



Federal Communications Commission
Washington, D.C. 20554

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(via electronic mail)

KVCW(TV), Las Vegas, NV
Facility ID No. 10195
LMS File No. 0000129983

Dear Licensee:

This letter is in reference to the above-captioned application for legal special temporary authority (Legal STA) filed by KUPN Licensee, LLC (Licensee), licensee of full power television station KVCW(TV), Las Vegas, Nevada (KVCW or the Station).¹ In its Legal STA, the Licensee requests authorization to allow KVCW'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 facilities of KLAS-TV, Las Vegas (KLAS), Nevada, licensed to Nexstar Broadcasting, Inc. (Nexstar), and commonly owned facility KSNV(TV), Las Vegas, Nevada (KSNV) (collectively, Multicast Hosts).² The Legal STA also requests that one of KVCW's multicast streams be changed.³ This arrangement between the Licensee and the Multicast Hosts has 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,⁴ it 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. Specifically, the Licensee requests that KVCW 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

¹ See LMS File No. 0000197514, as amended (filed Aug 12, 2022) (Extension/Change STA).

² *Id.*, STA Request at 1. KSNV is licensed to operate on RF channel 22, and KLAS is licensed to operate on RF channel 7.

³ Extension/Change STA, STA Request at 1.

⁴ See Letter from Barbara A. Kreisman, Chief, Video Division, FCC Media Bureau, to KUPN Licensee, LLC at 1 (Jul. 9, 2020) (on file at LMS File No. 0000112813) (KVCW STA). We note that KVCW and KSNV are both commonly owned by Sinclair Broadcast Group (Sinclair), the parent company of KUPN License LLC. Because the stations are commonly owned to ensure clarity under the Commission's rules Sinclair requests that the instant legal authorization cover KVCW's multicast streams aired both over the facilities of KSNV and KLAS. Extension/Change STA, STA Request at 2.

1934, as amended (Act) and the Commission's rules (Rules).⁵ For the reasons below, we grant the Licensee's request.

Background. On May 15, 2020, the Video Division granted KVCW's application for modification of license to convert its existing broadcast facility to ATSC 3.0 transmissions, and KVCW commenced ATSC 3.0 operations on May 26, 2020.⁶ As required by section 73.3801 of the Rules,⁷ KVCW's primary stream (CW) is being simulcast in an ATSC 1.0 format over the facilities of KTNV-TV, Las Vegas, Nevada (KTNV).⁸ On July 9, 2020, the Media Bureau (Bureau) granted a legal STA finding that for purposes of the Act and the Commission's rules the multicast program streams of *MyNetwork*, *TBD*, *ThisTV*, and *Comet TV* would be considered to be originated by KVCW, even though they would be aired over Multicast Hosts' channels.⁹ The Legal STA has been extended two times.¹⁰ The Licensee has requested another extension of its Legal STA, except this time the it requests authority to switch one of the multicast programming streams being aired over the facility of KLAS from *Comet TV* to *Stadium*.¹¹ The Licensee states that this change in programming will not "alter the amount of spectrum bandwidth used by KVCW's multicast streams, and if KVCW were broadcasting in ATSC 1.0 via its own facilities, KVCW would be able to broadcast its primary and multicast streams."¹² None of the other multicast programming streams (*MyNetwork*, *TBD* or *ThisTV*) will be modified from the arrangement set forth in the underlying Legal STA.¹³

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.¹⁴ Furthermore, due to capacity and other constraints the Station is not able to simulcast an ATSC 3.0 version of its multicast streams.¹⁵ Pursuant to an engineering study conducted by the Licensee, under its multicast hosting arrangements 100 percent of the Station's viewers within KVCW's noise limited service contour will retain access to the Station's

⁵ *Id.* at 2; 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.).

⁶ See LMS File No. 0000112811.

⁷ 47 CFR § 73.3801(b).

⁸ KTNV is licensed to operate on RF channel 13 and is licensed to Scripps Broadcasting Holdings, Inc.

⁹ Specifically, *MyNetwork* was authorized to air over the facility of KNSV and *TBD*, *ThisTV*, and *Comet TV* were authorized to air over the facility of KLAS. See KVCW STA at 2.

¹⁰ See LMS File Nos. 0000183902 and 0000184911.

¹¹ Extension/Change STA, STA Request at 1.

¹² *Id.*, Amendment at 1.

¹³ *Id.*, STA Request at 1. The Station's primary programming will also remain the same. *Id.* at 1.

¹⁴ *Id.* Next Gen TV 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.").

¹⁵ Extension/Change STA, STA Request at 1.

multicast streams in an ATSC 1.0 format over the Multicast Hosts' channels.¹⁶ Absent the proposed arrangements and grant of the instant request, the Licensee stated that "all over-the-air viewers would lose access to KVCW's multicast streams."¹⁷ The Licensee's engineering study also showed that its multicast streams will continue to serve the Station's Designated Market Area (DMA) and community of license.¹⁸

The Licensee also states the Station will air consumer notices for 30 days leading up to the programming change and has posted a notice to its website regarding the programming change.¹⁹ The Licensee goes on to state that it has coordinated with or will coordinate with MVPDs as needed.²⁰ According to the Licensee, because KSNV and KLAS are currently serving as multicast hosts for KVCW, it anticipates that MVPDs will continue to receive a good quality signal of its multicast streams.²¹ In order to continue to alleviate any viewer confusion, the Licensee confirms that the PSIP (virtual) channel for each of the Station's programming streams will remain unchanged and will continue to be identified to viewers as being associated with KVCW.²² The Licensee plans to replace the programming of *Comet TV* with the programming of *Stadium* on September 1, 2022.²³

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 non-primary multicast streams.²⁴ 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 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 continue 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,²⁵ equal employment opportunities, public inspection files, indecency, sponsorship identification, station identification, contests, the CALM Act, and the Emergency Alert

¹⁶ *Id.*, KVCW-KSNV-KLAS_ATSC_3.0_Engineering at 1-3.

¹⁷ *Id.*, STA Request at 2.

¹⁸ *Id.*, KVCW-KSNV-KLAS_ATSC_3.0_Engineering at 4.

¹⁹ *Id.* at 2.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*, Amendment at 1. KVCW's virtual channel 33.5 will be affiliated with *Stadium* instead of *Comet TV*. *Id.*

²³ *Id.*, STA Request at 1. Licensee has authority to continue airing its multicast streams as previously authorized through September 1, 2022. *See supra* note 9. Starting on September 1, 2022 the multicast streams will be aired as follows: the multicast host for *MyNetwork* will be KSNV and the multicast host for *TBD*, *ThisTV*, and *Stadium* will be KLAS.

²⁴ *Supra* note 14.

²⁵ The Licensee has stated that it "does not, and does not intend to, rely on any programming broadcast on its multicast streams for compliance with the Commission's children's programming requirements." Extension/Change STA, Amendment at 1.

System.²⁶ 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. Furthermore, because the Station has certified that the change in programming being aired over KVCW from *Comet TV* to *Stadium* will not require any additional spectrum capacity beyond what could be aired over KVCW's own channel if it were operating in ATSC 1.0, we find it is in the public interest to allow the programming change.²⁷

Finally, 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."²⁸

Accordingly, the application of KUPN Licensee, LLC, licensee of full power television station KVCW(TV), Las Vegas, Nevada, **IS GRANTED** for a period of six months from date of this letter – hereby expiring on February 27, 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 continue to coordinate with MVPDs as necessary 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. Because multicast signals are not entitled to mandatory carriage rights,²⁹ any impact on an MVPD's ability to carry KVCW's non-primary multicast streams pursuant to a retransmission consent agreement is subject to the terms of the private contractual relationships between the Station and the affected MVPDs. Our grant of the instant

²⁶ See *supra* note 5.

²⁷ See *id.*, Amendment at 1. See e.g., Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau to Gray Television Licensee, LLC (Apr. 29, 2022) (on file at LMS File No. 0000184684) (permitting KSMO-TV to switch the streams airing on its multicast hosts).

²⁸ *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).

²⁹ 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.

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.³⁰

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division

Cc: (via electronic mail):

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³⁰ In the *Second ATSC 3.0 Second 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 Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard*, GN Docket No. 16-142, Second Further Notice of Proposed Rulemaking, FCC 21-116 (rel. Nov. 5, 2021) (*ATSC 3.0 Second FNPRM*); *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. *See supra* note 23. 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." *ATSC 3.0 Second FNPRM* at n. 47. 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.