

Comment on FCC Use of Common Antenna Site Regulation

The Commission's recent request for comment on the revision or otherwise elimination of the rules and requirements concerning access to FM and television broadcast antenna sites, although seldom invoked, should nonetheless be analyzed with caution and mindfulness of the public interest. While the Commission's interest in modernity is well stated, it should not be used as a justification to remove well settled principles, rules and practices that favor the public's interest in programming variety and fair competition. The rules, as enacted nearly seventy-five years ago, sought to keep over the air space open and accessible. By prohibiting the granting or renewal of radio or television licenses to antenna site operators who were unwilling to make available use of their antenna site to other similar broadcast companies, the air space remained accessible for broadcasting. The initial concern addressing the scarcity of antenna availability is still relevant today as the consumption of over the air television and radio remains a vastly utilized medium that should not hastily be discarded despite recent advances in communication technology.

An initial inquiry into the public's use of over the air media will illustrate the importance of continuing the Commission's practice of ensuring antenna availability. Despite the Commission's contention that the rule has run afoul of modern trends in broadcast media and the transmission of these services, it remains important to recognize that, while availability of antenna space and use appears plentiful, several factors may eventually threaten the availability of over the air space. Primarily, the emergence of the Advanced Television Systems Committee's new ATSC 3.0 standards and the potential for increased demand of over the air frequency space and the omnipresent role that FM radio continues to assume in the daily lives of the general

public. These two issues present a series of issues that need to be considered when evaluating the decision to revise or eliminate the standards of antenna site sharing. While there appears to be a present abundance of antenna site availability, the emergence of new technology, such as the aforementioned ATSC 3.0, and the well established and highly consumed forms of media, particularly FM radio, the Commission's decision should be predicated on information surrounding the likelihood that the abundance of available antenna space may not persist. To begin this discussion, an examination of the presence and consumption of FM radio waves will be analyzed, followed by a discussion on the emergence of ATSC 3.0 technology, whose future implementation could inevitably require more site availability.

Through the advent of streaming services and the abundance of on demand media, access to one's favorite song is just a click away. No longer does one have to patiently wait for a song to be played over the FM airwaves in order to listen to it. In mere seconds one can enjoy music even without the use of a radio. However, despite this instant access to an endless supply of content, it has continuously been reported that radio remains a highly consumed source of music and information. According to data collected by Nielsen, radio still commands a prevalent role in information sharing and entertainment consumption. The analytics produced by Nielsen demonstrate that consumption of radio has maintained a relative similarity in listenership from 1970 to the date of the study's analysis in 2017. The report concludes that "Old-fashioned AM/FM radio remains the biggest mass-reach medium in the US, with more than 90% of consumers listening on a weekly basis. That percentage has stayed strong even in the face of the explosive growth of music streaming; it was 96% back in 2001"¹ Moreover, this steady trend in FM radio

¹ "Music 360 - 2017 Highlights." Accessed November 2, 2019. <https://www.nielsen.com/us/en/insights/report/2017/music-360-2017-highlights>.

consumption is not likely to dissipate. Theories of “tyranny of choice” explain the phenomena of a steady listenership to “old fashioned” FM radio despite the relative ease and on demand access that streaming services provide to consumers in the converse to FM radio. It has been theorized “For many people, the availability of so much music has led to what some academics and analysts call the tyranny of choice...You’re confronted with all the music in the world but what are you supposed to listen to? Somebody tell me what’s good!”² In other words, what people want and expect from their media consumption experience is passivity and the ability to have their listening experience curated by varied radio stations throughout the markets.

As evidenced by the constant role that radio contends in the mass media market, it is likely that the elimination of antenna siting requirements could have a detrimental effect on a medium that is still vastly consumed by multitudes of Americans each day. The use of antenna space is not likely to have a drastic decrease by virtue of the advanced technological choices that consumers presently have. Conversely, as the Nielsen report indicates, FM radio consumption has remained constant and its listenership has declined only slightly in previous decades. As a result, when determining whether to revise or eliminate the rules, the lessening of antenna site standards should take into consideration that the use of the frequencies emitted from the towers is not expected to decrease in any large number any time soon. It would therefore, best serve the public interest by preserving the stated purpose of the rule requiring the sharing of antenna sites to promote broadcast competition and ensure adequate variety by continuing to request antenna operators to employ good faith when the need to share a tower arises. As a result, the

² “Music 360 - 2017 Highlights.”

Commission should consider the effects of an omnipresent FM radio market before eliminating rules in place to promote access to a medium that still retains a vast listening audience.

A second factor that has the potential to increase demand for antenna site availability is the burgeoning ATSC 3.0 technological advancements in television. The onset of this new service posited the Commission's stance as one not willing to allocate a second channel to each broadcaster.³ In effect, it seems that the Commission is requesting broadcasters to cooperate in each market on a single transmitter. What remains unknown is how the approach would affect heavily populated markets where signal strength is not optimal. Therefore, the Commission should seek to maintain rules, such as §73.239 that require continued shared antenna sites in an ever growing media market that demands the use of open availability of antenna space.⁴

Moreover, the new ATSC 3.0 requires a vast investment undertaking on the behalf of broadcasters which has been stated as also requiring a lot of time and may even lead to disruption of service. Per the National Association of Broadcasters in order to "...accomplish a seamless implementation of Next Gen TV without disenfranchising viewers, the industry must deploy this new technology in parallel with it's existing digital TV services in a voluntary, market-based manner...the Next Gen TV standard must operate within the existing 6-MHz television channel and be subject to the same radio frequency (RF) interference constraints and requirements that apply to the current standards."⁵ In effect, the transition to ATSC 3.0 over the

³ Doug Lung. "Getting Ready for ATSC 3.0 | TvTechnology." Accessed November 2, 2019. <https://web.archive.org/web/20170109022038/http://www.tvtechnology.com/expertise/0003/getting-ready-for-atsc-30/276660>.

⁴ "FCC Fact Sheet," October 3, 2019, <https://docs.fcc.gov/public/attachments/DOC-360066A1.pdf>.

⁵ Next Generation Television (Atsc 3.0) Station Transition Guide (The National Association Of Broadcasters, 2019), https://Nabpilot.Org/Wp-Content/Uploads/2019/04/Nab-Atsc-3.0-Guide_Final.Pdf.

air television is in need of well established antenna sites. Accomplishment of these new television standards is expected to be achieved without additional spectrum being provided. The need to ensure availability is highlighted by the onset of ATSC 3.0 technology. Considering that this technology remains untested in full use yet, the Commission at the very least should consider keeping the antenna siting rules in place until a full development of the ATSC 3.0 frequent use is known what it will entail.

According to a recent study concerning the build out process for the deployment of the use of ATSC 3.0, most markets upon deciding to convert to ATSC 3.0 need a near overhaul of their "...entire transmission path, starting at the antenna, and working back to the program stream generation point."⁶ Additionally, this unsettled upgrade process "...is a task that involves many players... it is recommended to get all broadcasters on board."⁷ Assumedly, the inability of smaller television operators whom seek to switch over to the new ATSC 3.0 system may experience a financial disadvantage when it comes to modernizing their equipment to employ use of the new services, or to the extent they are tasked with components of the build out process on the antenna tower itself they may be unable to surmount the financial burden of the new technology. To ensure that smaller broadcasters might be afforded the same opportunities as those with greater financial resources, maintaining the Commission's well settled rule of common antenna site use would provide great benefit with the advent of this new television technology.

⁶ Next Generation Television (Atsc 3.0) Station Transition Guide (The National Association Of Broadcasters, 2019)

⁷ Next Generation Television (Atsc 3.0) Station Transition Guide (The National Association Of Broadcasters, 2019)

ATSC 3.0 signal and reception is drastically dependent upon the location of the antenna tower. Again, the National Association of Broadcasters has advised that “...the structural condition and capacity of a broadcast tower is the starting point for any change to antenna or transmission line. Any change in antenna or transmission line will require a structural analysis and, potentially, structural work to the tower, in order to support changed equipment. Existing antennas operating at their maximum power limit on ATSC-1 may not be capable of handling the additional peak-to-average ratio (PAR) needed for ATSC 3.0. Since the ATSC 3.0 standard is tailored to both over-the-air broadcast and delivery of data and secondary content to mobile devices, one must consider the mobile market.”⁸ Apparently, replacement of the transmission, similar to the antenna will also need replacement in order to secure the new broadcasting signal. Again, ensuring the principles of the statutory language in §73.239 by removing unnecessary impediments to competition and providing the public with access to varied broadcast sources is a policy that is best served by use of the statute. Given the requisite antenna modifications to ensure proper access to the new television standard, providing less financially advantaged broadcast companies, particularly those in smaller markets, an equal opportunity to secure access to the new antennas, it appears that the most favorable decision in the interest of competition would be to maintain the requirements of antenna site sharing. In short, the transition, though largely unknown at this point, will nonetheless require great resources to complete the build out process. To best serve the public interest and ensure access to advancements in television broadcast which encompass heightened governmental access to the public, keeping the antenna site sharing statute provides the best solution to broadcasters and the public alike.

⁸ Next Generation Television (Atsc 3.0) Station Transition Guide (The National Association Of Broadcasters, 2019)

As stated, the Commission's latest proposed rulemaking decision should draw from the available data concerning conditions that are likely to render the use of the statute relevant. Provided the strong presence of FM radio consumption by the public and the onset of ATSC 3.0 television standards, the availability of antenna siting should remain open in the interest of competition and the public's desire for a variety of content. To ensure these ends, it is essential that accessibility is afforded to all broadcasters. The risks associated with removing the common antenna site sharing requirements is a threat to less advantaged broadcasters, especially those in smaller markets. Therefore, safeguarding fair access to antenna site availability the Commission's statute should remain and any attempt to revise should be considered in light of the aforementioned factors.

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