



Federal Communications Commission
Washington, D.C. 20554

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Scripps Broadcasting Holdings LLC
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(via electronic mail)

KASW(TV), Phoenix, AZ
Facility ID No. 7143
LMS File No. 0000120506

Dear Licensee:

This letter is in reference to the above captioned application for legal special temporary authority (Legal STA) filed by Scripps Broadcasting Holdings LLC (Scripps or Licensee), licensee of full power television station KASW(TV), Phoenix, Arizona (KASW or Station).¹ In its Legal STA, Scripps requests authorization to allow some of KASW'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 KSAZ-TV, Phoenix, Arizona (KSAV), licensed to NW Communications of Phoenix, Inc., a subsidiary of Fox Corporation (FOX or multicast host).² This arrangement between Scripps and the multicast host has been entered into in connection with KASW's transition of its facility to the ATSC 3.0 transmission standard. Although Scripps has agreed to indemnify FOX from all liabilities or claims resulting from the airing of KASW's multicast streams over its facilities,³ Scripps has requested the instant authorization to make clear that Scripps will remain responsible from a statutory and regulatory perspective for KASW's multicast streams. Specifically, Scripps requests that KASW 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 Scripps's request.

Background. On March 13, 2020, the Video Division granted KASW's application for modification of license to convert its existing broadcast facility to ATSC 3.0 transmissions.⁵ As required

¹ Application of Scripps Broadcasting Holdings LLC for Legal Special Temporary Authority as amended, LMS File No. 0000120506 (filed Aug. 18, 2020) (KASW Legal STA).

² KSAV is licensed to operate on RF channel 10.

³ KASW Legal STA at 3.

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 file, indecency, sponsorship identification, etc.).

⁵ Application of Scripps Broadcasting Holdings LLC, LMS File No. 0000106570 (granted Mar. 13, 2020) (KASW License Modification).

by section 73.3801 of the Rules,⁶ KASW's primary stream will be simulcast in an ATSC 1.0 format over the facility of jointly owned KNXV-TV, Phoenix, Arizona (KNXV).⁷ In addition to its primary stream, KASW currently broadcasts three multicast channels: HSN, Grit, and Court TV Mystery.⁸ In order to avoid the loss of KASW's over-the-air multicast programming to its current ATSC 1.0 viewers, Scripps has entered into a written agreement with FOX to broadcast all three of its multicast streams using the facilities and channel of KSAZ.⁹ As part of the same arrangements, KSAZ has been provided capacity as an ATSC 3.0 guest station on KASW's facility.¹⁰

KASW converted its facility to ATSC 3.0 and commenced its ATSC 1.0 operations over the facilities of KNXV (primary), and KSAZ (multicast streams) on July 1, 2020.¹¹ On August 18, 2020, after commencing ATSC 3.0 operations and 1.0 simulcast/multicast operations, Scripps filed the instant Legal STA.¹² As noted in the Legal STA, because of ATSC 1.0 capacity constraints, KASW 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 on KNXV.¹³ Furthermore, due to capacity and other constraints Scripps is not able to simulcast an ATSC 3.0 version of KASW's multicast streams.¹⁴ Pursuant to an engineering study conducted by the Licensee, under its arrangement with the multicast host, all of KASW's current over-the-air ATSC 1.0 viewers will retain access to its multicast programming.¹⁵ Absent the proposed arrangement and grant of the instant request, Scripps states that "all over-the-air viewers would lose access to KASW(TV)'s multicast streams."¹⁶ The Licensee's engineering study also shows that its multicast streams will continue to serve KASW's community of license (which is the same as the one assigned to the multicast host).¹⁷

⁶ 47 CFR § 73.3801(b).

⁷ KNXV is licensed to operate on RF channel 15.

⁸ KASW Legal STA at 1.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 1. Counsel for Scripps has informed Division staff that the transition occurred on July 1, 2020, not July 8, 2020, as set forth in the Legal STA.

¹² To the extent possible, we request that a station that converts its facilities to ATSC 3.0 and chooses to seek formal Commission authority to air its ATSC 1.0 multicast channels on a multicast host station make such a request at the same time as other related ATSC 3.0 applications are filed.

¹³ *Id.*

¹⁴ Specifically, Scripps states that in order to air an ATSC 3.0 simulcast of the Station's multicast streams, KASW would not be able to accommodate current ATSC 3.0 guests as arranged. According to Scripps, to do so would not only require a reworking of existing ATSC 3.0 agreements, but impact 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, Scripps notes that additional engineering work and equipment would be required to accommodate simulcasting KASW's multicast streams in both an ATSC 1.0 and ATSC 3.0 format. *Id.* at 1-2.

¹⁵ *Id.* at 2. We also note that KASW's ATSC 1.0 primary simulcast that is being aired over the facility of KNXV will also result in no loss of its current ATSC 1.0 service population. See KASW License Modification, Technical Statement at 1, 3.

¹⁶ KASW Legal STA at 2.

¹⁷ *Id.* at 2, 5.

Scripps goes on to state that it provided the requisite notice to MVPDs regarding relocation of KASW's primary ATSC 1.0 stream and its multicast streams.¹⁸ KASW also has been airing the requisite over-the-air announcements¹⁹ and posted to its website consumer notices 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 KASW's ATSC 1.0 programming streams. In order to alleviate any viewer confusion, the PSIP (virtual) channels for each of KASW's program streams will remain unchanged and will be identified to viewers as being associated with KASW.²⁰

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 multicast streams.²¹ Grant of the instant Legal STA will promote continued transmission of KASW's multicast programming streams to viewers and, by providing KASW an authorization to air these signals over the host's facilities, make clear that Scripps 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 KASW's multicast streams airing on KSAZ, we will treat those signals as multicast streams being originated by KASW, even though they are being transmitted over KSAZ's facilities. That is, Scripps is the sole party responsible for ensuring compliance with all statutory and regulatory requirements with regards to KASW's three original multicast streams. This includes, but is not limited to, our rules regarding political broadcasting, children's programming,²² 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,²³ we will not require that KVCW air an ATSC 3.0 version of the ATSC 1.0 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

¹⁸ *Id.* at 2. See 47 CFR § 73.3801(g) (Notice to MVPDs).

¹⁹ KASW Legal STA at 2. See 47 CFR § 73.3801(f) (Consumer Education for Next Gen TV stations).

²⁰ KASW Legal STA at 2.

²¹ *Next Gen TV Report and Order*, 32 FCC Rcd at 9937-38, para. 13, n.40.

²² Scripps notes in its Legal STA that KASW "does not currently, and does not intend to, rely on its multicast streams for compliance with the Commission's Children's Television Programming requirements.... Accordingly KASW's compliance with the Commission's Children's Television Programming requirements and viewers' access to the station's core programming is not affected." KASW Legal STA at 3.

²³ See *supra* note 21.

would result in a potential violation of those rules.”²⁴ For purposes of the instant Legal STA, we find compelling the capacity and engineering constraints that the Licensee has set forth.²⁵

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. To the extent that the Commission’s existing rules do not provide sufficient clarity or guidance on issues related to the relocation of ATSC 1.0 multicast streams (simulcasted or non-simulcasted) and any other arrangements that have become necessary as part of broadcasters’ voluntary transition to ATSC 3.0 since the Commission’s ATSC 3.0 rules were adopted over two years ago, we encourage licensees to seek formal modification or clarification of the Commission’s existing rules prior to seeking renewal of the instant Legal STA.

As explained above, we will continue to consider these program streams to be KASW’s multicast streams even though they are being aired on a different channel than KASW’s ATSC 1.0 primary stream. Multicast signals are not entitled to mandatory carriage rights,²⁶ and this authorization does not modify or alter KASW’s mandatory carriage rights. Ultimately any impact on an MVPD’s ability to carry KASW’s multicast streams pursuant to a retransmission consent agreement is subject to the terms of the private contractual relationships between Scripps and the affected MVPDs. According to Scripps, it “does not expect there to be any adverse impact on MVPD viewers.”²⁷ As stated, Scripps states it 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 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 Legal STA requested by Scripps Broadcasting Holdings LLC, licensee of KASW(TV), Phoenix, Arizona, **IS GRANTED** for a period of six months from date of this letter – hereby expiring on March 23, 2021. For purposes of the Act and the Commission’s rules, we will consider the multicast program streams of HSN, GRIT, and Court TV Mystery to be originated by KASW, even though they are being aired over KSAZ’s facilities. 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 KASW’s multicast streams are being aired on the facilities of KSAZ pursuant to an active and Commission authorized ATSC 3.0 simulcasting arrangement (i.e., KASW is

²⁴ *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).

²⁵ *Supra* note 14.

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 KASW Legal STA at 2.

²⁸ *Id.*

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 multicast streams being aired over KSAZ's facilities by KASW or relocating KASW's multicast streams to a new ATSC 1.0 multicast host, will require the filing of a new request. Scripps 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 streams pursuant to an ATSC 3.0 simulcasting arrangement.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

Cc: (via electronic mail):
Coe W. Ramsey (Counsel for Scripps)