

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)	
)	

OPPOSITION TO PETITIONS FOR RECONSIDERATION

In November 2017, the FCC issued a Report and Order (the “Order”) in the above-captioned proceeding opening the door to a voluntary, industry-led implementation of Next Generation TV (“ATSC 3.0” or “Next Gen TV”).¹ Pearl TV (“Pearl”)² again commends the Commission for this action, which shows how a light regulatory touch can support innovation in broadcasting.

NCTA - The Internet & Television Association (“NCTA”)³ and the American Television Alliance (“ATVA”)⁴ have filed separate petitions for reconsideration of the Commission’s order. As the petitions raise overlapping issues, we address both in this Opposition.

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 (2017) (“ATSC 3.0 Order”).

² 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, which owns more than 220 television stations, consists of Cox Media Group, the E.W. Scripps Company, Graham Media Group, Hearst Television Inc., Meredith Local Media Group, Nexstar Media Group, Raycom Media, Inc., and TEGNA Inc.

³ Petition for Reconsideration, NCTA - The Internet & Television Association, GN Docket No. 16-142 (filed Mar. 5, 2018) (“NCTA Petition”).

⁴ Petition for Reconsideration, American Television Alliance, GN Docket No. 16-142 (filed Mar. 5, 2018) (“ATVA Petition”).

Overall, the petitions are another attempt to slow the pace of ATSC 3.0 deployment by the broadcast industry. Virtually all commenters in this proceeding have recognized that Next Gen TV stands to bring significant benefits to consumers. The Commission recognized these benefits by the efficacy with which it progressed from the initial Petition for Rulemaking to the Report & Order, as well as by the substance of its decision. The Commission should not permit its alacrity in this proceeding to be diminished by parties repeating old arguments.

There is one thread tying together the issues upon which Petitioners seek reconsideration: a desire to lure the Government into increased regulation. The Order sets forth a voluntary, market-based approach to deployment of ATSC 3.0. The essence of a voluntary approach is that the government does not need to impose mandates on the parties adopting it. Yet in the two overlapping items raised by both petitions, NCTA and ATVA want the Commission to abandon its light touch and impose heavy regulatory requirements on the broadcast industry, their competitor. First, both Petitioners want the Commission to put its thumb on the scale for the cable industry in retransmission consent negotiations. Second, both Petitioners seek to prevent broadcasters from “downgrading” their signals, and yet there is no current requirement mandating HD broadcasts. The FCC should refrain from imposing unnecessary regulation in these areas.

Petitions for reconsideration are “generally appropriate where the petitioner shows either a material error or omission in the original order or raises additional facts not known or not existing until after the petitioner’s last opportunity to respond.”⁵ These Petitions

⁵ *Amendment of Section 73.555(E) of the Commission’s Rules, National Television Multiple Ownership Rule*, Order on Reconsideration, 32 FCC Rcd. 3390, 3397 (2017).

fail to meet that bar since they simply re-hash arguments that have been fully debated in the record, and which the Order detailed fully before setting forth conclusions. While we are loath to extend these debates much longer, we address four of these arguments below. We urge the FCC to not consider them a moment longer than necessary.

First, both NCTA and ATVA argue that the Commission should intervene in retransmission consent negotiations to somehow prohibit parties from negotiating for carriage of ATSC 3.0 streams as part of the rest of their negotiation.⁶ This issue in particular has been debated *ad nauseam*, and Petitioners neither demonstrate a material error on the part of the Commission nor introduce new material facts.⁷ ATSC 3.0 carriage is no different from any of the many contractual terms that broadcaster and cable operators negotiate over regularly, and therefore, as the Commission determined, it is “best left to marketplace negotiations between broadcasters and MVPDs.”⁸ It should remain so.

Second, both NCTA and ATVA argue that the Commission should impose a new requirement on broadcasters preventing them from changing the format of their signals from HD to SD.⁹ Again, Petitioners neither demonstrate a material error on the part of the Commission nor introduce new material facts. In its Order, the Commission recognized what we have

⁶ NCTA Petition at 8-10; ATVA Petition at 3-5.

⁷ See ATSC 3.0 Order at ¶ 77 n.225-228 (addressing filings regarding retransmission consent issues by: AT&T Services Inc.; Midcontinent Communications; ATVA; Verizon; American Cable Association; DISH Network L.L.C.; ITTA - The Voice of America’s Broadband Providers; NCTA; National Association of Broadcasters (“NAB”); and America’s Public Television Stations, Advanced Warning and Response Network Alliance, Consumer Technology Association and NAB); see also Comments of Pearl TV, GN Docket No. 16-142, at 10-11 (filed May 9, 2017) (“Pearl NPRM Comments”).

⁸ ATSC 3.0 Order at ¶ 61.

⁹ NCTA Petition at 7-8; ATVA Petition at 8-9.

repeatedly said—that broadcasters have every incentive to continue to provide high quality service, and therefore a regulation mandating the same is unnecessary.¹⁰ Yet Petitioners seek that unnecessary regulation. As we have previously stated, each of the hundreds of broadcast stations across the country has unique, community-driven factors to consider in determining when and how to deploy ATSC 3.0. Local stations will consider the types of technology their viewers have and their viewers’ appetite for various options as they weigh the trade-offs of different deployment approaches.¹¹ By asking the Commission, for the first time, to mandate by regulation a high-definition format for television signals, Petitioners are asking the Commission to substitute its judgment for that of local stations that know their communities best. As the Commission has already determined, this is not the type of regulation the FCC should be pursuing.

Third, NCTA argues that the Commission should require stations deploying ATSC 3.0 to air substantially similar content on their 3.0 and 1.0 channels indefinitely, seeking to remove the reasonable five-year cap the Order currently puts on this requirement.¹² First, it is important to note that there is no time limit on the Order’s requirement that broadcasters transmitting an ATSC 3.0 channel also broadcast their signal in ATSC 1.0. Therefore, NCTA’s fearmongering that all consumers will need to purchase ATSC 3.0-compatible TVs by 2023 is incorrect. Second, broadcasters understand their communities and are responsive to them. If there is particular programming that consumers wish to continue seeing on a station’s ATSC 1.0 stream after the sunset of the substantially similar content requirement, we have every

¹⁰ATSC 3.0 Order at ¶¶ 27-28.

¹¹ Pearl NPRM Comments at 9.

¹² NCTA Petition at 3-6.

expectation that the station would continue airing that programming, as it is in the station's interest to satisfy its viewers. Finally, as the FCC stated, the substantially similar content requirement "is necessary in the early stages of ATSC 3.0 deployment, [but] could unnecessarily impede Next Gen TV programming innovations as the deployment of ATSC 3.0 progresses."¹³ The FCC's role regarding new technology is not to make it overly difficult for industry to bring it to the market, but to foster it as well as it can while still protecting necessary interests. The Commission walked this line well in drafting the Order, and establishing a sunset to the substantially similar content requirement is one example of this good balancing. NCTA seeks to upset this balance. In the FCC's own words, doing so would "impede . . . innovations," and the Commission should not consider it.

Fourth, ATVA argues that the Commission should rescind its exemption of LPTV and TV translator stations from the simulcasting requirement.¹⁴ The Commission's decision to exempt these stations—and to seek further comment on whether to exempt NCE and Class A stations—will promote the deployment of ATSC 3.0 for all stations, because rather than limiting them from participating in ATSC 3.0 altogether, it instead makes them excellent candidates for early transition as so-called "lighthouse stations." This is another example of the FCC balancing its support for the development of new technology with its protection of existing interests. ATVA's disagreement with this balancing constitutes neither a material error on the part of the Commission nor somehow a new material fact. Viewing the ATVA Petition as a whole, it is hard not to read ATVA's request that the Commission pull back from its support here as aimed at complicating the deployment of ATSC 3.0 in general, rather than in preserving HD

¹³ ATSC 3.0 Order at ¶ 22.

¹⁴ ATVA Petition at 6-8.

programming on the ATSC 1.0 streams of LPTV and TV translator stations. There is no need for reconsideration of this item either.

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The NCTA Petition and ATVA Petition are nothing more than an attempt to slow down the development of a dynamic new broadcasting technology. The Commission should reject this abuse of its rulemaking processes.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Kurt Wimmer, certify that on this 12th day of April, 2018, I caused a copy of the foregoing Opposition to Petitions for Reconsideration to be served by first class mail, postage prepaid, upon the following:

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