



Federal Communications Commission  
Washington, D.C. 20554

August 23, 2021

Scripps Broadcasting Holdings, LLC  
c/o David Giles  
312 Walnut Street  
28th Floor  
Cincinnati, OH 45202  
(via electronic mail)

KMCI-TV, Lawrence, KS  
Facility ID No. 42636  
LMS File No. 0000153578

Dear Licensee:

This letter is in reference to the above-captioned application for legal special temporary authority (Legal STA) filed by Scripps Broadcasting Holdings, LLC (Scripps or Licensee), licensee of digital full power television station KMCI-TV, Lawrence, Kansas, (KMCI or Station).<sup>1</sup> In its Legal STA, the Licensee requests authorization to allow KMCI'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 KSHB-TV, Kansas City, Missouri (KSHB), licensed to Scripps, and WDAF-TV, Kansas City, Missouri (WDAF), licensed to WDAF License, Inc. (Nexstar) (collectively, Multicast Hosts).<sup>2</sup> 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' facilities,<sup>3</sup> it 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 KMCI 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

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<sup>1</sup> Application of Scripps Broadcasting Holdings, LLC for Legal Special Temporary Authority, LMS File No. 0000153578 (filed July 21, 2021) (Scripps Legal STA).

<sup>2</sup> KSHB is licensed to operate on RF Channel 36, WDAF is licensed to operate on RF Channel 34.

<sup>3</sup> Scripps Legal STA at 3. Because KMCI and KSHB are commonly owned by Scripps, they need not enter into any contractual indemnification or a written simulcast agreement with regards to the multicast stream to be aired on KSHB. *See Media Bureau Announces That It Will Begin Accepting Next Generation Television (ATSC 3.0) License Applications in the Commission's Licensing and Management System on May 28, 2019*, GN Docket No. 16-142, Public Notice, 34 FCC Rcd 3684, 3685 n.5 (MB 2019) (*May 2019 PN*) (not requiring commonly-owned stations to enter into or maintain written simulcast agreements). Nonetheless, in an abundance of caution, Scripps requests that the instant legal authorization cover KMCI's multicast stream aired over the facility of KSHB. We find this approach in the context of a station's non-primary multicast stream is consistent with our determination in the May 2019 PN regarding a primary simulcast hosting arrangement between commonly owned stations. However, our action herein is not intended to prejudge the outcome of any potential proceeding relating to any future licensing requirements regarding non-primary multicast streams. *See infra* note 27.

amended (Act) and the Commission's rules (Rules).<sup>4</sup> 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.<sup>5</sup> As required by section 73.3801 of the Rules,<sup>6</sup> the Station's primary stream will be simulcast in an ATSC 1.0 format over the commonly-owned facility of KSHB.<sup>7</sup> In addition to its primary stream, the Station currently broadcasts three non-primary multicast streams: (1) *Bounce TV*, (2) *Court TV*, and (3) *HSN*.<sup>8</sup> In order to avoid the loss of the Station's over-the-air multicast programming to their current ATSC 1.0 viewers, the Licensee has entered into a written agreement with Nexstar to broadcast *Court TV* and *HSN* over WDAF, and plans to air *Bounce TV* over commonly-owned station KSHB.<sup>9</sup> As part of the same arrangement, the Multicast Hosts have been provided capacity as ATSC 3.0 guest stations on the Station's facilities.<sup>10</sup>

As noted in the 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.<sup>11</sup> Furthermore, due to capacity and other constraints the Station is not able to simulcast an ATSC 3.0 version of its multicast streams.<sup>12</sup> Pursuant to an engineering study conducted by the Licensee, under its multicast hosting arrangements, all of the Station's current over-the-air ATSC 1.0 viewers will retain

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<sup>4</sup> 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.).

<sup>5</sup> Application of Scripps Broadcasting Holdings LLC for Modification of License, LMS File No. 0000153576 (granted August 23, 2021) (Scripps License Modification).

<sup>6</sup> 47 CFR § 73.3801(b).

<sup>7</sup> See Scripps License Modification.

<sup>8</sup> Scripps Legal STA at 1.

<sup>9</sup> *Id.*

<sup>10</sup> See Application Scripps Broadcasting Holdings LLC for Modification of License, LMS File No. 0000153577 (granted August 23, 2021); Application of WDAF License, Inc. for Modification of License, LMS File No. 0000155694 (granted August 23, 2021).

<sup>11</sup> Scripps Legal STA at 2. 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.").

<sup>12</sup> Specifically, Licensee states that to air an ATSC 3.0 simulcast of the Station's non-primary multicast streams, the Station would not be able to accommodate current ATSC 3.0 guests as arranged. According to the Licensee, doing so also would impact the Station's ability to offer enhanced ATSC 3.0 offerings, such as High Dynamic Range, Wide Color Gamut and High Frame Rate, immersive and multiple audio channels, advanced emergency alerting, and non-realtime interactive data delivery. Furthermore, the Licensee notes that additional engineering work and equipment would be required to accommodate simulcasting the Station's non-primary multicast streams in both an ATSC 1.0 and ATSC 3.0 format and thereby delay rollout of ATSC 3.0 in the Kansas City, Missouri DMA. Scripps Legal STA at 2.

access to *Bounce TV* on KSHB, and over 98% will retain access to *Court TV* and *HSN* on WDAF.<sup>13</sup> Absent the proposed arrangements and grant of the instant request, the Licensee states that it “may not be able to continue to provide KMCI-TV’s multicast streams over the air, which would result in a complete loss of service to all of the over-the-air viewers of these streams.”<sup>14</sup> The Licensee’s engineering study also shows that its non-primary multicast streams will continue to serve the Station’s Designated Market Area (DMA) and community of license.<sup>15</sup>

The Licensee goes on to state 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.<sup>16</sup> The Station will also air the requisite over-the-air announcements<sup>17</sup> 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 KMCI’s ATSC 1.0 programming streams. In order to alleviate any viewer confusion, the PSIP (virtual) channel for each of KMCI’s programming streams will remain unchanged and will be identified to viewers as being associated with KMCI.<sup>18</sup> The Licensee plans to convert the Station’s facilities to ATSC 3.0 and commence its ATSC 1.0 operations over the facilities of KSHB (primary stream and *Bounce TV* multicast stream), and WDAF (*Court TV* and *HSN*) on August 24, 2021.<sup>19</sup>

*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 simulcast or continue airing their existing non-primary multicast streams.<sup>20</sup> 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 those signals 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 Hosts’ channels and facilities. The Station is the sole party responsible for ensuring compliance with all statutory and regulatory requirements with regard to all of its original non-primary multicast streams. This includes, but is not limited to, our rules regarding political broadcasting, children’s programming,<sup>21</sup> equal employment opportunities, public inspection files, indecency, sponsorship identification, station identification, contests, the CALM Act, and

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<sup>13</sup> See Scripps Legal STA at 2, 6. We also note that over 100% of the Station’s current over-the-air ATSC 1.0 viewers will retain access to its primary programming over KSHB. Scripps License Modification at 1, 3-4.

<sup>14</sup> Scripps Legal STA at 2.

<sup>15</sup> *Id.* at 2, 6.

<sup>16</sup> *Id.* at 2. See 47 CFR § 73.3801(g) (Notice to MVPDs).

<sup>17</sup> Scripps Legal STA at 2-3. See 47 CFR § 73.3801(f) (Consumer Education for Next Gen TV stations).

<sup>18</sup> Scripps Legal STA at 3.

<sup>19</sup> *Id.* at 1.

<sup>20</sup> *Supra* note 11.

<sup>21</sup> The Licensee notes in its Legal STA that “KMCI-TV schedules at least three-hours per week of core programming on its simulcast primary programming stream, and therefore does not currently, and does not intend to, rely on its non-primary multicast streams for compliance with the Commission’s children’s television programming requirements.” Scripps Legal STA at 3.

the Emergency Alert System.<sup>22</sup> Furthermore, because the Commission’s rules do not require that a multicast stream be simulcasted,<sup>23</sup> the Station need not air an ATSC 3.0 version of the ATSC 1.0 non-primary multicast streams being aired over the Multicast Hosts’ facilities. For purposes of the instant Legal STA, we find compelling the capacity and engineering constraints that the Licensee has set forth.

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.”<sup>24</sup>

Accordingly, the application of Scripps Broadcasting Holdings LLC, licensee of KMCI-TV, Lawrence, Kansas, **IS GRANTED** for a period of six months from date of this letter – hereby expiring on February 23, 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’ facilities and channels. Any change in the non-primary multicast streams being aired over the Multicast Hosts by the Station or relocating any of the 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,<sup>25</sup> any impact on an MVPD’s ability to carry KMCI’s non-primary multicast streams pursuant to a retransmission consent agreement is subject to the terms of the private contractual relationships between KMCI 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.<sup>26</sup> Whether renewal is granted will be subject to any additional

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<sup>22</sup> See *supra* note 4.

<sup>23</sup> See *supra* note 11.

<sup>24</sup> *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).

<sup>25</sup> 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.

<sup>26</sup> Scripps Legal STA at 2.

Commission or Bureau decisions on the treatment of multicast non-primary streams pursuant to an ATSC 3.0 simulcasting arrangement.<sup>27</sup>

Sincerely,

/s/

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

Cc: (via electronic mail):

Elizabeth Ryder, Esq.  
(Counsel for WDAF)

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<sup>27</sup> We note that the Commission has before it a Petition for Declaratory Ruling and Rulemaking requesting that the Commission “(1) clarify that its existing rules permit a station transmitting in ATSC 3.0 to partner with one or more other stations that would host the first station’s simulcasted ATSC 1.0 multicast streams to preserve existing service in the market; and (2) establish rules permitting a station transmitting in ATSC 3.0 to partner with one or more other stations that would host the first station’s ATSC 1.0 multicast streams, regardless of whether those ATSC 1.0 multicast streams are simulcast in ATSC 3.0, and also permit a station transmitting in ATSC 1.0 to partner with one or more other stations to host content transmitted in ATSC 3.0.” See Petition for Declaratory Ruling and Rulemaking of the National Association of Broadcasters, GN Docket No. 16-142 (filed Nov. 9, 2020) (Petition); *Media Bureau Seeks Comment on Petition for Declaratory Ruling and Petition for Rulemaking of the National Association of Broadcasters Seeking to Clarify Treatment of Multicast Streams Under the Next Gen TV Local Simulcasting Rules*, GN Docket No. 16-142, Public Notice, 35 FCC Rcd 13130 (MB 2020). Our action herein is not intended to prejudge the outcome of any potential proceeding undertaken in response to the Petition.