

**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)
)

**PETITION FOR DECLARATORY RULING AND PETITION FOR RULEMAKING
OF THE NATIONAL ASSOCIATION OF BROADCASTERS**

I. INTRODUCTION AND SUMMARY

Broadcasters have begun to deploy Next Gen TV within their existing channel allocations to improve service to viewers with interactivity, ultra-high definition video and more. As these deployments unfold, broadcasters have discovered an area where straightforward clarification of the Commission’s current rules would help broadcasters preserve existing service to viewers and a gap in the Commission’s 2017 rules¹ that must be addressed. Accordingly, pursuant to Sections 1.2 and 1.401 of the Commission’s Rules, the National Association of Broadcasters (NAB)² hereby requests the Commission: (1) clarify that its existing rules permit a station transmitting in ATSC 3.0 to partner with one or more other stations that would host the first station’s simulcasted ATSC 1.0 multicast streams to preserve existing service in the market; and (2) establish rules permitting a station

¹ *Authorizing Permissive Use of the “Next Generation” Broadcast Television Standard*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 9930 ¶ 2 (2017) (Order).

² The National Association of Broadcasters (NAB) is the nonprofit trade association that advocates on behalf of free local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

transmitting in ATSC 3.0 to partner with one or more other stations that would host the first station's ATSC 1.0 multicast streams, regardless of whether those ATSC 1.0 multicast streams are simulcast in ATSC 3.0, and also permit a station transmitting in ATSC 1.0 to partner with one or more other stations to host content transmitted in ATSC 3.0. Grant of these requests will help preserve existing programming viewers enjoy today and will also help speed the rollout of Next Gen TV and its improved features and services to American viewers.

II. CLARIFICATION OF THE COMMISSION'S RULES SERVES THE PUBLIC INTEREST

As broadcasters have begun to deploy ATSC 3.0 markets, they have placed the highest priority on preserving services to the maximum extent possible. Stations want to preserve the over-the-air delivery of their primary streams, highlight features of ATSC 3.0 and continue to serve audiences with multicast streams. Achieving this goal, while also splitting capacity between ATSC 3.0 and ATSC 1.0 signals given no new spectrum allocations, has required stations to be efficient and creative.

To those ends, broadcasters respectfully request the Commission to clarify and amend its rules to facilitate critical carriage arrangements among stations that are parties to an ATSC 3.0 deployment plan. Specifically, Petitioners seek recognition by the Commission that the licensee who originated the programming, rather than the licensee whose facilities are being used to distribute the programming, is responsible for the programming. This approach is wholly in keeping with the Commission's existing rules and its goal of encouraging successful ATSC 3.0 deployments. These arrangements may potentially include, for example:

- A station transmitting in ATSC 3.0 that has its primary, simulcast stream hosted on ATSC 1.0 Station A, and also has multicast streams, that are not transmitted in ATSC 3.0, hosted on Station A. This situation may include translator stations that are retransmitting multicast streams that are not simulcast.
- A station transmitting in ATSC 3.0 that has its primary, simulcast stream hosted on ATSC 1.0 Station A; a multicast stream transmitted only in ATSC 1.0 hosted

on ATSC 1.0 Station B; and a multicast stream transmitted only in ATSC 1.0 hosted on ATSC 1.0 Station C.

- A station transmitting in ATSC 1.0 that will simulcast some of its programming on ATSC 3.0 Station A, and some of its programming on ATSC 3.0 Station B, potentially including 3.0 multicast streams that are not simulcast in ATSC 1.0.
- A station transmitting in ATSC 3.0 that has its primary, simulcast stream as well as a multicast stream hosted on ATSC 1.0 Station A where, to have capacity to carry those streams, Station A must arrange for one of its multicast streams to be hosted on ATSC 1.0 Station B.

As NAB has previously noted,³ some stations may have concerns about which station is liable for any potential violations of Commission rules in these critical ATSC 3.0 deployment sharing arrangements that cannot fully be resolved through contractual agreements between the parties. In addition, a purely contractual approach would exclude noncommercial stations from participating in sharing arrangements to host commercial multicast streams. Section 399B of the of the Communications Act prohibits noncommercial stations from making their “facilities available to any person for the broadcasting of any advertisement.”⁴ This could severely limit the ability of noncommercial stations to participate in deployments as well as limit the ability of commercial stations to preserve their multicast streams to continue to serve their viewers.

A. The Commission Should Clarify that its Existing Licensed Framework Applies to Simulcasted Multicast Streams

NAB asks the Commission to clarify that the FCC’s existing licensing framework for simulcasting applies to simulcast multicast streams as well as a station’s primary stream.

With this clarification, a 3.0 station’s license would reflect additional channels hosting its 1.0

³ See Letter from Patrick McFadden to Marlene H. Dortch, GN Docket No. 16-142 (Jan. 27, 2020); Letter from Patrick McFadden to Marlene H. Dortch, GN Docket No. 16-142 (March 19, 2020).

⁴ 47 U.S.C. § 399(a).

multicast programming, or 1.0 station's license would reflect additional channels hosting its 3.0 multicast programming.

Such clarification would not raise novel public interest concerns. It would create no new carriage rights for multicast streams, which are not entitled to must-carry carriage. It would create no new station licenses or alienable interests. Each station would continue to have a single license as the Commission's rules provide – but instead of that single license reflecting only one authorized host channel, it could reflect more than one.

Specifically, we request the Commission to clarify that the term “simulcasting arrangements” as used in the FCC's orders and rules refers to arrangements necessary to give effect to the FCC's rules requiring simulcasting of the primary video stream and to preserve a station's ATSC 1.0 multicast streams where possible. In particular, the FCC should clarify that Section 73.3801 of the Commission's rules permits a station to partner with one or more other stations that would host the first station's ATSC 1.0 multicast streams in simulcast to preserve existing service in the market.

This clarification does not require a rulemaking. Section 73.3801(a) of the rules provides that:

for purposes of complying with the simulcasting requirement in paragraph (b), a full power television station may partner with one or more other full power stations or with one or more Class A, LPTV, or TV translator stations in a simulcasting arrangement for purposes of airing either an ATSC 1.0 or ATSC 3.0 signal on a host station's (i.e., a station whose facilities are being used to transmit programming originated by another station) facilities. Noncommercial educational television stations may participate in simulcasting arrangements with commercial stations.⁵

⁵ 47 C.F.R. § 73.3801(a).

The simulcasting requirement in paragraph (b), in turn, requires a station to partner for the hosting of a single stream in ATSC 1.0.⁶ Section 73.3801(a) expressly permits a station to partner with one or more stations for purposes of airing *either* an ATSC 1.0 or ATSC 3.0 signal on the host station's transmitter. That is, the rules expressly permit partnerships between more than two stations for compliance with a rule that only requires simulcasting of a single stream. The best reading of this rule is that the Commission intended to permit partnerships for hosting of additional ATSC 1.0 streams, including multicast streams, under its existing licensed framework. All the Commission need do is clarify that Section 73.3801(a) means what it says and permits stations to partner with more than one other station to simulcast its multicast streams in ATSC 1.0 under precisely the same legal framework as a station's primary stream.

B. The Commission Should Promptly Develop Rules to Help Stations Preserve Existing Multicast Service to Viewers in ATSC 1.0

The Commission should also clarify, or establish by rulemaking if necessary, that the same licensed framework applies where an ATSC 3.0 station seeks to preserve its 1.0 multicast streams by partnering with other stations where the 3.0 station will *not* be simulcasting the multicast streams in 3.0. Accordingly, we urge the Commission to promptly commence a proceeding to clarify the regulatory treatment of an ATSC 3.0 station's multicast streams hosted on an ATSC 1.0 station *regardless* of whether those streams are simulcast. That treatment should mirror the licensed framework the Commission currently employs with respect to simulcast programming streams.

⁶ 47 C.F.R. § 73.3801(b).

As with the declaratory ruling requested above, this change would not raise novel public policy concerns. It also would create no new carriage rights for multicast streams, which are not entitled to must-carry carriage. Similarly, it would create no new station licenses or alienable interests. Each station would continue to have a single license as the Commission's rules provide – but instead of that single license reflecting only one authorized host channel, it could reflect more than one to introduce ATSC 3.0 to the marketplace. The Commission would simply be making clear that the originator of a particular multicast stream, not the host, would be the sole party responsible for ensuring compliance with statutory and regulatory requirements regarding hosted multicast streams. This would include, but not be limited to, the Commission's rules regarding political broadcasting, children's programming, equal employment opportunities, the public inspection file, indecency, sponsorship identification, station identification, contests, the CALM Act, and the Emergency Alert System. Grant of this rule change would serve the public interest by promoting continued transmission of multicast streams to viewers.

Given that such arrangements would be in furtherance of ATSC 3.0 simulcasting arrangements, the Commission should make plain that applying the licensed approach to these arrangements would not trigger the broadcast ownership rules. This approach would be entirely consistent with the Commission's decision in the Next Gen TV Order.⁷

Prompt conclusion of this proceeding would provide a clear line of Commission authority over the originator of multicast streams (regardless of whether they are simulcast) through the same licensed approach the Commission uses for simulcast programming. This is critical to ensuring that both commercial and non-commercial stations are willing and able to

⁷ Next Gen Order at ¶ 80, n. 237.

partner to help preserve service to viewers. Amendment of the Commission's rules would serve the public interest by both helping to preserve existing programming and facilitating the smooth deployment of the next generation of television service for American viewers.

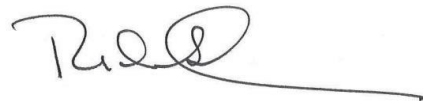
III. CONCLUSION

For the foregoing reasons, NAB respectfully requests that the Commission issue a Declaratory Ruling clarifying that its existing regulatory framework for the hosting of simulcast primary programming streams also applies to simulcast multicast streams. NAB also asks the Commission to promptly expand the application of these rules to cover the transmission of ATSC 1.0 multicast streams regardless of whether those streams are simulcast in ATSC 3.0.

Respectfully submitted,

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