

ALERT

# FCC Draft Order Would Authorize Voluntary Transition to ATSC 3.0

October 31, 2017

## FCC Draft Order Would Authorize Voluntary Transition to ATSC 3.0

On October 26, 2017, the Federal Communications Commission (FCC or Commission) released a draft Report & Order (Draft Order) that would allow television broadcasters to use the Next Gen TV standard (a/k/a ATSC 3.0) on a voluntary, market-driven basis. The Draft Order will be voted on at the Commission's November 16th Open Meeting. Below, we summarize the key points in the Draft Order.

### *Voluntary Use*

The Draft Order would authorize broadcasters to transmit using the ATSC 3.0 transmission standard on a voluntary, market-driven basis. Accordingly, broadcasters would be permitted, but not required, to transmit Next Gen TV signals. Broadcasters could, therefore, opt to continue transmitting their signals solely in the currently authorized ATSC 1.0 transmission standard.

### *Local Simulcasting*

In the Draft Order, the Commission states that it will require broadcasters choosing to implement Next Gen TV operations to air a local simulcast of the primary video programming stream of their ATSC 3.0 channel in the current ATSC 1.0 transmission standard. Next Gen TV broadcasters must partner with another station (i.e., a "host" station) in their local market to either (1) air an ATSC 3.0 channel at the host's facilities, while using their original facility to continue to provide an ATSC 1.0 simulcast channel, or (2) air an ATSC 1.0 simulcast channel at the host's facility, while converting their original facility to the ATSC 3.0 standard in order to provide a 3.0 channel.

## Authors

John M. Burgett

Partner

202.719.4239

jburgett@wiley.law

Kathryne C. Dickerson

Partner

202.719.7279

kdickerson@wiley.law

## Practice Areas

Media

Telecom, Media & Technology

The local simulcasting requirement only applies to the primary video programming stream aired by Next Gen TV broadcasters on their ATSC 3.0 channels. The Draft Order states that broadcasters will have discretion to select the primary stream for purposes of local simulcasting, but notes that the primary stream “generally contains network programming for network affiliates or the station’s most popular programming for non-network stations.”

The Draft Order specifies that a station may select a simulcast partner without regard to the station’s class. Thus, a full power station could partner with one or more other full power stations or with one or more Class A, LPTV, or TV translator stations. The Draft Order would also permit non-commercial educational (NCE) stations to participate in simulcast arrangements with commercial stations. The non-commercial educational station would retain its NCE status and must continue to comply with the rules applicable to NCE licensees.

The Draft Order also lays out the items that must be addressed in simulcast agreements, namely, each station’s rights and responsibilities in the following areas: (1) access to facilities, including whether each licensee will have unrestricted access to the shared transmission facilities; (ii) allocation of capacity within the shared channel; (iii) operation, maintenance, repairs, and modification of facilities, including a list of all relevant equipment, a description of each party’s financial obligations, and any relevant notice provision; (iv) the conditions under which the simulcast agreement may be terminated; and (v) the conditions under which and how a guest’s signal may be transitioned off the host station. Simulcast agreements need not be submitted to the Commission but broadcasters should maintain written copies so as to be able to provide them to the agency upon request.

#### *The “Substantially Similar” Requirement*

The Draft Order states that, for a period of five years, the programming aired on a broadcaster’s ATSC 1.0 simulcast channel must be “substantially similar” to the primary video programming stream aired on the ATSC 3.0 channel. “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 (e.g., geo-targeted weather, targeted emergency alerts, and hyper-local news), advertisements, and promotions for upcoming programs. The Commission will not consider programming that airs at a different time on the 1.0 simulcast channel than on the 3.0 primary channel to be “substantially similar.” In the Draft Order, the Commission declines to adopt requirements regarding the format of the 1.0 simulcast signal, emphasizing that stations may broadcast in either HD or SD format.

#### *Coverage Requirements*

The coverage that a broadcaster’s signal must maintain depends upon whether the broadcaster is relocating its 1.0 or 3.0 signal. The 1.0 simulcast signal of a full power station that relocates its 1.0 simulcast signal to a host station must retain and continue to cover the station’s community of license and be assigned to the same DMA as the originating station. In determining whether to grant a simulcast application for such a station, the Commission will consider “more favorably” simulcast arrangements with a service loss of no more than five percent of the population served by the station and will provide expedited processing of such applications. A

Next Gen TV broadcaster that elects to continue broadcasting in ATSC 1.0 from its existing location and transmit an ATSC 3.0 signal from a host location may establish 3.0 service anywhere within the same DMA as the broadcaster's existing station. In addition, the Commission will not consider the extent to which the population served by such stations will overlap with the population served by the existing ATSC 1.0 station.

A Class A station that proposes to move its 1.0 signal (1) must maintain overlap between the protected contour of its existing and proposed 1.0 signals and (2) may not relocate its 1.0 simulcast signal more than 30 miles from the reference coordinates of the relocating station's antenna location. The Draft Order states that LPTV and TV translator stations are exempt from the local simulcasting requirement and will be permitted to transition directly from ATSC 1.0 to ATSC 3.0 service.

#### *Waivers of Simulcasting and Coverage Requirements*

In the Draft Order, the Commission states that it will consider requests for waiver of the local simulcasting and coverage requirements on a case-by-case basis. Full power and Class A stations may seek a waiver to transition directly from ATSC 1.0 to ATSC 3.0 service on the station's existing facility without providing a 1.0 simulcast. Full power and Class A stations may also request to air a 1.0 simulcast channel from a host location that does not cover all or a portion of the station's community of license or from which the station can provide only a lower signal threshold over the community than that required by the rules. The Draft Order further states that the Commission is inclined to consider favorably requests for waiver where the Next Gen TV station can demonstrate that it has no viable local simulcasting partner in the market and where the station agrees to make reasonable efforts to preserve 1.0 service to existing viewers in the community of license and/or otherwise minimize the impact on such viewers.

#### *Licensed Simulcasting*

The Draft Order provides that 1.0 and 3.0 channels aired on a partner host station will be licensed as temporary second channels of the originating broadcaster. Thus, the ATSC 1.0 and 3.0 signals of a Next Gen TV broadcaster will be two separately authorized companion channels under the broadcaster's single, unified license. The partner host and guest station(s) in a simulcast arrangement will continue to be licensed separately and each station will have its own call sign. Each licensee will be independently subject to all of the Commission's obligations, rules, and policies. The Commission retains the right to enforce any violation of these requirements against one, more than one, or all parties to a simulcast agreement.

#### *Licensing Procedure*

In the Draft Order, the Commission states that it will require a Next Gen TV broadcaster to file an application with the Commission, and receive approval, before (1) moving its 1.0 signal to a host station; (2) commencing the airing of a 3.0 channel on a 3.0 host station; or (3) converting its existing station to 3.0 technology. For all of these applications, the Commission will adopt a streamlined one-step process that will apply if no technical changes are necessary to either the originating or the host station that would normally require Commission approval.

### *MVPD Carriage*

The Draft Order specifies that a Next Gen TV broadcaster's 1.0 simulcast channel will retain mandatory carriage rights on cable and satellite systems but that its 3.0 channel will not have mandatory carriage rights while the Commission requires local simulcasting. ATSC 1.0 channels relocating to a host facility will not be permitted to gain new mandatory carriage rights as a result of their new location. In addition, a Next Gen TV broadcaster will not be able to exercise mandatory carriage rights with respect to its 3.0 signal instead of its 1.0 signal, nor will it have mandatory carriage rights even if its 3.0 signal is the only signal being broadcast.

To assert 1.0 mandatory carriage rights, the 1.0 channel must continue to qualify for such rights at the temporary location from which it will transmit the 1.0 signal. The carriage rights of full-power commercial stations are unlikely to be affected by this requirement because such stations must remain within their DMA, and must retain and continue to serve their current communities of license. However, NCE, Class A, and LPTV stations may be affected if, for example, an NCE station that qualifies for carriage based on its contour encompassing a cable headend cannot continue to qualify for carriage rights at the host facility location if the shift in contour means the station can no longer cover the cable headend.

Next Gen TV broadcasters with must-carry rights relocating their 1.0 simulcast channel must provide notice to affected MVPDs at least 90 days in advance of the move, and 120 days in advance if the move occurs during the incentive auction repacking period. The notice must contain the following information: (1) date and time of the 1.0 channel change; (2) the 1.0 channel occupied by the station before and after commencement of local simulcasting; (3) modification, if any, to antenna position, location, or power levels; (4) stream identification information, including program numbers for each programming stream; and (5) engineering staff contact information.

The Draft Order declines to adopt any rules requiring the voluntary carriage of ATSC 3.0 signals through retransmission consent, thus rejecting an effort by MVPDs to prohibit broadcasters from negotiating for carriage of their 3.0 signals in connection with carriage of their 1.0 signals. Instead, the Commission proposes to allow Next Gen TV broadcasters to pursue 3.0 carriage through voluntary marketplace negotiations.

### *Public Interest Obligations*

The Draft Order states that Next Gen TV broadcasters must continue to comply with all broadcast rules and public interest obligations that currently apply to television broadcasters. In particular, broadcasters that choose to deploy ATSC 3.0 are expected to comply fully with all relevant Part 79 requirements, including closed captioning.

### *Tuner Mandate*

Noting that the deployment of ATSC 3.0 will be voluntary and market-drive, the Draft Order states that the Commission will revise its rules to make clear that there is no requirement that television reception devices include an ATSC 3.0 tuner. The Commission further states that it agrees with commenters that it is unnecessary to require that all TV receivers sold after a specified date have an HDMI port to permit attachment of a

converter device that would enable the receivers to receive ATSC 3.0 transmissions.

#### *Consumer Notice Requirements*

All stations that relocate their ATSC 1.0 signals to a host station's facility must air at least 60 seconds per day of on-air consumer education PSAs or crawls, beginning 30 days prior to the date that the stations will terminate ATSC 1.0 operations on their existing facilities. No specified language will be required, but the crawls must, at a minimum, specify the date of the ATSC 1.0 channel relocation and the expected date of the new ATSC 3.0 signal launch; inform viewers that they will have to rescan their TVs to receive the relocated ATSC 1.0 channel over the air; if applicable, explain that, as a result of the relocation, some viewers may no longer receive the ATSC 1.0 signal over the air and that viewers will no longer receive the ATSC 1.0 signal in HD; inform viewers that they may need to purchase new equipment in order to receive ATSC 3.0 signals; and state that viewers may get more information about ATSC 1.0 relocation and new ATSC 3.0 service on the station's website or by contacting the station by telephone.

#### *Technical Standards*

The Draft Order indicates that the Commission will incorporate specific parts of the Next Gen TV technical standard (specifically, A/321 and A/322) into its rules. The A/322 requirement would apply only to a broadcaster's primary video stream and would sunset five years from the effective date of the rules adopted by the Draft Order unless extended by the Commission. In addition, the Commission will use its existing methodology and planning factors to define the service area of an ATSC 3.0 signal and to calculate how ATSC 3.0 signals will interfere with ATSC 1.0 signals. Next Gen TV broadcasters will be required to offer at least one free ATSC 3.0 video programming stream comparable to a DTV signal and to provide a signal with a chosen modulation/coding scheme that requires a signal-to-noise ratio of no more than would be required of a DTV signal.

The Commission also specifies that broadcast television stations may operate ATSC 3.0 Single Frequency Networks ("SFNs") pursuant to the agency's current rules authorizing Distributed Transmission Systems. The Commission declines to adopt a specific synchronization standard for ATSC 3.0 SFNs.

#### *Further Notice of Proposed Rulemaking*

In a draft Further Notice of Proposed Rulemaking that accompanies the Draft Order, the Commission seeks comment on issues related to exceptions and waivers of the requirement that Next Gen TV broadcasters partner with a local station to simulcast DTV signals and whether to let full power broadcasters use vacant channels in the television broadcast band to encourage use of Next Gen TV. In addition, the draft Further Notice of Proposed Rulemaking seeks comment on the FCC's tentative conclusion that local simulcasting should not change the "significantly viewed" status of a Next Gen TV station for purposes of cable and satellite carriage.