

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
)
Northeastern Educational )
Television of Ohio, Inc. d/b/a )
Western Reserve Public Media )
)
Station WNEO, Alliance, OH ) Facility ID No. 49421
)
Station WEAO, Akron, OH ) Facility ID No. 49439

MEMORANDUM OPINION AND ORDER

Adopted: July 12, 2019

Released: July 12, 2019

By the Chief, Media Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we deny Northeastern Educational Television of Ohio’s (NETO’s) Petition for Reconsideration (Petition), which seeks to reverse the denial of certain NETO requests for reimbursement from the TV Broadcaster Relocation Fund (the Fund) for expenses incurred for pre-repack field strength measurements for two repacked stations.1 For the reasons set forth below, we affirm the denial of the reimbursement requests.

II. BACKGROUND

2. The broadcast television spectrum incentive auction was conducted by the Commission pursuant to the Spectrum Act.2 The auction involved, among other things, a reorganization, or repack, of television station channel assignments into a new, smaller broadcast television band to repurpose a portion of the band for new wireless uses.3 The Commission assigned each repacked station to a new channel and imposed a deadline by which that station must construct facilities and complete a transition to the new channel. The Spectrum Act also directs the Commission to reimburse repacked stations from the Fund for costs “reasonably incurred” by a repacked station “to relocate its television service from one channel to the other.”4

3. In assigning new channels, the Spectrum Act was specific in directing the Commission how to define, for each repack station, the pre-repack TV service area that the Commission was required to make all reasonable efforts to preserve in the repack. It specifically required that the Commission make “all reasonable efforts to preserve, as of the date of the enactment of this [Spectrum] Act [February

1 Petition for Reconsideration of Northeastern Educational Television of Ohio, Inc., for Stations WNEO, Alliance, Ohio, and WEAO, Akron, Ohio (filed Dec. 18, 2018) (Petition).

2 Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6402 (codified at 47 U.S.C. § 309(j)(8)(G)), 6403 (codified at 47 U.S.C. § 1452), 126 Stat. 156 (2012) (Spectrum Act).

3 Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, GN Docket No. 12-268, Report and Order, 29 FCC Red 6567, 6617 para. 109 (2014) (Incentive Auction R&O), aff’d, Nat’l Ass’n of Broadcasters v. FCC, 789 F.3d 165 (D.C. Cir. 2015).

4 Spectrum Act § 6403(b)(4)(A).

22, 2012], the coverage area and population served of each broadcast television licensee, *as determined using the methodology described in OET Bulletin 69.*<sup>5</sup> The methodology described by the Commission's Office of Engineering and Technology (OET) Bulletin 69 predicts a station's coverage area and population served.<sup>6</sup> After public comment, the Commission concluded in the *Incentive Auction R&O* that the computer program tool *TVStudy* would implement the OET Bulletin 69 methodology as required by the Spectrum Act.<sup>7</sup> The Commission utilized *TVStudy* to create a uniform nationwide grid to perform interference analysis and calculate stations' coverage areas and populations served and assign new channels in the repacking process.<sup>8</sup> Thus, the pre-repack and post-repack coverage area and population served for each repacked station was determined using the methodology described in OET Bulletin 69 as implemented by *TVStudy*, not by alternate or individual station measurements of existing antenna field strength.

4. In the *Incentive Auction R&O*, the Commission also established a detailed process for stations seeking reimbursement.<sup>9</sup> Consistent with this process, each station first submitted estimated costs for equipment and services necessary to complete the repack. Estimates were verified by Commission staff with the assistance of a contractor with extensive experience in television broadcast engineering and federal funds management (Fund Administrator). Thereafter Commission staff announced an initial allocation amount from the Fund for each station. The allocated dollar amount is a percentage of the total verified, estimated costs for that station that the station has available to draw down against as it incurs actual expenses. The Commission specifically stated that the "issuance of an initial allocation from the Fund based on these estimates does not create an obligation on the part of the Commission to pay the entity's total estimated or actual relocation costs."<sup>10</sup> After receipt of an allocation, stations were able to file requests for reimbursement for specific invoices. Each invoice submitted is reviewed by Commission staff with the support of the Fund Administrator to determine if the costs were "reasonably incurred" by a repacked station "to relocate its television service from one channel to the other."<sup>11</sup> Invoices that satisfy the standard are approved for payment, and those that do not are rejected as ineligible for reimbursement

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<sup>5</sup> Spectrum Act § 6403(b)(2) (emphasis added).

<sup>6</sup> *Incentive Auction R&O*, 29 FCC Rcd at 6625, para. 127.

<sup>7</sup> *Id.* at 6628-41, paras. 134-61.

<sup>8</sup> The Commission mandated that for full power stations, the protected "coverage area" would be defined consistent with the "service area" in OET-69 and section 73.622(e) of the Commission's rules. *See Incentive Auction R&O*, 29 FCC Rcd at 6643, para. 164 n.550. The Commission interpreted "population served" to require that each repacked station continue to serve the same viewers, determining that no channel reassignment could reduce a station's population served by more than a *de minimis* (i.e. 0.5 percent) amount. *See id.* at 6645-46, para. 169. To ensure that a station's post-repack coverage area replicates its pre-repack coverage area as determined using the methodology described in OET Bulletin 69 as implemented by *TVStudy*, the Commission adopted an "equal area" approach for replicating the contours that define the boundaries of the station's pre-repack coverage area on the station's new channel. Under this approach, the Commission stated that it would permit stations to adjust power so that geographic coverage on the new channel replicates the station's existing coverage area, assuming that other technical parameters, i.e., location, antenna height, and antenna pattern, are maintained. *Id.* at 6644-45, para. 166. The Commission also committed to preserving existing coverage for stations operating under waivers of height above average terrain (HAAT) and effective radiated power (ERP) limits. *Id.* at 6645, para. 167.

<sup>9</sup> *See Incentive Auction R&O*, 29 FCC Rcd at 6815, para. 607; *see also, 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) (*Procedures Public Notice*).

<sup>10</sup> *Incentive Auction R&O*, 29 FCC Rcd at 6818, para. 613 n.1729. *See also, 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, 2021 para. 63 n.69 (IATF/MB 2017) (*Financial Procedures PN*).

<sup>11</sup> Spectrum Act § 6403(b)(4)(A).

from the Fund.

5. The Commission delegated authority to the Media Bureau to prepare a catalog of eligible costs (Catalog) to assist in the reimbursement process.<sup>12</sup> In preparing the Catalog, the Media Bureau engaged Widely, Inc., to produce a report (Widely Report) analyzing the anticipated types and levels of costs associated with the repack. Before adopting the final Catalog, the Incentive Auction Task Force and Media Bureau sought comment on the information set forth in the Widely Report as well as how to determine whether such costs were reasonable for purposes of reimbursement under the Spectrum Act.<sup>13</sup> In the *Incentive Auction R&O*, the Commission explained that reasonable costs “necessarily will have to be decided on a case-by-case basis” and that the Catalog was not intended to be “a guarantee of reimbursement for any individual expense” incurred by a particular station, and delegated authority to the Media Bureau to make specific reimbursement determinations.<sup>14</sup>

6. WNEO, Alliance, OH, and WEO, Akron, OH, are noncommercial educational PBS member stations licensed to NETO who were assigned to new channels as part of the post-incentive auction repack. Estimates were filed on behalf of each station by NETO. The estimates for each station included a line item amount for transition field strength measurements. Prior to filing the estimates, NETO contacted Commission staff to inquire as to whether field strength measurements were reimbursable. Commission staff, with assistance from the Fund Administrator, verified initial cost estimates for both WNEO and WEO in October 2017. Each station was provided an initial allocation in October 2017.

7. On November 1, 2017, NETO submitted two invoices for reimbursement of expenses totaling \$63,707.83 for pre-repack field strength measurements, including invoice no. 930-04 for \$31,721.08 for station WNEO, and invoice no. 930-03 for \$30,986.75 for station WEO.<sup>15</sup> The Fund Administrator twice requested additional documentation from the two stations regarding these requests, each time providing an opportunity for NETO to submit information or evidence supporting the eligibility of the pre-repack expenses for reimbursement. On November 16 and 20, 2017, NETO responded to the requests for additional documentation by providing the vendor quote for the work and stating that the Catalog prices were used to develop the budget. On November 27, 2017, the Fund Administrator, on behalf of the Media Bureau, informed NETO’s engineering consultant via email that the invoices were being rejected because “...the Comprehensive Coverage study line item [in the Catalog] was anticipated for the new antennas after installation, not for the existing ones.”<sup>16</sup>

8. NETO resubmitted the pre-repack field strength measurement invoices on April 18, 2018, with a description of the methodology used for the measurements and copies of the vendor reports. The vendor reports concede “OET69 is specifically addressed to demonstrate the pre- and post-auction transition coverage areas,” yet assert that pre-repack “field strength measurements are considered a comprehensive coverage verification tool, and as such are an item eligible for reimbursement covered in the updated 2016 Widely Report, FCC finalized catalog of reimbursement expenses, and was further

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<sup>12</sup> *Incentive Auction R&O*, 29 FCC Rcd at 6821, para. 622.

<sup>13</sup> *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auction*, Notice of Proposed Rulemaking, 27 FCC Rcd 12357 (2012); *Media Bureau Seeks Comment on Widely Report and Catalog of Potential Expenses and Estimated Costs*, Public Notice, 29 FCC Rcd 2989 (MB 2014) (Widely Report) (emphasis added).

<sup>14</sup> *Incentive Auction R&O*, 29 FCC Rcd at 6821, para 622.

<sup>15</sup> Petition at 1.

<sup>16</sup> Email from Cindy Hutter, Cavell, Cavell Mertz & Associates, Inc., to Robert Gehman, Kessler and Gehman Associates (Nov. 27, 2017, 14:41 EST).

addressed as a covered expense in a webinar hosted by the FCC's Incentive Auction Task Force (IATF)."<sup>17</sup> The vendor report asserts:

the field strength measurements presented herein are a baseline for later comparison to [station] after the post transition facility has been built and measurements using the same methodology have been made. A comparison of the pre- and post-transition data will determine if coverage area has been lost due to the repack. If it is found that coverage has been lost, the data collected can be used as a proof of performance in a plea to the FCC requesting a resolution, such as a power increase, a change in channel and/or a change in transmitting antenna make, model, height and/or directionality.<sup>18</sup>

9. On May 4, 2018, the reimbursement requests were again rejected via email from the Fund Administrator, on behalf of the Media Bureau, stating that the invoices were for a "non-reimbursable cost." On November 12, 2018, NETO submitted its basis for claiming that the expenses qualified for reimbursement. NETO argued that field strength measurements were a reasonable expense consistent with the Spectrum Act's intent that "all reasonable efforts" be made to "preserve a television station's coverage area and population served," that it used an established methodology to confirm whether coverage was maintained, that FCC staff had indicated that field strength study expenses were a reasonable cost, and that the Fund Administrator, on behalf of the Media Bureau, had approved NETO's Form 399 estimates with the field study costs included.<sup>19</sup> On November 16, 2018 (WNEO), and November 19, 2018 (WEAO), the Fund Administrator, on behalf of the Media Bureau, rejected the reimbursement requests for a third time on the basis that the invoices represented "non-reimbursable costs." NETO seeks reconsideration of the November 16 and 19, 2018, rejections of the reimbursement requests for pre-repack field strength measurements, specifically \$31,721.08 for station WNEO and \$30,986.75 for station WEAO.

### III. DISCUSSION

10. In the Petition, NETO argues that the pre-repack field strength measurements are costs reasonably incurred due to the repack and therefore reimbursement is required by the Spectrum Act. The Petition states that the purpose of the pre-repack field strength measurements was to "identify, evaluate, and address any losses in coverage upon completion of the repack,"<sup>20</sup> and that the Spectrum Act intended that station coverage be maintained, so it is therefore reasonable for it to have performed pre-repack testing to establish a "baseline" for determining coverage. NETO further argues that the costs should be reimbursed because it incurred the expenses with the expectation that they would be reimbursed in reasonable reliance on the Widely Report, the Catalog, and communications with FCC staff. NETO also alleges that in "conversations with ... other RF consulting engineers, APTS, PBS and others ... persons outside the FCC reimbursement team believe that the ... field measurement costs were 'reasonably incurred' under the circumstances described in this Petition."<sup>21</sup>

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<sup>17</sup> Petition Exh. B, Kessler and Gehman Associates, FCC Incentive Auction Repack Baseline Pre-Transition ATSC Field Strength Measurements at 2 (KGA Report). Although the KGA Report references a "webinar" hosted by the IATF in its report to the station, NETO's Petition makes no reference to any webinar. Moreover, the KGA Report does not provide a citation for, or identify the date of, the referenced webinar. Commission staff's independent review was unable to identify any incentive auction webinar from 2012-2017 that included discussion of the eligibility of field strength measurements as an eligible cost.

<sup>18</sup> See KGA Report at 6, 75.

<sup>19</sup> Invoice #930-03, WEAO, prepared by Robert Gehman, Jr., Kessler and Gehman Associates, Inc., at 11-15 (submitted Nov. 12, 2018); Invoice #930-04, WNEO, prepared by Robert Gehman, Jr., Kessler and Gehman Associates, Inc., at 11-15 (submitted Nov. 12, 2018).

<sup>20</sup> Petition at 2-3.

<sup>21</sup> *Id.* at 8.

11. We find that NETO's arguments lack merit and therefore we deny the Petition and affirm the decision to reject the reimbursement requests. Neither the Spectrum Act nor the *Incentive Auction R&O* provide any basis for NETO to perform a pre-repack field strength test to establish a baseline for determining coverage. As required by the Spectrum Act and the *Incentive Auction R&O*, pre-repack coverage areas and populations served were determined using the methodology described in OET Bulletin 69 as implemented by *TVStudy*, and not by any other analysis. Furthermore, the Widely Report, the Catalog, and communications with FCC staff do not establish that pre-repack field strength tests are eligible for reimbursement. Thus, NETO could not reasonably rely on them to conclude that such expenses would be reimbursed. We also find that "conversations" with others outside the FCC do not present evidence upon which to determine specific invoices are eligible for reimbursement.

12. *Preserving Coverage Area and Population Served.* NETO argues that the Spectrum Act intends that a repacked station's coverage be maintained and that the pre-repack field test measurement is necessary to establish a baseline. The vendor report NETO submits states that "[a] comparison of the pre- and post-transition data will determine if coverage area has been lost due to the repack" and that such evidence could support a petition to the Commission to resolve the coverage distinction by power increase or other means.<sup>22</sup> We disagree. The Spectrum Act was specific in directing the Commission to use the methodology in OET Bulletin 69 to determine the coverage area and population served that it was required to make all reasonable efforts to preserve in the repack. In the *Incentive Auction R&O*, the Commission explained that *TVStudy* would implement the OET Bulletin 69 methodology to define the pre-repack coverage area and population served for stations, and that the Commission would use this same tool to define the coverage area and population served in channel reassignments to comply with its statutory obligation to make "all reasonable efforts" to preserve the coverage area and population served for broadcast licensees.<sup>23</sup>

13. The *Incentive Auction R&O* identifies the Commission as the entity responsible for determining and making all reasonable efforts to preserve repacked stations' coverage areas and populations served, not individual station testing.<sup>24</sup> Neither the Spectrum Act nor the *Incentive Auction R&O* contemplated that pre-repack field strength measurements would be necessary or utilized in determining baseline coverage areas and population served. In the context of these clearly established rules and procedures surrounding the repack, a comparison of a pre-repack and post-repack field strength measurement is not a relevant means to determine that a station's post-repack facility reaches the coverage area and population served to which the station is entitled. Thus, as a general matter, we find that pre-repack field strength tests are not "reasonably incurred . . . to relocate [the stations'] television service from one channel to the other," and therefore that they are not eligible for reimbursement from the Fund.<sup>25</sup> Furthermore, NETO offers no basis on which to distinguish the need for the pre-repack field strength studies specifically in the case of WEAO and WNEO, as distinct from the general case. The suggestion in the vendor report that NETO might want to have the data on hand for some possible future appeal of Commission rules does not alter our analysis. NETO is certainly free to undertake such studies, but that decision does not make the expense eligible for reimbursement under the statutory standard. We therefore find that the expenses NETO submitted for such studies are not eligible for reimbursement.

14. NETO further argues that the measurements were necessary to "confirm that its post-repack coverage met the standards set forth in the Spectrum Act."<sup>26</sup> NETO does not and cannot explain how a pre-repack field strength test is required to confirm that the post-repack coverage is consistent with

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<sup>22</sup> See KGA Report at 6, 75.

<sup>23</sup> *Incentive Auction R&O*, 29 FCC Rcd at 6625-42, paras. 127-61.

<sup>24</sup> *Id.* at 6644, para. 166 (e.g., "...we will replicate [each] station's contour on its new channel") (emphasis added).

<sup>25</sup> Spectrum Act § 6403(b)(4)(A).

<sup>26</sup> Petition at 6-7.

the pre-repack coverage as defined using the methodology described in OET Bulletin 69 as implemented by *TVStudy*, since the results of any such assessment would be irrelevant to the question of how the post-repack coverage compares to *TVStudy*.

15. *Catalog and Guidance.* NETO also argues that it reasonably relied on the Widelity Report, the Catalog, and FCC staff guidance to conclude that expenses associated with a pre-repack field strength measurement would be eligible for reimbursement. We disagree.

16. First, although the Widelity Report includes line items related to field strength measurements, the Widelity Report states that stations “routinely conduct field measurements to ascertain *post-construction* performance” and explains that field strength measurements “would be conducted if a problem was suspected, something that may not be realized until *after the station commences operation on its new channel.*”<sup>27</sup> A post-repack field study would be used to determine that the coverage area and population served established by the new facility conforms to the parameters assigned by the Commission using the methodology described in OET Bulletin 69 as implemented by *TVStudy*. On the other hand, there is no indication in the Widelity Report that stations should expect to conduct or be reimbursed for pre-transition field strength measurements, and it was not reasonable for NETO to rely on the Widelity Report to reach that conclusion.

17. With respect to the Catalog, the Commission made clear that the Catalog was not intended to be “a guarantee of reimbursement for any individual expense.”<sup>28</sup> In addition, while the Catalog lists “[c]omprehensive coverage verification via field study, if needed” as a potentially reimbursement-eligible expense in the Professional Services category, it did not state that pre-repack field strength measurements are eligible for reimbursement.<sup>29</sup> Especially when read in the context of the Widelity Report that the Bureau relied on in creating the Catalog and the *Incentive Auction R&O*, we conclude that a coverage verification would only be “needed” if there is a particular reason to verify the coverage area and population served of the post-repack facility, which analysis, as explained above, does not require a pre-repack field strength assessment. The Fund Administrator, on behalf of the Bureau, properly explained in an email rejecting the two invoices at issue that field strength measurements as described in the Catalog were “anticipated for the new antennas after installation, not for the existing ones.”<sup>30</sup>

18. NETO also argues that it relied on staff advice in deciding to proceed with the field strength measurements. Prior to conducting the measurements, NETO contacted FCC staff via email about the reimbursement eligibility of field strength measurements. FCC staff responded, “For stations that are assigned to new stations, field strength measurements are a reasonable cost *to the extent they are incurred as a result of the new channel assignment.*”<sup>31</sup> As an initial matter, the email from FCC staff did not state that pre-repack field strength measurements are eligible for reimbursement. In addition, correspondence with FCC staff, like the Catalog, must be read in the broader context of the Commission’s decision in the *Incentive Auction R&O* to utilize *TVStudy* to implement the methodology described in OET Bulletin 69 to establish the coverage area and population served to be preserved. While stations have the option to verify coverage post-construction through field strength measurements and costs for

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<sup>27</sup> *Widelity Report*, 29 FCC Rcd at 3026 (emphasis added).

<sup>28</sup> *Incentive Auction R&O*, 29 FCC Rcd at 6821, para. 622.

<sup>29</sup> See *Incentive Auction Task Force and Media Bureau Finalize Catalog of Reimbursement Expenses*, Public Notice, 32 FCC Rcd 1199 (IATF/MB 2017). See also *Incentive Auction Task Force and Media Bureau Update Price Ranges in Catalog of Reimbursement Expenses*, Public Notice, 33 FCC Rcd 6213, 6229 (MB 2018).

<sup>30</sup> Email from Cindy Hutter Cavell, Cavell Mertz, to Robert Gehman, Kessler and Gehman (Nov. 27, 2017, 2:14 PM EST).

<sup>31</sup> Petition Exh. A, Email from Pamela Gallant, Assistant Chief, Video Division, Media Bureau, FCC, to Jeffrey Gehman, Kessler and Gehman (Feb. 9, 2017, 11:41 AM EST) (emphasis added).

such post-construction studies may be “reasonably incurred” under the circumstances, pre-repack field-strength assessments are not reasonably incurred “as a result of the new channel assignment” as stated in the staff email and thus are not reimbursable for all of the reasons stated above.

19. Furthermore, it is well established that informal staff advice such as a staff email<sup>32</sup> is not authoritative and that a licensee assumes the risk of relying on such advice.<sup>33</sup> Moreover, even if the staff email provided erroneous advice – which we do not believe was the case – the government is not estopped from enforcing its rules in a manner that is inconsistent with erroneous advice provided to a party by an employee.<sup>34</sup>

20. NETO also notes that the Fund Administrator, on behalf of the Media Bureau, approved initial cost estimates that included line items for coverage verification via field study. The Commission has been clear that the staff’s verifications of cost estimates are not guarantees that specific invoices will be approved for payment from the Fund. The Commission specifically stated that the “issuance of an initial allocation from the Fund based on these estimates does not create an obligation on the part of the Commission to pay the entity’s total estimated or actual relocation costs.”<sup>35</sup> Rather, the Commission has explained that reimbursement of “reasonably incurred” costs “necessarily will have to be decided on a case-by-case basis,”<sup>36</sup> and that the staff will make that determination when invoices are submitted.<sup>37</sup> As described above, the Commission delegated authority to the Media Bureau (with the assistance of the Fund Administrator) to review each invoice submitted and make a case-by-case determination of whether the cost was “reasonably incurred” under the statutory standard.<sup>38</sup>

21. Finally, NETO argues that in “conversations with . . . other RF consulting engineers, APTS, PBS and others . . . persons outside the FCC reimbursement team believe that the . . . field measurement costs were ‘reasonably incurred’ under the circumstances described in this Petition.”<sup>39</sup> In support of this notion,<sup>40</sup> NETO attaches a letter from PBS, stating that NETO should be reimbursed because these noncommercial stations incurred the costs in good faith reliance on the understanding that

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<sup>32</sup> Although not relied upon in the Petition, the KGA Report also references a discussion of field strength measurement costs during a webinar hosted by the IATF. *See supra* para. 8, n. 17. As noted above, the KGA Report does not provide a citation for, or identify the date of, the referenced webinar, and Commission staff’s independent review has not identified an incentive auction webinar from 2012-2017 that included any discussion of field strength measurements as an eligible cost. Nevertheless, we note that had Commission staff provided advice at a webinar similar to that provided in the staff email relied upon by NETO, such informal advice would similarly not support a claim for reimbursement of the costs at issue here for the reasons discussed with respect to the staff email.

<sup>33</sup> *See, e.g., LPFM MX Group 304 NAACP Social Justice Law Project Application for a Construction Permit for a New LPFM Station at Philadelphia, Pennsylvania, Nueva Esperanza, Inc.*, Memorandum Opinion and Order, 30 FCC Rcd 13983, 13984, para. 3 (2015).

<sup>34</sup> *See Deleted Station WPHR(FM), Ashtabula, Ohio*, Memorandum Opinion and Order, 11 FCC Rcd 8513, 8515, para. 10 (1996) (citing *Mary Ann Salvatoriello*, Memorandum Opinion and Order, 6 FCC Rcd 4705, 4708, para. 22 (1991) (“A person relying on informal advice given by Commission staff does so at their own risk”); *Malkan FM Associates v. FCC*, 935 F.2d 1313 (D.C. Cir. 1991)); *Request for Review of Sacred Heart School, Schools and Libraries Universal Service Support Mechanism*, File No. SLD-346248, CC Docket No. 02-6, Order, 20 FCC Rcd 8162 (WCB 2005).

<sup>35</sup> *Incentive Auction R&O*, 29 FCC Rcd at 6818, para. 613 n.1729. *See also, Financial Procedures PN*, 32 FCC Rcd at 2021 para. 63 n.69 (2017).

<sup>36</sup> *Incentive Auction R&O*, 29 FCC Rcd at 6821, para. 622.

<sup>37</sup> *Procedures Public Notice*, 32 FCC Rcd 858, para. 81.

<sup>38</sup> *Supra* para. 5.

<sup>39</sup> Petition at 8.

they would be reimbursed.<sup>41</sup> The *Incentive Auction R&O* establishes detailed procedures requiring the Media Bureau—with the assistance of the Fund Administrator—to assess each cost submitted and make a case-by-case determination of eligibility in order to fulfill the Commission’s obligation as a prudent steward of taxpayer money and to prevent waste, fraud, and abuse. For the reasons stated above, despite the views of these third parties, we cannot conclude that the expenses were reasonably incurred for the stations to move to their new channel assignments and we cannot conclude that they are eligible for reimbursement from the Fund.

#### IV. ORDERING CLAUSE

22. Accordingly, **IT IS ORDERED**, pursuant to sections 5(c) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 155(c), 405, and Sections 0.61, 0.283, and 1.106 of the Commission’s rules, 47 CFR §§ 0.61, 0.283, and 1.106, the Petition for Reconsideration filed by Northeastern Educational Television of Ohio, Inc., on December 13, 2018, **IS DENIED** and that the denial of the two reimbursement requests for invoice nos. 930-05 and 930-03 **IS AFFIRMED**.

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey  
Chief, Media Bureau

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<sup>40</sup> NETO does not identify the other professionals engaged in the referenced “conversations.”

<sup>41</sup> The letter states, in part, that NETO should be reimbursed because it “performed the studies in good faith, based on established radio-frequency engineering practices and the information available at that time confirming the reimbursability of field studies. . . . Under these circumstances, PBS submits that NETO’s costs were ‘reasonably incurred’ . . . PBS urges in the strongest terms that the public interest and the public television industry’s ongoing repacking efforts will be undermined if the FCC and its Fund Administrator deny reimbursement for costs already reasonably incurred and paid out-of-pocket by these noncommercial, educational public television stations.” Petition at Exh. C (Letter from Katherine Lauderdale, Chief Legal Officer and Corporate Secretary, Public Broadcasting Service, to Federal Communications Commission Fund Administrator (undated)).