



Federal Communications Commission
Washington, D.C. 20554

October 24, 2022

Mercury Broadcasting Company, Inc.
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(via electronic mail)

Request for Legal STA
KMTW(TV), Hutchinson, Kansas
Facility ID No. 77063
LMS File No. 0000201737

Dear Licensee:

This letter is in reference to the above-captioned application for legal special temporary authority (Legal STA) filed by Mercury Broadcasting Company, Inc. (Mercury or Licensee), licensee of full power television station KMTW(TV), Hutchinson, Kansas (KMTW or Station).¹ 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 KSAS-TV, Wichita, Kansas (KSAS), licensed to KSAS Licensee, LLC; KSNW(TV), Wichita, Kansas (KSNW), licensed to Nexstar Media Inc.; and KAKE(TV), Wichita, Kansas (KAKE), licensed to Knoxville TV LLC (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 its channel,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 the Station be treated as if it is still originating all 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.

¹ Application of Mercury Broadcasting Company, Inc. for Legal Special Temporary Authority, LMS File No. 0000201737, as amended (filed Oct. 3, 2022) (Mercury Legal STA).

² The Multicast Hosts are authorized to operate on RF channels 26, 15, and 10, respectively.

³ Mercury Legal STA, Amendment at 1.

⁴ *Id.*, Narrative Exhibit at 1. 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.).

Background. On October 18, 2022, 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 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 KAKE.⁷ The Station currently broadcasts three multicast streams: *Stadium*, *Charge!*, and *TBD*.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 written agreements with the Multicast Hosts to broadcast the multicast stream of *Stadium* over KSAS, *Charge!* over KSNW, and *TBD* over KAKE.⁹ The Licensee intends to convert the Station's facilities to ATSC 3.0 on October 25, 2022.¹⁰

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.¹¹ Furthermore, due to capacity and other constraints the Station is not able to simulcast an ATSC 3.0 version of its multicast stream.¹² Pursuant to an engineering study conducted by the Licensee, at least 98.6 percent of the viewers that currently receive the Station's multicast streams over-the-air from the Station's current ATSC 1.0 facility will retain access to the Station's programming from KSAS-TV (98.6 percent), KSNW

⁵ Application of Mercury Broadcasting Company, Inc. for Legal Special Temporary Authority, LMS File No. 0000201733 (granted Oct. 18, 2022) (Mercury License Modification).

⁶ 47 CFR § 73.3801(b).

⁷ See Mercury License Modification. Because KMTW has been authorized to transmit its primary ATSC 1.0 simulcast signal over the facility of KAKE, KMTW is permitted to transmit multicast signals over the facility of KAKE if such a request is made as part of its license modification application. See Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau to KPTV-KPDX Broadcasting Corp. at (Jul. 27, 2020) (authorizing a station that is airing a multicast stream over the same host as its primary simulcast stream to disclose such information as part of its license modification application). Such a request was included in KMTW's license modification. Should any change be made to that arrangement, including a change to the multicast stream being aired by KAKE, Mercury must notify the Commission and file either a new license modification or Legal STA as may be appropriate.

⁸ Mercury Legal STA, Narrative Exhibit at 1.

⁹ *Id.*

¹⁰ See *id.* at 1.

¹¹ *Id.* 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.").

¹² Mercury Legal STA, Narrative Exhibit at 2. Specifically, the Licensee states that airing an ATSC 3.0 simulcast of the Station's multicast streams 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.* at 2-3.

(99.9 percent) and TBD (100 percent).¹³ The Multicast Hosts are also located in the same DMA as the Station and cover the Station's community of license.¹⁴ Absent the arrangement with Multicast Hosts, the Licensee states that all over-the-air viewers would lose access to the Station's multicast streams.¹⁵

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 multicast streams.¹⁶ 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.¹⁷ In order to alleviate any viewer confusion, the Station's current multicast channels will retain its existing PSIP major/minor channels number.¹⁸

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 multicast streams.¹⁹ Grant of the instant Legal STA will promote the continued transmission of the Station's multicast programming stream 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 multicast stream, we will treat that signal as a multicast stream being originated by the Station even though it is 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 multicast stream. This includes, but is not limited to, our rules regarding political broadcasting, children's programming,²⁰ equal employment opportunities, public inspection files, indecency, sponsorship identification, station identification, contests, the CALM

¹³ Mercury Legal STA, Narrative Exhibit at 3 and Engineering Statement. In order to qualify for expedited processing the Commission's rules require that a Next Gen TV broadcaster's primary 1.0 simulcast host covers at least 95 percent of the Station's original 1.0 coverage area. See 47 CFR § 73.3801(f)(5). Through the Legal STA process, the Media Bureau (Bureau) has previously authorized Next Gen TV stations to utilize a 1.0 multicast host whose coverage is at least 95 percent of its original 1.0 coverage area in order to preserve programming during the transition. See e.g., Letter from Barbara A. Kreisman, Chief, Video Division, FCC Media Bureau, to Tribune Broadcasting Company I LLC (Oct. 2, 2020) (on file at LMS File No. 0000121872). 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. *Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard*, Second Further Notice of Proposed Rulemaking, GN Docket No. 16-142, FCC 21-116, n.47 (rel. Nov. 5, 2021) (*ATSC 3.0 Second FNPRM*); see *infra* note 24.

¹⁴ Mercury Legal STA, Narrative Exhibit at Engineering Statement.

¹⁵ *Id.* at 3.

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

¹⁷ Mercury Legal STA, Narrative Exhibit at 3-4. See 47 CFR § 73.3801(f) (Consumer Education for Next Gen TV stations).

¹⁸ Mercury Legal STA, Amendment at 1.

¹⁹ *Supra* note 11.

²⁰ The Licensee notes in its Legal STA that "Licensee does not currently, and does not intend to, rely on its multicast stream for compliance with the Commission's Children's Television Programming requirements." Mercury Legal STA, Narrative Exhibit at 4.

Act, and the Emergency Alert System.²¹ Furthermore, we decline to require the Station to air an ATSC 3.0 version of the ATSC 1.0 multicast stream 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."²²

Accordingly, the application of Mercury Broadcasting Company, Inc., licensee of full power television station KMTW(TV), Hutchinson, Kansas, **IS GRANTED** for a period of six months from date of this letter – **hereby expiring on April 23, 2023**. For purposes of the Act and the Commission's rules, we will consider the multicast program stream to be originated by the Station, even though the stream is being aired over the Multicast Hosts' channels. Any change in the multicast streams being aired over the Multicast Hosts' channels by the Station or relocating a multicast stream(s) 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,²³ any impact on an MVPD's ability to carry KMTW multicast stream pursuant to a retransmission consent agreement is subject to the terms of the private contractual relationships between KMTW 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 multicast streams over-the-air or via alternative delivery methods.²⁴ Our grant of the instant STA authorization shall not prejudice the outcome of the

²¹ See *supra* note 4.

²² *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).

²³ 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.

²⁴ Mercury Legal STA, Narrative Exhibit at 3.

Commission's current ATSC 3.0 proceeding relating to the licensing of multicast streams and will be subject to the outcome of the proceeding.²⁵

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

Cc (via electronic mail):

Coe W. Ramsey (Counsel for KIKU, LLC)
Joan Stewart (Counsel for Gray)
Daniel A Kirkpatrick, Esq. (Counsel for Mercury)

²⁵ 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). As noted above, 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; see *supra* note 13. We find that the instant request is consistent with the Bureau’s prior actions under the STA process. 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, consistent with that precedent. The Commission also stated in the *ATSC 3.0 Second FNPRM* 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 prejudice 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.