



Federal Communications Commission
Washington, D.C. 20554

June 15, 2022

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Request for Legal STA
KMYS(TV), Kerrville, Texas
Facility ID No. 51518
LMS File No. 0000191506

Dear Licensee:

This letter is in reference to the above-captioned application for legal special temporary authority (Legal STA) filed by Deerfield Media (San Antonio) Licensee, LLC (Deerfield or Licensee), licensee of full power television station KMYS(TV), Kerrville, Texas (KMYS or Station).¹ In its Legal STA, the Licensee requests authorization to allow the Station's non-primary programming streams (multicast streams) to be aired in an ATSC 1.0 format, with no ATSC 3.0 simulcast, on KABB(TV), San Antonio, Texas (KABB), licensed to KABB Licensee, LLC (Sinclair or Multicast Host).² The arrangement between the Licensee and the Multicast Host have 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 Sinclair from all liabilities or claims resulting from the airing of its multicast streams over its channel,³ Licensee has requested the instant authorization 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 KMYS be treated as if it is still originating all 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 June 10, 2022, 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 Deerfield Media (San Antonio) Licensee, LLC for Legal Special Temporary Authority, LMS File No. 0000191506 (filed May 25, 2022) (Deerfield Legal STA).

² KABB(TV) is authorized to operate on RF channel 30.

³ Deerfield Legal STA, Narrative Exhibit at 2.

⁴ Deerfield Legal STA, Narrative Exhibit at 2. *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 Deerfield Media (San Antonio) Licensee, LLC for Modification of License, LMS File No. 0000191505 (granted June 10, 2022) (Deerfield License Modification).

by section 73.3801 of the Rules,⁶ the Station's primary stream of *DABL* programming will be simulcast in an ATSC 1.0 format over the facility of KCWX(TV), Fredericksburg, Texas (KCWX), licensed to Corridor Television, L.L.P.⁷ The Station currently broadcasts two multicast streams: *TBD* and *Stadium*.⁸ In order to avoid the loss of the Station's over-the-air multicast programming to its current ATSC 1.0 viewers, the Licensee has entered into written agreements with Sinclair to broadcast both non-primary multicast streams over KABB.⁹

As noted in the Legal STA, because of ATSC 1.0 capacity constraints, the Station is not able to air its multicast streams on the same channel as its primary ATSC 1.0 simulcast signal.¹⁰ Furthermore, due to capacity and other constraints the Station is not able to simulcast an ATSC 3.0 version of its multicast streams.¹¹ Pursuant to an engineering study conducted by the Licensee, 96.3 percent of the Station's current over-the-air viewers will retain access to *TBD's and Stadium's* multicast programming over KABB.¹² The Licensee also states that the multicast host places a city-grade service contour over the entirety of KMYS's city of license.¹³ Absent the proposed arrangements and grant of the instant request, the Licensee states that all over-the-air viewers would lose access to KMYS's multicast streams (*TBD and Stadium*).¹⁴

⁶ 47 CFR § 73.3801(b).

⁷ See Deerfield License Modification. KCWX is licensed to operate on RF Channel 5. We also note that 98 percent of the Station's current over-the-air ATSC 1.0 viewers will retain access to *DABL* programming over KCWX. *Id.*, Engineering Statement at 1 and 3.

⁸ Deerfield Legal STA, Narrative Exhibit at 1.

⁹ *Id.*

¹⁰ *Id.* We also note that stations are not required to air their multicast channels as part of their ATSC 3.0 conversion. See *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.").

¹¹ Deerfield Legal STA, Narrative Exhibit at 1. Specifically, Licensee states that airing an ATSC 3.0 simulcast of the Station's non-primary multicast stream would impact the Station's ability to offer enhanced video featuring High Dynamic Range, Wide Color Gamut and High Frame Rate, immersive and multiple audio channels using Dolby AC-4, Advanced Emergency Alerting and Information functions as part of a broadcast receiver application, and non-realtime interactive data delivery. *Id.* Furthermore, the Licensee notes that this would delay rollout of ATSC 3.0 in the market. *Id.*

¹² *Id.* at 2 and KMYS-KABB ATSC 3.0 STA Engineering, Exh. A. In the *Second ATSC 3.0 FNPRM*, the Commission stated that during the pendency of the proceeding it would allow the Bureau to continue to process STA requests and 3.0 license applications in the same manner it has previously. *Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard*, Second Further Notice of Proposed Rulemaking, GN Docket No. 16-142, FCC 21-116, n.47 (rel. Nov. 5, 2021) (*Second ATSC 3.0 FNPRM*). By grant of this authorization 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, consistent with that precedent. We find our action herein is consistent with our past actions and does not prejudge the outcome of that proceeding. See e.g., Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau, to Anderson (WFBC-TV) Licensee, Inc., (June 1, 2022) (on file at LMS File No. 0000190294) (permitting a multicast host arrangement where the host is covering greater than 95 percent of the licensee's original ATSC 1.0 coverage area). The Station must come into compliance with any rules that are ultimately adopted therein. See *infra* note 25.

¹³ Deerfield Legal STA, Engineering Statement, Exh. A.

¹⁴ *Id.*, Narrative Exhibit at 2.

The Licensee indicates that it has provided the requisite notice to MVPDs regarding relocation of the Station's primary ATSC 1.0 stream and its non-primary multicast streams.¹⁵ The Station is also airing the requisite over-the-air announcements regarding its transition to the ATSC 3.0 standard and the need for over-the-air viewers to rescan their television sets to continue to receive the Station's ATSC 1.0 programming streams.¹⁶ In order to alleviate any viewer confusion, the PSIP (virtual) channel for each of the Station's programming streams will remain unchanged and will be identified to viewers as being associated with KFRE.¹⁷ If granted authority, the Licensee will convert the Station's facilities to ATSC 3.0 and commence its ATSC 1.0 operations over KABB on June 16, 2022.¹⁸

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.¹⁹ 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 treat those signals as multicast streams being originated by the Station even though they are being transmitted over the Multicast Host's channel. 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,²⁰ equal employment opportunities, public inspection files, indecency, sponsorship identification, station identification, contests, the CALM Act, and the Emergency Alert System.²¹ Furthermore, 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 Host's channel given the capacity and engineering constraints that the Licensee has described.

Further, 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."²²

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

¹⁶ Deerfield Legal STA, Narrative Exhibit at 2. See 47 CFR § 73.3801(f) (Consumer Education for Next Gen TV stations).

¹⁷ Deerfield Legal STA, Narrative Exhibit at 2.

¹⁸ *Id.*

¹⁹ *Supra* note 10.

²⁰ The Licensee notes in its Legal STA that "Licensee 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 KMYS(TV) averages at least three hours per week of core programming on its primary stream." Deerfield Legal STA, Narrative Exhibit at 2.

²¹ See *supra* note 4.

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).

Accordingly, the application of Deerfield Media (San Antonio) Licensee, LLC, licensee of full power television station KMYS(TV), Kerrville, Texas, **IS GRANTED** for a period of six months from date of this letter – hereby expiring on December 14, 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 Host’s channel. Any change in the non-primary multicast streams being aired over the Multicast Host 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. Because multicast signals are not entitled to mandatory carriage rights,²³ any impact on an MVPD’s ability to carry KMYS’s non-primary multicast streams pursuant to a retransmission consent agreement is subject to the terms of the private contractual relationships between KMYS and the affected MVPDs. According to the Licensee, it will coordinate with all impacted MVPDs 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.²⁴ Our grant of the instant STA 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.²⁵

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

Cc (via electronic mail):

Miles Mason, Esq. and Jessica Nyman, Esq. (Counsel for Sinclair)

²³ 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.

²⁴ Deerfield Legal STA, Narrative Exhibit at 2.

²⁵ 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.