



# PUBLIC NOTICE

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## INCENTIVE AUCTION TASK FORCE AND MEDIA BUREAU RELEASE CATALOG OF POTENTIALLY REIMBURSABLE COSTS FOR LOW POWER TELEVISION, TELEVISION TRANSLATOR, AND FM BROADCAST STATIONS

**MB Docket No. 18-214**

**MB Docket 16-306**

**GN Docket No. 12-268**

### I. INTRODUCTION AND BACKGROUND

1. The Incentive Auction Task Force and the Media Bureau (Bureau) release the attached catalog of potentially reimbursable costs for Low Power Television (LPTV), television translator, and FM broadcast stations affected by channel changes by full-power and Class A television stations resulting from the Federal Communications Commission's (Commission's) broadcast television spectrum incentive auction. The Catalog of Eligible Expenses (LPTV/Translator/FM Cost Catalog or Cost Catalog) is a standardized list of services and equipment designed to facilitate the reimbursement process for LPTV, translator, and FM broadcast stations, which became eligible for reimbursement pursuant to the 2018 Reimbursement Expansion Act (REA).<sup>1</sup>

2. The REA requires the Commission to complete a rulemaking to implement a reimbursement process for LPTV/translator and FM broadcast stations “[n]ot later than 1 year” after the adoption of the REA, or by March 23, 2019.<sup>2</sup> It also directs that the rulemaking “shall include the development of lists of reasonable eligible costs to be reimbursed by the Commission.”<sup>3</sup> The Commission directed the Bureau to “develop a revised Catalog of Eligible Expenses” for LPTV,

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<sup>1</sup> See *Consolidated Appropriations Act, 2018*, Pub. L. 115-141, at Division E, Title V, § 511, 132 Stat. 348 (2018) (codified at 47 U.S.C. § 1452(j)-(n)). The REA provides that “the Commission shall reimburse costs reasonably incurred by a television translator station or low power television station on or after January 1, 2017, in order for such station to relocate its television service from one channel to another channel or otherwise modify its facility as a result of the reorganization of broadcast television spectrum” under the Spectrum Act. 47 U.S.C. § 1452(k)(1). The REA also provides that “the Commission shall reimburse costs reasonably incurred by an FM broadcast station for facilities necessary for such station to reasonably minimize disruption of service as a result of the reorganization of broadcast television spectrum.” 47 U.S.C. § 1452(l)(1)(A). The REA provides an additional \$1 billion in funding, \$600 million in fiscal year 2018 and \$400 million in fiscal year 2019. Of the \$600 million available in fiscal year 2018, the REA provides that “not more than” \$150 million be used to reimburse LPTV and TV translator stations, and “not more than” \$50 million be used to reimburse FM broadcast stations. 47 U.S.C. § 1452(j)(2)(A)(i).

<sup>2</sup> 47 U.S.C. § 1452(m)(1).

<sup>3</sup> *Id.* § 1452(m)(2).

translator, and FM broadcaster stations.<sup>4</sup> The draft Cost Catalog was put out for comment on October 22, 2018, and the record closed on December 6, 2018.<sup>5</sup> In response to input received from commenters and based on our own further review, we make certain minor changes to the draft Cost Catalog as discussed below. This final version of the LPTV/Translator/FM Cost Catalog that we adopt today will be incorporated into FCC Form 2100, Schedule 399 (the Reimbursement Form) and available for reference by eligible entities throughout the reimbursement process.

3. On March 15, 2019, the Commission implemented the REA by adopting a reimbursement process for LPTV, translator, and FM broadcast stations that largely mirrors the process in place to reimburse full-power and Class A television stations and multichannel video programming distributors (MVPDs) from the TV Broadcaster Relocation Fund.<sup>6</sup> Specifically, the Commission adopted rules establishing the process that will be used to reimburse LPTV and translator stations for costs reasonably incurred by certain “television translator station[s] or low power television station[s]” to relocate channels or modify facilities as a result of the reorganization of broadcast television spectrum,<sup>7</sup> including both “hard” expenses, such as new equipment and tower rigging, and “soft” expenses, such as legal and engineering services.<sup>8</sup> The *Report and Order* also adopted rules to reimburse these same types of costs for FM stations<sup>9</sup> that must replace or modify equipment and stations that must construct or upgrade auxiliary facilities in order to reasonably minimize disruption of service as a result of the reorganization of broadcast television spectrum.<sup>10</sup> Consistent with the conclusions adopted in the *Report and Order*, the Cost Catalog contains an extensive, but not exhaustive list of equipment and services that are potentially reimbursable for LPTV, translator, and FM broadcast stations affected by the channel change of a repacked full-power or Class A station. The role of the LPTV/Translator/FM Cost Catalog in the reimbursement process will be to provide predetermined costs or cost ranges for use as estimates when stations do not have vendor quotes, and establish acceptable price ranges, which provide guidance but do not serve as price caps and may be exceeded upon submission of additional cost justification documentation.<sup>11</sup> This Cost Catalog largely mirrors the same categories as the existing catalog for Class A and full-power stations and MVPDs but is tailored to the specific equipment and services likely to be purchased by LPTV, translator, and FM stations.

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<sup>4</sup> *LPTV, TV Translator, and FM Broadcast Station Reimbursement; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking and Order, 33 FCC Rcd 7855, 7892, para. 91 (2018) (*Reimbursement Expansion NPRM and Order*).

<sup>5</sup> *Incentive Auction Task Force and Media Bureau Seek Comment on Catalog of Potentially Reimbursable Costs Incurred by Low Power Television, Television Translator and FM Broadcast Stations*, MB Docket Nos. 18-214, 16-306, GN Docket No. 12-268, Public Notice, DA 18-1072 (MB Oct. 22, 2018), 2018 WL 5262925. We received four comments and no reply comments in response to the PN seeking comment on the draft LPTV/Translator/FM Cost Catalog.

<sup>6</sup> *LPTV, TV Translator, and FM Broadcast Station Reimbursement; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, MB Docket Nos. 18-214, 16-306, GN Docket No. 12-268, Report and Order, FCC 19-21, paras. 2, 6, 11, 22-31 (2019) (*Report and Order*).

<sup>7</sup> *Id.* at paras. 22, 38.

<sup>8</sup> *Id.* at para. 38.

<sup>9</sup> The Commission concluded that full-service and FM translator stations meet the definition of “FM broadcast station” in the REA, and that low power FM stations should also be considered “FM broadcast stations” for reimbursement purposes. *Id.* at paras. 56-57. We therefore use “FM broadcast station” to collectively refer to these three service categories.

<sup>10</sup> *Id.* at paras. 2, 54, 64-87.

<sup>11</sup> In addition, the prices in the Catalog do not serve as price floors. That is, a station may submit an estimated cost for an expense that is below what is stated in the Catalog. Moreover, reimbursement is based on actual costs, even if that cost falls below what is stated in the Catalog.

## II. DISCUSSION

4. As an initial matter, NPR expressed general concern that the catalog limits the range of equipment and services that is potentially reimbursable.<sup>12</sup> We reiterate that the Cost Catalog is a non-exhaustive list of equipment and services LPTV, translator, and FM broadcast stations are likely to purchase or modify in any adjustment they must make to accommodate repacked full-power and Class A television stations. It is intended to serve as a reference guide that will add structure to the process of claiming reimbursement by identifying the types of equipment and services that are most commonly required to construct new broadcast facilities, as well as their price ranges identified by a third-party survey of industry vendors. To the extent that particular equipment or services are not explicitly listed in the Catalog, we note that the Reimbursement Form provides flexibility for users to claim reimbursement for such reasonably incurred expenses. The “Other” category will serve as a catch-all to accommodate expenses that do not fall into the specified categories.<sup>13</sup>

5. Commenters also proposed specific additions or changes to the draft catalog. In several instances, we agree that the draft catalog should be modified. We agree with NPR that the initial price range proposed in the draft Cost Catalog for “Lease negotiations or other legal matters” for FM stations should be equivalent with the range for LPTV and translator stations, and we make that change in the final LPTV/Translator/FM Cost Catalog.<sup>14</sup> We also amend the Cost Catalog to add a line for FM stations to purchase a combined HD Importer/Exporter, a relatively new product that combines an HD radio importer and exporter into one unit.<sup>15</sup> In addition, on our own initiative, we update the Cost Catalog amounts for filing fees associated with certain Media Bureau applications that LPTV, translator, and FM stations may need to file to implement the facilities changes required to remain on the air during the TV spectrum repack.<sup>16</sup>

6. In other instances, we do not agree with commenters that the draft catalog should be modified. We disagree with Edge Spectrum that HVAC or helicopter expenses will be commonly incurred by LPTV and translator stations given the relatively shorter towers and lower-powered

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<sup>12</sup> National Public Radio (NPR) Comments at 3.

<sup>13</sup> For example, if a station incurs insurance expenses resulting directly from the impact of a repacked station, the station could include these expenses under the “Other” category. *See* NPR comments at 6.

<sup>14</sup> NPR Comments at 5. The Catalog now includes a range of \$2,255-4,095 for “Lease negotiation or other legal matters” in Section II.E, which applies to costs potentially incurred by LPTV and translators and in Section III.E, which applies to costs potentially incurred by FM stations. We are not persuaded, however, by NPR’s argument that the upper limit of this range should be increased to \$5,000 because we find that this range has proven generally sufficient guidance for full-power and Class A stations. We also note that the higher number in the range does not serve as a reimbursement cap for expenses that exceed this amount but are found to be reasonably incurred and submitted with sufficient justification.

<sup>15</sup> NPR Comments at 5. *See* “Combined HD Importer/Exporter,” with a range of \$2,550-4,800 in Section III.A.1 of the Cost Catalog.

<sup>16</sup> *See* Federal Communications Commission, Application Fee Filing Guide for Media Bureau (effective Sept. 4, 2018), available at <https://docs.fcc.gov/public/attachments/DOC-353919A1.pdf>. Specifically, we updated the Cost Catalog for LPTV and translator stations to delete the line “FCC Form 2100 Minor Change Construction Permit” because there is no fee charged for minor modifications, including displacement applications. We also modify the Cost Catalog to change the estimates for FCC Filing Fees listed in Section II.F as follows: “FCC Form 2100 Major Change Construction Permit” (from \$4,960 to \$835); “FCC Form 2100 License to Cover” (from \$335 to \$170); “FCC Form 2100 STL” (from \$305 to \$170). We also modify the Cost Catalog estimates for FM broadcast stations in Section III.F and update the relevant application numbers as follows: “FCC Form 301/340 Major Change Construction Permit” (from \$1,110 to \$3,975); “FCC Form 301/340 Minor Change Construction Permit” (from \$200 to \$1,110); “FCC Form 302 License to Cover (non-directional antenna)” (\$225); “FCC Form 302 License to Cover (directional antenna)” (\$695); “FCC Form 359 FM Translator Major Change Construction Permit” (\$835); and “FCC Form 350 FM Translator License to Cover” (from \$305 to \$170).

transmitters used by these stations.<sup>17</sup> There is no evidence in the record to dispute that conclusion. Accordingly, we do not include a specific line item for these expenses in the Cost Catalog. A station that determines it will incur these costs may submit a vendor quote along with its estimate and can be reimbursed if such expenses are found to be reasonably incurred. Additionally, although we agree with NPR that stations are likely to deploy previously used equipment<sup>18</sup> or to lease equipment or tower space temporarily, we believe that these costs are too variable to capture in the Cost Catalog. The Catalog already includes costs associated with reconfiguring transmitters and translators and, to the extent antennas, transmission line, or any other equipment can be modified rather than replaced, a station could submit such expenses for reimbursement by indicating on the Reimbursement Form that it is deploying used or leased equipment and submitting a quote and estimate for the associated costs.<sup>19</sup>

7. With regard to professional services, we acknowledge NPR's request that the "Professional Services" category include a broad range of program management and consulting costs because local public radio stations are likely to need "legal, engineering, and consulting services to assist with overall planning, determining the specific steps needed to minimize disruption, and procuring equipment, labor and services."<sup>20</sup> Similarly, we acknowledge Missouri Southern State University's advocacy regarding the breadth of project management tasks performed by station employees.<sup>21</sup> Nevertheless, we believe that the Catalog is sufficient to accommodate engineering and legal "Planning and Preparation" costs and expenses resulting from "Project Management," and we decline to amend the catalog based on these comments.

8. MSSU argues further that project management should include "resolving a potential MX matter."<sup>22</sup> The REA provides with respect to LPTV/translator stations that "[t]he Commission may not make reimbursement . . . for costs incurred to resolve mutually exclusive applications, including costs incurred in any auction of available channels."<sup>23</sup> In the *Report and Order*, the Commission concluded that, consistent with the REA, costs associated with the Settlement Window to resolve mutual exclusivity will not be reimbursed.<sup>24</sup> Because expenses resulting from resolving mutually exclusive applications are not eligible for reimbursement under the statute, it is unnecessary to add such a subcategory to the Cost

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<sup>17</sup> See Edge Spectrum, Inc. Comments at 2.

<sup>18</sup> The Commission proposed to require justification before receiving reimbursement for new equipment. See *Reimbursement Expansion NPRM and Order*, 33 FCC Rcd at 7875, para. 43 ("We propose to adopt a similar requirement that displaced LPTV/translator stations reuse their own equipment to the extent possible, and that displaced LPTV/translator stations seeking reimbursement provide a justification why it is reasonable to purchase new equipment rather than reuse existing equipment.") and 33 FCC Rcd at 7886, para. 73 ("We propose to adopt a similar requirement that FM stations reuse their own equipment, to the extent possible."). The Commission adopted these proposals. *Report and Order* at paras. 44-46, 68-69, 83-86.

<sup>19</sup> NPR also suggests stations that deployed used equipment could qualify for "maintenance" of such equipment. NPR comments at 4. While we find that ongoing, routine maintenance of equipment is not reimbursable because it is not necessitated by the TV spectrum repack, in instances in which specific work was undertaken to make a previously used piece of equipment operational, we will consider these expenses on a case-by-case basis.

<sup>20</sup> NPR Comments at 5-6.

<sup>21</sup> Missouri Southern State University (MSSU) Comments at 3. We note that reimbursement requests for internal staff labor require additional documentation. Additional guidance is provided in *Incentive Auction Task Force and Media Bureau Finalize Catalog of Reimbursement Expenses*, Public Notice, 32 FCC Rcd 1199, 1203, para. 6 (MB 2017) and in the Reimbursement Frequently Asked Questions available on the Commission's Incentive Auction website at <https://www.fcc.gov/sites/default/files/reimbursement-faqs-07242018.pdf>.

<sup>22</sup> MSSU Comments at 3.

<sup>23</sup> 47 U.S.C. § 1452(k)(4).

<sup>24</sup> *Report and Order* at para. 49.

Catalog. Similarly, we decline to modify the Cost Catalog in accordance with MSSU's contention that costs associated with "Economic Impact" to displaced LPTV stations resulting from loss of viewers should be included in the Cost Catalog.<sup>25</sup> We find that the "economic impact" contemplated by MSSU is encompassed within the meaning of "lost revenues," which the *Report and Order* defines as including "revenues that a station loses as a direct or ancillary result of the reorganization of broadcast television spectrum, including the repacking process and the reallocation of UHF spectrum in conjunction with the incentive auction."<sup>26</sup> As explained in the *Report and Order*, the REA, like the 2012 Spectrum Act, prohibits reimbursement of LPTV/translator stations and FM broadcast stations for "lost revenues."<sup>27</sup>

9. Other than as set forth herein, the record does not persuade us that further modifications to the list of services and equipment<sup>28</sup> or price ranges<sup>29</sup> in the Cost Catalog are needed. We are confident that, as with the cost catalog currently in use for repacked full-power and Class A stations, the items listed in the LPTV/Translator/FM Cost Catalog are sufficient to cover the most commonly required equipment and services, and that the "Other" category will serve as a catch-all to accommodate expenses that do not fall into the specified categories.<sup>30</sup> We reiterate that stations may submit a vendor quote to serve as an estimate for any equipment or service that is either not included in the Cost Catalog or those listed without a price range (*i.e.*, those with "variable" costs).<sup>31</sup>

### III. ADMINISTRATIVE MATTERS

10. For additional information on this proceeding, contact Jeffrey Neumann, at [Jeffrey.Neumann@fcc.gov](mailto:Jeffrey.Neumann@fcc.gov) or 202-418-2046, or Dana Leavitt, at [Dana.Leavitt@fcc.gov](mailto:Dana.Leavitt@fcc.gov) or 202-418-1317, in the Media Bureau.<sup>32</sup>

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<sup>25</sup> MSSU Comments at 4.

<sup>26</sup> *Report and Order* at para. 48.

<sup>27</sup> *Id.* at 48 (citing 47 U.S.C. § 1452(k)(2)), 88 (citing 47 U.S.C. § 1452(l)(1)(B)).

<sup>28</sup> Specifically, we decline to rename "Frequency Coordination" "Frequency Coordination and Interference Analysis (per license - 2 needed for bi-directional link)" (Section II.F of the Cost Catalog) because we believe the more general category encompasses a wider range of scenarios than the more specific title suggested by Mohave Board of County Supervisors. *See* Mohave Board of County Supervisors Comments at 2. Similarly, we disagree with NPR that it is necessary to alter the Cost Catalog to clarify that stations might need multiple pairs of IP codecs because the Reimbursement Form will permit stations to claim reimbursement for multiple items if they are reasonable under the circumstances. *See* NPR Comments at 6 ("The last line item lists '1 pair IP-only Codecs for fiber, Internet or IP microwave systems.' Some FM stations provide programming on multiple HD and IBOC channels and need multiple IP codecs to minimize disruption of service on all their channels. Accordingly, the Cost Catalog should clarify that these stations are eligible for reimbursement of costs based on their actual IP codec needs, e.g., up to four pairs.").

<sup>29</sup> *See* MSSU Comments at 3-4. MSSU contends that LPTV consumers will need to be notified of channel changes, which may require LPTV stations to incur public relations and other forms of notification expenses. Consistent with our approach in the Cost Catalog for full power and Class A stations, we do not believe that a specific line item is required for potential expenses not specifically identified. We note that the Cost Catalog includes an "Other" category that could be used to submit requests for additional reasonably incurred expenses.

<sup>30</sup> *See supra* at 3; NPR comments at 6.

<sup>31</sup> A Final Regulatory Flexibility Analysis (FRFA) pertaining to the reimbursement regime for LPTV/translators and FM broadcast stations is set forth in the *Report and Order* at Appendix B.

<sup>32</sup> The Bureau will send a copy of this Public Notice in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act (CRA), *see* 5 U.S.C. § 801(a)(1)(A).