



Federal Communications Commission
Washington, D.C. 20554

December 1, 2021

Fox Television Stations, LLC
Ann West Bobeck
101 Constitution Avenue, NW
Suite 200 West
Washington, DC 20001
(via electronic mail)

KTXH, Houston, TX
Facility ID No. 51569
LMS File No. 0000166830

Dear Licensee:

This letter is in reference to the above-captioned application for legal special temporary authority (Legal STA) filed by Fox Television Stations, LLC (Fox or Licensee), licensee of full power television station KTXH, Houston, Texas (KTXH or Station).¹ In its Legal STA, the Licensee requests authorization to allow KTXH's non-primary programming streams (multicast streams) to be aired in an ATSC 1.0 format, with no ATSC 3.0 simulcast, on KXLN-DT, Rosenberg, Texas (KXLN), licensed to KXLN License Partnership, L.P (Univision); KFTH-DT, Alvin, Texas (KFTH), licensed to Unimas Houston LLC (Univision); and KTRK-TV, Houston, Texas (KTRK), licensed to KTRK Television, Inc. (ABC) (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 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. Specifically, the Licensee requests that KTXH 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.

Background. On November 23, 2021, the Video Division granted the Station's application for modification of license to convert its existing broadcast facilities to ATSC 3.0 transmission.⁵ As required

¹ Application of Fox Television Stations, LLC for Legal Special Temporary Authority as Amended, LMS File No. 0000166830 (filed Nov. 8, 2021) (Fox Legal STA).

² KXLN is licensed to operate on RF Channel 30, KFTH is licensed to operate on RF Channel 36, and KTRK is licensed to operate on RF Channel 13.

³ Fox Legal STA, Second Amended Narrative Exhibit 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 Application of Fox Television Stations for Modification of License as Amended, LMS File No. 0000166189 (granted Nov. 23, 2021) (Fox License Modification).

by section 73.3801 of the Rules,⁶ the Station's primary stream will be simulcast in an ATSC 1.0 format over the facility of commonly-owned station KRIV-TV, Houston, Texas (KRIV).⁷ In addition to its primary stream, the Station currently broadcasts three non-primary multicast streams: (1) *Movies!*, (2) *TheGrio-TV*, and (3) *Buzzr*.⁸ 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 a written agreement with the Multicast Hosts to broadcast *Movies!* over KXLN, *TheGrio-TV* over KFTH, and *Buzzr* over KTRK.⁹ As part of the same arrangements, the Multicast Hosts have been provided capacity as ATSC 3.0 guest stations on the Station's channel.¹⁰

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.¹¹ Furthermore, due to capacity and other constraints the Station is not able to simulcast an ATSC 3.0 version of its multicast streams.¹² Pursuant to an engineering study conducted by the Licensee, over 99 percent of KTXH's current over-the-air ATSC 1.0 viewers will retain access to *Movies!* over KXLN, *TheGrio-TV* over KFTH, and *Buzzr* over KTRK.¹³ Absent the proposed arrangements and grant of the instant request, the Licensee states "FTS may not be able to continue to provide the Station's non-primary multicast streams over-the-air, which would [result] in a complete loss of service to all of the over-the-air viewers of these streams."¹⁴ The Station's non-primary multicast streams will continue to serve the Station's DMA and community of license.¹⁵

⁶ 47 CFR § 73.3801(b).

⁷ See Fox License Modification. KRIV is licensed to operate on RF Channel 26.

⁸ Fox Legal STA, Second Amended Narrative Exhibit at 1.

⁹ *Id.* at 2.

¹⁰ See Application of KXLN License Partnership, L.P. for Modification of License, LMS File No. 0000166964 (granted Nov. 23, 2021); Application of Unimas Houston LLC for Modification of License, LMS File No. 0000166957 (granted Nov. 23, 2021); Application of KTRK Television, Inc. for Modification of License, LMS File No. 0000167232 (granted Nov. 23, 2021).

¹¹ Fox Legal STA, Second Amended Narrative Exhibit at 2. 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."); see also *infra* note 26.

¹² Fox Legal STA, Second Amended Narrative Exhibit at 2. Specifically, Licensee states that to air an ATSC 3.0 simulcast of the Station's non-primary multicast streams, the Station would not be able to accommodate current ATSC 3.0 guests as arranged. According to the Licensee, doing so also would impact the Station's ability to offer enhanced ATSC 3.0 offerings, such as High Dynamic Range, Wide Color Gamut and High Frame Rate, Dolby AC-4 immersive audio, advanced emergency alerting and information functions, and non-real time interactive data delivery. *Id.* Furthermore, the Licensee notes that this would delay rollout of ATSC 3.0 in the Houston, Texas Designated Market Area (DMA). *Id.*

¹³ Fox Legal STA, License Service Statement at 1. See also, Fox Legal STA, KTXH Contour Compare to KRIV and KXLN; Fox Legal STA, KTRK and KTFH Contour Maps. We also note that over 99 percent of the Station's current over-the-air ATSC 1.0 viewers will retain access to its primary programming over KRIV. Fox Legal STA, License Service Statement at 1. See also Fox License Modification, Amended Engineering Statement at 1-2.

¹⁴ Fox Legal STA, Second Amended Narrative Exhibit at 3.

¹⁵ See Fox Legal STA, KTXH Contour Compare to KRIV and KXLN; Fox Legal STA, KTRK and KTFH Contour Maps.

The Licensee goes on to state that it has provided the requisite notice to MVPDs regarding relocation of the Station's primary ATSC 1.0 stream and its non-primary multicast streams.¹⁶ The Station will also air 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 KTXH's ATSC 1.0 programming streams.¹⁷ In order to alleviate any viewer confusion, the PSIP (virtual) channel for each of KTXH's programming streams will remain unchanged and will be identified to viewers as being associated with KTXH.¹⁸ The Licensee plans to convert the Station's facilities to ATSC 3.0 and commence its ATSC 1.0 operations over KRIV (primary stream), KXLN (*Movies!*), KFTH (*TheGrio-TV*), and KTRK (*Buzzr*) on December 2, 2021.¹⁹

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 non-primary multicast streams.²⁰ 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 those signals from a regulatory compliance and enforcement perspective. 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 Station is the sole party responsible for ensuring compliance with all statutory and regulatory requirements with regard to all of its 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,

¹⁶ Fox Legal STA, Second Amended Narrative Exhibit at 3. *See* 47 CFR § 73.3801(g) (Notice to MVPDs).

¹⁷ Fox Legal STA, Second Amended Narrative Exhibit at 3. *See* 47 CFR § 73.3801(f) (Consumer Education for Next Gen TV stations).

¹⁸ Fox Legal STA, Second Amended Narrative Exhibit at 3.

¹⁹ *Id.* at 1.

²⁰ *Supra* note 11.

²¹ The Licensee reports in its Legal STA that "the Station schedules one hour per week of regularly scheduled children's core programming and at least 52 hours per year of non-regularly scheduled core programming on its primary programming stream, and thus intends to rely on its non-primary multicast streams for its second hour per week of regularly scheduled core programming" for compliance with the Commission's Children's Television Programming Requirements. Fox Legal STA, Second Amended Narrative Exhibit at 3-4. As stated in the application, all multicasts will reach over 99 percent of current ATSC 1.0 viewers, coverage that is well within the Commission's expedited processing standard for a host station's coverage of a primary stream. The Commission established a 95 percent coverage threshold for expedited processing finding that it struck the appropriate balance between ensuring continued provision of service to viewers against providing broadcasters sufficient flexibility to locate and select a simulcast partner. *See Next Gen TV Report and Order*, 32 FCC Rcd at 9947-49, paras. 34-38; 47 CFR § 73.3801(f)(5). Through the Legal STA process, the Bureau has previously allowed Next Gen TV stations to utilize a 1.0 multicast host to demonstrate compliance with the Commission's Core Programming requirements where coverage was found to meet the 95 percent coverage threshold required for expedited processing. *See e.g.*, Letter from Barbara A. Kreisman, Chief, Video Division, FCC Media Bureau, to Fox Television Stations, LLC at 3, n. 21 (rel. June 24, 2021) (on file in LMS File No.0000143946). 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. We note that in the *Second ATSC 3.0 FNPRM* the Commission tentatively concluded that "to be counted toward Core Programming for purposes of our children's television rules, programming on a multicast stream must either be carried on the same host as the originating station's primary stream, or on a host that serves at least 95 percent of the predicted

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 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."²³

Accordingly, the application of Fox Television Stations, LLC, licensee of KTXH, Houston, Texas, **IS GRANTED** for a period of six months from date of this letter – hereby expiring on June 1, 2022. 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 Station or relocating any of the non-primary multicast streams 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 KTXH's non-primary multicast streams pursuant to a retransmission consent agreement is subject to the terms of the private contractual relationships between KTXH 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 non-primary multicast streams over-the-air or via alternative delivery methods.²⁵ Our grant of the instant STA authorization shall not prejudice the

population served by the applicant's pre-transition 1.0 signal." *Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard*, Second Further Notice of Proposed Rulemaking, GN Docket No. 16-142, FCC 21-116, para. 30 (rel. Nov. 5, 2021) (*Second ATSC 3.0 FNPRM*). The Commission also stated that during the pendency of the *Second ATSC 3.0 FNPRM* 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 not intended to prejudge the outcome of that proceeding, and the Station must come into compliance with any rules that are ultimately adopted therein. *See infra* note 26.

²² *See supra* note 4.

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 Fox Legal STA, Second Amended Narrative Exhibit at 3.

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.²⁶

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

Cc (via electronic mail):

Matthew S. DelNero, Esq.
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²⁶ 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 *Second ATSC 3.0 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) (Petition). 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.” *Second ATSC 3.0 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.