

ALERT

FCC Authorizes Voluntary Transition to ATSC 3.0

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On November 20, 2017, the Federal Communications Commission (FCC or Commission) released a Report & Order (Order) authorizing television broadcasters to use the Next Gen TV standard (a/k/a ATSC 3.0) on a voluntary, market-driven basis. The Order also includes a Further Notice of Proposed Rulemaking (FNPRM) that seeks further comment on three specific issues related to the ATSC 3.0 rules adopted in the companion Order. Comments are due 60 days after publication of the FNPRM in the Federal Register, and replies are due 30 days thereafter. The Next Gen TV rules adopted by the Order will become effective 30 days after Federal Register publication, except for a handful of rules that contain new or modified information collection requirements that require OMB approval. These few rules will become effective after OMB approval is obtained. The key points of the Order and FNPRM are summarized below.

Voluntary Use

The Order authorizes television broadcasters to transmit using the ATSC 3.0 transmission standard on a voluntary, market-driven basis. Accordingly, broadcasters are permitted, but not required, to transmit Next Gen TV signals provided they comply with all FCC rules applicable to such signals. Broadcasters could, therefore, opt to continue transmitting their signals solely in the currently authorized ATSC 1.0 transmission standard.

Local Simulcasting

The Order requires broadcasters choosing to implement Next Gen TV operations to air a local simulcast of the primary video programming stream of their ATSC 3.0 channel in the current ATSC 1.0 format. Next

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Gen TV broadcasters must partner with another station (i.e., a “host” station) in their local market to either (1) air an ATSC 3.0 channel at the 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 host’s facility, while converting their original facility to the ATSC 3.0 standard in order to provide a 3.0 channel. The local simulcasting requirement only applies to the primary video programming stream aired by Next Gen TV broadcasters on their ATSC 3.0 channels. Broadcasters will have discretion to select the primary stream for purposes of local simulcasting, but the Order notes the FCC’s belief that broadcasters will elect the programming stream that contains network programming for network affiliates or the station’s most popular programming for non-network stations.

The Order specifies that a station may select a simulcast partner without regard to the station’s class. Thus, a full power station could partner with one or more other full power stations or with one or more Class A, LPTV, or TV translator stations. The Order also permits non-commercial educational (NCE) stations to participate in simulcast arrangements with commercial stations. In such arrangements, the non-commercial educational station would retain its NCE status and continue to comply with the rules applicable to NCE licensees.

The Order specifies certain items that must be addressed in simulcast agreements, namely, each station’s rights and responsibilities in the following areas: (1) access to facilities, including whether each licensee will have unrestricted access to the shared transmission facilities; (ii) allocation of capacity within the shared channel; (iii) operation, maintenance, repairs, and modification of facilities, including a list of all relevant equipment, a description of each party’s financial obligations, and any relevant notice provisions; (iv) the conditions under which the simulcast agreement may be terminated, assigned or transferred; and (v) how a guest’s signal may be transitioned off the host station. Simulcast agreements need not be submitted to the Commission but broadcasters should maintain written copies so as to be able to provide them to the agency upon request.

The “Substantially Similar” Requirement

The Order requires that programming aired on a broadcaster’s ATSC 1.0 simulcast channel must be “substantially similar” to the primary video programming stream aired on the ATSC 3.0 channel. “Substantially similar” means that the programming must be the same, except for programming features that are based on the enhanced capabilities of ATSC 3.0 (e.g., geo-targeted weather, targeted emergency alerts, and hyper-local news), advertisements, and promotions for upcoming programs. The Order also provides an exception for instances where broadcasters are able to obtain the rights to air the 1.0 version of a program but not the 3.0 version of the program. In such cases, broadcasters may air that program on their 1.0 simulcast stream and a different program on their 3.0 primary stream. The Commission will not consider programming that airs at a different time on the 1.0 simulcast channel than on the 3.0 primary channel to be “substantially similar.” In the Order, the Commission declined to adopt any requirements regarding the format of the 1.0 simulcast signal, emphasizing that stations may broadcast as they see fit in either a high-definition or standard-definition format.

Coverage Requirements

The coverage that a broadcaster's signal must maintain depends upon whether the broadcaster is relocating its 1.0 or 3.0 signal. The 1.0 simulcast signal of a full power station that relocates its 1.0 simulcast signal to a host station must retain and continue to cover the station's community of license and be assigned to the same DMA as the originating station. In determining whether to grant a simulcast application for such a station, the Commission will consider "more favorably" simulcast arrangements with a service loss of no more than five percent of the population served by the station and will provide expedited processing of such applications. Broadcasters that do not satisfy the 95% population coverage threshold will be required to make a more detailed showing regarding their proposed simulcasting partnership than those that do meet the standard.

The Commission generally expects to process applications that do not qualify for expedited processing within 60 business days after public notice of the filing is provided. In addition to information regarding any population that will lose 1.0 service as a result of the simulcast arrangement, such applications must contain the following information: (1) whether there is another possible simulcast partner(s) in the market that would result in less 1.0 service loss to existing viewers and, if so, why the Next Gen TV broadcaster chose to partner with a station creating a larger service loss; (2) what steps, if any, the station plans to take to minimize the impact of the 1.0 service loss (e.g., providing ATSC 3.0 dongles, set-top boxes, or gateway devices to viewers in the loss area); and (3) the public interest benefits of the simulcast arrangement and a showing of why the station believes the benefits of granting the application outweigh the harms.

A Next Gen TV broadcaster that elects to continue broadcasting in ATSC 1.0 from its existing location and transmit an ATSC 3.0 signal from a host location may establish 3.0 service anywhere within the same DMA as the broadcaster's existing station. The extent to which the population served by such a station overlaps with the population served by the existing ATSC 1.0 station is irrelevant.

A Class A station that proposes to move its 1.0 signal (1) must maintain overlap between the protected contour of its existing and proposed 1.0 signals and (2) may not relocate its 1.0 simulcast signal more than 30 miles from the reference coordinates of the relocating station's antenna location. LPTV and TV translator stations are exempt from the local simulcasting requirement and will be permitted to transition directly from ATSC 1.0 to ATSC 3.0 service. However, if an LPTV or TV translator station elects to simulcast and to move its 1.0 signal to a temporary host facility in order to implement 3.0 service on its existing facilities, the station must comply with the restrictions applicable to Class A stations for such moves.

Waivers of Simulcasting and Coverage Requirements

The Commission will consider requests for waiver of the local simulcasting and coverage requirements on a case-by-case basis. This includes requests from full power and Class A stations to transition directly from ATSC 1.0 to ATSC 3.0 service on the station's existing facility without providing a 1.0 simulcast as well as requests to air a 1.0 simulcast channel from a host location that does not cover all or a portion of the station's community of license or from which the station can provide only a lower signal threshold over the community than that required by the rules. The Commission is inclined to consider favorably requests for waiver where the Next

Gen TV station can demonstrate that it has no viable local simulcasting partner in the market and where the station agrees to make reasonable efforts to preserve 1.0 service to existing viewers in the 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).

Licensed Simulcasting

The Order provides that 1.0 and 3.0 channels aired on a partner host station will be licensed as temporary second channels of the originating broadcaster. Thus, the ATSC 1.0 and 3.0 signals of a Next Gen TV broadcaster will be two separately authorized companion channels under the broadcaster's single, unified license. The partner host and guest station(s) in a simulcast arrangement will continue to be licensed separately and each station will have its own call sign. Each licensee will be independently subject to all of the Commission's obligations, rules, and policies. The Commission retains the right to enforce any violation of these requirements against one, more than one, or all parties to a simulcast agreement.

Licensing Procedure

Pursuant to the Order, a Next Gen TV broadcaster must file an application with the Commission, and receive approval, *before* (1) moving its 1.0 signal to a host station or moving its 1.0 simulcast to a different host station, or discontinuing a 1.0 guest signal; (2) commencing the airing of a 3.0 channel on a 3.0 host station (that has already converted to 3.0 operation), moving its 3.0 channel to a different host station, or discontinuing a 3.0 guest signal; or (3) converting its existing station to 3.0 operation or from 3.0 back to 1.0. For all of these applications, the Commission has adopted a streamlined one-step process that requires the filing of only an application for modification of license (i.e., without first filing an application for a construction permit), provided no technical changes are necessary to either the originating or the host station that would normally require a construction permit.

MVPD Carriage

The Order specifies that a Next Gen TV broadcaster's 1.0 simulcast channel will retain mandatory carriage rights on cable and satellite systems but that its 3.0 channel will not have mandatory carriage rights while the local simulcasting requirement is in effect. Thus, a Next Gen TV broadcaster may choose between must-carry and retransmission consent for its ATSC 1.0 signal, but may only pursue carriage via retransmission consent for its ATSC 3.0 signal. As such, the Order makes clear 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.

A Next Gen TV broadcaster relocating its 1.0 signal to a host facility will not be permitted to gain new mandatory carriage rights not previously held and exercised by the 1.0 station as a result of its new location. Moreover, to assert 1.0 mandatory carriage rights, the 1.0 channel must continue to qualify for such rights at the temporary host location from which it will transmit the 1.0 signal. The carriage rights of full-power commercial stations are unlikely to be affected by this requirement because such stations must remain within their DMA, and must retain and continue to serve their current communities of license. However, NCE, Class A,

and LPTV stations may be affected if, for example, an NCE station that qualifies for carriage based on its contour encompassing a cable headend cannot continue to qualify for carriage rights at the host facility location if the shift in contour means the station can no longer cover the cable headend.

Next Gen TV broadcasters with must-carry rights relocating their 1.0 simulcast channel must provide notice to affected MVPDs at least 90 days in advance of the move, and 120 days in advance if the move occurs during the incentive auction repacking period. The notice must contain the following information: (1) date and time of the 1.0 channel change; (2) the 1.0 channel occupied by the station before and after commencement of local simulcasting; (3) modification, if any, to antenna position, location, or power levels; (4) stream identification information, including program numbers for each programming stream; and (5) engineering staff contact information.

The Order declines to adopt any rules regarding the voluntary carriage of ATSC 3.0 signals through retransmission consent, thus rejecting an effort by MVPDs to prohibit broadcasters from negotiating for carriage of their 3.0 signals in connection with carriage of their 1.0 signals. Instead, the Commission will allow Next Gen TV broadcasters to pursue 3.0 carriage through voluntary marketplace negotiations.

Public Interest Obligations

The Order specifies that Next Gen TV broadcasters must continue to comply with all broadcast rules and public interest obligations that currently apply to television broadcasters (e.g., political broadcasting, children's programming, sponsorship identification, the Emergency Alert System, etc.). In particular, broadcasters that choose to deploy ATSC 3.0 are expected to comply fully with all relevant Part 79 requirements, including closed captioning.

Tuner Mandate

Noting that the deployment of ATSC 3.0 will be voluntary and market-driven, the Order makes clear that there is no requirement that television reception devices include an ATSC 3.0 tuner. The Order also concludes that it is unnecessary to require that all TV receivers sold after a specified date have an HDMI port to permit attachment of a converter device that would enable the receivers to receive ATSC 3.0 transmissions.

Consumer Notice Requirements

All stations that relocate their ATSC 1.0 signals (e.g., moving to a host station's facility, subsequently moving to a different host, or returning to their original facility), must air daily on-air consumer education PSAs or crawls, beginning 30 days prior to the date that the stations will terminate ATSC 1.0 operations on their existing facilities. No specific language is required for the consumer education messages and stations may choose between PSAs and crawls or a mix of both. Stations will also have the discretion to choose the duration of their crawls and PSAs, as well as the timeslots in which their PSAs or crawls will air. PSAs and crawls must be provided in the same language as a majority of the programming carried by the station, provide all pertinent information to consumers, and be closed captioned.

Technical Standards

Pursuant to the Order, the Commission will incorporate specific parts of the Next Gen TV technical standard (specifically, A/321 and A/322) into its rules. The A/322 requirement will apply only to a broadcaster's primary video stream and will sunset five years from the effective date of the rules adopted by the Order unless extended by the Commission. In addition, the Commission will use its existing methodology and planning factors to define the service area of an ATSC 3.0 signal and to calculate how ATSC 3.0 signals will interfere with ATSC 1.0 signals. Next Gen TV broadcasters will be required to offer at least one free ATSC 3.0 video programming stream comparable to a DTV signal and to provide a signal with a chosen modulation/coding scheme that requires a signal-to-noise ratio of no more than would be required of a DTV signal.

The Commission also specifies that broadcast television stations may operate ATSC 3.0 Single Frequency Networks (SFNs) pursuant to the agency's current rules authorizing Distributed Transmission Systems. The Order declines to adopt a specific synchronization standard for ATSC 3.0 SFNs.

Further Notice of Proposed Rulemaking

In the FNPRM accompanying the Order, the Commission seeks comment on the following three issues:

- (1) In light of the FCC's decision to grant waivers of the simulcasting requirement, the Commission seeks comment on the circumstances in which the Commission should grant such waivers, including how the agency should determine if a station has a "viable" simulcast partner and the "reasonable efforts" a waiver applicant should be required to undertake in order to preserve 1.0 service to existing viewers in its community of license and/or otherwise minimize the impact on viewers in its coverage area. The FCC also seeks comment on whether to exempt NCE and/or Class A stations as a class from the local simulcasting requirement (as it has done for LPTV and TV translator stations) or adopt a presumptive waiver standard for such stations.
- (2) The FNPRM seeks comment on the extent to which the Commission should allow full power broadcasters to use vacant channels in the television broadcast band to facilitate the transition to 3.0.
- (3) The FNPRM seeks comment on the Commission's tentative conclusion that, for purposes of cable and satellite carriage, the "significantly viewed" status of a Next Gen TV station should not change if it moves its 1.0 simulcast channel to a temporary host facility.