

**STATEMENT OF
COMMISSIONER GEOFFREY STARKS,
CONCURRING IN PART, DISSENTING IN PART**

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

I continue to support the Commission’s recognition that the ATSC 3.0 broadcasting standard is key to achieving the technological transformation to next generation television (Next Gen TV), which holds the promise of improved video and audio quality, personalization, and user interactivity—including targeted ads and neighborhood-specific weather reporting. This item advances that progression by adopting measures that will help protect consumers and non-broadcaster users of television band spectrum from loss or disruption of service. Those measures include clarification of the local simulcasting waiver standards regarding what constitutes a viable local simulcasting partner, and declining to exempt additional classes of stations from the waiver requirement, thus requiring all primary stations to demonstrate that a local simulcasting waiver is in the public interest. Additionally, the decision not to authorize full power broadcasters to use available or vacant TV band channels for voluntary ATSC 3.0 deployment will help ensure that other existing and valuable users of TV band spectrum, including wireless microphones and white spaces devices, do not experience harmful interference. I likewise appreciate that the Commission commits to revisit market conditions before allowing the requirement to provide a “substantially similar” ATSC 1.0 simulcast channel to expire in 2023, although I would have favored no sunset of this requirement at all. I concur with the majority.

There is one aspect of the waiver standard that I cannot support because, as clarified, it could result in viewers losing the ability to receive over-the-air TV channels that are not simulcast. The waiver standard requires “reasonable efforts to preserve 1.0 service,” and the majority explains that under this prong the Commission will “look favorably” at a broadcaster’s plan that would provide over-the-air households with one free ATSC 3.0 converter. That is insufficient; the Commission should mandate, as a condition of waiver, that broadcasters provide a free converter to any requesting over-the-air household. It is certainly “reasonable” to expect broadcasters voluntarily rolling out ATSC 3.0 service without a simulcast channel to provide the same protection to over-the-air households that the Commission provided for the DTV transition. Moreover, the order makes no attempt to justify this decision with a cost/benefit analysis of the potential burden to broadcasters versus the benefit to over-the-air viewers who would otherwise be cut off from their signal, an oversight that seems to occur as often as before we had an Office of Economics and Analytics.

This order also fails to adequately address concerns raised about the costs that would be incurred by small and rural multichannel video programming distributors (MVPDs) to upgrade their facilities to accommodate ATSC 3.0 signals if a simulcast waiver is granted. The “expectation” that broadcasters will work cooperatively and in good faith with MVPDs to ensure that their customers retain access to broadcast signals provides little assurance that MVPDs will have the resources and bargaining power to maintain current levels of service to their customers.

Additionally, the majority declines to reconsider a decision not to require signals currently broadcast in HD over ATSC 1.0 to be simulcast in HD. This could disadvantage viewers who currently get HD signals, and has the potential to significantly downgrade over-the-air viewing for those who cannot afford to transition to ATSC 3.0 programming. Likewise, because there is no requirement to alert viewers before changing signal format or quality, those who will lose HD programming may not be made aware until after the change occurs.

The majority also doubles down on the Commission’s prior refusal to require patents necessary to the provision of ATSC 3.0 programming to be licensed on a reasonable and non-discriminatory (RAND) basis. Not only is this inconsistent with past Commission decisions to require RAND pricing and terms

for patents needed for the DTV transition¹ and for DTS technology,² among other services; in this case, a single broadcaster holds the essential ATSC 3.0 patents and thus can set pricing and terms for any other broadcaster seeking to transition. This relinquishment of authority to monitor licensing practices is akin to signing off on unrestrained pricing and marketing that could preclude smaller broadcasters that lack bargaining power from offering Next Gen TV services.

Finally, this item notably omits any discussion (or mention) of consumer privacy. Given how close we appear to be to the provisioning of ATSC 3.0 services, soon these concerns will no longer be theoretical. The enhanced features made possible with Next Gen TV will rely heavily on consumer data that will be collected by broadcasters and device manufacturers. That detailed information about consumer viewing habits can be sold to advertisers and other third parties. It is naïve to believe that broadcasters will resolve all the issues involving what data is being collected, how it is being used, and how to keep data secure without any direction or a mandate from the Commission. Our continued failure to address the privacy implications of ATSC 3.0 data collection is a severe oversight that could cause widespread harm to consumers.

There also is a mountain of evidence about the inherent dangers of algorithmic bias in the types of artificial intelligence systems that will be used to translate consumer data into targeted ads that will be accessible on fixed and mobile devices. The rollout of Next Gen TV is imminent, and we can no longer afford to ignore our public interest mandate as it relates to the protection of data privacy and security. Consumers deserve clarity and assurances about their rights and how their data will be used *before* Next Gen TV is deployed.

For the foregoing reasons, I dissent. My thanks to the Media Bureau and other staff for your work on this item.

¹ See *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, Fourth Report and Order, 11 FCC Rcd 17771, 17794, paras. 54-55 (1996).

² See *Digital Television Distributed Transmission System Technologies*, Report and Order, 23 FCC Rcd 16731, 16760, para. 51 (2008) (“the essential patents to employ the synchronization technology used in DTS should be licensed on a [RAND] basis”).