

**STATEMENT OF COMMISSIONER SIMINGTON TO THE 100th ANNUAL
CONFERENCE OF THE NATIONAL ASSOCIATION OF BROADCASTERS**

April 16, 2023

Thank you to Curtis, Rick and everyone at NAB for the kind invitation to speak today about the future of ATSC 3.0.

ATSC 3.0 doesn't have a future. The broadcasting sector doesn't have a future. The Commission should redirect scarce resources toward higher value regulatory activity, and permit this legacy industry to languish beneath the weight of the regulatory load we've put on it until, at length, it expires, and we can direct the use of whatever remaining regulatory fees we may have collected toward burying it in the grave next to local newspapers.

Whoops, sorry! I was reading from the draft of the public notice that the Media Bureau is about to put out regarding the ATSC 3.0 Task Force.

No wait, I think you actually have to, hang on, yes you have to agree to that explicitly before you can get a low power construction permit.

Naturally, this is all being done on delegated authority.

Hey, listen, I didn't get to do a TikTok dance at the FCBA dinner like Commissioner Carr, so I'm going to have a little fun with this one, folks. You've all heard my spiel before, so I might get a little loose here. Just a little ribbing. I promise we're just joking.

Being serious for a second: the average conception of the broadcasting industry in DC is in black-and-white, both figuratively and literally.

Figuratively, in that we think of broadcasting as a family huddled around a glowing CRT television set, watching the Eagle land during the Apollo 11 mission. A glimmering jewel of cultural prestige whose perfect facets shone to millions all at once—as splendid as any sunrise, and better-attended. That memory is, for many in DC, not metaphorical, but literal. Many—I dare say, too many—in the corridors of power in DC have an actual memory of that moment, and may forever think of broadcasting as not unlike the Apollo program: an engine of American greatness and dominance that is now redolent of a bygone era. Like newspapers, like steel, like auto manufacturing, they view broadcasting with a certain nostalgia. And that's often in the best case. But, remember, 'nostalgia' was introduced as a concept to describe a sickness—a longing for things past that can never be satisfied. And long memories sometimes make bad policy.

And that's where we in DC sometimes think of broadcast in black and white, literally. What do I mean? We think often of broadcasting as the end product of a sheaf of rules and constraints, necessary to safeguard the American public and purse from marauding robber barons and their ne'er-do-well scions. Literal reams of black-and-white text. And we, the regulatory state, the sentinels who enforce the public interest, do so by standing *between* broadcasters and

the American public. An image of a necessarily *adversarial* relationship, where, but for regulatory intervention, broadcasters would behave badly.

And that image of broadcasting is reflected in media itself—you've all seen the episode of Last Week Tonight, where they spliced together a couple of dozen talking heads on Sinclair affiliates reading the same script.

Imagine it.

Sinclair. Sinclair! The terror, the horror! The grotesque beast stalking the American cultural landscape, sewing rancor and division where its cloven hooves fall! Not Sinclair!

Sinclair is, as of drafting, 0.72% of the market cap of Disney. And I don't have any particular truck with Disney, I promise I'm just picking on them as an example. But Disney owns ABC, ESPN, Touchstone, Marvel, Lucasfilm, and Pixar, not to mention Hulu and Disney Plus. Disney has been in the top ten most recognizable brands on earth since time immemorial. Hulu has 48 million subscribers. Disney Plus has 162 million subscribers. ESPN is in every single MVPD subscriber household in America. And ABC can, and does, influence the fortunes of most of the broadcasters in this room.

But, please, tell me more about the worrying media consolidation and the cultural influence of station groups operating in Abilene.

The fact is, broadcasters don't act badly, for at least three reasons.

First: they just don't. I've seen broadcasters, time and again, go above and beyond for the communities they serve and with whom they engage. They do things for their communities that no one asks them to do, and for which no one recognizes them, because they don't tell anyone about it. You have to dig deep and ask on site visits. It isn't on the website.

Second: let's be real. The broadcasting industry is at an inflection point, but no one can credibly argue that the cards are in the broadcasters' *favor*. Broadcasters have neither the scale, the political capital, nor the *actual* capital to make big moves right now. They are constrained in so many ways, and their few missteps recently have largely been sins against ministerialism, or, in many cases, not even sins at all. Just broadcasters trying to run broadcast businesses, and regulators getting their noses out of joint because they didn't ask for permission first. Every move they make is a tentative one.

Third: broadcasters are functionally constrained from real M&A activity right now. Broadcast assets have been devalued by several recent Commission decisions in a way that really ought to force us to rewrite the takings section of constitutional law treatises.

And that posture, incidentally, hits small and minority-owned broadcasters looking to exit much more than it does yonder corporate raider. The family-owned broadcaster running a handful of stations has broadcast concerns as their largest assets, whereas larger outfits can redirect capital out of broadcast and into higher return verticals much more readily. When we slow the dynamism in the broadcast market, we hurt those we seek to help.

So: broadcasters are not bad actors; broadcasters are the clear economic underdogs in the modern, unified media marketplace; and broadcast transactions are, possibly, illegal, or, at least—likely to need further study. So what’s the good news? Is there any?

Well, yes. ATSC 3.0 is cool. Datacasting is cool. Targeted, relevant advertising is cool. Advanced emergency alerting is cool. International uptake of ATSC 3.0 in international broadcast standards and technical frameworks and specifications is cool.

Or: they can be cool.

They can also not be, and you know that. It can be a lot less cool if we do nothing. I’m not saying that the Commission needs to intervene heavily to drive adoption, but how about a little bit of interest? We’ve buried broadcasters under outmoded regulations, and shaved broadcast spectrum as thin as the commonly-cited justification for broadcast regulation that “broadcasters don’t pay for their spectrum.” What a high-margin business you must operate, folks! Let’s call an Alphabet exec in here and give them a show on what real operating margin looks like.

There are a lot of restrictions designed to protect consumers throughout the ATSC 3.0 transition. Simulcasting rules, lateral hosting rules, and so on. Spectrum-constraining rules designed to make sure that you aren’t leaving your viewers behind. As though that were your plan.

Don’t get me wrong. I’m not suggesting that there are no legitimate concerns here, and that no safeguards are appropriate, or that the Commission should pull out all of the stops to help broadcasters through a voluntary transition. I’m not suggesting that.

All I’m saying is: we can do more. It’s a potentially transformative technology for the viewing experience, for alerting, for marketing, and, in my view especially, for datacasting. But it can be a missed opportunity if we do nothing. We can turn broadcast into a residue of the black-and-white past with our black-and-white rules, or we can broadcast in 4K HDR and see what happens.

This is mostly on you folks, but we have a part to play, too. We can, and we must.

Thank you again for the invitation to speak with you today.