

Request for Waiver of 47 U.S.C. § 73.3801(c)

By this application, Deerfield Media (San Antonio) Licensee, LLC (“Licensee”), licensee of KMYS(TV), Kerrville, TX (Facility ID 51518), is proposing to convert its Channel 21 facility to the ATSC 3.0 broadcast transmission standard and to simulcast the signal of its primary stream (affiliated with the CW Network) in ATSC 1.0 using the facilities of KABB(TV), San Antonio, TX. KMYS(TV) and KABB(TV) are both licensed to the San Antonio DMA, and KABB(TV)’s service contour covers 96.2% of the population within KMYS(TV)’s service contour. However, because KABB(TV) does not place a city-grade contour over KMYS(TV)’s community of license, Licensee respectfully requests a waiver of Section 73.3801(c).

Section 73.3801(c) of the Commission’s Rules requires that, where full-power broadcasters seeking to deploy ATSC 3.0 services elect to relocate their ATSC 1.0 signals to the facilities of a temporary host station, the ATSC 1.0 simulcast signal must (1) continue to cover the originating station’s entire community of license and (2) the host station must be assigned to the same DMA as the originating station. But recognizing that “in certain circumstances such an arrangement may not be viable,” the Commission adopted a local simulcasting waiver standard to facilitate the voluntary deployment of ATSC 3.0 service.¹ A station seeking such a waiver is expected to demonstrate that (1) it has no viable local simulcasting partner in its market; and (2) it will make reasonable efforts to preserve ATSC 1.0 services to existing viewers in its community of license and/or otherwise minimize the impact on such viewers.

The Commission recently clarified that it “will presume that a station satisfies the first element of [the] waiver standard, which is that it has no ‘viable simulcasting partner,’ if it has fewer than three potential simulcasting partners within its DMA that can cover its entire community of license.”² Here, there are only two full-power stations within the San Antonio DMA that can cover KMYS(TV)’s city of license: KPXL-TV, Uvalde, TX (Facility ID 61173) and KCWX(TV), Fredericksburg, TX (Facility ID 24316). Although not required under the Commission’s waiver standard due to the presumption, Licensee engaged in hosting discussions with both stations’ licensees, but was ultimately unable to enter into a hosting arrangement with either station. Following extensive negotiations, KPXL-TV declined to enter a hosting agreement and KMYS(TV) was unable to secure the network consents required to participate in a hosting arrangement with KCWX(TV) (which, in addition to the San Antonio DMA, serves heavily populated areas of the Austin DMA, as its city of license is technically located in the Austin DMA).³

With respect to the second element of the Commission’s waiver standard, Licensee submits that grant of the waiver will not result in a measurable loss of service to viewers in Kerrville, TX. The 2010 Census reports that the population of Kerrville was 22,347 (estimated at 23,754 in 2019). Licensee expects that within this small population there are very few television households that rely exclusively on over-the-air television service, because none of San Antonio’s Big Four-

¹ *Authorizing Permissive Use of the “Next Generation” Broadcast Television Standard*, Second Report and Order and Order on Reconsideration, 35 FCC Rcd 6793, 6795 (2020).

² *Id.* at 6797.

³ *See Corridor Television, L.L.P. and Time Warner Cable*, Memorandum Opinion and Order, 16 FCC Rcd 4535, 4538 (CSB 2001).

affiliated stations' signals reaches Kerrville (suggesting that most viewers subscribe to MVPD service). This expectation is supported by Nielsen data, as Nielsen's data sample for the area reports 13,969 television households (TV HH) located within the zip codes of Kerrville and surrounding areas, none of which were over-the-air only. *See* attached Nielsen data. The vast majority of KMYS(TV)'s current over-the-air viewers will continue to have access to the station's primary stream in ATSC 1.0 from KABB(TV)'s facilities, as KABB(TV)'s service contour covers 96.2% of the population within KMYS(TV)'s service contour. *See* attached engineering statement.

Grant of the requested waiver will serve the public interest because it will further the Commission's ATSC 3.0 policy goals and will ultimately result in a substantial increase in television services to Kerrville. While none of the Big-Four affiliated stations in San Antonio currently serves Kerrville, the proposed hosting arrangement will bring two Big-Four affiliated stations' ATSC 3.0 programming into the community because KMYS(TV) will serve as the ATSC 3.0 host to KABB(TV)'s Fox-affiliated programming stream and WOAI-TV's NBC-affiliated programming stream. Grant of the requested waiver will also enable KMYS(TV) to bring other ATSC 3.0-related services to residents of the San Antonio DMA (including Kerrville), such as advanced emergency alerting and information functions, enhanced video featuring High Dynamic Range, Wide Color Gamut and High Frame Rate, immersive and multiple audio channels, and interactive data services.

For all of the above reasons, a waiver of Section 73.3801(c) in these circumstances is justified, and Licensee requests that the Commission promptly grant such a waiver to expedite delivery of ATSC 3.0's benefits to the San Antonio DMA.