



Federal Communications Commission
Washington, D.C. 20554

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WPNT(TV), Pittsburgh, PA
Facility ID No. 73907
LMS File No. 0000112579

Dear Counsel:

This letter is in reference to the above captioned application for legal special temporary authority (Legal STA) filed by WCWB Licensee, LLC (Sinclair), licensee of full power television station WPNT(TV), Pittsburgh, Pennsylvania (WPNT or Station).¹ In its Legal STA, Sinclair requests authorization to allow WPNT's non-primary programming streams (multicast streams) to be aired in an ATSC 1.0 format, with no ATSC 3.0 simulcast, on the facility licensed to WTAE-TV, Pittsburgh, Pennsylvania (WTAE-TV), licensed to Hearst Stations Inc. (Hearst).² This arrangement between Hearst and Sinclair has been entered into in connection with WPNT's transition of its facility to the ATSC 3.0 transmission standard. Although Sinclair has agreed to indemnify Hearst from all liabilities or claims resulting from the airing of WPNT's multicast streams over WTAE-TV's facility,³ Sinclair has requested the instant authorization to make clear that Sinclair will remain responsible from a statutory and regulatory perspective for WPNT's multicast streams. Specifically, Sinclair requests that WPNT 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 rules and regulations in the same manner as an ATSC 1.0 primary simulcast stream is treated under the Commission's ATSC 3.0 rules and regulations.⁴ For the reasons below, we grant Sinclair's request.

Background. On May 20, 2020, the Video Division granted WPNT's application for modification of license to convert its existing broadcast facility to ATSC 3.0 transmissions.⁵ As required by section 73.3801 of the Commission's rules,⁶ WPNT's primary stream will be simulcast in an ATSC 1.0 format over the facility of commonly-owned station WPGH-TV, Pittsburgh, Pennsylvania (WPGH-

¹ LMS File No. 0000112579 (as amended) (WPNT Legal STA).

² WTAE-TV is licensed to operation on RF channel 27.

³ WPNT Legal STA at 1.

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, our rules regarding foreign ownership, political broadcasting, children's programming, equal employment opportunities, public inspection file, indecency, sponsorship identification, etc.).

⁵ LMS File No. 0000112577.

⁶ 47 CFR § 73.3801(b).

TV).⁷ In addition to its primary stream, WPNT currently broadcasts three multicast channels: Stadium, Comet TV, and TBD networks. In order to avoid the loss of WPNT's over-the-air multicast programming to its current ATSC 1.0 viewers, Sinclair has entered into a written agreement with Hearst to broadcast its multicast streams using the facilities and channel of WTAE-TV. As part of the same agreement, Hearst has been provided capacity as an ATSC 3.0 guest station on WPNT's facility.⁸

As noted in the Legal STA, because of ATSC 1.0 capacity constraints, WPNT is not able to air its multicast streams on the same channel as its primary ATSC 1.0 signal, which is being hosted on WPGH-TV.⁹ Furthermore, due to capacity and other constraints Sinclair is not able to simulcast an ATSC 3.0 version of WPNT's multicast streams.¹⁰ Pursuant to an engineering study conducted by Sinclair, under its arrangement with Hearst, approximately 93.4% of WPNT's current over-the-air ATSC 1.0 viewers will retain access to WPNT's multicast programming.¹¹ However, absent that arrangement and grant of the instant request, Sinclair states that "all over-the-air viewers will lose access to WPNT(TV)'s multicast streams."¹² Sinclair's engineering study also shows that its multicast streams will continue to serve WPNT's community of license (which is the same as the one assigned to WTAE-TV).¹³

Sinclair goes on to state that it provided the requisite 120-day notice regarding relocation of WPNT's primary ATSC 1.0 stream and its multicast streams.¹⁴ WPNT also has been airing the requisite over-the-air announcements¹⁵ 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 WPNT's ATSC 1.0 programming streams. In order to alleviate any viewer confusion, the PSIP (virtual) channels for each of WPNT's program streams will remain unchanged and will be identified to viewers as being associated with WPNT.¹⁶ WPNT plans to convert its facility to ATSC 3.0 and commence its ATSC 1.0 operations over the facilities of WPGH-TV (primary stream) and WTAE-TV (multicast streams) on June 16, 2020.¹⁷

⁷ WPGH-TV is licensed to operate on RF channel 20.

⁸ LMS File No. 0000112576 (granted May 15, 2020).

⁹ WPNT Legal STA at 1.

¹⁰ Specifically, Sinclair states that in order to air an ATSC 3.0 simulcast of the Station's multicast streams, WPNT would not be able to accommodate current ATSC 3.0 guests as arranged. According to Sinclair, 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 High Dynamic Range, Wide Color Gamut and High Frame Rate, immersive and multiple audio channels, and non-real time interactive data delivery. Furthermore, Sinclair notes that additional engineering work would be required to accommodate simulcasting WPNT's multicast streams in both an ATSC 1.0 and ATSC 3.0 format, at a minimum, delaying the rollout of ATSC 3.0 in the Pittsburgh market, which is expected to launch on June 16. *Id.*

¹¹ *Id.*, WPNT-WTAE 3.0 Engineering Exhibit at 1 and 3. We note that WPNT's ATSC 1.0 primary simulcast that is being aired over the facility of WPGH-TV will approximately serve 97.6% of its current ATSC 1.0 service population. *See* LMS File No. 0000112577, WPNT-WPGH ATSC 3.0 Engineering Exhibit at 1 and 3.

¹² WPNT Legal STA at 1.

¹³ *Id.*, WPNT-WTAE 3.0 Engineering Exhibit at 1 and 4.

¹⁴ WPNT Legal STA at 2. *See* 47 CFR § 73.3801(g) (Notice to MVPDs).

¹⁵ WPNT Legal STA at 2. *See* 47 CFR § 73.3801(f) (Consumer Education for Next Gen TV stations).

¹⁶ WPNT Legal STA at 2.

¹⁷ *See* LMS File No. 0000112577.

Discussion. We conclude, based on the facts and circumstances presented, that the public interest would be served by the grant of Sinclair's Legal STA. Under the Commission's rules, Next Gen TV Broadcasters are not required to simulcast or continue airing their existing multicast streams.¹⁸ Grant of the instant Legal STA will not only promote continued transmission of those programming streams to viewers, but by providing WPNT an authorization to air these signals over WTAE-TV's facility, this grant will make clear that Sinclair is responsible for the content of those signals from a regulatory compliance and Commission enforcement perspective. Therefore, for purposes of all statutory and regulatory obligations related to WPNT's multicast streams (Stadium, Comet TV, and TBD networks), we will treat those signals as multicast streams being originated by WPNT even though they are being transmitted over WTAE-TV's facility. Sinclair is the sole party responsible for ensuring compliance with all statutory and regulatory requirements with regards to WPNT's three multicast streams. This includes, but is not limited to, our rules regarding political broadcasting, children's programming,¹⁹ equal employment opportunities, public inspection file, 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,²⁰ we will not require that WPNT air an ATSC 3.0 version of the ATSC 1.0 multicast streams being aired over WTAE-TV's facility.

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 rule."²¹ For purposes of the instant Legal STA, we find compelling the capacity and engineering constraints that Sinclair has set forth.²²

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 existing Commission 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 formally seek 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 WPNT's multicast streams even though they are being aired on a different channel than WPNT's ATSC 1.0 primary stream.

¹⁸ *Next Gen TV Report and Order*, 32 FCC Rcd at 9937-38, para. 13, n.20.

¹⁹ Sinclair notes in its Legal STA that WPNT "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 WPNT(TV)'s compliance with the Commission's Children's Television Programming requirements nor viewers' access to the station's required core programming will be affected by deviations in coverage resulting from the relocation of WPNT(TV)'s multicast signals to WTAE-TV's channel 27 facilities." WPNT Legal STA at 2.

²⁰ *See supra* note 18.

²¹ *Next Gen TV Report and Order*, 32 FCC Rcd at 9971, 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, FCC 20-73, para. 15 (rel. Jun. 9, 2020).

²² *See supra* note 10.

Multicast signals are not entitled to mandatory carriage rights,²³ and this authorization does not modify or alter WPNT's mandatory carriage rights. Ultimately any impact on an MVPD's ability to carry WPNT's multicast streams pursuant to a retransmission consent agreement are subject to the terms of the private contractual relationship between Sinclair and the affected MVPD. According to Sinclair, the current arrangement between WPNT and WTAE-TV "will preserve access to those WPNT(TV) multicast streams currently received for most, if not all, viewers who are receiving them via MVPDs."²⁴ Sinclair 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.²⁵ As a result, we do not expect there to be any adverse impact on MVPD viewers.

Accordingly, the above captioned Legal STA requested by WCWB Licensee, LLC, licensee of WPNT(TV), Pittsburgh, Pennsylvania, **IS GRANTED** for a period of six months from date of this letter – hereby expiring on December 15, 2020. For purposes of the Act, and the Commission's rules and regulations we will consider the multicast program streams of Stadium, Comet TV, and TBD networks to be originated by WPNT even though they are being aired over WTAE-TV's facility. 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 WPNT's multicast streams are being aired on WTAE-TV's facility pursuant to an active and Commission authorized ATSC 3.0 simulcasting arrangement (i.e., WPNT 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 additional multicast streams, a change in the multicast streams being aired over WTAE-TV's facility by WPNT, or relocating WPNT's multicast streams to a new ATSC 1.0 host, will require the filing of a new request. Sinclair agrees to coordinate with MVPDs as necessary. While renewal of the instant authorization may be requested, there is no guarantee 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):
Jessica Nyman, Esq.
Coe Ramsey, Esq.

²³ See *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, First Report and Order and FNPRM, 16 FCC Rcd 2598, 2621, 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, 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.

²⁴ WPNT Legal STA at 1-2.

²⁵ *Id.*