

# COVINGTON

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October 13, 2017

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

**Re: *Ex parte* presentation in GN Docket No. 16-142**

Dear Ms. Dortch:

On October 11, 2017, Talia Rosen, Assistant General Counsel and Senior Director, Standards & Practices, and Brian Westley, Counsel, Standards & Practices, of the Public Broadcasting Service; Lonna Thompson, Executive Vice President, Chief Operating Officer and General Counsel, of America's Public Television Stations; Deborah Carr, Vice President, Media Strategy Operations, of the Corporation for Public Broadcasting<sup>1</sup>; and the undersigned (hereinafter "Public Television") met with the Media Bureau, as well as legal advisors from three Commission offices. A list of Commission attendees is attached.

In our discussion with staff, Public Television reiterated our support for a 2017 authorization of the ATSC 3.0 broadcast television standard (or "Next-Generation TV") so that public television stations may begin to deploy advanced television services on a voluntary basis.<sup>2</sup> Specifically, Public Television urged the Commission to be flexible in its simulcasting requirements. Public stations may be unable to share facilities with another station, particularly in rural and isolated communities, because they are often not centrally located in a television market (given that noncommercial educational must-carry rights are not tied to Designated Market Areas, so such stations are not necessarily sited near their commercial counterparts, and given that 16 states are covered by statewide public television networks that are designed to serve their entire state regardless of DMA boundaries).<sup>3</sup> We provided Commission staff with contour maps for three areas as examples of the many places where, due to tower siting, a public television station would effectively be precluded from sharing facilities to simulcast. Public Television estimates there are well over one hundred stations that could not share facilities

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<sup>1</sup> Ms. Carr did not attend the meeting with the Media Bureau staff.

<sup>2</sup> Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard, Notice of Proposed Rulemaking, GN Docket No. 16-142 (Feb. 24, 2017) ("ATSC 3.0 NPRM").

<sup>3</sup> See *Comments of PBS, CPB, and APTS*, GN Docket No. 16-142, at Appendix A (filed May 9, 2017).

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should the Commission establish a “substantially similar” contour requirement. Please see attached contour maps.

While the use of in-band vacant channels may alleviate this constraint for some stations, and Public Television supports the Commission’s proposal to allow the use of vacant channels for transitioning stations, these channels may not be universally available or affordable. For stations that are unable to simulcast an ATSC 1.0 and 3.0 signal, to the extent that a public station has determined that their local community has sufficient capability to receive ATSC 3.0 signals (either through receiver penetration or by voluntary agreements with MVPDs), the Commission should allow public stations to operate on a Next-Generation only basis, as appropriately determined by the station (in consultation with its community advisory boards). Local public television stations, which rely in large part on individual donations to sustain operations, are inherently responsive to their viewers and will not transition to ATSC 3.0 prior to a carefully coordinated and market-specific analysis that it is appropriate to transition. The Commission should therefore either wholly exempt public stations from a simulcasting requirement or adopt a presumptive and streamlined waiver policy for noncommercial licensees.<sup>4</sup>

Further, the Commission should be flexible with respect to simulcasting requirements for programming content. Some advanced services, such as interactive educational children’s content, would not be technically feasible to deploy on the current ATSC 1.0 standard. The Commission should therefore not deprive the public of the benefits an IP-based television platform can bring in terms of programming, targeted news and alerts, and improved accessibility -- rather it should encourage stations to rapidly deploy new services, including programming that is specifically designed from the ground up to take full advantage of ATSC 3.0, in order to advance the public interest.

Additionally, public television stations currently carry up to five multicast channels each, including gavel-to-gavel coverage of state legislatures, noncommercial multilingual programming, Native American programming, and children’s television. As the Commission is aware, due to technical constraints, there is simply insufficient capacity to transmit all multicast channels while sharing facilities, either on the ATSC 1.0 facility or on the ATSC 3.0 facility -- invariably, each local station will need to tailor its programming to best serve its local communities during the Next-Generation transition. This may require coordination with other

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<sup>4</sup> We urge the Commission to adopt simulcast flexibility in its initial rules, and not defer the matter of simulcasting requirements to a later time. Stations that have been involuntarily reassigned channels in the post-incentive auction repacking process are currently making investments in new transmission equipment, including substantial out-of-pocket costs. Because these costs are significant, it is critically important for the Commission to provide regulatory certainty now that will encourage repacked stations to deploy Next-Generation capable equipment, as well as encourage non-reassigned stations to rapidly adopt Next-Generation TV.

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public stations (if applicable) in a given market. The Commission therefore, should allow stations, which are best situated to understand and serve local needs, to determine the appropriate mix of programming that will best serve their communities during the transition to Next-Generation TV.

We also urged the Commission to apply a light regulatory touch to foster nimble and responsive broadcaster agreements and collaboration throughout the transition to ATSC 3.0. To that end, in lieu of the proposed licensing or multicasting approach, Public Television recommends a third way – the FCC should ascribe each ATSC 1.0 and 3.0 broadcast feed to the *originating* licensee rather than to the transmitting license.<sup>5</sup> This approach, supported by the broadcast community,<sup>6</sup> will allow public stations to enter into more streamlined and adaptable agreements with other broadcasters. We noted that channel sharing agreements entered pursuant to the incentive auction require extensive time to prepare (based in large part on delegation of rights, responsibilities, and indemnifications), and are generally intended to be long-term sharing arrangements. A short-form notification that lists stations that are sharing facilities, coordinates, and operating parameters would provide the Commission and the public with sufficient transparency as to a station's status in its deployment of Next-Generation TV, as well as allow the Commission to track the overall transition. Moreover, a short-form notification reduces burdens for both station and Commission staff, as it is highly likely that stations will need to be nimble and partner with more than one station over the course of the transition. Notably, unlike channel sharing, shared facilities for the ATSC 3.0 transition are intended to be short-term.

Finally, we noted that Public Television stations are not advocating for any new carriage requirements at this time. We expect that many of the technical upgrades to multichannel video programming distributors' ("MVPDs") facilities that are necessary to carry ATSC 3.0 programming will be driven, in large part, through marketplace negotiations with commercial stations. We requested the Commission to carefully monitor the ATSC 3.0 transition (including through the short-form notification described above) to assess whether it is appropriate to address carriage requirements for MVPDs in future proceedings.

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<sup>5</sup> See *Comments of PBS, CPB, and APTS*, GN Docket No. 16-142, at 11–13 (filed May 9, 2017); *Reply Comments of PBS, CPB, and APTS*, GN Docket No. 16-142, at 2–5 (filed June 8, 2017).

<sup>6</sup> See, e.g., *Comments of APTS, the AWARN Alliance, the Consumer Technology Association, and the National Association of Broadcasters*; *Comments of Pearl TV*; *Comments of Raycom Media*; *Comments of TEGNA Inc.*, GN Docket No. 16-142 (filed May 9, 2017).

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Please direct any further questions to the undersigned.

Sincerely,

A handwritten signature in blue ink, appearing to read "A Bobeck", is positioned above a horizontal line.

Ann West Bobeck  
*Counsel to PBS*

Attachments

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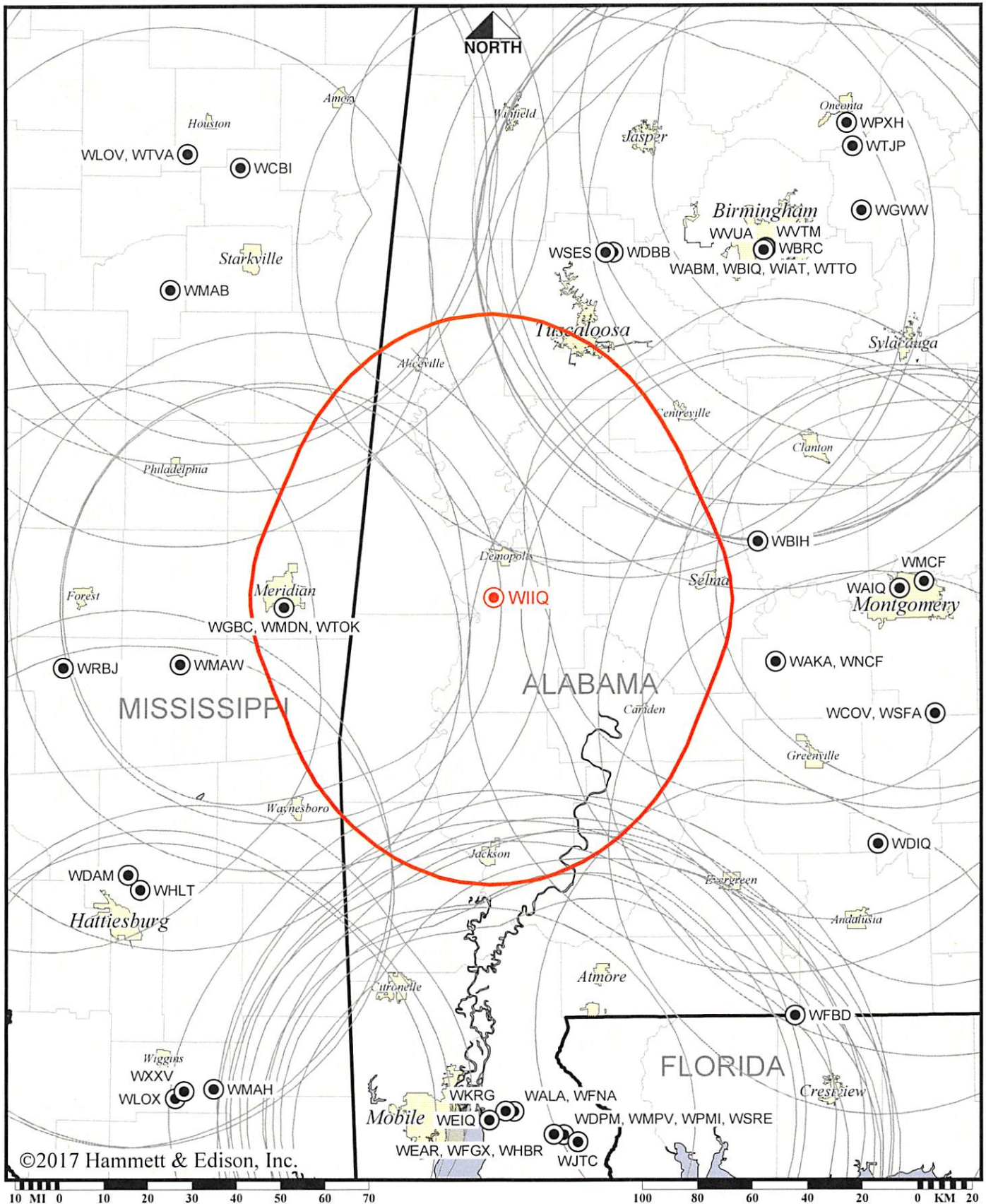
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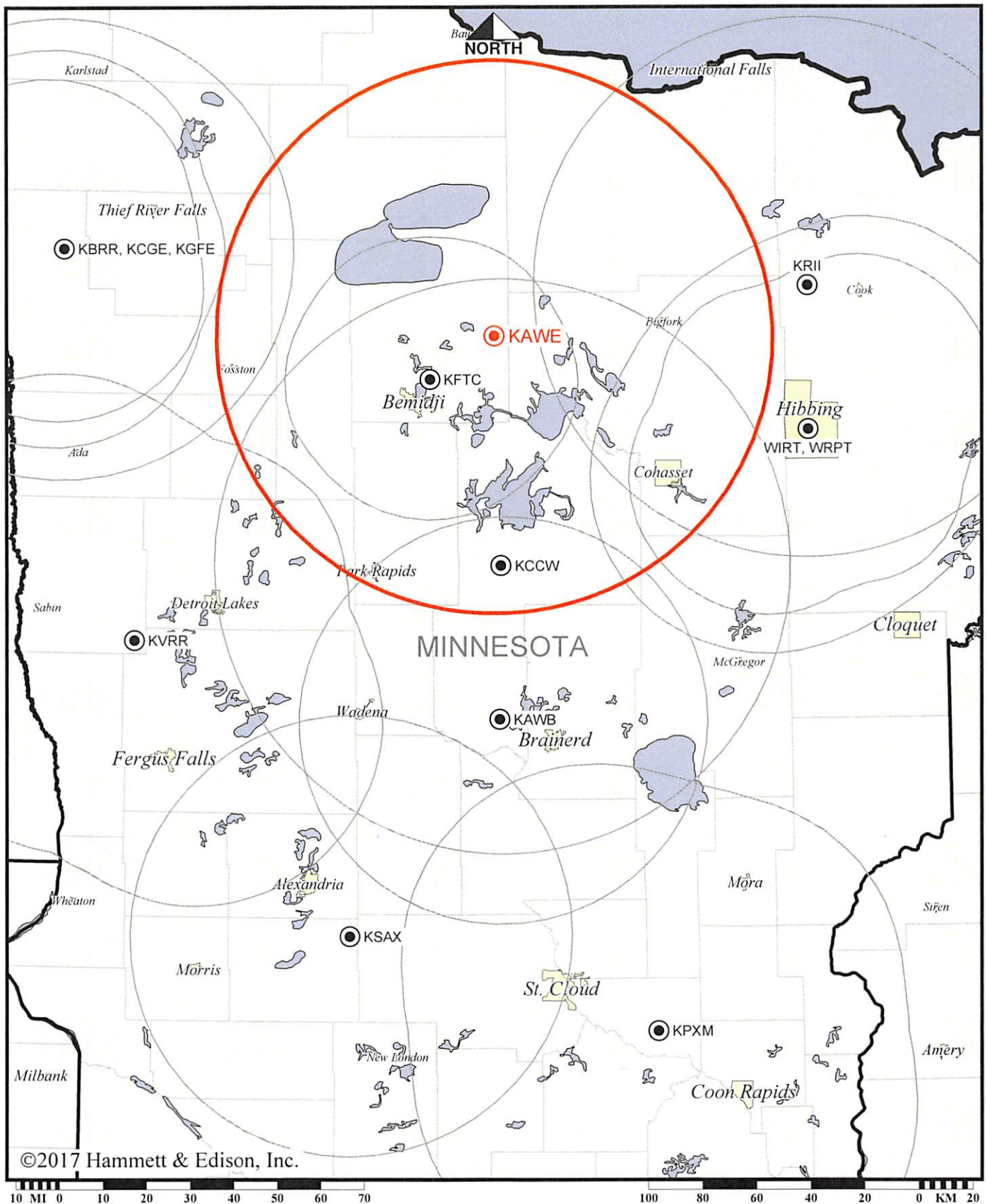
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