PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information: 202-418-0500
Internet: www.fcc.gov
TTY: 888-835-5322

DA 18-372
Released: April 16, 2018

INCENTIVE AUCTION TASK FORCE AND MEDIA BUREAU ANNOUNCE A FURTHER 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) today announce the issuance of a further allocation of the TV Broadcaster Relocation Fund (Fund) in the amount of $742 million 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 television channels.[1] With this further allocation, Eligible Entities have access to a total of $1.742 billion. This represents approximately 92.5 percent of their currently verified cost estimates, but we stress that individual invoices that are approved for payment are being paid in full (i.e. 100 percent), up to the total amount of the station or MVPD's allocation.[2]

Background. We are engaged in an ongoing program to "reimburse costs reasonably incurred" by full power and Class A broadcast television licensees that were involuntarily reassigned to new channels as a result of the incentive auction and repacking process, and by MVPDs in order to continue carrying the signals of those licensees reassigned to new channels.[3] To be a prudent steward of taxpayer money and prevent waste, fraud, and abuse, we carefully evaluate cost estimates and invoices when administering the Fund and we are allocating funding in tranches to ensure that stations have the funding necessary to timely undertake their transition work while reducing the possibility of having to reduce future allocations to assure that funds are fairly distributed among all stations and MVPDs.[4]

At the time we made the initial allocation on October 16, 2017, the total estimated demand on the Fund exceeded the amount available in the Fund.[5] Specifically, the total amount of funds available to Eligible Entities was $1.75 billion, the total verified cost estimates Eligible Entities submitted on the

[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] This allocation does not include funds from the *Repack Airwaves Yielding Better Access for Users of Modern Services Act of 2018*, H.R. 4986, 115th Cong. § 601 (2018) (codified at 47 U.S.C. § 1452) (Ray Baum's Act), which is described below.

[3] 47 U.S.C. § 1452(b)(4)(A)(i)-(ii).

[4] *Incentive Auction Task Force and Media Bureau Announce the Initial Reimbursement Allocation for Eligible Broadcasters and MVPDs*, Public Notice, 32 FCC Rcd 7556, 7556-57 (IATF/MB 2017) (*Initial Allocation PN*); *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, 6812-26, paras. 598-636 (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*).

[5] *Initial Allocation PN,* 32 FCC Rcd at 7557.

Form 2100, Schedule 399 (Reimbursement Form) equaled $1.86 billion, and we concluded that the estimates were likely to rise during the course of the transition.[6] This situation imposed significant Fund management challenges.[7] At that time, the Bureau allocated approximately $1 billion to Eligible Entities, which represented approximately 52 percent of the then-current verified cost estimates for commercial stations and MVPDs, and 62 percent for noncommercial educational broadcasters (NCEs).[8] The amount of the initial allocation was informed by the total verified cost estimates and an assessment of the reimbursement demanded across particular cost categories.[9] When we announced the initial allocation, we stated that we will "monitor closely the draw-down of Fund amounts and allocate additional amounts later in the transition period."[10] Because we rely on draw-down amounts and submitted estimates, including revisions, to make allocation decisions, we have encouraged Eligible Entities to promptly submit incurred costs for reimbursement and to revise their cost estimates, if applicable, based on more refined quotations from vendors and other current information.[11]

In a public notice issued March 8, 2018, we stated that our assessment of the draw-down amounts from the Fund indicated that it would be appropriate to issue a subsequent allocation of the available Fund in approximately four to six weeks.[12] Since issuance of the initial allocation, numerous Eligible Entities have claimed reimbursement for their reasonably incurred costs and, while the vast majority have not yet approached exhaustion of their initial allocation funding, a number of entities have reached draw-down levels indicating that they will soon reach, or even exceed, their remaining funding.[13] Additionally, several Eligible Entities have revised their cost estimates with more detailed information as construction planning and execution has proceeded, which has changed the total reimbursement demand. In the *Forthcoming Allocation PN*, we noted that the total verified and unverified cost estimates submitted by Eligible Entities as of March 7, 2018, was approximately $1.95 billion.[14]

After the *Forthcoming Allocation PN* was released, Congress passed the Ray Baum's Act, providing that, upon certification from the Commission to the Secretary of the Treasury that the Fund is likely to be insufficient to reimburse reasonably incurred costs, the Fund will be supplemented in an

---

[6] *Initial Allocation PN*, 32 FCC Rcd at 7558 (stating, "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.")

[7] In the Initial Allocation PN, we noted 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." *Id*. at 7557.

[8] The precise allocation was $1,000,003,751.80. *Id.* at 7558, n.15. As contemplated in the *Incentive Auction R&O*, the initial allocation gave NCEs access to 10 percent more of their then-currently estimated total costs, as compared to commercial stations and MVPDs, due to their "unique funding constraints." 29 FCC Rcd. at 6818, para. 614 (citing PTV Comments at 28–29).

[9] Based on this review, the Bureau concluded that this amount would be sufficient to cover "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." *Initial Allocation PN*, 32 FCC Rcd at 7558.

[10] *Id*. at 7556.

[11] *Id.* at 7559. *See also Incentive Auction Task Force and Media Bureau Announce a Forthcoming Reimbursement Allocation for Eligible Broadcasters and MVPDs*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, DA-18-223 at 1 (IATF/MB Mar. 8, 2018) (*Forthcoming Allocation PN*).

[12] *Forthcoming Allocation PN* at 1.

[13] *Id.* at 2.

[14] *Id*.

amount up to $750 million to reimburse Eligible Entities.[15] Upon such certification, the total Fund available to Eligible Entities will be $2.5 billion.[16] The availability of these additional funds substantially mitigates the Fund management challenges described in our *Initial Allocation PN* and allows us to make a further allocation in an amount greater than what otherwise would have been possible prior to passage of the legislation.[17]

Further Allocation. In addition to the approximately $1 billion previously allocated, this further allocation will make available an additional $742 million for a total allocation of $1.742 billion. Based on the aggregate verified cost estimates as of April 9, 2018, $1.883 billion,[18] all Eligible Entities have access to approximately 92.5 percent of their currently verified cost estimates.[19]

In determining the appropriate amount for the further allocation, the Bureau, in consultation with the Fund Administrator, considered the amount of funding available and the reimbursement demanded by Eligible Entities across several discrete cost categories. Analysis of submitted estimates and invoices indicates that an increasing number of stations will continue to incur costs for major equipment purchases requiring substantial payments and sometimes incurring obligations for additional sequenced payments. Consistent with our expectation in the *Initial Allocation PN*, we anticipate that estimated costs will continue to rise.[20] We have also considered the proximity of construction application and phase transition deadlines especially for stations in early phases.

We think that a further allocation of $742 million will permit Eligible Entities to execute their post-auction construction. As the Commission has stated, holding back a percentage of the total estimated costs ensures that Eligible Entities "do not face an undue financial burden" while at the same time reducing the likelihood that excess funds are allocated that would require the Commission to claw-back payments that have already been drawn down by Eligible Entities.[21] Although only a small fraction of Eligible Entities are currently approaching the limit of their initial allocation funding, this further allocation ensures all entities continue to have sufficient ongoing access to reimbursement funding to fully pursue their transition projects. We will continue to monitor closely the draw-down of the Fund to determine if additional allocations are warranted. At the end of the program, all Eligible Entities will 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

[15] Upon certification, the legislation makes $350 million available to full power and Class A stations in fiscal year 2018, and $400 million in fiscal year 2019. Congress also made available $250 million for other purposes not relevant to today's allocation. *See* Ray Baum's Act.

[16] *See* Ray Baum's Act.

[17] *See supra* note 7.

[18] The precise value of the further allocation is $741,567,128.08. Together with the precise value of the initial allocation of $1,000,003,751.80 the total allocation is $1,741,570,879.88.

[19] As a result of the significant amount of the allocation we are able to make available in this further allocation to all Eligible Entities, despite our prediction in the *Forthcoming Allocation PN*, we no longer think that it is necessary to continue to provide NCEs with access to 10 percent more of their verified cost estimates relative commercial stations and MVPDs. *See Forthcoming Allocation PN* at 2.

[20] *Initial Allocation PN*, 32 FCC Rcd at 7758.

[21] *See Incentive Auction R&O*, 29 FCC Rcd at 6819, paras. 614-16 (providing, "If any allocated funds remain in an entity's Treasury account in excess of the entity's actual costs determined to be eligible for reimbursement, those funds will revert back to the Reimbursement Fund.").

be required to return the excess funds to the Commission.[22]

Individual Allocation Amounts. Stations and MVPDs may view their updated individual allocations in the CORES Incentive Auction Financial Module pursuant to the procedures outlined in the *Financial Procedures Public Notice*.[23] 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 shortly following the release of this Public Notice.[24] Eligible Entities may continue to draw down against their individual allocations by uploading invoices or receipts and resubmitting the Reimbursement Form in the Bureau's Licensing and Management System. As noted above, approved invoices will continue to be paid in full up to the full amount of a station's or MVPD's allocation, including the additional amount allocated today.

Phase Transition Deadlines. We emphasis that all stations reassigned to new channels are subject to the applicable phase transition deadline the Commission has imposed on the station. All transitioning stations must be mindful of their particular transition phase deadlines, and plan for and initiate the various stages of their construction projects in a timely manner to meet their deadlines.[25] We are closely tracking the progress of stations through the transition period by monitoring reimbursement activity and the content of individual Form 2100, Schedule 387 (Transition Progress Report) forms filed quarterly and at certain milestone dates in a station's transition.[26] We have engaged in and will continue to undertake extensive outreach to transitioning stations to provide support, information, and guidance throughout the transition. Each station is assigned to a Regional Coordinator to enhance our ability to closely monitor station progress and provide a first point of contact at the Commission for stations to ensure a smooth and efficient transition.[27]

Although the Ray Baum's Act provides a process by which the Commission could have additional time to undertake a final accounting of reimbursement payments at the conclusion of the

---

[22] *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).*

[23] *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).

[24] If the eligible entity has consummated a change in ownership since the most recent 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.

[25] *Closing and Channel Reassignment PN*, 32 FCC Rcd at 2805-09, 2816, paras. 61-65, 69, 90; *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Auction Broadcast Transition*, Public Notice, 32 FCC Rcd 858 (IATF/MB 2017) (*Transition Procedures PN*); *Incentive Auction Task Force and Media Bureau Adopt a Post-Incentive Auction Transition Scheduling Plan*, Public Notice, 32 FCC Rcd 890 (IATF/MB 2017) (*Transition Scheduling PN).*

[26] *See e.g., Incentive Auction Task Force and Media Bureau Release Transition Progress Report and Filing Requirements for Stations Eligible for Reimbursement from the TV Broadcast Relocation Fund & Seek Comment on the Filing of the Report by Non-Reimbursable Stations*, Public Notice, 32 FCC Rcd 256 (IATF/MB 2017); *The Incentive Auction Task Force and Media Bureau Adopt Filing Requirements for the Transition Progress Report Form by Stations that are Not Eligible for Reimbursement From the TV Broadcast Relocation Fund*, Public Notice, 32 FCC Rcd 4029 (IATF/MB 2017).

[27] *See Incentive Auction Task Force and Media Bureau Announce Regional Coordinators to Facilitate Post-Auction Transition for Broadcast Stations*, Public Notice, 32 FCC Rcd 3113 (IATF/MB 2017).

reimbursement program,[28] the 39-month post-auction transition period that began with the release of the *Closing and Channel Reassignment PN* remains unchanged.[29] We emphasize that the possibility of an extended reimbursement period does not in any way alter the mandatory nature of applicable phase transition deadlines. As we have stated, the Bureau will view unfavorably any application/request for modifications of the transition schedule that would likely delay or disrupt the transition.[30] While the Bureau "does not intend to grant request that would disrupt the transition,"[31] we have provided several tools that will allow us to provide alternative transition solutions that could resolve unforeseen circumstances that could force a station to go dark.[32] We reiterate, however, our prior admonition that 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 any allocation will not be weighed favorably as a factor in considering grants of such relief.[33]

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 continue to 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.

- FCC –

[28] Pursuant to the Ray Baum's Act, the reimbursement period could be extended until July 3, 2023. *See* Ray Baum's Act § 1452(j)(2)(B)(ii).

[29] Currently, the reimbursement period is circumscribed to April 13, 2020, three years following completion of the forward auction. *See* Spectrum Act § 1452 (b)(4)(D) ("The Commission shall make all reimbursements … not later than the date that is 3 years after the completion of the forward auction…"); *see also Incentive Auction R&O*, 29 FCC Rcd at 6782, 6796, paras. 525, 559 ("With these goals in mind, we adopt a 39-month transition period."); *Closing and Channel Reassignment PN*, 32 FCC Rcd at 2805-09, 2816, paras. 61-65, 69, 90.

[30] *Transition Procedures PN*, 32 FCC Rcd at 880-81, para. 73.

[31] *Transition Scheduling PN*, 32 FCC Rcd at 913, para. 50.

[32] *Transition Procedures PN*, 32 FCC Rcd at 872 -74, paras. 46-49; *Transition Scheduling PN*, 32 FCC Rcd at 912-917, paras 47-59; *Initial Allocation PN*, 32 FCC Rcd at 7559-60.

[33] *See Initial Allocation PN,* 32 FCC Rcd at 7559-60; *see also Transition Procedures PN* at 871 -74, 880-81, paras. 39-49, 73-74; *Transition Scheduling PN,* 32 FCC Rcd at 912-14, paras. 49-52.