



Virginia Association of Broadcasters Legal Review



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Legal Memorandum

ATSC 3.0 Notice of Proposed Rulemaking: Comments Due May 9; Reply Comments Due June 8

The FCC has released a [Notice of Proposed Rulemaking](#) (“Notice”) proposing to authorize television stations to use the “Next Generation” broadcast television transmission standard, ATSC 3.0 (also known as “Next Gen TV”), on a voluntary, market-driven basis, while continuing to deliver current-generation digital television (“DTV”) broadcast service, using the ATSC 1.0 standard, to viewers. The Notice is scheduled to be published in the Federal Register on March 10, 2017, which means that comments will be due by May 9, 2017, and reply comments will be due by June 8, 2017.

Next Gen TV offers the promise of bringing together the benefits of broadcasting and the Internet. But it cannot be deployed without the FCC’s permission. The Notice is the first step toward bringing ATSC 3.0 to the marketplace in the United States; the FCC recognizes, however, that there are numerous questions and concerns to resolve before it can adopt rules to authorize use of the new standard. Chairman Pai has publicly indicated that his goal is for the FCC to adopt such rules before the end of 2017.

The FCC issued the Notice in response to a [joint petition](#) (the “Petition”) filed nearly a year ago by a coalition of industry stakeholders (the “Petitioners”). In the Notice, the FCC seeks to strike a balance between facilitating innovation while minimizing disruption to consumers and ensuring that broadcasters and pay-TV providers who elect not to carry ATSC 3.0 signals not be disadvantaged.

The Notice seeks comment on a number of issues and proposals, including the following (each of which is discussed in detail further below):

- Voluntary Use and Local Simulcasting. The FCC proposes to authorize voluntary use of the ATSC 3.0 transmission standard and to require “local simulcasting” for stations that

choose to deploy Next Gen TV transmissions so that viewers continue to receive existing ATSC 1.0-based services.

- MVPD Carriage and Retransmission Consent. The FCC proposes that MVPDs be required to continue carrying broadcasters' ATSC 1.0 signals during the transition to Next Gen TV transmissions, but that they not be required to carry ATSC 3.0 signals. The FCC asks a series of questions regarding voluntary carriage of ATSC 3.0 signals by MVPDs as a product of retransmission consent negotiations.
- Public Interest Obligations, Transition and Consumer Issues, and the Repacking Process. The FCC proposes that broadcasters who deploy Next Gen TV be subject to the same public interest obligations currently applicable to television stations and that all of the FCC's broadcast rules apply to Next Gen TV stations. The FCC also seeks comment on how to ensure that deployment of ATSC 3.0 does not negatively impact the post-Incentive Auction repacking process.
- Service and Interference Protection. The FCC seeks comment on whether ATSC 3.0 transmissions will raise interference concerns for existing ATSC 1.0 operations (and other services and devices) and whether any particular interference protection is warranted or necessary.

I.

Voluntary Use and Local Simulcasting

Host Stations and Local Simulcasting Generally. A key element of the Petitioners' proposal for voluntary transition to the Next Gen TV standard is local simulcasting, in which each television station choosing to implement ATSC 3.0 would arrange for another station in its local market to act as a "host" station to "simulcast" one of the two signals (i.e., either the ATSC 1.0 signal or the ATSC 3.0 signal). Broadcasters would have to partner with other stations in the same market in order to simulcast both transmission standards because one facility cannot broadcast using both ATSC 1.0 and ATSC 3.0. And, ATSC 3.0 is not backward-compatible with existing TV sets and receivers, meaning consumers who want to receive the service will need to buy new TV sets or converter equipment. In order to ensure that viewers (especially those who do not purchase ATSC 3.0-compatible equipment) continue to receive a station's signal as broadcasters implement Next Gen TV, the Notice proposes to mandate that stations electing to implement ATSC 3.0 simulcast in ATSC 1.0 format.

Separately Licensed or Multicast? In the Notice, the FCC contemplates a couple of options for how to treat a simulcast signal from a regulatory perspective: (1) as a temporarily shared channel that is separately licensed as a second channel of the originating station, or (2) as a multicast stream of the host station. The FCC appears to favor the former, "separately licensed" approach, and it discusses several benefits that might flow from that approach.

Separately Licensed Option. Under the "separately licensed" approach, the ATSC 1.0 and ATSC 3.0 signals would be two separately licensed channels of the originating station, and simulcasts would be implemented via temporary channel sharing agreements (following the existing "channel sharing" model that was introduced in the context of the Incentive Auction)

between the licensees of the originating station and the host station. The FCC proposes that, should it adopt this approach, a station whose programming stream(s) will be changing channels will have to file an application for a construction permit specifying the host station's technical facilities. According to the Notice, the "separately licensed" simulcasting approach offers certain advantages: It would allow noncommercial stations to serve as hosts for commercial stations, and it would make the originating station (and not the host) responsible for regulatory compliance regarding its simulcast signal, giving the FCC clear enforcement authority over the originating station.

Multicast Option. For its part, the multicast approach might minimize administrative burdens and offer broadcasters some flexibility. But the Notice points out some drawbacks of the multicast approach: It would likely preclude noncommercial stations from serving as hosts for commercial stations, and the host station—not the originating station—would be subject to the FCC's enforcement authority with respect to the originating station's program stream, which may deter stations from serving as hosts. In addition, because multicast channels are not entitled to must-carry rights, there may be more vexing carriage issues under the multicast approach than under the "separately licensed" approach (carriage issues are discussed below in [Section II](#)).

Other Simulcasting Options? The Notice asks whether there are other viable regulatory approaches for the treatment of simulcasting, and the FCC seeks comment on whether it should authorize broadcasters to simulcast via a host station through the STA (special temporary authority) process. The FCC also asks whether it should require stations to file their simulcasting agreements with the Commission.

Cessation of Simulcasting. Finally, the FCC proposes that, if it adopts a simulcast approach, it will decide in the future—not in this proceeding—when it would be appropriate to allow stations to stop simulcasting in ATSC 1.0.

Character of Program Streams. In the Notice, the FCC observed that it would expect that identical programming would be offered on the simulcast streams, but it seeks comment on that issue. The FCC also proposes to require that each Next Gen TV station offer at least one free ATSC 3.0 video stream at all times throughout the ATSC 3.0 coverage area, and that such ATSC 3.0 signal be at least as robust as the station's ATSC 1.0 signal.

Additional Issues for Comment. The Notice asks questions about several other topics related to local simulcasting. Regarding coverage and signal quality issues, it asks about the extent to which a Next Gen TV station should be allowed to partner with an ATSC 1.0 host simulcast station that has a different service contour or community of license, and how to make sure that local simulcasting arrangements do not result in significant losses of ATSC 1.0 service. The FCC also seeks comment about simulcasting arrangements between two or more stations in a market, and potentially between all stations in a market, and the advantages and disadvantages of a market-wide simulcast approach versus simulcasting agreements between individual stations. In addition, the Notice asks about whether low power television ("LPTV") stations and noncommercial broadcasters would be interested in offering ATSC 3.0 services, and whether their participation should be encouraged so that all broadcasters have a chance to participate as Next Gen TV broadcasters or simulcast hosts. The FCC also seeks comment on whether LPTV and Class A television stations should be allowed to deploy ATSC 3.0 without simulcasting (i.e., by "flash-cutting" to ATSC 3.0).

II. MVPD Carriage Issues

Must Carry Generally. The Notice proposes that MVPDs be required to continue to carry broadcasters' ATSC 1.0 signals, in accord with their statutory obligations, and that MVPDs not be required to carry broadcasters' ATSC 3.0 signals while broadcasters are implementing Next Gen TV service. On this point, numerous MVPDs submitted comments in response to the Petition, and many argued they do not and will not have the technical capability to receive or transmit ATSC 3.0 signals for some time. They also suggested that ATSC 3.0 signals could occupy more bandwidth than ATSC 1.0 signals. In response to those MVPD concerns, the Notice tentatively concludes that it is premature to address questions related to the mandatory carriage of ATSC 3.0 streams.

Implications of "Separately Licensed" vs. Multicast. The Notice revisits the "separately licensed" versus "multicast" approach to simulcasting in its discussion of carriage issues and explains that the rules would likely differ depending on which simulcasting approach (if any) is adopted.

Carriage of ATSC 3.0 Signals in a "Separately Licensed" Regime. The FCC concludes that, under a separately licensed approach, each station would have mandatory carriage rights as to its ATSC 1.0 stream (so it would choose between must-carry or retransmission consent for its ATSC 1.0 signal), and carriage of an ATSC 3.0 signal could only be pursued through retransmission consent negotiations. This approach would allow the FCC to avoid—for now, at least—addressing additional issues associated with mandatory carriage of ATSC 3.0 signals.

Carriage of ATSC 3.0 Signals in a Multicast Regime. Because multicast streams do not have must-carry rights, a multicast approach to local simulcasting would create more complicated and challenging mandatory carriage issues than the "separately licensed" approach. Significantly, it is unclear whether the FCC could require mandatory carriage of a station's ATSC 1.0 simulcast stream if that stream is broadcast by a host station as one of the host station's multicast streams, and the FCC seeks comment on this important, threshold issue.

Negotiation of Carriage of ATSC 3.0 Stream Via Retransmission Consent. The FCC seeks comment on certain issues related to voluntary carriage of ATSC 3.0 by MVPDs as a result of the retransmission consent process. MVPDs have already voiced concerns that broadcasters might use the retransmission consent process to "force" MVPDs to upgrade their equipment in order to carry ATSC 3.0 signals before they are prepared to do so, and that Next Gen TV broadcasters might try to "tie" ATSC 3.0 carriage to ATSC 1.0 carriage. In response, the FCC asks how its good faith retransmission consent rules can or should be applied or adapted to address such concerns. The Notice also seeks comment on whether small, rural, and capacity-constrained MVPDs might face unique circumstances with respect to voluntary carriage of ATSC 3.0 streams and how to address any such circumstances.

III. Public Interest Obligations, Transition and Consumer Issues, and the Repacking Process

Serving the Public Interest and Application of Regulatory Requirements. The Notice proposes that Next Gen TV stations would have a responsibility to serve the public interest, and that the various

legal obligations and restrictions imposed on broadcasters would apply to such stations. The FCC proposes to apply all of its broadcast rules to Next Gen TV stations including, but not limited to, the rules regarding foreign ownership, political broadcasting, children’s programming, EEO, public inspection files, main studios, indecency, sponsorship identification, station-conducted contests, commercial loudness (CALM Act), EAS, closed captioning, and video description. The Notice seeks comment on certain specific consumer enhancements that may be available through the use of ATSC 3.0—for example, enabling improvements to services like EAS, closed captioning, and video description—and on which features of ATSC 3.0 services will be provided for free, over-the-air, and which services may/will be provided to consumers for a fee.

Tuner Mandate. Television receivers used by consumers today cannot receive ATSC 3.0 signals, but if the industry eventually converts to universal ATSC 3.0 operation, television receivers will need—at some point—to include ATSC 3.0 tuners. The Notice tentatively concludes that it is not necessary to impose a Next Gen TV tuner mandate for manufacturers at this time because the contemplated transition would be voluntary and market-driven and, for now at least, ATSC 1.0 broadcasting would continue indefinitely. Nonetheless, the Notice does ask whether the FCC should require new television receivers manufactured after a certain date to include the capability to receive ATSC 3.0 signals, and when (if at all), that date should be.

ATSC 3.0 Consumer Education. The Notice asks whether stations should be required to provide on-air notifications to educate consumers about their deployment of ATSC 3.0 service and simulcasting of ATSC 1.0 service, and the FCC seeks comment on the timing, content, and format of such messages.

Implications of/for Post-Auction Repack. The Notice asks several questions regarding the interplay between the adoption of ATSC 3.0 and the post-Incentive Auction repacking process. The FCC seeks comment on the extent to which the repacking of stations after the Incentive Auction presents an opportunity for repacked stations that want to upgrade to ATSC 3.0, asking what steps (if any) the Commission should take to facilitate ATSC 3.0 deployment consistent with the repack while ensuring consumers retain the television service they expect. The Notice also asks how the FCC can ensure that deployment of ATSC 3.0 does not negatively affect the post-auction transition.

Side Note: Is ATSC 3.0 Equipment Eligible for Reimbursement During the Repack? In the Notice, the FCC responds to a request seeking clarification about whether ATSC 3.0 equipment is eligible for reimbursement from the Reimbursement Fund. The Notice observes that all requests for repacking reimbursement, including those for ATSC 3.0-capable equipment, will be evaluated pursuant to the standards previously adopted in the Incentive Auction proceeding. In other words, the Notice does not really provide any new gloss on the issue, and the FCC still does not “anticipate providing reimbursement for new, optional features in equipment unless the station documents that the feature is already present in the equipment that is being replaced. Eligible stations may elect to purchase optional equipment capability or make other upgrades at their own cost, but only the cost of the equipment without optional upgrades is a reimbursable expense.”

IV. Interference Issues

Interference Considerations Generally. According to the Notice, the proposed authorization of the ATSC 3.0 transmission standard raises three potential interference issues: (1) the issue of interference that ATSC 3.0 signals may cause to ATSC 1.0 signals; (2) the issue of interference that ATSC 1.0 and other ATSC 3.0 signals may cause to ATSC 3.0 signals; and (3) the issue of interference that ATSC 3.0 signals may cause to non-television services that operate within or adjacent to the TV band. The FCC proposes to broadly treat ATSC 1.0 and Next Gen TV interference equally, and, with respect to these three interference issues, the FCC proposes to treat ATSC 3.0 signals as though they were regular DTV (i.e., ATSC 1.0) signals with identical technical parameters (which is generally consistent with what the Petitioners requested).

Use of OET Bulletin No. 69 Methodology to Calculate Interference. The FCC proposes to apply the methodology and planning factors that are specified in OET Bulletin No. 69 (which provides guidance on the implementation and use of Longley-Rice methodology for evaluating TV service coverage and interference in accordance with various FCC rules) in order to calculate interference from ATSC 3.0 to ATSC 1.0 signals. Similarly, the FCC proposes to maintain the status quo (and rely on OET Bulletin No. 69) with respect to the protection that ATSC 3.0 signals should receive from other signals. The Notice also proposes requiring Next Gen TV broadcasters to provide at least one free stream comparable to the current DTV (ATSC 1.0) signal to ensure viewers within a “DTV-equivalent” service area continue to receive programming service in the manner to which they are accustomed at the current DTV protection levels (where “DTV-equivalent” service area for a station transmitting in ATSC 3.0 would, again, be defined using the methodology and planning factors defined for ATSC 1.0 in OET Bulletin No. 69). Further, the FCC proposes to define a protection threshold for Next Gen TV that would provide an equivalent level of protection as a DTV signal.

SFNs and the Current DTS Rules. The Notice proposes to authorize broadcast television stations to operate what it calls ATSC 3.0 Single Frequency Networks (“SFN”) under the existing Distributed Transmission Systems (“DTS”) rules. A traditional, non-DTS broadcaster has a single transmission site, and any fill-in service is provided using a separately licensed secondary transmission site using a different RF channel, while a DTS broadcaster provides television service by using two or more transmission sites using an identical signal on the same RF channel, synchronized to manage self-interference. Many parties in this proceeding have argued that broadcasters who deploy ATSC 3.0 service will have the ability to efficiently form an ATSC 3.0 SFN, which should be considered to be equivalent to DTS. The FCC tentatively concludes that the rules established to authorize DTS operations generally are adequate to authorize an ATSC 3.0 SFN station, and that such an ATSC 3.0 SFN should be considered a DTS station for the purposes of FCC rules. The FCC also tentatively concludes that it is not necessary to adopt a specific synchronization standard or system in order to authorize an ATSC 3.0 SFN (consistent with a similar finding it made in the DTS proceeding). The Notice seeks comment on these tentative conclusions. In addition, the Notice proposes one amendment to the DTS rules with regard to ATSC 3.0 transmissions—that each transmitter must not only comply with the ATSC 3.0 standard that is ultimately adopted, but also that all transmitters under a single license must follow the same standard (i.e., a DTS implementation cannot mix ATSC 3.0 and ATSC 1.0).

Use of 2010 Population Data Instead of 2000 Population Data. The FCC proposes to update its rules regarding acceptable levels of interference resulting from a broadcaster's application for new or modified facilities. Under the current rules, when the Media Bureau evaluates such applications, the degree of permissible interference to populations served is predicted based on the 2000 census population data. The FCC proposes to revise its rules so that the Media Bureau will use the latest official U.S. Census statistics (which would be 2010 statistics until sometime after 2020) to predict permissible interference.

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Comment Deadlines. As noted above, the Notice is due to be published in the Federal Register on March 10, 2017, which means that comments will be due by May 9, 2017, and reply comments will be due on June 8, 2017.

If you have any questions concerning the information discussed in this memorandum, please contact your communications counsel or any of the undersigned.

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