

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

In re Application of

Venture Technologies Group, LLC
W32EI-D (FID 130470)

File No. 0000054805

Accepted / Filed

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To: The Commission

Federal Communications Commission
Office of the Secretary

OPPOSITION TO APPLICATION FOR REVIEW

Venture Technologies Group, LLC (“VTG”), the licensee of digital low power television station W32EI-D, West Orange, NJ, Facility ID 130470, by its attorneys and pursuant to Section 1.115 of the Commission’s Rules, hereby opposes the Application for Review (the “AFR”) filed on July 26, 2019 by PMCM TV, LLC (“PMCM”) seeking review and reversal of the Video Division’s June 26, 2019 Letter Order (“Letter Order”) that denied PMCM’s petition to deny (“Petition to Deny”) the above-referenced displacement application seeking to move W32EI-D from RF channel 22 to RF channel 33 (the “Application”).

PMCM seeks review of the Letter Order based on a two-part claim that (i) the decision conflicts with a *recent* Commission policy decision concerning a station’s brand identity, and (ii) the decision rejected “undisputed evidence” that the Division’s proposed work-around is “generally unavailable” to many viewers.¹

¹ AFR at 2.

The AFR is yet another recycled filing of asked and answered complaints by PMCM that continue waste the time and resources of the Commission. In essence, because PMCM is unhappy with the Commission's decision to assign it to virtual channel 33 (in a thoroughly developed proceeding to which VTG was not a party), PMCM now asks the FCC to take the extraordinary step of providing it with protection on two difference channels in two different bands (its RF Channel 3 and its Virtual Channel 33). PMCM fails to state any valid basis to disturb the Letter Order and its AFR must be immediately dismissed or denied.

I. THE LETTER ORDER DOES NOT CONFLICT WITH THE COMMISSION'S DECISION IN THE CHANNEL 33 ORDER

The Letter Order correctly determined that nothing in the PSIP Order would “prohibit stations from having an RF channel number ... that is the major channel number of another station operating in the DMA.”²

PMCM claims that this determination conflicts with a “*recent* policy decision that preservation of a station's brand identity is a superior interest to clear over the air reception of a new broadcast signal.”³ As an initial matter, this is the first time PMCM has raised this argument in this proceeding. The policy decision cited by PMCM is the *Channel 33 Order*, issued two years ago.⁴ Despite PMCM's attempt to characterize this decision as new information, this argument could have been raised at any point in the underlying proceeding—but was not. It is well established in the law that “the Commission will not

² Letter Order at 4.

³ AFR at 2 (emphasis added).

⁴ *In the Matter of Request for Declaratory Ruling by Meredith Corp. and “Alternative PSIP Proposal” by PMCM TV, LLC for WJLP (Formerly KVVV(TV)), Middletown Township, New Jersey*, Memorandum Opinion and Order, 32 FCC Rcd. 7229 (2017) (the “*Channel 33 Order*”).

consider matters raised in an application for review upon which the Bureau had no opportunity to pass.”⁵ PMCM is procedurally barred from raising this argument now.⁶

Although the Commission cannot consider PMCM’s argument, VTG notes that if this argument was validly on the record – PMCM’s argument concocts a hypothetical policy that has no basis in the PSIP policy that is clearly explained in the *Channel 33 Order*.

The *Channel 33 Order* is a 2017 Commission decision ruling on another PMCM Application for Review. In that Order, the Commission affirmed a Media Bureau decision that a new entrant to a market is not allowed to assume the same major channel number (virtual channel) of another station in the market because this could dilute the original station’s “local brand.”⁷ In that case, PMCM had acquired the right to build a station to operate on RF Channel 3. The market to which this station was allocated previously had a station that operated on RF Channel 3, but it had since moved to another channel. Although Channel 3 was PMCM’s major channel number, it was assigned an alternate virtual channel—Channel 33—by the Media Bureau to protect the virtual channel and “brand” of the previous Channel 3 station in this market.

Now, PMCM argues that its rights to virtual Channel 33 prohibit the use of RF Channel 33 by any other station in the market. This is simply made up nonsense and not supported by anything in the Commission’s rules or the *Channel 33 Order*. PMCM is advancing this

⁵ *Channel 33 Order* at 7236; *See also supra* at fn 5.

⁶ 47 U.S.C. § 155(c)(5); 47 CFR § 1.115(c); *see also BDPCS, Inc. v. FCC*, 351 F.3d 1177, 1183-84 (D.C. Cir. 2003) (upholding Commission’s order dismissing arguments under Section 1.115(c) because that rule does not allow the Commission to grant an application for review if it relies upon arguments that were not presented below).

⁷ *See Channel 33 Order* at 7235.

grossly erroneous interpretation of the *Channel 33 Order* to create a hypothetical new standard that would conflate a virtual channel with an RF channel.

The Letter Order correctly determined that there is no prohibition in the Commission's rules against a new entrant to a market using an *RF channel number* that is the same as *the virtual channel* of another station in the market.

II. PMCM FAILS TO PROVIDE ANY NEW EVIDENCE FOR THE CHANNEL SELECTION WORK-AROUND

The Letter Order correctly considered and rejected PMCM's argument that the Application should be denied because the work-around solution of entering both the major and minor channel number (e.g., 33.1) proposed by the Media Bureau will not work for all viewers because not all remote control devices contain a "dot" or a "dash". PMCM provides no information or analysis to support a new interpretation of its argument. Rather, it provides the same information it included in its Petition to Deny and demands that the Commission come to a different conclusion. Strangely, the information provided by PMCM—first in the Petition to Deny and now in this proceeding—does not even support its argument. All of the remote control devices associated with specific manufacturers that are cited by PMCM **do** contain a "dot" or a "dash". The only remote control devices they cite that do not are inexpensive "universal" remotes that can be purchased online. Moving beyond the inherent weakness of its position, PMCM's argument on this issue has been addressed multiple times not only by the Media Bureau,⁸ but by the full Commission in the same order that PMCM misconstrues to support its assertion of a conflict with the *Letter*

⁸ PMCM raised this issue in its Supplement to the Request for Declaratory Ruling by Meredith Corporation and "Alternative PSIP Proposal" by PMCM TV, LLC for WJLP (Formerly KVVN(TV)), Middletown Township, New Jersey, MB Docket No. 14-150, Declaratory Ruling, 30 FCC Rcd 6078 (MB 2015) (Declaratory Ruling); *See also* Letter Order at 4-5.

*Order.*⁹ In the *Channel 33 Order*, the Commission acknowledged the potential tuning problem that PMCM now cites, but concluded that it “does not constitute an ‘emergency’ because it appears that in most instances WJLP and WCBS-TV would be correctly displayed when these receivers are tuned to 33.1 and 2.1”¹⁰ – a statement PMCM does not refute. The Commission went on to explain that:

this situation is not unique to WJLP and WCBS-TV in New York, but would result in 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 operations. Presumably 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 in order to watch these stations.¹¹

PMCM fails to provide any new evidence or argument not previously considered by the Media Bureau or the Commission that warrants review of the Letter Order on this point.

III. CONCLUSION

PMCM fails to raise any argument that warrants review of the Letter Order. Its Application for Review should be promptly dismissed or denied and the Application should be granted.

⁹ See *Channel 33 Order* at 7238.

¹⁰ *Id.*

¹¹ *Id.*

Respectfully submitted,

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Certificate of Service

I, Jackie Martin, a secretary at Wiley Rein LLP, hereby certify that a true and correct copy of the foregoing "Opposition to Application for Review" was sent this 9th day of August 2019 via First-Class United States mail, postage pre-paid, or as otherwise specified, to the following:

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