



Federal Communications Commission  
Washington, D.C. 20554

October 20, 2023

New York Television, Inc.  
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(via electronic mail)

WNYO-TV, Buffalo, NY  
Facility ID No. 67784  
LMS File No. 0000222067

Dear Licensee:

This letter is in reference to the above-captioned application for legal special temporary authority (Legal STA) filed by New York Television, Inc. (NYTV or Licensee), licensee of digital full power television station WNYO-TV, Buffalo, New York (WNYO or Station).<sup>1</sup> In its Legal STA, the Licensee requests authorization to allow WNYO'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 WKBW-TV, Buffalo, New York (WKBW), licensed to Scripps Broadcasting Holdings LLC; WGRZ(TV), Buffalo, New York (WGRZ), licensed to Multimedia Entertainment, LLC; and WNLO(TV), Buffalo, New York (WNLO), licensed to Nexstar Media Inc. (collectively, Multicast Hosts).<sup>2</sup> 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,<sup>3</sup> 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.<sup>4</sup> Specifically, the Licensee requests that the Station be treated as if it is still originating the multicast streams and be considered the responsible party for compliance with any obligations under the

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<sup>1</sup> Application of New York Television, Inc. for Legal Special Temporary Authority, LMS File No. 0000222067, (filed Oct. 4, 2023) (Legal STA).

<sup>2</sup> WKBW is licensed to operate on RF Channel 34, WGRZ is licensed to operate on RF channel 33, and WNLO is licensed to operate on RF channel 36.

<sup>3</sup> Legal STA, Narrative Exhibit at 2.

<sup>4</sup> *Id.*

Communications Act of 1934, as amended (Act) and the Commission's rules (Rules).<sup>5</sup> For the reasons below, we grant the Licensee's request.<sup>6</sup>

*Background.* On March 5, 2021, the Video Division granted the Station's application for modification of license to convert its existing broadcast facilities to ATSC 3.0 transmission.<sup>7</sup> As required by section 73.3801 of the Rules,<sup>8</sup> the Station's primary stream will be simulcast in an ATSC 1.0 format over the facility of WUTV(TV), Buffalo, New York, licensed to WUTV Licensee, LLC.<sup>9</sup> On March 17, 2021, the Station was granted a Legal STA finding that for purposes of the Act and the Rules the Station's three multicast streams could be aired as follows: *Stadium* over the channel of WKBW; *Comet TV* over the channel of WGRZ; and *GetTV* over the channel of WNLO.<sup>10</sup> This arrangement was entered into in order to avoid the loss of the Station's multicast streams to its current ATSC 1.0 viewers.<sup>11</sup> The Legal STA was most recently extended on May 31, 2023, for a period of six additional months.<sup>12</sup>

The Licensee has requested to continue airing its multicast streams over the channels of WKBW, WGRZ, and WNLO, except the Licensee requests authority to switch the affiliation of the multicast

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<sup>5</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>6</sup> In the *ATSC 3.0 Third R&O*, which was adopted after the instant Legal STA was filed, the Commission adopted rules permitting Next Gen TV broadcasters to modify their licenses to include their simulcast or non-simulcast multicast stream(s) whether those streams are hosted on the same station as its primary stream or on different simulcast host(s). See *Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard, Third Report and Order and Further Notice of Proposed Rulemaking*, GN Docket No. 16-142, paras. 15-16, FCC 23-53 (rel. June 23, 2023) (*ATSC 3.0 Third R&O*). The rules adopted in the *ATSC 3.0 Third R&O* are not yet effective and therefore the instant Legal STA is still necessary for the streams to be authorized in the manner requested by the Licensee. See *Effective Date, Comment Dates Set for ATSC 3.0 3<sup>rd</sup> R&O and 4<sup>th</sup> FNPRM*, Public Notice, DA 23-612 (rel. July 17, 2023) (*ATSC 3.0 Third R&O Effective Date PN*) (providing notice that the rules adopted in the *ATSC 3.0 Third R&O* will take effect on August 16, 2023, except for 47 CFR §§ 73.3801, 73.6029, and 74.782, which require OMB approval). As noted below, the Licensee must come into compliance with all rules adopted in the *ATSC 3.0 Third R&O* once they are final and effective. *Infra* pg. 5 and note 30. See also *Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard*, GN Docket No. 16-142, Second Further Notice of Proposed Rulemaking, 36 FCC Rcd 16088, 16095, n.47 (2021) (*ATSC 3.0 Second FNPRM*) (permitting the Media Bureau, during the pendency of the Commission's multicast licensing proceeding, to continue to process Legal STA requests and ATSC 3.0 license applications in the same manner it had been and requiring all such Legal STAs to come into compliance with the rules adopted in the proceeding).

<sup>7</sup> Application of New York Television, Inc. for Modification of License, LMS File No. 0000136976 (NYTV License Modification).

<sup>8</sup> 47 CFR § 73.3801(b).

<sup>9</sup> See NYTV License Modification.

<sup>10</sup> Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau, FCC to New York Television Inc. (Mar. 17, 2021) (on file at LMS File No. 0000136978) (STA Grant Letter).

<sup>11</sup> See STA Grant Letter at 2; Legal STA, Narrative Exhibit at 2.

<sup>12</sup> Application of New York Television, Inc. for Extension of Legal Special Temporary Authority, LMS File No. 0000214742 (granted May 31, 2023). The Legal STA is scheduled to expire on November 29, 2023.

stream being aired over the channel of WKBW from *Stadium* to *Nest*.<sup>13</sup> The Licensee states that this change in programming “does not alter the amount of spectrum bandwidth used by WNYO-TV’s multicast streams, and if WNYO-TV were broadcasting in ATSC 1.0 via its own facilities, WNYO-TV would be able to broadcast its primary and multicast streams.”<sup>14</sup> The Station’s other multicast streams, *Comet TV* and *GetTV* will continue to be aired over the channels of WGRZ and WNLO, respectively.<sup>15</sup> The Station plans to make the change to its multicast programming on or about October 30, 2023.<sup>16</sup>

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.<sup>17</sup> Furthermore, due to capacity and other constraints, the Station is not able to simulcast an ATSC 3.0 version of its multicast stream.<sup>18</sup> Pursuant to an engineering study previously provided by the Licensee, 100 percent of existing viewers within the Station’s noise limited service contour (NLSC) will retain access to WNYO’s multicast streams.<sup>19</sup> Absent the proposed arrangements and grant of the instant request, the Licensee states that “all over-the-air viewers would lose access to WNYO-TV’s multicast streams.”<sup>20</sup>

The Licensee also indicates that because WKBW is currently hosting one of the Station’s multicast streams, MVPDs will continue to receive a good quality signal.<sup>21</sup> The Licensee agrees to

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<sup>13</sup> Legal STA, Narrative Exhibit at 2.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 1.

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

<sup>17</sup> *Id.* 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; *Authorizing Permissive Use of the “Next Generation” Broadcast Television Standard*, GN Docket No. 16-142, Second Further Notice of Proposed Rulemaking, 36 FCC Rcd 16088, 16094, para. 11 (2021); *ATSC 3.0 Third R&O* at paras. 15-16 (permitting, but not requiring, the licensing of ATSC 1.0 multicast streams by stations that convert to ATSC 3.0).

<sup>18</sup> Specifically, Licensee states that in order to air an ATSC 3.0 simulcast of the Station’s non-primary multicast streams, WNYO would not be able to accommodate current ATSC 3.0 guests as arranged. According to the Licensee, doing so would impact the stations’ abilities to offer enhanced ATSC 3.0 offerings, such High Dynamic Range, Wide Color Gamut and High Frame Rate, immersive and multiple audio channels, and non-real time interactive data delivery. Furthermore, the Licensee notes that additional engineering work and equipment would be required to accommodate simulcasting WNYO’s non-primary multicast streams in both an ATSC 1.0 and ATSC 3.0 format and thereby delay rollout of ATSC 3.0 in the Buffalo, New York, Designated Market Area. Legal STA, Narrative Exhibit at 1.

<sup>19</sup> See STA Grant Letter at 2. The Multicast Hosts’ stations are also located in the same DMA as the Station and cover the Station’s community of license. *Id.* Through the Legal STA process, the 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, Media Bureau, FCC, to Tribune Broadcasting Company II LLC (Oct. 2, 2020) (on file at LMS File No. 0000121872). See also *ATSC 3.0 Second FNPRM*, 36 FCC Rcd at 16095, n.47 (permitting the Media Bureau, during the pendency of the Commission’s multicast licensing proceeding, to continue to process Legal STA requests and 3.0 license applications in the same manner it had been and requiring all such Legal STAs to come into compliance with the rules adopted in the proceeding).

<sup>20</sup> Legal STA, Narrative Exhibit at 1.

<sup>21</sup> *Id.* at 2.

continue to coordinate with MVPDs as needed.<sup>22</sup> Further, in order to alleviate any viewer confusion, the Station's current multicast streams will retain their existing Program and System Information Protocol (PSIP) major/minor channel numbers.<sup>23</sup> The Licensee also states that it is airing notices to inform viewers about the upcoming multicast stream affiliation change.<sup>24</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 multicast streams.<sup>25</sup> 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 streams, we will treat its multicast streams as 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 regards to its multicast streams. This includes, but is not limited to, our rules regarding political broadcasting, children's programming,<sup>26</sup> equal employment opportunities, public inspection files, indecency, sponsorship identification, station identification, contests, the CALM Act, and the Emergency Alert System.<sup>27</sup> We also decline to require the Station to air an ATSC 3.0 version of the 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>28</sup>

Accordingly, the application of New York Television, Inc., licensee of full power television station WNYO-TV, Buffalo, New York, **IS GRANTED** for a period of six months from date of this letter

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Supra* note 17.

<sup>26</sup> The Licensee notes in its Legal STA that it "does not intend to rely on any programming broadcast on its multicast streams for compliance with the Commission's Children's Television Programming requirements, as WNYO-TV averages at least three hours per week of core programming on its primary stream." Legal STA, Narrative Exhibit at 2.

<sup>27</sup> *See supra* note 5.

<sup>28</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). This finding is also consistent with the Commission's determination in the *ATSC 3.0 R&O* that "hosting multicast streams on a temporary host station's facility will not result in attribution under our broadcast ownership rules or for any other requirements related to television stations attribution (e.g., filing ownership reports)." *ATSC 3.0 Third R&O* at para. 26.

– hereby expiring on April 19, 2024.<sup>29</sup> 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 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 continue to coordinate with MVPDs as necessary. 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.<sup>30</sup> The Licensee also commits to providing notice of the affiliation change to its viewers. Finally, the Licensee must come into compliance with all rules adopted in the *ATSC 3.0 Third R&O* once they are effective and make any required filings.<sup>31</sup>

Sincerely,

/s/

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

Cc: (via electronic mail):

Jessica Nyman, Esq. (Counsel for WNYO)

Jason Roberts, Esq. (Counsel for WNLO)

Michael Beder, Esq. (Counsel for WGRZ)

Coe W. Ramsey, Esq. (Counsel for WKBW)

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<sup>29</sup> The Licensee has authority to continue airing its multicast streams as previously authorized under LMS File No. 0000214742, until the change in the affiliation from *Stadium* to *Nest* occurs, but no later than November 30, 2023. If the Station is not able to make the multicast stream change by that date, it must notify Media Bureau staff if it wants extension of this authority. Such a request may be made via electronic mail to Evan Morris at [Evan.Morris@fcc.gov](mailto:Evan.Morris@fcc.gov). The Licensee must also notify the Media Bureau within ten (10) days of the affiliation change occurring via electronic mail to Evan Morris.

<sup>30</sup> Legal STA, Narrative Exhibit at 2.

<sup>31</sup> While we believe that the instant multicast arrangement will comply with the rules adopted in the *ATSC 3.0 Third R&O*, our action herein is not intended to supersede any rules adopted in the *ATSC 3.0 Third R&O*, does not constitute a waiver of any of those rules, and does not represent that we would waive any of those rules if the instant multicast arrangement was found not to comply with the rules adopted in the *Third ATSC 3.0 R&O*.