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DA 14-1528

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

Counsel:

PMCM TV, LLC (PMCM) is the permittee of station WJLP-TV (formerly KVNV(TV)), RF channel 3, Middletown Township, New Jersey. As discussed below, we hereby assign station WJLP-TV virtual channel 33 for use on an interim basis.

Meredith Corporation (Meredith), the licensee of WFSB(TV), RF channel 33, virtual channel 3, Hartford, Connecticut had filed an informal objection to PMCM's above-referenced application for a construction permit for the station, objecting solely to PMCM's future operation on virtual channel 3, the same virtual channel used by WFSB(TV). The staff dismissed the informal objection as premature, stating that "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."¹ By Public Notice released September 12, 2014, the Media Bureau sought comment on (1)

¹ April 17, 2014 Letter from Hossein Hashemzadeh, Deputy Chief, Video Division to PMCM TV, LLC, available at http://licensing.fcc.gov/cgi-bin/prod/cdbs/forms/prod/getimportletter_exh.cgi?import_letter_id=49395.

a request for a Declaratory Ruling by Meredith that WJLP-TV be assigned virtual channel 33 and (2) an “Alternative PSIP Proposal” by PMCM requesting that WJLP-TV be assigned a two-part virtual PSIP channel 3.10 (with any additional streams eventually transmitted as 3.11, 3.12, etc.) while WFSB(TV) would retain virtual channel 3.1 through 3.9.² Comments were due by October 14 and reply comments are due October 29, 2014.

By letter dated September 29, 2014, PMCM, through its counsel, notified the Commission that it had completed construction of the above-referenced facilities and was commencing equipment tests as of that date. On October 3, 2014, Meredith, ION Media License Company (ION) and CBS Broadcasting Inc. (CBS) (collectively the Joint Parties) made a joint filing stating that as of September 30, 2014, PMCM “has commenced program-length commercial programming and network (ME-TV) programming identifying itself 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.” The Joint Parties further request that the Media Bureau “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].”

According to the Joint Parties, Meredith station WFSB(TV) and CBS station KYW-TV, RF channel 26, Philadelphia, Pennsylvania, both operate with virtual channel 3 and have contour overlap with WJLP-TV; ION’s station WPXN-TV, New York, New York, is carried on channel 3 on Cablevision cable systems in the New York DMA. The Joint Parties assert that “a principal purpose for the Commission’s adoption of the PSIP Standards for assignment of digital virtual channels to market newcomers [such as WJLP-TV] 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 they have built on their channels over many years.” The Joint Parties further assert that because PMCM’s station is being newly licensed in the market, it “has no existing identification with virtual channel 3 among its potential viewers” and “[r]equiring [WJLP-TV] to use virtual channel 33 for equipment and program tests thus would not harm [WJLP-TV] or engender viewer confusion.”

PMCM filed a response on October 7, 2014, suggesting that its use of virtual channel 3.10 is consistent with the Media Bureau’s July 25, 2014 letter ruling waiving section 76.64(f)(4) of the rules, 47 C.F.R. § 76.64(f)(4), to allow certain MVPDs to defer implementing the must-carry request and channel position election of PMCM for WJLP-TV until 90 days after the date of a final decision on WJLP-TV’s virtual channel.³ According to PMCM, that letter observed that 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 service area,” and that by adopting a major/minor channel number “that is *different* from Meredith’s 3.1 channel,” PMCM is complying with the Media Bureau’s directive.⁴ The Bureau’s letter decision, however, did not address the merits of the appropriate virtual

² *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, MB Docket No. 14-150 (rel. Sept. 12, 2014). As explained at n.1 of the Public Notice, 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).

³ *Letter to Tara A. Corvo, Esq. from William T. Lake, Chief, Media Bureau*, 29 FCC Rcd 9102 (MB 2014).

⁴ *See* October 7, 2014 Letter from Donald J. Evans, Esq. to Marlene Dortch at 2, para. b (emphasis in letter).

channel for WJLP-TV and PMCM's proposal to bifurcate channel 3 was first raised informally with the Bureau in a subsequent meeting with the staff. Accordingly, the Bureau's letter cannot be read as sanctioning PMCM's use of virtual channel 3.10.⁵

The PSIP Standard does not provide for or require the sharing of virtual channels by licensees with overlapping contours that are not commonly owned,⁶ and we have not yet ruled on PMCM's "Alternative PSIP Proposal." Because PMCM has no inherent right to use virtual channel 3 at this time, which is already used by WFSB(TV) and KYW-TV in areas that are also covered by WJLP-TV, we believe it appropriate that WJLP-TV operate with the virtual channel assigned under the PSIP Standard while we consider PMCM's "Alternative PSIP Proposal" in MB Docket No. 14-150.

Annex B, Section 1.4 of the PSIP Standard states that:

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 channel number, the number of the DTV RF channel originally allocated to the previous NTSC licensee of the assigned channel.

Therefore, the PSIP Standard assigns WJLP-TV, as a newly licensed station,⁷ virtual channel 33, which is WFSB(TV)'s RF channel.⁸ While PMCM argues that it is not a "newly licensed" station in the market because it was operating on NTSC channel 3 in Ely, Nevada prior to moving the station to New Jersey pursuant to section 331(a) of the Communications Act,⁹ our assignment of virtual channel 33 to WJLP-TV on an interim basis is consistent with the Division's decision allotting channel 5 to Seaford, Delaware pursuant to section 331(a) of the Act.¹⁰ There, the proposed allotment had contour overlap with WTTG(TV), RF channel 36, virtual channel 5, Washington, D.C. and the Seaford allotment was assigned virtual channel 36, which is WTTG(TV)'s RF channel.¹¹

We acknowledge that PMCM has raised a number of arguments why it should not be required to use virtual channel 33. In addition, the Commission may grant exceptions to the PSIP Standard on a case-by-case basis.¹² We emphasize that our interim assignment of virtual channel 33 for use by WJLP-

⁵ The remainder of the arguments in PMCM's October 7 response have been raised in connection with Docket 14-150 and will be addressed in that proceeding.

⁶ Annex B.1(5) of the PSIP Standard provides that a broadcaster that owns or controls broadcast licenses on two or more different RF channels with overlapping service areas may use a common major (virtual) channel for the stations. The broadcaster may choose one of its RF channels as its major channel and the minor channel number fields must be portioned to insure that there is no duplication of the two-part channel number in the service area, including the overlapping service area of other broadcasters using the same major channel number.

⁷ PMCM filed the above-referenced application for a license to cover the construction of WJLP-TV on October 14, 2014.

⁸ As noted above, WJLP-TV also has contour overlap with KYW-TV which operates on RF channel 26. That channel however, is not available for use by WJLP-TV because it is the RF and virtual channel of WHPX-TV, New London, Connecticut which has contour overlap with WJLP-TV.

⁹ 47 U.S.C. § 331(a).

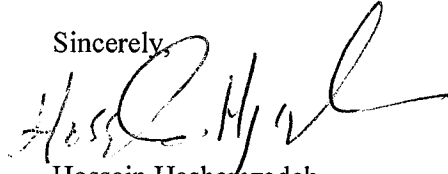
¹⁰ *Amendment of Section 73.622(i), Post-Transition Table of DTV Allotments, Television Broadcast Stations (Seaford, Delaware)*, MB Docket No. 09-230, Report and Order, 25 FCC Rcd 4466 (Vid. Div. 2010)(subsequent history omitted).

¹¹ *Id.* at 4472, para. 15.

¹² *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 03-15, Report and Order, 19 FCC Rcd 18279, 18346, para. 153 (2004).

TV is without prejudice to these pending arguments and PMCM's "Alternative PSIP Proposal" to use virtual channel 3.10, which will be considered after the pleading cycle has closed on that proposal and Meredith's request for declaratory ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Hossein Hashemzadeh". The signature is fluid and cursive, with a large initial "H" and a long, sweeping tail.

Hossein Hashemzadeh
Deputy Chief, Video Division
Media Bureau

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