

October 5, 2020

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Notice of *Ex Parte* Communication, MB Docket No. 20-145

Dear Ms. Dortch:

On October 1, 2020, Alison Neplokh and the undersigned of the National Association of Broadcasters (NAB) had a telephone conference with Michelle Carey, Sarah Whitesell, Evan Baranoff, Evan Morris, and Lyle Elder of the Media Bureau regarding the Commission's Notice of Proposed Rulemaking in the above-referenced docket.¹

During the call, NAB urged the Commission to employ a light regulatory touch to potential new services broadcasters could offer the public using the ATSC 3.0 transmission standard. While broadcasters seeking to transition to ATSC 3.0 are taking a "broadcast first" approach to the transition, one of the advantages ATSC 3.0 offers is the flexibility to offer new and innovative services to consumers. The Commission's policies should encourage broadcasters to continue to invest in their facilities to improve their ability to offer service to the public, not stifle innovation through unnecessary regulation. Unlike their competitors in the wireless industry, broadcasters are funding this transition without the benefit of additional spectrum.

Accordingly, NAB urges the Commission not to revisit its decision not to impose new format requirements for broadcasters as part of the ATSC 3.0 transition.² The existing rules regarding derogation of service have not proven controversial or unworkable in any way, and there is no compelling reason for the Commission to adjust those rules in this proceeding.

¹ *Promoting Broadcast Internet Innovation Through ATSC 3.0*, Declaratory Ruling and Notice of Proposed Rulemaking, MB Docket No. 20-145, FCC 20-73 (June 9, 2020).

² *Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 9930, ¶ 27 (2017).

We also urge the Commission to reject attempts by the cable lobby to inject irrelevant retransmission consent issues into this proceeding.³ As the Commission correctly observed in rejecting previous similar efforts: “Determining whether our retransmission consent rules have been violated in the context of a particular negotiation is inherently a fact-specific inquiry. There is no basis in the record for us to adopt rules of general applicability.”⁴ There is simply no reason for the Commission to consider, let alone adopt, regulations to prevent a harm that has not yet materialized associated with services that are not yet being offered.

Finally, the Commission should reject the proposal advanced by some interest groups to adjust the ancillary and supplemental service fee to subsidize the purchase of ATSC 3.0 compatible consumer equipment.⁵ This proposal is complex, legally suspect and completely unnecessary.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Patrick McFadden', with a stylized flourish at the end.

Patrick McFadden
Deputy General Counsel,
National Association of Broadcasters

cc: Michelle Carey
Evan Baranoff
Lyle Elder
Evan Morris
Sarah Whitesell

³ Comments of NCTA – The Internet & Television Association at 2-3, MB Docket No. 20-145 (August 17, 2020) (NCTA Comments).

⁴ *Authorizing Permissive Use of the “Next Generation” Broadcast Television Standard*, Second Report and Order and Order on Reconsideration, 35 FCC Rcd 6793, ¶ 59 (2020).

⁵ Comments of Public Knowledge, Consumer Reports, and New America’s Open Technology Institute at 6-8, MB Docket No. 20-145 (August 17, 2020).