

**STATEMENT OF  
COMMISSIONER MICHAEL P. O'RIELLY**

Re: *Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard*, GN Docket No. 16-142

I am pleased to support today's item, which introduces ATSC 3.0 with a consumer-driven, market-centered, flexible, and voluntary approach. These provisions are vital to the success of any possible transition to 3.0 and I will address each in turn.

*Consumer-driven.* The purpose of this item is to allow our nation's broadcasters to bring a suite of innovative services to consumers, ultimately allowing the consumer to decide what ATSC 3.0 actually looks like in the future. Will consumers want 4K and heightened audio quality? Will a more personalized experience and hyper local content bring local news to a new generation of viewers? Will the enhanced public safety features enable more people to get out of harm's way? Will this, like so many other things, become a more mobile experience, as consumers are increasingly on the go and expect access to information and entertainment anytime and anywhere? No one knows the answers to these questions quite yet, but I am looking forward to seeing where consumers drive ATSC 3.0. For these reasons, there are issues in this item that we do not address at this time. That does not mean we will never address them or that I am completely unsympathetic to the arguments that have been made. It simply means it is too early to do so.

Some have tried to take us down memory lane on Congressional action regarding the DTV transition in order to argue against our action today. Let me correct some of the record, since I was there at the time. The law that passed in 2005 was not the first DTV related provision enacted by Congress. In fact, Congress provided the first structural provisions in the 1996 Telecommunications Act, answering who could get DTV licenses and the revenue impacts of ancillary or supplementary services offered. Further, Congress returned to the issue as part of the Balanced Budget Act of 1997 to define for the first time when analog TV licenses would need to be returned, along with other issues. Thus, for those who argue that everything regarding ATSC 3.0 must be decided ahead of time as part of one big package, Congressional history does not support your claim. Indeed, our action today is entirely consistent with the multi-stage approach Congress and the Commission followed for the DTV transition.

*Market-centered.* One thing we do know is that the broadcasters have every incentive to ensure that this transition is successful. That is why I am pleased the Chairman's office worked with my office to eliminate prescriptive consumer education requirements in the original draft item. I agree that consumer education is an important element of the transition. However, I believe it should be the broadcaster, and not the bureaucrat, that decides how best to achieve this. Since the black and white television set, broadcasters have figured out ways to best market to the consumer. One broadcaster recently announced "bite-sized" commercials during its Thanksgiving Day NFL telecast.<sup>1</sup> These six-second spots—which have proven in the past to produce recall rates 70 percent greater than the same advertisers' own NFL norm and 25 percent higher than primetime norms—will run during the live telecast of the game. Yet, a few days before this experiment, the FCC suggested mandating 15 second ad spots for ATSC 3.0. That doesn't make sense and I am pleased to see that requirement eliminated in the item we will vote on today.

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<sup>1</sup> *Competitive Info: Fox Attempts Six-Second NFL Game Spots*, Inside Radio (Oct. 31, 2017), available at [http://www.insideradio.com/free/competitive-info-fox-attempts-six-second-nfl-game-spots/article\\_03377dc8-bdf6-11e7-b59a-036af8ef7f25.html](http://www.insideradio.com/free/competitive-info-fox-attempts-six-second-nfl-game-spots/article_03377dc8-bdf6-11e7-b59a-036af8ef7f25.html).

*Flexibility.* I have some reservations about the technical standards that we are incorporating into our regulations. It is not lost on me that this process is unique to broadcasters. Wireless carriers are not forced to come to the Commission when they transition from 3G to 4G and now to 5G. As a result, the rapid pace of innovation in that space has greatly served the consumer. Similar to how we handle the latest wireless standard, I had hoped that the Commission would avoid adopting stringent standards and mandates governing this transition in our rules. The Commission did not exactly heed this advice. Instead, it is mandating A/321 permanently and A/322 for a period of five years, arguing that this certainty is necessary for device manufacturers. Although many suggest this is an appropriate balance, I fear that five years can be an eternity in a space as rapidly evolving as this one. For this reason, I will be monitoring this closely throughout the transition. Ultimately, broadcasters need incredible flexibility so that the consumer and the market, and not the Commission, drives this transition.

*Voluntary.* Throughout the course of this preceding the Commission has made clear that any use of the new standard will be completely voluntary to *all* participants. This means voluntary to the broadcasters, who should have the opportunity to make this transition. For this reason, I appreciate the Chairman's willingness to work with me to put a timeframe of 60 days on applications filed with the Commission that do not receive expedited review. Just because a broadcaster does not qualify for the HOV lane at the Commission, does not mean it should be stuck in standstill traffic.

This also means voluntary to the distributors. While for the most part the Commission opts to let the market play out regarding negotiations between the broadcasters and MVPDs, I think it is worth nothing that attempts to make this transition involuntary could violate the obligation for broadcasters to negotiate in good faith. This is another issue I will be watching and the Commission may need to revisit as there becomes concrete examples to examine.

Finally, this means voluntary for consumers. Some have suggested ATSC 3.0 will be a tax on consumers. I believe this item has taken great care to ensure that *not* to be the case. Indeed, if this is a consumer tax, so is every new tablet or smartphone a consumer decides to purchase due to its enhanced and updated features. Unfortunately, as this proceeding has unfolded, and most recently in the last few weeks, some have offered up a parade of horrors and hypotheticals that could happen as a result of this transition. The problem with most of these hypotheses is they are divorced from market realities because broadcasters have every incentive in the world to make sure their viewers do not lose signal during and after any transition to 3.0.

Again, this will not be our last word on ATSC 3.0 and I will continue to monitor the transition closely. For now, I'll celebrate the step we take today as well as the timeliness of the item, which comes very close to my self-imposed deadline of Halloween.