

Congress of the United States
Washington, DC 20515

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November 8, 2017

The Honorable Ajit Pai, Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20536

Dear Chairman Pai,

We are writing to express our concern regarding two items you've offered for consideration at the upcoming November 2017 Open Meeting of the Federal Communications Commission (FCC). Having assessed your draft proposals, we have identified serious problems with both the Media Ownership Reconsideration Order¹ and the "Next Generation" Broadcast TV Standard (ATSC 3.0) Order². Both proposals carry serious consequences for the American media ecosystem and we urge you to postpone consideration of these items until the Commission has taken steps to rectify the concerns we've identified below.

Reconsideration for Broadcast Ownership

Your Media Ownership proposal will allow for consolidated ownership of more than one of the top four stations in any market if parties can demonstrate on a "case-by-case basis" that such a transaction would serve the public interest. First, this approach subjects the rule and the market to precisely the type of uncertainty that you have so often railed against in the past by failing to uphold a clear and consistent policy. The failure to commit to actually enforcing the law creates uncertainty for consumers and competitors unsure of whether and when the Commission will choose to enforce the laws Congress directed it to implement.

The broadening of Commission discretion by this item is also unnecessary if the purpose is to give relief from the bright-line duopoly rule in rare extenuating circumstances. Traditionally, relief from the duopoly rule can be granted by filing a petition for waiver demonstrating "good cause shown" which presumes the rule itself is still valid but that there has been good cause demonstrated to not apply it in the specific case. Under your proposed rule, the FCC can apply any standard it chooses so long as it is able to tie it to the public interest. This is far broader discretion than exists under current waiver

¹ *In the Matter of 2014 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket No. 14-50 *et al*, Draft Order on Reconsideration and Notice of Proposed Rulemaking (rel. Oct. 26, 2017).

² *In the Matter of Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard*, GN Docket No. 16-142, Draft Report and Order and Further Notice of Proposed Rulemaking (rel. Oct 26, 2017).

authority which itself has had to be reined in by courts for overuse. This potentially results in a regulatory scheme where the Commission grants exception to the duopoly rule in every case, rendering the duopoly a rule in name only. It exceeds the intent and undermines the purpose of media ownership policies.

Next Generation TV, or ATSC 3.0.


The 'Next Generation TV' item claims to combine the benefits of broadcasting and internet programming for next generation technologies, but it lacks essential protections for consumers and threatens to cut people from over the air signals.

First, the order in no way provides for an orderly transition process to a new broadcast standard. The minimal requirements laid out in the order threaten to leave consumers without access to over the air television. It allows broadcasters to cut off ATSC 1.0 service after five years, or earlier, without educating or informing consumers. This has the strong potential of leaving consumers with TVs and set top boxes that can no longer receive over the air broadcasts, because consumer's current equipment will not be able to receive ATSC 3.0 broadcasts. Even worse, the exemption for lower power and translator stations from the order's minimal requirements threatens viewers in rural America's ability to receive signals even sooner. Additionally, the Commission's case by case waiver process of full power stations simulcast requirements creates even more uncertainty as viewers in markets around the country may lose access to broadcast signals even sooner.


The Commission must rethink its approach to the ATSC 3.0 transition process. As it stands the order as currently written could deprive many American's of access to free over the air broadcasts and force them to purchase new potentially expensive equipment just to retain access to broadcasts they receive currently.

We therefore urge the Commission to postpone these items until it has rectified the problems identified in order to ensure that the Commission's actions conform more closely to the intent of Congress and pose a reduced risk to viewer's losing access to free over the air broadcasts. In so doing, we expect the Commission to remember its obligation to serve the public interest first. It should reassess its present path in both orders and forgo voting on these items until these concerns have been adequately addressed.

Sincerely,



Anna G. Eshoo
Member of Congress



Michael F. Doyle
Member of Congress



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

November 16, 2017

The Honorable Anna G. Eshoo
U.S. House of Representatives
241 Cannon House Office Building
Washington, D.C. 20515

Dear Congresswoman Eshoo:

Thank you for your letter expressing concern regarding the Media Ownership Reconsideration Order and Next Generation (Next Gen TV) Broadcast Standard Order and Further Notice of Proposed Rulemaking (FNPRM) and requesting that consideration of these items be postponed. Your views are important and will be entered into the record of the proceeding and considered as part of the Commission's review.

For the reasons set forth below, consideration of these items will not be postponed from the Commission's Open Meeting on November 16th. The Media Ownership Reconsideration Order ends the 2010/2014 quadrennial review proceedings, finally acknowledging the dynamic nature of the media marketplace and taking concrete steps to update the broadcast ownership rules to reflect today's reality. The Next Gen TV Order and FNPRM will allow television broadcasters to use the Next Generation broadcast television standard on a voluntary, market-driven basis.

Media Ownership. Section 202(h) of the Telecommunications Act of 1996, as amended, requires the Commission to review its broadcast ownership rules every four years to determine whether they "are necessary in the public interest as the result of competition" and to "repeal or modify any regulation [the Commission] determines to be no longer in the public interest." With this proposed Order, the Commission acknowledges the many changes in the media landscape since these rules were last adopted and recognizes the benefits that can be achieved from updating the broadcast ownership rules to reflect the current media landscape. Modernizing these outdated rules creates more investment opportunities and financing options for traditional media outlets as they compete in the vibrant and ever-changing media marketplace. Consumers benefit when these outlets invest in local news and public interest programming to improve overall service in local markets.

Specifically with respect to the Local Television Ownership Rule, while the record provided support for the retention of the Top-Four Prohibition, it also demonstrated that the restriction could be overbroad in certain circumstances. While the general waiver process is an effective method for addressing certain limited circumstances in which application of a rule is not in the public interest, in this instance, the case-by-case option provides a clearer procedure and greater direction for applicants seeking Commission approval of a transaction that would otherwise be precluded by the Top-Four Prohibition. This hybrid approach better reflects the marketplace and, importantly, does not relieve the Commission from its obligation to ensure that grant of an application proposing a top-four combination serves the public interest, convenience, and necessity pursuant to Section 310(d) of the Communications Act of 1934, as amended.

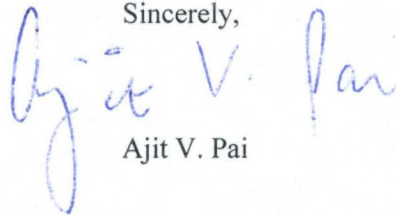
Next Gen TV. The Next Gen TV Order would allow television broadcasters to use the new transmission standard on a voluntary, market-driven basis. This decision will permit broadcasters to deliver cutting-edge and public-interest-oriented new services to their viewers, including Ultra High Definition (UHD) television, superior reception, mobile viewing capabilities, enhanced public safety capabilities, greater accessibility features, and localized and/or personalized content.

Importantly, broadcasters that choose to deliver Next Gen TV service also must continue to deliver current-generation digital television service, using the ATSC 1.0 transmission standard, thereby ensuring that viewers will not lose access to the over-the-air broadcasting services they receive today. The Order adopts a number of rules to ensure that this local simulcasting requirement is robust and is implemented in an orderly fashion. Contrary to the statement in your letter, the Order does not permit broadcasters to “cut off ATSC 1.0 service after five years, or earlier, without educating or informing consumers.” It allows one aspect of the local simulcasting requirement (that the programming aired on the simulcast channel must be “substantially similar” to the programming aired on the Next Gen TV channel) to sunset after five years, absent Commission action to extend it. There is no deadline at this time for ceasing ATSC 1.0 service or mandating Next Gen TV service. The Commission will decide in a future proceeding whether and, if so, when it would be appropriate for broadcasters to stop simulcasting in ATSC 1.0.

The Order exempts low-power TV (LPTV) stations from the local simulcasting requirement because of the unique challenges they would face in meeting this requirement. In order to simulcast, TV stations will need to partner with other stations in their local markets. However, many LPTV stations are not located near other LPTV stations, thereby making it difficult for such stations to find simulcast partners, and LPTV stations may not be attractive simulcast partners for full power stations because of their lower power and coverage area. LPTV stations also are subject to displacement by other stations, further reducing their desirability as simulcast partners. Absent an exemption from our local simulcasting requirement, LPTV stations likely would be denied the opportunity to implement Next Gen TV, to the detriment of their viewers. Because many non-commercial broadcasters similarly could face challenges finding simulcast partners, they may seek a waiver of the simulcasting requirement if they are unable to find a viable partner.

I appreciate your interest in these matters. Please let me know if I can be of any further assistance.

Sincerely,



Ajit V. Pai



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

November 16, 2017

The Honorable Mike Doyle
U.S. House of Representatives
239 Cannon House Office Building
Washington, D.C. 20515

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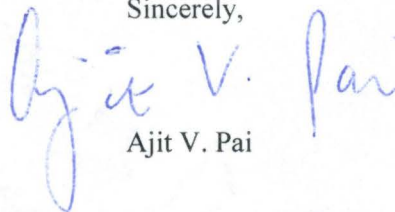
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