

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
)  
PMCM TV, LLC, Licensee of WJLP, )  
Middletown Township, New Jersey )  
)  
v. )  
)  
RCN Telecom Services, LLC . )  
\_\_\_\_\_ )

CSR-8917-M  
Docket No. 16-25

In the Matter of )  
)  
PMCM TV, LLC, Licensee of WJLP, )  
Middletown Township, New Jersey )  
)  
v. )  
)  
Service Electric Cable TV of New Jersey Inc., d/b/a )  
\_\_\_\_\_ )

CSR-8918-M  
Docket No. 16-26

**Accepted / Filed**

**JUN 10 2016**

Federal Communications Commission  
Office of the Secretary

In the Matter of )  
)  
PMCM TV, LLC, Licensee of WJLP, )  
Middletown Township, New Jersey )  
)  
v. )  
)  
Time Warner Cable Inc. )

CSR-8919-M  
Docket No. 16-27

DOCKET FILE COPY ORIGINAL

To: Marlene H. Dortch, Secretary  
For transmission to: The Commission

**CONSOLIDATED APPLICATION FOR REVIEW**

DONALD J. EVANS  
Fletcher, Heald & Hildreth, P.L.C.  
1300 N. 17th Street – 11th Floor  
Arlington, Virginia 22209  
(703) 812-0430  
evans@fhhlaw.com  
Counsel for PMCM TV, LLC

June 10, 2016

No. of Copies rec'd 0+4  
List ABCDE

## SUMMARY

This is the 4<sup>th</sup> in a series of applications for full Commission review of the Media Bureau's refusal to heed the command of the Commission's rules or the Communications Act to enforce WJLP-TV's over-the-air and cable carriage rights for its over-the-air channel, Channel 3. To date the Commission has taken no action on any of the applications for review to overrule or correct the Bureau's multiple violations of the law, leaving PMCM-TV, LLC (the licensee of WJLP), the cable systems in the New York DMA, 22 million viewers in the New York DMA, and now all stations which erroneously believed they had must carry rights under the Act in a state of regulatory limbo. It is essential that the Commission act quickly to remediate the situation for the benefit of the public and the industry. Because the change in WJLP's channel is a flagrant and time-sensitive violation of the Spectrum Act, PMCM must seek extraordinary judicial relief if the Commission does not act by July 15.

In addition to the need to bring clarity to an intolerable situation where the simple word "channel" as used in the Act is now deemed to have multiple, diametrically conflicting meanings that make any reasoned application of the statutory requirements impossible, the Bureau's action flagrantly violates the express prohibition of the Spectrum Act that a TV station's channel may not be changed by the Commission prior to the earlier of: (i) September 30, 2022, (ii) the date the Incentive Auction is declared a failure, or (iii) the date that the reverse and forward auctions have been successfully completed.<sup>1</sup> Because WJLP has been entitled to this protection under the Act

---

<sup>1</sup>47 U.S.C. Section 1452 (g)

Limitation on reorganization authority

**(1) In general.** During the period described in paragraph (2), the Commission may not—  
**(A)** involuntarily modify the spectrum usage rights of a broadcast television licensee or reassign such a licensee to another television channel except—  
[exceptions not applicable]...

*(Footnote continued on next page)*

since February 22, 2012 and the Bureau, by its own analysis, has patently violated this statutory requirement since October 23, 2014 by changing WJLP's channel from 3 to 33, immediate relief is necessary. If the Commission does not act to remedy the continuing violation of the law by the completion of the repacking process after a successful Incentive Auction, PMCM will have lost the entire benefit of the protection accorded by Congress. In the absence of immediate action by the Commission, therefore, PMCM intends to seek extraordinary relief from the Court to put an end to this flagrant violation of PMCM's statutory rights.

This Application for Review will address the following specific errors:

1. The Bureau acted on a novel matter, which is expressly forbidden to the Bureau to do. Specifically, the full Commission itself has never had occasion to interpret the application of Section 1452(g) of the Act, nor has it ever considered the far-reaching and disastrous effect of declaring a TV station's "channel" to be its virtual channel on the must-carry rights set forth in Section 614(h)(1) of the Communications Act.
2. The Commission failed to act on PMCM's must carry demand within the 120 day period set by the statute.
3. The Bureau's determination that a station's major *virtual* channel number is its channel number is directly contrary to both the Commission's and Congress's consistent, long-

---

*(Footnote continued from preceding page)*

**(2) Period described** The period described in this paragraph is the period beginning on February 22, 2012, and ending on the earliest of—

**(A)** the first date when the reverse auction under subsection (a)(1), the reassignments and reallocations (if any) under subsection (b)(1)(B), and the forward auction under subsection (c)(1) have been completed;

**(B)** the date of a determination by the Commission that the amount of the proceeds from the forward auction under subsection (c)(1) is not greater than the sum described in subsection (c)(2)(B); or

**(C)** September 30, 2022.

standing, and universal use of the term “channel” throughout its rules and throughout the Act.

4. A station’s “over the air channel” under Section 614(b)(6) of the Act refers to a transmitted frequency band which is an immutable phenomenon of physics. It cannot be changed arbitrarily by assigning “virtual” channels to TV stations.
5. Section 614(b)(6) of the Act guarantees a TV station the right to cable carriage on its “over the air channel,” a right which the Bureau has abrogated.
6. If the Bureau’s interpretation of the word “channel” in the Act is correct, the Bureau has indisputably changed WJLP’s “channel” from 3 to 33 in direct violation of the Spectrum Act, which forbids involuntary channel changes.
7. If the Bureau’s interpretation of the word “channel” is correct, the vast majority of stations which have thought themselves entitled to must-carry status for the last two and a half decades under Section 614(h) of the Act now do not qualify because they are not “licensed and operating on a channel regularly assigned to a community within a cable system’s market.” As now interpreted by the Bureau, most TV stations are operating on a channel (their virtual channel) which is neither a part of their license nor regularly assigned to a community. Only the non-virtual, over the air channels found in the Table of Allotments are assigned to communities. Hundreds of stations could now lose the must-carry rights which Congress plainly thought it was granting them.
8. The Bureau improperly denied PMCM’s cable carriage demand on RCN, despite the fact that RCN did not timely file an opposition to the demand. Its request to make a grossly late filing was properly rejected by the Bureau, leaving PMCM’s petition unopposed.

## TABLE OF CONTENTS

Summary .....	i
Table of Contents .....	iv
Questions Presented for Review .....	1
Background .....	2
Discussion .....	5
I.    A Station's "Over the Air" Channel is the Channel Identified in the Table of Allotments .....	6
II.   The Bureau's Interpretation of "Channel" Would Eviscerate the Must Carry Rights Guaranteed by 614(h)(1)(A) of the Act .....	9
III.  The Spectrum Act Precludes the Commission from Changing WJLP's Channel, However It Is Defined .....	10
IV.  Other Issues .....	12
Conclusion .....	15
Certificate of Service .....	

Pursuant to Section 1.115 of the Commission's Rules, PMCM TV, LLC ("PMCM"), licensee of Station WJLP(TV) ("WJLP"), Channel 3, Middletown Township, New Jersey, hereby seeks review by the full Commission of the decisions ("Bureau Orders") of the Media Bureau ("Bureau") set out in three May 17, 2016 orders addressing PMCM TV, LLC's (PMCM's), demand for on channel carriage on three cable systems in the New York DMA (DA 16-548, DA 16-547, and DA 16-549). These Orders were issued some two years after PMCM demanded carriage on these systems.

#### **QUESTIONS PRESENTED FOR REVIEW**

- A. By delaying a decision on PMCM's June 6, 2014 demand for cable carriage until May 17, 2016, did the Commission violate the statutory requirement to act on cable carriage requests within 120 days?
- B. Is WJLP's "over the air channel" the channel which is allotted to its community in the Table of Allotments which is associated with the specific frequencies over which the station broadcasts its signals from its transmitter site through the air to its distant receivers, or is its over the air channel a number which may be assigned by the Bureau without any relationship to the frequency on which the station is licensed to transmit over the air?
- C. If a station's over-the-air channel is now defined as its virtual channel, does the statutory prohibition on involuntarily changing a station's "channel" preclude the Commission from involuntarily changing a station's virtual channel?
- D. Does the Bureau's interpretation of the word "channel" in the cable carriage section of the Act to mean a station's "virtual channel" disqualify all stations operating on virtual channels which are different from their licensed channels from all must-carry rights because they are not operating on a channel "licensed to and regularly assigned to a community," as required by the Act?
- E. When a station has been allocated and licensed under the provisions of Section 331 of the Act, does the assignment of a UHF virtual channel number coupled with the denial of cable carriage on a VHF channel effectively negate the purpose and intent of Section 331 to make a VHF channel available to New Jersey?

## BACKGROUND

With the issuance of the Bureau's May 17 Orders, an issue which has lurked beneath the surface of the Bureau's continuing failure to recognize WJLP's statutory and regulatory right to be carried on cable channel 3 has finally come to an unavoidable crisis. In July of 2014, the Bureau indefinitely delayed the obligation of three cable systems to accommodate WJLP's must carry demand while the Bureau thought about whether WJLP's major virtual channel should be changed to something other than 3, the over the air and virtual channel which the station had used for nearly five years. This indefinite denial of WJLP's cable carriage rights is nowhere permitted in the Communications Act, which, to the contrary, requires cable carriage disputes to be resolved in no more than 120 days. 47 U.S.C. Section 614(d)(3). PMCM timely sought review of that patently unlawful action<sup>2</sup>, but the Commission has taken no remedial action.

Almost a year later, the Bureau, after taking the unusual step of opening a Docket to consider the matter, decided to change WJLP's virtual channel from 3 to 33 on a permanent basis. This decision flatly contradicted the prescriptions of ATSC A/65, Annex B, which lays out what major and minor virtual channel numbers are to be assigned to a station under various circumstances. PMCM TV timely appealed that decision,<sup>3</sup> pointing out, among other obvious problems with the decision, that the Bureau's ruling was premised on WJLP being simultaneously located in the Hartford, CT *and* the Philadelphia PA TV markets, but not in the New York market where it is actually situated and is recognized for all other purposes by the Commission's rules. The Commission has taken no remedial action on that AFR either.

---

<sup>2</sup> See Application for Review filed August 25, 2014.

<sup>3</sup> See Application for Review filed July 6, 2015.

While those appeals were pending, PMCM filed formal demands on the three captioned cable systems to carry it on the channel over which it is transmitted “over the air,” (i.e., channel 3). PMCM relied on the express language of the statute which requires cable carriage on a station’s “over the air channel,” not a virtual channel or any other channel designator. It also relied on the Commission’s express declaration in 2008 that in the digital era stations would continue to have available the cable carriage rights afforded by the statute, including the right to be carried on their over the air channels.<sup>4</sup> Finally, it relied on the fact that the Spectrum Act, *supra*, forbids the Commission from involuntarily changing a station’s spectrum usage rights OR reassigning it to a different channel until the Incentive Auction is successfully completed and all stations have been repacked. The Bureau denied these carriage complaints by the orders under review here.<sup>5</sup>

During most of WJLP’s operations, the lengthy irresolution of the virtual major channel issue followed by the assignment of an erroneous virtual major channel, and then topped off by a denial of on-channel cable carriage rights has resulted in literally millions of viewers being unable to access WJLP’s signal over the air or on cable, thus crippling its ability to provide the service to New Jersey which it was intended by Congress to deliver. It has also hurt WJLP’s ability to generate the revenues necessary to deliver that service. Despite these handicaps, WJLP was recently awarded three Emmys for its outstanding public affairs programming. Yet only a

---

<sup>4</sup> [“T]he channel placement options in Sections 614(b)(6) and 615(g)(5) of the Act, as implemented in Section 76.57 of the Commission’s Rules, remain in effect after the digital transition.” 2008 *Declaratory Order*, 23 FCC Rcd 14254 at 14258).

<sup>5</sup> This application for review addresses those orders, but the Bureau’s earlier errors are also implicated since re-assignment of WJLP’s original virtual major channel (3) with a different minor channel (.10) would effectively moot the cable carriage problem by making the station’s virtual channel coincide with its over the air channel while also complying with the protocols of ATSC A/65 Annex B.

minority of the people in the market are able to actually access its signal due to the erroneous virtual channel assignment and then the designation of that erroneous channel as its over the air channel. This problem has been aggravated by the fact discovered in the course of this proceeding that half of the TV receivers in the market cannot correctly direct the viewer to his or her desired station when a virtual channel broadcast by one licensee is the same as over-the-air channel broadcast by a different licensee in the same market. Thus, the intent of Congress to provide New Jersey via Section 331 of the Act with a commercial VHF station has been effectively thwarted by compelling WJLP to identify itself as channel 33 to over the air viewers and as something other than channel 3 to cable viewers.

The clear intent of Section 331(a), as spelled out in the original language of the bill as passed by Congress, is to give underserved states an *identifiable VHF dial position* and VHF frequency that can compete with the major VHF stations in the same market. If Congress had wanted an outcome that would put the station's identity in the UHF band, there would have been no reason for the law in the first place as New Jersey already had a number of UHF TV allocations as such at the time of adoption. WJLP was relocated to New Jersey for the express purpose of filling the VHF void which the Commission had unlawfully created. Yet it has a non-working PSIP number on Channel 33, a UHF dial position on 33 that undermines the clear intent of 331(a) to give the state an identifiable VHF channel, a dial position that misleads over the air viewers to purchase a UHF antenna for reception when only a VHF antenna will work, and a cable channel carriage assignment that that abrogates its right to placement on its over the air channel 3, as prescribed by statute.

## DISCUSSION

As PMCM has explained in detail in its previous filings with the Commission, under both Section 614(b)(6) of the Communications Act and the Commission's rules, a station is entitled to mandatory carriage on cable systems if it is a "local commercial television station," as defined in Section 614(h)(1) of the Communications Act and Section 76.55(c) of the Commission's rules. Sections 614(h)(1) and 76.55(c) define a "local commercial television station" as any full power television broadcast station that is 1) licensed to a community within the same television market as the cable system, 2) not considered a distant signal pursuant to the cable compulsory copyright license, and 3) capable of delivering a good quality over-the-air signal to the system's principal headend or willing to agree to be responsible for the costs of delivering such a signal through alternative means. WJLP(DT) qualifies as a local commercial television station on the New York DMA systems operated by the captioned cable companies and therefore is entitled to mandatory carriage.

Pursuant to Section 614(b)(6) of the Communications Act and Section 76.57 of the Commission's Rules, a station is entitled to carriage on (i) the channel number on which the station is "broadcast over the air," (ii) the channel number on which the station was carried on July 19, 1985 or January 1, 1992, or (iii) a channel mutually agreed to by the station and cable television system operator. WJLP(DT) broadcasts on over-the-air RF channel 3. WJLP(DT) was not carried on any of the subject cable systems in 1985 or 1992. RCN is currently carrying WJLP(DT) on Channel 33 pursuant to the Media Bureau's previously stated position that must-carry stations must be carried on the virtual major channel associated with that station. Time Warner is carrying WJLP on cable Channel 1239 under an interim agreement between the parties pending Commission resolution of this dispute. PMCM has no objection to continued carriage

on these channels pending Commission resolution of this complaint. Service Electric has refused to carry WJLP at all.

WJLP(DT) did not make a formal election on RCN's systems in 2014 and as a result, pursuant to Section 76.64(f)(3) of the Commission's rules, defaulted to must-carry status. Under the statutory and regulatory provisions cited above, all three cable systems are required to carry WJLP(DT) on its over the air channel 3.

**I. A Station's "Over the Air" Channel is the Channel Identified in the Table of Allotments**

Congress's mandate is clear and indisputable: a television station asserting must-carry rights "shall" be carried on the cable channel corresponding to the channel on which the station "is broadcast over the air". 47 U.S.C. §614(b)(6). Pursuant to the license which it has held for more than a decade, WJLP broadcasts over the air on Channel 3. Its right to do so is confirmed by (i) the FCC's DTV Table of Allotments, 47 C.F.R. §73.622(h)(2)(i), which sets out the channels on which stations may broadcast, and (ii) the channel and frequency noted on WJLP's license and construction permit. It is therefore entitled to cable placement on Channel 3.

The term "channel" is used throughout the FCC's rules (as well as the Act) to refer to an objective phenomenon, *i.e.*, the frequency band on which a radio wave modulates when it is emitted from a transmitter. In the FCC's TV rules, channels are identified with specific frequency bands. Since the channel on which WJLP(DT) is required, by its license, to emanate radio waves from its transmitter is channel 3 (60-66 MHz), that must be the channel on which the station broadcasts "over the air." To identify channels by some other arbitrary number divorces them from the objective and immutable physical reality of the frequency involved.

The arrival of digital television and, with it, the notion of "virtual" channels, did *not* alter the statutory mandate of Section 614(b)(6) and did *not* affect PMCM's right to carriage on

Channel 3. Congress was fully cognizant of, and actively engaged in, the DTV transition – but at no time did Congress even suggest that any revision of Section 614(b)(6) might be in order.

Similarly, the Commission itself did not amend its corresponding rule, 47 C.F.R. §76.57(a). To the contrary, the Commission expressly acknowledged that

the channel placement options in Section [614(b)(6)] of the Act ... *remain in effect after the digital transition.*

*Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, Declaratory Order, 23 FCC Rcd 14254,14258, ¶¶ 14-16 (2008) (“*2008 Declaratory Order*”) (Emphasis added).<sup>6</sup> The Bureau attempted here to explain away the Commission’s statement that the statutory channel placement options remain in effect by noting that the historical channel carriage options premised on carriage in 1985 and 1992 were deemed no longer “suitable” by the Commission in the *First Report and Order*, 16 FCC Rcd. 2598, 2633, footnote 235 (2001). However, the Bureau failed to observe that *in that same footnote* the Commission declared that the “on channel option is relevant to the new digital signals... Since digital signals are generally new products, there is no analogous supporting rationale for requiring digital channel positioning on any channel other than a station’s over-the-air channel.” The Commission went on in footnote 238 to repeatedly refer to a station’s broadcast frequency assignment as its “over-the-air” channel number. And rather than substituting the virtual channel for the over-the-air channel in implementing the statutory cable carriage scheme, as the

---

<sup>6</sup> See also *2008 Declaratory Order* at ¶18 (“We also clarify that although the *First Report and Order* did not specifically address the significance of the statutory provisions and rules with respect to the ‘historic’ carriage options, *these statutory options remain available* to digital must-carry broadcasters, who will make digital channel placement elections pursuant to Sections 76.57(a) or (b) *just as they previously have for analog channel placement elections.*”(Footnote deleted, emphasis added))

Bureau asserts the Commission did, the Commission expressly left it to technology to permit stations to be identified to viewers according to their virtual channels. *Id.* at 2635.

While the Commission did, in the *2008 Declaratory Order*, expand a licensee's must-carry channel placement options to include cable placement on a station's virtual major channel number, that accommodation to digital technology was provided purely as an option.<sup>7</sup> The availability of that option did not alter a station's right, under Section 614(b)(6), to placement on the channel on which the station broadcasts over the air. Nor could it have: that clear and unequivocal right was expressly created by Congress and, unless amended by Congress, cannot be withdrawn by the Commission.

The Bureau Orders appear to rely on Section 614(b)(4)(B) of the Act for authority to alter the statutory right expressly accorded by Section 614(b)(6). But Section (b)(4), entitled "Signal Quality," deals only with the *technical* aspects of receiving a TV signal. No one has suggested that there is any technical reason whatsoever for designating the virtual channel as the "over-the-air" channel prescribed by Section (b)(6); it was allowed solely to accommodate the stations' desire to be perceived as their old analog channel. Nor has there been any modification to the standards for advanced broadcast television signals such as a conversion to an internet protocol-based transmission platform that would necessitate or justify the gutting of Section (b)(6). In short, Section (b)(4) of the Act gives the Commission no authority to abrogate the express commands of Section (b)(6).

Indeed, to the contrary, the language relied on by the Bureau undermines its position. It is well-established that "where Congress includes particular language in one section of a statute but

---

<sup>7</sup> See *2008 Declaratory Order*, at ¶16 ("We clarify that any station carried pursuant to mandatory carriage may demand carriage on its major channel number ...." (Emphasis added)). The Commission's choice of the plainly non-mandatory "may" reflects the optional nature of this alternative.

omits it in another ..., it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.” *Keene Corp. v. United States*, 508 U.S. 200, 208 (1993). The language of Section (b)(4) on which the Bureau relies obviously demonstrates that Congress knew how to provide the Commission authority to adapt its *technical* rules as necessary. Had Congress intended to accord the Commission similar leeway with respect to the separate and distinct cable carriage provisions of the Act, Congress could and would have included similar language in Section (b)(6). The fact that it did not do so gives rise to the presumption that, contrary to the Bureau’s self-serving and unsupported claim, Congress did not intend to accord the Commission *carte blanche* to ignore the express statutory language of the Act’s carriage provisions.

## **II. The Bureau’s Interpretation of “Channel” Would Eviscerate the Must Carry Rights Guaranteed by 614(h)(1)(A) of the Act**

Section 614(h)(1)(A) of the Act defines a local commercial television station to be a station “licensed and operating on a channel regularly assigned to its community by the Commission that, with respect to a particular cable system, is within the same cable television market as the cable system.”<sup>8</sup> Congress plainly intended all of the cable carriage rights set forth in Section 614 to attach to stations operating over the channels which are found in the Table of Allotments where channels *are* assigned to local communities. The Commission has consistently enforced must carry rights on this basis. By contrast, virtual channels are *not* the channels on which stations are “licensed,” nor are they “assigned to communities.” Virtual

---

<sup>8</sup> Interestingly, if the Bureau is correct that WJLP’s “market” is both Hartford and Philadelphia, as it found in assigning it PSIP major channel 33, then WJLP would be entitled to must carry rights on cable systems in both of those markets in addition to the New York market.

channels therefore have no place in place in the statutory cable carriage scheme. Accordingly, the Bureau's notion that a station's "channel" is defined, for cable carriage purposes, by a virtual major channel different from the channel allotted to it in the Table of Allotments leads to the nonsensical result that that station is not entitled to cable carriage *at all* since it would not meet the statutory definition of a local commercial television station.

The Bureau's Orders, strangely, brush off the cataclysmic effect that the Orders may have on the current system of cable carriage of "must carry" stations. The Bureau did not acknowledge the conflict nor attempt to reconcile its definition of the word "channel" in Section 614(b)(6) with the statutory definition of a local TV station in Section 614(h)(1)(A). If the full Commission does not act to correct the Bureau's error, cable systems could begin tomorrow, presumably with the full support of the Bureau, to deny carriage to the hundreds of must carry stations whose newly defined "over the air channels" do not coincide with the channels on which they are licensed and which are assigned to their communities of license. They simply do not qualify as "local commercial television stations" as the Act defines them if the Bureau's interpretation is correct. This cannot possibly be what Congress intended; the Bureau's interpretation must be wrong.

### **III. The Spectrum Act Precludes the Commission from Changing WJLP's Channel, However It Is Defined**

The Spectrum Act<sup>9</sup> bars the Commission from involuntarily changing any TV station's channel until the Incentive Auction is over and the repacking process has been finalized. WJLP

---

<sup>9</sup> Middle Class Tax Relief and Job Creation Act, 47 U.S.C. §1452(g)(1)(A). "[Prior to the completion of the Incentive Auction and repacking process,] the Commission may not –

(A) Involuntarily modify the spectrum usage rights of a broadcast television licensee *or reassign such a license to another television channel except –*

*(Footnote continued on next page)*

operated on channel 3 with PSIP major channel 3 for almost five years. Its virtual channel 3 was recognized as its channel by the Commission (see attachment A) until the day in October, 2014 that the Bureau issued an order changing it to channel 33, first temporarily, then permanently. If its “channel” is deemed to be defined by its virtual channel -- an essential predicate of the Bureau’s Orders -- a compelled change from channel 3 to channel 33 would plainly constitute a change in its channel in direct violation of the Spectrum Act.

It is particularly important to note that §1452(g)(A) bans not only changes in TV station’s spectrum usage rights (i.e., its use of particular frequencies) but also changes in its “channel.” If the section were intended to ban only changes in RF aspects of station’s operations, the reference to “channel” changes, in addition to RF changes, would be meaningless surplusage – something the rules of statutory construction abhor. *United States v. Porter*, 745 F.3d 1035 (10th Cir., 2014), citing Bryan A. Garner, *A Dictionary of Modern Legal Usage* 860 (2d ed. 1995) (“Courts often recite the canon of construction that prevents them from reading statutory or contractual language in a way that renders part of it surplusage.”); *see also* William N. Eskridge, Jr., et al., *Legislation and Statutory Interpretation* 275 (2d ed.2006) (noting “the presumption that every statutory term adds something to a law’s regulatory impact”)

Here the Bureau is in that classic law school posture of being hoist by its own petard. It has defined a “channel” as a station’s virtual channel. PMCM vigorously disagrees with the Bureau’s interpretation that a station’s channel is its virtual channel rather than its RF channel, but the Commission cannot with any consistency, honesty, or intellectual rigor define a station’s

---

*(Footnote continued from preceding page)*

- (i) in accordance with this section; or in the case of a violation of its license or a specific provision of a statute administered by the Commission promulgated under any such provision... (Emph. added.)

channel as its over-the-air channel for purposes of Section 1452 of the Spectrum Act but not as its over-the-air channel for purposes of Section 614(b)(6) and 614(h)(1)(A); it cannot have it both ways.

The Bureau tried to finesse this key violation of the statute by describing it as a collateral attack on the virtual major channel designation, which is separately pending. In fact, however, it is the Bureau's determination that a station's channel is its virtual channel rather than its over-the-air channel that creates the dilemma posed here: if WJLP's channel is its virtual channel, then the Bureau has violated the Spectrum Act and has been doing so since October 2014; if WJLP's channel is its RF over-the-air channel, then the Bureau must now be violating Section 614(b)(6) of the Act. Either way, the Bureau must be wrong and PMCM is statutorily entitled to carriage on channel 3.

#### **IV. Other Issues**

A. The Bureau erred by taking upon itself the authority to rule on this matter. The Commission's authorizing rules expressly bar the Media Bureau from action on matters "that present novel questions of law, fact, or policy that cannot be resolved under existing precedents and guidelines." 47 C.F.R. 0.283. The issues presented here plainly fall within that prohibition. The Spectrum Act was only enacted in 2012. The full Commission has had no occasion to interpret the Act's prohibition on changing a station's channel during the pendency of the Incentive Auction proceedings – nor, for that matter, has the Bureau. Indeed, to date the Commission has invariably avoided changing any station's channel without its consent (whether virtual or over-the-air) in compliance with the Act. The Bureau indisputably changed WJLP's virtual channel from 3 to 33 in 2014. Its recent determination that the virtual channel is now WJLP's "channel" necessarily means that the Spectrum Act has been violated. This is a matter that was plainly outside the Bureau's delegated authority.

B. The Bureau's two year delay in resolving the WJLP cable carriage issue violated the statute's 120 day timeline for resolving such disputes. Ordinarily, adding, deleting or repositioning television stations on cable systems is a routine, every-day occurrence that, under the timeline set out in the Commission's rules, is to be accomplished within a matter of a couple of months. Congress has emphasized that the notification process underlying such additions, deletions or repositionings "shall not be used to undermine or evade the channel positioning or carriage requirements." 47 U.S.C. §614(b)(9). In other words, the process of change is supposed to run smoothly and quickly.

While PMCM took timely steps to notify cable operators of the impending commencement of WJLP's operation in New Jersey – and thereby assure initiation of carriage at the earliest possible date – the Bureau completely defeated PMCM's efforts. To the contrary, the Bureau effectively tossed out the statutorily fixed timeline. Nothing in the Act permits the Commission or its delegated authorities to simply place the 120 day timeline on hold while it looks at some other issues.<sup>10</sup> The Bureau's action was unprecedented and if not overruled

---

<sup>10</sup> In fact, Section 614(d)(3) unequivocally provides that cable carriage disputes must be resolved – by the Commission – within 120 days. That is, PMCM was entitled to a final agency disposition of its carriage claims within 120 days. So even if the Bureau's decision to hit the "pause" button in 2014 were deemed legitimate – which it plainly was not – at a minimum PMCM was statutorily entitled to final resolution – *by the Commission* – of this matter by May ---, 2016. The fact that the Bureau may have issued its decision by that date is *not* statutorily adequate. If action by a mere subordinate official, subject to review by the full Commission, were deemed to toll the Congressionally-mandated 120-day limit, that limit would be rendered meaningless: the Commission could then sit on any applications for review of that subordinate's actions indefinitely, effectively writing the 120-day limit out of the statute. By imposing the 120-day limit, Congress intended to insure that parties to a carriage dispute would know, within 120 days, the Commission's resolution of their dispute, so that they could comply with it or seek judicial review. Because, in the instant case, the 120-limit was passed weeks ago already, PMCM has already been deprived, and continues to be deprived, of its statutorily guaranteed right to agency disposition within that limit. PMCM hereby formally advises the Commission that, if the  
*(Footnote continued on next page)*

would open the door to wholesale evasion of the statutory deadline by the simple expedient of advising cable companies that they are under no obligation to carry a station's signal at all until the issues are resolved. The long and unlawful delay in resolution of this case has seriously and adversely impacted the rights of the people of New Jersey to have the TV service that Congress guaranteed them, and the Bureau's approach should be rejected.

C. RCN, one of the cable companies who were served with a demand for carriage, did not file a timely opposition to PMCM's demand. The Bureau correctly rejected RCN's grossly late attempt to file an opposition as unjustified. The result should have been that PMCM's demand was treated as unopposed and granted, as would almost any other cable carriage petition that was not opposed by the cable company. Instead, the Bureau proceeded to take cognizance of the late-filed pleading and denied the requested carriage despite the absence of an opposition. This effectively nullifies the purpose of the rules requiring parties to file pleadings on time if they care about a matter in issue. The Bureau's failure to enforce the Commission's rules should be reversed and the petition against RCN should be granted without regard to the issues timely raised by the other two cable companies.

---

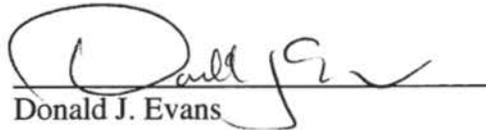
*(Footnote continued from preceding page)*

Commission does not resolve the instant Application for Review by July 5, 2016, PMCM will seek emergency intervention by the U.S. Court of Appeals for the D.C. Circuit.

## CONCLUSION

For the reasons set forth above, the Commission should reverse the Bureau's denial of the three cable carriage complaints and instead direct the cable companies to begin carrying WJLP immediately on its over-the-air channel 3. As stated above, because the ongoing violation of the Spectrum Act is flagrant and time limited, substantive disposition by the Commission of the instant Application for Review NO LATER THAN JULY 15, 2016 is requested. Failure to act by that date will necessitate an appropriate petition to the Court of Appeals for emergency relief.

Respectfully submitted,



Donald J. Evans

Fletcher, Heald & Hildreth, P.L.C.  
1300 N. 17th Street – 11th Floor  
Arlington, Virginia 22209  
(703) 812-0430  
evans@fhhlaw.com  
*Counsel for PMCM TV, LLC*

June 10, 2016

## ATTACHMENT A



IFF#Krp h#:#E

## Station Search Details

[FCC](#) > [Media Bureau](#) > [MB-CDBS](#) > [CDBS Public Access](#) > [Station Search](#)

[Help](#) [site map](#)

## Station Search Details

**Call Sign:** KVVV  
**Facility Id:** 86537  
**Primary Station Call Sign:**  
**Community of License:** MIDDLETOWN TOWNSHIP, NJ  
**Service:** DT  
**Fac Type:** COMMERCIAL DIGITAL TV  
**Status:** LICENSED  
**Status Date:** 03/09/2012  
**Frequency:** 60  
**Channel:** 3  
**Virtual Channel:** 3  
**Digital Status:**  
**Lic Expir:** 06/01/2015  
**NTSC TSID:** 8476  
**DTV TSID:** 8477  
**Licensee:** PMCM TV, LLC  
**Address:** 63 WEST PARISH ROAD  
**Address 2:**  
**City:** CONCORD  
**State:** NH  
**Zip Code:** 03303 -  
**Phone Number:** (732) 245-4705  
**Engineering Data** [View Engineering Data](#)  
**Call Sign History** [View Call Sign History](#)  
**FRN History** [View FRN History](#)  
**Correspondence Folder** [View Correspondence Folder](#)

[IFF#Krp h](#) | [Vhdufk](#) | [Xsqdwhv](#) | [H0I1kri](#) | [Iqldwlyhv](#) | [Iru#Frgvxp hlv](#) | [Ilg#Shrsd](#)

Please send comments via standard mail to the Federal Communications Commission, Consumer and Governmental Affairs Bureau, 445 12th Street, S.W., Washington, D.C., 20554. Questions can also be answered by calling the FCC's National Call Center, toll free, at 1-888-Call FCC (1-888-225-5322).

Federal Communications Commission  
 445 12th Street SW  
 Washington, DC 20554  
[More FCC Contact Information...](#)

Phone: 1-888-CALL-FCC (1-888-225-5322)  
 TTY: 1-888-TELL-FCC (1-888-835-5322)  
 Fax: 1-866-418-0232  
 E-mail: [fccinfo@fcc.gov](mailto:fccinfo@fcc.gov)

[- Privacy Policy](#)  
[- Website Policies & Notices](#)  
[- Required Browser Plug-ins](#)  
[- Freedom of Information Act](#)

## CERTIFICATE OF SERVICE

I, Michelle Brown Johnson, hereby certify that on this 10<sup>th</sup> day of June, 2016, I caused copies of the foregoing "Consolidated Application for Review" to be placed in the U.S. Postal Service, first class postage prepaid, or hand-delivered (as indicated below) addressed to the following persons:

Commissioner Mignon Clyburn (by hand)  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Commissioner Michael O'Rielly (by hand)  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Commissioner Ajit Pai (by hand)  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Commissioner Jessica Rosenworcel (by hand)  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Commissioner Thomas Wheeler (by hand)  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Jonathan Sallet, General Counsel (by hand)  
Office of General Counsel  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Barbara Kreisman, Chief (by hand)  
Video Division  
Media Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Joyce Bernstein (by hand)  
Video Division  
Media Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Michael D. Basile  
Cooley LLP  
1299 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
*Counsel for Meredith Corporation*

Mace Rosenstein  
Covington & Burling LLP  
One City Center  
850 Tenth Street, NW  
Washington, DC 20001-4956  
*Counsel for ION Media License Co, LLC*

RCN Telecom Services, LLC  
650 College Road East  
Suite 3100  
Princeton, NJ 08540  
Attn: Mr. Thomas K. Steel, Jr.

Service Electric Cable TV of New Jersey Inc.  
d/b/a Service Electric Broadband Cable  
320 Sparta Avenue  
Sparta, NJ 07871  
Attn: Robert Williams, Jr., General Counsel

Mobius Legal Group, PLLC  
P.O. Box 6104  
Springfield, VA 22150  
Attn: James E. Dunstan  
*Counsel to Service Electric Cable TV of New Jersey, Inc.*

Time Warner Cable  
60 Columbus Circle  
New York, NY 10023  
Attn: Mr. Andrew Rosenberg

Seth A. Davidson  
Ari. S. Moskowitz  
Mintz, Levin, Cohn, Ferris, Glovsky and  
Popeo, P.C.  
701 Pennsylvania Avenue, N.W.  
Suite 900  
Washington, DC 20004  
*Counsel to Time Warner Cable*

  
Michelle Brown Johnson