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**Multicasts, ATSC 3.0 Turn Broadcasting Into a Multichannel Platform**

by

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**I. Introduction and Summary**

Consumers today enjoy a wealth of choices in the multichannel video programming distribution marketplace. This vibrantly competitive environment represents a dramatic departure from decades past, when claims as to the existence of bottlenecks were used to justify intrusive government intervention. One rising, and perhaps unexpected and largely unreported, source of multichannel competition is over-the-air broadcasting.

Of course, dramatic changes in the media marketplace have been occurring for many years – and yet, due to its size, procedures, and inherent inertia, the "Communications Regulatory Complex" simply is unable to keep pace, especially in the face of considerable reflexive opposition by those who oppose any deregulatory changes. But with regard to broadcasting, cable, direct broadcast satellite (DBS), telco TV, and other media outlets, continued imposition of legacy regulatory restrictions of various types are in increasing tension with their First Amendment rights.

Over the last ten years, the number of U.S. households that utilize an antenna to view their local television stations has increased by over a third, from nearly 11.8 million to 16 million. One explanation for that is the improved picture and audio quality that digital television (DTV)

delivers. Another is that, as consumers "cut the cord" – that is, discontinue their subscriptions to traditional multichannel video programming distributors (MVPDs) and transition to streaming options like Netflix, Hulu, Disney+, and/or Amazon Prime Video – over-the-air television provides a free means to continue to receive the popular content, both national and local, that television stations carry. And lastly, broadcasting has emerged as a legitimate platform for the distribution of multichannel video programming once available only from an MVPD.

The current DTV technical specification enables the transmission of multiple programming services within a single 6 MHz spectrum allocation, and an updated version that stations are now rolling out will expand dramatically that capability. The \$2.65 billion E.W. Scripps Company (Scripps)/ION Media (ION) transaction announced last month highlights the financial significance of over-the-air multicasts to broadcasters today, and Evoca, a just-launched, 60+ channel MVPD service that leverages the new DTV standard, hints at what's to come.

## **II. With Multicasting and ATSC 3.0, Over-the-Air Broadcasting Is an Increasingly Viable Multichannel Video Distribution Platform**

Over-the-air broadcasting, always a major player in the video marketplace, is resurgent. The number of households that rely upon an antenna to access local television station signals has increased significantly over the last decade. According to FCC estimates, in 2009, the year during which full-power television stations completed the transition from analog to digital, 11.8 million U.S. households – or roughly 10 percent of the total – relied exclusively on over-the-air broadcasts.<sup>1</sup> Nielsen reported that the number had climbed to 16 million by May 2018.<sup>2</sup> And Parks Associates notes that, as of the third quarter of 2019, "25% of US broadband households use[d] an antenna to watch local broadcast TV channels, up from 15% in 2018."<sup>3</sup> That percentage is expected to rise further due to the COVID-19 pandemic.<sup>4</sup>

Broadcast television's increasing popularity can be attributed to three primary factors. One, DTV delivers a vastly improved viewing experience to analog, one that includes high-definition (HD) video and multichannel audio. Two, in an era where cord cutting and the adoption of one or more streaming services are increasingly common, consumers still want access to the local and national content that television stations provide – they just don't necessarily want to pay for a subscription to an MVPD in order to receive it. And three, DTV allows local stations to distribute multichannel video.

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<sup>1</sup> See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 07-269, Fourteenth Report, FCC 12-81 (2012), available at <https://docs.fcc.gov/public/attachments/FCC-12-81A1.pdf>, at 92, Table 15: Television Households and Media Usage Estimates (in thousands) (reporting a total 116,170,000 U.S. households in 2019, 11,830,000 of which were broadcast only).

<sup>2</sup> See "The Nielsen Local Watch Report" (January 14, 2019), available at <https://www.nielsen.com/us/en/insights/report/2019/nielsen-local-watch-report-the-evolving-ota-home/#>.

<sup>3</sup> "Parks Associates: TV Antenna Usage in US Broadband Households Jumped to 25% In 2019 and is Expected to Grow More as COVID-19 Keeps Consumers at Home," *PR Newswire* (March 26, 2020), available at <https://www.prnewswire.com/news-releases/parks-associates-tv-antenna-usage-in-us-broadband-households-jumped-to-25-in-2019-and-is-expected-to-grow-more-as-covid-19-keeps-consumers-at-home-301030104.html>.

<sup>4</sup> See *id.*

Whereas a station broadcasting in analog could deliver only a single "channel," a DTV station today using ATSC 1.0 can transmit up to 19.39 Mbps of data – and allocate that payload to multiple audiovisual services. The first is referred to as the "primary" stream. Any additional services, whether in HD or standard definition (SD), are labeled as "multicasts." Stations may choose to divvy up their available capacity in any number of ways: a single HD stream, two HD streams, an HD stream and multiple – as many as 6 or 7 – SD streams, and so on.<sup>5</sup>

While DTV stations have enjoyed this technical flexibility from day one, only fairly recently have multicasts begun to realize their full economic potential. In all likelihood, that is a side effect of the expanding number of consumers who have canceled their MVPD subscriptions and instead rely upon antennas to access the popular programming (including live sports, local news and information, and prime-time content) provided by national broadcast networks and the local television stations that distribute them.

Retransmission consent agreements between local stations and traditional MVPDs do not always cover multicast streams. Must-carry elections, meanwhile, provide for carriage only of the primary service. But as consumers cut the cord and connect antennas, they gain access to all the content that stations make available, including multicasts. The advertising-based revenues that multicasts generate are driven almost exclusively by these over-the-air eyeballs.

The recently announced \$2.65 billion Scripps/ION transaction makes clear how important multichannel distribution via broadcast has become. Scripps, the fourth-largest independent TV station group, operates 60 stations in 42 markets.<sup>6</sup> ION, the largest broadcast television station group, owns and operates 71 stations in 62 markets.<sup>7</sup> The combined company, even after the planned divestment of 23 stations to comply with FCC ownership rules, will have unsurpassed and unprecedented reach, owning 107 stations in 76 markets.<sup>8</sup>

In addition to its television stations, Scripps also owns Katz Networks, five programming services – Bounce TV, Court TV, Court TV Mystery, Grit, and Laff – that today reach over 90 percent of U.S. households.<sup>9</sup> In Scripps markets, it is able to transmit those networks as multicasts on its owned-and-operated local television stations. In other cases, Scripps currently leases capacity from third-party stations. According to the September 24 press release announcing the deal, the combined entity will generate \$500 million dollars in savings over 6 years, largely by allowing those leases to expire and transitioning distribution of Katz services to

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<sup>5</sup> See Glen Dickson, "Multicasting Special Report | Improved Encoders Equal More Diginets," *TVNewsCheck* (July 25, 2019), available at <https://tvnewscheck.com/article/237233/improved-encoders-equal-more-tv-capacity/>.

<sup>6</sup> Scripps, "Investor Information," available at <https://ir.scripps.com>.

<sup>7</sup> Scripps, "The E.W. Scripps Company Acquisition of ION Media: A transformative transaction that creates a national networks business" (September 24, 2020), available at <https://ir.scripps.com/static-files/1be47972-70ac-4a6c-a687-55364b48babb>, at 4.

<sup>8</sup> *Id.* at 2.

<sup>9</sup> See Scripps, "Katz Networks," available at <https://scripps.com/katz-networks/>.

former ION stations.<sup>10</sup> And upon migration to ATSC 3.0,<sup>11</sup> it will have the technical ability to distribute a substantially greater number of programming services via multicasting.

ATSC 3.0, an Internet Protocol (IP) based system marketed as "NextGen TV," improves upon its predecessor specification in a number of ways, including:

B)etter sound quality with less interference; higher picture resolution (with the potential for an 8K picture in the future); the availability on more mobile devices (like phones and tablets as well as in cars); more channels in higher quality without the need for a large antenna; and what is anticipated as the seamless combination of broadcast TV with the Internet.<sup>12</sup>

A number of stations already have begun to transmit using the ATSC 3.0 standard.<sup>13</sup> However, Evoca appears to be the first company to take advantage of its upgraded channel-carriage and IP-based capabilities in order to provide MVPD service.<sup>14</sup> Available in Boise, Idaho, as of September 1, Evoca delivers the bulk of its content via the over-the-air signals of two low-power stations, while leveraging an Internet connection for video-on-demand and lesser-viewed services.<sup>15</sup> Evoca, which reportedly attracted over 1,000 subscribers prior to launch,<sup>16</sup> currently offers over 60 channels.<sup>17</sup>

### III. Conclusion

Over time, the conditions that define a regulated service evolve. Competitive chokepoints disappear. New entrants emerge. Assumptions that led to the adoption of rules fall away. Such is the case, clearly, with respect to traditional MVPDs, a point that the Free State Foundation

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<sup>10</sup> See "Scripps creates national television networks business with acquisition of ION Media," *PR Newswire* (September 24, 2020), available at <https://www.prnewswire.com/news-releases/scripps-creates-national-television-networks-business-with-acquisition-of-ion-media-301137357.html> ("Synergies: About \$500 million over six years, reaching a run rate of about \$120 million a year, mainly driven by migrating the [Scripps-owned] Katz networks to ION digital subchannels as Katz's current distribution contracts expire and corporate savings.").

<sup>11</sup> See *id.* (quoting Scripps President and CEO Adam Symson as saying that "[n]ow, with this national broadcasting acquisition, Scripps will be the largest holder of broadcast spectrum, poised to take an even greater leadership role in the development of future business models that leverage ATSC 3.0 and spectrum to benefit the American people").

<sup>12</sup> Marc Berman, "ATSC 3.0: Everything You Need to Know About the Broadcast Industry's 'NextGen' Technology Standard," *Next TV* (September 21, 2020), available at <https://www.nexttv.com/news/atsc-30-everything-you-need-to-know-about-the-broadcast-industrys-nextgen-technology-standard>.

<sup>13</sup> See, e.g., Michael Balderston, "ATSC 3.0 Launches on 7 Portland TV Stations," *TV Technology* (July 29, 2020), available at <https://www.tvtechnology.com/news/atsc-30-launches-on-7-portland-tv-stations> ("ATSC 3.0, the next-generation television standard, has planted its flag in Portland, as seven local TV stations have begun broadcasting NextGen TV.").

<sup>14</sup> See generally <https://evoca.tv>.

<sup>15</sup> See David Bloom, "From Evoca to STIRR to VUit, How Broadcasters Are Tapping into ATSC 3.0," *Next TV* (September 13, 2020), available at <https://www.nexttv.com/news/from-evoca-to-stirr-to-vuit-how-broadcasters-are-tapping-into-atsc-30> (noting that "instead of relying solely on the internet to delivery video, Evoca mostly uses the ATSC 3.0 over-the-air broadcast standard").

<sup>16</sup> See Jon Lafayette, "Evoca Next-Gen TV Service Draws 1,000 Early Access Subs," *Next TV* (August 24, 2020), available at <https://www.nexttv.com/news/evoca-next-gen-tv-service-draws-1000-early-access-subs>.

<sup>17</sup> See Geoffrey Morrison, "Cable TV channels and 4K from an antenna? It's rolling out to this US city for \$49," *CNET* (September, 4, 2020), available at <https://www.cnet.com/news/cable-tv-channels-and-4k-from-an-antenna-its-rolling-out-to-this-us-city-for-49/>.

emphasized in comments recently submitted to the FCC addressing the status of the communications marketplace.<sup>18</sup> As Internet-based alternatives revolutionize how consumers purchase and consume video content, the number of subscribers to cable, DBS, and telco TV providers declines. As a consequence, there no longer is any reasoned rationale to maintain outdated regulations that (1) undermine the ability of traditional MVPDs to compete, and (2) in the absence of bottleneck-based justifications, progressively infringe upon their First Amendment protections.<sup>19</sup>

Local television stations increasingly compete in multichannel video distribution, as well. The recently announced transaction involving Scripps and ION highlights that over-the-air broadcasting's second act is about much more than cord cutters looking for an alternative – and free – way to access national network and localized content. Multicasting provides a viable distribution platform for the type of multichannel video programming that once required a subscription to a traditional MVPD. Going forward, the underway rollout of ATSC 3.0 will accelerate and expand that capability. The just-launched Evoca MVPD service is but an early example of what is possible.

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### **Further Readings**

Randolph J. May & Andrew Long, "[Maine's Cable Unbundling Law Violates the First Amendment](#)," *Perspectives from FSF Scholars*, Vol. 15, No. 39 (July 17, 2020).

[Comments of the Free State Foundation](#), The State of Competition in the Communications Marketplace, GN Docket No. 20-60 (April 27, 2020).

Seth L. Cooper, "[FCC Action Would Finally Eliminate Local Cable Rate Regulation](#)," *Perspectives from FSF Scholars*, Vol. 14, No. 31 (October 11, 2019).

Seth L. Cooper, "[Modern TV Act Would Remove Old Rules, Bring Video Policy Up to Date](#)," *FSF Blog* (July 25, 2019).

[Comments of the Free State Foundation](#), Leased Commercial Access, MB Docket No. 07-42; Modernization of Media Regulation Initiative, MB Docket No. 17-105 (July 22, 2019).

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<sup>18</sup> See generally Comments of the Free State Foundation, *The State of Competition in the Communications Marketplace*, GN Docket No. 20-60 (filed April 27, 2020), available at <https://freestatefoundation.org/wp-content/uploads/2020/04/FSF-Comments-Communications-Marketplace-Competition-042720.pdf>, at 17-21 (detailing the growth of Online Video Distributors (OVDs) and virtual MVPDs (vMVPDs)).

<sup>19</sup> See, e.g., *Comcast Cable Communications, LLC v. FCC*, 717 F.3d 982, 994 (2013) (Kavanaugh, Circuit Judge, concurring) ("In light of the Supreme Court's precedents interpreting the First Amendment and the massive changes to the video programming distribution market over the last two decades, ... the FCC cannot continue to implement a regulatory model premised on a 1990s snapshot of the cable market.").

Seth L. Cooper, "[FCC Gives the First Amendment Its Due in Cable Leased Access Proposal](#)," *FSF Blog* (June 5, 2019).

Randolph J. May, "[Deregulating the Video Marketplace](#)," *Perspectives from FSF Scholars*, Vol. 13, No. 31 (August 2, 2018).

Randolph J. May, "[Constitution Day at the FCC](#)," *FSF Blog* (September 15, 2016).

Randolph J. May, "[First Principles: Restoring the First Amendment to Its Rightful Place](#)," *FSF Blog* (January 6, 2014).

Seth L. Cooper, "[Court Ruling Factors First Amendment into Video Regulation Review](#)," *FSF Blog* (July 21, 2011).