

**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  
THE NATIONAL ASSOCIATION OF BROADCASTERS**

**I. INTRODUCTION AND SUMMARY**

The National Association of Broadcasters (NAB)<sup>1</sup> 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.<sup>2</sup> Initial comments in this matter strongly suggest that the Commission should refrain from further action at this time, as the market for ATSC 3.0 receivers remains strong, there is no basis for Commission authority over the patent marketplace, and Commission action would not solve any apparent problem. We urge the Commission to continue to focus on avenues for accelerating the ATSC 3.0 transition that fall within the Commission’s jurisdiction and expertise.

---

<sup>1</sup> 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.

<sup>2</sup> *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. NOTHING IN THE RECORD SUGGESTS A BASIS FOR COMMISSION REGULATION

### A. The Commission Lacks Authority to Regulate Patents

As an initial matter, no commenter has identified any statutory basis for Commission regulation of the patent marketplace. The FNPRM itself identifies no statutory basis for Commission jurisdiction over the patent marketplace. Indeed, the only support the FNPRM offers for Commission authority in this regard are comments from two parties, Qualcomm and Ericsson, who have now corrected the Commission’s suggestion that they previously acknowledged the Commission had taken action to prevent the abuse of patent rights.<sup>3</sup> In particular, Ericsson states directly that it “has not suggested that the FCC has previously regulated patent licensing,” and that “on the contrary, it is Ericsson’s view that the FCC cannot introduce any measures to regulate standards essential patents licensing or to prevent unsupported claims of patent abuse.”<sup>4</sup> Similarly, Qualcomm states that it has “never stated that the FCC has taken – or should ever take – action to prevent the abuse of patent rights,” and makes plain that “the FCC should not take any regulatory action relating to SEP licensing terms to address allegations of abuse of patent rights.”<sup>5</sup>

Two other commenters, Continental and ACT, cite previous Commission releases as a potential legal basis for Commission jurisdiction in this regard.<sup>6</sup> But a careful examination of these precedents confirm they do not support the expansive jurisdiction Continental and ACT

---

<sup>3</sup> Comments of Qualcomm Incorporated at 6, GN Docket No. 16-142 (Sept. 15, 2023) (Qualcomm Comments); Comments of Ericsson at 7, GN Docket No. 16-142 (Sept. 15, 2023) (Ericsson Comments).

<sup>4</sup> Ericsson Comments at 7.

<sup>5</sup> Qualcomm Comments at 6-7.

<sup>6</sup> Comments of Continental Automotive Systems at 4-6, GN Docket No. 16-142 (Sept. 15, 2023) (Continental Comments); Comments of ACT | The App Association at 11, GN Docket No. 16-142 (Sept. 15, 2023) (ACT Comments).

urge. First, the 1961 Commission Public Notice they cite merely restates Commission policy “to obtain patent information whenever it becomes relevant to a particular proceeding,” and announces staff increases to ensure that the Commission “may keep currently abreast of all patents issued and technical developments in the communications field which may have an impact on technical standards approved by the Commission in the various services.”<sup>7</sup> Nothing in this Public Notice suggests that the Commission was actually taking action to regulate the patent marketplace generally.

Similarly, Continental and ACT assert that the Commission has since imposed affirmative obligations requiring reasonable and non-discriminatory licensing of patents in the following instances:

- 1961 – Adopting the FM stereo standard;
- 1976 – Adopting AT&T’s technical standards for telephone jacks;
- 1993 – Conditioning the selection of Motorola’s system as the AM stereo standard on Motorola’s licensing of patents under fair and reasonable terms;
- 2007 – Committing to monitor the behavior of patent holders in adopting the iBiquity IBOC DAB digital radio system; and
- 2012 – Imposing a “good faith” licensing requirement for encryption technology patents exclusively controlled by cable operators in adopting rules allowing cable operators to encrypt the basic service tier.<sup>8</sup>

None of these examples stand for the contention for which Continental and ACT cite them. In 1961, the Commission acknowledged the *voluntary* commitment of a patent holder to license patents at reasonable rates but did not adopt rules requiring such an outcome.<sup>9</sup> In

---

<sup>7</sup> *Revised Patent Procedures of the Federal Communications Commission*, Public Notice, 1961 FCC Lexis 54 (Dec. 1, 1961).

<sup>8</sup> Continental Comments at 5-6; ACT Comments at 11.

<sup>9</sup> *Amendment of Part 3 of the FCC’s Rules and Regulations to Permit FM Broadcast Stations to Transmit Stereophonic Programs on a Multiplex Basis*, Report and Order, Docket No. 13506, ¶ 34 (Apr. 20, 1961) (available at: <https://durenberger.com/wp-content/uploads/2018/08/FMSTEREO.pdf>).

1976, the Commission conditioned the adoption of AT&T's proposed plug and jack designs on certain patent licensing requirements, and in 1993 the Commission similarly conditioned its adoption of Motorola's patented standard for AM stereo on Motorola's making patents available on "fair and reasonable terms."<sup>10</sup> In stark contrast to those situations, here the ATSC 3.0 standard that has been approved by the Commission does not rely on standards essential patents held by a single entity that is subject to Commission jurisdiction. In 2007, when it adopted in-band, on-channel technology for digital radio broadcasts, the Commission merely stated that it would continue to monitor the patent marketplace (much as it has done with respect to the ATSC 3.0 standard) but took no action to require any particular patent terms or regulate patent licensing generally.<sup>11</sup> Finally, in 2012, the Commission required cable operators to make licenses available "on a good faith basis," but specifically *declined* to adopt a fair, reasonable, and nondiscriminatory requirement as some commenters urged.<sup>12</sup>

In short, not a single one of the decisions ACT and Continental cite provide any statutory basis for Commission authority over the patent marketplace generally, nor do they provide precedent for Commission authority to require particular patent licensing terms in a patent marketplace with thousands of patents held by a large and diverse set of entities – including entities that are outside the Commission's jurisdiction. No other commenter suggests any statutory basis for Commission action in this regard.

---

<sup>10</sup> *Amendment of the Commission's Rules to Establish a Single AM Radio Stereophonic Transmitting Equipment Standard*, Report and Order, 8 FCC Rcd 8216, ¶ 29 (Nov. 23, 1993).

<sup>11</sup> *Digital Audio Broadcasting Systems And Their Impact on the Terrestrial Radio Broadcast Service*, Second Report and Order, First Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 22 FCC Rcd 10344, ¶ 101 (May 31, 2007).

<sup>12</sup> *Basic Service Tier Encryption*, Report and Order, 27 FCC Rcd 12786, ¶ 24 (Oct. 12, 2012).

## B. There is No Problem for the Commission to Solve

Beyond the fact that the Commission likely lacks authority to regulate patent licensing terms, there is no reason to believe that any such regulation would solve any current problem in the marketplace. As NAB noted in its initial comments, there is a growing marketplace for ATSC 3.0 compatible equipment, and consumers have a number of choices with respect to purchasing such equipment. 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.<sup>13</sup> 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 announced it will also begin selling NEXTGEN TV certified devices later this year.<sup>14</sup>

The comments of LG Electronics USA in this proceeding do not change these facts, nor do they demonstrate that there is a consumer problem that could conceivably be addressed through Commission action. LG has consistently been a staunch supporter of ATSC 3.0 technology.<sup>15</sup> NAB agrees with LG that, “the ATSC’s patent declaration processes and the early

---

<sup>13</sup> “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/>.

<sup>14</sup> *Id.*

<sup>15</sup> Comments of LG Electronics USA at 1, GN Docket No. 16-142 (Sept. 15, 2023) (LG Comments) (“LG commends the Commission n for its actions to advance NEXTGEN TV and provide consumers with the benefits of new and emerging technologies”); *id.* at 2 (“LG is a leading contributor to the development of ATSC 3.0”).

development of patent pools in the marketplace will likely create an environment where ATSC 3.0 SEPs can be made available on fair, reasonable and nondiscriminatory terms and conditions.”<sup>16</sup>

LG’s decision to pause inclusion of ATSC 3.0 compatible receivers in its 2024 television lineup should be viewed as an unfortunate data point in a marketplace that is still in the process of developing, not as an invitation to unprecedented and overbroad Commission regulation. Indeed, with respect to the specific issue described in LG’s comments, it is entirely unclear how Commission action could plausibly be helpful. As LG notes, Constellation Designs, LLC, is not an ATSC member and, unlike other ATSC members, has not made a commitment to license standard essential patents relating to ATSC 3.0 on a reasonable and nondiscriminatory basis.<sup>17</sup> To NAB’s knowledge, Constellation holds no FCC licenses and is not otherwise subject to Commission regulation – meaning that a Commission regulation requiring certain terms for licensing of patents related to ATSC 3.0 would likely not apply to Constellation. Commission action could thus have the unintended consequence of distorting the market and creating unhelpful incentives for entities not subject to Commission regulation.

### **III. THE COMMISSION SHOULD FOCUS ON POSITIVE ACTIONS TO AID ATSC 3.0 DEPLOYMENT THAT ARE WITHIN ITS JURISDICTION AND EXPERTISE**

As NAB explained in its initial comments and above, patent licensing falls outside both the Commission’s jurisdiction and its area of expertise. Nevertheless, the Commission can play a productive role by looking for opportunities firmly within its authority and expertise to help encourage the further development of the 3.0 marketplace in ways that will allow

---

<sup>16</sup> *Id.* at 4.

<sup>17</sup> *Id.*

manufacturers to accelerate the sales of 3.0-compatible products. Because broadcasters are seeking to accomplish this technological transition, which will ultimately significantly enhance their ability to serve their viewers, in the same spectrum footprint they currently occupy, there are real-world physical constraints on their ability to demonstrate the full capabilities of ATSC 3.0. Those physical limits are only compounded by Commission regulations that require broadcasters to, for example, transmit the same programming in ATSC 1.0 and ATSC 3.0 and find hosting partners that cover 95 percent of their current population served.

NAB applauds Chairwoman Rosenworcel's announcement of the Future of Television Initiative, which is intended to chart a path forward for a successful transition. We urge the Commission to be proactive in exploring additional ways to accelerate the transition on both the transmission side (broadcasters) and the reception side (manufacturers and consumers). A successful ATSC 3.0 transition is critical for over-the-air viewers to continue to have a competitive free service offering. Ultimately, if broadcasters are unable to meaningfully distinguish their 1.0 and 3.0 service, that poses a far greater threat to the transition and to over-the-air viewers than hiccups in the developing patent marketplace.

#### **IV. CONCLUSION**

No party, nor the FNPRM itself, has identified any 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. The only development of note in the record, LG's decision with respect to its 2024 television lineup, does not suggest there is a widespread issue with the availability of consumer equipment that Commission action, if authorized, would help to solve. We urge the Commission to take no further action at this time with respect to the patent marketplace but, rather, to continue to monitor the market consistent with its approach in the DTV transition. Finally, we urge the Commission to continue

to look for opportunities to speed the deployment of ATSC 3.0 service and the adoption of 3.0 equipment, including by allowing broadcasters greater ability to differentiate their service during the transition.

Respectfully submitted,

**NATIONAL ASSOCIATION OF  
BROADCASTERS**

1 M Street SE  
Washington, DC 20003  
(202) 429-5430

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

---

Rick Kaplan  
Patrick McFadden  
Robert Weller

October 16, 2023