



Federal Communications Commission
Washington, D.C. 20554

October 24, 2023

Mercury Broadcasting Company, Inc.
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(via electronic mail)

KMTW(TV), Hutchinson, KS
Facility ID No. 77063
LMS File No. 0000222734

Dear Licensee:

This letter is in reference to the above-captioned application for legal special temporary authority (Legal STA) filed by Mercury Broadcasting Company, Inc. (Licensee or Mercury), licensee of full power television station KMTW(TV), Hutchinson, Kansas (KMTW or the Station).¹ In its Legal STA, the Licensee requests authorization to allow the Station's non-primary programming streams (multicast streams) to be aired in an ATSC 1.0 format, with no ATSC 3.0 simulcast, on KSAS-TV, Wichita, Kansas (KSAS), licensed to KSAS Licensee, LLC; KSNW(TV), Wichita, Kansas (KSNW), licensed to Nexstar Media Inc.; and KAKE(TV), Wichita, Kansas (KAKE), licensed to Knoxville TV LLC (Multicast Hosts).² This arrangement 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 continue to make clear that it will remain responsible from a statutory and regulatory perspective for the Station's multicast streams.⁴ Specifically, the Licensee requests that the Station 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).⁵ For the reasons below, we grant the Licensee's request.⁶

¹ Application of Mercury Broadcasting Company, Inc. for Legal Special Temporary Authority, LMS File No. 0000222734 (filed Oct. 11, 2023) (Legal STA).

² *Id.* at 1. The Multicast Hosts are authorized to operate on RF channels 26, 15, and 10, respectively..

³ *Id.* at 2.

⁴ *Id.*

⁵ *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.).

⁶ In the *ATSC 3.0 Third R&O*, which was adopted after the instant Legal STA was filed, the Commission adopted rules permitting Next Gen TV broadcasters to modify their licenses to include their simulcast or non-simulcast multicast stream(s) whether those streams are hosted on the same station as its primary stream or on different

Background. On October 18, 2022, the Video Division granted the Station's application for modification of license to convert its existing broadcast facilities to ATSC 3.0 transmission.⁷ As required by section 73.3801 of the Rules,⁸ the Station's primary stream will be simulcast in an ATSC 1.0 format over the facility of KAKE.⁹ On October 24, 2022, the Station was granted a Legal STA finding that for purposes of the Act and the Rules the Station's three multicast streams – *Charge!*, *TBD*, and *Stadium* – could be aired over the Multicast Hosts.¹⁰ This arrangement was entered into in order to avoid the loss of the Station's multicast streams to its current ATSC 1.0 viewers.¹¹ The Legal STA was last extended on May 31, 2023, for a period of six additional months.¹²

The Licensee has requested to continue airing its multicast streams over the Multicast Hosts, except the Licensee requests authority to switch the affiliation of *Stadium*, which is currently airing on the channel of KSAS, to *Nest*.¹³ The Licensee states that this change in programming “does not alter the amount of spectrum bandwidth used by KTMW's multicast streams.”¹⁴ The Station will continue to air *TBD* over the facility of KAKE and *Charge!* over the facility of KSNW.¹⁵ The Station plans to make the change to its multicast programming on or about October 30, 2023.¹⁶

simulcast host(s). See *Authorizing Permissive Use of the “Next Generation” Broadcast Television Standard, Third Report and Order and Further Notice of Proposed Rulemaking*, GN Docket No. 16-142, paras. 15-16, FCC 23-53 (rel. June 23, 2023) (*ATSC 3.0 Third R&O*). The rules adopted in the *ATSC 3.0 Third R&O* are not yet effective and therefore the instant Legal STA is still necessary for the streams to be authorized in the manner requested by the Licensee. See *Effective Date, Comment Dates Set for ATSC 3.0 3rd R&O and 4th FNPRM*, Public Notice, DA 23-612 (rel. July 17, 2023) (*ATSC 3.0 Third R&O Effective Date PN*) (providing notice that the rules adopted in the *ATSC 3.0 Third R&O* will take effect on August 16, 2023, except for 47 CFR §§ 73.3801, 73.6029, and 74.782, which require OMB approval). As noted below, the Licensee must come into compliance with all rules adopted in the *ATSC 3.0 Third R&O* once they are final and effective. *Infra* pg. 5 and note 31. See also *Authorizing Permissive Use of the “Next Generation” Broadcast Television Standard*, GN Docket No. 16-142, Second Further Notice of Proposed Rulemaking, 36 FCC Rcd 16088, 16095, n.47 (2021) (*ATSC 3.0 Second FNPRM*) (permitting the Media Bureau, during the pendency of the Commission's multicast licensing proceeding, to continue to process Legal STA requests and ATSC 3.0 license applications in the same manner it had been and requiring all such Legal STAs to come into compliance with the rules adopted in the proceeding).

⁷ Application of Mercury Broadcasting Company, Inc. for Legal Special Temporary Authority, LMS File No. 0000201733 (granted Oct. 18, 2022) (Mercury License Modification).

⁸ 47 CFR § 73.3801(b).

⁹ See Mercury License Modification.

¹⁰ Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau, FCC to Mercury Broadcasting Company, Inc. (Oct. 24, 2022) (on file at LMS File No. 0000201737) (STA Grant Letter).

¹¹ See STA Grant Letter at 2; Legal STA, Narrative Exhibit at 2.

¹² Application of Mercury Broadcasting Company, Inc. for Legal Special Temporary Authority, LMS File No. 0000214744 (granted May 31, 2023). The Legal STA expired on October 20, 2023.

¹³ Legal STA, Narrative Exhibit at 1 and 2.

¹⁴ *Id.* at 2.

¹⁵ *Id.* at 1.

¹⁶ *Id.*

As noted in the Legal STA, because of ATSC 1.0 capacity constraints, the Station is not able to air all of its multicast streams on the same channel as its primary ATSC 1.0 simulcast signal.¹⁷ Furthermore, due to capacity and other constraints, the Station is not able to simulcast an ATSC 3.0 version of its multicast stream.¹⁸ Pursuant to an engineering study conducted by the Licensee, at least 98.6 percent of the viewers will retain access to an ATSC 1.0 version of the Station's multicast programming.¹⁹ Absent the proposed arrangements and grant of the instant request, the Licensee has stated that all over-the-air viewers would lose access to KMTW's multicast streams.²⁰

The Licensee states that it has notified all impacted MVPDs and agrees to continue to coordinate with them as needed.²¹ Further, in order to alleviate any viewer confusion, the Station's current multicast streams will retain their existing Program and System Information Protocol (PSIP) major/minor channel numbers.²² The Licensee also states that it is airing notices to inform viewers about the upcoming multicast stream affiliation change.²³

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 multicast streams.²⁴ Grant of the instant Legal STA will promote, to the greatest extent possible, the continued transmission of the Station's multicast programming streams in an ATSC 1.0 format to viewers while also making 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

¹⁷ *Id.* 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; *Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard*, GN Docket No. 16-142, Second Further Notice of Proposed Rulemaking, 36 FCC Rcd 16088, 16094, para. 11 (2021); *ATSC 3.0 Third R&O* at paras. 15-16 (permitting, but not requiring, the licensing of ATSC 1.0 multicast streams by stations that convert to ATSC 3.0).

¹⁸ Specifically, the Licensee states that in order to air an ATSC 3.0 simulcast of the Station's non-primary multicast streams, KMTW would not be able to accommodate current ATSC 3.0 guests as arranged. According to the Licensee, doing so would impact the stations' abilities to offer enhanced ATSC 3.0 offerings, such as High Dynamic Range, Wide Color Gamut and High Frame Rate, immersive and multiple audio channels, and non-real time interactive data delivery. Furthermore, the Licensee notes that additional engineering work and equipment would be required to accommodate simulcasting KMTW's non-primary multicast streams in both an ATSC 1.0 and ATSC 3.0 format. Legal STA, Narrative Exhibit at 2.

¹⁹ See STA Grant Letter at 2-3. The Multicast Hosts stations are also located in the same Designated Market Area (DMA) as the Station and covers the Station's community of license. *Id.* at 2. Through the Legal STA process, the Bureau has previously authorized Next Gen TV stations to utilize a 1.0 multicast host whose coverage is at least 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, FCC, to Tribune Broadcasting Company II LLC (Oct. 2, 2020) (on file at LMS File No. 0000121872). See *ATSC 3.0 Second FNPRM*, 36 FCC Rcd at 16095, n.47 (permitting the Media Bureau, during the pendency of the Commission's multicast licensing proceeding, to continue to process Legal STA requests and 3.0 license applications in the same manner it had been and requiring all such Legal STAs to come into compliance with the rules adopted in the proceeding).

²⁰ STA Grant Letter at 3.

²¹ Legal STA, Narrative Exhibit at 2.

²² *Id.*

²³ *Id.*

²⁴ *Supra* note 17.

multicast streams, we will treat its multicast streams as 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 regards to its multicast streams. This includes, but is not limited to, our rules regarding political broadcasting, children's programming,²⁵ equal employment opportunities, public inspection files, indecency, sponsorship identification, station identification, contests, the CALM Act, and the Emergency Alert System.²⁶ We also decline to require the Station to air an ATSC 3.0 version of the multicast streams being aired over the Multicast Hosts' channels given the capacity and engineering constraints that the Licensee has described.

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."²⁷

Accordingly, the application of Mercury Broadcasting Company, Inc., licensee of full power television station KMTW(TV), Hutchinson, Kansas, **IS GRANTED** for a period of six months from date of this letter – hereby expiring on April 23, 2024.²⁸ For purposes of the Act and the 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 multicast streams being aired over the Multicast Hosts' channels by the Station or relocating a multicast stream(s) to a new ATSC 1.0 multicast host will require the filing of a new request. By this grant, the Licensee agrees to continue to coordinate with MVPDs as necessary. According to the Licensee, it will coordinate with all impacted MVPDs to ensure that they continue to receive a good quality signal of the multicast streams.²⁹ The Licensee also commits to providing notice of the affiliation change to its viewers.³⁰ Finally, the Licensee must come

²⁵ The Licensee notes in its Legal STA that it "fulfills all of its children's programming requirements by airing core E/I programming on KMTW's primary stream and does not rely on any programming broadcast on its multicast streams for compliance with the Commission's children's programming requirements." Legal STA, Narrative Exhibit at 2. *See also ATSC 3.0 Third R&O* at para. 34 (permitting children's programming to be aired on a multicast stream to count toward the originating station's Core Programming requirement if the multicast stream is carried on the same host as the station's primary stream or on a multicast host that will serve at least 95 percent of viewers within the originating station's NLSC).

²⁶ *See supra* note 5.

²⁷ *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). This finding is also consistent with the Commission's determination in the *ATSC 3.0 R&O* that "hosting multicast streams on a temporary host station's facility will not result in attribution under our broadcast ownership rules or for any other requirements related to television stations attribution (e.g., filing ownership reports)." *ATSC 3.0 Third R&O* at para. 26.

²⁸ The Licensee has authority to continue airing its multicast streams as previously authorized under LMS File No. 0000214744, until the change in the affiliation from *Stadium* to *Nest* occurs, but no later than November 30, 2023. If the Station is not able to make the multicast stream change by that date, it must notify Media Bureau staff if it wants extension of this authority. Such a request may be made via electronic mail to Evan Morris at Evan.Morris@fcc.gov. The Licensee must also notify the Media Bureau within ten (10) days of the affiliation change occurring via electronic mail to Evan Morris.

²⁹ Legal STA, Narrative Exhibit at 2.

³⁰ *Id.*

into compliance with all rules adopted in the *ATSC 3.0 Third R&O* once they are effective and make any required filings.³¹

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

Cc: (via electronic mail):

Miles S. Mason, Esq. (Counsel for KSAS)
Jessica Nyman, Esq. (Counsel for KSAS)
Coe W. Ramsey (Counsel for Knoxville TV, LLC)
Jason Roberts (Counsel for Nexstar)
Daniel A Kirkpatrick, Esq. (Counsel for Mercury)

³¹ While we believe that the instant multicast arrangement will comply with the rules adopted in the *ATSC 3.0 Third R&O*, our action herein is not intended to supersede any rules adopted in the *ATSC 3.0 Third R&O*, does not constitute a waiver of any of those rules, and does not represent that we would waive any of those rules if the instant multicast arrangement was found not to comply with the rules adopted in the *Third ATSC 3.0 R&O*.