

**Before the**

**FEDERAL COMMUNICATIONS COMMISSION**

**Washington, D.C. 20554**

In the Matter of:

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Authorizing Permissive Use of the

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“Next Generation” Broadcast

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GN Docket No. 16-142

Television Standard

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**REPLY COMMENTS OF THE DYNAMIC SPECTRUM ALLIANCE**

Kalpak Gude  
President, Dynamic Spectrum Alliance  
3855 SW 153rd Drive  
Beaverton, OR 97003

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## I SUMMARY

The DSA is a global organization advocating for laws and regulations that will lead to more efficient and effective spectrum utilization. Our membership spans multinationals; small- and medium-sized enterprises; and academic, research and other organizations from around the world, all working to create innovative solutions that will increase the amount of available spectrum to the benefit of consumers and businesses alike. Our primary goals are to close the digital divide by reducing the cost of deploying last-mile wireless networks, enabling the Internet of Things (IoT), and alleviating the spectrum crunch.<sup>1</sup> The DSA submits the following Reply Comments in response to the ATSC 3.0 Further Notice.<sup>2</sup>

The DSA urges the Commission to hold broadcasters to their word that no additional spectrum is needed for the successful voluntary transition from ATSC 1.0 to ATSC 3.0 and not gift them spectrum in the guise of a dedicated transition channel that they can hold for the foreseeable future. Providing broadcasters with free spectrum they don't require will reduce the spectrum available for unlicensed operations in the UHF frequency band. Consequently, the prospects for white space devices will diminish as the uncertainty over the 'temporary' nature of the dedicated transition channels will chill large-scale investments.<sup>3</sup>

## II THE COMMISSION MUST HOLD BROADCASTERS TO THEIR WORD THAT NO ADDITIONAL SPECTRUM IS NEEDED FOR A SUCCESSFUL ATSC 3.0 TRANSITION

Along with DSA, several commenters to the ATSC 3.0 Further Notice raised the issue that broadcasters had previously sold the then proposed ATSC 3.0 transition to the Commission and other stakeholders as not requiring any additional spectrum resources.<sup>4</sup> Once it became clear that the

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<sup>1</sup> For more on the DSA, please visit: [www.dynamicspectrumalliance.org](http://www.dynamicspectrumalliance.org).

<sup>2</sup> Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard, Report and Order and Further Notice of Proposed Rulemaking, FCC 17-158, 32 Rcd. at 9930 (2017) ("ATSC 3.0 Further Notice").

<sup>3</sup> See Comments of the Wi-Fi Alliance at 5.

<sup>4</sup> See Comments of DSA at 3; See Comments of the Wi-Fi Alliance at 7; See Comments of NCTA at 6; See Comments of Microsoft at 4; See Comments of OTI/PK at 4; See Comments of Sennheiser Corporation at 2; See Comments of Shure Incorporated at 7.

Commission was moving forward with a Report and Order favorable to the ATSC 3.0 transition, the National Association of Broadcasters (NAB) and some individual broadcast groups must have believed it was now safe to reverse their position, breaking their commitment and seeking to acquire additional spectrum. OTI/PK calls the current broadcasters proposals a ‘bait-and-switch’<sup>5</sup>. Not only is making available the vacant channels in a market for dedicated simulcast channels a bad idea, it also raises the question: what’s the *next* promise that broadcasters are now going to try and walk away from regarding the ATSC 3.0 transition? DSA agrees with NCTA that the Commission should hold the broadcasters to their promises.<sup>6</sup>

### **III USE OF VACANT CHANNELS FOR DEDICATED SIMULCAST CHANNELS IS NOT TEMPORARY UNLESS THERE IS AN END DATE TO THE ATSC 3.0 TRANSITION**

Broadcast interests stated that use of vacant channels for dedicated simulcast channels is temporary, but did not elaborate or provide any supporting information. Several commenters, including DSA, raised concerns that use of the word ‘temporary’ associated with the proposal to allow vacant channels to be used as simulcast channels is misleading as there is no timeline for the completion of the ATSC 3.0 transition. As OTI/PK points out, the little we do know about the ATSC transition timeline is that for at least 5 years, the programming aired on the ATSC 1.0 simulcast channel be “substantially similar” to that of the primary video programming stream on the ATSC 3.0 channel.<sup>7</sup> The Commission intends ‘to monitor the ATSC 3.0 marketplace, and will extend the substantially similar requirement if necessary’.<sup>8</sup> With no ATSC 3.0 equipment available for sale in the U.S. market, it is a fairly safe bet that the Commission will have no choice but to extend the simulcast requirement. The result will be that

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<sup>5</sup> See Comments of OTI/PK at 5.

<sup>6</sup> See Comments of NCTA at 7.

<sup>7</sup> See Comments of OTI/PK at 4.

<sup>8</sup> Authorizing Permissive Use of the “Next Generation” Broadcast Television Standard, Report and Order and Further Notice of Proposed Rulemaking, FCC 17-158, 32 Rcd. at 9930, (2017), at paragraph 22.

these dedicated vacant channels will effectively be in the control of broadcasters for the foreseeable future, if not permanently.

#### **IV GIFTING BROADCASTERS SPECTRUM THAT CAN BE USED FOR PURPOSES OTHER THAN BROADCASTING IS NOT A MINOR MODIFICATION NOR FALLS UNDER SPECIAL TEMPORARY AUTHORITY**

Full service broadcasters are asking the Commission to provide them with free spectrum during the post-incentive auction transition period for a dedicated ATSC 3.0 transition channel. Such a gift would completely undermine the ATSC 3.0 hosting arrangement the broadcasters put forward in their 2016 petition and that the Commission incorporated in its Report and Order. If given the opportunity, why would any broadcaster turn down free ‘simulcast’ spectrum even if it could enter into a hosting arrangement with another channel in its market or if it has no immediate plans to utilize it.

The NAB’s spectrum grab proposal is as brazen as it is poor public policy. The NAB see no need for broadcasters seeking the additional channel for simulcasting to demonstrate need.<sup>9</sup> It asks the Commission to create a legal fiction by calling the gifting of free spectrum a minor modification to a broadcast facility.<sup>10</sup> And because it believes the Commission will receive few, if any, mutually exclusive applications, the NAB argues the Commission should leave the resolution of mutually exclusive applications to the private sector.<sup>11</sup> Granting broadcasters’ new spectrum rights through the minor modification process would not comply with the Commission’s own rules and statutory requirements regarding the acceptance and processing of license applications, which requires, among other things, public notice and an opportunity for comment.<sup>12</sup> Fundamentally, DSA is struggling to understand how such gifting of spectrum to broadcasters for a voluntary transition, that will allow them, for example, to

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<sup>9</sup> See Comments of the National Association of Broadcasters at 8.

<sup>10</sup> *Id.* at 7.

<sup>11</sup> *Id.*

<sup>12</sup> 47 U.S.C. §§ 309(a) & 311(a); 47 CFR §§ 73.3500 *et seq.*

compete against mobile operators that have purchased their spectrum at auction, can be considered a minor modification to a broadcast facility.

Interestingly, there does not appear to be unanimity amongst broadcasters regarding which legal fiction the Commission should apply to justify the gifting of spectrum. Some commenters proposed the Commission consider the gift of free spectrum under Special Temporary Authority (STA).<sup>13</sup> As Pearl TV points out, 'Under the Communications Act, the FCC may only grant a STA for a period of up to 180 days, and may only extend such grant for additional periods of up to 180 days, and then only upon the applicant's showing "that extraordinary circumstances warrant such an extension".<sup>14</sup> DSA agrees with Microsoft that 'A broadcaster's voluntary decision to adopt a new transmission standard for the purposes of, e.g., offering higher screen resolution, or providing ancillary and supplementary services, cannot reasonably be described as an extraordinary circumstance.'<sup>15</sup>

Finally, it is hard to even imagine how the first come / first served proposal by ONE Media would be implemented. ONE Media did not even bother to put forward the fig leaf of having the Commission justify such action as either a minor modification or a recurring grant of STA. Beyond the issue of whether spectrum gifting to broadcasters is in the public interest, ONE Media's proposal invites spectrum warehousing and would lead to very inefficient use of the UHF band.

The Commission should not consider the gifting of free spectrum to broadcasters as a minor modification to a facility or as an STA grant that can be renewed every 180 days.

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<sup>13</sup> See Comments of Meredith Corporation at 2; See Comments of Pearl TV at 4.

<sup>14</sup> See Comments of Pearl TV at 4.

<sup>15</sup> See Comments of Microsoft Corporation at 3.

**V USE OF VACANT CHANNELS AS DEDICATED SIMULCAST CHANNELS WILL NEEDLESSLY LIMIT UNLICENSED USES**

ONE Media states that *“It is critically important to reiterate that this spectrum is reserved for **broadcast** use; it is not unallocated spectrum available for any other use.”*<sup>16</sup> The accompanying footnote refers to the U.S. Table of Frequency Allocations to prove the point.<sup>17</sup>

ONE Media may want to amend its statement as its assertion is not accurate. Examination of U.S. Table of Frequency Allocations clearly shows that fixed radio service and the land mobile radio service each have a primary allocation in the 470-512 MHz frequency band in addition to broadcasting. Review of the Non-Governmental (NG) Footnote associated with the 470-512 MHz and the 512-608 MHz frequency bands provide a fuller view of the primary and secondary services operating in the band.<sup>18</sup> After reviewing the Footnotes NG5 and NG14, it does bring into question, whether a broadcaster that voluntarily transitions to ATSC 3.0 and chooses to use a portion of its spectrum to compete with mobile operators will be providing a primary service or a secondary service. Moreover, ONE Media ignores the fact that the Commission has already made rules allowing unlicensed use of these channels. Therefore, even setting aside the other primary allocations in the band, Commission rules make crystal clear that channels not already allocated to broadcasters are not “reserved” for broadcast use.<sup>19</sup>

DSA supports unlicensed use of the vacant channels. DSA support white space devices and unlicensed wireless microphones sharing the vacant channels under the existing Commission’s Part 15 rules. The comments universally acknowledged the proposal to permit full service broadcasters to use vacant channels in its market as simulcast channels would significantly reduce the amount of spectrum available for both white space devices and unlicensed wireless microphones. DSA and other white space

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<sup>16</sup> See Comments ONE Media at 6

<sup>17</sup> 47 C.F.R. §2.106, page 29, (Revised on December 13, 2017).

<sup>18</sup> 47 C.F.R. §2.106, Footnote NG5, Footnote NG14, Footnote NG66, Footnote NG115, Footnote NG149, pp. 167-172, (Revised on December 13, 2017).

<sup>19</sup> 47 C.F.R. § 15.707.

device advocates and wireless microphone manufacturers each believe that the economic benefits that their respective spectrum use enable is greater than the public benefit of giving free spectrum to broadcasters for something they said they did need to complete the transition to ATSC 3.0 successfully.

## **VI CONCLUSION**

The Commission should not allow the vacant channels in a market to become dedicated simulcast channels for the ATSC 3.0 transition. Broadcasters are on record saying that no additional spectrum is required for the successful voluntary transition to ATSC 3.0. As there is no end date in sight to the voluntary transition to ATSC 3.0, the long-term uncertainty regarding the future availability of spectrum will most likely chill large-scale investments in white space device development in the U.S. and limit professional audio / large venue wireless microphone use of the band.

Broadcaster's propose that the Commission classify the spectrum gift of a dedicated simulcast channel prior to the completion of the post incentive auction transition period as either a minor modification to a broadcast facility or a grant of special temporary authority that can be renewed every 180 days because of the extraordinary circumstances. The only thing extraordinary about the situation is that the broadcasters must believe that they are now in a position where they can promise something one day to get what they want and then the next day walk away from it without any repercussions. The DSA urges the Commission to hold broadcasters to their previous commitments that no additional spectrum is required for the ATSC 3.0 transition.

Respectfully Submitted,



Kalpak Gude  
President