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Re: Requests to Defer Mandatory Carriage of
KVVV(TV), Middletown Township, New Jersey
FCC File No. BPCDT-20130528AJP
Facility ID No. 86537

Dear Counsel:

This is with respect to the June 12, 2014 letter filed on behalf of Cablevision Systems Corporation (“Cablevision”) and the July 11, 2014 letters filed on behalf of Time Warner Cable Inc. (“TWC”) and Comcast Cable Communications, LLC (“Comcast”) (collectively the “MVPDs” and “Deferral Letters”). The MVPDs request that we issue an order allowing them to defer implementing the must-carry request and channel position election of PMCM TV, LLC (“PMCM”) for television station KVVV(TV), digital RF channel 3, Middletown, Township until 90 days from the date of a final decision on the appropriate Program System and Information Protocol (“PSIP”) virtual channel for the station.¹ For the reasons set forth below, we grant the MVPD’s letter requests.

Background and Pleadings. PMCM filed the above-referenced modification application to relocate KVVV(TV) from Ely, Nevada to Middletown Township after its RF channel 3 was allotted to Middletown Township pursuant to a decision by the U.S. Court of Appeals for the District of Columbia

¹ PSIP channels are also commonly referred to as “virtual” or “major” channels and the parties used the terms interchangeably.

Circuit.² Meredith Corporation (“Meredith”), the licensee of WFSB(TV), RF channel 33, virtual channel 3, Hartford, Connecticut, filed an informal objection to the modification application objecting to PMCM’s future operations on virtual channel 3 because WFSB(TV) had been assigned that channel since 2004. Meredith argued that because the two stations’ noise limited contours have significant overlap, both stations cannot operate on the same virtual channel. Meredith further argued that, under the PSIP Standard adopted by the Commission, KVNV(TV) should be assigned virtual channel 33, which is WFSB(TV)’s RF channel. On April 17, 2014, the Video Division granted PMCM’s application and dismissed Meredith’s informal objection as premature, stating that a station’s virtual channel designation is customarily considered after grant of the license modification application in a separate proceeding that solely addresses the virtual channel designation.³ Meredith filed a timely Petition for Reconsideration and Request for Declaratory Ruling on May 22, 2014, again asserting that KVNV(TV) should be assigned virtual channel 33, which PMCM opposes. Briefing on this matter closed on July 11, 2014 and a decision has not yet been issued.⁴

PMCM notified the MVPDs by separate letters dated June 6, 2014 that KVNV(TV) would commence operation as a new television station in the New York, New York DMA during the week of August 4, 2014.⁵ PMCM elected mandatory carriage of the station’s signal⁶ on all cable systems operated by the MVPDs, their subsidiaries, and affiliates serving communities in the New York DMA, and requested carriage on the systems on channel 3. Under the Commission’s rules, KVNV(TV)’s election takes effect 90 days from the date it was made, which is September 4, 2014.⁷ In addition, cable operators are required to notify customers in writing of any changes in programming services or channel positions a minimum of 30 days in advance of such changes if the change is within control of the cable operator.⁸

In its Deferral Letter, Cablevision states that, while WFSB(TV) is in the Hartford-New Haven DMA, as a result of an FCC market modification its local market also includes Fairfield County, Connecticut, which is in the New York DMA.⁹ According to Cablevision, WFSB(TV) is entitled to carriage on virtual channel 3 on Cablevision’s cable systems serving Fairfield County, and repositioning WFSB(TV) to another channel would cause significant disruptions to its channel lineups and require negotiations with the network or broadcast station that currently operates on the channel to which WFSB(TV) would be moved.¹⁰ Comcast also retransmits WFSB(TV) on channel 3 in cable systems serving Fairfield County, as well as three other counties in the New York DMA.¹¹ TWC states that it owns and operates cable systems serving over one million subscribers in the New York DMA, that these systems offer a variety of different channel lineups, and that “not only is Cable Channel 3 already occupied on the overwhelming majority of these line-ups, but in most instances the programming service

² See *PMCM LLC, TV v. FCC*, 701 F.3d 380 (D.C. Cir. 2012); *Reallocation of Channel 3 from Ely, Nevada to Middletown Township, New Jersey*, Report and Order, 28 FCC Rcd 2825 (Vid. Div. 2013).

³ Letter dated April 17, 2014 from Hossein Hashemzadeh, Deputy Chief, Video Division, to PMCM TV, LLC at http://licensing.fcc.gov/cgi-bin/prod/cdbs/forms/prod/getimportletter_exh.cgi?import_letter_id=49395.

⁴ See Email dated July 14, 2014 from Donald J. Evans, Esq. to Barbara A. Kreisman, Chief, Video Division at http://licensing.fcc.gov/cgi-bin/prod/cdbs/forms/prod/getimportletter_exh.cgi?import_letter_id=51026.

⁵ See Cablevision Deferral Letter at Attachment A.

⁶ See 47 C.F.R. § 76.56(b).

⁷ 47 C.F.R. § 76.64(f)(4).

⁸ 47 C.F.R. § 76.1603(b).

⁹ See *Modification of the Television Market of Television Station WFSB*, Memorandum Opinion and Order, 10 FCC Rcd 4939 (CSB 1995).

¹⁰ Cablevision Deferral Letter at 1-2. According to Cablevision, “because of FCC rules and other restrictions on where programming can be located in a channel line-up, repositioning one network or station often can set off a domino effect of other changes that must be negotiated and accommodated, and some negotiations can be significantly lengthy and contentious.” *Id.* at 2.

¹¹ Comcast Deferral Letter at 2.

currently occupying Cable Channel 3 has been carried on that channel for many years.”¹² The MVPDs assert that they should not be required to negotiate new channel positions for the services that would be displaced by KVVN(TV)’s carriage on cable channel 3, which would result in the displacement of other services and resulting customer confusion, while the question of KVVN(TV)’s virtual channel assignment is pending before the Commission. In order to avoid unnecessary business disruption and customer confusion, they request permission to defer implementing PMCM’s must-carry request until 90 days from the date of a final order on KVVN(TV)’s virtual channel position.

On June 26, 2014, PMCM filed an opposition to Cablevision’s deferral request, arguing, *inter alia*, that its right to mandatory carriage of KVVN(TV) on channel 3 “is so well settled as to require no elaboration here.” PMCM further asserts that KVVN(TV) “currently operates on major channel 3 in Ely, NV,” and that “given the unique circumstances of KVVN’s transition to New Jersey” it would thwart the Court’s mandate to change its PSIP channel.¹³ PMCM states, however, that it is “sensitive to the complications posed by the insertion of KVVN’s channel 3 into Cablevision’s channel line-up” and that it would be willing to accommodate a deferral but that it must be brief “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.”¹⁴

In response, Cablevision states that, while it will implement whatever channel position the Commission orders, its “overriding priority is to minimize disruption for consumers [and] it would create unnecessary confusion and disruption for [the MVPDs] to make immediate changes to their line-ups to accommodate KVVN’s request to be placed on channel 3 when KVVN ultimately may be assigned a different virtual channel, in all or part of the New York DMA.” Cablevision also observes (without taking a position on the merits) that, while PMCM claims that the requested deferral is unnecessary because its right to mandatory carriage on Channel 3 is well settled, “Meredith also has asserted a clear right to Channel 3 [and] FCC databases indicate that both stations are assigned to virtual channel 3, and the stations’ local carriage areas overlap in part (in Fairfield County, CT).” Given these “conflicting mandates,” Cablevision reiterates its request that it be allowed to defer implementing the KVVN(TV) must-carry request and channel position election until 90 days after a final decision.¹⁵

Discussion. Section 1.3 of the Commission’s Rules provides that we can waive our rules “for good cause shown.”¹⁶ We agree with the MVPDs that the public interest will be served by waiving the requirement of Section 76.64(f)(4) that PMCM’s June 6, 2014 election of must-carry status take effect within 90 days of its election. Section 73.682(d) requires digital television broadcast television to comply with ATSC A/65C (“PSIP Standard”).¹⁷ The PSIP Standard is meant to “guarantee that the two-part channel number combinations used by a broadcaster will be different from those used by any other broadcaster with an overlapping DTV service area.”¹⁸ It is undisputed that PMCM and Meredith have conflicting channel placement claims on certain cable systems in the New York DMA and that the matter is currently pending before the Bureau. WFSB(TV) is entitled to mandatory carriage on cable channel 3 in areas where PMCM is also asserting mandatory carriage rights, and the local MVPDs do not have the authority to resolve this conflict. Until this conflict is resolved, however, KVVN(TV)’s virtual channel number may be subject to change and MVPDs cannot ascertain on which channel they will be required to definitively carry the station.

¹² TWC Deferral Letter at 1. *See also* Cablevision Deferral Letter at 2 (“Given the channel position at issue, it is highly likely that very popular programming networks will be moved, requiring a lengthier and more comprehensive consumer education effort than the usual 30 day notice period . . .”)

¹³ Letter dated June 26, 2014 from Donald J. Evans, Esq. to Marlene H. Dortch, Secretary at 1-2.

¹⁴ *Id.* at 2.

¹⁵ Letter dated July 14, 2014 from Tara M. Corvo, Esq. to Marlene H. Dortch, Secretary at 1-2.

¹⁶ 47 C.F.R. § 1.3.

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

¹⁸ PSIP Standard, Annex B at 1.8.

Under the Commission's rules, cable operators must comply with channel positioning requirements absent a compelling technical reason for not being able to accommodate those requests.¹⁹ In this case, the MVPDs' cable systems are already carrying WFSB(TV) or another station at the channel 3 position and it is not technically feasible to position a second station there as well. Thus, MVPDs cannot carry KVNV(TV) on channel 3 without repositioning WFSB(TV) and possibly other programming services. We acknowledge that delaying the effectiveness of PMCM's must-carry request until after our decision on KVNV(TV)'s virtual channel number may result in PMCM not obtaining cable carriage for its station by the Fall. Nevertheless, the technical impediments and the consumer confusion that will result if MVPDs commence carriage of KVNV(TV) on channel 3 as its virtual channel and we then assign the station a different virtual channel shortly thereafter present serious countervailing considerations. Under these circumstances, we conclude that a waiver of Section 76.64(f)(4) is appropriate, to allow MVPD's to defer carriage of KVNV(TV) until 90 days from the date there is a final decision on the station's virtual channel. The Bureau anticipates that it will be able to issue its decision without lengthy delay.

Conclusion. Accordingly, we HEREBY WAIVE Section 76.64(f)(4) of the Rules to allow Cablevision Systems Corporation, Time Warner Cable Inc. and Comcast Cable Communications, LLC to defer implementing the must-carry request and channel position election of PMCM TV, LLC for television station KVNV(TV), Middletown Township, New Jersey until 90 days from the date of a final decision on KVNV(TV)'s virtual channel.

Sincerely,

William T. Lake, Chief
Media Bureau

cc: Michael D. Basile, Esq.
(Counsel for Meredith Corporation)

¹⁹ See *Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, MM Docket No. 92-259, Report and Order, 8 FCC Rcd 2965, 2988, para. 91 (1993).