



Federal Communications Commission
Washington, D.C. 20554

October 13, 2023

WNET
825 Eight Avenue
New York, NY 10019
ATTN: General Counsel
(via electronic mail)

Request for Legal STA
WLIW(TV), Garden City, NY
Facility ID No. 38336
LMS File No. 0000221193

Dear Licensee:

This letter is in reference to the above-captioned application for legal special temporary authority (Legal STA) filed by WNET (Licensee), licensee of noncommercial educational (NCE) television station WLIW(TV), Garden City, New York (WLIW 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 commonly owned station WNET(TV), Newark, New Jersey (WNET) and WCBS-TV, New York, New York (WCBS), licensed to CBS Broadcasting (Multicast Hosts).² 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 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

¹ Application of WNET for Legal Special Temporary Authority, LMS File No. 0000221193 (filed Sept. 21, 2023; amended Oct. 6, 2023) (WLIW Legal STA).

² *Id.*, Supplement at 1. The Multicast Hosts' stations are authorized to operate on RF channels 12 and 36, respectively. We have previously determined that an ATSC 1.0 simulcast host is permitted to also air a multicast stream under the same authorization so long as the Next Gen TV station discloses such an arrangement as part of its license modification application. See e.g., Letter from Barbara A. Kreisman, Chief, Video Division, FCC Media Bureau to Independent Television Company (Sept. 9, 2022) (on file at LMS File No. 0000195196); *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, para. 16, FCC 23-53 (rel. June 23, 2023) (*ATSC 3.0 Third R&O*) (permitting the hosting of non-simulcast multicast streams when hosted with a station's primary stream on its primary simulcast host). Furthermore, because WNET and WLIW are commonly owned, they need not enter into any contractual indemnification or a written simulcast agreement with regards to the multicast streams to be aired on WNET. 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 for primary streams); *ATSC 3.0 Third R&O* at para. 35 (concluding that commonly owned stations are not required to enter into written agreements for the hosting of either primary or multicast streams, consistent with the process the Bureau uses for handling the hosting of primary streams on commonly owned stations). Nonetheless, out of an abundance of caution, the Licensee requests that the instant legal authorization cover WLIW's multicast streams that will be aired over the facility of WNET. WLIW Legal STA, Supplement at 1-2. See also *supra* notes 6 and 26 (discussing adoption of *ATSC 3.0 Third R&O* and multicast licensing rules).

³ WLIW Legal STA, Supplement at 1.

streams.⁴ 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).⁵ For the reasons below, we grant the Licensee's request.⁶

Background. On October 12, 2023, we granted the Station's application for modification of license to convert its existing broadcast facilities to the ATSC 3.0 transmission standard.⁷ As required by section 73.3801 of the Rules,⁸ the Station's primary stream will be simulcast in an ATSC 1.0 format over WNET.⁹ The Station currently broadcasts three multicast streams: *World*, *Create*, and *All Arts*.¹⁰ 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 a written agreement with the Multicast Hosts to broadcast the multicast streams of *World* and *All Arts* over WNET and *Create* over WCBS.¹¹ The Licensee intends to convert the Station's facilities to ATSC 3.0 on October 16, 2023.¹²

⁴ *Id.*

⁵ *Id.* See *Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard*, 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 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 *ATSC 3.0 Third R&O* at paras. 15-16. 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 3rd R&O and 4th 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 26. 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 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).

⁷ Application of WNET for Modification of License, LMS File No. 0000221190 (granted October 12, 2023) (WLIW License Modification). We note that WLIW channel shares with commonly owned Class A station WMBQ-CD, New York, New York (WMBQ-CD). WMBQ-CD has also filed to convert to ATSC 3.0 operations and only provides one stream of programming – FNX-First Nation – which will be simulcast on commonly owned Class A station WNDT-CD. Application of WNET for Modification of License, LMS File No. 0000221188 (granted October 12, 2023).

⁸ 47 CFR § 73.3801(b).

⁹ See WLIW License Modification.

¹⁰ WLIW Legal STA, Narrative Exhibit at 1.

¹¹ *Id.*

¹² *Id.*

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.¹³ Furthermore, due to capacity and other constraints, the Station is not able to simulcast an ATSC 3.0 version of its multicast stream.¹⁴ Pursuant to an engineering study conducted by the Licensee, 100 percent of existing viewers within the Station's noise limited service contour (NLSC) will retain access to WLIW's multicast streams being aired on WNET and WCBS.¹⁵ The Multicast Hosts' stations are also located in the same DMA as the Station and cover the Station's community of license.¹⁶ The Licensee states that "[w]ithout the arrangements with the Multicast Hosts, all over-the-air viewers would lose access to these multicast streams."¹⁷

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.¹⁸ 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.¹⁹ In order to alleviate any viewer confusion, the Station's current multicast channels will retain its existing Program and System Information Protocol (PSIP) major/minor channel numbers.²⁰

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

¹³ *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; *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).

¹⁴ WLIW Legal STA, Supplement 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.*

¹⁵ WLIW License Modification, Comprehensive Exhibit at 2-3. 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).

¹⁶ WLIW License Modification, Comprehensive Exhibit at 2-3.

¹⁷ WLIW Legal STA, Supplement at 2.

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

¹⁹ WLIW Legal STA, Supplement at 2. See 47 CFR § 73.3801(f) (Consumer Education for Next Gen TV stations). The Licensee is also posting information to the Station's website about its transition to the ATSC 3.0 standard and the need for over-the-air viewers to rescan. WLIW Legal STA, Supplement at 2.

²⁰ *Id.* at 1.

Broadcasters are not required to continue airing their existing multicast streams.²¹ 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,²² equal employment opportunities, public inspection files, indecency, sponsorship identification, station identification, contests, the CALM Act, and the Emergency Alert System.²³ We also 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."²⁴

Accordingly, the application of WNET, licensee of noncommercial educational television station WLIW(TV), Garden City, New York, **IS GRANTED** for a period of six months from date of this letter – hereby expiring on April 12, 2024. 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 in order to ensure that they continue to receive a good quality signal either over-the-air or via alternative delivery methods. Because multicast signals are not entitled to mandatory carriage rights,²⁵ any impact

²¹ *Supra* note 13.

²² The Licensee notes in its Legal STA that it "does not currently, and does not intend to, rely on the multicast streams for compliance with the Commission's Children's Television Programming requirements because WLIW averages at least three hours per week of core programming on its primary stream." WLIW Legal STA, Supplement at 2.

²³ *See supra* note 5.

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). 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.

²⁵ *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) (*DTV Must-Carry R&O*) *aff'd 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

on an MVPD's ability to carry the Station's multicast streams pursuant to a voluntary carriage agreement is subject to the terms of the private contractual relationships between the Station and the affected MVPDs. 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.²⁶

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

Cc (via electronic mail):

Daniel G. Ryson (Contact Representative for WCBS)
Martha Heller, Esq. (Counsel for WCBS)
Sally Buckman, Esq (Counsel for WLIW and WNET)

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. NCE television stations may only elect mandatory carriage because they do not have retransmission consent rights, 47 U.S.C. §325(b)(2)(A); however, they are free to negotiate issues related to voluntary carriage with cable operators and satellite carriers. *DTV Must-Carry R&O*, 16 FCC Rcd at 2613, para. 36.

²⁶ 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 *ATSC 3.0 Third R&O*.