§ 1700.37 Underwater ship husbandry.

(a) For discharges from vessels that are less than 79 feet in length:

(1) To the greatest extent practicable, vessel hulls with an antifouling hull coating must not be cleaned within 90 days after the antifouling coating application.

(2) Vessel hulls must be inspected, maintained, and cleaned to minimize the removal and discharge of antifouling coatings and the transport of fouling organisms. To the greatest extent practicable, rigorous vessel hull cleanings must take place in drydock or at a land-based facility where the removed fouling organisms or spent antifouling coatings can be disposed of onshore in accordance with any applicable solid waste or hazardous substance management and disposal requirements.

(3) Vessel hull cleanings must be conducted in a manner that minimizes the release of antifouling hull coatings and fouling organisms, including:

(i) Adhere to any applicable cleaning requirements found on the coatings' FIFRA label.

(ii) Use soft brushes or less abrasive cleaning techniques to the greatest extent practicable.

(iii) Use hard brushes only for the removal of hard growth.

(iv) Use a vacuum or other collection/control technology, when available and feasible. Residues filtered, precipitated, or otherwise removed by any vacuum technology must be disposed of onshore in accordance with any applicable solid waste and hazardous substance management and disposal requirements.

(4) Vessel hull cleanings must be conducted in a manner that minimizes the release of antifouling hull coatings and fouling organisms, including:

(i) Adhere to any applicable cleaning requirements found on the coatings' FIFRA label.

(ii) Use soft brushes or less abrasive cleaning techniques to the greatest extent practicable.

(iii) Use hard brushes only for the removal of hard growth.

(v) Use a vacuum or other collection/control technology, when available and feasible. Residues filtered, precipitated, or otherwise removed by any vacuum technology must be disposed of onshore in accordance with any applicable solid waste and hazardous substance management and disposal requirements.

(b) For discharges from vessels that are greater than or equal to 79 feet in length:

(1) To the greatest extent practicable, vessel hulls with an antifouling hull coating must not be cleaned within 90 days after the antifouling coating application. To the greatest extent practicable, vessel hulls with copper-based antifouling coatings must not be cleaned within 365 days after coating application.

(2) Vessel hulls must be inspected, maintained, and cleaned to minimize the removal and discharge of antifouling coatings and the transport of fouling organisms. To the greatest extent practicable, rigorous vessel hull cleanings must take place in drydock or at a land-based facility where the removed fouling organisms or spent antifouling coatings can be disposed of onshore in accordance with any applicable solid waste or hazardous substance management and disposal requirements.

(3) Vessel hull cleanings must be conducted in a manner that minimizes the release of antifouling hull coatings and fouling organisms, including:

(i) Adhere to any applicable cleaning requirements found on the coatings' FIFRA label.

(ii) Use soft brushes or less abrasive cleaning techniques to the greatest extent practicable.

(iii) Use hard brushes only for the removal of hard growth.

(iv) Use a vacuum or other collection/control technology, when available and feasible. Residues filtered, precipitated, or otherwise removed by any vacuum technology must be disposed of onshore in accordance with any applicable solid waste and hazardous substance management and disposal requirements.

[FR Doc. 2020–12571 Filed 7–16–20; 8:45 am]
“significantly viewed” status of Next Gen TV stations. Second, we dismiss and, on alternative and independent grounds, deny the two petitions for reconsideration of the Next Gen TV Report and Order.

II. Background

2. In the Next Gen TV Report and Order, 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. ATSC 3.0 is the TV transmission standard developed by the Advanced Television Systems Committee as the world’s first internet Protocol (IP)-based broadcast transmission platform. The Commission determined in the Next Gen TV Report and Order that broadcasters deploying ATSC 3.0 generally must continue to deliver current-generation digital television (DTV) service, using the ATSC 1.0 transmission standard, also called “ATSC 1.0” or “1.0,” to their viewers through local simulcasting. Specifically, the Commission required full power and Class A television stations (Class A TV) deploying ATSC 3.0 service to simulcast the primary video programming stream of their ATSC 3.0 channels in an ATSC 1.0 format.

3. In the Next Gen TV Report and Order, the Commission determined that the local simulcasting requirement is crucial to the deployment of Next Gen TV service in order to minimize viewer disruption. This is because the Next Gen TV standard is not backward-compatible with existing TV sets or receivers, which have only ATSC 1.0 and analog tuners. This means that consumers will not be able to view 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 to deliver DTV service while the marketplace adopts devices compatible with the new 3.0 transmission standard in order to avoid either forcing viewers to acquire new equipment or depriving them of television service. 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 will be effectuated through voluntary partnerships that broadcasters seeking to provide Next Gen TV service enter into with other broadcasters in their local markets. A Next Gen TV broadcaster 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.

4. The Commission established a process for considering applications to deploy ATSC 3.0 service, which included, among other requirements, establishing coverage requirements for a Next Gen TV station’s ATSC 1.0 simulcast signal. The Commission’s ATSC 1.0 simulcast coverage requirement sought to minimize disruption to viewers resulting from the voluntary deployment of ATSC 3.0 by recognizing that if a station moves its ATSC 1.0 signal to a partner simulcast host station with a different transmitter location, some existing over-the-air (OTA) viewers may no longer be able to receive the 1.0 signal. Among other obligations, the Commission required 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 would continue to provide ATSC 1.0 simulcast service to its entire community of license.

5. While the Commission’s rules require that full power and Class A TV stations that convert their existing facility to ATSC 3.0 provide an ATSC 1.0 simulcast signal that covers a station’s entire community of license, the Commission recognized that in certain circumstances such an arrangement may not be viable. Accordingly, the Commission established a waiver standard for the ATSC 1.0 simulcast requirement in order to facilitate the voluntary deployment of ATSC 3.0 service. Specifically, the Commission stated that it would favor requests for waiver of the obligation to provide ATSC 1.0 simulcast service if the station can demonstrate both that: (1) It has “no viable local simulcasting partner” in its market; and (2) it will “make reasonable efforts to preserve service to existing viewers in its community of license and/or otherwise minimize the impact on such viewers (for example, by providing free or low cost ATSC 3.0 converters to viewers).” The Commission stated that it would consider waiver requests from full power and class A TV stations to transition directly from ATSC 1.0 to ATSC 3.0 service on the station’s existing 1.0 simulcast host that does not cover all or a portion of the station’s community of license or can provide only a lower signal threshold over the station’s community of license than that required by the rules. Thus, a station may seek a waiver to either provide no 1.0 simulcast service to its community of license or partial 1.0 simulcast service to its community of license. In both situations, a waiver of the community of license coverage requirement in 47 CFR 73.3801(c) is required and the waiver standard set forth in the Next Gen TV Report and Order applies.

6. In the Next Gen TV Further Notice, the Commission sought comment on three topics relating to local simulcasting rules. First, it sought further comment on issues related to waivers of, and exemptions from, the local simulcasting requirement. Specifically, the Commission sought comment on whether further guidance should be provided about the circumstances in which it would grant such a waiver, including how to define whether a station has “no viable local simulcasting partner” and whether a station has taken “reasonable efforts to preserve service and/or minimize impact on viewers.” Second, the Commission sought further comment on whether to let full power broadcasters use channels in the television broadcast band that are vacant to facilitate the transition to ATSC 3.0. Third, the Commission tentatively concluded that local simulcasting should not change the “significantly viewed status” of a Next Gen TV station for purposes of determining MVPD carriage and sought comment on that conclusion.

7. The Commission received 19 comments and eight reply comments in response to the Next Gen TV Further Notice. Broadcaster commenters again urged the Commission to continue to provide broadcasters with “flexibility” to facilitate their deployment of ATSC 3.0 service, such as through waivers of, and/or additional exemptions from, the local simulcasting rules and by permitting broadcasters to temporarily use vacant channels. Meanwhile, MVPD commenters urged the Commission to exercise restraint in issuing waivers of, or granting additional exemptions from, the local simulcasting rules. And public interest groups, white space proponents, and NCTA opposed the use of vacant channels as temporary transition channels by broadcasters.

8. The Commission also received two petitions for reconsideration of the Next Gen TV Report and Order: One filed by
III. Second Report and Order

9. In this Second Report and Order, we provide guidance on how Commission staff will evaluate petitions for waiver of our local simulcasting rules. In addition, we decline at this time to permit broadcasters to use vacant in-band channels for purposes of voluntary ATSC 3.0 deployment. Finally, we adopt the Commission’s tentative conclusion that the “significantly viewed” status of a Next Gen TV station will not change if it moves its ATSC 1.0 simulcast channel to a host facility.

A. Local Simulcasting Waivers and Exemptions

10. We affirm and clarify the local simulcasting waiver standard adopted in the Next Gen TV Report and Order. As explained below, we will presume that a station satisfies the first element of our waiver standard, which is that it has no “viable simulcasting partner,” if it has fewer than three potential simulcasting partners within its DMA that can cover its entire community of license. To satisfy the second part of our waiver standard, which is to provide “reasonable efforts to preserve 1.0 service,” we will look favorably on waiver applicants that take steps to ensure their viewers have the ability to continue watching the station. For example, waiver applicants may provide, upon request, free or low-cost ATSC 3.0 converter devices to over-the-air viewers within the station’s community of license who otherwise no longer would be able to receive the station’s 1.0 signal over the air as a result of the station’s conversion to ATSC 3.0.

1 Generally, we expect that a station seeking a waiver of the community of license coverage requirement will not be able to satisfy the standard for expedited processing, which requires a station to 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). Thus, we remind prospective waiver applicants that a station that needs a waiver of the community of license coverage requirement will also need to make the showing required for non-expedited applications established by the Next Gen Report and Order, which includes providing information about what steps, if any, the station plans to take to minimize the impact of the service loss. Accordingly, as a practical matter, we expect that a station choosing to provide ATSC 3.0 converter devices as a means to minimize the impact of not simulcasting on viewers will choose to provide such devices throughout its entire NLSC.

2 Commission staff estimates that, initially, about 8 percent of NCE stations and about 5 percent of commercial stations will be able to meet this threshold. This estimate was determined using LMS data. Staff calculated NLSCs using TVS study for stations remaining on-air following the Incentive Auction. For each station under the test, the boundaries of the community of license were determined by matching the community to a Census Place or Census Designated Place. The number of viable sharing partners was determined by counting the number of other stations in the same DMA as the station under the test whose NLSC completely covered the boundaries of the community of license.

3 We agree with NAB’s reasoning that “[i]f there are only one or two other stations in a market, a station that is eager to move forward now to improve its service may be unable to find a willing negotiating partner. If there are at least three other full power stations in the market, however, a transitioning station would be assured of having at least some possibility of moving forward even if one or two of those stations was not interested in a partnership at the time.”

4 The record shows that stations in rural, remote, and isolated areas most merit a waiver of the local simulcasting requirement.
stations constitute a secondary service that does not receive the same interference protection afforded to full power stations. We also note that a review of available data by Commission staff suggests that limiting potential Class A TV stations to three or more Class A stations results in only a very slight increase in the number of full power stations that would be able to demonstrate "no viable local simulcasting partner." In other words, if a station seeking a waiver to simulcast ATSC 3.0 service is located within its community of license in order to be eligible for a waiver, we find that this bright line test appropriately balances the likelihood of availability with the need to avoid a large number of subjective evaluations of how diligent the prospective ATSC 3.0 licensee has been in seeking out such arrangements.

15. With respect to Class A TV stations, we will presume that a Class A TV station has "no viable local simulcasting partner" if it has fewer than three potential Class A TV simulcasting partners in the same DMA that: (1) Can provide overlap to its protected contour (47 CFR 73.6010(c)); and (2) are less than 30 miles from the reference coordinates of the transitioning station's existing antenna location. This is the same contour overlap standard that we apply in our rule specifying permissible simulcast partners for Class A stations seeking to provide ATSC 3.0 service. We recognize that many Class A TV stations will be able to satisfy this prong of our waiver standard, because few markets have three or more Class A stations. However, we find that it is appropriate to create a lower bar for this class of stations to make a showing under this prong as they likely face many of the same challenges in finding a suitable simulcasting partner as do LPTV stations. We will not consider LPTV/translator stations in our calculation of available 1.0 simulcast partners for Class A TV stations because they are secondary services that do not receive the same interference protection afforded to Class A TV stations. Nevertheless, Class A TV stations may choose to partner with LPTV/translator stations as a means to mitigate the harm to viewers, and we encourage Class A TV stations to do so.

2. "Reasonable Efforts" To Preserve Service

16. In addition to demonstrating that a station lacks a viable partner, successful waiver applicants must commit to take certain affirmative steps to satisfy the second prong of our waiver test, by demonstrating that it is making "reasonable efforts" to preserve 1.0 service and minimize impact on viewers. It is critical that stations seeking a waiver of the simulcasting requirement can still achieve the purpose of our simulcasting rule—ensuring that viewers can continue to watch their channels during the transition period—through some alternate means, in order to serve viewers that can no longer receive the station over-the-air as a result of a station's conversion to ATSC 3.0.

17. The only alternative to local simulcasting raised or discussed in the record that is consistent with the purpose of the rule is for waiver applicants to provide free or low-cost ATSC 3.0 converter devices to affected over-the-air viewers. We believe that providing free or low-cost converter devices could help ensure that viewers in a station's coverage area can continue to watch a station over-the-air. Below, in an effort to provide greater predictability to prospective waiver applicants, we provide more detail about our expectations in this regard. We note, however, that we will consider other alternatives offered by waiver applicants on a case-by-case basis, provided the waiver applicant can demonstrate that such proposals would achieve the purpose of our local simulcasting rule.

18. We will look favorably on a waiver applicant choosing to provide ATSC 3.0 converter devices at no cost or low cost to over-the-air households located within its community of license which will no longer receive the station's ATSC 1.0 signal as a means to minimize the impact of not simulcasting on viewers. Although such equipment distribution is not a requirement to obtain a waiver, we find that this method provides one way to ensure that any disruption to viewers is minimized to the fullest extent possible. In order for us to evaluate this prong of our waiver standard, waiver applicants will explain in detail their plans for providing converter devices to eligible viewers, including: (1) What types of devices they intend to provide; (2) the cost, if any, that eligible viewers will be required to pay in order to receive the device; (3) how the applicant intends to inform viewers of the need for, and availability of, devices; and (4) how viewers will be able to request and obtain the device. The Bureau will consider a waiver applicant's plan for providing ATSC 3.0 converter devices to affected viewers on a case-by-case basis based on the unique circumstances confronting the applicant.

19. To provide greater predictability to applicants that chose to voluntarily provide ATSC 3.0 converters, the Bureau will look favorably on a plan in...
which the waiver applicant would provide affected over-the-air households,9 upon request, with one ATSC 3.0 converter at no cost. To the extent waiver applicants choose to charge a low cost to consumers for devices, we will consider the particular circumstances surrounding this charge, as well as the amount of the charge, on a case-by-case basis. A waiver applicant choosing to provide ATSC 3.0 converter devices would be expected to agree to provide an ATSC 3.0 converter upon request to each affected over-the-air household for as long as it operates pursuant to the waiver. A waiver applicant choosing to provide ATSC 3.0 converter devices would also be expected to inform viewers how they can obtain an ATSC 3.0 converter from the station.10 We note that some waiver applicants choosing to provide ATSC 3.0 converter devices may opt to partner with equipment manufacturers, retailers, and even other broadcasters in their local markets in order to provide the free or low-cost ATSC 3.0 converters. While nothing promotes waiver applicants from partnering with third parties to establish their ATSC 3.0 converter programs, we remind applicants that they remain ultimately responsible for complying with any commitments made as part of their waiver requests. Finally, we remind waiver applicants that a station that transitions directly to ATSC 3.0 must air daily Public Service Announcements (PSAs) or crawls every day for 30 days prior to the date that it will terminate ATSC 1.0 operations.11

Broadcasters contend that, while the Commission should look favorably on waiver applicants that offer to provide free or low-cost ATSC 3.0 converters to viewers in their coverage area, the Commission should not require broadcasters to provide free or low-cost ATSC 3.0 converters to viewers as a condition for a waiver of the local simulcasting requirements. NAB asserts that requiring waiver applicants to provide ATSC 3.0 converters “would risk adding unreasonable costs” on broadcasters, and ONE Media similarly contends that “such a costly requirement might deter innovation in some markets without corresponding benefits.” As stated above, we do not require waiver applicants to provide ATSC 3.0 converter devices and will consider alternative proposals that would achieve the purpose of the local simulcasting rule. There were, however, no such alternatives mentioned in the record. The Commission authorized the deployment of ATSC 3.0 service in a manner that is voluntary for all stakeholders. We find it unreasonable for consumers to bear significant expense for these devices or to be left without service in the event devices are not readily available in the marketplace when a station wishes to deploy ATSC 3.0 service. Broadcasters seeking waiver of the simulcasting requirement must demonstrate that they have taken steps to minimize any disruption to consumers. Broadcasters have stated in the record that they expect 20 different television models from three manufacturers, to be available with built-in ATSC 3.0 tuners as well as other types of conversion equipment, such as adapters and gateway devices, by the end of 2020. To the extent this comes to pass, we expect broadcasters will have adequate access to ATSC 3.0 converter devices and other equipment so that they can provide such equipment to their viewers in support of any simulcasting waiver requests.12

21. We reject NCTA’s argument that it is premature for us to consider waivers of the local simulcasting requirement. Because our waiver standard targets relief to stations in rural, remote, and isolated areas and requires applicants to make “reasonable efforts” to preserve 1.0 service and minimize impact on viewers, we disagree with NCTA that our waiver standard will undermine the purpose of the local simulcasting rule.13 We find that viewers in small and rural markets should have an opportunity to enjoy the benefits of ATSC 3.0 service as quickly as practicable and that stations lacking a simulcast partner that wish to innovate and invest in ATSC 3.0 technology should be afforded an opportunity to do so.

22. NTCA—The Rural Broadband Association (NTCA) also expressed concern that were the Commission to waive simulcasting requirements, broadcasters may try to enforce their mandatory carriage rights with respect to their ATSC 3.0 signals, potentially imposing significant costs on cable operators. We clarify that stations that receive a waiver of the local simulcasting rule are not allowed to assert mandatory carriage rights for their ATSC 3.0 signals. In the Next Gen TV Report and Order, the Commission stated that “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. In other words, under no circumstances will we recognize mandatory carriage rights for 3.0 signals while the Commission requires local simulcasting.” We clarify that the reference to “while the Commission requires local simulcasting” was intended to refer to the time period during which the general simulcasting rule remains in effect and was not meant to confer ATSC 3.0 carriage rights to stations excused from the general rule. At this time, there are no mandatory carriage rights for ATSC 3.0 signals.

23. In addition, NTCA expresses concern that stations which are granted waivers and elect retransmission consent can and likely would shift the costs of carrying ATSC 3.0 signals onto small and rural MVPDs. More specifically, NTCA avers that, because small and rural MVPDs generally rely on receiving broadcast signals over-the-air at their headend (as fiber is generally not an option), these MVPDs would have to upgrade their equipment to receive the signal of a 3.0 station that is not simulcasting in order to continue to carry the station. NTCA claims that, in such situations, broadcasters will have little incentive to share in the cost of such upgrades. NTCA maintains that, when considering a waiver request, the Bureau should consider the impact on MVPDs and their subscribers, particularly in situations in which such subscribers cannot receive any over-the-air broadcast signals and rely solely on MVPD service to receive a station. The Commission rejected suggestions that it should intervene in the retransmission
We find that the waiver standard, which is based on a proposal supported by PTV, adequately addresses this concern by providing that any station that lacks fewer than three potential partners presumptively satisfies the “no viable local simulcasting partner” prong of our waiver test. We find that our waiver standard will provide targeted relief to NCE stations in rural or other isolated areas without risking the loss of television service on which viewers currently rely. PTV also contends that the Public Broadcasting Act of 1967 (PBA) creates a statutory mandate for PT stations “to provide service to ‘all citizens of the United States,’ particularly ‘unserved and underserved audiences’” and, therefore, public television stations do not need a simulcasting requirement because the PBA will ensure that public television stations “will only transition to the ATSC 3.0 standard after ensuring that their viewers will not be left behind.” However, the sections of the PBA cited by PTV are not statutory mandates that are binding on public television stations, but rather a Congressional declaration of policy, and, in fact, we find that our waiver standard will buttress this Congressional statement of policy by ensuring that waivers are granted only in appropriate circumstances and that reasonable efforts will be made to prevent loss of public television service. We do not, however, find the Congressional statement of policy in the PBA to be a rationale for providing additional regulatory relief to NCE stations.

Consequently, if we were to afford NCE and Class A TV stations a class-based exemption from our local simulcasting requirement, as we did for LPTV/translator stations, we decline to give NCE and Class A TV stations a class-based exemption from our local simulcasting requirement, as we did for LPTV/translator stations.

As an initial matter, unlike LPTV/translator stations, NCE and Class A TV stations are considered primary under the Commission’s rules. Primary television stations (primary stations) are treated differently from secondary television stations (secondary stations) in many respects under the rules. Among other things, primary stations are afforded interference protection from other services and, in contrast to secondary services like LPTV/translator stations, are not subject to displacement by other primary licensees. In addition, primary stations tend to carry programming more relied upon by viewers. Consequently, if we were to afford NCE, Class A TV, or any other class of primary station a blanket exemption of the local simulcasting rule, the potential adverse impact caused by service loss would be inherently greater than it is for secondary classes of stations. We therefore find it appropriate to afford NCE and Class A TV stations less flexibility than secondary stations with respect to local simulcasting obligations.

We see no reason to treat viewers of full power television stations differently from other full power stations “because most of the rationale behind the [simulcast requirement] does not apply to Class A (TV) stations.” We acknowledge that Class A TV stations—unlike most other primary stations—are not generally carried by MVPDs, and thus their only way to access viewers is via over-the-air reception. Although we recognize they have incentives to maintain ATSC 1.0 service without a mandate, we disagree with WatchTV that these marketplace incentives justify a class-based exemption for Class A TV stations. By virtue of their status, Class A TV stations are required to provide locally-produced programming that is relied upon by viewers. We are reluctant to allow Class A TV stations to stop providing such service in ATSC 1.0 without a public interest showing. Thus, while most Class A TV waiver applicants will presumptively meet the first prong of the waiver standard, Class A TV waiver applicants will be required under the second prong of the waiver standard to minimize the impact on viewers, ensuring that viewers can maintain access to the locally-produced programming offered by these stations. 19

4. Waiver Processing

28. We clarify that the Media Bureau has delegated authority to consider requests for waiver of the local simulcasting requirement and that waiver requests should be made when filing a Next Gen TV license application. Consistent with the timing for reviewing non-expedited applications seeking authorization to deploy ATSC 3.0, we expect the Bureau will process applications with waiver requests within 60 business days after giving public notice of the waiver request. Some broadcaster commenters have requested much faster processing times for waiver requests, but such timeframes would provide staff insufficient time to verify that deviation from the established rule is warranted and in the public interest. So long as

19 We note that WatchTV has indicated its ability to provide low-cost 3.0 devices to viewers, suggesting that the waiver standard would not prove too onerous for Class A stations. WatchTV “contemplates being able to acquire dongles for as little as $10 in quantity, so that a station may sell them for a nominal amount or even simply give them away to viewers as a promotion.”

20 As explained above, a non-expedited applicant refers to a Next Gen TV station whose application does not propose to 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, thus, would not qualify for “expedited processing” for its application. A non-expedited applicant must provide a more robust public interest showing with its application and will be considered on a case-by-case basis.
information provided by waiver applicants is complete, we expect staff will be able to process the applications within the 60 business-day time period.

**B. Temporary Use of Vacant Channels**

29. We decline to adopt new rules at this time to authorize full power broadcast licensees to use available or vacant channels in the television band for purposes of their voluntary ATSC 3.0 deployment. The Commission declined to authorize such use in the Next Gen TV Report and Order, but sought additional comment on this issue in the Next Gen TV Further Notice. In particular, the Commission sought comment on ONE Media’s request that, in markets where such vacant channels are available, the Commission should allow full power broadcasters to use these channels as “dedicated transition channels to ensure maximum continuity of service, just as it did during the transition from analog to digital.” In support of this proposal, ONE Media and other commenters argue that allowing Next Gen broadcasters to use vacant channels would facilitate the transition to ATSC 3.0 and “minimize consumer disruption and preserve service to viewers.” They contend that television band spectrum is reserved for licensed broadcast use and that existing broadcasters should be given priority to use vacant channels as temporary transition channels in the band.21

30. We find that it is premature to consider allowing broadcasters to use vacant channels as temporary transition channels to deploy ATSC 3.0 service. At this time, deployment of ATSC 3.0 service is voluntary, and there is no certainty if or when it will replace ATSC 1.0 service; rather, it will be adopted by stakeholders based on marketplace considerations. For this reason, we reject ONE Media’s comparison to the DTV transition in which a second channel was provided to most broadcasters in order to accomplish a mandatory transition from analog to digital service. We also agree with MVPD providers, wireless microphone interests, and proponents of white space devices that authorizing widespread use of vacant channels as dedicated transition channels would be inconsistent with the premise of the broadcasters’ Next Gen TV Petition, which stated that local simulcasting would be the “core of the voluntary, market-driven implementation of ATSC 3.0” and that no additional spectrum would be needed for the voluntary deployment of ATSC 3.0 service.22 Further, the fact that no additional spectrum would be required for the voluntary use of ATSC 3.0 was a key consideration in the Next Gen TV Report and Order. Allowing widespread use of vacant channels as transition channels would likely discourage reliance on local simulcasting arrangements, which are intended to accomplish the voluntary deployment of ATSC 3.0 service in a spectrally efficient manner.

31. Moreover, any benefits of allowing broadcasters to use vacant channels as temporary transition channels appear outweighed by the costs to other stakeholders. Broadcasters maintain that vacant channel use may be particularly helpful to stations in rural, remote, and isolated areas. However, such broadcasters already have significant flexibility in complying with our local simulcasting rules by virtue of the waiver standard. Further, we are skeptical that rural, remote, and isolated broadcasters would even want to incur the costs of constructing and operating a second facility on a vacant channel. Instead, such broadcasters may find partnering with LPTV/translator stations, which are exempt from the simulcasting requirement, to be a more affordable and practical option for their initial deployment of ATSC 3.0 service.

32. In addition, we are not persuaded that the benefits of allowing broadcasters to use vacant channels as temporary transition channels outweigh the potential costs and harms to other stakeholders that operate in the band. Authorizing widespread use of vacant channels by broadcasters could have a significant adverse impact on these other stakeholders. First, permitting vacant channel use at this time, even for only 3.0 service, could have negative effects on the incentive auction reorganization of spectrum (repacking). The resources needed to use vacant channels for such purposes could strain resources needed to support the construction of new channels assigned in the post-incentive auction repacking, including transitioning stations and stations moving from interim to permanent facilities post-transition. Second, permitting widespread vacant channel use could adversely impact LPTV and TV translator stations, particularly those displaced by the post-Incentive Auction repacking process that are currently receiving federal funds to modify or construct new facilities on channels for which they hold construction permits. Although we recognize that full power stations are primary and LPTV and TV translator stations are not, during this repacking transition we strive to be good stewards in overseeing efficient use of federal reimbursement funds. By opting not to allow full power vacant channel use at this time, we reduce the potential of inefficiently allocated reimbursement expenses to relocating LPTV stations by further displacing those stations already receiving federal funds. Finally, permitting widespread vacant channel use for ATSC 1.0 simulcasting could impose costs on an MVPD that may need to receive a signal from a new ATSC 1.0 facility that it does not currently carry. To the extent broadcasters were to move from one vacant channel to another, MVPDs could incur such expenses multiple times with respect to a single station.23

33. Accordingly, we decline to allow the use of vacant channels for the ATSC 3.0 transition at this time. If warranted by market conditions in the future, we may revisit the need for permitting broadcasters to use vacant channels as transition channels.

C. “Significantly Viewed” Status of Next Gen TV Stations

34. We adopt our tentative conclusion that the significantly viewed status of a Next Gen TV station should not change if it moves its ATSC 1.0 simulcast channel to a temporary host facility. All commenters on this issue support this conclusion. Accordingly, a commercial television station that relocates its ATSC 1.0 simulcast channel cannot seek to gain significantly viewed status in new communities or counties and such station cannot lose significantly viewed status in communities or counties for which it qualified prior to the move of its ATSC 1.0 simulcast channel.

35. Significantly viewed stations are commercial television stations that the Commission has determined have

---

21 In addition to priority over unlicensed uses, ONE Media advocates giving existing broadcasters priority over applicants for new television station licenses as well as over secondary users, including displacement applications of LPTV and TV translator stations.

22 The Next Gen TV Petition stated that it “does not ask the Commission to give broadcasters additional spectrum to roll out Next Generation TV and does not seek any changes to the current DTV standard. Instead, broadcasters will use market-based solutions to introduce this enhanced capability on existing spectrum while not disenfranchising viewers using ATSC 1.0 equipment, and consumer electronics manufacturers will implement the new standard in response to market demands rather than regulatory mandates.”

23 We recognize that parties supporting use of vacant channels for unlicensed white space operations and wireless microphone operations also expressed concern about the potential adverse impact on such uses. In response, broadcasters contend that white space use should yield to broadcast operations in the television band. Because we decline on other grounds to adopt the proposal to allow full power vacant channel use, we do not address that issue here.
significant” over-the-air (i.e., non-cable and non-satellite) viewing and are thus treated as local stations in certain respects with regard to a particular community in another television market. Significantly viewed status allows the significantly viewed station to be (1) carried by a satellite carrier in such community in the other market; (2) carried in such community by cable and satellite operators at the reduced copyright payment applicable to local (in-market) stations; and (3) exempt from such community from another station’s assertion of its network non-duplication or syndicated exclusivity rights. A station that varies its signal strength or changes its location as a result of moving its ATSC 1.0 signal to a simulcast partner may raise the question of how this change affects its status as “significantly viewed” in a certain community or county under 47 CFR 76.5(i) and 76.54.

36. We agree with MVPDs and broadcasters that we should maintain the status quo in the significantly viewed context with respect to ATSC 1.0 simulcast signals and thereby avoid disruptions to the carriage obligations of MVPDs and the carriage rights of broadcasters, and note that no commenter opposes this approach. Any changes in significantly viewed status due to local simulcasting would be burdensome on MVPDs and with numerous changes to their carriage obligations. We note that significantly viewed status does not confer mandatory carriage rights to the station, but rather only allows carriage of the station via retransmission consent. Thus, maintaining the status quo with respect to eligibility for significantly viewed carriage presents no mandatory carriage burdens on MVPDs. We also conclude that expansion of eligibility for significantly viewed carriage due to the relocation of ATSC 1.0 simulcast signals would not be consistent with the purpose of local simulcasting, which is intended to serve the goal of further action by the Commission to reflect the sunset date.

37. Although our approach here differs from how we addressed this issue in the channel sharing context, we find that it is appropriate to treat significantly viewed status differently in these two contexts. In the Incentive Auction Report and Order, the Commission found that because significantly viewed status is largely a function of signal availability, a station moving to a new channel should lose its status at the relinquished location. But unlike in the channel sharing context, Next Gen TV broadcasters are not relinquishing their original channel. While they are relocating their ATSC 1.0 signal to a simulcast partner, they will continue to operate on their existing channel in ATSC 3.0 and will ultimately return to operating solely on their existing channel when the local simulcasting period ends. Moreover, a Next Gen TV broadcaster will continue to reach the communities or counties in which it is significantly viewed with an ATSC 3.0 over-the-air signal during the period in which it is simulcasting.

IV. Order On Reconsideration

38. In this Order on Reconsideration, we dismiss and, on alternative and independent grounds, deny the NCTA and ATVA petitions for reconsideration.24 NCTA and ATVA seek reconsideration of various aspects of the local simulcasting rules, as well as the Commission’s decisions concerning voluntary carriage of ATSC 3.0 signals through retransmission consent, patent licensing, and the sunset of the A/322 standard.25 All of the requests raised in the petitions have been considered and rejected already by the Commission in the underlying order. As discussed below, the NCTA and ATVA petitions repeat issues that commenters, including NCTA and ATVA, raised earlier in the proceeding, and that we fully considered and rejected in the Next Gen TV Report and Order. Further, we disagree that these petitions raise any errors or omissions that warrant reconsideration. (The Bureau has the authority to dismiss petitions for reconsideration that “fail to identify any material error, omission, or reason warranting reconsideration,” or which “rely on arguments that have been fully considered and rejected by the Commission within the same proceeding.” Because we also address the petitions on the merits, we have no occasion to rely on that delegation of authority here.)

A. Retention of Sunset Dates

1. Sunset of “Substantially Similar” Requirement

39. We dismiss and, on alternative and independent grounds, deny NCTA’s request to reconsider the five-year sunset of the “substantially similar” requirement. While we retain the July 17, 2023 sunset date for this rule, approximately one year before the requirement is set to expire, we will seek comment on whether it should be extended based on marketplace conditions at that time.

40. In the Next Gen TV Report and Order, the Commission required that the programming aired on a Next Gen TV station’s ATSC 1.0 simulcast channel be “substantially similar” to that of the primary video programming stream on the ATSC 3.0 channel. As the Commission explained, the programming must be the same, except for programming features that are based on the enhanced capabilities of ATSC 3.0, advertisements, and promotions for upcoming programs. The Commission stated that this approach “will help ensure that viewers do not lose access to the broadcast programming they receive today, while still providing flexibility for broadcasters to innovate and experiment with new, innovative programming features using Next Gen TV technology.” The Commission decided, however, that the substantially similar requirement would sunset five years from its effective date absent further action by the Commission to extend it. In this regard, the Commission concluded that, while “this [substantially similar] requirement is necessary in the early stages of ATSC 3.0 deployment, it could unnecessarily impede Next Gen TV programming innovations as the deployment of ATSC

24 Pursuant to Commission policy, petitions for reconsideration are not to be used merely to reargue points previously advanced and rejected.

25 Specifically, ATVA seeks reconsideration of three issues, including: (1) The Commission’s rejection of ATVA’s proposal to require separate negotiations for first-time carriage of ATSC 3.0 signals; (2) the Commission’s exemption from the simulcasting requirement for low power and TV translator stations; and (3) the Commission’s decision not to require stations to provide prior notice to viewers and MVPDs before changing their signal formats on their ATSC 1.0 simulcasts. NCTA seeks reconsideration of five issues, including: (1) The Commission’s decision to sunset five years after the “substantially similar” requirement; (2) the Commission’s decision to sunset five years after the requirement that a Next Gen TV broadcaster’s primary video programming stream adheres to the ATSC A/322 standard; (3) the Commission’s decision not to require Next Gen TV broadcasters to simulcast ATSC 1.0 signals in high definition (HD) format to the extent they are currently broadcasting such signals in HD; (4) the Commission’s decision not to prohibit broadcasters from using retransmission consent negotiations to obtain carriage of their ATSC 3.0 signals by withholding the ATSC 1.0 simulcast standard; and (5) the Commission’s decision not to require that patents relevant to the ATSC 3.0 standard must be licensed on a reasonable and non-discriminatory (RAND) basis.

26 We note that, while the Commission stated that the “substantially similar” requirement would expire five years after its effective date, the Commission had inadvertently omitted to codify the sunset date in the rule. We take this opportunity to correct this oversight and amend our rules to reflect the sunset date.
could become stale and impede the very
appropriate and, thus, affirm the
agree that the Commission erred. We
on this issue because we
in alternative and
require identical content and the length of time any
Substantially similar requirement was “arbitrary” and “has
would be for the Commission to monitor the roll-out of ATSC 3.0 and maintain the substantially similar requirement until the use of ATSC 3.0 is further along before “determin[ing] the
The Commission fully considered this issue in the Next Gen TV Report and Order and decided to establish a sunset for the substantially similar requirement. Because NCTA repeats arguments that have already been considered, we dismiss NCTA’s Petition on this issue. On alternative and independent grounds, we deny NCTA’s Petition on this issue because we disagree that the Commission erred. We continue to believe a sunset date is appropriate and, thus, affirm the decision in the Next Gen TV Report and Order. We reject NCTA’s request that we should either delay establishing a sunset for the substantially similar requirement or retain it indefinitely. As explained in the Next Gen TV Report and Order, without an expiration date, this rule could become stale and impede the very
NCTA claims in its reply to oppositions that “the Commission did not seek comment on the notion that the substantially similar requirement would sunset five years after its adoption.” In the Next Gen TV NPRM, the Commission sought comment on whether a “simulcast” means a stream with identical content to the video programming aired on the originating station’s primary ATSC 3.0 stream” and further asked “[i]f the simulcast content will be identical to the originating station’s primary video programming stream, . . . explain the reasons for any deviations in content and/or format (i.e., high definition (HD) versus SD) and the impact of such deviations on television viewers and the regulatory implications.” In response, broadcasters opposed an identical content requirement. Persuaded by broadcasters’ comments, the Commission opted against an identical content requirement and instead established the “substantially similar” requirement and determined that such requirement appeared necessary only in the early stages of ATSC 3.0 deployment. We find that the NPRM provided adequate notice that the Commission was considering whether (or not) to require identical content and the length of time any such requirement might be necessary.

27

28

29

30

31

32

33

34

35

36

37

38

39

40

41

42

43

44

45

46

47

48

49

50

ARMSA 3.0 Standard Sunset

We dismiss and, on alternative and independent grounds, deny NCTA’s request to reconsider the five-year sunset of the requirement that broadcasters’ primary free over-the-air Next Gen TV video programming streams adhere to the ATSC A/322 standard. While we retain the March 6, 2023, sunset for this rule, approximately one year before the rule is set to expire we will seek comment on whether it should be extended based on marketplace conditions at that time.

45. In the Next Gen TV Report and Order, the Commission incorporated two parts of the ATSC 3.0 “physical layer” standard into the rules: (1) ATSC A/321:2016 “System Discovery & Signaling” (A/321), which is the standard used to communicate the RF signal type that the ATSC 3.0 signal will use, and (2) A/322:2017 “Physical Layer Protocol” (A/322), which is the standard that defines the waveforms that ATSC 3.0 signals may take. With respect to the A/322 standard, the Commission applied the standard only to a Next Gen TV station’s primary free over-the-air video programming stream and incorporated it by reference into the rules for a period of five years, unless the Commission extends the requirement via rulemaking. The Commission decided that it was not appropriate at the time “to require broadcasters to adhere to A/322 indefinitely,” explaining that “the ATSC 3.0 standard could evolve, and stagnant Commission rules could prevent broadcasters from taking advantage of that evolution.” In establishing a sunset for A/322 compliance, the Commission sought to “balance [its] goals of protecting consumers while promoting innovation.”

46. In its petition, NCTA repeats its and other commenters’ earlier argument that we should incorporate the A/322 standard into our rules without a sunset date. NCTA claimed that the Commission’s decision to sunset

The amendments to 47 CFR 73.682(f), including the incorporation of the A/322 standard, took effect on March 5, 2018, i.e., 30 days after the rule’s publication in the Federal Register. We note that the rule incorrectly reflects a sunset date of February 2, 2023, instead of March 6, 2023, which date is five years from the effective date of the rule (pushed to the next business day). We take this opportunity to correct this mistake and amend 47 CFR 73.682(f) to reflect the true sunset date.

28 That is, we do not know the extent to which the pandemic has affected broadcasters’ plans for ATSC 3.0 deployment.

29 NCTA contends in its petition that the Commission’s requirement to comply with the A/322 standard “arbitrarily lifts . . . after five years.” Moreover, NCTA’s argument that there have been limited marketplace developments since 2017 applies equally to the A/322 standard sunset.

The Commission was considering whether (or not) to require identical content and the length of time any such requirement might be necessary.

27 NCTA claims in its reply to oppositions that “the Commission did not seek comment on the notion that the substantially similar requirement would sunset five years after its adoption.” In the Next Gen TV NPRM, the Commission sought comment on whether a “simulcast” means a stream with identical content to the video programming aired on the originating station’s primary ATSC 3.0 stream” and further asked “[i]f the simulcast content will be identical to the originating station’s primary video programming stream, . . . explain the reasons for any deviations in content and/or format (i.e., high definition (HD) versus SD) and the impact of such deviations on television viewers and the regulatory implications.” In response, broadcasters opposed an identical content requirement. Persuaded by broadcasters’ comments, the Commission opted against an identical content requirement and instead established the “substantially similar” requirement and determined that such requirement appeared necessary only in the early stages of ATSC 3.0 deployment. We find that the NPRM provided adequate notice that the
with our decision above concerning the “substantially similar” sunset, we will wait to consider the state of the marketplace a year before the rule sunsets to determine whether there is any need to extend it.

B. High Definition (HD) Service and Notice to Viewers

48. We dismiss and, on alternative and independent grounds, deny NCTA’s request to require broadcasters to simulcast ATSC 1.0 signals in high definition (HD) format to the extent they are currently broadcasting such signals in HD. We also dismiss and, on alternative and independent grounds, deny ATVA’s request to require a station to provide prior notice to viewers and MVPDs before changing its signal format or picture quality.

49. In its petition, NCTA repeats its earlier request in this proceeding to require Next Gen TV broadcasters that are currently broadcasting in HD to continue to provide HD service on 1.0 simulcast signals. NCTA asserts that the Commission erred in not doing so and by instead relying on broadcasters’ marketplace incentives. Specifically, NCTA contends that the Commission’s acknowledgement in the Next Gen TV Report and Order that “stations may have less capacity for HD programming” because of local simulcasting partnerships “undermines [the Commission’s] conclusion that a rule is unnecessary because broadcasters have ‘market-based incentives’ to continue to provide HD programming on the ATSC 1.0 signal.” NCTA further contends that the Next Gen TV Report and Order “does not acknowledge the harms to consumers identified in [NCTA’s] comments, much less explain why they are outweighed by a broadcaster’s voluntary experimentation with ATSC 3.0.”

50. The Commission fully considered this issue in the Next Gen TV Report and Order and decided not to require Next Gen TV broadcasters that are currently broadcasting in HD to continue to provide HD service on 1.0 simulcast signals. Because NCTA repeats arguments that have already been considered, we dismiss NCTA’s Petition on this issue. On alternative and independent grounds, we deny NCTA’s Petition on this issue because we disagree that the Commission erred. Thus, we affirm the decision in the Next Gen TV Report and Order. As explained in the Next Gen TV Report and Order, the Commission’s existing rules do not require broadcasters to provide their signals in HD and they can change format at any time. We acknowledge that a broadcaster seeking to meet its community’s demands for ATSC 3.0 service (including 4K or Ultra High Definition format) may choose to deploy ATSC 3.0 service, even if that means it will be able to air an ATSC 1.0 simulcast signal only in SD format.

51. In its Petition, ATVA asks the Commission to reconsider its decision not to require stations to provide prior notice to viewers and MVPDs before changing their signal formats on their broadcast service even though they will only be able to simulcast an ATSC 1.0 signal in SD. We also recognize that this may mean that consumers who want to continue to receive HD programming will need to purchase a 3.0 converter device. However, we find such decisions would be a response to competitive marketplace conditions, not contrary to them. We agree with NAB that “broadcasters have strong market incentives to maintain HD service to the maximum extent possible.”

52. NCTA states that “[b]ecause a high definition (HD) ATSC 1.0 signal consumes more bandwidth than a standard definition ATSC 1.0 signal, there is reason to fear that broadcasters launching an ATSC 3.0 signal will have strong incentives to degrade their over-the-air HD ATSC 1.0 signal so that more streams can be squeezed into another 6 MHz channel.”

53. ATVA asserts that “if a broadcaster has voluntarily chosen to transmit its 1.0 signal in HD, it should not be allowed to downgrade that signal to SD at least in the initial phases of launching a 3.0 signal” because “[l]evel downgrading would deprive viewers of the programming to which they have become accustomed and would force them and MVPD to incur costs to recapture the HD quality that they have come to expect.”

31 The Next Gen TV Report and Order explained the Commission’s intent to “establish a period of certainty for manufacturers, MVPDs, and consumers that will prevent broadcasting standards from splintering and will speed the overall adoption of ATSC 3.0.”

34 Although NCTA seeks the status quo for broadcasters currently broadcasting in HD, the status quo includes the right to change format at any time.

35 As Pearl TV explains, “[l]ocal stations will consider the types of technology their viewers have and their viewers’ appetite for various options as they weigh the trade-offs of different deployment approaches.”
1.0 simulcasts. The Commission fully considered this issue in the Next Gen TV Report and Order and decided not to require stations to provide such notice. Because ATVA repeats arguments that have already been considered, we dismiss ATVA’s Petition on this issue. We also reject ATVA’s argument that its request involves a new fact that justifies reconsideration. ATVA contends that the Commission’s decision not to require prior notice in this regard “constitutes a ‘material fact’ that was ‘not known’ to ATVA until the Order was released” because the draft order the Commission circulated a few weeks before it adopted the final Order would have required broadcasters to provide such notice. We disagree. A draft order the Commission circulated before adopting a final order is not binding. We agree with NAB that “ATVA’s suggestion that any changes from the draft to the final order serve as a basis for reconsideration would be an unworkable standard that would greatly burden the Commission and its staff.”

Given that another commenter was able to make the argument in favor of a notice requirement for HD service, we see no reason ATVA could not have done so as well.

52. On alternative and independent grounds, we deny ATVA’s Petition on this issue and affirm our findings on this issue in the Next Gen TV Report and Order. As discussed in the Next Gen TV Report and Order, broadcasters may have legitimate market incentives to deploy 3.0 service even though they will only be able to simulcast in SD. In these situations, viewers will continue to receive 1.0 service in SD, as is required by our rules, so we see no need for notice requirements like those mandated for stations that relocate their ATSC 1.0 signals. Instead, we will rely on broadcasters’ market incentives to inform viewers how they can receive Next Gen TV service enhancements.

To the extent MVPDs are concerned, there is nothing to prevent them from providing notice to their subscribers that a station’s channel is no longer being provided in HD as a result of the broadcasters’ decision to deploy 3.0 service.

C. LPTV/Translator Exemption

53. We dismiss and, on alternative and independent grounds deny, ATVA’s request that the Commission reconsider its decision in the Next Gen TV Report and Order to exempt LPTV and TV translator (LPTV/translator) stations from the local simulcasting requirement. In its Petition, ATVA repeats its earlier opposition to permitting LPTV/translator stations to transition directly to ATSC 3.0 and contends that this decision constituted “material error.” (ATVA argues that “allowing low power stations to flash-cut causes exactly the same harm as does allowing full power stations to flash cut—especially since a large and increasing number of stations maintain major-network affiliations.”) The Commission fully considered this issue in the Next Gen TV Report and Order and, accordingly, decided to exempt such stations from the local simulcasting requirement. Because ATVA repeats arguments that have already been considered, we dismiss ATVA’s Petition on this issue. On alternative and independent grounds, we deny ATVA’s Petition on this issue because we disagree that the Commission erred in this regard and affirm the decision in the Next Gen TV Report and Order. In addition, we reject ATVA’s contention that the Commission should adopt a waiver approach for LPTV/translator stations instead of maintaining a blanket exemption. We continue to believe that a class-based exemption from the simulcast requirement for LPTV/translator stations is more appropriate in this situation than the waiver approach suggested by ATVA. As ATVA concedes, a waiver process for LPTV/translator stations would be an inefficient and burdensome means of providing widespread relief to LPTV/translator stations. Such a process would slow deployment of 3.0 service to the public, and, ultimately, is unnecessary because we can rely on market incentives to protect viewers against significant LPTV/translator service loss.

55. In any case, ATVA appears to be primarily concerned with precluding direct transitions by LPTV/translator stations that are affiliated with a Big-4 network (i.e., ABC, CBS, FOX, NBC). ATVA acknowledges that a waiver process would “increase costs and burdens on low power broadcasters at least to some extent” and therefore states that it would “not object to reasonable steps to relieve such burdens for LPTV/translator stations unaffiliated with a Big Four network, such as preemptive filing of waivers in certain cases, shot-clocks, and paperwork simplification.” We note that ATVA previously argued in its reply comments and an ex parte to the Next Gen TV NPRM that it took “no position” on whether the simulcast requirement should apply to an LPTV/translator or Class A TV station, if such station “is not carried by any MVPD, is not required to be carried by any MVPD under the must-carry statute, and remains unaffiliated with any network.”

According to staff review of S&P data on February 19, 2020, about 46 of the 1,892 LPTV stations are affiliated with a Big-4 network. We note that this data is consistent with the data provided by ATVA, which stated, based on its review of 2017 SNL Kagan data, that about 55 LPTV and Class A stations were affiliated with a Big-4 network in September 2017. (As we do not exempt Class A stations, we did not include the 14 of 387 Class A stations affiliated with a Big-4 network in our total.) We note that the Next Gen TV Report and Order incorrectly indicated that there were 258 LPTV stations in September 2017. In fact, there were 1,964 LPTV stations in September 2017. This is because LPTV stations generally serve rural, remote, and isolated areas that are not served by other stations. Indeed, as PTV points out, such is the nature and purpose of TV translators.

36 We note that this issue was raised by another commenter in this proceeding.

37 We note that there is nothing in our rules that prohibits stations changing their signal format without notice. Indeed, ATVA concedes as much. ATVA contends that the ATSC 3.0 transition represents a special case in which broadcasters may have an incentive to degrade their signals. We are not persuaded and see no reliable record evidence to suggest that broadcasters are likely to change signal formats in the manner that ATVA suggests.
costs and uncertainty of a waiver process would not only slow 3.0 deployment, but also potentially dissuade LPTV/translator stations from seeking such relief.

D. Retransmission Consent Issues

57. We dismiss and, on alternative and independent grounds deny, the requests by ATVA and NCTA to adopt new rules related to the voluntary carriage of 3.0 signals through retransmission consent. Specifically, ATVA repeats its request to require separate negotiations for first-time carriage of ATSC 3.0 signals, and NCTA repeats its request to prohibit broadcasters from using retransmission consent negotiations to obtain carriage of their ATSC 3.0 signals by withholding the ATSC 1.0 signal.

58. ATVA and NCTA merely repeat their earlier concerns that Next Gen TV broadcasters could use the retransmission consent process to compel carriage of 3.0 signals before consumer demand and market circumstances warrant. ATVA contends that it was a “material error” for the Commission not to require separate negotiations for first-time MVPD carriage of ATSC 3.0 signals. NCTA contends that it “makes no sense” for the Commission to have concluded that it is premature to address any issues that may arise with respect to the voluntary carriage of ATSC 3.0 signals, saying MVPDs are at risk now of having to “prematurely invest in ATSC 3.0 technology.” ATVA also disagrees with the Commission that it is premature to address such issues, citing some examples it previously provided in the proceeding where broadcasters have already begun to seek bundling arrangements in contract negotiations.

59. The Commission fully considered this issue in the Next Gen TV Report and Order and declined to adopt new rules related to the voluntary carriage of 3.0 signals through retransmission consent. We agreed with NAB that “NCTA and ATVA offer nothing more in their petitions than a summary of their previous arguments.” Because NCTA and ATVA repeat arguments that have already been considered, we dismiss their Petitions on this issue. On alternative and independent grounds, we deny NCTA’s Petitions on this issue and affirm the decision in the Next Gen TV Report and Order.

60. We dismiss and, on alternative and independent grounds deny, NCTA’s request to reconsider the Commission’s decision in the Next Gen TV Report and Order not to require that patents relevant to the ATSC 3.0 standard must be licensed on a reasonable and non-discriminatory (RAND) basis. The Commission fully considered this issue in the Next Gen TV Report and Order and rejected requests for such a requirement. Because NCTA’s arguments have already been considered, we dismiss their Petitions on this issue.

61. On alternative and independent grounds, we deny NCTA’s Petitions on this issue and affirm the decision in the Next Gen TV Report and Order. We disagree with NCTA’s contention that the Commission’s decision not to require RAND licensing for standards-essential patents is inconsistent with the Commission’s decision approving the current DTV standard, ATSC 1.0. Although we do not believe that different approaches in the two contexts would necessarily be a cause for reconsideration, especially because ATSC 3.0 is voluntary at this time, we agree with NAB and ONE Media that the decision is consistent with the Commission’s decision in the DTV context. In the order adopting the ATSC 1.0 standard for digital television broadcasting, the Commission stated that it did not believe that licensing of the patents for the ATSC standard would impede the development of DTV products. The Commission also stated that the adoption of the standard was “premised” on “reasonable and non-discriminatory” licensing, but determined that Commission rules were not necessary. The Commission emphasized that if a problem with patent licensing arises and is brought to the Commission’s attention, it would “consider it and take appropriate action.” Similarly, in the Next Gen TV Report and Order, the Commission observed that the ATSC requires a

41 NCTA repeats its earlier request in this proceeding for the Commission to require RAND licensing.
deploying ATSC 3.0 service to simulcast the primary video programming stream of their ATSC 3.0 channel in an ATSC 1.0 format.

64. The Commission determined in the Next Gen TV Report and Order that the local simulcasting requirement is crucial to the deployment of Next Gen TV service in order to minimize viewer disruption. This is because the Next Gen TV standard is not backward-compatible with existing TV sets or receivers, which have only ATSC 1.0 and analog tuners. This means that consumers will not be able to view 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 to deliver DTV service while the marketplace adopts devices compatible with the new 3.0 transmission standard in order to avoid either forcing viewers to acquire new equipment or depriving them of television service. Because a TV station cannot, as a technical matter, broadcast in both 1.0 and 3.0 format from the same facility, local simulcasting will be effectuated through voluntary partnerships that broadcasters that wish to provide Next Gen TV service must enter into with other broadcasters in their local markets. Next Gen TV broadcasters must partner with another television station (i.e., a temporary “host” station) in their local market to either: (1) Air an ATSC 3.0 channel at the temporary host’s facility, 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 temporary host’s facility, while converting their original facility to the ATSC 3.0 standard in order to provide a 3.0 channel.

65. The Commission in the Next Gen TV Report and Order established a process for considering applications to deploy ATSC 3.0 service, which included, among other requirements, establishing coverage requirements for a Next Gen TV station’s ATSC 1.0 simulcast signal. The Commission’s ATSC 1.0 simulcast coverage requirement sought to minimize disruption to viewers resulting from the voluntary deployment of ATSC 3.0 by recognizing that if a station moves its ATSC 1.0 signal to a partner simulcast host station with a different transmitter location, some existing over-the-air (OTA) viewers may no longer be able to receive the 1.0 signal. Among other obligations, the Commission required the Next Gen TV station to select a partner 1.0 simulcast host station that is assigned to its same DMA and from which it would continue to provide ATSC 1.0 simulcast service to its entire community of license.

66. While the Commission’s rules require that all full power and Class A TV stations that convert their existing facility to ATSC 3.0 are required to provide an ATSC 1.0 simulcast signal that covers a station’s entire community of license, the Commission recognized that in certain circumstances such an arrangement may not be viable and in order to facilitate the voluntary deployment of ATSC 3.0 service established a waiver standard for the ATSC 1.0 simulcast requirement. Specifically, the Commission stated that it would favor requests for waiver of the obligation to provide ATSC 1.0 simulcast service if the station can demonstrate both that (1) it has “no viable local simulcasting partner” in its market; and (2) it will “make reasonable efforts to preserve 1.0 service to existing viewers in its community of license and/or otherwise minimize the impact on such viewers, for example, by providing free or low cost ATSC 3.0 converters to viewers.” Specifically, the Commission stated it would consider waiver requests from full power and Class A TV stations to transition directly from ATSC 1.0 to ATSC 3.0 service on the station’s existing facility without providing an ATSC 1.0 simulcast service at all. Alternatively, a station may request a waiver of the ATSC 1.0 simulcast requirement so it could air an ATSC 1.0 simulcast signal from a simulcast partner that does not cover all or a portion of the station’s community of license or can provide only a lower signal threshold over the station’s community of license than that required by the rules.

67. In the Next Gen TV Further Notice, the Commission sought comment on three topics relating to local simulcasting rules. First, it sought further comment on issues related to waivers of, and exemptions from, the local simulcasting requirement. In particular, the Commission sought comment on whether further guidance should be provided about the circumstances in which it would grant such a waiver, including how to define whether a station has “no viable local simulcasting partner” and whether a station has taken “reasonable efforts to preserve service and/or minimize impact on viewers.” Second, the Next Gen TV Further Notice sought further comment on whether to let full power broadcasters use channels in the television broadcast band that are vacant to facilitate the transition to ATSC 3.0. Third, it tentatively concluded that local simulcasting should not change the “significantly viewed status” of a Next Gen TV station for purposes of determining MVPD carriage.

68. In the Second Report and Order, we address the three issues raised in the Next Gen TV Further Notice. First, we provide guidance on how Commission staff will evaluate petitions for waiver of our local simulcasting rules. Second, we decline at this time to permit broadcasters to use vacant in-band channels for purposes of voluntary ATSC 3.0 deployment. Third, we adopt our tentative conclusion that the significantly viewed status of a Next Gen TV station should not change if it moves its ATSC 1.0 simulcast channel to a host facility.

2. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

69. There were no comments filed that specifically addressed the rules and policies proposed in the IRFA.

3. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

70. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

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

71. The types of small entities that may be affected by the Second Report and Order fall within the following categories: (1) Wired Telecommunications Carriers; Cable Companies and Systems (Rate Regulation); (2) Cable System Operators (Telecom Act Standard); (3) Direct Broadcast Satellite Service; (4) Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs); (5) Home Satellite Dish (HSD) Service, (6) Open Video Services; (7) Wireless Cable Systems—Broadband Radio Service and Educational Broadband Service; (8) Incumbent Local Exchange Carriers (ILECs) and Small Incumbent Local Exchange Carriers; Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing; (9) Audio and Video Equipment Manufacturing; (10) and Television Broadcasting.

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

72. The Second Report and Order imposes no new reporting, recordkeeping or other compliance
requirements beyond those already established in the first Next Gen TV Report and Order.

6. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

73. 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 and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities."

74. As an initial matter, the decision to deploy ATSC 3.0 service is a voluntary choice for each broadcaster. For this reason, broadcasters, including small entities, do not need to undertake any costs or burdens associated with providing ATSC 3.0 service unless they choose to do so.

75. Local Simulcasting Waivers. The first Next Gen TV Report and Order established a waiver standard for the local simulcast requirement. Specifically, the Commission stated that it would favor requests for waiver of the obligation to provide ATSC 1.0 simulcast service if the station can demonstrate both that (1) it has "no viable local simulcasting partner" in its market; and (2) it will "make reasonable efforts to preserve 1.0 service to existing viewers in its community of license and/or otherwise minimize the impact on such viewers (for example, by providing free or low cost ATSC 3.0 converters to viewers)."

The Second Report and Order provides additional guidance on how Commission staff will evaluate requests for waiver of the local simulcasting rules. The waiver process provides broadcast television stations, including small entities, with an alternative means of deploying ATSC 3.0 service in a manner that would still achieve the purpose of the local simulcasting requirement. The Second Report and Order clarifies but does not adopt any new rules with respect to the waiver standard. By clarifying the circumstances in which a waiver request might be granted, the Commission is seeking to provide predictability to broadcasters, including small entities, which should reduce costs for broadcasters contemplating seeking waivers. In the Second Report and Order, the Commission considered whether to exempt noncommercial educational (NCE) TV stations and Class A TV stations from the local simulcasting requirement. The Commission decided against affording an exemption for these entities, preferring instead to rely on the waiver standard to afford these stations with any additional flexibility.

76. Temporary Use of Vacant Channels. In the Second Report and Order, the Commission declined to adopt new rules to allow full power broadcasters to use vacant channels in the television broadcast band as transition channels in order to facilitate the deployment to ATSC 3.0 service. Accordingly, the Second Report and Order does not create or change rules in this regard.

77. Significantly Viewed Status of Next Gen TV Stations. In the Second Report and Order, the Commission decided that the significantly viewed status of a Next Gen TV station should not change if it moves its ATSC 1.0 simulcast channel to a temporary host facility. Under this proposal, a commercial television station that relocates its 1.0 simulcast channel could not seek to gain significantly viewed status in new communities or counties and such station could not lose significantly viewed status in communities or counties for which it qualified prior to the move of its 1.0 simulcast channel. By maintaining the status quo in the significantly viewed context with respect to ATSC 1.0 simulcast signals, the Commission avoids complications and disruptions to MVPDs and broadcasters, including small entities. The Commission reasoned that any changes in significantly viewed status due to local simulcasting would be temporary, and this approach will avoid disruptions to cable and satellite television viewers who have come to rely on such signals. This approach will not impose new mandatory carriage burdens on MVPDs and avoids burdening MVPDs with numerous changes to their carriage obligations.

B. Final Paperwork Reduction Act Analysis

78. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002 (SBPRA), Public Law 107–198, see 44 U.S.C. 3506(c)(4).

C. Congressional Review Act


D. Additional Information

80. 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.

VI. Ordering Clauses

81. 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 Second Report and Order and Order on Reconsideration is hereby adopted, effective thirty (30) days after the date of publication in the Federal Register.

82. It is further ordered that the Commission’s Rules are hereby amended as set forth in Appendix B and will become effective 30 days after publication in the Federal Register.

83. It is further ordered that pursuant to sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 405, and § 1.429 of the Commission’s rules, 47 CFR 1.429, NCTA’s and ATVA’s Petitions for Reconsideration are dismissed and, on alternative and independent grounds, denied.

84. It is further ordered that the Commission shall send a copy of this Second Report and Order and Order on Reconsideration 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).

List of Subjects in 47 CFR Parts 73 and 74

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

(b) * * *

(3) The “substantially similar” requirement in paragraph (b)(1) of this section will sunset on July 17, 2023.

* * * * *

§ 73.682 Low Power Television and TV Translator Simulcasting During the ATSC 3.0 (Next Gen TV) Transition

(b) * * *

(3) The “substantially similar” requirement in paragraph (b)(1) of this section will sunset on July 17, 2023.

* * * * *

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 200227–0066]

RTID 0648–XA291

Fisheries of the Exclusive Economic Zone Off Alaska; Sablefish in the Aleutian Islands Subarea of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting retention of non-Community Development Quota (CDQ) sablefish by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary because the 2020 non-CDQ sablefish initial total allowable catch (ITAC) in the Aleutian Islands subarea of the BSAI will be reached.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), July 14, 2020, through 2400 hours, A.l.t., December 31, 2020.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with this action appear at part 679 of 50 CFR.

The 2020 non-CDQ sablefish trawl ITAC in the Aleutian Islands subarea of the BSAI is 433 metric tons (mt) as established by the final 2020 and 2021 harvest specifications for groundfish in the BSAI (85 FR 13553, March 9, 2020). In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2020 non-CDQ sablefish trawl ITAC in the Aleutian Islands subarea of the BSAI will soon be reached. Therefore, NMFS is requiring that non-CDQ sablefish caught with vessels using trawl gear in the Aleutian Islands subarea of the BSAI be treated as prohibited species in accordance with § 679.21(a).

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the prohibited retention of non-CDQ sablefish by vessels using trawl gear in the Aleutian Islands subarea of the BSAI.

NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 13, 2020.

Authority: 16 U.S.C. 1801 et seq.


Hélène M.N. Scalliet,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.