

**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 )

**COMMENTS OF  
THE NATIONAL ASSOCIATION OF BROADCASTERS**

February 11, 2022

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**I. INTRODUCTION AND SUMMARY**

The National Association of Broadcasters (NAB)<sup>1</sup> hereby submits comments in response to the Commission’s Second Further Notice of Proposed Rulemaking (FNPRM) concerning the regulatory treatment of multicast programming streams that are aired on host stations as broadcasters deploy Next Gen TV service.<sup>2</sup> We appreciate the Commission’s efforts to encourage innovation and investment by taking steps to facilitate and expedite this deployment. Prompt Commission action to finalize rules in this proceeding will provide regulatory certainty for broadcasters while conserving Commission resources.

The transition to Next Gen TV service is more ambitious than any previous transition the broadcast industry has faced. As the Commission is well aware, without any additional capacity to enable simulcasting, broadcasters have to share capacity in order to be able to continue to provide service in ATSC 1.0 while beginning to deploy Next Gen TV. In the early

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<sup>1</sup> The National Association of Broadcasters (NAB) is the nonprofit trade association that advocates on behalf of free local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

<sup>2</sup> *Authorizing the “Next Generation” Broadcast Television Standard*, Second Further Notice of Proposed Rulemaking, GN Docket No. 16-142, FCC 21-116 (Nov. 5, 2021) (FNPRM).

stages of this transition, most stations in a market remain transmitting in the legacy format while one or perhaps two stations must host Next Gen content for all of the other stations while trying to also offer new and better experiences to viewers. As the transition progresses, more stations will begin to transmit in the Next Gen TV standard, enabling yet better experience for viewers, while fewer stations will host programming in the ATSC 1.0 format to maintain service to viewers. The sharing arrangements are complex today, and will get increasingly complex as the transition unfolds, but the end result will be a more robust broadcasting service with significant benefits for viewers.

The Commission's Media Bureau has worked closely and productively with the broadcast industry to implement an interim process governing the regulatory treatment of an ATSC 3.0 station's multicast streams that are hosted on another station's facilities.<sup>3</sup> The Commission's approach in this proceeding should be straightforward; it should aim to codify that existing practice with streamlined and efficient rules that enable stations to continue to deploy ATSC 3.0 service to viewers as fast as possible. Accordingly, the Commission should adopt rules for hosted multicast streams that largely mirror the treatment of hosted primary streams with sufficient flexibility to accommodate future technological developments and additional sharing arrangements as the transition proceeds. It makes little sense for the Commission to adopt rules that may soon become outdated. Finally, as the FNPRM acknowledges, the Commission must pursue a balanced approach, recognizing that overly stringent regulatory requirements may well have the unintended consequence of encouraging stations to drop multicast streams rather than shoulder undue regulatory burdens.<sup>4</sup>

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<sup>3</sup> *Id.* at ¶ 6.

<sup>4</sup> *Id.* at ¶ 31.

**II. THE COMMISSION SHOULD ADOPT A LICENSED REGULATORY REGIME FOR MULTICAST STREAMS CONSISTENT WITH ITS APPROACH TO PRIMARY STREAMS**

The central aim of this proceeding is to streamline and codify the Media Bureau's existing practice of using a licensed approach to hosted multicast streams. NAB greatly appreciates the hard work of the Media Bureau to implement an interim approach under which stations may seek special temporary authority for multicast hosting arrangements.<sup>5</sup> We agree, however, that this "case-by-case process is resource-intensive for both the Commission and broadcasters."<sup>6</sup> Rules addressing these arrangements will provide greater clarity and certainty for both the broadcast industry and the Commission.

The FNPRM correctly notes that a licensed regulatory approach has numerous advantages. First, it encourages stations to enter into hosting arrangements where they might not otherwise.<sup>7</sup> As NAB has explained, some stations may be hesitant to accept legal responsibility when airing another station's multicast programming, even if they are able to obtain contractual indemnification provisions.<sup>8</sup> Second, this approach would provide the Commission with clear enforcement authority over the originator of a multicast stream and clarify that the originator, not the host, is the sole party responsible for ensuring compliance with statutory and regulatory requirements regarding hosted multicast streams.<sup>9</sup> Third, a licensed approach would encourage noncommercial educational stations to participate in hosting arrangements for commercial stations without fear of violating the prohibition on

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<sup>5</sup> *Id.* at ¶ 6.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at ¶ 11.

<sup>8</sup> Petition for Declaratory Ruling and Petition for Rulemaking of the National Association of Broadcasters at 3, GN Docket No. 16-142 (filed Nov. 9, 2021) (NAB Petition).

<sup>9</sup> FNPRM at ¶ 11; NAB Petition at 6.

commercial advertising.<sup>10</sup> This in turn will help facilitate ATSC 3.0 deployments and the rollout of innovative services to the public.

In short, a licensed approach to hosted multicast streams furthers the Commission's goal of crafting rules that encourage Next Gen TV stations to enter into hosting arrangements to preserve 1.0 multicast streams during the transition while also encouraging investment and innovation.

#### **A. Simulcast Multicast Streams**

NAB strongly supports the FNPRM's tentative conclusion that the FCC's existing licensing framework should apply to simulcast multicast streams as well as a station's primary stream.<sup>11</sup> NAB does not object to the proposed requirement that multicast streams that are simulcasts of one another must be "substantially similar," the same requirement that applies to simulcast primary streams. To the extent the Commission adopts a substantially similar requirement for simulcast multicast streams, however, that requirement should sunset on the same schedule as the substantially similar requirement for simulcast primary streams.<sup>12</sup> Clarification regarding the regulatory treatment of simulcast multicast streams will help facilitate ATSC 3.0 deployments while giving stations the flexibility to preserve multicast programming where possible. NAB is not aware of any objection – or any conceivable objection – to this tentative conclusion.

#### **B. Non-Simulcast Multicast Streams**

NAB also strongly supports the FNPRM's tentative conclusion that a 3.0 station may include in its license hosting arrangements for multicast streams hosted on one or more 1.0

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<sup>10</sup> FNPRM at ¶ 11; NAB Petition at 3.

<sup>11</sup> FNPRM at ¶ 12.

<sup>12</sup> See 47 CFR § 73.3801(b)(3).

stations even when those multicast streams are not simulcast on the 3.0 facility. However, we urge the Commission to broaden its approach to this issue and provide additional flexibility for these arrangements.

In particular, the FNPRM suggests that its proposal should be limited to stations transmitting in ATSC 3.0. This would deprive stations of needed flexibility as the transition progresses and capacity for multicast streams in ATSC 1.0 becomes scarcer. For example, consider a hypothetical where Station A is transmitting in 3.0 and seeking a host for a 1.0 multicast stream. Assume that neither Stations B nor C currently has capacity to host Station A's particular 1.0 multicast stream in Station A's desired format. It could easily be the case that Station B *would* have capacity to host A's 1.0 multicast streams if B could shift one or more of its own multicast streams (requiring less capacity either due to formatting choices or the programming itself) to Station C (which has sufficient capacity to host B's stream but not A's). Streams are not a unit of capacity; they are not fungible. Multicast streams in different formats, or even in the same format but showing different programming, may require significantly different amounts of capacity. Arranging for hosting of programming is not a matter of swapping fungible streams; rather, it is akin to a game of Tetris where multiple stations will need to cooperate to host programming streams with widely varying capacity requirements.

### **C. Non-Simulcast 3.0 Multicast Streams**

The FNPRM declines to seek comment on NAB's proposal to allow a 1.0 station's license to cover 3.0 multicast streams that are not simulcast in ATSC 1.0. The FNPRM notes

that none of the STA requests the Media Bureau has received have covered this situation, and notes that NAB concedes that the issue is unlikely to arise until later in the transition.<sup>13</sup>

NAB strongly disagrees with this approach. Regardless of whether the Media Bureau has yet received a request for an STA to cover this scenario, it will inevitably arise during the transition as more facilities in individual markets convert to ATSC 3.0, particularly once there is significantly more 3.0 capacity in any individual market than 1.0 capacity. Because the issue is wholly foreseeable at this point, and because it raises no distinct policy considerations that could not be addressed now, there is simply no reason for the Commission not to adopt rules in this proceeding that will govern this issue. Addressing the issue promptly will conserve Commission and industry resources by obviating the need for a duplicative and inevitable additional rulemaking in this proceeding. Putting this issue off will only hamper broadcast innovation and harm the public.

**D. Use of Multicast Streams to Minimize 1.0 Service Loss**

NAB also supports the Commission's tentative conclusion that under certain circumstances a station may simulcast its primary stream on more than one host in order to minimize service losses that would otherwise result if the station only simulcast its primary stream on one host.<sup>14</sup> NAB generally agrees that this situation will likely only arise where a station is unable to find a host partner that could, on its own, provide coverage to 95 percent or more of the originating station's service area.<sup>15</sup> Under those circumstances, the Commission should provide flexibility to allow stations to mitigate service losses by partnering with more than one host station.

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<sup>13</sup> FNPRM at ¶ 18.

<sup>14</sup> *Id.* at ¶ 19.

<sup>15</sup> *Id.*



**III. A LICENSED APPROACH TO HOSTED MULTICAST STREAM NEED NOT RAISE NOVEL POLICY CONSIDERATIONS**

**A. The Commission Can Readily Address Programming or Spectrum Aggregation Concerns for the Limited Purpose of Temporary Hosting Arrangements**

The FNPRM asks whether permitting the sorts of licensing arrangements NAB proposes could raise unique ownership, programming or spectrum aggregation issues and, if so, how best to address those issues.<sup>16</sup> NAB respectfully submits that these licensing arrangements do not raise any unique policy concerns that cannot be completely addressed through the adoption of NAB's proposed rule providing capacity constraints, which is discussed in more detail below. Further, NAB implores the Commission not to fall prey to traditional command-and-control approaches to the broadcast industry, and instead look at the models it has adopted with respect to other industries, such as wireless, where its light-touch oversight has allowed tremendous growth and innovation.

First, the FNPRM asks whether the Commission should "extend the temporary 'waiver' of the Commission's local broadcast ownership rules, which currently applies to primary stream hosting partnerships, to multicast stream partnerships."<sup>17</sup> Because we agree with the Commission that "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,"<sup>18</sup> we strongly support the extension of a temporary waiver of the Commission's rules to accommodate licensed multicast streams.

When the Commission initially approved the deployment of ATSC 3.0 service, it determined that it would not apply its ownership rules in any situation where airing a 3.0 or a

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<sup>16</sup> *Id.* at ¶¶ 21-26.

<sup>17</sup> *Id.* at ¶ 27.

<sup>18</sup> *Id.* at ¶ 22.

1.0 simulcast on a temporary host station's facility would otherwise result in a potential violation of those rules.<sup>19</sup> There is no reason to reach a different conclusion with respect to temporary hosting arrangements for streams that are not simulcast. These hosting arrangements will ultimately be unnecessary once the transition is complete, but in the meantime licensed hosting will make it easier for stations to continue to provide 1.0 services and continue to serve viewers while deploying 3.0 service. In the long run, the best way for the Commission to address any potential concerns over extended waivers under this approach is to do everything in its power to help broadcasters expedite the transition. In the meantime, however, there is no reason to take a different approach with respect to multicast streams, whether simulcast or not, than the Commission has taken with respect to simulcast primary streams with respect to the Commission's ownership rules.

In the alternative, the Commission asks if it should instead "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."<sup>20</sup> Given the temporary nature of these arrangements, we support this conclusion as well. Indeed, to the extent the Commission believes that these temporary arrangements raise any potential policy concerns, the Commission should aim to facilitate a faster transition, allowing broadcasters to terminate these arrangements, rather than prolonging the transition by adding unnecessary regulatory barriers. We emphasize, however, that the Commission need not resolve any issue in this proceeding that would

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<sup>19</sup> *Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 9930, ¶ 80, n. 237 (2017).

<sup>20</sup> FNPRM at ¶ 28.

implicate or predetermine the outcome of the 2018 Quadrennial Review proceeding, nor should the outcome of that proceeding necessarily govern hosting arrangements that are strictly temporary in nature.<sup>21</sup>

Turning to the issue of spectrum aggregation, NAB respectfully submits that this question is not distinguishable from programming aggregation.<sup>22</sup> As an initial matter, the spectrum aggregation concerns discussed in the FNPRM do not appear consistent with the manner in which broadcasters use their spectrum. The FNPRM states that “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).”<sup>23</sup> In fact, no broadcast television station in the United States transmits using less than a full 6 MHz channel. Stations in channel sharing arrangements, or hosting arrangements due to ATSC 3.0 deployments, are dividing *capacity* on that 6 MHz channel, not spectrum. Stated differently these stations are dividing bits not megahertz.

Properly understood, this renders the spectrum aggregation discussion entirely moot; it is simply not true that some stations are using less than 6 MHz of spectrum and it is irrelevant that some stations may be using more as long as those stations are not using that spectrum to transmit more programming than they otherwise could. The policy considerations here lie not with spectrum but rather with capacity and whether the licensing arrangements at issue in

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<sup>21</sup> See also Comments of the National Association of Broadcasters at 99-106, MB Docket No. 18-349 (Sept. 2, 2021); Reply Comments of the National Association of Broadcasters at 53-57, MB Docket No. 18-349 (Oct. 1, 2021).

<sup>22</sup> FNPRM at ¶ 26, n. 94 (asking if NAB’s proposed cap on programming also addresses concerns about spectrum aggregation).

<sup>23</sup> *Id.* at ¶ 26.

this proceeding would potentially allow a station access to more capacity than would otherwise be permitted.

Finally, the FNPRM also asks whether NAB's request could potentially allow stations to aggregate broadcast programming in a way they may not currently.<sup>24</sup> The Commission can easily address any such concerns by adopting NAB's proposed rule for hosting arrangements, discussed in more detail below, which would prevent a station from arranging for the hosting of more programming than the station could transmit using its own facilities.

**B. The Commission Should Adopt NAB's Proposed Rule for Limiting the Scope of Hosting Arrangements**

In an effort to address any potential concerns over programming aggregation or ownership issues, NAB has proposed the Commission adopt a rule providing that, in arranging for the hosting of its 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.<sup>25</sup> Thus, for example, a station that is transitioning to ATSC 3.0, and is partnering with one or more ATSC 1.0 stations to preserve its content in ATSC 1.0, could only arrange for the hosting of content that the station would be able to transmit using its own facilities. NAB believes this proposal completely addresses the spectrum, programming, and ownership questions raised in the FNPRM and that this proposal is the best way to address those concerns while still providing broadcasters

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<sup>24</sup> *Id.* at ¶ 22.

<sup>25</sup> Reply Comments of the National Association of Broadcasters at 7, MB Docket No. 16-142 (Jan. 25, 2021); Letter from Patrick McFadden to Marlene H. Dortch, MB Docket No. 16-142 (Jan. 19, 2021).

with the necessary flexibility to “adopt new technologies in a rapidly changing video programming market.”<sup>26</sup>

First, this proposal would obviate the need for the Commission to consider limits on the number of streams an originating station can air on host stations or the number of programming hosts with which a station could partner.<sup>27</sup> Selecting an arbitrary cap on the number of streams a station can air on host stations will achieve no legitimate policy goal whatsoever, may serve to deprive the public of desired programming, and will not factually reflect broadcast technology because streams are not a remotely accurate proxy for capacity. Not only will different formatting choices for individual streams require different amounts of capacity, but different programming even with identical formatting will require different amounts of capacity depending on the nature of the individual programming stream. A 1080p broadcast of an NFL game could require significantly more capacity than a 1080p broadcast of a political debate, for example. There is simply no number of streams the Commission can choose as a limit that will not be either arbitrarily limiting or trivially easy to subject to abuse. There is also no reason to limit the number of host stations an originating station partners with *as long as that originating station is not gaining access to more capacity than it would have using its own facilities*. Stated differently, it makes no difference from a public policy standpoint if an originating station arranges for carriage of 50 percent of its programming on each of two hosts or 25 percent of its programming on each of four hosts. By arbitrarily limiting the number of partners a station can use, however, the Commission would risk making an already challenging transition even more difficult and time-consuming.

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<sup>26</sup> FNPRM at ¶ 22.

<sup>27</sup> *Id.* at ¶ 25.

Second, because the requirement is tied to the state of the art, it would evolve as ATSC 3.0 technology evolves. It is entirely possible that in the future advances in compression technology would allow a station to transmit more programming than it currently can, and the Commission's rules should be flexible enough to permit stations to take advantage of such advances.

Third, NAB submits this requirement would be straightforward for the Commission to administer. Upon application to the Commission, an originating station would certify that it would not gain access to more capacity under its hosting arrangements than it would have on its own facilities. In the event of a public complaint or Commission inquiry, the originating station would be required to make a demonstration to the Commission proving that it could host all of its hosted programming on its own facilities using then state of the art technology, e.g., current compression technology. NAB does not imagine this issue will arise at all, but if it should, our proposal gives the Commission the necessary tools to address the situation.

**C. The Commission Should Not Add New Burdens to the Application Process**

The FNPRM proposes to modify the Commission's Next Gen TV license application form to accommodate multicast licensing and seeks comment on what information it should collect in that regard.<sup>28</sup> The FNPRM asks whether it should collect, among other things, for each programming stream, resolution (*i.e.*, HD or SD) or network affiliation if any.<sup>29</sup> We urge the Commission not to add new information collection requirements as part of this proceeding. Not only will such requirements make completing the form more burdensome, but they will provide no relevant information to the Commission with respect to temporary hosting

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<sup>28</sup> FNPRM at ¶ 36.

<sup>29</sup> *Id.*

arrangements. The Commission does not describe, and we are unable to contemplate, what the relevance of resolution or network affiliation would be to this proceeding, and we urge the Commission not to collect additional information for the sake of collection alone.

#### IV. CONCLUSION

NAB greatly appreciates both the efforts of the Media Bureau staff to date in developing an interim process to address multicast hosting arrangements as well as the Commission's efforts to develop rules governing such arrangements. The same policy arguments that support a licensed framework for hosting primary streams support the same approach to multicast hosting arrangements, whether or not multicast programming is simulcast. We urge the Commission to expand its proposals to encompass wholly foreseeable hosting arrangements rather than require a duplicative and superfluous rulemaking proceeding in the near future. We believe the Commission can readily address any programming or spectrum aggregation concerns by adopting NAB's proposal to limit the amount of capacity a station can access through hosting arrangements, and we urge the Commission to move forward expeditiously to adopt final rules in this proceeding.

Respectfully submitted,

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