

**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)
)

**OPPOSITION TO PETITIONS FOR RECONSIDERATION OF
THE NATIONAL ASSOCIATION OF BROADCASTERS**

I. INTRODUCTION AND SUMMARY

The National Association of Broadcasters (NAB)¹ hereby opposes petitions submitted by NCTA – The Internet & Television Association (NCTA) and the American Television Alliance (ATVA) seeking reconsideration of the Commission’s order authorizing the voluntary deployment of the Next Generation TV transmission standard.² In their filings, NCTA and ATVA merely repeat arguments the Commission has already thoroughly considered and rejected based on an ample record. The NCTA and ATVA filings are thus not so much petitions for reconsideration as they are airings of grievances, intended to remind the Commission that NCTA and ATVA would have preferred a different outcome in this proceeding. Their ongoing desire to seek to limit the ability of broadcasters to innovate and invest in new technology to

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 Permissive Use of the “Next Generation” Broadcast Television Standard*, Report and Order and Further Notice of Proposed Rulemaking, GN Docket No. 16-142, FCC 17-158 (Nov. 20, 2017) (Order).

improve a free over-the-air service does not warrant reconsideration, and the Commission should promptly dismiss the petitions.

II. THE COMMISSION SHOULD NOT RECONSIDER ITS SIMULCASTING RULES

The Commission's simulcasting requirements reflect a careful consideration of the arguments in the record regarding broadcasters' abilities to innovate and improve service within a smaller spectrum footprint. By requiring those broadcasters choosing to voluntarily upgrade their facilities to continue to transmit using ATSC 1.0 signals, the Commission ensured that viewers could continue to enjoy free, over-the-air programming they rely on today while the Next Gen marketplace develops. The Commission's rules also ensure that broadcasters will have a reasonable degree of flexibility in implementation, as they will not have access to additional channels in all cases. NCTA and ATVA seek reconsideration of a number of aspects of these rules. The Commission should reject these requests.

First, NCTA seeks reconsideration of the five-year sunset of the Commission's requirement that programming transmitted on a station's ATSC 1.0 simulcast channel be substantially similar to programming transmitted using a station's Next Gen signal.³ NCTA seeks to make the substantially similar requirement open-ended, claiming that the Commission's decision was arbitrary and has no basis in the record.⁴ In fact, the Commission considered this issue, noted that some parties opposed the sunset provision, and nevertheless concluded that the sunset provision was appropriate.⁵ The Commission's determination was far from arbitrary or baseless, as the FCC specifically concluded that while

³ Order at ¶ 22.

⁴ NCTA Petition at 5.

⁵ Order at ¶ 22, n. 77.

the substantially similar “requirement is necessary in the early stages of ATSC 3.0 deployment, it could unnecessarily impede Next Gen TV programming innovations as the deployment of ATSC 3.0 progresses.”⁶

Second, NCTA asks the Commission to impose a new requirement that stations currently transmitting in HD using their ATSC 1.0 stream continue to do so as they deploy Next Gen transmissions. This issue was extensively discussed in this proceeding. In its Order, the Commission observed that broadcasters currently have no obligation to provide their signals in HD, and rightly concluded that broadcasters have strong market incentives to maintain HD service to the maximum extent possible.⁷ Accordingly, the Commission declined to impose new and unfounded regulatory burdens on stations seeking to innovate and improve their service. NCTA provides no new information or arguments that would plausibly support reconsideration; it simply disagrees with the Commission’s conclusion and seeks another bite at the apple.

More troublingly, just two weeks after filing its petition, NCTA filed Reply Comments asking the Commission *not* to allow broadcasters to use vacant in-band channels that might help smooth the transition for viewers.⁸ If NCTA actually cared about viewers, as it claims to, it would wholeheartedly endorse the use of additional channels that could help minimize consumer disruption. Instead, it seeks to impose new burdens on broadcasters while denying broadcasters access to unoccupied channels that could alleviate the problem with which

⁶ *Id.* at ¶ 22.

⁷ *Id.* at ¶ 27.

⁸ Reply Comments of NCTA at 3, GN Docket No. 16-142 (March 20, 2018).

NCTA purports to be concerned. Viewed in context, it is difficult to conclude that NCTA is motivated by anything other than a desire to delay or disrupt broadcaster innovation.

Third, ATVA asks the Commission to require broadcasters to provide notice in the event they are temporarily unable to transmit in HD during the transition. The question of whether broadcasters should be required to disclose any formatting changes was raised in the record of this proceeding. The Commission considered this argument and rejected it, concluding that because broadcasters are not required to transmit in HD under the FCC's current rules, there was no reason to impose a novel notice requirement.⁹ ATVA makes a halfhearted suggestion that the Commission's determination somehow constitutes a new or changed fact that would warrant reconsideration because the draft order the Commission circulated did not include this conclusion.¹⁰ Of course the draft orders the Commission has begun circulating are in no way binding. While NAB commends the Commission for its new policy of circulating draft orders to enhance transparency, ATVA's suggestion that any changes from the draft to the final order serve as a basis for reconsideration would be an unworkable standard that would greatly burden the Commission and its staff.

Fourth, ATVA asks the Commission to reconsider its decision to allow LPTV stations to flash cut to Next Gen transmissions. The Commission specifically considered and rejected the arguments ATVA raises in its petition, concluding that exempting LPTV stations from the simulcasting requirement was warranted given the "unique challenges" LPTV and TV translator stations face in locating simulcast partners.¹¹ The Commission recognized the

⁹ Order at ¶ 27, n. 87.

¹⁰ ATVA Petition at 8.

¹¹ Order at ¶ 41.

potential implications of this decision for some viewers, but concluded on balance that allowing LPTV and translator stations to flash cut would help ensure that these stations were not shut out of the Next Gen transition.

Remarkably, the only basis ATVA presents for reconsideration is its own advocacy.¹² ATVA cites its own comments in response to the Further Notice of Proposed Rulemaking the Commission adopted along with the Order in support of its argument that the Commission should address simulcast challenges for LPTV stations through waivers rather than an exemption. But the Commission has already concluded that a blanket exemption is more appropriate given the challenges LPTV stations will encounter and determined that, “the benefit of permitting these stations to transition directly outweighs the potential harm.”¹³ The fact that ATVA continues to disagree with the Commission is no basis for reconsideration.

In short, NCTA and ATVA present no basis for reconsidering the simulcasting requirements the FCC adopted. Their petitions consist solely of rewarmed arguments the Commission has already carefully considered and rejected. The Commission should deny their request for reconsideration.

III. THE COMMISSION SHOULD REJECT REPEATED EFFORTS AT REGULATORY ARBITRAGE

The record of this proceeding includes ample discussion of retransmission consent issues. Numerous parties urged the Commission to adopt new rules regarding retransmission consent relating to the carriage of Next Gen signals and, in particular, sought to require broadcasters to engage in separate negotiations for the carriage of Next Gen signals. The

¹² ATVA Petition at 6.

¹³ Order at ¶ 43.

Commission rejected these arguments, concluding that it would allow such issues to be resolved through voluntary marketplace negotiations.¹⁴

Both NCTA and ATVA continue to insist that the Commission's approval of the voluntary use of a new broadcast television transmission standard must be accompanied by rules favoring their members in retransmission consent negotiations. They repeat their previous claims that allowing broadcasters to negotiate for carriage of Next Gen signals will somehow make carriage of those signals mandatory – an argument that rests on the proposition that asking MVPDs for anything in negotiations amounts to coercion.

This is a transparently unreasonable position that the Commission properly rejected in its Order. NCTA and ATVA have repeatedly sought to impose remedies for market failures with absolutely no evidence that such failures have or will occur. NCTA and ATVA offer nothing more in their petitions than a summary of their previous arguments and the assurance that they do not merely object to the Commission's decision, they strenuously object. Stridence alone does not warrant reconsideration, and the Commission should promptly dismiss these efforts to relitigate these matters.

IV. THE COMMISSION SHOULD REJECT NCTA'S PATENT CLAIMS

NCTA's petition asserts that the Commission's determination that it would not require that patents associated with Next Gen be licensed on a reasonable and non-discriminatory (RAND) basis at this time is inconsistent with the Commission's decision approving the current DTV standard.¹⁵ Accordingly, NCTA asks the Commission to impose RAND licensing on reconsideration.

¹⁴ Order at ¶ 78.

¹⁵ NCTA Petition at 10-11.

This argument is misleading. In fact, in its orders adopting ATSC 1.0, the Commission did not take regulatory action to require RAND patent licensing. Rather, the Commission observed that the fact that industry testing procedures already required RAND patent licensing was adequate, and that the Commission would monitor developments and take further action if needed.¹⁶ Similarly, in its Next Gen Order, the Commission observed that the ATSC requires RAND licensing, and stated that it would, “monitor how the marketplace handles patent royalties for essential patents.”¹⁷ The Commission’s reasoning is wholly consistent with its previous orders and no further Commission action is needed at this time.

V. CONCLUSION

NCTA and ATVA have repeatedly attempted to establish roadblocks to an innovative and competitive effort by broadcasters to improve the service they can offer their viewers. They failed. With no new information to offer, the petitions for reconsideration amount to nothing more than a recitation of arguments the Commission has already considered and rejected. We urge the Commission to promptly dismiss these petitions.

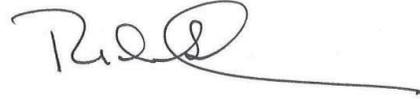
¹⁶ See *Advanced Television Systems and their Impact upon the Existing Television Broadcast Service*, Second Report and Order and Further Notice of Proposed Rulemaking, 7 FCC Rcd 3340, ¶ 68 (1992); *Advanced Television Systems and their Impact upon the Existing Television Broadcast Service*, Fourth Report and Order, 11 FCC Rcd 17771, ¶¶ 54-55 (1996).

¹⁷ Order at ¶ 100, n. 300.

Respectfully submitted,

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

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April 13, 2018

CERTIFICATE OF SERVICE

I, Patrick McFadden, certify that on this 13th day of April, 2018, I have caused a true and correct copy of the foregoing Opposition to Petitions for Reconsideration to be served via first class mail, postage paid, upon:

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