

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Authorizing Permissive Use of the)
“Next Generation” Broadcast) GN Docket No. 16-142
Television Standard)
)

**COMMENTS OF PUBLIC KNOWLEDGE, CONSUMER REPORTS, ELECTRONIC
FRONTIER FOUNDATION, ELECTRONIC PRIVACY INFORMATION CENTER,
MEDIA COUNCIL HAWAII, OPEN TECHNOLOGY INSTITUTE AT NEW AMERICA**

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I. INTRODUCTION

Commenters have long supported technological innovation in broadcasting when it strengthens universality, openness, competition, and public-interest obligations. Commenters do not oppose ATSC 3.0 as a technology. The standard offers real benefits: improved picture and audio quality, enhanced emergency alerting, better accessibility features, and more efficient spectrum use. But the manner of transition matters as much as the technology itself. A transition that undermines universal access to free over-the-air television, imposes unreasonable costs on consumers, or transforms public spectrum into a walled garden controlled by powerful incumbents would not serve the public interest.

Commenters opposed the National Association of Broadcasters' petition for rulemaking filed in February 2025.¹ That petition sought a mandatory, timeline-driven transition requiring broadcasters in the top 55 markets to cease ATSC 1.0 transmissions by 2028 and all remaining markets by 2030.² Commenters argued that such a transition was premature, failed to account for consumer readiness, and would impose substantial costs on viewers while delivering benefits primarily to broadcasters and their commercial partners.

The Commission's Fifth Further Notice of Proposed Rulemaking differs from the NAB petition in several respects. Most significantly, the FNPRM introduces a broadcaster-controlled sudden cutoff ("flash cut") model that would permit individual stations to terminate ATSC 1.0 service on their own timelines, creating unpredictability and market-by-market fragmentation.

¹ Comments of Public Knowledge et al., Petition for Rulemaking and Future of Television Initiative Report Filed by the National Association of Broadcasters, MB Docket No. 16-142 (May 7, 2025).

² Petition for Rulemaking of the National Association of Broadcasters, GN Docket No. 16-142, at 3 (filed Feb. 26, 2025).

The FNPRM also proposes to eliminate both the mandatory simulcasting requirement and the substantially similar rule, removing consumer protections before any readiness benchmarks have been established. At the same time, the FNPRM includes inquiries that Commenters welcome. For the first time, the Commission directly interrogates the ATSC 3.0 Security Authority and the digital rights management regime governing encrypted signals. The FNPRM also raises questions about privacy and data collection through ATSC 3.0's internet return path.

Commenters agree with Commissioner Gomez that technical standards matter and that the ability of the viewing public to continue receiving their free over-the-air broadcasting signal on equipment they already own has been paramount in every prior broadcast transition.³ As she observed, unlike the digital transition in 2009, this transition was not dictated by Congress and there is currently no funding to support a nationwide education campaign or the provision of NextGen TV tuners. Commissioner Gomez rightly noted that consumers are clearly concerned about encryption technologies, also referred to as digital rights management. These concerns affect both whether audiences will be able to continue enjoying free over-the-air television and the impact of privately established standards on the equipment market. As she also noted, “technology should not be a bottleneck to innovation.”⁴

II. CONSUMER PROTECTION

A. The Market Is Not Ready

The FNPRM itself demonstrates that the record on consumer readiness remains incomplete. The Commission seeks data on device penetration, consumer awareness, and support mechanisms precisely because this information is not yet in hand. Proceeding with proposals to

³ Statement of Comm’r Anna M. Gomez, Authorizing Permissive Use of the “Next Generation” Broadcast Television Standard, GN Docket No. 16-142, Fifth Further Notice of Proposed Rulemaking, FCC 25-72, at 71 (Oct. 28, 2025).

⁴ *Id.* at 72.

eliminate simulcasting protections and permit 1.0 cutoffs without this basic data would be premature.

The device penetration statistics that are available confirm the readiness gap. Approximately 14 million ATSC 3.0-capable television sets have been sold in the United States through 2024, along with roughly 300,000 external ATSC 3.0 converters.⁵ These figures must be placed in context: there are approximately 125 million television households in the United States.⁶ Even assuming every ATSC 3.0 device sold is in active use and capable of receiving encrypted signals, the vast majority of American households remain equipped only for ATSC 1.0 reception.

Device ownership does not equal readiness. A consumer who purchased a television with an ATSC 3.0 tuner may not know the television has this capability. The same consumer may own additional televisions in other rooms that are ATSC 1.0-only. And a television with an ATSC 3.0 tuner is not necessarily capable of decoding encrypted ATSC 3.0 signals. The A3SA certification process is separate from the NEXTGEN TV certification process, meaning a television bearing the NEXTGEN TV logo may still be unable to display encrypted programming from local stations.

B. The FNPRM Lacks Consumer-Readiness Thresholds

The FNPRM proposes to permit broadcasters to terminate ATSC 1.0 service without establishing any benchmarks for consumer readiness. Commenters urge the Commission instead to establish clear, measurable, and enforceable benchmarks that must be satisfied before any station may terminate ATSC 1.0 service. These benchmarks should include:

- National and market-specific penetration rates for ATSC 3.0-capable devices, disaggregated by income level, geographic location, and age of household members.

⁵ *Fifth Further Notice of Proposed Rulemaking*, FCC 25-72 (“FNPRM”), ¶12.

⁶ FNPRM ¶29 n.103.

- Demonstrated availability and affordability of standalone ATSC 3.0 receivers and converter devices across a range of retail channels, including devices compatible with the major smart TV operating systems.
- Confirmed redundancy in emergency alerting pathways so that viewers relying on ATSC 1.0 will continue to receive emergency alerts through alternative means until they have transitioned.
- Independent verification of ATSC 3.0 signal robustness and geographic coverage, including field testing in representative residential environments to confirm that theoretical coverage maps translate into actual receivability.
- Comprehensive public education campaigns conducted with adequate lead time so that consumers understand the transition timeline, their equipment options, and any assistance programs available to them.

These benchmarks should be prerequisites for transition.

C. E-Waste and Obsolescence

The cutoff model proposed in the FNPRM will create unpredictable waves of equipment obsolescence with significant environmental and economic consequences. When a station terminates ATSC 1.0 service, every ATSC 1.0-only device in its coverage area becomes partially obsolete. Multiply this across hundreds of stations making independent transition decisions and the result is a rolling e-waste crisis that would burden consumers, municipalities, and recycling systems.

Millions of functional televisions, DVRs, and tuner-equipped personal computers will be rendered unable to receive some or all over-the-air local broadcast signals. Electronic waste contains hazardous materials and requires specialized recycling processes. The economic impact falls disproportionately on lower-income households, who are more likely to own older equipment and less able to afford replacements.

The A3SA licensing structure magnifies this problem. A3SA licenses are time-limited, typically ranging from 10 to 30 years.⁷ When a device's A3SA certification expires, it may

⁷ Lon Seidman, *ATSC 3 TV Tuners Have an Expiration Date, Slow Progress on Gateway Devices and More...*, Lon.TV Blog (Jan. 30, 2024), <https://blog.lon.tv/2024/01/30/atsc-3-tv-tuners-have-an-expiration-date-slow-progress-on-gateway-devices-and-more/>.

become unable to receive encrypted ATSC 3.0 signals regardless of whether the hardware remains functional.

Any transition framework must include mechanisms to address e-waste and obsolescence, including reuse and recycling initiatives funded by broadcasters and device manufacturers rather than consumers and local governments.

D. Need for a Modern Transition-Assistance Framework

The 2009 digital television transition succeeded in large part because of a concerted government effort to prepare consumers. The Digital Television Transition and Public Safety Act of 2005 established the TV Converter Box Coupon Program, which provided households with up to two \$40 coupons toward the purchase of digital-to-analog converter boxes.⁸ The transition was also accompanied by extensive consumer education requirements, including mandatory public service announcements, quarterly reporting by broadcasters on their education efforts, notices to MVPD subscribers, device labeling and retail requirements, and outreach efforts.

Commenters urge the Commission to require, as a condition of any transition, a comprehensive consumer assistance framework that includes:

- A voucher or rebate program for low-income households and community institutions such as shelters, senior centers, schools, and rural hospitals that rely on free over-the-air broadcasting. (This can be modeled on the 2005 Act, or funded by broadcasters directly.)
- Clear labeling requirements on devices regarding ATSC 3.0 compatibility, encryption capability, and any internet connectivity dependencies.
- Rules prohibiting broadcasters from requiring internet connectivity as a condition for accessing unencrypted content.
- Periodic public reporting on consumer impact, device adoption rates, and service accessibility, with disaggregated data sufficient to identify disparities affecting vulnerable populations.

⁸ Digital Television Transition and Public Safety Act of 2005, Pub. L. No. 109-171 (2006).

E. Internet Dependence Threatens Accessibility and Resilience

ATSC 3.0's dependence on internet connectivity for certain features raises concerns about accessibility, equity, and the resilience of broadcast television. The new standard allows for interactive features not possible with broadcast alone, but new functions must not come at the expense of broadcasting's core purpose.

Unlike cable or online services, broadcast television does not require a monthly fee, a modem, or an ongoing service relationship. It is accessible to anyone with a compatible receiver, and it continues to function during power outages (with battery backup), network congestion, and infrastructure failures that disable internet-dependent services. This independence makes broadcasting uniquely valuable for emergency communications and public safety.

ATSC 3.0's hybrid architecture undermines this independence. If viewers must maintain an active internet connection to receive DRM updates or access important features, broadcasting loses its character as a standalone, offline-capable medium. Viewers without reliable broadband access, including rural households, low-income families, and those in areas with poor internet infrastructure, would be excluded from features that wealthier, urban viewers can access.

Internet dependence also introduces points of failure that do not exist in traditional broadcasting. A broadcaster could revoke access to encrypted content by refusing to provide updated credentials via the return path. A viewer's internet service could be interrupted, rendering the television unable to receive broadcasts that are being transmitted over the air if updates are required. These scenarios are inconsistent with the public interest obligations that justify broadcasters' use of spectrum.

III. DRM, ENCRYPTION, AND A3SA

A. FCC's New Scrutiny of A3SA

The FNPRM's detailed inquiry into the ATSC 3.0 Security Authority is a welcome and overdue development. Commenters have consistently argued that embedding a private DRM gatekeeper into public spectrum is inconsistent with the public interest mandate of broadcasting. The Commission's willingness to examine A3SA's governance structure, licensing practices, and effects on consumers and competition is welcome.

The FNPRM asks whether A3SA's implementation requirements, licensing fees, and operational structure serve the public interest. It inquires whether decryption keys and licenses are available on reasonable and non-discriminatory terms. It asks whether non-disclosure agreements prevent stakeholders from raising issues publicly. And it probes whether the encryption regime deters market entry or limits consumer choice.⁹

These are the right questions. To answer them: A3SA operates without meaningful external oversight. Its licensing terms are confidential. Its decision-making processes are opaque. It has no accountability to consumers, innovators, or public interest stakeholders. Yet it may come to serve as a private gatekeeper to the public airwaves.

The technical implementation of A3SA's DRM regime exacerbates these concerns. A3SA uses Google's Widevine DRM system, meaning encrypted programming is viewable only on devices that implement Widevine.¹⁰ This excludes devices using other encryption schemes. A3SA-compliant devices are limited to a subset of Samsung Tizen, Google/Android TV, and

⁹ FNPRM ¶¶ 37-38.

¹⁰ FNPRM ¶ 37.

Amazon Fire TV devices. Well over half of smart TVs and set-top boxes in the market are not compliant with A3SA's requirements.¹¹

The NEXTGEN TV logo certification program and A3SA certification are separate processes. A device may bear the NEXTGEN TV logo, indicating it can receive ATSC 3.0 signals, yet still be unable to display encrypted ATSC 3.0 programming because it lacks A3SA certification. This creates a confusing and potentially deceptive marketplace in which consumers may purchase devices believing they will receive all local broadcasts, only to discover that some stations' signals are inaccessible.

B. DRM Plus Sudden Cutoffs Equals Likely Loss of OTA Access

The combination of encryption and the elimination of ATSC 1.0 simulcasting will result in blackouts for viewers using general-purpose or legacy receivers.

Under the current voluntary deployment framework, viewers who cannot receive encrypted ATSC 3.0 signals can still access the same programming via ATSC 1.0 simulcasts. The substantially similar rule guarantees they receive equivalent content. If the Commission eliminates the simulcasting requirement and permits sudden cutoffs while the encryption regime remains in place, viewers without A3SA-certified devices will simply lose access to stations that encrypt their signals.

DRM also threatens viewers' ability to exercise fair use rights protected under copyright law. The Supreme Court held in *Sony* that time-shifting of broadcast content is a fair use.¹² Yet Section 1201 of the Digital Millennium Copyright Act makes it unlawful to bypass technological protection measures even for otherwise lawful purposes. The result is a perverse situation in which viewers have a legal right to time-shift broadcast programming but cannot exercise that

¹¹ FNPRM ¶ 37 n.137.

¹² *Sony Corp. of Am. v. Universal City Studios*, 464 U.S. 417 (1984).

right without violating federal law if the programming is encrypted. (NAB has pointed to A3SA's encoding rules as providing protection for time-shifting and other consumer uses. But A3SA's encoding rules are not enforceable by law, and they can be changed unilaterally at any time.)

The DRM regime also suppresses innovation. Many widely used consumer technologies, including DVRs, home media servers, and closed-captioning tools, might never have been developed under a DRM-centric regime. DVR features such as commercial skipping and automatic recording have been attacked by programmers.¹³

Under an A3SA-controlled ecosystem, such innovations would require the permission of the very parties whose interests they disrupt. Startups, open-source projects, and academic developers lack the resources to navigate A3SA's certification process. Even large manufacturers may avoid the standard because of the costs and restrictions of DRM compliance.

C. The Primary Broadcast Stream Must Not Be DRM-Locked

The historical model of broadcasting in the United States has been free, unencrypted, and universally accessible. Broadcasting has served as a public service, available to anyone with a receiver, for free. DRM transforms this model into something fundamentally different. Broadcast spectrum is a shared, collectively owned resource. Licenses to use this spectrum are granted pursuant to 47 U.S.C. § 309(a) only where doing so serves the public interest, convenience, and necessity. DRM is incompatible with this framework.

¹³ See *Fox Broad. Co. v. Dish Network*, 747 F.3d 1060, 1068-69 (9th Cir. 2014) (commercial-skipping “does not implicate Fox’s copyright interest because Fox owns the copyrights to the television programs, not to the ads”); *In re AutoHop Litig.*, No. 12 Civ. 4155, 2013 U.S. Dist. LEXIS 143492 (S.D.N.Y. Sept. 18, 2013) (consolidated from separate lawsuits filed by ABC and CBS, denying preliminary injunction against DVR commercial-skipping feature; broadcaster failed to show likelihood of success on copyright claims where customer copying constituted fair use).

The First Next Gen TV Report and Order in 2017 acknowledged that free Next Gen signals may be encrypted but emphasized that programming that is encrypted must not require special equipment supplied and programmed by the broadcaster to decode.¹⁴ The current A3SA regime may fail this test. Devices must be certified by a broadcaster-controlled entity, and certification requires compliance with terms dictated by that entity.

Commenters urge the Commission to require that the primary video programming stream of any broadcast station remain freely receivable without encryption and without internet connectivity requirements. The core broadcast service that justifies the use of public spectrum must remain universally accessible.

D. DRM Is in Tension with Core First Amendment Principles

The incorporation of DRM into broadcast television raises significant First Amendment concerns. The First Amendment embodies a commitment to an open marketplace of ideas, free from government-imposed or government-sanctioned barriers to expression and access. DRM restricts access to and use of information, including information transmitted over public airwaves that the public collectively owns. The DMCA gives DRM the force of law, and courts have not yet recognized a right to bypass technological protection measures even when the underlying use of the copyrighted material would be lawful.¹⁵

The fair use doctrine serves as a First Amendment safety valve that prevents copyright from becoming a tool of censorship.¹⁶ Fair use “permits courts to avoid rigid application of the

¹⁴ *Authorizing Permissive Use of the “Next Generation” Broadcast Television Standard*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 9930, 9935, ¶ 9 n.29 (2017) (*First Next Gen TV Report and Order*).

¹⁵ See *Green v. U.S. Dep’t of Justice*, 392 F. Supp. 3d 68 (D.D.C. 2019), *aff’d*, 2021 WL 4503600 (D.C. Cir. Oct. 1, 2021) (rejecting First Amendment challenge to DMCA’s anti-circumvention provisions).

¹⁶ *Eldred v. Ashcroft*, 537 U.S. 186, 219-20 (2003) (quoting *Harper & Row v. Nation Enters.*, 471 U.S. 539, 560 (1985)).

copyright statute when, on occasion, it would stifle the very creativity which that law is designed to foster.”¹⁷ DRM eliminates the practical ability of viewers to exercise fair use rights, and the DMCA criminalizes circumvention even for lawful purposes. The result is a regime in which the constitutional accommodation that reconciles copyright with the First Amendment becomes inaccessible to ordinary citizens.

The Supreme Court has recognized that government actions burdening access to information or imposing prior restraints on the dissemination of speech are subject to heightened scrutiny.¹⁸ The Commission would not directly regulate speech by permitting broadcasters to use DRM on public spectrum. But doing so would delegate to private actors the authority to control who may access broadcast content and under what conditions. This raises concerns about government facilitation of private speech restrictions, particularly when those restrictions foreclose fair use, time-shifting, and other lawful activities.

The Supreme Court has long recognized that the First Amendment protects the rights of listeners as well as speakers. In *Red Lion Broadcasting Co. v. FCC*, the Court emphasized that “it is the right of the viewers and listeners, not the right of the broadcasters, which is paramount.”¹⁹ Broadcast regulation has always rested on the principle that spectrum is a public resource and that licensees hold it in trust for the benefit of the public. A regime that conditions reception on private certification by a broadcaster-controlled entity inverts this relationship.

The conditioning of access on A3SA device certification creates a gatekeeping function incompatible with the open-access principles underlying the First Amendment’s guarantee of a

¹⁷ *Campbell v. Acuff-Rose Music*, 510 U.S. 569, 577 (1994).

¹⁸ See *Bd. of Educ. v. Pico*, 457 U.S. 853, 867 (1982) (plurality op.) (“[T]he right to receive ideas is a necessary predicate to the recipient’s meaningful exercise of his own rights of speech, press, and political freedom.”); *FCC v. League of Women Voters of Cal.*, 468 U.S. 364, 377 (1984).

¹⁹ 395 U.S. 367, 390 (1969).

free press and free speech. Viewers’ ability to receive broadcast speech would depend not on their technical ability to tune in, but on their possession of devices that have obtained certifications from a private entity operating under confidential terms. Broadcasters licensed to use public spectrum should not be permitted to impose conditions on access that would be unconstitutional if imposed by the government directly.

IV. SIMULCASTING AND THE “SUBSTANTIALLY SIMILAR” REQUIREMENT

A. The FNPRM Proposes to Eliminate Both Protections

The FNPRM proposes to eliminate the substantially similar rule immediately upon publication in the Federal Register, accelerating its currently scheduled sunset date of July 17, 2027.²⁰ The FNPRM further proposes to end the mandatory simulcasting requirement, permitting stations to terminate ATSC 1.0 service or end existing simulcasts on their own timelines.²¹

These two rules serve distinct but complementary functions. The simulcasting requirement, adopted in 2017, requires any station that elects to broadcast in ATSC 3.0 to continue providing its primary video programming stream in ATSC 1.0 format.²² This requirement has no sunset date. The substantially similar rule, by contrast, requires that the programming on the ATSC 1.0 simulcast channel be “substantially similar” to that of the primary video programming stream on the ATSC 3.0 channel.²³ The Commission initially scheduled this rule to sunset in July 2023, but

²⁰ FNPRM ¶ 21.

²¹ *Id.* ¶¶ 17-19.

²² 47 C.F.R. § 73.3801(b); *Authorizing Permissive Use of the “Next Generation” Broadcast Television Standard*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd. 9930, 9940-41 ¶ 18 (2017) (*First Next Gen TV Report and Order*).

²³ 47 C.F.R. § 73.3801(b)(1).

extended the date to July 17, 2027 after finding that “broadcasters’ market incentives alone are insufficient to protect OTA viewers from potential loss of 1.0 service.”²⁴

The FNPRM now proposes to eliminate both protections. If adopted, stations could terminate ATSC 1.0 service entirely on their own timelines, without regard to consumer readiness. And even stations that continue simulcasting could reserve their most desirable programming for the ATSC 3.0 signal, leaving ATSC 1.0 viewers with inferior content.

B. Premature Elimination Would Harm Viewers

The Commission’s 2023 decision to extend the substantially similar sunset reflected a finding, based on the record at that time, that the transition had not yet advanced far enough to justify removing protections. The Commission found “no evidence on the record that the substantially similar rule is currently impeding, or is likely in the near future to impede, the provision of innovative 3.0 features.”²⁵ The FNPRM does not identify any new evidence that would justify reversing this conclusion two years before the scheduled sunset.

The FNPRM suggests that market incentives will lead broadcasters to continue providing ATSC 1.0 service and substantially similar programming even without regulatory requirements.²⁶ This assumption is unsupported. Broadcaster incentives may push in the opposite direction: to migrate viewers to ATSC 3.0 as quickly as possible to take advantage of targeted advertising, viewer data collection, and new revenue opportunities enabled by the standard’s internet return path. If programming can be differentiated between the two standards,

²⁴ *Authorizing Permissive Use of the “Next Generation” Broadcast Television Standard*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 38 FCC Rcd 6409, 6449 ¶ 39 (2023) (*Third Report and Order*).

²⁵ *Third Report and Order*, 38 FCC Rcd at 6450 ¶ 44.

²⁶ FNPRM ¶ 21.

broadcasters have an incentive to make ATSC 3.0 more attractive by reserving premium content for that platform.

The Commission recognized this risk when it adopted the substantially similar rule in 2017. The rule was designed to address the concern that “Next Gen TV broadcasters may be motivated to withhold their most popular programming from their 1.0 simulcast signal in an effort to drive consumers to the 3.0 platform.”²⁷ That concern remains valid. The installed base of ATSC 3.0-capable receivers remains small relative to the total number of television households, and the vast majority of over-the-air viewers continue to rely on ATSC 1.0 equipment.

C. A Benchmark-Driven Approach Would Better Serve the Public Interest

The success of the 2009 analog-to-digital transition resulted from government oversight of a complex, multi-year transition with defined consumer protections. That transition included a hard deadline set by Congress, a well-publicized sunset, subsidized converter boxes, and extensive consumer education requirements.²⁸ The FNPRM’s proposal to eliminate simulcasting protections without comparable safeguards risks a far more disruptive outcome.

Commenters urge the Commission to retain the simulcasting requirement and the substantially similar rule until consumer-readiness benchmarks have been established and met. Any station seeking to terminate ATSC 1.0 service should be required to demonstrate that a substantial majority of households in its service area have access to ATSC 3.0-capable equipment, with data disaggregated by income level and other demographic factors. Affordable converter devices must be readily available in the market at price points and through distribution channels accessible to all consumers. Emergency alerting functionality must be maintained for

²⁷ *First Next Gen TV Report and Order*, 32 FCC Rcd at 9942 ¶ 22.

²⁸ Digital Television Transition and Public Safety Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006).

all viewers, with redundant pathways so that no viewer loses access to emergency information. And adequate public notice must be provided, with sufficient lead time for consumers to acquire equipment and adjust viewing arrangements.

The Commission should also consider requiring coordinated, market-wide transitions rather than individual station decisions. The FNPRM's proposal to permit each station to terminate ATSC 1.0 on its own timeline would create unpredictable service disruptions across markets. A viewer in a given market might lose access to one station in 2026, another in 2027, and a third in 2028, with no coherent public messaging about when or how to upgrade equipment. Coordinated transitions would reduce consumer confusion, enable more efficient public education campaigns, and prevent the rolling series of service disruptions that would result from station-by-station sudden cutoffs.

D. Voluntary Simulcasting Must Remain Available

The FNPRM tentatively concludes that, even after eliminating the mandatory simulcasting requirement, the Commission would continue to permit simulcasting on a voluntary basis.²⁹ Commenters support this tentative conclusion. Local simulcasting of ATSC 1.0 streams remains a tool for broadcasters to reach viewers who have not yet acquired ATSC 3.0-capable receivers, and some broadcasters will choose to continue simulcasting even without a regulatory mandate.

The Commission should make clear that voluntary simulcasting will remain available for as long as any broadcaster wishes to provide it. The rules governing voluntary simulcasting arrangements, including the requirements for simulcasting agreements and the licensing procedures for guest stations, should remain in place.³⁰ Broadcasters that choose to continue serving their 1.0 audiences should not face regulatory obstacles to doing so.

²⁹ FNPRM ¶ 20.

³⁰ 47 C.F.R. § 73.3801(e)-(f).

V. PUBLIC-INTEREST OBLIGATIONS AND MINIMUM BROADCAST SERVICE

The FNPRM asks how the public interest should inform the Commission's overall regulatory approach to the continued advancement of ATSC 3.0. The Commission's approach must be guided by the principle that broadcast licensees are public trustees who hold their spectrum on the condition that they serve the public interest, convenience, and necessity. Technological advancement, in and of itself, does not serve the public interest unless it strengthens universality, accessibility, localism, diversity, competition, and the protection of vulnerable populations.

The public interest in broadcasting has always encompassed several core values. First, broadcasting must remain free and universally accessible, available to all without subscription fees, equipment mandates, or technological gatekeeping. Second, broadcasting must serve as a platform for localism and civic engagement, providing local news, emergency information, and educational content tailored to community needs. Third, broadcasting must protect vulnerable populations, including rural residents, low-income households, seniors, people with disabilities, and tribal communities, who are most dependent on free over-the-air service. Fourth, broadcasting must preserve competition and innovation, allowing new entrants and diverse voices to participate in the marketplace without anticompetitive barriers. Fifth, broadcasting must protect viewer rights, including privacy, fair use, and freedom from commercial surveillance.

Any regulatory approach to ATSC 3.0 that prioritizes broadcaster revenues at the expense of these core public interest values would be inconsistent with the public interest, and should be rejected.

A. Minimum Broadcast Service Requirements

The FNPRM asks what minimum level of broadcast service should be required after a station transitions to ATSC 3.0.

The Commission should establish clear minimum capacity requirements for broadcasting. Broadcasters use 19.3 Mbps to support their broadcasting in ATSC 1.0 today,³¹ and that same bandwidth should be reserved for free, over-the-air broadcasting under ATSC 3.0. The primary video stream must not be treated as a bandwidth afterthought. Broadcasters who wish to pursue additional commercial uses of their spectrum may do so only after satisfying their core public service obligations.

B. Emergency Alerting and Accessibility Must Be Mandatory

One of the most frequently cited public benefits of ATSC 3.0 is its support for advanced emergency alerting systems. These include geo-targeted warnings, rich media content such as maps, images, and video, multilingual delivery, and improved wake-up functionality for sleeping or unattended devices. These are real improvements over the basic alerts provided through ATSC 1.0 and the Emergency Alert System.

Without a Commission mandate, adoption of these features will be uneven at best. Some stations may prioritize the commercial aspects of ATSC 3.0, such as targeted advertising or datacasting, and may delay or neglect implementation of improved public safety functions. To avoid a fragmented and inadequate emergency alerting system, the FCC should issue rules requiring all ATSC 3.0 broadcasters to implement enhanced alerting features as a core condition of operating under the new standard.

C. Receivability Standards Must Maintain Service Quality

The Commission must also establish clear receivability standards so that ATSC 3.0 deployments maintain service quality for viewers. The ATSC 3.0 standard's technical flexibility, particularly its wide range of modulation and coding (ModCod) configurations, introduces the

³¹ FNPRM ¶ 68 n.261

risk that some licensees may prioritize commercial data services or capacity maximization over the quality of the primary broadcast stream.

Under ATSC 1.0, broadcasters generally use a single, standard ModCod configuration, resulting in predictable and consistent reception across all stations. ATSC 3.0, by contrast, allows broadcasters to select from a range of configurations that trade off between robustness (the signal's resistance to interference and its range) and capacity (the amount of data that can be transmitted). A broadcaster seeking to maximize datacasting revenue or multicast channel capacity might select a less robust configuration, degrading reception quality for viewers at the edge of the coverage area or in areas with challenging terrain.

The Commission should establish minimum receivability standards that require ATSC 3.0 stations to demonstrate that their signal configurations provide service quality comparable to or better than ATSC 1.0 within their authorized coverage areas. These standards should include field testing in representative residential environments to confirm that theoretical coverage maps translate into actual receivability. The Commission should also prohibit broadcasters from degrading the ModCod configuration of their primary video stream to free up capacity for commercial datacasting or other ancillary services.

VI. PRIVACY AND RETURN-PATH RULES

A. FCC's Privacy Inquiry

The FNPRM seeks comment on whether privacy rules are needed to address broadcaster collection of viewer data, whether broadcasters' collection of viewer data will include personally identifiable information, whether broadcasters should be subject to MVPD-like privacy rules or other privacy requirements, and whether the Commission has statutory authority to impose privacy requirements on broadcasters under these circumstances. This inquiry is a welcome

development. NAB had argued that no new privacy rules were necessary and that existing laws suffice.

ATSC 3.0's architecture introduces, for the first time in the history of U.S. broadcasting, a persistent return path via internet connectivity that enables the collection of individualized user data. Unlike ATSC 1.0, which is one-way, ATSC 3.0 is designed to facilitate hybrid broadcast-broadband functions. Internet connectivity is needed to offer interactive features, targeted advertising, and remote license management. These features may enable technical enhancements and offer new business models for broadcasters, but they also introduce a powerful vector for the surveillance of viewers that is unprecedented in free, over-the-air broadcasting.

When a receiver is connected to the internet, it can transmit data back to broadcasters, device manufacturers, or third-party vendors. This can include information about which channels are being watched, for how long, at what times of day, and in conjunction with what other behaviors, potentially enriched with additional metadata such as ZIP code, device ID, or household-level demographics. This return-path functionality puts traditional broadcasters in the position of collecting and potentially monetizing data in ways that closely resemble streaming platforms and smart TV manufacturers.³² But unlike those services, broadcasters operate on public spectrum under public interest obligations, and their viewers have historically had no expectation that watching a local news broadcast might subject them to online tracking or behavioral profiling.

At present, there are no federal privacy laws that specifically apply to broadcasters using the ATSC 3.0 return path to collect viewer data. As a result, ATSC 3.0 risks creating a regulatory

³² See Press Release, Fed. Trade Comm'n, VIZIO to Pay \$2.2 Million to FTC, State of New Jersey to Settle Charges It Collected Viewing Histories on 11 Million Smart Televisions without Users' Consent (Feb. 6, 2017), <https://www.ftc.gov/news-events/news/press-releases/2017/02/vizio-pay-22-million-ftc-state-new-jersey-settle-charges-it-collected-viewing-histories-11-million>.

vacuum: broadcasters can collect individualized data, but are subject to none of the baseline consumer privacy protections applicable to other video programming distributors. Without appropriate safeguards, data collected through the return path could be shared with third-party advertisers, sold to data brokers, or even accessed by government agencies without a warrant.

Commenters support baseline privacy obligations including affirmative opt-in consent for data collection, transparency and notice requirements, data minimization and retention limits, limitations on third-party sharing, access and correction rights for viewers, and device-level controls that permit viewers to disable internet connectivity without losing access to core broadcast functions.

B. Existing Privacy Rules Can Be a Model

The Commission need not write on a blank slate. Section 631 of the Communications Act³³ imposes privacy obligations on cable operators, requiring them to obtain affirmative consent before collecting or disclosing personally identifiable information about subscribers. Section 338(i)³⁴ extends comparable requirements to satellite carriers. These provisions demonstrate that Congress has recognized the importance of protecting viewer privacy in the context of video services delivered to the home, and has provided workable regulatory models for doing so.

The FNPRM itself notes that the Communications Act places certain requirements on cable and satellite operators with respect to the collection and disclosure of subscribers' PII.³⁵ If broadcasters using ATSC 3.0 will engage in data collection practices functionally indistinguishable from those of cable and satellite operators, there is no principled reason why they should be exempt from comparable privacy obligations. The Commission should adopt

³³ 47 U.S.C. § 551.

³⁴ 47 U.S.C. § 338(i).

³⁵ FNPRM ¶ 69.

rules that establish parity between broadcasters using return-path data collection and MVPDs subject to Sections 551 and 338(i).

VII. MVPD CARRIAGE AND RETRANSMISSION CONSENT

A. Must-Carry Treatment in the FNPRM

The FNPRM reiterates the existing rule that ATSC 3.0 signals have no must-carry rights. When adopting the Next Gen TV carriage rules in 2017, the Commission found that mandating any MVPD carriage of the 3.0 signal at that time would be “antithetical” to a voluntary and market-driven 3.0 deployment for all stakeholders and would not advance the interests under the must-carry regime.³⁶ The Commission noted that until there is widespread adoption of 3.0 technology by OTA viewers, mandatory carriage of 3.0 signals would not serve the goals of promoting OTA broadcasting.

Commenters offer the following observations for consideration as the Commission evaluates any future, benchmark-based transition framework.

First, must-carry should remain limited to the primary video stream. The statutory must-carry provisions were designed to preserve free, over-the-air television and promote the widespread dissemination of information from a multiplicity of sources. These goals are served by having MVPDs carry broadcasters’ core video programming, not by extending carriage obligations to ancillary services.

Second, must-carry should be technology-neutral. Viewers should not lose access to broadcast programming because of changes in modulation or transmission standards. If the

³⁶ Authorizing Permissive Use of the “Next Generation” Broadcast Television Standard, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 9930, 9962, ¶ 67 (2017) (First Next Gen TV Report and Order).

Commission ultimately permits stations to terminate ATSC 1.0 service, any resulting must-carry framework should protect viewer access to programming they have historically received.

B. MVPD Interoperability If Stations Go 3.0-Only

If the Commission permits stations to terminate ATSC 1.0 simulcasting, the question of how MVPDs will receive and redistribute broadcast signals becomes central. The FNPRM seeks comment on the technical challenges that MVPDs face in carrying 3.0 signals, either by down-converting them or passing them through directly to subscribers. ATSC 3.0 is not backwards compatible with existing MVPD digital video systems, and MVPDs would need to purchase and install new transcoders, receivers, and other equipment to receive and redistribute 3.0 signals.

The FNPRM also asks whether down-conversion should be considered “material degradation” under the statute. Commenters submit that down-conversion should only be considered material degradation if the actual quality of the video or audio signal is degraded to a lower resolution, bitrate, or quality standard. Transcoding between formats or encoding protocols, without reducing the underlying quality of the content, should not constitute material degradation. The statutory concern is with harm to viewers’ experience of the programming, not with technical format conversions that preserve picture and sound quality.

Commenters stress that any signal delivery mechanism required for MVPD carriage in a post-simulcast environment must be unencrypted, so that MVPDs are not required to implement broadcaster-controlled DRM systems, and backward-compatible to the extent that existing MVPD infrastructure can be adapted without wholesale replacement (leading to increased consumer costs).

If broadcasters are permitted to deliver 3.0 signals to MVPDs through encrypted channels, the result will be to extend private gatekeeping from the over-the-air environment into the

MVPD ecosystem, and would impose costs and restrictions on MVPDs that would ultimately be borne by consumers.

C. Retransmission Consent Reform as Part of Any Future Transition

Some commenters have long advocated for reform of the retransmission consent regime to address imbalances that harm consumers. For example, in the 2017 Media Modernization proposal, Commenter Public Knowledge outlined a framework for retransmission consent reform. If the Commission contemplates any transition framework that permits broadcasters to terminate ATSC 1.0 service, these reforms become even more urgent.

ATSC 3.0 may fragment over-the-air access, particularly during sudden cutoffs, and retransmission consent leverage must not be allowed to increase. Viewers who lose over-the-air access due to a sudden cutoff will become entirely dependent on MVPD carriage, and broadcasters should not be permitted to exploit this dependency to extract higher retransmission fees or impose onerous conditions.

Commenters urge the Commission to consider the following reforms in connection with any transition framework:

First, certain negotiation tactics should be deemed per se bad faith under the Commission's good-faith negotiation rules. These include coordinated blackouts timed to coincide with major sporting events or national emergencies, and timing disputes designed to maximize leverage.

Second, the Commission should prohibit joint negotiations that enhance market power. Joint negotiation arrangements that allow station groups to bargain collectively increase broadcaster leverage and result in higher costs for MVPDs and their subscribers.

Third, the Commission should create a process to challenge bundling and tiering demands that require MVPDs to carry unwanted programming as a condition of obtaining retransmission consent for broadcast signals.

Fourth, the Commission should consider baseball-style arbitration as a mechanism for resolving retransmission consent disputes. Under this approach, each party would submit a final offer, and an arbitrator would select one offer or the other, creating incentives for reasonable proposals.

Fifth, the Commission should require interim carriage during disputes to protect viewers. Blackouts harm consumers who have no role in the negotiations and no ability to influence the outcome. Requiring continued carriage while disputes are resolved would shift the burden of negotiation delays away from viewers.

These reforms are necessary because ATSC 3.0 may fundamentally alter the balance of power between broadcasters and MVPDs. If over-the-air access becomes fragmented or unreliable, MVPD carriage becomes the only means by which many viewers can access broadcast programming. The Commission must prevent this transition from enabling broadcasters to extract rents from a captive audience.

VIII. TRANSLATOR, LPTV, AND RURAL/EQUITY IMPACTS

Commenters emphasize the disproportionate harms that the proposed transition framework would impose on rural, tribal, and underserved communities, consistent with earlier comments about unfunded translator conversions and vulnerable populations.

Low power television stations and TV translators play a unique role in the American broadcasting ecosystem. There are approximately 1,780 LPTV stations and 3,094 TV translators licensed in the United States,³⁷ and these stations serve rural and tribal areas where they are often the only source of broadcast television. For communities in remote and underserved regions,

³⁷ FNPRM at 66 n.26 (citing Broadcast Station Totals as of June 30, 2025, Public Notice, DA 25-581 (MB July 8, 2025)).

these stations provide access to local news, emergency alerts, educational programming, and civic information that would otherwise be unavailable.

The transition to ATSC 3.0 creates difficulties for translator stations. If an originating full-power station transitions to ATSC 3.0, the translator relaying its signal needs costly new transcoder equipment, estimated at \$10,000 to \$15,000 per station just to continue broadcasting in ATSC 1.0 for viewers who have not yet transitioned. Such costs could force translator operators to shut down, leaving rural and tribal consumers with no service.³⁸

Sudden cutoffs risk service loss in the regions most dependent on translators. The FNPRM's proposal to permit individual stations to terminate ATSC 1.0 service on their own timelines, without regard to the impact on dependent translators or the readiness of rural and tribal viewers, would create unpredictable and potentially permanent service gaps in communities that have the fewest alternatives.

The harms of the transition fall most heavily on those least able to bear them. Low-income households, rural residents, tribal communities, seniors, and people with disabilities rely most heavily on broadcast television. They depend on it for news, emergency alerts, and educational content. They are also the least likely to have disposable income to purchase new equipment, or the technical know-how to troubleshoot DRM failures, firmware incompatibilities, or internet connectivity requirements. Commenters urge that the Commission should not permit any transition framework that leaves rural communities, tribal areas, vulnerable populations, and community institutions without access to broadcast television.

³⁸ Comments of the National Translator Association at 2, GN Docket No. 16-142 (filed July 28, 2025).

IX. LEGAL AUTHORITY

A. Section 336 and the Fundamental Use Requirement

The Commission must not allow any transition framework that undermines Section 336's requirement that broadcasting remain the fundamental use of broadcast spectrum. The statute directs the Commission to limit the broadcasting of ancillary or supplementary services on designated frequencies so as to avoid derogation of any advanced television services, including high definition television broadcasts, that the Commission may require using such frequencies. The Commission's rules implement this directive by requiring that a licensee provide at least one free over-the-air video programming signal at no direct charge to viewers.

The Commission has made clear that it expects the fundamental use of television broadcast spectrum to continue to be the provision of free, over-the-air television service.³⁹ Some commenters have expressed concern that broadcasters could devote the lion's share of spectrum capacity to non-broadcast services under ATSC 3.0, with one observing that it would be difficult for the Commission to conclude broadcasting is a fundamental use of spectrum when only 3-4 percent of spectral capacity is actually used for broadcasting.⁴⁰

Commenters support clear rules preventing erosion of public-service content and local journalism. Using spectrum primarily for non-broadcast services is contrary to the ancillary or supplementary definition under Section 336(b). A reallocation of broadcast spectrum to predominantly non-broadcast uses would require a specific statutory process and clear Congressional authorization. The major questions doctrine may prevent the Commission from

³⁹ FNPRM ¶ 68 & n.258 (citing Broadcast Internet Order, 35 FCC Rcd at 14999 n.48; Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809, 12820, ¶ 28 (1997)).

⁴⁰ FNPRM ¶ 68 & n.260 (citing Weigel Comments at 21; ATVA Aug. 4 Ex Parte Letter at 2-3.)

authorizing a fundamental shift in the nature of over-the-air broadcasting without such authorization.⁴¹

B. Encrypted or Internet-Dependent Services May Not Meet the Statutory Definition of Broadcasting

The FNPRM asks whether encrypted 3.0 transmissions meet the statutory definition of broadcasting. ATSC 3.0 transmissions, when encrypted and controlled by private certification regimes, may not constitute broadcasting within the meaning of the Communications Act. Under 47 U.S.C. § 153(7), broadcasting is defined as the dissemination of radio communications intended to be received by the public, directly or by the intermediary of relay stations. The definition requires that broadcasting be public-facing, unconditionally accessible, and not limited by individualized authorization or subscription mechanisms.

The Commission itself has identified three indicia of a lack of intent that a communication be received by the public: the signals are not receivable on conventional sets without special equipment; the signals are encrypted, making them unusable by the public without decoders; and there is a private contractual relationship between the provider and the viewer.⁴² The current A3SA regime may implicate all three of these factors.

The use of DRM, private device certification, and internet return-path dependencies render encrypted ATSC 3.0 transmissions distinct from traditional broadcasting. Broadcasters encrypt their signals, requiring viewers to use devices certified by the ATSC 3.0 Security Authority, a private, broadcaster-controlled entity. This system introduces not only technological barriers but

⁴¹ See *West Virginia v. EPA*, 597 U.S. 697 (2022).

⁴² *Subscription Video Services*, Report and Order, 2 FCC Rcd 1001, 1006, ¶ 41 (1987), *aff'd*, *Nat'l Ass'n for Better Broad. v. FCC*, 849 F.2d 665, 669 (D.C. Cir. 1988); see also *First Next Gen TV Report and Order*, 32 FCC Rcd at 9936, ¶ 9; FNPRM ¶ 39.

also contractual conditions that broadcast participants must accept to access what has historically been a free and open medium.

C. The Commission’s Authority Is Limited by *American Library Association v. FCC*

The proposed transition to ATSC 3.0, particularly one that incorporates DRM requirements and conditions access on device certification, may exceed the Commission’s regulatory authority as established in *American Library Association v. FCC*.⁴³ In that case, the FCC attempted to enforce a “broadcast flag” rule requiring digital television receivers to recognize and respond to a digital code embedded in broadcast signals, thereby preventing unauthorized redistribution of content. The D.C. Circuit held that the FCC lacked authority to impose such requirements on consumer electronics.

The court made clear that the Commission’s jurisdiction over broadcasting does not extend to regulating receiving devices post-transmission, absent a specific statutory grant. As the court stated, “the agency’s general jurisdictional grant does not encompass the regulation of consumer electronics products that can be used for receipt of wire or radio communication when those devices are not engaged in the process of radio or wire transmission.”⁴⁴

The proposed ATSC 3.0 transition, particularly with DRM encryption and A3SA certification requirements, would dictate the design and capabilities of televisions and related devices. Consumers would need devices that incorporate specific technologies to access encrypted broadcast content. This requirement mirrors the broadcast flag regime invalidated in *American Library Association*, as it imposes post-transmission obligations on devices, controlling how they process and display content.

⁴³ 406 F.3d 689 (D.C. Cir. 2005).

⁴⁴ *Am. Library Ass’n v. FCC*, 406 F.3d 689, 700 (D.C. Cir. 2005).

If the Commission permits or facilitates a transition in which encrypted signals become the norm, and access to those signals requires compliance with A3SA certification, the Commission would be extending its regulatory reach into consumer electronics in a manner that *American Library Association* prohibits. The fact that the encryption and certification requirements are nominally imposed by private actors rather than by the Commission directly does not cure this defect. The Commission's approval of a transition framework that depends on such requirements would constitute impermissible regulation by proxy.

X. PROTECTING UNLICENSED ACCESS TO TV WHITE SPACES

The Commission must prevent the ATSC 3.0 transition from foreclosing public access to unlicensed spectrum in the television bands, commonly referred to as TV White Spaces (TVWS). These spectrum gaps provide a platform for rural broadband deployment, community wireless networks, and innovative unlicensed services. Allowing ATSC 3.0 deployments to encroach on these frequencies without justification would amount to an unjustified windfall to commercial broadcasters and a direct threat to the public interest.

Broadcasters have already received their spectrum allocations free of charge for the explicit purpose of providing free, over-the-air service to the public. Yet many of the same parties now seek to exploit the ATSC 3.0 transition as an opportunity to expand their spectrum footprint and launch fee-based services that compete directly with licensed mobile providers without paying for the privilege.

The impact on TVWS would be particularly severe in rural and underserved areas, where TVWS technology is often the only affordable path to broadband access. These areas already face connectivity challenges because of the high cost of fiber deployment and limited commercial incentives for fixed wireless investment. If TVWS channels are reclassified as protected broadcast spillover zones, the viability of rural broadband networks, smart agriculture

systems, and local mesh networks could be irreparably harmed. This would undermine national broadband goals and the Commission's statutory obligations to promote access in high-cost areas under Section 254 of the Communications Act.

Such an expansion would also contradict the stated intent of the ATSC 3.0 transition itself. The National Association of Broadcasters has repeatedly emphasized that the transition would be voluntary and spectrum-neutral, requiring no additional grants of public airwaves. Any attempt to use the transition as a pretext for claiming additional spectrum rights should be rejected.

The Commission should clarify that ATSC 3.0 stations have no greater protection against interference from unlicensed TVWS devices than ATSC 1.0 stations, and that the transition does not justify any expansion of broadcasters' interference protection zones or any reduction in available TVWS spectrum.

XI. POTENTIAL ANTICOMPETITIVE EFFECTS

The ATSC 3.0 transition, particularly if conducted under the framework proposed in the FNPRM, raises significant anticompetitive concerns. Technological advancement can promote competition when properly structured, but ATSC 3.0's architecture and the business models it enables create opportunities for consolidation, gatekeeping, and the suppression of competitive alternatives.

ATSC 3.0 allows for more efficient spectrum use, but it also enables new forms of vertical and horizontal integration. These include joint ventures for datacasting services, revenue-sharing partnerships with content distributors, and multicast hosting arrangements that consolidate broadcast infrastructure among competing licensees. This consolidation of physical infrastructure could transform what were once independent, competing broadcasters into tenants of a shared, privately controlled platform.

A concrete example is the formation of EdgeBeam Wireless, LLC, announced in January 2025 as a joint venture among four of the nation's largest independent local broadcasting groups: Scripps, Gray Media, Nexstar, and Sinclair. EdgeBeam represents a horizontal consolidation among direct competitors to provide commercial datacasting services using ATSC 3.0, with projected markets including automotive connectivity (estimated at \$3.7 billion per year), content delivery networks (\$3.65 billion per year), and enhanced GPS services (\$220 million per year).⁴⁵ The joint venture explicitly seeks to create a nationwide spectrum footprint that no individual broadcaster could achieve on its own and anticipates partnering with other broadcasters for additional capacity.

This arrangement raises several competition concerns. First, it consolidates control over datacasting opportunities among a small group of dominant players, potentially foreclosing independent or smaller broadcasters from these new markets. Second, it creates incentives for coordinated behavior among broadcasters who would otherwise compete with each other, not only in the datacasting space but also in traditional broadcasting markets. Third, it demonstrates how ATSC 3.0 enables broadcasters to monetize public spectrum for commercial purposes that bear little relationship to the public interest obligations that justified their free spectrum allocations. Fourth, it establishes a private platform that could favor affiliated stations or partners over competitors, giving the joint venture participants leverage in negotiations over spectrum-sharing arrangements, multicast hosting, and retransmission consent.

⁴⁵ Press Release, Local Broadcasters Form Joint Venture to Provide High-Speed Data Transmission Services to Clients Across the United States (Jan. 7, 2025), <https://www.globenewswire.com/news-release/2025/01/07/3005589/0/en/Local-Broadcasters-Form-Joint-Venture-to-Provide-High-Speed-Data-Transmission-Services-to-Clients-Across-the-United-States.html>; see also Phil Kurz, Scripps, Gray, Nexstar, Sinclair Form Powerhouse ATSC 3.0 Wireless Data Delivery Joint Venture, TV Technology (Jan. 7, 2025).

Such arrangements can have serious implications for competition and the diversity of voices on the public airwaves. The host station in a spectrum-sharing agreement may prioritize its own programming streams over those of its partners, offer better signal quality to affiliated networks, or use its infrastructure position to influence commercial negotiations. This opens the door to exclusionary practices, such as degrading the reach or quality of unaffiliated or independent stations, delaying the rollout of public interest content, or imposing contractual terms that discourage competition in adjacent services like advertising, emergency alerting, or datacasting.

ATSC 3.0 also enables new revenue models, particularly through addressable advertising and IP-based datacasting, that are likely to attract technology companies, data brokers, and investment groups seeking to monetize broadcast spectrum for non-traditional purposes. Without appropriate safeguards, broadcasters may enter into exclusive arrangements with data partners that control user analytics, targeting algorithms, or return-path infrastructure. This creates privacy concerns and gives rise to platform economics where the value of the spectrum is less about free over-the-air programming and more about control over a monetizable user base.

The DRM and A3SA certification regime compounds these anticompetitive risks. By conditioning access to broadcast signals on device certification by a private, broadcaster-controlled entity, the current framework creates barriers to entry for device manufacturers, suppresses innovation in consumer electronics, and locks consumers into proprietary ecosystems. Manufacturers who wish to produce ATSC 3.0-capable devices must obtain A3SA certification, comply with confidential licensing terms, pay fees, and implement Google's Widevine DRM. This excludes devices using competing DRM schemes and imposes costs and restrictions that may deter smaller manufacturers and open-source projects.

The Commission should scrutinize the anticompetitive potential of ATSC 3.0 deployment and take steps to prevent consolidation, gatekeeping, and exclusionary conduct. This includes prohibiting the use of retransmission consent leverage to negotiate for carriage of non-broadcast services provided by consortia, making sure spectrum-sharing arrangements do not discriminate against independent or unaffiliated stations, preventing broadcasters from conditioning device certification on acceptance of anticompetitive terms, and requiring transparency and non-discrimination in joint ventures like EdgeBeam Wireless that use public spectrum for commercial datacasting purposes.

XII. CONCLUSION

Commenters support innovation that strengthens universality, openness, competition, and the public-interest obligations of broadcasters. Commenters do not oppose ATSC 3.0 as a technology. Commenters oppose transition frameworks that would harm consumers, fragment access to free over-the-air television, and put public spectrum into a walled garden.

A rushed transition under the terms contemplated by the FNPRM would ignore the public interest, jeopardize universal access to broadcasting, and convert what has long been a public service into a platform serving primarily private commercial interests. Instead, the Commission should take a more cautious approach that places consumer protection and universal access at the center of any transition framework.

Respectfully submitted,

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