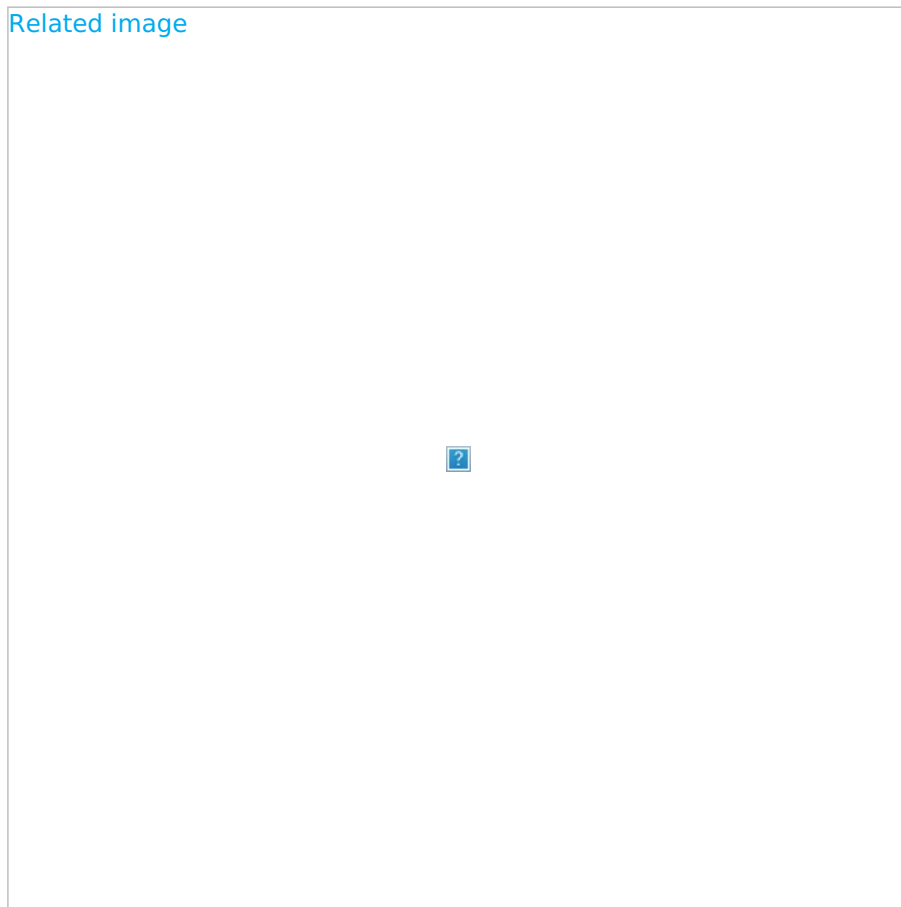


Will Your TV Watch You? FCC Green Lights Targeted Advertising in Next Gen TV Broadcasting Standard

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Last week, the Federal Communications Commission (FCC), in a 3-2 vote, approved an [order](#) allowing “television broadcasters to use the ‘Next Generation’ broadcast television (Next Gen TV) transmission standard, also called ‘ATSC 3.0.’” Described in the Order “as the world’s first Internet Protocol (IP)-based broadcast transmission platform,” the Next Gen TV standard is expected to allow broadcasters to provide more targeted advertisements to individual viewers. Some had expressed concerns over the collection of the demographic and consumer data necessary for Next Gen TV targeted advertising, and applicable privacy safeguards for the new standard. At this stage though, the FCC majority took a wait and see approach to privacy concerns.

Benefits: According to the FCC, the new ATSC 3.0 standard is intended to provide a number of benefits. These include:

- Providing consumers with a more immersive and enjoyable television viewing experience on both home and mobile screens; and
- Allowing broadcasters to offer enhanced public safety capabilities, including geo-targeting of emergency alerts, emergency alerts that can wake “sleeping devices” to warn consumers of imminent emergencies, and advanced accessibility options.

Transitions and Education about the New Standard. Because Next Gen TV will not be available on most current television sets, the Order requires broadcasters to continue supporting the current broadcasting standard for at least five years to minimize disruptions to consumers and other stakeholders. The FCC also requires broadcasters to provide “advance on-air notifications to educate consumers about Next Gen TV service deployment and simulcasting.” The Order further states that “[t]elevision stations transmitting signals in ATSC 3.0 will be subject to the public interest obligations currently applicable to television broadcasters.”

Privacy Concerns with the Next Gen TV Standard. FCC Commissioner Mignon Clyburn, a Democrat, voted against the Order and observed in her dissenting statement that consumer privacy questions “are important, in light of the two-way IP-based nature of this technology, and the plans to use it to enable targeted advertising. ... I appreciate those questions and the attention to this issue, as I am concerned that viewers are not and will not ever be aware that this is something they need to think about.”

Democratic Commissioner Jessica Rosenworcel also dissented from the Order, suggesting that the FCC is “rush[ing] this standard to market with an ugly disregard for the consumer consequences” and the Commission “need[s] to better understand targeted advertising on television and the implications for privacy, the use of encrypted signals, the collection of audience data, and the susceptibility to hacking and malware.”

These statements reflected some of the comments filed before the Order was issued that questioned the potential negative impacts to consumers, noting that broadcasters generally are not subject to the same privacy obligations as cable and other TV providers. For example, Consumers Union, Public Knowledge, and New America’s Open Technology Institute, in joint comments, urged the FCC to consider applying privacy safeguards to broadcasters if they collect and use consumer data for advertising purposes, made possible by the Next Gen TV standard.

Similar concerns were raised by Congressional Representative Debbie Dingell (D-MI) who, in a letter to FCC Chairman Ajit Pai, noted that the potential for broadcasters to offer targeted advertisements “raises questions about how advertisers and broadcasters will gather the demographic information from consumers which are necessary to do targeted advertisements, and what privacy protections will be in place for consumers.”

In the Order, the FCC majority, however, did not find the privacy concerns raised to be persuasive, stating in a footnote that “three commenters expressed concern about today’s action implicating consumer privacy, but none offered any evidence or substantiation to support their speculative assertions about such harm or any alternatives to address the alleged harm.” The final Order does not specifically address the concerns of Commissioners Clyburn and Rosenworcel or Representative Dingell.

Operational Considerations. Companies that are considering taking advantage of the Next Gen TV standard should review the Order carefully to determine what steps they should take for successful implementation. It also would be beneficial to evaluate whether existing consumer privacy policies and internal practices need to be updated to reflect new data collection that may result from deployment of ATSC 3.0.

Timing. The rule changes effectuated by the Order will become effective 30 days after the Order is published in the Federal Register, except those changes which will require approval by the Office of Management and Budget pursuant to the Paperwork Reduction Act.