



Federal Communications Commission
Washington, D.C. 20554

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Gray Television Licensee, LLC
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allfclms@gray.tv
(via electronic mail)

KSMO-TV, Kansas City, MO
Facility ID No. 33336
LMS File No. 0000184684

Dear Licensee:

This letter is in reference to the above-captioned application for legal special temporary authority (Legal STA) filed by Gray Television Licensee, LLC (Gray or Licensee), licensee of digital full power television station KSMO-TV, Kansas City, Missouri, (KSMO or Station).¹ In its Legal STA, the Licensee requests authorization to allow KSMO's non-primary programming streams (multicast streams) to be aired in an ATSC 1.0 format, with no ATSC 3.0 simulcast, on the channels of KMBC(TV), Kansas City, Missouri (KMBC), and KCWE(TV), Kansas City, Missouri (KCWE), both licensed to Hearst Stations Inc. (Hearst) (collectively, Multicast Hosts).² This arrangement between the Licensee and the Multicast Hosts has 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. Specifically, the Licensee requests that KSMO 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 August 23, 2021, 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 Gray Television Licensee, LLC, for Extension of Legal Special Temporary Authority, LMS File No. 0000184684 (filed Feb. 22, 2022) (Gray Legal STA). At the time of grant of the underlying Legal STA the Station was licensed to Meredith Corporation. *See* LMS File No. 0000153305. The Station was acquired by Gray on December 1, 2021. *See* LMS File No. 0000176197.

² KMBC is licensed to operate on RF Channel 29, KCWE is licensed to operate on RF Channel 31.

³ *See* Letter from Barbara A. Kreisman, Chief, Video Division Media Bureau to Meredith Corporation (Aug. 23, 2021) (KSMO Legal STA) available at LMS File No. 0000153305.

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, 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 Meredith Corporation for Modification of License, LMS File No. 0000153303 (granted August 23, 2021) (KSMO 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 commonly-owned facility of KCTV(TV), Kansas City, Missouri (KCTV).⁷ In addition on August 23, 2021, the Division granted a legal STA finding that for purposes of the Act and the Commission's rules the Station's four non-primary multicast programming streams could be aired as follows: *The Grio* and *DABL* over the channel of KMBC, and *COZI TV* and *Circle* over the channel of KCWE.⁸ This arrangement was entered into in order to avoid the loss of the Station's over-the-air multicast programming to their current ATSC 1.0 viewers.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

On February 22, 2021, the Licensee requested an extension of its Legal STA, seeking to continue airing its non-primary multicast streams over the channels of KMBC and KCWE. In addition, effective May 1, 2022, the Station requests authority to switch one of the multicast programming streams being aired over the channel of KCWE from *Circle* to *CometTV*.¹¹ Licensee states that this change in programming "will not result in a change to the amount of spectrum used by KSMO's multicast streams."¹² Licensee goes on to state that "[i]f KSMO was broadcasting in ATSC 1.0, it would be able to host these four multicast streams."¹³ None of the other multicast programming streams will be modified from the arrangement set forth in the underlying Legal STA.¹⁴

As stated in the underlying 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.¹⁵ Furthermore, due to capacity and other constraints the Station is not able to simulcast an ATSC 3.0 version of its multicast streams.¹⁶ Pursuant to an engineering study conducted by the Licensee, under its multicast hosting arrangements, over 99 percent of the Station's current over-the-air ATSC 1.0 viewers will retain access to the Station's non-primary multicast streams on the Multicast Hosts' channels.¹⁷ Absent the proposed arrangements and grant of the instant request, the Licensee stated that it "may not be able to continue to provide KSMO-TV's non-primary multicast streams over-the-air, which would result

⁶ 47 CFR § 73.3801(b).

⁷ See KSMO License Modification. KCTV is licensed to operate on RF Channel 24.

⁸ KSMO Legal STA.

⁹ *Id.* at 2.

¹⁰ *Id.* See also Application Hearst Stations Inc. for Modification of License, LMS File No. 0000153380 (granted August 23, 2021); Application of Hearst Stations Inc. for Modification of License, LMS File No. 0000153381 (granted August 23, 2021).

¹¹ Gray Legal STA.

¹² *Id.* at n.2.

¹³ *Id.*

¹⁴ *Id.* at 1.

¹⁵ KSMO Legal STA at 2. As previously noted, Next Gen TV stations are not required to air their multicast channels as part of their ATSC 3.0 conversion. See *id.* at n.11, citing *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.").

¹⁶ KSMO Legal STA at 2.

¹⁷ *Id.* We also note that over 99% of the Station's current over-the-air ATSC 1.0 viewers will retain access to its primary programming over KCTV. KSMO License Modification at 1, 3-4.

in a complete loss of service to all of the over-the-air viewers of these streams.”¹⁸ The Licensee’s engineering study also showed that its non-primary multicast streams will continue to serve the Station’s Designated Market Area (DMA) and community of license.¹⁹ In order to alleviate any viewer confusion, the PSIP (virtual) channel for each of KSMO’s programming streams will remain unchanged and will continue to be identified to viewers as being associated with KSMO.²⁰

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.²¹ 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 continue 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,²² equal employment opportunities, public inspection files, indecency, sponsorship identification, station identification, contests, the CALM Act, and the Emergency Alert System.²³ 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. Furthermore, because the Station has certified that the change in programming being aired over KCWE from *Circle* to *CometTV* will not require any additional spectrum capacity beyond what is currently required and that the multicast stream could be aired over

¹⁸ KSMOLegalSTA at 2.

¹⁹ *Id.*

²⁰ *Id.* at 1.

²¹ *Supra* note 15.

²² As previously disclosed, the Licensee notes that it will continue to air two hours per week of regularly scheduled children’s core programming on its primary channel and a third hour on multicast channels. KSMOLegalSTA at n.21 and GrayLegalSTA at 2. We note that the stations multicast streams both reach over 99 percent of its prior ATSC 1.0 viewers, so only a minimal number of viewers will lose access to the children’s programming carried on that stream. Indeed, the percentage of viewers reached is well within the Commission’s expedited processing standard for a host station’s coverage of a primary stream. *See Next Gen TV Report and Order*, 32 FCC Rcd at 9947-49, paras. 34-38 (establishing a 95% coverage threshold for expedited processing by balancing the need to ensure continued provision of service to viewers against providing broadcasters sufficient flexibility to locate and select a simulcast partner); 47 CFR § 73.3801(f)(5). 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. We note that in the *2019 KidVid Report and Order* the Commission found that it was “premature at [the] time to decide how to apply children’s programming rules to stations that broadcast in ATSC 3.0 and shift some of their Core Programming to a multicast stream that may not be simulcast in ATSC 1.0.” *Children’s Television Programming Rules; Modernization of Media Regulation Initiative*, MB Docket Nos. 18-202 and 17-105, Report and Order, 34 FCC Rcd 5822, 5849, n.171 (2019) (*2019 KidVid Report and Order*). The Commission stated it would monitor ATSC 3.0 deployment and revisit the issue at a later date. Our action herein is not intended to prejudge the outcome of any potential proceeding undertaken by the Commission related to this issue. *See infra*, note 28.

²³ *See supra* note 4.

KSMO's channel if it were operating in ATSC 1.0, we find it is in the public interest to allow the programming change effective May 1, 2022.²⁴

Finally, 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."²⁵

Accordingly, the application of Gray Television Licensee, LLC, licensee of KSMO(TV), Kansas City, Missouri, **IS GRANTED** for a period of six months from date of this letter – hereby expiring on October 28, 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 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.²⁶ Because multicast signals are not entitled to mandatory carriage rights,²⁷ any impact on an MVPD's ability to carry KSMO's non-primary multicast streams pursuant to a retransmission consent agreement is subject to the terms of the private contractual relationships between KSMO and the affected MVPDs. Our grant of the instant STA

²⁴ See *infra* note 28.

²⁵ *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).

²⁶ Gray Legal STA, Narrative Exhibit at 2.

²⁷ 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.

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.²⁸

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division

Cc: (via electronic mail):

Coe W. Ramsey, Esq.
(Counsel for KMBC and KCWE)

Joan Stewart, Esq.
(Counsel for KSMO)

²⁸ 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.