

November 8, 2017

The Honorable Ajit Pai, Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20536

Dear Chairman Pai,

We are writing to express our concern regarding two items you've offered for consideration at the upcoming November 2017 Open Meeting of the Federal Communications Commission (FCC). Having assessed your draft proposals, we have identified serious problems with both the Media Ownership Reconsideration Order¹ and the "Next Generation" Broadcast TV Standard (ATSC 3.0) Order². Both proposals carry serious consequences for the American media ecosystem and we urge you to postpone consideration of these items until the Commission has taken steps to rectify the concerns we've identified below.

Reconsideration for Broadcast Ownership

Your Media Ownership proposal will allow for consolidated ownership of more than one of the top four stations in any market if parties can demonstrate on a "case-by-case basis" that such a transaction would serve the public interest. First, this approach subjects the rule and the market to precisely the type of uncertainty that you have so often railed against in the past by failing to uphold a clear and consistent policy. The failure to commit to actually enforcing the law creates uncertainty for consumers and competitors unsure of whether and when the Commission will choose to enforce the laws Congress directed it to implement.

The broadening of Commission discretion by this item is also unnecessary if the purpose is to give relief from the bright-line duopoly rule in rare extenuating circumstances. Traditionally, relief from the duopoly rule can be granted by filing a petition for waiver demonstrating "good cause shown" which presumes the rule itself is still valid but that there has been good cause demonstrated to not apply it in the specific case. Under your proposed rule, the FCC can apply any standard it chooses so long as it is able to tie it to the public interest. This is far broader discretion than exists under current waiver

¹ *In the Matter of 2014 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket No. 14-50 *et al*, Draft Order on Reconsideration and Notice of Proposed Rulemaking (rel. Oct. 26, 2017).

² *In the Matter of Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard*, GN Docket No. 16-142, Draft Report and Order and Further Notice of Proposed Rulemaking (rel. Oct 26, 2017).

authority which itself has had to be reined in by courts for overuse. This potentially results in a regulatory scheme where the Commission grants exception to the duopoly rule in every case, rendering the duopoly a rule in name only. It exceeds the intent and undermines the purpose of media ownership policies.

Next Generation TV, or ATSC 3.0.


The 'Next Generation TV' item claims to combine the benefits of broadcasting and internet programming for next generation technologies, but it lacks essential protections for consumers and threatens to cut people from over the air signals.

First, the order in no way provides for an orderly transition process to a new broadcast standard. The minimal requirements laid out in the order threaten to leave consumers without access to over the air television. It allows broadcasters to cut off ATSC 1.0 service after five years, or earlier, without educating or informing consumers. This has the strong potential of leaving consumers with TVs and set top boxes that can no longer receive over the air broadcasts, because consumer's current equipment will not be able to receive ATSC 3.0 broadcasts. Even worse, the exemption for lower power and translator stations from the order's minimal requirements threatens viewers in rural America's ability to receive signals even sooner. Additionally, the Commission's case by case waiver process of full power stations simulcast requirements creates even more uncertainty as viewers in markets around the country may lose access to broadcast signals even sooner.


The Commission must rethink its approach to the ATSC 3.0 transition process. As it stands the order as currently written could deprive many American's of access to free over the air broadcasts and force them to purchase new potentially expensive equipment just to retain access to broadcasts they receive currently.

We therefore urge the Commission to postpone these items until it has rectified the problems identified in order to ensure that the Commission's actions conform more closely to the intent of Congress and pose a reduced risk to viewer's losing access to free over the air broadcasts. In so doing, we expect the Commission to remember its obligation to serve the public interest first. It should reassess its present path in both orders and forgo voting on these items until these concerns have been adequately addressed.

Sincerely,



Anna G. Eshoo
Member of Congress



Michael F. Doyle
Member of Congress