

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

In the Matter of:)	
)	
Authorizing Permissive Use of the “Next)	GN Docket No. 16-142
Generation” Broadcast Television Standard)	

**COMMENTS OF
NCTA – THE INTERNET & TELEVISION ASSOCIATION**

NCTA – The Internet & Television Association (“NCTA”) submits these comments in response to the *Further Notice of Proposed Rulemaking* in the above-captioned rulemaking proceeding.

INTRODUCTION

NCTA submitted comments and reply comments on the initial *Notice of Proposed Rulemaking* in this proceeding, in which the Commission authorized broadcasters to begin transmitting signals using “next generation” ATSC 3.0 technology. To enable experimentation with ATSC 3.0 without forcing over-the-air viewers and cable operators and their customers to bear the costs and inconvenience of adapting to the new standard preliminarily, the Commission adopted a requirement that stations opting to transmit an ATSC 3.0 signal also must continue to transmit a signal in the ATSC 1.0 format that is viewable on existing television sets. To do so, a broadcaster would need to share part of another broadcaster’s 6 MHz channel, to transmit simulcast streams in each format.

As we made clear, NCTA does not oppose broadcaster experimentation with new transmission technologies, such as ATSC 3.0. But we have urged that this authorization be accompanied by rules that prevent broadcasters from imposing costly burdens on cable

operators and their customers. ATSC 3.0 is incompatible with all existing ways of receiving television. It cannot be received by existing television sets, and it cannot be made viewable by cable systems and other multichannel video programming distributors (“MVPDs”) without costly equipment – none of which is currently developed, much less available.

All parties agreed at the outset that cable operators should not be required, under the existing must-carry rules, to carry ATSC 3.0 signals during any transition from ATSC 1.0 to ATSC 3.0. But NCTA expressed concerns that unless the programming on the ATSC 1.0 signal essentially replicated the programming transmitted on the ATSC 3.0 signal, over-the-air viewers might be unable to view the most popular broadcast programming without obtaining costly new television sets, and cable operators might be unable to deliver such popular broadcast programming to their customers without purchasing new equipment capable of receiving and transmitting in the new format. Moreover, NCTA urged the Commission to take steps to ensure that broadcasters could not use access to their 1.0 signals to secure new carriage rights for their voluntary ATSC 3.0 signal in a manner that imposes costs and hardships on cable operators and their customers.

The Commission, in its *Report and Order*, imposed simulcasting requirements during the initial period of experimentation with ATSC 3.0, although neither the duration of the requirements nor their substance were as fully protective of over-the-air viewers and cable operators and their customers as NCTA and others had urged. The Commission did not take steps to prevent broadcasters from using access to their 1.0 signals to effectively require carriage of “voluntary” 3.0 signals. The Commission did, however, withhold judgment on three specific questions, each of which is relevant to the concerns expressed in our initial comments – questions on which the *Further Notice* seeks comment.

I. REQUESTS FOR SIMULCASTING WAIVERS SHOULD NOT BE ENTERTAINED – AND STANDARDS FOR GRANTING SUCH WAIVERS SHOULD NOT BE CONSIDERED – UNTIL A LATER STAGE IN THE DEPLOYMENT OF ATSC 3.0.

The Commission required broadcasters that choose to launch an ATSC 3.0 signal to continue to transmit an ATSC 1.0 signal until the Commission can evaluate a variety of marketplace developments in a later proceeding.¹ The Commission found that “local simulcasting is *essential* to the deployment of Next Gen TV service on a voluntary, market-driven basis for all stakeholders....”² The simulcasting requirements imposed by the Commission mandate that a broadcaster’s ATSC 1.0 signal carry the same programming as the primary video on its 3.0 signal. The requirements also limit the extent to which the 1.0 simulcast channel’s host location may depart from its community of license and prescribe a maximum permissible loss of coverage to the simulcast channel’s community of license. These restrictions are important insofar as they limit the extent that experimentation with ATSC 3.0 disrupts and imposes costs on the viewing public and the transmission by cable systems of broadcast programming. The *Report and Order* indicates, however, that the Commission will, during this period, consider case-by-case requests to waive these requirements “where the Next Gen TV station 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 (for example, by providing free or low cost ATSC 3.0

¹ *Report and Order* at ¶14.

² *Id.* at ¶15.

converters to viewers).”³ The *Further Notice* seeks comment on how it should interpret this waiver standard.

As a general matter, consideration of waivers of the core simulcasting requirement is premature. Simulcasting waivers should not be granted – and the standards for granting such waivers should not be developed – until a later stage in the deployment of ATSC 3.0 signals. Unlike the mandatory transition to digital television, ATSC 3.0 is completely voluntary. It has no mandatory transition date, and it may or may not ultimately prove attractive to broadcasters or to consumers. It is, at this stage, an experiment. In these circumstances, there is no need for universal broadcaster participation in order to gauge ATSC 3.0’s pros and cons. And there is especially no reason to sacrifice the simulcasting rules’ protection against disruption and costs to consumers and cable operators just so every broadcaster under any circumstance may try it out.

It would be particularly inappropriate at this early stage to consider waivers of the simulcast requirement – much less to grant a blanket exemption – for NCE and/or Class A stations. Noncommercial stations depend on their viewers and on government to fund programming that is intended to be unique from advertiser-supported broadcast programming. Wholly apart from the costs that will be imposed in connection with premature carriage of ATSC 3.0 signals by cable systems, waiving the simulcast rules at the outset of the ATSC 3.0 experiment will inevitably impair and reduce the availability of a station’s programming to over-the-air viewers. Cable operators carry public television stations throughout the country,⁴

³ *Id.* at ¶18.

⁴ NCTA, APTS and PBS renewed a carriage agreement in 2016 that ensures carriage of multicast public television programming in many areas nationwide. See <http://www.pbs.org/about/blogs/news/pts-pbs-and-ncta-statement-regarding-renewal-of-2005-public-television-digital-cable-carriage-agreement/>

and permitting these stations to opt to turn off their viewable over-the-air ATSC 1.0 signal will inevitably cause significant disruption.

The spectrum auction aftermath is instructive in this regard. Certain broadcasters have chosen to move outside their community of license in order to share a channel with another broadcaster from a different location. The Commission should not compound this problem by permitting another round of confusing changes, bounded only by a broadcaster's claim not to have a "viable" simulcast partner.

The Commission has already committed to "monitor the pace of the voluntary deployment of ATSC 3.0 both nationally and market-by-market, including the rollout of 3.0 service by television broadcasters, the penetration of ATSC 3.0-ready TV sets and other converter equipment, and the extent to which MVPDs have deployed 3.0 equipment."⁵ Once the experiment is under way, equipment may be developed for receiving ATSC 3.0 signals on existing television sets and for receiving and transmitting such signals by cable systems and other MVPDs. At that point, reception of such signals in the absence of a simulcast 1.0 signal may at least be feasible, and the costs of enabling such reception will be known. It may then be possible to conduct a cost-benefit analysis to address the questions posed in the *Further Notice* regarding when and whether the absence of a "viable" simulcast partner might justify waiving the simulcast requirement and allowing a broadcaster to cease providing a 1.0 signal. It would be entirely premature to make these individualized determinations at this stage.

⁵ *Report and Order* at ¶14.

II. TEMPORARY USE OF VACANT CHANNELS SHOULD NOT BE PERMITTED.

The *Further Notice* seeks comment on a question that NCTA and others specifically addressed in their initial comments in this proceeding – namely, whether and how broadcasters should be allowed “to use vacant in-band channels remaining in the incentive auction repack to serve as temporary host facilities for ATSC 1.0 or 3.0 programming by multiple broadcasters.”⁶ NCTA’s answer remains that such use of vacant channels would be inconsistent with the promises and expectations on which the broadcasters’ ATSC 3.0 proposal was considered and would impose unjustifiable costs on cable operators, their customers, and the public.

In their Joint Petition for ATSC 3.0 authorization, the petitioners claimed that “[n]o additional spectrum is required or requested”⁷ for the new service and that they were not “ask[ing] the Commission to give broadcasters additional spectrum to roll out Next Generation TV.”⁸ As the LPTV Spectrum Rights Coalition and the WiFi Alliance made clear in their comments, using vacant in-band channels would be directly at odds with that commitment. It would also be at odds with the point of the spectrum auction and repacking, which was to recapture spectrum from the broadcast band for alternative wireless uses.

Additionally, allowing “temporary” use of a vacant channel instead of sharing currently used broadcast channels could impose new, unreimbursed costs on cable operators in order to continue carrying a broadcaster’s ATSC 1.0 signal. If that 1.0 signal is moved to a

⁶ *Further Notice* at ¶126.

⁷ Joint Petition at iii.

⁸ *Id.* at 3.

transmitter other than one that is already transmitting a broadcast signal being carried by the cable system, the cable operator may need to purchase and install new receiving equipment. At a minimum, it will incur the labor costs and burdens of repositioning its receive antennas at the headend.

There are sure to be costs and complications associated with the voluntary experimental deployment of a new transmission standard that is incompatible with the existing standard. But broadcasters gave assurances that they could undertake this project without asking for additional spectrum and without asking the government, cable operators and consumers to share the burdens or subsidize the costs. Having authorized the experiment, the Commission should hold the broadcasters to their promises.

III. THE SIGNIFICANTLY VIEWED STATUS OF A STATION SHOULD NOT CHANGE IF IT MOVES ITS ATSC 1.0 SIGNAL TO A TEMPORARY NEW LOCATION.

Finally, the Commission seeks comment on its tentative conclusion that the significantly viewed status of a broadcast station should not change if it moves its ATSC 1.0 signal to a temporary new location while simulcasting its 3.0 signal from its existing location. NCTA strongly supports this tentative conclusion. To rule otherwise would unnecessarily create significant disruption of the carriage obligations of cable systems and the carriage rights of broadcasters at the time of the move of the 1.0 signal – and again whenever simulcasting ends and carriage rights revert to the 3.0 signal. Under the Commission’s proposal, cable viewers will continue to receive the signals on their current lineups, broadcasters will continue to reach the same cable households, and cable operators will have the same carriage obligations. This is the fairest outcome for all parties, particularly consumers.

Moreover, the Commission's proposal would foreclose potential gaming of the carriage requirements by broadcasters seeking to gain significantly viewed status with their selection of a new location for their 1.0 signal. It would also spare the Commission the task of resolving disputes regarding significant viewership of signals being transmitted from a location intended to be temporary.

The point of requiring simulcasting of the 1.0 and 3.0 signals is precisely to *avoid* disruption while broadcasters deploy and possibly transition to 3.0. The Commission's proposal advances this objective and should be adopted.

CONCLUSION

Having authorized broadcasters to begin transmitting an ATSC 3.0 signal, the Commission's focus should remain on ensuring this experiment proceeds with a minimum of disruption for television viewers and that broadcasters do not force consumers and cable operators to bear or share its costs and burdens. To this end, and for the foregoing reasons, the Commission should not begin to entertain requests for simulcasting waivers – and the standards for granting such waivers should not be developed – until a later stage in the deployment of ATSC 3.0 signals. It should not allow the use of vacant in-band channels as temporary hosts for ATSC 1.0 signals. And it should adopt its tentative conclusion that the significantly viewed status of a broadcast station should not change if it moves its 1.0 signal to a temporary host facility.

Respectfully submitted,

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