



Federal Communications Commission
Washington, D.C. 20554

April 18, 2022

Mitts Telecasting Company, LLC
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(via electronic mail)

KXVO(TV), Omaha, Nebraska
Facility ID No. 23277
LMS File No. 0000189000

Dear Licensee:

This letter is in reference to the above-captioned application for legal special temporary authority (Legal STA) filed by Mitts Telecasting Company, LLC (Mitts or Licensee), licensee of full power television station KXVO(TV), Omaha, Nebraska (KXVO or Station).¹ In its Legal STA, the Licensee requests authorization to allow KXVO's non-primary programming streams (multicast streams) to be aired in an ATSC 1.0 format, with no ATSC 3.0 simulcast, on KMTV-TV, Omaha, Nebraska (KMTV-TV), licensed to Scripps Broadcasting Holdings LLC (Scripps) and KETV(TV), Omaha, Nebraska (KETV), licensed to Hearst Properties, Inc. (collectively Multicast Hosts).² These arrangements between the Licensee and the Multicast Hosts have been entered into in connection with the Station's transition of its facilities to the ATSC 3.0 transmission standard. Although the Licensee has agreed to indemnify the Multicast Hosts from all liabilities or claims resulting from the airing of its multicast streams over the Multicast Hosts' channels,³ it has requested the instant authorization to make clear that it will remain responsible from a statutory and regulatory perspective for the Station's multicast streams. Specifically, the Licensee requests that KXVO be treated as if it is still originating the multicast streams and be considered the responsible party for compliance with any obligations under the Communications Act of 1934, as amended (Act) and the Commission's rules (Rules).⁴ For the reasons below, we grant the Licensee's request.

Background. On April 8, 2022, the Video Division granted the Station's application for modification of license to convert its existing broadcast facilities to ATSC 3.0 transmission.⁵ As required

¹ Application of Mitts Telecasting Company, LLC for Legal Special Temporary Authority, LMS File No. 0000189000 (filed Apr. 6, 2022) (Mitts Legal STA).

² KMTV-TV is authorized to operate on RF channel 31 and KETV is authorized to operate on RF channel 20.

³ Mitts Legal STA, Request for STA at 1.

⁴ *Id.* 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, 9970-73, paras. 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 Mitts Telecasting Company, LLC for Modification of License, LMS File No. 0000187560 (granted Apr. 8, 2022) (Mitts License Modification).

by section 73.3801 of the Rules,⁶ the Station's primary stream will be simulcast in an ATSC 1.0 format over the facility of KPTM(TV), Omaha, Nebraska (KPTM), licensed to Sinclair Broadcasting Group, Inc.⁷ The Station currently broadcasts two non-primary multicast streams: *Stadium and Charge!*.⁸ In order to avoid the loss of the Station's over-the-air multicast programming to its current ATSC 1.0 viewers, the Licensee has entered into written agreements with the Multicast Hosts to broadcast *Stadium* over KMTV-TV, and *Charge!* over KETV.⁹ As part of the same arrangement, the Multicast Hosts have been provided capacity as ATSC 3.0 guest stations on the Station's channel.¹⁰

As noted in the Legal STA, because of ATSC 1.0 capacity constraints, the Station is not able to air its multicast streams on the same channel as its primary ATSC 1.0 simulcast signal.¹¹ Furthermore, due to capacity and other constraints the Station is not able to simulcast an ATSC 3.0 version of its multicast streams.¹² Pursuant to an engineering study conducted by the Licensee, at least 94.2 percent of KXVO's current over-the-air viewers will retain access to *Stadium and Charge!*.¹³ Absent the proposed

⁶ 47 CFR § 73.3801(b).

⁷ See Mitts License Modification. KPTM is licensed to operate on RF Channel 26.

⁸ Mitts Legal STA, Request for STA at 1.

⁹ *Id.*

¹⁰ See Application of Scripps Broadcasting Holdings LLC for Modification of License, File No. 0000187563 (granted Apr. 8, 2022); Application of Hearst Properties, Inc. for Modification of License, File No. 0000187560 (granted Apr. 8, 2022).

¹¹ Mitts Legal STA, Request for STA at 1. We also note that stations are not required to air their multicast channels as part of their ATSC 3.0 conversion. See *Next Gen TV Report and Order*, 32 FCC Rcd at 9937-38, para. 13, n.40 ("The provision of multicast channels is discretionary, and we decline to adopt rules requiring broadcasters who currently air such channels to continue to do so."); see also *infra* note 26.

¹² Mitts Legal STA, Request for STA at 1. Specifically, Licensee states that airing an ATSC 3.0 simulcast of the Station's non-primary multicast stream would impact the Station's ability to offer enhanced video featuring High Dynamic Range, Wide Color Gamut and High Frame Rate, immersive and multiple audio channels using Dolby AC-4, Advanced Emergency Alerting and Information functions as part of a broadcast receiver application, and non-realtime interactive data delivery. *Id.* Furthermore, the Licensee notes that this would delay rollout of ATSC 3.0 in the market. *Id.*

¹³ *Id.*, Engineering Exhibit at 1-2, 3 and 5. In order to qualify for expedited processing the Commission's rules require that a Next Gen TV broadcaster's primary 1.0 simulcast host covers at least 95 percent of the Station's original 1.0 coverage area. See 47 CFR § 73.3801(f)(5). Through the Legal STA process, the Bureau has previously authorized Next Gen TV stations to utilize a 1.0 multicast host whose coverage is less than 95 percent of its original 1.0 coverage area in order to preserve programming during the transition. See e.g., Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau, to Gray Television Licensee, LLC (Dec. 1, 2021) (on file at LMS File No. 0000146558). By grant of this authorization and temporary arrangement we help preserve the maximum amount of ATSC 1.0 programming to the greatest number of viewers while facilitating the deployment of ATSC 3.0 and new innovative broadcast services, consistent with that precedent. We note that in the *Second ATSC 3.0 FNPRM*, the Commission tentatively concluded that a Next Gen TV station may utilize a multicast host that covers less than 95 percent of its original coverage area, so long as the multicast host is within the same DMA and covers the Next Gen TV station's community of license. *Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard*, Second Further Notice of Proposed Rulemaking, GN Docket No. 16-142, FCC 21-116, para. 32 (rel. Nov. 5, 2021) (*Second ATSC 3.0 FNPRM*). In the *Second ATSC 3.0 FNPRM*, the Commission also stated that during the pendency of the proceeding it would allow the Bureau to continue to process STA requests and 3.0 license applications in the same manner it has previously. *Id.* at n. 47. Our action herein is consistent with our past actions and not intended to prejudge the outcome of that proceeding. The Station must come into compliance with any rules that are ultimately adopted therein. See *infra* note 28.

arrangements and grant of the instant request, the Licensee states, “all over-the-air viewers would lose access to KXVO’s multicast streams.”¹⁴ The Licensee also states that the multicast hosts place city-grade service contours over the entirety of the KXVO city of license.¹⁵

The Licensee indicates that it has provided the requisite notice to MVPDs regarding relocation of the Station’s primary ATSC 1.0 stream and its non-primary multicast streams.¹⁶ The Station is also airing the requisite over-the-air announcements regarding its transition to the ATSC 3.0 standard and the need for over-the-air viewers to rescan their television sets to continue to receive KXVO’s ATSC 1.0 programming streams.¹⁷ In order to alleviate any viewer confusion, the PSIP (virtual) channel for each of KXVO’s programming streams will remain unchanged and will be identified to viewers as being associated with KXVO.¹⁸ If granted authority, the Licensee will convert the Station’s facilities to ATSC 3.0 and commence its ATSC 1.0 operations over KPTM (primary), KMTV-TV (*Stadium*), and KETV (*Charge!*) on April 19, 2022.¹⁹

Discussion. We conclude, based on the facts and circumstances presented, that the public interest would be served by the grant of the Licensee’s Legal STA. Under the Commission’s rules, Next Gen TV Broadcasters are not required to continue airing their existing non-primary multicast streams.²⁰ Grant of the instant Legal STA will promote the continued transmission of the Station’s non-primary multicast programming streams in an ATSC 1.0 format to viewers and make clear that the Station is responsible for the content of that signal from a regulatory compliance and enforcement perspective. Therefore, for purposes of all statutory and regulatory obligations related to the Station’s non-primary multicast streams, we will treat those signals as multicast streams being originated by the Station even though they are being transmitted over the Multicast Hosts’ channels. The Licensee is the sole party responsible for ensuring compliance with all statutory and regulatory requirements with regard to its 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.²² Furthermore, we decline to require the Station to air an ATSC 3.0 version of the ATSC 1.0 non-primary multicast streams being aired over the Multicast Hosts’ channels given the capacity and engineering constraints that the Licensee has described.

¹⁴ Mitts Legal STA, Request for STA at 2.

¹⁵ *Id.*, Engineering Exhibit at 1, 2, 4 and 6.

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

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

¹⁸ Mitts Legal STA, Request for STA at 2.

¹⁹ *Id.*

²⁰ *Supra* note 11.

²¹ The Licensee notes in its Legal STA that it “does not currently, and does not intend to, rely on any programming broadcast on its multicast streams for compliance with the Commission’s children’s programming requirements, as KXVO(TV) averages at least three hours per week of core programming on its primary stream.” Mitts Legal STA, Request for STA at 2.

²² See *supra* note 4.

Further, 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 arrangements 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

Accordingly, the application of Mitts Telecasting Company, LLC, licensee of KXVO(TV), Omaha, Nebraska, **IS GRANTED** for a period of six months from date of this letter – hereby expiring on October 17, 2022. For purposes of the Act and the Commission's rules, we will consider the multicast program streams to be originated by the Station, even though the streams are being aired over the Multicast Hosts' channels. Any change in the non-primary multicast streams being aired over the Multicast Hosts by the Station or relocating a non-primary multicast streams to a new ATSC 1.0 multicast host will require the filing of a new request. By this grant, the Licensee agrees to coordinate with MVPDs as necessary. Because multicast signals are not entitled to mandatory carriage rights,²⁴ any impact on an MVPD's ability to carry KXVO's non-primary multicast streams pursuant to a retransmission consent agreement is subject to the terms of the private contractual relationships between KXVO and the affected MVPDs. According to the Licensee, it will coordinate with all impacted MVPDs to ensure that they continue to receive a good quality signal of the non-primary multicast streams over-the-air or via alternative delivery methods.²⁵ Our grant of the instant STA authorization shall not prejudice the outcome of the Commission's current ATSC 3.0 proceeding relating to the licensing of multicast streams and will be subject to the outcome of the proceeding.²⁶

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 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.

²⁵ Mitts Legal STA, Request for STA at 2.

²⁶ In the *Second ATSC 3.0 FNPRM* the Commission seeks comment on issues related to the licensing of ATSC 1.0 multicast streams by stations that have converted their facilities to ATSC 3.0 operations. See *ATSC 3.0 Second FNPRM*, FCC 21-116; see also Petition for Declaratory Ruling and Rulemaking of the National Association of Broadcasters, GN Docket No. 16-142 (filed Nov. 9, 2020). The Commission stated that during the pendency of the rulemaking it will "maintain the status quo and permit the Bureau to continue to process STA requests and 3.0 license applications in the same manner it has to date." *ATSC 3.0 Second FNPRM* at n. 47. We find that the instant request is consistent with the Bureau's prior actions under the STA process. The Commission also stated that "any STA or 3.0 license application granted previously or during the course of this proceeding containing such multicast arrangements shall not prejudice the outcome of this proceeding, and any such STA or 3.0 license application will be subject to the outcome of this proceeding." *Id.* Accordingly, we want to make clear that our action herein is not intended to prejudge the outcome of the proceeding and all licensees must come into compliance with any rules adopted by the Commission, therein, to the extent this authorization conflicts.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

Cc (via electronic mail):

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