

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
)	
Authorization of “Next Generation”)	GN Docket No. 16-142
Broadcast Television Standard)	
)	

COMMENTS OF ONE MEDIA, LLC

With the release of the Report and Order in November 2017 adopting the new technical standard developed for broadcast television (“**Next Gen TV**” or “**ATSC 3.0**”),¹ the Commission unleashed for broadcasters and consumers the promise of innovation, improved services and increased spectrum efficiency. Almost immediately, broadcasters have responded by investing in new companies and facilities that will bring these benefits to the public as early as this year. But, as this proceeding shows, more work needs to be done to finalize the rules and regulations that will govern broadcasters adopting the new standard.

Broadcasters are committed to the success of Next Gen TV. Less than two months after release of the *FNPRM*, Sinclair Broadcast Group, Inc. (“**Sinclair**”), Nexstar Media Group, Inc. (“**Nexstar**”), and Univision Local Media, Inc. (“**Univision**”) reached an agreement with American Tower Corporation to construct and operate jointly Single Frequency Network (“**SFN**”) sites to broadcast ATSC 3.0 signals within the Dallas Designated Market Area, as a first step toward a

¹ Report and Order and Further Notice of Proposed Rulemaking (“*FNPRM*”), GN Docket No. 16-142 (rel. Nov. 20, 2017). The Report and Order was published in 83 Fed. Reg. 4998 (February 2, 2018). The *FNPRM* was published in 82 Fed. Reg. 60350 (December 20, 2017); establishing a comment date of February 20, 2018.

national launch.² Moreover, Spectrum Co., the consortium created by Sinclair and Nexstar to launch ATSC 3.0, recently named its president to lead those efforts.³

In the *FNPRM*, the Commission seeks comment on several issues including 1) those related to exceptions to, and waivers of, the local simulcasting requirement and 2) whether it should let full power broadcasters use channels in the television broadcast band that are vacant to facilitate the transition to ATSC 3.0.⁴ As discussed below, ONE Media, LLC (“**ONE Media**”)⁵ recommends that the Commission resolve this proceeding quickly, allowing broadcasters the maximum flexibility with minimum oversight to develop the world’s first Internet Protocol (“**IP**”)-based broadcast transmission platforms that will provide new competition for the delivery of digital content. At the same time, broadcasters recognize their commitment to the viewing public, and will not put viewers at risk of losing service during the transition to ATSC 3.0.

I. Local Simulcasting Waivers and Exceptions

ONE Media agrees with the Commission that local simulcasting is a core element of the voluntary transition to Next Gen TV. Broadcasters have every incentive to maintain service to as many viewers as possible since access to those viewers is the lifeblood of a station’s business model. That said, there will be instances where stations wanting to deploy Next Gen TV services may be unable to find a willing simulcast partner. A waiver standard should not be so stringent that viewers in small or rural markets are denied the benefits of Next Gen TV services.

² “Sinclair Broadcast, Nexstar, Univision and American Tower Partner on ATSC 3.0 (Next Gen TV) Single Frequency Network Deployment in Dallas Market,” posted on Yahoo! Finance at <https://finance.yahoo.com/news/sinclair-broadcast-nexstar-univision-american-140000637.html> (last viewed February 12, 2018).

³ “John Hane Joins Spectrum Co as President,” posted on TV Technology at <https://www.tvtechnology.com/atsc3/0031/john-hane-joins-spectrum-co-as-president/282661> (last viewed February 12, 2018).

⁴ *FNPRM* ¶ 121.

⁵ ONE Media is a technology development company at the forefront of designing industry transmission standards encompassing its flexible and enhanced vision for broadcasting.

In the Report and Order adopting ATSC 3.0, the Commission stated that it was inclined to consider favorably requests for waiver of the local simulcasting requirement where the broadcaster can demonstrate that it has no viable local simulcasting partner in its market and where the station agrees to make reasonable efforts to preserve 1.0 service to existing viewers in its community of license and/or otherwise minimize the impact on such viewers.⁶ The Commission now seeks guidance on how to determine if a station has a “viable” simulcast partner; and whether there might be factors to make a potential partner not viable.⁷

ONE Media recommends a simple three-step inquiry to determine viability:

First, are there any stations that meet the technical (coverage) and legal requirements?⁸ If not, there is no viable partner.

Second, if there are technically and legally qualified candidates, are they willing to participate on agreeable terms? If not, there is no viable partner.⁹

Third, if technically and legally qualified stations exist and are willing to participate, do the participating stations have sufficient capacity to provide an acceptable quality of service (*e.g.*, stream quality, overhead capacity, coverage of market)? If not, then there is no viable partner.

Note that, because a station receives a waiver, it does not mean the station will not or cannot, find a simulcasting partner. A station that receives a waiver can, and most likely will, continue to look for a simulcasting partner, albeit one that might not meet all FCC requirements. The economic incentive (including contractual requirements of programming suppliers) and concerns about the impact on consumers and advertisers will ensure that no broadcaster transitions

⁶ *FNPRM* ¶ 46.

⁷ *Id.* ¶ 123.

⁸ A station must be considered to have no viable partner if there is no potential partner that can meet the Commission’s coverage requirements. *Id.* ¶ 29.

⁹ In this circumstance, a station should be required to certify that it has contacted all technically viable prospective partners and been rejected, or has not been able to make sufficient progress in negotiations, despite good faith efforts to do so. Timing and terms are essential elements of willingness, and ultimately viability.

to 3.0 without making all reasonable efforts to ensure service is replicated in 1.0. But stations should not be prohibited from transitioning when no partner that meets all FCC requirements is available.¹⁰ Every station will want the best simulcasting arrangement it can negotiate, and should have the flexibility to pursue all plausible arrangements to find the best partner for the station's specific circumstances.

The Commission should also consider adopting a broader definition of viability.¹¹ At a minimum, one-station markets must be exempt, as should stations in markets where no technically qualified simulcast partner exists. In two-station or three-station markets, a simple certification that neither of the other stations is willing to participate within the transitioning station's timeframe should suffice.

For a station that seeks to simulcast from a facility that will not cover its community of license, the distance of the host location from the petitioner's community of license should not be a factor. If there is no facility that will cover the community of license, the station will need a waiver. The waiver should be granted subject to the broadcaster's reasonable good faith efforts to find a simulcast partner, if available, regardless of whether the partner's signal meets FCC requirements.¹² The Commission should not engage in qualitative market-by-market evaluations of simulcasting plans because the Commission is not in a position to know all of the tradeoffs (*e.g.*, real-world technical performance, subjective decisions regarding capacity/bit rate, difficulties of distribution to distant transmitter sites, different expectations of parties regarding timing, *etc.*).

¹⁰ From a practical perspective, at least until very late in the transition, virtually all stations will need to find a simulcasting partner before transition to ATSC 3.0. Notwithstanding, a station that has transitioned to ATSC 3.0 and met the simulcasting requirement should not be required to accommodate late comers. The ATSC 3.0 station should be considered unavailable and, in any event, could not be a 1.0 lighthouse.

¹¹ *FNPRM* ¶ 123.

¹² The waiver recipient could be required to explain its good faith efforts upon request by the FCC, but the FCC should not second-guess those efforts.

The Commission should not require a commitment from waiver applicants to preserve 1.0 service as a condition to grant a waiver.¹³ The Commission should look favorably on waiver applicants that offer to provide free or low-cost ATSC 3.0 converters to viewers in their coverage area.¹⁴ However, the Commission should not make doing so a condition of granting waiver requests. The transition will take different paths in each market, and such a costly requirement might deter innovation in some markets without corresponding benefits. For example, the transitioning station may be a noncommercial station without sufficient resources, seeking to transition in a market that is already well-penetrated with ATSC 3.0 devices and may have arranged for all MVPDs to carry its signal. A one-size-fits-all approach will guarantee only that the solution is suboptimal in many cases.

The Commission also asks whether there may be special circumstance for Non-Commercial Educational (“NCE”) and/or Class A stations that would suggest an exemption from the local simulcasting requirement or the adoption of a presumptive waiver.¹⁵ The waiver standard recommended above should be flexible enough to accommodate NCE and/or Class A stations. If the Commission takes the approach ONE Media recommends herein, there would be no need for a blanket exemption. However, Class A stations may find it difficult to identify hosts/partners that can provide equivalent coverage.

II. Temporary Use of Vacant Channels

The stark difference between Next Gen TV deployment and the initial conversion from analog to digital transmission is that this new deployment is voluntary without the security of allocated second channels to ease the conversion. That then requires creative channel sharing protocols so as to preserve current access to programming while also allowing for new service

¹³ *FNPRM* ¶ 124.

¹⁴ *Id.* ¶ 122.

¹⁵ *Id.* ¶ 125.

deployment. As the Commission recognized in the Report and Order, allowing broadcasters to use vacant in-band channels during the transition can assist broadcasters in accelerating this service. In some markets, this could be the single most important step the Commission could take to minimize consumer disruption and preserve service to viewers.

The Commission asks whether it should consider allowing broadcasters seeking to deploy ATSC 3.0 to use vacant in-band channels remaining in the market after the incentive auction repack to serve as temporary host facilities for ATSC 1.0 or 3.0 programming by multiple broadcasters.¹⁶ ONE Media strongly supports the use of available vacant channels as dedicated transition channels to ensure maximum continuity of service, just as it did during the transition from analog to digital broadcasting.¹⁷ It is critically important to reiterate that this spectrum is reserved for **broadcast** use; it is not unallocated spectrum available for any other use.¹⁸ The vacant channels should be available to use in furtherance of Next Gen TV ***Broadcast*** service as the participating broadcasters in the market see fit – either to launch ATSC 3.0 service, or to host ATSC 1.0 simulcasts.

The Commission should give broadcasters proposing to use a vacant channel for Next Gen deployment priority over applicants for new television station licenses and acknowledge that such stations retain priority over secondary users, including displacement applications of LPTV and translator stations.¹⁹ This would be a temporary priority to encourage speedy deployment of ATSC 3.0 based upon articulated public interest benefits including innovation, enhanced services,

¹⁶ *Id.* ¶ 126.

¹⁷ ONE Media would define a vacant channel as a channel that can be deployed consistent with spacing rules or that can exist with short-spacing agreements that have been obtained from the proposed location and which will facilitate the transition, regardless of whether other requirements for hosting are met. Because these are broadcast bands, the channel should not be used for non-broadcast purposes.

¹⁸ See 47 C.F.R. § 2.106 (Table of Frequency Allocations), 73.601 *et seq*; ITU Spectrum Allocation, 600 MHz Band.

¹⁹ As licensed facilities, each full power transition station will have the same priority with respect to other services, and over all unlicensed uses, as all other licensed stations, including full power and Class A stations.

expanded service areas, and the enhanced public safety support and emergency capabilities built into the standard.²⁰ Once 3.0 deployment is complete, such “borrowed” channels could then be made available for new applicants.

Vacant channels should be available for temporary use by stations being repacked to new channels, and for stations seeking simulcasting capacity to support deployment of ATSC 3.0. Access to vacant channels could be on a first-come/first-served basis; with priority to requests for special temporary authority (“**STA**”) that facilitate the ATSC 3.0 rollout. If temporary use of vacant channels for repacking unrelated to a ATSC 3.0 rollout is permitted, the channel should be immediately available for temporary ATSC 3.0 transition simulcasting as soon as it is no longer needed in connection with repacking.²¹ The temporary licensee would have an obligation to negotiate reasonably with other stations seeking to transition on a similar timeframe. If there are competing requests, the proposal that accommodates the greatest number of transitioning stations should get priority. Requesting broadcasters should be required to explain how their use of the temporary channel will facilitate the earlier launch ATSC 3.0. They should be permitted to continue to use the vacant channel until the FCC ends the simulcasting requirement.

ONE Media expects that use of vacant channels for the ATSC 3.0 rollout will bring a disproportionate benefit to smaller markets, where there are more vacant channels and fewer existing stations that might act as simulcast hosts. Use of vacant channels is not expected to burden small MVPDs, and may actually help them as it should generally result in more and higher quality streams available in both standards. Smaller MVPDs are less likely to rely on alternative signal

²⁰ Local broadcasters as a market-wide group could petition the Commission for a grant of a renewable Special Temporary Authority for use of the channel.

²¹ If the Commission permits full power licensees priority to use vacant channels, it should be considered a minor change of the existing license, similar to hosted transition streams, and avoiding the need for a renewal every six months, as would be required for use permitted pursuant to special temporary authority.

delivery and therefore should support any investment transitioning broadcasters are willing to make to improve over-the-air signal quality during the transition.

CONCLUSION

ONE Media applauds the Commission's diligence in attempting to resolve these few remaining policy issues for the development of ATSC 3.0. The broadcast industry is eager to bring these benefits to the public as soon as this year. The Commission should act quickly and in accordance with the recommendations herein.

Respectfully submitted,

ONE Media, LLC

/s/ Jerald N. Fritz

Jerald N. Fritz
Executive Vice President
Strategic and Legal Affairs
1100 Wilson Blvd.
Arlington, VA 22209

February 20, 2018

Of Counsel
Glenn S. Richards
Pillsbury Winthrop Shaw Pittman LLP
1200 Seventeenth Street NW
Washington, DC 20036-3006