

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

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

GN Docket No. 16-142

REPLY TO OPPOSITIONS TO PETITION FOR RECONSIDERATION

The American Television Alliance (“ATVA”) hereby files this brief reply to the oppositions filed by broadcasters to ATVA’s petition for reconsideration.¹ The broadcasters’ oppositions misstate the legal standard for reconsideration. And their claims that so-called “marketplace incentives” will lead them to protect viewers strike us as dubious at best. The Commission should reconsider parts of its *ATSC 3.0 Order* related to separate negotiations, low-power flash-cuts, and notice prior to signal degradation.

¹ Opposition to Petitions for Reconsideration of the National Association of Broadcasters (“NAB Opp.”); Opposition from the Advanced Television Broadcasting Alliance to ATVA Petition for Reconsideration; Opposition to Petitions for Reconsideration of America’s Public Television Stations *et al.*; Opposition of Edge Spectrum, Inc. to ATVA Petition for Reconsideration; Opposition of HC2 Broadcasting Inc. to American Television Alliance Petition for Reconsideration; Letter from Joshua N. Pila, General Counsel, Meredith Corporation, to Marlene Dortch, Secretary, Federal Communications Commission (filed Apr. 12, 2018); ONE Media, LLC’s Opposition to Petitions for Reconsideration (“ONE Media Opp.”); Opposition to Petitions for Reconsideration of Pearl TV (filed Apr. 12, 2018) (“Pearl TV Opp.”). Unless otherwise indicated, all documents referenced in this reply were filed in GN Docket No. 16-142 on April 13, 2018. *See also* *Authorizing Permissive Use of the “Next Generation” Broad. Television Standard*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd. 9930 (2017) (“*Order*”).

Legal Standard. Broadcasters argue that the Commission should reject our petition for reconsideration to the extent it relies on arguments presented earlier in this proceeding.² But the Commission *can* grant a petition for reconsideration relying on arguments previously raised, so long as the petitioner demonstrates “material error or omission in the original order.”³ We continue to believe that aspects of the *ATSC 3.0 Order* constitute “material error” in (1) not requiring separate negotiations for first-time multichannel video programming distributor (“MVPD”) carriage of ATSC 3.0 signals; (2) permitting low-power and translator stations to flash-cut to ATSC 3.0; and (3) permitting broadcasters to degrade their signals without warning viewers and MVPDs beforehand. If the Commission comes to agree with us, no legal barrier prevents it from granting reconsideration.

Merits. In our original petition, and in our earlier advocacy, we explained at some length why we believe aspects of the *ATSC 3.0 Order* constitute material error. We explained that broadcasters have insisted and will continue to insist on ATSC 3.0 carriage, forcing MVPDs and their subscribers to absorb costs for a product for which no subscriber demand yet exists.⁴ We explained the consequences of low-power and translator stations affiliated with popular networks “flash-cutting” to ATSC 3.0, stranding viewers without new equipment.⁵ We discussed the

² E.g., NAB Opp. at 1; Pearl TV Opp. at 2-3; ONE Media Opp. at 1.

³ *Amendment of Section 73.3555(e) of the Commission’s Rules, National Television Multiple Ownership Rule*, Order on Reconsideration, 32 FCC Rcd. 3390 ¶ 16 (2017) (“Neither the Communications Act nor Commission rules preclude the Commission from granting petitions for reconsideration that fail to rely on new arguments. Commission precedent establishes 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.”).

⁴ Petition for Reconsideration of the American Television Alliance at 3-5 (filed Mar. 5, 2018).

⁵ *Id.* at 5-8.

incentives for broadcasters to degrade their signals, and explained the consequences of them doing so without warning their viewers.⁶

In their oppositions, the broadcasters' principal response is that "marketplace incentives" will prevent them from doing any of these things. We have always been highly skeptical of this claim. One benefit of the reconsideration process, however, is that it gives the Commission the opportunity to address these issues despite broadcasters' promises. Indeed, the Commission specifically cited this possibility in addressing retransmission consent arguments. It concluded that it was "premature" to address retransmission consent issues.⁷ It decided to "allow these issues *at the outset* to be addressed through marketplace negotiations."⁸ Commissioner O'Rielly added that broadcaster "attempts to make this transition involuntary could violate the obligation for broadcasters to negotiate in good faith."⁹ He continued: "This is another issue I will be watching and the Commission may need to revisit as there becomes concrete examples to examine."¹⁰

* * *

For these reasons, and for those set forth in our petition for reconsideration, we ask the Commission to issue an order on reconsideration (1) requiring separate negotiations for first-time carriage of ATSC 3.0 signals; (2) requiring low-power and translator stations to simulcast; and (3) requiring stations to provide prior notice to viewers and MVPDs before being allowed to degrade signal format or picture quality.

⁶ *Id.* at 8-9.

⁷ *Order* ¶ 78.

⁸ *Id.* (emphasis added).

⁹ *Id.*, Statement of Commissioner O'Rielly.

¹⁰ *Id.*

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CERTIFICATE OF SERVICE

I hereby certify that, on this 23rd day of April, 2018, a copy of the foregoing reply was served via First Class Mail upon:

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