

**DISSENTING STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN**

Re: *Authorizing Permissive Use of the “Next Generation” Broadcast Television Standard*, GN
Docket No. 16-142

Nine months ago, when I voted to approve the Notice of Proposed Rulemaking (NPRM) that informed this Order, I stated that “few things would please me more, than to be excited about the prospects of a voluntarily implemented next generation standard, and how it might enhance the consumer viewing experience.”

Included in that statement was a series of questions that needed to be answered on how this item would affect consumers and those who choose not to make the transition. The answers I sought – as I reviewed this order -- fell unfortunately short or were not to be found at all in this Report and Order and Further Notice of Proposed Rulemaking.

First, I asked for assurances that consumers would not be burdened with unwanted, unexpected costs. No such assurances can be found anywhere in this Order. Next Gen TV, also known as ATSC 3.0, is not backwards compatible, which means to those who do not speak this language, that your existing television set and cable equipment will not be able to receive a Next Gen signal. If you are an over-the-air viewer, you will either need to purchase a new television or some sort of a converter, and if you are a pay-TV viewer, you will need to purchase a new set top box. What will this cost you, the viewer? I don't know. No answer can be found anywhere in this order.

Next Gen supporters tell us not to worry, viewers can continue to receive the existing 1.0 signal, and for five years after this Order appears in our Federal Register, that signal will be “substantially similar.” Five years after this Order appears in our Federal Register, that requirement sunsets. Translation: that mandate goes away. They no longer have to send you that similar signal. Now late yesterday, the Chairman's Office revised the Order to include an exception to this requirement. Without a requirement to make programming substantially similar, broadcasters are free to create two different tiers of television. Why is this problematic? Why am I uneasy? This could actually create an unacceptable, unjustified and unwanted digital television divide for those with limited financial means.

My second question in the NPRM asked whether consumers that do not upgrade will continue to receive high definition programming through the existing 1.0 simulcast signal? Again, no reassurances given. While several broadcasters have stated that they intend to provide this highly popular service, they oppose any requirement to do so. Why? Just as troubling, is that the Order anticipates some level of service loss, meaning some viewers might not lose just HD, but their broadcast signal altogether. Broadcasters 2, consumers 0.

My third question was whether the higher-resolution carriage requirements of Next Gen TV come at the expense of channel placement for independent programmers or multicast streams. Again, cause for concern. We are again told to trust that our regulatees will do the right thing, but that we cannot create any requirements. Broadcasters 3, consumers 0.

Finally, I asked about fees, and ensuring that we do not disadvantage smaller businesses, both broadcasters and pay-TV providers. At the risk of sounding like a broken record, many concerns remain. We know that pay-TV providers are worried about how this new standard will affect the retransmission consent process, especially those smaller providers. Instead of providing guidelines for this process, we are told that this is best left to marketplace negotiations. Because this will undoubtedly lead to increased costs to consumers, the tally is now broadcasters 4, consumers 0.

In addition to all of the concerns I noted in my statement to the NPRM back in February, this item did not mention the word privacy even once until 9:43 this morning, despite questions about privacy being included in the NPRM. These questions are important, in light of the two-way IP-based nature of this technology, and the plans to use it to enable targeted advertising. In fact, Representative Debbie Dingell recently asked the Chairman how consumers' demographic information will be gathered, and what privacy protections will be in place. I appreciate those questions and the attention to this issue, as I am concerned that viewers are not and will not ever be aware that this is something they need to think about. Cable subscribers have the protections in Section 631 of the Communications Act. Should there be similar protections for broadcast viewers?

Despite my misgivings and the ever growing tally, let me be clear: I do not make presumptions about Next Gen TV. I do not know if it is bad, or inferior to the status quo, as some claim. It could very well bring about all of the advantages it purports, including 4K, and advanced emergency alerts. I also must say that I appreciate that this item does not set a date for eliminating the 1.0 service, and that it has included some consumer education requirements (although those have been scaled back in the final Order at a cost to the viewer).

But at the end of the day, I must affirm this: my charge, my responsibility as a regulator is to strike the appropriate balance. If it is not clear how an item, standard or transaction meets our public interest requirement, if I cannot clearly see that an item protects and enhances the consumer experience, then there is only one decision I left for me to render. It is not about politics or the inability to separate or differentiate one docket from another, it is about upholding that solemn promise I took over eight years ago.

In other words, this Order is not ready for primetime. It will do more for existing broadcasters than for the future of the industry and it will do much more for those companies' bottom line than for the nation's unsuspecting viewers.

That the main objective is giving the industry a lot of flexibility in deploying Next Gen TV gives me pause, not because I am against robust opportunities, but because millions of viewers will be at risk and millions could be thrust in the digital television badlands. And for a Commission that touts the importance of cost benefit analyses... there is absolutely no showing that this item has attempted to weigh the costs to consumers – both in loss of services and access costs -- against the touted benefits, none of which are required by this Order. This Order does absolutely nothing to resolve any of the concerns I offered up nine months ago, this Order gets a failing grade when it comes to putting the public's interest first, and if ever there were an Order most deserving of a strong dissent, it is this one, and I dissent.

My thanks begin with Holly Saurer for taking the lead in advising me on this Order and to the Chairman's office for allowing this arrangement. Additionally, my most sincere appreciation to the Media Bureau and Office of Engineering and Technology for your effort on this item. Even though I cannot support this item, what is clear is that you have done a great deal of work in a short amount of time. You are committed public servants and I sincerely appreciate your efforts.