

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In re Application of)	
)	
PMCM TV, LLC)	File No. BPCDT-20130528AJP
)	Facility ID No. 86537
For a Television Station Construction)	
Permit for KVNV(TV), Middletown)	Accepted/Filed
Township, New Jersey)	
)	

FCC Office of the Secretary

To: Office of the Secretary
Attn: Chief, Video Division, Media Bureau

**PETITION FOR RECONSIDERATION AND
REQUEST FOR DECLARATORY RULING OF
MEREDITH CORPORATION**

Meredith Corporation (“Meredith”) files this Petition for Reconsideration and Request for Declaratory Rules regarding the Media Bureau’s letter decision dated April 17, 2014 (the “Letter Decision”) granting the above captioned construction permit application for KVNV(TV).¹ The Letter Decision failed to address the disruption that KVNV(TV) would cause on Virtual Channel 3 if it commenced operations on that channel.² This failure was a material error and inconsistent with Bureau precedent. Therefore, the Bureau should grant Meredith’s Petition and declare that KVNV(TV) may not commence program tests on Virtual Channel 3. Instead, when KVNV(TV) commences program tests, it must do so on Virtual Channel 33.

¹ This Petition is timely filed. See 47 C.F.R. §1.106(f). The Bureau granted the KVNV(TV) construction permit application on April 17, 2014. The grant appeared on Public Notice on April 22, 2014. See Report No. 48223. To the extent necessary, Meredith requests, pursuant to 47 C.F.R. § 1.41, that the Bureau affirmatively declare that KVNV(TV)’s Virtual Channel is Channel 33.

² Letter to PMCM TV, LLC, File No. BPCDT-20130528AJP, at 1-2 (rel. Apr. 17, 2014) (stating that a station’s virtual channel number should be addressed in a separate proceeding after grant of a license application).

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BACKGROUND

For almost fifty years, WFSB(TV), Hartford, Connecticut, has operated on Channel 3, and viewers know WFSB(TV) as Channel 3. This well established viewer expectation did not change as a result of the DTV transition because the Commission wisely incorporated the Program System and Information Protocol (“PSIP”) standard into its rules.³ PSIP has preserved the longstanding brand equity that Meredith and other broadcasters have built in their channel numbers, and PSIP allows viewers to continue watching a station on the same channel number they are accustomed to watching.

Since the DTV transition was completed in 2009, WFSB(TV) has operated on Virtual Channel 3 and RF Channel 33. Thus, every viewer in WFSB(TV)’s service area has continued to tune to Channel 3 to watch WFSB(TV), and WFSB(TV) continues to enjoy statutory must-carry rights on Channel 3 throughout its DMA and in various communities in Fairfield County, Connecticut, which is in the New York DMA.⁴ Given WFSB(TV)’s historic connection to Channel 3, most cable and satellite operators in the Hartford-New Haven DMA and in Fairfield County continue to carry WFSB(TV) on Channel 3.

WFSB(TV)’s exclusive right to Channel 3 within the station’s service area had been unquestioned for more than fifty years until PMCM TV, LLC (“PMCM”) filed an application to relocate KVVN(TV) from remote Ely, Nevada to a tower atop Times Square in New York City. KVVN(TV) will operate on RF Channel 3, and KVVN(TV) intends to commence operations using Virtual Channel 3 as well.

³ *Second Periodic Review of the Commission’s Rules & Policies Affecting the Conversion to Digital Television*, 19 FCC Rcd 18297, 18345, ¶152 (2004).

⁴ *Modification of the Television Market of Station WFSB*, 10 FCC Rcd 4939 (CSB 1995) (adding certain communities in Fairfield County, Connecticut to WFSB(TV)’s market for purposes of electing must-carry status).

The noise limited contours for WFSB(TV) and KVVN(TV) overlap significantly.⁵ Hundreds of thousands of viewers live within the overlap area, which includes most of Fairfield County, Connecticut and large portions of New Haven and Litchfield Counties, which are inside the Hartford-New Haven DMA. Today, when those viewers tune to Channel 3.1, they receive WFSB(TV)'s primary program stream affiliated with the CBS network.

If KVVN(TV) commences operations using Virtual Channel 3, it is not clear what station viewers will see on Channel 3.1. In its Opposition, PMCM speculates that viewers still will be able to find WFSB(TV)'s CBS programming somewhere on Channel 3.⁶ WFSB(TV)'s programming might appear on Channel 3.1, but many TV receivers likely will also show KVVN(TV) on Channel 3.1 as well. Moreover, if KVVN(TV) operates with multiple multicast channels, it is possible that viewers would first need to cycle through multiple channels on Channel 3 before reaching WFSB(TV)'s programming. Bottom line – and as PMCM acknowledges – different DTV receivers would resolve the conflict differently, and viewer confusion is inevitable.

Meredith, therefore, filed an Informal Objection against the KVVN(TV) construction permit application.⁷ In its Informal Objection, Meredith demonstrated that the ATSC PSIP standard, which is incorporated into Section 73.682(d) of the Commission's rules, requires

⁵ See Informal Objection of Meredith Corporation, Exhibit A-1 (filed Feb. 18, 2014).

⁶ See Opposition to Informal Objection, Exhibit 1 at ¶ 27.

⁷ In its Opposition, PMCM claims that Meredith cannot object to KVVN(TV) operating on Virtual Channel 3 because Meredith's low power station WSHM-LD also operates on Virtual Channel 3. See Opposition at 6. Unlike KVVN(TV), however, WSHM-LD substantially simulcasts the programming from WFSB(TV) with the exception of certain local Springfield-based programming. Thus, the likelihood of consumer confusion is significantly less. Moreover, as a low power station WSHM-LD does not have must carry rights and cannot make a channel position election that would conflict with WFSB(TV).

KVNV(TV) to operate Virtual Channel 33 to avoid a PSIP conflict with WFSB(TV).⁸ In Opposition, PMCM claimed that because KVNV(TV) would not cause actual RF interference, the Commission should ignore the ATSC procedures for resolving a PSIP conflict.⁹ Moreover, because it should be “possible” for television receivers to distinguish between KVNV(TV)’s program streams and WFSB(TV)’s program streams, PMCM argued that the Commission need not concern itself with another full power television station operating on Virtual Channel 3 in WFSB(TV)’s service area.¹⁰

The Letter Decision did not rule on the merits of the PSIP dispute. Instead, the Bureau granted the KVNV(TV) construction permit application and stated that any decision regarding the Virtual Channel “is customarily considered after grant of the license modification application in a separate proceeding that solely addresses the virtual channel designation.”¹¹ The Letter Decision, however, is inconsistent with Bureau precedent addressing PSIP channel numbers at the pre-construction stage. Moreover, even though the Letter Decision claims that it is not assigning a PSIP channel number to KVNV(TV), CDBS indicates that the Bureau has assigned Virtual Channel 3 to KVNV(TV). Finally, given that PMCM claims that it is entitled to operate on Virtual Channel 3, licensing efficiency and sound processing policy require that the Bureau should not wait for the inevitable viewer confusion before assigning KVNV(TV) its appropriate virtual channel number. As required by Commission rules – and binding precedent – the Bureau should affirmatively require KVNV(TV) to operate on Virtual Channel 33.

⁸ Informal Objection at 3.

⁹ Opposition at 4.

¹⁰ *Id.*

¹¹ Letter Decision at 2.

I. Commission Rules Require KVVN(TV) to Operate on Virtual Channel 33.

ATSC's PSIP rules ensure that two unrelated, full-power stations with overlapping noise limited contours do not use the same PSIP major channel number. Specifically, ATSC A/65 "guarantee[s] that the two-part [virtual] channel number combinations used by a licensee will be different from those used by any other licensee with an overlapping DTV Service Area."¹² ATSC A/65 defines a station's "DTV Service Area" as its noise limited contour.¹³ Thus, under ATSC A/65, full-power stations with overlapping noise limited contours, like WFSB(TV) and KVVN(TV), cannot both operate with the same virtual channel number.

When a conflict arises because, for example, a station moves into a new market, ATSC A/65 requires the new entrant to change its PSIP major channel number to avoid the conflict:

If, after February 17, 2009, an RF channel previously allotted for NTSC in a market is assigned to a newly-licensed DTV licensee in that market, the newly-licensed DTV licensee shall use, as its major channel number, the number of the DTV RF channel originally assigned to the previous NTSC licensee of the assigned channel.¹⁴

Section 73.682(d) of the Commission's rules incorporates this requirement into the Commission's rules for full-power stations.¹⁵

This PSIP rule perfectly describes the current situation between KVVN(TV) and WFSB(TV). KVVN(TV) will operate on RF Channel 3. That channel was previously allotted for NTSC use by WFSB(TV) in large portions of KVVN(TV)'s DTV Service Area. Having moved across the country to the New York DMA, KVVN(TV) will be "a newly-licensed DTV licensee in that market." Therefore, because KVVN(TV)'s use of Virtual Channel 3 would

¹² "ATSC Standard: Program Information Protocol for Terrestrial Broadcast and Cable (PSIP)," Advanced Television Systems Committee, Doc. A/65:2013, Rev. Aug. 7, 2013 ("ATSC A/65B"), at 91.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ 47 C.F.R. §73.682(d).

conflict with WFSB(TV)'s longstanding use of Channel 3, KVVN(TV) must use the RF channel number for WFSB(TV) – Channel 33 – as its Virtual Channel.

Binding Bureau precedent confirms that KVVN(TV) must operate on Virtual Channel 33. In 2010, when the Bureau allotted DTV Channel 5 to Seaford, Delaware, the Bureau did not assign Virtual Channel 5 to the Seaford station. Instead, the Bureau assigned Virtual Channel 36 to the allotment because of the “overlapping DTV service contours between WTTG(TV), [Virtual Channel 5], Washington, D.C. and the channel 5 allotment at Seaford.”¹⁶ Channel 36 is WTTG(TV)'s RF Channel.

Commission rules compel the same result here. KVVN(TV) is the new entrant into the market. Its noise limited contour will overlap the noise limited contour for WFSB(TV) – a station with a long-established presence on Channel 3. Therefore, KVVN(TV) cannot operate on the same Virtual Channel as WFSB(TV). Instead, it must operate on Virtual Channel 33. As Meredith demonstrated in its Informal Objection, assigning Virtual Channel 33 to KVVN(TV) will not conflict with any other full power television station.¹⁷

In its Opposition, PMCM claims that the Bureau should disregard the contour overlap because “KVVN and WFSB are not located in the same market.”¹⁸ *Seaford, Delaware*, however, makes it abundantly clear that a station's contour – not its DMA – is the touchstone for whether a full-power station may operate on the same virtual channel as another.¹⁹ In *Seaford, Delaware*, the Bureau determined that contour overlap was likely. Therefore, it assigned the new entrant

¹⁶ *Amendment of Section 63.622(i), Post-Transition Table of DTV Allotments, Television Broadcast Stations (Seaford, Delaware)*, 25 FCC Rcd 4466, ¶15 (2010)

¹⁷ Informal Objection at 3.

¹⁸ See Opposition at 7.

¹⁹ Given that PMCM was a party to the *Seaford, Delaware* proceeding, Meredith is surprised that PMCM would claim here that the signal contour overlap could have no bearing on the Bureau's decision. See Opposition at 7.

Virtual Channel 36 to avoid a PSIP conflict. Commission rules require that the Bureau follow the same procedures here by assigning Virtual Channel 33 to KVVN(TV).

II. The Letter Decision's Failure to Address the PSIP Conflict Was in Error and Must Be Corrected on Reconsideration.

Despite Commission rules and binding precedent requiring KVVN(TV) to use the Channel 33 as its Virtual Channel, the Letter Decision held that it was "premature" to determine KVVN(TV)'s Virtual Channel at this pre-construction stage.²⁰ "Rather, such an objection to virtual channel designations is customarily considered after grant of the license modification application in a separate proceeding that solely addresses the virtual channel designation."²¹ *Seaford, Delaware*, however, demonstrates that the Bureau in fact will determine virtual channel designations before a license application is granted.

In *Seaford, Delaware*, the FCC assigned the new Seaford station its Virtual Channel number at the first possible opportunity: the order allotting channel 5 to Seaford, Delaware. The Commission released the *Seaford, Delaware* decision on April 28, 2010.²² The Commission did not grant a construction permit for this station until more than a year later on May 4, 2011, and the Commission did not even assign this station a call sign until June 14, 2012. As a result of the Bureau's decision in *Seaford, Delaware*, when the permittee of the station commences operations, it will do so on Virtual Channel 36. Thus, contrary to what the Letter Decision suggests, the Bureau does not wait until after grant of a license application to assign a Virtual Channel. Instead, it will resolve a potential PSIP dispute at the first opportunity after the issue is raised.

²⁰ Letter Decision at 1.

²¹ *Id.* at 2.

²² *Seaford, Delaware*, 25 FCC Rcd at ¶15.

III. The Bureau Should Assign Virtual Channel 33 to KVVN(TV) Without Delay.

By declaring the PSIP issue “premature,” the Letter Decision suggests that the Bureau can wait to assign KVVN(TV) a PSIP channel. Meredith respectfully disagrees. The time to assign a Virtual Channel to KVVN(TV) is now. The construction permit for KVVN(TV) grants PMCM automatic program test authority. Thus, PMCM requires a Virtual Channel assignment that is consistent with FCC rules and ATSC A/65 before commencing program tests. If PMCM commences operations on Virtual Channel 3, it will do so in violation of FCC rules. Under Section 1.80, the base forfeiture for unauthorized emissions is \$4,000 per day.²³ Given the possibility of a substantial forfeiture if PMCM operates on the wrong Virtual Channel, the Bureau should remove the potential for such a result by assigning Virtual Channel 33 to KVVN(TV) – as required by *Seaford, Delaware* and ATSC A/65.

Aside from violating FCC rules, if PMCM operates on Virtual Channel 3, it will cause disruptions to local viewers. Even assuming every DTV receiver operates exactly as PMCM speculates in its Opposition, it still is unclear on what channel over-the-air viewers will find WFSB(TV)’s programming. Today, WFSB(TV)’s CBS programming can be found on Channel 3.1. If KVVN(TV) also operates on Virtual Channel 3, WFSB(TV) might remain on Channel 3.1, but it might not. Or, over-the-air viewers might see multiple stations on Channel 3.1. Regardless, different DTV receivers will resolve the conflict differently. For example, if KVVN(TV) operates with four or five standard definition multicast channels, WFSB(TV) might appear on Channel 3, but only after first cycling through all of KVVN(TV)’s program streams. In any event, when tuning to Channel 3, many viewers, naturally, would assume that KVVN(TV)’s programming was Meredith’s programming causing substantial confusion in

²³ 47 C.F.R. §1.80.

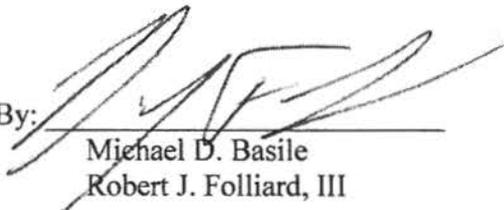
WFSB(TV)'s market. This conflict also could affect MVPDs that receive WFSB(TV) over the air at their headend or local receive site if their antennas lock on to stations via their Virtual Channel. Those MVPDs would receive no notice of the potential PSIP conflict that KVNV(TV) would cause when it commences operations. The Bureau can avoid these problems by promptly declaring that KVNV(TV) must commence program tests using Virtual Channel 33.

CONCLUSION

Because KVNV(TV) is the new entrant to the market and its PSIP Channel will conflict with WFSB(TV)'s PSIP Channel, ATSC A/65 and Commission rules requires the station to use WFSB(TV)'s RF Channel as its Virtual Channel. The Bureau, therefore, should grant this Petition and affirmatively declare that KVNV(TV) must operate on Virtual Channel 33. As the Bureau did in *Seaford, Delaware*, the Bureau should assign a PSIP virtual channel to KVNV(TV) before KVNV(TV) commences operations and before there is any opportunity for viewer disruption.

Respectfully submitted,

MEREDITH CORPORATION

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May 22, 2014

CERTIFICATE OF SERVICE

I, Rayya Khalaf, a secretary at the law firm of Cooley LLP, do hereby certify that a true and correct copy of the foregoing "Petition for Reconsideration and Request for Declaratory Ruling" was served by first-class U.S. mail, postage-prepaid, unless otherwise indicated, on the 22th day of May, 2014 on the following:

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