Federal Communications Commission
Washington, D.C. 20554

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PMCM TV, LLC
c/o Harry F. Cole, Esq.
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1300 North 17th Street
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Arlington, Virginia 22209

Re: Reallocation of Channel 2 from Jackson, Wyoming to Wilmington, Delaware
Facility ID No. 1283

Reallocation of Channel 3 from Ely, Nevada to Middletown Township, New Jersey
Facility ID No. 86537

Dear Licensee:

On June 15, 2009, PMCM TV, LLC ("PMCM"), the licensee of stations KJWY(TV), channel 2, Jackson, Wyoming and KVNV(TV), channel 3, Ely, Nevada, notified the Commission, pursuant to Section 331 of the Communications Act of 1934, as amended,[1] that it agrees to the reallocation of channel 2 from Jackson to Wilmington, Delaware, and channel 3 from Ely to Middletown Township, New Jersey.[2] According to PMCM, Section 331 mandates that the Commission order the reallocation of channels 2 and 3 to Wilmington and Middletown Township, respectively, and issue corresponding licenses to PMCM to operate on those channels at the new communities.

Section 307(b) of the Act provides that "the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same."[3] In 1982, Congress passed the Tax Equity and Fiscal Responsibility Act of 1982,[4] which added Section 331 (now Section 331(a)) to the Act. That Section provides that:

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[1] 47 U.S.C. § 331.
[2] Letter from Donald J. Evans and Harry F. Cole, Counsel for PMCM TV, LLC to Marlene H. Dortch, Secretary, FCC, Regarding Relocation of Station KVNV(TV), Ely, Nevada (June 15, 2009); Letter from Donald J. Evans and Harry F. Cole, Counsel for PMCM TV, LLC, to Marlene H. Dortch, Secretary, FCC, Regarding Relocation of Station KJWY(TV), Jackson, Wyoming (June 15, 2009).
[3] 47 U.S.C. § 307(b).
[4] Pub. L. No. 97-248, 96 Stat. 324 (1982).

> Very High Frequency Stations. — It shall be the policy of the Federal Communications Commission to allocate channels for very high frequency commercial television broadcasting in a manner which ensures that not less than one such channel shall be allocated to each State, if technically feasible. In any case in which [a] licensee of a very high frequency commercial television broadcast station notifies the Commission to the effect that such licensee will agree to the reallocation of its channel to a community within a State in which there is allocated no very high frequency commercial television broadcast channel at the time [of] such notification, the Commission shall, notwithstanding any other provision of law, order such reallocation and issue a license to such licensee for that purpose pursuant to such notification for a term of not to exceed 5 years as provided in section 307(d) of this the Communications Act of 1934.

At the time this legislation was passed in 1982, New Jersey and Delaware were the only states without a commercial television station operating on a VHF channel, and that scenario continues today. [5]

The Commission has applied Section 331 only one time, to order the reallocation of analog channel 9 from New York, New York, to Secaucus, New Jersey. In 1972, RKO General, Inc. ("RKO"), the licensee of station WOR-TV (now WWOR-TV), channel 9, New York, filed an application for renewal of license. Multi-State Communications, Inc. ("Multi-State") filed a competing application to operate on channel 9, and the Commission ordered a comparative hearing to determine which applicant was better qualified to be licensee of the New York station.[6] In 1980, the Commission determined that RKO lacked the character qualifications to continue to hold its license, RKO appealed, and the D.C. Circuit remanded the matter to the Commission with instructions to re-evaluate RKO's qualifications to hold the license for its New York station.[7]

During the course of the RKO comparative proceeding, various members of the New Jersey congressional delegation introduced legislation to secure a commercial VHF television channel for New Jersey and Delaware.[8] On September 3, 1982, Section 331 became law pursuant to legislation proposed by Senator Bradley of New Jersey, and shortly thereafter, RKO notified the Commission that it was willing to relocate the WOR-TV main studio to New Jersey pursuant to Section 331.[9] As a result of that notification, the Commission ordered the reallocation of channel 9 to Secaucus and issued RKO a license for that station for a term of 5 years. Multi-State, whose effort to win a license for channel 9 in New York was defeated by the Commission's reallocation of the channel to New Jersey pursuant to Section 331, appealed, asserting that Section 331 could not be used to reallocate a VHF channel to New Jersey because

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[5] While channel 13 is allotted to Newark, New Jersey, that channel has been used for noncommercial educational use for almost 50 years. *NTA Television Broadcasting Corp*., 44 F.C.C. 2563 (1961). Channel *12 is allotted to Wilmington, Delaware, but reserved for noncommercial educational use. 47 C.F.R. § 73.622(i). As discussed below, the Commission did reallocate channel 9 to New Jersey after passage of the Tax Equity and Fiscal Responsibility Act in 1982. The Commission, however, allotted that station UHF channel 38 for its pre- and post-transition digital use. 47 C.F.R. §§ 73.622(b) and (i).

[6] *See RKO General, Inc. (WOR-TV), New York, New York*, Hearing Designation Order, 46 F.C.C.2d 246 (1974).

[7] *RKO General, Inc. (WOR-TV), New York, New York*, *et al.*, 78 F.C.C.2d 357 (1980), *remanded*, *RKO General, Inc. v. FCC*, 670 F.2d 215 (D.C. Cir. 1981), *cert. denied*, 456 U.S. 927 and 457 U.S. 1119 (1982).

[8] *See* Remarks of Rep. Maguire on the Communications Cross-Ownership Act of 1980 (H.R. 6228), Section 3, reprinted in 126 Cong. Rec. 26738 (Sept. 23, 1980).

[9] *Petition to Reallocate VHF Television Channel 9 from New York, New York, to a City Within the City Grade Contour of Station WOR-TV*, 53 RR 2d 469 (1983). The station's transmitter remained atop the New York Trade Center in New York City. *Id*. at 470.

the state already had a commercial VHF allocation, channel 13.[10] In the alternative, Multi-State contended that the Commission was obligated to complete the remanded comparative proceeding on RKO's renewal application and Multi-State's competing application before awarding a license for the operation of channel 9 in New Jersey.[11] On appeal, the D.C. Circuit affirmed the Commission's decision to reallocate channel 9 from New York to New Jersey without a comparative hearing.

PMCM asserts that as a result of its June 15, 2009 notification filings, the Commission is required to order the reallocation of channel 2 from Jackson, Wyoming to Wilmington and channel 3 from Ely, Nevada to Middletown Township.[12] PMCM further states that because Section 331 mandates grant of its requests without regard to any other provision of law, "procedures to which license modification proposals are conventionally subject may therefore be dispensed with, and a new license must be issued to PMCM forthwith."[13] Absent the authority conveyed by Section 331, new channel allotments to communities are made after notice and comment rulemaking proceeding and a determination by the Commission that the allotment to the new community would further the policy goals of Section 307(b) and the allotment priorities and policies adopted by the Commission to implement Section 307(b).[14] Moreover, it is long-standing Commission policy that when a frequency becomes available to a community for the first time, "the proper procedure to follow in such cases is to allow applications to be filed under Section 309(a) of the Communications Act . . .."[15]

In determining whether the special procedures set forth in the second sentence of Section 331 apply here – which would deprive the Commission of its discretion to allocate channels in the public interest, allow PMCM to determine the channel allocations in New Jersey and Delaware, and shield PMCM from competition for those channels - it is necessary to interpret the meaning of the term "reallocation" in the second sentence of Section 331(a). The term "reallocation" in that provision is susceptible to two possible interpretations. PMCM would have the Commission interpret that term broadly so as to require grant of its requests to move the facilities of its television stations approximately 2,000 miles to communities in Delaware and New Jersey without following traditional administrative procedures or permitting the filing of competing applications. In other words, it urges the Commission to consider any allocation of a channel to a state without a VHF channel as a "reallocation" if the proponent currently operates a station on the same channel somewhere in the United States and agrees to terminate service on that channel and move to the unserved state to operate on the same channel there. Further, although PMCM asserts that its proposals are technically feasible, it contends that the Commission must order such "reallocation" even if it is not technically feasible because the second sentence of Section 331 has no explicit technical feasibility condition.[16]

Alternatively, we could interpret the term "reallocation" to mean shifting a channel allocation from one community to another community under circumstances where the channel cannot be used

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[10] *Multi-State Communications*, *Inc. v. FCC*, 728 F.2d 1519, 1522 (D.C. Cir. 1984), *cert denied*, 469 U.S. 1017 (1984).
[11] *Id*. at 1524.
[12] Notification Letters at p. 1.
[13] *Id*. at 2.
[14] *See Television Assignments, Sixth Report and Order*, 41 F.C.C. 148, 167 (1952).
[15] *Riverside and Santa Ana, California*, 65 F.C.C.2d 920, 921 (1977), *recon. denied*, 68 F.C.C.2d 557 (1968). The Commission found that "[t]his opportunity for competing filings is . . . in policy terms . . . preferable because it allows us to select the applicant which will best serve the public interest." *Id*. at 924.
[16] Email from Harry Cole, on behalf of PMCM TV, LLC, to Austin C. Schlick, General Counsel, FCC (Aug. 11, 2009).

simultaneously at both locations because such dual operations would cause interference. In other words, the Commission would consider the allotment of a channel to a community as a new allocation if it is not foreclosed by any existing allocation, and as a "reallocation" if the new allotment is possible only if an existing channel allocation is deleted.

We believe that the latter interpretation is the most reasonable interpretation of the term "reallocation" and the second sentence of Section 331. First, it is supported by the purpose, structure and legislative history of the statute. Moreover, this interpretation is consistent with the Commission's common usage of the term "reallocation" and long-standing Commission policy disfavoring technical proposals that would result in a loss of television service to existing viewers.

The overall purpose of Section 331 was "to affirm[] the congressional intent that it is in the public interest for every State to have at least one VHF television station."[17] By way of background, in 1974, the New Jersey Coalition for Fair Broadcasting ("the Coalition"), filed a petition with the Commission asserting that the allocation of television stations among New Jersey and its neighboring states violated the statutory mandate of Section 307(b) requiring a "fair, efficient and equitable distribution" of television channels among the states because of the lack of VHF channels operating in New Jersey.[18] The Coalition included members of the New Jersey congressional delegation. While recognizing that New Jersey was in need of additional television service, the Commission concluded that the requirements of equitable distribution in Section 307(b) had been met because UHF channels had been allotted to New Jersey, and the Court of Appeals affirmed the decision.[19] The first sentence of Section 331(a), adopted in 1982, was meant to augment the "fair, efficient and equitable" requirement of Section 307(b)[20] by requiring the allotment of at least one VHF channel to every State "if technically feasible." The qualification that any new allotment be technically feasible was most likely an acknowledgement that channel 8, the only VHF channel available to be dropped-in at New Jersey, would be severely short-spaced and therefore, not technically feasible.[21]

The second sentence of Section 331(a) established an alternative method of achieving the mandated goal of allotting a VHF channel to every state. Under this provision, if the licensee of a VHF television station "notifies the Commission to the effect that such licensee will agree to the reallocation of its channel" to a community in a state with no VHF channel, "the Commission shall, notwithstanding any other provision of law, order such reallocation and issue a license to such licensee" for the new community. The addition of the provision "notwithstanding any other provision of law" was intended to "remove impediments which currently discourage a licensee in a State which has more than one VHF

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[17] H.R. Conf. Rep. 97-760 at 338 (1982).

[18] *See The New Jersey Coalition for Fair Broadcasting v. FCC*, 574 F.2d 1119, 1121-22 (D.C. Cir. 1978) ("*New Jersey Coalition*").

[19] *Id.* at 1122, 1125-26.

[20] Early legislation to secure a VHF channel for New Jersey and Delaware introduced shortly after the court's March 22, 1978 *New Jersey Coalition* decision, was proposed in the form of an amendment to Section 307(b). *See* 124 Cong. Rec. 9001 (April 6, 1978) (S. 2853 introduced by Senators Williams and Case "to amend section 307 . . . to provide that each State shall have at least one very high frequency commercial television station located within the State"); 124 Cong. Rec. 17989 (June 16, 1978) (H.R. 11936, same); 124 Cong. Rec. 26301 (Aug. 15, 1978) (H.R. 13875 and H.R. 13876, same); 124 Cong. Rec. 26875 (Aug. 17, 1978) (H.R. 13958, same).

[21] *See New Jersey Coalition*, 574 F.2d at 1122 (while the Coalition initially urged the Commission to assign a short-spaced VHF channel to New Jersey, it later "abandoned its proposal for an additional 'short-spaced' television station in New Jersey as technically infeasible."); *see also In the Matter of Petition to Reallocate VHF-TV Channel 9 from New York, New York, to a City Within the City Grade Contour of Station WOR-TV*, 84 F.C.C.2d 280, 281 (1981).

television station from voluntarily moving to a State which has none."[22] This is because at the time Section 331 was enacted, the Commission regarded a petition to amend the TV Table of Allotments to change an allotment's community of license as an event triggering an opportunity for all interested parties to file applications for the new allotment, even when the channel was already occupied by a station and no new service would result from the change in community of license because the station already served that area.[23] Under this policy, licensees were deterred from seeking a change in community of license as they would be at risk of losing their authorization in a comparative hearing.[24] In introducing the legislation, Senator Bradley explained these impediments:

> My amendment, which was ultimately accepted by the House conferees, will remove the impediments which currently discourage an existing licensee in either New York or Philadelphia from voluntarily seeking to move to New Jersey. Under current law, that request would automatically trigger an action to open up that license to new applicants. In other words, the license would automatically be at risk to the current license holder. This makes it very unlikely that anyone would voluntarily offer to move to New Jersey.[25]

Senator Bradley continued that "[o]ne station has already expressed a desire to move to New Jersey" and that "[u]nder the provisions of my amendment, the reallocation of a license to New Jersey will mean that the licenseholder will move its studios and offices to New Jersey . . .." Senator Bradley was referring to RKO, the licensee of WOR-TV, Channel 9 in New York.[26]

Thus, we believe that the second sentence of Section 331(a) was intended as a means of ensuring that a station seeking to move to a nearby community in a state with no VHF commercial station would not have to put its license at risk to do so. In contrast, the licensee of a VHF station in a distant state which sought to operate on the same VHF channel in New Jersey or Delaware would not have been subject to the impediment and risk that the second sentence of Section 331(a) was meant to remove. For example, assuming that the allotment of channel 2 to New Jersey had been technically feasible in 1982, the licensee of the channel 2 television station in Wyoming could have petitioned the Commission to allocate that same channel to New Jersey and continue to operate its Wyoming station pending the outcome of (and even after) the allotment proceeding and any proceeding to choose among mutually-exclusive applications once the channel was allotted. That would be a petition for a new channel allocation, not a reallocation. Were the licensee of the Wyoming station unsuccessful in obtaining a license for the newly allotted channel 2 at New Jersey, its license and operations on channel 2 at Wyoming would be unaffected by its unsuccessful attempt to become the licensee of a New Jersey station.

Indeed, if the allocation of channel 2 (or any other VHF channel) to New Jersey were technically feasible without deleting a channel elsewhere, it would not be necessary to rely on the filing of a petition for a new allocation by the licensee of a VHF station, because the Commission itself could implement the

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[22] H.R. Conf. Rep. 97-760 at 338 (1982).

[23] *See In the Matter of Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *order on reconsideration*, 5 FCC Rcd 7094 (1990)("*Change in Community of License*").

[24] *Change in Community of License*, 4 FCC Rcd at 4872.

[25] Cong. Rec., Aug. 19, 1982 at S10946.

[26] *See, e.g.,* Remarks of Sen. Bradley, Cong. Rec., Oct. 6, 1981, at 23282 (stating that "RKO has stated for the record that, if indeed they remain the owner of the channel, they would have no objection if they were allocated to New Jersey.")

policy reflected in the first sentence of Section 331 by initiating a proceeding to allot a VHF channel to New Jersey. The only reason that it had not done so at the time Section 331 was enacted was because, as discussed above, it was technically infeasible to allocate a VHF channel to the state because allocations to neighboring states precluded doing so. That is why the second sentence of Section 331 was necessary to remove the regulatory disincentive to a licensee whose existing channel allocation precluded service to New Jersey to voluntarily agree to the reallocation of its channel to New Jersey. Thus, the relationship between the first and second sentences of Section 331 explains why the "technical feasibility" condition is in the first sentence but not the second. It was not omitted from the second sentence because Congress wanted to force the Commission to allocate a channel to an unserved state even where doing so would cause interference to existing stations, as PMCM argues. Rather, because the second sentence was intended to provide an incentive for a station to propose the reallocation of its licensed channel to a nearby community that was already in its service area, Congress assumed that technical feasibility would be assured. Thus, there was no need to include a special "technical feasibility" condition in the second sentence.[27]

Accordingly, in light of the purpose, structure and legislative history of Section 331, we interpret the term "reallocation" in the second sentence of Section 331 to mean the shifting of a channel allocation from one community to another community under circumstances where the channel cannot be used simultaneously at both locations due to interference concerns. This meaning of the term "reallocation" is consistent with how the Commission has used that term in other contexts. In decisions prior to 1982, the Commission used this term to refer to situations in which an allocation was to be moved from one community to another, where simultaneous operation in both communities was precluded by interference. This is evident in the 1976 orders pertaining to New Jersey as well as in later orders.[28] In using the term in Section 331, Congress was, presumably, aware of that Commission usage. Similarly, decisions relating to the reallocation of spectrum among services use the term "reallocate" to refer to Commission decisions to shift spectrum from one service to another where simultaneous use of the same spectrum for multiple services would create interference.[29]

A narrow interpretation of the term "reallocation" is also consistent with the Commission's policy disfavoring technical proposals that would result in a loss of service. Such proposals long have been considered to be *prima facie* inconsistent with the public interest, and must be supported by a strong showing of countervailing public interest benefits.[30] Congress was aware of the Commission's policy

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[27] Congress' directive in the first sentence with respect to Commission policy for allocating VHF channels – which includes an explicit mandate to consider technical feasibility – would be rendered superfluous if the second sentence of the statute were interpreted to require the Commission to reallocate a channel despite technical infeasibility. This is yet another reason to prefer our interpretation to PMCM's interpretation.

[28] *See, e.g., Petition to Reallocation of VHF-TV Channel 9 from New York, New York, to a City Within the Grade Contour of WOR-TV*, 84 F.C.C.2d at 288 (1981) (noting that channel 9 was available for reassignment because Commission did not renew WOR-TV's license); *Application of Sarasota-Bradenton Florida Television Co., Inc.*, 70 F.C.C.2d 699, 701 (1979) (explaining that *de facto* reallocation connotes removal of signal from one community and redirection of service to another community).

[29] *See, e.g., Improvements to UHF Television Reception*, Report and Order, 90 F.C.C.2d 1121, 1127 (1982) (regarding reallocation of broadcast frequencies to land mobile users; former users permitted to continue using frequencies subject to interference).

[30] *See West Michigan Telecasters, Inc.*, 22 F.C.C.2d 943 (1970), *recon. denied*, 26 F.C.C.2d 668 (1970), *aff'd*, *West Michigan Telecasters, Inc. v. FCC*, 460 F.2d 883, 889 (D.C. Cir. 1972) (finding that losses in service are *prima facie* inconsistent with the public interest); *Triangle Publications, Inc*., 37 F.C.C. 307, 313 (1964) (finding that "once in operation, a station assumes an obligation to maintain service to its viewing audience and the withdrawal or downgrading of existing service is justifiable only if offsetting facts are shown which establish that the public

when it adopted Section 331; the Commission had previously rejected the Coalition's request that it reallocate the existing channel 7 allotment from New York City to Trenton, New Jersey, with the station's transmitter moved to Freehold, New Jersey, largely because the reallocation would result in disruption and loss of television service to portions of Connecticut and Long Island.[31] Senator Bradley's remarks in 1982 and the 1982 Conference Report further indicate that legislators expected that reallocations would not involve the relocation of transmitters,[32] and thus no loss of existing service. Unlike the reallocation of WOR-TV's channel as contemplated by Congress in 1982, PMCM's proposal would result in loss of service to communities with no countervailing public interest benefits, since continued operation of the same channels in Nevada and Wyoming would not preclude their use in New Jersey and Delaware. Insofar as PMCM's interpretation of the second sentence of Section 331 would accomplish nothing that the Commission could not accomplish through its regular allocations practice, would result in a totally unnecessary loss of current service, and could even result in interference to existing stations at the new location, it makes little sense and appears to be inconsistent with Congressional intent.[33]

Finally, we acknowledge that the policy concerns that were the impetus for passage of Section 331 in 1982 have little or no validity now that all full power television stations have ceased analog operations and broadcast only digital signals.[34] In the 1950's and early 1960's, when the Commission allocated and licensed the remaining available VHF channels to communities in New York and Pennsylvania, effectively by-passing New Jersey and Delaware, VHF channels had substantial and well-known advantages over UHF channels. In its 1952 omnibus allocation order, the Commission observed that "VHF can effectively cover large areas, and VHF has been used wherever possible in larger cities since such cities have broad areas of common interest."[35] In addressing Congress in 1979 regarding the need for a VHF television station in New Jersey, Senator Bradley stated that while it had been suggested that UHF might be adequate to meet the needs of New Jersey,

> I have a prejudice against UHF which is shared by many Americans. As Chairman Ferris [of the Federal Communications Commission] testified, there are physical limitations such that UHF does not have the technical qualities of VHF. He has suggested that UHF could become more compatible with technical development, improved transmitting

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generally will be benefited"); *Television Corporation of Michigan v. FCC*, 294 F.2d 730 (1961) (finding that deprivation of service to any group was undesirable, and can be justified only by offsetting factors); *Hall v. FCC*, 237 F.2d 567 (D.C. Cir. 1956) (finding that a curtailment of service is not in the public interest unless outweighed by other factors).

[31] *Petition for Inquiry and the Need for Adequate Television Service for the State New Jersey*, 58 F.C.C.2d 790, 803 (1976).

[32] *See* Tax Equity and Fiscal Responsibility Act of 1982, H.R. Conf. Rep. No. 97-530 at 338 (1982) ("It is the intention of Congress that any current licensee which exercises the option of seeking the transfer of its license to an unserved State under the terms of this section will move its studio and offices, to and operate for the public benefit of the unserved State."); Remarks of Sen. Bradley, Cong. Rec., Aug. 19, 1982 at S10946 ("Under the the [sic] provisions of my amendment, the reallocation of a license to New Jersey will mean that the licenseholder will move its studios and offices to New Jersey . . . .").

[33] We recognize that PMCM makes a showing that its proposal would not cause interference, but we must nevertheless evaluate whether its interpretation of the statute is the most reasonable one in light of its possible application in other cases as well as this one.

[34] *See* DTV Delay Act, Pub. L. No. 111-4, 123 Stat. 112 (2009).

[35] *Television Assignments*, *Sixth Report and Order*, 41 F.C.C. at 168.

> characteristics, better antennas, and better receivers. . . . But as things now stand, a UHF [for New Jersey] is not an acceptable alternative.[36]

The technical advantages of analog VHF channels that existed at the time Section 331 was adopted, however, no longer exist in the current digital environment. Lower VHF channels 2-6 are not optimal spectrum for digital operations, as they "are subject to a number of technical penalties, including higher ambient noise levels due to leaky power lines, vehicle ignition systems, and other impulse noise sources and interference to and from FM radio service."[37] Since June 12, 2009, when all full power television stations were required to cease analog operations, a number of television stations in urbanized areas have requested the substitution of a UHF channel for their assigned post-transition high VHF channel 7-13, citing reception problems with the VHF channel.[38] Nevertheless, Congress has not yet repealed Section 331. Therefore, consistent with its mandate that the Commission allot at least one VHF channel to each State, if technically feasible, the Bureau today initiates rulemaking proceedings to allot channel 4 to Atlantic City, New Jersey and channel 5 to Seaford, Delaware.

In conclusion, we interpret the statute's requirement that the Commission order the reallocation of a VHF channel upon notification of the licensee of a VHF station that it agrees to the reallocation of its channel to a community in a State with no VHF channels, to apply only where the channel could not be used simultaneously at both locations due to interference that would occur from such dual operations. In view of the foregoing, PMCM TV, LLC's requests that the Commission reallocate channel 2 from Jackson, Wyoming to Wilmington, Delaware, and channel 3 from Ely, Nevada to Middletown Township, New Jersey, and issue PMCM corresponding licenses, ARE HEREBY DENIED.[39]

Sincerely,

William T. Lake
Chief, Media Bureau

cc: Aaron P. Shanis, Esq.

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[36] Statement of Sen. Bill Bradley, *published in* Hearings Before the Subcommittee on Communications of the Committee on Commerce, Science, and Transportation on S. 611 and S. 622, Part 4, 96th Cong., 1st Sess. (June 19, 1979), Committee Print at 2837-40 & 2842-46, *reprinted at* 125 Cong. Rec. 18598-99 (July 13, 1979).

[37] *Sixth Report and Order, In the Matter of Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, MM Docket No. 87-268, 12 FCC Rcd 14588, 14627 (1997). Only about 40 of the 1,753 full power digital television stations licensed in the United States are authorized to operate on a low VHF channel.

[38] *See, e.g., Colorado Springs, Colorado*, DA 09-1758 (released Aug. 6, 2009)(change from channel 10 to channel 49); *Chicago, Illinois*, DA 09-2052 (released Sept. 15, 2009)(change from channel 7 to channel 44); *Boston, Massachusetts*, DA 09-2057 (released Sept. 16, 2009)(change from channel 7 to channel 42); *New Orleans, Louisiana*, DA 09-2095 (released Sept. 23, 2009)(change from channel 8 to channel 29); *Ft. Myers, Florida*, DA 09-2456 (released Nov. 20, 2009)(change from channel 9 to channel 50).

[39] Nave Broadcasting, Inc., the licensee of low power television station WKOB-LP, New York, New York, filed a "Consolidated Informal Objection to Notification" on December 4, 2009. Given our decision to deny PMCM's request that we reallocate the channels for stations KJWY(TV) and KVNV(TV), we need not, and do not, consider the arguments made in Nave's December 4 pleading.