

## Updates

June 11, 2020

### FCC Seeks to Unlock Potential of TV Spectrum for Advanced Broadband Services

The Federal Communications Commission unanimously voted on June 9, 2020, to adopt a [Declaratory Ruling and Notice of Proposed Rulemaking](#) to promote broadcast internet services through a new broadcast standard called ATSC 3.0. This standard promises to bring to consumers Ultra High Definition picture quality and immersive audio, more localized programming content, and a variety of non-television broadband services related to advanced emergency alert systems, autonomous vehicle applications, internet of things (IoT), and telemedicine.

Now that ATSC 3.0 is finally being launched in trial markets, the FCC is taking steps to accelerate TV broadcasters' adoption of ATSC 3.0 to provide non-broadcast broadband services over the TV networks' excess network capacity, also known as "broadcast internet" services. With the explosive growth of streaming video applications seemingly marginalizing linear broadcast television programming, ATSC 3.0 and broadcast internet services provide TV broadcasters with an opportunity to play a significant role in the development of innovative new broadband services. FCC Commissioner Brendan Carr, at the forefront of this initiative, [stated that broadcast internet has the potential](#) to help close the digital divide since its propagation characteristics make it well suited for underserved, rural communities, and consumers could see reduced costs for internet services.

The declaratory ruling clarifies that leasing excess television spectrum to a third party, including other broadcasters in the same market, does not result in "attribution" under the rules nor does it give rise to any other requirements related to common ownership interests in the same market. The FCC reasoned that the existence of a lease to provide ancillary services over the station's spectrum does not by itself confer a "cognizable interest" in the broadcaster's station license. In other words, leased excess capacity used for non-broadcast broadband services will not be regulated as broadcast TV services.

Broadcasters will have broad freedom to utilize the excess capacity for broadcast internet services provided that they comply with the following conditions:

1. Broadcasters must retain ultimate control over their leased spectrum and responsibility for FCC compliance.
2. The term of any spectrum lease cannot be longer than the station's broadcast license.
3. Broadcasters must continue to provide at least one over-the-air video program signal at no charge to viewers.

### **Notice of Proposed Rulemaking**

In addition to the declaratory ruling, the FCC issued a notice of proposed rulemaking focusing on three topics:

1. **General Matters:** The FCC seeks comment on the potential uses and applications of excess broadcast spectrum capacity resulting from the transition to ATSC 3.0, and on what modifications to the rules would promote innovation, experimentation, and utilization of broadcast excess capacity.
2. **Ancillary and Supplementary Service Fees:** The FCC requires broadcasters to pay to the FCC a fee equal to five percent of a broadcaster's gross revenue resulting from offering ancillary services. The fee would, however, not apply to commercial advertisements used to support non-subscription broadcasting. The FCC seeks comment on whether the amount and method of calculating the ancillary services fee should be reconsidered given the new potential uses of excess spectrum capacity.

**3. Derogation of Service and Analogous Services:** Section 336 of the Telecommunications Act of 1996 requires that broadcasters' ancillary and supplemental services must (1) avoid "derogating" any advanced television services that the commission may require, and (2) be subject to commission regulations applicable to analogous services. According to FCC rules, a station's service is not derogated so long as it continues to offer at least one free over-the-air standard definition video programming stream. The FCC seeks comment on whether the existing interpretation of "derogation of service" remains valid or if any changes are necessary.

The notice of proposed rulemaking forecasts the next steps in the FCC's efforts to encourage broadcast internet services. Comments in response to the notice of proposed rulemaking are due 30 days after publication in Federal Register.

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