PUBLIC NOTICE

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INCENTIVE AUCTION TASK FORCE AND MEDIA BUREAU ANNOUNCE THE INITIAL REIMBURSEMENT ALLOCATION FOR ELIGIBLE BROADCASTERS AND MVPDS

MB Docket No. 16-306
GN Docket No. 12-268

The Incentive Auction Task Force and the Media Bureau (Bureau) announce the issuance today of an initial allocation of the TV Broadcaster Relocation Fund (Fund) in the total amount of $1 billion to begin to reimburse eligible full power and Class A broadcasters and multichannel video programming distributors (MVPDs) (together, Eligible Entities), for expenses related to the construction of station facilities on reassigned channels.[1] The Bureau will continue to monitor closely the draw-down of Fund amounts and allocate additional amounts later in the transition period.

Background. The Spectrum Act requires the Commission to "reimburse costs reasonably incurred" by broadcast television licensees that are involuntarily reassigned to new channels as a result of the repacking process and by MVPDs in order to continue carrying the signals of licensees reassigned to new channels as a result of the incentive auction and repacking process.[2] In doing so, the Commission intends to be a prudent steward of taxpayer money by carefully evaluating cost estimates and invoices when administering the Fund to prevent waste, fraud, and abuse.[3]

The *Incentive Auction R&O* set forth the process for reimbursing Eligible Entities.[4] The Commission decided to allocate funding in tranches, including an initial allocation to help stations cover upfront expenditures (such as planning, engineering studies, etc.), equipment down payments, and other ancillary charges. This approach seeks to provide Eligible Entities with access to the funding necessary to timely begin their relocation work while avoiding undue financial burden.[5] Making allocations in more than one tranche also takes into account that the estimates of many Eligible Entities may be refined and change over time as they move forward with planning, provisioning, and construction. This approach

[1] *See Middle Class Tax Relief and Job Creation Act of 2012*, Pub. L. No. 112-96, §§ 6402, 6403, 125 Stat. 156 (2012) (Spectrum Act) at § 6403(d)(1); 47 U.S.C. § 309(j)(8)(G)(iii)(I).

[2] 47 U.S.C. § 1452(b)(4)(A)(i)-(ii).

[3] *See Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, 6820, para. 619 (noting the importance of "maintaining the integrity of the Fund," and delegating authority to the Bureau to "adopt the necessary policies and procedures relating to allocations, draw downs, payments, obligations, and expenditures of money from the [] Fund in order to protect against waste, fraud, and abuse and in the event of bankruptcy."), *affirmed, National Association of Broadcasters v. FCC*, 789 F.3d 165 (D.C. Cir. 2015) (*Incentive Auction R&O*).

[4] *See id.* at 6812-6826, paras. 598-636. *See also, supra*, note 1.

[5] As the Commission has noted, "this approach should ensure that broadcasters and MVPDs do not face an undue financial burden while also reducing the possibility that we allocate more funds than necessary to cover actual relocation expenses." *Incentive Auction R&O*, 29 FCC Rcd at 6819, para. 614.

allows the Bureau to review such changes and make additional allocations based upon the most accurate and complete information available. Issuing multiple allocations also provides the Bureau with flexibility to monitor closely the draw-down of funds and make any necessary adjustments prior to a subsequent allocation.[6] This staged process will therefore permit us to make timely allocations to keep the process moving forward, while reducing the likelihood that excess funds are allocated that would require the Commission to reduce future allocations or claw-back payments that have already been drawn down. In addition, the Fund management challenge of avoiding allocation reductions and claw-backs while assuring that we allocate funds fairly and consistently across all Eligible Entities is magnified by the estimated total demand on the Fund,[7] and the possibility that demand against the Fund will increase over time as more granular information becomes available.

As also contemplated in the *Incentive Auction R&O*, the initial allocation we are making today will give noncommercial educational broadcasters (NCEs) access to 10 percent more of their currently estimated total costs, as compared to commercial stations and MVPDs, due to their "unique funding constraints."[8] At the end of the program, all Eligible Entities are to provide information regarding any actual or remaining estimated costs and, if appropriate, will be issued a final allocation percentage out of the remainder of the Fund. If overpayment is discovered, entities will be required to return the excess funds to the Commission.[9]

Review of Reimbursement Estimates. Eligible Entities have submitted estimates on the Form 2100, Schedule 399 (Reimbursement Form), of the expenditures they expect to incur as a result of the post-auction repack. The aggregate of Eligible Entities' original estimates of demand on the Fund, as of July 14, 2017, was $2,115,328,744.33, which did not include estimates for certain stations that received a waiver of the initial estimate filing deadline and a number of MVPDs. That aggregate amount of initial submissions increased to $2,139,861,869.68 as a result of estimates submitted after July 14, 2017.[10]

To assist the Commission in its efforts to reimburse Eligible Entities, to allocate the Fund fairly across all Eligible Entities, and to be a prudent steward of taxpayer money, the Commission engaged the services of a contractor with extensive experience in television broadcast engineering services and

[6] *Id*.

[7] Demand on the Fund is discussed further in the *Review of Reimbursement Estimates* section below.

[8] *Incentive Auction R&O*, 29 FCC Rcd. at 6818, para. 614 (citing PTV Comments at 28–29).

[9] *Id.* at 6815-16, para. 607; *and see Incentive Auction Closing and Channel Reassignment Pub. Notice the Broad. TV Incentive Auction Closes; Reverse Auction and Forward Auction Results Announced; Final TV Band Channel Assignments Announced; Post-Auction Deadlines Announced*, Public Notice, 32 FCC Rcd 2786, 2816, para. 90 (2017) (*Closing and Channel Reassignment PN*).

[10] Certain stations that have received a waiver of the construction permit filing deadline have not yet filed their Reimbursement Forms. For the purposes of the initial allocation of available funding, a proxy of the expected reimbursable expenses for those stations was established based on available information, so that they will have allocated funds available, for purposes of reimbursement, to move forward with planning and down-payments on equipment needed to operate in accordance with reassigned channels. *See Closing and Channel Reassignment PN*, 32 FCC Rcd at 2809, para. 70 ("Stations that determine that they are unable to construct facilities that meet the technical parameters specified in the Technical Parameters file described in Section IV.B, or the contour coverage variance permitted by 47 CFR § 73.7300(b)(1)(ii) and (iii), as well as stations otherwise unable to meet the 90-day construction permit filing deadline, may seek waiver of the filing deadline."); *see also* Press Release, Federal Communications Commission, *Incentive Auction Task Force Announces Preliminary Reimbursable Cost Estimate for the Post-Auction Broadcast Transition* (Jul. 12, 2017), *available at*: https://apps.fcc.gov/edocs_public/attachmatch/DOC-345815A1.pdf. *See also Closing and Channel Reassignment PN*, 32 FCC Rcd at 2815, para. 87 (noting "[t]he Commission will assign a proxy estimate using, for instance, the cost estimates of similarly situated stations, in order to provide those stations with an initial allocation.").

Federal fund management (Fund Administrator).[11] The Fund Administrator reviewed the Reimbursement Forms and the accompanying supporting documentation to validate that the estimates reflect costs that may be reasonably incurred to relocate television service from a station's original channel to its reassigned channel or, in the case of MVPDs, to continue to carry the broadcast signal of a reassigned broadcast station. Requests for additional information were sent to entities where reasonableness could not be determined, where necessary documentation appeared to be missing, or where the requested reimbursement appeared to be excessive. After the Fund Administrator completed its review of the estimates, and the Bureau reviewed and verified its recommendations, the aggregate reimbursement demand for the purposes of the initial allocation, as of October 10, 2017, was $1,863,971,470.42.[12] Each Eligible Entity will receive a direct e-mail communication on behalf of the Bureau describing the results of the reasonableness review, which will include: the aggregate verified amount for that entity's submitted estimate; where adjustments (if any) were made; and the rationale and amount of the modification to any cost estimate line items.

We emphasize that the verified estimates used for purposes of this initial allocation are likely to rise as Eligible Entities are able to produce adequate justification for their unverified initial estimates and refine and supplement their estimates as their construction planning and execution continues, including, for instance, as stations more fully evaluate tower and rigging needs, incur engineering and other consulting costs, and realize the impact of cost increases in equipment and services over the three-year transition period.[13]

Initial Allocation. In accordance with what the Commission has previously stated,[14] we will initially allocate approximately $1 billion,[15] which we believe will be sufficient to meet anticipated near-term expenditures. Based on the total verified aggregate demand on the Fund, as of October 10, 2017, the initial allocation will give commercial stations and MVPDs access to approximately 52 percent of their currently estimated and verified costs, and NCEs access to approximately 62 percent of their currently estimated and verified costs. The Bureau, in consultation with the Fund Administrator, considered the reimbursement demand by discrete cost categories, including the estimated expenditures anticipated to be incurred as up-front costs, down payments on equipment, and other associated starting costs, as well as other "pre-implementation" and "early implementation" costs billed in the ordinary course of trade. Based on an analysis of the various cost categories, equipment costs that require partial down payments or

[11] *See Incentive Auction R&O*, 29 FCC Rcd at 6820, para. 618 (directing the Bureau to engage a contractor to assist in the administration of the Fund, to be overseen by the Bureau).

[12] If, at the conclusion of the reasonableness review, certain expenses remained inadequately justified or otherwise not reimbursable, such expenses were, depending upon the nature of the concern, excluded from the recommended verified estimate amount or adjusted to the Cost Catalog amount for purposes of an entity's initial allocation. We note, however, that additional cost documentation or other revisions subsequently submitted in the Reimbursement Form will be considered in a later allocation. Based on our initial review of reimbursement estimates, commercial broadcast stations require approximately $1.6136 billion, NCEs require approximately $294.9 million, and MVPDs require approximately $17.9 million.

[13] *See Incentive Auction Task Force and Media Bureau Finalize Catalog of Reimbursement Expenses*, Public Notice, 32 FCC Rcd 1199, 1205, para. 12 (IATF/MB 2017) (adopting methodology for annually updating baseline costs listed in the Cost Catalog using the Producer Price Index (PPI), WPUFD4 series, as calculated by the Bureau of Labor Statistics, to ensure that the baseline costs remain current throughout the reimbursement period, and further noting that if actual price increases outpaced the PPI we would propose adjusting the baseline costs accordingly).

[14] *See Incentive Auction R&O*, 29 FCC Rcd at 6819, para. 615. *See also Closing and Channel Reassignment PN*, 32 FCC Rcd at 2815, para. 87.

[15] The precise allocation is $1,000,003,751.80, which represents exactly 52.095 percent of the currently verified estimated expenses of commercial stations and MVPDs, and 62.095 percent of the currently verified estimated expenses of NCEs.

full pre-payment combined with up-front, labor costs are expected to be less than the $1 billion included in this initial allocation. Additionally, the Bureau considered the initial allocation in light of the estimated funding needs as requested by stations assigned to the earliest phases of the transition. This analysis validates the Commission's original determination that an initial allocation of $1 billion is reasonable. We emphasize that Eligible Entities can submit cost documentation for reimbursement for any reimbursable expense they incur; they are not limited to requesting reimbursement only for up-front or "early implementation" costs following this initial allocation.

The initial allocation made today does not reflect the total estimated reimbursement for Eligible Entities' actual costs; rather, it is intended to provide entities with access to reimbursement funding sufficient to begin the transition process, while preserving flexibility to respond to unforeseen changes that may arise while undertaking transition activities. The timing and amount of a subsequent allocation or allocations will be based on careful and continual monitoring of the draw-down amounts as well as revisions to initial cost estimates as more refined data becomes available, so that an additional allocation can be made promptly when it appears that Eligible Entities are beginning to incur eligible costs beyond that which can be covered by the prior allocation. It is therefore especially important that entities seeking reimbursement timely submit invoices after incurring costs. We will be guided by what the facts show as the reimbursement process unfolds, but currently anticipate making a second allocation in the near future, and well in advance of the first phase testing period.[16]

Individual Allocation Amounts. Stations and MVPDs may view their individual allocations in the CORES Incentive Auction Financial Module pursuant to the procedures outlined in the *Financial Procedures Public Notice*.[17] Authorized Agent(s) for Eligible Entities will be able to view the exact amount allocated to them in the Auction Payments component of the CORES Incentive Auction Financial Module.[18] Eligible Entities may immediately begin submitting documentation of actual expenses incurred for approval to be drawn down against their individual allocations by uploading invoices or receipts and resubmitting the Reimbursement Form in the Bureau's Licensing and Management System. Invoices for actual expenses incurred that have already been submitted will also be reviewed and processed for payment upon approval.

Phase Transition Deadlines. Because allocations will be made in tranches, the initial allocation made today does not reflect the total estimated cost of a station's anticipated expenditures. All stations that are transitioning to new channels should be mindful of the applicable phase transition deadlines and plan for and initiate the various stages of their construction project in a timely manner to satisfy those deadlines. We have provided several tools that will allow us to provide relief to stations that are ultimately unable to satisfy certain deadlines due to circumstances beyond their control.[19] Such relief will

[16] The first phase testing period starts September 14, 2018. The full transition schedule can be found in the *Closing and Channel Reassignment PN. See* 32 FCC Rcd at 2806, para. 64; *and* Federal Communications Commission Transition Schedule website: https://www.fcc.gov/about-fcc/fcc-initiatives/incentive-auctions/transition-schedule.

[17] *See Procedures for Submitting Financial Information Required for the Disbursement of Incentive Payments and Reimbursement Payments after the Incentive Auction Closes*, Public Notice, 32 FCC Rcd 2003, 2029, para. 96 (2017).

[18] If the eligible entity has consummated a change in ownership since the submission of the Reimbursement Form, allocations will not be visible until that station returns to the Form, verifies and corrects the contact information, and certifies and resubmits the Reimbursement Form.

[19] These tools include temporarily operating on the post-auction channel at variance with reduced power, temporarily operating from an interim or an auxiliary facility, temporarily operating on an alternate channel, temporarily engaging in the joint use of another channel, other arrangements agreed upon by the other affected stations. *See Incentive Auction Task Force and Media Bureau Adopt a Post-Incentive Auction Transition Scheduling Plan*, Public Notice, 32 FCC Rcd 890 (IATF/MB 2017); *and Incentive Auction Task Force and Media*

be granted on a case-by-case basis to accommodate stations that face unforeseen circumstances to prevent a station from going dark. Failure to timely initiate a construction project or undertake necessary steps to complete the transition by the phase transition date due to the amount of the initial allocation or any subsequent allocation will not be weighed favorably as a factor in considering such grants of relief.

Resources. Educational and reference materials about the reimbursement process and the Reimbursement Form are accessible via the Commission's website at: https://www.fcc.gov/incentiveauctions/reimbursement. These materials will be updated periodically throughout the reimbursement period.

Additional Information. For questions about the reimbursement process, please call the Reimbursement Help Line at (202) 418-2009, or e-mail Reimburse@fcc.gov. Questions about this Public Notice may be directed to Raphael Sznajder at (202) 418-1648 or Raphael.Sznajder@fcc.gov, or Jeffrey Neumann at (202) 418-2046 or Jeffrey.Neumann@fcc.gov, of the Media Bureau. Press contact: Charlie Meisch, (202) 418-2943 or Charles.Meisch@fcc.gov.

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Bureau Announce Procedures for the Post-Incentive Auction Broadcast Transition, Public Notice, 32 FCC Rcd 858 (IATF/MB 2017).