

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

In the Matter of

Authorizing Permissive Use of the “Next
Generation” Broadcast Television Standard

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) GN Docket No. 16-142
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REPLY COMMENTS OF ONE MEDIA, LLC

The Commission’s recent commencement of a proceeding to adopt rules and procedures implementing Section 7 of the Communications Act was a clarion call for the government to encourage provision of new technologies and services to the public. The Commission noted, that “the regulatory path from technological breakthrough to authorization of service has often been too long and arduous.”¹ In markets without a second channel generally available, use of vacant channels will facilitate and expedite the deployment of the new technology embedded in the ATSC 3.0 standard and give effect to the goals of Section 7. As Chairman Pai noted, “Our goal is simple: to ensure that the FCC doesn’t stand as a gatekeeper between entrepreneurs who need our OK for new technologies and services and American consumers who can benefit from those innovations.”² It is with that perspective that ONE Media, LLC (“**ONE Media**”) submits these Reply Comments in this Further Notice of Proposed Rulemaking.

¹ *Encouraging the Provision of New Technologies and Services to the Public*, Notice of Proposed Rulemaking, GN Docket No. 18-22, FCC 18-18 ¶ 1 (rel. Feb. 23, 2018).

² *Id.*, *Statement of Chairman Ajit Pai*.

Temporary use of Vacant Channels. There is vigorous support for the temporary use of vacant in-band channels by both commercial and noncommercial broadcasters during the transition to Next Gen TV.³ As discussed by ONE Media in its initial comments, the use of vacant channels will ensure the “maximum continuity of service, just as it did during the transition from analog to digital broadcasting.”⁴ According to the National Association of Broadcasters, allowing broadcasters to use vacant in-band channels “could be the single most important step the Commission could take to minimize consumer disruption and preserve service to viewers.”⁵

Comments opposing broadcaster use of vacant in-band channels significantly mischaracterize the proposal. For example, Open Technology Institute at New America and Public Knowledge states that *giving* broadcasters *exclusive use of a second free channel* is akin to *multi-billion dollar giveaway* and a *request for new public subsidies*.⁶ Nonsense. ONE Media is not advocating that the transition channels, if and when available, be permanently licensed to any broadcaster. The use would be **temporary** in the same way the second simulcast digital channel provided to broadcasters during the analog-to-digital conversion was temporary. The channel will be relinquished later so that it can be assigned pursuant to normal FCC processes to full power or low power stations. Should the channels not be used under the existing rules after the transition, then it would be available for other uses, including white space technology.

³ See, e.g., Comments of San Bernardino Community College District, GN Docket No. 16-142, at 6-9 (Feb. 20, 2018); Comments of the Public Broadcasting Service, Corporation for Public Broadcasting, and America’s Public Television Stations, GN Docket No. 16-142, at 12-14 (Feb. 20, 2018); Comments of the National Association of Broadcasters, GN Docket No. 16-142, at 5-8 (Feb. 20, 2018) (“**NAB Comments**”); Comments of Meredith Corporation, GN Docket No. 16-142, at 2 (Feb. 20, 2018); Comments of Pearl TV, GN Docket No. 16-142, at 3-4 (Feb. 20, 2018).

⁴ Comments of ONE Media, LLC, GN Docket No. 16-142, at 6 (Feb. 20, 2018).

⁵ NAB Comments, at 6.

⁶ Comments of Open Technology Institute at New America and Public Knowledge, GN Docket No. 16-142, at 2 (Feb. 20, 2018) (“**OPI/PK Comments**”).

The white space advocates falsely accuse broadcasters of reneging on their request to deploy Next Gen TV services without a guaranteed second channel.⁷ The Commission's recent action to redeploy 84 MHz of spectrum previously dedicated to broadcast use by mobile services precluded any potential for nationwide changes to the digital broadcast standard by using second channels similar to the analog-to-digital conversion process. Broadcasters themselves devised a channel sharing deployment scheme as the best remaining option to deploy new and innovative services. Under that plan, no additional spectrum is *required* for broadcasters to deploy ATSC 3.0. But it is obvious that temporary channels, when available, can improve the experience for consumers during the transition period. Improvements in compression, even within the confines of the MPEG-2 compression standard that is hardwired into ATSC 1.0, have been considerable in recent years. Broadcast stations have expanded the diversity of their service offerings by adding many new multicast streams. At the same time, the elimination of 145 stations⁸ following the broadcast incentive auction will displace hundreds of programming streams, many of which are likely to be picked up by surviving stations.

Broadcasters planning a launch of 3.0 service are not required to maintain existing multicasts or high definition service. But they are already putting considerable money and effort into launching 3.0 with minimal loss of programming streams and little or no substitution of SD streams for streams that are now being broadcast in HD. But it is inevitable that compromises will have to be made in some cases in order to launch ATSC 3.0: in many markets there simply are not enough stations, or enough participating stations, to allow the programming of stations deploying 3.0 services to be hosted on, or carried in the same resolution on, 1.0 host stations. In

⁷ See Comments of Microsoft Corporation, GN Docket No. 16-142, at 4 (Feb. 20, 2018); OTI/PK Comments, at 5; Comments of Dynamic Spectrum Alliance, GN Docket No. 16-142, at 4 (Feb. 20, 2018).

⁸ See *The Incentive Auction "By the Numbers,"* available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-344398A1.pdf (last visited March 7, 2018).

the rare situations in which vacant allotments exist (or when viability of a temporary transition channel can be identified through a channel study), the Commission should allow transitioning stations to use that spectrum to improve the transition experience for their viewers. We are surprised the white spaces advocates now oppose giving broadcasters access to vacant broadcast spectrum in order to maintain HD quality and multicasts. In their opening comments in this proceeding, certain commenters argued that broadcasters should be required to maintain all HD streams in HD quality during the period of simulcasting.⁹ Now, when broadcasters seek to make the considerable investment of money and time to do exactly what these commenters insisted broadcasters should be required to do, these commenters now ask the Commission to deny them the use of fallow broadcast spectrum to do exactly that.

Broadcasters have always maintained that broadcast spectrum is first and foremost to be made available for the broadcasting service, which is the only primary allocation useable in the band. The white space advocates have twisted this plan by claiming that available broadcast channels should not be used to improve broadcast service but should instead be held dedicated for white space devices - which do not even have an allocation. They want “opportunistic” use to take priority over the primary allocation of the band. The Communications Act and decades of FCC policy and rules make clear that the TV band is to be used to facilitate as much TV service to as many communities in America as possible.¹⁰ It is *not* to set broadcast spectrum aside, unused, on

⁹ Comments of Consumers Union, Public Knowledge, and New America’s Open Technology Institute. GN Docket No. 16-142, at 9 (May 9, 2017).

¹⁰ See, e.g., *Connecting America: The National Broadband Plan*, FCC NBO-01, at 89 (2010) (“Over-the-air television continues to serve important functions in our society. It delivers free access to news, entertainment and local programming, and provides consumers an alternative video service to cable or satellite television. It is the only such service to a segment of the population that either cannot afford paid television or broadband services or cannot receive those services at their homes currently. Over-the-air television also serves numerous public interests, including children’s educational programming, coverage of community news and events, reasonable access for federal political candidates, closed captioning and emergency broadcast information. Through broadcast television, the FCC has pursued longstanding policy goals in support of the Communications Act, such as localism and diversity of views.”).

the chance someone may want to start using it “opportunistically” more than a decade after that was first allowed. The NAB’s analogy is apt: “White spaces is supposed to be about letting people camp on empty lots, not forcing broadcasters to leave their lots empty just in case someone wants to come along and pitch a tent, even if nobody ever does. Effectively, [white space advocates] get squatters’ rights without even having to go through the trouble of squatting.”¹¹

The question for the Commission to decide here is not whether to allow any vacant channels to be used for other broadcast services - that is, in fact, the service this band was allocated for. The only question is *how* those channels can best be used for the best possible broadcast service. The choice is whether transition channels can be made immediately available for temporary assignments to accelerate Next Gen TV deployment or should be used for LPTV displacement channels. ONE Media suggests that the best use case is to ease the transition and then for permanent licensing to full power or low power according to established Commission rules.

OTI/PK also mischaracterize ONE Media’s proposal for temporary use of unassigned channels by wrongly claiming the request sidesteps the Commission’s licensing protocol and insinuating that ONE Media’s position changed after the switch in political administrations and FCC majority.¹² In fact, it was the Commission that first invited comments on the accelerated deployment of Next Gen services through use of vacant channels in its initial NPRM.¹³ ONE Media responded that the Commission should give broadcasters proposing to use a vacant channel for Next Gen deployment priority over other applicants. This would be a temporary priority to encourage speedy deployment of ATSC 3.0 based upon articulated public interest benefits

¹¹ The Negative Sum Game, <https://blog.nab.org/2018/03/13/the-negative-sum-game/>.

¹² OTI/PK Comments at 5.

¹³ *Authorizing Permissive Use of the “Next Generation” Broadcast Television Standard*, GN Docket No. 16-142, Notice of Proposed Rulemaking, FCC 17-13, 32 FCC Rcd 1670, 1677 ¶ 14 (2017).

including innovation, enhanced services, expanded service areas, and the enhanced public safety support and emergency capabilities built into the standard. Once 3.0 deployment is complete, such “borrowed” channels could then be made available for new applicants.¹⁴ ONE Media noted that 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.¹⁵

Contrary to the mischaracterizations of the white space advocates, ONE Media is not asking for a permanent second channel. Nor is ONE Media asking to preempt the licensing protocol where a mutually exclusive application is on file for such permanent broadcast use. If only one applicant applies for a vacant channel in a market, that applicant (or group of applicants from the market) would be entitled to use it on a temporary basis. If there are multiple applicants, they are given an opportunity to resolve the mutual exclusivity, and if they cannot resolve it, the right to use the vacant channel temporarily would be auctioned per established Commission procedures. Importantly, these applicants must be for *broadcast service*. It is Microsoft and other white spaces cohorts that are asking for a fundamental policy change here, *not* ONE Media. They want to have priority over broadcasters for access to these vacant channels. They do not. And they have not provided any coherent rationale for upending the existing priority of use for these bands.

As it did in comments to the underlying rulemaking proceeding, the WiFi Alliance, joined in substance by OTI/PK, asked the Commission to complicate the deployment of ATSC 3.0 significantly and materially constrain ATSC 3.0 operations in order to protect operation of unlicensed devices.¹⁶ As ONE Media previously noted, those requests would turn longstanding

¹⁴ Similarly, for the digital television transition, the Commission found that using temporary paired transition channels, and the temporary unavailability of such channels for other purposes, was an efficient use of spectrum. *See Sixth Report and Order*, MM Docket No. 87-268, FCC 97-115 ¶¶ 12-34 (1997).

¹⁵ Comments of ONE Media, LLC, GN Docket No. 16-142, at 14 n. 22 (May 9, 2017).

¹⁶ Comments of Wi-Fi Alliance, GN Docket 16-142, at 6 (Feb. 20, 2018).

policy on its head and are divorced from the reality of how the spectrum allocated for television broadcasting is actually used. The *television* broadcast band is allocated for the provision of *television broadcast service*. Extending *television* broadcast service to *all* communities in the country, and increasing the *number of television* stations serving each community, have been core national policies for over a half century.¹⁷ Those national policies have not changed, and they cannot be changed in the casual, incidental way proposed by the white spaces advocates – hijacking this effort designed to expedite deployment of new broadcast innovations.

Once again, the white space advocates seem to pin their hopes on the open but dormant FCC proceeding in which the Commission asked whether it should refuse to accept applications for new television broadcast stations unless they show that the proposed broadcast facility would leave at least two “vacant” channels available for unlicensed use.¹⁸ There the white space advocates imply that proceeding established a policy of giving unlicensed/opportunistic uses priority over broadcast use of the broadcast spectrum. But an NPRM does not make rules or policy. That is particularly the case given that two sitting commissioners pointedly dissented from the adoption of the NPRM. Commissioner O’Rielly was incredulous that the Commission would even consider turning core national policies upside down. He wrote, “Simply put, secondary users should not have a superior claim over primary users for any spectrum in the TV band. This is the TV band, after all. The idea that we would even consider measures that could possibly freeze the broadcasting industry in place after the completion of the incentive auction is ludicrous.”¹⁹

¹⁷ See, e.g., *Fifth Report and Order*, MM Docket No. 87-268, FCC 97-116 ¶ 5 (1997) (“[W]e wish to promote and preserve free, **universally available**, local broadcast television in a digital world.”) (emphasis added).

¹⁸ *Amendment of Parts 15, 73 and 74 of the Commission’s Rules to Provide for the Preservation of One Vacant Channel in the UHF Television Band for Use by White Space Devices and Wireless Microphones*, Notice of Proposed Rulemaking, FCC 15-68, 30 FCC Rcd. 6711 (2015).

¹⁹ *Id.*, *Statement of Commissioner Michael O’Rielly* at 1.

Then-Commissioner Pai also dissented from the proposal to give unlicensed devices priority over full power broadcast stations. He cited the “underwhelming impact of unlicensed white-space devices in the market to date” and argued that broadcast stations having priority over unlicensed in the broadcast band should be “obvious.”²⁰ Now-Chairman Pai also argued that low power and translator stations, too, should continue to enjoy priority over unlicensed devices.²¹

The remnants of the 600 MHz band into which the broadcast industry has been squeezed is one of the most congested in the world. It is in that context that broadcasters have devised a way to make more efficient use of their channels and expand services to the public. It is what innovators do. And the deployment of these dramatic new capabilities is one of the great technological achievements in the communications realm. Broadcasters have figured out both how to improve their technology dramatically and implement it without extra channels. Where those channels do exist – in the broadcast band, however, – broadcasters should be able to use them to accelerate this exceptional new service. Giving it away for free to gigantic companies that could have had unfettered use of the other spectrum taken from broadcasters seems to be a particularly cynical approach to spectrum allocation.

²⁰ *Id.*, *Dissenting Statement of Commissioner Ajit Pai* at 1.

²¹ *Id.*

CONCLUSION

The Commission should adopt ONE Media's proposal for temporary use of unassigned channels to facilitate and expedite the deployment of ATSC 3.0 in accordance with the recommendations herein.

Respectfully submitted,

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