

ORIGINAL

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of )  
 )  
Amendment of Section 73.622(i) )  
Post-Transition Table of DTV Allotments, )  
Television Broadcast Stations. )  
(Atlantic City, New Jersey) )

MB docket No. 09-231  
RM-11587  
FILED/ACCEPTED

JAN 29 2010

To: The Secretary for Transmission to  
Chief, Video Division

Federal Communications Commission  
Office of the Secretary

COMMENTS OF PMCM TV, LLC

PMCM TV, LLC ("PMCM") offers these brief comments in response to the captioned Notice of Proposed Rulemaking issued by the Commission on December 18, 2009. PMCM, as the licensee of a full power television station in Ely, NV, has notified the Commission that it agrees to the reallocation of its license to Middletown Township, NJ pursuant to the provisions of Section 331 of the Communications Act. To date, the Commission has not effectuated the channel reallocation required by the Act.<sup>1</sup> In view of the plain command of the statute that PMCM's channel reallocation must be given effect, the present NPRM must be evaluated in that light.

PMCM's principals have for decades been strong proponents of the expansion of New Jersey-based television. They sought years ago to create a New Jersey-oriented state network covering the north and south parts of the state but were foreclosed by the Commission's licensing

<sup>1</sup> A letter issued by the Chief of the Media Bureau contemporaneously with the NPRM at issue here purported to deny the notifications. PMCM has protectively requested full Commission review of that letter while seeking an appropriate court order directing the Commission to obey the statute.

processes. For too long the needs of New Jersey have been given short shrift by the New York and Philadelphia-based broadcast stations that loom over New Jersey's borders. Indeed, it was the dearth of New Jersey and Delaware TV stations, and the corresponding lack of coverage of New Jersey and Delaware issues, that prompted Congress to enact Section 331 in the first place. So PMCM wants to go strongly on record as supportive of additional TV channel allocations for these underserved states.

This support, however, must take into account the factual and legal realities. When PMCM's channel reallocations are effected, there will be two new channels in the NJ-DE mix – channel 3 in north central New Jersey and channel 2 in Wilmington, DE. The Commission may not ignore the statutory mandate that these allocations will be made, whether ordered by the Court of Appeals or implemented by the full Commission itself. Under Section 331, PMCM's notices must be given effect if there are no commercial VHF stations allocated to a state "at the time [of] such notification." At the time that PMCM submitted its notifications, there were no VHF channels allocated to either New Jersey or Delaware. This means that regardless of whether additional channels are allocated to New Jersey and Delaware as a result of the pending NPRMs, PMCM's channels must be allocated to these states. The Commission's belated attempt through the instant NPRM to rectify its prior failure to heed the dictates of the first sentence of Section 331(a), which commands that a VHF channel be allotted to each state if technically feasible, cannot negate the fact that PMCM had already submitted its notifications prior to the adoption of the NPRM.

Consequently, the Commission must ensure that the proposed new allocations in Atlantic City and Seaford will not create impermissible interference to channels 2 and 3, which will have

the status of previously licensed facilities.<sup>2</sup> Of course, the mandate of Section 331 will have been satisfied by the reallocation of PMCM's channels to New Jersey and Delaware, so there will no longer be a statutory requirement to assign additional VHF channels to these states.

In closing, PMCM is pleased to see that the Commission has at last recognized the high priority assigned by Congress almost 30 years ago to allocating VHF TV stations to unserved states. But notwithstanding that belated recognition, the Commission must also recognize that, even if it seeks to implement the first sentence of Section 331 through the allotment proposed in the above-captioned proceeding, it must still comply with the mandate of the second sentence of Section 331 as well.

Respectfully submitted,

PMCM TV, LLC

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<sup>2</sup> PMCM appreciates that the Commission selected channels 4 and 5 for its new proposals, presumably to avoid a co-channel conflict with channels 2 and 3. PMCM's own studies indicate that there should be no conflict under the normal digital spacing rules between the technical parameters of its notifications and the proposed new allocations, but the Commission should satisfy itself of that as well.