

**Before the
Federal Communications Commission
Washington, DC 20554**

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

COMMENTS OF NTCA–THE RURAL BROADBAND ASSOCIATION

I. INTRODUCTION AND SUMMARY

NTCA–The Rural Broadband Association¹ (“NTCA”) submits these comments in response to the Federal Communications Commission’s (the “Commission’s”) Further Notice of Proposed Rulemaking (“FNPRM”) in the above referenced proceeding. In the Report and Order that accompanies the FNPRM (“Report and Order”),² the Commission determined that it will consider requests for waiver of its local simulcasting requirement on a case-by-case basis. It now seeks comment on what guidance it should provide about the circumstances in which it will grant such a waiver.³

NTCA is concerned that the Commission’s proposal would undermine the voluntary nature of the ATSC 3.0 transmission standard. If the Commission will permit a broadcaster to

¹ NTCA represents approximately 850 rural rate-of-return regulated telecommunications providers. All of NTCA’s members are full service local exchange carriers and broadband providers, and many provide video, wireless, satellite, and/or long-distance services as well.

² In the Matter of Authorizing Use of the “Next Generation” Broadcast Television Standard, *Report and Order and Further Notice of Proposed Rulemaking*, GN Docket No. 16-142, (Rel Nov. 20, 2017).

³ FNPRM, ¶ 123.

waive its local simulcasting requirement, it should require certain consumer protections across the entire video ecosystem. Specifically, a Commission’s waiver determination should include consideration of the following: (1) the associated costs to the local MVPD(s) and its subscribers; (2) the number of MVPD subscribers who cannot receive the broadcast station free over the air; and (3) whether or not the applicant volunteers to provide MVPDs and their subscribers with free equipment, or to otherwise subsidize the costs that ensue from grant of the waiver.

In its Report and Order, the Commission noted that ATSC 3.0 is not backwards-compatible with existing televisions sets or receivers.⁴ The simulcasting requirement was enacted to avoid forcing viewers to acquire new equipment or deprive them of televisions service and to make the conversion “voluntary.”⁵ It was also noted that a simulcast mandate would help ensure that MVPDs can continue to provide the 1.0 signal.⁶ This is an important consumer protection because the equipment used by MVPDs today to receive, transmit, and provide broadcast signals to viewers via set-top boxes is incapable of providing an ATSC 3.0 signal. Conversion to 3.0 carriage necessitates converting to 3.0 capable equipment or acquiring the equipment necessary to permit reception of an ATSC 3.0 signal and then “down converting” that signal to a format compatible with legacy equipment, including set-top boxes.

If a broadcaster chooses to deploy ATSC 3.0 service, the Commission determined that the 3.0 channel will not have mandatory carriage rights while the Commission requires local simulcasting.⁷ If the Commission waives simulcasting however, it could be read that the

⁴ Report and Order, ¶ 15.

⁵ *Id.*, ¶ 16

⁶ *Id.*, ¶ 17

⁷ *Id.*, ¶ 61

broadcaster could now enforce its mandatory carriage rights, since simulcasting would be no longer “required.” While the FNPRM asks whether it should consider favorably a waiver applicant’s offer to provide free or low cost ATSC 3.0 converters to viewers,⁸ it neglects to require express consideration of and accounting for the impact on MVPDs and their subscribers that helped drive the very simulcasting requirement in the first instance.

Nearly one-fourth of NTCA’s members report that 90 percent or more of the customers in their service areas cannot receive any over-the-air broadcast signals, and must rely upon MVPD services to receive local news, weather reports, and similar benefits of local broadcasts.⁹ An offer of free or low-cost 3.0 converters would therefore impart no benefit whatsoever to a significant number of rural subscribers. Because these rural residents rely on MVPDs to receive any television signals at all, small rural MVPDs already operating on slim to negative margins and their subscribers should not face additional burdens, such as upgrading equipment to accommodate ATSC 3.0 prematurely.

NTCA is not opposed to a consumer-driven, voluntary conversion to 3.0. If the market changes and consumers demand 3.0, MVPDs, including rural MPVDs, will need to upgrade systems according to their individual business plans. However, absent protections that enable consumer choice, a broadcaster could convert to 3.0 with a waiver to drop simulcasting, enact its mandatory carriage rights (or elect retransmission consent) and thereby impose significant cost on MVPDs and their subscribers. Most broadcasters are likely to elect retransmission consent, as

⁸ FNPRM, ¶ 124

⁹ See Comments of NTCA – the Rural Broadband Association, MB Docket No. 15-216 (filed Dec. 1, 2015), at 3.

it is a significant source of revenue for broadcasters¹⁰ and broadcast content is still considered “must carry” content by the vast majority of MVPDs, especially for those with subscribers who cannot receive content over the air. MVPDs and their subscribers may be forced to pay for the privilege of receiving “free” broadcast content and for the new equipment necessary to receive it – and ironically to do so in area where the content would not reach the consumer at all absent the MVPD’s carriage *for* the broadcaster. Broadcasters who voluntarily convert to 3.0 will do so because it benefits their business. They should not be permitted to foist the associated costs onto the backs of reluctant consumers, including MVPDs and rural subscribers.

Broadcasters who convert to ATSC 3.0 without simulcasting should bear the full cost of conversion across the entire video ecosystem, unless or until the Commission determines that simulcasting is no longer necessary or desirable. A Commission’s waiver determination should, at a minimum, include consideration of the following: (1) the associated costs to the local MVPDs; (2) the number of MVPD subscribers who cannot receive the broadcast station free over the air; and (3) whether or not the waiver applicant volunteers to provide MVPDs and their subscribers with free conversion and/ or reception equipment, or to otherwise subsidize the cost of the it.

¹⁰ MVPD subscribership has declined steadily over the last several years, but retransmission consent fees have increased exponentially. In 2015 retransmission consent represented 23% of broadcasters’ total television revenue, up from 18% in 2014. In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, *Eighteenth Report*, MB Docket No. 16-247 (Rel. Jan 17, 2017). Over the two-year period from 2013-2015, the compound average annual increase in retransmission consent fees paid by MVPDs was 42.8%. In the Matter of Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992 Statistical Report on Average Rates for Basic Service, Cable Programming Service, and Equipment, *Report on Cable Industry Prices*, MM Docket No. 92-266, ¶41 (Rel. Feb. 8, 2018).

The Commission is requiring simulcasting to protect consumers from a premature, broadcaster-driven conversion to ATSC 3.0. For that reason, any waiver of this requirement must take into account the effects on the consumers served by this protection, including the impacts on the services they buy from MVPDs that carry the signals in question. If the consumers desire and adopt the new standard, there will be an organic conversion and eventually, simulcasting will no longer be necessary or desirable. Until such time however, consumer protections are necessary to avoid a conversion that is solely driven by the broadcasters and is unnecessarily costly to consumers.

Respectfully submitted,



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February 20, 2018