

**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)	

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

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

DISCUSSION

In asking for authorization to experiment with the use of a new “Next Generation” standard, broadcasters assured the Commission that they would need no new spectrum¹ and would preserve the status quo for over-the-air and MVPD reception of television signals.² But as soon as the Commission indicated that it would grant such authorization, the broadcasters began backing away from their promises, and that backpedaling continues. Now that the Commission has given them the authorization they sought, the broadcasters insist on generous waivers of the requirements codifying their promises.

¹ Joint Petition for Rulemaking submitted by America’s Public Television Stations, AWARN Alliance, Consumer Technology Association, and National Association of Broadcasters (filed Apr. 13, 2016) at 3 (“The Petition does not ask the Commission to give broadcasters additional spectrum to roll out Next Generation TV....”)

² *See id.* at 17 (“The core of the voluntary, market-driven implementation of ATSC 3.0 will be local simulcasting. Under this plan, each television broadcaster choosing to implement Next Generation TV will arrange to continue to broadcast in the current DTV standard so that viewers will not be disenfranchised.”) *See also* Letter from Rebecca Hanson, Senior Vice President, Sinclair Broadcast Group, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 16-142, at 1-2 (filed Dec. 12, 2016).

Simulcasting, in their view, is fine as long there is another station willing to host the simulcast 1.0 signal on commercial terms the 3.0 station finds acceptable. But if there is no subjectively suitable and readily available host, then the requirement should be waived, and broadcasters should be allowed to flash-cut to ATSC 3.0, disrupting and imposing substantial costs on the reception of their signal by over-the-air viewers and MVPD systems. Or, if there is a vacant channel in its area, the broadcaster should be allowed to commandeer that valuable spectrum at no cost for its simulcast channel.

Thus, according to the broadcasters, “[t]he Commission should make clear that its standards for waiving the local simulcasting requirements will allow stations across the country to move forward with Next Gen deployments if they choose. The local simulcasting requirement is intended to minimize consumer disruption during this deployment, but it should not serve as a barrier that freezes viewers in small and rural markets in place and prevents them from enjoying the benefits of technological advances.”³

This argument turns the public interest priorities upside down. Unlike the transition to digital broadcasting, the broadcasters’ experiment with ATSC 3.0 is just that – a voluntary experiment that has not been mandated by Congress or the Commission. For now, the goal should be to allow the experiment to proceed only so long as it avoids costs and disruption to viewers, all of whom currently rely on receiving ATSC 1.0 signals either over-the-air or via their

³ Comments of National Association of Broadcasters (“NAB”) at 2.

MVPD and likely will for the foreseeable future.⁴ The broadcasters say they are all for avoiding such costs and disruption – except when they are obstacles to a broadcaster joining the experiment. The simulcasting rules are already excessively generous to broadcasters at viewers’ expense,⁵ and the Commission should hold the line.

The broadcasters’ argument that they should be allowed to use vacant channels for their experiment is a step back from their original representation that voluntary deployment of ATSC 3.0 would require no additional spectrum. Several parties object to this turnabout to the extent that it would interfere with the use of such spectrum for non-broadcast wireless services.⁶ But the broadcasters contend, without a trace of irony, that “[u]nder no circumstances should the Commission limit broadcasters’ access to television channels to expand *mythical* unlicensed use”⁷ – as if their proposed Next Generation experiment were itself much more than mythical at this point. Allowing broadcasters to use vacant channels could disrupt and add costs to reception of those channels by MVPDs, and it would prevent the use of such spectrum for unlicensed wireless services. The Commission should not permit it.

Public broadcasters go so far as to urge that they be exempted *entirely* from the simulcast requirement.⁸ NCTA’s initial comments showed why it is premature to consider waiving the core simulcasting requirement for any television station – and especially so for non-commercial

⁴ See Separate Statement of Chairman Pai (“Broadcasters deploying the Next Gen TV standards will be required to simulcast programming using the current digital television (DTV) standard – in other words, *their current viewers, with their current TVs, will be unaffected.*”) (emphasis added).

⁵ See NCTA Petition for Reconsideration, filed Mar. 5, 2018, at 3-10.

⁶ See, e.g. Comments of the Dynamic Spectrum Alliance; Comments of Wi-Fi Alliance; Comments of Microsoft Corporation; Comments of Sennheiser Electronics Corporation; Comments of Shure Incorporated.

⁷ NAB Comments at 2 (emphasis added)

⁸ PTV Comments at 1-2.

educational stations.⁹ The PTV Comments’ backwards logic provides no reason to permit them to abandon their core pledge to simulcast locally.¹⁰

Because of their “universal service” obligation,¹¹ it may be the case that PTV stations “have unique, and often prohibitive, challenges in finding a transition partner with which to simulcast – particularly those stations in rural, remote, and isolated communities.”¹² But it is precisely in those areas with few over-the-air options that it makes sense to *preserve*, not reduce, the number of *viewable* – *i.e.*, ATSC 1.0 – signals.¹³ It is also viewers in those areas who are highly dependent on MVPDs to deliver broadcast signals – MVPDs that in turn need to receive a viewable ATSC 1.0 over-the-air broadcast signal.¹⁴

Public broadcasters pay lip service to the need to serve viewers who receive their public television service over cable systems and other MVPDs but ask for the unilateral right to decide when to stop transmitting a viewable ATSC 1.0 signal based on vague and unenforceable factors.¹⁵ But this type of flash-cut approval is simply another way of arguing that broadcasters, not the Commission, should be able to determine when the transition to ATSC 3.0 ends and a

⁹ NCTA Comments at 4.

¹⁰ Joint Petition for Rulemaking at 17.

¹¹ See PTV Comments at 8 (“Under the Public Broadcasting Act of 1967, PTV stations have a statutory mandate to provide service to ‘all citizens of the United States,’ particularly ‘unserved and underserved audiences.’”)

¹² PTV Comments at 7.

¹³ See, e.g., ATVA Comments at 11 (“PBS’s advocacy would suggest that its programming is more important to viewers than those of other stations....”)

¹⁴ NTCA’s Comments point out that many rural customers “cannot receive any over-the-air broadcast signals and must rely upon MVPD services to receive local news, weather reports, and similar benefits of local broadcasts. An offer of free or low-cost 3.0 converters would therefore impart no benefit whatsoever to a significant number of rural subscribers.” NTCA Comments at 3.

¹⁵ PTV Comments at 9 (suggesting that public television stations “in consultation with their community advisory boards, will evaluate various factors include the MVPD adoption of ATSC 3.0 capabilities, surveys of dual-mode receiver penetration in their communities, and the availability of low-cost converter devices.”)

simulcasting requirement is no longer needed – a self-interested approach that the Commission already considered and appropriately rejected.¹⁶

Some PTV stations argue in favor of a flash-cut based on the notion that “the cost of simulcasting is substantial, particularly for NCE stations that cannot rely on the revenues generated by commercial advertising.”¹⁷ But that is no cause for shifting the significant costs of this voluntary television broadcaster endeavor to cable operators – or to over-the-air viewers unequipped to view 3.0 signals on their television sets. No broadcaster is required to experimentally transition to ATSC 3.0, and none should be allowed to where doing so would necessarily disenfranchise viewers and impose significant burdens on MVPDs.

Finally, Public Media Company urges the Commission to “provide must-carry rights for the primary ATSC 3.0 service of any NCE station that flash-cuts to Next Gen TV.”¹⁸ The Commission got it right in its *Report and Order*, where it found that “[a]llowing a broadcast to demand mandatory carriage of its 3.0 signal instead of its 1.0 signal would impose significantly greater costs and burdens on MVPDs. We find that it would not be reasonable to interpret the Act in a manner that would compel MVPDs to incur these added costs.”¹⁹ Public Media offers no legal or policy reason to reverse that logical approach.

¹⁶ *Report and Order* at ¶14 (“The Commission will 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. As we proposed in the *Next Gen TV NPRM*, we will determine in a later proceeding when it would be appropriate for the Commission to eliminate the requirement that broadcasters continue to provide an ATSC 1.0 signal.”)

¹⁷ Comments of San Bernardino Community College District at 3.

¹⁸ Comments of Public Media Company at 5.

¹⁹ *Report and Order* at ¶ 67.

CONCLUSION

For the foregoing reasons, and for the reasons stated in our initial comments on the *Further Notice*, the Commission should hold broadcasters to their essential commitments that launched this proceeding. They should be required to simulcast an ATSC 1.0 signal if they opt to transmit an ATSC 3.0 signal and should not use “vacant” channels for their simulcasting. Waivers from the core simulcast obligation should not be entertained until a later stage in the deployment of the nascent ATSC 3.0 standard.

Respectfully submitted,

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