

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Application of Ventana Television, Inc.)	LMS File No. 0000048498
)	W41DO-D
)	
Application of Venture Technologies Group, LLC)	LMS File No. 0000054805
)	W32EI-D
)	

**Accepted / Filed
AUG - 1 2018**

OPPOSITION TO PETITION TO DENY Federal Communications Commission
Office of the Secretary

PMCM challenges Ventana Television, Inc.'s ("Ventana's") displacement application for its LPTV station used to provide television service to viewers in New York City.¹ PMCM's objections have nothing to do with the substance of the LPTV application before the Commission, and everything to do with FCC decisions PMCM fought and lost in 2015 and again in 2017. PMCM's petition deserves no consideration and warrants immediate dismissal.²

The FCC recently created a special filing window for displaced LPTV stations following the close of the 600 MHz incentive auction to help mitigate the loss of LPTV service resulting

¹ See Petition to Deny of PMCM TV, LLC, LMS File Nos. 0000048498 (W41DO-D) & 0000054805 (W32EI-D) (filed July 2, 2018) ("Petition").

² Ventana submits this pleading as a formal opposition to the Petition but recognizes that the deadline for a formal opposition has likely passed. See 47 C.F.R. § 73.3584(c). Ventana requests a waiver of the opposition deadline for good cause. *Id.* § 1.3. PMCM did not file its Petition to Deny in the FCC's Licensing and Management System or Consolidated Database System, delaying Ventana's awareness of the filing. Ventana acted diligently to prepare a fulsome response once it received the Petition and filed its response as quickly as possible. Moreover, as set forth in greater detail below, PMCM's Petition is without merit. Ventana submits this Opposition as an informal objection in the alternative, should the FCC deny Ventana's waiver request. *Id.* § 73.3587.

from repacking full power and Class A stations in the band.³ Ventana's LPTV station qualified to file in the SDW and PMCM does not challenge the station's eligibility.⁴

PMCM acquired KVNV(TV) in Ely, Nevada in November 2008 and subsequently moved the station 2,500 miles to New Jersey where it renamed the station WJLP.⁵ WJLP operated on channel 3, but was assigned virtual channel 33 because WJLP's noise-limited contour significantly overlapped an existing full power station in the market that was already assigned to virtual channel three.⁶

The Commission rejected PMCM's efforts to move off-of virtual channel 33 first in 2015 and again in 2017.⁷ According to the Commission:

The problems with digital operations on low VHF channels in the mid-Atlantic region were well known when PMCM decided to move its operations from Nevada to New Jersey. If PMCM's viewers are experiencing technical difficulties based on PMCM's decision to operate on a low-band VHF channel,

³ See *Incentive Auction Task Force and Media Bureau Announce Post-Incentive Auction Special Displacement Window April 10, 2018, Through May 15, 2018, and Make Location and Channel Data Available*, Public Notice, 33 FCC Rcd 1234 (MB Feb. 9, 2018) ("*SDW Public Notice*"). The FCC opened its Special Displacement Window ("*SDW*") for displaced LPTVs on April 10, 2018. *Id.*

⁴ See *id.* ¶ 5 (noting that LPTVs must be both displaced and "operational" (*i.e.*, have licensed their authorized construction permit or have an application for a license to cover on file with the FCC) as of April 13, 2017 to be eligible to file in the SDW). The FCC licensed W41DO-D to operate on channel 41 in 2011. See W41DO-D, License to Cover for LPTV Station Application, File No. BLDL-20110224ACL (granted Mar. 8, 2011). T-Mobile displaced the station as a result of its commencing mobile broadband operations in the New York City market.

⁵ See *Request for Declaratory Ruling by Meredith Corp. and "Alternative PSIP Proposal" by PMCM TV, LLC for WJLP (Formerly KVNV(TV)), Middletown Township, New Jersey*, Memorandum Opinion and Order, 32 FCC Rcd 7229 ¶ 6 (2017) ("*WJLP Virtual Channel Order*").

⁶ *Id.* ¶¶ 9, n.28, 10. FCC rules dictated that WJLP, as the newcomer station, would receive the existing full power station's DTV RF channel (channel 33) as its virtual channel. *Id.*

⁷ See generally *Request for Declaratory Ruling by Meredith Corp. and "Alternative PSIP Proposal" by PMCM TV, LLC for WJLP (Formerly KVNV(TV)), Middletown Township, New Jersey*, Declaratory Ruling, 30 FCC Rcd 6078 (MB 2015); *WJLP Virtual Channel Order*.

the appropriate remedy is for PMCM to educate its consumers regarding antennas.⁸

The FCC also reaffirmed that “in making channel reassignments as part of the incentive auction, the Commission was only required to consider a station’s RF channel, which is the channel used to establish a station’s coverage area and population served.”⁹ Stated another way, WJLP was not guaranteed an interference-free virtual channel by virtue of the incentive auction repacking process.

PMCM’s dissatisfaction with WJLP’s assignment to virtual channel 33 persists and now manifests itself in the Petition against over-the-air LPTV operations on channel 33. PMCM’s sole objection to Ventana’s displacement application is the alleged “confusion or prevention of the reception of both WJLP’s signal and the signal of whichever of the two applications . . . is ultimately granted.”¹⁰ PMCM claims consumers do not know how to tune their television sets from actual station channels to virtual ones. In this sense, PMCM’s concerns relate to the manufacturing of Program and System Information Protocol-, or PSIP-, compliant television sets and broader consumer education efforts on digital station tuning requirements—not with Ventana’s LPTV displacement application.

First, denying Ventana’s displacement application does not address PMCM’s alleged tuning issue. The FCC’s *WJLP Virtual Channel Order* explained the repacking process does not protect *virtual* channels. Ventana has not requested authorization to operate W41DO-D on

⁸ *WJLP Virtual Channel Order* ¶ 43.

⁹ *Id.* ¶ 44 (citations omitted). Similarly, the FCC noted that its post-auction band optimization procedures did not consider stations’ virtual channels when making channel assignments. *Id.* ¶ 45.

¹⁰ Petition at 1.

WJLP's RF channel (channel 3). Ventana's displacement application is therefore wholly unrelated to PMCM's virtual channel assignment on channel 33.

Second, assuming the FCC decides to consider the merits of PMCM's arguments in the context of Ventana's displacement application, the FCC has already determined that most receivers, once properly tuned, can receive WJLP. The FCC explained in the *WJLP Virtual Channel Order* that "in most instances WJLP . . . would be correctly displayed when [allegedly noncompliant] receivers are tuned to 33.1" ¹¹ When CBS studied the same receivers PMCM complained of it found that all of the receiver models displayed WJLP when 33.1 was entered. ¹² Better consumer education on receiver tuning would alleviate the issues PMCM claims exist. ¹³

Third, grant of PMCM petition would upend the FCC's incentive auction policies. The FCC has acknowledged "the important services provided by, and the continued need for, LPTV[s]" as well as "the potential for a significant number of LPTV . . . stations to be displaced as a result of the auction and repacking process." ¹⁴ The FCC created the SDW to help preserve LPTV service in the repacked 600 MHz broadcast television band. Granting the Petition would "reserve" *two* RF channels for PMCM in the largest DMA in the country rather than the one channel to which PMCM is entitled. PMCM's requested relief would violate basic principles of transparency, accountability and fair notice and consume valuable spectrum resources for "virtual" signals that do not actually use the limited radiofrequency spectrum available for free, over-the-air television broadcasts to American consumers.

¹¹ *WJLP Virtual Channel Order* ¶ 20.

¹² *Id.* ¶ 20, n.68.

¹³ *See id.* (recounting PMCM's aversion to engaging in consumer education efforts).

¹⁴ *See Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567 ¶ 657 (2014).

Ventana Television, Inc. respectfully requests that the FCC reject PMCM's Petition to Deny.

Respectfully submitted,

By: /s/ C. Sean Spivey

C. Sean Spivey
Senior Associate
HOGAN LOVELLS US LLP
555 Thirteenth Street NW
Washington, DC 20004
(202) 637-3280

Counsel to Ventana Television, Inc.

August 1, 2018

CERTIFICATE OF SERVICE

I, C. Sean Spivey, certify that on August 1, 2018, I caused the foregoing Opposition to Petition to Deny to be filed with the FCC's Office of the Secretary and provided a courtesy copy *via* e-mail to Hossein Hashemzadeh, Deputy Division Chief, Video Division, Media Bureau (Hossein.Hashemzadeh@fcc.gov). Furthermore, I sent a true and correct copy of the same *via* U.S. Mail, first class postage prepaid, to the following:

Donald J. Evans
Fletcher Heald & Hildreth, P.L.C.
1300 North 17th Street, 11th Floor
Arlington, Virginia 22209

Counsel for PMCM TV, LLC

Joan Stewart
Wiley Rein LLP
1776 K Street NW
Washington, DC 20006

*Counsel for Venture Technologies Group,
LLC*

/s/ C. Sean Spivey
C. Sean Spivey