



Federal Communications Commission
Washington, D.C. 20554

October 24, 2023

WCWN Licensee, LLC
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(via electronic mail)

WCWN(TV), Schenectady, NY
Facility ID No. 73264
LMS File No. 0000222066

Dear Licensee:

This letter is in reference to the above-captioned application for legal special temporary authority (Legal STA) filed by WCWN Licensee, LLC (Sinclair or Licensee), licensee of full power television station WCWN(TV), Schenectady, New York (WCWN or Station).¹ In its Legal STA, the Licensee requests authorization to allow WCWN's non-primary programming streams (multicast streams) to continue to be aired in an ATSC 1.0 format, with no ATSC 3.0 simulcast, on the facility of on commonly owned station WRGB(TV), Schenectady, New York (WRGB), licensed to WRGB Licensee, LLC (Multicast Host).² This arrangement between the Licensee and the Multicast Host has been entered into in connection with the Station's transition of its facilities to the ATSC 3.0 transmission standard. The Although the stations are commonly owned, the Licensee has requested the instant authorization to continue to make clear that it will remain responsible from a statutory and regulatory perspective for the Station's multicast streams.³ Specifically, the Licensee requests that the Station 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).⁴ For the reasons below, we grant the Licensee's request.⁵

¹ Application of WCWN Licensee, LLC for Legal Special Temporary Authority, LMS File No. 0000222066 (filed Oct. 4, 2023) (Legal STA).

² *Id.* at 1. WRGB is licensed to operate on RF Channel 35.

³ *Id.* at 2.

⁴ *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.).

⁵ In the *ATSC 3.0 Third R&O*, which was adopted after the instant Legal STA was filed, the Commission adopted rules permitting Next Gen TV broadcasters to modify their licenses to include their simulcast or non-simulcast multicast stream(s) whether those streams are hosted on the same station as its primary stream or on different simulcast host(s). See *Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard, Third Report and Order and Further Notice of Proposed Rulemaking*, GN Docket No. 16-142, paras. 15-16, FCC 23-53 (rel. June 23, 2023) (*ATSC 3.0 Third R&O*). The rules adopted in the *ATSC 3.0 Third R&O* are not yet effective and

Background. On March 23, 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 WTEN(TV), Albany, New York (WTEN).⁸ On March 24, 2022 the Station was also granted a Legal STA finding that for purposes of the Act and the Commission's rules the Station's two non-primary multicast programming streams, *Stadium* and *Charge!* could be aired over the channel of WRGB.⁹ This arrangement was entered into in order to avoid the loss of the Station's over-the-air multicast programming to their current ATSC 1.0 viewers.¹⁰ The Legal STA was most recently extended on May 4, 2023, for a period of six additional months.¹¹

The Licensee has requested to continue airing its multicast streams over the channel of WRGB, except the Licensee requests authority to switch the affiliation of *Stadium* to *Nest*.¹² The Licensee states that this change in programming "does not alter the amount of spectrum bandwidth used by WCWN(TV)'s multicast streams, and if WCWN(TV) were broadcasting in ATSC 1.0 via its own facilities, WCWN(TV) would be able to broadcast its primary and multicast streams."¹³ The Station will continue to air *TBD* over the channel of WRGB.¹⁴ The Station plans to make the change to its multicast programming on or about October 30, 2023.¹⁵

therefore the instant Legal STA is still necessary for the streams to be authorized in the manner requested by the Licensee. *See Effective Date, Comment Dates Set for ATSC 3.0 3rd R&O and 4th FNPRM*, Public Notice, DA 23-612 (rel. July 17, 2023) (*ATSC 3.0 Third R&O Effective Date PN*) (providing notice that the rules adopted in the *ATSC 3.0 Third R&O* will take effect on August 16, 2023, except for 47 CFR §§ 73.3801, 73.6029, and 74.782, which require OMB approval). As noted below, the Licensee must come into compliance with all rules adopted in the *ATSC 3.0 Third R&O* once they are final and effective. *Infra* pg. 5 and note 31. *See also 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, 16095, n.47 (2021) (*ATSC 3.0 Second FNPRM*) (permitting the Media Bureau, during the pendency of the Commission's multicast licensing proceeding, to continue to process Legal STA requests and ATSC 3.0 license applications in the same manner it had been and requiring all such Legal STAs to come into compliance with the rules adopted in the proceeding).

⁶ Application of WCWN Licensee, LLC for Modification of License, LMS File No. 0000185804 (granted Mar. 23, 2022) (License Modification).

⁷ 47 CFR § 73.3801(b).

⁸ *See* License Modification. WTEN is licensed to Nexstar Media Inc. and licensed to operate on RF Channel 24.

⁹ Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau, FCC to WCWN Licensee, LLC (Mar. 24, 2022) (on file at LMS File No. 0000185805) (STA Grant Letter).

¹⁰ *See* STA Grant Letter at 2; Legal STA, Narrative Exhibit at 2.

¹¹ Application of WCWN Licensee, LLC for Extension of Legal Special Temporary Authority, LMS File No. 0000212552 (granted May 4, 2023). The Legal STA is scheduled to expire on November 3, 2023.

¹² Legal STA, Narrative Exhibit at 1.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

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.¹⁶ Furthermore, due to capacity and other constraints, the Station is not able to simulcast an ATSC 3.0 version of its multicast stream.¹⁷ Pursuant to an engineering study previously provided by the Licensee, approximately 91.8 percent of the Station's viewers within the Station's noise limited service contour (NLSC) will retain access to WCWN's multicast streams.¹⁸ Absent the proposed arrangements and grant of the instant request, the Licensee states that "all over-the-air viewers would lose access to WCWN(TV)'s multicast streams."¹⁹

The Licensee also indicates that because the Multicast Host is currently hosting the Station's multicast streams, MVPDs will continue to receive a good quality signal.²⁰ The Licensee agrees to continue to coordinate with MVPDs as needed.²¹ Further, in order to alleviate any viewer confusion, the Station's current multicast streams will retain their existing Program and System Information Protocol

¹⁶ *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; *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 Third R&O* at paras. 15-16 (permitting, but not requiring, the licensing of ATSC 1.0 multicast streams by stations that convert to ATSC 3.0).

¹⁷ Legal STA, Narrative Exhibit at 1. Specifically, Licensee states that simulcasting those streams in ATSC 3.0 would reduce capacity available to NextGen stations for offering consumers the improved services that ATSC 3.0 enables. The types of services and improvements that would be precluded would include 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. Each of these requires a portion of the ATSC 3.0 capacity that would be unavailable were Licensee to carry multicast program streams as the ATSC 3.0 host for stations in the Albany-Schenectady-Troy, New York Designated Market Area (DMA). *Id.*

¹⁸ See STA Grant Letter at 2. The Multicast Host's station is also located in the same DMA as the Station and covers the Station's community of license. *Id.* 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, Media Bureau, FCC, to Tribune Broadcasting Company II LLC (Oct. 2, 2020) (on file at LMS File No. 0000121872). The Bureau has also authorized Next Gen TV stations to utilize a 1.0 multicast host whose coverage is less than 95 percent of its original ATSC 1.0 coverage area in order to preserve programming during the transition. See, e.g., STA Grant Letter at 2 (authorizing WCWN to air its multicast streams over the facility of WRGB with approximately 91.8 percent of the Station's over-the-air ATSC 1.0 viewers retaining access to the Station's multicast streams); Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau, FCC to Hearst Stations Inc. (June 14, 2021) (on file at LMS File No. 0000146558) (granting an ATSC 1.0 multicast hosting arrangement in which approximately 70 percent of the Station's current over-the-air ATSC 1.0 viewers would retain access to one of the station's multicast streams). See *ATSC 3.0 Second FNPRM*, 36 FCC Rcd at 16095, n.47 (permitting the Media Bureau, during the pendency of the Commission's multicast licensing proceeding, to continue to process Legal STA requests and 3.0 license applications in the same manner it had been and requiring all such Legal STAs to come into compliance with the rules adopted in the proceeding). See also *ATSC 3.0 Third R&O* at paras. 32-33 (for purposes of expedited processing the Commission will only consider whether the primary stream will remain available in ATSC 1.0 to at least 95% of a station's current over-the-air audience. However, the Commission will review each application and the coverage of a station's multicast streams based on the unique facts of each case).

¹⁹ Legal STA, Narrative Exhibit at 1.

²⁰ *Id.* at 2.

²¹ *Id.*

(PSIP) major/minor channel numbers.²² The Licensee also states that it is airing notices to inform viewers about the upcoming multicast stream affiliation change.²³

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.²⁴ 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 the greatest number of viewers, while making 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 Host's channel. 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, our rules regarding political broadcasting, children's programming,²⁵ equal employment opportunities, public inspection files, indecency, sponsorship identification, station identification, contests, the CALM Act, and the Emergency Alert System.²⁶ We also decline to require the Station to air an ATSC 3.0 version of the ATSC 1.0 multicast stream 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."²⁷

Accordingly, the application of WCWN Licensee, LLC, licensee of full power television station WCWN(TV), Schenectady, New York, **IS GRANTED** for a period of six months from date of this letter

²² *Id.* at 1-2.

²³ *Id.* at 2.

²⁴ *Supra* note 16.

²⁵ The Licensee notes in its Legal STA that it "does not intend to rely on any programming broadcast on its multicast streams for compliance with the Commission's Children's Television Programming requirements, as WCWN(TV) averages at least three hours per week of core programming on its primary stream." Legal STA, Narrative Exhibit at 1-2. *See also ATSC 3.0 Third R&O* at para. 34 (permitting children's programming to be aired on a multicast stream to count toward the originating station's Core Programming requirement if the multicast stream is carried on the same host as the station's primary stream or on a multicast host that will serve at least 95 percent of viewers within the originating station's NLSC).

²⁶ *See supra* note 4.

²⁷ *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). This finding is also consistent with the Commission's determination in the *ATSC 3.0 R&O* that "hosting multicast streams on a temporary host station's facility will not result in attribution under our broadcast ownership rules or for any other requirements related to television stations attribution (e.g., filing ownership reports)." *ATSC 3.0 Third R&O* at para. 26.

– hereby expiring on April 23, 2024.²⁸ 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 multicast streams being aired over the Multicast Host’s channel 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 continue to coordinate with MVPDs as necessary. 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.²⁹ The Licensee also commits to providing notice of the affiliation change to its viewers.³⁰ Finally, the Licensee must come into compliance with all rules adopted in the *ATSC 3.0 Third R&O* once they are effective and make any required filings.³¹

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

Cc: (via electronic mail):

Jessica Nyman, Esq. (Counsel for WRGB and WCWN)

²⁸ The Licensee has authority to continue airing its multicast streams as previously authorized under LMS File No. 0000212552, until the change in the affiliation from *Stadium* to *Nest* occurs, but no later than November 30, 2023. If the Station is not able to make the multicast stream change by that date, it must notify Media Bureau staff if it wants extension of this authority. Such a request may be made via electronic mail to Evan Morris at Evan.Morris@fcc.gov. The Licensee must also notify the Media Bureau within ten (10) days of the affiliation change occurring via electronic mail to Evan Morris.

²⁹ Legal STA, Narrative Exhibit at 2.

³⁰ *Id.*

³¹ While we believe that the instant multicast arrangement will comply with the rules adopted in the *ATSC 3.0 Third R&O*, our action herein is not intended to supersede any rules adopted in the *ATSC 3.0 Third R&O*, does not constitute a waiver of any of those rules, and does not represent that we would waive any of those rules if the instant multicast arrangement was found not to comply with the rules adopted in the *Third ATSC 3.0 R&O*.