



Federal Communications Commission
Washington, D.C. 20554

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(via electronic mail)

WFNA(TV), Gulf Shores, AL
Facility ID No. 83943
LMS File No. 0000120978

Dear Licensee:

This letter is in reference to the above captioned application for legal special temporary authority (Legal STA) filed by Nexstar Broadcasting, Inc. (Nexstar or Licensee), licensee of full power television station WFNA(TV), Gulf Shores, Alabama (WFNA or Station).¹ In its Legal STA, Nexstar requests authorization to allow some of WFNA'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 WFGX(TV), Fort Walton Beach, Florida (WFGX), licensed to WFGX Licensee, LLC. (WFGX Licensee or multicast host).² This arrangement between Nexstar and the multicast host has been entered into in connection with WFNA's transition of its facility to the ATSC 3.0 transmission standard. Nexstar has requested the instant authorization to make clear that Nexstar will remain responsible from a statutory and regulatory perspective for WFNA's multicast streams. Specifically, Nexstar requests that WFNA 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).³ For the reasons below, we grant Nexstar's request.

Background. On September 24, 2020, the Video Division granted WFNA's application for modification of license to convert its existing broadcast facility to ATSC 3.0 transmissions.⁴ As required by section 73.3801 of the Rules,⁵ WFNA's primary stream will be simulcast in an ATSC 1.0 format over the facility of jointly owned WKRK-TV, Mobile, Alabama (WKRK).⁶ In addition to its primary stream,

¹ Application of Nexstar Broadcasting, Inc. for Legal Special Temporary Authority as amended, LMS File No. 0000120978, as amended (filed Sep. 1, 2020) (WFNA Legal STA).

² WFGX is licensed to operate on RF channel 14.

³ 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.).

⁴ Application of Nexstar Broadcasting, Inc. for Modification of License, LMS File No. 0000120977 (filed Sep. 1, 2020) (WFNA License Modification).

⁵ 47 CFR § 73.3801(b).

⁶ WKRK is licensed to operate on RF channel 20.

WFNA currently broadcasts three multicast channels: BounceTV, Justice Network, and Grit.⁷ In order to avoid the loss of WFNA's over-the-air multicast programming to its current ATSC 1.0 viewers, Nexstar has entered into a written agreement with WFGX Licensee to broadcast all three of its multicast streams using the facilities and channel of WFGX.⁸ As part of the same arrangements, WFGX has been provided capacity as an ATSC 3.0 guest station on WFNA's facility.⁹

As noted in the Legal STA, because of ATSC 1.0 capacity constraints, WFNA 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 WKRG.¹⁰ Furthermore, due to capacity and other constraints Nexstar is not able to simulcast an ATSC 3.0 version of WFNA's multicast streams.¹¹ Pursuant to an engineering study conducted by the Licensee, under its arrangement with the multicast host, 95% of WFNA's current over-the-air ATSC 1.0 viewers will retain access to WFNA's multicast programming.¹² Absent the proposed arrangement and grant of the instant request, Nexstar states that "all over-the-air viewers would lose access to WFNA(TV)'s multicast streams."¹³ The Licensee's engineering study also shows that its multicast streams will continue to serve WFNA's community of license (which is the same as the one assigned to the multicast host).¹⁴

Nexstar goes on to state that it provided the requisite notice to MVPDs regarding relocation of WFNA's primary ATSC 1.0 stream and its multicast streams.¹⁵ WFNA also has been airing the requisite over-the-air announcements¹⁶ 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 WFNA's ATSC 1.0 programming streams. In order to alleviate any viewer confusion, the PSIP (virtual) channels for each of WFNA's program streams will remain unchanged and will be identified to viewers as being associated with WFNA.¹⁷ WFNA plans to convert its facility to ATSC 3.0

⁷ WFNA Legal STA at 1.

⁸ *Id.*

⁹ *See*, Application of WFGX Licensee, LLC for Modification of License, LMS File No. 0000121010 (filed Sep. 1, 2020).

¹⁰ WFNA Legal STA at 1.

¹¹ Specifically, Nexstar states that in order to air an ATSC 3.0 simulcast of the Station's multicast streams, WFNA would not be able to accommodate current ATSC 3.0 guests as arranged. According to Nexstar, 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, Nexstar notes that additional engineering work and equipment would be required to accommodate simulcasting WFNA's multicast streams in both an ATSC 1.0 and ATSC 3.0 format. *Id.* at 1.

¹² *Id.* at 2. We also note that WFNA's ATSC 1.0 primary simulcast that is being aired over the facility of WKRG will also result in no loss of its current ATSC 1.0 service population. *See* WFNA License Modification, Engineering Statement at 2, 6.

¹³ WFNA Legal STA at 1-2.

¹⁴ *Id.*

¹⁵ *Id.* at 2. *See* 47 CFR § 73.3801(g) (Notice to MVPDs).

¹⁶ WFNA Legal STA at 2. *See* 47 CFR § 73.3801(f) (Consumer Education for Next Gen TV stations).

¹⁷ WFNA Legal STA at 2.

and commenced its ATSC 1.0 operations over the facilities of WKRG (primary), and WFGX (multicast streams) on October 21, 2020.¹⁸

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.¹⁹ Grant of the instant Legal STA will promote continued transmission of WFNA's multicast programming streams to viewers and by providing WFNA an authorization to air these signals over the host's facilities make clear that Nexstar 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 WFNA's multicast streams airing on WFGX, we will treat those signals as multicast streams being originated by WFNA even though they are being transmitted over WFGX's facilities. That is, Nexstar is the sole party responsible for ensuring compliance with all statutory and regulatory requirements with regards to WFNA's three original multicast streams. This includes, but is not limited to, our rules regarding political broadcasting, children's programming,²⁰ 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,²¹ we will not require that WFNA 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 would result in a potential violation of those rules."²² For purposes of the instant Legal STA, we find compelling the capacity and engineering constraints that the Licensee has set forth.²³

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 and regulations 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

¹⁸ *Id.*

¹⁹ *Next Gen TV Report and Order*, 32 FCC Rcd at 9937-38, para. 13, n.40.

²⁰ Nexstar notes in its Legal STA that WFNA "does not currently, and does not intend to, rely on its multicast streams for compliance with the Commission's Children's Television Programming requirements.... As such, neither WFNA's compliance with the Commission's Children's Television Programming requirements nor viewers' access to the station's required core programming is not affected." WFNA Legal STA at 2.

²¹ *See supra* note 19.

²² *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).

²³ *Supra* note 11.

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 WFNA's multicast streams even though they are being aired on a different channel than WFNA's ATSC 1.0 primary stream. Multicast signals are not entitled to mandatory carriage rights,²⁴ and this authorization does not modify or alter WFNA's mandatory carriage rights. Ultimately any impact on an MVPD's ability to carry WFNA's multicast streams pursuant to a retransmission consent agreement is subject to the terms of the private contractual relationships between Nexstar and the affected MVPDs. According to Nexstar, it does not expect there to be any adverse impact on MVPD viewers.²⁵ As stated, Nexstar 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.²⁶ As a result, we do not expect there to be any adverse impact on MVPD viewers.

Accordingly, the above captioned Legal STA requested by Nexstar Broadcasting, Inc., licensee of WFNA(TV), Gulf Shores, Alabama, **IS GRANTED** for a period of six months from date of this letter – hereby expiring on April 14, 2021. For purposes of the Act and the Commission's rules we will consider the multicast program streams of BounceTV, Justice Network, and Grit to be originated by WFNA, even though they are being aired over WFGX'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 WFNA's multicast streams are being aired on the facilities of WFGX pursuant to an active and Commission authorized ATSC 3.0 simulcasting arrangement (i.e., WFNA 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 multicast streams being aired over WFGX's facilities by WFNA or relocating WFNA's multicast streams to a new ATSC 1.0 multicast host, will require the filing of a new request. Nexstar 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

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 WFNA Legal STA at 1-2.

²⁶ *Id.* at 2.

subject to any additional Commission or Bureau decisions on the treatment of multicast streams pursuant to an ATSC 3.0 simulcasting arrangement.

Sincerely,

/s/

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