

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of

Petition for Rulemaking and Future of  
Television Initiative Report Filed by the  
National Association of Broadcasters

MB Docket No. 16-142

**COMMENTS OF PUBLIC KNOWLEDGE, ACCESS HUMBOLDT, CONSUMER  
REPORTS, ELECTRONIC FRONTIER FOUNDATION, MEDIA COUNCIL HAWAII,  
AND OPEN TECHNOLOGY INSTITUTE AT NEW AMERICA**

John Bergmayer  
*Legal Director*  
PUBLIC KNOWLEDGE  
1818 N. St NW, Suite 410  
Washington, DC 20036

June 6, 2025

## TABLE OF CONTENTS

<b>INTRODUCTION AND SUMMARY.....</b>	<b>1</b>
<b>I. The Lack of Marketplace Interest and High Consumer Costs Undermine NAB’s Mandate Proposal.....</b>	<b>5</b>
<b>II. The NAB Petition Prioritizes Non-Broadcast Services Over Core Public Interest Obligations.....</b>	<b>7</b>
<b>III. Vulnerable Populations and Translators Face Disproportionate Harm.....</b>	<b>9</b>
<b>IV. Technical Challenges, DRM, and Patent Issues Remain Unresolved.....</b>	<b>10</b>
<b>V. The Proposed Timing Conflicts with Major National and International Events.....</b>	<b>12</b>
<b>VI. The NAB Petition Raises Legal Red Flags and Poses Anticompetitive Risks.....</b>	<b>13</b>
<b>CONCLUSION.....</b>	<b>15</b>

## INTRODUCTION AND SUMMARY

Public Knowledge, Access Humboldt, Consumer Reports, Electronic Frontier Foundation, Media Council Hawaii, and Open Technology Institute at New America (Public Interest Commenters) submit these reply comments in response to the various filings made in this proceeding concerning the National Association of Broadcasters' (NAB) Petition for Rulemaking regarding an FCC-mandated transition to ATSC 3.0. As detailed in our initial comments,<sup>1</sup> Public Interest Commenters oppose NAB's proposal due to its potential to harm consumers, undermine the public nature of broadcast spectrum, and create significant marketplace distortions. The comments submitted by other parties, including NCTA – The Internet & Television Association (NCTA),<sup>2</sup> the American Television Alliance (ATVA),<sup>3</sup> the Consumer Technology Association (CTA),<sup>4</sup> Weigel Broadcasting Co. (Weigel),<sup>5</sup> America's Public Television Stations and the Public Broadcasting Service (PTV),<sup>6</sup> the National Television Association (NTA),<sup>7</sup> the Wireless Microphone Spectrum Alliance (WMSA),<sup>8</sup> and the North American Spectrum Alliance (NASPA)<sup>9</sup> reinforce our concerns and introduce additional compelling reasons why the Commission should reject the NAB Petition.

As explained more fully in our initial filing, the NAB Petition fundamentally fails to safeguard the public interest. Rather than promoting universal access, the mandated ATSC 3.0 transition threatens to disenfranchise marginalized communities, particularly low-income

---

<sup>1</sup> Comments of Public Knowledge, Access Humboldt, Consumer Reports, Electronic Frontier Foundation, Media Council Hawaii, and Open Technology Institute at New America in MB Docket No. 16-142 (May 7, 2025).

<sup>2</sup> Comments of NCTA in MB Docket No. 16-142 (May 7, 2025).

<sup>3</sup> Comments of ATVA in MB Docket No. 16-142 (May 7, 2025).

<sup>4</sup> Comments of CTA in MB Docket No. 16-142 (May 7, 2025).

<sup>5</sup> Comments of Weigel in MB Docket No. 16-142 (May 7, 2025).

<sup>6</sup> Comments of PTV in MB Docket No. 16-142 (May 7, 2025).

<sup>7</sup> Comments of NTA in MB Docket No. 16-142 (May 7, 2025).

<sup>8</sup> Comments of WMSA in MB Docket No. 16-142 (May 7, 2025).

<sup>9</sup> Comments of NASPA in MB Docket No. 16-142 (May 31, 2025)

households, rural residents, tribal areas, and older populations, by imposing substantial costs for new, certified equipment necessary to maintain access to broadcast signals. Public Interest Commenters highlighted that the imposition of Digital Rights Management (DRM) and private certification requirements transforms free, public airwaves into a conditional-access platform subject to the discretionary control of industry-led consortia, notably the ATSC 3.0 Security Authority (A3SA). This undermines the traditional, open-access nature of broadcasting, introducing gatekeeping practices more characteristic of subscription-based services than public broadcasting.

Moreover, the transition outlined by NAB is unnecessarily costly and confusing for consumers. Our initial comments emphasized that the NAB proposal would generate widespread electronic waste as millions of functional consumer devices, including televisions and DVRs, are prematurely rendered obsolete. Such environmental harm would disproportionately burden lower-income households and communities already facing economic challenges. The substantial financial cost of upgrading to new, DRM-compliant devices further exacerbates the digital divide, effectively disenfranchising viewers who depend most heavily on free broadcast content.

Our initial filing also underscored that the NAB's proposed timeline for the transition is unrealistic and arbitrary, unsupported by actual consumer readiness or broadcaster infrastructure preparedness. NAB's proposal disregards consumer adoption realities and fails to provide necessary consumer protections, such as subsidies for equipment upgrades, comprehensive public education, and meaningful continuity of service guarantees. Given the significant public interest concerns, Public Interest Commenters have urged that any eventual transition should place the burden of costs and responsibilities squarely upon broadcasters who stand to benefit

financially from new commercial opportunities such as datacasting, targeted advertising, and retransmission fees.

Additionally, our initial comments addressed the inadequacy of NAB's proposed public interest obligations. Although NAB promotes ATSC 3.0's technical capabilities, such as advanced emergency alerting and enhanced accessibility features, we emphasized that the existence of these technical capabilities alone does not ensure their practical deployment or public benefit. Without FCC-mandated implementation, there is a significant risk that critical public-interest services, including geo-targeted emergency alerts, multilingual capabilities, and advanced accessibility features like audio description and customizable captioning, would remain inconsistently deployed, prioritizing commercial services instead.

Further compounding the problems inherent in NAB's proposal is the planned integration of Digital Rights Management (DRM) technology into free, over-the-air broadcasting (in fact, turning it into something quite different). As our initial comments detail, DRM would fundamentally alter the character of broadcasting, imposing competitive and technological restrictions on consumer devices and blocking fair use rights protected under U.S. copyright law and the First Amendment. The DRM regime proposed through the ATSC 3.0 Security Authority (A3SA) would grant private entities extensive control over which devices can access broadcast signals, thereby suppressing competition, discouraging innovation, and infringing upon longstanding consumer rights.

Our initial comments also highlighted significant legal and statutory concerns. Encrypted ATSC 3.0 transmissions, reliant on DRM and private certification, may not meet the statutory definition of "broadcasting," since broadcasting is traditionally defined as content freely available to the general public without conditional access or subscription. Furthermore, this

DRM-based approach potentially conflicts with established FCC precedent and statutes, including the All-Channel Receiver Act, which ensures that television receivers can universally receive FCC-allocated broadcast frequencies without privately imposed restrictions.

Additionally, we argued that NAB's DRM proposals exceed the Commission's regulatory authority as explicitly limited by the court in *American Library Association v. FCC*, 406 F.3d 689 (D.C. Cir. 2005), a precedent prohibiting the FCC from imposing mandates on consumer electronics that restrict lawful consumer uses of content after transmission.

Public Interest Commenters also emphasized concerns related to ATSC 3.0's reliance on internet connectivity, a significant departure from traditional broadcasting that undermines accessibility, privacy, and resilience. By introducing an internet-dependent model, NAB's proposal risks leaving behind households without reliable broadband service, including rural and economically disadvantaged communities. Moreover, the persistent return path created by internet-enabled devices introduces unprecedented privacy risks through individualized viewer data collection. Without stringent privacy protections and clear regulatory guidelines, broadcasters could exploit viewer data for targeted advertising or data monetization, transforming public broadcasting into another surveillance-laden medium akin to online streaming services and smart TVs and streaming devices that feature "automatic content recognition."<sup>10</sup>

Finally, our initial comments raised concerns regarding potential anticompetitive effects arising from ATSC 3.0 deployment. The NAB proposal could facilitate consolidation and gatekeeping within the broadcasting industry, enabling dominant broadcasters and device

---

<sup>10</sup> Sharon Harding, *Your TV Set Has Become a Digital Billboard. And It's Only Getting Worse*, Ars Technica (Aug. 19, 2024), <https://arstechnica.com/gadgets/2024/08/tv-industrys-ads-tracking-obsession-is-turning-your-living-room-into-a-store>.

manufacturers to control spectrum access, advertising markets, and viewer data analytics. The Commission must remain vigilant to prevent the structural consolidation and anticompetitive practices witnessed in related sectors from infiltrating broadcast television, and must require transparency, enforceable commitments to competitive practices, and strict public-interest protections should any future transition be contemplated.

Taken together, these concerns, and those raised by other commenters, demonstrate that NAB's Petition for Rulemaking regarding ATSC 3.0 fails to satisfy the Commission's statutory obligations to safeguard the public interest, consumer rights, equitable access, and competitive fairness. Public Interest Commenters thus reiterate their recommendation that the Commission reject NAB's Petition.

### **I. The Lack of Marketplace Interest and High Consumer Costs Undermine NAB's Mandate Proposal**

The NAB Petition is built on the flawed premise that a mandate is necessary and justified to accelerate a transition to a flawed system that the marketplace has not yet embraced. As Public Interest Commenters argued, and other commenters confirm, there is a notable absence of consumer demand and significant costs associated with this transition that consumers are expected to bear.

As ATVA argues, the costs of a forced transition would far outweigh the benefits for anyone other than broadcasters, and the mandatory approach would entirely circumvent a voluntary market-driven adoption.<sup>11</sup> CTA agrees, stating that there is no basis for heavy-handed government intervention when the marketplace is working, and that mandates increase costs and stifle innovation.<sup>12</sup> Weigel emphasizes that broadcasting succeeds because it is free and simple, but ATSC 3.0 changes this equation, potentially making a free service expensive and

---

<sup>11</sup> ATVA Comments 23.

<sup>12</sup> CTA Comments 2, 4.

complicated.<sup>13</sup> NCTA similarly finds NAB’s government-directed transition proposal to be unjustified and states it would impose substantial costs on MVPDs and their subscribers.<sup>14</sup>

Several commenters provide data supporting the low consumer uptake of ATSC 3.0. NCTA notes a strikingly low 8% ATSC 3.0 adoption rate among full power stations and limited consumer uptake with only 14 million equipped sets sold, constituting only 4.5% of TVs used today.<sup>15</sup> ATVA cites CTA data showing that only 10% of TVs shipped to U.S. retailers in 2024 were 3.0 compatible, down from 11% in 2022, and suggests these numbers likely overstate consumer interest.<sup>16</sup> Weigel cites NAB’s own figure of 14 million sets sold through 2024, calculating this is only about 6% of televisions in American homes, and notes the lack of retailer visibility for ATSC 3.0 capabilities.<sup>17</sup>

Commenters also detail the substantial costs facing consumers and other stakeholders. Weigel outlines equipment costs (converter boxes \$70-\$130 depending on DRM/internet),<sup>18</sup> installation costs (\$156-\$358 per TV),<sup>19</sup> and necessary internet service costs.<sup>20</sup> NTA confirms the converter box price range and highlights that prices increase significantly for DRM-capable boxes that don’t require constant internet, costing \$150, and notes new TVs are over \$500.<sup>21</sup> CTA provides specific examples where 55-inch 4K TVs with ATSC 3.0 tuners were notably more expensive than those without.<sup>22</sup> ATVA reinforces that consumers would have to purchase new TVs or converter devices, even if they otherwise wouldn’t, and agrees with CTA that mandates

---

<sup>13</sup> Weigel Comments i.

<sup>14</sup> NCTA Comments 3.

<sup>15</sup> NCTA Comments 3-4.

<sup>16</sup> ATVA Comments 3.

<sup>17</sup> Weigel Comments 13-14.

<sup>18</sup> Weigel Comments 7-8.

<sup>19</sup> Weigel Comments 8.

<sup>20</sup> Weigel Comments 8-9.

<sup>21</sup> NTA Comments 2.

<sup>22</sup> CTA Comments 9.

would increase consumer prices.<sup>23</sup> NCTA notes these costs are imposed despite a lack of subscriber demand or guaranteed benefits.<sup>24</sup>

Weigel explicitly states that it has been unable to produce a business plan supporting broadcasting in ATSC 3.0 and has not seen a viable broadcast business model from other parties.<sup>25</sup>

These consistent observations from diverse stakeholders (including MVPDs, manufacturers, and some broadcasters) underscore that the market is not driving this transition, and imposing it by government fiat would place undue financial burdens on consumers for uncertain benefits.

## **II. The NAB Petition Prioritizes Non-Broadcast Services Over Core Public Interest Obligations**

In our comments, Public Interest Commenters raised concerns that NAB's proposal is less about improving free over-the-air broadcasting and more about enabling new revenue streams for broadcasters from ancillary services, potentially degrading the core service. Other commenters echo this concern.

ATVA argues that the *primary* benefits of an ATSC 3.0 transition have nothing to do with over-the-air television but are additional sources of revenue for broadcasters themselves.<sup>26</sup> Weigel notes that some ATSC 3.0 supporters plan to use the standard to monetize spectrum for services other than broadcasting<sup>27</sup> and, by Weigel's calculation under current rules, broadcasters could devote the vast majority of their spectrum – up to 97% – for non-broadcast services.<sup>28</sup>

ATVA specifically identifies Positioning, Navigation, and Timing (BPS) and Broadcast Internet (e.g., offloading Netflix streams) as services NAB highlights, noting joint ventures like

---

<sup>23</sup> ATVA Comments 16-17.

<sup>24</sup> NCTA Comments 5.

<sup>25</sup> Weigel Comments 14.

<sup>26</sup> ATVA Comments 5, 7.

<sup>27</sup> Weigel Comments 16.

<sup>28</sup> Weigel Comments i.

EdgeBeam Wireless are formed to offer and monetize these, with executives expressing excitement about new revenue opportunities.<sup>29</sup> Weigel agrees BPS and content delivery networks (like for Netflix) are examples, and notes NAB has elsewhere suggested spectrum could be used for pay-TV-like services.<sup>30</sup>

Weigel warns that this focus on non-broadcast services suggests many broadcasters may choose to degrade or at least not improve broadcasting in favor of these other services, posing an existential threat to over-the-air broadcasting itself.<sup>31</sup> ATVA points out that broadcasters have long resisted obligations to use 3.0 to actually *improve* over-the-air TV (e.g., resisting HD requirements above standard definition) and notes their lack of commitment to delivering these purported benefits makes them inappropriate as a justification for a mandate.<sup>32</sup>

The Wireless Microphone Spectrum Alliance (WMSA) introduces an important dimension to this debate by highlighting the impact on other spectrum users. As WMSA describes, wireless microphones make efficient use of TV-UHF spectrum in channels unused by high-power TV broadcasts (“spectrum gaps”).<sup>33</sup> WMSA argues that NAB’s proposal to use these “vacant channels” for the 3.0 transition is problematic because these channels are precisely where microphones operate and are already in short supply.<sup>34</sup> The North American Spectrum Alliance (NASPA) further argues that any spectrum dividend should benefit wireless microphone usage.<sup>35</sup> Without commenting on the specific equities of spectrum allocation, these concerns should give pause to the Commission: granting the NAB’s petition is not a simple matter of authorizing a

---

<sup>29</sup> ATVA Comments 7-8.

<sup>30</sup> Weigel Comments 16-17.

<sup>31</sup> Weigel Comments i, 19.

<sup>32</sup> ATVA Comments 5-6.

<sup>33</sup> WMSA Comments 4.

<sup>34</sup> WMSA Comments 4.

<sup>35</sup> NASPA Reply Comments 3-4.

shift from one broadcast standard to another, but could have effects on spectrum users and licensees of all kinds.

These arguments confirm that NAB's vision for ATSC 3.0 is fundamentally misaligned with the public service mission of broadcasting and threatens to turn public spectrum into a platform primarily for private commercial ventures unrelated to free television, that could have unintended consequences across many industries.

### **III. Vulnerable Populations and Translators Face Disproportionate Harm**

Public Interest Commenters emphasized that the burdens of the transition would fall most heavily on vulnerable populations. Public television stations and translator operators highlight how their viewers and operations would be uniquely and severely impacted by a mandatory transition.

As PTV explains, public television stations are locally governed and operated, serving communities with limited resources, including many in rural and remote areas often unserved by other broadcasters.<sup>36</sup> It argues that a mandated transition would disproportionately impact their viewers if stations are forced to transition before their community is ready or viewers can afford new equipment.<sup>37</sup> It believes new funding sources, like a coupon program, are needed to help stations and audiences transition.<sup>38</sup>

PTV stresses the unique challenges for public television stations, including the difficulty of finding sharing partners due to distant tower locations, especially for statewide networks.<sup>39</sup> It notes high costs (millions per station) for those without newer equipment, and challenging,

---

<sup>36</sup> PTV Comments 3, 9.

<sup>37</sup> PTV Comments 3, 9.

<sup>38</sup> PTV Comments 4, 11.

<sup>39</sup> PTV Comments 10.

lengthy budget processes for non-profit, government, and educational licensees<sup>40</sup> It provides the example of Mississippi Public Broadcasting facing significant challenges due to these factors.<sup>41</sup>

NTA, representing LPTV and Translator stations, highlights that these stations serve rural areas and are often the only source of broadcast television.<sup>42</sup> It notes that while NAB proposes an exemption for LPTV/Translators, it doesn't negate the challenges.<sup>43</sup> If an originating station transitions to 3.0, the Translator relaying its signal needs costly new transcoder equipment (\$10,000-\$15,000 per station) just to continue broadcasting in ATSC 1.0.<sup>44</sup> Such costs could force Translator operators to shut down, leaving rural consumers with no service.<sup>45</sup>

Weigel reinforces the importance of free over-the-air broadcasting for cord cutters/nevers and viewers in rural/heartland areas, noting that the costs of ATSC 3.0 (equipment, installation, internet) fall heaviest on those who rely on this free service today.<sup>46</sup>

These comments provide specific examples of how a mandatory transition would harm the most vulnerable viewers and the essential local services they rely on, particularly in rural areas.

#### **IV. Technical Challenges, DRM, and Patent Issues Remain Unresolved**

Public Interest Commenters highlighted the complexity and barriers introduced by ATSC 3.0's technical design, including DRM, IP licensing, and certification. Other commenters also explore these issues, and reinforce ongoing concerns about patent licensing and consumer confusion.

NCTA details numerous formidable technical challenges for MVPDs beyond equipment costs, including changes needed to address the "good quality signal" definition, potential

---

<sup>40</sup> PTV Comments 10-11.

<sup>41</sup> PTV Comments 11.

<sup>42</sup> NTA Comments 1.

<sup>43</sup> NTA Comments 2.

<sup>44</sup> NTA Comments 2.

<sup>45</sup> NTA Comments 3.

<sup>46</sup> Weigel Comments 2-4, 9-10.

“material degradation” when transcoding signals, defining “program related material” in a 3.0 context, and addressing watermarks.<sup>47</sup> It emphasizes that necessary ATSC standards work for things like 3.0 transport streams and IP-based delivery is not yet complete, making NAB’s deadlines unrealistic.<sup>48</sup>

ATVA provides further detail on MVPD technical challenges, including the need for new transcoders, receivers, demultiplexers, and dealing with watermarks.<sup>49</sup> It notes costs related to H.265 patent royalties.<sup>50</sup> ATVA and NCTA both discuss the significant capacity constraints for MVPDs, especially satellite and smaller cable systems, and the difficulty or infeasibility of carrying both full 3.0 signals and down-converted signals during a transition period.<sup>51</sup> ATVA argues that MVPDs cannot change their networks to enable most subscribers to receive 3.0 features and should not be required to do so.<sup>52</sup>

Weigel proposes specific technical “guardrails” the Commission should impose if any transition proceeds: a minimum capacity devoted to broadcasting (19.3 Mbps data rate, not requiring internet),<sup>53</sup> a guardrail to preserve receivability quality (minimum ModCod equivalent to 8-VSB, no antenna changes needed),<sup>54</sup> and limits on DRM (no internet required for initial startup or continued use).<sup>55</sup> These specific technical requirements highlight the potential for signal degradation absent Commission action.

---

<sup>47</sup> NCTA Comments 9-13.

<sup>48</sup> NCTA Comments 10-11.

<sup>49</sup> ATVA Comments 11-12.

<sup>50</sup> ATVA Comments 12.

<sup>51</sup> ATVA Comments 13-14; NCTA Comments 13-14.

<sup>52</sup> ATVA Comments 14-15.

<sup>53</sup> Weigel Comments 21-22.

<sup>54</sup> Weigel Comments 23.

<sup>55</sup> Weigel Comments 23-24.

Regarding DRM, Weigel notes that some converter boxes require a continuous internet connection for DRM support.<sup>56</sup> NTA confirms that converter box prices vary based on DRM capability and whether internet is required, highlighting that internet dependence is a problem in rural areas.<sup>57</sup> Weigel warns that DRM could lead to conditional access, payment requirements, and a new form of gatekeeping.<sup>58</sup>

Weigel also points to ongoing patent licensing issues, noting LG suspended manufacturing 3.0 TVs due to a patent lawsuit and that A3SA's rules governing DRM patent licenses may expire at the time of a flash cut.<sup>59</sup> NCTA correctly recommends the Commission affirmatively require ATSC 3.0 Standard Essential Patents (SEPs) be licensed on a reasonable and non-discriminatory (RAND) basis.<sup>60</sup> NTA also lists outstanding patent lawsuits as an unresolved challenge.<sup>61</sup>

These technical and licensing details reinforce that the standard is not fully mature, presents significant, costly challenges for deployment, and could result in a degraded or inaccessible service for consumers if not subject to clear regulatory safeguards.

## **V. The Proposed Timing Conflicts with Major National and International Events**

A new argument, not raised in our initial comments, comes from WMSA and NASPA regarding the timing of the proposed transition and its conflict with major upcoming events.

As WMSA and NASPA argue, the proposed Phase 1 deadline in February 2028, just months before the LA 2028 Olympic Games, would likely cause intolerable disruption to the critical spectrum planning required for the Games.<sup>62</sup> It highlights that the Olympics have the highest

---

<sup>56</sup> Weigel Comments 8.

<sup>57</sup> NTA Comments 2.

<sup>58</sup> Weigel Comments 10-11.

<sup>59</sup> Weigel Comments 11-12.

<sup>60</sup> NCTA Comments 17.

<sup>61</sup> NTA Comments 2.

<sup>62</sup> WMSA Comments 3, 7; NASPA Reply Comments 1-2.

demand for wireless microphone spectrum anywhere, and data from the Paris 2024 Olympics shows critical reliance on the TV-UHF band (470-694 MHz), which is already more constrained in the U.S.<sup>63</sup>

WMSA and NASPA also note that the FIFA World Cup and 250th American Independence celebrations are staged concurrently, both subjects of Presidential Executive Orders requiring Task Forces to ensure success.<sup>64</sup> They assert that compromising UHF spectrum for wireless mics would undermine the creation of high-quality content, contradicting the promise of ATSC 3.0.<sup>65</sup>

This timing conflict presents a compelling, practical argument against NAB's proposed deadlines, and applies more widely than the wireless microphone issue. It seems obvious that potential disruptions to how TV is delivered should steer clear of major national and international events. This further demonstrates that an industry-driven timeline does not adequately consider the broader national interest and schedule of significant events.

## **VI. The NAB Petition Raises Legal Red Flags and Poses Anticompetitive Risks**

Public Interest Commenters argued that the NAB Petition asks the Commission to exceed its authority and promotes an anticompetitive, privatized model. Other commenters strongly support these legal and market structure concerns.

ATVA argues that the Commission lacks authority to mandate a transition, particularly one resulting in the primary use of broadcast spectrum for non-broadcasting activities, stating that general authority is insufficient for such a fundamental shift.<sup>66</sup> NCTA similarly states the Commission lacks authority to mandate a transition<sup>67</sup> and that in its view extending must-carry

---

<sup>63</sup> WMSA Comments 3, 7; NASPA Reply Comments 2.

<sup>64</sup> WMSA Comments 3; NASPA Reply Comments 1.

<sup>65</sup> NASPA Reply Comments 2.

<sup>66</sup> ATVA Comments ii, 17, 20, 21.

<sup>67</sup> NCTA Comments 8.

rules to ATSC 3.0 signals would raise constitutional issues.<sup>68</sup> ATVA provides detailed legal arguments that using spectrum primarily for non-broadcast is contrary to the “ancillary or supplementary” definition under 47 U.S.C. § 336(b) and that a functional reallocation would require a specific statutory process.<sup>69</sup> Weigel agrees it would be difficult for the Commission to conclude broadcasting is the “fundamental use” if minimal capacity is used and references the major questions doctrine, which may prevent the Commission from authorizing a fundamental shift in the nature of over-the-air broadcasting without clear Congressional authorization.<sup>70</sup>

ATVA also argues that imposing the transition could be arbitrary and capricious under the APA, as NAB fails to justify the substantial costs against the benefits (primarily to a handful of broadcasters).<sup>71</sup> ATVA and NCTA both argue that requiring MVPDs to take on additional burdens for ATSC 3.0 could raise constitutional objections, as well.<sup>72</sup>

Regarding anticompetitive risks, NCTA urges the Commission to take steps to contain potential harm, including prohibiting the use of retransmission consent to negotiate for carriage of non-broadcast services provided by consortia<sup>73</sup> and rejecting NAB’s proposal for preferential placement on TVs.<sup>74</sup> ATVA states a government mandate would predetermine economic winners and losers, which is contrary to deregulation efforts.<sup>75</sup> CTA argues that mandates stifle innovation and competition,<sup>76</sup> and that NAB’s UI mandates proposal would hinder competition

---

<sup>68</sup> NCTA Comments 8, 24, 28, 29.

<sup>69</sup> ATVA Comments 20-21.

<sup>70</sup> Weigel Comments 21 & n.80.

<sup>71</sup> ATVA Comments 22.

<sup>72</sup> ATVA Comments 23, NCTA Comments 7.

<sup>73</sup> NCTA Comments 15-16.

<sup>74</sup> NCTA Comments 17.

<sup>75</sup> ATVA Comments 8.

<sup>76</sup> CTA Comments 10.

and favor broadcast over other services.<sup>77</sup> Weigel warns that DRM could lead to new gatekeeping and that patent licensing issues are problematic.<sup>78</sup>

These comprehensive legal and economic arguments reinforce Public Interest Commenters' position that the NAB Petition is not only bad policy but potentially exceeds the Commission's authority and would create an anticompetitive landscape tilted in favor of a few dominant broadcasters. Additionally, it seems that a transition under the NAB's timeline would be subject to legal challenges from various industry sectors.

### **CONCLUSION**

The comments submitted by NCTA, ATVA, CTA, Weigel, PTV, NTA, WMSA, NASPA, and others offer broad and detailed support for Public Interest Commenters' initial opposition to the NAB Petition and contribute compelling new arguments against a mandatory, timeline-driven transition to ATSC 3.0. These parties, which represent a wide range of interests across the video ecosystem and among spectrum users, consistently express concern about numerous key issues.

Taken together, the record reflects overwhelming opposition to NAB's proposal. A forced transition to ATSC 3.0, under the terms NAB has put forward, would ignore the public interest, jeopardize universal access to broadcasting, and convert what has long been a public service into a gated commercial platform serving only a narrow range of private interests.

Public Interest Commenters urge the Commission to take these concerns seriously. To safeguard consumers, ensure continued access for all, and maintain the essential public service role of broadcasting, the Commission should reject NAB's Petition for Rulemaking.

---

<sup>77</sup> CTA Comments 11-12.

<sup>78</sup> Weigel Comments 10-11.

Respectfully submitted,

/s/ John Bergmayer

*Legal Director*

Public Knowledge

1818 N St. NW Suite 410

Washington, DC 20036

Access Humboldt

Consumer Reports

Electronic Frontier Foundation

Media Council Hawaii

Open Technology Institute At New America

June 6, 2025