

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

In re)	
)	
PMCM TV, LLC,)	No. 14-1238
)	
Petitioner)	

**OPPOSITION OF THE FEDERAL COMMUNICATIONS COMMISSION
TO EMERGENCY PETITION FOR WRIT OF MANDAMUS**

The Federal Communications Commission opposes the petition of PMCM TV, LLC, for a writ of mandamus directing the agency to “rescind or stay” an agency order issued on November 7, 2014 (*Order*) (Pet. Attach. A). The *Order* suspended program test authority for PMCM’s recently launched television station, WJLP-TV, effective November 10, 2014, at 12 p.m., Eastern Standard Time, unless and until PMCM certified it would operate the station using “virtual” channel 33, as the agency had directed on October 23, 2014.¹

To obtain a writ of mandamus, PMCM must establish that its right to such “drastic and extraordinary” relief is “clear and indisputable.” *Cheney v. U.S. Dist. Court of the Dist. of Columbia*, 542 U.S. 367, 380, 381 (2004) (quotation marks omitted). To meet that burden requires showing that the FCC has breached “a clear, nondiscretionary duty.” *Your Home Visiting Nurse Servs. v. Shalala*, 525 U.S. 449, 457 (1999) (quotation marks omitted). In addition, for a writ of

¹ On November 12, 2014, the agency issued a temporary administrative stay of the *Order* “to permit orderly briefing” in this Court. *PMCM TV, LLC*, Letter Order at 1 (Media Bur. Video Div. 2014) (*Temporary Stay Order*) (attached as Exhibit 1).

mandamus that would operate as a stay, PMCM must make “a clear showing” that it can satisfy the four traditional elements for preliminary injunctive relief: (1) likelihood of success on the merits, (2) irreparable harm, (3) absence of harm to other interested parties, and (4) benefit to the public interest. *Winter v. NRDC*, 555 U.S. 7, 22 (2008); see *WMATC v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977).

For the reasons set forth below, PMCM fails to show that it has a clear and indisputable right to mandamus relief, or that it can meet the stringent test for a stay. As we explain, the *Order* reasonably preserves the agency’s ability to consider and resolve a technical channel-tuning dispute between several digital television stations in an orderly way. PMCM cannot show that the agency abused its broad discretion in taking such an interim measure, nor has PMCM shown it will incur irreparable harm if required to operate its station using virtual channel 33 while the FCC resolves the underlying dispute.

BACKGROUND

This case involves a dispute over what channel number PMCM should use in identifying its television station to digital television receivers.

A. Governance of Digital Broadcasters’ Virtual Channel Selection

Historically, in the age of analog broadcasting, there was no distinction between the radio frequency channels over which U.S. television stations broadcast their programming and the television channels on which viewers without cable or satellite service received stations’ programming over the air. That changed with the nation’s transition to digital television in 2009.

Today, the channel on which over-the-air viewers receive a station's programming is determined by a two-part numerical code that all television stations transmit within their digital broadcasts. *See Media Bureau Seeks Comment on Request for Declaratory Ruling by Meredith Corporation and 'Alternative PSIP Proposal' by PMCM TV, LLC for KVVN(TV), Middletown Township, New Jersey*, Public Notice, 29 FCC Rcd 10556, 10556 n.1 (Media Bur. 2014) (Public Notice) (attached as Exhibit 2). That code is known as a station's "Program System and Information Protocol" (PSIP) channel, and is more colloquially called its "virtual" channel, *see* Pet. 11, because it can be set irrespective of the radio frequency channel over which the station broadcasts. The first numeral of the PSIP channel is its "major" channel, the second its "minor" channel. *See id.*

Section 73.682(d) of the FCC's rules prescribes that digital broadcast television signals must comply with certain privately developed engineering protocols that the rule incorporates by reference. *See* 47 C.F.R. § 73.682(d). The channel identification data a station transmits, for example, must comply with "ATSC A/65C: 'ATSC Program and System Information Protocol for Terrestrial Broadcast and Cable, Revision C With Amendment No. 1 dated May 9, 2006,' (January 2, 2006)." *Id.* Ordinarily, digital television stations are able to implement the required ATSC protocol without need for FCC intervention. But the agency has the clear authority to address any problems that arise. *See* 47 U.S.C. § 154(i). On occasion, for example, the FCC has intervened to ensure an appropriate application of the ATSC protocol when stations have expressed concern to the agency that another station with an overlapping service area was using, or might plan to use,

the same virtual channel number. *E.g.*, *Amendment of Section 73.622(i), Post-Transition Table of DTV Allotments, Television Broadcast Stations (Seaford, Delaware)*, Report and Order, 25 FCC Rcd 4466, 4472, para. 15 (Media Bur. Video Div. 2010) (*Seaford Order*), *subsequent history omitted*.

B. Reallocation of Radio Frequency Channel 3 from Nevada to New Jersey

When broadcast television signals were transmitted in analog form, radio frequency channels characterized as “very high frequency” (VHF) “enjoyed substantial technical advantages over other broadcasting methods.” *PMCM TV, LLC v. FCC*, 701 F.3d 380, 381 (D.C. Cir. 2012). In 1982, concerned that there were no VHF stations operating commercially in New Jersey, Congress passed a statute, codified as Section 331(a) of the Communications Act, 47 U.S.C. § 331(a), to facilitate the “reallocation” of a New York VHF channel to New Jersey, *PMCM TV*, 701 F.3d at 382. The next year, pursuant to Section 331(a), the FCC granted a request by the licensee of WOR-TV in New York City to reallocate channel 9 to New Jersey, giving that state “a first commercial VHF station.” *Petition to Reallocate VHF Television Channel 9 from New York, New York, to a City Within the City Grade Contour of Station WOR-TV*, Report and Order, 53 Rad.Reg. 2d (P&F) 469, 470, para. 2 (1983), *aff’d*, *Multi-State Commc’ns v. FCC*, 728 F.2d 1519 (D.C. Cir. 1984).

For technological reasons, however, VHF spectrum is in some instances “poorly suited for digital broadcasting.” *PMCM TV*, 701 F.3d at 382–83. In part for that reason, “when the United States transitioned from analog to digital television broadcasting” in 2009, the FCC “allowed several stations to substitute other [radio

frequency] channels for their VHF allotments.” *Id.* WOR (by then using the call sign WWOR) vacated its VHF channel 9 in exchange for ultra-high frequency (UHF) spectrum. *Reallocation of Channel 2 from Jackson, Wyoming to Wilmington, Delaware*, 26 FCC Rcd 13696, 13699, para. 6 (2011), *rev’d*, *PMCM TV*, 701 F.3d 380. “As a result, New Jersey . . . once again had no [commercial] VHF station[.]” *PMCM TV*, 701 F.3d at 383.

PMCM thereafter sought to have the FCC reallocate VHF channel 3 from Ely, Nevada, to Middletown Township, New Jersey, *see PMCM TV*, 701 F.3d at 383, where it could be used for broadcasts reaching the New York City media market. Initially, the FCC concluded that Section 331(a) did not require that reallocation. *See id.* On PMCM’s appeal, this Court reversed. *See id.* at 385. The FCC thereupon reallocated VHF channel 3 as PMCM desired. *See Reallocation of Channel 3 from Ely, Nevada to Middletown Township, New Jersey, Amendment of Section 73.622(i), Post-Transition Table of DTV Allotments, Television Broadcast Stations*, Report and Order, 28 FCC Rcd 2825 (Media Bur. 2013) (2013 *Reallocation Order*) (attached as Exhibit 3).

C. PMCM’s Application for a Construction Permit

In May 2013, PMCM applied to the FCC for a construction permit to build a new broadcast facility. *See PMCM TV*, Letter Order at 1 (Media Bur. Video Div. 2014) (*Permit Order*) (attached as Exhibit 4). In February 2014, Meredith Corporation, licensee of WFSB(TV), Hartford, CT, filed an informal objection to PMCM’s application. *See id.* at 1 & n.2. With the digital television transition, Meredith’s station now broadcasts over radio frequency channel 33, but employs

channel 3 as its virtual channel and has identified itself to viewers as “Channel 3” since 1957. *See* Meredith Informal Objection 4 (Feb. 18, 2014) (attached as Exhibit 5). Because the station PMCM sought to launch would have a service area overlapping with that of Meredith’s station, Meredith asked the FCC to direct PMCM to use virtual channel 33, or to make some other assignment instead of virtual channel 3. *See id.* at 2. Among other things, Meredith argued that its proposal would protect “hundreds of thousands of viewers in the overlap area” from “substantial virtual interference,” as well as permit Meredith’s station to “maintain [its] local branding.” *Id.* at 3, 4, 5. The Video Division of the FCC’s Media Bureau nonetheless granted PMCM’s construction permit application in April 2014, dismissing Meredith’s informal objection as premature. *Permit Order* at 2.

D. Subsequent FCC Proceedings

Meredith sought reconsideration of the order granting PMCM’s construction permit application, and at the same time requested a declaratory ruling that PMCM’s New Jersey station “may not commence program tests on Virtual Channel 3.” Meredith Petition for Reconsideration and Request for Declaratory Ruling 1 (May 22, 2014) (attached as Exhibit 6).

Meanwhile, PMCM filed an “Alternative PSIP Proposal” with the FCC. *See* PMCM Alternative PSIP Proposal (Aug. 8, 2014) (attached as Exhibit 7). PMCM proposed, in effect, that its station and Meredith’s share virtual channel 3, with Meredith’s station operating over channels 3.1 through 3.9, and PMCM’s station using channel 3.10 (as well as higher channels—3.11, 3.12, etc.—for any future

programming streams). *See* Alternative PSIP Proposal 3. PMCM also made a “[c]ontingent [w]aiver [r]equest,” to the extent the FCC concluded its alternative proposal was “inconsistent with the Commission’s rules or the ATSC standards.” *Id.* at 11.

On September 12, 2014, the Media Bureau issued a public notice opening a docketed proceeding, MB Docket No. 14-150, to receive public comment on Meredith’s request for declaratory ruling and PMCM’s alternative proposal. *See* Public Notice, 29 FCC Rcd at 10556. The public notice established an October 14, 2014, deadline for comments and set October 29, 2014, as the deadline for reply comments. *See id.*

E. WJLP’s Program Testing and Disregard for the *Interim Order*

On September 29, 2014, PMCM notified the FCC that it had completed construction of its new broadcasting facility. *Interim Order* at 2. By operation of Section 73.1620(a)(1) of the FCC’s rules, 47 C.F.R. § 73.1620(a)(1), that notification secured the authority for PMCM’s station to begin “program testing,” contingent upon PMCM’s filing a license application within 10 days’ time—which PMCM subsequently filed, and which remains pending. *See* Pet. 9. On or about September 30, 2014, PMCM’s station commenced broadcasting. *See Interim Order* at 2.

Almost immediately thereafter, on October 3, 2014, Meredith, CBS Broadcasting Inc., and ION Media License Company jointly complained to the FCC that PMCM’s station was operating with the channel identification code 3.10, which they argued the station was not entitled to use without first obtaining a

“waiver” (presumably of 47 C.F.R. § 73.682(d), the FCC rule incorporating the ATSC protocol). *See Interim Order* at 2. Like Meredith, CBS is the licensee of a television station—KYW-TV, Philadelphia, Pennsylvania—that uses virtual channel 3 in a portion of the intended service area for PMCM’s station. *See id.* ION is the licensee of WPXN-TV, New York, New York, which Cablevision Systems Corporation carries on cable channel 3 in the New York designated market area. *See id.*

In their joint letter, Meredith, CBS, and ION asked that the FCC “immediately notify [PMCM] that any further equipment or program tests initiated by [WJLP-TV] . . . must use virtual channel 33 pending final action by the Commission in [MB Docket No. 14-150].” *Interim Order* at 2 (alterations in original) (quoting the joint letter). In a response filed October 7, 2014, PMCM disagreed, but acknowledged that “[t]he filings in MB Docket 14-150 will presumably guide the Commission’s [final] decision” on what virtual channel number to assign PMCM’s station. *See Letter from Donald J. Evans* 4 (Oct 7, 2014) (attached as Exhibit 8).

Having considered both the incumbent licensees’ joint letter and PMCM’s response, the Video Division issued the *Interim Order* on October 23, 2014. *See Interim Order* at 2–3. The Division observed that the pleading cycle in Media Bureau Docket No. 14-150 had not yet closed. *Id.* at 2. The Division also took account of the incumbent licensees’ concern that allowing PMCM’s station to use the channel identification code 3.10 during the pendency of the docketed proceeding would cause “viewer confusion” and diminish “the equity and brand

identification [that the incumbent licensees] have built on their channels over many years,” whereas PMCM’s station “has no existing identification with virtual channel 3 among . . . potential viewers” in its new service area. *Id.* (quoting the incumbent licensees’ joint letter). Against that backdrop, the Division elected to make an “interim assignment of virtual channel 33 for use by WJLP-TV” during the pendency of the docketed proceeding. *Id.* at 3. The *Interim Order* expressly “acknowledge[s] that PMCM has raised a number of arguments why it should not be required to use virtual channel 33,” *id.*, and states that the Division’s interim channel assignment is “without prejudice to these pending arguments and PMCM’s ‘Alternative PSIP Proposal’ to use virtual channel 3.10,” *id.* at 4.

Although PMCM took no immediate steps to appeal or seek reconsideration of the *Interim Order*, PMCM continued to operate its station using the channel identification code 3.10. The incumbent licensees alerted the FCC to that continued activity on November 4, 2014, *see* Joint Letter 1 (Nov. 4, 2014) (attached as Exhibit 9), and the New York Field Office of the FCC’s Enforcement Bureau verified that PMCM’s station was still using the 3.10 code as of November 7, 2014. *See Order* at 2. “Because station WJLP-TV [was] operating in a manner inconsistent with the [*Interim Order*] directing the station to use virtual channel 33 on an interim basis,” the Division suspended the station’s program test authority “effective 12:00 p.m., EST, November 10, 2014.” *Id.* at 3. The Division’s *Order* makes clear, however, that PMCM could preserve its authority to operate the station by certifying that it would do so “using virtual channel 33 on an interim basis, as specified in the [*Interim Order*].” *Id.*

On November 10, 2014, PMCM filed an application for review by the full Commission of both the *Order* and the *Interim Order*. *See* PMCM Application for Review i, 1 (Nov. 10, 2014) (Pet. Attach. F). In conjunction with its application for review, PMCM moved for an administrative stay of those orders. *See* PMCM Emergency Motion for Administrative Stay 1 (Pet. Attach. E). Before the FCC could address those filings, PMCM filed its petition for a writ of mandamus in this Court. To permit orderly briefing here, the Video Division on its own motion imposed a temporary stay of the *Order* until December 1, 2014, at 12 p.m., Eastern Standard Time. *See Temporary Stay Order* at 1. In view of that temporary stay, the Division has also suspended the briefing schedule with regard to PMCM's administrative stay motion (but not the application for review) until further notice. *PMCM TV*, Letter Order at 2 (Media Bur. Video Div. 2014) (attached as Exhibit 10). The notice and comment proceeding concerning Meredith's request for declaratory ruling and PMCM's alternative proposal remains pending.

ARGUMENT

THE PETITION SHOULD BE DENIED.

PMCM acknowledges that the relief it seeks in its mandamus petition, filed under the All Writs Act, "is in the nature of a stay." Pet. 19. A party seeking a stay through mandamus must satisfy the traditional elements for such relief: (1) it will likely prevail on the merits, (2) it will suffer irreparable harm unless a stay is granted, (3) other interested parties will not be harmed if a stay is granted, and (4) a stay will serve the public interest. *See Reynolds Metals Co. v. FERC*, 777 F.2d 760, 762 (D.C. Cir. 1985); *Holiday Tours*, 559 F.2d at 843.

A stay is an “intrusion into the ordinary processes of administration” and thus “is not a matter of right, even if irreparable injury might otherwise result.” *Nken v. Holder*, 556 U.S. 418, 427 (2009) (quotation marks omitted). To merit such an “extraordinary remedy,” petitioners must make “a clear showing” that they are “entitled to such relief.” *Winter*, 555 U.S. at 22. That is particularly so—as PMCM itself recognizes, Pet. 17–18—when a party seeks a stay through the “drastic” vehicle of mandamus relief, *Cheney*, 542 U.S. at 380. PMCM has failed to make the necessary showing here.

A. PMCM Has Not Demonstrated a Likelihood of Success on the Merits, Let Alone a Clear Entitlement to Relief.

PMCM is not likely to prevail in challenging the *Order*, which is simply intended to preserve the pre-existing viewing landscape in the relevant service areas while the agency completes its pending notice and comment proceeding. PMCM’s laundry list of arguments that the ATSC protocol and various provisions of the Communications Act foreclose the agency’s action all are unavailing.

1. *The Order Is a Reasonable, Interim Measure Entitled to Deference.*

This Court has repeatedly recognized that “[s]ubstantial deference must be accorded” to an agency’s interim action intended to “maintain the status quo so that the objectives of a pending . . . proceeding will not be frustrated.” *MCI Telecomms. Corp. v. FCC*, 750 F.2d 135, 141 (D.C. Cir. 1984). Here, until PMCM received program test authority—over Meredith’s informal objection—for its New Jersey station, the Meredith and CBS stations were the only ones in their respective service areas using virtual channel 3. In the *Interim Order*, the Video Division

sought to preserve, for the time being, the existing landscape of channel identifications in the established stations' service areas; at the same time, the Division sought to allow PMCM to operate by assigning its station virtual channel 33, on an "interim" basis, while PMCM's application for a license was pending and the FCC resolved conflicting interpretations of the ATSC protocol in a notice and comment proceeding. *Interim Order* at 3. That interim channel assignment is "without prejudice" to any of PMCM's arguments in the pending proceeding, including PMCM's proposal to use channel identification code 3.10. *Id.* at 4.

The *Order* simply enforces the *Interim Order* in view of PMCM's deliberate noncompliance. And while directing PMCM to cease its station's operations using virtual channel 3, the *Order* leaves PMCM the option of continuing to operate the station using virtual channel 33. *Order* at 3. PMCM had ample time to comply with the *Order*; switching to virtual channel 33 would have been a simple matter of resetting the channel code for the station's signal information. In short, the *Order* and the *Interim Order* implement an entirely reasonable interim measure to facilitate the orderly resolution of the dispute between PMCM and the licensees that already operate stations using virtual channel 3 in overlapping service areas.

2. The ATSC Protocol Does Not Foreclose the Order's Interim Relief.

PMCM asserts that ATSC A/65:2013, Annex B, B.1.1 (1) "***compels*** it to use" virtual channel 3, giving its station an "inherent" right to that channel

assignment. Pet. 20.² That provision states that for “licensee[s] with an [analog] license” when they “commence[] digital service,” the major channel assignment will correspond to the radio frequency channel the licensee was using “at the time it commenced digital service.” ATSC A/65:2013, Annex B, B.1.1 (1).

PMCM’s arguments concerning Annex B.1.1 (1), however, do not undermine the *Order*. For one, PMCM fails to note that, even if Annex B.1.1 (1) were to support its use of virtual channel 3, the agency would nonetheless have the authority to instruct PMCM to use another virtual channel.³ Beyond that, there is at least a possible question whether PMCM, operating its station under program test authority and awaiting the FCC’s decision on its license application, is a “licensee” within the meaning of Annex B.1.1 (1). There is also uncertainty whether Annex B.1.1 (1) applies when a licensee’s radio frequency channel is reallocated to a new locality. *See Interim Order* at 3.

Instead, as the *Interim Order* explains, it is possible that the governing provision is Annex B.1.1 (4). *See Interim Order* at 3 (citing the version of that

² The version of the ATSC protocol incorporated by reference in the FCC’s current rules is ATSC A/65C, dated January 2, 2006. *See* 47 C.F.R. § 73.682(d). PMCM has instead attached, as Attachment D to its petition, the most current version of the ATSC protocol (dated August 7, 2013). Because the precise version of the protocol in force does not appear to make a material difference at this stage of litigation, our pleading cites to PMCM’s version. For the Court’s reference, a copy of the incorporated version of the protocol is attached as Exhibit 11.

³ *See Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, Report and Order, 19 FCC Rcd 18279, 18346, para. 153 (2004) (“To the extent broadcasters have a unique situation that is not provided for in [the ATSC protocol], the Commission may grant exceptions on a case-by-case basis.”); *see also Interim Order* at 3 & n.12.

provision codified in 47 C.F.R. § 73.682(d)). That provision states that “[i]f, after February 17, 2009, [a radio frequency] channel previously allotted for [analog operation] 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 [radio frequency] channel originally assigned to the previous [analog] licensee of the assigned channel.” ATSC A/65:2013, Annex B, B.1.1 (4). In other words, Annex B.1.1 (4) sets forth a rule that a new entrant to a market should use the virtual channel number corresponding to the radio frequency channel number used by the previous incumbent. Under that rule, it was reasonable, at least as an interim measure, to direct “WJLP-TV, as a newly licensed station,” to use “virtual channel 33,” because that is the radio frequency channel of Meredith’s television station. *Interim Order* at 3.⁴ In addition, as the Division noted, the “assignment of virtual channel 33 to” PMCM’s station “on an interim basis” was “consistent with the Division’s decision allotting channel 5 to Seaford, Delaware.” *Id.*; see *Seaford Order*, 25 FCC Rcd at 4472 (“[P]ursuant to the [ATSC] Standard, the [radio frequency] channel 5 allotment at Seaford will be assigned PSIP channel 36.”).

PMCM contends that its alternative proposal to use a “two-part virtual channel number” starting at number 3.10 “is fully compliant with” the ATSC protocol. Pet. 15. In PMCM’s view, the protocol “expressly approves” sharing

⁴ The Division explained that assigning PMCM’s station virtual channel 26 (the radio frequency channel of the CBS station in Philadelphia) was not possible because that channel was already being used by an overlapping station in New London, Connecticut. See *Interim Order* at 3.

virtual channels “so long as the station’s respective minor_channel_numbers are appropriately partitioned.” Pet. 20. But by its own terms, the provision upon which PMCM relies, Annex B.1.1 (5), “establishes a *limited exception*” for stations “own[ed] or control[ed]” by the same licensee. ATSC A/65:2013, Annex B, B.1.1 (5) (emphasis added). It therefore does not expressly “provide for or require the sharing of virtual channels by licensees with overlapping contours that are not commonly owned.” *Interim Order* at 3.

The Division “acknowledge[d]” in the *Interim Order* “that PMCM has raised a number of arguments why it should not be required to use virtual channel 33,” and that the agency has the power to “grant exceptions to the PSIP Standard on a case-by-case basis.” *Interim Order* at 3. But in the face of a fair dispute over the appropriate resolution of this technical issue, which the agency had put out for public comment, it was perfectly reasonable for the Division to implement an interim solution—which was at a minimum based on an available interpretation of the governing ATSC protocol—that was “without prejudice to these pending arguments and PMCM’s ‘Alternative PSIP Proposal.’” *Interim Order* at 3–4.

3. *The Order Does Not Violate Section 331(a).*

PMCM also asserts that, by seeking to require PMCM’s station to use virtual channel 33 on an interim basis, the *Order* clearly violates 47 U.S.C. § 331(a). *See* Pet. 2, 8–9. Section 331(a) requires that the FCC “allocate channels for very high frequency commercial television broadcasting in a manner which ensures that not less than one such channel shall be allocated to each state, if technically feasible.”

47 U.S.C. § 331(a). The FCC has reallocated radio frequency 3 to New Jersey. *See 2013 Reallocation Order*, 28 FCC Rcd at 2827, para. 5.

PMCM contends that assignment of a *virtual* channel number outside the range of radio frequency channel numbers (2 through 13) allotted to VHF broadcasting violates Section 331(a) because it “would effectively convert WJLP from a VHF station to a UHF station.” Pet. 2. That is incorrect. “UHF” (ultra high frequency) and VHF (very high frequency) are well-understood terms that specify the radio frequency on which a television station transmits its signal. *See, e.g.*, Newton’s *Telecom Dictionary* 988 (24th ed. 2008) (defining VHF as “[f]requencies from 30 MHz to 300MHz”). PMCM was granted a construction permit to build a station using VHF channel 3, which uses spectrum in the 60–66 MHz range. *See* 47 C.F.R. § 73.603. But as PMCM concedes, “a station’s DTV channel designation”—that is, its virtual channel—may or may not bear any relation to the over-the-air [radio frequency] channel on which the station’s signal is first transmitted.” Pet. 10. Section 331(a), which was enacted in 1982, plainly does not speak to issues concerning virtual channels, which are creatures of the far more recent transition to digital broadcasting.

4. *The Order Does Not Violate Section 1452(g).*

PMCM also claims (Pet. 3, 18) that assigning virtual channel 33 for its station’s interim use violates 47 U.S.C. § 1452(g), which, in connection with authorizing a broadcast spectrum incentive auction, prohibits the FCC from assigning “a broadcast television licensee from a very high frequency television channel to an ultra high frequency television channel, unless . . . such a

reassignment will not decrease the total amount of ultra high frequency spectrum made available for allocation under this section.” 47 U.S.C. § 1452(g)(1)(B).

Again, PMCM’s argument is premised on the unsupported contention that requiring PMCM’s station to use virtual channel 33 on an interim basis “effectively makes WJLP a *de jure* UHF station.” Pet. 3. As we have shown, that is incorrect. In any event, Section 1452(g) governs the availability of “spectrum.” 47 U.S.C. § 1452(g). The statute in no way concerns virtual channel assignments, which have no bearing on the spectrum that a broadcast television station is licensed or permitted to use. Thus, contrary to PMCM’s suggestion, *see* Pet. 3, requiring PMCM’s station to use virtual channel 33 (even on a permanent basis, let alone on an interim basis) would not in any way “decrease the total amount of ultra high frequency *spectrum* made available for reallocation” in the course of the contemplated spectrum auction, *id.* (emphasis added) (quoting 47 U.S.C. § 1452(g)(1)(B)). No matter what channel identification code the FCC requires PMCM’s station to transmit, the broadcast spectrum allocated for the station’s broadcasts remains radio frequency channel 3.

5. The Order Does Not Violate Section 316.

Finally, PMCM is wrong that the *Order* impermissibly modifies its construction permit. *See* Pet. 4–5, 18. Section 316 of the Communications Act provides, in relevant part, that no FCC modification of a construction permit “shall become final until the holder of the . . . permit shall have been notified in writing of the proposed actions and the grounds and reasons therefor, and shall” have received a “reasonable opportunity, of at least thirty days, to protest such proposed

order of modification.” 47 U.S.C. § 316(a)(1). But the Division did not modify PMCM’s construction permit by ordering PMCM to operate its station using virtual channel 33 on an interim basis. As PMCM recognizes, “WJLP’s construction permit contains no reference whatsoever to any virtual channel number, whether one-part or two-part.” Pet. 16.

B. PMCM Has Not Demonstrated Irreparable Injury.

PMCM’s assertions of harm arise not from the *Order* but from PMCM’s own decisions.

The *Order* does not “force WJLP off the air for the indefinite future.” Pet. 21. To the contrary, the *Order* makes clear that PMCM’s station can continue operating under program test authority if PMCM certifies that, for the time being, it will operate the station using virtual channel 33. *See Order* at 2; *Interim Order* at 3. That certification is within PMCM’s power to provide. In short, PMCM has taken itself off the air.

PMCM does acknowledge at one point in the petition that it *could* continue to operate its station using virtual channel 33. *See* Pet. 22. PMCM asserts, however, that doing so would “create substantial audience confusion” because “audience members have become accustomed to finding” the station on “the VHF end of television listings.” *Id.* The magnitude of such confusion—for a station that has been on the air just since September 30—may be questioned. In any event, PMCM plainly has the power to mitigate such confusion by informing its audience, through advertising, announcements on its website, or otherwise, that it has moved

(for the time being) to virtual channel 33. Any temporary loss in an audience that can be won back is not “irreparable.”

C. A Stay Would Harm Third Parties and Disserve the Public Interest, and the Balance of Equities Strongly Disfavors a Stay.

Offsetting PMCM’s claims of harm, Meredith and CBS assert that allowing PMCM’s station to use virtual channel 3 would engender countervailing confusion among their audiences of much longer standing. *See* Reply Comments of Meredith and CBS 4 (Oct. 29, 2014) (attached as Exhibit 12). In Meredith’s case, the record shows that viewers have identified its station as “Channel 3” for over 50 years. *See* Meredith Informal Objection 4.

More significantly, a stay would encroach on the FCC’s statutorily conferred ability to “conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice.” 47 U.S.C. § 154(j). The agency has determined that the dispute between PMCM and the licensees of established Channel 3 stations in service areas that PMCM’s station would reach raises questions that are best considered and resolved in the context of a notice and comment proceeding. Unhappy with the agency’s chosen procedure, PMCM opted to ignore the Video Division’s effort to adopt an interim measure to preserve the pre-existing landscape of television stations identified over the air as “Channel 3” in the relevant service areas until such time as the agency reached a final determination concerning the appropriate virtual channel assignment for PMCM’s station. Under these circumstances, the balance of equities plainly favors the agency’s approach.

* * * * *

This case involves a technical disagreement over the terms of an industry protocol for digital broadcasting that has been incorporated in the FCC's rules. The agency sought to protect its ability to resolve the dispute by adopting an interim measure, which requires a newly constructed station, for the time being, to include channel identification data in its broadcasts that will not breed confusion among long-standing viewers of other stations in its service area. Although PMCM believes its right to use a different channel identification code is clear, it has failed to demonstrate a clear and indisputable right to relief or that it will be irreparably harmed by compliance with the FCC order. Stay and mandamus are not warranted.

CONCLUSION

For the foregoing reasons, the Court should deny the petition.

Respectfully submitted,

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November 18, 2014

EXHIBIT 1

(Temporary Stay Order)



Federal Communications Commission
Washington, D.C. 20554

November 12, 2014
(Service via Email)

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John Bagwell, Esq.
CBS Broadcasting Inc.
51 West 52nd Street
New York, New York 10019

Re: PMCM TV, LLC
WJLP-TV, Middletown Township, NJ
File Nos. BPCDT-20130528AJP and
0000001037
Facility ID No. 86537
Docket No. 14-150

Counsel:

By letter dated November 7, 2014, the Video Division suspended program test authority for station WJLP-TV, Middletown Township, New Jersey, effective 12 pm, EST, November 10, 2014. The letter indicated that the Division would reinstate program test authority for the station upon notification by PMCM TV, LLC, the permittee of the station, that it would operate the station on an interim basis using virtual channel 33, consistent with the Division's directive in a letter order dated October 23, 2014.

PMCM filed an Emergency Petition for Writ of Mandamus with the United States Court of Appeals for the District of Columbia Circuit on November 10, asking the court to order the Commission to rescind or stay the effectiveness of the suspension of program test authority. In order to permit orderly briefing before the court, we impose a temporary stay of the suspension of WJLP-TV's program test authority until Monday, December 1, 2014 at 12 pm, EST. In taking this action on our own motion for

administrative purposes, we express no view whether PMCM's showings in its Emergency Petition satisfy any of the requirements for a stay.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. A. Kreisman', with a long horizontal stroke extending to the right.

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc: Tara M. Corvo, Esq.
Frederick W. Giroux, Esq.
Seth A. Davidson, Esq.
William LeBeau, Esq.
Stephen Maguire/District Director/NY Field Office

EXHIBIT 2

(Public Notice)



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

DA 14-1298

Released: September 12, 2014

**MEDIA BUREAU SEEKS COMMENT ON REQUEST FOR DECLARATORY RULING
BY MEREDITH CORPORATION AND “ALTERNATIVE PSIP PROPOSAL” BY
PMCM TV, LLC FOR KVVV(TV), MIDDLETOWN TOWNSHIP, NEW JERSEY
MB Docket No. 14-150**

Comment Date: October 14, 2014

Reply Comment Date: October 29, 2014

On May 22, 2014, Meredith Corporation (Meredith), the licensee of WFSB(TV), RF channel 33, virtual channel 3, Hartford, Connecticut, filed a “Petition for Reconsideration and Request for Declaratory Ruling.” In the declaratory ruling section of its pleading, Meredith objects to the assignment of virtual channel 3 to new station KVVV(TV), RF channel 3, Middletown Township, New Jersey, because the stations’ noise limited contours have significant overlap. Meredith asks for a ruling that KVVV(TV) be assigned virtual channel 33.¹

On August 8, 2014, PMCM TV, LLC (PMCM), the permittee of station KVVV(TV), filed an “Alternative PSIP Proposal,” which it supplemented on August 13, 2014. In its “Alternative PSIP Proposal” PMCM proposes that KVVV(TV) be assigned a two-part virtual PSIP channel 3.10 (with any additional program streams eventually transmitted on KVVV(TV) identified as 3.11, 3.12, etc.), while WFSB(TV) would retain virtual channel 3.1 through 3.9.² KVVV(TV)

¹ A station’s RF channel is the channel allotted to the station’s community in the Post-Transition Table of DTV Allotments, 47 C.F.R. § 73.622(i). A station’s virtual channel number is the number that the PSIP Standard attaches to a broadcaster’s current DTV RF channel number regardless of the actual RF channel used for DTV transmission. It is the channel number that television viewers physically tune to in order to view a television station. Section 73.682(d) requires digital broadcast television signals to comply with ATSC A/65C (“ATSC Program and System Information Protocol for Terrestrial Broadcast and Cable, Revision C With Amendment No. 1 dated May 9, 2006”) (“PSIP Standard”). 47 C.F.R. § 73.682(d) (incorporated by reference, *see* §73.8000). For purposes of the PSIP Standard, the terms “major” channel and “virtual” channel are interchangeable.

² In the alternative, PMCM proposed that it be assigned virtual PSIP channel 14 but that the Commission specify that KVVV(TV) is entitled to cable carriage on channel 3 on cable systems throughout the New York DMA, except in Fairfield County, Connecticut. PMCM withdrew that proposal in footnote 13 in its August 25, 2014 Application for Review of the Media Bureau’s decision granting certain MPVDs’ requests that they be allowed to defer implementing PMCM’s must-carry requests and channel position election until 90 days after the date of a final

also has significant contour overlap with KYW-TV, RF channel 26, virtual channel 3, Philadelphia, Pennsylvania, licensed to CBS Broadcasting Inc. Under PMCM's proposal, KVVN(TV) would be available to over-the-air viewers exclusively on channels 3.10 (and 3.11, etc.) throughout its footprint. As cable systems typically do not employ two-part channel numbers, KVVN(TV) would request carriage on cable channel 3, except in Fairfield County, Connecticut.

We issue this Public Notice pursuant to Section 1.2 of the Commission's Rules to seek comment on Meredith's Request for Declaratory Ruling and PMCM's Alternative PSIP Proposal and Explanatory Supplement.³ These pleadings, as well as related pleadings filed by Meredith and PMCM, are available electronically through the Commission's ECFS under MB Docket No. 14-150, which may be accessed on the Commission's Internet website at <http://www.fcc.gov>. All filings concerning the matters referenced in this Public Notice should refer to MB Docket No. 14-150. Pleadings may be filed within 30 days of release of this Public Notice.⁴ Replies may be filed within 15 days thereafter. Meredith and PMCM need not resubmit their arguments already made with respect to Meredith's Request for Declaratory Ruling.

Submissions in this matter may be filed electronically (i.e., through ECFS) or by filing paper copies.

- Electronic Filers: Documents may be filed electronically using the Internet by accessing the ECFS: <http://efiling.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. Filings may be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Any filing that is not addressed to the Office of the Secretary will be treated as filed on the day it is received by the Office of the Secretary. Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.

decision on KVVN(TV)'s virtual channel. Letter from William T. Lake, Chief, Media Bureau to Tara M. Corvo, Esq., *et al.*, DA 14-1029 (rel. July 25, 2014).

³ See 47 C.F.R. § 1.2. See also *In the Matter of Certain of the Commission's Part 1 Rules of Practice and Procedure and Part 1 Rules of Commission Organization*, GC Docket No. 10-44, Report and Order, 26 FCC Rcd 1594 (2011). We emphasize that we are not docketing the matters raised in Section III of Meredith's Petition for Reconsideration and Request for Declaratory Ruling, which seeks reconsideration of the April 17, 2014 letter dismissal of Meredith's Informal Objection to PMCM's application for a construction permit (FCC File No. BPCDT-20130518AJP), based on KVVN(TV)'s virtual channel assignment, as premature. We will reject any additional arguments as untimely and/or unauthorized by Section 405 of the Communications Act, 47 U.S.C. § 405.

⁴ See 47 C.F.R. § 1.2(b).

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street, S.W., Room TW-A325, Washington, D.C. 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, Maryland 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, S.W., Washington, D.C. 20554.

In addition, one copy of each submission must be sent to the following:

- The Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, telephone 1-800-378-3160, e-mail fcc@bcpiweb.com;
- Joyce Bernstein, Video Division, Media Bureau, Room 2-A864, e-mail Joyce.Bernstein@fcc.gov.

Any submission that is e-mailed to Best Copy and Printing and Joyce Bernstein should include in the subject line of the e-mail: (1) MB Docket No. 14-150 and (2) the name of the submitting party.

People with Disabilities. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

Availability of Documents. Documents in this proceeding will be available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. The documents may also be purchased from BCPI, telephone (202) 488-5300, facsimile (202) 488-5563, TTY (202) 488-5562, e-mail fcc@bcpiweb.com. Documents will also be available electronically through the Commission's ECFS, which may be accessed on the Commission's Internet website at <http://www.fcc.gov>.

For further information, contact Joyce Bernstein at (202) 418-1647. For press inquiries, contact Janice Wise at (202) 418-8165.

By: Chief, Media Bureau

EXHIBIT 3

(2013 Reallocation Order)

Federal Communications Commission

DA 13-448

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

In the Matter of)	
)	
)	
Reallocation of Channel 3 from Ely, Nevada)	MB Docket No. 13-72
to Middletown Township, New Jersey,)	RM-11694
Amendment of Section 73.622(i),)	
Post-Transition Table of DTV Allotments,)	
Television Broadcast Stations.)	
)	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: March 15, 2013**Released: March 18, 2013**

By the Chief, Media Bureau:

1. On June 15, 2009, PMCM TV, LLC ("PMCM"), the licensee of KVVN(TV), channel 3, Ely, Nevada, notified the Commission, pursuant to section 331(a) of the Communications Act of 1934, as amended,¹ that it wished to reallocate channel 3 from Ely, Nevada to Middletown Township, New Jersey.² The Media Bureau denied PMCM's Reallocation Request³ and the Commission affirmed the Bureau Decision.⁴ PMCM appealed the Commission Decision to the United States Court of Appeals for the District of Columbia (the "Court"), which subsequently reversed the Commission's denial and remanded the matter to the Commission with instructions to approve PMCM's Reallocation Request.⁵ We therefore now approve the reallocation of channel 3 from Ely, Nevada to Middletown Township, New Jersey in accordance with the Court's instructions.

2. Section 331(a) provides that:

¹ 47 U.S.C. § 331(a) ("section 331(a)").

² Letter from Donald J. Evans and Harry F. Cole, Counsel for PMCM TV, LLC, to Marlene H. Dortch, Secretary, FCC, Regarding Relocation of Station KVVN(TV), Ely, Nevada (June 15, 2009) ("Reallocation Request").

³ *PMCM TV, LLC c/o Harry Cole, Esq.*, 24 FCC Rcd 14588 (MB 2009) ("Bureau Decision").

⁴ *Reallocation of Channel 2 from Jackson, Wyoming to Wilmington, Delaware and Reallocation of Channel 3 from Ely, Nevada to Middletown Township, New Jersey*, Memorandum Opinion and Order, 26 FCC Rcd 13696 (2011) ("Commission Decision").

⁵ *PMCM TV, LLC v. FCC*, 701 F.3d 380 (D.C. Cir. Dec. 14, 2012).

Federal Communications Commission

DA 13-448

Very High Frequency Stations. It shall be the policy of the Federal Communications Commission to allocate channels for very high frequency commercial television broadcasting in a manner which ensures that not less than one such channel shall be allocated to each State, if technically feasible. In any case in which [a] licensee of a very high frequency commercial television broadcast station notifies the Commission to the effect that such licensee will agree to the reallocation of its channel to a community within a State in which there is allocated no very high frequency commercial television broadcast channel at the time [of] such notification, the Commission shall, notwithstanding any other provision of law, order such reallocation and issue a license to such licensee for that purpose pursuant to such notification for a term of not to exceed 5 years as provided in Section 307(d) of the Communications Act of 1934.⁶

At the time that PMCM notified the Commission of its Reallocation Request, the State of New Jersey did not have a VHF commercial channel.⁷ Furthermore, in support of its Reallocation Request, PMCM “emphasizes its commitment to assure the provision of programming of special interest to the community of Middletown Township, to all of Monmouth County, and to the rest of northern New Jersey and its environs.”⁸

3. On appeal, the Court determined that Congress intended for section 331(a) to direct “the FCC to allocate VHF channels to each state where technically feasible,” and for “the Commission to grant any proposed technically feasible reallocation to unserved States.”⁹ We conclude that channel 3 can be allocated at Middletown, New Jersey as proposed, in compliance with the principle community coverage requirements of Section 73.625(a) of the Commission’s rules, at coordinates 40-45-22 N. and 73-59-12 W. In addition, we find that this channel meets the technical requirements set forth in Sections 73.616 and 73.623 of the Commission’s rules for station KVVV(TV) with the following specifications:

City and State	Channel	Power (kw)	Antenna HAAT (m)	Service Pop. (thous.)
Middletown Township, New Jersey	3	10	262	20,766

4. In addition, the Court held that a reallocation pursuant to section 331(a) “displac[es] the normal procedure for channel reallocation as well as the normal procedures for issuing licenses”¹⁰ Therefore, the allocation criteria and procedures developed pursuant to section 307(b) of the Communications Act, as amended,¹¹ including compliance with the rulemaking procedures of the Administrative Procedure Act, do not apply to this proceeding.

⁶ 47 U.S.C. § 331(a).

⁷ The State of New Jersey currently has one commercial VHF channel, which the Commission allotted to the State after PMCM submitted its Reallocation Request. *Atlantic City, New Jersey*, Report and Order, 25 FCC Rcd 2602 (Vid. Div. 2010).

⁸ Reallocation Request at 3.

⁹ *PMCM LLC, TV v. FCC*, 701 F.3d at 385.

¹⁰ *Id.* at 9 (citing *Multi-State Commc’ns, Inc. v. FCC*, 728 F.2d 1519, 1525 (D.C. Cir. 1984), cert. denied, 469 U.S. 1017 (1984)).

¹¹ 47 U.S.C. § 307(b).

Federal Communications CommissionDA 13-448

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and Section 331(a) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's rules, IT IS ORDERED, That effective 30 days after the date of publication of this Report and Order in the Federal Register, the DTV Table of Allotments, Section 73.622(i) of the Commission's rules, IS AMENDED, with respect to the communities listed below, to read as follows:

<u>City and State</u>	<u>Present Channel Nos.</u>	<u>Amended Channel Nos.</u>
Middletown Township, New Jersey	--	3
Ely, Nevada	3	--

6. IT IS FURTHER ORDERED, That not later than 45 days of the effective date of this Order, PMCM TV, LLC shall submit to the Commission a minor change application for a construction permit (FCC Form 301) specifying channel 3 at Middletown Township, New Jersey for station KVVV(TV).

7. The Commission will send a copy of this Memorandum Opinion and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact Adrienne Y. Denysyk, Video Division, Media Bureau, (202) 418-1600.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

EXHIBIT 4

(Permit Order)



**Federal Communications Commission
Washington, D.C. 20554**

April 17, 2014

PMCM TV, LLC
c/o Harry F. Cole Esq.
Fletcher, Heald, & Hildreth, P.L.C.
1300 North 17th Street
11th Floor
Arlington, VA 22209

Meredith Corporation
c/o Michael D. Basile
Cooley LLP
1299 Pennsylvania Ave., N.W.
Suite 700
Washington, D.C. 20004

In re: Application of PMCM TV, LLC for a
Television Station Construction Permit
KVVN(TV), Middletown Township, NJ
Facility ID. No. 86537
File No. BPCDT-20130528AJP

Dear Counsel:

We have before us an informal objection filed by Meredith Corporation ("Meredith"), licensee of WFSB(TV), Hartford, CT, digital RF channel 33, virtual channel 3, against the above-referenced application for a construction permit for KVVN(TV), Middletown Township, New Jersey, digital RF channel 3, filed by PMCM TV, LLC ("PMCM").¹ Meredith objects solely to PMCM's future operation on virtual channel 3, the same virtual channel WFSB(TV) is currently operating on. At this time, we dismiss Meredith's informal objection as premature.

In its informal objection, Meredith claims that "both stations' simultaneous use of the same PSIP channel would cause significant 'virtual' interference" as "[t]he noise limited contour of WFSB(TV) and the proposed noise limited contour of KVVN(TV) overlap significantly."² Meredith also expresses concern that assigning virtual channel 3 to PMCM will result in conflicting must-carry rights for KVVN(TV) and WFSB(TV). In response, and among other arguments, PMCM states that "PSIP major[/virtual] channel information is not included in a license modification application," and therefore should not be considered at this time.³

We agree with PMCM solely on the point that a station's virtual channel designation is not included in or considered in a license modification application. Therefore it is premature for

¹ The stated purpose of the application, as amended, is for a minor change in a licensed facility.

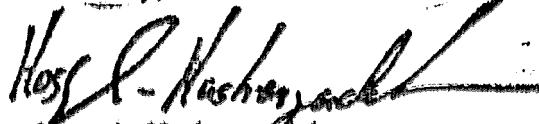
² Meredith Informal Objection at 1 (filed Feb. 18, 2014).

³ PMCM Opposition to Informal Objection at 2 (filed Mar. 24, 2014).

Meredith to file its informal objection. 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.

ACCORDINGLY, IT IS ORDERED That, the informal objection, filed by Meredith Corporation against the above-referenced application is DISMISSED as premature. IT IS FURTHER ORDERED , That, the above referenced application, File No. BPCDT-20130528AJP is GRANTED.

Sincerely,

A handwritten signature in black ink, appearing to read "Hossein Hashemzadeh", with a long horizontal flourish extending to the right.

Hossein Hashemzadeh
Deputy Chief, Video Division
Media Bureau

EXHIBIT 5

(Informal Objection)

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In re Application of

PMCM TV, LLC

For Modified Facilities of KVVN(TV),
Middletown Township, New Jersey

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)
)
)

File No. BPCDT-20130528AJP

To: Secretary's Office
Attn: Video Division, Media Bureau

INFORMAL OBJECTION

Meredith Corporation ("Meredith"), by its attorneys and pursuant to 47 C.F.R. §1.41 and 47 C.F.R. § 73.3587, hereby submits this Informal Objection against the above-referenced application (the "Application") of PMCM TV, LLC ("PMCM") for a construction permit for KVVN(TV), Middletown Township, New Jersey.¹ PMCM proposes to operate KVVN(TV) on DTV RF Channel 3 from a tower at Times Square in New York City, New York. Meredith is the licensee of WFSB(TV) in nearby Hartford, Connecticut, which broadcasts using Channel 3 as its Program System and Information Protocol ("PSIP") major channel number. The noise limited contour of WFSB(TV) and the proposed noise limited contour of KVVN(TV) overlap significantly. As a result, both stations simultaneous use of the same PSIP major channel number would cause significant "virtual" interference. Accordingly, the Commission should not

¹ This Informal Objection is timely filed under Section 73.3587 of the Commission's Rules because the Commission has not yet acted on the Application.

assign PSIP Channel 3 to KVVN(TV). If the Commission cannot assign a different PSIP major channel number to KVVN(TV) (other than Channel 3), the Application should be dismissed.

To prevent the virtual interference that KVVN(TV) would cause to WFSB(TV), the Advanced Television Systems Committee (“ATSC”) developed rules and priorities for determining a station’s PSIP major channel.² In its *Second Periodic Review*, the Commission incorporated ATSC’s PSIP rules into Section 73.682(d) of the FCC’s rules.³ As a result, every full power television station must implement PSIP as set forth in ATSC A/65B.

In the vast majority of instances, selecting a station’s PSIP channel is straightforward. Typically, a station’s PSIP major channel is its former NTSC channel number. Thus, WFSB(TV) uses Channel 3 as its PSIP major channel number, and KVVN(TV) currently uses Channel 3 as its PSIP major channel number. Because Hartford, Connecticut and Ely, Nevada are more than 2,500 miles apart, both stations can use the same PSIP major channel number without creating any virtual interference.

Occasionally, however, PSIP conflicts arise. As shown in the contour map attached as Exhibit A-1, KVVN(TV)’s proposed noise limited contour would overlap significantly with WFSB(TV)’s noise limited contour. Thus, both stations cannot operate with the same PSIP major channel number. ATSC addresses this possibility in ATSC A/65. In particular, Section B.1.1 of Annex B of ATSC A/65 sets forth several rules to “guarantee that the two-part channel number combinations used by a licensee will be different from those used by any other licensee

² ATSC’s PSIP standards are set forth in “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”).

³ 47 C.F.R. §73.682(d). *See also Second Periodic Review of the Commission’s Rules & Policies Affecting the Conversion to Digital Television*, 19 FCC Rcd. 18279, 18345, ¶ 152 (2004).

with an overlapping DTV Service Area.”⁴ When a DTV station moves into a market, ATSC A/65 ensures that the new station cannot use a PSIP major channel number that conflicts with the major channel number of an incumbent station in the market:

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.⁵

WFSB(TV)’s DTV RF channel number is Channel 33. Under ATSC A/65B, the Commission must assign Channel 33 to KVVN(TV) as its PSIP major channel number because KVVN(TV) is the new entrant to the market.⁶

Channel 33 is available for use. KVVN(TV)’s noise limited contour will not overlap with any other station using PSIP Channel 33. The two closest stations also using PSIP Channel 33 are WFXV(TV), Utica, New York, and WITF-TV, Harrisburg, Pennsylvania. As Exhibit A-2 demonstrates, KVVN(TV)’s noise limited contour will not overlap either WFXV(TV) or WITF(TV).

Assigning Channel 33 as KVVN(TV)’s PSIP major channel number serves the public interest. It will ensure that the hundreds of thousands of viewers in the overlap area for WFSB(TV) and KVVN(TV) will be able to receive both stations without any virtual interference. Moreover, it will minimize the disruption to viewers accustomed to receiving

⁴ ATSC A/65B at 86. ATSC A/65B defines “DTV Service Area” as a station’s noise limited contour.

⁵ *Id.*

⁶ Meredith constructed WFSB(TV)’s present DTV facilities in 2004, and, since then, the station has been operating with Channel 3 as its PSIP major channel number. *See* FCC File No. BLCDT-20041029AIL. Meanwhile, the Commission did not allot Channel 3 to Middletown Township, New Jersey until 2013. *See Reallocation of Channel 3 from Ely, Nevada to Middletown Township, New Jersey*, 28 FCC Rcd 2825 (2013).

WFSB(TV) on Channel 3 for decades. When the Commission adopted the PSIP rules, it acknowledged that allowing broadcasters to “keep” their analog channel after the DTV transition permitted stations to maintain their local branding.⁷ Since commencing broadcasts in 1957, viewers have tuned to Channel 3 to watch WFSB(TV)’s programming. The same remains true today because PSIP allows viewers within WFSB(TV)’s noise limited contour to view the station on Channel 3. On the other hand, KVVN(TV) has no established presence or local branding because the station is relocating thousands of miles from Ely, Nevada to Middletown Township, New Jersey. Allowing KVVN(TV) to broadcast on PSIP Channel 3 not only would violate the Commission’s rules, but it also would allow PMCM to undercut a significant policy basis for adopting the ATSC PSIP rules. Thus, the Commission must protect WFSB(TV)’s long-standing presence in the market by requiring KVVN(TV) to use PSIP Channel 33.

Finally, failure to assign major channel 33 to KVVN(TV) also will result in conflicting must-carry rights for KVVN(TV) and WFSB(TV). Fairfield County, Connecticut is within the New York Designated Market Area (“DMA”). As a broadcast station located within the New York DMA, KVVN(TV) would have must carry rights in Fairfield County. WFSB(TV) also has must carry rights in several communities in Fairfield County.⁸ Assigning PSIP Channel 3 to KVVN(TV) would be untenable in Fairfield County because both WFSB(TV) and KVVN(TV) would have the right to demand carriage on Channel 3.

Based upon the foregoing, Meredith requests that the Commission assign Channel 33 as KVVN(TV)’s PSIP major channel number. If, however, only PSIP Channel 3 is available for KVVN(TV), Meredith requests that the Commission dismiss the Application because

⁷ *Second Periodic Review*, 19 FCC Rcd. at 18346 ¶ 153.

⁸ *Modification of the Television Market of Station WFSB*, 10 FCC Rcd. 4939 (CSB 1995).

KVNV(TV) operating on PSIP Channel 3 would cause substantial virtual interference and confusion in the overlap area between KVNV(TV) and WFSB(TV) .

Respectfully submitted,

Meredith Corporation

By: 

Michael D. Basile
Robert J. Folliard, III

Cooley LLP
1299 Pennsylvania Avenue, NW
Suite 700
Washington, D.C. 20004
(202) 776-2357

February 18, 2014

Exhibit A-1

**Map of Noise Limited Contours of WFSB(TV), Hartford, Connecticut
and KVVN(TV), Middletown Township, New Jersey**

Noise Limited Coverage Contour Comparison
WFSB, RF Ch. 33, Virtual Ch. 3, Hartford, CT, BLCDT20041029AIL
KVNV, RF Ch. 3, Virtual Ch. 3, Middletown Township, NJ, BPCDT20130528AJP

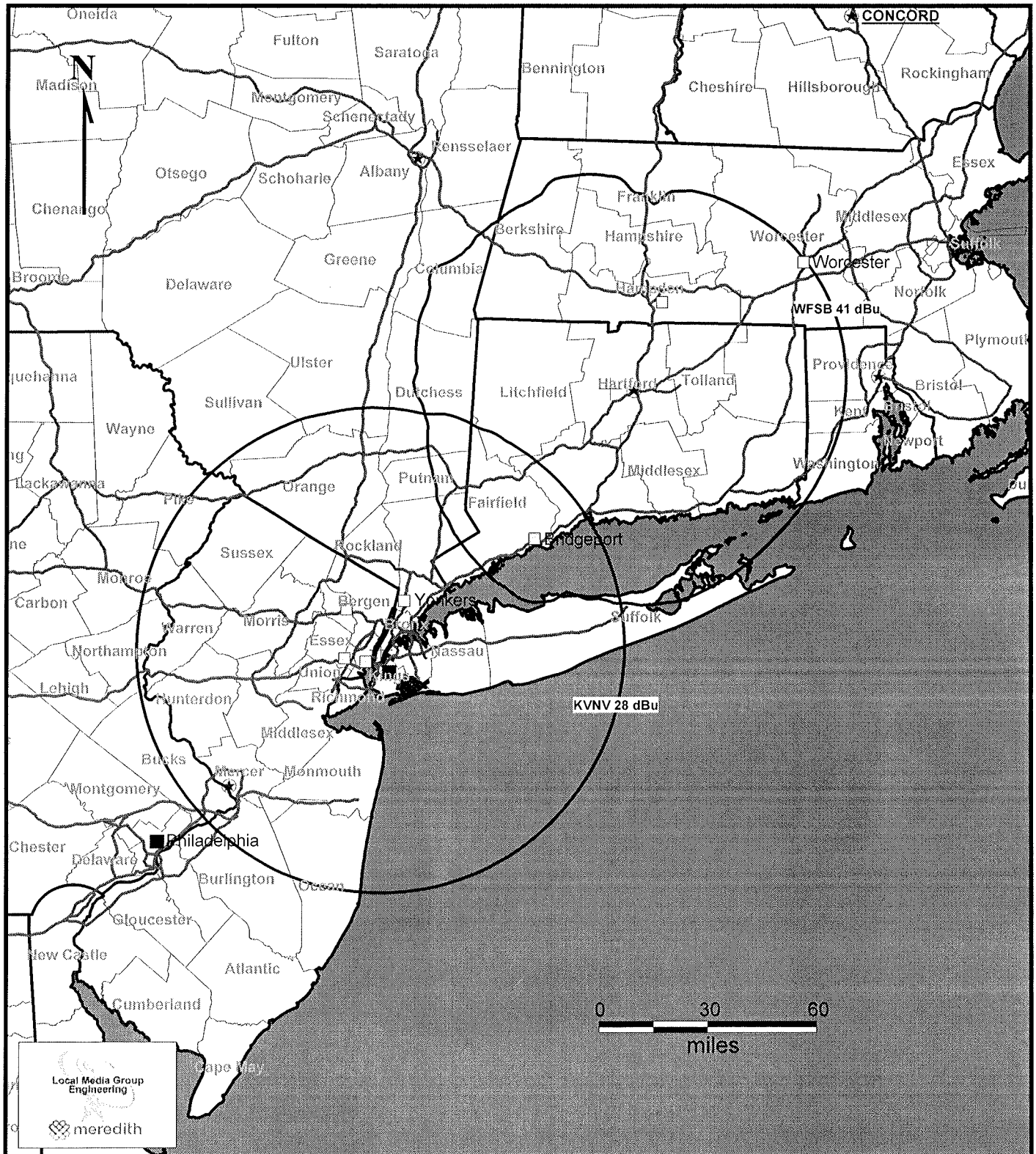
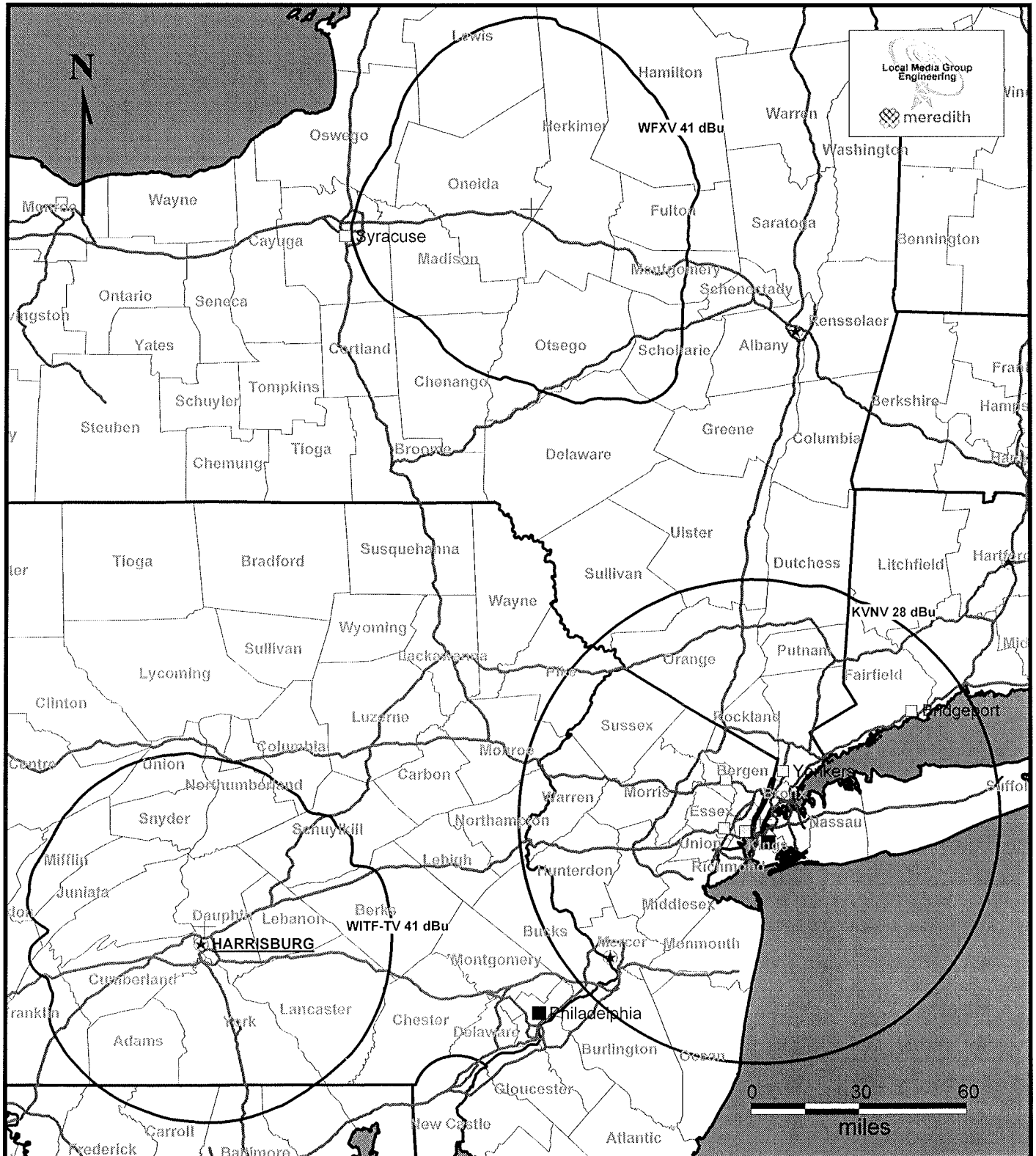


Exhibit A-2

**Map of Noise Limited Contours of WFXV(TV), Utica, New York;
KVVN(TV), Middletown Township, New Jersey; and
WITF-TV, Harrisburg, Pennsylvania**

Noise Limited Coverage Contour Comparison
WFXV, RF Ch. 27, Virtual Ch. 33, Utica, NY, BLCDT20090331ADG
KVNV, RF Ch. 3, Virtual Ch. 3, Middletown Township, NJ, BPCDT20130528AJP
WITF-TV, RF Ch. 36, Virtual Ch. 33, Harrisburg, PA, BLEDT20000922AHE



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 "Informal Objection" was served by first-class U.S. mail, postage-prepaid, unless otherwise indicated, on the 18th day of February, 2014 on the following:

Ms. Barbara Kreisman *
Chief, Video Division
Media Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Harry F. Cole, Esq.
1300 N. 17th Street
11th Floor
Arlington, VA 22209



Rayya Khalaf

* Via hand delivery.

EXHIBIT 6

(Petition for Reconsideration and Request
for Declaratory Ruling)

14-150
ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, DC 20554

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

Accepted/Filed

MAY 22 2014

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 KVVV(TV).¹ The Letter Decision failed to address the disruption that KVVV(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 KVVV(TV) may not commence program tests on Virtual Channel 3. Instead, when KVVV(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 KVVV(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 KVVV(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 KVVN(TV) would cause when it commences operations. The Bureau can avoid these problems by promptly declaring that KVVN(TV) must commence program tests using Virtual Channel 33.

CONCLUSION

Because KVVN(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 KVVN(TV) must operate on Virtual Channel 33. As the Bureau did in *Seaford, Delaware*, 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.

Respectfully submitted,

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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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* Via hand delivery.

EXHIBIT 7

(Alternative PSIP Proposal)

SEP 9 - 2014

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

Federal Communications Commission
Office of the Secretary

In re Application of

PMCM TV, LLC

For Minor Modification of the License for
KVVV(TV), Facility ID Number 86537,
Middletown Township, New Jersey

File No. BPCDT-20130528AJP

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AUG - 8 2014

Federal Communications Commission
Bureau / Office

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

Alternative PSIP Proposal

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Summary

PMCM TV, LLC ("PMCM") submits its analysis of the PSIP/cable channel carriage issue that has arisen in the captioned case. The analysis takes into account the discussion among the parties at a July 31, 2014 meeting convened by the staff to discuss the matter, as well as a survey of the PSIP allocation guidelines and the statutory and regulatory mandates requiring cable carriage on a station's "over-the-air" channel.

Based on this review, PMCM proposes a PSIP assignment that accommodates Meredith Broadcasting's concerns about perceived over the air and cable carriage impacts on its existing service. The combination of major channel 3 and minor channel 10 *et seq.* fully meets the requirements of ATSC A/65 Annex B for over the air reception issues (to the extent that there actually are any such issues given the lack of over the air viewership in Fairfield County), and PMCM's agreement to rescind its demand for cable carriage on Channel 3 in Fairfield County eliminates any issues regarding conflicting demands for channel 3.

PMCM also stresses the statutory and regulatory imperatives that give commercial TV stations the right to cable carriage on their actual over-the-air channels. The proposal set forth largely meets those requirements.

The proposal also takes into account the unique circumstances of KVVN's allocation to New Jersey as a VHF channel pursuant to a court order, a remedial measure that would be largely undercut by relegation to a non-VHF cable channel position.

Finally, PMCM offers an alternative PSIP/cable channel carriage assignment which would less effectively permit service to begin both on the air and on cable. This alternative would have PMCM accept major channel 14 as its PSIP but would also require an order mandating cable carriage on Channel 3, except in Fairfield County.

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Attention: Chief, Video Division, Media Bureau

Alternative PSIP Proposal

PMCM TV, LLC believes that the meeting among the Bureau staff and the parties last week was a constructive airing of the issues related to PSIP assignment for KVVV. While we disagree with some of the positions taken by the staff, we have taken into consideration the discussion in order to come up with a PSIP/channel carriage plan that would meet our needs, should address the concerns of Meredith Broadcasting, and would be consistent with the Bureau's thinking as we could divine it. The problem presented is to fashion a solution that maintains the integrity of the PSIP assignment protocols as enunciated in Annex B of ATSC A/65 while also complying with the bluntly stated will of Congress and the Commission that stations have the right to be carried by cable systems on their "over-the-air" channel.

As we understand it, the Bureau believes that Annex B requires that there be no overlap of the DTV Service Areas of television stations with the same major channel number in their

two-part virtual PSIP channels without the consent of other overlapping users of that major channel number. Ordinarily that policy would prevent Station KVVN(TV) from using its over-the-air RF Channel 3 as its major channel number for PSIP purposes, thereby preventing it from demanding cable carriage on its over-the-air channel, as authorized and contemplated by the statute and the rules.

At the outset, we note that the situation presented here, while not unique, is one where two overlapping stations have the right to major channel 3 in their PSIP by operation of Annex B of ATSC A/65. Paragraph (1) of Section B.1.1 of the Annex calls for the assignment of the NTSC RF channel number as the major channel number to a station which was operating on that channel at the time of its digital conversion. This paragraph, by its terms, applies to both KVVN and WFSB. We do not believe that Paragraph (4) of Section B.1.1 applies here because the application of that provision (which could be argued to cause the assignment of channel 33 to KVVN) is limited by its terms to situations where a channel is allotted to a "market" where the same major channel was previously assigned. The key here is market allotment. Everywhere else in Annex B the text refers explicitly to overlapping DTV Service Areas when it is referring to areas where there is signal overlap. In Paragraph 4, however, it uniquely refers to a "market," which must be presumed to have a different meaning than overlapping DTV Service Areas. As recently as August 6, the Media Bureau issued an Order indicating that a commercial TV station's "market" is its "designated market area" or DMA as defined by Nielsen.¹ This definition of a TV station's market is used consistently throughout the rules when the "market" (as opposed to signal contour coverage) is what is intended. In the present context, this makes perfect sense since it would be flatly erroneous on every possible factual level to say that a

¹ *Pine Telephone, Inc.*, DA 14-1142, re. August 6, 2014.

station in Hartford, CT in the Hartford DMA with its own nexus of local competitors, local advertising opportunities, local market conditions, and local programming needs is in the same "market" as a station in Middletown Township, NJ, which is separated from Connecticut by an entire state, is in a different DMA, and faces an entirely different matrix of competitive and business issues from the Hartford market. In no other instance does the Commission equate a "market" with partly overlapping service areas and it should not do so here.

It is also important in this context to note that Paragraph 4 expressly applies to the market where a channel is "allotted" -- not where its signal contours run. Reference to the table of allotments in Part 73.622 quickly confirms that WFSB's channel 3 was "allotted" to Hartford, CT which is in the Hartford DMA while KVVN's channel 3 is allotted to Middletown Township, NJ in the New York DMA. The use of "allotment" in the text confirms that the DMA of allotment rather than overlapping service areas was what was contemplated.²

Proposed Solution

How then do we reconcile the apparent Annex B prohibition on overlapping identical PSIPs with application of the subordinate paragraphs in Annex B which result in two overlapping stations having the same major channel? The staff indicated at the meeting that it would entertain a proposal to resolve this problem. Our proposal is that Station KVVN(TV) simply be assigned the two-part virtual PSIP channel 3.10 (with any additional KVVN program streams that may eventually be transmitted to be identified as 3.11, 3.12, etc.) while WFSB would retain PSIP channel 3.1 through 3.9.

² We also note in this connection that Channel 33 does not fall within the basic broadcast channel tier of the cable operators in the New York DMA. To be placed in each cable system's basic tier (see 614(b)(7) and 76.57(f)) KVVN would have to be placed elsewhere in each cable channel line-up with confusingly different channel designations in different cities and counties.

The advantages of this proposal are several.

Compliance with Annex B

First, it would be completely consistent with Annex B of ATSC A/65 which guarantees only that the “*two-part channel number combinations* used by a licensee will be different from those used by any other licensee with an overlapping DTV Service Area.” (Emphasis added.)³ Nothing in Annex B – or anywhere else that we’re aware of – precludes overlapping television signals with different two-part channel numbers, *i.e.*, where the overlapping stations share a common major channel number but have distinct minor channel numbers. To confirm this we have consulted with a number of experts knowledgeable about the PSIP assignment process and its effects, including Dr. Richard Chernock, the chairman of the ATSC. Dr. Chernock himself suggested the very approach proposed here as a solution which would obviate any PSIP problem. All agree that this approach would be consistent with ATSC A/65 *and* that there would be no confusion of the TV receiver by such a PSIP assignment. We invite the Commission to check with Dr. Chernock to verify our findings.

Our conclusion is, of course, confirmed in the laboratory of the real world. As we mentioned during the meeting, the Commission has *already* authorized multiple situations involving overlapping *identical* (*i.e.*, both major channel and minor channel numbers) PSIPs for stations serving millions of households. To the best of our knowledge, no adverse effects have occurred in any of those situations.⁴ That circumstance, repeated over and over in numerous parts of the country, demonstrates compellingly that the prophylactic mandate of the preamble to

³ Major channel numbers are to be uniquely assigned in different regions (defined as countries) under the ATSC.

⁴ There is no simple way to identify how many instances of overlapping identical PSIPs exist. Besides the situations in Louisiana-Arkansas-Mississippi (non-commonly owned stations KSLA, KETZ and WJTV all share virtual channel 12.1), in Nevada, and in New Jersey which we mentioned at the meeting, there are overlaps of full power and class A stations with identical PSIPs in Detroit and Chicago. (See attachments A, B, and C). In no case are we aware of any problem arising.

Annex B may be unnecessary – but we do not propose here to take issue with that. We note those circumstances simply to assure the Commission that (a) there is ample precedent for overlapping major channel PSIPs and (b) there need be no fear of any adverse consequences if our proposal is adopted. If overlapping identical PSIPs can co-exist in peace, non-identical overlapping PSIPs are even more secure.

By adding a separate and distinct minor channel, the Commission would – in full compliance with ATSC A/65 – eliminate any identical overlap at all with any other station already broadcasting with a PSIP that includes major channel 3. This would permit Meredith full flexibility to add new subchannels without a viewer even once having to spend the nanosecond necessary to scroll through PMCM's channels. Under this PSIP arrangement, WFSB will always come up as the first viewer choice for channel 3 in the limited areas where it can be received over the air, so there is no detriment whatsoever to WFSB's access to channel 3 vs. that of other competing stations in its market. Although the real world facts suggest that assignment of a much higher minor channel (*e.g.*, 3.10) is an unnecessary precaution, PMCM would accept that limitation in order to avoid any conceivable overlap of identical two-part channel number PSIPs. And, since ATSC A/65 guarantees freedom from overlap of *two-part* channel numbers, compliance with the PSIP protocol would be achieved.

We observe that nothing in Annex B requires the consent of other common major channel users when the two part PSIP is not identical. Because the two part PSIP combination is recognized as distinct from any other overlapping PSIP in the service area, no confusion can arise. To be sure, Paragraph 5 of Annex B permits co-owned stations to deviate from the usual PSIP assignment rules by voluntarily sharing the same major channel number, but it then prescribes that any potential confusion be eliminated by exactly the approach proposed here:

assigning distinct minor channel numbers. We must emphasize again that nothing in Annex B prevents overlapping major channel numbers as long the minor channel numbers are different. The system is designed to accommodate that very eventuality.⁵

The Bureau's concern with overlapping PSIPs here is especially curious since WFSB's channel 33 RF signal contour is substantially short-spaced to WCBS's channel 33 contour. See Attachment D⁶. The digital service contour overlap of these two stations embraces a huge area in south-central Connecticut and results in destructive interference to some 147,534 households and 381,414 people within the WFSB service contour in Fairfield County alone. This Commission-mandated RF overlap perhaps explains why over the air reception of WFSB in Fairfield County is virtually non-existent. Moreover, when analyzed with the assumption of a typical consumer antenna, there is no PSIP overlap at all. Recent data indicate that the cable and satellite penetration rate in Fairfield County is among the highest in the United States -- 92%. Accordingly, from a practical standpoint, the over-the-air viewership of WFSB is a non-factor in resolving the PSIP issue. The RF channel 33 DTV assignments already prevent most potential WFSB viewers in the overlap area from receiving a WFSB signal. And those that *can* receive a signal would have to use a high gain antenna oriented toward Hartford -- directly in the opposite direction from KVVN -- so that KVVN's signal would not be picked up at all. In other words, even if overlapping major channel PSIPs were a theoretical issue, which they are not, over-the-air viewers would not be substantively affected.

⁵ The solution proposed here would also eliminate any possibility of adverse effect on the Channel 3 PSIP user in Philadelphia.

⁶ A narrative explaining exhibit D-2 will be submitted Monday.

The Need to Protect Over-the-Air Carriage Rights

Designation of PSIP channel 3.10 would also protect the other critical value at stake here: PMCM's unqualified right to demand cable carriage on its over-the-air channel. The importance of this unambiguous mandate cannot be overemphasized:

a. Section 614 (B)(6) of the Communications Act, as the Commission has repeatedly acknowledged, expressly requires that signals carried in fulfillment of the must carry obligations set forth in the Act "shall be carried on the cable system channel number on which the local commercial television station is broadcast over the air..." The statute could not be clearer.

b. The Commission's own cable carriage rules duly implement Section 614(B)(6) of the Act by also requiring that "a cable operator shall carry [a must carry] signal on the cable system channel number on which the local commercial television station is broadcast over the air..." 47 C.F.R. 76.57(a)

c. In interpreting the must carry obligations of cable operators under Section 614 in the digital environment, the Commission in 2008 reaffirmed that "the channel placement options in Sections 614(b)(6) and 615(g)(5), as implemented in Section 76.57 of the Commission's rules, remain in effect after the digital transition."⁷ The right of a commercial television station to be carried on the same channel number on which the station is broadcast over the air thus remains an option, as both the statute and the rule explicitly require. The Commission also clarified that stations "may" demand carriage on their major channel number as broadcast in the station's PSIP, but it did not require them to do so. *Id.* at 14258. Nothing here

⁷ *Carriage of Digital Television Broadcast Signal: Amendment to Part 76 of the Commission's Rules*, 23 FCC Rcd. 14254, 14257 (2008).

mandates or even suggests that the statutorily mandated over-the-air channel option has been abandoned.

Several years earlier, in the *First Report and Order and Further Notice of Proposed Rulemaking, In the Matter of Carriage of Digital Television Broadcast Signals*, 16 FCC Rcd. 2598, 2635 (2001), the Commission had indicated that digital channel position requirements were unnecessary since digital technology would map the broadcast channel to the PSIP. This "technology-based" solution, the Commission said, resolved broadcaster concerns that they would not be carried on their over-the-air channel as required in the analog regime. At the same time, the Commission indicated that in the digital environment, "there is no analogous supporting rationale for requiring digital channel positioning on any cable channel other than on a station's over-the-air channel." *Ibid.* at 2633, footnote 235. The Commission accordingly modified Section 76.57(c) of the rules to require a cable operator "to carry the information necessary to identify and tune to the broadcast television signal." Again, nothing here suggests that mandatory carriage on the over-the-air channel is no longer operative. The opposite, rather, appears to be true.

We understand that the Bureau has recently suggested in several orders that cable carriage on one's over-the-air channel may no longer be a right.⁸ Given clear and express statutory language and numerous Commission pronouncements all to the contrary, we do not need to address those decisions here, but it is inconceivable that one's "over-the-air" channel, as

⁸ See, for example, *KSQA, L.L.C. v. Cox Cable Communications, Inc.*, 27 FCC Rcd 13185 (Policy Div. 2012). See also *Gray Television Licensee, LLC*, 28 FCC Rcd 10780 (Policy Div. 2013); *America-CV Station Group, Inc.*, 28 FCC Rcd 29 (Policy Div. 2013); *Mauna Kea Broadcasting Company*, 27 FCC Rcd 13188 (Policy Div. 2012). We do note, however, that the Bureau in the *KSQA* case appears to have misread the Commission's 2008 declaration that broadcast channels are no longer identified by reference to their over the air radio frequencies. The *KSQA* Order incorrectly states that the Commission declared that "a station's over-the-air broadcast channel number" is no longer so identified. The Commission said no such thing, nor could it have in view of the statutory mandate.

protected by both the statute and the rules, could be anything other than one's over-the-air channel as identified in the table of allotments. Part 73, Sections 601 *et. seq.* of the Commission's rules consistently identify over the air channel numbers by the numbers designated in the allotment tables and their associated radio frequencies. KVVN's allotted over-the-air channel number is there designated as channel 3. To identify KVVN's over the air channel number as anything but channel 3 would not only contravene the statute (and the implementing rule) directly, but would also be administrative doublespeak of the highest order. Such a reading would literally read the words "over the air" out of the statute.

d. While the Cable Carriage Act, rule 76.57(a), and the 2008 Declaratory Ruling all unanimously guarantee the right of a TV station to demand carriage on its over the air channel, PMCM is willing to forego its right to cable carriage on channel 3 on the Fairfield County cable systems so long as WFSB operates on channel 3 there. This concession is offered in the interest of resolving this issue with the least disruption to incumbent stations with must carry rights to channel 3. Upon confirmation of KVVN's right to major channel 3 PSIP, we would immediately amend our must carry demand on the Fairfield County cable systems to demand carriage elsewhere in the basic channel tier.

Section 331

In addition to the integrity of the PSIP rules and the absolute preference in the statute and rules for over-the-air channel placement, there is a third important value at stake here. It cannot be ignored that KVVN came to the New Jersey market by virtue of an extraordinary Act of Congress that mandated the allotment of a VHF channel to New Jersey. Section 331 speaks in terms of reallocating a VHF *channel* to an unserved state by operation of the law. At the time Section 331 was adopted, of course, one's over-the-air channel was the same as its receiver dial

position. To reallocate Channel 3 to New Jersey but to then strip it of the panoply of rights associated with that channel under the Cable Carriage Act might well be viewed as not only contravening the purpose of Section 331 (again) but also as deliberately, perhaps even contemptuously, thwarting the mandate of the court. At the very least, the Commission should be sensitive to the objective of the statute in ensuring that the people of the state have access to a VHF channel that can compete with the VHF channels in nearby states, not only over the air but on the cable systems over which much of the viewership occurs.

An Alternative to Assignment of PSIP 3.10

As an alternative, but less desirable, proposal, PMCM would not object to the staff's suggestion that KVVN's major channel number be designated as 14 in its PSIP, *provided* the Commission also specifies that KVVN would be entitled to cable carriage on channel 3 throughout the New York DMA except Fairfield County. Since cable position is not dependent on broadcast PSIPs, the Commission may require on-channel carriage regardless of the assigned PSIP and, indeed, under this approach the Commission would have to expressly impose that requirement in order to comply with Section 614(b)(6) of the Act. Again, PMCM would agree in this context to modify its demand for carriage on Channel 3 in Fairfield County, and instead demand carriage in that County on Channel 14 or another channel mutually agreed to with the cable operators. It would also waive any right to cable carriage on Channel 3 outside the New York DMA.

This alternative approach, like our first proposal, would eliminate any concerns regarding overlapping PSIPs which either Meredith or the Channel 3 user in Philadelphia might have had. The PSIP Channel 14/guaranteed carriage on Channel 3 option is decidedly not our preferred choice since it means that over-the-air viewers would pick KVVN up on Channel 14, thus

diminishing the practical effect of having a new VHF station in New Jersey. We are nevertheless willing to accept this PSIP as long as the Commission expressly provides, in connection with the designation of major channel number 14 for KVVN, that PMCM would retain its right to demand cable carriage on its over-the-air Channel 3. PMCM would reserve the right, however, to have its PSIP conformed to its over-the-air Channel 3 in the event the Commission clarifies the governing rules to permit such an assignment.

Contingent Waiver Request

To the extent that either of the proposals set forth above might be deemed in any way inconsistent with the Commission's rules or the ATSC standards – and, as noted above, PMCM believes that there is no such inconsistency – PMCM hereby requests waiver of the pertinent rule so as to effectuate the on-channel carriage mandate of the Act and avoid any duplication of PSIPs.

Conclusion

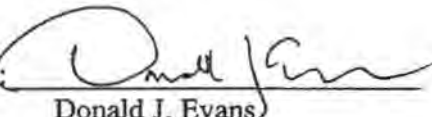
The above proposal is a good faith effort to accommodate the needs and interests of Meredith⁹ and the staff's understanding of the PSIP assignment rules. Our purpose here is to reach a practical solution that should work to substantially accomplish the mandates of the Cable Carriage Act, the Commission's rules, ATSC A/65 and Section 331. In our view, through the simple assignment of PSIP 3.10 to KVVN, the concerns raised by Meredith can be resolved satisfactorily in a manner which is consistent with the mandates of the Act, the rules, ATSC A/65 and full Commission precedent. By assuring PMCM its statutory right to assert carriage on its over-the-air broadcast channel, the Commission would also be advancing Congress's intent, as

⁹ We do not here address the position of ION. If ION's facially unlawful channel placement agreement with Cablevision is pressed, those parties would have to deal with that at a later point.

expressed in Section 331 of the Act, to ensure that New Jersey has its own VHF channel enjoying the same over-the-air and cable carriage rights as other equivalent VHF stations.

Finally, PMCM requests that the Bureau ordain, consistent with the normal mechanics of Section 1.103 of its rules, that the PSIP and on-channel carriage determination made consistent with PMCM's proposal herein be made effective immediately, irrespective of, but obviously subject to, any subsequent reconsideration or review that might be sought.

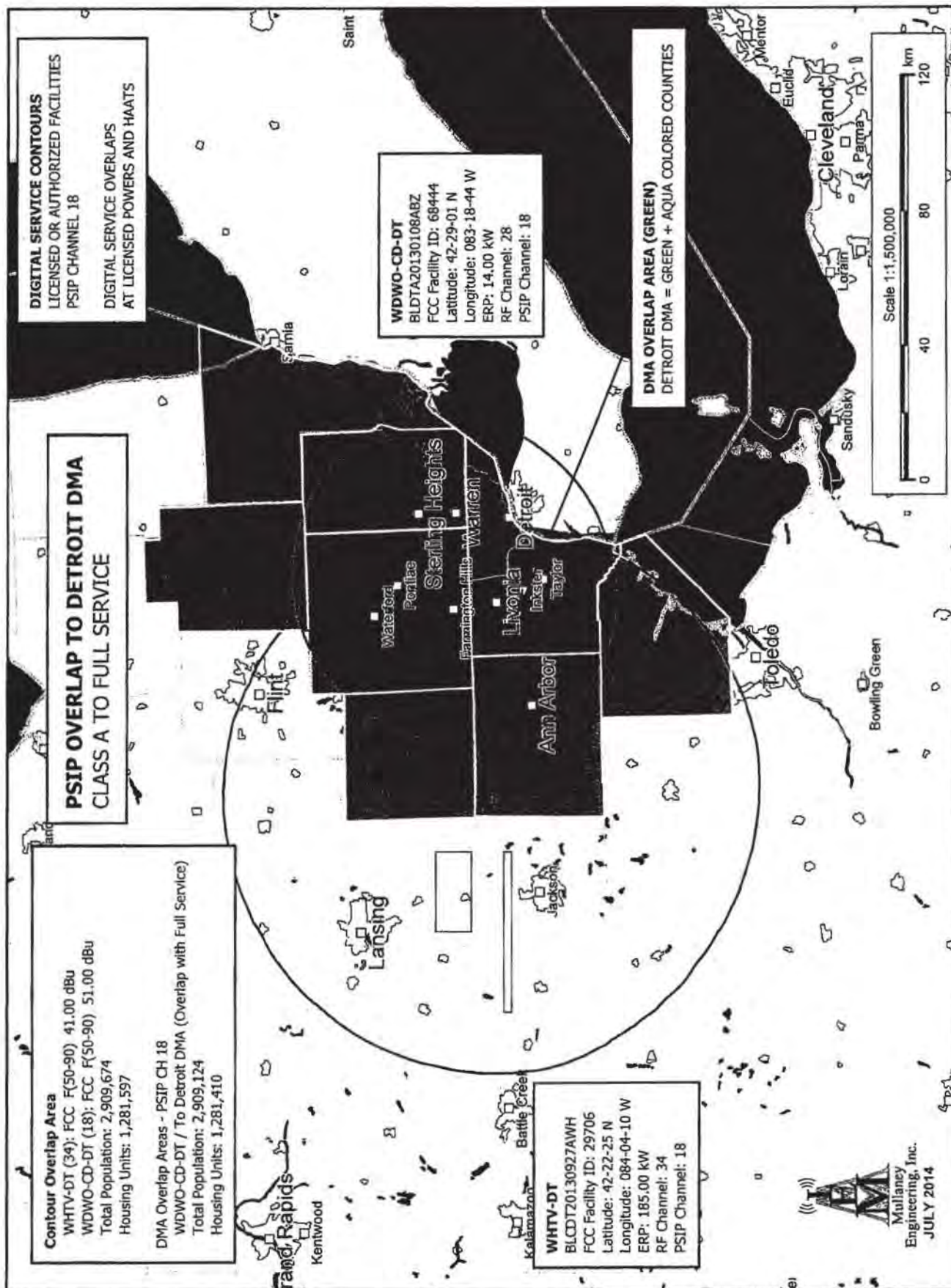
Respectfully submitted,
PMCM TV, LLC

By: 
Donald J. Evans
Its Attorney

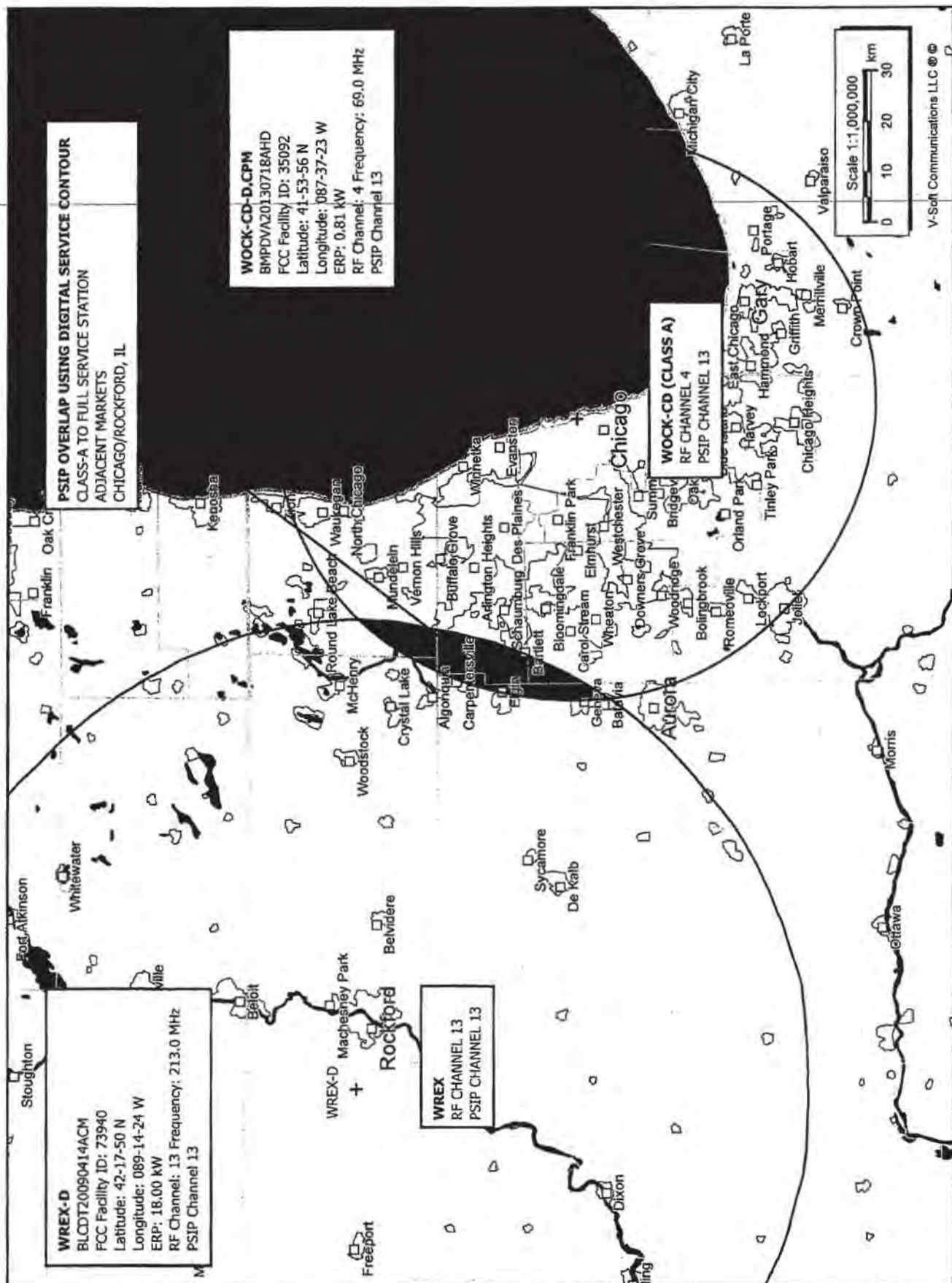
FLETCHER, HEALD & HILDRETH, P.L.C.
1300 North 17th Street, 11th Floor
Arlington, VA 22209
Phone: (703) 812-0400

August 8, 2014

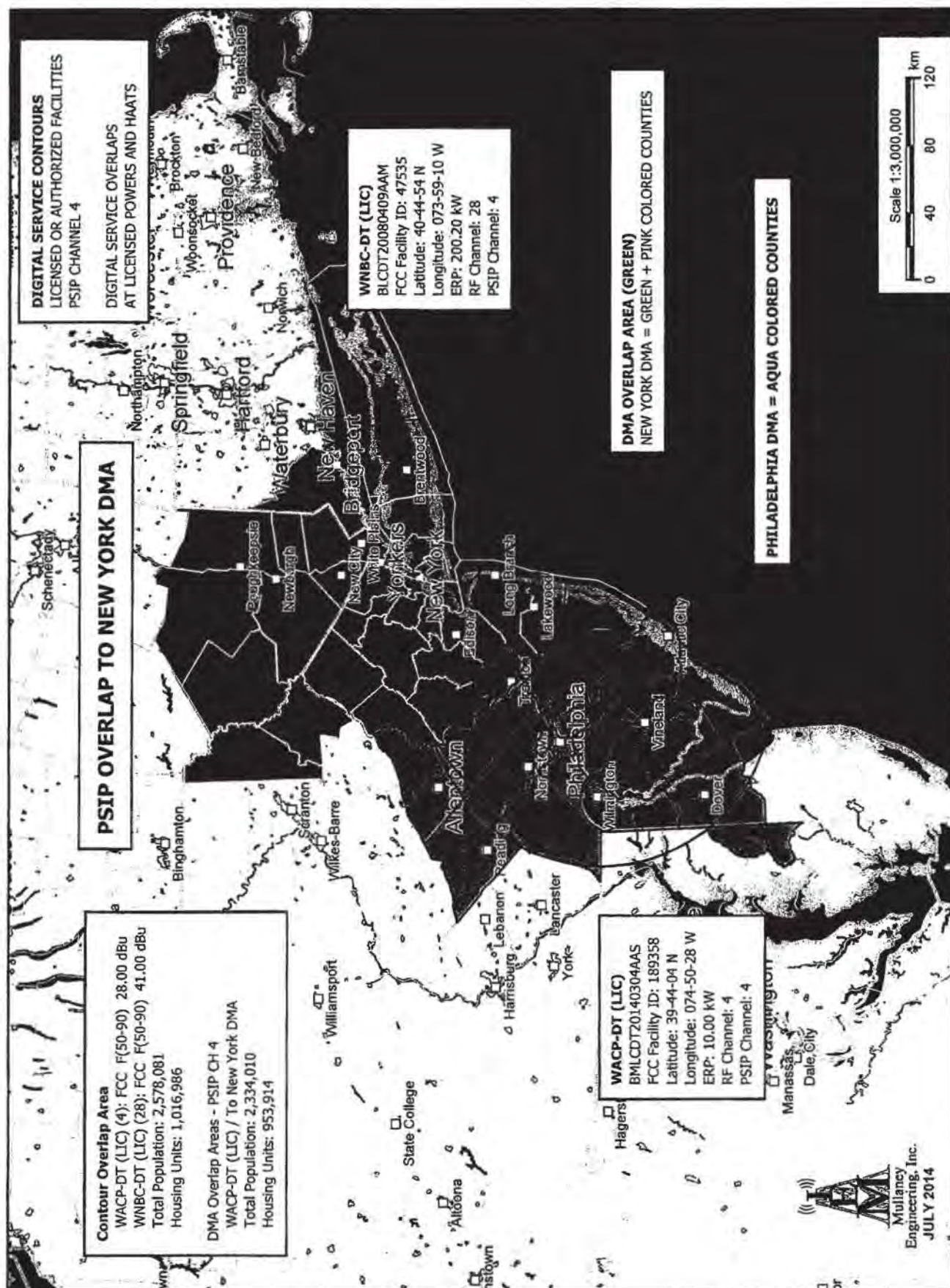
ATTACHMENT A



ATTACHMENT B



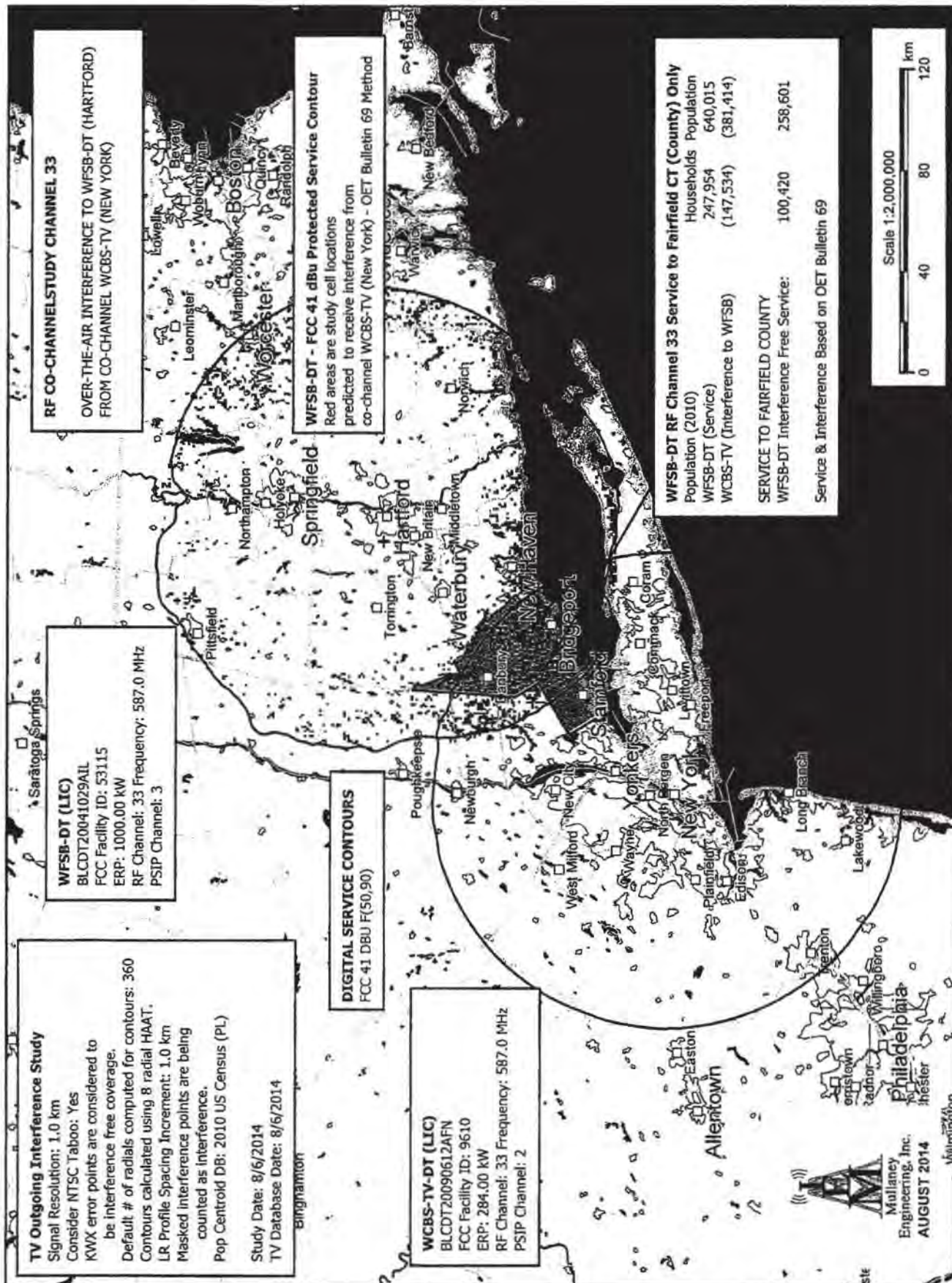
ATTACHMENT C-1



ATTACHMENT C-2



ATTACHMENT D



OVER-THE-AIR STUDY

The focus of this study is Fairfield County Connecticut only.

The population/households numbers were computed using the methods provided for in OET Bulletin Number 60 (Longley-Rice prediction method).

The numbers are:

WFSB-DT RF Channel 33 Service to Fairfield CT (County) Only

Population (2010)

Households Population

WFSB-DT (Service)

247,954

640,015

- Baseline service in Fairfield County

WCBS-TV (Interference to WFSB)

(147,534)

(381,414)

- Interference to the baseline service

SERVICE TO FAIRFIELD COUNTY

WFSB-DT Interference Free Service: 100,420 258,601 - Net WFSB service to Fairfield County.

Service & Interference is based on OET Bulletin 69 predictive method.

Narrative:

From the above figures – WFSB is predicted to provide service to 247,954 households within Fairfield County, of those predicted service households interference is predicted to occur to 147,534 households from co-channel WCBS (New York), the net interference free household number is 100,420.

The calculation method for the population number is the same, WFSB is predicted to provide service to 640,015 persons within Fairfield County, of the predicted population, interference is predicted to 381,414 persons from WCBS (NEW York), the net interference free population number is 258,601 persons.

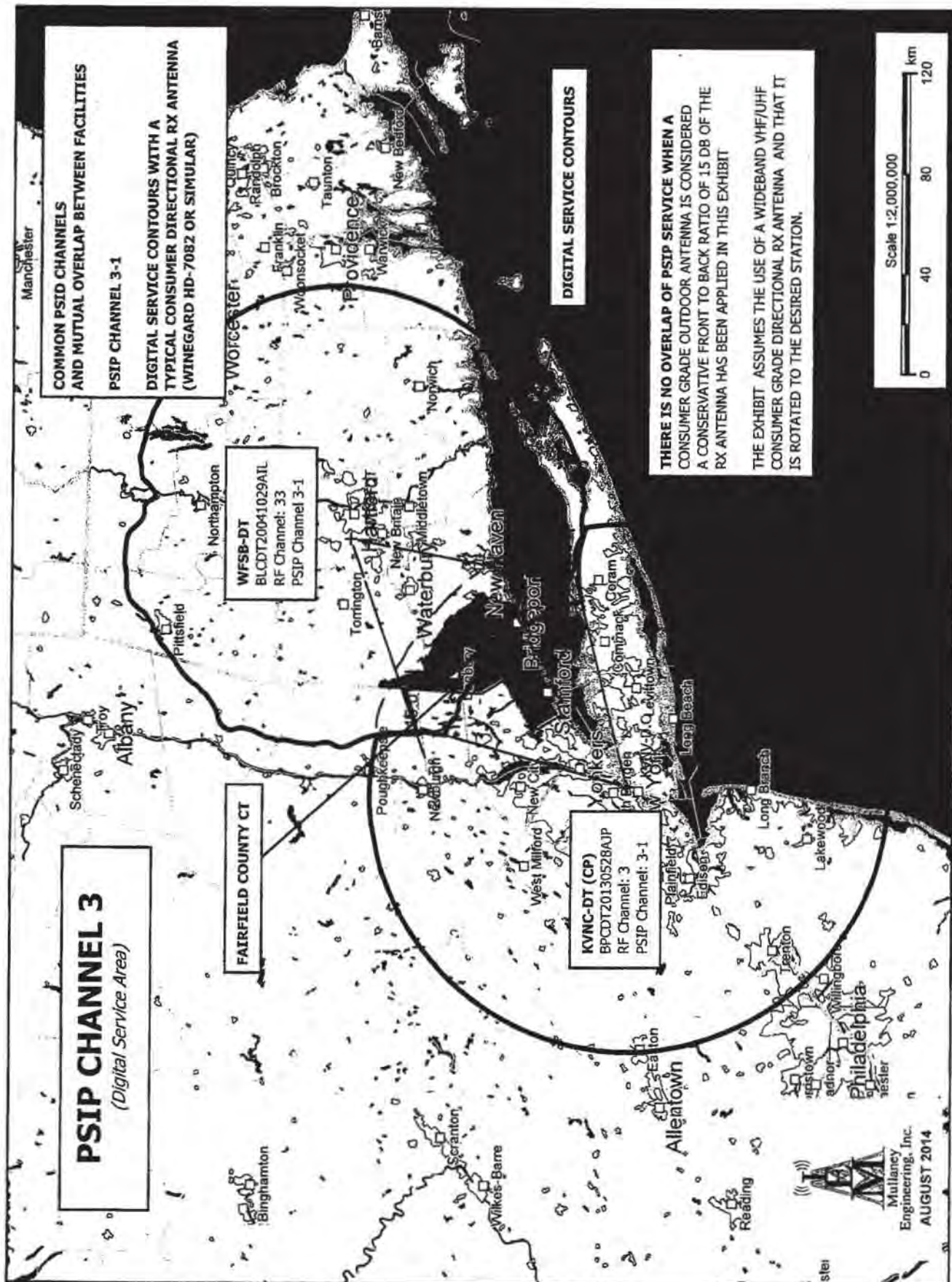
Fairfield CT (County) Percentages of service are:

	Households	Population
WFSB-DT (Service)	100%	100% (baseline service in Fairfield County)
WCBS-TV (Interference to WFSB)	59.5%	59.6%
WFSB-DT Interference Free Service:	40.5%	40.4%

Summary: OVER-THE-AIR SERVICE TO FAIRFIELD COUNTY

Nearly 60 % of the service to Fairfield County that WFSB is predicted to provide is subject to interference from co-channel WCBS, New York.

ATTACHMENT D-2



Certificate of Service

I, Michelle Brown Johnson, hereby certify that on this 8th day of August, 2014, I caused copies of the foregoing "Alternative PSIP Proposal" to be placed in the U.S. Postal Service, first class postage prepaid, or hand-delivered (as indicated below) addressed to the following persons:

Barbara Kreisman, Chief (by hand)
Video Division
Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Joyce Bernstein (by hand)
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Counsel for Meredith Corporation

Eve R. Pogoriler
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1201 Pennsylvania Avenue NW
Washington, DC 20004
Counsel for ION Media License Co, LLC

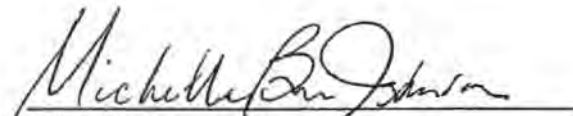

Michelle Brown Johnson

EXHIBIT 8

(PMCM October 7 Letter)



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HARRY F. COLE
ANNE GOODWIN CRUMP
DONALD J. EVANS
PAUL J. FELDMAN
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October 7, 2014

DONALD J. EVANS
(703) 812-0430
EVANS@FHHLAW.COM

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th St. SW
Washington, DC 20045

Re: PMCM TV, LLC Program Test Notification

Dear Ms. Dortch:

This letter will respond to the request filed jointly by CBS Broadcasting, Inc., Meredith Corporation and ION Media License Company, LLC that PMCM TV, LLC be required to operate Station WJLP¹ using major channel 33 rather than major channel 3, which is its currently specified virtual channel as shown in the CDBS data base.

Initially, we note that ION has no standing whatsoever to complain about WJLP's PSIP. ION shares neither an over the air channel nor a PSIP with WJLP. Since the Media Bureau has allowed certain cable systems to defer carrying WJLP's signal, PMCM's over the air operation can have no conceivable adverse effect on ION whatsoever. It appears that ION is simply trying to delay the entry of a competitor into the New York market without even a colorable claim to some sort of technical harm. The FCC should dismiss ION's request summarily.

Meredith and CBS assert that PMCM is "defying" the Commission's rules by going on the air using its authorized over the air channel and the virtual, or PSIP, channel dictated by ATSC A/65. Nothing could be further from the truth. PMCM has acted in complete consistency with the rules and ATSC A/65:

¹ As of October 3, KVVU's call sign was changed to WJLP.



Marlene H. Dortch, Secretary
Federal Communications Commission
October 7, 2014
Page 2

- a) No FCC action is required to set a station's PSIP major channel number, nor is the PSIP major or minor channel reflected in any license, construction permit, or other authorization. Rather, identification of a station's PSIP channel occurs automatically according to the provisions of ATSC A/65, without incident. Indeed, several thousand stations have converted to digital operation and are currently utilizing PSIPs, but FCC intervention with regard to any PSIP matters has arisen in only a very small handful of cases.
- b) In his July 25, 2014 letter permitting three cable systems an indefinite delay in carriage of PMCM's signal, William Lake expressly stated that "Section 73.682(d) requires digital television broadcast television to comply with ATSC A/65C ("PSIP Standard").² The PSIP Standard is meant to "guarantee 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."³ DA14-1029 at p.3. That is why PMCM has adopted a major/minor channel number combination that is *different* from Meredith's 3.1 channel number, thus complying with the "guarantee" cited by Mr. Lake and by the PSIP allocation protocols. It is impossible to see how strict compliance with Mr. Lake's directive can be interpreted as somehow defying the Commission's rules.
- c) As Mr. Lake indicated, ATSC A/65 established the principles that govern PSIP use. Under ATSC A/65 Annex B at paragraph B1.1.1), WJLP's major channel PSIP was determined by its NTSC RF channel number. Channel 3 is therefore correctly set in the Commission's database as its major channel 3. To avoid the circumstance of overlapping identical two-part channel combos, PMCM selected a minor channel sufficiently distant from Meredith's 3.1 operation to ensure no overlap of identical PSIPs. Paragraph B1.1.5) of Annex B expressly acknowledges, with approval, that stations using the same major_channel number may have overlapping signals – including stations that are *not* commonly owned. In fact, as PMCM has elsewhere pointed out, there are currently more than 100 situations in which non-commonly owned stations with overlapping signals use the same major_channel number. Indeed, in those situations the stations apparently also use the same minor_channel numbers, which (unlike PMCM's PSIP) is flatly contrary to the express language of ATSC A/65. The correct – indeed the only – application of the ATSC PSIP process is to adopt a minor channel that is different from the other overlapping major channel licensee to ensure that there is "no duplication of the *two-part* channel number in the DTV Service Areas." PMCM has again complied scrupulously with the Commission's rules.

² 47 C.F.R. § 73.682(d) (incorporated by reference, *see* § 73.8000).

³ In his letter, Mr. Lake cited "PSIP Standard, Annex B at 1.8" for this proposition. There is no Paragraph 1.8 in Annex B. However, the language quoted by Mr. Lake does appear in ATSC A/65 Annex B.1.1.



Marlene H. Dortch, Secretary
Federal Communications Commission
October 7, 2014
Page 3

- d) Meredith and CBS suggest that WJLP should be assigned a PSIP of major channel 33. There is no basis whatsoever for such an assignment. That suggestion is presumably derived, incorrectly, from Paragraph 4) of ATSC A/65 Annex B. But Paragraph 4), by its own terms, expressly involves the allotment of a new DTV channel to a “market” where that channel had previously been assigned for NTSC operation. In this case, WJLP’s Channel 3 has been allotted to Middletown Township, New Jersey, in the New York market. Channel 3 was not previously allotted to that market. Moreover, Channel 33 (*i.e.*, WFSB’s RF channel) is allotted to the separate and distinct Hartford/New Haven market, *not* the New York market. Here the ATSC standards look explicitly to the market of *allotment* rather than areas where there may be overlapping signals to determine whether Paragraph 4) applies. The Commission uses the Nielsen-defined TV markets to define what a TV market is for all purposes under the Commission’s television and cable TV rules. See, for example, *Gunter Marksteiner v. Comcast Corp. and Comcast Cable of FLA/GA LLC*, 23 FCC Red 8320 (2008).⁴ In addition, WJLP (formerly KVVU) has been an authorized station since long before the June, 2009 DTV transition; it is not a “newly-licensed” station. Accordingly, assignment of PSIP 33 to WJLP would be inconsistent with not only Paragraph 1) but also paragraph 4).
- e) Meredith and CBS allude vaguely to some “harm” that has been caused by PMCM’s use of PSIP 3.10. Tellingly, they demonstrate no actual adverse economic or technical effect on either them or any member of the public resulting from PMCM’s operations. PMCM has received not a single complaint from any viewer in its 20 million+ person service area about “confusion.” In the event that a viewer receives two major channel 3 over-the-air signals, he or she need only do what viewers have done in the more than 100 other markets where this situation has arisen: re-scan the stations on his or her TV set. Since WFSB has virtually no over the air signal reception in the areas where its PSIP overlaps with WJLP’s (thanks to RF interference from CBS’s WCBS-TV, which transmits on RF Channel 33 – the same as WFSB’s – but which is dramatically short-spaced to WFSB), it is not surprising that few, if any, viewers have had to undertake even that minor one-time effort.
- f) While PMCM opposed the Bureau’s decision to open a Docket on this matter, perhaps the hopefully minor delay arising from that unnecessary process will assist in deciding the PSIP issue once and for all. It will permit the Commission to confirm the absence of adverse real world effects occasioned by overlapping non-identical two-part channel numbers. It will also permit the Commission to consider the more than 100 situations across the country where two or more stations with overlapping service areas already use (and have used for years) identical two-part PSIP numbers, notwithstanding the contrary

⁴ “Section 76.55(e)(2) of the Commission’s rules specifies that a commercial broadcast television station’s market is its Designated Market Area as determined by Nielsen Media Research. 47 CFR §76.55(e)(2).”



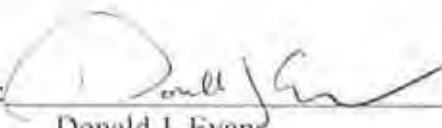
Marlene H. Dortch, Secretary
Federal Communications Commission
October 7, 2014
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dictate of ATSC A/65. To the best of PMCM's knowledge, none of these situations has given rise to any noticeable problem. The Commission might also use the opportunity afforded by the docketing schedule to get corroboration from the ATSC authors that the differentiated minor channel approach adopted by PMCM here is fully consistent with the letter and intent of Annex B. If, after evaluating that data, the Commission decides to overrule the current ATSC protocols so as to eliminate the possibility of even non-identical major/minor channel overlaps, it would have to initiate a rulemaking to modify Section 73.682(d). But it would do so knowing that the exact disruption which the Commission seems to be concerned about here would be caused in literally scores of markets with no apparent benefit to anyone. There is no rational, non-arbitrary, non-capricious basis on which the Commission could or should single out WJLP for differing treatment from the hundred other stations that have overlapping major channel PSIPs.

The filings in MB Docket 14-150 will presumably guide the Commission's decision as to whether a PSIP change is legally or factually warranted. To grant the Meredith-CBS-ION request now, particularly in the absence of any showing of any harm to anyone whatsoever, would in effect prejudge the outcome of the Docket without the full record that the staff presumably wants. It would also disrupt the viewers who may have already re-scanned their sets to pick up a new programming source. PMCM therefore urges the Commission to deny the request of Meredith, CBS and ION and focus instead on determining whether this entire matter is a search for a solution for which there is no problem.

Respectfully submitted.

PMCM TV, LLC

By: 
Donald J. Evans
Its Counsel

cc: Michael Basile
John Bagwell
Mace Rosenstein
Barbara Kreisman
Joyce Bernstein

EXHIBIT 9

(Joint Letter)

October 3, 2014

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th St. S.W.
Washington, D.C. 20045

Re: PMCM TV, LLC
KVVN (TV), Middletown Township, New Jersey
Alternative PSIP Proposal
MB Docket No. 14-150
Construction Permit File No. BPCDT-20130528AJP

Dear Ms. Dortch:

Meredith Corporation (“*Meredith*”), ION Media License Company, LLC (“*ION*”), and CBS Broadcasting Inc. (“*CBS*”), by their respective attorneys, hereby request that the Media Bureau immediately notify PMCM TV, LLC (“*PMCM*”) that any further equipment or program tests initiated by KVVN(TV), Middletown Township, New Jersey (“*KVVN*”), must use virtual channel 33 pending final action by the Commission in the above-referenced proceeding. Meredith is the licensee of WFSB(TV) (“*WFSB*”), RF channel 33, virtual channel 3, Hartford, Connecticut. CBS is the licensee of KYW-TV (“*KYW*”), Philadelphia, Pennsylvania, RF channel 26, virtual channel 3. ION is the licensee of WPXN-TV (“*WPXN*”), New York, NY, which is carried on Channel 3 on Cablevision cable systems in the New York DMA.

PMCM is openly defying the Commission’s rules and causing precisely the harm that the Commission sought to avoid — a conflict over a major channel number — when it incorporated ATSC A/65 into its rules at 47 C.F.R. § 73.682(d). The Commission should not permit PMCM to circumvent either the rule or the ongoing review, in MB Docket No. 14-150, of KVVN’s PSIP assignment.

The Media Bureau initiated the proceeding in MB Docket No. 14-150 to determine the appropriate major channel designation for KVVN in view of the objections to PMCM’s proposed use of major channel 3 as KVVN’s virtual channel and PMCM’s alternative proposals concerning KVVN’s major channel designation. By public notice released on September 12, 2014, the Media Bureau requested public comment on PMCM’s “Alternative PSIP Proposal.”¹ In that filing, PMCM requests an unprecedented waiver of the Commission’s rules for KVVN to use a two-part virtual PSIP channel 3.10 (with any additional program streams eventually transmitted on KVVN(TV) identified as 3.11, 3.12, *etc.*). Under PMCM’s alternate proposal, Meredith’s WFSB, which has had over-the-air identification as Channel 3 in its market for

¹ See *Public Notice*, MB Docket No. 14-150, DA 14-1298, released September 12, 2014.

Ms. Marlene Dortch,
Secretary, Federal Communications Commission
October 3, 2014
Page 2

almost half a century would retain use of virtual channels 3.1 through 3.9. Furthermore, PMCM has taken the position that it is entitled to be positioned on channel 3 on cable systems in the New York DMA, notwithstanding WPXN's first-in-time right to carriage on channel 3.

On September 29, 2014, PMCM advised the Commission that it had completed the construction of the facilities authorized by its above-referenced construction permit and was commencing equipment tests. As of September 30, 2014, PMCM was testing its equipment with a visual call-sign slide in place (*See* Attachment A) and using virtual channel 3.10, even though the Commission has granted PMCM no authority for use of virtual channel 3.10 and initial comments in the waiver proceeding seeking that authority are not even due until October 14, 2014. KVVN nevertheless has commenced program-length commercial programming and network (ME-TV) programming identifying itself over the air as "Channel 3" and using virtual channel 3.10, which it can only use if it obtains a waiver that the Commission has never issued.

Through objections to the KVVN construction permit application and a subsequent petition for declaratory ruling, Meredith has pointed out that the PSIP standards incorporated as part of the Commission's rules call for the assignment of virtual channel 33 to KVVN, since it is a station being newly licensed in the market. ION has supported that position in its own submissions in this proceeding. Furthermore, as Meredith and ION have pointed out, a principal purpose for the Commission's adoption of the PSIP standards for assignment of digital virtual channels to market newcomers was to avoid viewer confusion and to permit incumbent stations such as Meredith's WFSB, CBS's KYW, and ION's WPXN to retain the equity and brand identification that they have built up in their channels over many years. Permitting KVVN to begin program tests using the virtual major channel number identified with Meredith's WFSB, CBS's KYW, or ION's WPXN in advance of a decision in MB Docket 14-150 would amount to a prejudgment of the merits of the proceeding. Moreover, over-the-air viewers would be subject to confusion and Meredith would suffer impairment of the value of its channel-based service marks before the Commission decided the merits of its position regarding the proper virtual channel for KVVN or even reviewed public comments. At present, KVVN is using the same major channel designation as Meredith's WFSB for ongoing programming and is identifying its programming as coming from "Channel 3."

The Media Bureau also should clarify that PMCM's unilateral decision to disregard Section 73.682(d) of the Commission's rules and to circumvent the ongoing Media Bureau inquiry does not entitle KVVN in any way to select channel 3 in cable positioning matters. Not only is it inappropriate for KVVN to be operating today with major channel 3, but PMCM's demand that KVVN be carried on cable channel 3 is contrary to well-established precedent that a first-in-time channel positioning arrangement — such as ION's for carriage of WPXN on channel 3 — has priority over a channel positioning election subsequently made by another must-carry station.

KVVN, as a station being newly licensed in the market, has no existing identification with virtual major channel 3 among its potential viewers. Requiring KVVN to use virtual channel 33 for equipment and program tests thus would not harm KVVN or engender viewer confusion. KVVN, of course, may choose not to initiate further equipment or program testing until its

Ms. Marlene Dortch,
Secretary, Federal Communications Commission
October 3, 2014
Page 2

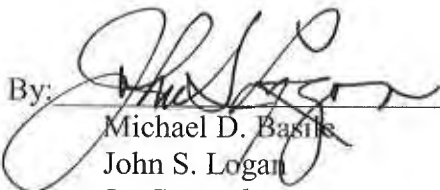
virtual channel assignment is determined in this proceeding. If PMCM should choose to continue equipment tests or initiate program tests for KVVU using virtual channel 33, its use of virtual channel 33 would be without prejudice to any decision the Commission ultimately might make. We respectfully request the Commission immediately direct PMCM to use virtual channel 33 for any program tests or other broadcast operations, pending a final order in the captioned docket.

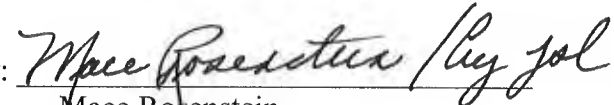
Please inform the undersigned if any questions should arise concerning this request.

Respectfully submitted,

MEREDITH CORPORATION

ION MEDIA LICENSE COMPANY, LLC

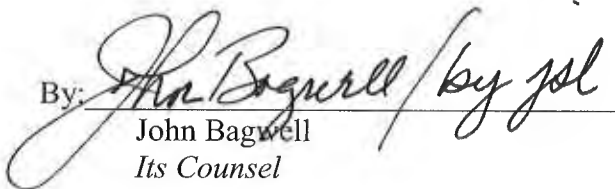
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Its Counsel

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51 West 52nd Street
New York, New York 10019.

cc: Per attached certificate of service

ATTACHMENT A

>> YOUR FATHER JUST THINK SHE
SHOULD HAVE A LITTLE MORE
GUMPTI

MeTV
3 NEW JERSEY
NEW YORK

LG

KVNV TV

WULP-TV



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 letter was served by first-class U.S. mail, postage-prepaid, unless otherwise indicated, on the 3rd day of October, 2014 on the following:

Barbara Kreisman
Chief, Video Division
Media Bureau
Federal Communications Commission
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Washington, DC 20554

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Video Division
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Rayya Khalaf

EXHIBIT 10

*(Order Suspending Briefing on Request for
Administrative Stay)*



Federal Communications Commission
Washington, D.C. 20554

November 13, 2014
(Service via Email)

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John Bagwell, Esq.
CBS Broadcasting Inc.
51 West 52nd Street
New York, New York 10019

Re: PMCM TV, LLC
WJLP-TV, Middletown Township, NJ
File Nos. BPCDT-20130528AJP and
0000001037
Facility ID No. 86537
Docket No. 14-150

Counsel:

By letter dated November 7, 2014, the Video Division suspended program test authority for station WJLP-TV, Middletown Township, New Jersey, effective 12 pm, EST, November 10, 2014. On November 10, PMCM TV, LLC, the permittee of the station, filed an "Emergency Motion for Stay of Suspension of Service and Virtual Channel Re-Assignment" with the Commission. On that same date, it filed an "Emergency Petition for Writ of Mandamus" with the United States Court of Appeals for the District of Columbia Circuit asking the court to order the Commission to rescind or stay the effectiveness of the suspension of program test authority. In order to permit orderly briefing before the court, by letter dated November 12, we imposed a temporary stay of the suspension of WJLP-TV's program test authority until Monday, December 1, 2014 at 12 pm, EST.

Pursuant to section 1.45(d) of our rules, oppositions to the Emergency Motion before the Commission must be filed by November 17. Because we have issued an administrative stay in this proceeding, we suspend the deadline for the filing of oppositions until after the conclusion of the judicial proceedings, and will issue a revised pleading schedule accordingly.

Sincerely,

A handwritten signature in black ink, appearing to read 'Barbara A. Kreisman', written in a cursive style.

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc: Tara M. Corvo, Esq.
Frederick W. Giroux, Esq.
Seth A. Davidson, Esq.
William LeBeau, Esq.

EXHIBIT 11

(ATSC A/65C (January 2, 2006))

Annex B: Additional Constraints on Virtual Channel Table For the U.S. (Normative)

1. ASSIGNMENT OF MAJOR CHANNEL NUMBER VALUES FOR TERRESTRIAL BROADCAST IN THE U.S.

The assignment of `major_channel_number` values in the U.S. shall be based on the rules below.

- 1) For broadcasters with existing NTSC licenses, the `major_channel_number` for the existing NTSC channels, as well as the digital virtual channels, controlled by the broadcaster, shall be set to the current NTSC RF channel number. E.g., assume a broadcaster who has an NTSC broadcast license for RF channel 13 is assigned RF channel 39 for digital ATSC broadcast. That broadcaster is required to use `major_channel_number` 13 for identification of the analog NTSC channel on RF channel 13, as well as the digital virtual channels it is controlling on RF channel 39.
- 2) For a new broadcaster without an existing NTSC license, the `major_channel_number` for the digital virtual channels controlled by the broadcaster shall be set to the FCC assigned RF channel number for ATSC digital TV broadcast. E.g., assume a broadcaster who currently has no NTSC broadcast license applies and receives a license for digital ATSC broadcast on RF channel 49. That broadcaster is required to use `major_channel_number` 49 for identification of the digital virtual channels that it is controlling on RF channel 49.
- 3) If during or at the end of the transition period, the RF channel assigned to a broadcaster for digital ATSC broadcast is changed for any reason, the `major_channel_number` used by that broadcaster shall not change.
- 4) If, after the transition, a previously used NTSC RF channel in a market is assigned to a newly-licensed DTV broadcaster in that market, the newly-licensed DTV broadcaster shall use, as his `major_channel_number`, the number of the DTV RF channel originally allocated to the previous NTSC licensee of the assigned channel.
- 5) If a broadcaster owns or controls broadcast licenses for two or more different RF channels having overlapping service areas, he may use a common `major_channel_number` for all services on all channels. He may choose the `major_channel_number` as determined above for any one of the RF channels. The values in the `minor_channel_number` fields must be partitioned to insure that there is no duplication of the two-part channel number in the DTV service area, including the overlapping DTV service areas of other broadcasters using that same `major_channel_number`.
- 6) The two-part channel numbers for other broadcasts may be included in the DTV transport stream, provided that the `channel_TSID` and `source_id` are exactly associated with the two-part channel number combinations used by the referenced broadcaster and there is no duplication with those used by any broadcaster whose DTV service¹⁶ area overlaps with the emitting station's DTV service¹⁷ area.

¹⁶ CFR 47 73.622(e) [13]

¹⁷ CFR 47 73.622(e) [13]

- 7) A broadcaster may include in the transmitted multiplex programming originating from a different licensed broadcaster and use the major/minor channel numbers of the original broadcast if the major/minor channel number combinations are coordinated in the local broadcast area to avoid conflicts. The coordination process is beyond the scope of this document.
- 8) The provisions listed above assign `major_channel_number` values 2 through 69 uniquely to broadcasters licensed to broadcast Digital ATSC signals and guarantee 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 service¹⁸ area.
- 9) Values for `major_channel_number` from 70 to 99 may be used to identify groups of digital services carried in an ATSC multiplex that the broadcaster wishes to be identified by a different major channel number. Values 70 through 99 must be unique in each potential receiving location or the receiver will not be able to correctly select such services. For example a local broadcaster transmitting community college lectures in its bit stream may want to use a `major_channel_number` different than its own `major_channel_number` for the virtual channel carrying the lectures. The assessment of the feasibility of using this capability, as well as the coordination process for assignment of these `major_channel_number` values is beyond the scope of this document.
- 10) For a translated signal, the major/minor channel numbers shall remain the same as the original broadcast station unless the major channel conflicts with a broadcaster operating in the service area of the translator. In that case, the translator shall change the major number to a non-conflicting number.

2. REQUIREMENT TO TRANSMIT ANALOG TRANSMISSION SIGNAL ID

Broadcasters which reference an NTSC signal by inserting a `channel_TSID` in a VCT shall cause insertion of an analog Transmission Signal ID within the VBI of each referenced NTSC signal per CEA-608-C [3]. Refer to Annex D Section 9 for a discussion of the use of the analog Transmission Signal ID.

¹⁸ CFR 47 73.622(e) [13]

EXHIBIT 12

(Reply Comments of Meredith and CBS)

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, DC 20554

In re)	
)	
WJLP (formerly KVVN(TV)),)	
MIDDLETOWN TOWNSHIP, NEW)	
JERSEY)	
)	
FCC Facility ID No 86537,)	
)	
Request for Declaratory Ruling by Meredith)	MB Docket No. 14-150
Corporation,)	
)	
and)	
)	
“Alternative PSIP Proposal” by PMCM TV,)	
LLC)	

To: Marlene Dortch, Secretary

For Transmission to: The Media Bureau

**REPLY COMMENTS OF
 MEREDITH CORPORATION AND CBS BROADCASTING INC. ON
 “ALTERNATIVE PSIP PROPOSAL” OF PMCM TV, LLC AND
 REQUEST OF MEREDITH CORPORATION FOR
 DECLARATORY RULING**

Meredith Corporation (“*Meredith*”) and CBS Broadcasting Inc. (“*CBS*”), by their attorneys, hereby submit their reply comments on the “Alternative PSIP Proposal” of PMCM TV, LLC (“*PMCM*”), licensee of WJLP(TV) (formerly KVVN(TV)), Middletown Township, New Jersey (“*WJLP*”), and the related Request of Meredith Corporation for Declaratory Ruling in response to the Media Bureau’s *Public Notice*, DA 14-1298, released September 12, 2014.

Aside from PMCM’s own comments, PMCM’s “Alternative PSIP Proposal” received no supporting comments from anyone that its proposal would directly affect—not from viewers, not from other broadcast stations in the market, and not from cable systems or other programming

entities. Apart from PMCM's own submission, the only filing not actively opposing PMCM's Alternative PSIP Proposal was a letter from Paul S. Rotella, Esq., President and CEO of the New Jersey Broadcasters Association, of which PMCM is a member.¹

In contrast, commenters did provide strong support for the grant of Meredith's Request for Declaratory Ruling. In its Request, Meredith asked that the Commission affirmatively declare that WJLP (then KVVN(TV)) must operate using virtual channel 33 under the PSIP Standard² incorporated in the Commission's rules, given that WJLP's interference-free service contour overlaps that of Meredith's WFSB, an incumbent station in the market already using virtual channel 3 and identified with channel 3 for almost half a century. CBS's KYW-TV, Philadelphia, Pennsylvania, similarly has overlapping interference-free service contours with WJLP to the south, also uses virtual channel 3, and has an even longer identification with channel 3 in its overlap area with WJLP than does Meredith's WFSB, and has joined in Meredith's request for the declaratory ruling.

Comments filed by ION Media License Company, LLC ("*ION*") and by Turner Broadcasting System, Inc. ("*Turner*") each support with detailed explanation the plain-language interpretation of the PSIP Standard advanced by CBS and Meredith and uniformly reflected in prior Commission precedent that assigns virtual channel 33 to PMCM's WJLP, because WJLP is

¹ In his letter, Mr. Rotella, while indicating general support for PMCM's Alternative PSIP Proposal, focuses principally on the Bureau's interim order temporarily suspending cable carriage obligations for PMCM pending resolution of this proceeding.

² "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 ("*PSIP Standard*"). Section 73.682(d) of the Commission's rules incorporates this requirement into the Commission's rules for full-power stations. See 47 C.F.R. §73.682(d).

a station “newly licensed” in the market.³ ION points out that PMCM’s contrary contention that WJLP nevertheless has “an unqualified right to demand cable carriage on its over-the-air channel”—by which PMCM means its RF channel, channel 3—contradicts established Commission rules and precedent, would undermine the Commission’s policy goals in adopting the PSIP Standard, and would disserve the public interest by upsetting historical viewing patterns, disrupting established business relationships, and causing viewer confusion.⁴

Following the DTV transition, as ION points out, a television broadcast station’s “over-the-air channel number” is the channel number identified by reference to the station’s major channel number as carried in its PSIP and, for WJLP, that virtual channel number must be channel 33, unless the Commission grants a waiver for “unusual circumstances.”⁵ At the least, as ION points out, the Bureau should not assign WJLP channel 3 as its major channel number “to effectuate the clear purpose of the [PSIP Standard] to avoid confusing PSIP overlaps.”⁶

Indeed, all commenters other than PMCM and its membership organization focused on the absence of any policy justification to ignore the plain language of the PSIP Standard to preserve for WJLP the same virtual channel it used when licensed to Ely, Nevada, more than a thousand miles away. PMCM has the policy precisely backwards: the PSIP Standard is intended to prevent a station newly licensed in a market from using the same major channel as an

³ See Turner Comments at 2-3 and ION Comments at 6-8; see also *Seaford, Delaware*, Report and Order, 25 FCC Red 4466, 4472 (Vid. Div. 2010) (“*Seaford, Delaware*”), *petition for reconsideration denied*, *Memorandum Opinion and Order on Reconsideration*, 28 FCC Rcd 1167 (Vid. Div. 2013); *petition for further reconsideration denied*, *Memorandum Opinion and Order on Further Reconsideration*, MB Docket No. 09-230, DA 14-546 (May 1, 2014).

⁴ See ION Comments at 1-5.

⁵ See ION Comments at 2 and the decisions cited therein (citations omitted).

⁶ ION Comments at 7.

incumbent station with overlapping service contours so as to avoid viewer confusion and to preserve incumbent stations' investment in and identification with those channels that they, like WFSB and KYW-TV, may have been using for decades.⁷

PMCM's objections to assigning WJLP virtual channel 33 under the Meredith-CBS plain language reading of the PSIP Standard do not withstand analysis. For example, PMCM asserts that the obviously relevant provisions of the PSIP Standard cannot apply to WJLP because a prerequisite is the existence of "an RF channel previously allotted for NTSC in a market" that is "assigned to a newly-licensed DTV licensee in that market." PMCM seeks to inject ambiguity where none exists by insisting that "market" must mean "DMA" and that the phrase "newly-licensed DTV licensee in that market" does not include the words "in that market."⁸ There is no indication that the drafters of the ATSC A/65 standards that the Commission adopted as its PSIP Standard used "market" as a technical reference to the DMA market definition. Moreover, although the Commission formerly licensed WJLP (as KVVN) to serve Ely, Nevada, WJLP is now being licensed to serve Middletown Township, New Jersey and is therefore a "newly licensed station in that market," consistent with the letter and policy of the PSIP Standard that assigns WJLP to virtual channel 33.

The PSIP Standard specifies a protocol to avoid duplication in the assignment of virtual channels to stations that come into a market where an incumbent station previously had its

⁷ See Comments of Meredith and CBS at 5-6.

⁸ The text of the relevant section reads as follow:

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.

PSIP Standard, *supra*.

present virtual channel as its RF channel in prior NTSC operations. WJLP competes for over-the-air viewers in the area defined by its service contours. Treating WFSB and KYW-TV as being in the same “market” with WJLP because each has overlapping service contours with WJLP accords seamlessly with the PSIP Standard and prior Commission precedent.

Channel 3—the channel allotted to each of WFSB and KYW-TV for prior use in that market as its NTSC channel and subsequently for use as each station’s virtual channel—is thus “an RF channel previously allotted for NTSC” in that market. This reading accords with the stated purpose of the PSIP Standard to identify licensees’ virtual channel assignments while avoiding potential conflicts in major channel assignments with incumbent stations that provide over-the-air service to the same area. WJLP’s reading of “market” to mean only DMA, in contrast, implies that the Commission is indifferent to whether its assignment of a particular virtual channel to a licensee would cause viewer confusion within the service area of a station in a neighboring DMA despite substantial service area overlap, a position that is not reflected in the PSIP Standard and that, if adopted by the Commission, would reverse existing Commission precedent and nullify, among other things, the Commission’s recent decision in *Seaford, Delaware*.⁹

One point PMCM gets exactly right: With the incorporation of the PSIP Standard into the Commission’s rules, the Commission sought to avoid the need for direct involvement in the

⁹ See *Seaford, Delaware, supra*. Although the language and stated purposes of the PSIP Standard fully support the definition of “market” for the reasons explained above, PMCM’s notion that the Commission lacks authority to interpret the PSIP Standard that it incorporated into its rules because someone else originally wrote it is insupportable. The Commission always retains the authority to interpret its rules, whether the Commission drafted the language itself or incorporated into its rules a standard compiled by a third party or advisory body. Consider, for example, the Commission’s adoption of BIA-Arbitron radio market definitions for purposes of its local radio ownership rules. In applying those standards, the Commission declines, for purposes of allowing additional local ownership, to apply BIA-Arbitron market reassignments for a period of two years after BIA-Arbitron say that the reassignment occurred.

designation of virtual channels to new entrants and to limit its role to adjudicating conflicts. PMCM fails, however, to acknowledge the necessary implication of this goal—namely, that the Commission should interpret the PSIP Standard so that, to the maximum extent practicable, application of the standard will reliably identify one and only one virtual channel number that meets the standard in any particular context.

PMCM invites the Commission to interpret the PSIP Standard as providing a menu of available combinations of major and minor virtual channels from which a television station newly licensed in a market may select at will, with the menu including major channels that conflict with those of stations having overlapping service contours choices that would require the modification of the virtual channel assignment of incumbent broadcasters in the market (as, for example, by restricting incumbents from using a particular range of minor channels, as PMCM’s “Alternative PSIP Proposal” would do). If the Commission accepts that invitation, it continually will face proceedings in which parties argue about which of the multiple channel choices presented would best serve the public interest and do the least harm to incumbent users of the channel and other affected entities. In contrast, Meredith’s and CBS’s interpretation of the PSIP Standard, with which every commenting party except PMCM and its membership organization concurs, gives full credit to the language of the PSIP Standard and produces a single acceptable channel for WJLP’s virtual channel, channel 33.¹⁰

The Commission previously has granted waivers for virtual channel assignments inconsistent with the PSIP Standard in “unusual circumstances” if an alternate channel assignment would better serve the Commission’s underlying goals in adopting the PSIP

¹⁰ The former RF channel of KYW-TV already is in use in the market.

Standard.¹¹ PMCM's case for its Alternative PSIP Proposal, however, assumes at the outset that PMCM is entitled to virtual channel 3 and all included minor channels under the PSIP Standard as a matter of right and, against that background, PMCM argues that having WJLP use only channels 3.10 *et seq.* would offer advantages.¹² If, however, as Meredith and CBS have demonstrated, the PSIP Standard identifies channel 33 as the virtual channel for WJLP, then PMCM has failed to demonstrate any "unique circumstances" sufficient to warrant substituting virtual channel 33 with the range of minor channels 3.10 *et seq.* as WJLP's virtual channel. By using virtual channel 3.10 *et seq.* and identifying its station as "Channel 3" in the areas of service overlap with WFSB and KYW-TV, PMCM would create viewer confusion and diminish the identification of these long-serving stations with Channel 3 in the service overlap areas with WJLP.

The Commission has been generous in granting waivers of the PSIP Standard to avoid viewer confusion, but has denied waiver requests that would create service area overlaps in which two licensees use the same major channel. In its recent decision granting waivers to KJCT(TV) and KKHD-LP, Grand Junction, Colorado,¹³ for example, the Commission found "unique circumstances" because the requested waiver would "avoid viewer confusion when

¹¹ See, e.g., Letter decision dated October 21, 2014, from Hossein Hashemzadeh, Deputy Chief, Video Division, Media Bureau, to Excalibur Grant Junction, LLC and Gray Television Licensee, LLC regarding KJCT(TV) and KKHD(LP), Grand Junction, Colorado ("*KJCT/KKHD Decision*").

¹² PMCM petitions for imposition of its 3.10 *et seq.* solution "irrespective of, but obviously subject to, any subsequent reconsideration or review that might be sought." *Id.* at 12. This formulation as presented, notably, would not foreclose PMCM itself from seeking further review or appeal to vindicate its claims to use virtual channel 3 without regard to the service overlap areas with WFSB and KYW-TV.

¹³ *KJCT/KKHD Decision, supra.*

KJCT(TV)'s programming is transferred to KKHD-LP.”¹⁴ The Bureau stated that the proposed operation was “technically feasible as the stations’ protected service contours will not overlap with the protected service contours of other stations on those major channel numbers,” a reference to virtual channel 20 and virtual channel 8. Under the *KJCT/KKHD Decision*, PMCM’s proposal, which would create two new, heavily populated areas in which two stations would use the same major channel number, is therefore not “technically feasible” under Commission precedent and should be rejected.¹⁵

In sum, except for PMCM, no party directly affected by PMCM’s Alternative PSIP Proposal supports it, so adoption of the proposal will not resolve this proceeding. The PSIP Standard does not provide for the assignment of channels 3.10 *et seq.* to WJLP as a matter of right, so imposition of the PSIP Standard would require the grant of a waiver. PMCM has not met the high hurdle for obtaining a waiver. Furthermore, because the PMCM Alternative PSIP Proposal is both inconsistent with the language of the PSIP Standard and undercuts its policy goals, it is apparent that PMCM cannot meet that standard. Accordingly, for the reasons stated above and in the initial comments of Meredith and CBS, the Commission should assign WJLP to

¹⁴ *Id.* at 2.

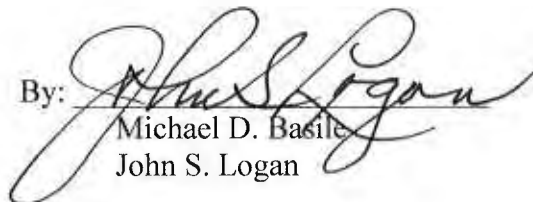
¹⁵ *Id.* at 3. Meredith and CBS addressed the high standards for seeking a waiver of the Commission’s rules in their initial comments in this proceeding.

virtual channel 33 as its virtual channel by application of the PSIP Standard and terminate this proceeding.

Respectfully submitted,

MEREDITH CORPORATION

By:

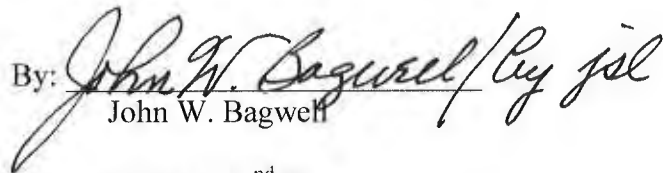


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CBS BROADCASTING INC.

By:



John W. Bagwell

51 West 52nd Street
New York, NY 10019

October 29, 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 “Reply Comments of Meredith Corporation and CBS Broadcasting Inc. on ‘Alternative PSIP Proposal’ of PMCM TV, LLC, and Request of Meredith Corporation for Declaratory Ruling” was served by first-class U.S. mail, postage-prepaid, unless otherwise indicated, on the 29th day of October, 2014, on the following:

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Rayya Khalaf

* Via hand delivery

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

<hr/>)	
In re)	
)	
PMCM TV, LLC,)	No. 14-1238
)	
Petitioner)	
<hr/>)	

CERTIFICATE OF SERVICE

I, Sarah E. Citrin, hereby certify that on November 18, 2014, I electronically filed the foregoing Opposition Of The Federal Communications Commission To Emergency Petition For Writ Of Mandamus with the Clerk of the Court for the United States Court of Appeals for the D.C. Circuit by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

Donald J. Evans
Harry F. Cole
Fletcher, Heald & Hildreth, P.L.C.
1300 N. 17th Street -11th Floor
Arlington, VA 22209
Counsel for PMCM TV, LLC

/s/ Sarah E. Citrin