

**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

**ONE MEDIA, LLC’s OPPOSITION TO PETITIONS FOR RECONSIDERATION**

ONE Media, LLC (“**ONE Media**”), pursuant to Section 1.429 of the Commission’s Rules,<sup>1</sup> hereby opposes the Petitions for Reconsideration submitted by NCTA – The Internet & Television Association (“**NCTA**”) and the American Television Alliance (“**ATVA**”).<sup>2</sup> Both petitions seek reconsideration of parts of the Commission’s *Order* in the above-captioned proceeding.<sup>3</sup> The petitions should be denied because they simply rehash arguments presented in this proceeding by petitioners and others, and which the Commission has considered and rejected. Also, petitioners do not identify material errors or omissions, or raise previously unknown facts. Deployment of this critical new service should not be delayed by pleas of unsupported, speculative harms and repeated efforts to convert this technical proceeding on adoption of a transmission standard into yet another request for Commission involvement in program carriage negotiations.

**I. Background**

On April 13, 2016, a joint petition for rulemaking (“**Petition**”) was filed by America’s Public Television Stations, the Advanced Warning and Response Network Alliance, the Consumer

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<sup>1</sup> 47 C.F.R. § 1.429.

<sup>2</sup> Notice of the petitions was published in the Federal Register, establishing a deadline for oppositions of April 13, 2018 (83 Fed. Reg. No. 61 at 13463 (Mar. 29, 2018)).

<sup>3</sup> *In the Matter of 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) (“**Order**”).

Technology Association, and the National Association of Broadcasters to initiate this proceeding.<sup>4</sup> After issuing a public notice seeking comment on the Petition, the Commission received 35 comments and 14 reply comments to the Petition.<sup>5</sup> The Commission subsequently issued a Notice of Proposed Rulemaking on February 24, 2017.<sup>6</sup> In response to the NPRM, 46 comments and 28 reply comments were submitted by a diverse array of commenters, including consumer advocates, broadcasters, cable providers, wireless providers, technology companies, and others.<sup>7</sup> On November 20, 2017, after establishing a robust record and extensive deliberations with stakeholders, the Commission released the *Order*, which authorized the “Next Generation” broadcast TV standard, also known as ATSC 3.0.<sup>8</sup>

On March 5, 2018, petitions for reconsideration were filed by NCTA and ATVA. NCTA seeks reconsideration of the following: (1) the decision to sunset the “substantially similar” requirement after five years; (2) the decision not to require broadcasters that currently provide their primary video stream in HD to continue to transmit an HD ATSC 1.0 signal; (3) the decision not to adopt a rule that prohibits carriage of ATSC 3.0 signals via retransmission consent negotiations; and (4) the decision not to adopt a rule that requires reasonable and non-discriminatory patent licensing.

ATVA seeks reconsideration of the following: (1) the decision not to require separate negotiations for first-time MVPD carriage of ATSC 3.0 signals; (2) the decision to exempt low

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<sup>4</sup> See Joint Petition for Rulemaking of America’s Public Television Stations, the AWARN Alliance, the Consumer Technology Association, and the National Association of Broadcasters, GN Docket No. 16-142 (filed Apr. 13, 2016), available at <https://www.fcc.gov/ecfs/filing/60001667342/document/60001701021> (last visited Apr. 3, 2018).

<sup>5</sup> *Order* ¶ 2 n.2.

<sup>6</sup> *Authorizing Permissive Use of the “Next Generation” Broadcast Television Standard*, GN Docket No. 16-142, Notice of Proposed Rulemaking, GN Docket No. 16-142, FCC 17-13 (2017).

<sup>7</sup> *Order* at Appendix A.

<sup>8</sup> *Id.* ¶ 1.

power and translator stations from the local simulcasting requirement; and (3) the decision not to require stations to disclose planned changes in signal quality as part of their simulcasting application.

## **II. Petitioner Arguments Have Been Fully Considered and Rejected by the Commission**

Petitions for reconsideration may be denied if they rely on arguments that have been fully considered and rejected by the Commission within the same proceeding.<sup>9</sup> The Commission has found that consideration of petitions for reconsideration that are merely repetitious is inefficient.<sup>10</sup> Similarly, petitions may be denied if they identify no material error, omission, or other reason warranting reconsideration.<sup>11</sup> The Commission recently stated that “reconsideration is 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.”<sup>12</sup> Here, as discussed below, the arguments made in the NCTA and ATVA petitions repeat arguments previously addressed, do not identify errors or omissions, and do not raise additional facts other than speculating about information that may or may not emerge at an indeterminate point in the future.

For example, NCTA’s argument that the Commission should reconsider its decision to sunset the “substantially similar” requirement after five years because the requirement “has no basis in the record” fails to offer anything more than disagreement with the Commission’s

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<sup>9</sup> 47 C.F.R. § 1.429(l); *Travelers’ Information Stations*, PS Docket No. 09-19, FCC 15-37 ¶ 1 (2015); *Promoting Diversification of Ownership in the Broadcasting Services*, MB Docket No. 07-294 *et al.*, DA 17-5 ¶ 1 (2017).

<sup>10</sup> *Amendment of Certain of the Commission’s Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization*, Report and Order, GC Docket No. 10-44, FCC 11-16 ¶¶ 27-18 (2011).

<sup>11</sup> *Supra* note 9.

<sup>12</sup> *Amendment of Section 73.3555(e) of the Commission’s Rules, National Television Multiple Ownership Rule*, MB Docket No. 13-236, FCC 17-40 ¶ 16 (2017).

assessment.<sup>13</sup> Indeed, NCTA rehashes an argument made by ATVA in this proceeding. ATVA opposed an automatic sunset date of the substantially similar requirement, and advocated that review of the issue be deliberated in a different proceeding.<sup>14</sup> Not only was ATVA's position on the matter fully addressed in the *Order*,<sup>15</sup> the Commission specifically left open the possibility that the sunset date could be extended if necessary.<sup>16</sup>

In addition, as part of its argument against a five-year sunset timeframe, NCTA states that "it may be years before [stations] start transmitting an ATSC 3.0 signal."<sup>17</sup> However, the reality is that progress is moving much faster than NCTA suggests. Indeed, less than two months after release of the *Order*, Sinclair Broadcast Group, Inc., Nexstar Media Group, Inc., and Univision Local Media, Inc. reached an agreement with American Tower Corporation to construct and operate jointly Single Frequency Network sites to broadcast ATSC 3.0 signals within the Dallas Designated Market Area.<sup>18</sup> A few weeks later, Spectrum Co., the consortium created by Sinclair and Nexstar to launch ATSC 3.0, named its president to lead those efforts.<sup>19</sup>

Similarly, NCTA argues that the Commission's decision not to require "broadcasters that currently provide their primary video stream in HD continue to transmit an HD ATSC 1.0 signal"

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<sup>13</sup> NCTA Petition at 5.

<sup>14</sup> See Letter from Michael Nilsson, Counsel to ATVA, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 16-142, at 10-11 (filed Nov. 3, 2017).

<sup>15</sup> *Order* ¶ 22 n.77.

<sup>16</sup> *Id.* ¶ 22.

<sup>17</sup> NCTA Petition at 6.

<sup>18</sup> *Sinclair Broadcast, Nexstar, Univision and American Tower Partner on ATSC 3.0 (Next Gen TV) Single Frequency Network Deployment in Dallas Market*, Yahoo! Finance (Jan. 17, 2018), available at <https://finance.yahoo.com/news/sinclair-broadcast-nexstar-univision-american-140000637.html> (last visited Apr. 3, 2018).

<sup>19</sup> *John Hane Joins Spectrum Co as President*, TV Technology (Feb. 1, 2018), available at <https://www.tvtechnology.com/atsc3/0031/john-hane-joins-spectrum-co-as-president/282661> (last visited Apr. 3, 2018).

was arbitrary.<sup>20</sup> However, the only evidence that NCTA provides for its claim are comments filed by NCTA.<sup>21</sup> Such an argument is circular. It is telling that ATVA did not challenge this part of the *Order*, even though they aligned with NCTA on the issue in the underlying proceeding. Realizing this point had been fought and lost, ATVA simply notes in its petition that “the Commission declined to adopt our suggestion.”<sup>22</sup> Likewise, NCTA’s argument regarding retransmission consent is simply a summary of its disagreement with the Commission’s decision.<sup>23</sup> Merely advocating for, and then losing, an argument does not warrant reconsideration.<sup>24</sup>

Similarly, ATVA’s petition simply reasserts arguments that ATVA previously made in this proceeding, and summarizes ATVA’s disagreement with the Commission’s rejection of those arguments. ATVA’s argument advocating for separate negotiations for first-time ATSC 3.0 carriage relies on additional facts that ATVA hypothesizes will emerge about broadcaster behavior (i.e. broadcasters will insist on carriage of ATSC 3.0 signals) that will allegedly validate its argument.<sup>25</sup> ATVA readily admits this argument is a “prediction.”<sup>26</sup> Such speculation is not grounds for reconsideration because no actual additional facts have been presented, and mere conjecture should not hold up or cast uncertainty over the future of ATSC 3.0.

ATVA also asks that the “Commission should reconsider its decision to permit stations to degrade their signals without notifying viewers and MVPDs.”<sup>27</sup> ATVA asserts that language

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<sup>20</sup> NCTA Petition at 8.

<sup>21</sup> *Id.*

<sup>22</sup> ATVA Petition at 8.

<sup>23</sup> NCTA Petition at 8-10.

<sup>24</sup> *See* 47 C.F.R. § 1.429(l)(3).

<sup>25</sup> ATVA Petition at 3-5.

<sup>26</sup> *Id.* at 4.

<sup>27</sup> *Id.* at 8-9

added by the Commission after it released a draft of the *Order* constitutes additional facts not known or not existing until after its last opportunity to respond.<sup>28</sup> However, the argument that the language in question was “not known” because it did not appear in the draft is incorrect. The Commission is under no obligation to make drafts public, and only since last year has it begun utilizing them on a consistent basis. Quite simply, applying ATVA’s argument would set a chaotic and irrational precedent.

### **III. Patent Royalties**

NCTA attacks the Commission’s decision to “monitor how the marketplace handles patent royalties for essential patents, but [] not require reasonable and non-discriminatory (“**RAND**”) licensing at this time.”<sup>29</sup> Specifically, NCTA argues that “patents relevant to a government-mandated standard [should] be licensed on a reasonable and non-discriminatory (RAND) basis, as was the case with the standards for ATSC 1.0[.]”<sup>30</sup> In an attempt to bolster its assertion, NCTA references the dissenting statement of Commissioner Rosenworcel, which states that “reasonable and nondiscriminatory terms were part of the package” when the Commission adopted the ATSC 1.0 standard.<sup>31</sup>

NCTA misrepresents the ATSC 1.0 decision as it attempts to blur the distinction between an ATSC requirement and Commission regulation. Indeed, the Commission did not impose any regulations pertaining to RAND requirements. Instead, it found that a requirement by ATSC that “proponents submit, prior to testing, a statement that any relevant patents they own would be made available either free of charge or on reasonable, nondiscriminatory terms,” adequately safeguarded

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<sup>28</sup> *Id.* Importantly, ATVA does not argue that this result could not be construed from the underlying record.

<sup>29</sup> *Order* ¶ 100 n.300; NCTA Petition at 10-11.

<sup>30</sup> NCTA Petition at 10.

<sup>31</sup> *Order* at Dissenting Statement of Commissioner Jessica Rosenworcel.

consumer and competitive interests.<sup>32</sup> The Commission also held that “if a future problem [pertaining to RAND] is brought to our attention, we will consider it and take appropriate action.”<sup>33</sup> In other words, the Commission held that the ATSC requirement was sufficient, that regulation by the Commission was unnecessary, and that it would monitor the issue for future problems. The same analysis was used in the *Order*, which references ATSC’s RAND requirement before stating that it is premature to impose RAND regulations.<sup>34</sup> As a result, the *Order*’s decision is consistent with its ATSC 1.0 decision on this issue. Indeed, Commissioner Rosenworcel’s dissent in the *Order* is careful not to state that the Commission imposed regulations itself, and instead simply notes that RAND terms were “part of the package” with ATSC 1.0.<sup>35</sup>

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<sup>32</sup> *Advanced Television Systems*, Second Report and Order, MM Docket 87-268, FCC 92-174 ¶ 68 (1992); *Advanced Television Systems*, Fourth Report and Order, MM Docket 87-268, FCC 96-493 ¶¶ 54-55 (1996) (“**Fourth Report and Order**”).

<sup>33</sup> *Fourth Report and Order* ¶ 55.

<sup>34</sup> *Order* ¶ 100 n.300.

<sup>35</sup> *Id.* at Dissenting Statement of Commissioner Jessica Rosenworcel.

## CONCLUSION

The ATSC 3.0 transmission standard, voluntarily deployed by broadcasters, promises the most significant advance in services to the public in decades. Procedural attempts to slow this deployment based on considered and rejected arguments should be summarily dismissed. For the foregoing reasons, ONE Media urges the Commission to deny the petitions for reconsideration filed by NCTA and ATVA.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I, Joseph A. Cohen, certify that on this 13th day of April, 2018, I caused a copy of the foregoing “ONE Media, LLC’s Opposition to Petitions for Reconsideration” to be served by first class mail, postage prepaid, upon the following:

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