

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

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

From the outset of this proceeding, I have identified four key principles that must guide our effort to facilitate NextGen TV: keep the process consumer-driven, market-centered, flexible, and voluntary. By and large, the Commission has remained faithful to these points, and the same holds true as we consider the Second Report and Order to clean up some of the remaining issues, specifically, simulcast waivers, vacant channels, and technology standards.

First, today's item makes determinations regarding simulcasting 1.0 signals and the waiver process for stations that have difficulty meeting this requirement, particularly in smaller markets. Rather than choosing an arbitrary threshold and a bright line test, I would have preferred to establish a process by which stations could self-certify that no viable potential partners exist, with the opportunity for competitors or consumers to challenge such certifications. The Commission allows for such a process in plenty of other contexts, and I don't see why it couldn't be used here. As I and others have stated over the last few years, avoiding interruption of service for viewers is a preeminent, if not existential, consideration for any local broadcaster that is venturing to deploy the new standard, and placing the responsibility on broadcasters to accurately certify their efforts makes sense in this context. Nonetheless, it is possible that the presumption in favor of meeting the first prong of the waiver test, based on having fewer than three available potential partners, will at least suffice to grant applications where needed for stations in smaller markets. The item also appropriately emphasizes the expectation that waiver requests will be processed within 60 days of the Bureau providing public notice of the request. While I always support the quickest turnaround possible, this seems to be a fair landing spot, assuming it is treated as a ceiling and not a target.

Second, I agree with the decision in this item declining at this time to allow for the use of vacant channels during the transition period. This is clearly a premature matter that can be examined later, if absolutely necessary. Without completely closing the door depending on the circumstances presented, I would prefer that interested broadcasters deploy NextGen TV without the need of an additional broadcast channel. Full power stations absolutely remain primary licensees in the band, and after all the work that has gone into the repack, distributed transmission systems, and other related matters, any additional changes should not be made in haste. For example, with the support of my colleagues, especially Chairman Pai and Commissioner Rosenworcel, I have led efforts to facilitate TV white spaces (TVWS) technology and the benefits it can offer, including bringing wireless broadband to unserved rural markets. Therefore, throughout the NextGen TV transition, any changes to the broadcast band need to be mindful of possible effects on TVWS. Furthermore, in declining to allow the use of vacant channels, we avoid imposing costs related to LPTV and TV translators or multichannel video programming distributors.

Finally, without restating my specific concerns with regard to embedding the ATSC A/322 standard in our regulations, I would highlight that this decision has created a feedback loop, requiring the Commission to continue to reevaluate the sunset over and over, as we do here in response to commenters. My preference across the board is to avoid incorporating specific technologies into our rules at all costs, to avoid the problems we're currently confronting in the wireless context.

This journey has taken many turns over the past three years, and the possibility of even more markets lighting up 3.0 signals by the end of the year is exciting, especially given the current challenges facing broadcasters and the entire economy, for that matter. While manufacturers continue to work on producing equipment that will allow consumers to receive the new signals, it is encouraging to see money being invested in the infrastructure as we await the market's determination of which applications will carry the day.