Before the
Federal Communications Commission
Washington, DC. 20554

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

REPLY COMMENTS OF COCOLA BROADCASTING COMPANIES, LLC

Cocola Broadcasting Companies, LLC ("CBC"), by its attorney, here submits reply comments in the referenced proceeding, looking to the prompt, voluntary deployment of new services utilizing the suite of standards known as ATSC 3.0. CBC is licensee of full service TV broadcast station KGMC, Clovis, California, and holds the controlling interest in another full service station, KKJB, Boise, Idaho. Both facilities are co-located with a group of commonly owned low power television broadcast stations. CBC was an early adopter in the transition to Digital Television, and looks forward to assuming leadership, again, in fostering new services under the banner of 3.0.

Both of CBC's full service TV stations currently stand out-of-core and will need to change channels. Pursuant to the invitation extended by DA-17-106-A1, released January 21, 2017, CBC chose to seek service waivers for these facilities, in lieu of transition cost reimbursements. Our waiver request confirmed the intention to retain a conventional, free over-the-air channel. We committed to interference free service, with special protection language based on Low Power FM policy, see Section 73.809(d) and (e) of the Rules and Regulations. Within those constraints, CBC sought broad discretion to adopt any appropriate service model, as contemplated by Section 73.624(c) of the Rules:

> (c) Provided that DTV broadcast stations comply with paragraph (b) of this section [one "free" channel], DTV broadcast stations are permitted to offer services of any nature, consistent with the public interest, convenience, and necessity, on an ancillary or supplementary basis. The kinds of services that may be provided include, but are not limited to computer software distribution, data transmissions, teletext, interactive materials, aural messages, paging services, audio signals, subscription

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video, and any other services that do not derogate DTV broadcast
stations' obligations under paragraph (b) of this section. Such
services may be provided on a broadcast, point-to-point or
point-to-multipoint basis, provided, however, that any video broadcast
signal provided at no direct charge to viewers shall not be considered
ancillary or supplementary.
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CBC sought waiver of only one rule, Section 73.624(c)(1), which requires that any such supplementary service be compliant "with the Commission regulations that apply to those services. . . ." CBC noted that, "Should it prove necessary to apply a strong regulatory hand in the future, the Commission will have many tools for doing so, not least the public service showing required of the Station at renewal time, which encompasses the ancillary services as part of the entire service record, Section 73.624(c)."

With that background, we turn to the proposals set forth in this docket, and the comments of interested parties. Our responses center upon the "simulcasting" requirement, and the application to 3.0 of legacy full service TV broadcasting rules and policies.

I. THERE SHOULD BE NO REQUIREMENT THAT 3.0 SERVICE "REPLICATE" A 1.0 "STREAM."

The Notice of Proposed Rule Making ("NPRM" at para. 11) seeks comment on whether simulcasting of the ATSC 3.0 stream should be defined as transmitting a stream of identical content to that found on the required 1.0 stream. Fundamentally, we submit that the term "simulcasting" should not be used at all with respect to possible 3.0 implementation. Such a term narrows permitted use and, at least by implication, repeals the liberal standard wisely adopted years ago in Section 73.624(c). Comments of America's Public Television Stations, et al., at p. 5 are well argued with respect to the "identical" stream idea: "The Commission should refrain from adopting such requirements and, indeed, should not define simulcasting arrangements with respect to content at all." Also see comments

of the Advanced Television Broadcasting Alliance, p. 3: ". . . [S]imulcasting, when undertaken, should not be subject to rigid requirements regarding format and content."

The NPRM, paras. 15 – 22, posits two possible approaches. In one, the two streams, using 1.0 and 3.0, would be separately licensed, and stations would be apply for authority to move one stream or the other to a partnering station. Alternatively, in a "multicast" approach, a station could move its 1.0 stream to another station and adopt 3.0 stream at home exclusively, without a separate FCC application. CBC suggests that this dichotomy may be based on a misconception. At the heart of ATSC 3.0 in an internet protocol organization that need not constitute itself into an actual "stream." The Comments of LG Electronics, Inc., even while not addressing this point, are instructive. As stated there (p. 20):

> Unlike the current broadcast standard, ATSC 3.0 is an IP-based standard that will allow broadcasters to provide viewers with Ultra High Definition Video, additional free over-the-air program streams, immersive sound, improved in home and mobile reception, and new personalized and interactive features that will enhance the experience of watching broadcast content.

With the functionality that can be anticipated from future 3.0 deployment, the effort to define "simulcasting" or "streaming" quickly breaks down. As one commenting party put it: "Univision urges the Commission to seek a third path forward: a 'light' licensing model whereby an ATSC 3.0 stream is attributable to the originating license that also is transmitting in ATSC 1.0 and does not require any separate licensing or Commission approval for those shared operations."[1] CBC might take the analysis one step further, and note that the term "stream" unduly limits the possibilities. Rather, we would just call the new ATSC 3.0 offering generically a "program service" – something the Commission clearly avoids regulating whenever it can. Aside from demonstrating compliance with a required 1.0 transmission, the Commission's policies should not restrict the flow of offered 3.0 services among cooperating program strategies, approaches or participating stations. As noted by the Public Broadcasting Service, *et al*.:

1 Comments of Univision Communications Inc., at p. 4.

> Both the licensing and the multicasting approach would unduly impede the adoption of ATSC 3.0. Instead, the Commission should adopt a straightforward origination approach that will facilitate station collaboration, while achieving the *certainty* of the licensing approach along with the *simplicity* of the multicasting approach.[2]

The complex question of cable and MVPD carriage for 3.0 raises a danger of bogging down 3.0 implementation, but is readily left to another day. MVPD Carriage is a significant issues because it involves many interested parties beyond broadcasting, see NPRM paras. 28 – 42. Comments of the American Cable Association raise the specter of broadcasters attempting to claim that language in existing ATSC 1.0 agreements can be employed to force ATSC 3.0 carriage, pp. 11-13. Comments of the National Cable Television Association at pp. 18-21, set forth at length the reasons that must carry obligations remain as applicable to 1.0, but should not be extended to any 3.0 services. Many of these concerns are valid, but all can be avoided during this voluntary implementation stage by the Commission squarely holding that no service alongside or supplemental to the required free 1.0 channel is inherently a "stream" or entirely "broadcasting," 47 U.S.C. Sec. 153(7). As a corollary, full replication or "simulcasting" is not required and may not be possible.

II. THE FULL PANOPLY OF PUBLIC INTEREST OBLIGATIONS SHOULD NOT BE APPLIED TO SERVICES USING ATSC 3.0.

CBC submits that the classification of ATSC 3.0 services as "broadcasting" – or not – is a policy choice, not dictated by the express terms of the Communications Act, see NPRM para. 67. It is a circularity to note that the Act contains a definition of "broadcasting" as "dissemination of radio communications intended to be received directly by the public, directly or by the intermediary of relay stations," 47 U.S.C. 153(6). But the authority to promote new services such as 3.0 derives in part from a section of the law entitled Broadcast Spectrum Flexibility [47 U.S.C. Sec. 336 et seq.], and services

2 Comments of the Public Broadcasting Service, Corporation for Public Broadcasting, and America's Public Television Stations, p. 11 [emphasis in original], and fuller discussion in pp. 11-13.

there are described as "advanced television services," a term not limited in the statute. The authority to regulate such services is permissive, and does not constrain the Commission's charter to "broadcasting."[3] An excellent discussion of this issue appears in the Comments of AT&T, fn. 36 at 12 – 13, where that party for good reason expresses "doubt" (without taking a position now) that ATSC 3.0-based video programming service would qualify as "broadcasting."[4]

That choice is a momentous one and the path being proposed by the Commission, we submit, is not to be preferred. From the classification as "broadcasting" the Commission proposes (NPRM, para. 68) to apply all broadcast rules to Next Gen TV stations, including those regarding foreign ownership, political broadcasting, children's programming, children's programming limits and reporting, equal employment opportunities, public inspection file, main studio, indecency, sponsorship identification, contest rules, CALM ACT, EAS, closed captioning and video description.

This is a remarkable listing, especially given that the Commission's recent actions have specifically and deliberately liberalized a number of the items. The incentive auction itself involves the downgrading or outright extinguishment of full service TV stations subject to all these constraints, so that spectrum could be repackaged and sold to entities *not subject to these rules at all*. With respect to internet protocol, the Commission is moving away from full Title II regulation, preferring to employ a "light touch" Title I approach. While no one is claiming that all these rules should be sunset for ATSC 1.0 program services, their automatic bulk transference 3.0 has not been justified.

We do not know what IP based services might be possible or likely under 3.0. But a prosaic example might illustrate. One program offering might be a 24-hour political news and analysis service,

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3 In prescribing the regulations the Commission "shall" – "apply to any other ancillary or supplemental service such of the Commission's regulations as are applicable to the offering of analogous services by any other person, except that no ancillary or supplementary service shall have any rights to carriage under Section 614 or 615 or be deemed a multichannel video programming distributor for purposes of Section 628." 47 U.S.C. Sec. 336(b)(3).

4 The definitions at the outset of the Communications Act do not by themselves constitute a classification scheme, and there can be substantial overlap in policy and in practice among "Broadcast Station" 47 U.SC. Sec. 153(5); "Broadcasting," 153(6); "Information Service," 153(20); "Mobile Service,"153(28); and "Radio Communication" 153(33); and "Transmission of Energy by Radio, 153(50).

with interactive features enabling viewers to upload videos or other program content. A mandate that this service include children's content, and children's commercialization and reporting would make no sense. Meanwhile another program offering might offer full time children's programming, and a children's participation feature subject to a conditional access to assure parental consent. A ban on this service because it is access-limited, or a requirement that it provide "reasonable access" for candidate for federal elective office would make no sense. [5]

Given the scope of industries potentially affected by 3.0, including Broadcast, Cable, MVPD's, common carrier telecom services, and internet companies it is striking that virtually none of the commenting parties endorsed the Commission's adoption *in toto* of the full calcified collection of broadcast regulations. As stated (p. 3) by the Advanced TV Broadcast Alliance, "Moreover, simulcasting, when undertaken, should not be subject to rigid requirements regarding format and content."[6]

III. CONCLUSION

The original Petitioners sought prompt action by the Commission to authorize voluntary use of ATSC 3.0. The Commission responded to this call commendably and quickly. Many of the details will need to be worked out and refined, but this NPRM was a good starting place. Cocola Broadcast Companies looks forward to the early adoption of 3.0 features, through its full service TV stations, low power power TV stations, or in appropriate combinations.

We found in the initial comments support for two core contentions. First, that new 3.0 services should not be constrained by artificial definitions of service replication, simultaneous transmission or

5 And see the discussion of innovative children's TV projects in Comments of Public Broadcasting Service, *et al*., pp. 5-6.

6 Also see Comments of Univision Communications, Inc.: "[S]o too should the Commission reject calls in the instant proceeding for the imposition of additional regulatory burdens based solely upon an upgrade in transmission capability." (fn. 9 at p. 4).

streaming. Second, that the aging tool kit of regulatory mandates on television broadcasting not be applied across the board to 3.0 services. Regulatory forbearance will speed the adoption of innovative service that all should welcome.

Respectfully submitted,

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