

August 21, 2017

BY ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: *Ex Parte* Communication in GN Docket No. 16-142

Dear Ms. Dortch:

On August 17, 2017, representatives of the American Television Alliance met with staff from the Office of General Counsel to discuss the Commission's authority to adopt ATVA's suggestions regarding the proposed transition to ATSC 3.0. Present on behalf of the Commission were William Richardson, David Konczal, and Susan Aaron (by telephone) of the Office of General Counsel. Present on behalf of ATVA were Executive Director Mike Chappell, Alison Minea and Jeff Blum of DISH, Maureen O'Connell of Charter Communications, Amanda Potter and Brendan Haggerty of AT&T, Leora Hochstein and William Wallace of Verizon, Mary Lovejoy of the American Cable Association, and Mike Nilsson and Mark Davis of Harris, Wiltshire & Grannis.

As discussed below, the Commission has numerous sources of authority *in addition to* the retransmission consent statute to condition a station's use of the ATSC 3.0 standard. These include, either individually or in combination:

- Section 303(g) (requiring the Commission to “generally encourage the larger and more effective use of radio”), either on its own or in conjunction with Section 303(r) (authorizing the Commission to “[m]ake such rules and regulations *and prescribe such restrictions and conditions*, not inconsistent with law, as may be necessary to carry out the provisions of this chapter”).
- Section 303(b) (requiring the Commission to “[p]rescribe the nature of the service to be rendered by each class of licensed stations and each station within any class”).
- Section 307(b) (requiring the Commission “to provide a fair, efficient, and equitable distribution” of broadcast service).

- Section 336 (requiring the Commission to “prescribe” regulations for “advanced television” services and authorizing the Commission to require high definition television broadcasts, among other grants of authority).
- Section 316 (authorizing the Commission to “modify” broadcast licenses).
- The Commission’s authority to waive the requirement to transmit in ATSC 1.0 and to condition any such waiver as necessary to further the public interest.

I. Background.

ATVA believes that the broadcasters’ proposed transition to the ATSC 3.0 format should accomplish two goals: it must not harm viewers by depriving them of existing service and it must be truly “voluntary” for all parties.¹ It offered a variety of suggestions for how the Commission might accomplish these goals. These include (but are not limited to) the following:

- In order to ensure that the transition is “voluntary” for all parties, the Commission should require broadcasters to negotiate separately for first-time carriage of ATSC 3.0 signals.²
- In order to prevent service loss, the Commission should require simulcasting,³ encourage simulcasting from existing facilities,⁴ and otherwise limit service loss from simulcasting from other facilities.⁵
- In order to prevent loss of service quality, the Commission should prohibit stations from downgrading the format or picture quality of simulcasts⁶ and require simulcasts to include the same content as ATSC 3.0 transmissions.⁷

¹ See Comments of the American Television Alliance, GN Docket No. 16-142 (filed May 9, 2017) (“ATVA Comments”).

² *Id.* at 25.

³ Reply Comments of the American Television Alliance at 2-8, GN Docket No. 16-142 (filed June 8, 2017) (“ATVA Reply Comments”).

⁴ ATVA Comments at 31-35.

⁵ *Id.*

⁶ *Id.* at 35-37.

⁷ *Id.* at 37.

ATVA also explained that the Commission possesses ample statutory authority to adopt these suggestions.⁸

With respect to our separate-negotiation proposal, we continue to believe that the Commission possesses authority under *both* Section 325 of the Act and the various provisions governing broadcast licensees described in more detail below.⁹ Section 325 requires the Commission to “establish regulations to govern the exercise by television broadcast stations of the right to grant retransmission consent.”¹⁰ Broadcasters and MVPDs have long disagreed about whether this provision permits the Commission to allow MVPDs to carry signals during a retransmission consent dispute when the prior agreement has expired.¹¹ Our separate-negotiation proposal, however, requires the Commission to do no such thing. Rather, if adopted, the proposal forbids a station from executing an agreement for first-time carriage of ATSC 3.0 signals unless the station and the MVPD are parties to an existing retransmission consent agreement for ATSC 1.0 signals with at least one year remaining on the term.¹²

Perhaps realizing this, broadcasters focus instead on disputing our claim that such a one-time negotiation rule “relates only to the negotiating *process*”.¹³ They argue instead that our proposal represents a “substantive” intervention into retransmission consent negotiations of the sort that the Commission has previously declined to take.¹⁴ We continue to think that a proposal requiring separate negotiation for first-time ATSC 3.0 carriage, but which says nothing about the substance of such negotiations, cannot reasonably be described as “substantive.” Yet even assuming for the sake of argument that broadcasters’ characterization were correct, broadcasters do not claim that Congress *forbade* the Commission from addressing substance altogether. Nor could they.¹⁵ If the Commission finds that it serves the public interest to address “substance” in

⁸ *Id.* at 51-54.

⁹ *See, e.g.*, Letter from Michael Nilsson to Marlene Dortch, MB Docket No. 15-216 (filed Mar. 15, 2016) (discussing a wide range of legal authority permitting the Commission to regulate retransmission consent negotiations).

¹⁰ 47 U.S.C. § 325(b)(3)(A).

¹¹ *See, e.g.*, Reply Comments of the National Association of Broadcasters at 44, MB Docket No. 15-216 (filed Jan. 14, 2016) (citing 47 U.S.C. § 325(b)(1)(A)).

¹² ATVA Comments at 25.

¹³ *Id.* at 52.

¹⁴ Reply Comments of Sinclair Broadcast Group at 8, GN Docket No. 16-142 (filed June 8, 2017).

¹⁵ For example, such a claim could not be squared with the requirement that differences in prices and other terms and conditions be “based on competitive marketplace considerations.” 47 U.S.C. § 325(b)(3)(C)(ii); *see also id.* § 325(b)(3)(A) (directing the Commission “to

the unique circumstances presented by the proposed ATSC 3.0 transition, it plainly has legal authority to do so.¹⁶

As for the Commission's authority over its broadcast licensees under other provisions of the Communications Act, the Commission has broad authority—subject only to arbitrary-and-capricious review under the Administrative Procedure Act¹⁷—both to adopt a new transmission standard and to condition that standard as necessary to ensure that it serves the public interest.¹⁸ The broadcasters appear to concede this point: if they thought otherwise, they presumably would not have proposed their *own* “simulcasting” condition.¹⁹ At the request of Commission staff, the balance of this letter examines the Commission's authority under these other provisions in more detail.

II. General Provisions Relating to Broadcast Service.

The following provisions, taken singly or as a group, provide more than adequate authority for the Commission to condition the adoption of the ATSC 3.0 standard as ATVA has proposed.

A. Sections 303(g) (Effective Use of Radio) and 303(r) (Conditioning Regulation of Radio Transmissions).

The Commission and courts have repeatedly found that Section 303(g), employed alone or in conjunction with Section 303(r), grants the Commission extremely broad authority to regulate broadcast television. Those provisions also provide ample authority for the FCC to condition the use of the ATSC 3.0 standard as ATVA requests here.

Section 303(g) empowers the Commission to “[s]tudy new uses for radio, provide for experimental uses of frequencies, and generally encourage the larger and more effective use of

govern the exercise by television broadcast stations of the right to grant retransmission consent. . . .”).

¹⁶ See 47 U.S.C. §§ 325(b)(3)(A), (b)(3)(C)(ii); *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

¹⁷ See, e.g., *NTCH, Inc. v. FCC*, 841 F.3d 497, 506-07 (D.C. Cir. 2016) (reviewing FCC's decision to impose conditions under the arbitrary-and-capricious standard).

¹⁸ See, e.g., *GTE Serv. Corp. v. FCC*, 782 F.2d 263, 268 (D.C. Cir. 1986) (explaining, in the context of license-transfer proceedings, that when a statute directs the Commission to act in the public interest, “the Commission may impose conditions whenever in the absence of such conditions the transfer would not be in the public interest.”).

¹⁹ Petition of National Association of Broadcasters at 17-18, GN Docket No. 16-142 (filed Apr. 26, 2016).

radio in the public interest.”²⁰ For decades, the Commission has interpreted that provision to directly authorize a broad range of regulatory activity over broadcasters, from instituting the prime time access and syndication rule²¹ to amending the table of assignments.²² Just this year, the Commission relied on this provision to permit channel sharing outside the auction context.²³

Likewise, the courts have long endorsed the Commission’s broad interpretation of its powers to regulate broadcasting in the “public interest” under Section 303(g).²⁴ In *NBC v. United States*, the Supreme Court invoked Section 303(g) in upholding the Commission’s authority to regulate the relationship between broadcast licensees and their network affiliates.²⁵ And the Commission’s Section 303(g) authority over television broadcasters is so broad that it

²⁰ 47 U.S.C. § 303(g).

²¹ *Mt. Mansfield Television, Inc. v. FCC*, 442 F.2d 470, 479 (2d Cir. 1971) (Section 303(g) supports prime time access rule and syndication rule for television broadcasters).

²² *Springfield Television of Utah, Inc. v. FCC*, 710 F.2d 620, 622 (10th Cir. 1983) (noting that the FCC amends the Television Table of Assignments pursuant to its authority in 303(g), 303(r), and 307(b)).

²³ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, 32 FCC Rcd. 2637, ¶ 6 (2017) (“We conclude that specific provisions of Title III of the Communications Act of 1934, as amended (the ‘Act’), provide us ample authority to adopt rules to expand channel sharing outside the auction context. Section 303(g) authorizes the Commission to ‘generally encourage the larger and more effective use of radio in the public interest.’ Consistent with that provision, channel sharing promotes efficient use of spectrum by allowing two or more television stations to share a single 6 MHz channel.”) (internal citations omitted).

²⁴ *See, e.g., NBC v. United States*, 319 U.S. 190, 218 (1943) (“[T]here is no evidence that Congress did not mean its broad language [in Section 303(g), (i), and (r)] to carry the authority it expresses.”); *id.* at 219 (“In the context of the developing problems to which it was directed, the Act gave the Commission not niggardly but expansive powers. It was given a comprehensive mandate to ‘encourage the larger and more effective use of radio in the public interest,’ if need be, by making ‘special regulations applicable to radio stations engaged in chain broadcasting.’” (quoting 47 U.S.C. §303(g), (i))); *Nat’l Ass’n of Regulatory Util. Comm’rs v. FCC*, 525 F.2d 630, 639 (D.C. Cir. 1976) (referring to the Commission’s “broad statutory power” under Section 303(g)); *Network Project v. FCC*, 511 F.2d 786, 794 (D.C. Cir. 1975) (Section 303(g) authorizes regulation of satellite communications project).

²⁵ *NBC*, 319 U.S. at 216-21 (upholding rule prohibiting grant of licenses to radio stations that had entered “exclusive affiliation” agreements with a network). The Court cited not only Section 303(i) but also Section 303(g) and related provisions directing the Commission to regulate broadcasting in the public interest. And it concluded that the Commission had authority to adopt the rule despite the lack of an explicit grant of authority to the Commission to “deal with network practices found inimical to the public interest.”

led the Supreme Court to endorse the Commission's ancillary authority over nascent cable companies in *Midwest Video Corp.*²⁶

The Commission and courts often cite Section 303(r) in conjunction with Section 303(g) as providing additional authority for the Commission to *condition* its regulation of radio transmission to satisfy broad considerations of public interest. Section 303(r) provides the FCC the authority to “[m]ake such rules and regulations *and prescribe such restrictions and conditions*, not inconsistent with law, as may be necessary to carry out the provisions of this chapter.”²⁷ Only five years after the Communications Act took effect, the D.C. Circuit endorsed the proposition that, “if the power granted in Sec. 303(g) was sufficient to authorize experimental grants . . . , then it is clear the Commission had the right to apply conditions and to insist upon their observance.”²⁸ The Commission has similarly held that Section 303(g), in combination with Section 303(r), authorizes the FCC to condition its regulation of the radio spectrum to serve the public interest.²⁹ And it has previously conditioned the adoption of a broadcast standard in order to prevent an anticompetitive result that would otherwise result from adoption of that standard.³⁰

In conditioning a station's use of the ATSC 3.0 standard, the FCC would be regulating at the very heart of its core area of power to “encourage the larger and more effective use” of broadcast television³¹—both where such conditions apply to service area and picture quality and

²⁶ *United States v. Midwest Video Corp.*, 406 U.S. 649, 669 (1972). The Commission also relies on its Section 303(g) and 303(r) authority when assigning spectrum to television stations. See, e.g., *Amendment of Section 73.606(b), Table of Allotments, Television Broad. Stations. (Albion, Nebraska)*, 10 FCC Rcd. 3183 (1995).

²⁷ 47 U.S.C. § 303(r) (emphasis added).

²⁸ *Crosley Corp. v. FCC*, 106 F.2d 833, 836 (D.C. Cir. 1939).

²⁹ See, e.g., *Authorized Entities & Authorized Users Under the Commc'ns Satellite Act of 1962*, 4 FCC.2d 421, ¶¶ 16-17 (1966) (conditions set for satellite communication); *Radiotelephony for Navigational Commc'n.*, 42 FCC 955, ¶ 16 (1959) (conditions set for special VHF use).

³⁰ *Amendment of the Commission's Rules to Establish a Single AM Radio Stereophonic Transmitting Equipment Standard*, 8 FCC Rcd. 8216, ¶ 29 (1993) (“29. Patent Licensing Policies. As proposed in the Notice, we are conditioning the selection of Motorola's system as the AM stereo standard by requiring Motorola to license its patents to other parties under fair and reasonable terms.”); *Advanced Television Systems and Their Impact Upon The Existing Television Broadcast Service*, 11 FCC Rcd. 17771, ¶ 55 (1996) (“We reiterate that adoption of this standard is premised on reasonable and nondiscriminatory licensing of relevant patents, but believe that greater regulatory involvement is not necessary at this time. We remain committed to this principle and if a future problem is brought to our attention, we will consider it and take appropriate action.”).

³¹ 47 U.S.C. § 303(g).

where they apply to MVPD carriage of the ATSC 3.0 signal. Sections 303(g) and (r), among others, provide the FCC authority to condition the ATSC 3.0 standard on requirements that serve the public interest so long as the Commission adequately explains why imposition of the conditions is necessary in the public interest.

B. Section 303(b) (“Nature of the Service”).

Section 303(b) provides the Commission with additional and independent authority to condition a broadcaster’s use of ATSC 3.0—including conditions related to retransmission consent. That provision requires the Commission to “[p]rescribe the nature of the service to be rendered by each class of licensed stations and each station within any class.”³² The power to “prescribe the nature of the service” on its face grants the Commission the power to *adopt* a broadcast-transmission standard such as ATSC 3.0 as well as the conditions of its use during and after the transition (*e.g.*, requiring continued HD simulcasts, limiting loss of service coverage during the transition, and mandating more robust ATSC 3.0 signal coverage). The D.C. Circuit, however, has held that this power also includes the authority to *regulate* the licensee’s commercial agreements related to its licensed services.

For example, in *Cellco Partnership v. FCC*,³³ the Commission adopted a data-roaming rule providing that if cellular carriers offered wireless data service to their customers, they had to offer data roaming agreements to other providers on commercially reasonable terms. The D.C. Circuit held that even though “the data roaming rule dictates certain interactions between licensees and third parties,” it was still within the Commission’s authority under 47 U.S.C. § 303(b) because it “merely defines the form mobile-internet service must take for those who seek a license to offer it.”³⁴ Many of our proposals ask the Commission to do essentially the same thing here—to say, for example, that *if* a broadcaster chooses to use spectrum to broadcast in the ATSC 3.0 format, it must provide signals to MVPDs that carry it today.³⁵ Likewise, *if* a broadcaster chooses to transmit in the ATSC 3.0 format, it may enter into an agreement for the initial carriage of ATSC 3.0 broadcasts only when the parties to the agreement have an existing retransmission consent agreement covering the ATSC 1.0 broadcasts that has at least one year remaining in the term.³⁶

³² 47 U.S.C. § 303(b).

³³ 700 F.3d 534 (D.C. Cir. 2012).

³⁴ *Id.* at 542-43.

³⁵ ATVA Comments at 35.

³⁶ See also *Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications*, 28 FCC Rcd. 7556, ¶ 91 (2013) (“We conclude that Section 303(b) provides the Commission with authority to apply the bounce-back requirement to CMRS providers because the rule prescribes the nature of the service to be rendered by CMRS providers in their use of spectrum. Specifically, the rule requires that, in furtherance of the public interest purposes noted herein, CMRS providers that seek to use spectrum for the provision of covered text messaging services offer a service that includes the provision of certain text

C. Section 307(b) (“Fair, Efficient, and Equitable Distribution” of Broadcast Service).

The Commission may also impose conditions under Section 307(b), which directs it “to provide a fair, efficient, and equitable distribution” of broadcast service.³⁷ Section 307(b) gives the Commission “broad discretion . . . to determine the public interest” and to take actions that serve that interest.³⁸ Like section 303(g), section 307(b) is an independent mandate for the Commission to act.³⁹ Under this provision, the Commission “strongly” disfavors loss of broadcast service.⁴⁰ Thus, consistent with Congress’s directives in the Spectrum Act and the rules subsequently adopted by the Commission for the broadcast repack,⁴¹ Section 307(b) authorizes the Commission to adopt baseline safeguards governing the transition. This includes, for example, a robust simulcast requirement that prevents loss of service—including loss of HD service—and a rule requiring broadcasters to offer a more robust ATSC 3.0 signal.

D. Section 336 (“Advanced Television” Service).

The Commission may also impose conditions under a variety of provisions in Section 336.⁴²

- Section 336(b)(1) requires the Commission to permit broadcasters to offer “ancillary or supplementary services” only if doing so “is consistent with the technology or method

messaging functions—namely, the bounce-back notification, which ensures that consumers using the service do not get the false impression that their text to 911 was received by emergency services.”).

³⁷ 47 U.S.C. § 307(b).

³⁸ *Winter Park Comm’ns, Inc. v. FCC*, 873 F.2d 347, 352 (D.C. Cir. 1989).

³⁹ *Policies to Promote Rural Radio Serv. and to Streamline Allotment and Assignment Procedures*, 25 FCC Rcd. 1583, ¶¶ 8, 12 (2010) (describing section 307(b)’s “mandate”).

⁴⁰ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, 27 FCC Rcd. 12357, ¶ 48 n.88 (2012).

⁴¹ *See* 47 U.S.C. § 1452(b)(2) (requiring the Commission to make “all reasonable efforts to preserve . . . the coverage area and population served of each broadcast station licensee”); *Expanding the Economic Innovation Opportunities of Spectrum Through Incentive Auctions*, 29 FCC Rcd. 6567, ¶ 179 (2014) (interpreting the Spectrum Act to adopt the repack methodology preferred by broadcasters, which “preserve[s] [over-the-air broadcast] service[s] to the same specific viewers” served by the broadcast station as of the date of the enactment of the Spectrum Act).

⁴² Section 336(a) references “advanced television services,” which includes broadcasts made using the ATSC 3.0 standard. The Communications Act defines “advanced television services” as “television services provided using digital or other advanced technology.” 47 U.S.C. § 336(i)(1). The Commission has employed a similarly broad definition. *See Advanced Television Sys. and Their Impact Upon the Existing Television Broad. Serv.*, 7

designated by the Commission for the provision of advanced television services.”⁴³ This standard implies that the Commission has the authority to “designate” the “technology” and “method” for the “provision” of advanced services in the first place. (ATVA’s proposals all relate to the “technology” or the “method” for the “provision” of ATSC 3.0.)

- Section 336(b)(2) requires the Commission to ensure that ancillary or supplementary services do not derogate advanced television services and expressly acknowledges the Commission’s authority to “require” HD broadcast service.⁴⁴
- Section 336(b)(4) requires the Commission to “adopt such technical and other requirements as may be necessary or appropriate to assure the quality of the signal used to provide advanced television services.”⁴⁵ Numerous ATVA proposals are “necessary or appropriate” to “assure the quality of the [ATSC 1.0 simulcast or ATSC 3.0] signal,” including, for example, ATVA’s proposed prohibition on downgrading the format or picture of the ATSC 1.0 simulcasts and the requirement that ATSC 1.0 simulcasts include the same content as the ATSC 3.0 transmissions.
- And Section 336(b)(5) requires the Commission, in adopting regulations for “advanced television” licenses, to “prescribe such other regulations as may be necessary for the protection of the public interest, convenience, and necessity,” and has been broadly interpreted by the Commission.⁴⁶

E. Section 316 (Modification of Licenses).

The Commission could impose the functional equivalent of conditions under its authority to “modify” licenses under 47 U.S.C. § 316. That provision permits the Commission to modify any broadcast license “if in the judgment of the Commission such action will promote the public

FCC Rcd 6924, ¶ 1 n.1 (1992) (advanced television services “refers to any television technology that provides improved audio and video quality or enhances the current television broadcast system.”).

⁴³ 47 U.S.C. § 336(b)(1).

⁴⁴ 47 U.S.C. § 336(b)(2). Significantly, the Commission relied on its broad authority in Section 336 when it codified the anti-degradation principle incorporated into its existing rules. *See* 47 C.F.R. § 73.624(b)(providing that “[t]he DTV service that is provided pursuant to this paragraph must be at least comparable in resolution to the analog television station programming transmitted to viewers on the analog channel.”).

⁴⁵ 47 U.S.C. § 332(b)(4).

⁴⁶ 47 U.S.C. § 336(b)(5); *see also DTV Consumer Education Initiative*, 23 FCC Rcd. 4134, ¶ 28 n.80 (finding that the Commission had authority under Section 336(b)(5) to require broadcasters to make public service announcements regarding the digital transition and to keep records of those announcements).

interest, convenience, and necessity, or the provisions of this chapter or of any treaty ratified by the United States will be more fully complied with.”⁴⁷ Section 316 also provides that “the FCC may modify *entire classes* of licenses.”⁴⁸

The Commission therefore could determine that it is in the “public interest, convenience, and necessity” to modify a broadcaster’s license to permit use of ATSC 3.0 only if that broadcaster complies with certain conditions. Likewise, to the extent the Commission adopts a license-modification approach to permitting the use of ATSC 3.0, the Commission could determine that it is *not* in the public interest to modify the licenses of broadcasters who do not agree to conditions the Commission finds to be in the public interest. And if it chooses to make a blanket modification of broadcast licenses to permit use of ATSC 3.0, the Commission could achieve the same result by specifying the terms on which a broadcaster may offer ATSC 3.0 broadcast service.

F. Waiver Authority.

The Commission could also impose any of the conditions discussed above if it permitted ATSC 3.0 transmissions through its waiver authority. Under 47 C.F.R. § 73.682, broadcasters must comply with the ATSC 1.0 standard today.⁴⁹ The Commission may eventually promulgate a similar rule requiring broadcasters to comply with ATSC 3.0. The *transition* to ATSC 3.0, however, is to be totally “voluntary.”⁵⁰ Thus, the Commission could permit “voluntary” ATSC 3.0 transmissions by waiving the rule otherwise requiring ATSC 1.0 transmissions. It could do so, moreover, only when it would serve the public interest—namely, when stations agree to comply with the conditions proposed by ATVA.

The Commission’s rules permit it to waive a rule “at any time” for “good cause shown.”⁵¹ Much as it could in modifying a license, the Commission could determine as a general matter that good cause to waive the rule exists when broadcasters agree to comply with a

⁴⁷ 47 U.S.C. § 316(a)(1).

⁴⁸ *Cnty. Television, Inc. v. FCC*, 216 F.3d 1133, 1140 (D.C. Cir. 2000) (emphasis added).

⁴⁹ 47 C.F.R. § 73.682 (d), (e).

⁵⁰ *Authorizing Permissive Use of the ‘Next Generation’ Broadcast Television Standard*, Notice of Proposed Rulemaking, 32 FCC Rcd. 1670, ¶ 1 (2017) (“In this Notice of Proposed Rulemaking (NPRM), we propose to authorize television broadcasters to use the ‘Next Generation’ broadcast television (Next Gen TV) transmission standard associated with recent work of the Advanced Television Systems Committee (‘ATSC 3.0’) on a voluntary, market-driven basis, while they continue to deliver current-generation digital television (DTV) broadcast service, using the ‘ATSC 1.0 standard,’ to their viewers.”).

⁵¹ 47 C.F.R. § 1.3; *see also WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (“The agency’s discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety valve procedure for consideration of an application for exemption based on special circumstances”); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

particular set of conditions (such as preserving service areas and picture quality) but not otherwise. The Commission routinely conditions waivers when needed to protect the public interest.⁵²

* * *

In accordance with the Commission's rules, we will file one copy of this letter electronically in GN Docket No. 16-142.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Michael Nilsson", with a stylized flourish at the end.

Michael Nilsson
Mark Davis
Jared Marx
Counsel to the American Television Alliance

cc: Meeting Attendees

⁵² See, e.g., *AT&T Wireless Servs., Inc. v. FCC*, 270 F.3d 959, 962 (D.C. Cir. 2001) (“The Bureau imposed nine special conditions on the waiver, including the requirement that cellular service to airborne terminals be a secondary service, and that participating licensees provide at least thirty days prior notice of service or testing to co-block licensees with transmitter sites within 270 kilometers of their ground stations. The Bureau’s conditions further stipulated that participating licensees had a duty to provide information promptly on request of the Commission regarding any complaint of interference, and an obligation to resolve any instance of harmful interference, which was defined as ‘serious degradation, obstruction, or repeated interruption of cellular service.’”).