



Federal Communications Commission
Washington, D.C. 20554

December 8, 2020

Sinclair Seattle Licensee LLC
c/o Miles Mason
Pillsbury Winthrop Shaw Pittman LLP
1200 Seventeenth Street, NW
Washington, DC 20036
Miles.Mason@pillsburylaw.com
(via electronic mail)

KUNS-TV, Bellevue, WA
Facility ID No. 4624
LMS File No. 0000126192

Dear Licensee:

This letter is in reference to the above captioned application for legal special temporary authority (Legal STA) filed by Sinclair Seattle Licensee. (Sinclair or Licensee), licensee of full power television station KUNS-TV, Bellevue, Washington (KUNS or Station).¹ In its Legal STA, Sinclair requests authorization to allow some of KUNS'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 KIRO-TV, Seattle, Washington, licensed to KIRO-TV, Inc., a subsidiary of Cox (Cox or multicast host).² This arrangement between Sinclair and Cox has been entered into in connection with KUNS's transition of its facility to the ATSC 3.0 transmission standard. Although Sinclair has agreed to indemnify Cox from all liabilities or claims resulting from the airing of its multicast stream over KIRO's facilities,³ Sinclair has requested the instant authorization to make clear that it will remain responsible from a statutory and regulatory perspective for KUNS's multicast streams. Specifically, Sinclair requests that KUNS 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 KUNS's request.

Background. On November 20, 2020, the Video Division granted KUNS's application for modification of license to convert its existing broadcast facility to ATSC 3.0 transmissions.⁵ As required by section 73.3801 of the Rules,⁶ KUNS's primary stream will be simulcast in an ATSC 1.0 format over

¹ Application of Sinclair Seattle Licensee for Legal Special Temporary Authority as amended, LMS File No. 0000126192, as amended (filed Nov. 16, 2020) (KUNS Legal STA).

² KIRO is licensed to operate on RF channel 23.

³ KUNS 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 Hearst Properties, Inc. for Modification of License, LMS File No. 0000126240 (granted Nov. 20, 2020) (KUNS License Modification).

⁶ 47 CFR § 73.3801(b).

the facility of commonly owned KOMO-TV, Seattle, Washington (KOMO).⁷ In addition to its primary stream, KUNS currently broadcasts two non-primary multicast streams: TBD and Stadium.⁸ In order to avoid the loss of KUNS's over-the-air multicast programming to its current ATSC 1.0 viewers, Sinclair has entered into a written agreement with Cox to broadcast KUNS's multicast channels using the facilities and channel of KIRO.⁹ As part of the same arrangement, KIRO has been provided capacity as ATSC 3.0 guest stations on KUNS's facilities.¹⁰

As noted in the Legal STA, because of ATSC 1.0 capacity constraints, KUNS 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 by KOMO.¹¹ Furthermore, due to capacity and other constraints KUNS is not able to simulcast an ATSC 3.0 version of KUNS's multicast streams.¹² Pursuant to an engineering study conducted by the Licensee, under its arrangement with Cox, more than 99% of KUNS's current over-the-air ATSC 1.0 viewers will retain access to TBD and Stadium on KIRO.¹³ Absent the proposed arrangement and grant of the instant request, KUNS states that "all over-the-air viewers would lose access to KUNS-TV's multicast streams."¹⁴ The Licensee's engineering study also shows that its non-primary multicast streams will continue to serve KUNS's designated market area and community of license.¹⁵

Sinclair goes on to state that it provided the requisite notice to MVPDs regarding relocation of KUNS's primary ATSC 1.0 stream and its non-primary multicast streams.¹⁶ KUNS 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 operations and the need for over-the-air viewers to rescan their television sets in order to continue to receive KUNS's ATSC 1.0 programming streams. In order to alleviate any viewer confusion, the PSIP (virtual) channels for each of KUNS's program streams will remain unchanged and will be identified to viewers as being associated with KUNS.¹⁸ Sinclair plans to convert KUNS's

⁷ See KUNS License Modification. KOMO is licensed to operate on RF channel 30.

⁸ KUNS Legal STA at 1.

⁹ *Id.*

¹⁰ See Application of KIRO-TV, Inc. for Modification of License, LMS File No. 0000126350 (granted Nov. 20, 2020).

¹¹ KUNS Legal STA at 1.

¹² Specifically, KUNS states that in order to air an ATSC 3.0 simulcast of the Station's non-primary multicast streams, KUNS would not be able to accommodate current ATSC 3.0 guests as arranged. According to KUNS, 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, KUNS notes that additional engineering work and equipment would be required to accommodate simulcasting non-primary multicast streams in both an ATSC 1.0 and ATSC 3.0 format. *Id.* at 1.

¹³ *Id.* at 2. See also, KUNS Legal STA, Engineering Statement at 1,3. We also note that 100% of KUNS's current over-the-air ATSC 1.0 viewers will retain access to KUNS's primary programming on KOMO. See KUNS License Modification, Engineering Statement at 1, 3.

¹⁴ KUNS Legal STA at 1.

¹⁵ KUNS Legal STA, Engineering Statement at 1,3.

¹⁶ KUNS Legal STA at 2. See 47 CFR § 73.3801(g) (Notice to MVPDs).

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

¹⁸ KUNS Legal STA at 2.

facilities to ATSC 3.0 and commence its ATSC 1.0 operations over the facilities of KOMO (primary stream), KIRO (non-primary multicast streams) on December 15, 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 non-primary multicast streams.²⁰ Grant of the instant Legal STA will promote the continued transmission of KUNS's multicast programming streams to viewers and by providing KUNS an authorization to air these signals over the host's facilities make clear that KUNS 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 KUNS's non-primary multicast streams airing on KIRO, we will treat those signals as multicast streams being originated by KUNS even though they are being transmitted over KIRO's facilities. That is, KUNS is the sole party responsible for ensuring compliance with all statutory and regulatory requirements with regards to KUNS's two original non-primary 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 KUNS air an ATSC 3.0 version of the ATSC 1.0 non-primary 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 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,

¹⁹ *Id.* at 2.

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

²¹ KUNS notes in its Legal STA that KUNS "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. As such, neither KUNS-TV's compliance with the Commission's Children's Television Programming requirements nor viewers' access to the station's core programming will be affected." KUNS Legal STA at 3.

²² *See supra* note 20.

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 12.

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

we will continue to consider these program streams to be KUNS's multicast streams even though they are being aired on different channels than KUNS's ATSC 1.0 primary stream. Multicast signals are not entitled to mandatory carriage rights,²⁶ and this authorization does not modify or alter KUNS's mandatory carriage rights. Ultimately any impact on an MVPD's ability to carry KUNS's non-primary multicast streams pursuant to a retransmission consent agreement is subject to the terms of the private contractual relationships between KUNS and the affected MVPDs. According to KUNS, it does not expect there to be any adverse impact on MVPD viewers.²⁷ As stated, KUNS 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 non-primary 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 Sinclair Seattle Licensee, Inc., licensee of KUNS-TV, Bellevue, Washington, **IS GRANTED** for a period of six months from date of this letter – hereby expiring on June 8, 2021. For purposes of the Act and the Commission's rules we will consider the multicast program streams of TBD and Stadium to be originated by KUNS, even though they are being aired over KIRO's facilities and channel. Further, we will not apply our ownership rules to the extent the instant temporary arrangement would otherwise result in a potential violation of those rules so long as KUNS's non-primary 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., KUNS 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 non-primary multicast streams being aired over the multicast hosts' facilities by KUNS or relocating either of KUNS's non-primary 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

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, DA 20-1394 (rel. Nov. 24, 2020). Our action herein is not intended to prejudge 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 KUNS Legal STA at 2.

²⁸ *Id.*

Bureau decisions on the treatment of non-primary multicast streams pursuant to an ATSC 3.0 simulcasting arrangement.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

Cc: (via electronic mail):
Christina Burrow, Esq.
(Counsel for KIRO)

Jessica Nyman, Esq.
(Counsel for KUNS)