

Statement Concerning Exemption from Freeze

The instant application is filed pursuant to the Order (“Channel Change Order”) of the Media Bureau in MB Docket No. 13-72.¹ The Channel Change Order, released in response to and in implementation of, the mandate of the D.C. Circuit Court of Appeals, *PMCM TV, LLC v. FCC*, 701 F. 3d 380 (2012), directed PMCM to submit this application – which the Channel Change Order characterized as a “minor change” application – no later than May 28, 2013 (as calculated from the date of publication in the Federal Register). PMCM’s application is timely filed in compliance with the Channel Change Order.

On April 5, 2013, the Media Bureau issued an Order (“Freeze Order”) freezing certain modification applications by full power TV stations.² The Freeze Order is intended to fix a stable database of full power and Class A stations for purposes of analysis in the Incentive Auction proceeding. The Commission recognized, however, that certain modifications that were in the works, such as Class A digital transition applications), would not be subject to the freeze since the Commission fully anticipates, and has anticipated, that these modifications would be filed. Freeze Order at p.2.

Moreover, the Freeze Order does not seem to apply by its terms to stations authorized under new allocations or reallocations. Rather, the Order is directed at “changes to existing television service areas that would increase a [station’s] protected contour in one or more directions beyond the area resulting from the station’s present parameters...” This is not the kind of change that is occasioned when a station files a Form 301 in response to an authorized channel reallocation, for in the latter situation the entire station is in a different service area and there is no “increase” in contours in any direction. The contours are entirely different.

PMCM therefore understands that its instant application is *not* precluded by or otherwise subject to the Freeze Order. The particular modification proposed by PMCM falls into that small category of pre-existing circumstances which the Commission knew were going to be effectuated at the time the Freeze Order was issued. The Freeze Order was intended to prevent *new* modification proposals from being advanced after April 5 that might disrupt Incentive Auction planning. The Commission has known that PMCM’s modification was in the works since: June, 2009, when PMCM first filed its notification pursuant to Section 331; December 14, 2012, when the Court ordered the Commission to effectuate PMCM’s reallocation; and March, 2013, when the Media Bureau ordered PMCM to file its application. In view of these

¹ *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*, DA 13-448, Rel. March 18, 2013.

² *Media Bureau Announces Limitations on the Filing and Processing of Full Power and Class A Television Station Modifications Applications, Effective Immediately, and Reminds Stations of Spectrum Act Preservation Mandate*. DA 13-618, rel. April 5, 2013.

circumstances, PMCM believes that its application was plainly anticipated by the Commission and, thus, exempt from the Freeze Order .

Moreover, the situation of PMCM's application is in any event *sui generis*. The modification of PMCM's license is occasioned by a rare application of Section 331 of the Act which, as the Court ruled, obligates the Commission to reallocate the channel and modify the subject license to a state which previously lacked a commercial VHF allocation. As the Court held, Section 331 reflects Congress's clear mandate that such allocations and modifications are to be effectuated under the circumstances presented here, notwithstanding any other provision of law. Imposition of a freeze barring PMCM's application would be inconsistent with the Court's mandate by preventing the very modification that the Court and Congress ordered. The mandate of Section 331, by its terms, supersedes all other provisions of the United States Code and all regulations of the FCC. *A fortiori*, it supersedes the Freeze Order .

Thus, PMCM understands that its application is exempt from the Freeze Order . Nevertheless, in the event that the Commission may deem the instant application subject to the Freeze Order , PMCM hereby respectfully requests that the Freeze Order be waived in view of the facts and circumstances discussed above.