

**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)

**COMMENTS OF
THE NATIONAL ASSOCIATION OF BROADCASTERS**

I. INTRODUCTION AND SUMMARY

The National Association of Broadcasters (NAB)¹ hereby replies to comments submitted in response to the Commission’s Fourth Further Notice of Proposed Rulemaking (FNPRM) concerning the state of the marketplace for ATSC 3.0 standard essential patents.² At the outset, NAB notes that it is at best unclear whether the Commission has jurisdiction to regulate patents at all, let alone jurisdiction over all parties that may hold standard essential patents. But even if the FCC possessed such authority, there is no current indication how Commission action could be helpful to protect consumers or encourage deployment. As a result, NAB respectfully submits that the Commission should continue to monitor market developments and act only if there is evidence of actual market failure and the Commission can identify clearly its source of authority for imposing new rules or requirements.

¹ 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.

² *Authorizing the “Next Generation” Broadcast Television Standard*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, GN Docket No. 16-142, FCC 23-53 (June 20, 2023) (FNPRM).

II. THERE IS NO BASIS FOR FURTHER COMMISSION ACTION WITH RESPECT TO ATSC 3.0 PATENTS

A. There is a Robust Market for ATSC 3.0 Compatible Receivers

The Commission's interest in the state of the ATSC 3.0 patent marketplace should be confined to the question of whether there is presently a market failure that Commission action could solve. That is, is there a patent issue limiting the availability of 3.0 compatible receivers that could be corrected by Commission action to ensure consumers are able to purchase compatible equipment and that broadcasters may reasonably continue rolling out ATSC 3.0 services? Real world market conditions plainly demonstrate there is no such failure at this time.

In fact, major television set manufacturers have several models of 3.0 compatible sets available for sale at a variety of screen sizes and price points. Industry estimates suggest that, by the end of 2023, approximately ten million 3.0 compatible sets will have been sold, with tens of millions more sets expected to be sold in the years following.³ In addition, consumers interested in purchasing an accessory device that allows them to receive an ATSC 3.0 signal using their current television set will soon have multiple options. ADTH is already marketing and shipping a certified NEXTGEN TV accessory device that is available for less than \$100. Zinwell will also begin selling NEXTGEN TV certified devices later this year.⁴

In short, nothing to date indicates that there is currently a problem for the Commission to solve with respect to Commission regulatees operating in the ATSC 3.0 device marketplace,

³ "Zinwell Now Certified to Produce NextGen TV Upgrade Accessory Receiver Products," TVNewCheck (July 13, 2023) available at: <https://tvnewscheck.com/tech/article/zinwell-now-certified-to-produce-nextgen-tv-upgrade-accessory-receiver-products/>.

⁴ *Id.*

let alone any evidence that patent issues in particular are causing a problem that would merit Commission intervention.

In fact, as the Commission is aware, ATSC's patent policy generally requires disclosure of essential patents and licensing of essential patents on reasonable and non-discriminatory (RAND) terms.⁵ We are not aware of any ATSC member patent-holder that has refused to make essential patents available on RAND terms. Indeed, every ATSC member that has disclosed that it holds patents essential to ATSC 3.0 adopted standards has publicly declared its intention to make those patents available on RAND terms.⁶ Whether any non-ATSC member takes a different position and is able to attempt to rent-seek for its standard essential patents despite market forces may be another matter. But at this point, the Commission should not depart from its current approach of continuing to monitor marketplace developments without greater regulatory involvement – the same approach it took during the DTV transition.⁷

B. The Commission Lacks Authority to Regulate Patents

As noted above, the Commission previously refrained from regulating patent licensing terms in the DTV transition because, as is the case now, there was no evidence of a market failure that Commission regulation could plausibly solve. More fundamentally, however, the Commission has no plain authority or expertise with respect to patent licensing or royalties, and Commission intervention in the market under these circumstances could have unpredictable consequences.

⁵ NPRM at ¶ 50. See *also* "Patent Policy," Advanced Television Systems Committee, Inc. (Dec. 13, 2007) available at: <https://www.atsc.org/about/policy-documents/>.

⁶ See "Patent Statements," Advanced Television Systems Committee, Inc., available at: <https://www.atsc.org/documents/atsc-3-0-standards/patent-statements/>.

⁷ *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, Fourth Report and Order, 11 FCC Rcd 17771, ¶ 55 (1996).

First, as NAB and other commenters have previously stated, is unclear at best that the FCC has any authority to regulate patent licensing generally or require RAND licensing of patents specifically.⁸ The FNPRM identifies no statutory basis for Commission regulation of patent licensing, nor is it clear how such regulation could be considered as falling under the Commission’s ancillary authority.

Second, while NAB has enormous respect for the legal and engineering expertise of the Commission staff, that expertise does not extend to patent regulation. Patent law is a complex, specialized field. The FCC lacks the expertise and experience to weigh in on even the threshold question of whether a particular patent qualifies as a “standard essential patent” that could be subject to potential regulation, let alone the expertise to determine what might constitute a reasonable rate for such patents.

Third, we find it perplexing that that the Commission continues to ask questions concerning the patent marketplace for a broadcast technology without, to NAB’s knowledge, similarly examining the patent marketplace for other industries in recent proceedings. For example, the Commission has not asked questions regarding the state of patent licensing regarding wireless equipment manufacturers nor proposed to regulate patent licensing or royalties for wireless equipment in the recent C-band rulemaking or the recent 6 GHz rulemaking, which proposed to make additional spectrum available for licensed or unlicensed wireless services respectively. This is most likely because there is no evidence of market

⁸ Comments of Ericsson at 5, GN Docket No. 16-142 (Aug. 8, 2022) (“The FCC lacks the statutory authority to dictate the terms of ATSC 3.0 patent licenses.”); Comments of Qualcomm Incorporated at 12, GN Docket No. 16-142 (Aug. 8, 2022) (Qualcomm Comments) (“The FCC lacks the legal authority, as well as the underlying patent policy expertise, to adjudicate patent licensing terms and related disputes between private parties that involve contract and patent law issues.”)

failure for those products that would warrant regulation and, as discussed above, the Commission lacks the authority or the expertise to impose such regulation. We fail to see why the Commission would take a different approach here.

Finally, Commission action to regulate patents and patent royalties could have unintended consequences. Numerous ATSC 3.0 patent holders, including some entities that claim to hold essential patents, are not FCC licensees and not otherwise plainly subject to Commission jurisdiction. Creating a haphazard and uneven regulatory framework that subjects some parties to rate regulation because they happen to be subject to Commission jurisdiction while ignoring other players in the ecosystem could stifle future innovation or lead to competitive imbalances which would not serve the public interest.

III. CONCLUSION

While the market for ATSC 3.0 compatible devices continues to develop, there are no indications to date that patent issues are creating issues for consumers that could plausibly warrant Commission action. Further, there is no apparent statutory authority for Commission regulation of patent licensing and it is unclear how the Commission could plausibly purport to regulate every entity claiming to hold a standard essential patent. We urge the Commission to take no further action at this time.

Respectfully submitted,

**NATIONAL ASSOCIATION OF
BROADCASTERS**

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A handwritten signature in black ink, appearing to read "Rick Kaplan", with a long horizontal flourish extending to the right.

Rick Kaplan
Patrick McFadden
Robert Weller

September 15, 2023