



**Federal Communications Commission
Washington, D.C. 20554**

June 12, 2019

Connecticut Public Broadcasting, Inc.
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PMCM TV, LLC
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Managing Director
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Re: WEDW, Stamford, Connecticut
Facility ID No. 13594
LMS File No. 0000036047

Dear Licensees:

This is with respect to the above-referenced application filed by Connecticut Public Broadcasting, Inc. (CPBI), licensee of noncommercial educational television station WEDW, Stamford, Connecticut.¹ WEDW is currently operating on RF channel *49 and was reassigned to channel *21 during the incentive auction repacking process.² CPBI proposes to operate with a two-site Distributed Transmission System (DTS) facility. PMCM TV, LLC (PMCM), the licensee of WJLP, RF channel 3, Middletown Township, New Jersey, filed an informal objection. PMCM states that because WEDW is channel sharing with a commercial station, WZME, Bridgeport, Connecticut, that is also in the New York, New York Designated

¹ The Video Division recently granted CPBI's rulemaking petition requesting that its community of license be changed from Bridgeport to Stamford, Connecticut. *Amendment of Section 73.622(i) Post-Transition Table of DTV Allotments (Bridgeport and Stamford, Connecticut)*, Report and Order, DA 19-264 (Apr. 8, 2019 Vid. Div.), *appl. for rev. pending*. On June 5, 2019, CPBI filed an application to modify its license to reflect the new community of license (LMS File No. 00000074518) and that application was granted on June 7, 2019.

² See *Incentive Auction Closing and Channel Reassignment Public Notice: The Broadcast Television Incentive Auction Closes; Reverse Auction and Forward Auction Results Announced; Final Television Band Channel Assignments Announced; Post-Auction Deadlines Announced*, GN Docket No. 12-268, Public Notice, 32 FCC Rcd 2786 (2017) (*Closing and Channel Reassignment Public Notice*). CPBI's application was filed on December 6, 2017, during the period when the Media Bureau temporarily lifted the April 2013 freeze on the filing of applications that proposed to expand the contour of full power television stations. See *Media Bureau Temporarily Lifts the Freeze on the Filing of Minor Modification Applications That Expand the Contour of Full Power and Class A Television Stations from November 28 Through December 7, 2017*, Public Notice, 32 FCC Rcd 9328 (MB 2017).

Market Area (DMA), PMCM will likely be harmed economically by grant of the DTS proposal.³ For the reasons set forth below, we deny the informal objection and grant CPBI's application.

Background. DTS uses multiple synchronized transmitters spread around a station's service area, rather than the single transmitter traditionally used by television stations, and each DTS transmitter broadcasts the station's DTV signal on the same channel.⁴ The Commission adopted rules for the use of DTS technology in November 2008⁵ in order to give broadcasters that were changing channels or transmitting locations for their digital service the option to use DTS technology to continue to provide over-the-air service to current analog viewers, as well as reach potential viewers within a station's contour that had historically been unable to receive a good signal due to terrain or interference.⁶ In addition, the Commission's rules require that each DTS transmitter be located either within the station's Table of Distances area⁷ or the station's authorized service area (noise limited contour).⁸ The *DTS R&O* explained in 2008 that generally, a station's DTS reference point, which is used to calculate the maximum service area that can be obtained by DTV stations under the rules using the Table of Distances, would be determined using a station's final allotment in the Post-Transition Table of DTV Allotments.⁹ As the Commission explained in the *DTS R&O*, "[g]enerally, a station would use its current reference point based on its Appendix B facility or the Order granting it a new channel, as appropriate."¹⁰ The Commission noted, however, that "upon the appropriate public interest showing, a station may request a change in its reference point, just as stations have done historically, providing certain criteria are met."¹¹

The Commission also stated that "[a]s an alternative to the Table of Distances Approach for determining the hypothetically maximized service area, full-power stations may use the 'largest station' provision in section 73.622(f)(5) of the rules."¹² This rule, which was meant to equalize coverage between VHF and UHF stations, permits a station to exceed the permitted ERP and antenna HAAT in order to provide the same geographic coverage area as the largest station within their market.¹³ The Commission concluded that "DTS stations may obtain the same coverage under the rule as would a single-transmitter station, provided the DTS service would not result in new interference."¹⁴

As noted above, WEDW was reassigned to channel *21 and initially filed for that channel at its current site outside of Bridgeport (the Trumbull Tower).¹⁵ During the second filing window for

³ We also have before us CPBI's response, PMCM's reply, PMCM's supplement to its informal objection, and CPBI's response to the supplement.

⁴ See *Digital Television Distributed Transmission System Technologies*, MB Docket No. 05-312, Report and Order, 23 FCC Rcd 16731, 16734, para. 4 (2008) (*DTS R&O*).

⁵ The Commission obtained approval from the Office of Management and Budget for information collection requirements on December 5, 2008, and the modified construction permit forms were not available for filing on February 27, 2009. See *DTS Rules Now in Effect; Commission Ready to Accept Applications by DTV Stations to Use Distributed Transmission System Technologies*, Public Notice, 24 FCC Rcd 2853 (MB 2009).

⁶ *DTS R&O*, at 16732, para. 1; see also 16734, para. 6.

⁷ The Table of Distances defines the hypothetical maximum service area that can be reached by use of a single transmitter under the rules. *Id.* at 16746-47, para. 26.

⁸ *Id.* at 16750, para. 32.

⁹ *Id.* at 16748-49, para. 29.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 16751-52, para. 35.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ LMS File No. 00000025204, granted June 29, 2017.

reassigned stations to file applications for alternate channels and expanded facilities,¹⁶ CPBI filed an application for a construction permit to move its channel *21 facility to an existing tower located near Stamford, Connecticut (the Stamford Tower), located southwest of the current Bridgeport site.¹⁷ That application was granted on December 1, 2017 and the grant is final. On December 6, 2017, CPBI filed the above-referenced DTS application, which proposed the Stamford Tower as WEDW's DTS reference point, the Trumbull Tower as DTS Site 1 and the Empire State Building as DTS Site 2. CPBI also explained that it was using the “largest station” in the market to determine the area within which its DTS facilities noise-limited contours must be contained and that in the New York DMA, the largest station in the DMA is WABC-TV, RF channel 7, New York, New York. According to CPBI, WABC-TV’s service area of 43,775 square kilometers translates to a DTS arc of 118.0 kilometers, and CPBI provided maps showing that both proposed DTS Site’s service contours overlap with each other and encompass the coverage contour of the construction permit at the Stamford Tower. In addition, both Sites are located within the 118-kilometer arc and neither’s noise-limited contour extends beyond that arc.

PMCM argues first that the DTS application is defective because Section 73.626(c)(2) defines a station’s reference point as that established in the FCC Order that created or made final modifications to the Post-Transition Table of Allotments in Section 73.622(i) and thus, that WEDW’s reference point is the Trumbull Tower near Bridgeport and not the Stamford construction permit site specified in the DTS application. According to PMCM, “[m]erely applying to modify one’s transmitter site does not satisfy the high hurdle necessary to change a station’s reference point, a significant modification akin to changing one’s community of license,” and that if CPBI “has no intention of relocating to the site of its current CP in Stamford, any claim to a new reference point centered on that site must be rejected.” In addition, PMCM argues that while a DTS system’s coverage area can also be calculated using the station’s Table of Distances area to determine whether each DTS system’s transmitter coverage would be contained with the station’s service area, and that its distance from its reference point may be up to 118 kilometers from the reference point using the “largest station” rule, CPBI incorrectly calculated its authorized service area from the Stamford site. According to PMCM, using the Trumbull Tower as the reference point would not permit the proposed service from the Empire State Building because that site would not be encompassed within the appropriately calculated service area.

Next, PMCM argues that station WSAH, the predecessor to WZME, applied to relocate its transmitter site in 2008 from a location near Bridgeport to the Empire State Building, an “application eerily similar to the present one,” and that the Video Division correctly dismissed that application because it result in a loss of service to approximately 2.2 million people who currently received an over-the-air signal from WSAH.¹⁸ PMCM alleges that just as with the 2008 application there will be a significant diminution in coverage to people in Connecticut if CPBI “is credited with its putative proposal to relocate the transmitter site to Stamford . . .”

In its response, CPBI asserts that its DTS application complies with the Commission’s policies for the post-incentive auction transition and for distributed transmission systems and should be granted. CPBI argues first, that its application specifies a proper reference point since a station may propose either

¹⁶ See *Incentive Auction Task Force and Media Bureau Announce the Opening of the Second Filing Window for Eligible Full Power and Class A Television Stations – October 3 Through November 2, 2017*, Public Notice, MB Docket No. 16-306, 32 FCC Rcd 6989 (IATF/MB 2017).

¹⁷ LMS File No. 00000034869, granted Dec. 1, 2017.

¹⁸ File No. BPCDT-20080620ALT; Letter of Barbara A. Kreisman to MTB Bridgeport-NY Licensee, LLC, dated Nov. 9, 2009, available at http://licensing.fcc.gov/cgi-bin/prod/cdbs/forms/prod/getimportletter_exh.cgi?import_letter_id=14711

(1) the reference point identified in the Table of Allotments or an order granting the station a new channel or (2) another reference point that is in the public interest. Because in the incentive auction context, the Commission followed a minor modification procedure instead of a codified Table of Allotments,¹⁹ CPBI asserts that a station's construction permit for a new facility at a new location is the functional equivalent of an order granting a new channel and that there is no public interest rationale for delaying the benefits of the DTS application and forcing CPBI to first build out the Stamford facility only then to convert to a DTS facility. Alternatively, CPBI argues that if the Commission determines that the Stamford permit is not automatically the appropriate reference point, it should nevertheless find that moving WEDW's reference point to the Stamford Tower is in the public interest. According to CPBI, although relocating WEDW's facility to Stamford results in a more efficient distribution of CPBI's network, which already serves the areas north and east of Bridgeport through its simulcast on commonly-owned WEDH(TV), it would result in a loss of service of WZME, and the DTS facility would provide continuing service to all of WZME's existing viewers. In addition, the change in reference point will allow WEDW and WZME to achieve significant service gains, and by co-locating one of WEDW's transmitters with WDVB-CD, Edison, New Jersey on the Empire State Building, adjacent channel interference to WEDW would be eliminated.²⁰

Moreover, CPBI states that the DTS facility will allow WEDW and WZME to better serve viewers who receive the strongest over-the-air signal from stations transmitting from New York City and are more likely to point their antenna towards Manhattan and away from the Trumbull and Stamford towers. According to CPBI, the DTS application resolves this problem by positioning one of WEDW's proposed transmitters on the Empire State Building. Finally, CPBI asserts that its application is fully compliant with all of the criteria specified in Section 73.626(f) of the Commission's rules, which are (1) the combined coverage from all of the DTS transmitters covers all of the authorized service area; (2) each DTS transmitter's coverage is contained within either the DTV station's Table of Distances area or its authorized service area; (3) each DTS transmitter's coverage is contiguous with at least one other DTS transmitter's coverage; and (4) the coverage from one or more DTS transmitters is shown to provide principal community coverage as required by Section 73.625(a) of the Commission's rules.

In its reply, PMCM reiterates that WEDW's reference point remains at its currently licensed site and suggests that a station's reference point can only be changed by a rulemaking proceeding to change a community of license allotment. PMCM also reargues that the construction permit to relocate WEDW to the Stamford Tower must be disregarded in considering any DTS proposal from CPBI because CPBI had no intent to construct that facility and operate it.

On September 26, 2018, PMCM filed a supplement arguing that the DTS application should also be dismissed because when WEDW proposed to match the service area of the largest station in the

¹⁹ *In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, GN Docket 12-268, 29 FCC Rcd 6567, 6789-90, para. 544 (2014). Once the Commission completes the repacking and channel substitution process, the Media Bureau will resume using the current rulemaking process to make new channel allotments and intends to initiate a proceeding to amend Section 73.622 of the rules to reflect all new full power channel assignments in a revised Table of Allotments. *Id.* at n.1545.

²⁰ WDVB-CD was repacked from channel 23 to channel 22. CPBI explains that the same day it applied for the Stamford permit on channel *21 to improve CPBI service to western Connecticut, the licensee of WDVB-CD filed a maximization application, which caused interference to WEDW's proposed facility, especially in the underserved area to which WEDW was seeking to expand. According to CPBI, when it determined the DTS application with a transmitter site co-located with WDVB-CD on the Empire State Building would eliminate the interference, LMS would not permit it to convert its current licensed facility to DTS. Accordingly, it filed an application to convert its Stamford construction permit to DTS.

market, it referenced the facilities authorized to WABC-TV in a construction permit that expired on March 15, 2018.²¹ PMCM further alleges that “[a] mere construction permit cannot serve as the basis for a Section 73.622(f)(5) match application because there is no assurance that the facilities authorized in the construction permit will ever be constructed or actually provide ‘coverage.’” It also asserts that a number of other stations in the New York DMA have recently sought to increase power and antenna heights to match the WABC-TV facilities “but that they all appear to have correctly referenced the *existing* operating facilities of WABC[-TV] as the basis for their proposal match.”

In response, CPBI asserts that PMCM’s argument is contrary to established precedent and sound public policy. CPBI points out that during the DTV transition the Media Bureau routinely approved applications bases on the geographic area covered by a construction permit.²² CPBI also asserts that it is nonsensical that an application that complied with Section 73.622(f)(5) at the time it was filed could be non-compliant simply because it remained pending for several months after it was filed, and that to avoid arbitrary results, the Commission evaluates applications based on the circumstances at the time the application was filed.²³

Discussion. We agree with CPBI that we may use the Stamford construction permit site as WEDW’s reference point in evaluating its DTS application. As the Commission specifically noted in the *DTS R&O*, “upon the appropriate public interest showing, a station may request a change in its reference point, just as stations have done historically, providing certain criteria are met.”²⁴ The Video Division has routinely permitted stations to change their reference point through the filing and grant of a minor modification application. We also agree that changing WEDW’s reference point serves the public interest because it permits WEDW to place a transmitter on the Empire State Building, which eliminates interference to WEDW from WDVB-CD, preserves service to all of WZME’s existing viewers while extending CPBI service into Western Connecticut, and makes service available to viewers in Connecticut that point their antennas at New York City, where most of the market’s other television stations’ transmission facilities are located.

With respect to PMCM’s argument that the 2008 application to relocate WSAH’s transmitter to the Empire State Building, which was dismissed by the Video Division because of significant loss of service, is similar to the above-referenced DTS application, we disagree. When the licensee of WSAH filed its minor modification application, the DTS option was not available to it. Because DTS permits CPBI to operate multiple synchronized transmitters, there will be no service loss since DTS Site 1, located outside Bridgeport at WEDW’s currently licensed transmission site, will continue to place a signal over its existing geographic service area. We also agree with CPBI that its application is fully compliant with Section 73.626(f) of the Commission’s rules.

Finally, PMCM is incorrect that CPBI was not permitted to use the facilities specified in a construction permit authorized to WABC-TV, which has since expired. CPBI correctly points out that the Media Bureau has routinely granted applications seeking to match the largest station in the market based on construction permits, and that the Commission evaluates applications based on whether they complied

²¹ File No. BMPCDT-20080620AMV. WABC-TV’s facilities were on one of the World Trade Center buildings and were accordingly destroyed on September 11, 2001. WABC-TV and other stations whose facilities were destroyed filed applications in 2008 proposing to move to One World Trade Center, which had not yet been constructed.

²² CPBI Response to Supplement to Informal Objection at page 2 & n.3.

²³ Id. at page 3 & n.4.

²⁴ *DTS R&O*, 23 FCC Rcd at 16748-49, para. 29.

with the rules at the time they were filed.²⁵ Even if PMCM were correct that CPBI could not seek to match the area resulting from the expired construction permit, which it is not, we note that WJLP is now the largest station in the market.²⁶ According to the staff's analysis, WJLP's authorized service area of 42,605.5 square kilometers translates to a DTS arc of 116.4 kilometers. Under this distance, both Sites are located within the 116.4 kilometer arc and while the Empire State Building contour extends beyond that arc in two areas, those extensions are minimal, which is allowed.²⁷

Ordering Clause. In view of the foregoing, the Informal Objection filed by PMCM TV, LLC and related pleadings ARE HEREBY DENIED and the above-referenced minor modification application filed by Connecticut Public Broadcasting, Inc for WEDW, Stamford, Connecticut IS HEREBY GRANTED.

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

²⁵ While PMCM asserts that other stations in the New York DMA used the "correct existing operating facilities of WABC-TV" in seeking to match its service, WCBS also specified the WABC-TV construction permit facility in its application to match the largest station in the market. See LMS File No. 00000033867, granted January 23, 2018. In addition, WABC-TV's post-incentive auction baseline (File No. DTVBL-1328) is based on the facilities specified in the expired construction permit to move to One World Trade and defines WABC-TV's authorized and protected contour.

²⁶ LMS File No. 000035766, granted June 24, 2018, expiration May 31, 2021.

²⁷ DTS R&O, 23 FCC Rcd at 16750-51, para. 33.