

*Via ECFS*

October 16, 2023

Marlene H. Dortch, Esq.  
Secretary  
Federal Communications Commission  
45 L Street NE  
Washington, DC 20554

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

Dear Ms. Dortch:

The Consumer Technology Association (CTA)® respectfully submits these reply comments in response to the Federal Communications Commission’s (“Commission” or “FCC”) Fourth Further Notice of Proposed Rulemaking, seeking comment on the state of the marketplace for ATSC 3.0 Standard Essential Patents (SEPs).<sup>1</sup>

As North America’s largest technology trade association,<sup>2</sup> CTA has long-advocated for reform of the U.S. patent system to promote innovation, job creation, and curb the ability of Patent Assertion Entities (also known as patent trolls) to jeopardize the health of American business.

Over the past two decades, CTA has observed the impact of so-called patent trolls on businesses ranging from the smallest startup to the largest Fortune 500 company. Targeted businesses have suffered from the enormous waste that comes from the threat of litigation and actual litigation, as well as devoting time and resources which could otherwise be devoted to R&D and expanding their workforce.

At the same time, we recognize the fundamental difference between the motivations of patent holders who participate transparently in the standards process, and non-practicing entities who do not disclose their relevant intellectual property.

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<sup>1</sup> Authorizing Permissive Use of the “Next Generation” Broadcast Television Standard, GN Docket No. 16-142, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, ¶ 50 (rel. Jun. 23, 2023).

<sup>2</sup> As North America’s largest technology trade association, CTA® is the tech sector. Our members are the world’s leading innovators—from startups to global brands—helping support more than 18 million American jobs. CTA owns and produces CES®—the most influential tech event in the world.

Patent policies of standards organizations, such as CTA, which require participants to declare whether they will commit to license their SEPs on Reasonable and Non-Discriminatory (RAND) Terms are based on ANSI's Essential Requirements<sup>3</sup> and are fundamental when including the patented technology in a standard. This transparency is a key element of the U.S. approach to national standards. The Advanced Television Systems Committee's (ATSC) policies follow the same model for the same reason.

While CTA takes no position here on the FCC's legal authority over SEPs, we believe that if it is to achieve its stated policy goal of supporting a voluntary, market-by-market rollout of ATSC 3.0, the Commission should pay close attention to patent holders that did not participate in the ATSC 3.0 standard development process but claim to have patents essential to the standard and are unwilling to commit to license them on RAND terms. In doing so, the Commission should assess the impact of these actions on NEXTGEN TV tech deployment.

Recent developments, including the decision by one CTA member to withdraw from selling new ATSC 3.0-equipped TV sets in 2024<sup>4</sup>, demonstrate that SEP abuse is impacting advancement of technology and the rollout of NEXTGEN TV products and will have a detrimental impact on consumer choice.

Should the Commission conclude that SEP holders are effectively preventing advancement of technology, the FCC may consider adopting principles to guide the application of the ATSC SEP licensing policy, as some commenters in the docket have observed.<sup>5</sup>

When entities claim to be holders of essential patents in ATSC 3.0 technologies and are allowed to hold innovators hostage, consumers lose. CTA strongly believes the transition to ATSC 3.0 must remain voluntary and market-based, not guided by government mandates nor by pressure from patent assertion entities and non-practicing entities.

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<sup>3</sup> ANSI Essential Requirements (January 2022), available at <https://www.ansi.org/american-national-standards/ansi-introduction/essential-requirements>.

<sup>4</sup> Comments of LG Electronics at 5, Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard, GN Docket No. 16-142 (Sept. 15, 2023).

<sup>5</sup> Comments of ACT | The App Association, Alliance for Automotive Innovation et al., Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard, GN Docket No. 16-142 (Sept. 15, 2023).

Thank you for considering our views.

Respectfully submitted,

CONSUMER TECHNOLOGY ASSOCIATION

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