

**Before the
Federal Communications Commission
Washington, DC 20230**

In the Matter of)
)
Promoting Broadcast Internet Innovation) MB Docket No. 20-145
Through ATSC 3.0)

**COMMENTS OF
NTCA–THE RURAL BROADBAND ASSOCIATION**

I. INTRODUCTION AND SUMMARY

NTCA–The Rural Broadband Association (“NTCA”)¹ hereby submits these comments in response to the Notice of Proposed Rulemaking issued by the Federal Communications Commission (“Commission”) in the above-referenced proceeding.² In the *Notice*, the Commission seeks comment on methods of promoting the deployment of Broadcast Internet services as part of the transition to ATSC 3.0. In particular, the Commission seeks comment on potential uses of the technology that ATSC 3.0 will make available to television broadcasters and how the Commission should calculate the fee to be paid by broadcasters who lease excess spectrum capacity for ancillary and supplementary offerings. The Commission further asked whether certain types of ancillary and supplementary offerings should be exempt from any fee

¹ NTCA represents approximately 850 independent, community-based telecommunications companies and cooperatives and more than 400 other firms that support or are themselves engaged in the provision of communications services in the most rural portions of America. All NTCA service provider members are full service rural local exchange carriers and broadband providers, and many provide fixed and mobile wireless, video, and other competitive services in rural America as well.

² *Promoting Broadcast Internet Innovation through ATSC 3.0*, Declaratory Ruling and Notice of Proposed Rulemaking, MB Docket No. 20-145 (June 9, 2020) (“*Declaratory Ruling*” or “*Notice*”).

requirement. The Commission noted that ATSC 3.0 broadcast signals “can connect to 5G wireless networks” and “can offer broadband-speed downloads ... and its propagation characteristics make it well suited for underserved rural communities.”³

NTCA welcomes the Commission’s recognition that some rural communities continue to lack access to high-speed broadband internet service and all of the distance learning, jobs, smart agriculture and telemedicine capabilities that such service makes possible. However, the Commission must be careful not to allow rhetoric to overcome reality when considering new methods of reaching rural areas with high-speed internet services. Furthermore, as the Commission aptly recognized, television broadcasters continue to be required by the Communications Act of 1934 (the “Act”) to provide free, over-the air programming to residents of their broadcast community.⁴ Accordingly, NTCA recommends the Commission adopt rules in the instant proceeding that would responsibly address both of these needs.

II. EVEN IF ALLOWED TO WAIVE THE FEE MANDATED BY THE ACT, THE COMMISSION MUST FIRST REQUIRE AN AFFIRMATIVE SHOWING THAT A BROADCASTER’S ANCILLARY OR SUPPLEMENTAL SPECTRUM IS BEING USED FOR A FEE-EXEMPT SERVICE.

The Commission noted that the Act requires broadcasters who receive compensation either from subscribers or third parties for ancillary or supplemental services delivered through digital television spectrum to pay a fee to the U.S. Treasury.⁵ The Commission explained that this fee is intended to ensure broadcasters do not receive “unjust enrichment” from spectrum they acquired for free on the condition that broadcasters provide free programming that is in the

³ *Notice* at ¶ 14.

⁴ *Id.* at ¶ 7.

⁵ *Id.* at ¶ 23.

public interest, convenience and necessity. As the Commission also noted, however, that condition has been modified over time to now require only that broadcasters provide one free over-the-air video program signal using the digital channel.⁶ In the *Notice*, the Commission proposes to take this one step further by exempting broadcasters from a fee for any paid use of the ancillary or supplemental spectrum if the broadcaster uses such spectrum for one of several enumerated purposes, such as “telehealth, distance learning, public safety, or homeland security-related services, or services that promote access in rural areas.”⁷

Assuming the Commission has authority to waive the statutory mandated fee, the Commission must ensure that the spectrum truly is being used to provide one of the fee-exempt services and not for any other purpose. This includes: (1) establishing a clear and well-defined list of specific fee-exempt services; (2) clearly defining what the broadcaster who holds the license will be required to demonstrate in order for the proposed service to qualify for the fee exemption; (3) requiring the broadcaster to provide written demonstration to the Commission of how the proposed fee-exempt service(s) will be delivered throughout the broadcaster’s community of license; and (4) establishing a process for ongoing verification that the excess spectrum continues to be used for that specific fee-exempt purpose and no other. Put another way, the purported use of spectrum for a fee-exempt purpose must not become an “end run” or a Trojan Horse that is leveraged to provide a financial windfall for the broadcaster by using spectrum it obtained for free with no resulting benefit to the American taxpayer.

⁶ *Id.* at ¶ 31.

⁷ *Id.* at ¶ 28.

The types of services the Commission suggested could be fee-exempt, such as telehealth, distance learning, public safety, homeland security or services that promote access in rural areas offer important public services, and NTCA supports the Commission’s efforts to expand these services to rural communities. However, in doing so, the Commission must require broadcasters, or those to whom they lease excess spectrum, to do more than simply check a box stating the spectrum will be used to provide one or more fee-exempt service. Instead, the Commission should require the broadcaster, who would in turn obtain this information from the entity leasing the spectrum, to demonstrate and document that the excess spectrum is in fact being solely and exclusively used for the specified fee-exempt service. Furthermore, if the spectrum is being used for such a service *and* for others, this should disqualify the licensee from any fee exemption; without such a bright line, the fee exemption would swallow the rule and result in every broadcaster or lessee structuring its offerings in a way that checks the box but offers little or no actual public benefit while generating a windfall for the broadcaster.

Requiring broadcasters to demonstrate that the excess spectrum is being used to provide at least one of the public services enumerated by the Commission to residents and businesses located within the broadcaster’s community of license prior to being exempt from the statutory fee is a necessary first step to ensuring those living and working within the broadcast licensee’s community of service receive the intended benefit. For instance, the Commission states in the Notice that “ATSC 3.0 broadcast signals can connect to 5G wireless networks to provide enhanced consumer experiences....”⁸ The Commission also notes that the propagation

⁸ *Id.* at ¶ 14.

characteristics of the ATSC 3.0 signal “make it well suited for underserved rural communities.”⁹ As an initial matter, however, as discussed further below, the Commission should be aware that broadcasters are unable to reach a rather large number of rural locations with over-the-air signals, especially since the digital transition took place. Indeed, multichannel video programming distributors (“MVPDs”) pay retransmission consent fees to broadcasters so that all locations may receive local programming; in other words, these providers pay the broadcaster for the “privilege” of carrying the signal throughout the broadcaster’s designated area when the broadcaster itself cannot or will not do so. Furthermore, even if the propagation characteristics of ATSC 3.0 signals allow those signals to reach locations previously out of reach of ATSC 1.0 signals, the high cost of upgrading to ATSC 3.0 will likely result in broadcasters upgrading to this service in only the largest markets.¹⁰ Thus, even if an ATSC 3.0 signal could extend farther than an ATSC 1.0 signal, there is no evidence to suggest the signal could extend tens of miles beyond a major metropolitan area as would be necessary to reach rural consumers.

The Commission should also recognize when developing rules in the instant proceeding that the availability of fiber is a condition precedent to the success of any advanced wireless service. Indeed, as one systems engineer noted, “If 5G is to be aggressively rolled out in the coming years ... [t]he only transport media capable of scaling to these demands is fiber meaning it’ll have to be available everywhere”¹¹ Additionally, a report prepared by a noted

⁹ *Id.*

¹⁰ *See Notice* at ¶ 29. (“The transition to ATSC 3.0 is voluntary and many stations may lack the funds and/or expertise to upgrade their transmission facilities.”)

¹¹ “5G wireless needs fiber, and lots of it,” Brian Lavellee, Ciena, available at https://www.ciena.com/insights/articles/5G-wireless-needs-fiber-and-lots-of-it_prx.html (last visited August 3, 2020). *See also* “Communications infrastructure upgrade - The need for deep fiber,” Deloitte,

engineering firm demonstrates “5G wireless cells must be placed very close to the customer (often within 300 to 500 feet), which makes 5G particularly impractical for most rural applications.”¹² The report further notes that “it is unclear why, when one is putting fiber so deep into the network to enable such speeds and to overcome the capacity constraints [of 5G] identified in this paper, one would stop at the small cell rather than just delivering fiber to the premises a few hundred feet away – and thereby deliver the promise of much higher speeds and availability without the same kinds of capacity limitations.”¹³ Accordingly, while the Commission’s efforts to encourage 5G deployment in rural areas is commendable, the Commission will need to take a very close look at any proposals to use excess ATSC 3.0 spectrum to deliver 5G services in rural areas in order to determine whether such services truly are possible based upon the fiber infrastructure in place in those areas.

NTCA further recommends the Commission utilize existing definitions of rural areas¹⁴ when reviewing proposals to use excess ATSC 3.0 spectrum to deliver one of the fee exempt services to rural areas. This is necessary not only to ensure consistency among different technologies but also to ensure residents and businesses located within the broadcaster’s community of license are in fact able to receive the benefit intended by the Commission.

July 2017, p. 13, noting that “Whether to supply backhaul to wireless towers or to shorten copper distances, closing the digital divide requires fiber investment in [] underserved areas.” Available at <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/technology-media-telecommunications/us-tmt-5GReady-the-need-for-deep-fiber-pov.pdf> (last visited Aug. 10, 2020).

¹² Letter from Michael R. Romano, NTCA, to Marlene H. Dortch, FCC, WC Docket No. 10-90 (Feb. 13, 2017), p. 6

¹³ Vantage Point Report at pp. 24-25.

¹⁴ See Establishing a 5G Fund for Rural America, GN Docket No. 20-32, *Notice of Proposed Rulemaking and Order* (Apr. 24, 2020), ¶¶25-26 (using the Dept. of Agriculture’s Rural-Urban Commuting Area Codes (1-10) for the 5G Fund).

Likewise, NTCA recommends the Commission utilize the same criteria for evaluating ATSC 3.0 telehealth proposals as the Commission uses for telehealth grants.¹⁵

III. BROADCASTERS WHO PROVIDE SMALL MVPDs WITH PROGRAMMING IN LIEU OF RETRANSMISSION CONSENT FEES SHOULD QUALIFY FOR A FEE EXEMPTION.

Long before the notion of spectrum auctions became a reality, Congress provided broadcasters with free spectrum on the condition that they deliver programming in the public interest, convenience and necessity.¹⁶ The Commission explained, “Generally, this means it must air programming that is responsive to the needs and problems of its local community of license.”¹⁷ With the advent of digital television signals, however, broadcasters’ signal coverage area has been reduced and broadcasters must now only provide one standard definition over-the-air video program signal for free on its digital channel.¹⁸ Instead, broadcasters enter into lucrative retransmission consent agreements with MVPDs that include not only traditional over-the-air broadcast channels (which include the local news) but may require the mandatory carriage of additional undesired channels.

Even in the current age of social media and multiple video outlets, many residents continue to turn to their local television broadcast station for local news, weather and sports.¹⁹

¹⁵ See Promoting Telehealth in Rural America, *Report and Order*, WC Docket No. 17-310 (Aug. 20, 2019).

¹⁶ Communications Act of 1934, ch. 652, 48 Stat.1064 (codified in 47 U.S.C. §§ 151-611 (1994)).

¹⁷ “The Public and Broadcasting,” available at <https://www.fcc.gov/media/radio/public-and-broadcasting> (last visited Aug. 4, 2020).

¹⁸ *Notice* at ¶ 31.

¹⁹ MVPDs that are located near the border of two states are often licensed by the Commission to a Designated Marketing Area (“DMA”) that includes a bordering state’s broadcast stations rather than their local community’s broadcast stations. MVPDs in this situation must pay extra to carry the local

However, as noted earlier, many rural consumers cannot access a free, over-the air signal due to terrain limitations or distance from a broadcast tower. Significantly, an NTCA survey found that for nearly one quarter of NTCA members, ninety percent (90%) or more of their customers cannot receive an over-the-air television broadcast signal.²⁰ Consequently, a significant number of customers in rural areas must rely on their local MVPD to view local television programming that is ostensibly to be made available for free “over the air.” Thus, in severe weather, the MVPD is often the only source of local information. Even the Centers for Disease Control and Prevention recommends, “When there are thunderstorms in your area, turn on your radio or TV to get the latest emergency information from local authorities. Listen for announcements of a tornado watch or tornado warning.”²¹ MVPDs are essential to filling this public safety role due to the fact they are the only ones delivering local programming to their communities. Accordingly, NTCA encourages the Commission to use the opportunity of the instant proceeding to ensure MVPDs have the ability to continue to provide this critical service.

Despite the critical need for access to local content, MVPDs are being forced out of the video market due to double digit increases in retransmission fees paid to the broadcasters, including to serve those customers the broadcaster cannot itself reach. A 2019 survey of NTCA members revealed that their retransmission consent fees had increased by an average of almost

community’s broadcast stations – in addition to paying significant fees to carry the DMA’s stations - because their subscribers need and want local news, weather and sports, rather than that of the large metropolitan area tens of miles away in another state.

²⁰ NTCA – The Rural Broadband Association and INCOMPAS 2015 Video Competition Survey (2015 Video Competition Survey), https://www.ntca.org/sites/default/files/documents/2018-01/NTCA_2015VideoCompetitionSurvey.pdf (last visited Aug. 4, 2020).

²¹ Centers for Disease Control and Prevention, Natural Disasters and Severe Weather, <https://www.cdc.gov/disasters/tornadoes/prepared.html> (last visited Aug. 4, 2020).

\$54,000 in the last negotiating cycle. This amounts to an average of 34.8% of providers' total operating expenditures. The numbers were similar in 2018, with NTCA members reporting an average increase in retransmission consent fees of nearly \$44,000, which amounted to an average of 33.6% of providers' total operating expenditures.²²

To help ensure residents in all areas will continue to have access to local programming, in addition to the public interest services proposed by the Commission for excess digital spectrum, NTCA recommends the Commission also exempt broadcasters from payment of any statutory fee resulting from the ancillary and supplementary use of such spectrum if the broadcaster distributes the same programming to unaffiliated MVPDs with whom they have an existing retransmission consent agreement without charging a fee for such programming. This use of broadcasters' ancillary and supplemental digital spectrum would be in the public interest and firmly in line with the original purpose of granting broadcasters free spectrum.

IV. CONCLUSION

NTCA supports the Commission's goal of finding new methods of delivering broadband-enabled services to the public, especially those residing in rural areas. However, to ensure this goal is met, NTCA encourages the Commission to establish clear guidelines that must be met prior to a broadcaster being exempted from submitting a portion of the funds it receives from the lease of excess and ancillary spectrum to the U.S. Treasury. NTCA further encourages the Commission to adopt rules that would exempt broadcasters from the statutory fee if the broadcaster delivers the same programming to MVPDs with whom it has a retransmission

²² See Broadband/Internet Availability Survey Report, NTCA – The Rural Broadband Ass'n, Dec. 2019, p. 21, <https://www.ntca.org/sites/default/files/documents/2019-12/2019%20Broadband%20Survey%20Report.pdf> (last visited Aug. 4, 2020).

consent agreement for no charge and for the same duration as the retransmission consent agreement. Such an exemption would not only meet the statutory requirements for broadcasters' lease of ancillary or supplemental digital spectrum but also allow broadcasters to fulfill the purpose for which they were granted spectrum initially – to serve the public interest, convenience and necessity.

Respectfully submitted,



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