

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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

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

NTCA–The Rural Broadband Association (“NTCA”)<sup>1</sup> hereby submits these reply comments in response to the Second Further Notice of Proposed Rulemaking (“*Further Notice*”)<sup>2</sup> released by the Federal Communications Commission (“Commission”) in the above-captioned proceeding. The Commission tentatively concludes in the *Further Notice* that Next Gen TV stations may license one or more simulcast multicast streams on a host station or stations, whether that guest stream is the 3.0 broadcast or the 1.0 simulcast. The Commission also proposes to allow Next Gen TV stations broadcasting in 3.0 on their own channels to license one or more multicast streams aired only in 1.0 format on a host station or stations even if they are not simulcasting that stream in 3.0; the Commission further seeks comment on whether licensing non-simulcast 1.0 multicast streams raises any concerns.<sup>3</sup>

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<sup>1</sup> NTCA–The Rural Broadband Association represents approximately 850 independent, community-based companies and cooperatives that provide advanced communications services in rural America and more than 400 other firms that support or are themselves engaged in the provision of such services.

<sup>2</sup> *Authorizing Permissive Use of the “Next Generation” Broadcast Television Standard*, Second Further Notice of Proposed Rulemaking, GN Docket No. 16-142, FCC 21-116 (rel. Nov. 5, 2021) (“*Second Further Notice*”).

<sup>3</sup> *Second Further Notice* at ¶ 16.

NTCA agrees with commenters' general support for allowing a Next Gen TV station that is broadcasting in 3.0 to license one or more non-simulcast 1.0 multicast streams to another television station to ensure the public continues to have access to the same programming as stations transition to ATSC 3.0. The National Association of Broadcasters ("NAB") sought this revision to the Commission's rules based on the possibility that 3.0 facilities will have insufficient capacity initially to multicast 1.0 and 3.0 streams.<sup>4</sup> However, as NCTA and ATVA noted, the Commission should erect safeguards to ensure consumers are not harmed by such multicasting.<sup>5</sup> Specifically, as NCTA commented, "the Commission should ensure that any additional flexibility granted to broadcasters is appropriately tailored to the Commission's goal of minimizing disruption to current ATSC 1.0 viewers during the ATSC 3.0 transition."<sup>6</sup>

To this end, NTCA first encourages the Commission to adopt ATVA's recommendation that new programming will be aired only on 3.0.<sup>7</sup> This will ensure the public continues to receive the same programming that is currently delivered via 1.0 while using the limited 3.0 space to test out new programming, consistent with the Commission's goals and NAB's basis for seeking this revision to the Commission's rules. Notably, the Commission concluded that during the initial roll-out of 3.0 service, ATSC 3.0 capacity will be limited and likely used primarily or solely for NEXT Gen TV station's primary streams.<sup>8</sup> Additionally, CMG Media pointed out that "ATSC

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<sup>4</sup> See *Second Further Notice* at ¶ 15.

<sup>5</sup> Comments of NCTA – The Internet & Television Ass'n, GN Docket No. 16-142 (Feb. 11, 2022) ("NCTA Comments"). See also Comments of American Television Alliance ("ATVA"), GN Docket No. 16-142 (Feb. 11, 2022) ("ATVA Comments").

<sup>6</sup> NCTA Comments at p. 1.

<sup>7</sup> See ATVA Comments at p. 4.

<sup>8</sup> See *Second Further Notice* at ¶ 15.

3.0 signals are not backwards-compatible with consumer ATSC 1.0 equipment,” and as a result, Next Gen TV stations must “prioritize serving ATSC 1.0 viewers and minimize viewer disruption.”<sup>9</sup> Thus, requiring broadcasters who need to create space on their 3.0 channels to deliver their existing programming using another broadcaster’s 1.0 signal will allow consumers to continue to receive the same programming during the station’s transition to full 3.0 broadcasting.

Next, NTCA supports NCTA’s recommendation that any rules allowing non-simulcast 1.0 multicast hosting arrangements expire in five years.<sup>10</sup> Five years should provide broadcasters the time needed to test out new programming on their 3.0 facilities while also guarding against station owners’ ability to use an open-ended transition period to gain additional market concentration for their programming. To further guard against broadcasters’ ability to use non-simulcast multicast arrangements to gain an even larger concentration of programming, NTCA recommends the Commission specify that Next Gen TV stations cannot require any new programming delivered via the station’s 3.0 facilities to be included as part of any retransmission consent agreement.

CMG Media, Pearl TV, ONE Media and Gray TV all argue retransmission fee arrangements are “tangential” to the instant proceeding and should therefore be disregarded.<sup>11</sup>

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<sup>9</sup> Comments of CMG Media Corporation d/b/a/ Cox Media Group (“CMG Media”), GN Docket No. 16-142 (Feb. 11, 2022), p. 2.

<sup>10</sup> See NCTA Comments at p. 4. See also ATVA Comments at p. 5; Comments of Pearl TV, LLC, GN Docket No. 16-142 (Feb. 11., 2022), p. 2 (acknowledging that the transition to 3.0 is a “time-limited event”) (“Pearl TV Comments”).

<sup>11</sup> See Comments of CMG Media, GN Docket No. 16-142 (Feb. 11, 2022), p.2; Pearl TV Comments at p. 2, Comments of ONE Media 3.0, LLC, GN Docket No. 16-142 (Feb. 11, 2022), p. 2, Comments of Gray Television, Inc., GN Docket No. 16-142 (Feb. 11, 2022), p. 5.

History, however, demonstrates that the issue of retransmission consent fees is hardly “tangential,” but is rather highly relevant to and inextricably intertwined with any discussion of how television programming will be distributed. As recently as July 2021, the Justice Department required Gray TV and Quincy Media to divest ten broadcast television stations as a condition to Gray’s purchase of Quincy. Notably, the Justice Department concluded that “[t]he combined company likely would charge cable and satellite companies higher retransmission fees to carry its broadcast television stations” in markets where, absent the divestiture, combining the companies’ stations would eliminate head-to-head competition.”<sup>12</sup>

To further guard against broadcasters using additional programming delivered via ATSC 3.0 to increase retransmission consent fees or to demand carriage of programming few consumers view as a condition of entering into a retransmission consent agreement with multichannel video programming distributors (“MVPDs”), NTCA recommends the Commission prohibit broadcasters from requiring ATSC 3.0 programming to be included in any retransmission consent agreement during the transition period recommended above. This precaution is hardly speculative as Sinclair Broadcasting, for instance, has required rural MVPDs to carry the Tennis Channel as a condition to entering into any retransmission consent agreement. Furthermore, members are already reporting that they have experienced demands for carriage of ATSC 3.0 signals through broad language that requires carriage of any “compliant ATSC standard.” Accordingly, while the Commission already specified that ATSC 3.0 signals

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<sup>12</sup> Justice Department Requires Substantial Divestiture in Gray’s Acquisition of Quincy to Protect American Consumers and Small Businesses, *News Release*, Dept. of Justice (July 28, 2021), available at [Justice Department Requires Substantial Divestitures in Gray’s Acquisition of Quincy to Protect American Consumers and Small Businesses | OPA | Department of Justice](#) (last visited March 2, 2022).

are not eligible for “must carry,” the Commission should take a step further to ensure this transition underway is not used as a Trojan Horse to achieve the same effect via a carefully worded or program-tied retransmission consent agreement. Without such a restriction, if the local network affiliate decides to transition to the ATSC 3.0 signal and demands carriage from rural MVPDs, these MVPDs will have no choice but to carry the new signal at higher cost or not carry the station’s programming at all – an unsustainable position for a small, rural MVPD and a real harm for the consumers who otherwise often have no ability to receive the broadcaster’s signal over the air.

Based on the foregoing, allowing broadcasters some measure of flexibility to transition to ATSC 3.0 programming is appropriate. However, this flexibility must be bounded by targeted safeguards – such as the time limits and programming limits referenced above and proposed by NCTA/ATVA and the retransmission consent fee safeguard proposed herein – to ensure “tangential” issues such as increased market concentration and the resulting imbalance in negotiating retransmission consent agreements do not arise from this allowance.

Respectfully submitted,



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