



Federal Communications Commission
Washington, D.C. 20554

November 16, 2020

Raleigh (WRDC-TV) Licensee, Inc.
c/o Miles Mason
Pillsbury Winthrop Shaw Pittman LLP
1200 Seventeenth Street, NW
Washing, DC 20036
Miles.mason@pillsburylaw.com
(via electronic mail)

WRDC-TV, Durham, NC
Facility ID No. 54963
LMS File No. 0000125063

Dear Licensee:

This letter is in reference to the above captioned application for legal special temporary authority (Legal STA) filed by Raleigh (WRDC-TV) Licensee, Inc. (Sinclair or Licensee), licensee of full power television station WRDC-TV, Durham, North Carolina (WRDC or Station).¹ In its Legal STA, WRDC requests authorization to allow some of WRDC'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 WNCN(TV), Goldsboro, North Carolina (WNCN), licensed to Nexstar Inc. (Nexstar), and WTVD(TV), Durham, North Carolina (WTVD), licensed to WTVD Television, LLC (ABC) (collectively multicast hosts).² This arrangement between WRDC and the multicast hosts has been entered into in connection with WRDC's transition of its facility to the ATSC 3.0 transmission standard. Although Sinclair has agreed to indemnify Nexstar and ABC from all liabilities or claims resulting from the airing of its multicast stream over WNCN's and WTVD's facilities,³ Sinclair has requested the instant authorization to make clear that it will remain responsible from a statutory and regulatory perspective for WRDC's multicast streams. WRDC has requested the instant authorization to make clear that WRDC will remain responsible from a statutory and regulatory perspective for WRDC's multicast streams. Specifically, Sinclair requests that WRDC be treated as if it is still originating the multicast streams and be considered the responsible party for compliance with any obligations under the Communication Act of 1934, as amended (Act) and the Commission's rules (Rules).⁴ For the reasons below, we grant WRDC's request.

Background. On November 16, 2020, the Video Division granted WRDC's application for modification of license to convert its existing broadcast facility to ATSC 3.0 transmissions.⁵ As required

¹ Application of Raleigh (WRDC-TV) Licensee, Inc. for Legal Special Temporary Authority as amended, LMS File No. 0000125063, as amended (filed Oct. 26, 2020) (WRDC Legal STA).

² WNCN is licensed to operate on RF channel 8, WTVD is licensed to operate on RF channel 9.

³ WRDC Legal STA at 2.

⁴ 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, 9931, para. 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 Raleigh (WRDC-TV) Licensee, Inc. for Modification of License, LMS File No. 0000125503, as

by section 73.3801 of the Rules,⁶ WRDC's primary stream will be simulcast in an ATSC 1.0 format over the facility of commonly owned WLFL(TV), Raleigh, North Carolina (WLFL).⁷ In addition to its primary stream, WRDC currently broadcasts two multicast channels: Charge! and Comet TV.⁸ In order to avoid the loss of WRDC's over-the-air multicast programming to its current ATSC 1.0 viewers, Sinclair has entered into a written agreement with the multicast hosts to broadcast Charge! using the facilities and channel of WNCN and Comet TV using the facilities and channel of WTVD.⁹ As part of the same arrangements, the multicast hosts have been provided capacity as ATSC 3.0 guest stations on WRDC's facilities.¹⁰

As noted in the Legal STA, because of ATSC 1.0 capacity constraints, WRDC is not able to air all of its multicast streams on the same channel as its primary ATSC 1.0 signal, which is being hosted on WLFL.¹¹ Furthermore, due to capacity and other constraints WRDC is not able to simulcast an ATSC 3.0 version of WRDC's multicast streams.¹² Pursuant to an engineering study conducted by the Licensee, under its arrangement with the multicast host, 96% of WRDC's current over-the-air ATSC 1.0 viewers will retain access to Charge! on WNCN, and all of WRDC's current viewers will retain access to Comet TV on WTVD.¹³ Absent the proposed arrangement and grant of the instant request, WRDC states that "all over-the-air viewers would lose access to WRDC(TV)'s multicast streams."¹⁴ The Licensee's engineering study also shows that both of its multicast streams will continue to serve WRDC's community of license.¹⁵

amended (filed Nov. 9, 2020) (WRDC License Modification).

⁶ 47 CFR § 73.3801(b).

⁷ WLFL is licensed to operate on RF channel 18. WLFL is licensed to WLFL Licensee, LLC, which is a subsidiary of Sinclair Broadcast Group, the same parent company of Raleigh (WRDC-TV) Licensee, Inc.

⁸ WRDC Legal STA at 1.

⁹ *Id.*

¹⁰ *See*, Application of WTVD Television, LLC for Modification of License, LMS File No. 0000125310 (filed Nov. 2, 2020); Application of Nexstar Inc. for Modification of License, LMS File No. 0000125308 (filed Nov. 2, 2020).

¹¹ WRDC Legal STA at 1.

¹² Specifically, WRDC states that in order to air an ATSC 3.0 simulcast of the Station's multicast streams, WRDC would not be able to accommodate current ATSC 3.0 guests as arranged. According to WRDC, to do so would not only require a reworking of existing ATSC 3.0 agreements, but impact stations' abilities to offer enhanced ATSC 3.0 offerings, such High Dynamic Range, Wide Color Gamut and High Frame Rate, immersive and multiple audio channels, and non-real time interactive data delivery. Furthermore, WRDC notes that additional engineering work and equipment would be required to accommodate simulcasting WRDC's multicast streams in both an ATSC 1.0 and ATSC 3.0 format. *Id.* at 1.

¹³ *Id.* at 2. We also note that WRDC's ATSC 1.0 primary simulcast that is being aired over the facility of WLFL will result in loss of 5.4% of its current ATSC 1.0 service population. *See* WRDC License Modification, Engineering Statement at 1, 3 and WRDC - Supplement to 73.3801(f) Exhibit. However, when accounting for the population served by WMYV(TV), Greensboro, North Carolina, which airs the same MyNetwork primary programming as WRDC, only 1.7% of WRDC's ATSC 1.0 service area will lose access to WRDC's ATSC 1.0 primary programming after the Station converts to ATSC 3.0 service. *See*, WRDC License Modification, DMA Analysis and WRDC - Supplement to 73.3801(f) Exhibit.

¹⁴ WRDC Legal STA at 1-2.

¹⁵ *Id.*

Sinclair goes on to state that it provided the requisite notice to MVPDs regarding relocation of WRDC's primary ATSC 1.0 stream and its multicast streams.¹⁶ WRDC also has been airing the requisite over-the-air announcements¹⁷ and posted to its website consumer notices regarding its transition to the ATSC 3.0 standard and the need for over-the-air viewers to rescan their television sets in order to continue to receive WRDC's ATSC 1.0 programming streams. In order to alleviate any viewer confusion, the PSIP (virtual) channels for each of WRDC's program streams will remain unchanged and will be identified to viewers as being associated with WRDC.¹⁸ Sinclair plans to convert WRDC's facilities to ATSC 3.0 and commence its ATSC 1.0 operations over the facilities of WLFL (primary), WNCN and WTVD (multicast streams) on November 17, 2020.¹⁹

Discussion. We conclude, based on the facts and circumstances presented, that the public interest would be served by the grant of Licensee's Legal STA. Under the Rules, Next Gen TV Broadcasters are not required to simulcast or continue airing their existing multicast streams.²⁰ Grant of the instant Legal STA will promote continued transmission of WRDC's multicast programming streams to viewers and by providing WRDC an authorization to air these signals over the host's facilities make clear that WRDC 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 WRDC's multicast streams airing on WNCN and WTVD, we will treat those signals as multicast streams being originated by WRDC even though they are being transmitted over WNCN's and WTVD's facilities. That is, WRDC is the sole party responsible for ensuring compliance with all statutory and regulatory requirements with regards to WRDC's two original multicast streams. This includes, but is not limited to, 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. Furthermore, because the Commission's rules do not require that a multicast stream be simulcasted,²² we will not require that WRDC air an ATSC 3.0 version of the ATSC 1.0 multicast streams being aired over the multicast hosts' facilities.

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 arrangement 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

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

¹⁷ WRDC Legal STA at 2. See 47 CFR § 73.3801(f) (Consumer Education for Next Gen TV stations).

¹⁸ WRDC Legal STA at 2.

¹⁹ *Id.*

²⁰ *Next Gen TV Report and Order*, 32 FCC Rcd at 9937-38, para. 13, n.40.

²¹ WRDC notes in its Legal STA that WRDC "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 such, neither WRDC(TV)'s compliance with the Commission's Children's Television Programming requirements nor viewers' access to the station's required core programming will be affected." WRDC Legal STA at 2.

²² See *supra* note 19.

would result in a potential violation of those rules.”²³ For purposes of the instant Legal STA, we find compelling the capacity and engineering constraints that the Licensee has set forth.²⁴

We are taking this temporary measure in order to help facilitate the deployment of ATSC 3.0 and in light of the evolving nature of ATSC 3.0 deployment and related agreements.²⁵ As explained above, we will continue to consider these program streams to be WRDC’s multicast streams even though they are being aired on different channels than WRDC’s ATSC 1.0 primary stream. Multicast signals are not entitled to mandatory carriage rights,²⁶ and this authorization does not modify or alter WRDC’s mandatory carriage rights. Ultimately any impact on an MVPD’s ability to carry WRDC’s multicast streams pursuant to a retransmission consent agreement is subject to the terms of the private contractual relationships between WRDC and the affected MVPDs. According to WRDC, it does not expect there to be any adverse impact on MVPD viewers.²⁷ As stated, WRDC has provided written notice to all impacted MVPDs, is coordinating with all impacted MVPDs, and will continue to coordinate as needed with potentially affected MVPDs to ensure they continue to receive a good quality signal of the multicast streams over-the-air or via alternative delivery methods, such as direct fiber feed.²⁸ As a result, we do not expect there to be any adverse impact on MVPD viewers.

Accordingly, the above captioned Legal STA requested by Raleigh (WRDC-TV) Licensee, Inc., licensee of WRDC-TV, Durham, North Carolina, **IS GRANTED** for a period of six months from date of this letter – hereby expiring on May 16, 2021. For purposes of the Act and the Commission’s rules we will consider the multicast program streams of Charge! and Comet TV to be originated by WRDC, even though they are being aired over WNCN’s and WTVD’s facilities. Further, we will not apply our

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 *Supra* note 11.

²⁵ 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). Our action herein is not intended to prejudice the outcome of any potential proceeding undertaken as a result of the Petition.

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 these streams is entitled to mandatory carriage. *Id.* at 4530-37, paras. 28-44.

²⁷ WRDC Legal STA at 2.

²⁸ *Id.* at 2.

ownership rules to the extent the instant temporary arrangement would otherwise result in a potential violation of those rules so long as WRDC's multicast streams are being aired on the facilities of the multicast hosts pursuant to an active and Commission authorized ATSC 3.0 simulcasting arrangement (i.e., WRDC is operating an authorized ATSC 3.0 facility and its primary stream, absent waiver, is being aired over the facility of an ATSC 1.0 simulcast host). Any change in the multicast streams being aired over the multicast hosts' facilities by WRDC or relocating either of WRDC's multicast streams to a new ATSC 1.0 multicast host, will require the filing of a new request. Sinclair agrees to coordinate with MVPDs as necessary. While renewal of the instant authorization may be requested, there is no expectation of renewal and whether renewal is granted will be subject to any additional Commission or Bureau decisions on the treatment of multicast streams pursuant to an ATSC 3.0 simulcasting arrangement.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

Cc: (via electronic mail):
Jessica Nyman, Esq.
(Counsel for WRDC)
Jason Roberts, Esq.
(Counsel for WMCN)
Susan Fox, Esq.
(Counsel for WTVD)