



Federal Communications Commission
Washington, D.C. 20554

December 11, 2020

KONG-TV, Inc.
c/o Michael Beder
Tegna, Inc.
8350 Broad Street, Suite 2000
Tysons, VA 22102
mbeder@tegnacom
(via electronic mail)

KONG-TV, Bellevue, WA
Facility ID No. 35396
LMS File No. 0000127063

Dear Licensee:

This letter is in reference to the above captioned application for legal special temporary authority (Legal STA) filed by KONG-TV, Inc., a subsidiary of Tegna Inc. (Tegna or Licensee), licensee of full power television station KONG-TV, Bellevue, Washington (KONG or Station).¹ In its Legal STA, Tegna requests authorization to allow some of KONG's non-primary programming streams (multicast streams) to be aired in an ATSC 1.0 format, with no ATSC 3.0 simulcast, on the facilities of KCPQ(TV), Tacoma, Washington (KCPQ), and KZJO(TV), Seattle, Washington (KZJO), both licensed to Fox Television Stations, LLC (Fox) (collectively the multicast hosts).² This arrangement between Tegna and Fox has been entered into in connection with KONG's transition of its facility to the ATSC 3.0 transmission standard. Although Tegna has agreed to indemnify Fox from all liabilities or claims resulting from the airing of its multicast stream over KCPQ's and KZJO's facilities,³ Tegna has requested the instant authorization to make clear that it will remain responsible from a statutory and regulatory perspective for KONG's multicast streams. Specifically, Tegna requests that KONG be treated as if it is still originating the multicast streams and be considered the responsible party for compliance with any obligations under the Communication Act of 1934, as amended (Act) and the Commission's rules (Rules).⁴ For the reasons below, we grant KONG's request.

Background. On December [XX], 2020, the Video Division granted KONG's application for modification of license to convert its existing broadcast facility to ATSC 3.0 transmissions.⁵ As required by section 73.3801 of the Rules,⁶ KONG's primary stream will be simulcast in an ATSC 1.0 format over

¹ Application of KONG-TV, Inc. for Legal Special Temporary Authority as Amended, LMS File No. 0000127063, as amended (filed Nov. 24, 2020) (KONG Legal STA).

² KCPQ is licensed to operate on RF channel 13, KZJO is licensed to operate on RF channel 36.

³ KONG Legal STA at 1.

⁴ See *Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard*, GN Docket No. 16-142, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 9930, 9931, para. 79-82 (2017) (*Next Gen TV Report and Order*) (requiring Next Gen TV broadcasters to comply with all Commission broadcast rules, including, but not limited to, the Rules regarding foreign ownership, political broadcasting, children's programming, equal employment opportunities, public inspection files, indecency, sponsorship identification, etc.).

⁵ Application of KONG-TV, Inc. for Modification of License, LMS File No. 0000127044 (granted Dec. 9, 2020) (KONG License Modification).

⁶ 47 CFR § 73.3801(b).

the facility of commonly owned KING-TV, Seattle, Washington (KING).⁷ In addition to its primary stream, KONG currently broadcasts two non-primary multicast streams: This TV and Bounce.⁸ In order to avoid the loss of KONG's over-the-air multicast programming to its current ATSC 1.0 viewers, Tegna has entered into a written agreement with Fox to broadcast KONG's multicast channels using the facilities and channels of KCPQ and KZJO.⁹ As part of the same arrangement, KCPQ and KZJO have been provided capacity as ATSC 3.0 guest stations on KONG's facilities.¹⁰

As noted in the Legal STA, because of ATSC 1.0 capacity constraints, KONG is not able to air all of its multicast streams on the same channel as its primary ATSC 1.0 signal, which is being hosted by KING.¹¹ Furthermore, due to capacity and other constraints KONG is not able to simulcast an ATSC 3.0 version of KONG's multicast streams.¹² Pursuant to an engineering study conducted by the Licensee, under its arrangement with the multicast hosts 100% of KONG's current over-the-air ATSC 1.0 viewers will retain access to This TV and Bounce on KCPQ and KZJO.¹³ Absent the proposed arrangement and grant of the instant request, KONG states that all over-the-air viewers would lose access to KONG's multicast streams.¹⁴ The Licensee's engineering study also shows that its non-primary multicast streams will continue to serve KONG's designated market area and community of license.¹⁵

Tegna also states that it provided the requisite notice to MVPDs regarding relocation of KONG's primary ATSC 1.0 stream and its non-primary multicast streams.¹⁶ KONG also has been airing the requisite over-the-air announcements¹⁷ regarding its transition to the ATSC 3.0 standard and the need for over-the-air viewers to rescan their television sets in order to continue to receive KONG's ATSC 1.0 programming streams. In order to alleviate any viewer confusion, the PSIP (virtual) channels for each of KONG's program streams will remain unchanged and will be identified to viewers as being associated with KONG.¹⁸ Tegna plans to convert KONG's facilities to ATSC 3.0 and commence its ATSC 1.0

⁷ See KONG License Modification. KING is licensed to operate on RF channel 25, and is licensed to King Broadcasting Company, a subsidiary of Tegna.

⁸ KONG Legal STA at 1.

⁹ *Id.*

¹⁰ See Application of Fox Television Stations, LLC, Inc. for Modification of License, LMS File No. 0000126148 (granted Dec. 9, 2020); Application of Fox Television Stations, LLC, Inc. for Modification of License, LMS File No. 0000126151 (granted Dec. 9, 2020).

¹¹ KONG Legal STA at 1.

¹² Specifically, Tegna states that in order to air an ATSC 3.0 simulcast of the Station's non-primary multicast streams, KONG would not be able to accommodate current ATSC 3.0 guests as arranged and would "degrade[] the participating stations' options for offering advanced Next Gen Television services to the public, such as enhanced video and audio (using features such as High Dynamic Range video and Dolby AC-4 immersive audio) and targeted emergency alerting functions." *Id.* at 1.

¹³ *Id.* at 2, 5. We also note that over 99% of KONG's current over-the-air ATSC 1.0 viewers will retain access to KONG's primary programming on KING. See KONG License Modification at 4.

¹⁴ KONG Legal STA at 2.

¹⁵ *Id.* at 2, 5.

¹⁶ *Id.* at 2. See 47 CFR § 73.3801(g) (Notice to MVPDs).

¹⁷ KONG Legal STA at 2. See 47 CFR § 73.3801(f) (Consumer Education for Next Gen TV stations).

¹⁸ KONG Legal STA at 2.

operations over the facilities of KING (primary stream), KCPQ, and KZJO (non-primary multicast streams) on December 15, 2020.¹⁹

Discussion. We conclude, based on the facts and circumstances presented, that the public interest would be served by the grant of Licensee’s Legal STA. Under the Rules, Next Gen TV Broadcasters are not required to simulcast or continue airing their existing non-primary multicast streams.²⁰ Grant of the instant Legal STA will promote continued transmission of KONG’s non-primary multicast programming streams to viewers and by providing KONG an authorization to air these signals over the multicast hosts’ facilities make clear that KONG is responsible for the content of those signals from a regulatory compliance and enforcement perspective. Therefore, for purposes of all statutory and regulatory obligations related to KONG’s non-primary multicast streams airing on KCPQ and KZJO, we will treat those signals as multicast streams being originated by KONG even though they are being transmitted over KCPQ’s and KZJO’s facilities. That is, KONG is the sole party responsible for ensuring compliance with all statutory and regulatory requirements with regards to KONG’s two original non-primary multicast streams. This includes, but is not limited to, our rules regarding political broadcasting, children’s programming,²¹ equal employment opportunities, public inspection files, indecency, sponsorship identification, station identification, contests, the CALM Act, and the Emergency Alert System. Furthermore, because the Commission’s rules do not require that a multicast stream be simulcasted,²² we will not require that KONG air an ATSC 3.0 version of the ATSC 1.0 non-primary multicast streams being aired over the multicast hosts’ facilities.

Given that the current arrangement is temporary and is in furtherance of an ATSC 3.0 simulcasting arrangement, we will not apply the broadcast ownership rules to the extent that the arrangement would result in a potential violation of those rules. We find this approach is consistent with the Commission’s decision and underlying basis to “not apply the broadcast ownership rules in any situation where airing an ATSC 3.0 signal or an ATSC 1.0 simulcast on a temporary host station’s facility would result in a potential violation of those rules.”²³ For purposes of the instant Legal STA, we find compelling the capacity and engineering constraints that the Licensee has set forth.²⁴

¹⁹ *Id.* at 1.

²⁰ *Next Gen TV Report and Order*, 32 FCC Rcd at 9937-38, para. 13, n.40.

²¹ KONG notes in its Legal STA that KONG “does not, and does not intent to, rely on any programming broadcast on its multicast streams for compliance with the Commission’s children’s programming requirements.” KONG Legal STA at 3.

²² *See supra* note 20.

²³ *Next Gen TV Report and Order*, 32 FCC Rcd at 9972, para. 80, n.237. *See also Promoting Broadcast Internet Innovation through ATSC 3.0*, MB Docket No. 20-145, Declaratory Ruling and Notice of Proposed Rulemaking, 35 FCC Rcd 5916, 5924, para. 15 (2020).

²⁴ *Supra* note 12.

We are taking this temporary measure in order to help facilitate the deployment of ATSC 3.0 and in light of the evolving nature of ATSC 3.0 deployment and related agreements.²⁵ As explained above, we will continue to consider these program streams to be KONG's multicast streams even though they are being aired on different channels than KONG's ATSC 1.0 primary stream. Multicast signals are not entitled to mandatory carriage rights,²⁶ and this authorization does not modify or alter KONG's mandatory carriage rights. Ultimately any impact on an MVPD's ability to carry KONG's non-primary multicast streams pursuant to a retransmission consent agreement is subject to the terms of the private contractual relationships between KONG and the affected MVPDs. According to KONG, it does not expect there to be any adverse impact on MVPD viewers.²⁷ As stated, KONG has provided written notice to all impacted MVPDs, is coordinating with all impacted MVPDs, and will continue to coordinate as needed with potentially affected MVPDs to ensure they continue to receive a good quality signal of the non-primary multicast streams over-the-air or via alternative delivery methods, such as direct fiber feed.²⁸ As a result, we do not expect there to be any adverse impact on MVPD viewers.

Accordingly, the above captioned KONG-TV, Inc., licensee of KONG-TV, Bellevue, Washington, **IS GRANTED** for a period of six months from date of this letter – hereby expiring on June 11, 2021. For purposes of the Act and the Commission's rules we will consider the multicast program streams of TBD and Stadium to be originated by KONG, even though they are being aired over KCPQ's and KZJO's facilities and channels. Further, we will not apply our ownership rules to the extent the instant temporary arrangement would otherwise result in a potential violation of those rules so long as KONG's non-primary multicast streams are being aired on the facilities of the multicast hosts pursuant to an active and Commission authorized ATSC 3.0 simulcasting arrangement (i.e., KONG is operating an authorized ATSC 3.0 facility and its primary stream, absent waiver, is being aired over the facility of an ATSC 1.0 simulcast host). Any change in the non-primary multicast streams being aired over the multicast hosts' facilities by KONG or relocating either of KONG's non-primary multicast streams to a

²⁵ We note that the Commission has before it a Petition for Declaratory Ruling and Rulemaking requesting that the Commission "(1) clarify that its existing rules permit a station transmitting in ATSC 3.0 to partner with one or more other stations that would host the first station's simulcasted ATSC 1.0 multicast streams to preserve existing service in the market; and (2) establish rules permitting a station transmitting in ATSC 3.0 to partner with one or more other stations that would host the first station's ATSC 1.0 multicast streams, regardless of whether those ATSC 1.0 multicast streams are simulcast in ATSC 3.0, and also permit a station transmitting in ATSC 1.0 to partner with one or more other stations to host content transmitted in ATSC 3.0." See Petition for Declaratory Ruling and Rulemaking of the National Association of Broadcasters, GN Docket No. 16-142 (filed Nov. 9, 2020) (Petition); *Media Bureau Seeks Comment on Petition for Declaratory Ruling and Petition for Rulemaking of the National Association of Broadcasters Seeking to Clarify Treatment of Multicast Streams Under the Next Gen TV Local Simulcasting Rules*, GN Docket No. 16-142, Public Notice, DA 20-1394 (rel. Nov. 24, 2020). Our action herein is not intended to prejudice the outcome of any potential proceeding undertaken as a result of the Petition.

²⁶ See *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, CS Docket Nos. 98-120, 00-96 and 00-2, First Report and Order and FNPRM, 16 FCC Rcd 2598, 2621-22, para. 54 (2001); affirmed by *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, Second Report and Order and First Order on Reconsideration, CS Docket No. 98-120, 20 FCC Rcd 4516, 4518, para. 3 (2005) (*DTV Must-Carry Second R&O*) (declining to require cable systems to carry a licensee's multicast streams). In the *DTV Must-Carry Second R&O*, the Commission affirmed its decision in the First Report and Order to interpret the statutory term "primary video" to mean only a single programming stream. If a digital broadcaster elects to divide its digital spectrum into several separate programming streams, only one of these streams is entitled to mandatory carriage. *Id.* at 4530-37, paras. 28-44.

²⁷ KONG Legal STA at 2.

²⁸ KONG Legal STA at Second Amendment.

new ATSC 1.0 multicast host, will require the filing of a new request. Tegna agrees to coordinate with MVPDs as necessary. While renewal of the instant authorization may be requested, there is no expectation of renewal and whether renewal is granted will be subject to any additional Commission or Bureau decisions on the treatment of multicast non-primary streams pursuant to an ATSC 3.0 simulcasting arrangement.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

Cc: (via electronic mail):
Ann Boeck, Esq.
(Counsel for KCPQ and KZJO)