



Federal Communications Commission  
Washington, D.C. 20554

September 9, 2022

Independence Television Company  
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(via electronic mail)

Request for Legal STA  
WBKI(TV), Salem, IN  
Facility ID No. 34167  
LMS File No. 0000195196

Dear Licensee:

This letter is in reference to the above-captioned application for legal special temporary authority (Legal STA) filed by Independence Television Company (ITC or Licensee), licensee of full power television station WBKI(TV), Salem, Indiana (KSHV-TV or Station).<sup>1</sup> 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 commonly owned station WDRB(TV), Louisville, Kentucky (WDRB), WAVE(TV), Louisville, Kentucky (WAVE), licensed to Gray Television Licensee, LLC (Gray), and WLKY(TV), Louisville, Kentucky (WLKY), licensed to Hearst Properties Inc. (Hearst) (collectively Multicast Hosts).<sup>2</sup> 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,<sup>3</sup> 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 WBKI be treated as if it is still originating all the multicast streams and be considered the responsible party for compliance

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<sup>1</sup> Application of Independence Television Company for Legal Special Temporary Authority, LMS File No. 0000195196 (filed Jul. 18, 2022) (ITC Legal STA).

<sup>2</sup> WLKY is authorized to operate on RF channel 14, WDRB is authorized to operate on RF channel 32, and WAVE is authorized to operate on RF channel 36. Because WBKI and WDRB are both ultimately commonly owned by ITC they need not enter into any contractual indemnification or a written simulcast agreement with regards to the multicast stream to be aired on WDRB. *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). Furthermore, WAVE is the Station's primary host and in addition to airing a simulcast of WBKI's primary stream, WAVE is also authorized to air WBKI's multicast stream provided WBKI provides notice as part of its license modification application. Nonetheless, out of an abundance of caution, ITC requests that the instant legal authorization cover WBKI's multicast streams aired over the facilities of WDRB and WAVE. Our action herein is not intended to prejudge the outcome of any potential proceeding relating to any future licensing requirements regarding non-primary multicast streams. *See infra* note 30.

<sup>3</sup> ITC Legal STA, Exhibit at 1.

with any obligations under the Communications Act of 1934, as amended (Act) and the Commission's rules (Rules).<sup>4</sup> For the reasons below, we grant the Licensee's request.

*Background.* On August 29, 2022, the Video Division granted the Station's application for modification of license to convert its existing broadcast facilities to ATSC 3.0 transmission.<sup>5</sup> As required by section 73.3801 of the Rules,<sup>6</sup> the Station's primary stream (CW) will be simulcast in an ATSC 1.0 format over the facility of WAVE.<sup>7</sup> The Station currently broadcasts five non-primary multicast streams: *MyNetwork*, *Cozi*, *Movies!*, *True Real*, and *Defy*.<sup>8</sup> 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 arrangements with the Multicast Hosts to broadcast the multicast streams of *MyNetwork*, *True Real*, and *Defy* over WDRB, *Movies!* over WLKY and *Cozi* over WAVE.<sup>9</sup> As part of that same arrangement, ITC will provide WAVE, WDRB, and WLKY capacity as ATSC 3.0 guest stations on WBKI's ATSC 3.0 channel.<sup>10</sup>

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.<sup>11</sup> Furthermore, due to capacity and other constraints the Station is not able to simulcast an ATSC 3.0 version of its multicast streams.<sup>12</sup> Pursuant to an engineering study conducted by the Licensee, 97.7 percent of the Station's current over-the-air viewers will retain access to *MyNetwork*, *True Real*, and *Defy* over WDRB, 91.9 percent will retain access to *Movies!* over WLKY, and 90.1% will retain access to *Cozi* over

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<sup>4</sup> *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.).

<sup>5</sup> Application of Independence Television Company for Modification of License, LMS File No. 0000194608 (granted Aug. 29, 2022) (ITC License Modification).

<sup>6</sup> 47 CFR § 73.3801(b).

<sup>7</sup> See ITC License Modification.

<sup>8</sup> ITC Legal STA, Exhibit at 1.

<sup>9</sup> *Id.*

<sup>10</sup> See Application of Independent Television Company for Modification of License, LMS File No. 0000196709 (granted Aug. 29, 2022); Application of Gray Television Licensee, LLC, for Modification of License, LMS File No. 0000197265 (granted Aug. 29, 2022); and Application of Hearst Properties Inc., LMS File No. 0000196798 (granted Aug. 29, 2022).

<sup>11</sup> ITC Legal STA, 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 ("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.").

<sup>12</sup> ITC Legal STA, Exhibit at 2. Specifically, the Licensee states that airing an ATSC 3.0 simulcast of the Station's non-primary multicast stream 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.*

WAVE.<sup>13</sup> The Multicast Hosts are also located in the same designated market area (DMA) as WBKI and will place a city-grade service contour over the entirety of WBKI's city of license.<sup>14</sup>

According to ITC, most of the service loss from moving the WBKI multicast streams to WAVE and WLKY is outside of the Louisville DMA. For the multicast streams hosted by WAVE, only 20,728 persons located within the Louisville DMA would lose WBKI's ATSC 1.0 service as a result of the simulcasting arrangement – approximately 0.95% of the population within WBKI's noise limited service contour (NLSC).<sup>15</sup> Similarly, for the one multicast stream hosted by WLKY, only 15,725 persons located within the Louisville DMA would lose access to WBKI's ATSC 1.0 multicast streams – approximately 0.72% of the population within WBKI's NLSC.<sup>16</sup> Absent the proposed arrangements and grant of the instant request, the Licensee states that all over-the-air viewers would lose access to WBKI's multicast streams.<sup>17</sup>

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 non-primary multicast streams.<sup>18</sup> 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.<sup>19</sup> In order to alleviate any viewer confusion, the PSIP (virtual) channel for each of the Station's programming streams will remain unchanged and will be identified to viewers as being associated with WBKI.<sup>20</sup> If granted authority, the Licensee will convert the Station's facilities to ATSC 3.0 and commence its ATSC 1.0 operations over WDRB, WAVE, and WLKY on September 12, 2022.<sup>21</sup>

*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.<sup>22</sup> Through the Legal STA process, the Media Bureau (Bureau) has previously authorized Next Gen TV stations to utilize an ATSC 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.<sup>23</sup> 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,

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<sup>13</sup> *Id.*, Engineering Statement.

<sup>14</sup> *Id.*, Exhibit at 3.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* See 47 CFR § 73.3801(g) (Notice to MVPDs).

<sup>19</sup> ITC Legal STA, Exhibit at 3. See 47 CFR § 73.3801(f) (Consumer Education for Next Gen TV stations).

<sup>20</sup> ITC Legal STA, Exhibit at 1-2.

<sup>21</sup> *Id.* at 1.

<sup>22</sup> *Supra* note 11.

<sup>23</sup> See e.g., Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau, to Hearst Stations Inc. (June 14, 2021) (on file at LMS File No. 0000146558).

consistent with that precedent.<sup>24</sup> Grant of the instant Legal STA will also 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 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 Licensee is the sole party responsible for ensuring compliance with all statutory and regulatory requirements with regard to its original non-primary multicast streams. This includes, but is not limited to, our rules regarding political broadcasting, children's programming,<sup>25</sup> equal employment opportunities, public inspection files, indecency, sponsorship identification, station identification, contests, the CALM Act, and the Emergency Alert System.<sup>26</sup> 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."<sup>27</sup>

Accordingly, the application of Independence Television Company, licensee of full power television station WBKI(TV), Salem, Indiana, **IS GRANTED** for a period of six months from date of this letter – hereby expiring on March 8, 2023. 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 a 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,<sup>28</sup> any

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<sup>24</sup> We note that in order to qualify for expedited processing the Commission's rules require that a Next Gen TV broadcaster's primary 1.0 simulcast host cover at least 95 percent of the Station's original 1.0 coverage area. *See* 47 CFR § 73.3801(f)(5). In the *Second ATSC 3.0 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 Designated Market Area (DMA) and covers the Next Gen TV station's community of license. *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. 32 (rel. Nov. 5, 2021) (*Second ATSC 3.0 FNPRM*). In the *Second ATSC 3.0 FNPRM*, the Commission also stated that during the pendency of the proceeding 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. We find our action herein is consistent with our past actions and does not prejudice the outcome of that proceeding. The Station must come into compliance with any rules that are ultimately adopted therein. *See infra* note 30.

<sup>25</sup> The Licensee notes in its Legal STA that "WBKI fulfills all of its children's programming requirements by airing core E/I programming on WBKI's primary stream." ITC Legal STA, Exhibit at 4.

<sup>26</sup> *See supra* note 4.

<sup>27</sup> *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).

<sup>28</sup> *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

impact on an MVPD's ability to carry WBKI's non-primary multicast streams pursuant to a retransmission consent agreement is subject to the terms of the private contractual relationships between WBKI 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.<sup>29</sup> Our grant of the instant STA authorization shall not prejudice the 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.<sup>30</sup>

Sincerely,

/s/

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

Cc (via electronic mail):

Joan Stewart, Esq. (Counsel for Gray)

Coe Ramsey, Esq. (Counsel for Hearst)

Christina H. Burrow, Esq. (Counsel for ITC)

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

<sup>29</sup> ITC Legal STA, Exhibit at 3.

<sup>30</sup> 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 ATSC 3.0 Second 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). 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* 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.