

**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

On November 16, 2017, the Commission took an important step towards the future of television. By approving voluntary use of the Next Generation TV (Next Gen) transmission standard, the Commission set the stage for broadcasters to offer exciting and innovative services, including visually stunning pictures, more immersive audio, superior reception, enhanced public safety capabilities and other features.¹ The Commission’s order will use market forces, not regulatory mandates, to bolster innovation, enhance competition and expand service offerings available for free to consumers.

The Commission also approved a Further Notice of Proposed Rulemaking seeking comment on three specific issues concerning Next Gen deployment: waivers and exceptions to the local simulcasting requirement; temporary use of available television channels to smooth deployment; and implications of Next Gen deployment for the significant viewed

¹ *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 & FNPRM).*

status of stations. The National Association of Broadcasters (NAB)² commends the Commission for approving the voluntary use of the Next Gen standard and for moving forward quickly to resolve the limited outstanding regulatory questions that remain. We urge the Commission to continue to take a flexible and balanced approach that allows broadcasters across the country to improve the unparalleled free, over-the-air service they provide to consumers.

First, the Commission should make clear that its standards for waiving the local simulcasting requirement will allow stations across the country to move forward with Next Gen deployments if they choose. The local simulcasting requirement is intended to minimize consumer disruption during this deployment, but it should not serve as a barrier that freezes viewers in small and rural markets in place and prevents them from enjoying the benefits of technological advances.

Second, the Commission should encourage the use of unoccupied broadcast television channels to minimize consumer disruption during Next Gen deployment. Approving such use would allow stations greater flexibility and increase the chances of preserving service to every viewer during the transition to Next Gen TV. Under no circumstances should the Commission limit broadcasters' access to television channels to expand mythical unlicensed use (*i.e.*, TV white spaces), which has proven to be a massive flop over the last decade.

Third, NAB agrees with the Commission's tentative conclusion that Next Gen deployment should not alter a station's significantly viewed status. NAB does not address this

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.

issue in detail below, but supports the Commission's reasoning with respect to this tentative conclusion.

II. THE COMMISSION SHOULD WAIVE THE SIMULCASTING REQUIREMENT AS APPROPRIATE TO ENCOURAGE DEPLOYMENT IN ALL MARKETS

NAB has consistently made plain that local simulcasting is a core component of the voluntary transition to Next Gen TV. Broadcast television stations, which are in the business of serving viewers, have tremendous market incentives to maintain service to as many viewers as possible. Failure to do so will directly impact stations' bottom lines. Nevertheless, there will be markets where individual broadcast stations are eager to move forward with investments in their facilities to improve service but are unable to find a willing partner to do so. The Commission should not set a waiver standard so high that viewers in small or rural markets are shut out of the Next Gen transition.

In its order, the Commission stated it would evaluate requests for waiver of its local simulcasting requirement on a case-by-case basis and would be inclined to consider favorably requests for waiver where stations could demonstrate they lacked viable simulcasting partners in their market.³ The Commission seeks further comment on further guidance it should provide regarding the circumstances that would warrant a waiver of the local simulcasting requirement. In particular, the Commission asks whether it should adopt a standard that a station is deemed to have no viable partner only if there is *no* potential simulcasting partner in the same DMA that can cover the station's entire community of license, or if instead it should adopt a broader definition of viability.⁴

³ Order & FNPRM at ¶ 46.

⁴ *Id.* at ¶ 123.

We urge the Commission to adopt a broader definition. Because the transition to Next Gen will be wholly voluntary and broadcasters are not seeking additional spectrum, stations in markets with a limited number of potential partners may be unable to deploy Next Gen signals without a waiver. Even if a single potential partner is available in a given market, if that partner is not interested in moving forward with a Next Gen deployment, or in serving as a host for a 1.0 signal, viewers in that market may be left behind indefinitely while other markets move forward.

As an alternative, the Commission asks whether it should specify that stations in a market with fewer than a threshold number of full power and/or class A or LPTV stations will be considered to have no viable partner. NAB endorses a reasonable, flexible approach that will provide stakeholders with greater predictability. Specifically, we believe the Commission should specify that a station in a market with fewer than three other full power stations that cover the station's community of license should be considered to have no viable partner.

Because Next Gen deployment will be wholly voluntary, some stations will choose to move forward at a different pace than others. Further, while a successful Next Gen transition will depend on broadcaster cooperation, the reality is that some stations are avid competitors. The Commission must account for the willingness of other stations to serve as simulcast partners in evaluating waiver requests. If there are only one or two other stations in a market, a station that is eager to move forward now to improve its service may be unable to find a willing negotiating partner. If there are at least three other full power stations in the market, however, a transitioning station would be assured of having at least some possibility of moving forward even if one or two of those stations was not interested in a partnership at the time.

NAB submits that the number of potential full power partners is the relevant criteria because, while low power stations may be able to play an important role in smoothing the

transition to Next Gen in some markets, LPTV stations by definition do not cover comparable areas and the Commission should not consider them presumptively viable partners.

The Commission also seeks comment on how to consider other efforts stations make to preserve service to existing viewers.⁵ In particular, the Commission asks if it should look favorably on efforts to provide free or low cost ATSC 3.0 converters to viewers in a station's coverage area.⁶

NAB certainly agrees that efforts to provide free or low-cost converters to viewers should weigh heavily in favor of granting a waiver of the local simulcasting requirement. Indeed, in some cases, if a station offers to provide free or low-cost converters to a significant portion of the viewing audience, the Commission should consider waiving the local simulcasting requirement on that basis alone, as the station will have mitigated the only possible viewer harm associated with the Next Gen transition. However, the Commission should not *require* the provision of free or low-cost converters as a condition for a waiver of the local simulcasting requirements. Such a requirement would risk adding unreasonable costs to a transition that is already being funded solely by the broadcast industry.

III. THE COMMISSION SHOULD ALLOW BROADCASTERS TO USE VACANT IN-BAND CHANNELS DURING THE NEXT GEN TRANSITION

As NAB has explained previously in this proceeding, attempting to deploy a new transmission technology without additional spectrum resources poses unique challenges. Unlike wireless carriers, broadcasters do not have a nationwide footprint that would allow them to re-farm existing spectrum while maintaining service. Unlike the DTV transition, broadcasters will not all have additional channels available to ensure a seamless cutover.

⁵ *Id.* at ¶ 124.

⁶ *Id.*

Combined with the conclusion of the incentive auction, which will result in a broadcast television band that is 84 MHz smaller, this poses a central challenge for a successful Next Gen deployment.

The Commission can aid this deployment, making the transition easier for both broadcasters and their viewers, by allowing broadcasters to use vacant in-band channels during the transition. Indeed, in some markets, this could be the single most important step the Commission could take to minimize consumer disruption and preserve service to viewers.

Predictably, the Commission can anticipate opposition from Microsoft and its paid advocates asserting that allowing broadcasters to use unoccupied television channels to provide television service will undermine the deployment of television white spaces technology. There are at least three problems with this contention. First, despite the passage of 10 years since the adoption of FCC rules allowing white spaces operation, the white spaces experiment continues to fail. Based on a review of the white spaces database, which remains in shambles years after NAB first demonstrated its inaccuracies, it appears that no more than a few hundred white spaces devices are actually in operation and providing service. This is not a success story, let alone a history warranting further regulatory favors and handouts from the Commission. Second, the core tenet of the Commission's unlicensed rules, which white spaces advocates simply refuse to acknowledge, is that unlicensed services are guaranteed no protection. Indeed, in adopting the white spaces rules, the Commission expressly determined that white space use would yield to future broadcast operations in the television band.⁷ Third, even if the white spaces experiment actually held meaningful promise, the

⁷ *In the Matter of Unlicensed Operation in the TV Broadcast Bands*, Second Report and Order and Memorandum Opinion and Order, 23 FCC Rcd 16807, ¶ 50 (2008).

Commission is only proposing to allow *temporary* use of unoccupied channels by broadcasters to smooth the Next Gen deployment. Once the transition is complete in any given market, these channels will once again be available for white spaces devices to continue to fail to live up to their promise.

For these reasons, NAB believes the Commission should allow television stations to use unoccupied television channels where available during the Next Gen transition. With the recent announcement that the Commission will shortly be opening a filing window for LPTV and translator stations displaced by the incentive auction and repack to seek new channels, the Commission should promptly process applications for these displaced stations. Whatever channels remain unoccupied should be made available for use by full power stations during the Next Gen transition.

The Commission also seeks comment on procedures to authorize use of such channels to facilitate Next Gen deployment. The Commission should treat requests for temporary channels as minor change applications. While deployment on these channels will be temporary, if the FCC treats such requests as requests for Special Temporary Authority, stations will need to reapply for STAs every six months during the transition, which represents an unnecessary administrative burden both for stations and the Commission.

We also urge the Commission to encourage private industry resolution of any mutually exclusive applications for temporary channels. As NAB has previously described, because no broadcaster has or can have a nationwide spectrum footprint, broadcasters will need to cooperate for the transition to unfold successfully. They will have every incentive to cooperate with other stations in their market to ensure that temporary channels, if available, are put to efficient use and to coordinate any requests for such channels. As a result, we believe it is highly unlikely that the Commission will receive mutually exclusive applications for such

channels. If the FCC does receive mutually exclusive applications, it should encourage the parties to resolve the issue directly, and step in only as a last resort.

Finally, the Commission asks if it should require a broadcaster to demonstrate need for a temporary channel. The FCC should require no such demonstration. The record of this proceeding confirms that broadcasters will have every incentive to preserve service to their viewers to the fullest extent possible. Nevertheless, unlike other services that seek substantial new allocations of spectrum to upgrade their technology,⁸ broadcasters will be attempting to transition to a new technology in a television band that will be 84 MHz smaller. The use of available television channels to assist the transition could reduce the number of rescans required and help preserve coverage, signal quality and existing multicast streams offered by broadcasters. The most helpful step the Commission could take to ease the transition for consumers would be to allow broadcasters to use unoccupied, in-band channels to deploy Next Gen facilities. Providing broadcasters with access to these channels should not turn on any showing of particular need. Rather, the Commission should presume that it is in the public interest to minimize consumer disruption and preserve existing service while broadcasters invest in their facilities to revolutionize a free, over-the-air service.

IV. CONCLUSION

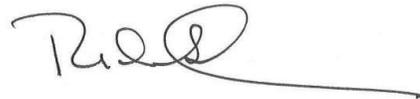
The Commission's vote to approve the voluntary deployment of Next Gen TV has set the stage for the future of television. We hope the Commission will continue to move forward with the same expedition it has demonstrated to date and will move quickly to resolve the few additional questions set forth in the FNPRM. In particular, the Commission should adopt a

⁸ See *Use of Spectrum Bands Above 24 GHz for Mobile Radio Services*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 8014 (2016).

reasonable waiver standard for its local simulcasting requirement that will ensure that viewers in small and rural markets are not shut out of the benefits of Next Gen if stations in those markets are unable to find viable simulcasting partners. The Commission should also encourage the use of available television channels to help stations preserve service and minimize potential consumer disruption during this transition.

Respectfully submitted,

**NATIONAL ASSOCIATION OF
BROADCASTERS**
1771 N Street, NW
Washington, DC 20036
(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

Bruce Franca
Alison Neplokh
Robert Weller

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