

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	)	
	)	

**REPLY COMMENTS OF PEARL TV**

As a companion to its November 2017 order authorizing the voluntary adoption of the new broadcast standard Next Generation TV, (“ATSC 3.0 or “Next Gen TV”), the FCC identified three issues for further discussion in a Further Notice of Proposed Rulemaking (“FNPRM”). One of these issues in particular — broadcasters’ proposed temporary use of vacant in-band channels during the deployment of ATSC 3.0 — had not garnered as much attention and discussion as other topics on which the FCC and stakeholders have worked since the Commission first released its Public Notice regarding the Joint Petition for Rulemaking filed by America’s Public Television Stations, AWARN Alliance, Consumer Technology Association, and the National Association of Broadcasters nearly two years ago. This makes the issue an appropriate subject for an FNPRM, and has drawn in commenters who have been less involved in the Next Gen TV proceeding than many whose voices are familiar in this docket. It is therefore understandable that a number of commenters advocating against any use by broadcasters of vacant in-band channels have leapt to conclusions about how such use would be granted, and leveled clever legal critiques against a process for which Pearl TV (“Pearl”) and its member companies have not advocated.

Pearl<sup>1</sup> wishes to clarify how we propose the FCC consider granting broadcasters deploying ATSC 3.0 temporary authority to use vacant in-band channels, should such resources be available. Additionally, to return to well-trodden ground in this docket, Pearl will respond to arguments against the Commission's grant of exceptions and waivers to the local simulcast requirement.

**I. The FCC Should Allow Broadcasters to Use Vacant In-Band Channels by Acting Favorably Upon Broadcasters' Requests for Special Temporary Authority.**

Much of the ink spilled by commenters arguing against the FCC permitting broadcasters to use vacant in-band channels focuses on how such a "spectrum giveaway" may violate the Communications Act.<sup>2</sup> However, these critiques are leveled at the presumption that the Commission would grant a broadcaster an indefinite license to a neighboring channel. If the Commission were to adopt this method, it certainly could do so within the parameters of the Communications Act. But, critically, that is not the method Pearl proposed.

In our comments to the FNPRM, Pearl proposed that any use by broadcasters of vacant in-band channels would truly be temporary, and that it should be governed by the Communications Act's provision regarding special temporary authority ("STA"). The Open Technology Institute at New America and Public Knowledge claim that "there is no statutory exception for 'temporary' exclusive licenses," but that's plainly wrong: 47 U.S.C. § 309(f)

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<sup>1</sup> Pearl is a business organization of U.S. broadcast companies with a shared interest in exploring forward-looking broadcast opportunities, including innovative ways of promoting local broadcast TV content and developing digital media and wireless platforms for the broadcast industry. Its membership, comprising more than 220 network-affiliated TV stations, consists of eight of the largest broadcast companies in America, including: Cox Media Group, the E.W. Scripps Company, Graham Media Group, Hearst Television Inc., Meredith Local Media Group, Nexstar Media Group, Raycom Media, and TEGNA Inc.

<sup>2</sup> Comments of Open Technology Institute at New America and Public Knowledge, GN Docket No. 16-142, at 12 (filed Feb. 20, 2018).

provides precisely this authority.<sup>3</sup> Under this provision of the Communications Act, the FCC may only grant an STA for a period of up to 180 days, and may only extend such grant for additional periods of up to 180 days,<sup>4</sup> and then only upon the applicant’s showing “that extraordinary circumstances warrant such an extension.”<sup>5</sup> 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.

Microsoft acknowledges this authority, but questions whether a broadcaster’s decision to deploy ATSC 3.0 qualifies as “extraordinary circumstances.”<sup>6</sup> While this is ultimately for the Commission to decide on a case-by-case basis, the ability to bring the benefits of Next Gen TV to consumers, particularly in small and rural markets, without disrupting service to any viewers is a worthy use of spectrum otherwise vacant of licensed services and the transition to Next Gen TV certainly qualifies as an extraordinary event both to consumers and to a broadcasting station. Throughout the FCC’s proceeding on ATSC 3.0, virtually all commenters have voiced support for the new standard’s benefits, and for broadcasters’ desire to innovate for the benefit of their viewers. Broadcasters will deploy this innovative new technology against a challenging backdrop: without the allocation of additional spectrum (unlike the DTV transition), and after the incentive auction, which resulted in the broadcast television band being reduced by 84 MHz. NAB stated in its FNPRM comments that the Commission permitting a broadcaster to use a vacant in-band channel “in some markets . . . could be the

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<sup>3</sup> *Id.* at 16.

<sup>4</sup> *See* 47 U.S.C. § 309(f).

<sup>5</sup> *See* 47 C.F.R. § 1.931(a)(3).

<sup>6</sup> Comments of Microsoft Corporation, GN Docket No. 16-142, at 2-3 (filed Feb. 20, 2018).

single most important step the Commission could take to minimize consumer disruption and preserve service to viewers.”<sup>7</sup> Given the wide support for this new standard, and more importantly the difference the FCC could make in the deployment of ATSC 3.0 by acting favorably towards a broadcaster’s application for STA, we urge the Commission to find that such a broadcaster would easily meet the extraordinary circumstances threshold.

Finally, we must reiterate that all comments advocating against broadcasters’ use of vacant in-band channels because of the impact such use might have on unlicensed devices must be viewed through the lens of one of the Commission’s key tenets: unlicensed devices are not entitled to protection against licensed operations.<sup>8</sup>

#### **I. The FCC Should Adopt a Flexible Waiver Process.**

Next Gen TV is a new phenomenon for all stakeholders involved. Therefore, it is essential that the Commission provide flexibility to broadcasters, who will be deploying Next Gen TV in a variety of markets and circumstances at different times across the country. Given this diversity of situations, neither we nor any commenter can today predict all of the different scenarios in which a waiver of the simulcasting or coverage rules imposed by the Commission’s November 2017 order may prove in the public interest. If, however, the Commission makes clear that it will consider all waiver requests and continue to grant them according to this familiar standard, as well as any specific circumstances it may identify in advance as justifying a waiver, it will be acting in support of the deployment of Next Gen TV services for consumers.

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<sup>7</sup> Comments of National Association of Broadcasters, GN Docket No. 16-142, at 6 (filed Feb. 20, 2018).

<sup>8</sup> See 47 C.F.R. § 15.5.

What would hamper deployment are a pair of suggestions from the American Television Alliance (“ATVA”) and NCTA - The Internet & Television Association (“NCTA”) regarding the simulcasting waiver. ATVA states that the FCC should grant waivers of the simulcast requirement only rarely, and should not exempt any class of stations from this requirement.<sup>9</sup> NCTA states instead that it is premature for the Commission to set any standards regarding waivers of the simulcast requirement or to determine whether to exempt any class of stations from this requirement.<sup>10</sup> While these proposals are in a way at odds with each other, they are similar in that they seem intent on limiting the Commission’s range of action at a time when it could play a key role in benefitting consumers by assisting broadcasters’ innovation and deployment of Next Gen TV. The Commission should not be so hamstrung and should be able to react nimbly to a meritorious waiver request, regardless of when it is made and to what rules it pertains.

Additionally, we reiterate our support for the Commission’s proposed idea to exempt Class A and NCE stations from the simulcast requirement, as it did in the November 2017 order for LPTV and TV translator stations. PBS, APTS, and CPB have filed comprehensive comments detailing how such an exemption would foster deployment of Next Gen TV, both by easing the burden of finding a suitable simulcast partner and strongly incentivizing the 43 percent of public television stations that have been repacked to invest in equipment that includes ATSC 3.0 capability.<sup>11</sup> Implementing this exemption would show the

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<sup>9</sup> See Comments of the American Television Alliance, GN Docket No. 16-142, at 6-8 (filed Feb. 20, 2018).

<sup>10</sup> See Comments of NCTA - The Internet & Television Association, GN Docket No. 16-142, at 4-5 (filed Feb. 20, 2018).

<sup>11</sup> See Comments of the Public Broadcasting Service, Corporation for Public Broadcasting, and America’s Public Television Stations, GN Docket No. 16-142, at 6-10 (filed Feb. 20, 2018).

Commission's support for deployment of ATSC 3.0 across the country, particularly in more remote or rural areas.

### **Conclusion**

Throughout this proceeding, the FCC has acted with efficiency and support for Next Gen TV and the benefits it promises to bring to consumers across the country. We urge it to continue to do so, including by supporting those broadcasters whose deployment of Next Gen TV can be aided by use of a vacant in-band channel, and by adopting a flexible waiver process as broadcasters begin to implement this new standard.

Respectfully submitted,



Anne Schelle  
Managing Director

PEARL TV  
850 Tenth Street, N.W., Suite 312N  
Washington, D.C. 20001

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Kurt Wimmer  
Gerard J. Waldron  
Hannah Lepow

COVINGTON & BURLING LLP  
850 Tenth Street, N.W.  
Washington, D.C. 20001

*Counsel for Pearl TV*

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