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Before the
FEDERAL COMMUNICATIONS COMMISSION
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Federal Communications Commission
Office of the Secretary

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

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

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

**REPLY OF MEREDITH CORPORATION TO
OPPOSITION TO PETITION FOR RECONSIDERATION AND
REQUEST FOR DECLARATORY RULING**

Meredith Corporation ("Meredith") hereby responds to the Opposition to Petition for Reconsideration and Request for Declaratory Ruling filed on June 4, 2014, by PMCM TV, LLC ("PMCM"), the licensee of KVVV(TV). KVVV(TV), which is moving from Ely, Nevada, to Middletown Township, New Jersey, 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).

The Media Bureau held that Meredith's Informal Objection to KVVV(TV)'s use of Virtual Channel 3 was premature because an objection to virtual channel designations "is customarily considered after grant of the license modification application in a separate proceeding." As the *Seaford, Delaware* decision indicates, however, the Commission will resolve PSIP disputes at the first opportunity after the issue is raised. The positions of PMCM and Meredith are before the Bureau. Only by resolving these issues now, before KVVV(TV) begins operation, can the Commission fulfill its objectives in adopting the PSIP Standard: to

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avoid viewer confusion and allow broadcasters to maintain their local brand identification by “guaranteeing 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.”¹

PMCM remains adamant about operating on Meredith’s Virtual Channel 3 at its earliest opportunity, but PMCM’s Opposition ignores both the text of the PSIP Standard and the Commission’s expressed reasons for adopting those standards to govern the assignment of “virtual” major channel numbers. The PSIP Standard provides in pertinent part:

If, after 17 February 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.²

KVNV(TV) has not previously been licensed to Middletown Township, New Jersey or to any place near it. Thus, when the FCC issues KVNV(TV) a license for Middletown Township, KVNV(TV) will be “newly licensed in that market.” It is irrelevant that the Commission previously licensed KVNV(TV) to a different market in Nevada. Because KVNV(TV) will be newly licensed in its new market, the PSIP Standard quoted above applies to KVNV(TV).

As a “newly licensed DTV station in that market,” KVNV(TV) will operate on RF Channel 3. Meredith’s WFSB(TV) used RF Channel 3 during almost fifty years of NTSC

¹ *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), *citing* 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. *See also*, Letter from counsel to Cablevision Systems Corporation to Marlene Dortch regarding PMCM TV, LLC, File No. BPCDT-20130528AJP (detailing operational difficulties for cable systems arising from failure of the Commission to designate a Virtual Channel for KVNV(TV)).

² PSIP Standard (emphasis added).

operations and has used Virtual Channel 3 since the DTV transition. During its NTSC operations and its subsequent DTV operations, WFSB(TV) has served substantial areas and populations that KVVN(TV) would serve with its proposed facilities for Middletown Township, New Jersey. Thus, not only is KVVN(TV) a “newly licensed television station in that market,” it is also one to which “an RF channel previously allotted for NTSC in a market has been assigned.” The PSIP Standard specifically provides that, in that situation, a station like KVVN(TV) that will be newly licensed in the market

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.³

Thus, the channel that the PSIP Standard states KVVN(TV) “shall use as its major_channel_number” is Virtual Channel 33, the number of the DTV RF channel “originally assigned” to Meredith, the “previous NTSC licensee of the assigned [RF] channel,” for use with WFSB(TV). In other words, literal, straightforward application of the PSIP Standard requires that KVVN(TV) accept Virtual Channel 33, unless it can demonstrate that it has a “unique situation that is not provided for in PSIP” so as to warrant a waiver of the PSIP Standard.⁴

PMCM’s contrary reading of the PSIP Standard ignores not only the text of the standard but also the Commission’s express reasons for adopting the standard and incorporating the standard within the Commission’s rules. One of the reasons that the Commission adopted the

³ PSIP Standard, *supra*.

⁴ See Letter from Hossein Hashemzadeh, Deputy Chief, Video Division, Media Bureau, to counsel for Weigel Broadcasting Company regarding WBND-LD, South Bend, Indiana (August 16, 2014), citing *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) (“*Second Periodic Review*”) (“To the extent broadcasters have a unique situation that is not provided for in PSIP, the Commission may grant exceptions on a case-by-case basis.”).

PSIP Standard is to avoid viewer confusion.⁵ In its *Second Periodic Review*, the Commission quoted with approval the comments of ATSC that “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.”⁶ Second, the Commission acknowledged that the PSIP Standard approach for assigning PSIP major channel numbers “allows broadcasters to maintain their local brand identification.”⁷ Thus, since the DTV transition, when presented with a potential for a PSIP conflict, the Commission has ensured that two stations with overlapping contours do not operate with the same PSIP channel number.⁸

PMCM’s perverse reading of the PSIP Standard subverts both of the public interest objectives that led the Commission to adopt the PSIP protocol for assigning virtual channel numbers in the first place. Assigning Virtual Channel 33 to KVVN(TV), as the PSIP Standard requires (when rightly read), fulfills the Commission’s stated objectives of “avoiding conflict with duplicative [channel] numbers in a market” and allowing existing market stations, in this case WFSB(TV), “to maintain their local brand identification.” In contrast, a reading that permits KVVN(TV) to use already-occupied Channel 3 as its Virtual Channel turns those policies on their head by reading the PSIP Standard so as to engender virtual channel conflicts and to break down long-established local brand identification. KVVN(TV) is a station newly

⁵ See *id.*, citing *Second Periodic Review* at 18433-34.

⁶ *Second Periodic Review* at 18346.

⁷ *Id.*

⁸ See, e.g., *Seaford*, 25 FCC Rcd at 4472; *Associated Christian Television Systems, Inc.*, 25 FCC Rcd 9237 (Vid. Div. 2010); Letter from Hossein Hashemzadeh, Deputy Chief, Video Division, Media Bureau, to counsel to Entravision Holdings, LLC regarding KETF-CD (Feb. 17, 2012); Letter from Hossein Hashemzadeh, Deputy Chief, Video Division, Media Bureau, to counsel to MCUSA, Inc. regarding BNPDLV-20090828ADZ (Oct. 26, 2011).

licensed to Middletown Township, having been authorized previously to serve Ely, Nevada, more than a thousand miles away. No potential viewer in KVVN(TV)'s new market identifies KVVN(TV) with a Channel 3 dial position, because KVVN(TV) has not previously been licensed in its new market at all. A station in KVVN(TV)'s position has no investment or brand equity in the use of any particular channel in its new market, and there is no policy basis for construing the PSIP Standard to avoid a change in KVVN(TV)'s virtual channel number. In WFSB(TV)'s coverage area and in the overlap area with KVVN(TV), however, viewers have identified WFSB(TV) as the Channel 3 station in their market for decades, and WFSB has branded and promoted itself as the Channel 3 station in its service area.

Neither the text of the PSIP Standard nor the Commission's stated objectives in adopting the PSIP Standard support PMCM's argument that it is entitled to use Channel 3 as its virtual channel. PMCM in fact is seeking to subvert the letter and purpose of the standards, not uphold them. It is understandable (although scarcely commendable) that a new entrant to the market like PMCM would like to trade on the good will that WFSB(TV) has built up over decades by confusingly positioning itself as an "alternative" Channel 3 in the market. Furthermore, any viewer confusion of a new Channel 3 KVVN(TV) with the well-established Channel WFSB(TV) necessarily would work to the economic advantage of newcomer PMCM in those areas of the market that the two stations would serve in common.

KVVN(TV) sticks by its strained reading of the PSIP Standard because it cannot show any "unique circumstances" or any Commission policy that would justify assigning it Virtual Channel 3 rather than Virtual Channel 33, the channel that the PSIP Standard specifies in this circumstance. As explained above, however, it is KVVN(TV), not WFSB(TV), that has the burden of showing why it should have a virtual channel other than the one that the PSIP Standard

specifies for it—and particularly why it should have a virtual channel that another station has long been using in the common market area that each would serve.

When the PSIP Standard is correctly read, PMCM's remaining arguments become irrelevant. PMCM objects that Meredith has not shown the precise type of confusion that KVVN(TV)'s use of the same virtual channel as WFSB(TV) could create for viewers in the overlap area. The purpose of the PSIP Standard, however, is to make virtual channel assignments that avoid the need for case-by-case determination and avoid any risk of viewer confusion or dilution of the brand identification and promotional investment that existing television stations in the market have in their channels numbers. Assigning KVVN(TV) to Virtual Channel 33 accomplishes that result. In contrast, there is no reason that the Commission should strain to read the PSIP Standard to preserve the same PSIP assignment for a television station newly licensed to New Jersey from Nevada, when a far more plausible reading would conform to the Commission's stated policies for adopting the standard.

Moreover, although PMCM touts its demonstration of the supposedly simple way some receivers would deal with the reception of multiple stations using the same virtual channel, that demonstration proves far more than PMCM intended. In the situation depicted by PMCM, the receiver presented the viewer with a second screen and a choice of multiple channels, each using the same virtual channel. In that scenario, viewers who have long identified their preferred station by channel number now would need to distinguish by different criteria and go through an additional step to tune in their preferred channel. Moreover, on receivers that respond as did the example, a viewer who sought the WFSB(TV) signal on channel 3 effectively would be presented with a screen asking "Are you sure?" and presenting a further menu of choice. PMCM understandably would like each viewer seeking WFSB(TV) in the overlap area to be presented

with a new screen and a further opportunity to choose KVVN(TV) instead. This signal choice matrix has far more potential to confuse viewers than a simple A/B switch, which the Commission determined and the courts confirmed was an unworkable alternative for consumers to choose between video programming sources in an analogous context.⁹ Also, by increasing the likelihood that viewers seeking WFSB would tune to KVVN(TV) in error, PMCM would appropriate a portion of the goodwill that WFSB(TV) has built up over many years—precisely the result that the adoption of the PSIP Standard was intended to avoid.

PMCM also asserts that KVVN(TV) and WFSB(TV) are not located in the same television “market,” apparently assuming that the Commission need not be concerned about viewer confusion if KVVN(TV) only frustrates those trying to watch another station in a different DMA from its own. In the first place, the PSIP Standard does not define its use of “market” to mean “DMA.” Rather, the PSIP Standard uses the term “market” functionally in addressing areas where stations have service contour overlap. KVVN(TV) and WFSB(TV) will have service contour overlap. Moreover, the Commission is on record as taking cognizance of channel conflicts in market areas based on overlapping DTV service area contours, even when the complaining station is located in a different DMA. In *Seaford, Delaware*,¹⁰ WTTG, a Washington, D.C. television station using Channel 5, objected to the prospective use of Virtual Channel 5 for a new Seaford, Delaware allotment on RF Channel 5. The Media Bureau explained that, contrary to WTTG’s concerns, the PSIP Standard did not call for the assignment of Virtual Channel 5, because there was service area overlap with a station already using Virtual Channel 5. As the Commission observed:

⁹ *Turner Broadcasting System, Inc. v. FCC*, 520 U.S. 180 (1997).

¹⁰ *Seaford, Delaware, supra*, at 4469, 4472.

The PSIP Standard “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.”¹¹

Accordingly, 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,” the Bureau declared that “pursuant to the PSIP Standard, the [RF] channel 5 allotment at Seaford will be assigned Virtual Channel 36,” which was the DTV RF channel number licensed to WTTG. Thus, the *Seaford* decision confirms that stations with overlapping DTV service area contours are in the same “market” for purposes of the application of the PSIP Standard. Moreover, the *Seaford* decision confirms that the existence of overlapping service areas, without regard to the extent of the overlap, triggers the provisions of the PSIP Standards that call for the assignment of a virtual channel number other than the new licensee’s RF channel to avoid in-market duplication. PMCM suggests that its situation is different from that in *Seaford* because a court order reallocated KVVN(TV) from Nevada to New Jersey. The fact that KVVN(TV) was previously licensed in its old market and moved pursuant to court order, however, does not mean that it is not “newly licensed” in its new market. Regardless of the reason or the means for its cross-country move, when KVVN(TV) receives a covering license, it will be a station “newly licensed” in the market that includes KVVN(TV) and WFSB(TV) and fully subject to the non-duplication provisions of the PSIP Standard.¹²

¹¹ *Seaford, Delaware, supra*, at 4472, citing PSIP Standard at Annex B, §1, No. 8.

¹² PMCM argues that *Seaford* is inconsistent with the Commission’s “action” regarding WACP(TV), Atlantic City, New Jersey, but also acknowledges that the Commission never “acted” with regard to WACP(TV). The licensee’s choice of virtual channel was not challenged and the Commission has had no occasion to consider that situation, so there is nothing that the Bureau validly can draw from it.

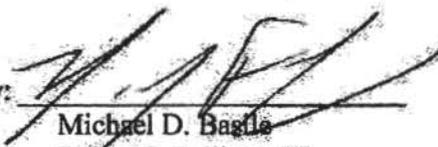
Finally, as discussed above, the *Seaford, Delaware*, decision also establishes that the Commission does not uniformly wait until after the grant of a license modification application to consider objections to virtual channel designations in a separate proceeding. Delaying the resolution of PSIP assignments until the grant of a license modification would undercut the objectives of avoiding viewer confusion and allowing broadcasters to maintain their local brand identification. That is particularly the case here, where PMCM has made it abundantly clear that it intends to proceed to operate on Virtual Channel 3 at its earliest opportunity. Accordingly, the Bureau should assign Virtual Channel 33 to KVNV(TV) before KVNV(TV) commences operation and forbid KVNV(TV) from initiating program tests until the Commission has resolved its PSIP virtual channel assignment.

CONCLUSION

PMCM's Opposition urges the Bureau to adopt a strained reading of the PSIP Standard that subverts the express goals of the Commission in adopting the PSIP Standard in the first place. Because KVNV(TV) is the new entrant to 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 rules require KVNV(TV) 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 program tests and before there is any opportunity for viewer disruption or damage to Meredith's channel identification in its market.

Respectfully submitted,

MEREDITH CORPORATION

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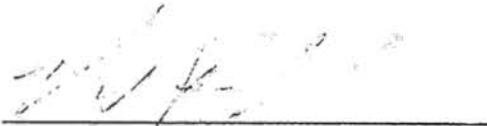
June 16, 2014

CERTIFICATE OF SERVICE

I, Robert J. Folliard, III, do hereby certify that a true and correct copy of the foregoing "Reply of Meredith Corporation to Opposition to Petition for Reconsideration and Request for Declaratory Ruling" was served by electronic mail on the 16th day of June, 2014 on the following:

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