



Federal Communications Commission
Washington, D.C. 20554

December 7, 2022

Mission Broadcasting, Inc.
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(via electronic mail)

Request for Legal STA
KASY-TV, Albuquerque, New Mexico
Facility ID No. 55049
LMS File No. 0000203917

Dear Licensee:

This letter is in reference to the above-captioned application for legal special temporary authority (Legal STA) filed by Mission Broadcasting, Inc. (Mission or Licensee), licensee of full power television station KASY-TV, Albuquerque, New Mexico (KASY 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 KWBQ(DT), Santa Fe, New Mexico (KWBQ), licensed to Mission; KRQE(DT), Albuquerque, New Mexico (KRQE), licensed to Nexstar Media, Inc.; and KOAT-TV, Albuquerque, New Mexico (KOAT), licensed to Hearst Properties, Inc. (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 airing of its multicast streams over its channel,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 the Station be treated as if it is still originating all the multicast streams and be considered the responsible party for compliance with any

¹ Application of Mission Broadcasting, Inc. for Legal Special Temporary Authority, LMS File No. 0000203917 (filed Nov. 21, 2022) (Mission Legal STA).

² The Multicast Hosts are authorized to operate on RF channels 29, 13, and 7, respectively.

³ Mission Legal STA, Narrative Exhibit at 1.

⁴ *Id.* Because KASY and KWBQ are commonly owned by Mission, they need not enter into any contractual indemnification or a written simulcast agreement to air a multicast stream of KASY over the facility of KWBQ. *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, 34 FCC Rcd 3684, 3685, n.5 (MB 2019) (not requiring commonly owned stations to enter into or maintain written simulcast agreements). KWBQ is also the Station's primary ATSC 1.0 host and the Bureau has determined that an ATSC 1.0 simulcast host is permitted to also air a multicast stream under the same authorization so long as the Next Gen TV station discloses such an arrangement as part of its license modification application. *See e.g.*, Letter from Barbara A. Kreisman, Chief, Video Division, FCC Media Bureau to Independent Television Company (Sept. 9, 2022) (on file at LMS File No. 0000195196). Nonetheless, out of an abundance of caution, Mission requests that the instant legal authorization cover KASY's multicast stream that will be aired over the facility of KWBQ. Our action herein is not intended to prejudice the outcome of any potential proceeding relating to any future licensing requirements regarding multicast streams. *See infra* note 26.

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 December 7, 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 stream will be simulcast in an ATSC 1.0 format over the facility of KWBQ.⁸ The Station currently broadcasts four multicast streams: *Ion Mystery*, *Get TV*, *Court TV*, and *Antenna 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 the multicast stream of *Ion Mystery* over KWBQ; *Get TV* and *Court TV* over KRQE; and *Antenna TV* over KOAT.¹⁰ The Licensee intends to convert the Station's facilities to ATSC 3.0 on December 13, 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, due to capacity and other constraints the Station is not able to simulcast an ATSC 3.0 version of its multicast stream.¹³ Pursuant to an engineering study conducted by the Licensee, 100 percent of the viewers that currently receive the Station's multicast streams over-the-air from the Station's current ATSC 1.0 facility will retain access to the Station's multicast programming that will be aired by the

⁵ *Id.* 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.).

⁶ Application of Mission Broadcasting, Inc. for Modification of License, LMS File No. 0000201733 (granted Dec. 7, 2022) (Mission License Modification).

⁷ 47 CFR § 73.3801(b).

⁸ See Mission License Modification.

⁹ Mission Legal STA, Narrative Exhibit at 1.

¹⁰ *Id.*

¹¹ See Mission License Modification.

¹² Mission Legal STA, Narrative Exhibit 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; *Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard*, GN Docket No. 16-142, Second Further Notice of Proposed Rulemaking, 36 FCC Rcd 16088, 16094, para. 11 (2021) (*ATSC 3.0 Second FNPRM*). .

¹³ Mission Legal STA, Narrative Exhibit at 1. Specifically, the Licensee states that airing an ATSC 3.0 simulcast of the Station's multicast streams 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.* Furthermore, the Licensee notes that this would delay rollout of ATSC 3.0 in the market. *Id.* at 1-2.

Multicast Hosts.¹⁴ The Multicast Hosts are also located in the same DMA as the Station and cover the Station's community of license.¹⁵ Absent the arrangement with Multicast Hosts, the Licensee states that all over-the-air viewers would lose access to the Station's multicast streams.¹⁶

The Licensee indicates that it has provided the requisite notice to Multichannel Video Programming Distributors (MVPDs) regarding relocation of the Station's primary ATSC 1.0 stream and its multicast streams.¹⁷ 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.¹⁸ In order to alleviate any viewer confusion, the Station's current multicast channels will retain its existing PSIP major/minor channels number.¹⁹

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 multicast streams.²⁰ Grant of the instant Legal STA will promote the continued transmission of the Station's multicast programming stream 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 multicast stream, we will treat that signal as a multicast stream being originated by the Station even though it is 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 multicast stream. This includes, but is not limited to,

¹⁴ Mission Legal STA, Narrative Exhibit at 3 and Engineering Statement at 3-5, 9, 11 and 13. As noted above, Next Gen TV stations are not required to air their multicast channels as part of their ATSC 3.0 conversion. *See supra* note 12. In the *ATSC 3.0 Second FNPRM*, the Commission stated that during the pendency of the proceeding it would allow the Media Bureau (Bureau) to continue to process STA requests and 3.0 license applications in the same manner it has previously. *Id.* at n. 47. 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 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, FCC Media Bureau to Tribune Broadcasting Company II LLC (Oct. 2, 2020) (on file at LMS File No. 0000121872). In fact, in the *ATSC 3.0 Second 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. *ATSC 3.0 Second FNPRM*, 36 FCC Rcd at 16104, para. 32. Here, 100 percent of viewers that currently receive the Station's multicast streams over-the-air will continue to have access to them. Our action herein is consistent with our past actions and not intended to prejudge the outcome of the *ATSC 3.0 Second FNPRM*. The Station must come into compliance with any rules that are ultimately adopted by the Commission. *See infra* note 26.

¹⁵ Mission Legal STA, Engineering Statement at 9, 11, and 13.

¹⁶ *Id.*, Narrative Exhibit at 2.

¹⁷ *Id.* *See* 47 CFR § 73.3801(g) (Notice to MVPDs).

¹⁸ Mission Legal STA, Narrative Exhibit at 2. *See* 47 CFR § 73.3801(f) (Consumer Education for Next Gen TV stations).

¹⁹ Mission Legal STA, Narrative Exhibit at 1.

²⁰ *Supra* note 12.

our rules regarding political broadcasting, children’s programming,²¹ equal employment opportunities, public inspection files, indecency, sponsorship identification, station identification, contests, the CALM Act, and the Emergency Alert System.²² Furthermore, we decline to require the Station to air an ATSC 3.0 version of the ATSC 1.0 multicast stream 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.”²³

Accordingly, the application of Mission Broadcasting, Inc., licensee of full power television station KASY-TV, Albuquerque, New Mexico, **IS GRANTED** for a period of six months from date of this letter – hereby expiring on June 6, 2023. For purposes of the Act and the Commission’s rules, we will consider the multicast program stream to be originated by the Station, even though the stream is being aired over the Multicast Hosts’ channels. Any change in the multicast streams being aired over the Multicast Hosts’ channels by the Station or relocating a multicast stream(s) 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,²⁴ any impact on an MVPD’s ability to carry the Station’s 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. According to the Licensee, it will coordinate with all impacted MVPDs to ensure that they continue to receive a good quality signal of the multicast streams over-the-air or via alternative delivery methods.²⁵ Our grant of the instant STA authorization shall not prejudice the outcome of the

²¹ The Licensee notes in its Legal STA that “KASY-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.” Mission Legal STA, Narrative Exhibit at 3.

²² See *supra* note 5.

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, 35 FCC Rcd 5916, 5924, para. 15 (2020).

²⁴ 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.

²⁵ Mission Legal STA, Narrative Exhibit at 2.

Commission's current ATSC 3.0 proceeding relating to the licensing of multicast streams and will be subject to the outcome of the proceeding.²⁶

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

Cc (via electronic mail):

Coe W. Ramsey, Esq. (Counsel for Hearst)
Jason Roberts, Esq. (Counsel for Nexstar)
Gregory Masters, Esq. (Counsel for Mission)

²⁶ In the *ATSC 3.0 Second 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*, 36 FCC Rcd 16088; 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*, 36 FCC at 16095, n. 47. We find that the instant request is consistent with the Bureau’s prior actions under the STA process. 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. The Commission also stated in the *ATSC 3.0 Second FNPRM* 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.” *ATSC 3.0 Second FNPRM*, 36 FCC Rcd at 16095, n. 47. 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.