

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

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

REPORT AND ORDER
(Proceeding Terminated)

Adopted: March 15, 2013

Released: March 18, 2013

By the Chief, Media Bureau:

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

2. Section 331(a) provides that:

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

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

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

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

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

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

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

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

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

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

⁶ 47 U.S.C. § 331(a).

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

⁸ Reallocation Request at 3.

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

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

¹¹ 47 U.S.C. § 307(b).

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

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

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

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

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

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

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau