Federal Communications Commission
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Re: W32EI-D, Port Jervis, New York
File No. 00000054805
Facility ID No. 130470

W41DO-D, New York, New York
File No. 0000048498
Facility ID No. 60554

Dear Counsel:

This is with respect to the above-referenced displacement applications filed by Venture Technologies Group, LLC (Venture), licensee of low power television station W32EI-D, Port Jervis, New York, and Ventana Television, Inc. (Ventana), licensee of low power television station W41DO-D, New York, New York. Both stations were displaced by the incentive auction and repacking process and filed applications during the Special Displacement Window that was available for such stations.[1] PMCM TV, LLC (PMCM), the licensee of full power television station WJLP, RF channel 3 and virtual channel 33,

[1] *See Incentive Auction Task Force and Media Bureau Announce Post Incentive Auction Displacement Window April 10, 2018, Through May 15, 2018, and Make Location and Channel Data Available*, Public Notice, 32 FCC Rcd 1234 (IATF/MB 2018). Both stations are currently silent pursuant to silent STA authorizations. *See* File Nos. 00000068426 and 00000063407.

Middletown Township, New Jersey, filed a petition to deny the displacement applications.[2] For the reasons set forth below, we deny the petition to deny.

Background. PMCM acquired television station KVNV(TV), analog RF channel 3, Ely, Nevada, in 2008, and in June 2009 filed a notification that it agreed to the reallocation of digital RF channel 3 from Ely to Middletown Township, New Jersey pursuant to Section 331(a) of the Communications Act, as amended.[3] The Commission denied the Ely notification, the United States Court of Appeals for the District of Columbia reversed the denial, and the Video Division reallocated digital RF channel 3 from Ely to Middletown Township in 2013.[4] PMCM constructed an RF channel 3 facility atop 4 Times Square and began using channel 3 as its virtual (or major) channel – the channel number viewers see when they view a digital television station over-the-air.[5] Two stations that had noise limited contour overlap with KVNV(TV) (later WJLP) and also used virtual channel 3, as well as another television station and several cable systems, objected to WJLP's use of virtual channel 3. After extensive litigation, in June 2015 the Media Bureau ruled that ATSC A/65C, Annex B, which set forth rules and priorities for determining a station's virtual channel number, required that WJLP use virtual channel 33,[6] and the Commission affirmed in September 2017.[7] WJLP has been using virtual channel 33 since March 2015.[8]

WCBS-TV, New York, New York, operates on RF channel 33 using virtual channel 2. PMCM asserted in its Application for Review of the Bureau's *Declaratory Ruling* that it should not be required to use virtual channel 33 because some television receivers in the viewing area did not display WJLP when directed to channel 33 by a remote control device, but instead displayed WCBS-TV on RF channel 33.[9] The Commission found this allegation regarding television receiver error irrelevant to the issue before it – whether ATSC A/65C, Annex B requires the assignment of virtual channel 33 to WJLP – and that this situation was hardly unique to WJLP.[10] In addition, the Commission concluded that the situation was easily resolvable because in most instances, "WJLP and WCBS-TV would be correctly displayed when these receivers are tuned to 33.1 and 2.1."[11] According to the Commission, this situation "would result in

[2] PMCM Petition to Deny filed July 2, 2018. We also have before us separate oppositions filed by Venture and Ventana, and PMCM's reply to Venture's opposition. Ventana did not file its opposition until August 1, 2018, after the 15 day deadline for filing an opposition. *See* 47 CFR § 73.3584(c). While Ventana asks for a waiver of the deadline, it does not provide any information in support of its request. While Ventana claims that PMCM did not file its petition in LMS, that is not the case and the certificate of service attached to the petition indicates that the Legal Representative listed in applications for station W41DO-O, including the above-referenced displacement application, was served. Accordingly, Ventana's opposition will be dismissed.

[3] *See Request for Declaratory Ruling by Meredith Corporation and "Alternative PSIP Proposal" By PMCM TV, LLC for WJLP (Formerly KVNV(TV)), Middletown Township, New Jersey*, 32 FCC Rcd 7229, 7231-32, para. 6, 2017) (*PSIP Order*), *aff'd*, *PMCM TV, LLC v. FCC and USA Dept. of Justice Antitrust Div. and CBS Corp., et al.*, United States Court of Appeals for the District of Columbia Circuit, Case No. 17-1209 (filed June 20, 2018), unpublished opinion; 47 U.S.C. § 331(a).

[4] *PSIP Order*, 32 FCC Rcd at 7232, para. 7.

[5] *Id.* at 7232, para. 8; *see also id.* at 7230, para 2.

[6] *KVNV(TV Request for Declaratory Ruling by Meredith Corporation and "Alternative PSIP Proposal" by PMCM TV, LLC for WJLP (Formerly (KVNV(TV)), Middletown Township, New Jersey*, MB Docket No. 14-150, Declaratory Ruling, 30 FCC Rcd 6078 (MB 2015) (*Declaratory Ruling*); 47 CFR § 73.682(d).

[7] *PSIP Order*, *passim*.

[8] *Id.* at 7232-33, para. 9.

[9] *PSIP Order*, 32 FCC Rcd at 7238, para. 20.

[10] *Id.*

[11] *Id.* ATSC A/65C introduced a two-part number navigational concept for digital service – the first part of the two-part number is called the "major" channel number used to group all channels that are to be identified as belonging to

any area in which a licensee relinquished its analog channel number and another licensee in the area elected to use the relinquished channel for its digital operation [and] [p]resumably viewers owning these television receiver models after the end of the DTV transition in 2009 have known to input both a major and minor channel number in order to watch these stations."[12]

Pleadings. PMCM argues that the displacement facilities on RF channel 33 proposed by Venture and Ventana would have substantial service contour overlap with WJLP, covering well over 5 million television households, and that it objects to grant of the applications based on "the virtual interference which will necessarily exist between the signals of any overlapping channel 33 operation and PMCM's long existing operations on virtual channel 33."[13] According to PMCM, tests it conducted "conclusively established that about half of the TV sets in the U.S. market are not properly configured to distinguish between stations whose overlapping virtual channels and RF channels are identical," and that these test results "were independently confirmed by CBS's technical staff and Consumer Reports."[14] PMCM states that while in some cases the problem can be solved by the viewer inputting the desired station's two-part virtual channel number, i.e., 33.1, not all remotes have a "dot" to click on.[15] Instead, some have a "dash" or hyphen-like icon that functions the same as a "dot," "but the average viewer could hardly be expected to understand that he or she must press a dash button rather than a dot button in order to tune to 33.1"[16] And, according to PMCM, "viewers who use the buttons on their actual TV set rather than a remote device cannot remediate the problem at all."[17]

PMCM states that it hoped that the relocation of WCBS-TV to a different RF channel would alleviate WJLP reception problems, [18] but that if RF channel 33 is assigned to Ventana and Venture, these problems will continue.[19] PMCM further states that it assumes the Commission would not assign either low power television station virtual channel 33, given its strongly held conviction that there must never be overlapping major channel numbers.[20]

In opposition, Venture argues that "PMCM filed this utterly frivolous Petition to resurrect a long-standing dispute concerning the use of virtual channel 33, despite that the fact that the Commission has already soundly rejected PMCM's position."[21] According to Venture, PMCM's argument that the Commission should leave RF channel 33 permanently unoccupied in the congested New York/New Jersey market because of overlap between RF channel 33 and virtual channel 33 is not a valid basis to deny Venture's application.[22] Venture further asserts that its application complies with all applicable

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a particular broadcaster, and the second part of the channel number, called the "minor" channel number, identifies one program service within the group of services defined by the major number. *Id.* at 7230, paras. 3, 4.

[12] *Id.* at 7238, para. 20.

[13] Petition to Deny at 1-2.

[14] *Id.* at 2.

[15] *Id.* at 3.

[16] *Id.* PMCM also complains that no other station in the United States requires viewers to input extra dots and dashes in order to be received.

[17] *Id.*

[18] WCBS-TV was reassigned to channel 36 in the incentive auction and repacking process but has not yet made the transition to its new channel.

[19] *Id.* at 4.

[20] *Id.* at n.3.

[21] Venture Opposition at 1-2.

[22] *Id.* at 2. Venture further argues that "[a]llowing a channel to lie fallow . . . because PMCM 'hoped that the reallocation of WCBS from RF channel 33 to RF channel 36 would alleviate part of the problem' it has with its virtual channel assignment, is a waste of limited and valuable spectrum resources." *Id.* at 3.

Commission rules, is not predicted to cause any impermissible interference, and accordingly is grantable.[23]

In reply, PMCM claims that its petition is "based on the undeniable fact that overlapping operations of virtual and RF channels in the same market results in an inability of more than half of the TV sets in the market to receive PMCM's signal correctly," and that substituting Venture for CBS on RF channel 33 would continue the "confusion and diversion of audience caused by this state of affairs."[24] PMCM argues that Venture's assertion that the Commission previously looked at and dismissed PMCM's allegations of problems with stations having overlapping virtual and RF channels is only partially correct because in its petition, PMCM demonstrated that the "press the dot plus 1 work around" is not generally available, given the fact that many television remotes do not include a "dot."[25] According to PMCM, no one knew about the problem with overlapping virtual and RF channels "until PMCM identified it, confirmed it, and had it confirmed by CBS and an independent research laboratory" and that now that the Commission is aware of the problem and that a simple cure for the problem does not exist, it should not grant an application that will cause the problem to exist.[26]

Discussion. We agree with Venture that PMCM raises no arguments that would warrant dismissal of the displacement applications. The staff has reviewed the applications and they comply with all of the Commission's technical and interference requirements.[27] The mandatory requirements for assigning the major channel number component of stations' virtual channels set forth in Annex B to ATSC A/65C are meant to guarantee that *major* channel numbers are assigned uniquely to DTV licensees and that the two-part channel number combination used by a broadcaster be different from those used by any other broadcaster with an overlapping DTV service area.[28] Annex B, however, does not prohibit stations from having an RF channel number (channel 33 here with respect to WCBS-TV and the displacement proposals) that is the major channel number of another station operating in the DMA (channel 33 with respect to WJLP). In the *PSIP Order*, the Commission noted that as of July 2015, more than 100 stations were in the same situation as WJLP and WCBS-TV (a situation which would continue if Ventana and Venture commence operations on RF channel 33),[29] and concluded that viewers that that owned television receivers that had difficulty choosing the correct station based on the channel inputted by the viewer presumably have known since the end of the DTV transition in 2009 to input a major and a minor channel number in order to watch these stations.[30] We also observe that some viewers of WJLP

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[23] *Id.* at 3, citing 47 CFR §§ 74.709, 74.793(e), 74.793(f), 74.793(g), and 74.793(h).

[24] Reply at 1.

[25] Reply at 2.

[26] *Id.*

[27] PMCM states that both displacement proposals would require acceptance of "significant RF interference (approximately 30% in the case of Ventana and 25% in the case of [Venture}", and that "[w]hether this degree of interference is so material as to prevent the grant of either application is something we do not propose to address here, dismissal of the application on RF interference grounds would obviously moot the present objection." PMCM Petition to Deny at 1-2. When the staff processes LPTV and TV translator applications it typically only considers interference caused by the pending proposal. We note, however, that our interference analysis shows that the Ventana and Venture displacement proposals will not receive a significant amount of interference from other stations.

[28] *PSIP Order*, 32 FCC Rcd at 7231, para. 5. Thus, we would not, as PMCM suggests (*see* PMCM Petition to Deny at 4, n.3), entertain a request by Venture or Ventana to permit it to use major channel 33.

[29] *Id.* at 7238, n.70.

[30] *Id.* at para. 20. We also note that PMCM asserts that about half of the television receivers in the United States have difficulty distinguishing between stations whose overlapping virtual channels and RF channels are the same. Thus, this issue of "receiver error" is well known to viewers of over-the-air television.

and WCBS-TV have been confronted with television receiver issue since March 2015, when WJLP started using virtual channel 33, and that these viewers presumably learned how to resolve the situation, and that the same measures can be used if an issue arises when Ventana and Venture begin operations on RF channel 33.

PMCM's argument that the "work around" suggested by the Commission – that viewers press the "dot" on their remote control and then enter a minor channel number of the stations they wish to view – does not work in all cases is also without merit. According to PMCM, some remote controls do not have a "dot," but instead have a "dash" and some viewers do not use a remote, but instead use the buttons on their actual television set. All three of these channel navigation features, however, are standard with respect to television receivers, and over-the-air television viewers have been familiar with these features, and how they work, since the end of the DTV transition in June 2009 when analog operations ceased and viewers exclusively watched full power DTV stations, which are capable of offering multiple streams of programming grouped under a station's major channel number and differentiated by unique minor channel numbers.[31]

In view of the foregoing, the Petition to Deny filed by PMCM TV, LLC against the above-referenced displacement applications filed by Ventana Television, Inc. and Venture Technologies Group, LLC IS HEREBY DENIED. In addition, the Opposition to Petition to Deny filed by Ventana Television, Inc. IS HEREBY DISMISSED as untimely.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau

[31] We also disagree with PMCM's assertion that stations and viewers were unaware of receiver errors with respect to overlapping virtual and RF channel number until PMCM brought it to the Commission's attention in 2015. As noted above, after the DTV transition there were more than 100 stations in the same situation as WJLP and WCBS-TV and if the number of affected receivers is as large as PMCM posits, a significant number of stations and viewers would have had to figure out how to view their desired station. We also do not agree with PMCM's characterization of the record in Docket 14-150 regarding the survey it undertook of a number of television receivers. CBS did not confirm the results of PMCM's survey. Instead, CBS undertook its own study using the same receivers as PMCM and reported that all of the receivers displayed WJLP when 33.1 was entered. *PSIP Order*, 32 Rcd at 7238, n.68. In addition, while PMCM claims in its Petition to Deny that its survey was confirmed by "Consumer Reports" and an "independent research laboratory," PMCM never submitted any such confirmation in Docket 14-150.