



Federal Communications Commission
Washington, D.C. 20554

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Gray Television Licensee, LLC
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(via electronic mail)

KSCW-DT, Wichita, KS
Facility ID No. 72348
LMS File No. 0000201011

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 full power television station KSCW-DT, Wichita, Kansas (KSCW or Station).¹ In its Legal STA, the Licensee requests authorization to allow KSCW's non-primary programming streams (multicast streams) to be aired in an ATSC 1.0 format, with no ATSC 3.0 simulcast, on KAKE(TV), Wichita, Kansas (KAKE), licensed to Knoxville TV LLC (KTL), KWHC-DT, and KPTS(TV), Hutchinson, Kansas (KPTS), licensed to Kansas Public Telecommunications Service, Inc. (KPTS) (collectively Multicast Hosts).² These arrangements between the Licensee and the Multicast Hosts 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 the Multicast Hosts from all liabilities or claims resulting from the

¹ Application of Gray Television Licensee, LLC for Legal Special Temporary Authority, LMS File No. 0000201011 (filed May 25, 2022) (Gray Legal STA). On July 27, 2022, the Commission granted KSCW authority to have its multicast host streams hosted in an ATSC 1.0 format utilizing different hosts. *See* Letter from Barbara A Kreisman, Chief, Video Division, Media Bureau to Gray Television Licensee, LLC (Jul. 27, 2022) (on file at LMS File No. 0000190822) (July 2022 Grant Letter). That hosting arrangement never went into effect and Gray subsequently submitted the instant, revised, multicast hosting arrangement. Gray Legal STA at 1. The instant authorization overrides all authority provided under the previously granted Legal STA.

² KAKE is authorized to operate on RF channel 10, KPTS is authorized to operate on RF channel 8 and KWHC-DT is licensed to operate on RF channel 19. KPTS is a non-commercial educational (NCE) station. Under the Commission's rules "[n]oncommercial educational television stations may participate in simulcasting arrangements with commercial stations." 47 CFR § 73.801(a). We find that the instant STA is not only necessary in order for a NCE station to act as a multicast host, but consistent with the rationale underlying the Commission's decision to permit NCEs to serve as host stations for commercial stations' programming. *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, 9941 and 9954, paras. 14 and 50 (2017) (*Next Gen TV Report and Order*); *Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard*, GN Docket No. 16-142, Second Further Notice of Proposed Rulemaking, FCC 21-116, para. 11 (rel. Nov. 5, 2021) (*Second ATSC 3.0 FNPRM*) (noting that the licensed multicast approach proposed would allow NCE stations to serve as hosts to commercial stations' multicast); Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau to Tribune Media Company (Dec. 1, 2021) (on file at LMS File No. 0000166996) (authorizing NCE station KUHT(TV), Houston, Texas to serve as an ATSC 1.0 multicast host for a commercial station); 47 U.S.C. § 399B (prohibiting noncommercial stations from making their "facilities available to any person for the broadcasting of any advertisement."). Furthermore, permitting KPTS to participate in the ATSC 3.0 rollout not ensures that viewers maintain access to all of KSCW's multicast streams, but it provides an opportunity for KPTS, a public television station, to participate in the ATSC 3.0 conversion in the market.

airing of its multicast streams over the Multicast Hosts' channels,³ 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.⁴ Specifically, the Licensee requests that KSCW 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).⁵ For the reasons below, we grant the Licensee's request.

Background. On May 25, 2022, the Video Division granted the Station's application for modification of license to convert its existing broadcast facilities to ATSC 3.0 transmission.⁶ As required by section 73.3801 of the Rules,⁷ the Station's primary programming will be simulcast in an ATSC 1.0 format over the channel of commonly owned facility of KWHC-DT, Hutchinson, Kansas (KWHC).⁸ The Station currently broadcasts three non-primary multicast streams: *Decades*, *Antenna TV*, and *Start TV*.⁹ 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 the Multicast Hosts to broadcast *Decades* over KWCH, *Antenna TV* over KAKE, and *Start TV* over KPTS.¹⁰ If granted authority, the Licensee will convert the Station's facilities to ATSC 3.0 and commence its ATSC 1.0 operations over KWCH (primary and *Decades*), KAKE (*Antenna TV*) and KPTS (*Start TV*) on October 25, 2022.¹¹

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.¹² Furthermore,

³ Gray Legal STA at 1.

⁴ *Id.* at 3.

⁵ *Id.* See *Next Gen TV Report and Order*, 32 FCC Rcd at 9970-73, paras. 79-82 (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.).

⁶ Application of Gray Television Licensee, LLC for Modification of License, LMS File No. 0000190148 (Gray License Modification). The Station had anticipated commencing ATSC 3.0 operation on July 28, 2022, but its deployment plans have been delayed until October 25, 2022. Media Bureau staff was promptly notified by the Licensee's counsel regarding the ATSC 3.0 deployment delay.

⁷ 47 CFR § 73.3801(b).

⁸ See Gray License Modification. We note that 95.9 percent of the Station's current over-the-air ATSC 1.0 viewers will retain access to its primary programming over KWCH. *Id.*, Expedited Processing Map. While the Bureau has previously permitted ATSC 1.0 primary simulcast hosts to also air an ATSC 3.0 station's multicast stream so long as notice is provided as part of the ATSC 3.0 stations license modification application, because KSCW's license modification has already been granted it requests that the instant legal authorization to cover one of KSCW's multicast streams being aired the facility of KWHC. See e.g., Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau to Independent Television Company (Sept. 9, 2022) (on file at LMS File No. 0000195196).

⁹ Gray Legal STA at 1.

¹⁰ *Id.*

¹¹ *Id.* While in its filing Gray states that the Station's transition will occur on October 27, 2022, counsel for Gray subsequently informed Media Bureau staff that the Station's transition date had been moved up to October 25, 2022.

¹² Gray Legal STA at 1. 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.").

due to capacity and other constraints the Station is not able to simulcast an ATSC 3.0 version of its multicast streams.¹³ Pursuant to an engineering study conducted by the Licensee, 86.2 percent of KSCW's current over-the-air viewers will retain access to *Antenna TV* over KAKE; 95.9 percent of viewers will retain access to *Decades* over KWCH-DT; and 91.6 percent of viewers will retain access to *Start TV* over KPTS.¹⁴ According to Gray there is no other station within the Wichita-Hutchinson, Kansas, Designated Market Area (DMA) with sufficient ATSC 1.0 bandwidth that can provide greater coverage to KSCW's existing service area than the Multicast Hosts.¹⁵ According to Gray, absent the proposed arrangements and grant of the instant request, the Licensee states, "all over-the-air viewers would lose access to KSCW-TV's multicast streams."¹⁶ The Licensee also demonstrates that the multicast hosts place city-grade service contours over the entirety of the KSCW's city of license.¹⁷

The Licensee agrees to provide the requisite notice to MVPDs regarding relocation of the Station's primary ATSC 1.0 stream and its non-primary multicast streams.¹⁸ The Station will also air the requisite over-the-air announcements regarding its transition to the ATSC 3.0 standard and the need for

¹³ Gray Legal STA 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-real time interactive data delivery. *Id.* at 1-2. Furthermore, the Licensee notes that this would delay rollout of ATSC 3.0 in the market. *Id.* at 2.

¹⁴ *Id.* at 2 and 4-9. In order to qualify for expedited processing the Commission's rules require that a Next Gen TV broadcaster's primary 1.0 simulcast host covers at least 95 percent of the Station's original 1.0 coverage area. *See* 47 CFR § 73.3801(f)(5). Through the Legal STA process, the Bureau has previously authorized Next Gen TV stations to utilize a 1.0 multicast host whose coverage is at least 95 percent. *See e.g.*, Letter from Barbara A. Kreisman, Chief, Video Division, FCC Media Bureau, to Tribune Broadcasting Company II LLC (Oct. 2, 2020) (on file at LMS File No. 0000121872). The Bureau has also previously authorized Next Gen TV stations to utilize a 1.0 multicast host whose coverage is less than 95 percent of its original 1.0 coverage area in order to preserve programming during the transition. *See e.g.*, Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau, to Hearst Stations Inc. (June 14, 2021) (on file at LMS File No. 0000146558). 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, consistent with that precedent. We note that in the *Second ATSC 3.0 FNPRM*, the Commission tentatively concluded that a Next Gen TV station may utilize a multicast host that covers less than 95 percent of its original coverage area, so long as the multicast host is within the same DMA and covers the Next Gen TV station's community of license. *Second ATSC 3.0 FNPRM* at para. 32. In the *Second ATSC 3.0 FNPRM*, the Commission also 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. *Id.* at n. 47. Our action herein is consistent with our past actions and not intended to prejudge the outcome of that proceeding. The Station must come into compliance with any rules that are ultimately adopted therein. *See infra*, note 30.

¹⁵ Gray Legal STA at 2. In its prior request Gray made the same statement. *See* July 2022 Grant Letter at 3. However, the addition of a new station to the ATSC 3.0 deployment allowed for the ability to modify the ATSC 1.0 multicast hosting arrangement. Gray also notes that *Antenna TV*, which will be received by under 95 percent of the Station's current ATSC 1.0 viewers, is carried by the majority of cable operators in the Wichita Designated Market Area (DMA), including the largest provider Cox Cable. According to Gray, although *Start TV* is not carried by Cox Cable, it is carried on most of the other cable operators in this DMA. Legal STA at 2.

¹⁶ *Id.*

¹⁷ *Id.* at 7.

¹⁸ *Id.* at 2. *See* 47 CFR § 73.3801(g) (Notice to MVPDs).

over-the-air viewers to rescan their television sets to continue to receive KSCW's ATSC 1.0 programming streams.¹⁹ In order to alleviate any viewer confusion, the PSIP (virtual) channel for each of KSCW's programming streams will remain unchanged and will be identified to viewers as being associated with KSCW.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. It will also ensure that KPTS, a NCE station is able to participate in the ATSC 3.0 market deployment.²² 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. 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,²³ equal employment opportunities, public inspection files, indecency, sponsorship identification, station identification, contests, the CALM Act, and the Emergency Alert System.²⁴ 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 Hosts' channels 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."²⁵

Accordingly, the application of Gray Television Licensee, LLC, licensee of KSCW(TV), Wichita, Kansas, **IS GRANTED** for a period of six months from date of this letter – **hereby expiring on April 20, 2023**. 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

¹⁹ Gray Legal STA at 2. *See* 47 CFR § 73.3801(f) (Consumer Education for Next Gen TV stations).

²⁰ Gray Legal STA at 1.

²¹ *See supra* note 11.

²² *See supra* note 2.

²³ The Licensee notes in its Legal STA that "KSCW-TV does not, and does not intend to, rely on any programming broadcast on its multicast streams for compliance with the Commission's children's programming requirements." Gray Legal STA, Amendment at 3.

²⁴ *See supra* note 4.

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).

Station or relocating a non-primary multicast streams to a new ATSC 1.0 multicast host will require the filing of a new request. Because multicast signals are not entitled to mandatory carriage rights,²⁶ any impact on an MVPD's ability to carry the Station's non-primary multicast streams pursuant to a retransmission consent agreement is subject to the terms of the private contractual relationships between the Station and the affected MVPDs. By this grant the Licensee agrees it will coordinate with all impacted MVPDs and ensure that they continue to receive a good quality signal of the non-primary multicast streams over-the-air or via alternative delivery methods.²⁷ 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.²⁸

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

Cc (via electronic mail):

Coe Ramsey, Esq. (Counsel for Knoxville TV LLC)
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²⁶ 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 the streams is entitled to mandatory carriage. *Id.* at 4530-37, paras. 28-44.

²⁷ Gray Legal STA, Amendment at 2.

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.