

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

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I. INTRODUCTION AND SUMMARY

The National Association of Broadcasters (NAB)¹ appreciates the robust participation in this proceeding from a wide variety of participants. The record clearly demonstrates that the necessary groundwork has been laid and that the Commission has the information it needs to issue a Notice of Proposed Rulemaking (NPRM) to propel us into the future of television broadcasting and promote the most robust use of broadcast spectrum.

To ensure the continued vitality and competitiveness of free, local television, the Commission should move expeditiously and issue an NPRM this summer to establish a timeline for a complete transition. It cannot be overstated how critical it is for the Commission to move swiftly and make clear to the marketplace that a full and complete transition is on the horizon. To that end, NAB’s comments do not attempt to rebut each argument and proposal in the record because many of the issues commenters raise can and should be further explored in the context of an NPRM and should not be used as a pretext to postpone it. However, we do address objections from commenters that seek to cast doubt on the overall framework of a

¹ 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.

full, industry-wide transition and objections that attempt to delay the advancement of this proceeding to the next stage in service of their own parochial and often anti-competitive interests.

First, the Commission should reject contentions that a full transition is premature and that the Commission should refrain from acting until consumer adoption or other metrics have been met. These arguments lead to a road to nowhere. Continued progress under the current framework is hampered by regulatory uncertainty, which suppresses investment, limits device availability, and discourages consumer adoption. The transition cannot succeed under the current dual-standard regime, which reinforces the very barriers – such as low device penetration and limited content – that opponents of a deadline cite. To move forward, the FCC must provide the regulatory certainty needed to unlock investment, accelerate adoption, and ensure that broadcast television remains a viable, modern platform in today's ultra-competitive media environment.

Second, the Commission should see opposition from the pay TV industry for what it is: a calculated effort to preserve market dominance rather than a good-faith concern for consumers or competition. No one believes the pay TV industry is first and foremost concerned about consumers. Instead, pay TV's calls to delay the transition and restrict broadcasters' use of spectrum for advanced services reflect a longstanding strategy to suppress competition and prevent viewers from accessing innovative, over-the-air alternatives to cable and broadband. Think *cableopoly*.

Third, the Commission should reject the expressly anti-consumer approach demanded by CTA that would lead consumers to buy televisions that would be instantly obsolete and unusable with free over-the-air broadcasting. CTA may not care whether viewers can use their devices without a paid subscription and/or Internet connection, but the Commission should

update the FCC's tuner rules to protect consumers from being misled. To be clear, NAB is not seeking to *add* an ATSC tuning requirement; rather we are seeking to shift the existing 1.0 requirement to a 3.0 requirement. Consumers, let alone Congress, would not be pleased if the Commission suddenly stopped requiring that sets actually receive the signal Congress mandated broadcasters provide. It does no good to have a free signal out there that no one can access. Like their pay TV brethren, CTA is simply not in it for consumers.

Finally, the Commission should reject the arguments made by Big Tech advocates² shapeshifting into so-called “public interest” groups that would indefinitely delay the transition and ultimately decimate over-the-air broadcasting. Broadcasters are committed to making this transition as seamless as possible and preserving or exceeding viewer expectations, but an overly restrictive regulatory environment will make it impossible for broadcasters to continue to compete in the marketplace.

II. A FULL INDUSTRY-WIDE TRANSITION IS ESSENTIAL FOR CONSUMERS

Broadcasters have made substantial progress during the permissive phase of the ATSC 3.0 transition – voluntarily launching Next Gen TV services in more than 80 markets nationwide, experimenting with innovative applications, and navigating a complex technical and regulatory environment that requires simulcasting both ATSC 1.0 and 3.0 signals. These achievements underscore a deep industry commitment to modernization and reveal what broadcasters can accomplish even when operating under significant constraints. But to build

² See <https://publicknowledge.org/sources-of-funding-for-public-knowledge/> (indicating Dish, Google, Meta, Microsoft, Netflix, and OpenAI among the top funders). See *also* <https://www.newamerica.org/our-funding/> (indicating Google and Apple as major funders of the Open Technologies Institute).

on this foundation and make certain that broadcast television remains competitive in the digital age, the FCC must act decisively and set a firm deadline to complete the transition.

Some commenters argue that a full, industry-wide transition is premature given current levels of adoption and should be tied to market penetration or other benchmarks.³ However, this approach misdiagnoses the problem. Maintaining the current regulatory structure will actually reinforce the very obstacles to a full transition that opponents cite: limited device availability, lack of consumer awareness, and underdeveloped ATSC 3.0-exclusive content.⁴ Opponents of a full transition offer no plausible explanation for how the very challenges they highlight – challenges driven by regulatory ambiguity – will resolve themselves without a clear and decisive shift in policy. NAB also agrees with other commenters that current consumer adoption levels should not be viewed as an impediment to regulatory action. As one commenter observes, Next Gen TV adoption is tracking or exceeding the pace of adoption during the same stage of the analog-to-digital transition.⁵ ATSC 3.0-capable televisions are already widely available at lower price points than DTV sets were at this point in the transition.⁶

Markets respond to clear policy signals. Without a firm deadline, manufacturers face uncertainty about future demand and are unlikely to make the necessary investments to scale up production or reduce costs. This leaves consumers with limited product choices. At the

³ See, e.g., Comments of Public Knowledge, et. al., GN Docket No. 16-142, at 15 (May 7, 2025) (Public Knowledge Comments).

⁴ See, e.g., Public Knowledge Comments at 7-8; Comments of NCTA, GN Docket No. 16-142, at 2 (May 7, 2025) (NCTA Comments); Comments of the American Television Alliance, GN Docket No. 16-142, at 3-4 (May 7, 2025) (ATVA Comments).

⁵ See Comments of Gray Local Media, Inc., GN Docket No. 16-142, at 6-7 (May 7, 2025).

⁶ *Id.*

same time, broadcasters remain constrained by the requirement to simulcast in both ATSC 1.0 and 3.0, which diverts resources and spectrum from the development of new, next-generation services that could make ATSC 3.0 more attractive to viewers.⁷ Multiple commenters therefore agree that establishing a deadline and removing the substantially similar requirement will provide the market incentives necessary to increase the quantity and affordability of converter devices and to incentivize broadcasters to produce compelling, ATSC 3.0-exclusive content.⁸

Moreover, regulatory action is required because, as ATSC and others have noted, a permissive, market-based transition cannot continue indefinitely due to spectrum constraints. Unlike the wireless industry, broadcasters are making this transition with no additional spectrum. Many markets simply cannot deploy robust 3.0 services while under the burden of simulcast requirements – especially in those markets where only a single broadcast partner is available for channel sharing.⁹ This fact also exposes the absurdity of concerns raised by

⁷ See Comments of Trinity Broadcasting Network, GN Docket No. 16-142, at 2-3 (May 7, 2025) (“Full advancement of ATSC 3.0’s potential will not occur while the current 1.0 ‘simulcast’ requirement remains in effect. If the promise of ATSC 3.0 cannot be clearly demonstrated to the public, encouraging public adoption of the standard will become more difficult, and equipment manufacturers will remain hesitant to fully undertake mass production of ATSC 3.0 equipment.”).

⁸ See Comments of the E.W. Scripps Co., GN Docket No. 16-142, at 6 (May 7, 2025) (“[A] firm final transition deadline will provide regulatory certainty and motivation to commence ATSC 3.0 transition planning as soon as possible.”); Comments of Pearl TV, GN Docket No. 16-142, at 3 (May 7, 2025) (“A date certain on the transition will signal to all parties in the ecosystem (broadcasters, TV set and accessory manufacturers, and consumers) to plan for the future and that will result in both lower costs for consumers and more innovation by manufacturers and broadcasters to unlock other broader benefits of ATSC 3.0”) (Pearl Comments); Comments of Sinclair Inc., GN Docket No. 16-142, at 9 (May 7, 2025) (“A sunset date sends a clear market signal to manufacturers as well as consumers.”).

⁹ See Comments of ATSC: The Broadcast Standards Association, GN Docket No. 16-142, at 5 (May 6, 2025) (“Due to the lack of available spectrum resources in many markets, the pace of further channel sharing and creation of ATSC 3.0 stations is likely to be relatively slow. Some

wireless microphone users who ask to delay the transition based on a misunderstanding of what the transition entails.¹⁰ One of the features of a coordinated industry-wide transition is that it enables this transition to occur without the need for broadcasters to occupy multiple channels simultaneously. The change of standard from ATSC 1.0 to ATSC 3.0 will have no impact on the amount of spectrum available to secondary users such as wireless microphones during the 2028 Olympics or otherwise. In fact, completing the transition prior to the Olympics has the potential to improve the viewing experience by making it possible to offer 4K HDR video to over-the-air viewers rather than only viewers subscribed to a pay TV service.

In short, the Commission and the broadcast television industry cannot afford to wait for some ill-defined, mythical threshold of “consumer readiness” to emerge organically. As the analog-to-digital transition clearly demonstrated, regulatory leadership is essential to overcoming inertia and catalyzing marketplace change. Without clear direction, stakeholders will remain hesitant to invest, innovation will be stifled, and consumers will be left with limited choices. Contrary to the suggestions of some commenters, the Commission possesses the legal authority to establish such a timeline under its longstanding powers to prescribe the

markets will not be able to offer ATSC 3.0 services at all due to spectrum scarcity, while some markets with only one transmitter and broadcast provider cannot transition because there is no other broadcaster partner available for a channel sharing arrangement.”); Pearl Comments at 4 (“[A]s Pearl has observed firsthand, in the current dual-signal environment broadcasters are forced to make difficult tradeoffs given the severe spectrum constraints, and the result is an ATSC 3.0 signal that does not use all of its potential and at times compromises some ATSC 1.0 feeds”).

¹⁰ See Comments of the Wireless Microphone Spectrum Alliance, GN Docket No. 16-142 (May 7, 2025). See *also* Reply Comments of the North American Spectrum Alliance, GN Docket No. 16-142 (May 31, 2025). We note that while NAB is listed on this filing as a current member of the alliance, we were not made aware of their misguided position prior to it being filed in ECFS and believe it has no basis in fact.

nature of broadcast service to serve the public interest.¹¹ A proactive, decisive approach by the FCC will unlock the full promise of ATSC 3.0 and ensure that the nation's broadcast infrastructure remains a vibrant, forward-looking part of the communications landscape.

III. THE PAY TV INDUSTRY SHOULD NOT BE PERMITTED TO INDEFINITELY DELAY A FULL TRANSITION TO PRESERVE THEIR COMPETITIVE POSITION

Opposition from the cableopoly¹² to a full, industry-wide transition to ATSC 3.0 is entirely predictable and should be evaluated for what it truly is: a coordinated effort to preserve longstanding market dominance, not a principled concern for consumers or the public interest. Despite cloaking their position in the language of consumer protection and regulatory restraint, pay TV providers aim to prevent broadcasters from delivering the innovative, competitive services that ATSC 3.0 makes possible. This pattern of obstruction must not be allowed to derail a transition critical to the future of free, local broadcasting.

At the outset, the pay TV industry's sudden embrace of deregulation in this context is fundamentally disingenuous. While pay TV commenters now claim to oppose a full transition to ATSC 3.0 in the name of deregulation, their track record tells a different story.¹³ The pay TV industry has routinely resisted deregulatory reforms that would empower broadcasters and

¹¹ See 47 U.S.C. § 303(b) (the Commission shall “[p]rescribe the nature of the service to be rendered by each class of licensed stations and each station within any class”); 47 U.S.C. § 303(e) (the Commission shall “[r]egulate the kind of apparatus to be used with respect to its external effects and the purity and sharpness of the emissions from each station and from the apparatus therein”).

¹² See <https://endthecableopoly.org/>.

¹³ See NCTA Comments at 1-2 (arguing that NAB's approach “would be contrary to the deregulatory goals of the Trump Administration and the Commission”); ATVA Comments at ii (same).

foster greater competition.¹⁴ Far from advocating regulatory restraint, MVPDs continue to call for additional regulatory burdens on broadcasters in their comments – including extending the

¹⁴ See, e.g., Letter from Mary Beth Murphy, NCTA, to Marlene H. Dortch, FCC, MB Docket Nos. 18-349 and 22-459 (Dec. 21, 2023); Letter from Mary Beth Murphy, NCTA, to Marlene H. Dortch, FCC, MB Docket Nos. 18-349 and 22-459 (Dec. 6, 2023); Letter from Mary Beth Murphy, NCTA, to Marlene H. Dortch, FCC, MB Docket Nos. 18-349 and 22-459 (Nov. 30, 2023); Comments of NCTA in MB Docket No. 22-459 (Mar. 6, 2023); Comments of NCTA in MB Docket No. 18-349 (Sept. 2, 2021); Comments of NCTA in MB Docket No. 18-349 (Apr. 19, 2019) (urging the Commission to retain its 1999 local television ownership rule and to further expand the rule to cover multicast streams and low power television (LPTV) stations); see *also* Letter from Mary Beth Murphy, NCTA, to Marlene H. Dortch, FCC, MB Docket Nos. 03-185, 16-42, 22-261, 22-459 (Mar. 9, 2023) (opposing a proposal to open a new window for LPTV facilities changes until the Commission acts on NCTA's proposed changes to the local TV ownership rule to include LPTV stations); Letter from Radhika Bhat, NCTA, to Marlene H. Dortch, FCC, MB Docket No. 22-161 (Jun. 22, 2022) (urging FCC to impose conditions on proposed Standard General- TEGNA transaction); Comments of NCTA, MB Docket No. 19-30 (Mar. 18, 2019) (urging FCC to impose conditions on proposed Nexstar-Tribune transaction); Informal Objection of NCTA, File No. 0000214896 (June 20, 2023) (objecting to proposed sale of a single station). See *also*, Letter from Michael Nilsson, Counsel to ATVA, to Marlene H. Dortch, FCC, MB Docket Nos. 18-349 and 22-459 (Dec. 20, 2023); Letter from Michael Nilsson, Counsel to ATVA, to Marlene H. Dortch, FCC, MB Docket Nos. 18-349, 22-459, 23-405 (Dec. 6, 2023); Letter from Michael Nilsson, Counsel to ATVA, to Marlene H. Dortch, FCC, MB Docket Nos. 18-349, 22-459 (Nov. 2, 2023); Letter from Michael Nilsson, Counsel to ATVA, to Marlene H. Dortch, FCC, MB Docket Nos. 18-349, 22-459 (Oct. 18, 2023); Letter from Michael Nilsson, Counsel to ATVA, to Marlene H. Dortch, FCC, MB Docket Nos. 18-349, 22-459 (Oct. 16, 2023); Letter from Michael Nilsson, Counsel to ATVA, to Marlene H. Dortch, FCC, MB Docket Nos. 18-349, 22-459 (Oct. 18, 2023); Reply Comments of ATVA, MB Docket Nos. 18-349, 22-459 (Mar. 20, 2023); Comments of ATVA, MB Docket Nos. 18-349, 22-459 (Mar. 3, 2023); Further Reply Comments of ATVA, MB Docket No. 18-349 (Oct. 2, 2021); Further Comments of ATVA, MB Docket No. 18-349 (Sept. 2, 2021); Letter from Michael Nilsson, Counsel to ATVA, to Marlene H. Dortch, FCC, MB Docket Nos. 18-349, 10-71 (Mar. 18, 2021) (Chairwoman's Office Meeting); Letter from Michael Nilsson, Counsel to ATVA, to Marlene H. Dortch, FCC, MB Docket Nos. 18-349, 10-71 (Mar. 18, 2021) (Bureau Meeting); Letter from Michael Nilsson, Counsel to ATVA, to Marlene H. Dortch, FCC, MB Docket Nos. 18-349, 10-71 (Mar. 18, 2021) (Starks Office Meeting); Letter from Michael Nilsson, Counsel to ATVA, to Marlene H. Dortch, FCC, MB Docket Nos. 18-349, 10-71 (Mar. 18, 2021) (Carr Office Meeting); Letter from Michael Nilsson, Counsel to ATVA, to Marlene H. Dortch, FCC, MB Docket Nos. 18-349, 10-71 (Mar. 17, 2021); Letter from Michael Nilsson, Counsel to ATVA, to Marlene H. Dortch, FCC, MB Docket Nos. 18-349, 10-71, 15-216 (Feb. 5, 2021); Letter from Michael Nilsson, Counsel to ATVA, to Marlene H. Dortch, FCC, MB Docket Nos. 18-349, 19-275 (Nov. 6, 2019); Comments of ATVA, MB Docket No. 18-349 (Apr. 19, 2019) (all urging the Commission to adopt more restrictive local television ownership rules).

simulcast and substantially similar requirements indefinitely,¹⁵ Commission-imposed limits on retransmission consent negotiations,¹⁶ and restrictions on broadcasters' use of spectrum.¹⁷ These demands contradict any genuine commitment to market freedom and instead expose the industry's true objective: maintaining regulatory asymmetries that entrench their market dominance.

After all, MVPDs presumably stand to lose if broadcasters are allowed to enhance their service offerings, especially when those offerings might reduce consumer reliance on pay TV or compete with vertically integrated broadband services. ATSC 3.0 has the proven ability to improve the quality, accessibility, and versatility of free, over-the-air television and to create new avenues for broadcasters to diversify their revenue streams through hybrid broadcast-broadband service. From the outset, the pay TV industry has sought to delay or derail the transition to ATSC 3.0 and their current opposition is simply a continuation of that longstanding strategy to suppress emerging competition before it can gain traction.¹⁸

¹⁵ See NCTA Comments at 3 (“The Commission should reject NAB’s proposals and instead retain its current market-driven approach to the transition, coupled with continuing its requirement that transitioning stations simulcast substantially similar programming in ATSC 1.0.”).

¹⁶ See NCTA Comments at n. 37 (asking Commission for finding that “any attempt by broadcasters to mandate ATSC 3.0 carriage through retransmission consent negotiations violates broadcasters’ obligation to negotiate retransmission consent in good faith.”); *id.* at 15-16 (asking the Commission to “prohibit the use of retransmission consent to negotiate for carriage of Broadcast Internet services”).

¹⁷ See ATVA Comments at 20-22 (questioning the right of broadcasters to use their spectrum for non-broadcast purposes); NCTA Comments at 15-16 (“The Commission should also consider whether allowing broadcasters to retain valuable spectrum resources they are no longer using for broadcast television—instead of putting the spectrum up for auction—would fail to put scarce spectrum resources to their highest and best use.”).

¹⁸ See e.g., Letter from Mary Beth Murphy, NCTA, to Marlene H. Dortch, FCC, GN Docket No. 16-142 (Feb. 23, 2023) (urging the Commission to require that broadcasters make a showing of necessity before being permitted to engage in lateral hosting to continue to provide ATSC

Objections to broadcasters' use of broadcast spectrum for advanced data services eliminate any ambiguity as to the pay TV industry's anticompetitive motives. NCTA and ATVA argue that a transition would impermissibly allow broadcasters to use spectrum for data services in a manner that exceeds the intended scope of broadcast licenses and suggest that such use should be restricted (or the spectrum auctioned off).¹⁹ These arguments expose MVPDs' true concern that ATSC 3.0 could introduce meaningful alternatives to their vertically integrated broadband services. In many markets, cable operators enjoy effective monopolies ("cableopolies") or duopolies on broadband delivery. By opposing a full transition to ATSC 3.0, the pay TV industry aims to eliminate potential rivals in this space.

The hypocrisy of MVPDs' suggestions that allowing broadcasters to use spectrum for datacasting services would somehow "enable broadcasters to compete on a subsidized basis with alternative providers of similar non-broadcast services" and therefore "distort market forces and undermine full and fair competition" or would not be putting spectrum to its

1.0 service during the transition); Comments of NCTA, GN Docket No. 16-142 (Feb. 11, 2022) (urging the Commission to adopt limits on the provision of multicast streams during the transition to Next Gen TV); Petition for Reconsideration of NCTA, GN Docket No. 16-142 (March 5, 2018) (proposing requirements that would: (i) force broadcasters to provide high definition streams on their ATSC 1.0 signals throughout the transition to Next Gen TV, (ii) prohibit broadcasters from negotiating with cable companies to provide for voluntary carriage of ATSC 3.0 signals, and (iii) create new requirements regarding patent licensing by entities not participating in a standards development process or regulated by the Commission); Petition for Reconsideration of ATVA, GN Docket No. 16-142 (March 5, 2018) (urging the commission to: (i) restrict negotiations for carriage of ATSC 3.0 signals, (ii) prohibit low-power and translator stations from flash-cutting to ATSC 3.0, and (iii) require stations to provide advance notice before changing the resolution or picture quality of programming).

¹⁹ NCTA Comments at 15-16. ATVA similarly objects to NAB's proposal on the grounds that broadcasters would be providing data services that "are already available to consumers, including over 5G networks" and argues that the use of broadcast spectrum for non-broadcast uses "could also effectively function as an unannounced reallocation of the broadcast television bands to other, non-broadcast uses." ATVA Comments at 9-10, 22.

highest and best use should not be overlooked.²⁰ MVPDs themselves receive billions of dollars in public subsidies, including Universal Service Fund support, to expand broadband infrastructure.²¹ Moreover, the cableopoly has hoarded immense amounts of spectrum that is going essentially unused.²² Broadcasters, most of which have paid for their spectrum, are not seeking subsidies. They are simply aiming to use their licensed spectrum in a flexible, innovative manner that aligns with the law and the nation's public interest.²³ The Commission has long permitted ancillary and supplemental uses of broadcast spectrum, and datacasting using ATSC 3.0 fits squarely within this framework.²⁴ Unleashing these kinds of innovative uses offers broadcasters another source of revenue that is essential for broadcasters to be able to continue to invest in valuable programming, including local news, and presents a critical opportunity to address connectivity gaps in rural and underserved communities where

²⁰ NCTA Comments at 16.

²¹ NCTA is a key member of the Keep America Connected Coalition that was launched earlier this year to urge Congress to pass legislation preserving the Universal Service Fund. See <https://keepamericaconnectedcoalition.org/keep-america-connected-coalition-launches/>.

²² See <https://endthecableopoly.org/wp-content/uploads/2025/01/The-Cableopoly-Admits-They-Dont-Need-More-Spectrum-2025.pdf>. See also *Space Bureau Opens New Docket to Explore EchoStar Corporation's Use of 2 GHz MSS Spectrum*, Public Notice, DA 25-405 (May 12, 2025) (noting that questions have been raised about whether EchoStar is using the 2 GHz band consistent with the terms of its authorization and the Commission's rules and policies).

²³ Pay TV and other commenters' insistence that the transition will result in the derogation of television service on the grounds that broadcasters have not made concrete commitments miss the mark. Broadcasters seek the flexibility to explore innovative ancillary services and emphasize that regulations that constrain broadcasters' ability to explore the full potential of ATSC 3.0 should not be reflexively imposed to prevent hypothetical harms that have not yet materialized.

²⁴ See *Fees for Ancillary or Supplementary Use of Digital Television Spectrum Pursuant to Section 336(e)(1) of the Telecommunications Act of 1996*, MM Docket No. 97-247, Report and Order, 14 FCC Rcd 3259 (1998).

cable companies have repeatedly failed to deliver.²⁵ Suppressing that potential to protect the incumbents' business model would be a profound disservice to consumers.

The pay TV industry's arguments regarding costs and technical carriage issues also do not warrant delaying Commission action.²⁶ It is true that MVPDs will incur some costs to upgrade their infrastructure to enable access to ATSC 3.0's advanced features. As the Future of Television Initiative Report explains, establishing a clear transition date will accelerate adoption, drive down equipment costs through scale, and give MVPDs the time they need to plan and budget.²⁷ To the extent pay TV commenters raise technical concerns about the carriage of ATSC 3.0 signals, those matters can be appropriately addressed in an NPRM.²⁸ The existence of outstanding technical questions should not serve as a pretext to delay or obstruct the transition entirely. Indeed, setting a deadline will provide necessary urgency and focus the efforts of broadcasters, MVPDs, and standards bodies working to resolve the issues that MVPDs identify. MVPDs' insistence on elevating these questions into insurmountable barriers is little more than a stall strategy – one designed to protect their monopoly rents at the expense of consumer choice, innovation, and the continued vitality of free, local broadcasting.

²⁵ Brendan Carr, *Keynote Remarks of FCC Commissioner Brendan Carr at the National Association of Broadcasters and Communications Technology Association Online Event on ATSC 3.0, "Broadcast Internet: The Future of ATSC 3.0,"* May 18, 2020, <https://docs.fcc.gov/public/attachments/DOC-364414A1.pdf>.

²⁶ See ATVA Comments at 10-14; NCTA Comments at 5-6, 9-14.

²⁷ See Future of Television Initiative Report at 27-28.

²⁸ See NCTA Comments at 9-14.

IV. THE APPROACH SUGGESTED BY CTA WOULD LEAD TO NEVER-ENDING SIMULCASTING

CTA and its members have been valuable partners in developing the ATSC 3.0 standard and the test suite that accompanies the NEXTGEN TV logo. Broadcasters rely on device manufacturers represented by CTA to ensure that viewers have access to free, over-the-air signals. Thanks to these efforts, viewers can purchase televisions with a Next Gen TV tuner from Hisense, Panasonic, Samsung, Sony, or TCL at a variety of price points. There are also converter devices available that can allow viewers to use legacy television sets to receive Next Gen TV signals. While broadcasters continue to simulcast in ATSC 1.0 and ATSC 3.0, this voluntary approach has been sufficient.

However, what was adequate to start the transition will not be enough to finish it. In its comments, CTA claims that “manufacturers are meeting marketplace demand for ATSC 3.0 tuners without regulatory intervention.”²⁹ This may be true at the current phase of adoption, but most viewers will not independently seek out ATSC 3.0 capability until it offers something they cannot get without it. As discussed above, the problem is circular. Broadcasters cannot offer the full benefits of Next Gen TV service until they can stop simulcasting in ATSC 1.0. But nearly all parties in this docket, including broadcasters, are concerned about ending simulcasting if viewers are not equipped to receive ATSC 3.0 signals.

This impasse is not new or unprecedented. During the DTV transition, the FCC recognized that voluntary market adoption was insufficient and in 2002 updated its tuner rule to require television sets to include ATSC 1.0 tuners with a phase-in from July 1, 2004 for

²⁹ Comments of Consumer Technology Association, MB Docket No. 16-142, at 3 (May 7, 2025) (CTA Comments).

larger television sets through July 1, 2007 for smaller sets.³⁰ At the time, a hard date for the DTV transition had not yet been set, but it would eventually be set for 2009. The FCC rejected many of the same arguments CTA is currently making about the expense of including tuners and the lack of consumer interest. The Commission observed “[w]hile broadcasters have progressed in their implementation of DTV such that almost a third of all stations are now transmitting DTV service, and DTV services reach more than 86% of the nation, the number of consumers with DTV capable receivers is still very low.”³¹ Interestingly, broadcasters are very nearly at the same point in the transition today as they were when the FCC adopted the DTV tuner requirement. Establishing a tuner requirement today would serve the same purpose as it did the last time the FCC did so. The Commission should ensure that individuals who purchase television sets do not find the devices instantly obsolete by updating the tuner requirement to include Next Gen TV reception capability prior to the sunset of ATSC 1.0 transmission.

In addition to this commonsense rule update, NAB also asked the FCC to consider adopting requirements akin to what is already being adopted in other parts of the world to ensure that broadcasting remains accessible to the average consumer and not hidden behind a maze of menus that only the most sophisticated and dedicated viewers can manage. The Next Gen TV devices currently on the market, for the most part, do provide an easy method for viewers to access television. This is not surprising given there would be no reason for a manufacturer today to opt to include an ATSC 3.0 tuner and then make it difficult to access. However, as manufacturers increasingly include their own FAST channels, app stores, and

³⁰ *Second Report and Order and Second Memorandum Opinion and Order* in MM Docket No. 00-39, 17 FCC Rcd 15978 (2002).

³¹ *Id.* at ¶ 34.

enter into data- and revenue-sharing partnerships with streaming services, some television manufacturers are choosing to prioritize those services at the expense of free broadcast television. We emphasize that the Commission need not resolve this concern prior to moving forward with an industry-wide transition to Next Gen Television. At this stage we are asking the FCC to keep a watchful eye on the marketplace developments and remain open to corrective action if necessary to ensure the adequacy of devices' reception capabilities.

V. BIG TECH ADVOCATES' ATTEMPT TO DELAY OR PREVENT THE TRANSITION WILL ULTIMATELY HARM THE PUBLIC INTERESTS THEY PURPORT TO PROTECT

Public Knowledge and the Open Technology Institute (collectively "Big Tech Advocates") love free over-the-air broadcasting so much they might just kill it.³² While stressing the importance of preserving viewers' access to free, over-the-air television, Big Tech Advocates seek to impose regulatory burdens that ultimately threaten the viability of those services. They ask that the Commission delay setting a date for the transition until every viewer already has the necessary equipment. That would be like refusing to open a new highway until every driver has bought a car that can use it. As though that's not problematic enough, they would also compromise broadcasters' ability to continue to obtain content rights, eliminate broadcasters' rights to explore new revenue opportunities, and restrain broadcasters' efforts to improve service to viewers in the interest of continuing to promote the failed white spaces experiment.

The committed opposition to broadcasters protecting their signals from unauthorized redistribution is not sufficient grounds to prevent a full transition to Next Gen TV. In arguing vehemently against encryption, such commenters fail to understand the important role it

³² See, e.g., TOMMY BOY, Paramount Pictures, available at <https://www.youtube.com/watch?v=c1EyN9xTK94> (explaining how Tommy unintentionally killed his "pretty little pet").

plays in ensuring broadcasters can continue to obtain high-quality programming in the modern media marketplace. While these advocates may have a religious opposition to DRM, when every other (legal) video service encrypts content to protect against piracy, encryption becomes table stakes in negotiations for the right to carry programming. If broadcasters cannot encrypt signals, it becomes even harder for broadcasters to win the right to carry high value content, including professional sports. Sports content is migrating games to other platforms. A *USA Today* article recently estimated that it would cost \$883 for a fan to access all the games in the 2025 NFL season.³³ Broadcast viewers are likely to continue losing free access to games if encryption is prohibited. This is not the privatization of public airwaves as these commenters suggest, but a necessary evolution to remain competitively viable in the modern video ecosystem.

The encryption technology that broadcasters are beginning to deploy is the exact same technology used by YouTube and other free streaming services (yes, the same YouTube that funds these organizations). It does not impose a cost on viewers or prevent viewers from saving programs on a digital video recorder (DVR) or impose a time restriction on how long a saved program can be retained on a DVR. All it does is prevent a bad actor from retransmitting the program unencrypted over the Internet.

Aside from philosophical differences about the use of encryption, Public Knowledge also grossly mischaracterizes the holding in the Broadcast Flag case.³⁴ That case does not limit the Commission's ability to allow broadcasters to encrypt, it limits only the ability of the

³³ Robert Zeglinski, *Here's how much it will (roughly) cost to watch every NFL game in the 2025 season*, May 13, 2025, <https://ftw.usatoday.com/story/sports/nfl/2025/05/13/nfl-2025-season-fan-watch-tv-streaming-cost/83604610007/>.

³⁴ Public Knowledge Comments at 25, citing *Am. Library Ass'n v. FCC*, 406 F.3d 689 (D.C. Cir. 2025).

Commission to impose post-demodulation requirements on *devices*. It plainly states, “this case turns on one simple fact: the Flag Order does not require demodulator products to give effect to the broadcast flag until after the DTV broadcast is complete. The Flag Order does not regulate the actual transmission of the DTV broadcast. In other words, the Flag Order imposes regulations on devices that receive communications after those communications have occurred; it does not regulate the communications themselves.”³⁵ When broadcasters encrypt their transmissions, it is not the FCC that imposes any additional requirements on the devices. To the extent there are downstream requirements, those are the result of a private contractual arrangement between the device manufacturers and the entity providing the decryption keys as a condition of receiving those keys. The FCC is not involved in that process, except to the extent it may choose to impose limits or conditions on what broadcasters may do. The Broadcast Flag case has no relevance to broadcasters’ rights to encode or encrypt content.

Moreover, every Next Gen Television set and nearly all the converter devices on the market will seamlessly decrypt content and display it to viewers, without the need for an Internet connection. As with any new technology, there were some glitches with early devices, and those may have needed a firmware update to work with encrypted content. Growing pains like these are a near-universal experience with any kind of innovation. Broadcasters have convened numerous “interop,” built testing labs and have otherwise worked to resolve issues as they arise. Ultimately, however, broadcasters have no control over manufacturers who choose to put a device on the market knowing that it will not work with encrypted ATSC 3.0 transmissions. All the broadcast industry can do is point viewers to devices that are known to work, through resources like <https://www.watchnextgentv.com/shop/>.

³⁵ *Am. Library Ass’n v. FCC*, 406 F.3d at 703.

Big Tech Advocates' position on NAB's petition and a full industry-wide transition is also confusing. In another docket, these same organizations point to the viability of the Broadcast Positioning System (BPS) (which will only be realized with a full, industry-wide transition) and cite NAB's petition to support rejecting another PNT solution in that docket.³⁶ NAB wholeheartedly agrees that BPS is a viable solution that offers immense public interest benefits and would expect commenters to support NAB's petition to enable its full deployment.

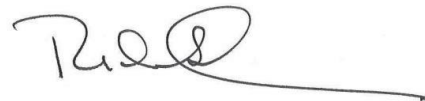
VI. CONCLUSION

Transitioning to Next Gen Television is necessary for the future of over-the-air broadcasting. Time is of the essence. Establishing a clear timeline will help focus all participants – broadcasters, device manufacturers, MVPDs, and consumers alike on a common target. To the extent that there remain issues to be resolved prior to adopting the final framework for this transition, the NPRM process affords ample opportunity to resolve those issues. We urge the FCC to issue an NPRM expeditiously.

Respectfully submitted,

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³⁶ Comments of Open Technology Institute at New America and Public Knowledge, WT Docket No. 25-110, at 5-7 (Apr. 28, 2025).

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