



Federal Communications Commission
Washington, D.C. 20554

October 2, 2020

Tribune Broadcasting Company II LLC
c/o Elizabeth Ryder
545 E. John Carpenter Freeway
Suite 700
Irving, TX 75062
eryder@nexstar.tv
(via electronic mail)

KAUT-TV, Oklahoma City, OK
Facility ID No. 50182
LMS File No. 0000121872

Dear Licensee:

This letter is in reference to the above captioned application for legal special temporary authority (Legal STA) filed by Tribune Broadcasting Company II LLC (Tribune or Licensee), licensee of full power television station KAUT-TV, Oklahoma City, Oklahoma (KAUT or Station).¹ In its Legal STA, Tribune requests authorization to allow some of KAUT'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 KOKH-TV, Oklahoma City, Oklahoma (KOKH), licensed to KOKH Licensee, LLC, and KOCB(TV), Oklahoma City, Oklahoma (KOCB), licensed to KOCB Licensee, LLC (multicast hosts or Sinclair).² This arrangement between Tribune and the multicast hosts has been entered into in connection with KAUT's transition of its facility to the ATSC 3.0 transmission standard. Although Scripps has agreed to indemnify Sinclair from all liabilities or claims resulting from the airing of KAUT's multicast streams over its facilities,³ Tribune has requested the instant authorization to make clear that Tribune will remain responsible from a statutory and regulatory perspective for KAUT's multicast streams. Specifically, Tribune requests that KAUT 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 Tribune's request.

Background. On September 24, 2020, the Video Division granted KAUT's application for modification of license to convert its existing broadcast facility to ATSC 3.0 transmissions.⁵ As required

¹ Application of Tribune Broadcasting Company II LLC for Legal Special Temporary Authority as amended, LMS File No. 0000121872, as amended (filed Sep. 18, 2020) (KAUT Legal STA).

² KOKH is licensed to operate on RF channel 24, and KOCB is licensed to operate on RF channel 33. Both licensees are subsidiaries of Sinclair Broadcast Group.

³ KAUT 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 file, indecency, sponsorship identification, etc.).

⁵ Application of Tribune Broadcasting Company II LLC for Modification of License, LMS File No. 0000121785 (granted Sep. 24, 2020) (KAUT License Modification).

by section 73.3801 of the Rules,⁶ KAUT's primary stream will be simulcast in an ATSC 1.0 format over the facility of jointly owned KFOR-TV, Oklahoma City, Oklahoma (KFOR).⁷ In addition to its primary stream, KAUT currently broadcasts three multicast channels: Court TV, Escape, and Cozi TV.⁸ In order to avoid the loss of KAUT's over-the-air multicast programming to its current ATSC 1.0 viewers, Tribune has entered into a written agreement with multicast hosts to broadcast all three of its multicast streams: Court TV and Escape using the facilities and channel of KOKH, and Cozi TV using the facilities and channel of KOCB.⁹ As part of the same arrangements, KOKH has been provided capacity as an ATSC 3.0 guest station on KAUT's facility.¹⁰

KAUT plans to convert its facility to ATSC 3.0 and commence its ATSC 1.0 operations over the facilities of KFOR (primary), KOKH, and KOCB (multicast streams) on October 8, 2020.¹¹ On September 18, 2020, Tribune filed the instant Legal STA.¹² As noted in the Legal STA, because of ATSC 1.0 capacity constraints, KAUT 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 on KFOR.¹³ Furthermore, due to capacity and other constraints Tribune is not able to simulcast an ATSC 3.0 version of KAUT's multicast streams.¹⁴ Pursuant to an engineering study conducted by the Licensee, under its arrangement with the multicast hosts, at least 98.5% of KAUT's current over-the-air ATSC 1.0 viewers will retain access to its multicast programming.¹⁵ Absent the proposed arrangement and grant of the instant request, Tribune states that "all over-the-air viewers would lose access to KAUT(TV)'s multicast streams."¹⁶ The Licensee's engineering

⁶ 47 CFR § 73.3801(b).

⁷ KFOR is licensed to operate on RF channel 27.

⁸ KAUT Legal STA at 1.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 1.

¹² To the extent possible, we request that a station that converts its facilities to ATSC 3.0 and chooses to seek formal Commission authority to air its ATSC 1.0 multicast channels on a multicast host station make such a request at the same time as other related ATSC 3.0 applications are filed.

¹³ KAUT Legal STA at 1.

¹⁴ Specifically, Tribune states that in order to air an ATSC 3.0 simulcast of the Station's multicast streams, KAUT would not be able to accommodate current ATSC 3.0 guests as arranged. According to Tribune, 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 as High Dynamic Range, Wide Color Gamut and High Frame Rate, immersive and multiple audio channels, and non-real time interactive data delivery. Furthermore, Tribune notes that additional engineering work and equipment would be required to accommodate simulcasting KAUT's multicast streams in both an ATSC 1.0 and ATSC 3.0 format. *Id.*

¹⁵ KOCB covers 99.9% and KOKH covers 98.5% of KAUT's current over-the-air ATSC 1.0 viewers. KAUT Legal STA, Technical Statement at 2, 7-8 (KAUT Technical Statement). We also note that KAUT's ATSC 1.0 primary simulcast that is being aired over the facility of KFOR will cover 98.7% of KAUT's current ATSC 1.0 service population. *See* KAUT License Modification, Technical Statement at 1, 5.

¹⁶ KAUT Legal STA at 1.

study also shows that its multicast streams will continue to serve KAUT's community of license (which is the same as the one assigned to the multicast hosts).¹⁷

Tribune goes on to state that it provided the requisite notice to MVPDs regarding relocation of KAUT's primary ATSC 1.0 stream and its multicast streams.¹⁸ KAUT also has been airing the requisite over-the-air announcements¹⁹ and posted to its website consumer notices regarding its transition to the ATSC 3.0 standard and the need for over-the-air viewers to rescan their television sets in order to continue to receive KAUT's ATSC 1.0 programming streams. In order to alleviate any viewer confusion, the PSIP (virtual) channels for each of KAUT's program streams will remain unchanged and will be identified to viewers as being associated with KAUT.²⁰

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 multicast streams.²¹ Grant of the instant Legal STA will promote continued transmission of KAUT's multicast programming streams to viewers and, by providing KAUT an authorization to air these signals over the hosts' facilities, make clear that Tribune 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 KAUT's multicast streams airing on KOKH and KOCB, we will treat those signals as multicast streams being originated by KAUT, even though they are being transmitted over the multicast hosts' facilities. That is, Tribune is the sole party responsible for ensuring compliance with all statutory and regulatory requirements with regards to KAUT's three original multicast streams. This includes, but is not limited to, our rules regarding political broadcasting, children's programming,²² 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,²³ we will not require that KAUT air an ATSC 3.0 version of the ATSC 1.0 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

¹⁷ KAUT Technical Statement, *supra*. note 15 at 1-2, 7-8.

¹⁸ *Id.* at 2. See 47 CFR § 73.3801(g) (Notice to MVPDs).

¹⁹ KAUT Legal STA at 2. See 47 CFR § 73.3801(f) (Consumer Education for Next Gen TV stations).

²⁰ KAUT Legal STA at 2.

²¹ *Next Gen TV Report and Order*, 32 FCC Rcd at 9937-38, para. 13, n.40.

²² Tribune notes in its Legal STA that KAUT "does not currently, and does not intend to, rely on its multicast streams for compliance with the Commission's Children's Television Programming requirements.... As such, neither KAUT's compliance with the Commission's Children's Television Programming requirements and viewers' access to the station's core programming will be affected." KAUT Legal STA at 2.

²³ See *supra* note 21.

would result in a potential violation of those rules.”²⁴ For purposes of the instant Legal STA, we find compelling the capacity and engineering constraints that the Licensee has set forth.²⁵

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. To the extent that the Commission’s existing rules do not provide sufficient clarity or guidance on issues related to the relocation of ATSC 1.0 multicast streams (simulcasted or non-simulcasted) and any other arrangements that have become necessary as part of broadcasters’ voluntary transition to ATSC 3.0 since the Commission’s ATSC 3.0 rules were adopted over two years ago, we encourage licensees to seek formal modification or clarification of the Commission’s existing rules prior to seeking renewal of the instant Legal STA.

As explained above, we will continue to consider these program streams to be KAUT’s multicast streams even though they are being aired on a different channel than KAUT’s ATSC 1.0 primary stream. Multicast signals are not entitled to mandatory carriage rights,²⁶ and this authorization does not modify or alter KAUT’s mandatory carriage rights. Ultimately any impact on an MVPD’s ability to carry KAUT’s multicast streams pursuant to a retransmission consent agreement is subject to the terms of the private contractual relationships between Tribune and the affected MVPDs. According to Tribune, it “does not expect there to be any adverse impact on MVPD viewers.”²⁷ As stated, Tribune states it 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 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 Legal STA requested by Tribune Broadcasting Company II LLC, licensee of KAUT-TV, Oklahoma City, Oklahoma, **IS GRANTED** for a period of six months from date of this letter – hereby expiring on April 1, 2021. For purposes of the Act and the Commission’s rules, we will consider the multicast program streams of Court TV, Escape, and Cozi TV to be originated by KAUT, even though they are being aired over the multicast hosts’ facilities. 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 KAUT’s multicast streams are being aired on the facilities of KOKH and KOCB pursuant to an active and Commission authorized ATSC 3.0 simulcasting arrangement (i.e.,

²⁴ *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).

²⁵ *Supra* note 14.

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 KAUT Legal STA at 2.

²⁸ *Id.*

KAUT 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 multicast streams being aired over the multicast hosts' facilities by KAUT or relocating KAUT's multicast streams to a new ATSC 1.0 multicast host, will require the filing of a new request. Tribune 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 Bureau decisions on the treatment of multicast streams pursuant to an ATSC 3.0 simulcasting arrangement.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

Cc: (via electronic mail):
Jason Roberts (Counsel for Tribune)
Miles Mason (Counsel for KOKH Licensee, LLC and KOCB Licensee, LLC)