

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:)	
)	
Authorizing Permissive Use of the “Next)	GN Docket No. 16-142
Generation” Broadcast Television Standard)	

**REPLY OF NCTA – THE INTERNET & TELEVISION ASSOCIATION
TO OPPOSITIONS TO PETITION FOR RECONSIDERATION**

NCTA – The Internet & Television Association hereby replies to the oppositions to its Petition for Reconsideration of certain aspects of the Report and Order in the above-captioned proceeding. As we made clear at the outset of this proceeding, “broadcasters should be allowed to innovate and improve their over-the-air signals.”¹ At the same time, as the Commission has recognized, this authorization should “minimiz[e] the impact on, and costs to, consumers and other industry stakeholders.”² Our Petition for Reconsideration is aimed at advancing these goals.

Central to those principles was that the ATSC 3.0 experiment would be entirely voluntary – not only for broadcasters but also for MVPDs and for television viewers. And central to those promises was that broadcasters who chose to transmit a 3.0 signal would also “simulcast” their programming on their 1.0 signal.

To that end, NCTA asked the Commission to reconsider its rulings that would sunset after five years the “substantially similar” simulcasting requirement and would allow

¹ Comments of National Cable & Telecommunications Association, GN Docket. No. 16-142, at 2 (May 26, 2016) (“NCTA Comments”). All filings cited hereinafter were filed in GN Docket No. 16-142 unless otherwise noted.

² *Authorizing Permissive Use of the “Next Generation” Broadcast Television Standard*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd. 9930, ¶ 2 (2017) (“Report and Order”).

broadcasters to downgrade the ATSC 1.0 signals from high definition (HD) to standard definition (SD). NCTA also asked the Commission to reconsider the decision not to take steps at this time to prevent broadcasters from using the retransmission consent process to compel premature carriage of ATSC 3.0 signals by MVPDs.

The broadcasters now argue, first, that these points were presented to and rejected by the Commission, so that they may not be raised in petitions for reconsideration.³ That argument is wrong on several counts. First, NCTA did, indeed, argue in support of a simulcast requirement—which the Commission adopted. And we argued that the content of the simulcast programming should be identical on both the ATSC 1.0 and ATSC 3.0 signals—which the Commission also largely adopted by imposing the “substantially similar” requirement. But the Commission did not seek comment on the notion that the latter requirement would sunset five years after its adoption, regardless of whether *any* broadcasters had yet begun transmitting an ATSC 3.0 signal. And for good reason. Initial tests for ATSC 3.0 signals are just beginning and consumer equipment to receive ATSC 3.0 signals is not available. Given the current state of the marketplace, the rational policy would be for the Commission to monitor the roll-out of ATSC 3.0 and maintain the substantially similar requirement until the use of ATSC 3.0 is further along in the marketplace. The Commission can then determine the appropriate sunset.

Moreover, while NCTA argued that the simulcast requirement should preclude downgrading the ATSC 1.0 signal from HD to SD, the Report and Order does not acknowledge the harms to consumers identified in our comments,⁴ much less explain why they are outweighed

³ See, e.g., Opposition of Pearl TV, at 2-3 (filed Apr. 12, 2018) (“Pearl TV Opposition”); Opposition of One Media, at 3-5 (filed Apr. 13, 2018); Opposition of America’s Public Television Stations, Corporation for Public Broadcasting, and Public Broadcasting Service, at 2 (filed Apr. 13, 2018).

⁴ “Rules are necessary so that, as the comments of Consumers Union et al. put it, ‘[c]onsumers should not be worse off or involuntarily bear additional costs as a result of the transition.’ If broadcasters opting to transmit ATSC 3.0 are permitted to degrade the current ATSC 1.0 signal received over-the-air by consumers in HD to

by a broadcaster's voluntary experimentation with ATSC 3.0. The Commission says that "[o]ur existing rules do not require broadcasters to provide their signals in HD, and we decline to adopt such rules for purposes of voluntary deployment of ATSC 3.0 service."⁵ Broadcasters are, of course, not required to provide their existing ATSC 1.0 signals in HD. And if a broadcaster has chosen not to broadcast in HD, it should, of course, be allowed to continue to transmit its 1.0 signal in SD. But what we argued is that if a broadcaster has voluntarily *chosen* to transmit its 1.0 signal in HD, it should not be allowed to *downgrade* that signal to SD at least in the initial phases of launching a 3.0 signal.

Such downgrading would deprive viewers of the programming to which they have become accustomed and would force them and MVPDs to incur costs to recapture the HD quality that they have come to expect. That's precisely the harm that the simulcast requirement was meant to prevent, and the Commission should correct this disconnect. Here again, it would be rational and prudent for the Commission to maintain the status quo on HD. Going forward, the Commission can monitor the use of ATSC 3.0 and the adoption by consumers, and similar to the simulcasting decision, decide when there has been enough uptake to eliminate HD simulcasting. The Commission could address any specific spectrum concerns in a particular market in the interim through waivers.

NCTA and others have also urged the Commission to take affirmative steps to prevent broadcasters from using the retransmission consent process to compel the premature carriage of ATSC 3.0 signals by MVPDs, which will result in higher costs for MVPDs and their customers.

SD, 'consumers are harmed in this context, especially where investments had been made to purchase a television with HD resolution capability.' The same would be true for those cable customers accustomed to receiving a broadcast station in HD." Reply Comments of NCTA – The Internet & Television Association, at 7 (filed June 8, 2017).

⁵ Report and Order ¶ 27. *See also* Opposition of NAB, at 3 (filed Apr. 13, 2018) ("NAB Opposition"); Meredith Corporation, at 1 (filed Apr. 12, 2018) ("Meredith Corp. Opposition"); Pearl TV Opposition at 2.

The broadcasters support the Commission’s decision to rely on “marketplace negotiations” at the outset to prevent this chain of events,⁶ but the evidence to date is validating our concerns. WTA recently met with the Commission staff and noted that some members are already seeing language that requires small MVPDs to retransmit “any ATSC compliant standard.”⁷ Moreover, as ATVA said, more concrete examples are likely to emerge.⁸ In light of these developments, the Commission should continue to monitor the situation, and take appropriate actions to address abuses.

CONCLUSION

For the foregoing reasons and for the reasons set forth in NCTA’s Petition for Reconsideration, the Commission should modify its rules to better ensure a truly voluntary process for all participants in the video marketplace.

Respectfully submitted,

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⁶ See, e.g., Pearl TV Opposition at 3; NAB Opposition at 6; Meredith Corp. Opposition at 2.

⁷ Letter from Bill Durdach, Director of Gov’t Affairs, WTA – Advocates for Rural Broadband, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 16-142, at 2 (filed Apr. 12, 2018).

⁸ See American Television Alliance Petition for Reconsideration, at 5 (filed Mar. 5, 2018).