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Federal Communications Commission
Office of the Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In re Application of)
)
PMCM TV, LLC)
)
For a Television Station Construction)
Permit for KVVN(TV), Middletown)
Township, New Jersey)
)

File No. BPCDT-20130528AJP
Facility ID No. 86537

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

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OPPOSITION TO SUPPLEMENT

Meredith Corporation ("Meredith") hereby responds to the Supplement to Opposition filed on June 27, 2014, by PMCM TV, LLC ("PMCM"), the licensee of KVVN(TV). KVVN(TV) is moving from Ely, Nevada to Middletown Township, New Jersey and proposes to operate on Virtual Channel 3, the same channel that Meredith's WFSB(TV), Hartford, Connecticut, has used for half a century (first as an NTSC channel and then as a virtual channel). As Meredith previously has pointed out, KVVN(TV), which has not previously been licensed to Middletown Township, New Jersey, will be a "newly licensed DTV licensee in that market" under the PSIP Standard. Thus, the PSIP Standard requires that KVVN(TV) use as its Virtual Channel "the number of the DTV RF channel originally assigned to the previous NTSC licensee of the assigned channel," which is Virtual Channel 33.¹

¹ 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") ("PSIP Standard"), at 91, Annex B, §1, No. 8.

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In its Supplement, PMCM no longer argues that its supposed right to take Meredith's Virtual Channel 3 as its own derives from the PSIP Standard. Instead, PMCM supplements its Opposition to address "[s]everal new developments" that supposedly render the PSIP Standard irrelevant. PMCM's purported "new developments," however, are not new at all except to the extent they amount to reversals in PMCM's own legal positions – its former positions having been discredited. The only constant is PMCM's desire is to hijack, in contravention of the PSIP Standard, the goodwill that Meredith has built up in the market for its Channel 3 over the last fifty years.

First, PMCM previously opposed reconsideration of the Bureau's decision to consider virtual channel designations for PMCM in connection with PMCM's license modification application, arguing that it would be premature to consider those issues at the license modification stage.² Meredith, on the other hand, contended for immediate consideration because delay would cause confusion in the market. In its Supplement, PMCM, changes its position to agree with Meredith about "the need for the Commission to act immediately,"³ a position consistent with the Commission's *Seaford* decision, which stands for the proposition that the Commission should resolve PSIP disputes at the first opportunity after an affected party raises the issue.⁴

² PMCM, Opposition to Informal Objection, at 8 (filed Mar. 24, 2014) (stating that Meredith's concerns were "premature"); PMCM, Opposition to Petition for Reconsideration and Request for Declaratory Ruling, at 2 (filed Jun. 4, 2014) (arguing that PSIP "is not something that the Commission generally undertakes as part of licensing a station").

³ PMCM Supplement at 3.

⁴ *Seaford, Delaware*, Report and Order, 25 FCC Rcd 4466, 4472 (Vid. Div. 2010) ("*Seaford*"), *petition for reconsideration denied*, Memorandum Opinion and Order on Reconsideration, 28 FCC Rcd 1167 (Vid. Div. 2013); *petition for further reconsideration denied*, Memorandum Option and Order on Further Reconsideration, MB Docket No. 09-230, DA 14-546 (May 1, 2014).

Second, because a plain reading of the PSIP Standard prevents PMCM from using Virtual Channel 3, PMCM now maintains that Section 331 of the Communications Act overrides the PSIP Standard entirely and bars the Commission from holding a separate proceeding to consider what virtual channel to assign to KVVN(TV) in its new market. PMCM bases its new approach on the provision of Section 331 that provides for the reallocation of VHF channels to states without VHF service “notwithstanding any other provision of law.” PMCM, however, provides no reasonable basis for reading Section 331 to also dictate a station’s Virtual Channel. Indeed, the D.C. Circuit has already rejected PMCM’s expansive reading of the phrase “notwithstanding any other provision of law”:

As we explained in *Multi-State Communications*, this language simply serves to “displace[] the normal procedures for channel reallocation as well as the normal procedures for issuing licenses.”⁵

As PMCM acknowledges, Section 331 provides for the allocation of a VHF “channel,” and the statute pre-dates the digital transition and the adoption of the PSIP Standard. When Section 331 refers to “channel,” it means the physical, allotted channel, which was the only meaning of the term when Congress enacted the provision. By allocating a physical VHF channel to New Jersey, the Commission has honored both the letter and purpose of the statute.⁶ PMCM, without support, nevertheless suggests that a low virtual channel number is somehow essential for the “experience” of a VHF channel that Congress intended to provide for non-VHF states through Section 331. If that were the case, however, then the existence of WWOR(TV), Secaucus, New Jersey, operating on Virtual Channel 9, fully would have supplied the sought-for

⁵ *PMCM TV, LLC v. FCC*, 701 F.3d 380, 385 (D.C. Cir. 2012), quoting *Multi-State Communications, Inc. v. FCC*, 728 F.2d 1519, 1525 (D.C. Cir. 1984).

⁶ See 47 C.F.R. §73.622 (providing an allotment for Channel 3 at Middletown Township, New Jersey).

low-channel “experience” and removed the rationale for permitting KVVN(TV) to move from Nevada to New Jersey in the first place.

Furthermore, the Bureau already has rejected PMCM’s notion that Section 331 overrides the PSIP Standard. In its *Seaford* decision, the Bureau relied on Section 331 to allot VHF RF Channel 5 to Seaford. At the same time, however, the Bureau relied on the PSIP Standard to assign UHF Virtual Channel 36 to the new allotment.⁷ Here, as in *Seaford*, Section 331 has no relevance to the interpretation of PSIP Standard. The PSIP Standard calls for PMCM, as the new licensee in the market, to be assigned the DTV RF channel number of the previous NTSC licensee of the assigned channel, which in this case is Virtual Channel 33.

Third, PMCM’s stated concerns about the “widely rippling impact [on the post-auction repack] of any suggestion that PSIPs are entitled to protection” are irrelevant. Meredith’s petition does not address auction repacks but the question of what virtual channel KVVN(TV) must use under the Commission’s rules as a station newly licensed in its market. The Bureau already has controlling precedent. The Bureau’s decision in *Seaford*, which also involved a channel allocated under Section 331, makes it clear that a new licensee takes the DTV RF channel number of the previous NTSC licensee of the assigned channel—Virtual Channel 33 in the case at hand. Moreover, given the interference protections built into the post-auction repack, it is highly unlikely that stations will move the substantial distances necessary for virtual channels to overlap. Thus, PMCM’s concerns are speculative at best and highly unlikely to

⁷ *Seaford* at 4472. In *Seaford*, the Bureau corrected a party’s misunderstanding that assigning RF Channel 5 to Seaford under Section 331 required the Bureau to also assign the station Virtual Channel 5. Instead, the Bureau held that, because “[i]t appears there may be overlapping DTV service area contours between WTTG(TV), Washington, D.C. and the channel 5 allotment at Seaford,” then, “pursuant to the PSIP Standard, the channel 5 allotment at Seaford will be assigned PSIP Channel 36”—that is, the DTV RF channel number licensed to WTTG, the previous NTSC licensee of the assigned channel. *Id.*

materialize. In any event, the express requirements of the PSIP Standard – which “guarantees that the two-part channel number combinations used by a broadcaster will be different from those used by any other broadcaster with an overlapping DTV service area”⁸ – bind the parties and the Bureau, not PMCM’s imaginative extrapolations.

Finally, PMCM reiterates its argument that, for at least some consumer equipment, a few extra steps by the consumer would allow them “to identify the stations [with the same virtual channel] as separate stations through their TSIDs.” This, however, amounts to an argument for discarding the PSIP Standard entirely, which would require rule making.⁹ Because KVVN(TV) will be a newcomer in the market, it will benefit from the additional steps required for Meredith’s viewers to reach the WFSB signal and from viewers’ confusion of KVVN(TV)’s signal with Meredith’s signal. The purpose of the PSIP Standard in the first place, however, was to eliminate the kind of market confusion that PMCM seeks to engender and to prevent stations newly licensed in the market from improperly appropriating the good will that market incumbents created for their channels through decades of careful stewardship.¹⁰

CONCLUSION

Because KVVN(TV) is newly licensed in the market and use of its RF channel as its virtual channel would conflict with WFSB(TV)’s virtual channel, ATSC A/65 and Commission

⁸ *Seaford* at 4472, quoting PSIP Standard.

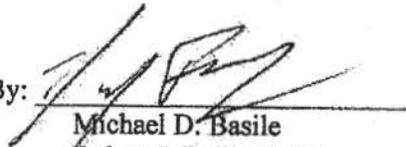
⁹ PMCM cites to apparent instances of virtual channel overlap that have not been the subject of litigation. Since the Commission considers virtual channel conflicts when objections are filed, the absence of objections is not precedent for interpreting the PSIP Standard.

¹⁰ As the Commission stated when it adopted the PSIP Standard in its *Second Periodic Review*, “the PSIP Standard defines specific requirements for use of “major channel numbers to provide viewers with a uniform methodology to access DTV services and to avoid conflict with duplicative numbers in a market.” Second, the PSIP Standard’s approach for assigning PSIP major channel numbers “allows broadcasters to maintain their local brand identification.” *Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television, Report and Order*, FCC 04-192, 19 FCC Rcd 18279, 18346 (2004).

rules require KVVN(TV) to use WFSB(TV)'s RF channel as its Virtual Channel. The Bureau, therefore, should grant this Petition and affirmatively declare that KVVN(TV) must operate on Virtual Channel 33. As the Bureau did in *Seaford*, the Bureau should assign a PSIP virtual channel to KVVN(TV) before KVVN(TV) commences operations and before there is any opportunity for viewer disruption or damage to Meredith's channel identification in its market.

Respectfully submitted,

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July 11, 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 "Opposition to Supplement" was served by email on the 11th day of July, 2014 on the following:

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