

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

In re Application of)
)
PMCM TV, LLC) File No. BPCDT-20130528AJP
)
For Minor Modification of the License for)
KVVN(TV), Facility ID Number 86537,)
Middletown Township, New Jersey)

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

OPPOSITION TO INFORMAL OBJECTION

PMCM TV, LLC (“PMCM”), by its attorneys, hereby respectfully submits its Opposition to the Informal Objection of Meredith Corporation (“Meredith”) with regard to the above-captioned application for modification of the license for KVVN(TV), Middletown Township, New Jersey.

With respect thereto, the following is stated:

Meredith is the licensee of WFSB(TV), Hartford, Connecticut, which is located in the Hartford and New Haven Designated Market Area (“DMA”). It is opposing the license modification application for KVVN(TV), which is located in the New York DMA, solely on the basis that the two stations both use Channel 3 as their Program System and Information Protocol (“PSIP”) major channels, and they have some overlap of their noise limited contours. Meredith claims that, as a result, there will be “virtual interference” between the two stations in the overlap area. In crafting the term “virtual interference” – a term which, as far as PMCM can determine, does not appear in the Commission’s rules – Meredith is not referring to any actual radiofrequency (RF)- based “interference” ordinarily subject to Commission regulation. Rather, Meredith appears to claim that use of a common PSIP major channel by two stations with overlapping signals may, by itself, cause some sort of confusion in over-the-air receivers within the overlap area. Having posited, without any supporting technical showing, that some such confusion might occur, Meredith stamps that supposed confusion with the damning term “interference”. And solely on this basis, Meredith has requested

First, Meredith has provided no engineering analysis or other technical support for its notion of “virtual interference.” While Meredith tries to dress up its objection in a seemingly technical costume, in point of fact, there is no technical issue: the simultaneous use of PSIP major channel 3 by both KVVN and WFSB will not create difficulties in the reception of either station in the overlap area, thanks to the way that the PSIP system was designed.

Second, KVVN is neither a newly-licensed DTV station² nor is it in the same market as WFSB. The provision of Annex B cited by Meredith is addressed to determining channels in a market, rather than in an area of contour overlap. This choice of terminology reflects the ATSC’s recognition that an overlap of signal contours of stations with a common major channel would not by itself create any “virtual interference.” Since neither of the circumstances specified in the quoted portion of Annex B is present, that provision is inapplicable. Use of major channel 33 as suggested would thus be inappropriate and contrary to the PSIP standard adopted by the Commission.

The remaining issue – involving a perceived potential conflict of cable channel placement rights in some communities – is a business one which has nothing to do with KVVN’s proposed technical operation set forth in its modification application. In any event, such rights are available to only those stations carried pursuant to must-carry obligations rather than retransmission consent agreements, and it appears that Meredith would not qualify for such rights at this time. Even if it did, these business issues can be resolved by negotiation. Section 76.57 of the Commission’s Rules expressly contemplates negotiation. Therefore, Meredith’s Informal Objection must be denied.

The possible issues surrounding over-the-air reception and cable reception of television stations are different and must be addressed separately. As an initial matter, addressing over-the-air reception first, no actual RF interference to the signal of either WFSB or KVVN is alleged or even possible. WFSB operates on digital RF Channel 33, while KVVN will operate on digital RF channel

² KVVN was licensed as an analog station on Channel 3 in 2002 (BLCT-20010713ABQ) and as a flash-cut digital station in 2009 (BLCDT-20090527AEK).

authorized without encountering the difficulties Meredith fancifully posits. For example, WNBC, New York, New York operates on virtual channel 4, as does WACP, Atlantic City, New Jersey. The DTV service areas of the two stations have significant overlap, although they are located in different markets.³ Attached hereto as Exhibit 2 is a map which shows the overlap area.⁴ PMCM is unaware of any reports of difficulties experienced by viewers in the overlap area. If significant problems had arisen for over-the-air viewers in that area, PMCM is confident that these issues would have become known in the industry, but there has been no discussion of any such problems. Further, attached hereto as Exhibit 3 is another RabbitEars. Info map which depicts the service areas of all of the DTV facilities which operate on PSIP major channel 9. This map provides a snapshot of all of the stations with overlapping service areas which operate on one major channel. While a number of these facilities are digital Class A television stations, digital translators, or digital LPTV stations, that fact is largely irrelevant to the way in which a television receiver picks up the digital signal it receives. Still, there have been no reports of any widespread difficulties with over-the-air reception of different stations operating on the same major channel with overlapping service areas.

Even more telling is the experience of viewers in Ely, Nevada, KVVN's former community of license from which it is currently operating. Attached hereto as Exhibit 4 is the Declaration of Ronald Taylor, in which he explains how he receives without difficulty the programming of several different stations which operate on the same major channel number. He views the programming *via* translators which rebroadcast stations from Salt Lake City, Las Vegas, and Reno without changing the major channel numbers. *Id.* Because of local terrain, two translators, transmitting from different peaks, are necessary for each primary station to reach the entire community, as some portions of Ely cannot be reached from one peak or the other. Mr. Taylor's home, however, is located in an area which can receive transmissions from both transmitter locations. *Id.* As can be seen from the

³ Furthermore, this is an overlap area which the Commission created post-DTV transition when it allotted digital Channel 4 to Atlantic City, New Jersey, as a new DTV station.

⁴ This map was printed from www.RabbitEars.Info, which provides maps of all facilities operating on particular PSIP major channels, and shows an enlarged version of the relevant area.

information which ensures that television receivers will be able to distinguish between stations with the same major channel number and properly display them. Since here, KVVN and WFSB properly have different TSID's, the likelihood of anything like "virtual interference" is nil.

Even if there were some possibility of an issue, the portion of Annex B to ASTC A/65c cited by Meredith as providing a solution is inapplicable. Section B.1.1(4) provides a rule for selecting the major channel number if "an RF channel previously allotted for NTSC in a market is assigned to a newly-licensed DTV licensee in that market." ATSC A/65C at Annex B, B.1.1(4). This provision has no bearing PMCM's application because PMCM is not a newly-licensed DTV licensee and KVVN is not in the same market as WFSB. It is clear in the context of Annex B "newly-licensed DTV licensee" is distinguished from a licensee which had an NTSC license. Subparagraph 1 is directed to licensees with an existing NTSC license, and Subparagraph 2 provides for new licensees without an NTSC license. Subparagraph 3 then follows to address what would happen if an entirely new channel were dropped into a market and licensed to a new entity. It must be remembered that at the time ASTC A/65C was drafted, television stations were assigned both an NTSC channel and a companion digital channel, and it appeared possible that, after transition, the Commission might auction the channel not chosen as the final digital channel to become a new television station. It is this type of situation, in which a licensee elected to remain on its digital channel, and a new licensee acquired the former NTSC channel, that Subparagraph 3 is designed to govern. KVVN, however, is not such a station, but rather is one that had an NTSC license. Thus, the language quoted by Meredith is simply inapplicable to the situation at hand.

Further, KVVN and WFSB are not located in the same market. Television markets are equated with Nielsen DMA's. *See, e.g.*, Section 73.3555(b) of the Commission's Rules. The fact of a small degree of signal contour overlap is not determinative of the respective television markets of two stations. *Id.* As set forth above, WFSB is located in the Hartford-New Haven DMA, while KVVN is in the New York DMA. Limited cable carriage rights in one county at the edge of the DMA do not give WFSB a presence in the DMA as a whole. While NTSC channel 3 was allotted to

While such an issue could theoretically arise at some time, it does not exist now. And even if it were to arise, it would involve nothing but business issues relating to branding. There is no technical issue related to any engineering concerns. Likewise, there is no question of cable carriage or the lack thereof for Meredith; this matter is currently controlled by its retransmission consent agreement and will be controlled in future by whatever election it makes for the upcoming election period. The sole issue is whether Meredith may continue to cling to its cable placement on Channel 3 in "several" communities outside of its DMA in which it has acquired carriage rights. Meredith's apparent desire to maintain consistency of channel number in a few communities outside its market cannot outweigh KVNV's rights to channel 3 throughout all of the New York market. Serving but a few communities at the edge of the market, Meredith presumes to dictate the manner in which KVNV should be carried throughout the largest market in the nation. The Commission's rules do not afford Meredith the right to dictate such a result, and the PSIP system carefully designed by the ATSC prevents the "virtual interference" which, in Meredith's self-serving but misguided view, might give rise to such a right.

Finally, it is notable that KVNV's channel 3 allotment was reallocated to Middletown Township, New Jersey, by operation of statute. Such a relocation is an extraordinary circumstance not contemplated by ATSC as it was developing the PSIP system. The purpose of the reallocation as set forth in the statute (47 U.S.C. §331(a)) was to provide a VHF station for the state of New Jersey. While KVNV will continue to operate on RF channel 3 in any event, the underlying purpose of the statute should also be fulfilled through continued operation on PSIP major channel 3. The statute clearly did not contemplate an apparent channel different from a station's RF channel.

In sum, Meredith has identified no technical defect in the KVNV modification application which would warrant its dismissal or the imposition of any extraordinary conditions. Instead, without one shred of technical support, Meredith has advanced the novel proposition that stations with overlapping DTV signal contours will create some kind of unspecified problem, which it has dubbed "virtual interference," if they operate with the same PSIP major channel. As thoroughly

Exhibit 1

7. All digital broadcasting today is based on the “foundation” of ISO/IEC document 13818, a standard implemented in multiple parts and commonly referred to as “MPEG-2.” Many of the constituent documents of MPEG-2 are optional, but the basic document part, entitled “*Generic coding of moving pictures and associated audio information, Part 1 – Systems*” is common (“normatively referenced”) to all the other parts.
8. Commonly referred to as “MPEG-2 Systems”, ISO/IEC 13818 part 1 describes the digital “transport stream” that enables broadcast, cable and satellite radio frequency (RF) channels to carry one or more otherwise independent content streams. A transport stream can be imagined as a generic one-way electronic “roadway” along with basic “driving rules” to insure that “vehicles” don’t collide while in transit. A transport stream may have just one lane (a “single program transport stream”) or multiple lanes (a “multiple program transport stream”). As used here, a “program” is not a television program or show, but a collection of audio and video streams that are combined (“multiplexed”) into a single coherent presentation. To minimize this confusion, I will refer to an “MPEG-2 program” as a “content stream” in this document.
9. In theory, a valid MPEG-2 transport stream could contain no content streams, just “null packets.” But, if a transport stream contains content streams, it must include a Program Association Table (PAT) which serves as a dynamic “index” of the available content streams within that transport stream.
10. The MPEG-2 suite of standards was intended to be extensible by “users” (other standards development organizations) that would build upon MPEG-2 to provide practical standardized implementations for terrestrial broadcast, cable and satellite transmission. One such MPEG “user” is the Advanced Television Systems Committee, a non-profit standards development organization. The *ATSC Digital Television Standard* (ATSC document A/53) “normatively references” parts of the MPEG-

the same as the RF channel that carries the signal. ATSC-compliant digital television sets make use of the data in the Program Association Table (PAT) and the PSIP Virtual Channel Table (VCT) to distinguish available digital signals and the content streams contained within RF channels.

15. To avoid “channel number” collisions in the transition from analog TV broadcasting to digital television (DTV), Annex B of ATSC A/65:2009 provides simple rules that must be followed to determine the “major channel” that is used to identify the virtual channels of a particular DTV station. Although ATSC A/65 has evolved through multiple editions, there have been no significant changes in Annex B in any of those revisions. If a digital station in the US started operations as an analog television station, it must identify itself using a major channel number equal to the RF channel last used in analog operations. In the context of the instant informal objection, it is important to mention that this constraint on major channel usage was designed to ease the transition to all-digital TV in the US and is not required by any technical feature or limitation in the underlying ATSC A/65 standard.
16. When a new ATSC television set is first tuned on, it has no ability to understand the relationships between physical (RF) channels and virtual channels as these relationships depend entirely on the TV signals that are available at that location, at that time.
17. To establish these relationships; in other words, to construct a “channel map”, when sets are first plugged in, the viewer is normally prompted to, or the set automatically conducts, a “channel scan.” Starting with RF channel 2, the set determines if an NTSC or 8-VSB signal is available on each RF channel. As a general rule, ATSC A/65 does not explicitly define receiver behaviors. How a set conducts such a channel scan is actually an “implementation detail” that may vary from one receiver model to another.
18. If an 8-VSB signal is found on a particular RF channel during a channel scan, the television set takes

tsid value in the PAT does not match the tsid in the VCT, something is wrong and television sets often will not continue parsing that station's PSIP and may "behave" unpredictably.

25. The VCT provides a listing of each virtual channel in the transport stream. Each VCT entry must include the major and minor channel numbers for a particular content stream and the tsid of the transport stream carrying that virtual channel as well as up to seven characters that identify the virtual channel for viewers, and additional data elements used in tuning operations.
26. For each virtual channel identified in a channel scan, receivers are expected to store in non-volatile memory all the needed particulars for each combination of major/minor channels, RF channel and tsid in its channel map. Once an ATSC television set has completed the initial channel scan, it can immediately retrieve from memory all the needed information to tune and demultiplex the selected content stream.
27. The exact method employed internally by each model of TV set is an implementation detail. Conceptually, there are two basic scenarios: channel up/down and explicit channel selection.
28. Channel maps consistently appear to be lists of detected virtual channels listed in major channel/minor channel order, or ordered by tsid/major channel/minor channel number, with the lowest overall value being the first entry in the channel map. Some TV set makers offer additional granularity in their channel map, even using the combination of RF channel/tsid/major channel/minor channel in constructing the channel map.
29. If a viewer clicks on "channel up" a set generally will tune to the next entry in order in the internal channel map. If a viewer selects "channel down" generally a set will tune to the previous entry in the channel map.
30. Once the virtual channel's tuning characteristics have been determined, the television set will adjust

35. As an initial matter, WFSB's informal objection misuses the term "interference," which is an impairment of radio frequency reception. As is explained above, major channel numbers are not RF characteristics and are only processed in the demodulated DTV transport (or "compression") layer. Major channel numbers thus are in context only after signals have been demodulated and therefore appear to be outside the jurisdiction granted by Congress to the Federal Communications Commission..

36. WFSB-DT is licensed to serve the community of Hartford, Connecticut. WFSB-DT operates on TV (RF) channel 33 (584-590 MHz) using an omnidirectional transmitting antenna, 1 megawatt of effective radiated power and a radiation center 292 meters above mean sea level. WFSB was granted tsid 507 and pursuant to Annex B of ATSC A/65 uses major channel 3.

37. KVVV(TV) is currently licensed to serve the community of Ely, Nevada on RF channel 3 (60-66 MHz) which was also its RF channel during NTSC operation. In the pending application, KVVV is requesting a minor change so that it may serve Middletown Township, NJ on RF channel 3 from a transmitter site atop 4 Times Square, New York, New York. The proposed facilities of KVVV(TV) will have an effective radiated power of 7.09 kW using an omnidirectional antenna with a radiation center 353 meters above mean sea level. KVVV was granted tsid 8477 pursuant to Annex B of ATSC A/65 uses major channel 3..

38. Clearly, due to the significant distance and difference in operating frequencies between WFSB's transmitter and the proposed facilities of KVVV(TV), the operation of KVVV(TV) will not cause detectable impairment (interference) to the reception of WFSB.

39. WFSB's informal objection appears to be based on a misunderstanding of the relevance of major channel numbers in identifying ATSC-compliant transport streams transmitted by DTV broadcasters.

Exhibit 2

Exhibit 3

KETG **ARKADELPHIA, AR**
 • 9-1 Over The Air (RF13)
K16EO **ORO VALLEY/TUCSON, AZ**
 • 9-1 Over The Air (RF16)
 • 9-1 Over The Air (RF16)
KGUN-TV **TUCSON, AZ**
 • 9-1 Over The Air (RF9)
K20DE-D **ALTURAS/LIKELY, CA**
 • 9-1 Over The Air (RF20)
K08OR-D **CANBY, CA**
 • 9-1 Over The Air (RF8)
K18IS-D **CHICO AND PARADISE, CA**
 • 9-1 Over The Air (RF18)
KECY-TV **EL CENTRO, CA**
 • 9-1 Over The Air (RF9)
K03HX-D **ETNA, CA**
 • 9-1 Over The Air (RF3)
K28DB-D **FALL RIVER MILLS, CA**
 • 9-1 Over The Air (RF28)
K05CR-D **HAYFORK, CA**
 • 9-1 Over The Air (RF5)
K14HX-D **LAKEHEAD, CA**
 • 9-1 Over The Air (RF14)
K28CY-D **LEWISTON, CA**
 • 9-1 Over The Air (RF28)
KCAL-TV **LOS ANGELES, CA**
 • 9-1 Over The Air (RF9)
K08OB-D **NEWELL, CA**
 • 9-1 Over The Air (RF8)
KIXE-TV **REDDING, CA**
 • 9-1 Over The Air (RF9)
K45GO-D **RIDGECREST, CA**
 • 9-1 Over The Air (RF45)
KSDX-LD **SAN DIEGO, CA**
 • 9-1 Over The Air (RF9)
KOED **SAN FRANCISCO, CA**
 • 9-1 Over The Air (RF30)
K39DG-D **TRINITY CENTER, CA**
 • 9-1 Over The Air (RF39)
K31GK-D **UKIAH, CA**
 • 9-1 Over The Air (RF31)
K02EE-D **WEAVERVILLE, CA**
 • 9-1 Over The Air (RF2)
K19GL-D **YREKA, CA**
 • 9-1 Over The Air (RF19)
K16LB-D **YUCCA VALLEY, CA**

• 9-1 Over The Air (RF44)
WFTV ORLANDO, FL
 • 9-1 Over The Air (RF20)
 • 9-1 Over The Air (RF39)
W36DV-D SEBASTIAN, FL
 • 9-1 Over The Air (RF36)
WHDT STUART, FL
 • 9-1 Over The Air (RF42)
WTVM COLUMBUS, GA
 • 9-1 Over The Air (RF11)
WVAN-TV SAVANNAH, GA
 • 9-1 Over The Air (RF9)
KFVE HONOLULU, HI
 • 9-1 Over The Air (RF22)
KGMV WAILUKU, HI
 • 9-1 Over The Air (RF24)
KCRG-TV CEDAR RAPIDS, IA
 • 9-1 Over The Air (RF9)
KCAU-TV SIOUX CITY, IA
 • 9-1 Over The Air (RF9)
 • 9-1 Over The Air (RF30)
KNIN-TV CALDWELL, ID
 • 9-1 Over The Air (RF10)
K140A-D PRESTON, ID
 • 9-1 Over The Air (RF14)
WGN-TV CHICAGO, IL
 • 9-1 Over The Air (RF19)
WNIN EVANSVILLE, IN
 • 9-1 Over The Air (RF9)
KOOD HAYS, KS
 • 9-1 Over The Air (RF16)
WOBZ-LD EAST BERNSTADT, KY
 • 9-1 Over The Air (RF9)
WAFB BATON ROUGE, LA
 • 9-1 Over The Air (RF9)
CKND-DT Winnipeg, MB
 • 9-1 Over The Air (RF40)
WWTV CADILLAC, MI
 • 9-1 Over The Air (RF9)
 • 9-1 Over The Air (RF40)
WTBA-LD TRAVERSE CITY, MI
 • 9-1 Over The Air (RF38)
K38AC-D ALEXANDRIA, MN
 • 9-1 Over The Air (RF38)
K25MW-D BAUDETTE, MN
 • 9-1 Over The Air (RF25)

K04IH-D BAKER, MT
 • 9-1 Over The Air (RF4)
K17KB-D BELGRADE, ETC., MT
 • 9-1 Over The Air (RF17)
K27CD-D BOULDER, MT
 • 9-1 Over The Air (RF27)
KUSM-TV BOZEMAN, MT
 • 9-1 Over The Air (RF8)
K43DU-D BUTTE, MT
 • 9-1 Over The Air (RF43)
K22LD-D CHINOOK, MT
 • 9-1 Over The Air (RF22)
K23DJ-D EKALAKA, MT
 • 9-1 Over The Air (RF23)
K27LO-D EMIGRANT, MT
 • 9-1 Over The Air (RF27)
K02AO-D EUREKA, MT
 • 9-1 Over The Air (RF2)
K24ID-D FERNDALE, MT
 • 9-1 Over The Air (RF24)
KXLH-LD HELENA, MT
 • 9-1 Over The Air (RF9)
KCFW-TV KALISPELL, MT
 • 9-1 Over The Air (RF9)
K05FC-D LAKE MCDONALD, MT
 • 9-1 Over The Air (RF5)
K18KD-D LIBBY, MT
 • 9-1 Over The Air (RF18)
K48NS-D LIVINGSTON, MT
 • 9-1 Over The Air (RF48)
K17OB-D PLEVNA, MT
 • 9-1 Over The Air (RF17)
K34DP-D PLEVNA, MT
 • 9-1 Over The Air (RF34)
K12AA-D TROY, MT
 • 9-1 Over The Air (RF12)
K29ID-D WEEKSVILLE, MT
 • 9-1 Over The Air (RF29)
CIMT-1 Edmundston, NB
 • 9-1 Over The Air (RF4)
CKLT-DT Saint John, NB
 • 9-1 Over The Air (RF9)
WSOC-TV CHARLOTTE, NC
 • 9-1 Over The Air (RF30)
 • 9-1 Over The Air (RF34)
 • 9-1 Over The Air (RF46)

KWTV-DT OKLAHOMA CITY, OK
 • 9-1 Over The Air (RF39)

K39JH-D STRONG CITY, OK
 • 9-1 Over The Air (RF39)

K23IY-D WEATHERFORD, OK
 • 9-1 Over The Air (RF23)

CBOFT-DT Ottawa, ON
 • 9-1 Over The Air (RF9)
 • 9-1 Over The Air (RF33)

CICO-9 Thunder Bay, ON
 • 9-1 Over The Air (RF9)

CFTO-DT Toronto, ON
 • 9-1 Over The Air (RF9)

CBET-DT Windsor, ON
 • 9-1 Over The Air (RF9)

K23ME-D CAMAS VALLEY, OR
 • 9-1 Over The Air (RF23)

K27CL-D COOS BAY/NORTH BEND, OR
 • 9-1 Over The Air (RF27)

K42HK-D COTTAGE GROVE, OR
 • 9-1 Over The Air (RF42)

K11KI-D DORENA, ETC, OR
 • 9-1 Over The Air (RF11)

KEZI EUGENE, OR
 • 9-1 Over The Air (RF9)

K11GT-D EUGENE, OR
 • 9-1 Over The Air (RF11)

KEZI EUGENE, OR
 • 9-1 Over The Air (RF23)
 • 9-1 Over The Air (RF25)

K35HW-D FLORENCE, OR
 • 9-1 Over The Air (RF35)

K51EY-D LONDON SPRINGS, OR
 • 9-1 Over The Air (RF51)

K25NI-D MAPLETON, OR
 • 9-1 Over The Air (RF25)

K07JS-D NORTH BEND, OR
 • 9-1 Over The Air (RF7)

K07IA-D OAKLAND, OR
 • 9-1 Over The Air (RF7)

K34KL-D POWERS, OR
 • 9-1 Over The Air (RF34)

K04OS-D REEDSPORT, OR
 • 9-1 Over The Air (RF4)

K46KS-D ROSEBURG, OR
 • 9-1 Over The Air (RF46)

• 9-1 Over The Air (RF9)
 • 9-1 Over The Air (RF16)
KTRE LUFKIN, TX
 • 9-1 Over The Air (RF9)
KWES-TV ODESSA, TX
 • 9-1 Over The Air (RF9)
KLRN SAN ANTONIO, TX
 • 9-1 Over The Air (RF9)
K31KP-D ALTON, UT
 • 9-1 Over The Air (RF31)
K41LD-D ANTIMONY, UT
 • 9-1 Over The Air (RF41)
K51JV-D BEAVER, UT
 • 9-1 Over The Air (RF51)
K48LT-D BERYL, NEW CASTLE, M, UT
 • 9-1 Over The Air (RF48)
K47JI-D BLANDING, MONTICELLO, UT
 • 9-1 Over The Air (RF47)
K19IE-D BOULDER, UT
 • 9-1 Over The Air (RF19)
K27KB-D CAINEVILLE, UT
 • 9-1 Over The Air (RF27)
K17JK-D CANE BEDS,AZ/HILDALE, UT
 • 9-1 Over The Air (RF17)
K41GE-D CEDAR CITY, UT
 • 9-1 Over The Air (RF41)
K23KW-D CIRCLEVILLE, UT
 • 9-1 Over The Air (RF23)
K36JT-D CLEAR CREEK, UT
 • 9-1 Over The Air (RF36)
K48KS-D DELTA, ETC., UT
 • 9-1 Over The Air (RF48)
K36JV-D EAST PRICE, UT
 • 9-1 Over The Air (RF36)
K28KN-D EMERY, UT
 • 9-1 Over The Air (RF28)
K15EM-D ESCALANTE, UT
 • 9-1 Over The Air (RF15)
K24IO-D FERRON, UT
 • 9-1 Over The Air (RF24)
K44EA-D FILLMORE ETC., UT
 • 9-1 Over The Air (RF44)
K25LH-D FISHLAKE RESORT, UT
 • 9-1 Over The Air (RF25)
K39KH-D FOUNTAIN GREEN, UT
 • 9-1 Over The Air (RF39)

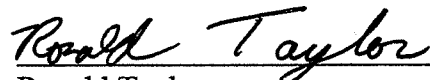
K33KH-D NEPHI, UT
 • 9-1 Over The Air (RF33)
KUEN OGDEN, UT
 • 9-1 Over The Air (RF36)
K46JK-D ORANGEVILLE, UT
 • 9-1 Over The Air (RF46)
K15IA-D ORDERVILLE, UT
 • 9-1 Over The Air (RF15)
K43KL-D PANGUITCH, UT
 • 9-1 Over The Air (RF43)
K39HP-D PARK CITY, UT
 • 9-1 Over The Air (RF39)
K46DF-D PAROWAN, ENOCH, ETC., UT
 • 9-1 Over The Air (RF46)
K19EX-D PRICE, UT
 • 9-1 Over The Air (RF19)
K36CB-D RICHFIELD, ETC., UT
 • 9-1 Over The Air (RF36)
K44IP-D ROOSEVELT, ETC., UT
 • 9-1 Over The Air (RF44)
K30JN-D RURAL CARBON COUNTY, UT
 • 9-1 Over The Air (RF30)
K43DY-D RURAL GARFIELD COUNT, UT
 • 9-1 Over The Air (RF43)
K24FD-D RURAL GARFIELD, ETC., UT
 • 9-1 Over The Air (RF24)
K47MG-D RURAL SEVIER COUNTY, UT
 • 9-1 Over The Air (RF47)
K22DM-D RURAL SUMMIT COUNTY, UT
 • 9-1 Over The Air (RF22)
K17FC-D SALINA & REDMOND, UT
 • 9-1 Over The Air (RF17)
K45LD-D SCIPIO, UT
 • 9-1 Over The Air (RF45)
K41LB-D SCOFIELD, UT
 • 9-1 Over The Air (RF41)
K32FQ-D ST. GEORGE, UT
 • 9-1 Over The Air (RF32)
K21GW-D TOQUERVILLE, HURRICA, UT
 • 9-1 Over The Air (RF21)
K38MW-D TORREY, ETC., UT
 • 9-1 Over The Air (RF38)
K31EL-D TROPIC, ETC., UT
 • 9-1 Over The Air (RF31)
K33DO-D VERNAL, UT
 • 9-1 Over The Air (RF33)

Exhibit 4

The attached pictures show the channel guide that my receiver displays, with multiple listings on each of three major channels, as well as screen shots of what was being shown on two channels designated 5.1 and two channels designated 8.1. As demonstrated by these pictures, my receiver does not have any difficulty in displaying multiple stations operating on the same major channel number. Instead, in the channel guide, it lists all such stations which operate with the same major channel number. In fact, because in most cases, I can receive more than one translator which has the same primary station, that primary station is listed twice, and I may select which one I wish to watch.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 19 day of March, 2014.



Ronald Taylor

I, Ronald Taylor, hereby declare and state as follows:

I reside in Ely, Nevada, and I am familiar with the broadcast service provided by the television translator operations of White Pine Television District #1. White Pine Television District #1 is the licensee of a number of translators which serve the community of Ely and bring in distant television signals from Salt Lake City, Las Vegas, and Reno to provide the opportunity for over-the-air viewing in Ely.

The community of Ely is located in a valley at approximately 6,400 feet above mean sea level. Because of terrain, parts of the community are shadowed and do not receive service from translators located on either one or the other of the nearby peaks where translator transmitter sites are located. Accordingly, White Pine Television District #1 has translators located on both Squaw Peak and Cave Mountain in order to be able to serve all of the community of Ely.

Attached hereto is a list of translators licensed to White Pine Television District #1, together with a list of the virtual channels on which they operate. The translators operate on the same major channel as the primary stations that they rebroadcast and pass through all PSIP and transport stream identification (TSID) information unchanged.

From my home, I can receive the broadcasts of translators on both Squaw Peak and Cave Mountain. I thus receive multiple broadcasts from translators operating with the same virtual or major channel number. Attached hereto are pictures which show how my television receiver displays the different stations.

These pictures show a Haier receiver, Model Number HL 19SL2a, which is a DTV receiver readily available to consumers. I took the pictures of the screen display at my home on

Channel List

5-1 KVVU-HD

5-1 KSL-HD

5-1 KVVU-HD

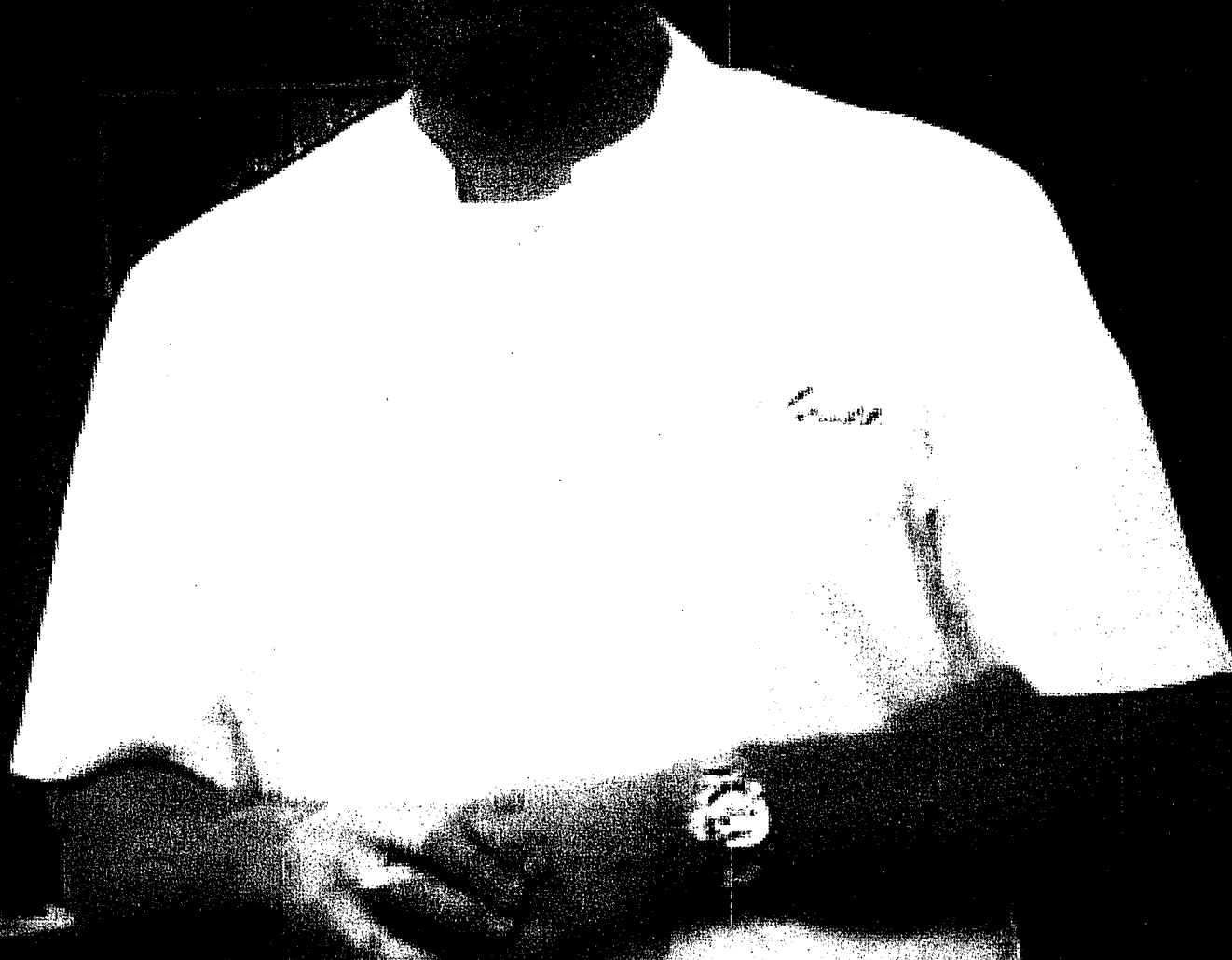
5-1 KSL-HD

5-2 KVVU-DT

5-2 COZI-TV

5-1
KSL-HD

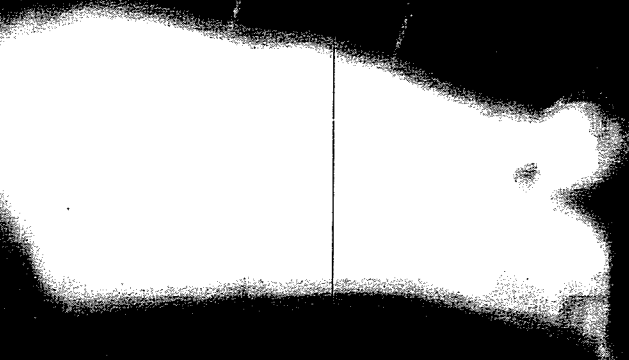
Antenna



8-1

KOLO-DT

Atlanta



V X X

DT

Exhibit 5

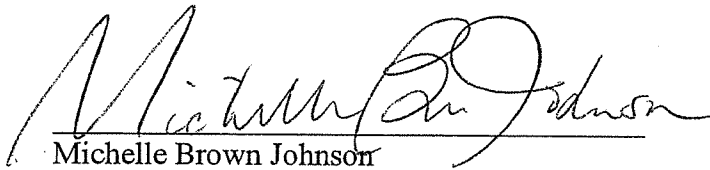
Certificate of Service

I, Michelle Brown Johnson, hereby certify that on this 24th day of March, 2014, I caused a copy of the foregoing "Opposition to Informal Objection" to be served via U.S. mail, postage prepaid, upon the following:

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

Michael D. Basile, Esquire
Robert J. Folliard, III, Esquire
Cooley, LLP
1299 Pennsylvania Avenue, N.W.
Suite 700
Washington, D.C. 20004

*By Hand Delivery


Michelle Brown Johnson

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

ACCEPTED/FILED

FEB 18 2014

Federal Communications Commission
Office of the Secretary

In re Application of)
)

PMCM TV, LLC)
)

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

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 KVVV(TV), Middletown Township, New Jersey.¹ PMCM proposes to operate KVVV(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 KVVV(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.

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. BLCDDT-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).

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

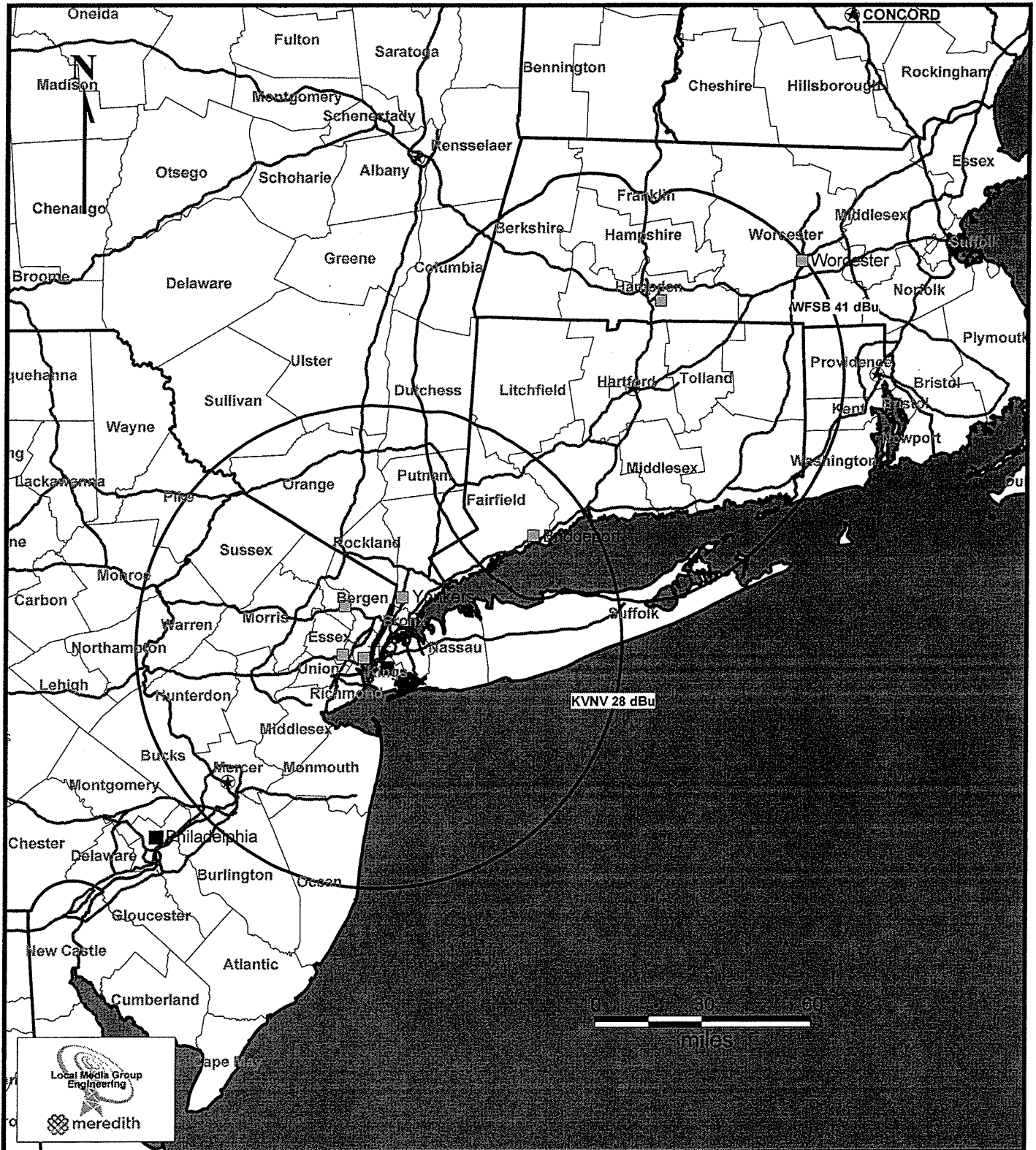
By: 

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

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

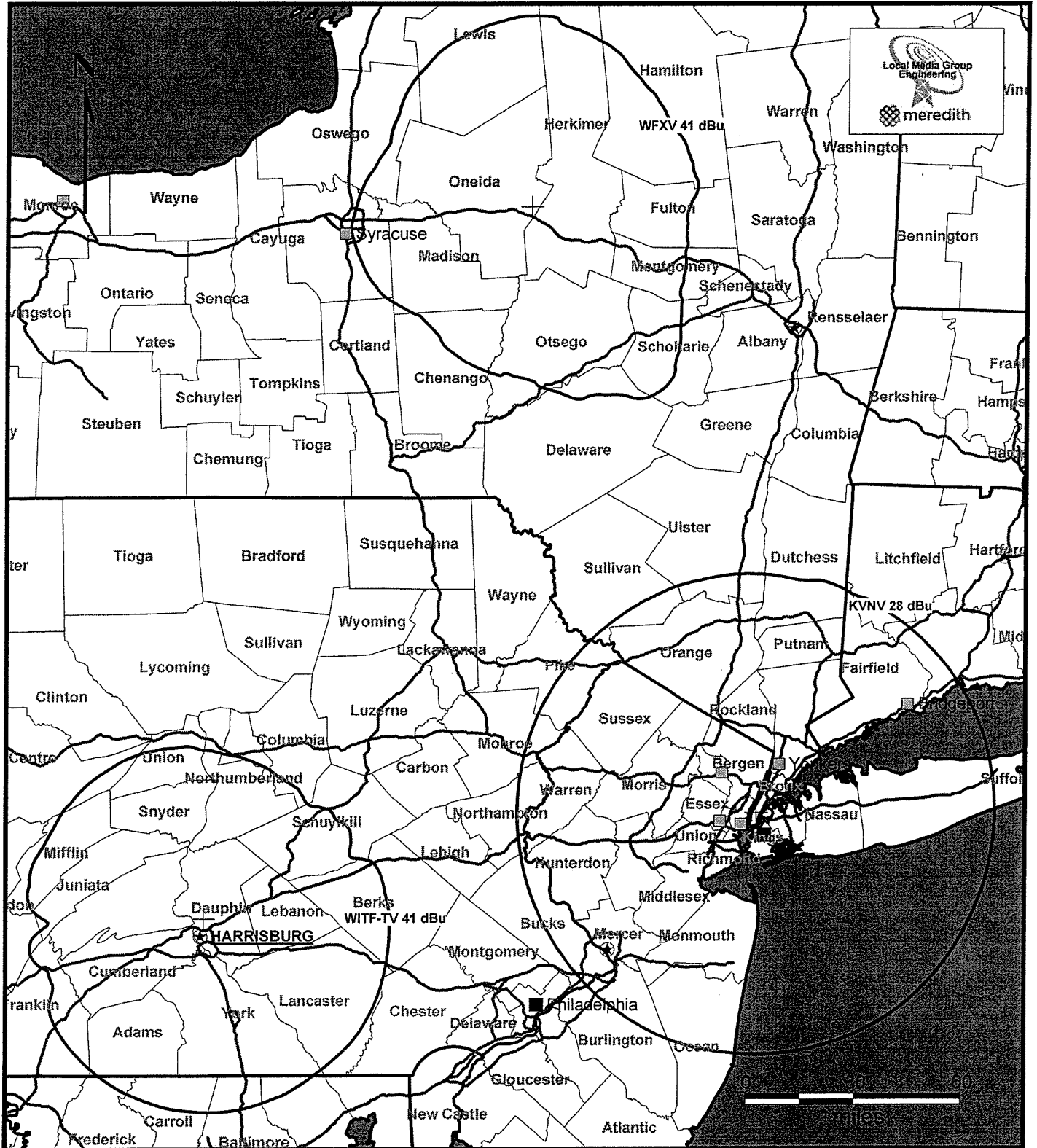


Noise Limited Coverage Contour Comparison

WFXV, RF Ch. 27, Virtual Ch. 33, Utica, NY, BLC DT20090331ADG

KVNV, RF Ch. 3, Virtual Ch. 3, Middletown Township, NJ, BPC DT20130528AJP

WTF-TV, RF Ch. 36, Virtual Ch. 33, Harrisburg, PA, BLEDT20000922AHE



Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

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 KVVN(TV).¹ The Letter Decision failed to address the disruption that KVVN(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 KVVN(TV) may not commence program tests on Virtual Channel 3. Instead, when KVVN(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 KVVN(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 KVVN(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).

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 KVNV(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 KVNV(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 KVNV(TV) and WFSB(TV). KVNV(TV) will operate on RF Channel 3. That channel was previously allotted for NTSC use by WFSB(TV) in large portions of KVNV(TV)'s DTV Service Area. Having moved across the country to the New York DMA, KVNV(TV) will be "a newly-licensed DTV licensee in that market." Therefore, because KVNV(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 KVVV(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 KVVV(TV) to use the Channel 33 as its Virtual Channel, the Letter Decision held that it was "premature" to determine KVVV(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 KVNV(TV) would cause when it commences operations. The Bureau can avoid these problems by promptly declaring that KVNV(TV) must commence program tests using Virtual Channel 33.

CONCLUSION

Because KVNV(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 KVNV(TV) must operate on Virtual Channel 33. As the Bureau did in *Seaford, Delaware*, the Bureau should assign a PSIP virtual channel to KVNV(TV) before KVNV(TV) commences operations and before there is any opportunity for viewer disruption.

Respectfully submitted,

MEREDITH CORPORATION

By: 

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(202) 776-2357

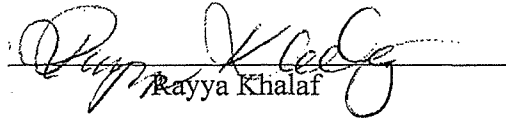
May 22, 2014

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:

Barbara Kreisman, Esq. *
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.

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

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

File No. BPCDT-20130528AJP

RECEIVED - FCC

JUN - 4 2014

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

Federal Communications Commission
Bureau / Office

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PMCM TV, LLC

By:



Donald J. Evans
Harry F. Cole
Anne Goodwin Crump
Daniel Kirkpatrick

FLETCHER, HEALD & HILDRETH, P.L.C.
1300 N. 17th Street - Eleventh Floor
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(703) 812-0400

June 4, 2014


CERTIFICATE OF SERVICE

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

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

Michael D. Basile, Esquire
Robert J. Folliard, III, Esquire
Cooley LLP
1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Counsel for Meredith Corporation

/s/


Harry F. Cole

Harry F. Cole

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

Received & Inspected
JUL 07 2014
FCC Mail Room

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

File No. BPCDT-20130528AJP

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

SUPPLEMENT TO OPPOSITION

PMCM TV, LLC (PMCM) hereby offers this brief supplement to its June 4, 2014 Opposition in the above captioned matter to bring to the Bureau's attention several matters relating to the instant case which could not have been raised in PMCM's initial Opposition. PMCM requested an in-person meeting to address these developments, but in lieu of a meeting and in the interest of ensuring a complete record, this supplement is offered now.

We must begin by reiterating a key point here that was made in response to Cablevision's request for deferral of carriage¹: KVVN currently operates on major channel 3 in Ely, NV. Channel 3 was its analog channel and the normal PSIP assignment protocols operated to retain channel 3 as its major channel number after the DTV transition. The Commission's records correctly reflect that channel 3 is its virtual channel number. When it relocates this summer to the New Jersey area it will retain the channel number and PSIP that it has always had. To do otherwise would be extraordinary and unprecedented. Moreover, alteration of KVVN's long-established channel designator at this point would require a rulemaking proceeding. While such a proceeding was underway, PMCM would obviously retain its current channel. This is especially true under the unique circumstances of KVVN's transition to New

¹ PMCM's Opposition to Cablevision's request was filed on June 26, 2014. A copy was served on counsel for Meredith.

Jersey pursuant to Section 331 of the Act. That section, as recently interpreted by the D.C. Circuit,² requires the Commission to reallocate a VHF "channel" at the request of the licensee to a state which at the time had no such channel allocated to it. In 1982 when Section 331 was adopted, one's broadcast "channel" meant only one thing: the channel that the station broadcast over the air. KVVN's over-the-air and virtual channel is, and was at the time it notified the Commission of its intent to relocate to New Jersey, channel 3. It would utterly thwart the intention of Congress and the Court's mandate to now change KVVN's channel designator to some non-VHF channel. Any member of the public receiving KVVN's signal over the air or on cable would experience the channel as something other than the VHF channel it transmits over, thus effectively again denying the people of New Jersey their right to an over-the-air VHF broadcast station. If there were any uncertainty about this, Section 331's requirement that the Commission reallocate the channel "notwithstanding any other provision of law" should make clear that any countervailing considerations must yield to this mandate.

Several new developments shed additional light on the current dispute. In addition to KVVN's established position on channel 3, the Commission should be mindful of the widely rippling impact of any suggestion that PSIPs are entitled to protection. On June 2, 2014, the Commission released its Report and Order in GN Docket No. 12-268, *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, FCC 14-50, rel. June 2, 2014. (*Incentive Auction Order*). That R & O, which runs to over 400 pages in length, details the Commission's plans for auctioning and re-packing TV broadcast stations in the spectrum space left after the auction dust settles. While neither PMCM nor, indeed any mortal human, could have reviewed and digested the 400 pages of the Order prior to the June 4 date for PMCM's Opposition, PMCM has now had an opportunity to almost complete its review of the tome. We observed that in describing its repacking plans, the Commission nowhere indicated that "virtual channels" as opposed to actual RF channels, were to be protected from signal overlap. The re-packing plans (and presumably the re-packing simulation data released by the Commission this week) hinge on protecting "the coverage area and population served of each broadcast television licensee."

² *PMCM TV, LLC v. FCC*, 701 F.3d 380 (D.C. Cir. 2012)

Incentive Auction Order at Para. 119-120, et seq. The thought that a station's virtual channel might have to be protected from overlap seems not to have occurred to either Congress or the Commission, and neither institution deemed virtual channels -- as opposed to signal coverage area -- worthy of protection.

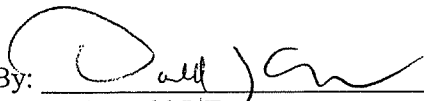
This omission is significant, for if the Bureau adopted Meredith's assertion of a right to non-overlap of its PSIP major channel with that of another co-PSIP station, as well as a right to non-interference between its over-the-air channel and other over-the-air other stations, the Commission's entire post-Incentive Auction re-packing plan would have to be revised. Every TV station with a PSIP differing from its over-the-air channel would be entitled to protection of *both* channels in the re-packing -- something the Commission did not take into account in its lengthy analysis of who and what needs to be protected. And even stations that gave up their over-the-air channel so as to share another channel (and which could consequently change station location incident to the sharing process) would be entitled to have no overlaps of their PSIP from co-PSIP stations. This again would complicate the ability of the Commission to re-pack stations by adding a huge new variable into the re-packing equation. A drastic revision of the repacking program would have to be developed to incorporate the protection which Meredith now demands. Adoption of Meredith's theory therefore, in addition to being unsupported from an engineering and legal perspective, would both seriously delay the Incentive Auction as presently envisioned and severely limit the number of channels that will be able to be freed up through the auction process. The Bureau should take this practical problem into account in addressing Meredith's petition.

Second, since PMCM's June 4 Opposition was filed, PMCM has received a request from Cablevision, a major cable system in the New York area, to defer its otherwise mandatory obligation to carry KVNV on Channel 3 on its systems. The request was predicated on the pendency of Meredith's petition here. PMCM has separately responded to that request. (A copy of the Opposition is provided here and incorporated by reference.) However, the Cablevision request underscores the need for the Commission to act immediately to establish KVNV's right to virtual channel 3 in the New York DMA so that Cablevision and the other cable systems can make the necessary channel assignments without any uncertainty whatsoever about the virtual channel. Not only the cable systems but PMCM, which has

planned the imminent launch of its New Jersey station based on its statutorily mandated channel 3 location, will benefit by prompt resolution of any lingering uncertainty that Meredith's Petition may have created.

Finally, PMCM noted in its Opposition that multiple channels around the country have overlapping common PSIPs and no complaints or other problems have arisen in the public records for those stations. For example, we pointed specifically to WACP which was allotted channel 4 in Atlantic City and has been on the air since June of 2012. That station operates with a large overlap over the virtual channel 4 of WNBC in New York, yet no complaints from the public have been filed of record with either station. This strongly confirms the technical presentation made by PMCM that overlapping PSIPs do not cause any technical problem because the TV receivers are easily able to identify the stations as separate stations through their TSIDs. The attached map depicting the overlap of the two stations pictorially crystallizes this situation and quantifies the number of people (over 2.5 million) and over 1 million households in the overlap area who have been able to happily receive signals from both stations without any of the problems posited by Meredith. This real world confirmation of the analysis set forth in PMCM's original opposition to Meredith's Objection should give the Commission and Meredith comfort that there is nothing to worry about here.

Respectfully submitted,
PMCM TV, LLC

By: 
Donald J. Evans
Its Attorney

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June 27, 2014

PSIP CHANNEL 4

(Digital Service Area)

COMMON PSID CHANNELS AND MUTUAL OVERLAP BETWEEN FACILITIES

PSIP CHANNEL 4-1

DIGITAL SERVICE CONTOURS

FIGURE 5

WNBC-DT

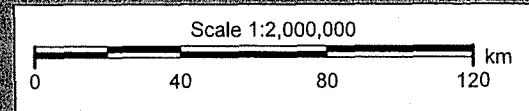
BLCDDT20080409AAM
FCC Facility ID: 47535
RF Channel: 28
PSIP Channel: 4-1

WACP-DT

BMLCDT20140304AAS
FCC Facility ID: 189358
RF Channel: 4
PSIP Channel: 4-1

COMMON PSIP CHANNEL AREA

WACP-DT & WNBC-DT
COMMON AREA:
POPULATION : 2,578,081
HOUSEHOLDS : 1,016,986



Fletcher, Heald & Hildreth

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ACCEPTED/FILED
JUN 26 2014

Federal Communications Commission
Office of the Secretary

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

June 26, 2014

Via Courier

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

Re: Cablevision Systems Corporation Request to Delay
Mandatory Carriage of KVVN (Ch. 3)

Dear Ms. Dortch:

I write to oppose the June 12, 2014 request by Cablevision Systems Corporation to delay implementation of PMCM TV; LLC's request for must-carry placement on Cablevision's systems in the New York DMA. The premise for Cablevision's request is that some uncertainty about KVVN's PSIP has been raised by Meredith Corporation's informal objection to KVVN's construction permit. Cablevision observes that placement of KVVN on its over-the-air channel 3 will require bumping and re-shuffling of a number of stations to accommodate the placement.

PMCM's right to mandatory carriage on Channel 3 is so well settled as to require no elaboration here. For decades, the Commission, in accordance with the express command of Section 614(b)(6) of the Communications Act, has required cable television systems to carry a station asserting must-carry rights on the same cable channel position as the channel on which the station broadcasts over the air. Since 2008, for any station which operated in analog mode prior to the June, 2009 DTV transition, the Commission has treated the analog RF channel on which it previously broadcast as if that were its over-the-air channel and uses that as the station's major channel number embedded in its PSIP. *Carriage of Digital Television Broadcast Signal: Amendment to Part 76 of the Commission's Rules, 23 FCC Rcd. 14254, 14258 (2008)*.¹

¹ We note that the Commission's 2008 decision to require cable carriage according to a station's PSIP channel rather than its "over the air" channel, as required by the Act, appears to contravene the Act. The section of the Act relied on by the Commission in 2008 as a basis for modifying the express language of Section 614(b)(6) is found in Section 614(b)(4)(B). *Id.* at 14255. That section is headed "SIGNAL QUALITY" and deals with issues of signal degradation that might have resulted from the DTV transition. Nothing in the language of that section or the accompanying legislative history cited by the Commission in its 2008 Order even remotely suggests that Congress intended to permit the Commission by rule to override the express command of 614(b)(6) with respect to "CHANNEL POSITIONING." Indeed, if Section 614(b)(6) of the Act were given effect, *no* station would have a right to must carry carriage on any channel but its over the air broadcast channel. It will hopefully be unnecessary to resolve this apparent error in this case since KVVN's over the air channel is the same as the "major channel" in its PSIP.

There is no uncertainty about KVVN's major channel. KVVN currently operates on major channel 3 in Ely, NV. Channel 3 was its analog channel and the normal PSIP assignment protocols operated to retain channel 3 as its major channel number after the DTV transition. The Commission's records correctly reflect that channel 3 is its virtual channel number. When it relocates this summer to the New Jersey area it will retain the channel number and PSIP that it has always had. To do otherwise would be extraordinary and unprecedented. This is especially true under the unique circumstances of KVVN's transition to New Jersey pursuant to Section 331 of the Act. That section, as recently interpreted by the D.C. Circuit,² requires the Commission to reallocate a VHF "channel" at the request of the licensee to a state which at the time had no such channel allocated to it. In 1982 when Section 331 was adopted, one's broadcast "channel" meant only one thing: the channel that the station broadcast over the air. KVVN's channel is, and always has been, channel 3. It would utterly thwart the intention of Congress and the Court's mandate to now change KVVN's over the air channel designator to some non-VHF channel. Any member of the public receiving KVVN's signal over the air or on cable would experience the channel as something other than the VHF channel it transmits over, thus effectively again denying the people of New Jersey their right to an over-the-air VHF broadcast station. If there were any uncertainty about this, Section 331's requirement that the Commission is to reallocate the channel "notwithstanding any other provision of law" should make clear that any countervailing considerations must yield to this mandate. Moreover, alteration of KVVN's long-established channel designator at this point would require a rulemaking proceeding.

That said, PMCM is sensitive to the complications posed by the insertion of KVVN's channel 3 into Cablevision's channel line-up. For that reason, PMCM contacted Cablevision informally many months ago to alert them that KVVN would be going on the air in mid-summer 2014 and would be requiring on-channel must-carry carriage. This was intended to permit Cablevision to initiate whatever steps were necessary well in advance to arrange any necessary re-shuffling of its line-up. Even now, PMCM would be willing to accommodate some reasonable brief deferral of the carriage date in order to permit Cablevision to make the necessary arrangements. "Brief" is the operative word here, however, since it is essential that KVVN get on the air with full on-channel carriage prior to the key ratings periods coming up in the fall. PMCM has predicated its programming distribution plans for some time on the statutory and regulatory right to be carried on channel 3. There is no justification whatsoever for Cablevision's request for an indefinite delay in complying with its statutory and regulatory obligations within the time frame established by the rules.

ION Media Input

We note that ION Media License Company, LLC recently filed a letter in support of Cablevision's extension request. ION indicates that it has been carried on channel 3 on Cablevision's systems for some time pursuant to a "Channel Positioning Agreement." ION asserts that this channel positioning agreement effectively trumps KVVN's must-carry rights because the FCC's rules permit must carry stations and cable systems to reach mutually agreeable alternative arrangements for channel placement. It seems obvious that the "mutually agreeable" alternative rule cannot operate to deprive another station of its own on-channel must carry rights without its consent. Any "mutually agreeable" alternative to on-channel carriage would have to include the mutual agreement of the station with primary must carry rights to the channel in question. Any other interpretation of the rule would have the absurd result of permitting cable systems and favored broadcasters to usurp the channel positions intended by Congress for on-channel broadcast stations without those stations' involvement or consent.

But here the Commission does not even need to address that issue since the "Channel Positioning Agreement" cited by ION is plainly unlawful and unenforceable. 47 C.F.R. Section 76.60 expressly prohibits a cable operator from accepting money or other valuable consideration in return for must-carry channel placement.³ ION's letter makes no bones about the fact that it has provided "valuable consideration" to Cablevision in exchange for its channel placement -- precisely what the rule proscribes. Given ION's refreshingly candid admission that Cablevision has been a party to an illegal channel positioning agreement for at least 12 years, the

² *PMCM TV, LLC v. FCC*, 701 F.3d 380 (D.C. Cir. 2012)

³ "§76.60 Compensation for carriage.

A cable operator is prohibited from accepting or requesting monetary payment or other valuable consideration in exchange either for carriage or channel positioning of any broadcast television station carried in fulfillment of the must-carry requirements...."

ION has noted that it is carried on Cablevision pursuant to a must-carry demand, a fact confirmed by its public file.

Certificate of Service

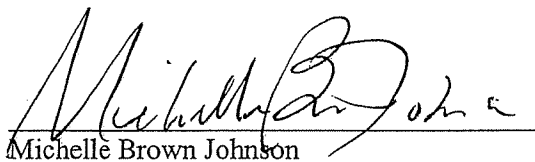
I, Michelle Brown Johnson, hereby certify that on this 27th day of June, 2014, I caused a copy of the foregoing Supplement to Opposition be served via U.S. mail, postage prepaid, upon the following:

Barbara Kreisman, Esq.
Chief, Video Division
Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Hossein Hashemzadeh
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

and hand-delivered to:

Michael Basile
Cooley LLP
1299 Pennsylvania Avenue NW
Suite 700
Washington, DC 20004


Michelle Brown Johnson

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In re Application of)	
)	
PMCM TV, LLC)	File No. BPCDT-20130528AJP
)	Facility ID No. 86537
For a Television Station Construction)	
Permit for KVVN(TV), Middletown)	
Township, New Jersey)	
)	
To: Office of the Secretary		
Attn: Chief, Video Division, Media Bureau		

OPPOSITION TO SUPPLEMENT

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

⁸ *Seaford* at 4472, quoting PSIP Standard.

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

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

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

Respectfully submitted,

MEREDITH CORPORATION

By: 

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July 11, 2014

CERTIFICATE OF SERVICE

I, Rayya Khalaf, a secretary at the law firm of Cooley LLP, do hereby certify that a true and correct copy of the foregoing "Opposition to Supplement" was served by email on the 11th day of July, 2014 on the following:

Barbara Kreisman, Esq.
Chief, Video Division
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445 12th Street, SW
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Rayya Khalaf