

ALERT

FCC Adopts ATSC 3.0 Multicast Licensing Rules, Extends “Substantially Similar” and A/322 Sunsets

June 26, 2023

On June 23, 2023, the Federal Communications Commission (FCC or Commission) released a Third Report and Order (Order) in its Next Generation Broadcast Television (ATSC 3.0 or Next Gen TV) docket, as well as a Fourth Further Notice of Proposed Rulemaking (FNPRM).

The Order adopts the agency’s proposal in a 2021 FNPRM to allow a Next Gen TV station to seek modification of its license to include certain of its non-primary video programming streams (i.e., multicast streams) that are aired on “host” stations during the Next Gen TV transition, and extends the sunsets for the “substantially similar” programming rule for simulcast streams and the requirement to comply with the ATSC A/322 standard on primary ATSC 3.0 streams until at least July 17, 2027. Meanwhile, the FNPRM seeks comment on the current marketplace for ATSC 3.0 Standard Essential Patents (SEPs) and whether the Commission should adopt rules to require essential patent holders in ATSC 3.0 technology to commit to licensing them on reasonable and non-discriminatory (RAND) terms.

We have provided an overview of the Order and the FNPRM below.

Background

In authorizing broadcasters to use ATSC 3.0 on a voluntary, market-driven basis in 2017, the Commission required that a broadcaster deploying ATSC 3.0 service generally continue to air at least its primary stream using the current-generation ATSC 1.0 TV transmission standard through a local simulcasting (or “hosting”) arrangement with another station in its market, so as to minimize viewer disruption. Per

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the Commission’s rules, Next Gen TV broadcasters are also encouraged, but not required, to simulcast their 3.0 multicast streams in a 1.0 format.

In 2020, the National Association of Broadcasters filed a Petition for Declaratory Ruling and Petition for Rulemaking asking the Commission to allow Next Gen TV stations to seek modification of their licenses to include certain of their multicast streams on host stations during the transition to ATSC 3.0. In response, the Commission issued the 2021 FNPRM, which proposed to allow Next Gen TV stations to include these streams within their license, using the same licensing framework and, to a large extent, the same regulatory regime established for the simulcast of primary video programming streams on host stations.

The 2017 rules also required that a Next Gen TV station’s ATSC 1.0 simulcast be “substantially similar” to that of the primary video programming stream on the ATSC 3.0 channel—meaning that programming must be the same except for advertisements, promotions for upcoming programs, and programming features that are based on ATSC 3.0 capabilities—and that Next Gen TV stations comply with the A/322:2016 (A/322) portion of the ATSC 3.0 suite of standards, which defines the waveforms that ATSC 3.0 signals may take. However, the Commission determined that, absent an extension, these requirements would sunset on July 17, 2023 and March 6, 2023, respectively.

Multicasting Licensing Regime

In the Order, the Commission established a licensing regime for Next Gen TV stations’ multicast streams that are aired on host stations during the ATSC 3.0 transition. Highlights from the Commission’s decision include:

1. A Next Gen TV station may seek modification of its license to include one or more of its multicast streams, hosted by one or more partner stations, whenever the Next Gen TV station is airing that multicast stream in a “substantially similar” fashion in both 1.0 and 3.0 formats. The “substantially similar” requirement in this context will apply for as long as it applies to primary simulcasts.
2. A Next Gen TV station broadcasting in ATSC 3.0 on its own channel will now be able to seek modification of its license to include one or more 1.0 multicast streams aired on a ATSC 1.0 host or hosts, even when it is not simulcasting that multicast stream on a paired stream in a 3.0 format.

A Next Gen TV station seeking to license multiple ATSC 1.0 multicast streams as authorized above must demonstrate that it is not licensing more capacity on partner host stations, in the aggregate, than the station could use if it were still operating its own facility in ATSC 1.0.

Significantly, despite strong support from most broadcasters, the Commission declined to adopt a rule authorizing same service (or “lateral”) hosting arrangements—i.e., situations where a Next Gen TV station still operating its own facility in ATSC 1.0 and serving as a ATSC 1.0 host for another Next Gen TV station that converted its facility to ATSC 3.0 seeks to relocate one or more of its own multicast streams to another ATSC 1.0 host station. The Commission noted, however, that it will entertain requests for special temporary authority for such arrangements and may revisit this decision later.

The Commission will generally apply the same rules to simulcast and non-simulcast licensed multicast streams as it currently applies to primary simulcast streams. Thus, upon grant of a license modification application to implement a multicast stream hosting arrangement, each of the originating station’s multicast streams aired as a guest stream on a host will be licensed as an additional temporary channel of the originating broadcaster, and each of the originating station’s guest multicast streams aired on a host will be considered to be an additional, separately authorized channel under the originating station’s single, unified license. In addition, ATSC 1.0 multicast streams aired on a host channel must continue to cover the guest station’s entire community of license and the host station must be assigned to the same designated market area (DMA) as the originating station. For ATSC 3.0 multicast streams aired on a host channel, only the DMA requirement applies. These rules will apply until and unless the Commission eliminates the mandatory local simulcasting requirement.

The Commission also confirmed that hosting multicast streams on a temporary host station’s facility will not result in attribution under the agency’s broadcast ownership rules and does not change those existing rules in any substantive way.

Sunsets

The Commission elected to retain both the “substantially similar” rule and the A/322 requirement and extend their sunset dates to July 17, 2027.

With regard to the “substantially similar” rule, the Commission found that the requirement is still needed to protect over-the-air viewers who rely on ATSC 1.0. As for the A/322 requirement, the Commission explained that the rule remains essential at this time for protecting both innovators and investors in the ATSC 3.0 space, allowing for the development and purchase of equipment with confidence.

According to the Order, the Commission will initiate a review approximately one year before these rules are set to expire to seek comment on whether they should be extended.

Further Notice of Proposed Rulemaking

With the FNPRM, the Commission seeks comment on the current marketplace for ATSC 3.0 SEPs and the ability of third parties to develop products that rely upon them. Specific questions include:

1. Are SEP holders complying with the ATSC RAND patent licensing requirement?
2. Does the Commission have the authority to impose RAND requirements on ATSC 3.0 patent licenses?
3. If the Commission were to find problems in the SEP marketplace that could be ameliorated by the application of RAND requirements, how could those requirements be crafted to minimize potential adverse economic impact and maximize opportunity for participation in the ATSC market?

Looking Ahead

The Commission’s new multicast licensing rules will become effective 30 days after publication in the Federal Register, while the “substantially similar” and A/322 rules will remain in effect as they have been since 2017. Comments and reply comments on the FNPRM will be due 60 and 90 days after publication in the Federal Register, respectively.

If you have any questions about the Commission’s new rules or are interested in filing comments in response to the FNPRM, please contact one of the attorneys listed on this alert or your usual Wiley contact.