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Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of)
)
PMCM TV, LLC)
)
For Minor Modification of the License for)
KVVN(TV), Facility ID Number 86537,)
Middletown Township, New Jersey)

File No. BPCDT-20130528AJP

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Directed to: Office of the Secretary
Attention: Chief, Video Division, Media Bureau

FCC Office of the Secretary

**OPPOSITION TO PETITION FOR RECONSIDERATION
AND REQUEST FOR DECLARATORY RULING**

PMCM TV, LLC ("PMCM"), by its attorneys, hereby respectfully submits its Opposition to the Petition for Reconsideration and Request for Declaratory Ruling of Meredith Corporation ("Meredith") with regard to the above-captioned application for modification of the license for KVVN(TV), Middletown Township, New Jersey. With respect thereto, the following is stated:

Meredith is the licensee of WFSB(TV), Hartford, Connecticut, which is located in the Hartford and New Haven Designated Market Area ("DMA"). It is requesting reconsideration of the letter decision, *PMCM TV, LLC*, dated April 17, 2014, granting the above-captioned application for minor modification of the license for KVVN(TV), Middletown Township, New Jersey, which is located in the New York DMA, separate from (albeit adjacent to) the Hartford/New Haven DMA. Meredith is further requesting the extraordinary remedy of a declaratory ruling directing KVVN to operate in a manner which is contrary to that specified by the Advanced Television Systems Committee's Program System and Information Protocol ("PSIP") standard incorporated by reference in the Commission's Rules. The sole stated basis for these extraordinary requests is that WFSB and KVVN both use Channel 3 as their PSIP major channel and their noise limited contours overlap somewhat near the edges of their respective markets. Meredith claims, without any support (other

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than its own self-serving speculation), that some sort of unspecified difficulties with over-the-air reception may result, possibly causing viewer confusion. In its Informal Objection to the KVVV application, Meredith described its imagined problem as involving "virtual interference" – a term which, as far as PMCM can determine, is of Meredith's creation and does not appear in the Commission's rules. While Meredith has now dropped the use of this rather misleading term, it still has provided no supporting technical showing as to what the claimed problems might be. In contrast, PMCM's Opposition to Meredith's Informal Objection included a demonstration, supported by a technical statement from an expert in the PSIP system, that the reception difficulties posited by Meredith would not occur in the real world. Meredith has provided no countervailing evidence whatsoever. Thus, while Meredith has attempted to label PMCM's demonstration as speculative, it is Meredith's own unsupported theories which must be dismissed as the pure speculation that they are.

Moreover, Meredith's "fix" for any theoretical problems which might arise -- the assignment to PMCM of a different major channel number -- would be contrary to the PSIP standard and is not something that the Commission generally undertakes as part of licensing a station. Given that neither the above-captioned application, the resulting construction permit, nor a station's license include major channel information, the Petition for Reconsideration must be dismissed as irrelevant to the application under consideration.

Further, Meredith's request for declaratory ruling requires the Commission to ignore one portion of the PSIP standard clearly applicable here while applying another that it is equally clearly inapplicable. As an operating station, KVVV already has a major channel or virtual channel in full compliance with the PSIP standard (and, thus, the Commission's Rules); there is no need for the Media Bureau to alter that. That is particularly so when the sole purported justification for changing KVVV's PSIP-compliant major channel number throughout the entire New York DMA would be nothing more than some signal contour overlap in a small portion of that DMA from a station in the separate and distinct Hartford-New Haven DMA. Finally, Meredith's repeated references to cable

carriage strongly suggest that Meredith's real concern is cable channel placement in Fairfield County, Connecticut, not whether the few over-the-air viewers in a corner of its market might have to make a selection of which station to watch. Cable channel placement is completely unrelated to KVVV's modification application. Moreover, there is presently no conflict at all relative to such placement and any consideration of it at this time would be purely speculative and premature. Therefore, Meredith's request for a declaratory ruling must be dismissed.

As was true with respect to Meredith's Informal Objection, the Commission must recognize what Meredith still does *not* claim. Specifically, Meredith does not allege that PMCM's proposed facilities would cause *any* radiofrequency ("RF") interference. Nor does it take issue with *any* of the information (*e.g.*, power level, antenna height, location) otherwise required by the Commission's application form and therefore contained in PMCM's granted application. These are the elements which the Commission was required to examine and upon which it had to rely in reaching a decision as to whether the KVVV application should be granted. It is the function of the Commission's staff to examine the information contained in a modification application to ensure that proposed technical changes will not create objectionable interference to another station or otherwise create an operation contrary to Commission policy. Meredith's claims do not address any such considerations. Rather, they relate exclusively to the normal operation of an element of the PSIP standard (*i.e.*, the major channel number), as incorporated by reference in Sections 73.682 and 73.8000 of the Commission's Rules, *not* to anything contained in the modification application. Again, PSIP major channel information is not included in a license modification application, nor is it a part of the licensing process, nor is it even included in a station license.¹ Accordingly, the Bureau correctly decided that

¹ This omission contrasts sharply with the inclusion of the transport stream identifier ("TSID") in a DTV station license. Early in the process of adopting rules to apply PSIP requirements to digital television stations, the Commission recognized that each individual television station must have a unique TSID, and therefore determined that TSID assignments should be made part of the Commission's licensing process for broadcast television stations. *In the Matter of Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television*, 16 FCC Rcd 5946, 5971 (2001). No such determination was made with regard to PSIP major channels.

it would be premature to reach beyond the information contained in the modification application to decide an issue not presented by that application. While Meredith asserts that this decision is contrary to Bureau precedent, it cites no precedent in which the Bureau has modified a PSIP major channel number in connection with a licensing proceeding or minor modification application.

Meredith has apparently overlooked, or chosen to ignore the relevance of, one critical fact: KVVN is currently an operating station which was previously an NTSC station. It is *not* a new station, and it is *not* engaged in a rule making proceeding. By operation of Annex B to the PSIP Protocol, Section B.1.1.(1), as a station with an existing NTSC license at the time that it commenced digital service, KVVN's major channel number is set to its prior NTSC RF channel number, Channel 3. Thus, Meredith is incorrect in asserting that the Bureau has assigned any PSIP channel to KVVN; rather, the data base listing for KVVN simply reflects the normal operation of the PSIP protocol. A change in location does not change KVVN's status as a station which had a prior NTSC license, nor is there any indication in the PSIP protocol that such a change should result in a change of major channel number. Thus, the PSIP standard dictates that KVVN should operate with major channel 3, and, contrary to Meredith's claims, it is only such operation that would comply with the adoption of the PSIP standard in the Commission's Rules.

Nor has Meredith demonstrated that such operation will, or is even likely to, cause any problems. While Meredith has done much hand-wringing about possible confusion among the over-the-air viewers in the relatively small signal contour overlap area between KVVN and WFSB, it has provided no technical support for its notion that problems may arise. Indeed, its argument boils down to an assertion that, because Meredith doesn't know what will happen when both stations are broadcasting on virtual channel 3, it must be Something Bad . . . because Meredith says so. In contrast, PMCM provided a detailed technical statement which explained that, so long as the TSID's with which the two stations operate are different – which they are – PSIP-compliant receivers will not have any difficulty in distinguishing between the two stations. Meredith has offered no

information, in either its Informal Objection or its Petition for Reconsideration, to dispute this showing.

PMCM also provided an example of how a receiver offered viewers a choice among three different stations operating with the same virtual channel. While different receivers might arrange the choices somewhat differently, PMCM rejects the idea advanced by Meredith that viewers are somehow incapable of making a selection from an on-screen menu or entering a desired channel number. The minimal likelihood of any confusion is further lessened by the fact that KVNV and WFSB have quite different programming: KVNV is a Me-TV affiliate, and WFSB is a CBS affiliate. The differing programming on the screen would quickly alert any viewers who might have entered an incorrect choice of station. Meredith did not advance any counter-example to indicate any likelihood of confusion.

Further, PMCM demonstrated that, despite Meredith's grand pronouncements, there are, in fact, a number of stations with the same virtual channel and overlapping contours. For an obvious example, WNBC, New York, New York operates on virtual channel 4, as does WACP, Atlantic City, New Jersey. The DTV service areas of the two stations have significant overlap, although they are located in different markets. Furthermore, this is an overlap area which the Commission created post-DTV transition when it allotted digital Channel 4 to Atlantic City, New Jersey, as a new DTV station. Thus, there are other stations with (a) overlapping DTV service contours and (b) a common major channel number, and there have been no apparent ill effects. Again, Meredith has proffered nothing to counter this showing.

Moreover, it must be remembered that any possible issue that might arise would affect only over-the-air viewers in a small portion of the respective markets of KVNV and WFSB. Meredith's demand that KVNV change its virtual channel for the entire New York DMA, the largest market in the country, based upon claimed, theoretical confusion for the small number of over-the-air viewers

in a small portion of the market smacks of the tail wagging the dog. The arrogance of such a request, based only on Meredith's unsupported speculation as to what might happen (notwithstanding contradictory evidence) is breathtaking.

Even if it were not, Meredith's suggestion to resort to a provision of Annex B to ASTC A/65c that would result in use of Meredith's RF channel as KVNV's major channel is misplaced. The section relied on by Meredith is simply inapplicable. Section B.1.1(4) relates to the selection of a major channel number if "an RF channel previously allotted for NTSC in a market is assigned to a newly-licensed DTV licensee in that market." ATSC A/65C at Annex B, B.1.1(4). This provision has no bearing on PMCM's application because PMCM is not a newly-licensed DTV licensee and KVNV is not in the same market as WFSB. It is clear in the context of Annex B that the term "newly-licensed DTV licensee" is intended to distinguish such a licensee from one which previously had an NTSC license.

By contrast, Subparagraph 1 is directed to licensees with an existing NTSC license, while Subparagraph 2 provides for new licensees without an NTSC license. Subparagraph 4 then follows to address what would happen if an entirely new channel were dropped into a market and licensed to a new entity. It must be remembered that at the time ASTC A/65C was drafted, television stations were assigned both an NTSC channel and a companion digital channel, and it appeared possible that, after transition, the Commission might auction the channel not chosen as the final digital channel to become a new television station. It is this type of situation, in which a licensee elected to remain on its digital channel, and a new licensee acquired the former NTSC channel, that Subparagraph 4 is designed to govern. KVNV is not such a station; rather, KVNV had an NTSC license. Thus, the language quoted by Meredith is simply inapplicable to the situation at hand.

Further, KVNV and WFSB are not located in the same market. Television markets are equated with Nielsen DMA's. *See, e.g.*, Section 73.3555(b) of the Commission's Rules. The fact of a small degree of signal contour overlap is not determinative of the respective television markets of

two stations. *Id.* Meredith points to the fact that ATSC A/65C defines the term "DTV Service Area," by reference to Commission rules, as the station's noise limited contour. This statement is a non-sequitur, however, as the provision to which Meredith points does not make any reference to DTV Service Areas, but rather uses only the term "market." There is no definition in ATSC A/65C which equates the term "DTV Service Area" with the term "market," and it cannot be assumed that any such equivalency was intended. Many DTV stations have DTV Service Areas which cover only portions of the markets in which they are located. As set forth above, WFSB is located in the Hartford-New Haven DMA, while KVVV is in the New York DMA. Limited cable carriage rights in one county at the edge of the DMA do not give WFSB a presence in the DMA as a whole. While NTSC channel 3 was allotted to the Hartford-New Haven market, it was not so allotted in the New York market. KVVV, however, is located in the New York market and not the Hartford-New Haven market. Therefore, once again, the Annex B provision cited by Meredith simply has no bearing on the situation at hand.

Meredith points to the decision in *Seaford, Delaware*, 25 FCC Rcd 4466 (M. Bur. 2010) as indicating that markets are equated with service areas. That case, however, is inapposite here. The staff in that decision did, at one point in the decision, mention the two markets in which the proposed station and a protesting station were located, and then in a later unrelated paragraph, noted that there might be overlapping contours before assigning the protesting station's RF channel as the prospective station's PSIP major channel. But the decision contains no discussion of the staff's thinking in this regard, nor was there any party to the proceeding whose interests would be affected by that ruling. As a result, the *Seaford* decision can hardly be cited as binding precedent – especially since the Commission's staff plainly took a contrary action in the essentially contemporaneous WACP situation.

The language of Annex B is quite clear: the exceptional provision there applies only to stations in the same market. It is axiomatic that when the Commission's staff goes beyond the

language of a rule or policy in one instance, it is not compelled to repeat that error. The *Seaford, Delaware* proceeding also differs from the instant one in other significant ways which make it inapplicable as any precedent. First, as noted above, the Seaford, Delaware, channel was allotted through a rule making proceeding, while the channel for KVVN was reallocated by operation of statute, enforced by an order from the U.S. Court of Appeals for the D.C. Circuit. That fact, by itself, makes KVVN's situation unique and uniquely compels the retention of Channel 3 as its PSIP major channel. Furthermore, the future applicant for the newly allotted Seaford, Delaware channel clearly would be a newly-licensed DTV licensee which had not previously held an NTSC license for the allotment. Thus, in any event, the *Seaford, Delaware* decision is inapplicable to the circumstances at hand.

While Meredith has expressed some officious concern about possible rule violations created by the operation of KVVN, such misgivings are misplaced. As noted above, KVVN has a PSIP major channel, Channel 3, which was automatically assigned based on Subparagraph 1 of Annex B to the PSIP specifications due to its status as a former NTSC licensee. It uses that major channel for current operation and will continue to use that channel after its modification of facilities to Middletown Township. No further action by the Bureau is required at this time, and such operation is in complete compliance with PSIP specifications. PMCM has demonstrated that the proposed operation will cause no difficulties due to the fact that KVVN and WFSB operate with different TSID's. Meredith has offered nothing to refute this showing but rather has asserted, based on only its own say-so, that some largely unspecified "confusion" might arise. Its "solution" for these non-existent problems is to turn to another section of Annex B to A/65C which is plainly inapplicable to the situation at hand.

So it is apparent that concern about potential confusion on the part of over-the-air viewers is, at best, an insubstantial strawman. PMCM suspects that Meredith's true motivation for objecting to PMCM's application is concern about channel placement on cable systems in Fairfield County,

Connecticut – concern about channel placement is a theme that recurs in Meredith’s pleadings. As demonstrated in PMCM’s Opposition to Informal Objection, WFSB is currently carried pursuant to retransmission consent. The rule allowing a station to demand carriage on a particular channel applies only to stations carried pursuant to must-carry obligations. 47 C.F.R. §76.57. Thus, if KVNV elects mandatory carriage, KVNV will be the sole station with actual rights to be placed on Channel 3, and Meredith will be left to negotiate for a new channel position. That would likely disappoint Meredith. But Meredith’s disappointment is not a basis for Commission intervention with respect to an issue that has not even arisen yet and might not arise.

Even if a channel positioning problem were to arise, it would involve nothing but business issues relating to branding. There is no technical issue related to any engineering concerns. Likewise, there is no question of cable carriage or the lack thereof for Meredith; this matter is currently controlled by its retransmission consent agreement and will be controlled in the future by whatever election Meredith makes for the upcoming election period. The sole issue is whether Meredith may continue in future years both to cling to its cable placement on Channel 3 in the communities outside of its DMA in which it has acquired carriage rights, and to negotiate a retransmission consent agreement. Meredith’s apparent desire to maintain consistency of channel number in a few communities outside its market cannot outweigh KVNV’s rights to channel 3 throughout all of the New York market. Serving but a few communities at the edge of the market, Meredith presumes to dictate the manner in which KVNV should be carried throughout the largest market in the nation. The Commission’s rules do not afford Meredith the right to dictate such a result. PMCM submits that a much more tailored solution could be negotiated to resolve this potential, future problem. Therefore, Meredith’s Petition for Reconsideration must be dismissed or denied.

WHEREFORE, the premises considered, and given that Meredith has demonstrated no issue with PMCM's above-captioned application, PMCM respectfully requests that Meredith's Petition for Reconsideration be dismissed or denied.

PMCM TV, LLC

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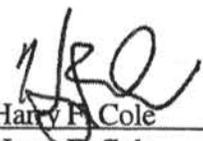
June 4, 2014

CERTIFICATE OF SERVICE

I, Harry F. Cole, hereby certify that on this 4th day of June, 2014, I caused copies of the foregoing "Opposition to 'Petition for Reconsideration and Request for Declaratory Ruling'" to be placed in the U.S. Postal Service, first class postage prepaid, or hand-delivered (as indicated below) addressed to the following persons:

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