## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MB Docket Nos. 20–145; FCC 20–73; FRS 16852]**

## Promoting Broadcast Internet Innovation Through ATSC 3.0

**AGENCY:** Federal Communications Commission

**ACTION:** Declaratory Ruling.

**SUMMARY:** In this document, the Commission removes regulatory uncertainty that could hinder the development of the new, innovative uses of broadcast spectrum that the ATSC 3.0 standard enables. Specifically, we clarify that long-standing television station ownership restrictions do not apply to the lease of spectrum to provide Broadcast internet services. By taking this step today, we help ensure that market forces, and not television station ownership rules that were written for different services, are brought to bear on and determine the success of the nascent Broadcast internet segment. This step will also help ensure that broadcasters and other innovators have the flexibility to generate the scale—both locally and nationally—that may be necessary to support certain Broadcast internet services without being subject to regulations unrelated to the provision of such services. A Notice of Proposed Rulemaking relating to the broadcast ancillary and supplementary service rules is published elsewhere in this issue of the **Federal Register**.

**DATES:** This *Declaratory Ruling* took effect June 9, 2020.

**FOR FURTHER INFORMATION CONTACT:** For additional information on this proceeding, contact John Cobb, *John.Cobb@fcc.gov* of the Policy Division, Media Bureau, (202) 418–2120.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Declaratory Ruling,* MB Docket Nos. 20–145; FCC 20–73, adopted and released on June 9, 2020. A summary of the *Notice of Proposed Rulemaking* adopted concurrently concerning the broadcast ancillary and supplementary service rules is published elsewhere in this issue of the **Federal Register**. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW, CY–A257, Washington, DC 20554. The full text of this document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street SW, Room CY–B402, Washington, DC 20554. To request these documents in accessible formats (computer diskettes, large print, audio recording, and Braille), send an email to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

### Synopsis

The United States is transitioning to a new era of connectivity. From innovative 5G offerings to high-capacity fixed services and an entirely new generation of low-earth orbit satellites, providers from previously distinct sectors are competing like never before to offer high-speed internet services through a mix of different technologies. The Commission has been executing on a plan to identify and remove the overhang of unnecessary government regulations that might otherwise hold back the introduction and growth of new competitive offerings. We want the marketplace—not outdated rules—to determine whether new services and technologies will succeed. Broadcasters, as well as a range of other entities, now have the potential to use broadcast spectrum to enter the converged market for connectivity in ways not possible only a few short years ago.

With this item, we take important steps to further unlock the potential of broadcast spectrum, empower innovation, and create significant value for broadcasters and the American public alike by removing the uncertainty cast by legacy regulations. More than twenty years ago, during the transition from analog to digital broadcast television, the Commission adopted rules allowing digital television (DTV) licensees to provide ancillary or supplementary services on their excess spectrum capacity and authorized licensees to enter into leases with other entities that would provide such services. Flash forward to today, and the conversion of digital television from the first-generation technologies associated with the ATSC 1.0 standard to the next-generation of ancillary services that will be enabled by ATSC 3.0 is now underway. This new technology promises to expand the universe of potential uses of broadcast spectrum capacity for new and innovative services beyond traditional over-the-air video in ways that will complement the nation's burgeoning 5G network and usher in a new wave of innovation and opportunity. These new offerings over broadcast spectrum can be referred to collectively as ''Broadcast internet'' services to distinguish them from traditional over-the-air video services. Broadcasters will not only be able to better serve the information and entertainment needs of their communities, but they will have the opportunity to play a part in addressing the digital divide and supporting the proliferation of new, IP-based consumer applications or voluntarily entering into arrangements to allow others to invest in achieving those goals. We undertake this proceeding to ensure that our rules help to foster the introduction of new services and the efficient use of spectrum.

By our Declaratory Ruling, we remove regulatory uncertainty that could hinder the development of the new, innovative uses of broadcast spectrum that the ATSC 3.0 standard enables. Specifically, we clarify that long-standing television station ownership restrictions do not apply to the lease of spectrum to provide Broadcast internet services. This means that a broadcast television licensee can lease spectrum to another broadcaster (including one operating in the same geographic market) or to a third party for the provision of ancillary and supplementary services without triggering the Commission's attribution or ownership rules for television stations. Those television station rules, which identify the specific kinds of ''cognizable interests'' that allow a party to ''own, operate or control'' a television station or ''otherwise provid[e] an attributable interest, . . . pursuant to [specified] criteria,'' regulate traditional broadcast television service and therefore have no application to innovative Broadcast internet services. By taking this step today, we help ensure that market forces, and not television station ownership rules that were written for different services, are brought to bear on and determine the success of the nascent Broadcast internet segment. This step will also help ensure that broadcasters and other innovators have the flexibility to generate the scale—both locally and nationally—that may be necessary to support certain Broadcast internet services without being subject to regulations unrelated to the provision of such services. For instance, a single entity could use this leasing mechanism to acquire the rights to offer Broadcast internet services on multiple broadcast channels in the same market. And that same entity could put together a nationwide footprint for the provision of

Broadcast internet services. Combined, this can help create an even more attractive market for the deployment of competitive Broadcast internet services.

As noted, the Commission last addressed these issues over twenty years ago, well before the ongoing transition to ATSC 3.0 dramatically increased the scope of innovative new services that can be provided and expanded the types of leasing arrangements that will help facilitate greater access to broadcast spectrum by third parties. Therefore, questions have been raised about the application of our prior ancillary services regime to these new offerings. Our decision today will help provide the stable and predictable regulatory environment that is critical if parties are to invest heavily in new Broadcast internet services and thus aid in their proliferation.

*Background. Commission Regulations Applicable to Ancillary and Supplementary Services.* Pursuant to section 336 of the Telecommunications Act of 1996 (the 1996 Act), Congress established the framework for licensing DTV spectrum to television broadcasters and permitted them to offer ancillary and supplementary services consistent with the public interest. Congress recognized that the transition from analog to digital broadcast technology would enable DTV licensees to provide new and innovative services, including various forms of data services, over their additional spectrum capacity and wanted to provide licensees with the flexibility necessary to utilize fully that new potential. Accordingly, section 336 directed the Commission to adopt regulations that would allow DTV licensees to make use of excess spectrum capacity, so long as the ancillary or supplementary services carried on DTV capacity do not derogate any advanced television services (*i.e.,* free over-the-air broadcast service) that the Commission may require. Such ancillary or supplemental services are also subject to any Commission regulations that are applicable to analogous services. The statute also directed the Commission to impose a fee on ancillary or supplementary services for which the DTV licensee charges a subscription fee or receives compensation from a third party other than commercial advertisements used to support non-subscription broadcasting.

The Commission adopted the initial rules governing the provision of ancillary or supplementary broadcast services in 1997 as part of the *DTV Fifth Report and Order.* Consistent with the Act, the rules obligate DTV licensees to ''transmit at least one over-the-air video program signal at no direct charge to viewers on the DTV channel.'' This means that regardless of whatever other services a broadcaster may provide over its spectrum, it must continue to provide one free stream of programming to viewers. As long as DTV licensees satisfy that obligation, the rules permit them to ''offer services of any nature, consistent with the public interest, convenience, and necessity, on an ancillary or supplementary basis'' provided the services do not derogate the licensee's obligation to provide one free stream of programming to viewers and are subject to any regulations on services analogous to the ancillary or supplementary service. These rules reflect the Commission's intent to promote the public interest by maximizing ''broadcasters' flexibility to provide a digital service to meet the audience's needs and desires.''

The Commission initiated a separate proceeding to determine how best to assess and collect the statutorily required fee for ancillary or supplementary services. The statute directed the Commission to adopt a fee structure that would ''recover for the public a portion of the value of the public spectrum resource made available for such commercial use, and . . . avoid unjust enrichment through the method employed to permit such uses of that resources.'' It also specifically instructed the Commission to set the fee at a value that, ''to the extent feasible, equals but does not exceed (over the term of the license) the amount that would have been recovered had such services been licensed pursuant to the provisions of section 309(j) of [the Act] and the Commission's regulations thereunder.'' Ultimately, the Commission determined that a fee based on a percentage of the gross revenues generated by feeable ancillary or supplementary services was the best option to satisfy the statutory directive and achieve the goal of incentivizing innovation to maximize spectrum efficiency. The Commission set the fee at five percent of gross revenues received from any feeable ancillary or supplementary services.

Subsequently, the Commission clarified the ancillary or supplementary service rules as applied to noncommercial educational (NCE) television licensees. The Commission concluded that § 73.621 of the rules, which requires public NCE stations to provide a nonprofit and noncommercial broadcast service, would apply to the provision of ancillary or supplementary services by NCE licensees. However, the Commission also decided to allow NCE licensees to offer subscription services on their excess capacity and to advertise on ancillary or supplementary services that do not constitute broadcasting. Finally, the Commission concluded that section 336(e) of the Act does not exempt NCE licensees ''from the requirement to pay fees on revenues generated by the remunerative use of their excess digital capacity, even when those revenues are used to support their mission-related activities.''

Pursuant to section 336(e)(4) of the Act, the Commission originally adopted rules requiring all DTV licensees and permittees annually to file a form (currently Form 2100, Schedule G), reporting information about their use of the DTV bitstream to provide feeable ancillary and supplementary services. In 2017, as a part of the *Modernization of Media Regulation Initiative,* the Commission revised these filing requirements. The Commission concluded that requiring every DTV licensee to file the form was an unnecessary regulatory burden, as very few licensees offered any feeable service, and instead changed the rules to require only those licensees who had provided feeable ancillary or supplementary services during the applicable reporting period to file the form. As the Commission observed, at that time only a fraction of all television broadcast stations provided feeable ancillary or supplementary services despite expectations in the wake of the digital transition.

*Next Generation Broadcast Standard (ATSC 3.0).* ATSC 3.0 is the ''Next Generation'' broadcast television (Next Gen TV) transmission standard developed by the Advanced Television Systems Committee as the world's first IP-based broadcast transmission platform, which ''merges the capabilities of over-the-air broadcasting with the broadband viewing and information delivery methods of the internet, using the same 6 MHz channels presently allocated for DTV service.'' As stated in the *Next Gen TV Report and Order,* the ATSC 3.0 standard will allow broadcasters to ''offer exciting and innovative services,'' including superior reception, mobile viewing capabilities, enhanced public safety capabilities (such as advanced emergency alerting capable of waking up sleeping devices to warn consumers of imminent emergencies), enhanced accessibility features, localized and/or personalized content, interactive educational children's content, and other enhanced features. In 2017, the Commission authorized broadcasters to begin the transition to ATSC 3.0 voluntarily and established standards to minimize the impact on, and costs to, consumers and other industry

stakeholders. The Media Bureau began accepting applications for Next Gen TV licenses on May 28, 2019. Earlier this year, the Commission adopted a Notice of Proposed Rulemaking seeking comment on proposed changes to the rules governing the use of distributed transmission systems (DTS) by broadcast television stations. Proponents of the changes assert that they will facilitate the use of new and innovative technologies that will improve traditional broadcast service and mobile reception of broadcast signals, as well as allow the more efficient use of broadcast spectrum, which they claim would enable broadcasters to exploit more fully the new capabilities resulting from ATSC 3.0.

ATSC 3.0 provides greater spectral capacity than the current digital broadcast television standard, allowing broadcasters to innovate, improve service, and use their spectrum more efficiently. Although today many broadcasters are focused solely on deploying traditional broadcast television services using the ATSC 3.0 standard, some broadcasters and third-party groups are looking to the future and examining ways broadcasters can become part of the 5G ecosystem and provide myriad other services using the enhanced capabilities of ATSC 3.0 technologies. Specifically, these groups hope to utilize television spectrum to provide non-traditional broadcast video services such as video-on-demand or subscription video services and new, innovative non-broadcast services in such areas as the automotive industry, agriculture, distance learning, telehealth, public safety, utility automation, and the ''Internet of Things'' (IoT). Providing a regulatory environment to enable a thriving secondary market is key to unlocking the potential for such Broadcast internet services via ATSC 3.0.

*Declaratory Ruling.* The Communications Act and the Commission's rules provide clear authority for the provision of ancillary and supplementary services by broadcast television stations, including through spectrum lease agreements, yet few such services have been offered over the past two decades and none appear to have been offered extensively or systematically across the television industry. Accordingly, the Commission has had little occasion to opine on these rules since their adoption over twenty years ago. With the advent of ATSC 3.0, however, broadcasters may be better positioned to realize the potential long envisioned by Congress and the Commission when they were granted the flexibility to use their spectrum in new and novel ways to benefit their local communities and the American people. We expect that our clarification today will help promote increased investment in broadcast television stations, thereby enabling them to better serve their local markets.

As the Commission has noted, some licensees may find it useful to develop partnerships with other broadcasters or third parties to help make the most productive and efficient use of their spectrum, and the Commission has stated that it would ''look with favor on such arrangements.'' In some cases, a broadcaster may lease a portion of its spectrum to a separate and unrelated entity that, instead of the broadcaster, would provide ancillary and supplementary services to the consumer. Conversion of broadcast television to the ATSC 3.0 transmission standard has the potential to increase the attractiveness of ancillary and supplementary services and correspondingly the prevalence of spectrum leases to third parties (including other broadcasters) that can provide such services. As an IP-based standard designed for compatibility with wireless broadband networks, ATSC 3.0 broadcast signals can connect to 5G wireless networks to provide enhanced consumer experiences in ways that ATSC 1.0 cannot. Wireless networks are becoming more dynamic, relying on various spectrum bands for inbound and outbound data paths. Though ATSC 3.0 transmissions presently lack a return path, the technology is well positioned to support a host of next-generation applications, both on its own or as part of a hybrid wireless network. For example, third parties may wish to lease excess broadcast spectrum for such uses as supporting autonomous vehicle operation through system updates; pre-positioning popular content (*e.g.,* movies or video games) to help reduce network congestion; distributing educational or job certification materials; providing supplemental information to telemedicine patients; issuing advanced emergency alerts for first responders and the public; and providing operational support for IoT devices and smart meters. We expect that these types of next-generation services will come to define Americans' lives over the coming years and decades, and broadcast spectrum will be in a position to support their growth and proliferation. Furthermore, an ATSC 3.0 signal can offer broadband-speed downloads, which may help reduce consumer costs for internet services, and its propagation characteristics make it well suited for underserved rural communities. In addition, the nature of ATSC 3.0 transmissions, as compared to ATSC 1.0, could lead to novel and creative leasing arrangements that could involve multiple, short-term spectrum users, arrangements that were not feasible when the Commission last issued guidance on these issues more than twenty years ago.

In issuing this declaratory ruling, we seek to clarify the regulatory treatment of such leasing arrangements and to remove any uncertainty that might chill the introduction of new and innovative services under ATSC 3.0. Specifically, we clarify that the lease of excess broadcast television spectrum to a third party, including another broadcaster, for the provision of ancillary and supplementary services does not result in attribution under our broadcast television station ownership rules or for any other requirements related to television station attribution (*e.g.,* filing ownership reports). That is, our attribution rules do not confer a ''cognizable interest'' solely by the existence of a lease agreement to provide ancillary and supplementary services over the station's spectrum. The Commission's broadcast television station attribution rules seek to identify interests that confer influence or control such that those interests should be counted for purposes of the media ownership limits. Influence or control over programming, personnel, and finances is considered in making an attribution determination. The Commission's media ownership limits are intended to promote viewpoint diversity, localism, and competition in broadcast services, yet ancillary and supplementary services are defined to exclude broadcast services. We thus find no basis to deem a lease pertaining to such non-broadcast services as implicating our media ownership limits. Similarly, the Commission stated in its order authorizing the voluntary use of the ATSC 3.0 transmission standard that it would 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 have otherwise resulted in a potential violation of those rules. Pursuant to that order, such temporary simulcasting arrangements do not constitute a cognizable interest under our attribution rules.

This ruling applies regardless of whether the station is broadcasting in ATSC 1.0 or 3.0 and only in those circumstances where the lessee uses the spectrum for services that qualify as

ancillary and supplementary under § 73.624(c) of the Commission's rules, which is the limited focus of our action today. Consistent with our rules, licensees entering into such leases still bear the responsibility to retain ultimate control over their spectrum and to ensure compliance with our broadcast regulations. Also consistent with existing Commission rules and policies, the term of any spectrum lease should be for no greater than the duration of the station's broadcast license, with renewal of the leasing arrangement permitted. Furthermore, the broadcaster must continue to provide at least one over-the-air video program signal at no charge to viewers in accordance with § 73.624(b) of the Commission's rules and remain in compliance with all other applicable Commission rules. By extension, the broadcaster is responsible for any misuse of its spectrum by a lessee in violation of applicable statutes or Commission rules.

By this declaratory ruling, we seek to provide additional clarity in order to encourage the investment in and deployment of potentially beneficial Broadcast internet services and to eliminate any possibility of unnecessary regulatory obstructions, either real or perceived. The Commission's rules for ancillary and supplementary services were intended to afford broadcasters the flexibility to use spectrum capacity in entrepreneurial and innovative ways. In recognizing ''the benefit of permitting broadcasters the opportunity to develop additional revenue streams from innovative digital services,'' the Commission has chosen ''to impose few restrictions on broadcasters and to allow them to make decisions that will further their ability to respond to the marketplace.'' As the industry transitions to a next-generation broadcast television standard, we seek to ensure that our rules help facilitate innovative arrangements that can result in the efficient use of spectrum. In doing so, it is our hope that the marketplace, not rules designed for different services, will ultimately decide which Broadcast internet services are developed and supported.

*Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that, this rule is ''non-major'' under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of the *Declaratory Ruling* to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

*It is ordered* that, pursuant to sections 1, 4(i), 4(j), 303(r), and 336 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 303(r), and 336, and section 1.2 of the Commission's Rules, 47 CFR 1.2, this Declaratory Ruling in MB Docket No. 20–145 *is adopted. It is further ordered* that, pursuant to § 1.103 of the Commission's rules, 47 CFR 1.103, this Declaratory Ruling *shall be effective* upon release. *It is further ordered* that the Commission *shall send* a copy of the Declaratory Ruling in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

Federal Communications Commission.

**Marlene Dortch,**

*Secretary.*

[FR Doc. 2020–13202 Filed 7–15–20; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 622

**[Docket No. 200707–0183]**

**RIN 0648–BJ67**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic Region; Abbreviated Framework Amendment 3

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS implements management measures described in Abbreviated Framework Amendment 3 (Abbreviated Framework 3) to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), as prepared and submitted by the South Atlantic Fishery Management Council (South Atlantic Council). This final rule increases the commercial and recreational annual catch limits (ACLs) and Abbreviated Framework 3 increases the recreational annual catch target (ACT) for blueline tilefish in the South Atlantic exclusive economic zone (EEZ). The purpose of this final rule is to ensure that these measures for South Atlantic blueline tilefish are based on the best scientific information available, to achieve and maintain optimum yield (OY), and to prevent overfishing while minimizing to the extent practicable, adverse social and economic effects.

**DATES:** This final rule is effective on August 17, 2020.

**ADDRESSES:** Electronic copies of Abbreviated Framework 3 may be obtained from *www.regulations.gov* or the Southeast Regional Office website at *https://www.fisheries.noaa.gov/action/abbreviated-framework-amendment-3-blueline-tilefish.* Abbreviated Framework 3 includes a Regulatory Flexibility Act (RFA) analysis and regulatory impact review.

**FOR FURTHER INFORMATION CONTACT:** Mary Vara, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *mary.vara@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** The snapper-grouper fishery in the South Atlantic region is managed under the FMP and includes blueline tilefish, along with other snapper-grouper species. The FMP was prepared by the South Atlantic Council and is implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On April 15, 2020, NMFS published a proposed rule for Abbreviated Framework 3 in the **Federal Register** and requested public comment (85 FR 20970, April 15, 2020). Abbreviated Framework 3 and the proposed rule outline the rationale for the actions contained in this final rule. A summary of the management measures described in Abbreviated Framework 3 and implemented by this final rule is provided below. All weights described in this final rule are in round weight.

### Management Measure Contained in This Final Rule

This final rule revises the commercial and recreational ACLs for South Atlantic blueline tilefish based on updated information from a Southeast Data, Assessment, and Review (SEDAR) benchmark assessment that was completed for the Atlantic stock of blueline tilefish, using data through 2015 (SEDAR 50).

Prior to this final rule, the blueline tilefish commercial ACL was 87,521 lb (39,699 kg) and the recreational ACL was 87,277 lb (39,588 kg).

Consistent with the results of SEDAR 50 and the acceptable biological catch (ABC) recommendation from the South Atlantic Council's Scientific and Statistical Committee (SSC) that was accepted by the South Atlantic Council, this final rule increases the commercial