

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Authorizing Permissive Use of the “Next Generation” Broadcast Television Standard	)	GN Docket No. 16-142
	)	
Implementation of Section 103 of the STELA Reauthorization Act of 2014	)	MB Docket No. 15-216
	)	
Totality of the Circumstances Test	)	

**Comments of WTA – Advocates for Rural Broadband**

**WTA – Advocates for Rural Broadband**

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## EXECUTIVE SUMMARY

Although the transition to ATSC 3.0 broadcasting holds much promise for local broadcast stations, the transition raises a number of questions and likely burdens for small MVPDs, many of which cannot be answered or otherwise understood at this time because the Next Generation TV standards, including standards for MVPD redistribution, are still under development. A transition to ATSC 3.0 also has implications for the future of independent programming and broadband services offered over cable systems.

Despite assertions by broadcast commenters that carriage by MVPDs will be purely voluntary, if the launch of ATSC 3.0 broadcast signals is at all similar to the launch of multicast and affiliated cable networks, small MVPDs will very likely be required to undertake substantial investments to continue retransmitting local broadcast content to their customers. At a time when rural broadband deployment is a national priority, the Commission should take all necessary steps to avoid unnecessary diversion of resources from broadband deployment, including expressly prohibiting the tying of ATSC 3.0 to carriage of legacy ATSC 1.0 signals.

Even if carriage of ATSC 3.0 signals is entirely voluntary for MVPDs, carriage of local simulcast ATSC 1.0 signals may similarly require investments that small MVPDs are not in a position to make, whether such investment includes modification to existing headend facilities or deployment of additional fiber transport. Because retransmission consent agreements largely place the onus on small MVPDs to receive broadcast signals and small MVPDs are not in a position to influence in any way the adoption of ATSC 3.0 or local simulcast arrangements entered into by local broadcast stations, the Commission should require local broadcast stations to disclose their plans to transition to ATSC 3.0 and local simulcasting arrangements during retransmission consent negotiations to take place in the Fourth Quarter of 2017.

The Commission should also ensure that must-carry broadcast stations provide sufficient notice of their transition to ATSC 3.0 by extending the notice requirement from 60 days to at least 90 days, similar to the notice requirements arising out of the post-incentive auction repacking of broadcast stations.

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**Comments of WTA – Advocates for Rural Broadband**

WTA-Advocates for Rural Broadband (“WTA”)<sup>1</sup> hereby submits these comments in response to the Federal Communications Commission (“Commission”) Notice of Proposed Rulemaking (“NPRM”)<sup>2</sup> seeking comment on a range of issues implicated with the authorization for broadcast stations to voluntarily use the new Advanced Television Systems Committee (“ATSC”) 3.0 broadcast standard while using “local simulcasting” to continue providing existing ATSC 1.0-based services to their communities.<sup>3</sup> WTA welcomes the opportunity to comment on the proposals and issues raised in the NPRM.

While a voluntary transition to ATSC 3.0 may provide broadcasters with new and innovative opportunities to serve some of their viewers, WTA is concerned about the effects the transition will have on the continued viability of MVPDs, particularly small MVPDs, who may

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<sup>1</sup> WTA – Advocates for Rural Broadband is a national trade association representing more than 325 rural telecommunications providers offering voice, broadband and video-related services in rural America. WTA members serve some of the most rural and hard-to-serve communities in the country and are providers of last resort to those communities.

<sup>2</sup> *Authorizing Permissive Use of the “Next Generation” Broadcast Television Standard*, Notice of Proposed Rulemaking, 32 FCC Rcd 1670 (rel. Feb. 24, 2017) (“NPRM”).

<sup>3</sup> NPRM ¶ 5.

have to substantially and expensively upgrade their reception and distributional networks to accommodate the ATSC transition, as well as on the finances of both rural and non-rural viewers who will have to bear the costs of upgraded television sets, antennas and MVPD services.

The NPRM proposes that MVPDs must continue to carry broadcasters' ATSC 1.0 signals pursuant to statutory mandatory carriage obligations, and that MVPDs not be required to carry broadcasters' ATSC 3.0 signals during the period when broadcasters are voluntarily implementing ATSC 3.0 service.<sup>4</sup> WTA agrees that any mandatory carriage obligations should attach only to ATSC 1.0 signals and that no MVPD should be mandated to carry ATSC 3.0 signals by Commission rules. Likewise, the Commission should prohibit a broadcast station from requiring any MVPD – and particularly small rural MVPDs – as a condition of retransmission consent to undertake the investments necessary to carry ATSC 3.0 signals during the voluntary transition. Forced MVPD conversions to ATSC 3.0 during the next three years as a condition of retransmission consent would be likely to further accelerate the exodus of small MVPDs from the video marketplace. Given that a significant number of retransmission consent agreements are up for renewal during the Fourth Quarter of 2017, it is critical for the Commission to put the latter prohibition in effect before the October 1, 2017 commencement of the retransmission consent negotiation period.

**I. Too Many Details Remain Unknown For MVPDs to Fully Comprehend the Technical and Financial Impact a Transition to ATSC 3.0 and Local Simulcasting Will Have on Cable Operators.**

In order to gauge the likely impact a transition to ATSC 3.0 will have on cable operators, the NPRM asks questions regarding what equipment would be necessary for an MVPD to carry

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<sup>4</sup> NPRM ¶ 28.

an ATSC 3.0 stream on a voluntary basis.<sup>5</sup> WTA is pleased that broadcast commenters recognize that MVPDs are currently technically incapable of retransmitting ATSC 3.0 signals.<sup>6</sup> WTA agrees with other commenters that “[b]ecause many aspects of the ATSC 3.0 standard have yet to be finalized and approved, it is difficult to predict at this time the cost of new or modified equipment, let alone test such equipment to verify compatibility with our platforms.”<sup>7</sup> In fact, the video operations staffs and vendors of various WTA members have confirmed that equipment necessary to facilitate a transition to ATSC 3.0 is not yet available and that it is unknown when such equipment will begin development let alone how much it will cost or when it will be available for purchase in the marketplace. Accordingly, although the extent to which new equipment and investment will be necessary cannot be reliably estimated at this time, it is certain that there will need to be financial investments made by MVPDs (and likely that such investments will be substantial) to enable retransmission of ATSC 3.0 signals.<sup>8</sup>

WTA understands that the new ATSC 3.0 standard entirely changes transmission to orthogonal modulation in contrast to the existing 8VSB broadcast format with which existing headend receivers are compatible. In order to receive new ATSC 3.0 signals, MVPDs that

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<sup>5</sup> *NPRM* ¶ 41.

<sup>6</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 at iii, GN Docket No. 16-142 (filed Apr. 13, 2016) (“Petition”) (stating that ATSC 3.0 is “not backward compatible with existing television receivers, just as the current DTV standard was not backward compatible with the previous, analog TV standard). See also Letter from Rebecca Hanson, SVP, Strategy and Policy, Sinclair Broadcast Group, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 16-142 at 1 (filed Dec. 12, 2016) (“Sinclair Dec. 12 *Ex Parte* Letter”) (explaining that “MVPDs are technically incapable of retransmitting Next Generation TV” that uses High Efficiency Video Coding, “which is not supported by current cable and DBS systems.”).

<sup>7</sup> See Letter from Brendan F. Haggerty, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 16-142, at 1 (filed Dec. 5, 2016).

<sup>8</sup> See Letter From Rick Kaplan, General Counsel and Executive Vice President, Legal and Regulatory Affairs, National Association of Broadcasters to Marlene H. Dortch, Secretary, FCC, GN Docket No. 16-142, at 2 (filed Dec. 8, 2016) (“NAB Dec. 8 *Ex Parte* Letter”) (stating that there may be costs associated with an MVPD’s choice to carry Next Generation TV signals).

receive broadcast signals over-the-air today will need to acquire and install a new ATSC 3.0-compatible hardware for each off-air broadcast station they carry.<sup>9</sup> This would likely involve multiple receivers and transcoders per over-the-air broadcast station. Additional investments in direct fiber connections to broadcast stations or third-party transport arrangements may also be necessary in the event that ATSC 3.0 signals have smaller or otherwise modified signal coverage areas than the current ATSC 1.0 signals. For example, one WTA member reports that construction of a direct fiber connection to its local broadcast stations (which are located outside of its service territory) will cost up to \$2 million, an onerous and burdensome outlay for small rural carrier whose only purpose for the fiber would be connecting to local broadcast stations to obtain broadcast feeds. MVPDs relying on existing third-party transport arrangements could see future increases in transport costs if the third-party passes along costs for investments that may be necessary to upgrade or replace existing equipment to receive ATSC 3.0 signals, not to mention the significantly increased bandwidth of ATSC 3.0 signals (approximately 20 Megabits per second (“Mbps”) compared with 9 Mbps for a regular high definition channel). Depending on the format in which signals are provided, transcoding the signals into a format that matches existing hardware may be required for some MVPDs.

New and potentially more expensive set-top boxes may also be necessary, which will lead to increased prices for consumers requiring new equipment and MVPDs who will have stranded investment associated with their existing set-top box inventory. It is also unclear what will be required of MVPDs to enable interactive programming over their systems and the impact

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<sup>9</sup> Some MVPDs receive their broadcast signals through transport from another carrier or through direct fiber connections to broadcast studios. WTA’s members’ operations span the gamut of over-the-air, third-party transport and direct fiber connections with some members utilizing all three methods of signal reception. An MVPD’s method of signal reception becomes more complex when it serves more than one DMA.



of additional programming content on bandwidth required for retransmission to (and from) consumers. Upgrades associated with ATSC 3.0 will require system integration and multiple levels of testing which will consume significant MVPD time and resources – particularly for MVPDs that have only a handful of staff or need to engage outside contractors for implementation. The cost of implementation will vary depending on unique circumstances but will be most significant for MVPDs that receive broadcast signals over-the-air and operate analog cable systems. Based on the costs of existing equipment, it is not unreasonable to expect several thousands of dollars in up-front costs per broadcast station for some MVPDs to accommodate ATSC 3.0.

The Commission proposes that broadcast stations voluntarily launching ATSC 3.0 broadcasts will be required to locally simulcast their ATSC 1.0 signals from a separate location to ensure that signals compatible with existing MVPD and consumer receivers remain available.<sup>10</sup> While ostensibly such arrangements will preserve availability of ATSC 1.0 signals, the Commission must impose conditions of the locations of the ATSC 1.0 transmitters to ensure that MVPDs that obtain broadcast signals over-the-air today are not required to make substantial investments to move or to upgrade those transmitters to continue receiving those signals.<sup>11</sup> It is extremely difficult to determine the true impact that local simulcasting may have on MVPDs without additional local market details regarding which broadcast stations will transition and when. For example, tower work may be necessary to reposition antennas in the direction of a “hosting” station that will broadcast an ATSC 1.0 signal on behalf of another broadcast station.

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<sup>10</sup> *NPRM* ¶ 9.

<sup>11</sup> *See* Comments of NCTA at 5-6, GN Docket No. 16-142 (filed May 26, 2016) (urging the Commission to “make clear that cable operators are to be held harmless in such situations by requiring any station transmitting an ATSC 3.0 signal over its transmitter to arrange for the delivery of a good quality ATSC 1.0 over-the-air signal to the cable headend” to avoid unfairly burdening cable operators with the costs associated with the change).

This may also require the use of new and more complex antenna systems. Because retransmission consent agreements often place the onus of signal reception entirely on small MVPDs, it is likely that small MVPDs will bear the costs of continued ATSC 1.0 signal reception in the event that a broadcast station begins to simulcast its signal from a nearby station. These and other costs associated with a broadcast station's voluntary transition to ATSC 3.0 should be borne by local broadcast stations seeking to launch ATSC 3.0 operations, *not* small rural MVPDs and their customers, and should be taken into consideration by the Commission in authorizing ATSC 3.0.<sup>12</sup>

Moreover, ATSC 3.0 implementation costs will likely be highest for small MVPDs which historically have little to no ability to influence the development of new technologies and are often the last participants in the marketplace to whom new equipment is made available at all or at a reasonable price. These factors highlight the fact that the costs of implementation may be disproportionately high for small MVPDs, particularly in the first years of a transition to ATSC 3.0 when equipment is brand new and has not yet made its way through the market to Tier 2 and Tier 3 carriers. Costs imposed upon small MVPDs in connection with the transition will ultimately be passed along to consumers in the form of higher cable rates. For small MVPDs with only a couple hundred or thousand video subscribers over which to spread costs, such an investment may push MVPDs out of the marketplace altogether and leave rural consumers with little or no facilities-based video service options. The Commission must take steps to ensure that a voluntary transition does not unreasonably burden small MVPDs and their customers, particularly when a significant number of rural consumers today are unable to receive free broadcast signals over-the-air at their residences.

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<sup>12</sup> See *NPRM* ¶ 13 (seeing comment on the Commission's role in evaluating local simulcasting agreements).

## **II. Retransmission Consent Negotiations Between Small MVPDs and Broadcast Stations Will Likely Result in Forced Tying of ATSC 3.0 Signals Similar to Tying of Multicast and Affiliated Cable Programming Networks.**

WTA generally agrees that MVPDs should not be required to carry ATSC 3.0 signals.

Leading up to the NPRM, broadcast commenters have continually dismissed the likelihood that ATSC 3.0 signals will be unilaterally tied by broadcasters to retransmission consent agreements regarding legacy ATSC 1.0 signals.<sup>13</sup> Although there may be some validity to the question of whether “any local broadcaster could force AT&T to do anything,”<sup>14</sup> broadcast stations have not disputed allegations by WTA and other small rural MVPD representatives that they can, and regularly do, require small rural MVPDs to agree to contract terms involving carriage of additional signals and networks as a condition of retransmission consent. Such demands are often made because broadcasters know that the economic fallout from an inability to reach agreement is substantially more destructive to small MVPDs that will lose customers than on a local broadcast station.<sup>15</sup> In a moment of candor, Nexstar Media CEO Perry Sook admitted that entrants in the MVPD marketplace “need local stations much more than we need them.”<sup>16</sup>

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<sup>13</sup> Interestingly, the Petition altogether omits any reference to retransmission consent negotiations and subsequent filings by some broadcasters seek the Commission to ignore the concerns of small MVPDs regarding the leverage of retransmission consent negotiations to obtain ATSC 3.0 carriage. *See* Sinclair Dec. 12 *Ex Parte* Letter at 2 (urging the Commission to avoid inquiry “on competitive industry business relationships” in determining whether ATSC 3.0 should be permitted on a voluntary basis). *See also* Comments of Cox Media Group at 3, GN Docket No. 16-142 (filed May 25, 2016) (omitting any reference to MVPDs but stating that “adoption of the Next Generation TV standard should be entirely voluntary”).

<sup>14</sup> Letter from Rick Kaplan, General Counsel and Executive Vice President, Legal and Regulatory Affairs, NAB, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 16-142, at 1-2 (filed Dec. 4, 2016).

<sup>15</sup> *See* CableFAX Daily, June 3, 2011 at 2 (regarding statements by CBS President and CEO Les Moonves that “the sky is the limit” regarding retransmission consent fees because the ability to blackout a broadcast signal on an MVPD system provides the “ultimate leverage” in retransmission consent negotiations).

<sup>16</sup> Ben Munson, *Nexstar CEO: vMVPDs Need Local TV Stations More Than We Need Them*, Fierce Cable (Feb. 28, 2017), <http://www.fiercecable.com/broadcasting/nexstar-ceo-vmvpds-need-local-tv-stations-more-than-we-need-them>. Although this statement referred to new virtual MVPD entrants in the market such as PlaystationVUE, DirecTV Now and Hulu’s live TV service, the general sentiment can be

Another broadcast executive admitted that “[b]roadcasting is at the core of what each of these services has to have to get off the ground.”<sup>17</sup> It is clear from the record before the Commission that broadcast stations have the upper-hand as it pertains to retransmission consent negotiations with small MVPDs, and they know it.

As has been documented for the Commission in prior proceedings, modern retransmission consent “negotiations” between broadcast stations and small MVPDs and the resulting agreements are anything but purely free market, voluntary transactions that result in terms agreeable to both parties. On the contrary, small MVPDs increasingly experience take-it-or-leave-it negotiations, which have ultimately resulted in double-digit per-subscriber price increases and additional carriage obligations (including carriage of multicast channels and unidentified cable programming networks) with no relief in sight. The choice in the modern video marketplace for the small MVPD is the irreversible loss of video subscribers to DBS providers on the one hand or passing along ever-increasing retransmission consent fees and reluctantly agreeing to carry additional networks their subscribers do not demand or may not even be known by the MVPD on the other hand.

For example, in addition to increased retransmission consent fees for its local broadcast signals, Sinclair Broadcasting’s purchase of the Tennis Channel activated a provision in retransmission consent agreements across the country that mandated carriage of (and payment for) an unidentified cable network now known to be the Tennis Channel. Rather than lose carriage of Sinclair stations altogether, which would have left some rural consumers without

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extrapolated to small rural MVPDs, many of which are new entrants into the video marketplace or have such small subscriber bases that they can be compared to start-ups with low numbers of current subscribers and little negotiating leverage.

<sup>17</sup> Harry A. Jessell, *Lougee: Tegna Nears Deal With Virtual MVPDs*, TVNewsCheck (Feb. 27, 2017) <http://www.tvnewscheck.com/article/101853/lougee-teгна-nears-deal-with-virtual-mvps>.

access to over-the-air or retransmitted broadcast signals, some small MVPDs felt no other choice but to accept the terms of the agreement. This scenario has been happening now for years, and it appears that broadcasters—particularly those affiliated with large national broadcast ownership groups or networks—are likely to leverage the retransmission consent process to compel MVPD’s to carry ATSC 3.0 signals in addition to or in place of legacy ATSC 1.0 signals.<sup>18</sup> Nothing in the record provides any assurance otherwise.

Furthermore, substantial questions remain regarding the reach of ATSC 3.0 signals and the continued availability of commercial grade ATSC 1.0 signals at cable headends and consumer households. Today, many rural consumers and small rural MVPDs are often unable to receive some or all ATSC 1.0 broadcast signals over-the-air in their communities. Rural MVPDs are often challenged with broadcast field strength levels that do not properly cover the DMA boundaries. Because broadcast stations know that carriage of broadcast networks is a “must have” for an MVPD service to be viable, there is no incentive, financial or otherwise, for broadcast stations to preserve or otherwise extend the over-the-air reach of their signals or to absorb any costs associated with signal reception. Retransmission consent fees historically have no correlation with signal coverage (i.e., broadcast stations receive retransmission consent fees for customers without regard to whether they can receive free over-the-air broadcast signals or not) and current retransmission consent agreements largely place the burden of signal reception on MVPDs.<sup>19</sup> Therefore, without further guidance from the Commission, it is not unreasonable

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<sup>18</sup> See Reply Comments of Raycom Media, Inc. at 2, GN Docket No. 16-142 (filed June 27, 2016) (“If MVPDs would like to offer their customers the improved picture and features Raycom stations can provide using the Next Generation TV standard, MVPDs may obtain those rights and resolve any costs that may arise through retransmission consent negotiations, the way all cost issues are resolved between Raycom stations and their carriers.”).

<sup>19</sup> *NPRM* ¶ 24 (seeking comment on broadcasters’ incentives to maintain existing service coverage or quality to viewers). See also Comments of DISH Network at 4, GN Docket No. 16-142 (filed May 26, 2016) (observing that broadcasters “do not appear to be concerned about the decrease in OTA coverage

to expect small MVPDs to bear any and all costs associated with changes in signal coverage and quality before or after a transition to ATSC 3.0.

### **III. Involuntary MVPD Carriage of ATSC 3.0 Signals Through Retransmission Consent Negotiations Will Result in Less Capacity for Independent Programming and Broadband Services On Rural Cable Systems.**

While broadcast stations and the Commission state that ATSC 3.0 will enable higher quality video and sound, more interactive programming, and advanced and localized emergency alerts,<sup>20</sup> the purported benefits enabled by the transition must be weighed against the costs of the transition. Beyond costs associated with upgrades to MVPD facilities discussed above, a transition to ATSC 3.0 – if not structured properly – will have a negative impact on the availability of independent, niche programming and broadband services over rural cable systems. Content distributed via ATSC 3.0 will consume much larger amounts of bandwidth capacity -- approximately 20-to-21 Mbps per channel -- on existing MVPD systems.<sup>21</sup> This is a disaster for analog cable systems and for many small digital cable systems. Even for larger IPTV systems, the typical WTA member and other rural local exchange carrier broadband networks would be hard pressed to accommodate additional bandwidth that would be required to retransmit ATSC 3.0 signals and additional associated content for each local broadcast station.

The MVPD investment necessary to accommodate ATSC 3.0 will divert resources from the provision of independent programming and broadband deployment. This means that a small MVPD may likely need to drop existing independent programming, forego future deals to carry

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area because pay-TV operators retransmit broadcasters' stations to those underserved subscribers, allowing broadcasters to extend the reach of their signals while collecting retransmission fees at the same time.”).

<sup>20</sup> *NPRM* ¶ 4.

<sup>21</sup> See Letter from Michael Nilsson, Counsel to the American Cable Association, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 16-142 at 5-6 (filed Feb. 13, 2017) (explaining that the ATSC 3.0 transition would increase the bandwidth consumption required for Big Four broadcast networks on a cable system from 36 Mbps to 84 Mbps).

new independent programs, or reallocate existing capacity used for broadband services to its managed video network. These negative impacts will be most pronounced in areas served by the smallest and most rural MVPDs. At a time when rural broadband deployment is a national priority, the Commission should take all necessary steps to avoid unnecessary diversion of resources from broadband deployment including prohibiting broadcast stations from tying carriage of ATSC 3.0 signals to retransmission consent negotiations and agreements at least until standards for redistribution are fully developed and MVPDs have a fair opportunity to fully assess the implications to their ability to serve their customers.

**IV. The Commission Should Prohibit As Bad Faith Tying of ATSC 3.0 Signals Through Retransmission Consent Negotiations For Existing ATSC 1.0 Signals During Any Voluntary Transition Period.**

Small MVPDs suffer from a substantial lack of negotiating leverage and historical trends regarding signal reception, multicast programming and affiliated cable networks demonstrate the high likelihood that carriage of ATSC 3.0 will be tied to ATSC 1.0 signals in retransmission consent negotiations between broadcasters and small MVPDs. The Commission should expressly prohibit the unilateral tying of ATSC 3.0 signals through retransmission consent negotiations. Broadcasters seeking to demand carriage of ATSC 3.0 signals should bear the burden of proving to consumers and MVPDs the value and benefits of the new standard.<sup>22</sup> In other words, carriage of ATSC 3.0 signals on MVPD systems should be determined by the demand in the marketplace.

In order for retransmission consent negotiations to take place in good faith, MVPDs need the ability to decline carriage of ATSC 3.0 signals without the substantial threat of losing access to legacy signals altogether. As discussed above, small MVPDs have little to no ability in the

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<sup>22</sup> Petitioners' Reply at 5-6, GN Docket No. 16-142 (filed July 27, 2016) ("If an MVPD chooses to offer its customers the improved quality of services and new features that broadcasters can provide using the Next Generation TV standard, this will be the MVPD's choice, and interested parties can address such carriage through negotiations.").

current retransmission consent marketplace to exclude conditions regarding multicast or affiliate cable programming from the negotiating table when local broadcast network affiliates are at issue. Hence, the Commission should prohibit broadcast stations from requiring MVPDs to carry their ATSC 3.0 signals as a condition of retransmission consent unless and until the Commission has mandated the carriage of ATSC 3.0 signals by the size or other classification of MVPDs in which the MVPD is included. This proposal accords with commitments by the broadcast industry that MVPDs will not be forced to undertake investments to carry ATSC 3.0 signals.<sup>23</sup>

A significant number of retransmission consent agreements are up for renewal by the end of 2017. Therefore, the Commission must take steps to ensure that MVPDs are not hamstrung into agreeing to terms in renewed retransmission consent agreements in which they are unable to fully understand. Broadcast stations and MVPDs would still be able to negotiate mutually agreeable terms in good faith, but one party should not be permitted to knowingly place the opposing party between a rock and a hard place in retransmission consent negotiations. Prohibiting as bad faith unilateral tying of ATSC 3.0 carriage to ATSC 1.0 retransmission consent agreements will ensure that the free market – rather than one segment of the video industry – determines the value ATSC 3.0 as it diffuses in the marketplace.

**V. The Commission Should Require Broadcast Stations to Disclose Intent to Transition to ATSC 3.0 in Retransmission Consent Negotiations During Any Voluntary Transition and Should Require Must-Carry Stations to Notify MVPDs At Least 90 Days Prior to Transition.**

Finally, WTA requests that the Commission require broadcast stations to disclose any plans they have to transition to ATSC 3.0 during retransmission consent negotiations that will

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<sup>23</sup> See NAB Dec. 8 *Ex Parte* Letter at 2 (reaffirming the commitment that “MVPDs will not be forced to carry Next Generation TV signals”).



occur between October 1, 2017 and when the Commission conducts a proceeding at a future date to sunset ATSC 1.0. Small MVPDs may likely incur costs associated with local simulcasting that will be arranged by broadcast stations and have no ability to influence the decision by a local broadcast station to transition and attendant local simulcasting arrangements. Small MVPDs have very few staff, with some lacking dedicated engineering and technical teams to make engineering and other adjustments that may be required. Furthermore, requiring disclosure of plans to launch ATSC 3.0 broadcast signals and local simulcast arrangements during forthcoming retransmission consent negotiations will put small MVPDs on alert prior to entering into new three-year agreements this year and will provide small MVPDs with a better understanding of the potential consequences of retransmission consent agreements to be signed.

Finally, the NPRM proposes that must-carry broadcast stations provide only 60 days notice to local MVPDs of their intent to launch ATSC 3.0 and simulcasting, but makes no mention of MVPD notice requirements for retransmission consent stations.<sup>24</sup> Sixty days is likely too short of a time period for small MVPDs to investigate, understand, and implement any changes that may be required of them as a result of a local simulcast arrangement, particularly for MVPDs that must engage a third-party contractor for technical assistance. The Commission should instead require must-carry broadcast stations to provide at least 90 days notice to MVPDs similar to the notice requirements in the Commission's incentive auction repacking procedures.<sup>25</sup>

## **VI. Conclusion**

The transition to ATSC 3.0 broadcasting holds much promise for local broadcast stations but raises a number of questions and potential burdens for small MVPDs and their customers,

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<sup>24</sup> *NPRM* ¶ 37.

<sup>25</sup> *Incentive Auction Task Force and Media Bureau Adopt Post-Incentive Auction Transition Scheduling Plan*, Public Notice, DA 17-107 at ¶ 51 (rel. Jan. 27, 2017) (outlining procedures for notifying MVPDs of post-incentive auction not less than 90 days prior to a station's transition to a post-auction channel).

many of which cannot be answered or otherwise understood at this time. Accordingly, the Commission should expressly prohibit the tying of ATSC 3.0 carriage to retransmission consent negotiations. The Commission should also require local broadcast stations to disclose their plans to transition to ATSC 3.0 and local simulcasting during retransmission consent negotiations that are scheduled to take place at the end of 2017.

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