

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Upgrade to the Next Generation)	GN Docket No. 16-142
Digital Television Service)	
)	

COMMENTS OF PEARL TV

Pearl TV (“Pearl”) commends the FCC on its November order opening the door to a voluntary, industry-led implementation of Next Generation TV (“ATSC 3.0” or “Next Gen TV”). This marks the beginning of a new, innovative phase of broadcast television, and broadcasters are eager to begin bringing the many benefits of Next Gen TV to viewers.

As a companion to its order, the Commission identified three issues for further discussion in a Further Notice of Proposed Rulemaking (“FNPRM”): (1) exceptions and waivers to the local simulcast requirement; (2) broadcasters’ proposed temporary use of vacant in-band channels during the transition; and (3) the significantly viewed status of transitioning Next Gen TV stations.¹

In Pearl’s view, the Commission should take actions to facilitate the implementation of ATSC 3.0 so that consumers can reap its benefits more quickly and pervasively. Adopting a flexible waiver process to the simulcast rules and permitting broadcasters to temporarily use vacant channels during the roll-out of ATSC 3.0 will both serve this purpose and help create a smoother and wider deployment of this new technology.

¹ *Authorizing Permissive Use of the “Next Generation” Broadcast Television Standard, Report and Order and Further Notice of Proposed Rulemaking*, GN Docket No. 16-142, FCC 17-158 at ¶¶ 121-131 (Nov. 20, 2017).

Additionally, the Commission need not complicate the deployment by having the temporary simulcast process impact a station's significantly viewed status.

I. The Commission Should Adopt a Flexible Waiver Process.

The November order set forth a number of rules governing the simulcasting process. The simulcasting structure the Commission has adopted can be made more realistic and useful by the adoption of a waiver process that addresses some of the real-world issues that will confront broadcasters in the near term so that more stations can bring the benefits of Next Gen TV to their viewers. The Commission seeks comment on what guidance it can provide regarding situations in which it will grant a waiver, but more important than hypothesizing different scenarios is ensuring a flexible framework that can address scenarios we cannot predict.

The deployment of ATSC 3.0 has not yet begun. Once it does, and once different stations in different markets begin to roll out ATSC 3.0, the state of the current simulcasting regime guarantees that issues will arise that the FCC will need to address. For example, as we have stated in our previous comments, broadcasters have every market incentive to retain all of their current ATSC 1.0 viewers during the deployment of ATSC 3.0. In practice, however, certain stations will need flexibility to determine how best to implement ATSC 3.0 in light of challenges that are sure to be manifest in the early days of the new standard. For example, Station A could be eager to invest in this new technology, but be unable to find a suitable nearby partner equally willing to commit to this change (this is especially likely if Station A is in a rural or small market). This should not deprive the viewers of Station A of Next Gen TV's features. In addition, there may be circumstances in which a broadcaster or its upstream program supplier may not have the necessary intellectual property rights to provide an entire "simulcast" schedule in ATSC 3.0, a circumstance that could well arise in the near term. In both of these cases, waivers would be beneficial and in the public interest. In many other cases, we cannot predict

the circumstances in which a waiver might be useful, and we urge the Commission to make clear that its general authority to grant waivers in the public interest still will apply, in addition to any specific circumstances that the Commission may identify in advance as justifying a waiver.

It also would be extremely helpful to the deployment of ATSC 3.0 if the Commission could react nimbly to these requests. One way it can do so is by affirmatively delegating the authority to grant these waivers to the Media Bureau. The Bureau will be able to react with more alacrity than the full Commission, and will build up a body of knowledge as the transition progresses to inform the waiver process. For now, that process need only be flexible and focused on promoting the transition.

Additionally, the Commission asks whether it should exempt NCE and Class A stations from the simulcast requirement, as it has done for LPTV and TV translator stations. We urge the Commission to do so, as this action will promote the transition for all stations. As commenters have previously stated, the features of NCE and Class A stations may make it more difficult for them to find a local simulcasting partner.² However, if these stations are granted additional flexibility, then rather than being limited from participating in this new technology, they can instead be excellent candidates for early transition as lighthouse stations.

II. Broadcasters Should Be Permitted to Use Vacant In-Band Channels.

Not only will broadcasters implement ATSC 3.0 without the allocation of additional spectrum (unlike the DTV transition), but they will also be deploying this new technology after the incentive auction, which resulted in the broadcast television band being reduced by 84 MHz. These limitations pose a unique challenge. Therefore, if there happen to be

² See Comments of The Public Broadcasting Service, Corporation for Public Broadcasting, and America's Public Television Systems, GN Docket No. 16-142, at 6-9 (filed May 9, 2017).

vacant in-band channels that broadcasters could use to help effectuate the deployment of ATSC 3.0, the Commission should readily allow such use by acting favorably upon broadcasters' requests for special temporary authority ("STA"). Permitting the usage of vacant channels will especially assist the transition in rural areas.

While some commenters have pushed back on this point previously, it is important to note two facts. *First*, any devices operating in these vacant channels are unlicensed. It is a core tenant of the Commission's rules that unlicensed devices are not entitled to protection as against licensed operations.³ *Second*, the use of these vacant channels to implement ATSC 3.0 will be a temporary use of these channels. Under the Communications Act, the FCC may only grant STA for a period of up to 180 days, and may only extend such grant for additional periods of up to 180 days,⁴ and then only upon the applicant's showing "that extraordinary circumstances warrant such an extension."⁵ Therefore, the very form by which broadcasters would be permitted to use vacant in-band channels guarantees that their usage would not permanently bar this spectrum from other uses.

III. Simulcasting Should Not Have an Impact on a Station's Significantly Viewed Status.

Pearl supports the Commission's tentative conclusion that simulcasting should not impact a Next Gen TV's station significantly viewed status. It is unnecessary to complicate the deployment of ATSC 3.0 in this manner. As we have stated above and in our previous filings, broadcasters are motivated to continue serving all of their viewers during the roll-out of ATSC 3.0, and the Commission reasonably can expect them to do so. Furthermore, any change made

³ See 47 C.F.R. § 15.5

⁴ See 47 U.S.C. § 309(f).

⁵ See 47 C.F.R. § 1.931(a)(3).

during this period that may impact a station's significantly viewed status would be temporary, and the Commission should not make changes to the significantly viewed list based on purely temporary changes.

Conclusion

Again, we congratulate the Commission on the work it has done so far to support the voluntary implementation of ATSC 3.0. We ask that the Commission continue to foster the innovation that the new broadcast standard will bring by continuing its pattern of expeditious and thoughtful action in this proceeding.

Respectfully submitted,



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