

September 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 September 19, 2017, representatives of the American Television Alliance met with Commission staff to discuss a recent letter from the National Association of Broadcasters related to the proposed ATSC 3.0 transition.¹ Present on behalf of the Commission were Michelle Carey, Nancy Murphy, Martha Heller, Steven Broeckaert, Evan Baranoff, Kim Matthews, Susan Aaron, and (by telephone) Kathy Berthot. Present on behalf of ATVA were Stacy Fuller, Jeanine Poltronieri, and Amanda Potter of AT&T, Alison Minea of DISH, Maureen O’Connell of Charter, Ross Lieberman of the American Cable Association, Leora Hochstein and William Wallace of Verizon, and Michael Nilsson of Harris, Wiltshire & Grannis LLP.

ATVA continues to believe that a properly crafted simulcast requirement is needed to ensure that the ATSC 3.0 transition does not cause widespread loss of television service or signal degradation. We appreciate the fact that broadcasters appear to once again acknowledge this, after a period in which many of them characterized simulcasting as a luxury to be abandoned wherever a station deemed it “impractical.”² And we agree with broadcasters about at least some aspects of how such a simulcasting requirement should work, including the key definition of what it means to “simulcast.”

Here, however, the details matter even more than usual. In several cases, the language suggested in NAB’s letter would permit widespread service loss. Other important aspects of a

¹ Letter from Patrick McFadden to Marlene Dortch (filed Sept. 8, 2017) (“NAB Letter”). Unless otherwise indicated, all documents referenced in this letter were filed in GN Docket No. 16-142.

² E.g., Comments of ONE Media at 22 (filed May 9, 2017).

simulcasting requirement remain unaddressed by NAB, including the picture quality that simulcast signals will contain and the geographic areas that simulcast signals will cover.

* * *

There is broad agreement on the facts relevant to simulcasting. The ATSC 3.0 standard is not “backwards compatible.” This means that televisions and set-top boxes in service today cannot receive ATSC 3.0 signals. Thus:

- If a station does not simulcast in ATSC 1.0, viewers will lose service from that station unless they have new equipment that can receive and display the ATSC 3.0 signal—or subscribe to an MVPD that has invested in and deployed its own new equipment.
- If a station simulcasts from a tower with a smaller or different coverage area than its current facilities, viewers outside the coverage area will lose service unless they have new equipment. So too will viewers that subscribe to MVPDs whose headends or local receive facilities are located outside the simulcast coverage area, unless the MVPDs arrange for delivery by alternative means (or such alternative means are already in place).
- If a station transmits in high definition today but does not simulcast in high definition, viewers will lose high definition service unless they have new equipment—or subscribe to an MVPD that has invested in and deployed its own new equipment. Loss of high definition service, from many viewers’ perspectives, is as bad as not receiving service at all.
- If a station does not simulcast the same programming carried on ATSC 3.0, viewers will receive only “replacement” programming unless they have new equipment—or subscribe to an MVPD that has invested in and deployed its own new equipment. Again, loss of desired programming could be as bad as not receiving service at all.

Any of these outcomes both disserves the public interest and makes the transition to ATSC 3.0 decidedly *non*-voluntary for viewers and MVPDs alike. We were thus encouraged to see that broadcasters appear to have once again proposed a simulcasting requirement,³ after numerous broadcasters abandoned Petitioners’ original simulcasting proposal.⁴ A simulcasting

³ NAB Letter at 3 (“A television station licensee choosing to deploy the Next Gen transmission standard should arrange for the simultaneous transmission of television programming comprising its primary video feed on a television station in the same market using the ATSC 1.0 transmission standard.”).

⁴ See, e.g., Comments of TEGNA Inc. at 5 (filed May 9, 2017) (stating that a simulcasting requirement “is not only unnecessary but the wrong course of action”).

requirement remains important for the reasons broadcasters originally stated—“so that viewers will not be disenfranchised.”⁵ In our view, avoiding such disenfranchisement means every bit as much here as broadcasters say it does in other contexts, such as the repack following the Incentive Auction.⁶ Indeed, it is even more important here because the ATSC working group dealing with pay-TV distribution has not even completed its first task (related to transcoding and downconversion), and may not do so for months.⁷

We also agree with broadcasters that, under a simulcast requirement, programming on each feed should be the same, or at least essentially so. At the same time—and as we have previously indicated⁸—stations should be able to introduce ATSC 3.0 features that “cannot be replicated using ATSC 1.0” such as “dynamic programming options” or “coverage of different local high school sports teams”⁹ without violating a simulcast requirement.

Again, however, the devil is in the details. And the broadcasters’ changing position on simulcasting suggests to us that clarity on the “fine print” is especially important if a simulcasting requirement is to limit service loss, viewer disruption, and related issues requiring the Commission’s attention.

1. Issues related to the proposed “substantial similarity” requirement for simulcasting.

- a. **Duration of requirement.** The simulcast requirement should continue until the Commission determines that it is no longer necessary. Consistent with this principle, NAB suggests no time limit to cease *simulcasting*.¹⁰ Yet NAB

⁵ Joint Petition for Rulemaking of America’s Public Television Stations, the AWARN Alliance, the Consumer Technology Association, and the National Association of Broadcasters at 17 (filed Apr. 26, 2016) (“Petition”).

⁶ See Letter from Ross Lieberman to Marlene Dortch (filed July 20, 2017); Testimony of Rick Kaplan before House Subcommittee Hearing on Broadcast Incentive Auction, NAB.org (Sept. 7, 2017), <http://www.nab.org/documents/newsRoom/pressRelease.asp?id=4228>.

⁷ We understand that TG3/S37, the “Specialist Group on Conversion and Redistribution of ATSC 3.0 Service,” may not complete its initial work on transcoding and downconversion before the first quarter of 2017, and it could take a year or more thereafter before any product compliant with the group’s standards would be available for purchase.

⁸ See Reply Comments of the American Television Alliance at 14 (filed June 8, 2017) (“ATVA Reply Comments”).

⁹ NAB Letter at 2-3.

¹⁰ *Id.* at 3; see also *id.* (“Stations should continue to transmit television programming using the ATSC 1.0 standard until the Commission determines, in a separate proceeding, that it is appropriate to sunset the requirement for simultaneous ATSC 1.0 transmission”).

proposes eliminating the key component of this requirement—that the two feeds be “*substantially similar*”—in three years.¹¹

Of course, a “simulcast” requirement that does not require substantial similarity is not a simulcast requirement at all. We are aware of no evidence suggesting that the need for simulcasting would disappear in three years, especially in light of the fact that the *last* transition took over twenty years.¹² Broadcasters have presented no such evidence. The “substantial similarity” requirement, like the simulcasting requirement itself, should last until the Commission finds that it is no longer in the public interest, based on objective criteria.¹³

¹¹ *Id.* at 4. NAB does not specify if the three years starts upon the Federal Register publication of an order in this proceeding, or if it starts on the date an individual station begins simulcasting. We find the proposal unreasonable under either formulation.

¹² *Compare Advanced Television Sys. & Their Impact on the Existing Television Broad. Service et al.*, Notice of Inquiry, 2 FCC Rcd. 5125, ¶ 1 (1987) *with Implementation of the DTV Delay Act*, Third Report and Order and Order on Reconsideration, 24 FCC Rcd. 3399, ¶ 1 (2009) (implementing June 12, 2009 deadline for cessation of analog broadcasting).

¹³ By way of comparison, in 1997, Congress instructed the Commission to delay the analog cutoff until a variety of criteria had been met. Balanced Budget Act of 1997, PL 105–33, 111 Stat 251, 265–66 (1997).

“(A) LIMITATIONS ON TERMS OF TERRESTRIAL TELEVISION BROADCAST LICENSES.—A television broadcast license that authorizes analog television service may not be renewed to authorize such service for a period that extends beyond December 31, 2006.

“(B) EXTENSION.—The Commission shall extend the date described in subparagraph (A) for any station that requests such extension in any television market if the Commission finds that—

“(i) one or more of the stations in such market that are licensed to or affiliated with one of the four largest national television networks are not broadcasting a digital television service signal, and the Commission finds that each such station has exercised due diligence and satisfies the conditions for an extension of the Commission's applicable construction deadlines for digital television service in that market;

“(ii) digital-to-analog converter technology is not generally available in such market; or

“(iii) in any market in which an extension is not available under clause (i) or (ii), 15 percent or more of the television households in such market—

“(I) do not subscribe to a multichannel video programming distributor (as defined in section 602) that carries one of the digital television service programming

- b. **Nature of the requirement.** NAB suggests that the simulcast feed must be “substantially similar” to the ATSC 3.0 feed.¹⁴ We generally agree with this approach. Yet we think NAB’s proposal needs clarification or modification in certain respects. In Appendix 1 hereto, we provide language that we think better reflects the goals that both sides appear to support.
- i. **“Substantial similarity” v. “the same.”** The phrase “substantial similarity” is presumably meant to provide broadcasters with flexibility. In light of the exceptions described below, however, we see no reason why the remainder of a station’s “primary ATSC 3.0 signal” should not be *the same* in ATSC 1.0. Broadcasters have provided no such reason.
- ii. **Exceptions to the requirement.** NAB proposes several categories of exceptions to the substantial similarity requirement. We agree with these exceptions, at least in concept. We agree, for example, that “advertisements, promotions or content transmitted by means other than a real-time ATSC 3.0 broadcast transmission” should be excluded.¹⁵

We also agree that the rule should not apply to localized emergency warnings or alerts, or other “features or content that cannot be transmitted using ATSC 1.0.”¹⁶ Here, however, clarity is needed to ensure that this exception does not swallow the rule. For example, if a broadcaster creates brand new and interactive children’s programming, the *entirety* of which cannot *physically* be transmitted using ATSC 1.0,

channels of each of the television stations broadcasting such a channel in such market; and

“(II) do not have either—

- “(a) at least one television receiver capable of receiving the digital television service signals of the television stations licensed in such market; or
- “(b) at least one television receiver of analog television service signals equipped with digital-to-analog converter technology capable of receiving the digital television service signals of the television stations licensed in such market.”

Congress struck this language in 2005 when it, among other things, appropriated funds for the digital-to-analog converter box program. Deficit Reduction Act of 2005 PL 109–171, § 3005, 120 Stat 4, 23–24 (2006).

¹⁴ NAB Letter at 3.

¹⁵ *Id.*

¹⁶ *Id.*

we agree that the substantial similarity requirement should not require simulcasting of that programming. On the other hand, if a particular interactive feature in an NFL game cannot physically be transmitted using ATSC 1.0, the station should still simulcast the game itself. The exception, in other words, should apply only *to the extent* particular features or content cannot be transmitted.

- iii. **Programming stream subject to the requirement.** Stations may be able to transmit multiple streams of programming in ATSC 3.0, just as they do in ATSC 1.0 today. NAB does not say which stream should be simulcast in such case. But if a station transmits a FOX affiliate and a home shopping channel on ATSC 3.0, nobody will be happy if the station simulcasts only the home shopping channel on ATSC 1.0. Likewise, if one feed contains network sports and primetime programming and others do not, the feed with such programming should always be simulcast on ATSC 1.0.

The Commission, in other words, cannot allow stations to evade the simulcast requirement by deliberately choosing less popular programming for ATSC 1.0 simulcasting. Congress dealt with a similar problem related to multicasting by defining circumstances in which a particular feed is “primary.”¹⁷ The Commission should take a similar approach here.

- iv. **Multiple versions of programs.** NAB suggests that if a station “elects to transmit multiple versions of programming personalized or targeted to specific geographic or other viewing segments,” the station should choose which programming gets simulcast.¹⁸ To the extent this language refers to multiple versions of a *single program*, we do not object to this approach. For example, we would not object to a broadcaster choosing

¹⁷ 17 U.S.C. § 119(d) (Defining an “unserved household” as one that cannot receive the “primary stream” of a local broadcast station and defining “primary stream” as “(A) the single digital stream of programming as to which a television broadcast station has the right to mandatory carriage with a satellite carrier under the rules of the Federal Communications Commission in effect on July 1, 2009; or (B) if there is no stream described in subparagraph (A), then either— (i) the single digital stream of programming associated with the network last transmitted by the station as an analog signal; or (ii) if there is no stream described in clause (i), then the single digital stream of programming affiliated with the network that, as of July 1, 2009, had been offered by the television broadcast station for the longest period of time.”).

¹⁸ NAB Letter at 3.

between multiple “versions” of a local newscast tailored to different geographic areas.¹⁹

- v. **Rights.** NAB suggests that the Commission should not consider programming to be “substantially similar” if a station “does not have the right to transmit programming using a particular transmission standard.”²⁰ We are not particularly concerned if a station has rights to transmit programming in ATSC 1.0 but lacks the rights to do so in ATSC 3.0. We would be very concerned, however, if a station lacked rights to simulcast particular programming in ATSC 1.0—especially if that programming were of interest to viewers. We certainly would not want the Commission’s rules to *encourage* a station not to obtain such rights, which we believe would be an unintended result of NAB’s proposal. In the event that a station were unable to obtain ATSC 1.0 rights—and broadcasters have nowhere explained why this might be so—a better approach would be for the station to seek a waiver of the simulcasting requirement, explaining why it was unable to obtain the rights in question.

2. Issues related to the quality and coverage of the simulcast signal.

- a. **Format and picture quality of simulcast signal.** NAB says nothing in its letter about the format or picture quality of simulcasts. Yet, as ATVA and others have pointed out, simulcasting cannot protect viewers from disenfranchisement if it involves degrading their current service, by, for example, replacing viewers’ high definition signals with standard definition signals.²¹ Again, from many viewers’ perspectives, receiving an NFL game in standard definition is as bad as not receiving it at all.

The Commission should require any station that transmits in high definition today to simulcast in the same quality high definition during the transition to ATSC 3.0. As we have described previously, the Commission has ample legal

¹⁹ On the other hand, if the context of the program in question makes clear that a particular version of a program is “primary,” the station should simulcast that version. If, for example, ATSC 3.0 permits a FOX affiliate to simultaneously transmit two NFL games—one version that would be expected to be more popular in most of the market’s counties and the other that would be expected to be more popular in only a few of the market’s counties, context makes clear that the former constitutes the “primary” version and should be the version simulcast.

²⁰ NAB Letter at 3.

²¹ Comments of American Television Alliance at 35 (filed May 9, 2017) (“ATVA Comments”).

authority to do so.²² For example, 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 designated by the Commission for the provision of advanced television services.”²³ This implies that the Commission has the authority to designate the technology and method for the provision of advanced services in the first place. ATSC 1.0 simulcasts are unquestionably “advanced services,”²⁴ and high-definition is a “technology” and a “method.”

Section 336(b)(2) is even more explicit on this point. It requires the Commission to ensure that ancillary or supplementary services do not undermine advanced television services—“including high definition television service.”²⁵ It then expressly acknowledges the Commission’s authority to “require” high definition broadcast service.²⁶

And again, we do not ask the Commission to require any station to *start* transmitting in high definition, although the provisions described above grant the Commission legal authority to do so. All we ask is that stations not *degrade existing* format or picture quality as part of the ATSC 3.0 transition—at least not without seeking an FCC waiver due to extenuating circumstances. This is exactly the approach the Commission took in the DTV transition, where it issued rules prohibiting stations from degrading signal quality.²⁷ The same approach, it seems to us, is the bare minimum that the public interest requires.

- b. **Geographic coverage.** From the beginning of this proceeding, we have suggested that a simulcast requirement does no good unless the simulcast signal actually reaches viewers and MVPDs. We have also suggested ways in which

²² See Letter from Michael Nilsson to Marlene Dortch (filed Aug. 21, 2017).

²³ 47 U.S.C. § 336(b)(1).

²⁴ 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 also *Advanced Television Sys. and Their Impact Upon the Existing Television Broad. Serv.*, 7 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.”).

²⁵ 47 U.S.C. § 336(b)(2).

²⁶ *Id.*

²⁷ 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.”).

the Commission could craft such a requirement in order to minimize service loss²⁸—a topic that broadcasters have characterized as of supreme importance in other contexts, such as the auction repack.²⁹

NAB's latest letter may represent a step backwards with respect to the geographic coverage of simulcasts. In its original petition, NAB suggested that the simulcast facility should “serv[e] a substantially similar community of license.”³⁰ NAB's recent letter, however, states merely that the simulcasting station should be “in the same market” as the originating station. Yet stations located in the “same market” can have very different coverage areas.

For example, both WTTG (the Washington DC FOX affiliate) and WVPY (the Front Royal PBS affiliate) are located in the Washington DC local market. But if WTTG were to simulcast from WVPY, the simulcast signal would not reach any off-air viewers (or MVPD headends) in Washington DC, Alexandria, Bethesda, Silver Spring, Columbia, Fredericksburg, or Baltimore.³¹ By our calculations, approximately 6.5 million people live in areas served by WTTG but not served by WVPY.

For that matter, even the broadcasters' original proposal fails to provide the protections provided in analogous proceedings. For example, the Commission requires stations entering into channel sharing agreements outside of the auction context to *maintain* their existing community of license.³² This means, among other things, that a station must “place a principal community contour” over that entire community.³³ The “principal community contour” is significantly higher (7 dB) than the signal level used to define the digital television noise limited

²⁸ ATVA Comments at 29-45.

²⁹ See note 6, above.

³⁰ Petition at 17.

³¹ In each case, we refer to the 41dBu service contour, as specified in the FCC's “TV Query” tool. See <https://www.fcc.gov/media/radio/map-display#appid=1423082&call=WTTGundefined&contour=41&city=WASHINGTON&state=DC&fileno=BLCDT-20080507AAA&.map> (service contour for WTTG); <https://www.fcc.gov/media/radio/map-display#appid=1422438&call=WVPYundefined&contour=41&city=FRONT ROYAL&state=VA&fileno=BLEDT-20100209AAB&.map> (service contour for WVPY).

³² *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, 32 FCC Rcd. 2637, ¶ 44 (2017).

³³ *Id.* ¶ 44 n.135; 47 C.F.R. § 73.625.

service contour.³⁴ The broadcasters' original proposal here—that simulcast stations merely “substantially serve” the originating station’s community of license—arguably requires much less. Such a requirement could be read, for example, to require service in parts of the community with a weaker “noise-limited” signal.

In our Comments, we suggested that the best way to preserve existing service is to limit service-loss to a percentage of the population that a station currently serves.³⁵ If the Commission wishes to adopt an approach based on community of license, however, it should require stations to *maintain* their community of license when simulcasting—as it did with respect to channel sharing—in order to minimize disruption.

3. **Must-carry of flash-cut stations.** NAB suggests that a station that does not simulcast because it receives a waiver “should retain the same carriage rights it would have at its location if it were transmitting using ATSC 1.0, but must arrange for the delivery of its signal to any MVPDs required to carry the station’s signal in a format the MVPD is capable of receiving.”³⁶ Of course, this “solution” does nothing to help over-the-air viewers, most of whom would receive *no* signal in such circumstances. Even setting this aside, NAB’s proposal presents any number of legal issues that NAB appears not to have considered.

As a threshold matter, the Commission tentatively concluded that it should not address must-carry rights for ATSC 3.0 signals in this proceeding.³⁷ (This, of course, was broadcasters’ original position as well.³⁸) The Notice thus does not contemplate, much

³⁴ 47 C.F.R. § 73.625. A station’s community of license has other legal effects as well: for example, licensees should also locate their transmitters so that they have line-of-sight over the entire community of license. *See* 47 C.F.R. § 73.685.

³⁵ ATVA Comments at 33.

³⁶ NAB Letter at 4.

³⁷ *See Authorizing Permissive Use of the “Next Generation” Broadcast Television Standard*, Notice of Proposed Rulemaking, FCC No. 17-13, ¶ 36 (rel. Feb. 24, 2017) (“*Notice*”) (“Given that ATSC 3.0 signals would not be accorded mandatory carriage rights under our proposals, and because of the current uncertainty about how MVPDs would carry ATSC 3.0 signals as a technical matter, we tentatively conclude that it is premature to address questions related to the mandatory carriage of ATSC 3.0 streams at this stage.”).

³⁸ *See* Petition at 19 (“Generally, must-carry obligations will not require MVPDs to purchase new equipment at this time, as they will continue to receive signals in the current digital standard via the simulcasting agreements discussed above.”); Letter from Rick Kaplan to Marlene Dortch at 2 (filed Dec. 8, 2016) (“Petitioners have stated, again in unmistakably clear terms, that MVPDs will not be forced to carry Next Generation TV signals.”); *id.* at 1-2

less propose, any legal mechanism for affording carriage rights to ATSC 3.0 signals.³⁹ Moreover, as we have stated repeatedly, granting must-carry rights to ATSC 3.0 signals would represent an unwarranted (and unconstitutional) expansion of must carry rights—one that would place the existing must-carry regime in legal jeopardy.⁴⁰

Broadcasters cannot avoid these legal issues by promising to deliver signals “in a format the MVPD is capable of receiving.” Broadcasters can, of course, deliver signals *for which they have must carry rights* using alternative means.⁴¹ But if a broadcaster transmits only in ATSC 3.0, there is no off-air signal for which the broadcaster has must-carry rights.⁴² How a broadcaster chooses to deliver that signal has no legal relevance.

(“NAB and its fellow petitioners have stated,” they continued, “in terms no party could misunderstand other than willfully, that the transition to Next Generation TV will be a wholly voluntary, market-driven transition.”).

³⁹ See note 35, above. Not only did the Commission tentatively conclude that it would not grant stations must-carry rights for ATSC 3.0 signals, but each of the proposals for authorizing ATSC 3.0 carriage assumed that no such rights would be granted. See *Notice* ¶ 31 (“Broadcasters and MVPDs appear to agree on the premise that MVPDs must continue to carry broadcasters’ ATSC 1.0 signals, pursuant to their statutory mandatory carriage obligations, and that MVPDs should not be required to carry broadcasters’ ATSC 3.0 signals at this time.”) To require must-carry of ATSC 3.0 signals in such circumstances would violate the Administrative Procedure Act’s notice and reasoned decision-making requirements. See, e.g., *Honeywell International, Inc. v. EPA*, 372 F.3d 441, 445 (D.C. Cir. 2004) (holding that, under the APA, an NPRM must “provide sufficient factual detail and rationale for the rule to permit interested parties to comment meaningfully”); *Verizon v. FCC*, 740 F.3d 623, 635 (D.C. Cir. 2014) (holding that, under the APA, a court must “determine whether the Commission’s actions were ‘arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law’”) (quoting 5 U.S.C. § 706(2)(A)).

⁴⁰ See ATVA Reply Comments at 11-12 (explaining constitutional concerns with expanding must-carry rights).

⁴¹ See, e.g., *Jovon Broad. Corp.*, 18 FCC Rcd. 8145, ¶ 9 (Med. Bur. 2003) (“[A must-carry] station may generally use any delivery means at its disposal to provide a good quality signal to the cable operator’s headend. As long as [the station] transmits exactly the same content over its digital signal as is contained in its analog signal, and it pays the cost of delivering such a signal to the principal headend, it may do so in accordance with the Commission’s rules and policies.”).

⁴² As NCTA put it, “an ATSC 1.0 simulcast at a host station should be entitled to must-carry only if it (1) qualified for, and has been exercising, must-carry rights in its original location and (2) continues to meet must-carry criteria in the new location.” Comments of NCTA—the Internet & Television Association at 20 n.47 (filed May 9, 2017).

4. **Other issues.**

- a. **Consumer education and MVPD notice.** NAB suggests that broadcasters not be required to engage in consumer education. We continue to believe that, if the Commission decides to permit broadcasters to eliminate, limit, or degrade the service they provide today, it must at a bare minimum require broadcasters to notify the public and the MVPDs that serve the public ahead of time.⁴³

Generally speaking, we agree with the approach to consumer notification and MVPD notice adopted in the auction context.⁴⁴ As we have noted previously, however, simulcasting could occur *during* the repack.⁴⁵ Because MVPDs may be attempting to accommodate repacking stations, channel-sharing stations, and ATSC 3.0 simulcast simultaneously, a longer notice period is appropriate here than in the auction⁴⁶ or channel sharing⁴⁷ contexts, or as proposed in the *Notice*.⁴⁸

- b. **A/322.** We are pleased to see that NAB has agreed that, for at least the broadcast transmission required by law, “broadcasters rely on both components of the physical layer, that is, A/321 and A/322.”⁴⁹ As with the simulcasting requirement, we see no reason to sunset this requirement in three years.
- c. **Low-power flash cuts.** NAB suggests that low power stations be permitted to “flash cut” to ATSC 3.0.⁵⁰ We continue to object to such flash-cuts for the same

⁴³ See ATVA Comments at 38 (arguing that stations (1) should provide clear and conspicuous on-screen notifications explaining that its voluntary transition to ATSC 3.0 has caused the issue; (2) should provide such on-screen notice periodically both prior to the transition and thereafter, and should include the station’s contact information for consumer complaints); *id.* (noting that “[s]uch on-screen notices would help ensure that subscribers do not blame MVPDs for issues caused by broadcasters... [and] would also reduce the resources MVPDs would have to devote to answering complaints about these issues”).

⁴⁴ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, 29 FCC Rcd. 6567, ¶¶ 586-97 (2014) (“*Incentive Auction Order*”).

⁴⁵ ATVA Comments at 37.

⁴⁶ *Incentive Auction Order* ¶ 596 (30 days).

⁴⁷ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, 32 FCC Rcd. 2637, ¶ 51 (2017) (90 days).

⁴⁸ *Notice* ¶ 37 (60 days).

⁴⁹ NAB Letter at 3; *see also* ATVA Reply Comments at 16 n.72 (urging adoption of A/322).

⁵⁰ NAB Letter at 4.

reason we object to flash-cutting for full-power stations—particularly as they relate to low-power network affiliates.

If, however, a low-power or Class A station is not carried by any MVPD, is not required to be carried by any MVPD under the must-carry statute, and remains unaffiliated with any network, we take no position on whether a simulcast requirement should apply to such stations.⁵¹ And low-power and Class A stations, like full power ones, can always seek waivers allowing them to flash-cut.

Again, we are cautiously optimistic to see what appears to be an emerging consensus on issues related to simulcasting. Yet the Commission should be careful to craft simulcasting and related rules in order to minimize viewer disruption. We look forward to continuing to work with broadcasters and the Commission to help achieve this goal.

Respectfully submitted,

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

Michael Nilsson
Counsel to the American Television Alliance

cc: Meeting Attendees

⁵¹ ATVA Reply Comments at 6 n.27.

APPENDIX 1

Proposed Rules for Substantial Similarity

1. Substantial similarity.

- a. In general. A station's ATSC television programming in the 1.0 simulcast shall be the same as the television programming in its primary ATSC 3.0 stream, subject to paragraph (b), below.
- b. Exceptions. The requirement in paragraph (a) shall not apply to:
 - i. Advertisements, promotions or content transmitted by means other than a real-time ATSC 3.0 broadcast transmission.
 - ii. Features or content that cannot physically be transmitted using ATSC 1.0, but only to the extent such features or content cannot be so transmitted, and only to the extent such features or content are not so transmitted with the purpose or effect of circumventing paragraph (a).
 - iii. Multiple versions of a single program.
 - 1. If a station transmits multiple versions of a single program in ATSC 3.0, it may choose the version of the single program to be simulcast in ATSC 1.0, subject to subparagraph 2, below.
 - 2. If the context of the program makes clear that a particular version of a single program is "primary," the station must simulcast that version.
- c. Definitions.
 - i. The "primary ATSC 3.0 stream" is
 - 1. "the single digital stream of programming as to which a television broadcast station has the right to mandatory carriage with a satellite carrier under the rules of the Federal Communications Commission in effect on [effective date]; or
 - 2. if there is no stream described in subparagraph (1), then either—
 - a. the single digital stream of programming associated with the network last transmitted by the station prior to [effective date]; or

- b. if there is no stream described in clause (a), then the single digital stream of programming affiliated with the network that, as [effective date], had been offered by the television broadcast station for the longest period of time.”).

[Definition adapted from 17 U.S.C. § 119(d)(15), with effective date modified.]