



**6712-01**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 73 and 74**

**[GN Docket No. 16-142; FCC 20-72; FRS 16880]**

**Authorizing Permissive Use of the “Next Generation” Broadcast Television Standard**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission resolves the pending issues in this proceeding that authorized broadcasters to use ATSC 3.0, the “Next Generation” broadcast television (Next Gen TV) transmission standard. First, the FCC addresses the three issues raised in the Further Notice of Proposed Rulemaking that was issued in conjunction with the *Next Gen TV Report and Order*. Specifically, we provide additional guidance to broadcasters deploying Next Gen TV that wish to receive a waiver of our local simulcasting rules, decline to permit at this time the use of vacant broadcast channels for purposes of Next Gen TV deployment, and clarify the “significantly viewed” status of Next Gen TV stations. Second, we dismiss and, on alternative and independent grounds, deny the two petitions for reconsideration of the *Next Gen TV Report and Order*.

**DATES:** Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** For additional information, contact Evan Baranoff, [Evan.Baranoff@fcc.gov](mailto:Evan.Baranoff@fcc.gov), of the Media Bureau, Policy Division, (202)

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**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s Second Report and Order and Order on Reconsideration, FCC 20-72, adopted on June 3, 2020 and released on June 16, 2020. The full text of this document is available electronically via the FCC’s Electronic Document Management System (EDOCS) Web Site at <https://www.fcc.gov/edocs> or via the FCC’s Electronic Comment Filing System (ECFS) Web Site at <https://www.fcc.gov/ecfs>. (Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.) This document is also available for public inspection and copying during regular business hours in the FCC Reference Information Center, which is located in Room CY-A257 at FCC Headquarters, 445 12th Street, SW, Washington, DC 20554. The Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m. The complete text may be purchased from the Commission’s copy contractor, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or calling the Commission’s Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

## **Synopsis**

### **I. INTRODUCTION**

1. In this Second Report and Order and Order on Reconsideration, we resolve the pending issues in this proceeding that authorized broadcasters to use the “Next Generation” broadcast television (Next Gen TV) transmission standard. First, we

address the three issues raised in the Further Notice of Proposed Rulemaking that was issued in conjunction with the *Next Gen TV Report and Order*. Specifically, we provide additional guidance to broadcasters deploying Next Gen TV that wish to receive a waiver of our local simulcasting rules, decline to permit at this time the use of vacant broadcast channels for purposes of Next Gen TV deployment, and clarify the “significantly viewed” status of Next Gen TV stations. Second, we dismiss and, on alternative and independent grounds, deny the two petitions for reconsideration of the *Next Gen TV Report and Order*.

## **II. BACKGROUND**

2. In the *Next Gen TV Report and Order*, the Commission authorized television broadcasters to use the Next Gen TV transmission standard, also called “ATSC 3.0” or “3.0,” on a voluntary, market-driven basis. ATSC 3.0 is the TV transmission standard developed by the Advanced Television Systems Committee as the world’s first Internet Protocol (IP)-based broadcast transmission platform. The Commission determined in the *Next Gen TV Report and Order* that broadcasters deploying ATSC 3.0 generally must continue to deliver current-generation digital television (DTV) service, using the ATSC 1.0 transmission standard, also called “ATSC 1.0” or “1.0,” to their viewers through local simulcasting. Specifically, the Commission required full power and Class A television stations (Class A TV) deploying ATSC 3.0 service to simulcast the primary video programming stream of their ATSC 3.0 channels in an ATSC 1.0 format.

3. In the *Next Gen TV Report and Order*, the Commission determined that the local simulcasting requirement is crucial to the deployment of Next Gen TV service

in order to minimize viewer disruption. This is because the Next Gen TV standard is not backward-compatible with existing TV sets or receivers, which have only ATSC 1.0 and analog tuners. This means that consumers will not be able to view ATSC 3.0 transmissions on their existing televisions without additional equipment. Thus, it is critical that Next Gen TV broadcasters continue to provide service using the current ATSC 1.0 standard to deliver DTV service while the marketplace adopts devices compatible with the new 3.0 transmission standard in order to avoid either forcing viewers to acquire new equipment or depriving them of television service. Because a TV station cannot, as a technical matter, simultaneously broadcast in both 1.0 and 3.0 format from the same facility on the same physical channel, local simulcasting will be effectuated through voluntary partnerships that broadcasters seeking to provide Next Gen TV service enter into with other broadcasters in their local markets. A Next Gen TV broadcaster must partner with another television station (i.e., a temporary “host” station) in its local market to either: (1) air an ATSC 3.0 channel at the temporary host’s facility, while using its original facility to continue to provide an ATSC 1.0 simulcast channel, or (2) air an ATSC 1.0 simulcast channel at the temporary host’s facility, while converting its original facility to the ATSC 3.0 standard in order to provide a 3.0 channel.

4. The Commission established a process for considering applications to deploy ATSC 3.0 service, which included, among other requirements, establishing coverage requirements for a Next Gen TV station’s ATSC 1.0 simulcast signal. The Commission’s ATSC 1.0 simulcast coverage requirement sought to minimize disruption to viewers resulting from the voluntary deployment of ATSC 3.0 by recognizing that if a station moves its ATSC 1.0 signal to a partner simulcast host station with a different

transmitter location, some existing over-the-air (OTA) viewers may no longer be able to receive the 1.0 signal. Among other obligations, the Commission required the Next Gen TV station to select a partner 1.0 simulcast host station that is assigned to its same designated market area (DMA) and from which it would continue to provide ATSC 1.0 simulcast service to its entire community of license.

5. While the Commission's rules require that full power and Class A TV stations that convert their existing facility to ATSC 3.0 provide an ATSC 1.0 simulcast signal that covers a station's entire community of license, the Commission recognized that in certain circumstances such an arrangement may not be viable. Accordingly, the Commission established a waiver standard for the ATSC 1.0 simulcast requirement in order to facilitate the voluntary deployment of ATSC 3.0 service. Specifically, the Commission stated that it would favor requests for waiver of the obligation to provide ATSC 1.0 simulcast service if the station can demonstrate both that: (1) it has "no viable local simulcasting partner" in its market; and (2) it will "make reasonable efforts to preserve 1.0 service to existing viewers in its community of license and/or otherwise minimize the impact on such viewers (for example, by providing free or low cost ATSC 3.0 converters to viewers)." The Commission stated that it would consider waiver requests from full power and Class A TV stations to transition directly from ATSC 1.0 to ATSC 3.0 service on the station's existing facility without providing an ATSC 1.0 simulcast service at all. Alternatively, a station may request a waiver of the ATSC 1.0 simulcast requirement so it can air an ATSC 1.0 simulcast signal from a partner simulcast host that does not cover all or a portion of the station's community of license or can provide only a lower signal threshold over the station's community of license than that

required by the rules. Thus, a station may seek a waiver to either provide no 1.0 simulcast service to its community of license or partial 1.0 simulcast service to its community of license. In both situations, a waiver of the community of license coverage requirement in 47 CFR 73.3801(c) is required and the waiver standard set forth in the *Next Gen TV Report and Order* applies.

6. In the *Next Gen TV Further Notice*, the Commission sought comment on three topics relating to local simulcasting rules. First, it sought further comment on issues related to waivers of, and exemptions from, the local simulcasting requirement. Specifically, the Commission sought comment on whether further guidance should be provided about the circumstances in which it would grant such a waiver, including how to define whether a station has “no viable local simulcasting partner” and whether a station has taken “reasonable efforts to preserve service and/or minimize impact on viewers.” Second, the Commission sought further comment on whether to let full power broadcasters use channels in the television broadcast band that are vacant to facilitate the transition to ATSC 3.0. Third, the Commission tentatively concluded that local simulcasting should not change the “significantly viewed status” of a Next Gen TV station for purposes of determining MVPD carriage and sought comment on that conclusion.

7. The Commission received 19 comments and eight reply comments in response to the *Next Gen TV Further Notice*. Broadcaster commenters again urged the Commission to continue to provide broadcasters with “flexibility” to facilitate their deployment of ATSC 3.0 service, such as through waivers of, and/or additional exemptions from, the local simulcasting rules and by permitting broadcasters to

temporarily use vacant channels. Meanwhile, MVPD commenters urged the Commission to exercise restraint in issuing waivers of, or granting additional exemptions from, the local simulcasting rules. And public interest groups, white space proponents, and NCTA opposed the use of vacant channels as temporary transition channels by broadcasters.

8. The Commission also received two petitions for reconsideration of the *Next Gen TV Report and Order*: one filed by the American Television Alliance (ATVA) and the other filed by NCTA – The Internet & Television Association (NCTA). NCTA and ATVA seek reconsideration of various aspects of the local simulcasting rules, as well as the Commission’s decisions concerning voluntary carriage of ATSC 3.0 signals through retransmission consent, patent licensing, and the sunset of the A/322 standard. We received eight oppositions to these petitions and three replies to the oppositions.

### **III. SECOND REPORT AND ORDER**

9. In this Second Report and Order, we provide guidance on how Commission staff will evaluate petitions for waiver of our local simulcasting rules. In addition, we decline at this time to permit broadcasters to use vacant in-band channels for purposes of voluntary ATSC 3.0 deployment. Finally, we adopt the Commission’s tentative conclusion that the “significantly viewed” status of a Next Gen TV station will not change if it moves its ATSC 1.0 simulcast channel to a host facility.

#### **A. Local Simulcasting Waivers and Exemptions**

10. We affirm and clarify the local simulcasting waiver standard adopted in the *Next Gen TV Report and Order*. As explained below, we will presume that a station satisfies the first element of our waiver standard, which is that it has no “viable simulcasting partner,” if it has fewer than three potential simulcasting partners within its

DMA that can cover its entire community of license. To satisfy the second part of our waiver standard, which is to provide “reasonable efforts to preserve 1.0 service,” we will look favorably on waiver applicants that take steps to ensure their viewers have the ability to continue watching the station. For example, waiver applicants may provide, upon request, free or low-cost ATSC 3.0 converter devices to over-the-air viewers within the station’s community of license who otherwise no longer would be able to receive the station’s 1.0 signal over the air as a result of the station’s conversion to ATSC 3.0.<sup>1</sup> Stations choosing to provide such devices will be expected to inform viewers about the availability of such free or low-cost ATSC 3.0 converter devices and how to request or obtain such equipment. In addition, we decline to adopt a blanket exemption from the local simulcasting requirement for noncommercial educational (NCE) or Class A TV stations, preferring instead to rely on our waiver standard to afford these stations with any additional flexibility. Finally, we clarify that the Bureau has delegated authority to consider requests for waivers of the local simulcasting requirement and, consistent with the timing for reviewing non-expedited applications seeking authorization to deploy ATSC 3.0, the Bureau generally will process applications with waiver requests within 60 business days after giving public notice of the waiver request. Waiver requests that comply with the criteria as explained in this Order will be viewed favorably.

11. We recognize that some stations, such as public television and other NCE

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<sup>1</sup> Generally, we expect that a station seeking a waiver of the community of license coverage requirement will not be able to satisfy the standard for expedited processing, which requires a station to provide ATSC 1.0 simulcast service to at least 95 percent of the predicted population within the station’s original noise limited service contour (NLSC). Thus, we remind prospective waiver applicants that a station that needs a waiver of the community of license coverage requirement will also need to make the showing required for non-expedited applications established by the *Next Gen TV Report and Order*, which includes providing information about what steps, if any, the station plans to take to minimize the impact of the service loss. Accordingly, as a practical matter, we expect that a station choosing to provide ATSC 3.0 converter devices as a means to minimize the impact of not simulcasting on viewers will choose to provide such devices throughout its entire NLSC.

stations, Class A TV stations, and stations in small markets or in rural, remote, and isolated areas, may face unique challenges in securing local simulcasting partners. We seek to provide such stations with greater flexibility to deploy ATSC 3.0 service, provided they take steps to protect their viewers from the potential loss of ATSC 1.0 service resulting from a waiver. With these principles in mind, we provide, below, additional guidance on the waiver standard adopted in the *Next Gen TV Report and Order*.

**1. “No Viable Local Simulcasting Partner”**

12. With respect to the first prong of our waiver test, we will presume that a full power Next Gen TV station has “no viable local simulcasting partner” if it has fewer than three (*i.e.*, zero to two) potential full power simulcasting partners in the same DMA that can cover its entire community of license. If a full power station seeking a waiver is found to have fewer than three full power stations in its DMA that can meet the local simulcasting coverage requirements in 47 CFR 73.3801(c), then the station will receive a presumption that it meets the “no viable local simulcasting partner” prong of the waiver standard.<sup>2</sup> On the other hand, we will presume that full power stations with at least three potential simulcast partners have viable simulcasting partners and, thus, are not eligible for a waiver of 47 CFR 73.3801(c), absent compelling circumstances.

13. We adopt this criteria based on the proposals of several commenters, including the National Association of Broadcasters (NAB) and the joint comments of

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<sup>2</sup> Commission staff estimates that, initially, about 8 percent of NCE stations and about 5 percent of commercial stations will be able to meet this threshold. This estimate was determined using LMS data. Staff calculated NLSCs using TVStudy for stations remaining on-air following the Incentive Auction. For each station under the test, the boundaries of the community of license were determined by matching the community to a Census Place or Census Designated Place. The number of viable sharing partners was determined by counting the number of other stations in the same DMA as the station under the test whose NLSC completely covered the boundaries of the community of license.

Public Broadcasting Service (PBS), Corporation for Public Broadcasting (CPB), and America's Public Television Stations (APTS), collectively "PTV." Adopting this presumption will provide stakeholders increased predictability regarding what stations may be eligible for a waiver. In adopting a threshold of fewer than three potential partners, we recognize that not all stations will have an interest in serving as a 1.0 simulcast host, and we avoid the need for a broadcast station to demonstrate individually to the Commission that no station is willing to be its simulcast partner. We also find that the threshold of fewer than three potential simulcasting partners will provide transitioning stations with a reasonable opportunity to find suitable simulcast partners.<sup>3</sup> At the same time, the threshold will generally limit waiver relief to stations in rural, remote, and isolated areas – those stations that we believe will face the most significant challenges in finding local simulcasting partners.<sup>4</sup> Consistent with NAB's proposal, we will consider only full power stations in our calculation of available 1.0 simulcast partners in considering a waiver request submitted by a full power station, because Class A TV and LPTV stations do not cover comparable service areas and LPTV stations constitute a secondary service that does not receive the same interference protection afforded to full power stations.<sup>5</sup>

14. We prefer the threshold approach of fewer than three potential partners to

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<sup>3</sup> We agree with NAB's reasoning that "[i]f there are only one or two other stations in a market, a station that is eager to move forward now to improve its service may be unable to find a willing negotiating partner. If there are at least three other full power stations in the market, however, a transitioning station would be assured of having at least some possibility of moving forward even if one or two of those stations was not interested in a partnership at the time."

<sup>4</sup> The record shows that stations in rural, remote, and isolated areas most merit a waiver of the local simulcasting requirement.

<sup>5</sup> We also note that a review of available data by Commission staff suggests that limiting potential partners to only full power stations (*i.e.*, excluding Class A TV stations) resulted in only a very slight increase in the number of full power stations that would be able to demonstrate "no viable local simulcasting partner."

ONE Media's certification proposal, which would allow a station simply to certify "that it has contacted all technically viable prospective partners and been rejected, or has not been able to make sufficient progress in negotiations, despite good faith efforts to do so." We find that our objective approach is more administratively efficient as it is readily demonstrable. Thus, we reject the certification proposal as an overly subjective standard that could provide opportunities for stations to overuse or abuse the waiver process. We note that the objective threshold approach also avoids having the Commission "engage in qualitative market-by-market evaluations of simulcasting plans," which was a key concern of ONE Media. Given the difficulties associated with persuading another station in the DMA to relinquish its multicast capabilities to permit a competing station to deploy ATSC 3.0 by using the host station's facilities for its ATSC 1.0 simulcast, and the challenges associated with negotiating the terms of an agreement to do so, we believe the record demonstrates that it is unlikely for a station to be able to reach such an agreement with only one or two candidates available to do so. For the reasons stated above, we believe that this bright line test appropriately balances the likelihood of availability with the need to avoid a large number of subjective evaluations of how diligent the prospective ATSC 3.0 licensee has been in seeking out such arrangements.

15. With respect to Class A TV stations, we will presume that a Class A TV station has "no viable local simulcasting partner" if it has fewer than three potential Class A TV simulcasting partners in the same DMA that: (1) can provide overlap to its protected contour (47 CFR 73.6010(c)); and (2) are not more than 30 miles from the reference coordinates of the transitioning station's existing antenna location.<sup>6</sup> This is the

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<sup>6</sup> In other words, if a station seeking a waiver to transition to ATSC 3.0 has only between zero and two stations in its market that can meet the Commission's local simulcasting coverage requirements in 47 CFR

same contour overlap standard that we apply in our rule specifying permissible simulcast partners for Class A stations seeking to provide ATSC 3.0 service. We recognize that many Class A TV stations will be able to satisfy this prong of our waiver standard, because few markets have three or more Class A stations. However, we find that it is appropriate to create a lower bar for this class of stations to make a showing under this prong as they likely face many of the same challenges in finding a suitable simulcasting partner as do LPTV stations.<sup>7</sup> We will not consider LPTV/translator stations in our calculation of available 1.0 simulcast partners for Class A TV stations because they are secondary services that do not receive the same interference protection afforded to Class A TV stations. Nevertheless, Class A TV stations may choose to partner with LPTV/translator stations as a means to mitigate the harm to viewers, and we encourage Class A TV stations to do so.

## **2. “Reasonable Efforts” to Preserve Service**

16. In addition to demonstrating that a station lacks a viable partner, successful waiver applicants must commit to take certain affirmative steps to satisfy the second prong of our waiver test, by demonstrating that it is making “reasonable efforts” to preserve 1.0 service and minimize impact on viewers. It is critical that stations seeking a waiver of the simulcasting requirement can still achieve the purpose of our simulcasting rule – ensuring that viewers can continue to watch their channels during the transition period – through some alternate means, in order to serve viewers that can no longer

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73.6029(c), then the station will receive a presumption that it meets the “no viable local simulcasting partner” prong of the waiver standard. Commission staff estimates that, initially, about 71 percent of Class A stations will be able to meet this threshold.

<sup>7</sup> For example, like LPTV stations, Class A TV stations may not be attractive simulcast partners for full power stations because of their lower power and coverage area, as well as their frequent financial constraints. We note that, in any event, Class A TV stations would still need to comply with the second prong of our waiver standard.

receive the station over-the-air as a result of a station's conversion to ATSC 3.0.

17. The only alternative to local simulcasting raised or discussed in the record that is consistent with the purpose of the rule is for waiver applicants to provide free or low-cost ATSC 3.0 converter devices to affected over-the-air viewers. We believe that providing free or low-cost 3.0 converter devices could help ensure that viewers in a station's coverage area can continue to watch a station over-the-air. Below, in an effort to provide greater predictability to prospective waiver applicants, we provide more detail about our expectations in this regard. We note, however, that we will consider other alternatives offered by waiver applicants on a case-by-case basis, provided the waiver applicant can demonstrate that such proposals would achieve the purpose of our local simulcasting rule.

18. We will look favorably on a waiver applicant choosing to provide ATSC 3.0 converter devices at no cost or low cost to over-the-air households located within its community of license which will no longer receive the station's ATSC 1.0 signal as a means to minimize the impact of not simulcasting on viewers. Although such equipment distribution is not a requirement to obtain a waiver, we find that this method provides one way to ensure that any disruption to viewers is minimized to the fullest extent possible. In order for us to evaluate this prong of our waiver standard, we expect waiver applicants will explain in detail their plans for providing converter devices to eligible viewers, including: (1) what types of devices they intend to provide; (2) the cost, if any, that eligible viewers will be required to pay in order to receive the device; (3) how the applicant intends to inform viewers of the need for, and availability of, devices; and (4) how viewers will be able to request and obtain the device. The Bureau will consider a

waiver applicant's plan for providing ATSC 3.0 converters to affected viewers on a case-by-case basis based on the unique circumstances confronting the applicant.<sup>8</sup>

19. To provide greater predictability to applicants that chose to voluntarily provide ATSC 3.0 converters, the Bureau will look favorably on a plan in which the waiver applicant would provide affected over-the-air households,<sup>9</sup> upon request, with one ATSC 3.0 converter at no cost. To the extent waiver applicants choose to charge a low cost to consumers for devices, we will consider the particular circumstances surrounding this charge, as well as the amount of the charge, on a case-by-case basis. A waiver applicant choosing to provide ATSC 3.0 converter devices would be expected to agree to provide an ATSC 3.0 converter upon request to each affected over-the-air household for as long as it operates pursuant to the waiver. A waiver applicant choosing to provide ATSC 3.0 converter devices would also be expected to inform viewers how they can obtain an ATSC 3.0 converter from the station.<sup>10</sup> We note that some waiver applicants choosing to provide ATSC 3.0 converter devices may opt to partner with equipment manufacturers, retailers, and even other broadcasters in their local markets in order to

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<sup>8</sup> We agree with PTV that “[i]n situations where a station does simulcast ATSC 1.0 programming to part of its community, it should only be expected to provide free or low-cost converters to viewers unable to receive the ATSC 1.0 signal.” In addition, we disagree with ATVA to the extent it contends that a waiver applicant must simulcast to part of its community of license in order to be eligible for a waiver. We do not require a waiver applicant to simulcast to part of its community of license, but we find that a waiver applicant that chooses to simulcast to part of its community of license will have mitigated the harm to those viewers in such area that receives the simulcast signal. For example, a waiver applicant may mitigate harm to viewers by simulcasting to part of its community of license and providing ATSC 3.0 converters to those areas not reached by the partial simulcast, or it may mitigate harm to viewers by providing ATSC 3.0 converters to its entire community of license. We note that ATVA does appear to agree that the harm to viewers can be mitigated by providing free or low-cost ATSC 3.0 converter devices to viewers, which we expect waiver applicants will do to satisfy the second prong of our waiver test.

<sup>9</sup> “Affected over-the-air households” are households exclusively receiving television broadcast stations over the air with an antenna. This definition does not include households that subscribe to cable or satellite service.

<sup>10</sup> For example, as part of this notice, we expect stations choosing to provide ATSC 3.0 converter devices will provide information on their websites about how viewers can request and obtain any free or low-cost ATSC 3.0 converter devices that may be offered.

provide the free or low-cost ATSC 3.0 converters. While nothing precludes waiver applicants from partnering with third parties to establish their ATSC 3.0 converter programs, we remind applicants that they remain ultimately responsible for complying with any commitments made as part of their waiver requests. Finally, we remind waiver applicants that a station that transitions directly to ATSC 3.0 must air daily Public Service Announcements (PSAs) or crawls every day for 30 days prior to the date that it will terminate ATSC 1.0 operations.<sup>11</sup>

20. Broadcasters contend that, while the Commission should look favorably on waiver applicants that offer to provide free or low-cost ATSC 3.0 converters to viewers in their coverage area, the Commission should not require broadcasters to provide free or low-cost ATSC 3.0 converters to viewers as a condition for a waiver of the local simulcasting requirements. NAB asserts that requiring waiver applicants to provide ATSC 3.0 converters “would risk adding unreasonable costs” on broadcasters, and ONE Media similarly contends that “such a costly requirement might deter innovation in some markets without corresponding benefits.” As stated above, we do not require waiver applicants to provide ATSC 3.0 converter devices and will consider alternative proposals that would achieve the purpose of the local simulcasting rule. There were, however, no such alternatives mentioned in the record. The Commission authorized the deployment of ATSC 3.0 service in a manner that is voluntary for all stakeholders. We find it unreasonable for consumers to bear significant expense for these devices or to be left without service in the event devices are not readily available in the marketplace when a station wishes to deploy ATSC 3.0 service. Broadcasters seeking

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<sup>11</sup> Waiver applicants must provide all pertinent information to viewers in their PSAs or crawls, including information about how viewers can request and obtain any free or low-cost ATSC 3.0 converter devices to the extent such devices are offered.

waiver of the simulcasting requirement must demonstrate that they have taken steps to minimize any disruption to consumers. Broadcasters have stated in the record that they expect 20 different television models from three manufacturers, to be available with built-in ATSC 3.0 tuners as well as other types of conversion equipment, such as adapters and gateway devices, by the end of 2020. To the extent this comes to pass, we expect broadcasters will have adequate access to ATSC 3.0 converter devices and other equipment so that they can provide such equipment to their viewers in support of any simulcasting waiver requests.<sup>12</sup>

21. We reject NCTA's argument that it is premature for us to consider waivers of the local simulcasting requirement. Because our waiver standard targets relief to stations in rural, remote, and isolated areas and requires applicants to make "reasonable efforts" to preserve 1.0 service and minimize impact on viewers, we disagree with NCTA that our waiver standard will undermine the purpose of the local simulcasting rule.<sup>13</sup> We find that viewers in small and rural markets should have an opportunity to enjoy the benefits of ATSC 3.0 service as quickly as practicable and that stations lacking a simulcast partner that wish to innovate and invest in ATSC 3.0 technology should be afforded an opportunity to do so.

22. NTCA – The Rural Broadband Association (NTCA) also expressed

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<sup>12</sup> We disagree with ONE Media's further assertion that we should not require a waiver applicant to provide ATSC 3.0 converter devices if it is "in a market that is already well-penetrated with ATSC 3.0 devices and [has] arranged for all MVPDs to carry its signal." If most viewers in a market already have ATSC 3.0 devices, then it should not be overly burdensome for waiver applicants to provide ATSC 3.0 converters to the remaining few viewers in the market that do not. Further, carriage on all MVPDs in a market does not mean that all viewers would have access to the Next Gen TV station's signal unless they are a subscriber to MVPD service. Requiring that a viewer subscribe to an MVPD service in order to retain access to a station's free over-the-air signal would unreasonably shift the burden of what is supposed to be a voluntary transition onto viewers.

<sup>13</sup> We also find that our targeted waiver approach addresses ATVA's concerns that waivers will not be sufficiently narrow to address situations where stations cannot comply with the simulcasting rules.

concern that were the Commission to waive simulcasting requirements, broadcasters may try to enforce their mandatory carriage rights with respect to their ATSC 3.0 signals, potentially imposing significant costs on cable operators. We clarify that stations that receive a waiver of the local simulcasting rule are not allowed to assert mandatory carriage rights for their ATSC 3.0 signals. In the *Next Gen TV Report and Order*, the Commission stated that “a Next Gen TV broadcaster will not be able to exercise mandatory carriage rights with respect to its 3.0 signal instead of its 1.0 signal, nor will it have mandatory carriage rights even if its 3.0 signal is the only signal being broadcast. In other words, under no circumstances will we recognize mandatory carriage rights for 3.0 signals while the Commission requires local simulcasting.” We clarify that the reference to “while the Commission requires local simulcasting” was intended to refer to the time period during which the general simulcasting rule remains in effect and was not meant to confer ATSC 3.0 carriage rights to stations excused from the general rule. At this time, there are no mandatory carriage rights for ATSC 3.0 signals.

23. In addition, NTCA expresses concern that stations which are granted waivers and elect retransmission consent can and likely would shift the costs of carrying ATSC 3.0 signals onto small and rural MVPDs. More specifically, NTCA avers that, because small and rural MVPDs generally rely on receiving broadcast signals over-the-air at their headend (as fiber is generally not an option), these MVPDs would have to upgrade their equipment to receive the signal of a 3.0 station that is not simulcasting in order to continue to carry the station. NTCA claims that, in such situations, broadcasters will have little incentive to share in the cost of such upgrades. NTCA maintains that, when considering a waiver request, the Bureau should consider the impact on MVPDs

and their subscribers, particularly in situations in which such subscribers cannot receive any over-the-air broadcast signals and rely solely on MVPD service to receive a station. The Commission rejected suggestions that it should intervene in the retransmission consent process vis-à-vis ATSC 3.0 signals in the *Next Gen TV Report and Order*, and in so doing, it decided that it was premature to consider arguments that Next Gen TV broadcasters could use the retransmission consent process to compel carriage of ATSC 3.0 signals before consumer demand and market circumstances warrant. Nevertheless, we expect waiver stations that are granted waivers of the simulcasting requirements will actively coordinate and work cooperatively and in good faith with all affected MVPDs to help ensure that MVPD subscribers can continue to watch the station.

### **3. No Additional Simulcast Exemptions**

24. We conclude that it is not necessary and would not serve the public interest to grant exemptions to any additional classes of stations at this time. In the *Next Gen TV Further Notice*, the Commission sought comment on whether to exempt NCE and/or Class A TV stations as a class from the local simulcasting requirement. Given the flexibility afforded by our waiver standard, we decline to give NCE and Class A TV stations a class-based exemption from our local simulcasting requirement, as we did for LPTV/translator stations.<sup>14</sup>

25. As an initial matter, unlike LPTV/translator stations, NCE and Class A TV stations are considered primary under the Commission's rules. Primary television stations (primary stations) are treated differently from secondary television stations (secondary stations) in many respects under the rules. Among other things, primary

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<sup>14</sup> In this regard, we agree with ATVA that our targeted waiver approach is more appropriate than a class-based exemption.

stations are afforded interference protection from other services and, in contrast to secondary services like LPTV/translators, are not subject to displacement by other primary licensees.<sup>15</sup> In addition, primary stations tend to carry programming more relied upon by viewers.<sup>16</sup> Consequently, if we were to afford NCE, Class A TV, or any other class of primary station a blanket exemption of the local simulcasting rule, the potential adverse impact caused by service loss would be inherently greater than it is for secondary classes of stations. We therefore find it appropriate to afford NCE and Class A TV stations less flexibility than secondary stations with respect to local simulcasting obligations.

26. In advocating for a blanket exemption from the local simulcasting rules, public television commenters emphasize that they are particularly likely to lack viable simulcasting partners because they often are not sited near other stations in the market. We find that our waiver standard, which is based on a proposal supported by PTV,<sup>17</sup> adequately addresses this concern by providing that any station that lacks fewer than three potential partners presumptively satisfies the “no viable local simulcasting partner” prong of our waiver test. We find that our waiver standard will provide targeted relief to NCE stations in rural or other isolated areas without risking the loss of television service on which viewers currently rely. PTV also contends that the Public Broadcasting Act of 1967 (PBA) creates a statutory mandate for PTV stations “to provide service to ‘all citizens of the United States,’ particularly ‘unserved and underserved audiences’” and,

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<sup>15</sup> We note that secondary stations also do not have principal community coverage obligations.

<sup>16</sup> For example, we note that Class A TV stations are required to broadcast a minimum of 18 hours per day and provide an average of at least three hours per week of locally-produced programming each quarter.

<sup>17</sup> Although PTV would prefer an exemption for public television stations, it indicated that it would support, in the alternative, a presumptive waiver for such stations.

therefore, public television stations do not need a simulcasting requirement because the PBA will ensure that public television stations “will only transition to the ATSC 3.0 standard after ensuring that their viewers will not be left behind.” However, the sections of the PBA cited by PTV are not statutory mandates that are binding on public television stations, but rather a Congressional declaration of policy, and, in fact, we find that our waiver standard will buttress this Congressional statement of policy by ensuring that waivers are granted only in appropriate circumstances and that reasonable efforts will be made to prevent loss of public television service. We do not, however, find the Congressional statement of policy in the PBA to be a rationale for providing additional regulatory relief to NCE stations.<sup>18</sup>

27. Likewise, we find the waiver approach is more appropriate for Class A TV stations than a class-based exemption. WatchTV states that the Commission should exempt Class A TV stations “because most of the rationale behind the [simulcast requirement] does not apply to Class A (TV) stations.” We acknowledge that Class A TV stations—unlike most other primary stations—are not generally carried by MVPDs, and thus their only way to access viewers is via over-the-air reception. Although we recognize they have incentives to maintain ATSC 1.0 service without a mandate, we disagree with WatchTV that these marketplace incentives justify a class-based exemption for Class A TV stations. By virtue of their status, Class A TV stations are required to provide locally-produced programming that is relied upon by viewers. We are reluctant

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<sup>18</sup> PTV also argues that “public television stations have a strong financial incentive for ensuring that viewers are able to continue receiving their broadcast signals” because “public television stations rely on direct financial support from viewers.” We also do not find this argument grounds for additional regulatory relief to public television stations. Our goal is to ensure viewers are protected during the transition to ATSC 3.0 service. We see no reason to treat viewers of full power public television stations differently from other full power stations.

to allow Class A TV stations to stop providing such service in ATSC 1.0 without a public interest showing. Thus, while most Class A TV waiver applicants will presumptively meet the first prong of the waiver standard, Class A TV waiver applicants will be required under the second prong of the waiver standard to minimize the impact on viewers, ensuring that viewers can maintain access to the locally-produced programming offered by these stations.<sup>19</sup>

#### **4. Waiver Processing**

28. We clarify that the Media Bureau has delegated authority to consider requests for waiver of the local simulcasting requirement and that waiver requests should be made when filing a Next Gen TV license application. Consistent with the timing for reviewing non-expedited applications seeking authorization to deploy ATSC 3.0, we expect the Bureau will process applications with waiver requests within 60 business days after giving public notice of the waiver request.<sup>20</sup> Some broadcaster commenters have requested much faster processing times for waiver requests, but such timeframes would provide staff insufficient time to verify that deviation from the established rule is warranted and in the public interest. So long as information provided by waiver applicants is complete, we expect staff will be able to process the applications within the 60 business-day time period.

#### **B. Temporary Use of Vacant Channels**

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<sup>19</sup> We note that WatchTV has indicated its ability to provide low-cost 3.0 devices to viewers, suggesting that the waiver standard would not prove too onerous for Class A stations. WatchTV “contemplates being able to acquire dongles for as little as \$10 in quantity, so that a station may sell them for a nominal amount or even simply give them away to viewers as a promotion.”

<sup>20</sup> As explained above, a non-expedited applicant refers to a Next Gen TV station whose application does not propose to provide ATSC 1.0 simulcast service to at least 95 percent of the predicted population within the station’s original noise limited service contour (NLSC) and, thus, would not qualify for “expedited processing” for its application. A non-expedited applicant must provide a more robust public interest showing with its application and will be considered on a case-by-case basis.

29. We decline to adopt new rules at this time to authorize full power broadcast licensees to use available or vacant channels in the television band for purposes of their voluntary ATSC 3.0 deployment. The Commission declined to authorize such use in the *Next Gen TV Report and Order*, but sought additional comment on this issue in the *Next Gen TV Further Notice*. In particular, the Commission sought comment on ONE Media's request that, in markets where such vacant channels are available, the Commission should allow full power broadcasters to use these channels as "dedicated transition channels to ensure maximum continuity of service, just as it did during the transition from analog to digital." In support of this proposal, ONE Media and other broadcaster commenters argue that allowing Next Gen broadcasters to use vacant channels would facilitate the transition to ATSC 3.0 and "minimize consumer disruption and preserve service to viewers." They contend that television band spectrum is reserved for licensed broadcast use and that existing broadcasters should be given priority to use vacant channels as temporary transition channels in the band.<sup>21</sup>

30. We find that it is premature to consider allowing broadcasters to use vacant channels as temporary transition channels to deploy ATSC 3.0 service. At this time, deployment of ATSC 3.0 service is voluntary, and there is no certainty if or when it will replace ATSC 1.0 service; rather, it will be adopted by stakeholders based on marketplace considerations. For this reason, we reject ONE Media's comparison to the DTV transition in which a second channel was provided to most broadcasters in order to accomplish a mandatory transition from analog to digital service. We also agree with MVPD providers, wireless microphone interests, and proponents of white space devices

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<sup>21</sup> In addition to priority over unlicensed uses, ONE Media advocates giving existing broadcasters priority over applicants for new television station licenses as well as over secondary users, including displacement applications of LPTV and TV translator stations.

that authorizing widespread use of vacant channels as dedicated transition channels would be inconsistent with the premise of the broadcasters' Next Gen TV Petition, which stated that local simulcasting would be the "core of the voluntary, market-driven implementation of ATSC 3.0" and that no additional spectrum would be needed for the voluntary deployment of ATSC 3.0 service.<sup>22</sup> Further, the fact that no additional spectrum would be required for the voluntary use of ATSC 3.0 was a key consideration in the *Next Gen TV Report and Order*. Allowing widespread use of vacant channels as transition channels would likely discourage reliance on local simulcasting arrangements, which are intended to accomplish the voluntary deployment of ATSC 3.0 service in a spectrally efficient manner.

31. Moreover, any benefits of allowing broadcasters to use vacant channels as temporary transition channels appear outweighed by the costs to other stakeholders. Broadcasters maintain that vacant channel use may be particularly helpful to stations in rural, remote, and isolated areas. However, such broadcasters already have significant flexibility in complying with our local simulcasting rules by virtue of the waiver standard. Further, we are skeptical that rural, remote, and isolated broadcasters would even want to incur the costs of constructing and operating a second facility on a vacant channel. Instead, such broadcasters may find partnering with LPTV/translator stations, which are exempt from the simulcasting requirement, to be a more affordable and practical option for their initial deployment of ATSC 3.0 service.

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<sup>22</sup> The Next Gen TV Petition stated that it "does not ask the Commission to give broadcasters additional spectrum to roll out Next Generation TV and does not seek any changes to the current DTV standard. Instead, broadcasters will use market-based solutions to introduce this enhanced capability on existing spectrum while not disenfranchising viewers using ATSC 1.0 equipment, and consumer electronics manufacturers will implement the new standard in response to market demands rather than regulatory mandates."

32. In addition, we are not persuaded that the benefits of allowing broadcasters to use vacant channels as temporary transition channels outweigh the potential costs and harms to other stakeholders that operate in the band. Authorizing widespread use of vacant channels by broadcasters could have a significant adverse impact on these other stakeholders. First, permitting vacant channel use at this time, even for only 3.0 service, could have negative effects on the incentive auction reorganization of spectrum (repacking). The resources needed to use vacant channels for such purposes could strain resources needed to support the construction of facilities on channels assigned in the post-incentive auction repacking, including transitioning stations and stations moving from interim to permanent facilities post-transition. Second, permitting widespread vacant channel use could adversely impact LPTV and TV translator stations, particularly those displaced by the post-Incentive Auction repacking process that are currently receiving federal funds to modify or construct new facilities on channels for which they hold construction permits. Although we recognize that full power stations are primary and LPTV and TV translator stations are not, during this repacking transition we strive to be good stewards in overseeing efficient use of federal reimbursement funds. By opting not to allow full power vacant channel use at this time, we reduce the potential of inefficiently allocated reimbursement expenses to relocating LPTV stations by further displacing those stations already receiving federal funds. Finally, permitting widespread vacant channel use for ATSC 1.0 simulcasting could impose costs on an MVPD that may need to receive a signal from a new ATSC 1.0 facility that it does not currently carry. To the extent broadcasters were to move from one vacant channel to another, MVPDs could

incur such expenses multiple times with respect to a single station.<sup>23</sup>

33. Accordingly, we decline to allow the use of vacant channels for the ATSC 3.0 transition at this time. If warranted by market conditions in the future, we may revisit the need for permitting broadcasters to use vacant channels as transition channels.

**C. “Significantly Viewed” Status of Next Gen TV Stations**

34. We adopt our tentative conclusion that the significantly viewed status of a Next Gen TV station should not change if it moves its ATSC 1.0 simulcast channel to a temporary host facility. All commenters on this issue support this conclusion.

Accordingly, a commercial television station that relocates its ATSC 1.0 simulcast channel cannot seek to gain significantly viewed status in new communities or counties and such station cannot lose significantly viewed status in communities or counties for which it qualified prior to the move of its ATSC 1.0 simulcast channel.

35. Significantly viewed stations are commercial television stations that the Commission has determined have “significant” over-the-air (i.e., non-cable and non-satellite) viewing and are thus treated as local stations in certain respects with regard to a particular community in another television market. Significantly viewed status allows the significantly viewed station to be (1) carried by a satellite carrier in such community in the other market; (2) carried in such community by cable and satellite operators at the reduced copyright payment applicable to local (in-market) stations; and (3) exempt in such community from another station’s assertion of its network non-duplication or syndicated exclusivity rights. A station that varies its signal strength or changes its

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<sup>23</sup> We recognize that parties supporting use of vacant channels for unlicensed white space operations and wireless microphone operations also expressed concern about the potential adverse impact on such uses. In response, broadcasters contend that white space use should yield to broadcast operations in the television band. Because we decline on other grounds to adopt the proposal to allow full power vacant channel use, we do not address that issue here.

location as a result of moving its ATSC 1.0 signal to a simulcast partner may raise the question of how this change affects its status as “significantly viewed” in a certain community or county under 47 CFR 76.5(i) and 76.54.

36. We agree with MVPDs and broadcasters that we should maintain the status quo in the significantly viewed context with respect to ATSC 1.0 simulcast signals and thereby avoid disruptions to the carriage obligations of MVPDs and the carriage rights of broadcasters, and note that no commenter opposes this approach. Any changes in significantly viewed status due to local simulcasting would be temporary, and our approach will avoid disruptions to cable and satellite television viewers who have come to rely on such signals. This approach will not impose added mandatory carriage burdens on MVPDs and avoids burdening MVPDs with numerous changes to their carriage obligations. We note that significantly viewed status does not confer mandatory carriage rights to the station, but rather only allows carriage of the station via retransmission consent. Thus, maintaining the status quo with respect to eligibility for significantly viewed carriage presents no mandatory carriage burdens on MVPDs. We also conclude that expansion of eligibility for significantly viewed carriage due to the relocation of the ATSC 1.0 simulcast signal would not be consistent with the purpose of local simulcasting, which is intended to serve the goal of maintaining existing television service to viewers within the station’s original coverage area, not expanding service into new areas.

37. Although our approach here differs from how we addressed this issue in the channel sharing context, we find that it is appropriate to treat significantly viewed status differently in these two contexts. In the Incentive Auction Report and Order, the

Commission found that because significantly viewed status is largely a function of signal availability, a station moving to a new channel should lose its status at the relinquished location. But unlike in the channel sharing context, Next Gen TV broadcasters are not relinquishing their original channel. While they are relocating their ATSC 1.0 signal to a simulcast partner, they will continue to operate on their existing channel in ATSC 3.0 and will ultimately return to operating solely on their existing channel when the local simulcasting period ends. Moreover, a Next Gen TV broadcaster will continue to reach the communities or counties in which it is significantly viewed with an ATSC 3.0 over-the-air signal during the period in which it is simulcasting.

#### **IV. ORDER ON RECONSIDERATION**

38. In this Order on Reconsideration, we dismiss and, on alternative and independent grounds, deny the NCTA and ATVA petitions for reconsideration.<sup>24</sup> NCTA and ATVA seek reconsideration of various aspects of the local simulcasting rules, as well as the Commission's decisions concerning voluntary carriage of ATSC 3.0 signals through retransmission consent, patent licensing, and the sunset of the A/322 standard.<sup>25</sup> All of the requests raised in the petitions have been considered and rejected already by

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<sup>24</sup> Pursuant to Commission policy, petitions for reconsideration are not to be used merely to reargue points previously advanced and rejected.

<sup>25</sup> Specifically, ATVA seeks reconsideration of three issues, including: (1) the Commission's rejection of ATVA's proposal to require separate negotiations for first-time carriage of ATSC 3.0 signals; (2) the Commission's exemption from the simulcasting requirement for low power and TV translator stations; and (3) the Commission's decision not to require stations to provide prior notice to viewers and MVPDs before changing their signal formats on their ATSC 1.0 simulcasts. NCTA seeks reconsideration of five issues, including: (1) the Commission's decision to sunset after five years the "substantially similar" requirement; (2) the Commission's decision to sunset after five years the requirement that a Next Gen TV broadcaster's primary video programming stream adheres to the ATSC A/322 standard; (3) the Commission's decision not to require Next Gen TV broadcasters to simulcast ATSC 1.0 signals in high definition (HD) format to the extent they are currently broadcasting such signals in HD; (4) the Commission's decision not to prohibit broadcasters from using retransmission consent negotiations to obtain carriage of their ATSC 3.0 signals by withholding the ATSC 1.0 signal; and (5) the Commission's decision not to require that patents relevant to the ATSC 3.0 standard must be licensed on a reasonable and non-discriminatory (RAND) basis.

the Commission in the underlying order. As discussed below, the NCTA and ATVA petitions repeat issues that commenters, including NCTA and ATVA, raised earlier in the proceeding, and that we fully considered and rejected in the *Next Gen TV Report and Order*. Further, we disagree that these petitions raise any errors or omissions that warrant reconsideration. (The Bureau has the authority to dismiss petitions for reconsideration that “fail to identify any material error, omission, or reason warranting reconsideration,” or which “rely on arguments that have been fully considered and rejected by the Commission within the same proceeding.” Because we also address the petitions on the merits, we have no occasion to rely on that delegation of authority here.)

**A. Retention of Sunset Dates**

**1. Sunset of “Substantially Similar” Requirement**

39. We dismiss and, on alternative and independent grounds, deny NCTA’s request to reconsider the five-year sunset of the “substantially similar” requirement. While we retain the July 17, 2023 sunset date for this rule, approximately one year before the requirement is set to expire, we will seek comment on whether it should be extended based on marketplace conditions at that time.<sup>26</sup>

40. In the *Next Gen TV Report and Order*, the Commission required that the programming aired on a Next Gen TV station’s ATSC 1.0 simulcast channel be “substantially similar” to that of the primary video programming stream on the ATSC 3.0 channel. As the Commission explained, the programming must be the same, except for programming features that are based on the enhanced capabilities of ATSC 3.0, advertisements, and promotions for upcoming programs. The Commission stated that

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<sup>26</sup> We note that, while the Commission stated that the “substantially similar” requirement would expire five years after its effective date, the Commission had inadvertently omitted to codify the sunset date in the rule. We take this opportunity to correct this oversight and amend our rules to reflect the sunset date.

this approach “will help ensure that viewers do not lose access to the broadcast programming they receive today, while still providing flexibility for broadcasters to innovate and experiment with new, innovative programming features using Next Gen TV technology.” The Commission decided, however, that the substantially similar requirement would sunset five years from its effective date absent further action by the Commission to extend it. In this regard, the Commission concluded that, while “this [substantially similar] requirement is necessary in the early stages of ATSC 3.0 deployment, it could unnecessarily impede Next Gen TV programming innovations as the deployment of ATSC 3.0 progresses.” The Commission further stated that it “intend[ed] to monitor the ATSC 3.0 marketplace,” and would “extend the substantially similar requirement if necessary.” The substantially similar rule took effect July 17, 2018, so it will expire on July 17, 2023, unless extended by the Commission.

41. In its petition, NCTA repeats its and other commenters’ earlier opposition in this proceeding to an automatic sunset of the substantially similar requirement. NCTA contends that the Commission’s decision to sunset the substantially similar requirement was “arbitrary” and “has no basis in the record.”<sup>27</sup> NCTA further asserts that, “[g]iven the current state of the marketplace, the rational policy would be for the Commission to

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<sup>27</sup> NCTA claims in its reply to oppositions that “the Commission did not seek comment on the notion that the [substantially similar] requirement would sunset five years after its adoption.” In the *Next Gen TV NPRM*, the Commission sought comment on whether “a ‘simulcast’ means a stream with identical content to the video programming aired on the originating station’s primary ATSC 3.0 stream” and further asked “[i]f the simulcast content will not be identical to the originating station’s primary video programming stream, ... explain the reasons for any deviations in content and/or format (*i.e.*, high definition (HD) versus SD) and the impact of such deviations on television viewers and the regulatory implications.” In response, broadcasters opposed an identical content requirement. Persuaded by broadcasters’ comments, the Commission opted against an identical content requirement and instead established the “substantially similar” requirement and determined that such requirement appeared necessary only in the early stages of ATSC 3.0 deployment. We find that the NPRM provided adequate notice that the Commission was considering whether (or not) to require identical content and the length of time any such requirement might be necessary.

monitor the roll-out of ATSC 3.0 and maintain the substantially similar requirement until the use of ATSC 3.0 is further along” before “determin[ing] the appropriate sunset.”

42. The Commission fully considered this issue in the *Next Gen TV Report and Order* and decided to establish a sunset for the substantially similar requirement. Because NCTA repeats arguments that have already been considered, we dismiss NCTA’s Petition on this issue. On alternative and independent grounds, we deny NCTA’s Petition on this issue because we disagree that the Commission erred. We continue to believe a sunset date is appropriate and, thus, affirm the decision in the *Next Gen TV Report and Order*. We reject NCTA’s request that we should either delay establishing a sunset for the substantially similar requirement or retain it indefinitely. As explained in the *Next Gen TV Report and Order*, without an expiration date, this rule could become stale and impede the very Next Gen TV programming innovations that we seek to promote by authorizing the deployment of ATSC 3.0. In any event, we note that only the “substantially similar” requirement will expire and not the requirement to broadcast in 1.0, so viewers will not lose access to ATSC 1.0 signals. Thus, contrary to NCTA’s suggestion, consumers will not need to invest in 3.0 technology before they are ready. We also agree with Pearl TV that broadcasters understand their communities and have strong market incentives to be responsive to their needs, both to those viewers seeking the enhancements of ATSC 3.0 service and those choosing to continue watching in ATSC 1.0 format. Therefore, we expect broadcasters will use any additional flexibility resulting from the rule’s eventual sunset to offer innovative programming on their ATSC 3.0 signals, rather than to “diminish[] the quality of the content on their ATSC 1.0 simulcast signal,” as NCTA fears.

43. While we acknowledge that there have been limited marketplace developments since the *Next Gen TV Report and Order* was released in November 2017, given the dynamic nature of the broadcast and consumer electronics industries, we find a better approach is to defer a decision regarding any extension until the year prior to the current sunset. We find this approach to be particularly sound given that it accounts for unanticipated events, such as the novel coronavirus (COVID-19), whose impact we are unable to discern at this time. We note, prior to the recent pandemic, the industry expected that many stations would begin broadcasting in ATSC 3.0 this year. According to NAB and Pearl TV, broadcasters intended to launch ATSC 3.0 service in 61 markets in 2020. It is not clear whether these plans remain intact.<sup>28</sup> Moreover, although consumer reception equipment is not currently commercially available, the industry has represented that such equipment will be available to consumers in the fourth quarter of this year. Again, we do not know whether this target holds true today. Thus, we will continue to monitor the ATSC 3.0 marketplace and, when we get closer to the sunset date, we will initiate a proceeding to determine whether it is necessary to extend the substantially similar requirement.

## **2. ATSC A/322 Standard Sunset**

44. We dismiss and, on alternative and independent grounds, deny NCTA's request to reconsider the five-year sunset of the requirement that broadcasters' primary free over-the-air Next Gen TV video programming streams adhere to the ATSC A/322

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<sup>28</sup> That is, we do not know the extent to which the pandemic has affected broadcasters' plans for ATSC 3.0 deployment.

standard.<sup>29</sup> While we retain the March 6, 2023, sunset for this rule, approximately one year before the rule is set to expire we will seek comment on whether it should be extended based on marketplace conditions at that time.<sup>30</sup>

45. In the *Next Gen TV Report and Order*, the Commission incorporated two parts of the ATSC 3.0 “physical layer” standard into the rules: (1) ATSC A/321:2016 “System Discovery & Signaling” (A/321), which is the standard used to communicate the RF signal type that the ATSC 3.0 signal will use, and (2) A/322:2017 “Physical Layer Protocol” (A/322), which is the standard that defines the waveforms that ATSC 3.0 signals may take. With respect to the A/322 standard, the Commission applied the standard only to a Next Gen TV station’s primary free over-the-air video programming stream and incorporated it by reference into the rules for a period of five years, unless the Commission extends the requirement via rulemaking. The Commission decided that it was not appropriate at the time “to require broadcasters to adhere to A/322 indefinitely,” explaining that “the ATSC 3.0 standard could evolve, and stagnant Commission rules could prevent broadcasters from taking advantage of that evolution.” In establishing a sunset for A/322 compliance, the Commission sought to “balance [its] goals of protecting consumers while promoting innovation.”

46. In its petition, NCTA repeats its and other commenters’ earlier argument that we should incorporate the A/322 standard into our rules without a sunset date.

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<sup>29</sup> NCTA contends in its petition that the Commission’s requirement to comply with the A/322 standard “arbitrarily lifts ... after five years.” Moreover, NCTA’s argument that there have been limited marketplace developments since 2017 applies equally to the A/322 standard sunset.

<sup>30</sup> The amendments to 47 CFR 73.682(f), including the incorporation of the A/322 standard, took effect on March 5, 2018, *i.e.*, 30 days after the rule’s publication in the Federal Register. We note that the rule incorrectly reflects a sunset date of February 2, 2023, instead of March 6, 2023, which date is five years from the effective date of the rule (pushed to the next business day). We take this opportunity to correct this mistake and amend 47 CFR 73.682(f) to reflect the true sunset date.

NCTA claimed that the Commission’s decision to sunset compliance with the A/322 standard was arbitrary. NCTA restated the Commission’s recognition that “device manufacturers and MVPDs may not be able to reliably predict what signal modulation a broadcast is using unless broadcasters are required to follow A/322” and asserted that the Commission “offer[ed] no compelling reason to believe that the need for that certainty will vanish in 2023.”

47. The Commission fully considered this issue in the *Next Gen TV Report and Order* and decided to require compliance with the A/322 standard only for a transitional period, after which the requirement will sunset absent Commission action to extend it. Because NCTA repeats arguments that have already been considered, we dismiss NCTA’s Petition on this issue. On alternative and independent grounds, we deny NCTA’s Petition on this issue because we disagree that the Commission erred. Thus, we affirm the decision in the *Next Gen TV Report and Order*. We reject NCTA’s claim that the Commission’s decision to sunset compliance with the A/322 standard was arbitrary. In establishing a sunset for A/322 compliance, the Commission sought to balance the competing goals raised in the record of providing certainty to device manufacturers, MVPDs, and consumers while promoting broadcaster innovation.<sup>31</sup> The Commission determined five years struck the right balance at the time to ensure stations had “a reasonable opportunity to implement Next Gen TV broadcasting” before the A/322 requirement sunsets. We expect that once broadcasters begin to implement the ATSC 3.0 standard in compliance with A/322, it will establish a measure of certainty for device manufacturers and MVPDs. Although device manufacturers, MVPDs, and consumers

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<sup>31</sup> The *Next Gen TV Report and Order* explained the Commission’s intent to “establish a period of certainty for manufacturers, MVPDs, and consumers that will prevent broadcasting standards from splintering and will speed the overall adoption of ATSC 3.0.”

may want continued certainty, we think at some point the rule must sunset to allow for broadcast innovation outside of the A/322 standard. Even when the rule sunsets, as a practical matter, broadcasters will have to coordinate with device manufacturers and MVPDs if they want to deviate from A/322 to ensure their broadcasts can be received and viewed on devices and MVPD systems. We also note that broadcasters have no incentive to change their implementation of ATSC 3.0 in a way that would render existing consumer equipment obsolete. Finally, consistent with our decision above concerning the “substantially similar” sunset, we will wait to consider the state of the marketplace a year before the rule sunsets to determine whether there is any need to extend it.

**B. High Definition (HD) Service and Notice to Viewers**

48. We dismiss and, on alternative and independent grounds, deny NCTA’s request to require broadcasters to simulcast ATSC 1.0 signals in high definition (HD) format to the extent they are currently broadcasting such signals in HD. We also dismiss and, on alternative and independent grounds, deny ATVA’s request to require a station to provide prior notice to viewers and MVPDs before changing its signal format or picture quality.

49. In its petition, NCTA repeats its earlier request in this proceeding to require Next Gen TV broadcasters that are currently broadcasting in HD to continue to provide HD service on 1.0 simulcast signals. NCTA asserts that the Commission erred in not doing so and by instead relying on broadcasters’ marketplace incentives.<sup>32</sup>

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<sup>32</sup> NCTA states that “[b]ecause a high definition (HD) ATSC 1.0 signal consumes more bandwidth than a standard definition ATSC 1.0 signal, there is reason to fear that broadcasters launching an ATSC 3.0 signal will have strong incentives to degrade their over-the-air HD ATSC 1.0 signal so that more streams can be squeezed into another 6 MHz channel.”

Specifically, NCTA contends that the Commission's acknowledgement in the *Next Gen TV Report and Order* that "stations may have less capacity for HD programming" because of local simulcasting partnerships "undermines [the Commission's] conclusion that a rule is unnecessary because broadcasters have 'market-based incentives' to continue to provide HD programming on the ATSC 1.0 signal." NCTA further contends that the *Next Gen TV Report and Order* "does not acknowledge the harms to consumers identified in [NCTA's] comments, much less explain why they are outweighed by a broadcaster's voluntary experimentation with ATSC 3.0."<sup>33</sup>

50. The Commission fully considered this issue in the *Next Gen TV Report and Order* and decided not to require Next Gen TV broadcasters that are currently broadcasting in HD to continue to provide HD service on 1.0 simulcast signals. Because NCTA repeats arguments that have already been considered, we dismiss NCTA's Petition on this issue. On alternative and independent grounds, we deny NCTA's Petition on this issue because we disagree that the Commission erred. Thus, we affirm the decision in the *Next Gen TV Report and Order*. As explained in the *Next Gen TV Report and Order*, the Commission's existing rules do not require broadcasters to provide their signals in HD and they can change format at any time.<sup>34</sup> We acknowledge that a broadcaster seeking to meet its community's demands for ATSC 3.0 service (including 4K or Ultra High Definition format) may choose to deploy ATSC 3.0 service, even if that means it will be able to air an ATSC 1.0 simulcast signal only in SD format. We also recognize that this

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<sup>33</sup> NCTA asserts that "if a broadcaster has voluntarily chosen to transmit its 1.0 signal in HD, it should not be allowed to downgrade that signal to SD at least in the initial phases of launching a 3.0 signal" because "[s]uch downgrading would deprive viewers of the programming to which they have become accustomed and would force them and MVPDs to incur costs to recapture the HD quality that they have come to expect."

<sup>34</sup> Although NCTA seeks the status quo for broadcasters currently broadcasting in HD, the status quo includes the right to change format at any time.

may mean that consumers who want to continue to receive HD programming will need to purchase a 3.0 converter device. However, we find such decisions would be a response to competitive marketplace conditions, not contrary to them. We agree with NAB that “broadcasters have strong market incentives to maintain HD service to the maximum extent possible.” Broadcasters that choose to deploy 3.0 service even though they will only be able to simulcast an ATSC 1.0 signal in SD will likely be doing so to meet consumer demands for 4K/UHD service and other enhancements, and we believe that broadcasters should have the flexibility to innovate and respond to marketplace demands.<sup>35</sup> We agree with broadcasters that mandating HD format for 1.0 simulcasts could hamper the deployment of 3.0 service to communities in which there is significant market demand for such service. We thus decline to substitute our own judgment for that of local television stations that best know their communities’ needs. Accordingly, we remain unpersuaded that new rules are needed to mandate HD service on simulcasts.

51. In its Petition, ATVA asks the Commission to reconsider its decision not to require stations to provide prior notice to viewers and MVPDs before changing their signal formats on their 1.0 simulcasts.<sup>36</sup> The Commission fully considered this issue in the *Next Gen TV Report and Order* and decided not to require stations to provide such notice. Because ATVA repeats arguments that have already been considered, we dismiss ATVA’s Petition on this issue. We also reject ATVA’s argument that its request involves a new fact that justifies reconsideration. ATVA contends that the Commission’s decision not to require prior notice in this regard “constitutes a ‘material fact’ that was

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<sup>35</sup> As Pearl TV explains, “[l]ocal stations will consider the types of technology their viewers have and their viewers’ appetite for various options as they weigh the trade-offs of different deployment approaches.”

<sup>36</sup> We note that this issue was raised by another commenter in this proceeding.

‘not known’ to ATVA until the Order was released” because the draft order the Commission circulated a few weeks before it adopted the final Order would have required broadcasters to provide such notice. We disagree. A draft order the Commission circulates before adopting a final order is not binding. We agree with NAB that “ATVA’s suggestion that any changes from the draft to the final order serve as a basis for reconsideration would be an unworkable standard that would greatly burden the Commission and its staff.” Given that another commenter was able to make the argument in favor of a notice requirement for HD service, we see no reason ATVA could not have done so as well.

52. On alternative and independent grounds, we deny ATVA’s Petition on this issue and affirm our findings on this issue in the *Next Gen TV Report and Order*. As discussed in the *Next Gen TV Report and Order*, broadcasters may have legitimate market incentives to deploy 3.0 service even though they will only be able to simulcast in SD. In these situations, viewers will continue to receive 1.0 service in SD, as is required by our rules, so we see no need for notice requirements like those mandated for stations that relocate their ATSC 1.0 signals. Instead, we will rely on broadcasters’ market incentives to inform viewers how they can receive Next Gen TV service enhancements.<sup>37</sup> To the extent MVPDs are concerned, there is nothing to prevent them from providing notice to their subscribers that a station’s channel is no longer being provided in HD as a result of the broadcasters’ decision to deploy 3.0 service.

### **C. LPTV/Translator Exemption**

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<sup>37</sup> We note that there is nothing in our rules that prohibits stations changing their signal format without notice. Indeed, ATVA concedes as much. ATVA contends that the ATSC 3.0 transition represents a special case in which broadcasters may have an incentive to degrade their signals. We are not persuaded and see no reliable record evidence to suggest that broadcasters are likely to change signal formats in the manner that ATVA suggests.

53. We dismiss and, on alternative and independent grounds deny, ATVA's request that the Commission reconsider its decision in the *Next Gen TV Report and Order* to exempt LPTV and TV translator (LPTV/translator) stations from the local simulcasting requirement.

54. In its Petition, ATVA repeats its earlier opposition to permitting LPTV/translator stations to transition directly to ATSC 3.0 and contends that this decision constituted "material error." (ATVA argues that "allowing low power stations to flash-cut causes exactly the same harm as does allowing full power stations to flash cut – especially since a large and increasing number of stations maintain major-network affiliations.") The Commission fully considered this issue in the *Next Gen TV Report and Order* and, based on the record, decided to exempt such stations from the local simulcasting requirement. Because ATVA repeats arguments that have already been considered, we dismiss ATVA's Petition on this issue. On alternative and independent grounds, we deny ATVA's Petition on this issue because we disagree that the Commission erred in this regard and affirm the decision in the *Next Gen TV Report and Order*. In addition, we reject ATVA's contention that the Commission should adopt a waiver approach for LPTV/translator stations instead of maintaining a blanket exemption. We continue to believe that a class-based exemption from the simulcast requirement for LPTV/translator stations is more appropriate in this situation than the waiver approach suggested by ATVA. As ATVA concedes, a waiver process for LPTV/translator stations would be an inefficient and burdensome means of providing widespread relief to LPTV/translator stations. Such a process would slow deployment of 3.0 service to the public, and, ultimately, is unnecessary because we can rely on market incentives to

protect viewers against significant LPTV/translator service loss.

55. In any case, ATVA appears to be primarily concerned with precluding direct transitions by LPTV/translator stations that are affiliated with a Big-4 network (i.e., ABC, CBS, FOX, NBC).<sup>38</sup> According to staff review of S&P data on February 19, 2020, only about 2.5 percent of LPTV stations are affiliated with a Big-4 network.<sup>39</sup> We agree with LPTV/translator commenters that requiring thousands of simulcast waiver requests because of a limited number of Big-4 affiliated LPTV/translator stations that might choose to transition directly to ATSC 3.0 would be inefficient and unnecessarily burdensome for both LPTV/translator stations as a whole and Commission staff who would need to process potentially thousands of such requests. Moreover, even if some of these Big-4 network affiliated stations have greater viewership and resources than unaffiliated LPTV/translator stations, it still would be the exception rather than the rule that an LPTV/translator station would both be able to find a suitable simulcast partner and to afford simulcasting.<sup>40</sup> We agree with LPTV/translator commenters that LPTV/translator stations affiliated with a Big-4 network will have strong market

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<sup>38</sup> ATVA acknowledges that a waiver process would “increase costs and burdens on low power broadcasters at least to some extent” and therefore states that it would “not object to reasonable steps to relieve such burdens for LPTV/translator stations unaffiliated with a Big Four network, such as presumptions in favor of waivers in certain cases, shot-clocks, and paperwork simplification.” We note that ATVA previously argued in its reply comments and an *ex parte* to the *Next Gen TV NPRM* that it took “no position” on whether the simulcast requirement should apply to an LPTV/translator or Class A TV station, if such station “is not carried by any MVPD, is not required to be carried by any MVPD under the must-carry statute, and remains unaffiliated with any network.”

<sup>39</sup> According to staff review of S&P data on February 19, 2020, about 46 of the 1,892 LPTV stations are affiliated with a Big-4 network. We note that this data is consistent with the data provided by ATVA, which stated, based on its review of 2017 SNL Kagan data, that about 55 LPTV and Class A stations were affiliated with a Big-4 network in September 2017. (As we do not exempt Class A stations, we did not include the 14 of 387 Class A stations affiliated with a Big-4 network in our total.) We note that the *Next Gen TV Report and Order* incorrectly indicated that there were 258 LPTV stations in September 2017. In fact, there were 1,964 LPTV stations in September 2017.

<sup>40</sup> This is because LPTV/translator stations generally serve rural, remote, and isolated areas that are not served by other stations. Indeed, as PTV points out, such is the nature and purpose of TV translators.

incentives to maintain 1.0 service because of their reliance on advertising revenues. Consequently, we agree with the LPTV/translator groups that “[o]ut of necessity these few LPTV/translator stations [affiliated with top four networks] will simulcast voluntarily if and when they transition to ATSC 3.0,” a consideration that lends further support to our prior conclusion that a class-based exemption for LPTV/translator stations is more appropriate than a waiver process.

56. Finally, we also agree with LPTV/translator commenters that LPTV/translator stations would better serve their role as initial 3.0 hosts for full power stations if they were immediately available through an exemption, rather than having to request a waiver prior to becoming available to serve as 3.0 hosts. Indeed, Alliance points out that the costs and uncertainty of a waiver process would not only slow 3.0 deployment, but also potentially dissuade LPTV/translator stations from seeking such relief.

#### **D. Retransmission Consent Issues**

57. We dismiss and, on alternative and independent grounds deny, the requests by ATVA and NCTA to adopt new rules related to the voluntary carriage of 3.0 signals through retransmission consent. Specifically, ATVA repeats its request to require separate negotiations for first-time carriage of ATSC 3.0 signals, and NCTA repeats its request to prohibit broadcasters from using retransmission consent negotiations to obtain carriage of their ATSC 3.0 signals by withholding the ATSC 1.0 signal.

58. ATVA and NCTA merely repeat their earlier concerns that Next Gen TV broadcasters could use the retransmission consent process to compel carriage of 3.0 signals before consumer demand and market circumstances warrant. ATVA contends

that it was a “material error” for the Commission not to require separate negotiations for first-time MVPD carriage of ATSC 3.0 signals. NCTA contends that it “makes no sense” for the Commission to have concluded that it is premature to address any issues that may arise with respect to the voluntary carriage of ATSC 3.0 signals, saying MVPDs are at risk now of having to “prematurely invest in ATSC 3.0 technology.” ATVA also disagrees with the Commission that it is premature to address such issues, citing some examples it previously provided in the proceeding where broadcasters have already begun to seek bundling arrangements in contract negotiations.

59. The Commission fully considered this issue in the *Next Gen TV Report and Order* and declined to adopt new rules related to the voluntary carriage of 3.0 signals through retransmission consent. We agree with NAB that “NCTA and ATVA offer nothing more in their petitions than a summary of their previous arguments.” Because NCTA and ATVA repeat arguments that have already been considered, we dismiss their Petitions on this issue. On alternative and independent grounds, we deny the NCTA and ATVA Petitions on this issue because we disagree that the Commission erred in this regard and affirm the decision in the *Next Gen TV Report and Order*. We continue to believe that it is premature to address any issues that may arise with respect to the voluntary carriage of ATSC 3.0 signals before broadcasters begin widespread transmission in this new voluntary standard. Determining whether our retransmission consent rules have been violated in the context of a particular negotiation is inherently a fact-specific inquiry. There is no basis in this record for us to adopt rules of general applicability. To the extent a cable operator or satellite carrier believes that the Commission’s retransmission consent rules have been violated, they may file a

complaint.

**E. Patent Issue**

60. We dismiss and, on alternative and independent grounds deny, NCTA's request to reconsider the Commission's decision in the *Next Gen TV Report and Order* not to require that patents relevant to the ATSC 3.0 standard must be licensed on a reasonable and non-discriminatory (RAND) basis.<sup>41</sup> The Commission fully considered this issue in the *Next Gen TV Report and Order* and rejected requests for such a requirement. Because NCTA's arguments have already been considered, we dismiss their Petitions on this issue.

61. On alternative and independent grounds, we deny NCTA's Petitions on this issue and affirm the decision in the *Next Gen TV Report and Order*. We disagree with NCTA's contention that the Commission's decision not to require RAND licensing for standards-essential patents is inconsistent with the Commission's decision approving the current DTV standard, ATSC 1.0. Although we do not believe that different approaches in the two contexts would necessarily be a cause for reconsideration, especially because ATSC 3.0 is voluntary at this time, we agree with NAB and ONE Media that the decision is consistent with the Commission's decision in the DTV context. In the order adopting the ATSC 1.0 standard for digital television broadcasting, the Commission stated that it did not believe that licensing of the patents for the ATSC standard would impede the development of DTV products. The Commission also stated that the adoption of the standard was "premised" on "reasonable and non-discriminatory" licensing, but determined that Commission rules were not necessary. The Commission

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<sup>41</sup> NCTA repeats its earlier request in this proceeding for the Commission to require RAND licensing.

emphasized that if a problem with patent licensing arises and is brought to the Commission's attention, it would "consider it and take appropriate action." Similarly, in the *Next Gen TV Report and Order*, the Commission observed that the ATSC requires a commitment to RAND licensing and stated that it would "monitor how the marketplace handles patent royalties for essential patents." Thus, we find the two decisions are consistent.

## **V. PROCEDURAL MATTERS**

### **A. Final Regulatory Flexibility Act Analysis.**

62. As required by the Regulatory Flexibility Act of 1980 (RFA), as amended, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Further Notice of Proposed Rulemaking in this proceeding. The Federal Communications Commission (Commission) sought written public comment on the proposals in the FNPRM, including comment on the IRFA. The Commission received no comments in response to the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA. We note that this FRFA addresses only the matters considered in the Second Report and Order portion of the Second Report and Order and Order on Reconsideration. No FRFA is necessary for the Order on Reconsideration portion. The only rule revisions adopted in the Order on Reconsideration are made to accurately reflect the sunset dates adopted in the 2017 Order. Because these rule changes are editorial and non-substantive, we find good cause to conclude that notice and comment are unnecessary for their adoption. Because these revisions do not require notice and comment, the Regulatory Flexibility Act does not apply to these changes. We also note that a FRFA adopting these sunset dates was included with the 2017 Order.

**1. Need for, and Objectives of, the Report and Order.**

63. In the first *Next Gen TV Report and Order*, the Commission authorized television broadcasters to use the Next Gen TV transmission standard, also called “ATSC 3.0” or “3.0,” on a voluntary, market-driven basis. ATSC 3.0 is the new TV transmission standard developed by the Advanced Television Systems Committee as the world’s first Internet Protocol (IP)-based broadcast transmission platform. The Commission determined in the *Next Gen TV Report and Order* that broadcasters that deploy ATSC 3.0 generally must continue to deliver current-generation digital television (DTV) service, using the ATSC 1.0 transmission standard, also called “ATSC 1.0” or “1.0,” to their viewers through local simulcasting. Specifically, the Commission required full power and Class A TV stations deploying ATSC 3.0 service to simulcast the primary video programming stream of their ATSC 3.0 channel in an ATSC 1.0 format.

64. The Commission determined in the *Next Gen TV Report and Order* that the local simulcasting requirement is crucial to the deployment of Next Gen TV service in order to minimize viewer disruption. This is because the Next Gen TV standard is not backward-compatible with existing TV sets or receivers, which have only ATSC 1.0 and analog tuners. This means that consumers will not be able to view ATSC 3.0 transmissions on their existing televisions without additional equipment. Thus, it is critical that Next Gen TV broadcasters continue to provide service using the current ATSC 1.0 standard to deliver DTV service while the marketplace adopts devices compatible with the new 3.0 transmission standard in order to avoid either forcing viewers to acquire new equipment or depriving them of television service. Because a TV station cannot, as a technical matter, broadcast in both 1.0 and 3.0 format from the same

facility, local simulcasting will be effectuated through voluntary partnerships that broadcasters that wish to provide Next Gen TV service must enter into with other broadcasters in their local markets. Next Gen TV broadcasters must partner with another television station (i.e., a temporary “host” station) in their local market to either: (1) air an ATSC 3.0 channel at the temporary host’s facility, while using their original facility to continue to provide an ATSC 1.0 simulcast channel, or (2) air an ATSC 1.0 simulcast channel at the temporary host’s facility, while converting their original facility to the ATSC 3.0 standard in order to provide a 3.0 channel.

65. The Commission in the *Next Gen TV Report and Order* established a process for considering applications to deploy ATSC 3.0 service, which included, among other requirements, establishing coverage requirements for a Next Gen TV station’s ATSC 1.0 simulcast signal. The Commission’s ATSC 1.0 simulcast coverage requirement sought to minimize disruption to viewers resulting from the voluntary deployment of ATSC 3.0 by recognizing that if a station moves its ATSC 1.0 signal to a partner simulcast host station with a different transmitter location, some existing over-the-air (OTA) viewers may no longer be able to receive the 1.0 signal. Among other obligations, the Commission required the Next Gen TV station to select a partner 1.0 simulcast host station that is assigned to its same DMA and from which it would continue to provide ATSC 1.0 simulcast service to its entire community of license.

66. While the Commission’s rules require that all full power and Class A TV stations that convert their existing facility to ATSC 3.0 are required to provide an ATSC 1.0 simulcast signal that covers a station’s entire community of license, the Commission recognized that in certain circumstances such an arrangement may not be viable and in

order to facilitate the voluntary deployment of ATSC 3.0 service established a waiver standard for the ATSC 1.0 simulcast requirement. Specifically, the Commission stated that it would favor requests for waiver of the obligation to provide ATSC 1.0 simulcast service if the station can demonstrate both that (1) it has “no viable local simulcasting partner” in its market; and (2) it will “make reasonable efforts to preserve 1.0 service to existing viewers in its community of license and/or otherwise minimize the impact on such viewers (for example, by providing free or low cost ATSC 3.0 converters to viewers).” Specifically, the Commission stated it would consider waiver requests from full power and Class A TV stations to transition directly from ATSC 1.0 to ATSC 3.0 service on the station’s existing facility without providing an ATSC 1.0 simulcast service at all. Alternatively, a station may request a waiver of the ATSC 1.0 simulcast requirement so it could air an ATSC 1.0 simulcast signal from a partner simulcast host that does not cover all or a portion of the station’s community of license or can provide only a lower signal threshold over the station’s community of license than that required by the rules.

67. In the *Next Gen TV Further Notice*, the Commission sought comment on three topics relating to local simulcasting rules. First, it sought further comment on issues related to waivers of, and exemptions from, the local simulcasting requirement. In particular, the Commission sought comment on whether further guidance should be provided about the circumstances in which it would grant such a waiver, including how to define whether a station has “no viable local simulcasting partner” and whether a station has taken “reasonable efforts to preserve service and/or minimize impact on viewers.” Second, the *Next Gen TV Further Notice* sought further comment on whether

to let full power broadcasters use channels in the television broadcast band that are vacant to facilitate the transition to ATSC 3.0. Third, it tentatively concluded that local simulcasting should not change the “significantly viewed status” of a Next Gen TV station for purposes of determining MVPD carriage.

68. In the Second Report and Order, we address the three issues raised in the *Next Gen TV Further Notice*. First, we provide guidance on how Commission staff will evaluate petitions for waiver of our local simulcasting rules. Second, we decline at this time to permit broadcasters to use vacant in-band channels for purposes of voluntary ATSC 3.0 deployment. Third, we adopt our tentative conclusion that the significantly viewed status of a Next Gen TV station should not change if it moves its ATSC 1.0 simulcast channel to a host facility.

## **2. Summary of Significant Issues Raised by Public Comments in Response to the IRFA.**

69. There were no comments filed that specifically addressed the rules and policies proposed in the IRFA.

## **3. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration.**

70. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

## **4. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.**

71. The types of small entities that may be affected by the Second Report and Order fall within the following categories: (1) Wired Telecommunications Carriers;

Cable Companies and Systems (Rate Regulation); (2) Cable System Operators (Telecom Act Standard); (3) Direct Broadcast Satellite Service; (4) Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs); (5) Home Satellite Dish (HSD) Service, (6) Open Video Services; (7) Wireless Cable Systems – Broadband Radio Service and Educational Broadband Service; (8) Incumbent Local Exchange Carriers (ILECs) and Small Incumbent Local Exchange Carriers; Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing; (9) Audio and Video Equipment Manufacturing; (10) and Television Broadcasting.

**5. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements.**

72. The Second Report and Order imposes no new reporting, recordkeeping or other compliance requirements beyond those already established in the first *Next Gen TV Report and Order*.

**6. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered.**

73. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.”

74. As an initial matter, the decision to deploy ATSC 3.0 service is a voluntary choice for each broadcaster. For this reason, broadcasters, including small entities, do not need to undertake any costs or burdens associated with providing ATSC 3.0 service unless they choose to do so.

75. *Local Simulcasting Waivers.* The first *Next Gen TV Report and Order* established a waiver standard for the local simulcast requirement. Specifically, the Commission stated that it would favor requests for waiver of the obligation to provide ATSC 1.0 simulcast service if the station can demonstrate both that (1) it has “no viable local simulcasting partner” in its market; and (2) it will “make reasonable efforts to preserve 1.0 service to existing viewers in its community of license and/or otherwise minimize the impact on such viewers (for example, by providing free or low cost ATSC 3.0 converters to viewers).” The Second Report and Order provides additional guidance on how Commission staff will evaluate requests for waiver of the local simulcasting rules. The waiver process provides broadcast television stations, including small entities, with an alternative means of deploying ATSC 3.0 service in a manner that would still achieve the purpose of the local simulcasting requirement. The Second Report and Order clarifies but does not adopt any new rules with respect to the waiver standard. By clarifying the circumstances in which a waiver request might be granted, the Commission is seeking to provide predictability to broadcasters, including small entities, which should reduce costs for broadcasters contemplating seeking waivers. In the Second Report and Order, the Commission considered whether to exempt noncommercial educational (NCE) TV stations and Class A TV stations from the local simulcasting requirement. The Commission decided against affording an exemption for these entities, preferring instead

to rely on the waiver standard to afford these stations with any additional flexibility.

76. *Temporary Use of Vacant Channels.* In the Second Report and Order, the Commission declined to adopt new rules to allow full power broadcasters to use vacant channels in the television broadcast band as transition channels in order to facilitate the deployment to ATSC 3.0 service. Accordingly, the Second Report and Order does not create or change rules in this regard.

77. *Significantly Viewed Status of Next Gen TV Stations.* In the Second Report and Order, the Commission decided that the significantly viewed status of a Next Gen TV station should not change if it moves its ATSC 1.0 simulcast channel to a temporary host facility. Under this proposal, a commercial television station that relocates its 1.0 simulcast channel could not seek to gain significantly viewed status in new communities or counties and such station could not lose significantly viewed status in communities or counties for which it qualified prior to the move of its 1.0 simulcast channel. By maintaining the status quo in the significantly viewed context with respect to ATSC 1.0 simulcast signals, the Commission avoids complications and disruptions to MVPDs and broadcasters, including small entities. The Commission reasoned that any changes in significantly viewed status due to local simulcasting would be temporary, and this approach will avoid disruptions to cable and satellite television viewers who have come to rely on such signals. This approach will not impose new mandatory carriage burdens on MVPDs and avoids burdening MVPDs with numerous changes to their carriage obligations.

**B. Final Paperwork Reduction Act Analysis.**

78. This document does not contain new or modified information collection

requirements subject to the Paperwork Reduction Act of 1995 (PRA), Pub. L. 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002 (SBPRA), Pub. L. 107-198, *see* 44 U.S.C. 3506(c)(4).

**C. Congressional Review Act.**

79. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that this rule is “non-major” under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of the Order to Congress and the Government Accountability Office, pursuant to 5 U.S.C. 801(a)(1)(A).

**D. Additional Information.**

80. For additional information, contact Evan Baranoff, [Evan.Baranoff@fcc.gov](mailto:Evan.Baranoff@fcc.gov), of the Media Bureau, Policy Division, (202) 418-7142. Direct press inquiries to Janice Wise at (202) 418-8165.

**VI. ORDERING CLAUSES**

81. **IT IS ORDERED**, pursuant to the authority found in sections 1, 4, 7, 301, 303, 307, 308, 309, 316, 319, 325(b), 336, 338, 399b, 403, 534, and 535 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 157, 301, 303, 307, 308, 309, 316, 319, 325(b), 336, 338, 399b, 403, 534, and 535, this Second Report and Order and Order on Reconsideration **IS HEREBY ADOPTED**, effective thirty (30) days after the date of publication in the *Federal Register*.

82. **IT IS FURTHER ORDERED** that the Commission’s Rules **ARE**

**HEREBY AMENDED** as set forth in Appendix B and **WILL BECOME EFFECTIVE** 30 days after publication in the *Federal Register*.

83. **IT IS FURTHER ORDERED** that pursuant to sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 405, and § 1.429 of the Commission's rules, 47 CFR 1.429, NCTA's and ATVA's Petitions for Reconsideration are **DISMISSED** and, on alternative and independent grounds, **DENIED**.

84. **IT IS FURTHER ORDERED** that the Commission **SHALL SEND** a copy of this Second Report and Order and Order on Reconsideration in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

**List of Subjects in 47 CFR Parts 73 and 74**

Communications equipment, Television.  
Federal Communications Commission.

**Marlene Dortch,**  
*Secretary.*

## Final Rules

For the reasons stated in the preamble, the Federal Communications Commission amends 47 CFR parts 73 and 74 as follows:

### **PART 73– RADIO BROADCAST SERVICES**

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, and 339.

#### **§ 73.682 [Amended]**

2. Amend § 73.682(f)(2) by removing “February 2, 2023” and adding in its place “March 6, 2023”.

3. Amend § 73.3801 by adding paragraph (b)(3) to read as follows:

#### **§ 73.3801 Full Power Television Simulcasting During the ATSC 3.0 (Next Gen TV)**

##### **Transition.**

\* \* \* \* \*

(b) \* \* \*

- (3) The “substantially similar” requirement in paragraph (b)(1) of this section will sunset on July 17, 2023.

\* \* \* \* \*

4. Amend § 73.6029 by adding paragraph (b)(3) to read as follows:

#### **§ 73.6029 Class A Television Simulcasting During the ATSC 3.0 (Next Gen TV)**

##### **Transition**

\* \* \* \* \*

(b) \* \* \*

- (3) The “substantially similar” requirement in paragraph (b)(1) of this section will sunset

on July 17, 2023.

\* \* \* \* \*

**PART 74 – EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST  
AND OTHER PROGRAM DISTRIBUTIONAL SERVICES**

5. The authority for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 307, 309, 310, 336, and 554.

6. Amend § 74.782 by adding paragraph (b)(3) to read as follows:

**§ 74.782 Low Power Television and TV Translator Simulcasting During the ATSC**

**3.0 (Next Gen TV) Transition**

\* \* \* \* \*

(b) \* \* \*

(3) The “substantially similar” requirement in paragraph (b)(1) of this section will sunset on July 17, 2023.

\* \* \* \* \*

[FR Doc. 2020-13837 Filed: 7/16/2020 8:45 am; Publication Date: 7/17/2020]