

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
)
)
Authorizing Permissive Use of the "Next
) GN Docket No. 16-142
Generation" Broadcast Television Standard
)

SECOND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: November 4, 2021

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Comment Date: [60 days after date of publication in the Federal Register]
Reply Comment Date: [90 days after date of publication in the Federal Register]

By the Commission:

I. INTRODUCTION

1. In this Second Further Notice of Proposed Rulemaking (FNPRM), we propose changes to our Next Gen TV rules designed to preserve over-the-air (OTA) television viewers' access to the widest possible range of programming while also supporting television broadcasters' transition to the next generation of broadcast digital television (DTV) technology. In response to a Petition filed by the National Association of Broadcasters (NAB), we propose to allow Next Gen TV stations to include within their license certain of their non-primary video programming streams (multicast streams) that are aired in a different service on "host" stations during a transitional period, using the same licensing framework, and to a large extent the same regulatory regime, established for the simulcast of primary video programming streams on "host" station facilities. Given that Next Gen TV stations must, without any additional allocation of spectrum, prioritize serving ATSC 1.0 viewers while voluntarily transitioning to ATSC 3.0, we seek to take actions that will minimize viewer disruption as much as possible. Specifically, this FNPRM seeks to facilitate and encourage partnerships that will minimize potential

1 Petition for Declaratory Ruling and Petition for Rulemaking of the National Association of Broadcasters, GN Docket No. 16-142 (filed Nov. 9, 2020) (Petition).

2 By "Next Gen TV" broadcaster or station, we mean a television broadcaster or station that has obtained Commission approval and commenced broadcasting its signal using the ATSC 3.0 standard in its local market. A station can deploy ATSC 3.0 service either by converting its own facility to ATSC 3.0 or by airing its ATSC 3.0 signal(s) on a station in its local market that has converted its facility to ATSC 3.0 (which we refer to as an ATSC 3.0 "host" station). For purposes of this FNPRM, a station's "own" channel or facility refers to the channel and facility on which it operated prior to its transition to ATSC 3.0 (even if it has already converted to operate in 3.0). We use this term to distinguish between operations on this facility and a station's operations on a host facility.

3 For purposes of this FNPRM, "multicast" stream(s) refers to a TV broadcast station's non-primary video programming stream(s); that is, stream(s) other than the station's primary video programming stream.

4 A "host" station is one whose facilities are being used to transmit programming originated by another station ("guest") as part of a local simulcasting arrangement. We propose below that, as with primary stream simulcasting, host and guest stations may not be broadcasting in the same service (i.e., a guest station that continues to broadcast in ATSC 1.0 may only seek a host or hosts broadcasting in ATSC 3.0).

5 We also expect to modify our Next Gen TV license application form (FCC Form 2100) to accommodate this change. We note that our proposed rules do not prohibit the use of private contractual arrangements for partner stations to air their multicast streams. For regulatory compliance purposes, such streams would be considered multicast streams of the host partner station, not the originator station.

disruptions by permitting stations in a market to work together to preserve viewers' access to ATSC 1.0-formatted programming during the transition. We intend to facilitate broadcasters' voluntary transition to 3.0, which can provide consumers with the benefit of new and innovative services, while protecting consumers who continue to rely on 1.0 equipment.

II. BACKGROUND

2. Next Gen TV is the newest broadcast TV transmission standard, developed by the Advanced Television Systems Committee (ATSC), that promises to enable broadcasters to deliver an array of new services and enhanced content features to consumers.⁶ In 2017, the Commission authorized television broadcasters to use the Next Gen TV transmission standard, also called "ATSC 3.0" or "3.0," on a voluntary, market-driven basis.⁷ The Commission required that broadcasters voluntarily deploying ATSC 3.0 service must, with very limited exceptions,⁸ continue to air at least their primary stream using the current-generation DTV transmission standard, also called "ATSC 1.0" or "1.0," to their viewers through "local simulcasting."⁹ Under the Commission's rules, Next Gen TV broadcasters are encouraged, but not required, to simulcast their 3.0 multicast streams in a 1.0 format.¹⁰

3. The Commission found that the local simulcasting requirement is crucial to deploying Next Gen TV service in a manner that minimizes viewer disruption. The Next Gen TV standard is not backward-compatible with existing TV sets or receivers, which have only ATSC 1.0 and analog tuners.¹¹ Accordingly viewers will be unable to watch ATSC 3.0 transmissions on their existing televisions without additional equipment. Thus, it is critical that Next Gen TV broadcasters continue to provide service using the current ATSC 1.0 standard while the marketplace adopts devices compatible with the new 3.0 transmission standard in order to avoid forcing viewers to acquire expensive new equipment or depriving them of their local television service during the transition.¹² Because a TV station cannot, as a technical matter, simultaneously broadcast in both 1.0 and 3.0 format from the same facility on the same physical channel, local simulcasting must be effectuated through voluntary partnerships that broadcasters seeking

⁶ See ATSC, *Spotlight ATSC 3.0*, <https://www.atsc.org/nextgen-tv/> (last visited June 22, 2021) (listing key features of 3.0 and providing a video describing the 3.0 service). ATSC 3.0 merges the capabilities of OTA broadcasting with the broadband viewing and information delivery methods of the Internet, using the same 6 MHz channels presently allocated for DTV service. As 3.0 proponents have previously explained to the Commission, the greater spectral capacity of the new standard and its Internet-Protocol delivery component will allow broadcasters to provide consumers with a higher quality television viewing experience, such as ultra-high-definition (UHD) picture resolutions and immersive audio. It also has the potential to enable broadcasters to reach viewers on both home and mobile screens. In addition, ATSC 3.0 will allow broadcasters to offer enhanced public safety capabilities, such as geo-targeting of emergency alerts to tailor information to particular communities and emergency alerting capable of waking up sleeping devices to warn consumers of imminent emergencies, as well as greater accessibility options, localized content, and interactive educational children's content. See *Promoting Broadcast Internet Innovation through ATSC 3.0*, MB Docket No. 20-145, Report and Order, 35 FCC Rcd 14492, 14493, para. 4 (2020) (*Broadcast Internet Order*); *Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard*, GN Docket No. 16-142, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 9930, 9933-34, para. 4 (2017) (*Next Gen TV First Report and Order*).

⁷ *Next Gen TV First Report and Order*, 32 FCC Rcd at 9931, para. 1; *Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard*, GN Docket No. 16-142, Second Report and Order and Order on Reconsideration, 35 FCC Rcd 6793, 6794, para. 2 & n.4 (2020) (*Next Gen TV Second Report and Order*).

⁸ LPTV and TV translator stations may deploy ATSC 3.0 service without providing an ATSC 1.0 simulcast signal. *Next Gen TV First Report and Order*, 32 FCC Rcd at 9950, para. 40. 47 CFR § 74.782(c). In addition, full power and Class A stations may request a waiver of the simulcast requirements. *Id.* at 9953, para. 46.

⁹ *Id.* at 9931, para. 1.

¹⁰ *Id.* at 9937-38, para. 13 & n.40.

¹¹ *Id.* at 9939, para. 15.

¹² *Id.* at 9939, paras. 15-16.

to provide Next Gen TV service enter into with other broadcasters in their local markets.¹³ A Next Gen TV station must partner with another television station (*i.e.*, a temporary “host” station) in its local market to either: (1) air an ATSC 3.0 channel at the temporary host’s facility, while using its original facility to continue to provide an ATSC 1.0 simulcast channel, or (2) air an ATSC 1.0 simulcast channel at the temporary host’s facility, while converting its original facility to the ATSC 3.0 standard in order to provide a 3.0 channel.¹⁴ A Next Gen TV station’s ATSC 1.0 “simulcast” must be “substantially similar” to that of the primary video programming stream on the ATSC 3.0 channel.¹⁵

4. The process for considering applications to deploy ATSC 3.0 service includes coverage requirements for a Next Gen TV station’s ATSC 1.0 simulcast signal.¹⁶ The Commission sought to minimize disruption to viewers resulting from the voluntary deployment of ATSC 3.0 while recognizing that if a station moves its ATSC 1.0 signal to a partner simulcast host station with a different transmitter location, some OTA viewers may no longer be able to receive the station’s 1.0 signal.¹⁷ Among other obligations, the Commission requires the Next Gen TV station to select a partner 1.0 simulcast host station that is assigned to its same designated market area (DMA) and from which it will continue to provide ATSC 1.0 simulcast service to its entire community of license.¹⁸

5. According to NAB, as ATSC 3.0 deployment has progressed, broadcasters interested in transitioning to ATSC 3.0 while maintaining their current programming streams have faced challenges finding partner stations willing to host broadcasters’ multicast streams through private contractual agreements.¹⁹ Moreover, NAB states that Next Gen TV broadcasters want to “continue to serve

¹³ *Next Gen TV Second Report and Order*, 35 FCC Rcd at 6794, para. 3; *Next Gen TV First Report and Order*, 32 FCC Rcd at 9937, para. 12; 47 CFR § 73.624(b)(3).

¹⁴ *Next Gen TV First Report and Order*, 32 FCC Rcd at 9937, para. 12; 47 CFR § 73.3801 (simulcasting rules for full power TV stations). In either case, a Next Gen TV broadcaster must simulcast the primary video programming stream of its ATSC 3.0 channel in an ATSC 1.0 format, so that viewers will continue to receive ATSC 1.0 service. *Next Gen TV First Report and Order*, 32 FCC Rcd at 9937, para. 12; 47 CFR § 73.3801(b) (simulcasting requirement). By the time the transition is complete, any temporary authority granted for local simulcasting will expire, and a station will once again be required to air all of its licensed programming on its own single channel. *Next Gen TV First Report and Order*, 32 FCC Rcd at 9938, n.46 and accompanying text. The Commission has committed to consider the state of the transition and the Next Gen TV marketplace in the Spring of 2022. *Second Report and Order and Order on Reconsideration*, 35 FCC Rcd 6793, 6812-19, paras. 39-47 (2020) (*Next Gen TV Order on Reconsideration*).

¹⁵ *Next Gen TV First Report and Order*, 32 FCC Rcd at 9942-44, paras. 22-24; 47 CFR § 73.3801(b).

¹⁶ *Id.* at 9945-46, paras. 29-31; 47 CFR § 73.3801(c). A Next Gen TV broadcaster must file an application and obtain Commission approval before a 1.0 simulcast channel or a 3.0 channel aired on a partner host station can go on the air, as well as before an existing 1.0 station can convert to 3.0 operation or back to 1.0 operation. *Id.* at 9939, para. 48; 47 CFR § 73.3801(f)(2).

¹⁷ *Next Gen TV First Report and Order*, 32 FCC Rcd at 9946, para. 30 (“By requiring stations to continue to provide an ATSC 1.0 signal that covers their current community of license and encouraging them to keep coverage loss to 5% or less of the population currently receiving a 1.0 signal over the air, we will limit the number of current viewers and MVPD headends that will lose access to the OTA 1.0 signal as a result of local simulcasting.”).

¹⁸ *Id.* at 9945-46, paras. 29-31. *See* 47 CFR § 73.3801(c). Because Class A TV stations do not have a community of license, the Commission established a coverage requirement based on contour overlap and mileage. *Next Gen TV First Report and Order*, 32 FCC Rcd at 9946-47, para. 32. *See* 47 CFR § 73.6029(c). Some stations may not be formally assigned by Nielsen to DMAs. As stated in the *Next Gen TV First Report and Order*, “we will consider stations that are not assigned to a DMA by Nielsen to be assigned to the DMA in which they are located.” *Next Gen TV First Report and Order*, 32 FCC Rcd at 9946 n.93.

¹⁹ Letter from Patrick McFadden, Associate General Counsel, NAB, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 16-142, at 1-2 (filed Mar. 19, 2020) (NAB Mar. 19 *Ex Parte* Letter); Letter from Patrick McFadden, Associate General Counsel, NAB, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 16-142, at 1-2 (filed Jan. 27, 2020) (NAB Jan. 27 *Ex Parte* Letter).

audiences with multicast streams,” even though they are not required to do so.²⁰ NAB contends, however, that stations are hesitant to serve as hosts pursuant to private arrangements due to concerns about regulatory liability and whether such private multicast agreements are expressly permitted under the Commission’s ATSC 3.0 rules.²¹ Moreover, NAB observes that “a purely contractual approach [to ATSC 3.0 deployment sharing arrangements] would exclude noncommercial stations from participating in sharing arrangements to host commercial multicast streams” under section 399B of the of the Communications Act.²² In addition, NAB asserts that if broadcasters execute hosting agreements for their multicast streams that are not reflected on the license of the originating station, “the Commission might not retain enforcement authority” over the originating station with respect to that guest stream.²³

6. Because our existing rules do not address the licensing of multicast streams, even with regard to the host that is airing a station’s primary stream, the Media Bureau implemented an interim process by which a Next Gen TV broadcaster that has converted or is seeking to convert its facility to 3.0 can seek special temporary authority (STA) to air 1.0 multicast streams on a host station. Just as under the current rules for primary guest streams, these STAs permit a guest multicast stream to be treated as if it originated from the Next Gen TV broadcaster’s facility, as opposed to the host station’s facility, for purposes of the Commission’s rules and the Communications Act. The STAs granted to date are valid for six months but may be renewed. This case-by-case process is resource-intensive for both the Commission and broadcasters, and under this approach it is difficult for both Commission staff and potential viewers to track where streams are being hosted.

7. NAB Petition. In November 2020, NAB filed a Petition for Declaratory Ruling and Petition for Rulemaking (Petition) seeking:²⁴

- (1) Clarification or a rulemaking to allow a Next Gen TV broadcaster to license its simulcast multicast stream(s) either together with its primary stream on the primary simulcast host or on different simulcast host(s);²⁵
- (2) A rulemaking to allow a Next Gen TV broadcaster to license its “non-simulcast” 1.0 multicast stream(s) (*i.e.*, multicast stream(s) aired only in 1.0 format and not in 3.0 format) either together

²⁰ Petition at 2.

²¹ NAB Mar. 19 *Ex Parte* Letter at 1-2; NAB Jan. 27 *Ex Parte* Letter at 1-2.

²² Petition at 3 and 5-6. *See also* 47 U.S.C. § 399B (prohibiting noncommercial stations from making their “facilities available to any person for the broadcasting of any advertisement”).

²³ NAB Jan. 27 *Ex Parte* Letter at 1-2. The NAB asserts that these issues “could create complex contractual indemnification concerns that could complicate deployment,” particularly for NCE stations, “some of which are restricted or prohibited entirely from agreeing to indemnification.” NAB Jan. 27 *Ex Parte* Letter at 2; NAB Mar. 19 *Ex Parte* Letter at 2.

²⁴ *See generally* Petition. Although the Petition was structured as two requests (*see id.* at 1-2), we divided the two requests into three parts for purposes of our discussion below.

²⁵ *Id.* at 3-5. By “simulcast multicast stream,” we refer to a multicast stream that is aired by a Next Gen TV station, in substantially similar fashion, in both 1.0 and 3.0 formats throughout the mandatory local simulcasting period. That is, we mean either (1) a 1.0 multicast guest stream aired on a host that is a simulcast of a 3.0 multicast stream aired by the Next Gen TV station, or (2) a 3.0 multicast stream aired on a host that is being simulcast by a 1.0 multicast stream aired by the Next Gen TV station. For example, in this situation, Station A converts to 3.0 and arranges with Station B (remaining in 1.0) to host Station A’s primary stream and one multicast stream in 1.0; Petitioner wants the multicast stream, like the primary stream, to be licensed to Station A, the originator of the streams. In addition, if Station A arranges with Station C (not the primary host) to host a second multicast stream in 1.0, that multicast stream would also be licensed to Station A. In these examples, Station A would itself be broadcasting both multicast streams in 3.0. Likewise, if a station remained in 1.0, it would be allowed to license its 3.0 multicast streams aired either by the primary host or a secondary host. In these situations, the multicast channels are being simulcast.

with its primary stream on its primary 1.0 host or on different 1.0 simulcast host(s);²⁶ and

- (3) A rulemaking to allow a Next Gen TV broadcaster to license its “non-simulcast” 3.0 multicast stream(s) (*i.e.*, multicast stream(s) aired only in 3.0 format and not in 1.0 format) either together with its primary stream on its primary 3.0 host or on different 3.0 host(s).²⁷

NAB requests that the regulatory treatment of multicast streams mirror the existing licensing framework for primary streams.²⁸ Moreover, NAB asserts that its requested rule changes would not create any new cable or satellite carriage rights for multicast streams, which are not entitled to mandatory carriage.²⁹ NAB later filed an *ex parte* expanding on its proposal by suggesting specific revisions to the Commission’s ATSC 3.0 rules that would implement the changes and clarifications requested in its Petition.³⁰

8. The Media Bureau placed the Petition on Public Notice and received comments and reply comments from 12 parties, including 10 broadcast station groups and associations (including NAB) and two MVPD associations.³¹ As discussed more fully below, all of the broadcast station groups and associations support the Petition’s proposals. The two MVPD associations that commented generally do not oppose a rulemaking, but express particular concerns about the effect on the local television marketplaces of permitting Next Gen TV stations to license multicast streams that are not being simulcast on host stations and, in particular, of permitting those stations to license such multicast streams on multiple hosts.³²

²⁶ *Id.* at 5-6. For example, using Stations A, B, and C from the prior example, Station A (the 3.0 host) only has enough capacity to air its primary channel, Station B’s primary channel, and Station C’s primary channel in 3.0, but wants to continue to provide its multicast channels in 1.0 during the transition. In this situation, Stations B and C would each be hosting a multicast stream licensed to Station A, but neither multicast stream would be simulcast. Thus, by “non-simulcast 1.0 multicast stream,” we refer to a multicast stream that was originated by a Next Gen TV station and aired in 1.0 format either on its own channel or a 1.0 host’s channel, but that has no “substantially similar” stream being aired in 3.0 format by the originating station, whether on its own channel or on a 3.0 host’s channel.

²⁷ *Id.* at 1-2 (“[NAB] hereby requests that the Commission . . . establish rules . . . [to] permit a station transmitting in ATSC 1.0 to partner with one or more other stations to host content transmitted in ATSC 3.0.”). This request apparently is being made looking forward to a later stage in the transition when more stations have transitioned to 3.0 and the number of 1.0 “lighthouses” is more limited.

²⁸ *Id.* at 3-6.

²⁹ *Id.* at 4, 6.

³⁰ Letter from Patrick McFadden, Deputy General Counsel, NAB, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 16-142, at 1-2 (filed Apr. 9, 2021) (NAB April 2021 *Ex Parte* Letter).

³¹ *Media Bureau Seeks Comment on Petition for Declaratory Ruling and Petition for Rulemaking of the National Association of Broadcasters Seeking to Clarify Treatment of Multicast Streams Under the Next Gen TV Local Simulcasting Rules*, MB Docket No. 16-142, Public Notice, 35 FCC Rcd 13130 (2020). Commenters include: American Television Alliance (ATVA), America’s Public Television Stations (APTS) & Public Broadcasting Service (PBS) (collectively, “PTV”), Cox Media Group (Cox), Graham Media Group, Inc. (Graham), Gray Television Inc. (Gray), Meredith Corporation (Meredith), National Translator Association (NTA), Pearl TV (Pearl), and the E.W. Scripps Company (Scripps). Reply comments were filed by the National Association of Broadcasters (NAB), NCTA – The Internet & Television Association (NCTA), Scripps, and TEGNA Inc. (TEGNA). The comment cycle ended January 25, 2021. We note that NAB did not submit its proposed rule until April 9, 2021.

³² NCTA Reply at 1-2 (seeking broader examination of ATSC 3.0 simulcasting arrangements); ATVA Comments at 1-2, 4-8 (seeking NOI instead of NPRM). See also *infra* sections III.B and C (discussing non-simulcast multicast streams) and D (discussing limits on the use of multiple hosts and related issues, including questions related to the Commission’s ownership rules).

III. DISCUSSION

9. We propose to adopt rules to address the first two licensing scenarios set forth by NAB (as described above),³³ so as to preserve, to the extent possible, consumer access to multicast programming in 1.0 format during the ATSC 3.0 transition without the need for new equipment. First, we therefore tentatively conclude that Next Gen TV stations may license one or more simulcast multicast streams on a host station or stations, whether that guest stream is the 3.0 broadcast or the 1.0 simulcast (“simulcast” multicast streams). Second, we propose that Next Gen TV stations which are broadcasting in 3.0 on their own channels may license one or more multicast streams aired only in 1.0 format on a host station or stations even if they are not simulcasting that stream in 3.0 (“non-simulcast” 1.0 multicast streams), consistent with any limits as discussed below.³⁴ To permit the licensing of multicast streams on a host, we propose that each of the originating station’s multicast streams will be licensed as a temporary channel in the same manner as its primary stream on the primary host. That is, each of the originating station’s guest multicast streams aired on a host will be considered to be an additional, separately authorized channel under the originating station’s single, unified license.³⁵ As to the third of NAB’s scenarios, in which a Next Gen TV station broadcasting in 1.0 on its own channel might seek to license multicast streams aired only in 3.0 format on a 3.0 host or hosts (“non-simulcast” 3.0 multicast streams),³⁶ we decline at this time to seek comment on what appears to be a purely hypothetical scenario.³⁷ In addition to these scenarios, we explore another licensing scenario that has come to our attention from industry. Specifically, we seek comment on whether our rules should permit an originating station to rely on simulcasting its primary stream on two separate partner stations in order to minimize service loss from its transition to 3.0.³⁸

10. After considering these various licensing arrangements, we next explore the policy concerns raised in the record with respect to these arrangements, including whether there is a need, as some commenters suggest, to limit the ability of stations to aggregate spectrum or programming streams through the licensing of programming streams on multiple partner hosts.³⁹ Finally, we tentatively conclude that we should apply certain ATSC 3.0 transition rules that currently apply only to primary simulcast streams to both simulcast and non-simulcast licensed multicast streams aired on host stations, as NAB has proposed,⁴⁰ with certain exceptions as detailed below, and tentatively conclude that any rules

³³ *Supra* para. 7.

³⁴ *Infra* sections III.E (considering limitations on spectrum aggregation) and F (seeking comment on the appropriate duration of any rules adopted in this proceeding). Under our proposal, Next Gen TV stations would not be required to license their multicast stream(s), but if they choose to do so, they would be required to comply with the rules we ultimately adopt through this rulemaking proceeding. As noted above, we do not preclude Next Gen TV broadcasters from pursuing private contractual arrangements with partner stations, but note that host stations will be legally responsible for multicast streams aired on their channels in such situations. Stations entering into such arrangements may also choose to air their multicast stream(s) on one or more hosts. *See infra* sections III.A & III.B.

³⁵ *Infra* section III.F.

³⁶ By “non-simulcast 3.0 multicast stream,” we refer to a multicast stream that was originated by a Next Gen TV station and aired in 3.0 format either on its own channel or a 3.0 host’s channel, but that has no “substantially similar” stream being aired in 1.0 format by the originating station, whether on its own channel or on a 1.0 host’s channel.

³⁷ *Infra* section III.C.

³⁸ *Infra* section III.D.

³⁹ *Infra* section III.E.

⁴⁰ The rules at issue are those found in sections 73.3801, 73.6029, and 74.782 (each entitled “Television Simulcasting”). These include simulcast arrangements and agreements (47 CFR §§ 73.3801(a) and (e), 73.6029(a) and (e), 74.782(a) and (f)); the simulcasting requirement (47 CFR §§ 73.3801(b), 73.6029(b), 74.782(b)); contour, DMA, and community of license coverage requirements (47 CFR §§ 73.3801(d) and (f)(5)-(6), 73.6029(d) and

(continued....)

adopted pursuant to this FNPRM should apply until the Commission eliminates the mandatory local simulcasting requirement.⁴¹

11. We seek to craft rules that will protect current OTA viewers by facilitating and encouraging Next Gen TV stations to preserve 1.0 multicast streams during the transition while also creating an environment that does not stifle innovative new services that may be offered to OTA viewers through the deployment of ATSC 3.0 service. Pursuant to the current ATSC 3.0 rules, Next Gen TV stations are not required to simulcast their multicast streams but may choose to air them pursuant to private contractual arrangements.⁴² NAB explains that some host stations may be reluctant, however, to accept legal responsibility when airing another station's multicast stream(s), even if they can obtain indemnification from such station through a private contractual agreement.⁴³ Further, many Next Gen Broadcasters cannot simulcast all of their multicast streams because of capacity and other practical constraints. The licensed multicast stream approach proposed herein seeks to address these concerns by providing the industry with regulatory certainty about the legal treatment of multicast streams and facilitating their airing on multiple stations. A licensed multicast approach would not only make clear that the originating station (and not the host station) is responsible for regulatory compliance regarding the multicast stream being aired on a host station but also give the Commission clear enforcement authority over the originating station in the event of a rule violation on the hosted multicast programming stream. In addition, this approach seeks to facilitate noncommercial educational (NCE) stations' 3.0 deployment by allowing them to serve as hosts to commercial stations' multicast streams without violating the prohibition on broadcasting advertisements over spectrum dedicated to noncommercial use.⁴⁴

A. Simulcast Multicast Streams

12. We tentatively conclude that to address NAB's first scenario,⁴⁵ a Next Gen TV station may license one or more of its multicast streams, hosted by one or more partner stations, in situations where the Next Gen TV station is airing such multicast stream in "substantially similar" fashion⁴⁶ in both

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 (f)(5)-(6), 74.782(e) and (g)(5)-(6)); MVPD notice requirements (47 CFR §§ 73.3801(h), 73.6029(h), 74.782(i)); consumer education provisions (47 CFR §§ 73.3801(g), 73.6029(g), 74.782(h)); and licensing procedures (47 CFR §§ 73.3801(f)(2), 73.6029(f)(2), 74.782(g)(2)). See Petition at 3-6. We do not propose to extend these requirements to private contractual arrangements, many of which may already be in place.

⁴¹ *Infra* section III.F.

⁴² For example, commonly owned stations would not appear to face the same challenges in formulating hosting arrangements or determining ultimate responsibility for broadcast programming, and such stations may choose to forego multicast licensing altogether. Nonetheless, we encourage Next Gen TV stations to license their multicast streams aired on a commonly owned host station, in order to aid the Commission and the public in understanding the progress of the transition. In order to facilitate such licensing arrangements, we tentatively conclude that commonly owned stations should not be required to enter into written agreements, either for the hosting of primary or multicast streams. This is consistent with how the Bureau announced it would handle the hosting of primary streams on commonly owned stations. *Media Bureau Announces That It Will Begin Accepting Next Generation Television (ATSC 3.0) License Applications in the Commission's Licensing and Management System on May 28, 2019*, GN Docket No. 16-142, Public Notice, 34 FCC Rcd 3684, 3685 n.5 (MB 2019).

⁴³ NAB Petition at 3.

⁴⁴ 47 U.S.C. § 399B (prohibiting noncommercial stations from making their "facilities available to any person for the broadcasting of any advertisement").

⁴⁵ *Supra* para. 7.

⁴⁶ *Supra* para. 7 and note 25. As with primary streams (See 47 CFR §§ 73.3801(b)(1), 73.6029(b)(1), 74.782(b)(1)), "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, including targeted advertisements and promotions for upcoming programs. Such enhanced content or features that cannot reasonably be provided in ATSC 1.0 format include: "hyper-localized" content (e.g., geo-targeted weather, targeted emergency alerts, and hyper-local news),

(continued....)

1.0 and 3.0 formats.⁴⁷ This would include situations in which a multicast stream is aired together with the Next Gen TV station's primary stream on the primary host, as well as situations in which a multicast stream is aired on a host different from the primary host.⁴⁸ In either case, we tentatively conclude that the Next Gen station must air one of the simulcast multicast streams – either the 1.0 or 3.0 on its own (non-host) channel.⁴⁹ No commenter opposes this prong of NAB's proposal or raises any concerns about permitting the licensing of simulcast multicast streams.⁵⁰ We also tentatively conclude that any multicast streams treated as "simulcasts" of each other under this section must be "substantially similar."⁵¹ Although these rules, like the ATSC 3.0 transition rules generally, do not increase the amount of spectrum available to television broadcasters in a market, we tentatively conclude that this proposal may help address specific Next Gen TV stations' capacity constraints by facilitating the participation of stations uncomfortable with a purely contractual approach and making the participation of NCE stations legally permissible.⁵² We seek comment on these tentative conclusions. Is there any reason to treat "simulcast" multicast streams differently than "simulcast" primary streams in this regard? As discussed below, like local simulcasting arrangements for primary streams, hosting arrangements for multicast streams are temporary ones made to facilitate the station's transition to 3.0 service.⁵³

13. We agree with NAB that the adoption of such a licensing process will help preserve existing service in the market⁵⁴ by recognizing what CMG calls the "multi-party simulcasting model that has evolved" as a result of limited spectrum.⁵⁵ Moreover, we believe that facilitating the licensing of simulcast multicast channels best meets our dual goals of facilitating the transition to 3.0 and protecting

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programming features or improvements created for the 3.0 service (e.g., emergency alert "wake up" ability and interactive programming features), enhanced formats made possible by 3.0 technology (e.g., 4K or HDR), and any personalization of programming performed by the viewer and at the viewer's discretion. *Next Gen TV First Report and Order*, 32 FCC Rcd at 9942-43, para. 22.

⁴⁷ Although NAB's Petition alternatively asks us to clarify through a declaratory ruling that our "existing rules permit a station transmitting in ATSC 3.0 to partner with one or more other stations that would host the first station's simulcast ATSC 1.0 multicast streams to preserve existing service in the market," we believe a rulemaking is more appropriate for addressing the issue of licensing of simulcast multicast streams. See NAB Petition at 1. When adopting its initial rules, the Commission did not address the issue of multicast licensing. Instead, by default, multicast arrangements were left to private contractual arrangements and more recently to the STA process. During the pendency of this proceeding, we will maintain the status quo and permit the Bureau to continue to process STA requests and 3.0 license applications in the same manner it has to date. Any STA or 3.0 license application granted previously or during the course of this proceeding containing such multicast arrangements shall not prejudice the outcome of this proceeding, and any such STA or 3.0 license application will be subject to the outcome of this proceeding.

⁴⁸ *Supra* note 25.

⁴⁹ *Supra* note 25 (Station A in the example airs its multicast streams in 3.0 on its own channel and simulcasts them in 1.0 on its partner hosts).

⁵⁰ See generally GN Docket 16-142.

⁵¹ See, e.g., 47 CFR § 73.3801(b)(1) and (2). See also *infra* section III.F ("Timing").

⁵² Petition at 3.

⁵³ *Infra* section III.F ("Timing").

⁵⁴ NAB Comments at 3-4.

⁵⁵ CMG Comments at 3. For example, a Next Gen TV station's primary stream host may not have sufficient capacity to also air all of the Next Gen TV station's multicast streams, either because it is using that capacity for its own programming or to host the streams of other stations. In such a case, this proposal would permit the Next Gen TV station to seek an additional partner or partners with available capacity who can serve as hosts to its different-service multicast streams.

current 1.0 viewers.⁵⁶

B. Non-Simulcast 1.0 Multicast Streams

14. We tentatively conclude that to address the second scenario set forth by NAB, a Next Gen TV station that is broadcasting in 3.0 on its own channel may license one or more 1.0 multicast streams aired on a 1.0 host or hosts, even when it is *not* simulcasting that multicast stream in a 3.0 format.⁵⁷ We seek comment on this tentative conclusion, including our conclusion that we should limit this proposal to those Next Gen TV stations broadcasting in 3.0 on their own channels. Although NAB suggests such a hypothetical,⁵⁸ we are unaware of any station broadcasting in 1.0 on its own channel that has sought 1.0 hosts for its multicast programming, so see no reason to provide such flexibility in these proposed rules. Perhaps more fundamentally, it is unclear that providing such flexibility is necessary either to facilitate the transition to 3.0 or to protect current 1.0 viewers.⁵⁹

15. We tentatively find that, as NAB contends, allowing multicast licensing for non-simulcast 1.0 multicast streams would benefit consumers by preserving viewer access to 1.0 multicast streams in situations where broadcasters that have transitioned to 3.0 on their own channels lack capacity to air their multicast streams on their 3.0 facilities.⁶⁰ We recognize that, at this early stage of the transition, ATSC 3.0 capacity will be limited. During the initial roll-out of 3.0 service, we expect markets will generally start with one or two ATSC 3.0 “lighthouse” stations, leaving capacity on 3.0 lighthouse stations mostly – if not entirely – for Next Gen TV station’s primary streams.⁶¹ We agree with broadcasters that denying them this flexibility would likely lead them to stop broadcasting some 1.0 multicast streams altogether.⁶² We therefore tentatively find that, by extending our multicast licensing approach to non-simulcast 1.0 multicast streams, we would not only encourage Next Gen TV broadcasters to preserve the multicast streams viewers watch today, but also facilitate their transition to 3.0 by making it easier for them to continue serving their existing viewers even while 3.0 spectrum is limited.

⁵⁶ As discussed in section III.E below, however, we seek comment on any necessary restrictions on the licensing of multicast streams aired by multiple hosts, in order to limit the amount of spectrum or programming any one Next Gen TV licensee may aggregate.

⁵⁷ *Supra* para. 7 and note 26. Any “non-simulcast” multicast streams licensed pursuant to rules proposed in this section would not be required to comply with 47 CFR §§ 73.3801(b), 73.6029(b), and 74.782(b) (the “Simulcasting Requirement”).

⁵⁸ Petition at 3 (“A station transmitting in ATSC 3.0 that has its primary, simulcast stream as well as a multicast stream hosted on ATSC 1.0 Station A where, to have capacity to carry those streams, Station A must arrange for one of its multicast streams to be hosted on ATSC 1.0 Station B.”).

⁵⁹ As discussed in sections III.E and F below, we also seek comment on our tentative conclusion regarding the duration of such a requirement, and on whether restrictions on the licensing of multicast streams aired by multiple hosts are needed in order to limit the amount of spectrum any one Next Gen TV licensee may aggregate.

⁶⁰ Broadcaster commenters uniformly and enthusiastically support the licensing of non-simulcast streams. *See, e.g.*, Cox Comments at 1; Graham Comments at 1-3; Gray Comments at 1-2; Meredith Comments at 1-2; NTA Comments at 1; Pearl TV Comments at 1-3.

⁶¹ *See, e.g.*, NAB Reply at 3 (“While ATSC 3.0 has greater channel capacity for programming than ATSC 1.0, the capacity is not infinite. The enhanced services Next Gen TV will allow, such as ultra high definition video, can greatly reduce the amount of residual capacity to carry multicast streams. Therefore, the ATSC 3.0 station may be unable to provide all of the multicast streams it provided prior to the transition on its ATSC 3.0 signal if it is also going to carry ATSC 3.0 simulcasts of its partners’ ATSC 1.0 signals and provide enhanced services to entice viewers to upgrade.”). For example, a Next Gen TV station broadcasting in 3.0 on its own channel may not have sufficient capacity to also air all of its own multicast streams in 3.0, most likely because it is using that capacity to host the primary 3.0 streams of partner stations. In such a case, this proposal would permit the Next Gen TV station to seek a partner or partners with available capacity in 1.0 who can air 1.0 versions of its multicast streams.

⁶² *See, e.g.*, TEGNA Reply at 3.

16. We seek comment about whether licensing non-simulcast 1.0 multicast streams raises specific concerns.⁶³ We observe that, unlike simulcast streams, non-simulcast 1.0 multicast streams aired on a host would not be tied to a specific programming stream aired by the originating station. We also observe that non-simulcast 1.0 multicast licensing is only necessary while 3.0 capacity is limited, because with sufficient 3.0 capacity a station could simulcast its multicast streams. Should we limit the licensing of non-simulcast 1.0 multicast streams only to situations where 3.0 capacity is demonstrably limited because of the hosting of partner streams or otherwise restrict the licensing of non-simulcast streams? Why or why not?

17. We seek comment on ATVA's assertion that, under the non-simulcast licensing proposal, a Next Gen TV station could air a single SD primary stream on its 3.0 signal and provide data services on its remaining 3.0 spectrum, while licensing host spectrum to air its 1.0 primary and multicast streams.⁶⁴ To our knowledge, no situation like this has arisen to date, even though dozens of 3.0 transitions have begun with programming streams carried by partner hosts (in the case of primary streams) and private contractual partners. While we consider this situation unlikely early in the transition because of 3.0 capacity constraints, we seek comment on this understanding and acknowledge that this could occur as the transition progresses.⁶⁵ However, given that 3.0 broadcasters will be seeking to attract viewers, we note that they have touted offering primary streams in HD, if not UHD format, as a key selling point for the 3.0 service. Moreover, as discussed more below, our grant of authority for Next Gen TV broadcasters to license host spectrum is temporary. Finally, we seek comment on NCTA's request that we consider "enhanced transparency and disclosure requirements" for ATSC 3.0 host partner arrangements, particularly those involving non-simulcast streams.⁶⁶ What would such requirements entail, what benefits would they provide, and what costs would they impose? We seek comment on these issues.

C. Non-Simulcast 3.0 Multicast Streams

18. We decline to seek comment on the third prong of NAB's proposal, which would allow a Next Gen TV station that continues to broadcast in 1.0 on its own channel to license 3.0 multicast streams aired on a host station even when it is not simulcasting those multicast streams in a 1.0 format.⁶⁷ NAB itself concedes that the issue of non-simulcast 3.0 multicast streams is likely to arise only in the later stages of the transition.⁶⁸ Significantly, we also note that, of the 35 STA requests the Bureau has reviewed to date, none has asked us to license a non-simulcast 3.0 multicast stream. We thus conclude

⁶³ ATVA and NCTA raise policy questions and concerns about non-simulcast multicast streams in particular. *See* ATVA Comments at 4-7; NCTA Reply at 1-2 (requesting that we "more broadly examine the proper scope of ATSC 3.0 channel-sharing [*sic*] arrangements or other 'simulcasting agreements,' including the use of channel sharing to broadcast multicast streams that will not be simulcast on the originating station's ATSC 3.0 stream"). We address some of those issues below to the extent that they are potentially relevant to all situations involving multiple hosts. *Infra* section III.E.

⁶⁴ ATVA Comments at 4-7.

⁶⁵ We note that the Commission has indicated its intention to address in a future proceeding how much spectral capacity a broadcast television station (commercial or NCE) must use *after* the ATSC 3.0 transition period for the provision of its free over-the-air television service. *Broadcast Internet Order*, 35 FCC Rcd at 14499-500, n.48. Nonetheless, we observe that today no station is required to air more than one SD stream of programming, and most choose to air more programming, and/or programming at higher resolutions.

⁶⁶ NCTA Comments at 1-2.

⁶⁷ *Supra* para 7; Petition at 1-2 ("[NAB] hereby requests that the Commission . . . establish rules . . . [to] permit a station transmitting in ATSC 1.0 to partner with one or more other stations to host content transmitted in ATSC 3.0."). NAB states that one such arrangement may be "[a] station transmitting in ATSC 1.0 that will simulcast some of its programming on ATSC 3.0 Station A, and some of its programming on ATSC 3.0 Station B, potentially including 3.0 multicast streams that are not simulcast in ATSC 1.0." Petition at 3.

⁶⁸ Petition at 2.

that seeking comment on NAB's third scenario at this time would be premature.

D. Use of Multicast Streams to Minimize 1.0 Service Loss

19. We tentatively conclude that, under certain circumstances, a Next Gen TV station may simulcast its primary stream programming both on its primary stream host and on a multicast stream carried by a different partner station in order to minimize the impact of service loss that would result if it were only able to air its primary stream on a single host.⁶⁹ We expect this situation will arise only when an applicant intends to broadcast in 3.0 on its own channel and is unable to find a partner 1.0 host that could, on its own, provide coverage of its primary stream to 95 percent of the applicant's 1.0 service area. In such cases, the application will be reviewed under the non-expedited processing standard.⁷⁰ Applicants whose applications are reviewed under the non-expedited processing standard are required to minimize the impact of the expected service loss, but the Commission did not require a specific method for doing so.⁷¹ The Bureau recently considered an STA application which found that airing a simulcast of the originating station's primary stream on two different hosts was "an acceptable method for mitigating ATSC 1.0 service loss under the non-expedited processing standard."⁷² Significantly, the Bureau noted that the two hosts in question were NCEs, and found that "permitting NCE stations to participate in the ATSC 3.0 rollout arrangements in this manner is critical to the success of the transition."⁷³ The Bureau therefore granted an STA request to authorize the multicast streams, including the stream with the primary programming. We tentatively conclude that similarly situated applicants⁷⁴ seeking to rely on one licensed multicast stream carrying primary programming to minimize the impact of service loss may have their applications considered through the non-expedited application process instead of through an STA. We also tentatively conclude that any approval of such an approach would require that the licensed multicast stream airing the primary programming be a "substantially similar" simulcast of the Next Gen TV station's primary stream. We also tentatively conclude that, if such application is granted, we will consider the 1.0 host station of the multicast stream to be licensed in the same manner as the primary stream host. Providing a license will permit NCE stations to host commercial primary multicast streams

⁶⁹ We note that such a stream would be considered a "simulcast multicast stream" under any rules adopted in this proceeding and would count toward any limit on aggregate spectrum or programming ultimately established in this proceeding. *Supra* section III.E ("Spectrum Aggregation").

⁷⁰ In the *Next Gen TV Report and Order*, the Commission established a presumption that it would favor grant of an application demonstrating that the station would provide ATSC 1.0 simulcast service to at least 95 percent of the predicted population within the station's original noise limited service contour (NLSC) and afford "expedited processing" to such applications. *Next Gen TV Report and Order*, 32 FCC Rcd at 9946, para. 29. *See also* 47 CFR §§ 73.3801(f)(5)-(6), 73.6029(f)(5)-(6). A Next Gen TV applicant whose ATSC 1.0 simulcast signal will not satisfy this 95 percent threshold ("non-expedited applicant") will be considered on a case-by-case basis and must provide the showing set forth in the *Next Gen TV Report and Order*, 32 FCC Rcd at 9947-48, para. 34.

⁷¹ *Id.*

⁷² *Authorization for Application of WNUV-TV for Modification of License as Amended and Application of WNUV-TV for Legal Special Temporary Authority as Amended*, Letter Order, LMS File Nos. 0000136472 and 0000136473, at 1, 6 (VD June 22, 2021). Although the Bureau called the stream a "supplemental primary ATSC 1.0 simulcast stream," the stream can be viewed as a multicast stream simulcasting the station's primary programming. Recognizing this ensures that there is no confusion that the second stream is merely a multicast stream and not a second "primary" stream. We seek comment on this point. We note that the Bureau "emphasize[d] that the supplemental primary stream [had] no carriage rights." Our treatment of this stream as a multicast stream would similarly afford it with no carriage rights.

⁷³ *Id.* at 6.

⁷⁴ For the purposes of this tentative conclusion, we consider similarly situated originating stations to be NCEs, or commercial stations working with NCE partner hosts, transitioning their own channel to 3.0, who are unable to find a partner 1.0 host that could, on its own, provide coverage of its primary stream to 95 percent of the applicant's 1.0 service area.

in a manner that is consistent with section 399B of the Communications Act of 1934, as amended.⁷⁵ We seek comment on these tentative conclusions.

20. We also seek comment on whether we should consider this approach to be an acceptable method for mitigating ATSC 1.0 service loss for any other types or groups of applicants. We recognize that each programming stream devoted to simulcasting a primary stream is one fewer that could be devoted to multicast programming, potentially reducing the diversity of programming available to viewers in order to ensure the widest availability of the most popular programming. We also note that a station airing its primary stream programming on two hosts could be reaching many viewers previously outside its 1.0 footprint, irrespective of whether it successfully provides service to 95 percent of that original area. How should we weigh such tradeoffs when reviewing non-expedited applications seeking to rely on this method of reducing service loss? We seek comment on the appropriate scope of this flexibility.

E. Policy Issues Related to Multicast Licensing

21. While we consider each of the specific licensing proposals above, in this section, we seek comment on potential policy-related issues stemming from the increased flexibility that we propose in this proceeding. While our proposals for licensing simulcast multicast streams and non-simulcast 1.0 multicast streams would allow Next Gen TV stations to license multicast programming streams on one or more hosts in their local markets, we seek comment on whether this flexibility should be circumscribed. Specifically, we seek comment on how we can ensure that individual stations do not use this transition period flexibility to aggregate programming or broadcast spectrum on multiple stations in a market in a manner that would not otherwise be possible or permitted absent the proposed rule changes. We also seek comment on whether to extend the waiver of the ownership rules, which currently applies only to primary stream hosting partnerships, to multicast stream hosting partnerships.

22. *Programming Aggregation.* As ATVA points out, permitting the types of licensing arrangements set forth in NAB's petition could have the unintended consequence of permitting Next Gen TV stations to aggregate broadcast programming in a way they may not do today.⁷⁶ We seek comment on these concerns, and whether our final rules should be tailored to address them while allowing broadcasters to "continue to serve audiences with multicast streams."⁷⁷ For instance, ATVA contends that NAB's proposal would "provide yet another loophole permitting [a station] to assemble 'big four' duopolies, triopolies, and even quadropolies without triggering ownership rules and without needing to seek FCC approval."⁷⁸ Under our current ownership rules, an entity may only own two full power stations in a market, only one of which may be a "top-four" station.⁷⁹ As described in the 2018 Quadrennial Review proceeding, however, broadcasters sometimes aggregate multiple top-four network affiliations in a market on a single station by placing newly acquired affiliated programming on one or more multicast streams. These licensees are not currently required to seek Commission approval to do so and are able to maintain compliance with the Local TV Ownership Rule, which limits ownership of multiple *stations* in a single market, rather than multiple *streams* of programming in a market.⁸⁰

⁷⁵ 47 U.S.C. § 399(a), (b)(2) ("[n]o public broadcast station may make its facilities available to any person for the broadcasting of any advertisement," which is defined as "any message or other programming material which is broadcast or otherwise transmitted in exchange for any remuneration."). See also *Next Gen TV First Report and Order*, 32 FCC Rcd at 9954-55, para. 50 (concluding that a licensed simulcast approach will allow NCE stations to serve as hosts to commercial stations' simulcast programming); Petition at 3.

⁷⁶ See ATVA Comments at 3-8.

⁷⁷ Petition at 2.

⁷⁸ ATVA Comments at 7.

⁷⁹ 47 CFR § 73.3555(b).

⁸⁰ See 2018 *Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other*

(continued....)

Recognizing this trend, as well as commenters' concerns about its increasing prevalence as a means to work around the letter and spirit of the Local TV Ownership Rule, the Commission has sought comment on the practice of dual affiliation using multicasting and "whether and how the Commission should evaluate multicast streams for purposes of the Local Television Ownership Rule."⁸¹ The proposals at issue in this FNPRM appear to be primarily motivated by a desire to adopt new technologies in a rapidly changing video programming market, and any rules adopted would be temporary. Nonetheless, we recognize that they could contribute to or even exacerbate the trend discussed above. Would it be appropriate to restrict these program aggregation practices for Next Gen TV stations relying on partner hosts during the 3.0 transition regardless of how we address the application of the TV duopoly rule in the context of the Quadrennial Review proceeding?

23. ATVA notes that the proposal in this proceeding would open the door to broadcasters' airing newly acquired programming not just on their own multicast streams carried on their own channels—the issue directly raised in the 2018 Quadrennial Review proceeding—but on their own multicast streams carried by host stations as well.⁸² Such a scenario would potentially expand what ATVA characterizes as an existing "loophole" in the Local TV Rule.⁸³ Should the Commission be concerned about allowing such flexibility, and if so are there ways that the approach contemplated in this FNPRM could be modified to avoid expanding this "loophole" while at the same time giving broadcasters sufficient flexibility to "preserve existing multicast service to viewers" during the transition from 1.0 to 3.0?⁸⁴ For instance, to what extent are efforts to address the issues raised by ATVA more properly addressed in another proceeding, such as the 2018 Quadrennial Review proceeding where, as noted above, the Commission has sought comment on issues related to multicasting? In what ways are the issues ATVA raises here different than the issues raised in the 2018 Quadrennial Review proceeding?⁸⁵ We seek comment on whether, and if so how, these concerns should be addressed in the context of this proceeding. Should we condition the grant of a multicast license on the outcome of the 2018 Quadrennial Review proceeding?

24. In response to ATVA's concerns, NAB offers a proposal for "limiting the potential scope of hosting arrangements."⁸⁶ Specifically, NAB proposes that: "In arranging for the hosting of its

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Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MB Docket No. 18-349, Notice of Proposed Rulemaking, 33 FCC Rcd 12111, 12137, para. 67 (2018) (finding that "[b]ased on Commission staff review of Nielsen data, there are at least several dozen [Designated Market Areas] where a single entity holds affiliations with two top-four networks by using a multicast stream to carry the second signal"); *Media Bureau Seeks to Update the Record in the 2018 Quadrennial Regulatory Review*, MB Docket No. 18-349, Public Notice, DA 21-657, at 4 (MB June 4, 2021) (seeking comment on the further development and impact of technological advances and industry practices, including multicasting) (collectively, *2018 Quadrennial Review NPRM*); 47 CFR 73.3555(b) (stipulating that "[a]n entity may directly or indirectly own, operate, or control two television stations licensed in the same Designated Market Area (DMA) (as determined by Nielsen Media Research or any successor entity) if...[a]t the time the application to acquire or construct the station(s) is filed, at least one of the stations is not ranked among the top four stations in the DMA, based on the most recent all-day (9 a.m.-midnight) audience share, as measured by Nielsen Media Research or by any comparable professional, accepted audience ratings service").

⁸¹ See *2018 Quadrennial Review NPRM*, 33 FCC Rcd at 12137, paras. 66-67; *Media Bureau Seeks to Update the Record in the 2018 Quadrennial Regulatory Review*, MB Docket No. 18-349, Public Notice, 2021 WL 2302129, *3 (June 4, 2021).

⁸² ATVA Comments at 3-8.

⁸³ *Id.* at 7-8.

⁸⁴ Petition at 5.

⁸⁵ See, e.g., ATVA Comments at 8 (characterizing the flexibility proposed in this proceeding as creating a "new" loophole).

⁸⁶ See NAB Reply at 7; Letter from Patrick McFadden, Associate General Counsel, NAB, to Marlene H. Dortch,

(continued....)

programming, no individual broadcaster shall partner with other stations to host, in the aggregate, more programming than such station could broadcast on its own facilities based on the then-current state of the art for television broadcasting as evidenced by other television stations then operating with the same standard.”⁸⁷ We believe that an effective rule addressing ATVA’s concerns would need to be objective, simple for stakeholders to understand and apply, and amenable to enforcement. While we question whether NAB’s proposal meets these standards, we seek comment on NAB’s proposed approach. For example, what is meant by “the then-current state of the art”? How would such a standard work? Who would decide what is the “state of the art”? How would an interested party and/or the Commission determine whether a given broadcaster is in compliance with this rule? We seek comment on NAB’s proposal, including suggestions regarding how NAB’s terminology in the proposal could or should be construed, or ways in which it could be made workable or enforceable in practice. The record contains no alternative proposals that might address these concerns, beyond the cable commenters’ suggestion that we consider a flat prohibition on the licensing of hosted non-simulcast streams.⁸⁸ We therefore seek comment on potential alternatives to NAB’s proposal that might better address concerns related to the aggregation of programming, should we adopt our licensing proposals.

25. Either in addition to or in lieu of action in the 2018 Quadrennial Review or another proceeding, should the Commission limit the number of programming streams generally – or non-simulcast programming streams in particular – that an originating station can air on host stations as commenters suggest?⁸⁹ Alternatively, should the Commission limit the number of hosts that any one broadcaster can use to air primary and multicast streams? If so, would limiting the number of hosts to two give broadcasters sufficient flexibility to serve their existing viewers during the transition, while also limiting their ability to aggregate programming or broadcast spectrum on multiple stations in a manner that would not otherwise be possible or permitted absent the proposed rule changes? If the Commission does adopt final multicast licensing rules that circumscribe the approach NAB originally sought, should the Commission also establish a waiver process pursuant to which parties could seek additional flexibility by demonstrating that it is consistent with the goals of this proceeding?

26. *Spectrum Aggregation.* We also seek comment on how to ensure that a Next Gen TV broadcaster does not use the interim flexibility proposed in this FNPRM to aggregate spectrum beyond that which is legally permissible today. A single station may generally use no more than 6 MHz under its license (and stations channel sharing due to successful participation in the reverse auction use less). As discussed above, today one entity can effectively control no more than two full power stations in a market.⁹⁰ In addition to its concerns about aggregation of programming, ATVA expresses concern that the proposal in NAB’s Petition could result in a Next Gen TV station being authorized to operate on three or more different channels, potentially using “many times its assigned” amount of spectrum to air more programming than it otherwise could.⁹¹ The group asserts that this would reduce viewpoint diversity by encouraging stations to lease spectrum in order to host other stations’ streams, rather than providing

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Secretary, FCC, GN Docket No. 16-142, at 1-2, 7 (filed Jan. 19, 2021); NAB April 2021 *Ex Parte* Letter at 2.

⁸⁷ NAB April 2021 *Ex Parte* Letter at 2. *See also* Letter from Patrick McFadden, Deputy General Counsel, NAB, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 16-142, at 1 (Aug. 2, 2021) (stating that “its proposed rule would limit the amount of capacity that any single station would have access to in any given market, regardless of the number of stations it partnered with to host programming”).

⁸⁸ ATVA Comments at 6-8; Letter from Rick Chessen, Chief Legal Officer & Senior Vice President, NCTA, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 16-142, at 2 (filed Aug. 26, 2021) (NCTA Aug. 26, 2021 *Ex Parte* Letter).

⁸⁹ ATVA Comments at 6-8; NCTA Aug. 26, 2021 *Ex Parte* Letter at 2.

⁹⁰ *Supra* para 22. *See also* 47 CFR 73.3555(b). A single entity, therefore, may effectively control no more than 12 megahertz of full power spectrum in a given market.

⁹¹ ATVA Comments at 6-8.

programming of their own.⁹² While calling the idea “wholly speculative and extraordinarily unlikely in practice,” NAB suggests that its proposal to limit the scope of hosting arrangements (described above) would address this concern.⁹³ Should the Commission be concerned about the impact of the proposals above on spectrum aggregation in a market and in particular the ramifications for viewpoint diversity, competition, or localism? If so, we anticipate that any rule the Commission adopts to address this situation will also address any concerns about programming aggregation. That is, we expect that, to the extent we must address both of these potential scenarios, they can be addressed by the same rule. We seek comment on these assumptions. If we were to adopt such a rule, would NAB’s proposed rule be effective for this purpose?⁹⁴ We also invite comment on other ways in which we could ensure that a station does not aggregate spectrum beyond that which it is allowed pursuant to a single license and that a broadcaster does not aggregate control of spectrum in a market beyond that which it is allowed under the Local Television Ownership Rule.

27. *Ownership Rules Exemption.* On a related issue, we seek comment on whether to extend the temporary “waiver” of the Commission’s local broadcast ownership rules, which currently applies to primary stream hosting partnerships, to multicast stream hosting partnerships. That is, if we adopt the approach contemplated in this FNPRM or another proposal that would grant similar flexibility, should we also grant temporary relief from our broadcast ownership rules broadly to stations involved in multicast hosting relationships in order to provide clarity for such stations and other stakeholders, or would it be sufficient for us to limit any relief granted to those portions of our ownership rules that define attributable relationships? In the 2017 *Next Gen TV First Report and Order*, we found that, “[g]iven that the local simulcasting requirement . . . is temporary, [the Commission] will not apply the broadcast ownership rules in any situation where airing an ATSC 3.0 signal or an ATSC 1.0 simulcast on a temporary host station’s facility would result in a potential violation of those rules.”⁹⁵ In adopting this exemption, the Commission emphasized its temporary nature and that it was granted to facilitate the transition to ATSC 3.0. In addition, that previously adopted exemption is tied to a requirement to simulcast programming aired by the originating station itself, limiting the scope of the exemption and potential effects on the competitive dynamics of the marketplace. By contrast, the licensed multicast stream hosting rules proposed today would permit a Next Gen TV broadcaster to air programming on another station without airing a simulcast of that programming on its own station, or even having previously aired that network or stream of programming.⁹⁶ Is this a significant enough difference to warrant a different approach? Or do the temporary nature of the exemption and the desire to facilitate the 3.0 transition make the situations similar enough to warrant the same approach? We seek comment on the similarities of and differences between these situations, and whether a temporary exemption from the media ownership rules in whole or in part is appropriate in the multicast licensing context.

28. Instead of broadly exempting licensed multicast streams from the Commission’s ownership rules, should we alternatively find in this proceeding that the hosting of a Next Gen TV station’s multicast stream standing alone – either simulcast or non-simulcast – simply does not give rise to an attributable interest in the host for the originating station and vice versa? Should we likewise find that the hosted multicast stream is considered part of the originating station for purposes of our ownership rules such that any action taken in the 2018 Quadrennial Review proceeding that impacts a station’s use

⁹² *Id.* at 7-8.

⁹³ *Supra* para. 24 (also noting the Commission’s skepticism about the efficacy of the rule as proposed).

⁹⁴ For example, would the NAB proposal’s cap on “programming” also address concerns about “spectrum”?

⁹⁵ *Next Gen TV First Report and Order*, 32 FCC Rcd at 9972 n.237. See also *Promoting Broadcast Internet Innovation through ATSC 3.0*, MB Docket No. 20-145, Declaratory Ruling and Notice of Proposed Rulemaking, 35 FCC Rcd 5916, 5924, para. 15 (2020).

⁹⁶ *Supra* section III.B.

of its own multicast streams would also apply to multicast streams that the station arranges to air on a host station? We seek comment on these issues.

29. Finally, we seek comment on the practical impacts if we adopt the proposals in sections III.A, B, and D of this proceeding but decline to extend to multicasting hosting relationships a temporary exemption from either the ownership rules broadly or, more narrowly, the associated portion of those rules that governs attribution. To what extent, if any, would the absence of an exemption from the ownership rules or the associated attribution rules for multicast hosting arrangements inhibit broadcasters from providing multicast programming during the transition? If an exemption from the ownership rules or the associated attribution rules or both is not extended to multicast hosting relationships, how would, or how should, these relationships be considered or counted for purposes of applying our ownership and attribution rules, including the prohibition on ownership of two top-four rated stations in a market?

F. Rules Applicable to Multicast Streams Aired on a Host Station

30. Finally, we tentatively conclude that we should apply certain ATSC 3.0 transition rules that currently apply only to primary simulcast streams to both simulcast and non-simulcast licensed multicast streams aired on host stations, as NAB has proposed,⁹⁷ with certain exceptions as detailed below.⁹⁸ In particular, we propose an exception to the predicted population threshold required for expedited processing of the licensing applications as it relates to multicast license applications but keep the requirement in place for determining an originating station's compliance with our children's television Core Programming requirements.⁹⁹ We propose to revise our rules and Form 2100, which is used by stations seeking to implement or modify sharing arrangements, accordingly. We also note that, as NAB recognizes in its proposal,¹⁰⁰ nothing we do in proposing multicast licensing rules would change the carriage rights of multicast streams, which are not entitled to mandatory carriage by MVPDs.¹⁰¹ We seek comment on these proposals.

31. Generally, the ATSC 3.0 transition rules that currently apply only to primary simulcast streams are intended to protect consumers from losing access to the 1.0 television programming they currently watch and avoiding consumer disruption during the transition to ATSC 3.0. Our intention is therefore to ensure that primary and multicast streams licensed to be aired by a partner host station are treated the same, to the greatest extent possible. While multicast programming typically has much lower viewership than primary streams, such viewership is not insignificant and is important to those viewers watching it today.¹⁰² Moreover, multicast streams add to the diversity of programming available to

⁹⁷ The rules at issue are those found in sections 73.3801, 73.6029, and 74.782 (each entitled "Television Simulcasting"). These include simulcast arrangements and agreements (47 CFR §§ 73.3801(a) and (e), 73.6029(a) and (e), 74.782(a) and (f)); the simulcasting requirement (47 CFR §§ 73.3801(b), 73.6029(b), 74.782(b)); contour, DMA, and community of license coverage requirements (47 CFR §§ 73.3801(d) and (f)(5)-(6), 73.6029(d) and (f)(5)-(6), 74.782(e) and (g)(5)-(6)); MVPD notice requirements (47 CFR §§ 73.3801(h), 73.6029(h), 74.782(i)); consumer education provisions (47 CFR §§ 73.3801(g), 73.6029(g), 74.782(h)); and licensing procedures (47 CFR §§ 73.3801(f)(2), 73.6029(f)(2), 74.782(g)(2)). See Petition at 3-6.

⁹⁸ *Infra* paras. 32-36. See also *supra* note 51 and accompanying text (proposing to apply the "substantially similar" standard to simulcast multicast streams without a scheduled expiration), and note 57 (noting that licensed non-simulcast streams would not be subject to the requirements in 47 CFR §§ 73.3801(b), 73.6029(b), and 74.782(b)).

⁹⁹ *Infra* paras. 32-34.

¹⁰⁰ Petition at 4, 6.

¹⁰¹ We emphasize that multicast streams have no mandatory carriage rights on cable or satellite and our proposals herein will not convey any new carriage rights to Next Gen TV stations licensing their multicast streams on a host. See *DTV Must Carry Order*, 16 FCC Rcd 2598, para. 54; *affirmed by Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, Second Report and Order and First Order on Reconsideration, 20 FCC Rcd 4516, 4518, para. 3 (*DTV Must-Carry Second R&O*) (declining to require cable systems to carry a licensee's multicast streams).

viewers in the market. We recognize, however, that no broadcaster is required to provide multicast streams and that Next Gen TV stations are not required to preserve or simulcast their existing multicast streams when they transition to ATSC 3.0 service.¹⁰³ Thus, we must balance the goal of preserving maximum availability of multicast streams with the reality that broadcasters could simply decline to air multicast streams if our rules are too burdensome. We seek comment on how to balance these goals in adopting licensing rules.

32. *Coverage rules.* We propose to apply the DMA and community of license coverage requirements to all multicast streams that are licensed to be aired on a host station that is not the primary host.¹⁰⁴ We tentatively conclude that a station seeking to license multicast streams aired on a host station will continue to qualify for expedited processing if its primary stream aired on a partner 1.0 host can provide coverage to 95 percent of the predicted population served by the applicant's pre-transition 1.0 signal.¹⁰⁵ Even if its licensed multicast streams will be aired by a different a host station, they will not be required to meet this predicted population threshold requirement to qualify for expedited processing, as long as they comply with the DMA and community of license coverage requirements.¹⁰⁶ However, we also propose that a Next Gen TV broadcaster should note in its application the predicted percentage of population within the noise-limited service contour (NLSC) served by the station's original 1.0 signal that will be served by each multicast stream host in order to provide transparency to the public and interested parties. Finally, we propose that in order for such a multicast stream to count toward the originating station's children's television Core Programming requirement, the multicast stream must either be carried on the same host as the originating station's primary stream, or on a host that serves at least 95 percent of the predicted population served by the applicant's pre-transition 1.0 signal.¹⁰⁷

33. Given that one of the primary goals of granting licensing flexibility is to preserve 1.0 multicast service, we tentatively conclude that we must preserve such service for the station's DMA and community of license when a Commission license is being issued. We note that this is more restrictive than NAB's proposed rule, which would require only that a multicast host be in the same DMA as the originating station. We seek comment on this tentative conclusion, including whether some other minimum coverage or other standard would be more appropriate.¹⁰⁸ We tentatively agree with NAB,

(Continued from previous page) _____

¹⁰² We estimate that at least 70 broadcast television stations air Big-4 network programming (*i.e.*, ABC, CBS, FOX, NBC) on a multicast stream, based on staff review of May 2021 Nielsen ratings and the BIA Kelsey Media Access Pro database as of August 5, 2021, but seek comment on this estimate. In addition, other popular network programming on multicast streams includes, for example: MeTV (0.89 avg rating), ION (0.42 avg rating), CW (0.4 avg rating), GRIT (0.37 avg rating), Telemundo (0.35 avg rating), and Heroes & Icons (HI) (0.32 avg rating) (Average ratings data based on staff review of May 2021 Nielsen ratings. For each network, the average rating is computed using the network's ratings in DMAs where the network was aired on a multicast stream.).

¹⁰³ *Next Gen TV First Report and Order*, 32 FCC Rcd at 9937-38, para. 13. The Commission recognized the capacity constraints broadcasters will face during their transition to ATSC 3.0 service when they are sharing facilities in order to air both a 1.0 and 3.0 channel. *Id.* at n.40 (*citing* PBS *ex parte* letter). The Commission also observed that “[t]he provision of multicast channels is discretionary” and so “decline[d] to adopt rules requiring broadcasters who currently air such channels to continue to do so.” *Id.* at n.40. *See also* 47 CFR § 73.624(b) (requiring DTV broadcasters to transmit only one free over-the-air programming stream to viewers).

¹⁰⁴ For 1.0 simulcasts aired on a host channel, a Next Gen TV station's ATSC 1.0 simulcast signal must continue to cover the station's entire community of license and the host station must be assigned to the same Designated Market Area (DMA) as the originating station. 47 CFR §§ 73.3801(c), 73.6029(c), 74.782(d). For 3.0 signals aired on a host channel, only the DMA requirement applies. 47 CFR §§ 73.3801(d), 73.6029(d), 74.782(e).

¹⁰⁵ *Next Gen TV Report and Order*, 32 FCC Rcd at 9947-48, para. 34.

¹⁰⁶ *Infra* para. 33. *See also* 47 CFR §§ 73.3801(f)(5), 73.6029(f)(5), 74.782(g)(5).

¹⁰⁷ *Infra* para. 34.

¹⁰⁸ NAB April 2021 *Ex Parte* Letter at 2.

however, that we should not otherwise require a multicast stream to cover a specific amount of the originating station's 1.0 NLSC in order for a license application to receive favorable treatment and expedited processing.¹⁰⁹ We seek comment on whether this approach will provide broadcasters with enough flexibility to find hosts for their multicast streams, while still ensuring that the preservation of 1.0 service is focused on the stations' communities of license. We also seek comment, however, on whether this approach would adequately conform to the expectations of viewers outside a station's community of license.

34. We further tentatively conclude that, to be counted toward Core Programming for purposes of our children's television rules, programming on a multicast stream must either be carried on the same host as the originating station's primary stream, or on a host that serves at least 95 percent of the predicted population served by the applicant's pre-transition 1.0 signal.¹¹⁰ We observe that if we allow multicast streams to serve substantially fewer viewers than the primary stream, it would seem to be inappropriate to allow a station to rely on such multicast streams to comply with its Core Programming requirements.¹¹¹ As in the expedited processing context, we believe this 95 percent threshold will balance the need to ensure the continued provision of service to viewers against the need to allow broadcasters sufficient flexibility to locate and select a simulcast partner.¹¹² Application of this threshold is intended to preserve the maximum amount of ATSC 1.0 programming to the greatest number of viewers while facilitating the deployment of ATSC 3.0 and new innovative broadcast services. We seek comment on these tentative conclusions and on whether this approach will preserve existing viewership while providing broadcasters a reasonable amount of flexibility during the transition. Alternatively, we seek comment on any alternative minimum coverage requirement or other standard to achieve the stated goals.

35. *Licensing.* We propose to apply our licensing process for primary simulcast streams to guest multicast streams aired on a host station.¹¹³ Thus, an originating station's multicast streams aired as guest streams on a host will be licensed as additional temporary channels of the originating broadcaster.¹¹⁴

¹⁰⁹ NAB April 2021 *Ex Parte* Letter at 2 (proposing that "the expedited processing guidelines in subsection (f) shall consider only the coverage of the station's primary video signal transmitted in ATSC 1.0"). To qualify for expedited processing and receive more favorable treatment, the Next Gen TV station must provide ATSC 1.0 service to at least 95 percent of the predicted population within the NLSC of its original ATSC 1.0 facility. 47 CFR §§ 73.3801(f)(5)-(6), 73.6029(f)(5)-(6), 74.782(g)(5)-(6).

¹¹⁰ *Authorization for Application of Fox Television Stations, LLC, for Legal Special Temporary Authority as Amended*, Letter Order, LMS File No. 0000143946, at 3 n.21 (VD June 24, 2021) (*WRBW Letter Order*). We tentatively conclude that this coverage requirement can be met by relying on up to two hosted simulcast multicast streams. See *supra* section III.D (discussing the use of one or two simulcast multicast streams to mitigate 1.0 service loss).

¹¹¹ We note that in 2019, the Commission permitted television broadcast stations to air up to 13 hours per quarter of regularly scheduled weekly programming on a multicast stream. 47 CFR § 73.671(d). The Commission found, however, that it was "premature at [the] time to decide how to apply children's programming rules to stations that broadcast in ATSC 3.0 and shift some of their Core Programming to a multicast stream that may not be simulcast in ATSC 1.0." *Children's Television Programming Rules; Modernization of Media Regulation Initiative*, MB Docket Nos. 18-202 and 17-105, Report and Order, 34 FCC Rcd 5822, 5849 n.171 (2019).

¹¹² *WRBW Letter Order* at 3 n.21.

¹¹³ The 2017 *Next Gen TV First Report and Order* authorized a Next Gen TV station to obtain a separate authorization for its primary stream (1.0 or 3.0) aired on a partner host station. *Next Gen TV First Report and Order*, 32 FCC Rcd at 9939, para. 48. See 47 CFR §§ 73.3801(f)(1), 73.6029(f)(1), 74.782(g)(1). Under these proposed rules, a Next Gen TV station could seek to obtain separate authorizations for each host station used to air any programming stream, and would no longer be limited to the two authorizations contemplated in the *Next Gen TV First Report and Order*. *Next Gen TV First Report and Order*, 32 FCC Rcd at 9953-54, para. 48. See also *supra* section III.E (seeking comment on whether Next Gen TV stations should be limited to two total hosts, resulting in a maximum of three authorizations).

¹¹⁴ *Next Gen TV First Report and Order*, 32 FCC Rcd at 9953-54, para. 48.

That is, each of the originating station's guest multicast streams aired on a host would be considered an additional, separate channel under the originating station's single, unified license.¹¹⁵ We seek comment on this proposal.

36. *Form 2100.* We propose to modify our Next Gen TV license application form (FCC Form 2100) to accommodate multicast licensing and any other changes adopted in the final order to this proceeding. We seek comment on what information we should collect in this regard, including what information we could collect to provide more transparency about Next Gen TV broadcasters' hosting arrangements.¹¹⁶ For example, based on our proposals above, we might collect the following information for each programming stream (primary and multicast) that the applicant would license on a host station: (1) each guest stream's channel number (RF and virtual) as aired on the host (*i.e.*, channel 10.2, 10.3 etc.); (2) resolution (*i.e.*, HD or SD); (3) network programming affiliation (if any); and (4) whether the stream will be simulcast. If we adopt any limits on spectrum or programming aggregation, we also seek comment on what information we would require in order to implement such limits. We might also, for example, collect the following information in order to identify each partner host station used by the applicant: (1) host's call sign and facility identification number; (2) host's DMA; and (3) the predicted percentage of population within the noise limited service contour served by the station's original ATSC 1.0 signal that will be served by the host, including identifying areas of service loss by providing a contour overlap map.¹¹⁷ We seek comment on whether the information discussed in this paragraph would be useful to the Commission and the public as well as the burden on broadcasters if required to provide this information. We seek comment on whether additional information not discussed in this paragraph should be collected. To avoid administratively expensive and time-consuming changes to the form for a temporary licensing process, and expedite the availability of the revised form, we propose to collect much of this information through one or more required exhibits. We seek comment on this proposed approach. Finally, we seek comment on how to make this information accessible to the public and interested parties.¹¹⁸

37. *Timing.* As set forth above, we tentatively conclude that any rules adopted pursuant to this FNPRM should apply until and unless the Commission eliminates the mandatory local simulcasting requirement.¹¹⁹ As we have made clear, and again emphasize, these arrangements are intended to be temporary, but continue to be necessary, given the standard is not backward-compatible with existing TV sets or receivers.¹²⁰ We find it to be most sensible to apply these rules for the same duration as the ATSC

¹¹⁵ *Id.* The guest stream aired on a partner host station will be considered part of the guest station's license and may not be separately assigned to a third party. *Id.* at n.140. See also *In the Matter of Advanced Television Systems and Their Impact on the Existing Television Broadcast Service*, Fifth Report and Order, 12 FCC Rcd 12809, 12833-34, paras.57-59 (1997); *In the Matter of Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, Report and Order, 19 FCC Rcd 19331, 19389, para. 175, note 363 (2004).

¹¹⁶ See NCTA Aug. 26 *Ex Parte* Letter at 2, n.2 (seeking enhanced transparency and disclosure requirements for Next Gen TV hosting arrangements, "such as the identification in each station's market of any partner host station(s); the network affiliation, broadcast standard, format (HD or SD), and amount of bandwidth allocated for each stream being hosted; and to the extent hosting of non-simulcast streams is allowed, whether the streams are being simulcast on the originating broadcaster's station in the alternate standard.").

¹¹⁷ *Supra* para. 32.

¹¹⁸ We note that a Next Gen TV station's ATSC 3.0 license application (Form 2100) is available through the Commission's Licensing and Management System (LMS).

¹¹⁹ Although there is no expiration date for the local simulcasting requirement, the Commission has stated that it "intends that the local simulcasting requirement be temporary" and will consider in a future proceeding when it would be appropriate to eliminate the requirement. *Next Gen TV First Report and Order*, 32 FCC Rcd at 9938, para. 14.

¹²⁰ ATVA expresses concern about the potential for a Next Gen TV broadcaster to exercise "permanent" control

(continued....)

3.0 rules applicable to primary streams because they are intended to achieve the same purposes, which are to preserve existing 1.0 viewership while giving broadcasters the flexibility to transition 3.0. We seek comment on this tentative conclusion. We also seek particular comment on whether to sunset the “substantially similar” requirement for simulcast multicast streams on the same schedule as the primary stream simulcast requirement, currently scheduled to sunset on July 17, 2023.¹²¹

38. *Alternative or additional proposals.* Finally, we seek comment on any other ways not previously considered in which modification of our rules would not only help facilitate the 3.0 transition but also preserve existing ATSC 1.0 service to viewers.

39. *Digital Equity and Inclusion.* Finally, the Commission, as part of its continuing effort to advance digital equity for all,¹²² including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations¹²³ and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission’s relevant legal authority.

IV. PROCEDURAL MATTERS

40. *Initial RFA Analysis.* As required by the Regulatory Flexibility Act of 1980 (RFA),¹²⁴ the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA). The IRFA is attached as Appendix B. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the first page of this document. The Commission will send a copy of this document, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

41. *Initial Paperwork Reduction Act Analysis.* This document contains proposed new and/or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the

(Continued from previous page) _____
over the spectrum of multiple competitors in its market. We believe ATVA’s concerns are overstated given the transitional nature of the proposed rules. ATVA Comments at 6.

¹²¹ 47 CFR §§ 73.3801(b)(3), 73.6029(b)(3), 74.782(b)(3). The “substantially similar” sunset is scheduled for review in 2022 as part of the Commission’s broader review of the transition and the state of the Next Gen TV marketplace. *Next Gen TV Order on Reconsideration*, 35 FCC Rcd at 6812-15, paras. 39-43.

¹²² Section 1 of the Communications Act of 1934 as amended provides that the FCC “regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex.” 47 U.S.C. § 151.

¹²³ The term “equity” is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. *See* Exec. Order No. 13985, 86 Fed. Reg. 7009, Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (January 20, 2021).

¹²⁴ 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601, *et. seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

Paperwork Reduction Act of 1995 (PRA).¹²⁵ In addition, pursuant to the Small Business Paperwork Relief Act of 2002,¹²⁶ the Commission will seek specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

42. *Ex Parte Rules - Permit-But-Disclose.* This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.¹²⁷ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

43. *Filing Requirements—Comments and Replies.* Pursuant to sections 1.415 and 1.419 of the Commission’s rules,¹²⁸ interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS).¹²⁹

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.

¹²⁵ The Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104-13, 109 Stat 163 (1995) (codified in Chapter 35 of title 44 U.S.C.).

¹²⁶ The Small Business Paperwork Relief Act of 2002 (SBPRA), Pub. L. No. 107-198, 116 Stat. 729 (2002) (codified in Chapter 35 of title 44 U.S.C.). See 44 U.S.C. § 3506(c)(4).

¹²⁷ 47 CFR §§ 1.1200 *et seq.*

¹²⁸ *Id.* §§ 1.415, 1.419.

¹²⁹ *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322 (1998).

- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.¹³⁰
- During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

44. *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

45. *Additional Information.* For additional information, contact Evan Baranoff, Evan.Baranoff@fcc.gov, of the Media Bureau, Policy Division, (202) 418-7142. Direct press inquiries to Janice Wise at (202) 418-8165.

V. ORDERING CLAUSES

46. **IT IS ORDERED**, pursuant to the authority found in sections 1, 4, 7, 301, 303, 307, 308, 309, 316, 319, 325(b), 336, 338, 399b, 403, 534, and 535 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 157, 301, 303, 307, 308, 309, 316, 319, 325(b), 336, 338, 399b, 403, 534, and 535, this Further Notice of Proposed Rulemaking **IS HEREBY ADOPTED** and **NOTICE IS HEREBY GIVEN** of the proposals and tentative conclusions described in this Further Notice of Proposed Rulemaking.

47. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹³⁰ FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, 35 FCC Rcd 2788 (OMD 2020). See <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

APPENDIX A

Proposed Rule Changes

The Federal Communications Commission proposes to amend Parts 73 and 74 of Title 47 of the Code of Federal Regulations (CFR) as set forth below:

PART 73– Radio Broadcast Services

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

2. Section 73.3801 is amended by revising paragraph (f)(5) and by adding paragraph (i) as follows:

§ 73.3801 Full Power Television Simulcasting During the ATSC 3.0 (Next Gen TV) Transition

* * *

(f) * * *

* * *

(5) Expedited processing. An application filed in accordance with the streamlined process in paragraph (f)(3) of this section will receive expedited processing provided, for stations requesting to air an ATSC 1.0 **primary** signal on the facilities of a host station, ~~the~~ **that** station will provide ATSC 1.0 service to at least 95 percent of the predicted population within the noise limited service contour of its original ATSC 1.0 facility.

* * *

(i) Multicast Streams. A Next Gen TV station is not required to license, under paragraph (f) of this section, a “guest” multicast stream that it originates and which is aired on a host station. If it chooses to do so, it and each of its licensed guest multicast streams must comply with the requirements of this section (including those otherwise applicable only to primary streams), except for paragraph (f)(5) and as otherwise provided in this paragraph. For purposes of this section, a “multicast” stream refers to a video programming stream other than the primary video programming stream.

(1) 1.0 Multicast Streams. A Next Gen TV station may license its guest ATSC 1.0 multicast stream(s) aired on one or more ATSC 1.0 hosts pursuant to paragraph (f) of this section. Non-simulcast streams are not required to comply with paragraph (b) of this section.

(2) 3.0 Multicast Streams. A Next Gen TV station may license its guest ATSC 3.0 multicast stream(s) aired on one or more ATSC 3.0 hosts pursuant to paragraph (f) of this section.

(3) Next Gen TV stations may rely on a multicast stream they are airing via a host partner to comply with the Commission’s children’s television programming requirement in Section 73.671 of this Part. Such a stream must either be carried on the same host as the Next Gen TV station’s primary stream, or on a host that serves at least 95 percent of the predicted population served by the applicant’s pre-transition 1.0 signal.

* * *

3. Section 73.6029 is amended by revising paragraph (f)(5) and by adding paragraph (i) as follows:

§ 73.6029 Class A Television Simulcasting During the ATSC 3.0 (Next Gen TV) Transition

* * *

(f) * * *

* * *

(5) Expedited processing. An application filed in accordance with the streamlined process in paragraph (f)(3) of this section will receive expedited processing provided, for stations requesting to air an ATSC 1.0 **primary** signal on the facilities of a host station, ~~the~~ **that** station will provide ATSC 1.0 service to at least 95 percent of the predicted population within the noise limited service contour of its original ATSC 1.0 facility.

* * *

(i) Multicast Streams. A Next Gen TV station is not required to license, under paragraph (f) of this section, a “guest” multicast stream that it originates and which is aired on a host station. If it chooses to do so, it and each of its licensed guest multicast streams must comply with the requirements of this section (including those otherwise applicable only to primary streams), except for paragraph (f)(5) and as otherwise provided in this paragraph. For purposes of this section, a “multicast” stream refers to a video programming stream other than the primary video programming stream.

(1) 1.0 Multicast Streams. A Next Gen TV station may license its guest ATSC 1.0 multicast stream(s) aired on one or more ATSC 1.0 hosts pursuant to paragraph (f) of this section. Non-simulcast streams are not required to comply with paragraph (b) of this section.

(2) 3.0 Multicast Streams. A Next Gen TV station may license its guest ATSC 3.0 multicast stream(s) aired on one or more ATSC 3.0 hosts pursuant to paragraph (f) of this section.

(3) Next Gen TV stations may rely on a multicast stream they are airing via a host partner to comply with the Commission’s children’s television programming requirement in Section 73.671 of this Part. Such a stream must either be carried on the same host as the Next Gen TV station’s primary stream, or on a host that serves at least 95 percent of the predicted population served by the applicant’s pre-transition 1.0 signal.

* * *

* * * * *

PART 74 – Experimental Radio, Auxiliary, Special Broadcast and Other Program Distributional Services

4. The authority citation for Part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 302(a), 303, 307, 309, 310, 336, and 554.

5. Section 74.782 is amended by revising paragraph (g)(5) and by adding paragraph (j) as follows:

§ 74.782 Low power television and TV translator Simulcasting During the ATSC 3.0 (Next Gen TV) Transition

* * *

(g) * * *

* * *

(5) Expedited processing. An application filed in accordance with the streamlined process in paragraph (f)(3) of this section will receive expedited processing provided, for stations requesting to air an ATSC 1.0 **primary** signal on the facilities of a host station, ~~the~~ **that** station will provide ATSC 1.0 service to at least 95 percent of the predicted population within the noise limited service contour of its original ATSC 1.0 facility.

* * *

(j) Multicast Streams. A Next Gen TV station is not required to license, under paragraph (f) of this section, a “guest” multicast stream that it originates and which is aired on a host station. If it chooses to do so, it and each of its licensed guest multicast streams must comply with the requirements of this section (including those otherwise applicable only to primary streams), except for paragraph (f)(5) and as otherwise provided in this paragraph. For purposes of this section, a “multicast” stream refers to a video programming stream other than the primary video programming stream.

(1) 1.0 Multicast Streams. A Next Gen TV station may license its guest ATSC 1.0 multicast stream(s) aired on one or more ATSC 1.0 hosts pursuant to paragraph (f) of this section. Non-simulcast streams are not required to comply with paragraph (b) of this section.

(2) 3.0 Multicast Streams. A Next Gen TV station may license its guest ATSC 3.0 multicast stream(s) aired on one or more ATSC 3.0 hosts pursuant to paragraph (f) of this section.

(3) Next Gen TV stations may rely on a multicast stream they are airing via a host partner to comply with the Commission’s children’s television programming requirement in Section 73.671 of this Part. Such a stream must either be carried on the same host as the Next Gen TV station’s primary stream, or on a host that serves at least 95 percent of the predicted population served by the applicant’s pre-transition 1.0 signal.

* * *

APPENDIX B**Initial Regulatory Flexibility Analysis**

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies proposed in the *Notice of Proposed Rulemaking (NPRM)*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* provided on the first page of the *NPRM*. The Commission will send a copy of this entire *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the *NPRM* and the IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rule Changes.

2. In this *Second Further Notice of Proposed Rulemaking (FNPRM)*, we consider changes to our ATSC 3.0 (3.0 or Next Gen TV) rules to make it easier for Next Gen TV broadcasters to continue to provide viewers with existing programming that is offered on non-primary multicast video programming streams (multicast streams) after these stations begin ATSC 3.0 service. We propose to revise our rules to allow ATSC 3.0 broadcasters to treat as part of their license certain multicast streams that are aired as a “guest” signal on a partner “host” station during the mandatory local simulcasting period, using the same licensing framework, and to a large extent the same regulatory regime, established for the simulcast of primary video programming streams on “host” station facilities.⁴ We therefore tentatively conclude that we should permit Next Gen TV stations to license one or more simulcast multicast streams on a host station or stations, whether that guest stream is the 3.0 broadcast or the ATSC 1.0 (1.0) simulcast. Second, we propose, with limitations, that Next Gen TV stations which are broadcasting in 3.0 on their own channel may license one or more multicast stream aired only in 1.0 format on a host station or stations even if they are not simulcasting that stream in 3.0. Third, we seek comment on whether our rules should permit an originating station to rely on simulcasting its primary stream on two separate host stations in order to minimize service loss caused by its transition to 3.0. In addition, we seek comment on certain policy concerns raised regarding these new potential licensing arrangements and tentatively conclude to apply certain ATSC 3.0 transition rules currently in place for primary streams to both simulcast and non-simulcast licensed multicast streams aired on host stations, with certain exceptions. Under this proposal for multicast licensing, the Commission would authorize a Next Gen TV station to either (1) include its multicast streams under its authorization on the primary host’s channel; or (2) obtain a separate authorization for any 1.0 or 3.0 multicast stream(s) aired on a host’s channel that is not the primary host’s channel. We propose to amend our Next Gen TV local simulcasting rules to accommodate multicast licensing.⁵

3. We seek to craft rules that will protect current OTA viewers by facilitating and encouraging Next Gen TV stations to preserve 1.0 multicast streams during the transition while also creating an environment that does not stifle innovative new services that may be offered to OTA viewers through the deployment of ATSC 3.0 service. Pursuant to the current ATSC 3.0 rules, Next Gen TV

¹ 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² 5 U.S.C. § 603(a).

³ *Id.*

⁴ A “host” station is one whose facilities are being used to transmit programming originated by another station (“guest”) as part of a local simulcasting arrangement.

⁵ Appendix A, Rules. We also expect to revise our Next Gen TV license application form (Form 2100) in line with the rules ultimately adopted.

stations are not required to simulcast their multicast streams but may choose to air them pursuant to private contractual arrangements. NAB explains that some host stations may be reluctant, however, to accept legal responsibility when airing another station's multicast stream(s), even if they can obtain indemnification from such station through a private contractual agreement.⁶ Further, many Next Gen Broadcasters cannot simulcast all of their multicast streams because of capacity and other practical constraints. The licensed multicast stream approach proposed herein would address these concerns by providing the industry with regulatory certainty about the legal treatment of multicast streams and facilitating their carriage on multiple stations. A licensed multicast approach would not only make clear that the originating station (and not the host station) is responsible for regulatory compliance regarding the multicast stream being aired on a host station but also give the Commission clear enforcement authority over the originating station in the event of a rule violation on the hosted multicast programming stream. In addition, this approach would facilitate noncommercial educational (NCE) stations' 3.0 deployment by allowing them to serve as hosts to commercial stations' multicast streams without violating the prohibition on broadcasting advertisements over spectrum dedicated to noncommercial use.⁷

B. Legal Basis.

4. The proposed action is authorized pursuant to sections 1, 4, 7, 301, 303, 307, 308, 309, 316, 319, 325(b), 336, 338, 399b, 403, 534, and 535 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 157, 301, 303, 307, 308, 309, 316, 325(b), 336, 338, 399b, 403, 534, and 535.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.

5. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁸ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁹ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.¹⁰ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹¹ The rules proposed herein will directly affect small television and radio broadcast stations. Below, we provide a description of these small entities, as well as an estimate of the number of such small entities, where feasible.

6. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as "establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a

⁶ NAB Petition at 3.

⁷ 47 U.S.C. § 399B (prohibiting noncommercial stations from making their "facilities available to any person for the broadcasting of any advertisement").

⁸ 5 U.S.C. § 603(b)(3).

⁹ *Id.* § 601(6).

¹⁰ *Id.* § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." *Id.* § 601(3).

¹¹ 15 U.S.C. § 632(a)(1). Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission's statistical account of television stations may be over-inclusive.

combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”¹² The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.¹³ Census data for 2017 shows that there were 3,054 firms that operated that year. Of this total, 2,964 operated with fewer than 250 employees.¹⁴ Thus, under this size standard, the majority of firms in this industry can be considered small.

7. *Cable Companies and Systems (Rate Regulation)*. The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission’s rules, a “small cable company” is one serving 400,000 or fewer subscribers nationwide.¹⁵ Industry data indicate that there are currently 1,096 active cable companies in the United States.¹⁶ Of this total, all but five cable companies (or “operators”) nationwide are small under the 400,000-subscriber size standard.¹⁷ In addition, under the Commission’s rate regulation rules, a “small system” is a cable system serving 15,000 or fewer subscribers.¹⁸ Current Commission records show 4,600 cable systems nationwide.¹⁹ Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records.²⁰ Thus, under this standard as well, we estimate that most cable systems are small entities.

8. *Cable System Operators (Telecom Act Standard)*. The Communications Act also contains a size standard for small cable system operators, which is “an operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.”²¹ There are approximately 46,006,823 cable video subscribers in the United States

¹² United States Census Bureau, *North American Industry Classification System*, 517311 Wired Telecommunications Carriers, <https://www.census.gov/naics/?input=wired&year=2017&details=517311> (last visited Aug. 9, 2021).

¹³ 13 CFR § 121.201, NAICS Code 517311.

¹⁴ United States Census Bureau, *Selected Sectors: Employment Size of Firms for the U.S. 2017*, TableID EC1700SIZEEMPFIEM (2017), <https://data.census.gov/cedsci/table?q=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIEM> (last visited Aug. 9, 2021).

¹⁵ 47 CFR § 76.901(d).

¹⁶ Media Bureau estimates were based on data contained in the Commission’s Cable Operations and Licensing System (COALS) as of August 15, 2015. See FCC, *Cable Operations and Licensing System (COALS)*, www.fcc.gov/coals.

¹⁷ S&P Capital IQ, *Top Cable MSOs* (Q3 2021), <https://www.capitaliq.spglobal.com/web/client?auth=inherit#industry/topCableMSOs> (select “Communication Services” under “Sectors” drop down menu, expand “Technology, Media & Telecom,” then expand “U.S. Multichannel,” and select “Top Cable MSOs” to see results).

¹⁸ 47 CFR § 76.901(c).

¹⁹ *Supra* note 16.

²⁰ *Id.*

²¹ 47 CFR § 76.901 (e).

today.²² Accordingly, an operator serving fewer than 460,068 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.²³ Based on available data, we find that all but five incumbent cable operators are small entities under this size standard.²⁴ We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million.²⁵ Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

9. *Direct Broadcast Satellite (“DBS”) Service.* DBS Service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic “dish” antenna at the subscriber’s location. DBS is now included in SBA’s economic census category “Wired Telecommunications Carriers.” The Wired Telecommunications Carriers industry is defined in paragraph 6, *supra*. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.²⁶ The SBA determines that a wireline business is small if it has fewer than 1,500 employees.²⁷ Census data for 2017 indicate that 3,054 wireline firms were operational during that year. Of that number, 2,964 operated with fewer than 250 employees.²⁸ Based on that data, we conclude that the majority of wireline firms are small under the applicable standard. However, based on data developed internally by the FCC, currently only two entities provide DBS service, which requires a great deal of capital for operation: DIRECTV and DISH

²² S&P Capital IQ, *U.S. Multichannel Industry Benchmarks* (2020), <https://www.capitaliq.spglobal.com/web/client?auth=inherit#industry/multichannelIndustryBenchmarks> (select “Communication Services” under “Sectors” drop down menu, expand “U.S. Multichannel,” and select “U.S. Multichannel Industry Benchmarks” to see results).

²³ 47 CFR § 76.901(e).

²⁴ S&P Capital IQ, *Top Cable MSOs* (Q3 2021), <https://www.capitaliq.spglobal.com/web/client?auth=inherit#industry/topCableMSOs> (select “Communication Services” under “Sectors” drop down menu, expand “Technology, Media & Telecom,” then expand “U.S. Multichannel,” and select “Top Cable MSOs” to see results).

²⁵ The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority’s finding that the operator does not qualify as a small cable operator pursuant to section 76.901(e) of the Commission’s rules. See 47 CFR § 76.901(e).

²⁶ United States Census Bureau, *North American Industry Classification System*, 517311 Wired Telecommunications Carriers, <https://www.census.gov/naics/?input=wired&year=2017&details=517311> (last visited Aug. 9, 2021).

²⁷ 13 CFR § 121.201, NAICS Code 517311.

²⁸ United States Census Bureau, *Selected Sectors: Employment Size of Firms for the U.S. 2017*, TableID EC1700SIZEEMPfirm (2017), <https://data.census.gov/cedsci/table?q=517311&tid=ECNSIZE2017.EC1700SIZEEMPfirm> (last visited Aug. 9, 2021).

Network.²⁹ Accordingly, we must conclude that internally developed FCC data are persuasive that in general DBS service is provided only by large firms.

10. *Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs).* SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are now included in the SBA's broad economic census category, Wired Telecommunications Carriers, which was developed for small wireline businesses. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.³⁰ Census data for 2017 shows that there were 3,054 firms that operated that year. Of this total, 2,964 operated with fewer than 250 employees.³¹ Thus, under this size standard, the majority of firms in this industry can be considered small.

11. *Home Satellite Dish (HSD) Service.* HSD or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers, and involves the home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers' receipt of video programming. Because HSD provides subscription services, HSD falls within the SBA-recognized definition of Wired Telecommunications Carriers. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.³² Census data for 2017 shows that there were 3,054 firms that operated that year. Of this total, 2,964 operated with fewer than 250 employees.³³ Thus, under this size standard, the majority of firms in this industry can be considered small.

12. *Open Video Services.* The open video system (OVS) framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers.³⁴ The OVS framework provides opportunities for the distribution of video

²⁹ *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Eighteenth Report, MB Docket No. 16-247, 32 FCC Rcd 568, 570, para. 2 n.6 (2017). At the end of Q1 2021, DIRECTV is the largest DBS operator and the third largest MVPD in the United States, serving 12.3 million subscribers. DISH Network is the second largest DBS operator and the fourth largest MVPD operator, serving 8.6 million subscribers. S&P Capital IQ, *Media Census: Operator Subscribers by Geography* (Q1 2021), <https://www.capitaliq.spglobal.com/web/client?auth=inherit#industry/mediaCensusWrapper?ReportID=f3c5f1a5-6d6a-4bbb-8ccc-f3a3d8567c9f> (select "Communication Services" under "Sectors" drop down menu, expand "Technology, Media & Telecom," then expand "U.S. MediaCensus," and select "Operator Subscribers by Geography").

³⁰ 13 CFR § 121.201, NAICS Code 517311.

³¹ United States Census Bureau, *Selected Sectors: Employment Size of Firms for the U.S. 2017*, TableID EC1700SIZEEMPfirm (2017), <https://data.census.gov/cedsci/table?q=517311&tid=ECNSIZE2017.EC1700SIZEEMPfirm> (last visited Aug. 9, 2021).

³² 13 CFR § 121.201, NAICS Code 517311.

³³ United States Census Bureau, *Selected Sectors: Employment Size of Firms for the U.S. 2017*, TableID EC1700SIZEEMPfirm (2017), <https://data.census.gov/cedsci/table?q=517311&tid=ECNSIZE2017.EC1700SIZEEMPfirm> (last visited Aug. 9, 2021).

³⁴ 47 U.S.C. § 571(a)(3)-(4). See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Thirteenth Annual Report, 24 FCC Rcd 542, 606, para. 135 (2009) (*13th Annual Competition Report*).

programming other than through cable systems. Because OVS operators provide subscription services,³⁵ OVS falls within the SBA small business size standard covering cable services, which is Wired Telecommunications Carriers. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.³⁶ Census data for 2017 shows that there were 3,054 firms that operated that year. Of this total, 2,964 operated with fewer than 250 employees.³⁷ Thus, under this size standard, the majority of firms in this industry can be considered small. In addition, we note that the Commission has certified some OVS operators, with some now providing service.³⁸ Broadband service providers (BSPs) are currently the only significant holders of OVS certifications or local OVS franchises.³⁹ The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

13. *Wireless Cable Systems – Broadband Radio Service and Educational Broadband Service.* Wireless cable systems use the Broadband Radio Service (BRS)⁴⁰ and Educational Broadband Service (EBS)⁴¹ to transmit video programming to subscribers. In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than \$40 million in the previous three calendar years.⁴² The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities.⁴³ After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. In 2009, the Commission conducted

³⁵ 47 U.S.C. § 573.

³⁶ See 13 CFR § 121.201, NAICS Code 517311.

³⁷ United States Census Bureau, *Selected Sectors: Employment Size of Firms for the U.S. 2017*, TableID EC1700SIZEEMPfirm (2017), <https://data.census.gov/cedsci/table?q=517311&tid=ECNSIZE2017.EC1700SIZEEMPfirm> (last visited Aug. 9, 2021).

³⁸ A list of OVS certifications may be found at: FCC, *Current Filings for Certification of Open Video Systems*, <https://www.fcc.gov/general/current-filings-certification-open-video-systems#block-menu-block-4> (last visited Aug. 9, 2021).

³⁹ *13th Annual Competition Report*, 24 FCC Rcd at 606-07, para. 135. BSPs are newer businesses that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

⁴⁰ BRS was previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS). See *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, Report and Order, 10 FCC Rcd 9589, 9593, para. 7 (1995).

⁴¹ EBS was previously referred to as the Instructional Television Fixed Service (ITFS). See *id.*

⁴² 47 CFR § 27.1213(a).

⁴³ 47 U.S.C. § 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of section 309(j) of the Communications Act of 1934, 47 U.S.C. § 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard of 1,500 or fewer employees.

Auction 86, the sale of 78 licenses in the BRS areas.⁴⁴ The Commission offered three levels of bidding credits: (i) a bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed \$3 million and do not exceed \$15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid.⁴⁵ Auction 86 concluded in 2009 with the sale of 61 licenses.⁴⁶ Of the 10 winning bidders, two bidders that claimed small business status won four licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

14. In addition, the SBA's placement of Cable Television Distribution Services in the category of Wired Telecommunications Carriers is applicable to cable-based Educational Broadcasting Services. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers, which was developed for small wireline businesses. This category is defined in paragraph 6, *supra*. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.⁴⁷ Census data for 2017 shows that there were 3,054 firms that operated that year. Of this total, 2,964 operated with fewer than 250 employees.⁴⁸ Thus, under this size standard, the majority of firms in this industry can be considered small. In addition to Census data, the Commission's internal records indicate that as of August 2021, there are 2,451 active EBS licenses.⁴⁹ The Commission estimates that of these 2,451 licenses, the majority are held by non-profit educational institutions and school districts, which are by statute defined as small businesses.⁵⁰

15. *Incumbent Local Exchange Carriers (ILECs) and Small Incumbent Local Exchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. ILECs and small ILECs are included in the SBA's economic census category, Wired Telecommunications Carriers.⁵¹ The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.⁵² Census data for 2017 shows that there were 3,054 firms that operated that year. Of

⁴⁴ *Auction of Broadband Radio Service (BRS) Licenses, Scheduled for October 27, 2009, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 86*, Public Notice, 24 FCC Rcd 8277 (2009).

⁴⁵ *Id.* at 8296.

⁴⁶ *Auction of Broadband Radio Service Licenses Closes, Winning Bidders Announced for Auction 86, Down Payments Due November 23, 2009, Final Payments Due December 8, 2009, Ten-Day Petition to Deny Period*, Public Notice, 24 FCC Rcd 13572 (2009).

⁴⁷ 13 CFR § 121.201, NAICS Code 517311.

⁴⁸ United States Census Bureau, *Selected Sectors: Employment Size of Firms for the U.S. 2017*, TableID EC1700SIZEEMPfirm (2017), <https://data.census.gov/cedsci/table?q=517311&tid=ECNSIZE2017.EC1700SIZEEMPfirm> (last visited Aug. 9, 2021)..

⁴⁹ FCC, *Universal Licensing System*, <https://wireless2.fcc.gov/UlsApp/UlsSearch/results.jsp> (under "Advanced License Search" option, select "ED - Educational Broadband Service," "Active" and "Regular" License, and "Exclude Leases" to see search results).

⁵⁰ The term "small entity" within SBREFA applies to small organizations (non-profits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. §§ 601(4)-(6).

⁵¹ This category is defined in paragraph 6, *supra*.

⁵² 13 CFR § 121.201, NAICS Code 517311.

this total, 2,964 operated with fewer than 250 employees.⁵³ Thus, under this size standard, the majority of firms in this industry can be considered small.

16. *Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. These entities are included in the SBA's economic census category, Wired Telecommunications Carriers. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.⁵⁴ Census data for 2017 shows that there were 3,054 firms that operated that year. Of this total, 2,964 operated with fewer than 250 employees.⁵⁵ Thus, under this size standard, the majority of firms in this industry can be considered small.

17. *Television Broadcasting.* This Economic Census category "comprises establishments primarily engaged in broadcasting images together with sound."⁵⁶ These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.⁵⁷ These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: those having \$41.5 million or less in annual receipts.⁵⁸ The 2017 Economic Census reports that 744 firms in this category operated in that year. Of this number, 657 had annual receipts of less than \$25 million, 48 had annual receipts ranging from \$25 million to \$99,999,999, and 39 had annual receipts of \$100 million or more.⁵⁹ Based on this data we therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

18. Additionally, the Commission has estimated the number of licensed commercial television stations to be 1,374.⁶⁰ Of this total, 1,282 stations (or 94.2%) had revenues of \$41.5 million or less in 2018, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on April 15, 2019, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates the number of licensed noncommercial educational

⁵³ United States Census Bureau, *Selected Sectors: Employment Size of Firms for the U.S. 2017*, TableID EC1700SIZEEMPfirm (2017), <https://data.census.gov/cedsci/table?q=517311&tid=ECNSIZE2017.EC1700SIZEEMPfirm> (last visited Aug. 9, 2021).

⁵⁴ 13 CFR § 121.201, NAICS Code 517311.

⁵⁵ United States Census Bureau, *Selected Sectors: Employment Size of Firms for the U.S. 2017*, TableID EC1700SIZEEMPfirm (2017), <https://data.census.gov/cedsci/table?q=517311&tid=ECNSIZE2017.EC1700SIZEEMPfirm> (last visited Aug. 9, 2021).

⁵⁶ U.S. Census Bureau, *North American Industry Classification System*, 515120 Television Broadcasting, <https://www.census.gov/naics/?input=television+broadcasting&year=2012&details=515120> (last visited Aug. 9, 2021).

⁵⁷ *Id.*

⁵⁸ 13 CFR § 121.201, NAICS Code 515120.

⁵⁹ United States Census Bureau, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S. 2017*, TableID EC1700SIZEREVFirm (2017), <https://data.census.gov/cedsci/table?q=515120%3A%20Television%20broadcasting&tid=ECNSIZE2017.EC1700SIZEREVFirm>.

⁶⁰ Press Release, FCC, Broadcast Station Totals as of March 31, 2021 (April 5, 2021), <https://docs.fcc.gov/public/attachments/DOC-371337A1.pdf>

(NCE) television stations to be 384.⁶¹ The Commission does not compile and does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

19. We note, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations⁶² must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of “small business” requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive.

20. There are also 386 Class A stations.⁶³ Given the nature of these services, the Commission presumes that all of these stations qualify as small entities under the applicable SBA size standard. In addition, there are 1,985 LPTV stations and 3,306 TV translator stations.⁶⁴ Given the nature of these services as secondary and in some cases purely a “fill-in” service, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements.

21. The *FNPRM* proposes to authorize Next Gen TV broadcasters to air their multicast streams as guest signals on host stations during the mandatory local simulcasting period. We propose to apply our MVPD notice rules in place for primary streams to multicast streams that are currently carried by an MVPD and which will be relocated to a host station or terminated as a result of the station’s transition.⁶⁵ MVPD carriage of such multicast signals would be determined through retransmission consent negotiations, as there is no mandatory carriage for multicast streams. In addition, we propose to apply our on-air consumer notice rules for 1.0 primary simulcast streams relocated to a host station or terminated as a result of the station’s transition.⁶⁶ Under this proposal, a Next Gen TV station that relocates its 1.0 multicast stream to a host station or terminates such multicast stream as a result of the station’s transition to ATSC 3.0 must air daily PSAs or crawls every day for 30 days prior to the date that the stations will relocate or terminate the 1.0 multicast stream.

E. Steps Taken to Minimize Significant Impact on Small Entities and Significant Alternatives Considered.

22. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather

⁶¹ *Id.*

⁶² “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both.” 13 CFR § 121.103(a)(1).

⁶³ *Supra* note 60 (discussing broadcast station totals as of March 31, 2021).

⁶⁴ *Id.*

⁶⁵ 47 CFR §§ 73.3801(h), 73.6029(h), 74.782(i).

⁶⁶ 47 CFR §§ 73.3801(g), 73.6029(g), 74.782(h).

than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.⁶⁷

23. These proposals would not impose a negative economic impact on any small entities involved because they provide increased flexibility to broadcasters without imposing additional obligations. Indeed, by expanding the ability of broadcasters to place licensed streams on additional host partners, our proposals may allow small broadcast entities transitioning to ATSC 3.0 to experience positive economic impacts through partnerships with unaffiliated third parties. NCE television stations in particular, both large and small, will experience positive benefits from the proposals in this item, which could improve their ability to participate in the transition to Next Gen TV. In addition, we expect the proposed multicast licensing approach to minimize administrative burdens for all broadcasters, including small broadcasters. The proposed rules would streamline the current process whereby broadcasters request special temporary authority on a case-by-case basis.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rule.

24. None.

⁶⁷ 5 U.S.C. § 603(c).