

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

June 8, 2017

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**I. INTRODUCTION AND SUMMARY**

The initial comments in this proceeding reflect broad support for the innovation and service improvements that Next Gen TV will provide. Broadcasters are excited about the opportunity to improve their service, and other stakeholders acknowledge the potential benefits associated with the new technology. Significantly, no commenter argues that broadcasters should not be permitted to improve their service using Next Gen technology on a voluntary basis. While the record reflects questions concerning the specifics of implementation of Next Gen, there is no question as to whether broadcasters should be permitted to move forward.

Given the clear potential benefits of Next Gen, as well as the voluntary rollout broadcasters seek, this is unsurprising. At every step in this proceeding, NAB, together with its fellow petitioners, has made plain that it seeks a wholly voluntary, market-driven deployment of Next Gen TV. NAB does not seek subsidies or additional spectrum in other bands. NAB does not seek tuner mandates for home or mobile receivers. Rather than a hard transition date, NAB seeks a market-driven process where consumers, not the government, will determine the pace of progress.

As the Commission moves forward with final rules to allow broadcasters to deploy Next Gen, it should seek to provide broadcasters with as much flexibility as possible, and be guided by a reliance on market forces rather than overly prescriptive regulatory requirements. Just as the Commission should not impose tuner mandates, it should not impose inflexible mandates on service area or signal quality that will unduly burden broadcasters, particularly those in smaller or rural markets. Similarly, just as the Commission need not mandate carriage of Next Gen signals for MVPDs, it should not interfere with market forces that will drive adoption of this new technology and the innovations it will allow.

Rather than raising regulatory hurdles to this innovation, as some urge, the Commission's goal should be to lower them. Accordingly, the Commission should adopt a flexible regulatory approach to simulcasting arrangements. It should also allow broadcasters to use available spectrum in the television band to smooth the Next Gen transition. Finally, the Commission should not impose additional constraints on the Next Gen deployment due to unfounded concerns that it will delay repacking or increase repacking costs.

## **II. THE COMMISSION SHOULD ENCOURAGE A FLEXIBLE APPROACH TO NEXT GEN DEPLOYMENT**

### **A. The Commission Should Allow Broadcasters to Determine the Details of Simulcasting Arrangements**

The Commission should allow the market, not overly prescriptive regulatory mandates, to drive the specifics of simulcasting arrangements. The introduction of new requirements regarding programming format or content would only complicate the transition. The light regulatory touch the Commission uses for other services, with which broadcasters compete, is appropriate, and the FCC's approach should be to encourage innovation, not stifle it by imposing new regulatory hurdles.

To that end, NAB agrees with commenters urging the Commission to adopt flexible rules regarding simulcasting arrangements supporting a voluntary Next Gen deployment.<sup>1</sup> Broadcasters are committed to serving their viewers as the Next Gen deployment unfolds. A broadcaster has no financial incentive to lose current viewers while attempting to develop a market for Next Gen TV. Rather, as the record of this proceeding reflects, broadcasters have every incentive to continue to serve all of their viewers to the maximum extent possible. Mock negotiations regarding Next Gen deployment suggest that stations place a high priority on continuing to transmit the highest quality signal and preserving multicast streams.<sup>2</sup> Accordingly, there is no need for Commission requirements concerning service area, programming format or programming content. As one commenter states, “the Commission need not substitute its own judgment for that of local stations that know their communities best.”<sup>3</sup>

First, the Commission should reject invitations to change its rules to apply a higher regulatory burden than currently exists with respect to signal quality.<sup>4</sup> Commenters urging the Commission to impose a new requirement on broadcasters that they transmit HD signals during any Next Gen deployment consistently ignore the fact that broadcasters are under no obligation to transmit HD signals *today*. If a broadcaster decided that it could better serve its

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<sup>1</sup> See, e.g., Comments of the Public Broadcasting Service, Corporation for Public Broadcasting, and America’s Public Television Stations at 15-17, GN Docket No. 16-142 (May 9, 2017) (PBS Comments) Comments of Pearl TV at 8-9, GN Docket No. 16-142 (May 9, 2017) (Pearl Comments).

<sup>2</sup> Letter from Gerard J. Waldron to Marlene H. Dortch at 4-5, GN Docket No. 16-142 (Dec. 14, 2016).

<sup>3</sup> Pearl Comments at 9.

<sup>4</sup> Comments of DISH Network L.L.C. at 10-11, GN Docket No. 16-142 (May 9, 2017) (DISH Comments); Comments of NCTA – The Internet & Television Association at 10-11, GN Docket No. 16-142 (May 9, 2017) (NCTA Comments).

viewers by, for example, replacing a single HD transmission with multiple SD multicast streams, it could do so. Penalizing those broadcasters willing to invest in their facilities to improve the service they offer to viewers by imposing a heightened regulatory requirement on them would discourage investment and innovation.

Further, the argument that broadcasters should be forced to transmit in HD contradicts the alleged concerns of MVPDs that Next Gen deployment will eventually raise issues with capacity constraints on MVPD systems. MVPDs cannot credibly claim that they are capacity-constrained and claim, in the very same pleading, that broadcasters should be forced to transmit HD signals which take up more capacity on MVPD systems.<sup>5</sup> Claiming that broadcasters unduly burden capacity while simultaneously asking the Commission to require that broadcasters take up additional capacity only serves to underscore the fact that there is no underlying principle behind these MVPDs' position. Rather, they simply seek to stymie innovation by a competing industry.

Second, the Commission should not adopt any requirement that simulcasting stations be forced to carry identical content on both their ATSC 1.0 and Next Gen streams. NAB agrees with broadcasters that "local stations will consider the technology their audience has and the local appetite for various options as they weigh the trade-offs of different transition approaches."<sup>6</sup> Constraining broadcasters to transmit only identical programming could

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<sup>5</sup> Comments of the American Cable Association at 5-6, 13-18, GN Docket No. 16-142 (May 9, 2017) (ACA Comments); Comments of Verizon at 3, 7, GN Docket No. 16-142 (May 9, 2017) (Verizon Comments); Comments of AT&T at 5, 13-16, GN Docket No. 16-142 (May 9, 2017) (AT&T Comments).

<sup>6</sup> Comments of Raycom Media, Inc. at 5, GN Docket No. 16-142 (May 9, 2017).

undermine broadcasters' ability to highlight the features and advantages of the Next Gen transmission standard to help spur market demand.<sup>7</sup>

Third, for the same reasons, the Commission need not regulate the service area that simulcasting partners must cover. Broadcasters have absolutely no market incentive to lose viewership during the Next Gen deployment. Indeed, while broadcasters are confident that viewers will enjoy and value Next Gen programming, allowing a successful market-based transition, there is no guarantee of success in this project. Broadcasters will thus prioritize protecting their existing business while they seek to improve the service they can provide. However, because broadcasters will not have the ability to use spectrum in other bands to smooth the transition, there may be instances where broadcasters are unable to find partners that will allow precise replication of existing service areas. Overly restrictive service requirements could effectively stifle innovation and thwart the voluntary, market-based deployment envisioned in this proceeding. NAB urges the Commission to "trust in broadcasters' incentives to serve their viewers and broadcasters' knowledge of their individual markets to implement the transition in a way that will best serve each community of license."<sup>8</sup>

Finally, we urge the Commission to reject requests to re-examine fees associated with ancillary services.<sup>9</sup> Any consideration of fees associated with ancillary services is premature, as revenues associated with any such services are wholly speculative at this juncture. Adjusting these fees before broadcasters have even had the opportunity to deploy Next Gen,

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<sup>7</sup> Comments of Nexstar Broadcasting, Inc. at 8, GN Docket No. 16-142 (May 9, 2017).

<sup>8</sup> Comments of TEGNA Inc. at 1-2, GN Docket No. 16-142 (May 9, 2017).

<sup>9</sup> Comments of CTIA at 9, GN Docket No. 16-142 (May 9, 2017).

and learn which approaches best serve their viewers and their business interests, will only discourage innovative business models and the introduction of new features and services.

**B. The Commission Should Adopt the Flexible Regulatory Treatment for Simulcasting Arrangements Broadcasters Propose**

In initial comments, both commercial and non-commercial broadcasters urged the Commission to minimize administrative burdens in determining the appropriate regulatory treatment of simulcasting arrangements.<sup>10</sup> To accommodate a voluntary, market-driven transition that will not rely on subsidies or mandates, the Commission should provide broadcasters with the ability to enter into arrangements with simulcasting partners quickly and smoothly, without the need for time-consuming approvals or review.

In particular, in the event the Commission does not adopt the multicasting approach, it should adopt an alternative to the separate licensing approach that will minimize regulatory hurdles and delays. Several parties support a version of the alternative NAB has proposed, whereby simulcasting partners would notify the Commission of their simulcasting arrangements, and these notifications would have the effect of adjusting the scope of the parties' current license to cover both the current standard and Next Gen feeds.<sup>11</sup>

As the record reflects, this approach would provide broadcasters with significant flexibility, as they would simply notify the FCC of their arrangements.<sup>12</sup> There would be no need for Commission review or approval of these arrangements, as both stations would continue to transmit on already-authorized, licensed facilities. Non-commercial stations would

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<sup>10</sup> See, e.g., Nexstar Comments at 6-7, PBS Comments at 11-13; Pearl Comments at 5-8.

<sup>11</sup> PBS Comments at 11-13; Pearl Comments at 5-8.

<sup>12</sup> Pearl Comments at 8.

clearly be able to partner with commercial stations in Next Gen deployments, because the commercial station's content would be separately licensed and excluded from the non-commercial station's license.<sup>13</sup> Both MVPDs and broadcasters would have clarity regarding carriage obligations, as broadcasters would continue to have a single license and continue to designate their primary stream for must-carry purposes. The Commission would have clear enforcement authority over the originator of programming violating any FCC rules, as well as a ready means to monitor the progress of Next Gen deployments in individual markets and across the country. We urge the Commission to adopt this alternative to avoid the complexities and burdens of a separate licensing approach, including the potential for separate regulatory fees, separate renewals and the potential for competing applications.

### **III. NEXT GEN DEPLOYMENT WILL NOT EXTEND THE TIMING OR COSTS OF REPACKING**

In their initial comments, T-Mobile and CTIA urge the Commission not to allow Next Gen deployment to extend the timeframe for, or increase the costs of, repacking television stations assigned to new channels following the close of the broadcast spectrum incentive auction.<sup>14</sup> The Commission should not delay or hinder the deployment of Next Gen TV due to concerns that such deployment will interfere with repacking.

There is no basis to believe that approval of the voluntary use of the Next Gen standard will delay repacking. More than one year ago, GatesAir, a leading supplier of broadcast transmission equipment, confirmed that "the technology required to implement Next

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<sup>13</sup> PBS Comments at 13.

<sup>14</sup> Comments of T-Mobile USA, Inc. at 4-7, GN Docket No. 16-142 (May 9, 2017); CTIA Comments at 3-6.

Generation TV is already being developed.”<sup>15</sup> Gates Air stated that transmission equipment is available today “that is ATSC 3.0 compatible with a mere software upgrade.”<sup>16</sup> GatesAir has made a significant investment in developing future-compatible transmission technologies, and stresses that “the ecosystem necessary for ATSC 3.0 is well on its way to fruition.”<sup>17</sup> Indeed, as of May 31, broadcasters in South Korea are already transmitting using the Next Gen TV standard.<sup>18</sup>

While Next Gen deployment will present challenges in terms of broadcaster simulcasting arrangements and the need to preserve service to existing viewers, those challenges do not implicate the timing of the repack. Because equipment is already available, and broadcasters elsewhere have already made the transition, approval of the Next Gen standard should not present any technical challenges that would delay the repack.

Thus, when CTIA expresses concern that, “several parties in this proceeding seek to tie the ATSC 3.0 transition to the post-auction repacking process,” it misinterprets the request of those parties.<sup>19</sup> Broadcasters do not seek to extend the repack to accommodate Next Gen deployment; rather, they seek to accelerate approval of the Next Gen standard so they can proceed with deployment while repacking is ongoing. This has the potential to minimize consumer disruption by reducing the need for viewers to rescan, as well as consumer benefits in the form of enhanced services. Far from serving as an obstacle to the repack, the

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<sup>15</sup> Comments of GatesAir Inc. at 2, GN Docket No. 16-142 (May 26, 2016).

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

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

<sup>18</sup> Michael Balderston, “South Korean Broadcasters Ready to Launch ATSC 3.0,” TVTechnology (May 30, 2017), available at: <http://www.tvtechnology.com/atsc3/0031/south-korean-broadcasters-ready-to-launch-atsc-30/281130>.

<sup>19</sup> CTIA Comments at 3.

deployment of Next Gen TV provides the Commission with the opportunity to allow repacking to provide real benefits to viewers in the form of improved service, rather than merely the disruption of stations relocating.

There is also no basis to believe that Next Gen deployment will increase the costs of the repack. Again, current-generation equipment that will be deployed during repacking is, in many cases, already Next Gen compatible, or capable of being easily upgraded to be Next Gen-compatible. To the extent there are any cost differences between equipment that is Next Gen-compatible and equipment that is not, NAB has stated that it is committed to assisting the FCC in ensuring that repacking funds are not directed to unwarranted or unnecessary upgrades.

In short, no commenter has provided any basis for believing that Next Gen deployment will slow down the repack or increase its cost. T-Mobile's request that no broadcaster should be allowed to deploy Next Gen unless it has already met or is on track to meet its repacking deadline is wholly unreasonable and would needlessly penalize the broadcast industry based on the assumption that the repack will proceed precisely as envisioned. In reality, the repack will already prove disruptive and expensive for broadcasters, and the Commission's current rules risk severe service losses for viewers and listeners of broadcast television and radio stations. If broadcasters are unable to meet their repacking deadlines, it will not be because of Next Gen, it will be because those deadlines are unrealistic and unattainable. Demanding that the industry be frozen in time unless the impossible is achieved would make an already involuntary, burdensome process outright punitive.

#### **IV. ALLOWING BROADCASTERS TO USE VACANT IN-BAND CHANNELS WILL HELP MINIMIZE CONSUMER DISRUPTION**

Numerous commenters in this proceeding recognize the growing importance of over-the-air television service to consumers and the significant public interest benefits free over-

the-air television service provides.<sup>20</sup> The NPRM also discusses the importance of protecting viewers and maintaining service during the voluntary implementation of Next Gen service.<sup>21</sup>

Throughout this proceeding, broadcasters have proposed to protect their viewership by entering into simulcasting arrangements that will maintain access to over-the-air signals using the current DTV transmission standard. As discussed above, broadcasters have strong financial incentives to maintain coverage and signal quality to their existing viewers. The Commission should rely on these powerful market incentives to protect viewers.

Nevertheless, unlike other services that seek substantial new allocations of multiple GHz of spectrum in new bands to roll out new technology,<sup>22</sup> broadcasters will seek to deploy Next Gen TV in a spectrum footprint that will actually be 84 MHz *smaller* following the successful close of the broadcast television spectrum incentive auction. If the Commission wants to take action to help minimize viewer disruption during the Next Gen deployment, it should authorize the use of vacant, in-band channels by broadcasters seeking to implement Next Gen service. This could reduce the number of rescans required, and help preserve coverage, signal quality and existing multicast streams offered by broadcasters. The single most important step the Commission could take to benefit consumers in this proceeding would be to allow broadcasters to use vacant, in-band channels to deploy Next Gen facilities.

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<sup>20</sup> DISH Comments at 7-8; AT&T Comments at 5; Comments of Consumers Union, Public Knowledge, and New America's Open Technology Institute at 3, GN Docket No. 16-142 (May 9, 2017) (Consumers Union Comments).

<sup>21</sup> *Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard*, Notice of Proposed Rulemaking, GN Docket No. 16-142, FCC 17-13, ¶ 11 (Feb. 24, 2017) (NPRM).

<sup>22</sup> 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).

Predictably, white spaces advocates oppose such a step, apparently because preserving access to free spectrum for an ongoing, failed experiment with white spaces is more important to them than protecting consumers. Thus, for example, the Wi-Fi Alliance claims that, “in order to support a business case for white space use of the television band, there must be sufficient spectrum reliably available for unlicensed operations.”<sup>23</sup> Similarly, Microsoft complains about “regulatory uncertainty facing unlicensed broadband innovators at the very moment companies need certainty about post-auction white-spaces availability to permit investment and planning.”<sup>24</sup>

These comments demonstrate that white spaces proponents continue to misunderstand the rights of unlicensed users with respect to licensed operations. Unlicensed users are *always* subject to displacement; they are required not to cause harmful interference and to accept any harmful interference caused by licensed users. If white spaces proponents have business models contingent on guaranteed access to spectrum they should explore licensed spectrum opportunities, not ask for handouts or seek to handicap other industries.

Microsoft, in particular, is a company worth several times as much as T-Mobile, the highest bidder in the incentive auction. If Microsoft wished to gain “certainty” with respect to its access to low-band spectrum, the incentive auction provided an unprecedented opportunity to do so. Rather than invest in licensed spectrum, Microsoft has made the calculation that it is cheaper to continue to invest in regulatory advocacy around securing

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<sup>23</sup> Comments of Wi-Fi Alliance at 2, GN Docket No. 16-142 (May 9, 2017).

<sup>24</sup> Comments of Microsoft Corporation at 6, GN Docket No. 16-142 (May 9, 2017).

access to free spectrum. The Commission should not be making spectrum accommodations for those who consciously decided to sit out auctions and instead pursue regulatory favors.<sup>25</sup>

It is particularly galling to see “public interest” groups seeking to impose unnecessary regulatory requirements on broadcasters while opposing practical, concrete actions the Commission could take to protect viewers. Consumers Union, Public Knowledge and New America urge the Commission to impose a new, heightened requirement that would force broadcasters to transmit signals in HD and urge the Commission to intervene in private contractual negotiations to the benefit of MVPD profit margins, but they oppose the single step that could best help broadcasters invest their own resources to improve a free, over-the-air service.<sup>26</sup>

It is long past time for the Commission to be skeptical regarding the claims of the white spaces industry. When the Commission originally adopted white space rules, advocates for such rules promised ubiquitous gigabit internet service in short order.<sup>27</sup> White spaces

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<sup>25</sup> See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, 7043 (2014) (Dissent of Commissioner Pai: “AT&T and Verizon, for example, spent billions of dollars purchasing spectrum in the 700 MHz auction. Their participation was a good thing. It helped to make the auction a success and raised substantial amounts of money for the Treasury. And that spectrum is being used today to deliver high-speed 4G LTE service to Americans across the country. But today, we are effectively penalizing these carriers for their past participation in that auction by limiting their ability to bid in this auction. And who do these restrictions benefit? Carriers that chose to sit out the 700 MHz auction. To be clear, that was their decision, and I do not fault them for it. It is certainly not my position to weigh in on corporate strategy. But I do object to rewarding these carriers for their failure to bid in prior auctions, as we are doing here.”)

<sup>26</sup> Consumers Union Comments at 9, 17, 24-27.

<sup>27</sup> Anne Broache, “Google outlines proposal for ‘Wi-Fi on steroids’” (April 28, 2008) (“Google on Monday said it has a plan to have American consumers from Manhattan to rural North Dakota surfing the Web on handheld gadgets at gigabits-per-second speeds by the 2009 holiday season.”) available at: <http://www.cnet.com/news/google-outlines-proposal-for-wi-fi-on-steroids/>.

advocates have had years under the current rules to follow through on their grandiose visions. Yet, despite the elaborate promises white spaces advocates have made and continue to make, there remain only a few hundred devices operating nationwide.<sup>28</sup> Simply put, the white spaces experiment has been a failure. Rather than accept the claims of white spaces advocates that *just one more regulatory favor* is the key to gigabit internet service nationwide, the Commission should allow licensed users to improve their service using available spectrum in their own band.

#### V. THE COMMISSION SHOULD REJECT REGULATORY ARBITRAGE IN THIS PROCEEDING

The initial comments of MVPDs in this proceeding reflect a predictable effort to try to leverage any opportunity to secure regulatory advantage in retransmission consent negotiations. In particular, MVPDs have coalesced around a request that broadcasters should not even be allowed to raise the possibility of carriage of Next Gen signals in private contractual negotiations.<sup>29</sup> According to this fantastical theory, MVPDs, including multinational telecommunications companies such as Verizon and AT&T, will be held hostage by local broadcasters in contract negotiations and compelled to yield to unacceptable terms.

This is a fiction. Any lawyer who has ever negotiated a contract knows that a party can ask for anything it wants, but that does not mean it will get it. For example, it is impossible to take seriously Verizon's portrayal that a local broadcaster can "compel carriage of ATSC 3.0

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<sup>28</sup> See, e.g., Comments of the National Association of Broadcasters at 7-8, GN Docket No. 12-268, WT Docket No. 12-269, AU Docket No. 14-252 (Sept. 30, 2015).

<sup>29</sup> See Comments and Initial Regulatory Flexibility Analysis Response of NTCA – The Rural Broadband Association at 4-5, GN Docket No. 16-142 (May 9, 2017); Comments of WTA – Advocates for Rural Broadband at 2, GN Docket No. 16-142 (May 9, 2017); Comments of ITTA – The Voice of America's Broadband Providers at 9, GN Docket No. 16-142 (May 9, 2017); Verizon Comments at 2; AT&T Comments at 16-19; DISH Comments at 5-6; ATVA Comments at 19-24; ACA Comments at 10-18.

signals before consumer demand and market circumstances warrant.”<sup>30</sup> Verizon is not a helpless victim, it is one of the largest telecommunications service providers in the world.

Even with respect to smaller MVPDs, the argument that MVPDs can be “compelled” to agree to unacceptable contract terms rests on a hopeless insistence that the word “compel” means something other than it does. What MVPDs really mean is that viewers value broadcast programming and are less likely to subscribe to pay-TV services that do not resell that programming. As a result, if MVPDs want to continue to resell broadcaster programming, they may have to pay broadcasters more than they would like (because they would like to pay nothing).

That may be true, but the nature of supply and demand does not warrant Commission intervention. Carried to its logical conclusion, the MVPD argument would be that the Commission should forbid broadcasters from investing in creating high-quality, desirable content because that content might prove more expensive for pay-tv providers. Perhaps MVPDs would like to see the Commission require broadcasters to transmit in black and white to really drive down the value of their programming.

The facts surrounding carriage issues are straightforward. Broadcast stations can elect mandatory carriage or retransmission consent. With respect to must-carry stations, NAB and its fellow petitioners have made plain that the Commission need not mandate carriage of Next Gen signals in addition to current signals, and should only address issues surrounding the potential sunset of current signals in a separate proceeding – when more facts are available regarding the status of the transition. With respect to stations electing retransmission consent, *nothing* compels MVPDs to accept contractual terms they find unpalatable. Setting

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<sup>30</sup> Verizon Comments at 2.

aside the hyperbole of MVPD interests that exist solely to secure regulatory arbitrage for their clients, the reality is that retransmission consent negotiations are arms-length transactions between private parties. If MVPDs find it unprofitable to resell a particular broadcaster's signal, they can stop. If MVPDs feel that broadcasters are acting in bad faith in retransmission consent negotiations, they are free to bring a complaint to the Commission. But the Commission should not be fooled – what offends MVPDs is that they are forced to negotiate at all.

In this context, it is apparent that the parade of horrors described by MVPDs in their initial comments is simply irrelevant. MVPDs claim that carriage of Next Gen signals would require them to invest in their facilities to provide a better service to their viewers. That may be true – but it has no bearing on this proceeding because carriage of Next Gen signals will not be mandated. MVPDs also claim that carriage of Next Gen signals would overburden their capacity, which again could require them to invest in their facilities to improve the service they offer to their customers. That claim is highly suspect.<sup>31</sup> For purposes of this proceeding, however, even if this claim is true it is irrelevant, because carriage will not be mandatory.

There is no question that MVPDs do not like paying for the broadcast signals they resell. They would prefer to pay less than market rates for these signals, and thus be able to pad their profit margins even further. But it is not the Commission's role, in this or any other proceeding, to guarantee profit margins of MVPDs by forbidding broadcasters from negotiating

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<sup>31</sup> See Steven J. Crowley, *Capacity Trends in Direct Broadcast Satellite and Cable Television Services* (Oct. 8, 2013) available at: [http://www.nab.org/documents/newsRoom/pdfs/100813\\_Capacity\\_Trends\\_in\\_DBS\\_and\\_Cable\\_TV\\_Services.pdf](http://www.nab.org/documents/newsRoom/pdfs/100813_Capacity_Trends_in_DBS_and_Cable_TV_Services.pdf); see also *NAB Study Finds Pay-TV Carriage Capacity Not Constrained by Technological Barriers*, NAB (Jan. 14, 2014) available at: <http://www.nab.org/documents/newsRoom/pressRelease.asp?id=3283>.

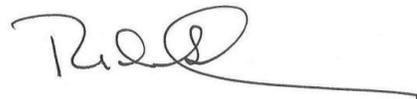
during negotiations. The Commission declined to do this during its recent proceeding on good faith retransmission consent negotiations, and it should reject the efforts of MVPDs to relitigate this issue here.

## VI. CONCLUSION

NAB commends the Commission and the staff for continuing to move expeditiously in this proceeding, including the staff's decision to set aside a period for *ex parte* meetings with stakeholders in the coming weeks.<sup>32</sup> As it works towards finalizing rules, we urge the Commission to provide broadcasters with as much flexibility as possible, and to rely on broadcasters' strong market incentives to preserve viewership and maintain service. Expedient approval of flexible rules for a voluntary, market-driven deployment of Next Gen TV will allow broadcasters to begin ushering in the future of television.

Respectfully submitted,

**NATIONAL ASSOCIATION OF  
BROADCASTERS**  
1771 N Street, NW  
Washington, DC 20036  
(202) 429-5430



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Rick Kaplan  
Patrick McFadden

Bruce Franca  
Alison Neplokh  
Robert Weller

June 8, 2017

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<sup>32</sup> *Media Bureau and Office of Engineering and Technology Establish Schedule for Ex Parte Meetings in Next Gen TV Proceeding*, Public Notice, GN Docket No. 16-142, DA 17-539 (June 2, 2017).