

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

**COMMENTS OF PUBLIC KNOWLEDGE AND
OPEN TECHNOLOGY INSTITUTE AT NEW AMERICA**

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I. INTRODUCTION

Public Knowledge (PK) and the Open Technology Institute (OTI) at New America submit these reply comments in response to the Federal Communications Commission’s (the Commission or FCC) Further Notice of Proposed Rulemaking on “Authorizing Permissive Use of the ‘Next Generation’ Broadcast Television Standard” (FNPRM) that was noticed on July 7, 2022.¹ The comments before the Commission on this docket demonstrate that ATSC 3.0 marketplace has not developed as quickly as the Commission originally hoped when it authorized ATSC 3.0 in 2017. The lack of affordable consumer ATSC 3.0 devices means that consumers will need assistance to transition if they lose access to their ATSC 1.0 broadcasts. This is why the Commission should actively consider how it will help consumers with costs and continue the substantially similar rule. PK and OTI also found ample evidence in the record to support their skepticism that incumbent conglomerate broadcasters are actually interested in the advanced *television* services ATSC 3.0 can provide, rather than the significant commercial applications ATSC 3.0 has for ancillary services.

¹ Authorizing Permissive Use of the “Next Generation” Broadcast Television Standard, 87 FR 40464 (published July 16, 2020) [hereinafter FNPRM].

II. THE RECORD DEMONSTRATES THAT CONSUMERS WILL NEED ASSISTANCE TO TRANSITION IF THE COMMISSION WERE TO DISCONTINUE SIMULCASTING ANYTIME IN THE NEAR FUTURE.

PK and OTI's primary concern with ATSC 3.0 has always been the consumer costs to transition. The record demonstrates that this is still a very real concern. As such, PK and OTI encourage the Commission to delay any forced transition until long after the vast majority of TV sets sold in the US are ATSC 3.0 enabled and to look for ways to help ease consumer transition costs, such as considering the ancillary service fee coupon program PK & OTI proposed in 2020.²

As the record demonstrates, the ATSC 3.0 marketplace has not significantly changed in the last 5 years. ATVA points out that according to the Commission's own metrics for evaluating the ATSC 3.0 marketplace, the ATSC 3.0 marketplace has not changed much.³ As the Internet and Television Association (NCTA) state, "Barely 4 million ATSC 3.0-equipped television sets have been sold thus far, which is less than 1.5% of TVs used in the U.S. today, and 3.0-equipped television sets are expected to account for just 2% of total U.S. television sales this year."⁴ Very few consumers have purchased ATSC 3.0 enabled TV sets. This is unsurprising given the high cost and limited availability ATSC 3.0 compatible TV sets.

² Public Interest Commenters, Comments on Promoting Broadcast Internet Innovation through ATSC 3.0 at 7-16 (Aug. 17, 2020) [Hereinafter Public Interest Comments].

³ American Television Alliance, Comment Letter on Proposed Rule Authorizing Permissive Use of the "Next Generation" Broadcasting Television Standard, at 2 (Aug. 8, 2022), <https://www.fcc.gov/ecfs/search/search-filings/filing/108081828519114> (The Commission's ATSC 3.0 evaluation metrics include national and market-by-market voluntary deployment, MVPD deployment of ATSC 3.0 equipment, and consumer adoption of ATSC 3.0 enabled TV sets and other converter devices) [hereinafter ATVA Comments].

⁴ The Internet and Television Association, Comment Letter on Proposed Rule Authorizing Permissive Use of the "Next Generation" Broadcasting Television Standard, at 2-3 (Aug. 8, 2022), <https://www.fcc.gov/ecfs/search/search-filings/filing/10809063355911> [hereinafter NCTA Comments].

Although some have commented on the potential deployment of low-cost converter devices, these devices seem mostly hypothetical.⁵ For example, Saankhya Labs comments that it has two converter devices ready for mass production, but these are only intended for new TV sets built after 2022.⁶ For televisions built between 2018-2022, Saankhya Labs believes that a low-cost dongle is possible, hypothesizing that “while most existing televisions do not support AC4 decode, we believe a software decode of AC4 can be implemented in the ATSC 3.0 receiver application.”⁷ Even less promising, for TV sets older than 2018, Saankhya Labs states that it “does not believe that a 3.0 to 1.0 converter box would be the right approach as it would involve first demodulating the ATSC 3.0 content and transcoding the AV content to the ATSC 1.0 standard and then re-modulating and sending it over RF.” Through which “the original intent (AV quality, metadata, user experience) of the content provider/broadcaster may be lost.”⁸ Meaning that any television set more than 4 years old, is a poor prospect for a converter device. This is particularly problematic since as PK & OTI pointed out in comments, most consumers only replace their televisions every 7-8 years.⁹

Given the lack of ATSC 3.0 enabled devices and converter equipment for consumers, considering a forced transition to ATSC 3.0 is premature. If the Commission determines that moving forward with ATSC 3.0 is in the best interest of the public, then it should also start exploring ways that it can help consumers afford the transition before it becomes a critical issue.

⁵ See e.g. Saankhya Labs Pvt. Ltd, Comment Letter on Proposed Rule Authorizing Permissive Use of the “Next Generation” Broadcasting Television Standard (Aug. 8, 2022), <https://www.fcc.gov/ecfs/search/search-filings/filing/10808085790491> [hereinafter Saankhya Labs Comments].

⁶ *Id.* at 2.

⁷ *Id.* at 3.

⁸ *Id.* at 4.

⁹ Public Knowledge & the Open Technology Institute, Comment Letter on Proposed Rule Authorizing Permissive Use of the “Next Generation” Broadcasting Television Standard, at 5 (Aug. 8, 2022).

III. THE RECORD DEMONSTRATES THAT THE SUBSTANTIALLY SIMILAR RULE IS NECESSARY TO PROTECT CONSUMERS.

The Commission should continue the substantially similar rule because it protects consumers with virtually no burden to broadcasters. This rule is important because as ATVA points out, “a simulcast requirement that does not require substantial similarity is not a simulcast requirement at all.”¹⁰ As NCTA explains, “The rationale for the substantially similar requirement—ensuring that viewers do not lose access to desired broadcast programming during the transition—is still relevant, and that will continue to be the case for the foreseeable future.”¹¹

Sunsetting the substantially similar requirement would mean that “broadcasters would be free to provide the most desirable programming only to those with 3.0-compatible TV equipment, placing viewers at risk of losing access to popular programming should they be unwilling or unable to pay for this new equipment.”¹² Due to the lack of affordable ATSC 3.0 tuners and conversion devices, NCTA correctly posits that “[t]hese costs would disproportionately affect disadvantaged communities.”¹³

Moreover, as NCTA and ATVA both comment, the Commission has provided enough flexibility within the substantially similar rule to ensure that broadcasters are still able to innovate.¹⁴ As ATVA explains, broadcasters “have failed to explain with specificity what the rule prevents them from doing.” Because the Commission’s rules do not require broadcasters to transmit “programming features that are based on the enhanced capabilities of ATSC 3.0, advertisements, and promotions for upcoming programs”¹⁵ in ATSC 1.0, the substantially similar rule does not prevent broadcasters from exploring the possibilities of ATSC 3.0.

¹⁰ ATVA Comments at 5.

¹¹ NCTA Comments at 2.

¹² *Id.* at 3.

¹³ *Id.*

¹⁴ NCTA Comments at 4; ATVA Comments at 6.

¹⁵ 2017 ATSC 3.0 Order ¶ 22.

Thus, the Commission should maintain the substantially similar rule because it protects the public from losing access to broadcast services if they are unable or unwilling to purchase ATSC 3.0 equipment.

IV. THE RECORD DEMONSTRATES THAT INCUMBENT BROADCAST CONGLOMERATES ARE NOT INTERESTED IN THE SUCCESS OF ATSC 3.0 TELEVISION SERVICES.

PK & OTI have repeatedly expressed skepticism that broadcasters will use ATSC 3.0 and their continued free grants of spectrum to benefit the general public interest. This skepticism is not targeted at new broadcasters using ATSC 3.0 to provide competitive service at lower costs. Rather, PK & OTI are skeptical that large broadcasting conglomerates like Sinclair will develop the potential public benefits of ATSC 3.0 without Commission regulations to protect the public interest. The record demonstrates that this skepticism is justified.¹⁶

Since the Commission authorized ATSC 3.0 in 2017, very few broadcasters have managed to provide the advanced *television* services promised by the new standard. As the American Television Alliance (ATVA) points out: “Broadcasters have, of course, placed considerable efforts into developing ATSC 3.0, including engaging in standards development, beta-testing, pilot-project rollouts in certain markets, and a variety of testing related to *non-television* services.”¹⁷ But, making advanced *television* services available is a different matter. According to ATVA, “programs offered in ATSC 3.0 do not have the advanced features—such as ultra high-definition pictures, immersive sound, and emergency alert services” and “...networks and other program suppliers have yet to grant broadcasters copyright authorization for the widespread transmission of ultra high-definition programming, or, for that matter for transmitting in ATSC 3.0 at all.”¹⁸ As ATVA explains, since “program suppliers may

¹⁶ See e.g. ATVA Comments.

¹⁷ *Id.* at 3.

¹⁸ *Id.*

have new incentives to offer enhanced services on their own “walled garden” online platforms” this makes sense.¹⁹

Moreover, vertically-integrated media companies (VIMCs), like Sinclair, are using their power over content to limit the success of new entrant ATSC 3.0 broadcasters.²⁰ Evoca is the “first new facilities-based competitor for subscription video since the advent of DBS in the 1980s.”²¹ Evoca provides low-cost programming to underserved areas and has even expanded foreign language programming to serve niche markets like the Basque community in Boise.²² Despite Evoca’s success at developing and using ATSC 3.0 to serve consumers, Evoca describes attempted content boycotts by VIMCs as its “biggest issue.”²³ As Evoca explains,

“VIMCs like Sinclair, which runs the nation’s largest regional sports network (RSN) Bally Sports, have refused to fair and reasonable commercial terms with Evoca even though it benefits them financially. Consequently, they have also hindered the development of a robust OTA 3.0 market generally, by limiting supply of desirable and ‘must have’ content.”²⁴

Actively working against broadcasters that actually use ATSC 3.0 to deliver NextGen TV broadcast innovations, while failing to deliver those services themselves, demonstrates that incumbent conglomerate broadcasters do not actually want ATSC 3.0 for its broadcast benefits, but rather for its commercial use for ancillary services. For example, by engineering the band to create wider, more contiguous channels that can be leased out to mobile carriers, or used to compete with them, the big broadcasters could actually use the web of Commission orders

¹⁹ *Id.*

²⁰ *See* Edge Networks, Inc., Comment Letter on Proposed Rule Authorizing Permissive Use of the “Next Generation” Broadcasting Television Standard, at 4-5 (Aug. 8, 2022), <https://www.fcc.gov/ecfs/search/search-filings/filing/10808032418507>.

²¹ *Id.* at 6.

²² *Id.* at 13-14.

²³ *Id.* at 4.

²⁴ *Id.* at 4-5.

around ATSC 3.0 to exterminate the important public interest benefits related to over-the-air broadcasting that Congress counted on to justify their free access to the airwaves.

Incumbent broadcasters have done little to actually deliver advanced ATSC 3.0 television services while actively hindering new entrants that are trying to deliver advanced television services. This is why the Commission must ensure it adopts ATSC 3.0 policies that protect the public interest such as continuing the substantially similar rule and creating RAND requirements for ATSC 3.0 patents.

V. CONCLUSION

The Commission's ATSC 3.0 policies must first and foremost protect the public interest. This is why PK and OTI encourage the Commission to take active steps to help consumers transition by exploring a coupon fund and continuing the substantially similar rule. The Commission should also factor in the actions of incumbent conglomerate broadcasters when making its policy determinations. The Commission should ensure that the public interest is protected by ensuring that ancillary services do not undermine the primary purpose of the broadcast licensed spectrum—providing over-the-air broadcast programming.

Respectfully submitted,

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