



Federal Communications Commission
Washington, D.C. 20554

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KVCW(TV), Las Vegas, NV
Facility ID No. 10195
LMS File No. 0000112813

Dear Licensee:

This letter is in reference to the above captioned application for legal special temporary authority (Legal STA) filed by KUPN Licensee, LLC (the Licensee), licensee of full power television station KVCW(TV), Las Vegas, Nevada (KVCW or Station).¹ In its Legal STA, the Licensee requests authorization to allow KVCW'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 KSNV(TV), Las Vegas, Nevada, (KSNV) licensed to the Licensee, and KLAS-TV, Las Vegas, Nevada (KLAS), licensed to Nexstar Broadcasting, Inc. (Nexstar) (collectively the "multicast hosts").² This arrangement between the Licensee and the multicast hosts has been entered into in connection with KVCW's transition of its facility to the ATSC 3.0 transmission standard. Although the Licensee has agreed to indemnify Nexstar from all liabilities or claims resulting from the airing of KVCW's multicast streams over their facilities,³ the Licensee has requested the instant authorization to make clear that the Licensee will remain responsible from a statutory and regulatory perspective for KVCW's multicast streams.⁴ Specifically, the Licensee requests that KVCW 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 (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.⁵ For the reasons below, we grant the Licensee's request.

¹ Application of KVCW Licensee, LLC for Legal Special Temporary Authority as amended, LMS File No. 0000113901 (filed June 23, 2020) (KVCW Legal STA).

² KSNV is licensed to operate on RF channel 22, and KLAS is licensed to operate on RF channel 7.

³ KVCW Legal STA at 2.

⁴ We note that KVCW and KSNV are both commonly owned by Sinclair Broadcast Group (Sinclair), the parent company of KUPN License LLC. Counsel for Sinclair has informed Video Division staff that because the stations are commonly owned, they have not entered into any contractual indemnification, however, to ensure clarity under the rules given the involvement of Nexstar in the multicast arrangement, Sinclair requests that the instant legal authorization cover KVCW's multicast streams aired both over the facilities of KSNV and KLAS.

⁵ 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,

Background. On May 15, 2020, the Video Division granted KVCW’s application for modification of license to convert its existing broadcast facility to ATSC 3.0 transmissions.⁶ As required by section 73.3801 of the Rules,⁷ KVCW’s primary stream will be simulcast in an ATSC 1.0 format over the facility of KTNV-TV, Las Vegas, Nevada (KTNV).⁸ In addition to its primary stream, KVCW currently broadcasts four multicast channels: MyNetwork, TBD, ThisTV, and Comet TV.⁹ In order to avoid the loss of KVCW’s over-the-air multicast programming to its current ATSC 1.0 viewers, the Licensee has entered into a written agreement with Nexstar and an arrangement with commonly owned station KSNV to broadcast the multicast streams of KVCW using the facilities and channels of KLAS and KSNV. As part of the same arrangements, the multicast hosts have been provided capacity as ATSC 3.0 guest stations on KVCW’s facility.¹⁰

As noted in the Legal STA, because of ATSC 1.0 capacity constraints, KVCW is not able to air its multicast streams on the same channel as its primary ATSC 1.0 signal, which is being hosted on KTNV.¹¹ Furthermore, due to capacity and other constraints the Licensee is not able to simulcast an ATSC 3.0 version of KVCW’s multicast streams.¹² Pursuant to an engineering study conducted by the Licensee, under its arrangement with the multicast hosts, 100% of KVCW’s current over-the-air ATSC 1.0 viewers will retain access to KVCW’s multicast programming.¹³ Absent this arrangement and grant of the instant request, the Licensee states that “all over-the-air viewers would lose access to KVCW(TV)’s multicast streams.”¹⁴ The Licensee’s engineering study also shows that its multicast

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.).

⁶ Application of KVCW Licensee, LLC for Modification of License, LMS File No. 0000112811 (granted May 15, 2020) (KVCW License Modification).

⁷ 47 CFR § 73.3801(b).

⁸ KTNV is licensed to operate on RF channel 13 and is licensed to Scripps Broadcasting Holdings, Inc.

⁹ The Licensee is airing MyNetwork on KSNV and TBD, ThisTV, and CometTV on KLAS. KVCW Legal STA at 1

¹⁰ Application of Nexstar Broadcasting, Inc. for Modification of License, LMS File No. 0000112828 (granted May 15, 2020); Application of KUPN Licensee, LLC for Modification of License, LMS File No. 0000112809 (granted May 15, 2020).

¹¹ KVCW Legal STA at 1.

¹² Specifically, the Licensee states that in order to air an ATSC 3.0 simulcast of the Station’s multicast streams, KVCW would not be able to accommodate current ATSC 3.0 guests as arranged. According to the Licensee, 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, the Licensee notes that additional engineering work and equipment would be required to accommodate simulcasting KVCW’s multicast streams in both an ATSC 1.0 and ATSC 3.0 format. *Id.*

¹³ *Id.*, KVCW-KSNV-KLAS STA Engineering Exhibit at 1-3, 5. We also note that KVCW’s ATSC 1.0 primary simulcast that is being aired over the facility of KTNV will also result in no loss of its current ATSC 1.0 service population. *See* KVCW License Modification, KVCW-KTNV ATSC 3.0 Engineering Statement at 1, 3.

¹⁴ KVCW Legal STA at 1.

streams will continue to serve KVCW's community of license (which is the same as the one assigned to the multicast hosts).¹⁵

The Licensee goes on to state that it provided the requisite 120-day notice regarding relocation of KVCW's primary ATSC 1.0 stream and its multicast streams.¹⁶ KVCW also has been airing the requisite over-the-air announcements¹⁷ 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 KVCW's ATSC 1.0 programming streams. In order to alleviate any viewer confusion, the PSIP (virtual) channels for each of KVCW's program streams will remain unchanged and will be identified to viewers as being associated with KVCW.¹⁸ KVCW converted its facility to ATSC 3.0 and commenced its ATSC 1.0 operations over the facilities of KUCW (primary stream), KUTV and KTVX (multicast streams) on May 26, 2020.¹⁹

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.²⁰ Grant of the instant Legal STA will not only promote continued transmission of those programming streams to viewers, but by providing KVCW an authorization to air these signals over the hosts' facilities, this grant will make clear that the Licensee 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 KVCW multicast streams (MyNetwork, TBD, ThisTV, and Comet TV), we will treat those signals as multicast streams being originated by KVCW even though they are being transmitted over the multicast hosts' facilities. The Licensee is the sole party responsible for ensuring compliance with all statutory and regulatory requirements with regards to KVCW's four multicast streams. This includes, but is not limited to, our rules regarding political broadcasting, children's programming,²¹ 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,²² 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

¹⁵ *Id.*, KVCW-KSNV-KLAS STA Engineering Exhibit at 1-2, 4, 6.

¹⁶ KVCW Legal STA at 2. See 47 CFR § 73.3801(g) (Notice to MVPDs).

¹⁷ KVCW Legal STA at 2. See 47 CFR § 73.3801(f) (Consumer Education for Next Gen TV stations).

¹⁸ KVCW Legal STA at 2.

¹⁹ See KVCW License Modification.

²⁰ *Next Gen TV Report and Order*, 32 FCC Rcd at 9937-38, para. 13, n.40.

²¹ Licensee notes in its Legal STA that KVCW "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 KVCW(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 the relocation of KVCW(TV)'s multicast signals to KSNV(TV)'s and KLAS-TV's facilities." KVCW Legal STA at 2.

²² See *supra* note 20.

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."²³ For purposes of the instant Legal STA, we find compelling the capacity and engineering constraints that the Licensee has set forth.²⁴

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 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 KVCW's multicast streams even though they are being aired on a different channel than KVCW's ATSC 1.0 primary stream. Multicast signals are not entitled to mandatory carriage rights,²⁵ and this authorization does not modify or alter KVCW's mandatory carriage rights. Ultimately any impact on an MVPD's ability to carry KVCW's multicast streams pursuant to a retransmission consent agreement are subject to the terms of the private contractual relationship between the Licensee and the affected MVPD. According to the Licensee, the current arrangement between KVCW and the multicast hosts "will preserve access to those KVCW(TV) multicast streams currently received for viewers who are receiving them via MVPDs."²⁶ The Licensee 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.²⁷ As a result, we do not expect there to be any adverse impact on MVPD viewers.

Accordingly, the above captioned Legal STA requested by KUPN Licensee, LLC, licensee of KVCW(TV), Las Vegas, Nevada, **IS GRANTED** for a period of six months from date of this letter – hereby expiring on January 8, 2021. For purposes of the Act, and the Rules and regulations we will

²³ *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, FCC 20-73, para. 15 (rel. Jun. 9, 2020).

²⁴ See *supra* note 12.

²⁵ 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.

²⁶ KVCW Legal STA at 2.

²⁷ *Id.*

consider the multicast program streams of MyNetwork, TBD, ThisTV, and Comet TV to be originated by KVCW even though they are being aired over the multicast hosts' 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 KVCW's multicast streams are being aired on the multicast hosts' facilities pursuant to an active and Commission authorized ATSC 3.0 simulcasting arrangement (i.e., KVCW 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 the multicast hosts' facilities by KVCW or relocating KVCW's multicast streams to a new ATSC 1.0 multicast host, will require the filing of a new request. The Licensee 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/

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