

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

In the Matter of)
LPTV, TV Translator, and FM Broadcast Station) MB Docket No. 18-214
Reimbursement)
Expanding the Economic and Innovation) GN Docket No. 12-268
Opportunities of Spectrum Through Incentive)
Auctions)

NOTICE OF PROPOSED RULEMAKING AND ORDER

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I. INTRODUCTION

1. In this *Notice of Proposed Rulemaking and Order*, we propose rules to implement Congress's recent directive that we reimburse certain Low Power Television (LPTV), television translator (TV translator), and FM broadcast stations for costs incurred as a result of the Commission's broadcast television spectrum incentive auction.¹ When Congress authorized the Commission to conduct the incentive auction as part of the 2012 Spectrum Act,² it required the Commission to reimburse certain costs incurred by full power and Class A television licensees that were reassigned to new channels as a result of the auction, as well as certain costs incurred by multichannel video program distributors (MVPDs) to continue to carry such stations.³ On March 23, 2018, Congress adopted the Reimbursement Expansion Act (REA), which amends Section 6403 of the Spectrum Act to expand the list of entities eligible to be reimbursed for auction-related expenses to include LPTV, TV translator, and FM broadcast stations,⁴ and to provide additional funds to the Reimbursement Fund to be used for this purpose.⁵ The REA also increases the funds available to reimburse full power and Class A stations and MVPDs, and provides funds to the Commission for consumer education.⁶

2. In this *Notice of Proposed Rulemaking (NPRM)*, we propose a mechanism for reimbursing the newly eligible entities that is substantially similar to the process we currently use to reimburse full power and Class A licensees and MVPDs as established in the *Incentive Auction R&O*.⁷ Among the key proposals are the following:

- We tentatively conclude that LPTV and TV translator stations (collectively referred to herein as LPTV/translator stations) are eligible for reimbursement if (1) they filed an application during the Commission's Special Displacement Window and obtained a construction permit, and (2) were licensed and transmitting for at least 9 of the 12 months prior to April 13, 2017, as required by the REA.⁸
- We also tentatively conclude that we will reimburse LPTV/translator stations for their reasonable costs to construct the facilities authorized by the grant of the station's Special Displacement Window application, but will require stations to reuse existing equipment and take other measures to mitigate costs where possible.⁹
- With respect to FM broadcast stations, we tentatively conclude that both full power FM stations and FM translators that were licensed and transmitting on April 13, 2017, using the facilities

¹ 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)). We refer to this legislation herein as the "Reimbursement Expansion Act" or "REA."

² See 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 47 U.S.C. § 1452(b)(4)(A). The Spectrum Act directed the Commission to make reimbursements from the TV Broadcaster Relocation Fund (Reimbursement Fund) established by Congress for that purpose and specified that the amount available for reimbursement of relocation costs is \$1.75 billion. See *id.* § 1452(d).

⁴ See 47 U.S.C. § 1452(k), (l).

⁵ See 47 U.S.C. § 1452(j)(1).

⁶ See 47 U.S.C. § 1452(j)(2)(A)(i). See also *infra* Section III.A.

⁷ See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, 6812-6833, paras. 598-654 (2014), *affirmed*, *National Association of Broadcasters v. FCC*, 789 F.3d 165 (D.C. Cir. 2015) (*Incentive Auction R&O*). See also *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Second Order on Reconsideration, 30 FCC Rcd 6746, 6820-28 (2015).

⁸ See *infra* Section III.B.1.

⁹ See *infra* Section III.B.2.

impacted by the repacked television station¹⁰ are eligible for reimbursement under the REA.¹¹ We propose that this will include FM stations that incur costs because they must permanently relocate, temporarily or permanently modify their facilities, or purchase or modify auxiliary facilities to provide service to at least 80 percent of their primary station's coverage area or population during a period of time when construction work is occurring on a collocated repacked television station's facilities.¹²

- We propose to reimburse up to 100 percent of the costs eligible for reimbursement for FM stations that must relocate permanently, or temporarily or permanently modify facilities.¹³ We seek comment on a graduated, prioritized system to reimburse FM stations for the cost to purchase or modify auxiliary equipment to avoid going silent as a result of the repacking process.¹⁴
- We propose to require LPTV/translator and FM stations seeking reimbursement to file with the Commission one or more forms certifying that they meet the eligibility criteria established in this proceeding for reimbursement, providing information regarding their current broadcasting equipment, and providing an estimate of their costs eligible for reimbursement.¹⁵ We invite comment on ways to streamline the submission of this information for these entities.
- We propose that after the submission of information, the Media Bureau will provide eligible entities with an allocation of funds, to be available for draw down as the entities incur expenses.¹⁶ We propose that the Media Bureau will make an initial allocation toward eligible expenses, followed by subsequent allocation(s) as needed, to the extent funds remain for LPTV/translator stations and FM stations in the Reimbursement Fund, and we seek comment on how to determine the amount of these allocations.
- We propose to use revised versions of the financial forms currently being used by full power, Class A, and MVPD entities for purposes of reimbursing eligible LPTV/translator and FM stations, and we propose to use the same procedures to provide reimbursement payments to these newly eligible entities.¹⁷
- We discuss the measures we propose to take to protect the Reimbursement Fund against waste, fraud, and abuse.¹⁸

3. In the companion *Order*, we direct the Media Bureau to engage a contractor to assist in the reimbursement process and administration of the Reimbursement Fund for LPTV/translator and FM stations, and we also direct the Bureau to make determinations regarding eligible costs and the reimbursement process, such as calculating the amount of allocations to eligible entities and seeking

¹⁰ For purposes of this *NPRM*, we use the term “repacked TV station” to refer to a full power or Class A television station that was either reassigned to a new channel in the *Closing and Channel Reassignment PN* or that relinquished its spectrum usage rights in the reverse auction. *See infra* para. 52; note 47.

¹¹ *See infra* Section III.C.1.

¹² *See id.*

¹³ *See infra* Section III.C.2.

¹⁴ *See id.*

¹⁵ *See infra* Sections III.D.1-2.

¹⁶ *See infra* Section III.D.3.

¹⁷ *See infra* Section III.E.

¹⁸ *See infra* Section III.F.

comment on a revised Catalog of Eligible Expenses.¹⁹ We also determine that the Media Bureau will announce, pursuant to the requirements in the REA, when the reimbursement program for all entities eligible for reimbursement pursuant to the Spectrum Act and the REA will end.²⁰ Finally, we interpret the REA as providing at least \$50 million for use by the Commission to fund its efforts to educate consumers about the reorganization of broadcast television spectrum under 47 U.S.C. § 1452(b).²¹

II. BACKGROUND

A. Reimbursement Expansion Act

4. On March 23, 2018, Congress adopted the REA, directing the Commission to “reimburse costs reasonably incurred” by a TV translator or LPTV station in order to “relocate” to another channel or “otherwise modify” its facility as a result of the reorganization of broadcast television spectrum.²² In addition, the REA directs the Commission to “reimburse costs reasonably incurred” by an FM station “for facilities necessary for such station to reasonably minimize disruption of service” as a result of the reorganization of broadcast television spectrum.²³ The REA also provides funding for the Commission to make payments for the purpose of consumer education relating to the reorganization of broadcast television spectrum.²⁴

5. The REA appropriates a total of \$1 billion in additional funds for the Reimbursement Fund, \$600 million in fiscal year 2018 and \$400 million in fiscal year 2019.²⁵ Of the \$600 million appropriated in fiscal year 2018, the Act authorizes the Commission to use “not more than” \$350 million to make reimbursements to full power and Class A stations and MVPDs pursuant to the Spectrum Act,²⁶ “not more than” \$150 million to reimburse TV translator and LPTV stations,²⁷ “not more than” \$50 million to reimburse FM broadcast stations,²⁸ and \$50 million to make “payments solely for the purposes of consumer education relating to the reorganization of broadcast television spectrum” pursuant to the Spectrum Act.²⁹ We seek comment below on two different interpretations of the statutory provisions that relate to the availability of the \$400 million appropriated in fiscal year 2019 and, specifically, on whether these funds are available to reimburse newly eligible LPTV, TV translator, and FM broadcast stations, in addition to full power, Class A, and MVPD entities.³⁰

6. The REA establishes a number of conditions on the availability and use of the \$1 billion it appropriates to the Reimbursement Fund. First, it provides that these funds are available only if the

¹⁹ See *infra* Section IV.

²⁰ See *id.*

²¹ See *id.*

²² 47 U.S.C. § 1452(k)(1).

²³ 47 U.S.C. § 1452(l)(1)(A).

²⁴ 47 U.S.C. § 1452(j)(2)(A)(iv).

²⁵ See 47 U.S.C. § 1452(j)(1). The funds will be available upon Commission certification to the Secretary of the Treasury that the funds available prior to the date of REA enactment are likely to be insufficient to reimburse reasonably incurred costs of full power and Class A stations and MVPDs carrying their signals. 47 U.S.C. §§ 1452(j)(2)(A)-(B). These funds remain available “until not later than July 3, 2023.” 47 U.S.C. § 1452(j)(1)(A), (B). The REA provides that the administrative costs incurred by the Commission in making reimbursements will be covered by the proceeds of the forward auction. See 47 U.S.C. § 1452(j)(4); *infra* note 41.

²⁶ 47 U.S.C. § 1452(j)(2)(A)(i).

²⁷ 47 U.S.C. § 1452(j)(2)(A)(ii).

²⁸ 47 U.S.C. § 1452(j)(2)(A)(iii).

²⁹ 47 U.S.C. § 1452(j)(2)(A)(iv).

³⁰ See *infra* Section III.A.

Commission makes a certification “to the Secretary of the Treasury that the funds available prior to the date of enactment” of the REA “in the TV Broadcaster Relocation Fund are likely to be insufficient to reimburse reasonably incurred costs” of full power and Class A stations and MVPDs pursuant to the Spectrum Act.³¹ Second, it provides that the funds may be used by the Commission to make payments after April 13, 2020, only if, “before making any such payments after such date, the Commission submits to Congress a certification that such payments are necessary to reimburse” costs reasonably incurred by entities eligible for reimbursement pursuant to the Spectrum Act and the REA.³² Third, the REA requires that the Commission use the funds it appropriates to make all reimbursements to full power and Class A stations, MVPDs, LPTV/translators, and FM stations by July 3, 2023, at the latest.³³ The Commission may, however, establish an earlier date by which its reimbursement program will end if it certifies to the Secretary of the Treasury that all reimbursements to full power, Class A, and MVPDs, as specified by the Spectrum Act, and all reimbursements to LPTV/translators and FM stations, as specified by the REA, have been made.³⁴

7. Section 511(k)(3) of the REA states that duplicative payments to “a low power television station that has been accorded primary status as a Class A television licensee under [47 CFR § 73.6001(a)]” from the Reimbursement Fund are prohibited.³⁵ Specifically, such licensee may not receive reimbursement under Section 511(k)(1) of the REA, which provides for reimbursement of eligible displaced LPTV/translator stations, if such station has received reimbursement under Section 6403(b)(4)(A)(i) of the Spectrum Act (including the additional funding made available for reimbursing full power, Class A, and MVPDs in Section 511(j)(2)(A)(i) of the REA).³⁶ Similarly, Section 511(k)(3)(B) specifies that if such station receives reimbursement under Section 511(k)(1) of the REA, it may not receive reimbursement under Section 6403(b)(4)(A)(i) of the Spectrum Act.³⁷ Section 511(k)(3)(A) also provides that if a low power television station that has been accorded primary status as a Class A television licensee receives reimbursement “from any other source, such station may not receive reimbursement under paragraph 1” of Section 511(k), which permits reimbursement of costs

³¹ 47 U.S.C. § 1452(j)(2)(B). The statute specifies that, if this certification is made, the funds shall be available to reimburse full power, Class A, and MVPD entities, as well as newly eligible LPTV/translator and FM stations, and to fund consumer education efforts. *Id.* § 1452(j)(2)(A).

³² 47 U.S.C. § 1452(j)(2)(C)(i), (ii), (iii).

³³ *See* 47 U.S.C. § 1452(j)(3)(B)(ii). Section 511(j)(3)(A) of the REA provides that any funds remaining in the Reimbursement Fund after the date described in Section 511(j)(3)(B) will be returned to the Treasury to be used “for the sole purpose of deficit reduction.” 47 U.S.C. § 1452(j)(3)(A). Section 511(j)(3)(B) defines the date by which reimbursements must be made as “the earlier of – (i) the date of a certification by the Commission” that all reimbursements under the Spectrum Act to eligible full power and Class A stations and MVPDs have been made, and that all reimbursements under the REA to LPTV, TV translator, and FM stations have been made; “or (ii) July 3, 2023.” 47 U.S.C. § 1452(j)(3)(B).

³⁴ *Id.* *See also* 47 U.S.C. § 1452(j)(3)(C). Section 511(j)(3)(C) of the REA provides that, if all reimbursements pursuant to the Spectrum Act and the REA have been made before July 3, 2023, “the Commission shall submit to the Secretary of the Treasury a certification that all such reimbursements have been made.” 47 U.S.C. § 1452(j)(3)(C).

³⁵ 47 U.S.C. § 1452(k)(3). Section 73.6001(a) of the Commission’s rules provides that “[q]ualified low power television licensees which, during the 90-day period ending November 28, 1999, operated their stations in a manner consistent with the programming and operational standards set forth in the Community Broadcasters Protection Act of 1999, may be accorded primary status as Class A television licensees.” 47 CFR § 73.6001(a). Low power television stations that did not qualify for Class A status are secondary. *See id.* § 74.702(b).

³⁶ 47 U.S.C. § 1452(k)(3)(A).

³⁷ 47 U.S.C. § 1452(k)(3)(B).

reasonably incurred by eligible LPTV/translator stations that filed in the Special Displacement Window.³⁸ Section 511(l)(1)(C) states that “[i]f an FM broadcast station has received a payment for interim facilities from the licensee of a television broadcast station that was reimbursed for such payment” under the Spectrum Act, “or from any other source,” such FM broadcast station may not receive reimbursement under the REA.³⁹

8. Finally, the REA requires the Commission to complete a rulemaking to implement a reimbursement process for LPTV, TV translator, and FM stations “[n]ot later than 1 year” after the adoption of the Act, or by March 23, 2019.⁴⁰ It also directs that the rulemaking include “the development of lists of reasonable eligible costs to be reimbursed by the Commission” and “procedures for the submission and review of cost estimates and other materials related to those costs consistent with the regulations developed by the Commission” in establishing the reimbursement process for full power, Class A, and MVPD entities.⁴¹

B. Incentive Auction and Transition Period

9. Congress authorized the Commission to conduct the incentive auction to help meet the Nation’s growing spectrum needs.⁴² In the “reverse auction” phase of the incentive auction, television broadcasters had the opportunity to voluntarily relinquish some or all of their broadcast television spectrum usage rights in exchange for a share of the proceeds from a “forward auction” of new, flexible-use licenses suitable for mobile broadband use. In the *Incentive Auction R&O*, the Commission adopted its proposal to limit reverse auction participation to licensees of commercial and noncommercial educational (NCE) full power and Class A stations.⁴³

10. Stations that remained on the air after the auction were reorganized during the “repacking” process to occupy a smaller portion of the television spectrum, and some were assigned new channels to clear spectrum for use by wireless providers. The Commission specified that full power and Class A facilities that already were operating pursuant to a license (or a pending application for a license to cover a construction permit) on February 22, 2012, would be protected in the repacking process, as Congress required.⁴⁴ The Commission also exercised its discretion to protect certain, additional full power and Class A stations.⁴⁵ The Commission declined to protect other categories of facilities, including LPTV/translator stations, on the basis that such facilities are secondary in nature and protecting them would have unduly restrained the agency’s flexibility in the repacking process and undermined its ability to meet the goals of the incentive auction.⁴⁶

11. On April 13, 2017, after the conclusion of auction bidding, the Incentive Auction Task Force and the Media and Wireless Telecommunications Bureaus released the *Closing and Channel Reassignment PN*, which announced the completion of the auction, the auction results, and the broadcast

³⁸ 47 U.S.C. § 1452(k)(1), (3)(A).

³⁹ 47 U.S.C. § 1452(l)(1)(C).

⁴⁰ 47 U.S.C. § 1452(m)(1).

⁴¹ 47 U.S.C. § 1452(m)(2). The REA also provides that the FCC’s administrative costs associated with making reimbursements from the funds appropriated by the Act will be covered by auction proceeds, similar to the administrative costs provision in the Spectrum Act. *See* 47 U.S.C. § 1452(j)(4) (*citing* 47 U.S.C. § 309(j)(8)(B)).

⁴² *Incentive Auction R&O*, 29 FCC Rcd at 6569, para. 1.

⁴³ *Id.* at 6716, para. 352.

⁴⁴ *Id.* at 6652-54, paras. 184-89.

⁴⁵ *Id.* at 6654-67, paras. 190-224.

⁴⁶ *Id.* at 6667-77, paras. 226-45.

television channel reassignments.⁴⁷ The release of the *Closing and Channel Reassignment PN* also commenced the 39-month post-auction transition period (transition period) during which all reassigned stations must transition to their post-auction channel assignments.⁴⁸ Reassigned stations had three months, or until July 12, 2017, to file construction permit applications for any minor changes to their facilities needed to operate on their new channels.⁴⁹ Following the three-month application filing deadline, stations have up to 36 months, or until July 13, 2020, to transition to their new channels.⁵⁰

12. To ensure an orderly, managed transition process, the Commission established a phased construction schedule for the transition period and grouped all full power and Class A television stations transitioning to new channels into one of 10 transition phases.⁵¹ The *Closing and Channel Reassignment PN* announced the specific transition phase, phase completion date, and testing period applicable to each transitioning station.⁵²

C. LPTV and TV Translator Stations and FM Broadcasters

13. *LPTV and TV Translators.* LPTV/translator stations are secondary to full power television stations, which may be authorized and operated “without regard to existing or proposed low

⁴⁷ See *Incentive Auction Closing and Channel Reassignment Public Notice; The Broadcast Television Incentive Auction Closes; Reverse Auction and Forward Auction Results Announced; Final Television Band Channel Assignments Announced; Post-Auction Deadlines Announced*, Public Notice, 32 FCC Rcd 2786 (2017) (*Closing and Channel Reassignment PN*).

⁴⁸ *Incentive Auction R&O*, 29 FCC Rcd at 6782, 6796, paras. 525, 559. Stations may request extensions of time to construct their new facilities, but no station will be allowed to continue operating on a reassigned or reallocated channel more than 39 months following the release of the *Closing and Channel Reassignment PN*, or later than July 13, 2020. See *Closing and Channel Reassignment PN*, 32 FCC Rcd at 2807, para. 68, and 2813, para. 81.

⁴⁹ See *Closing and Channel Reassignment PN*, 32 FCC Rcd at 2809, para. 70. Stations were also allowed to request alternate channels or expanded facilities on their new channels. *Id.* at 2809-2910, para. 71.

⁵⁰ See *id.* at 2807, para. 68. Television stations that voluntarily turned in their licenses (license relinquishment stations) were required to discontinue operations on their pre-auction channels within three months of receiving their reverse auction payments, *i.e.*, October 25, 2017. *Id.* at 2810, para. 73. License relinquishment stations that either indicated in their auction application a present intent to channel share, or reserved the right to channel share and entered into a channel sharing agreement post-auction, were required to discontinue operations on their pre-auction channels and commence shared operations within six months of receiving their reverse auction payments, *i.e.*, January 23, 2018. *Id.* at 2812, para. 76.

⁵¹ This approach was designed to accommodate the varying amount of times stations would need to modify their facilities to operate on their post-auction channel. In addition, it allowed the Commission to coordinate construction deadlines where, for example, one station must vacate a channel before another can begin operating on its new channel. See generally *Incentive Auction Task Force and Media Bureau Adopt a Post-Incentive Auction Transition Scheduling Plan*, Public Notice, 32 FCC Rcd 890 (IATF and MB, 2017). See also *Incentive Auction R&O*, 29 FCC Rcd at 6580, para. 34 (“Stations will be assigned deadlines within that period tailored to their individual circumstances”); *id.* at 6800, para. 569 (“We recognize that some stations will face significant challenges in completing the post-auction transition to their new facilities. The Media Bureau will take such challenges into account when assigning individual construction deadlines.”). The last transition phase, phase 10, has a completion date of July 3, 2020, approximately one week prior to the final deadline for the broadcast transition. *Closing and Channel Reassignment PN*, 32 FCC Rcd at 2807, para. 68.

⁵² See *Closing and Channel Reassignment PN*, 32 FCC Rcd at 2805-07, paras. 61-65. Each of the 10 transition phases began immediately upon release of the Public Notice for purposes of construction, subject to the Commission granting a station’s construction permit application. As soon as the construction permit application is granted, construction may take place, regardless of the testing period and completion date for the station’s transition phase. The phase completion date is the date by which each station must cease operations on its pre-auction channel. It also is the date listed in each station’s construction permit as its construction deadline. *Id.* at 2806, paras. 63-64.

power TV or TV translator stations.”⁵³ LPTV/translator stations were not eligible to participate in the incentive auction and were not eligible for reimbursement pursuant to the Spectrum Act.⁵⁴ In addition, while the Spectrum Act required the Commission to make “all reasonable efforts” to preserve the coverage area and population served of eligible full power and Class A television stations in the incentive auction repacking process,⁵⁵ as noted above, LPTV/translator stations were not protected.⁵⁶ Accordingly, the *Incentive Auction R&O* noted the potential for a significant number of LPTV/translator stations to be displaced as a result of the auction or repacking process which would require them either to find a new channel from the smaller number of channels that remain in the reorganized broadcast television bands or to discontinue operations altogether.⁵⁷

14. The Commission has taken a number of steps to mitigate the impact of the auction and repacking process on LPTV/translator stations.⁵⁸ The Media Bureau opened a special filing window on April 10, 2018 to offer operating LPTV/translator stations that are displaced an opportunity to select a new channel.⁵⁹ That displacement window closed on June 1, 2018.⁶⁰ In total, the Commission received 2,159 applications during the window which are currently under consideration. Applicants will have the opportunity to resolve any mutual exclusivity through settlement or engineering amendments filed prior to the close of a Settlement Window to be announced by the Media Bureau. Should applications remain

⁵³ 47 CFR § 74.702(b). These secondary stations may not cause interference to, and must accept interference from, full-service television stations, certain land mobile radio operations, and other primary services. *See Incentive Auction R&O*, 29 FCC Rcd at 6673-74, para. 239.

⁵⁴ *Incentive Auction R&O*, 29 FCC Rcd at 6716-17, para. 352, and 6813, para. 601.

⁵⁵ 47 U.S.C. § 1452(b)(2). *See also Incentive Auction R&O*, 29 FCC Rcd at 6652, para. 185.

⁵⁶ *See Incentive Auction R&O*, 29 FCC Rcd at 6652, para. 185 and § III.B.3.d.iii. (Facilities That Will Not Receive Discretionary Protection: LPTV and TV Translator Stations). The Commission also determined it would not extend interference protection to LPTV or TV translator stations vis-à-vis Class A television stations in the repacking process. *Id.* at 6676, para. 244.

⁵⁷ *See id.* at 6834-35, para. 657.

⁵⁸ For instance, the Commission adopted rules to allow secondary stations to enter into voluntary channel sharing arrangements with other secondary stations and with primary stations. *See Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television and Television Translator Stations; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 30 FCC Rcd 14927, 14937-45, paras. 20-39 (2015) (*LPTV DTV Third R&O*); *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions; Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television and Television Translator Stations; Channel Sharing by Full Power and Class A Stations Outside the Broadcast Television Spectrum Incentive Auction Context*, Report and Order, 32 FCC Rcd 2637 (2017). The Commission also extended the deadline for analog LPTV/translator stations to complete their transition from analog to digital facilities from September 1, 2015 to 12 months after the completion of the 39-month transition period, or until July 13, 2021. *LPTV DTV Third R&O*, 30 FCC Rcd at 14930-31, para. 6. Further, the Commission allowed LPTV/translator stations to remain on their existing channels in the 600 MHz Band, the spectrum cleared for use by wireless providers, until they are notified that they are likely to interfere with a forward auction winner that is ready to commence operations. *Incentive Auction R&O*, 29 FCC Rcd at 6835, para. 657, and 6840, para. 670.

⁵⁹ *Incentive Auction R&O*, 29 FCC Rcd at 6835, para. 657. Prior to opening the window, the Commission released a channel study to help LPTV/translator stations identify potential new channels in the repacked TV band.

⁶⁰ The Special Displacement Window was originally scheduled for April 10, 2018 to May 15, 2018 and was subsequently extended to June 1, 2018. *See Incentive Auction Task Force and Media Bureau Announce Post Incentive Auction Special Displacement Window April 10, 2018, Through May 15, 2018, And Make Location and Channel Data Available*, Public Notice, 33 FCC Rcd 1234 (IATF and MB, 2018) (*Special Displacement Window PN*); *Incentive Auction Task Force and Media Bureau Extend Post-Incentive Auction Special Displacement Window Through June 1, 2018*, Public Notice, DA 18-389 (IATF and MB, rel. April 18, 2018) (*Special Displacement Window Extension PN*).

mutually exclusive after the Settlement Window, a schedule will be set for them to be resolved subject to the Commission's competitive bidding rules.⁶¹

15. Some LPTV/translator stations have already been displaced. Pursuant to our rules, LPTV/translator stations that were on channels 38 through 51 must terminate operations if they receive notice of likely interference to a new 600 MHz Band licensee that intends to commence operations or conduct first field application (FFA) testing on their licensed 600 MHz spectrum.⁶² The Commission has granted a number of 600 MHz licenses, which authorized the licensees to construct facilities on their new spectrum.⁶³ T-Mobile USA (T-Mobile), one of the recipients of those licenses, provided notices to certain LPTV and TV translator stations that it would commence operations or conduct FFA testing on some of its licensed spectrum before the opening of the Special Displacement Window. The Commission therefore provided tools to these "early displaced" LPTV/translator stations to ensure that they would be able to continue to broadcast.⁶⁴ One of these tools was for a displaced station to submit a displacement application prior to the opening of the Special Displacement Window with a request for waiver of the current displacement freeze, and file for Special Temporary Authority to temporarily operate the facility proposed in the displacement application.⁶⁵ The *Tools PN* further explained that applications filed with a request for waiver of the displacement freeze would be treated as if filed on the last day of the Special Displacement Window and processed in accordance with the rules for that window.⁶⁶ Approximately 340 displacement applications were filed prior to the Special Displacement Window pursuant to the *Tools PN*. Independent of the *Tools PN*, T-Mobile created a Supplemental Reimbursement Plan whereby it committed to pay the reasonable costs associated for such stations to move from a temporary channel to a permanent channel if the station's displacement application for the temporary channel was not granted and the station therefore needs to move twice.⁶⁷ In addition, T-Mobile and PBS announced in June 2017 that T-Mobile had committed to cover the costs for PBS translator stations to relocate their frequencies following the incentive auction.⁶⁸

16. *FM Broadcasters.* FM broadcasters were not eligible to participate in the auction, were

⁶¹ *The Incentive Auction Task Force and Media Bureau Announce Procedures for Low Power Television, Television Translator and Replacement Translator Stations During the Post-Incentive Auction Transition*, Public Notice, 32 FCC Rcd 3860, 3866-67, paras. 14-16 (IATF and MB, 2017). This means an auction under the Commission's rules. See 47 CFR § 73.5000 *et seq.*

⁶² See *Incentive Auction R&O*, 29 FCC Rcd at 6839-40, paras. 668-71, and 6840, n.1863.

⁶³ Applications were granted on June 14, 2017, July 19, 2017, November 1, 2017, January 9, 2018, January 30, 2018, July 3, 2018, and July 26, 2018. *Incentive Auction Task Force and Wireless Telecommunications Bureau Grant 600 MHz Licenses*, Public Notice, 32 FCC Rcd 4832 (2017), 32 FCC Rcd 5684 (2017), 32 FCC Rcd 9280 (2017), 33 FCC Rcd 98 (2018), 33 FCC Rcd 869 (2018), DA 18-693 (2018), DA 18-774 (2018). The Commission's review of the long-form applications of other winning bidders in Auction 1002 is ongoing.

⁶⁴ See *Incentive Auction Task Force and Media Bureau Set Forth Tools Available to LPTV/Translator Stations Displaced Prior to the Special Displacement Window*, Public Notice, 32 FCC Rcd 4943 (2017) (*Tools PN*).

⁶⁵ *Id.* at 4945, paras. 5-7.

⁶⁶ *Id.* at 4945, para. 6.

⁶⁷ Letter from Steve B. Sharkey, Vice President, Government Affairs, T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 16-306, et al. (filed July 17, 2017) (T-Mobile July 17, 2017 *Ex Parte*).

⁶⁸ Letter from Steve B. Sharkey, Vice President, Government Affairs, T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 16-306, et al., at 1 (filed Aug. 4, 2017). The letter also references a press release by PBS, reporting that "T-Mobile has committed to covering the costs for local public television low power facilities that are required to relocate to new broadcasting frequencies following the government's recent spectrum incentive auction." *Id.* at n.2 (citing PBS, Press Release, Public Joins Forces With T-Mobile to Preserve Access to Public Television for Millions in Rural America (June 29, 2017), available at <http://to.pbs.org/2tteX4V>). See also Letter from Talia Rosen, Assistant General Counsel and Senior Director, Standards & Practices, PBS, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 16-306 (filed May 30, 2018) (PBS May 30, 2018 *Ex Parte*).

not subject to the repacking process, and were not eligible for reimbursement pursuant to the Spectrum Act.⁶⁹ While FM spectrum was not subject to reorganization in the repacking process, FM stations may be affected by the reorganization of broadcast television spectrum if, for example, an FM station shares a tower with a repacked TV station. Changes to the facilities of the TV station could affect the FM station if, for example, the FM station antenna must be moved, either temporarily or permanently, to accommodate the TV station's change or if an FM station needs to power down, or cease operating temporarily, to permit a repacked TV broadcaster to modify its facilities. In total, we estimate this could include fewer than 500 full-service stations.⁷⁰

D. Full Power, Class A, and MVPD Reimbursement Process

17. As we initiate the proceeding to reimburse additional entities affected by the reorganization of broadcast television spectrum, we find the current eligibility criteria, process, and procedures associated with the Reimbursement Fund instructive. We summarize pertinent details below.

18. The Spectrum Act requires the Commission to reimburse full power and Class A broadcast television licensees for costs "reasonably incurred" in relocating to their new channels assigned in the repacking process, and to reimburse MVPDs for costs "reasonably incurred" in order to continue to carry the signals of stations relocating to new channels as a result of the repacking process or a winning reverse auction bid.⁷¹ Congress specified that these reimbursements be made from the Reimbursement Fund,⁷² and that the Commission make all reimbursements within three years after completion of the forward auction (Reimbursement Period).⁷³ In the *Incentive Auction R&O*, the Commission concluded that, with respect to broadcast licensees, the Spectrum Act's reimbursement mandate applies only to full power and Class A television licensees that are involuntarily reassigned to new channels in the repacking process.⁷⁴

19. In the *Incentive Auction R&O*, the Commission established the reimbursement process that is currently in place. Following the release of the *Closing and Channel Reassignment PN*, entities seeking reimbursement provided information regarding their existing broadcasting equipment and their

⁶⁹ In the *Incentive Auction R&O*, the Commission noted that, in some cases, stations that are not reassigned to new channels but that sustain expenses due to the repacking process may be reimbursed indirectly, *e.g.*, where multiple stations share a tower, a reassigned station that makes changes may be required by contract to cover certain expenses incurred by other tower occupants. *See Incentive Auction R&O*, 29 FCC Rcd at 6813-14, para. 602. The Commission clarified, however, that in such a situation only the reassigned station would be eligible to seek reimbursement from the Reimbursement Fund for any such costs. *Id.* at 6814, n.1698.

⁷⁰ *See infra* note 174.

⁷¹ 47 U.S.C. §§ 1452(b)(4)(A)(i), (ii).

⁷² *See id.* § 1452(d). In the Spectrum Act, Congress made \$1.75 billion available for reimbursement of relocation costs. *See* Spectrum Act § 6402 (adopting 47 U.S.C. § 309(j)(8)(G)(iii)(I), (II)). In the REA, Congress provided an additional \$350 million available in fiscal year 2018, and up to \$400 million in fiscal year 2019, to be used to reimburse full power and Class A licensees and MVPDs for incentive auction relocation costs. *See* 47 U.S.C. § 1452(j)(1) – (2). *See also supra* para. 5.

⁷³ 47 U.S.C. § 1452(b)(4)(D). This three-year period commenced with the release of the *Closing and Channel Reassignment PN* on April 13, 2017. Thus, under the Spectrum Act, reimbursements are required to be completed by April 13, 2020. As noted above, in the REA Congress provided additional funding to be used to reimburse full power and Class A licensees and MVPDs for their eligible auction-related expenses. *See supra* para. 5. In addition, it provided that payments from these additional funds may be made after April 13, 2020 "if, before making any such payments after such date, the Commission submits to Congress a certification that such payments are necessary to reimburse reasonably incurred costs" as defined in the Spectrum Act. 47 U.S.C. § 1452(j)(2)(C)(i).

⁷⁴ *See Incentive Auction R&O*, 29 FCC Rcd at 6813, para. 601. The Commission concluded that winning incentive auction bidders that remain on the air and incur relocation costs because of their winning bid option are not eligible for reimbursement. *Id.*

plan to accomplish the channel transition, including an estimate of their eligible costs,⁷⁵ by filing FCC Form 2100, Schedule 399 (the Reimbursement Form), in the Media Bureau's Licensing and Management System (LMS).⁷⁶ Estimated costs could be provided by the entity or by using predetermined cost estimates based on the Catalog of Potential Expenses and Eligible Costs (Catalog of Reimbursement Expenses, or Catalog)⁷⁷ developed by the Media Bureau. The Catalog sets forth categories of expenses that are most likely to be commonly incurred by broadcasters and MVPDs as a result of the repacking process, together with ranges of prices for the potential expenses. The Media Bureau, with assistance from a contractor with extensive experience in television broadcast engineering and Federal funds management (Fund Administrator), reviews the cost estimates.

20. The Commission's goal is to ensure that reimbursement funds are allocated fairly and consistently across all eligible entities and, at the same time, to have sufficient flexibility to make reasoned allocation decisions that maximize the funds available for reimbursement. To this end, reimbursement funds are being allocated in tranches, with the allocation amounts calculated based in part on the total amount of repacking expenses reported on the estimated cost forms as well as the amount of money available in the Reimbursement Fund.⁷⁸ On October 16, 2017, an initial allocation of approximately \$1 billion was made, which represented approximately 52 percent of the then-current verified cost estimates for commercial stations and MVPDs, and 62 percent for NCE broadcasters.⁷⁹ A further allocation of approximately \$742 million was made on April 16, 2018, providing all repacked full power and Class A stations and MVPDs access to approximately 92.5 percent of their then-current verified cost estimates.⁸⁰ The Commission will continue to monitor closely the draw-down of the Reimbursement Fund to determine if additional allocations are warranted.

21. The allocation is available for draw down and reimbursement from the U.S. Treasury as the entities incur expenses eligible for reimbursement and submit invoices that are approved for payment. Entities draw down against their individual allocations using the Reimbursement Form to report incurred expenses and upload invoices or receipts into LMS. To facilitate the disbursement of reimbursement payments, entities were also required to submit payment instructions to the Commission by (i) submitting a signed and notarized FCC Form 1876, along with a bank account verification letter or redacted bank

⁷⁵ See *id.* at 6815-16, para. 607. Eligible broadcasters must estimate the costs they expect to reasonably incur to change channels, and eligible MVPDs must estimate the costs they expect to reasonably incur to accommodate new channel assignments. *Id.* at 6817-18, para. 611.

⁷⁶ See *id.* at 6817, para. 610; *Media Bureau Finalizes Reimbursement Form for Submission to OMB and Adopts Catalog of Expenses*, Public Notice, 30 FCC Rcd 11701 (2015). Entities were required to file the estimated cost forms within three months following the release of the *Closing and Channel Reassignment PN*. See *Incentive Auction R&O*, 29 FCC Rcd at 6817, para. 610. These forms are filed with the Commission electronically, and entities must update the form if circumstances change substantially. *Id.*

⁷⁷ See *Incentive Auction Task Force and Media Bureau Finalize Catalog of Reimbursement Expenses*, Public Notice, 32 FCC Rcd 1199 (2017) (Catalog of Potential Expenses and Estimated Costs attached as Appendix) (*Finalized Catalog of Reimbursement Expenses PN*).

⁷⁸ See *Incentive Auction Task Force and Media Bureau Announce the Initial Reimbursement Allocation for Eligible Broadcasters and MVPDs*, Public Notice, 32 FCC Rcd 7556 (2017) (*Initial Allocation PN*). In the *Incentive Auction R&O*, the Commission stated its intention to issue NCE broadcasters initial allocations equivalent to up to 90 percent of their estimated costs eligible for reimbursement, and all other broadcasters and MVPDs initial allocations equivalent to up to 80 percent of their estimates costs eligible for reimbursement. See *Incentive Auction R&O*, 29 FCC Rcd at 6818-19, para. 614.

⁷⁹ See *id.* 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." *Incentive Auction R&O*, 29 FCC Rcd at 6818, para. 614 (citing PTV Comments at 28-29).

⁸⁰ See *Incentive Auction Task Force and Media Bureau Announce a Further Reimbursement Allocation for Eligible Broadcasters and MVPDs*, Public Notice, DA 18-372 (rel. Apr. 16, 2018) (*Further Allocation PN*).

statement that confirms ownership of the bank account, for each Facility ID/File Number receiving a reimbursement payment; and (ii) entering bank account information for the reimbursement payment recipient in the CORES Incentive Auction Financial Module.⁸¹

22. Prior to the end of the three-year Reimbursement Period, entities must provide information regarding their actual and remaining estimated costs and will be issued a final allocation, if appropriate, to cover the remainder of their eligible costs.⁸² If any allocated funds remain in excess of the entity's actual costs determined to be eligible for reimbursement, those funds will revert back to the Reimbursement Fund.⁸³ In addition, if an overpayment is discovered, even after the end of the Reimbursement Period, entities will be required to return the excess to the Commission.⁸⁴

III. NOTICE OF PROPOSED RULEMAKING

A. Amounts Available for Reimbursement

23. As an initial matter, we seek comment on how to interpret the statute with respect to amounts available to reimburse eligible entities pursuant to the REA using funds appropriated for fiscal year 2019. Section 511(j)(1) of the REA appropriates funds “to the TV Broadcaster Relocation Fund established by [47 U.S.C. § 1452(d)]”—specifically, \$600 million for fiscal year 2018 and \$400 million for fiscal year 2019.⁸⁵ Section 511(j)(2) of the REA discusses the “availability of funds” and provides that, if the Commission makes the required certification, “amounts made available to the TV Broadcaster Relocation Fund by [Section 511(j)(1)] shall be available to the Commission to make” certain specified payments.⁸⁶ In particular, Section 511(j)(2)(A) states that funds appropriated in Section 511(j)(1) shall be available to the Commission to make payments required by the Spectrum Act and the REA, including “not more than” \$350 million to reimburse full power and Class A stations and MVPDs from fiscal year 2018 funds, “not more than” \$150 million to reimburse LPTV and TV translator stations from fiscal year 2018 funds, and “not more than” \$50 million to reimburse FM broadcast stations from fiscal year 2018 funds.⁸⁷ It also states that funds appropriated in Section 511(j)(1) shall be available to the Commission to make payments “solely for the purposes of consumer education relating to the reorganization of broadcast television spectrum,” including \$50 million from the funds available for fiscal year 2018.⁸⁸ While Section 511(j)(2)(A) clearly delineates the availability of funds for fiscal year 2018, it does not do so with respect to fiscal year 2019 funding.

24. We therefore seek comment on whether the \$400 million appropriated to the Reimbursement Fund for fiscal year 2019 is only available to reimburse eligible full power and Class A stations and MVPDs for costs reasonably incurred in the repacking process or whether the REA also permits this money to be used to reimburse LPTV, TV translators, and FM broadcast stations, as well as to fund the Commission's consumer education efforts.

25. If the Commission were to interpret the statute to find that it is authorized to reimburse eligible LPTV, TV translator, and FM broadcast stations and to fund consumer education efforts from the fiscal year 2019 funds, in addition to reimbursing full power, Class A, and MVPD entities, we seek

⁸¹ 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, 2022-26, paras. 66-79 (2017) (*Financial Procedures PN*).

⁸² See *Incentive Auction R&O*, 29 FCC Rcd at 6819, para. 616.

⁸³ *Id.*

⁸⁴ *Id.* at 6815-16, para. 607 and 6826, para. 635, n.1770.

⁸⁵ 47 U.S.C. § 1452(j)(1)(A)-(B).

⁸⁶ 47 U.S.C. § 1452(j)(2)(A).

⁸⁷ 47 U.S.C. § 1452(j)(2)(A)(i)-(iii).

⁸⁸ 47 U.S.C. § 1452(j)(2)(A)(iv).

comment on whether and how the Commission should prioritize this funding. While we have received estimates of the costs that full power and Class A stations anticipate as a result of their channel reassignments, we have no estimates to date of the costs that will be incurred by LPTV, TV translator, and FM stations. Moreover, as we have indicated, we anticipate that the estimates for full power and Class A stations will increase as their construction process continues.⁸⁹ It is therefore possible that there will be significant demand on the Reimbursement Fund from all categories of eligible entities such that the total amount available may not be sufficient to cover all their eligible expenses. If so, should the Commission prioritize the payments to full power and Class A stations over those of FM stations and LPTV/translator stations? We also seek comment on whether the Commission should prioritize the payment of full power and Class A stations over any aggregate costs exceeding the limits described in Section 511(j)(2) of \$50 million for FM stations and \$150 million for LPTV/translator stations. In other words, should the Commission consider reimbursement of costs above those aggregate amounts for FM and LPTV/translator stations only after full power and Class A expenses are fully satisfied? We seek comment on these issues.

B. LPTV and TV Translator Stations – Eligibility and Expenses

26. As discussed above,⁹⁰ the REA authorized the Commission to reimburse “costs reasonably incurred by a television translator 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 Section 6403(b) of the Spectrum Act. In this section, we seek comment on issues related to eligibility and expenses under the REA provisions for reimbursement of displaced LPTV and TV translator stations.

1. Stations Eligible for Reimbursement

a. LPTV/Translator Stations

27. The REA provides that 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 are eligible for reimbursement.⁹¹ The REA specifies that these two types of stations are to be defined pursuant to the definition included in Section 74.701 of Title 47 of the Code of Federal Regulations.⁹² We interpret this provision to mean that LPTV and TV translator stations, as defined by Section 74.701 of our rules, may be eligible for reimbursement under the Reimbursement Fund if they meet the additional eligibility criteria discussed below, and we seek comment on this interpretation.

(i) Special Displacement Window Eligibility Criteria

28. The REA provides that “[o]nly stations that are eligible to file and do file an application in the Commission’s Special Displacement Window are eligible to seek reimbursement.”⁹³ The Media

⁸⁹ See, e.g., *Further Allocation PN* at 3 (stating “[c]onsistent with our expectation in the *Initial Allocation PN*, we anticipate that estimated costs will continue to rise”).

⁹⁰ See *supra* para. 4.

⁹¹ 47 U.S.C. § 1452(k)(1).

⁹² 47 U.S.C. § 1452(k)(5)(A), (B). Section 74.701 defines “Low power TV station” as “[a] station authorized under the provisions of this subpart that may retransmit the programs and signals of a TV broadcast station and that may originate programming in any amount greater than 30 seconds per hour and/or operates a subscription service.” 47 CFR § 74.701(f). “Television broadcast translator station” is defined as “[a] station in the broadcast service operated for the purpose of retransmitting the programs and signals of a television broadcast station, without significantly altering any characteristic of the original signal other than its frequency and amplitude, for the purpose of providing television reception to the general public.” *Id.* § 74.701(a).

⁹³ 47 U.S.C. § 1452(k)(1). The Special Displacement Window was originally scheduled for April 10, 2018 to May 15, 2018 and was subsequently extended to June 1, 2018. See generally *Special Displacement Window PN*; *Special*

Bureau has provided that, to be eligible to file in the Special Displacement Window, a station had to be an LPTV/translator station that was “operating” on April 13, 2017 – the date of the release of the *Closing and Channel Reassignment PN*.⁹⁴ Furthermore, for this purpose, a station is “operating” if it had licensed its authorized construction permit facilities or had an application for a license to cover on file with the Commission on that date.⁹⁵ The station must also be “displaced . . . as a result of the broadcast television spectrum incentive auction.”⁹⁶ Therefore, we tentatively conclude that, to be eligible for reimbursement, a station must be an LPTV/translator station that was eligible to file and did file an application during the Special Displacement Window. As noted above, the Commission received 2,159 applications during the window which, subject to the other eligibility requirements, represents the largest possible universe of LPTV/translator stations that could be eligible for reimbursement.

29. While the threshold eligibility criteria set forth in the REA require only that a station was “eligible to file and [did] file an application” in the Special Displacement Window, we tentatively conclude that, to be eligible for reimbursement, a station’s displacement application filed during the Special Displacement Window (or prior to the window with grant of a waiver, or subsequently amended prior to the close of the Settlement Window) must be granted. Although this requirement is not mandated by the REA,⁹⁷ we believe that this additional criterion is essential to ensure the integrity of the reimbursement program and is consistent with Section 511(k)(1), which requires reimbursement of only costs reasonably incurred to “relocate . . . television service from one channel to another channel . . . or otherwise modify [a] facility.”⁹⁸ We believe that eligibility must be limited to stations with valid displacement construction permits obtained through the procedural mechanisms associated with the Special Displacement Window that will permit them to construct the displacement facilities for which they receive reimbursement. Otherwise, providing reimbursement to eligible stations whose applications are not granted will result in reimbursement for expenses related to facilities that will not be constructed to “relocate . . . television service from one channel to another channel . . . or otherwise modify [a] facility.”⁹⁹ We seek comment on this tentative conclusion.

30. An LPTV/translator station that filed in the Special Displacement Window whose application is dismissed may subsequently file a displacement application when the Media Bureau lifts the freeze on the filing of such applications.¹⁰⁰ We tentatively conclude that such stations will be eligible

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Displacement Window Extension PN. Of the total of 2,164 applications filed during the Special Displacement Window, 946 have been granted as of July 30, 2018.

⁹⁴ *Media Bureau Announces Date by Which LPTV and TV Translator Stations Must Be “Operating” in Order to Participate in Post-Incentive Auction Special Displacement Window*, Public Notice, 31 FCC Rcd 5383, 5384 (MB 2016) (*Operating PN*).

⁹⁵ *Id.*

⁹⁶ See 47 CFR § 73.3700(g)(1); *Incentive Auction R&O*, 29 FCC Rcd at 6836, para. 659. In order to be “displaced” for purposes of filing in the Special Displacement Window, an LPTV or TV translator station had to: (1) be subject to displacement by a full power or Class A television station on the repacked television band (channels 2-36) as a result of the incentive auction and repacking process; (2) be licensed on frequencies repurposed for new, flexible use by a 600 MHz Band wireless licensee (channels 38-51); or (3) be licensed on frequencies that will serve as part of the 600 MHz Band guard bands (which includes the duplex gap). See 47 CFR § 73.3700(g)(1); *Incentive Auction R&O*, 29 FCC Rcd at 6836, para. 659.

⁹⁷ *Mobile Communications Corp. v. FCC*, 77 F.3d 1399, 1405 (D.C. Cir. 1996) (explaining that the maxim of statutory construction *expressio unius est exclusio alterius* (the mention of one thing implies the exclusion of another) “‘is simply too thin a reed to support the conclusion that Congress has clearly resolved [an] issue’”) (quoting *Texas Rural Legal Aid, Inc. v. Legal Serv. Corp.*, 940 F.2d 685, 694 (D.C. Cir. 1991)).

⁹⁸ 47 U.S.C. § 1452(k)(1).

⁹⁹ *Id.*

¹⁰⁰ For example, if a displaced station filed an application during the Special Displacement Window that was technically deficient and was not amended to resolve the deficiency within the applicable time period stated in a

for reimbursement under the REA if their later-filed displacement application is subsequently granted. Although they would receive their construction permit through a displacement application that was not filed during the Special Displacement Window, these stations would meet the threshold eligibility criteria under the REA because such stations were “eligible to file and [did] file an application” in the Special Displacement Window.¹⁰¹ In addition, such stations are affected by the reorganization of broadcast television spectrum in the same way as other displaced LPTV/translator stations. We seek comment on whether and how such stations could be included in the reimbursement process considering that they will not be able to meet the same filing deadlines applicable to other eligible LPTV/translator stations that have applications granted in the Special Displacement Window and, depending on the demand on the Reimbursement Fund, this difference could result in a lack of reimbursement resources. Would allowing such stations to be eligible for reimbursement be appropriate given the finite resources of the Reimbursement Fund? Should such stations be eligible for reimbursement only to the extent funds remain available for LPTV/translator stations in the Reimbursement Fund?

(ii) “Licensed and Transmitting” Eligibility Criteria

31. The REA provides that only stations that were “licensed and transmitting for at least 9 of the 12 months prior to April 13, 2017,” are eligible to receive reimbursement under the REA.¹⁰² The statute also specifies that “the operation of analog and digital companion facilities may be combined” for purposes of the “licensed and transmitting” requirement.¹⁰³ We propose that, consistent with the eligibility requirement for participation in the Special Displacement Window, stations that were licensed or that filed a license to cover application prior to April 13, 2017, be considered “licensed” for purposes of REA reimbursement eligibility.¹⁰⁴

32. Because neither Commission rules nor the REA specifies a definition of “transmitting,”¹⁰⁵ we propose a definition that relies on the Commission’s minimum operating schedule rule for commercial full power television broadcast stations.¹⁰⁶ That rule provides that commercial full power television stations must “operate”¹⁰⁷ not less than 2 hours in each day of the week and not less than a total of 28

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notice of deficiency letter, then such application would be dismissed. However, the displaced station could file another displacement application after the filing freeze is lifted.

¹⁰¹ 47 U.S.C. § 1452(k)(1).

¹⁰² See 47 U.S.C. § 1452(k)(5)(A), (B). As noted above, LPTV/translator stations had to be “operating” by April 13, 2017 to be eligible to participate in the Special Displacement Window. See *supra* para. 28.

¹⁰³ See 47 U.S.C. § 1452(k)(5)(A), (B). LPTV/translator stations may transition to digital by either one of two methods. They may conduct an on-channel “flash cut” of their analog facilities to digital. Alternatively, they may choose to construct and operate a companion digital channel facility on a different channel in conjunction with their analog facility. See *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend the Rules for Digital Class A Television Stations*, Report and Order, 19 FCC Rcd 19331, 19376, 19379 (2004). Prior to completion of the LPTV/translator digital transition date (July 13, 2021), these stations must terminate their analog facility and operate only their digital companion channel facility. See *LPTV DTV Third R&O*, 30 FCC Rcd at 14932-33, para. 9.

¹⁰⁴ See *Operating PN*, 31 FCC Rcd at 5384 (interpreting an “operating” LPTV/translator station that is displaced as a result of the incentive auction to mean one that is operating on the date of release of the *Closing and Channel Reassignment PN*).

¹⁰⁵ We note that LPTV/translator stations have no minimum operating requirement. 47 CFR § 74.763(a). LPTV, TV translator, and TV booster stations are, however, required to notify the Commission within 10 days if causes beyond their control make it impossible to continue operating, and to request Special Temporary Authority if they continue to be unable to operate beyond 30 days. *Id.* § 74.763(b). Their licenses are also automatically cancelled if they fail to transmit a broadcast signal for any consecutive 12-month period. 47 U.S.C. § 312(g).

¹⁰⁶ See 47 CFR § 73.1740.

¹⁰⁷ The rule defines “operation” to include the period during which the station is operated pursuant to temporary authorization or program tests, as well as during the license period. *Id.* § 73.1740(a)(3). The rule also specifies that

hours per calendar week.¹⁰⁸ Therefore, we propose that, in order to be considered “transmitting,” stations seeking reimbursement under the REA must have been operating not less than 2 hours in each day of the week and not less than a total of 28 hours per calendar week for 9 of the 12 months prior to April 13, 2017. We believe that, given the finite nature of the Reimbursement Fund, it is necessary to give reasonable meaning to the eligibility criteria set forth in the REA. By defining “transmitting” in the same way as we do for full power stations, we intend to prioritize reimbursement for LPTV/translator stations that provided more robust service to the public over those that were on the air for only a brief period each day. Because a translator station is required to retransmit the signal of a television station,¹⁰⁹ we would expect that most, if not all, translators would meet this requirement. We believe that this requirement reflects the legislative mandate that only “transmitting” stations be eligible to receive reimbursement. We seek comment on this proposal.

33. We propose that stations be required to certify compliance with the minimum operating requirement we adopt as part of the reimbursement process. LPTV/translator stations may be required to provide evidence to support this certification, such as documentation of the programming aired by the station during the period of time in question, electric power bills, or other evidence showing that the station was transmitting during this time period.¹¹⁰ The Commission previously determined that, with respect to the incentive auction reimbursement program, “audits, data validations, and site visits are essential tools in preventing waste, fraud, and abuse, and that use of these measures will maximize the amount of money available for reimbursement.”¹¹¹ With respect to reimbursing low-power broadcast stations, we contemplate that a third party firm on behalf of, or in conjunction with, the Media Bureau may conduct audits, data validations, site visits or other verifications to substantiate the supporting evidence and representations of entities that certify that they meet the eligibility criteria adopted in this proceeding to the extent necessary. We propose to direct such entities to make available any relevant documentation upon request from the Commission or its contractor. We emphasize that a false certification may result in disqualification and other sanctions provided for in the Communications Act and the Commission’s rules.¹¹² We seek comment on these proposals.

b. Other Eligible Stations

34. *Early Displaced Stations.* We propose that LPTV and TV translator stations that were displaced early, were eligible to file in the Special Displacement Window, and filed a displacement application prior to the Special Displacement Window will be eligible for reimbursement under the REA. As described above, some LPTV/translator stations were displaced prior to the Special Displacement

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“[v]isual transmissions of test patterns, slides, or still pictures accompanied by unrelated aural transmissions may not be counted in computing program service (see § 73.653).” *Id.* § 73.1740(a)(2)(iii).

¹⁰⁸ *Id.* § 73.1740(a)(2)(ii). Class A television stations must operate not less than 18 hours in each day of the week (for a total of 126 hours per week). *Id.* § 73.1740(a)(5). Noncommercial educational full power television stations are not required to operate on a regular schedule and are not subject to minimum hours of operation. *Id.* § 73.1740(b).

¹⁰⁹ See 47 CFR § 74.701(a) (defining “television broadcast translator station” as “[a] station in the broadcast service operated for the purpose of retransmitting the programs and signals of a television broadcast station, without significantly altering any characteristic of the original signal other than its frequency and amplitude”).

¹¹⁰ See *infra* para. 77.

¹¹¹ *Incentive Auction R&O*, 29 FCC Rcd at 6826, para. 635.

¹¹² Section 1.17 of the Commission’s rules requires that licensees must provide truthful and accurate information in all interactions with the Commission. 47 CFR § 1.17. Violation of this rule may subject the applicant to a monetary forfeiture pursuant to Sections 502 and/or 503 of the Communications Act, 47 U.S.C. §§ 502 and 503. An intentional false certification also may be sanctioned under Section 1001 of Title 18 of the United States Code, 18 U.S.C. § 1001, which makes it a crime, punishable by a \$10,000 fine, or five years imprisonment, or both, to knowingly and willfully make “any false, fictitious or fraudulent statements or representation” with respect to any matter within the jurisdiction of a federal agency.”

Window as a result of T-Mobile's decision to commence wireless operations in the 600 MHz band.¹¹³ As noted above, approximately 340 such stations filed a request for waiver of the displacement freeze and a request for an STA, and the Media Bureau has treated these filings as if filed on the last day of the Special Displacement Window.¹¹⁴ Such applications will be processed in accordance with the rules for that window.¹¹⁵ Because these stations meet the definition of LPTV/translator stations eligible for reimbursement under the REA,¹¹⁶ and their displacement applications were considered as filed during the Special Displacement Window, we propose that these stations will be eligible for reimbursement if they meet all of the other eligibility requirements. We seek comment on this proposal.

35. *Replacement Translators.* In the *Incentive Auction R&O*, the Commission concluded that digital low power TV translator stations authorized pursuant to Section 74.787(a)(5) of the Commission's rules (analog-to-digital replacement translators, or DRTs) that were displaced by the incentive auction and repacking process are eligible to file displacement applications during the Special Displacement Window.¹¹⁷ Because DRTs are potentially displaced as a result of the reorganization of broadcast television spectrum, were eligible to file in the Special Displacement Window, and are considered "TV translators" and licensed under the same Part 74 rules as other TV translator stations,¹¹⁸ we propose that displaced DRTs also are eligible for reimbursement pursuant to the REA, as long as they meet the other eligibility requirements. We seek comment on this proposal.

36. In the *LPTV DTV Third R&O*, the Commission established a new digital-to-digital replacement translator (DTDRT) service to allow eligible full power television stations to recover lost digital service area that could result from the repacking process.¹¹⁹ The Commission concluded that full power stations may begin to file for DTDRTs beginning with the opening of the Special Displacement Window on April 10, 2018, and ending one year after completion of the incentive auction transition period.¹²⁰ Although they were eligible to file in the Special Displacement Window, and DTDRTs are similar to DRTs in that they are considered "TV translators" and licensed under the same Part 74 rules as other TV translator stations,¹²¹ we tentatively conclude that new DTDRTs are not eligible for reimbursement under the REA because they would not have been "licensed and transmitting" for 9 of the past 12 months prior to April 13, 2017, as required by the statute. In addition, even if they were otherwise eligible under the statutory criteria, DTDRTs are newly established facilities and thus are not "relocat[ing] . . . from one channel to another channel" or "modify[ing]" their facilities as required by the statute. We seek comment on this tentative conclusion.

37. *Class A Television Licensees.* As noted above, Section 511(k)(3) of the REA prohibits

¹¹³ See *Incentive Auction R&O*, 29 FCC Rcd at 6839-40, paras. 668-71, and 6840, n.1863.

¹¹⁴ See *supra* Section II.C.

¹¹⁵ *Tools PN*, 32 FCC Rcd at 4945, para. 6.

¹¹⁶ See *supra* Section III.B.1.a.

¹¹⁷ See *Incentive Auction R&O*, 29 FCC Rcd at 6675, paras. 242-43, and 6834-35, para. 657. Such applications have a processing priority over displacement applications filed by LPTV/translator applications. *Id.*

¹¹⁸ See *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Replacement Digital Low Power Television Translator Stations*, Report and Order, 24 FCC Rcd 5931, 5942, para. 26 (2009) (applying the rules associated with television translator stations to the replacement digital television translator service). See also *Incentive Auction R&O*, 29 FCC Rcd at 6675, para. 243 ("[T]he Commission did not confer an operating status on DRTs that differs from other TV translator stations. On the contrary, it put the licensees of these facilities on notice that DRTs, like other TV translator stations, would be secondary in nature and therefore subject to displacement.").

¹¹⁹ *LPTV DTV Third R&O*, 30 FCC Rcd at 14956-57, para. 65.

¹²⁰ 47 CFR § 74.787(a)(5)(i); *LPTV DTV Third R&O*, 30 FCC Rcd at 14959, para. 70.

¹²¹ See *LPTV DTV Third R&O*, 30 FCC Rcd at 14962-63, para. 80 (applying the existing rules associated with TV translator stations to DTDRTs).

duplicative payments from the Reimbursement Fund to “a low power television station that has been accorded primary status as a Class A television licensee under [47 CFR § 73.6001(a)].”¹²² Specifically, Section 511(k)(3)(A) provides that such licensee may not receive reimbursement under Section 511(k)(1) of the REA if such station has received reimbursement under Section 6403(b)(4)(A)(i) of the Spectrum Act (including the additional funding made available for reimbursing full power, Class A, and MVPDs in Section 511(j)(2)(A)(i) of the REA).¹²³ We interpret this language to underscore that Class A stations reimbursed from funds for Class A stations under the Spectrum Act or the REA are not eligible for reimbursement from funds dedicated to LPTV/translator reimbursement under the REA. Such Class A stations were not eligible to file an application during the Special Displacement Window and thus do not qualify for reimbursement for LPTV/translator stations under the REA.¹²⁴ Similarly, Section 511(k)(3)(B) specifies that a low power television station that has been accorded primary status as a Class A television licensee that receives reimbursement under Section 511(k)(1) of the REA may not receive reimbursement under Section 6403(b)(4)(A)(i) of the Spectrum Act.¹²⁵ We interpret this language to underscore that such stations that filed in the Special Displacement Window are not eligible for reimbursement under Section 6403(b)(4)(A)(i) because they are not full power or Class A stations involuntarily reassigned to a new channel in the repacking process.¹²⁶ We seek comment on our interpretations.

2. Expenses Eligible for Reimbursement

a. Costs Reasonably Incurred

38. 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.¹²⁷ As discussed above,¹²⁸ on April 13, 2017, we released the *Closing and Channel Reassignment PN*, which announced the completion of the auction, the auction results, the broadcast television channel reassignments made through repacking, and the 600 MHz Band plan reflecting the reallocations of broadcast television spectrum for flexible use and the frequencies that will serve as part of the 600 MHz Band guard bands.¹²⁹ We interpret the REA to provide for reimbursement of reasonably incurred

¹²² 47 U.S.C. § 1452(k)(3). Section 73.6001(a) of the Commission’s rules provides that “[q]ualified low power television licensees which, during the 90-day period ending November 28, 1999, operated their stations in a manner consistent with the programming and operational standards set forth in the Community Broadcasters Protection Act of 1999, may be accorded primary status as Class A television licensees.” 47 CFR § 73.6001(a). Low power television stations that did not qualify for Class A status are secondary. *See id.* § 74.702(b).

¹²³ 47 U.S.C. § 1452(k)(3)(A).

¹²⁴ Instead, Class A stations eligible for reimbursement were required to have been involuntarily reassigned to new channels in the repacking process pursuant to Section 6403(b)(1)(B)(i) of the Spectrum Act, and to have filed an application for the facilities specified in the *Closing and Channel Reassignment PN* either within 90 days of the release of that *Public Notice* or during the First Priority Filing Window in the post-auction transition process. *Incentive Auction R&O*, 29 FCC Rcd at 6813, para. 601, and 6791-92, paras. 547-50. *See also* 47 CFR § 73.3700(b)(ii)-(iv).

¹²⁵ 47 U.S.C. § 1452(k)(3)(B).

¹²⁶ *Incentive Auction R&O*, 29 FCC Rcd at 6813-14, paras. 601-02.

¹²⁷ 47 U.S.C. § 1452(k)(1).

¹²⁸ *See supra* para. 11.

¹²⁹ Reassigned stations then had three months, until July 12, 2017, to file construction permit applications for any minor changes necessary to construct the channels assigned in the *Closing and Channel Reassignment PN*. *Id.* These stations had limited flexibility to propose transmission facilities that deviated from the technical parameters specified in the *Closing and Channel Reassignment PN*. *See Incentive Auction Task Force and Media Bureau*

relocation costs for LPTV/translator stations that were displaced “as a result of the reorganization of broadcast television spectrum” under the Spectrum Act, which includes displacement resulting from full power and Class A channel reassignments made in the *Closing and Channel Reassignment PN* and from the reallocation of broadcast television spectrum for flexible use by a 600 MHz Band wireless licensee or for use as 600 MHz Band guard bands.

39. While the Commission’s reorganization of television spectrum under Section 1452(b) of the Spectrum Act was completed with the issuance of the *Closing and Channel Reassignment PN*, the Commission also afforded reassigned stations the opportunity to file applications for alternate channels or expanded facilities during two filing windows that ended on September 15 and November 2, 2017.¹³⁰ We anticipate that some LPTV/translator stations that filed applications during the Special Displacement Window may have been displaced by grant of an application filed during one of the alternate channel/expanded facilities filing windows, rather than the channel reassignments specified in the *Closing and Channel Reassignment PN*. While applications filed during the two filing windows by reassigned full power and Class A stations to modify their repacked facilities were not required under Section 1452(b) of the Spectrum Act, they may have resulted in displacement of LPTV/translator stations making those stations eligible to file applications in the Special Displacement Window. Accordingly, we seek comment on whether the REA’s requirement that we reimburse costs reasonably incurred “as a result of the reorganization of broadcast television spectrum” extends to include costs incurred by LPTV/translator stations that were displaced solely due to modifications made by full power and Class A facilities as a result of receiving authorizations through these two filing windows.

40. We tentatively conclude that the equipment and other costs necessary for an eligible LPTV/translator station to construct the facilities authorized by grant of the station’s Special Displacement Window application shall be considered costs “reasonably incurred,” and seek comment on this tentative conclusion. This approach is similar to the reimbursement program used for full power and Class A stations with the following distinction. In implementing the Spectrum Act’s reimbursement provisions for full power and Class A stations reassigned to new channels, the Commission concluded that the Act required that it reimburse costs “that are reasonable to provide facilities comparable to those that a broadcaster . . . had prior to the auction that are reasonably replaced or modified following the auction, as a result of the repacking process, in order to allow the broadcaster to operate on a new channel. . . .”¹³¹ This included reimbursement “for modification or replacement of facilities on the post-

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Announce Procedures for the Post-Incentive Auction Broadcast Transition, Public Notice, 32 FCC Rcd 858, 864-65, paras. 18-20 (2017), citing *Incentive Auction R&O*, 29 FCC Rcd at 6791-92, paras. 547-50.

¹³⁰ *Incentive Auction R&O*, 29 FCC Rcd at 6792-95, paras. 552- 56. See also *Incentive Auction Task Force and Media Bureau Announce the Opening of the First Priority Filing Window for Eligible Full Power and Class A Television Stations from August 9 Through September 8, 2017*, Public Notice, 32 FCC Rcd 5785 (2017); *Incentive Auction Task Force and Media Bureau Extend the Filing Deadline for the First Priority Filing Window for Eligible Full Power and Class A Television Stations*, Public Notice, 32 FCC Rcd 6827 (2017); *Incentive Auction Task Force and Media Bureau Announce the Opening of the Second Filing Window for Eligible Full Power and Class A Television Stations—October 3 Through November 2, 2017*, Public Notice, 32 FCC Rcd 6989 (2017).

¹³¹ *Incentive Auction R&O*, 29 FCC Rcd at 6822, para. 623. In the *Incentive Auction R&O*, the Commission determined that fixed broadcast auxiliary service (BAS) stations, which include television studio transmitter links (STLs), must cease operating and/or relocate out of the repurposed 600 MHz band and that expenses related to relocation would not be entitled to reimbursement. See *id.* at 6695-96, paras. 297-98 (citing Spectrum Act § 6403(b)(4)(A)). Further, the costs of replacing a STL with a different technology, such as microwave equipment, may not be reimbursed for full power or Class A stations. See *id.* at 6822, para. 623. In a report accompanying an earlier version of the REA, “the Committee instruct[ed] the Commission to consider whether stations may be eligible for reimbursement from the Translator and Low Power Station Relocation Fund or the Broadcast Repack Fund for costs reasonably incurred to move or reconfigure studio-to-transmitter links or to replace studio-to-transmitter links that are no longer available because they previously operated in the new 600 MHz wireless band.” See House Report 115-587 to H.R. 4986 (115th Congress) at 33. We seek comment on whether the REA would permit reimbursement of such full power and Class A station costs from the Reimbursement Fund, whether the

auction channel consistent with the technical parameters identified in the *Channel Reassignment PN*.¹³² The Spectrum Act required that the Commission make “all reasonable efforts” in the repacking process to preserve coverage area and population served of full power and Class A stations.¹³³ Thus, the post-auction channel reassignments specified in the *Closing and Channel Reassignment PN* were made at stations’ existing locations and largely replicated stations’ pre-auction facilities.¹³⁴

41. We do not believe that a similar “comparable” facilities reimbursement standard can, as a technical matter, be applied to displaced LPTV/translator stations. Displaced LPTV/translator stations, unlike full power and Class A stations, may need to move their transmitter and antenna locations in addition to changing channels.¹³⁵ In order to continue to provide service to viewers from the new site, stations may need to increase their effective radiated power and height, which may require the purchase of transmitters, transmission lines, and other equipment that is not “comparable” to their existing equipment.¹³⁶ Therefore, we tentatively conclude that the equipment and other costs necessary for an eligible LPTV/translator station to construct the facilities authorized by grant of the station’s Special Displacement Window application shall be considered “reasonably incurred,” consistent with other reimbursement procedures and processes we propose herein (such as requiring broadcasters to reuse equipment and take other steps to mitigate costs where possible).¹³⁷ We propose to permit LPTV/translators to be reimbursed for both “hard” expenses, such as new equipment and tower rigging, and “soft” expenses, such as legal and engineering services,¹³⁸ but, as discussed below, propose to direct the Media Bureau to prioritize, if necessary, the payment of certain hard costs necessary to operate the stations over soft costs to assure that such costs are recoverable to the extent possible under a limited fund.¹³⁹ We seek comment on these tentative conclusions and on any alternative reimbursement approaches for eligible LPTV/translator stations. For example, should we permit as costs “reasonably incurred” those costs necessary to provide replacement facilities of comparable coverage? When reimbursing low-power broadcasters for equipment, to what extent could the Commission reimburse the costs for full service mask filters that could promote spectrum efficiency, even if the station technically could operate at its new location with a stringent or simple mask? Should such equipment be considered a “reasonably incurred” expense that is related to the repack because it would promote greater use of the television band or should it be considered an upgrade that is not eligible for reimbursement?

42. The REA limits reimbursement for LPTV/translators to “costs . . . incurred . . . on or after

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Commission could or should permit reimbursement of such expenses in light of findings in the *Incentive Auction R&O*, and how to treat such costs incurred by non-repacked stations.

¹³² *Id.*

¹³³ *See id.* at 6617-18, para. 109.

¹³⁴ *See id.* at 6823, para. 626 (declining to provide additional reimbursement for repacked non-priority stations to construct an alternate channel or for an expanded facility, finding such costs are not “reasonably incurred” because “[s]uch stations will be able to continue to serve their coverage area and population served on the channel and pursuant to the technical parameters assigned in the repacking process without having to rely on an alternate channel or expanded facilities”).

¹³⁵ *See Special Displacement Window PN*, 33 FCC Rcd at 1237, para. 6 & nn.20, 21.

¹³⁶ For example, a transmitter capable of transmitting at a higher power is more expensive than a lower power transmitter. *See Finalized Catalog of Reimbursement Expenses PN*, 32 FCC Rcd at 1207, Appendix A.

¹³⁷ *See infra* Section III.D.

¹³⁸ *See Incentive Auction R&O*, 29 FCC Rcd at 6822, para. 623.

¹³⁹ *See infra* para. 83. Given the limited size of the Reimbursement Fund, it might be necessary to prioritize hard costs to ensure that at the very least all stations are able to obtain the equipment necessary to complete the move to their new channels.

January 1, 2017.”¹⁴⁰ We propose to interpret this provision to require that an LPTV/translator station have either expended funds or ordered equipment or services for a cost otherwise eligible for reimbursement on or after that date in order to be eligible for reimbursement pursuant to the REA.¹⁴¹ We invite comment on this proposal.

b. Equipment Upgrades and Reuse of Existing Equipment

43. In implementing the Spectrum Act’s reimbursement provisions, the Commission concluded that it would not reimburse stations for new, optional features in equipment that are not already present in the equipment being replaced,¹⁴² and we propose to apply this same approach to eligible LPTV/translator stations. In addition, the Commission required full power and Class A stations seeking reimbursement to reuse their own equipment to the extent possible, rather than acquiring new equipment to be paid for from the Reimbursement Fund, and to “provide a justification when submitting their estimated cost form as to why it is reasonable under the circumstances to purchase new equipment rather than modify their . . . current equipment. . . .”¹⁴³ 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. We seek comment on these proposals.

c. Interim Facilities

44. We propose to exclude “interim facilities” from the type of expenses eligible for reimbursement under the REA. In the *Incentive Auction R&O*, the Commission concluded that stations that are assigned a new channel in the incentive auction repacking process may need to use interim facilities to avoid prolonged periods off the air during the transition, and, thus, the Commission decided to reimburse full power and Class A stations for such facilities under the Spectrum Act reimbursement provisions.¹⁴⁴ Because of their lower operating power and the fact that the engineering work that is involved in changing channels is more limited than for full power television stations, we believe it is unlikely that LPTV/translator stations will construct interim facilities as part of the displacement process. Furthermore, LPTV/translators are actually displaced at a time determined either by the receipt of a notice from a wireless carrier that the wireless carrier intends to commence operations in the new 600 MHz wireless band or the phase completion date for a full power or Class A station pursuant to the transition schedule. Because LPTV/translators will have less time to construct interim facilities as a practical matter due to the timing of their actual displacement, interim facilities are unlikely to be utilized by such stations. We believe this proposal will also maximize the limited reimbursement funds available for all eligible LPTV/translator stations and seek comment on this analysis.

¹⁴⁰ 47 U.S.C. § 1452(k)(1).

¹⁴¹ An invoice dated on or after January 1, 2017, reflecting equipment or services ordered, with a payment due date after the date of the invoice, would be sufficient to permit eligibility for reimbursement under this proposal.

¹⁴² *Incentive Auction R&O*, 29 FCC Rcd at 6822, para. 624. For example, a station whose current antenna does not contain components enabling the transmission of ATSC Mobile/Handheld signals cannot claim reimbursement for the cost of adding that capability in its replacement equipment. *Id.* at 6822, n.1752.

¹⁴³ *Id.* at 6832, para. 651. See also *Finalized Catalog of Reimbursement Expenses PN*, 32 FCC Rcd at 1210, 1216, Appendix A (noting that, in some instances, transmission lines can be reused in the event of a channel change and that broadcasters may be able to retune existing transmitters on the new channel rather than replacing them).

¹⁴⁴ See *Incentive Auction R&O*, 29 FCC Rcd at 6823-24, para. 627. The Commission cited to the following situations where a station might need an interim facility: (1) a station may need an additional transmitter or antenna for interim use on either its pre- or post- auction channel; (2) a station with a top mounted antenna may need to run a side mounted antenna; (3) a station with an antenna at “X” feet on a tower may need to operate at “Y” feet temporarily; (4) a station may need to operate with an antenna mounted on a different tower while it finishes mounting final facilities on its current tower or a new tower; (5) a station may need to operate on a different channel with different facilities than its final channel or facilities; or (6) a station may need to use its auxiliary or back-up facility as its main facility while it finishes final facilities. *Id.* at 6823, n.1756.

d. Lost Revenues

45. The REA, like the 2012 Spectrum Act, prohibits reimbursement of LPTV/translator stations for “lost revenues.”¹⁴⁵ In the *Incentive Auction R&O*, the Commission defined “lost revenues” to include “revenues that a station . . . loses as a direct or ancillary result of the reverse auction or the repacking process.”¹⁴⁶ We propose to adopt a similar definition of “lost revenues” for purposes of reimbursing LPTV/translator stations: “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.” Under this definition and consistent with the Commission’s approach in connection with reimbursing full power and Class A stations, we would not reimburse a station’s loss of advertising revenues while it is off the air during its displacement, or for refunds a station is required to make for payments for airtime as a result of being off the air in order to implement a channel change.¹⁴⁷ We seek comment on our proposal and on whether there are other additional categories of costs that LPTV/translator stations may incur that would constitute “lost revenues” not eligible for reimbursement under the REA.

e. Costs to Resolve Mutually Exclusive Applications

46. The REA provides 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.”¹⁴⁸ Applications filed during the Special Displacement Window that remain mutually exclusive will be resolved through competitive bidding.¹⁴⁹ We interpret the prohibition against reimbursing for “costs incurred in any auction” to mean that the Commission may not reimburse LPTV/translator station auction bidders under the REA for the costs related to filing an auction application associated with a competitive bidding process, participating in such an auction, and winning bid payments. We seek comment on this interpretation. We also tentatively conclude that costs associated with the Settlement Window to resolve mutual exclusivity will not be reimbursed under the REA.¹⁵⁰ Thus, we propose not to reimburse stations for costs in resolving mutual exclusivity, including engineering studies and preparing application amendments, or the payment of other stations’ expenses as part of a settlement.¹⁵¹ However, we propose to reimburse for costs reasonably incurred in constructing the facilities resulting from settlement and coordination between mutually exclusive applicants. We seek comment on these proposals.

f. Stations with Other Sources of Funding

47. We seek comment on whether stations that receive or have received reimbursement of certain expenses from sources of funding other than the Reimbursement Fund should receive reimbursement for those expenses from the Reimbursement Fund. As an initial matter, we note that

¹⁴⁵ See 47 U.S.C. § 1452(k)(2).

¹⁴⁶ *Incentive Auction R&O*, 29 FCC Rcd at 6824-25, para. 630.

¹⁴⁷ *Id.* We note that stations can plan in advance for or mitigate the effects of temporary interruptions in service by, for example, alerting advertisers beforehand, declining to accept advance payments for airtime during relevant post-auction periods, and offering make-ups after the station returns to the air in lieu of refunds of advance payments. See *id.* at n.1763.

¹⁴⁸ 47 U.S.C. § 1452(k)(4).

¹⁴⁹ See *The Incentive Auction Task Force and Media Bureau Announce Procedures for Low Power Television, Television Translator and Replacement Translator Stations During the Post-Incentive Auction Transition*, Public Notice, 32 FCC Rcd 3860, 3868, para. 16 (IATF and MB, 2017).

¹⁵⁰ *Id.* at 3866, para. 14.

¹⁵¹ Settlements that result in the dismissal of an application shall be limited to the payment of the dismissing applicant’s expenses per Section 311(c) of the Communications Act of 1934, as amended, and Section 73.3525 of the Commission’s rules. See 47 U.S.C. § 309(j)(6)(E); 47 CFR § 73.3525(a)(3).

Section 511(k)(3)(A) specifies that Class A stations that receive reimbursement from “any other source” may not receive reimbursement under the REA.¹⁵² While the REA does not set forth the same requirement for LPTV stations generally,¹⁵³ we seek comment on whether a similar prohibition should extend to LPTV stations because a cost that is reimbursed by another source of funding is not a “cost . . . incurred” by the station under Section 511(k)(1). For example, we seek comment on whether displaced LPTV/translator stations that have received reimbursement from T-Mobile for a particular expense should receive reimbursement for that expense pursuant to Section 511(k)(1). As mentioned above, T-Mobile, which holds a number of 600 MHz licenses, began deploying its spectrum in 2017, thereby displacing a number of LPTV/translator stations before the Special Displacement Window opened on April 10, 2018.¹⁵⁴ With respect to these displaced stations that began operating a displacement facility pursuant to an STA, T-Mobile has established a Supplemental Reimbursement Program, to be administered by T-Mobile.¹⁵⁵ According to T-Mobile, it will reimburse eligible licensees “for the costs that they reasonably incur to comply with the permanent channel assignments that they may receive under the Special Displacement Window to the extent those channel assignments differ from the channel assignment these licensees may build following displacement from the 600 MHz band due to T-Mobile’s rapid broadband deployment.”¹⁵⁶ Similarly, T-Mobile has reportedly awarded a grant to PBS to “provide funding to enable public television translators . . . to move to new displacement channels regardless of the reason for displacement.”¹⁵⁷ We seek comment on how to address the interplay between the expanded Reimbursement Fund and such pre-REA funding for LPTV relocation.

48. We also seek comment on whether a displaced LPTV/translator station that has received a state governmental grant to construct its displacement facility should be eligible for reimbursement under the REA. Similarly, we seek comment on whether the licensee of a displaced station that has solicited and received donations to construct its displacement facility should be eligible for reimbursement from the REA.

49. Finally, we seek comment on whether displaced LPTV/translator stations should be required to indicate on their reimbursement submissions whether they have received or expect to receive reimbursement from another source as part of the reimbursement process. If so, should they provide documentation of the amount that they have received or expect to receive and the associated eligible expenses covered by that alternate reimbursement? We seek comment on whether stations that are eligible to receive reimbursement from other sources for certain expenses (*e.g.*, insurance) should be required to pursue those alternative sources before requesting reimbursement for those expenses pursuant to the REA, and on the type of documentation such stations should be required to provide.

C. FM Broadcast Stations – Eligibility and Expenses

50. As mentioned above, in the REA, Congress allocated funds for the purpose of reimbursing 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

¹⁵² See *supra* note 97.

¹⁵³ See *supra* para. 7.

¹⁵⁴ See *supra* para. 15.

¹⁵⁵ See generally T-Mobile July 17, 2017 *Ex Parte*.

¹⁵⁶ *Id.* at 4. T-Mobile also describes eligibility requirements for reimbursement from its Supplemental Reimbursement Program, specifies how it will evaluate whether a station’s costs are “reasonably incurred” and how it will administer the program, and indicates that no expenses will be reimbursed after the 39-month post-auction transition period. *Id.* at nn.14-15.

¹⁵⁷ See PBS May 30, 2018 *Ex Parte*, Attach. (“PBS LPTV/Translator Relocation Grant Program” at 1). See also *supra* note 68.

spectrum.”¹⁵⁸ In this section, we seek comment on issues related to eligibility and expenses under the REA provisions for reimbursement of FM stations.

1. Stations Eligible for Reimbursement

a. FM Broadcast Stations and FM Translator Stations

51. Congress defined “FM broadcast stations” in the REA by referencing Sections 73.310 and 74.1201 of the Commission’s rules.¹⁵⁹ Section 73.310 defines an FM broadcast station as “[a] station employing frequency modulation in the FM broadcast band and licensed primarily for the transmission of radiotelephone emissions intended to be received by the general public.”¹⁶⁰ Additionally, Section 74.1201 defines an FM translator as “[a] station in the broadcasting service operated for the purpose of retransmitting the signals of an AM or FM radio broadcast station or another FM broadcast translator station without significantly altering any characteristics of the incoming signal other than its frequency and amplitude, in order to provide radio broadcast service to the general public.”¹⁶¹ Given these references, we tentatively conclude that “FM broadcast station” as used in the REA includes full-service FM stations and FM translator stations.¹⁶² We seek comment on this tentative conclusion. Further, although low-power FM (LPFM) stations were not specifically referenced in the REA, we note that such stations meet the criteria for “FM broadcast station” set forth in Section 73.310 of the rules and they are licensed under Part 73 of the rules like full-service FM stations.¹⁶³ We therefore seek comment on whether LPFM stations should also be considered “FM broadcast stations” for reimbursement purposes.¹⁶⁴

b. Licensed and Transmitting at Time of Repack

52. We tentatively conclude that to be eligible for reimbursement under the REA, an FM station must have been licensed and transmitting on April 13, 2017, and using facilities impacted by a repacked television station.¹⁶⁵ We also tentatively conclude that only those costs associated with the impact at that location will be considered eligible. The REA seeks to reimburse costs “reasonably incurred” by FM stations to “reasonably minimize disruption of service”¹⁶⁶ as a result of the reorganization of broadcast television spectrum, but provides no other additional specificity as to the eligibility of FM stations for reimbursement. We believe it is both necessary and appropriate to impose some reasonable standards on the eligibility of FM stations to be reimbursed from the Reimbursement Fund. We tentatively conclude that we should place the same limitation on FM stations that is applied to

¹⁵⁸ *Id.* § 1452(l)(1)(A).

¹⁵⁹ *Id.* § 1452(l)(2); 47 CFR § 73.310.

¹⁶⁰ 47 CFR § 73.310(a).

¹⁶¹ *Id.* § 74.1201(a).

¹⁶² In the REA, Congress did not differentiate between FM broadcast stations providing commercial programming and those broadcasting NCE programming. NCE FM stations are licensed only to nonprofit educational organizations upon showing that the station will be used for the advancement of an educational program. *Id.* § 73.503(a). Both commercial and NCE stations provide programming meeting the needs of their communities of license. Our tentative conclusion therefore encompasses both commercial and NCE FM full-service and translator stations.

¹⁶³ Additionally, 47 CFR § 73.310 and its definitions are incorporated in the Part 73 LPFM rules. *See* 47 CFR § 73.801.

¹⁶⁴ We note, however, that due to technical and financial constraints, the number of LPFM stations directly impacted by the reorganization of broadcast television spectrum is likely to be much lower than the number of full-service FM stations so impacted.

¹⁶⁵ *See supra* note 10 (defining “repacked television station” for purposes of this *NPRM* as a full power or Class A television station that was either reassigned to a new channel in the *Closing and Channel Reassignment PN* or that relinquished spectrum usage rights in the reverse auction).

¹⁶⁶ 47 U.S.C. § 1452(l)(1)(A).

LPTV/translator stations. That is, we first propose a cut-off date of April 13, 2017, by which the FM station had to be licensed and transmitting. We choose this date because it is the date on which reverse auction winners and the television stations subject to the repack were identified in the *Closing and Channel Reassignment PN*. Thus, we tentatively conclude that any FM station that began operating on a facility or at a location impacted by a repacked television station after that date voluntarily assumed the risk of any potential disruption of service to the FM station. We tentatively conclude that any costs incurred by FM stations that undertook such a risk are not “reasonably incurred” under the statutory standard and thus are not eligible for reimbursement pursuant to the REA. We propose that FM stations will be required to certify that they were licensed and transmitting at the facility implicated by the reorganization of broadcast television spectrum on April 13, 2017, and seek comment on this proposal. The REA requires reimbursement “to reasonably minimize disruption of service as a result of the reorganization of broadcast television spectrum under [47 U.S.C. § 1452(b)].”¹⁶⁷ As an initial matter, we tentatively conclude that an FM station can experience a service disruption “as a result of the reorganization of broadcast television spectrum under [47 U.S.C. § 1452(b)]” either because a full power or Class A television station has been reassigned to a new channel in the *Closing and Channel Reassignment PN* or because a full power or Class A television station relinquished spectrum usage rights in the reverse auction. In either case, the full power or Class A television station may need to modify its facilities (*e.g.*, dismantling equipment in the case of a license relinquishment station) that may impact the FM station. We read the statutory language to require a causal link between the facilities being reimbursed and the activities associated with the repacked full power or Class A television station, and likewise interpret this provision to mean that only the FM broadcast facilities directly impacted by the repacked television station are eligible for reimbursement. We believe our interpretation of this REA language is consistent with Congress’s provision of limited funds for FM facility reimbursement. We invite comment on this interpretation of the REA. We also seek comment on whether the REA’s requirement that we reimburse costs incurred by FM stations to “reasonably minimize disruption of service as a result of the reorganization of broadcast television spectrum under [47 U.S.C. § 1452(b)]” extends to include costs that were incurred by FM stations solely due to modifications made by full power and Class A facilities as a result of receiving authorizations through the two alternate channel/expanded facilities filing windows.¹⁶⁸

c. Categories of Eligible FM Stations

53. In addition, we believe it is both necessary and appropriate to impose eligibility requirements for FM stations that define the way an FM station could “reasonably incur” costs as the result of a “disruption of service” caused by “the reorganization of broadcast television spectrum” as required by the REA.¹⁶⁹ We believe a large majority of FM stations will not incur any costs or encounter any disruption of service as a result of the reorganization of broadcast television spectrum. However, in limited circumstances, as defined herein, some FM stations may be affected because they are collocated with, or adjacent, or in close proximity to,¹⁷⁰ a repacked television station such that construction work on the repacked television station’s facility necessarily results in a disruption of service to the FM station and requires the FM station to incur costs. Accordingly, we tentatively conclude that only stations that are collocated with, or adjacent, or in close proximity to, a repacked television station are eligible for reimbursement and that the FM station will be required to certify to that fact and identify the television station. We seek comment on these conclusions. We believe that only stations in the following categories will encounter any disruption of service as a result of the reorganization of broadcast television spectrum such that they would be eligible for reimbursement under the REA:

¹⁶⁷ *Id.*

¹⁶⁸ *See supra* para. 39.

¹⁶⁹ *Id.*

¹⁷⁰ We tentatively conclude that “adjacent, or in close proximity to” encompasses the stations outlined in note 174, *infra*.

- Category (1) – Stations Forced to Relocate Permanently. We propose that this eligibility category include FM stations required either to vacate their towers, and which therefore incur costs for alternative facilities at a different site, or to relocate their antennas to a different level of their current towers. Either change would modify the station’s transmissions and would thus require prior Commission approval. We anticipate that there will be a very small number of FM stations if any in this eligibility category.
- Category (2) – Stations Forced to Temporarily Dismantle Equipment or Make Other Changes Not Requiring Commission Approval. We propose that this eligibility category include FM stations required temporarily to dismount or disassemble equipment, most likely antennas, in order to accommodate work on a television antenna or a tower.¹⁷¹ We propose that this category also include FM stations required to physically move their transmitter to accommodate new television transmission equipment. While such an equipment move may not be temporary, it is not the kind of facility modification that would change the station’s transmissions, and thus would not require Commission approval. We propose this category also include other types of necessary equipment modifications that do not require Commission approval.¹⁷² We anticipate there will be a very small number of FM stations in this eligibility category.
- Category (3) – Stations Forced to Temporarily Reduce Power or Cease Transmission on Their Primary Facility to Accommodate Antenna or Tower Modifications. We propose that this eligibility category would include those FM stations that are required to reduce power or go off the air to protect workers making modifications to television facilities on a tower from RF exposure. The length of time during which a station would have to reduce power or cease transmissions could range from hours to weeks or even months. Such stations could incur costs to build or modify auxiliary facilities to permit FM broadcast service to continue during this period. Category (3) would include stations with no existing auxiliary facilities and stations that are unable to access auxiliary transmission facilities. Category (3) would also include stations that have existing auxiliary facilities, but whose facilities do not provide substantial (80+ percent) coverage¹⁷³ of the primary station’s coverage area or population. FM stations in other eligibility categories could also qualify as Category (3) stations if they otherwise meet the reimbursement requirements. We anticipate that this category of stations will be the most numerous of eligible FM stations but is still likely to include only a limited number of FM stations.¹⁷⁴

54. We believe that reimbursing FM stations for the types of service disruptions described in these categories is consistent with our statutory mandate to reimburse FM stations for “costs . . . for facilities necessary for such station to reasonably minimize disruption of service as a result of the

¹⁷¹ For example, an FM station might be forced to remove its antenna temporarily to make room for a gin pole being used to modify or remove a television antenna, or to enable work to upgrade a tower for heavier television antennas or greater wind loading.

¹⁷² For example, an FM station might need to replace or modify a directional antenna whose directional pattern is changed due to tower modifications or additional coaxial cables or wave guides running behind the antenna, in order to conform to its licensed signal pattern.

¹⁷³ For further discussion of the 80 percent standard, *see* paragraph 64, *infra*.

¹⁷⁴ We expect that fewer than 500 FM full-service stations could potentially be included in these three categories of FM stations. We calculate this number using the Commission’s licensing data for FM stations in CDBS and identifying: (1) FM stations that are either on the same tower as and below a repacked TV station (any TV station required either to cease operation or to modify its facility as a result of the repack), and (2) FM stations on the same tower as and above a repacked TV station, or on an adjacent tower, in either case within a worst-case radius of the FM antenna based on the radiofrequency (RF) emission guidelines for RF exposure to the general public. *See* 47 CFR §§ 15.209, 15.239; *Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation*, Report and Order, 11 FCC Rcd 15122 (1996).

reorganization of broadcast television spectrum,”¹⁷⁵ and we seek comment on our interpretation. We invite comment on the scope of our categories above and ask commenters specifically to explain whether there are additional categories of service disruption that should be reimbursed. We tentatively conclude that FM stations would be required to certify which eligibility category they satisfy, and we seek comment on that conclusion.

55. Section 511(l)(1)(C) specifies that an FM broadcast station that has received payment for “interim facilities” from either a station that was reimbursed under the Spectrum Act or “from any other source” may not receive “any reimbursements” under the REA.¹⁷⁶ Thus, as required by the statutory language, we propose that if an FM broadcast station has received such payment for “interim facilities,” it is ineligible for any reimbursement under the REA. We tentatively conclude that FM stations would be required to certify whether they have received payment for such interim facilities.

2. Expenses Eligible for Reimbursement

56. The REA states that the Commission shall provide reimbursement for “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.”¹⁷⁷ We note that the statute does not require reimbursement of costs to ensure there is no disruption of service at all. We tentatively conclude that some level of disruption of service to eligible FM stations is reasonable, and we do not propose to reimburse costs incurred to avoid reasonable disruptions. We also believe that the public interest requires that we seek to maximize the limited funds available for all facilities to address the most significant service disruptions to ensure that the most needed facilities are fully funded. We seek comment below on how to define what costs are “reasonably incurred” and on how to interpret the phrase “to reasonably minimize disruption of service” as contemplated by the REA, and we propose an approach for prioritization of reimbursement to stations with a greater level of service disruption to preserve limited funds.¹⁷⁸

a. Costs Reasonably Incurred

57. As described below, we propose that eligible costs for Category (1) and Category (2) stations are similar to eligible costs for full power and Class A stations in the repack and therefore should be reimbursed in a similar manner. We propose, however, that the cost for Category (3) stations should be subject to a graduated priority system and reimbursable only when the disruption of service is significant enough to make it reasonable for a station to incur costs to minimize the disruption, and then on a scale that balances the level of the service disruption with the need to maximize the finite funds and ensure the most significantly impacted facilities are fully funded. We seek comment on these proposals as detailed below.

(i) Replacing or Restoring Facilities – Category (1) and (2) Stations

58. The existing reimbursement program for full power and Class A stations seeks to reimburse costs reasonably incurred for stations to move their facilities to a new channel that was assigned as a result of the incentive auction repacking process using reasonable efforts to preserve each station’s coverage area and population served.¹⁷⁹ We believe it is in the public interest to develop a similar standard for the reimbursement of costs associated with Category (1) stations because the nature

¹⁷⁵ 47 U.S.C. § 1452(l)(1)(A).

¹⁷⁶ 47 U.S.C. § 1452(l)(1)(C).

¹⁷⁷ 47 U.S.C. § 1452(l)(1)(A).

¹⁷⁸ See *infra* Section III.C.2.a.

¹⁷⁹ *Incentive Auction R&O*, 29 FCC Rcd at 6622, paras. 120-21 (replication of service), and 6812-30, paras. 598-644 (reimbursement).

of the displacement of the FM station and the types of costs incurred are similar. We seek comment on these conclusions. We believe the goal for Category (1) stations should be to rebuild their facility to reasonably replicate the station's coverage area and population served, similar to the standard applicable to full power and Class A stations.¹⁸⁰ Further, we believe that Category (1) stations should be eligible for reimbursement for costs similar to full power and Class A stations to move and reconstruct the current facilities at a new site or tower location, including costs of equipment, professional services such as engineering, and tower and construction work.¹⁸¹ We believe that such stations are likely to experience the most significant disruption of service of all FM stations because they will be required to entirely or partially dismantle and reconstruct their facilities. As a result, if sufficient funds allocated to reimburse FM stations exist in the Reimbursement Fund, we believe that Category (1) stations should be reimbursed for up to 100 percent of eligible costs similar to the reimbursements provided to impacted full power and Class A stations. As noted above, we believe only a very small number of stations are likely to be included in this category and therefore we do not believe the reimbursement of these stations is likely to be a primary resource demand on the Reimbursement Fund. We seek comment on these conclusions.

59. Examples of reimbursable equipment costs that we believe could be reasonably incurred include transmitters, antennas, coaxial cable or wave guides, and associated equipment needed to reasonably replicate the service being lost.¹⁸² We propose that existing equipment should be reused as appropriate. To the extent that existing equipment cannot be reused, we propose that new equipment may be reimbursable if needed to reasonably replicate service and coverage area. We propose that the costs of engineering to determine what technical facilities are needed to replace existing service at a new site should be considered reimbursable expenses, as well as transportation costs of physically moving equipment to a new site or new location on a tower and any engineering costs associated with the move. We seek comment on these proposals.

60. We believe it is also in the public interest to develop a similar standard for eligible expenses for reimbursement of Category (2) stations because the types of costs incurred are also similar. We seek comment on these conclusions. We believe the goal for Category (2) stations should be to restore the station's existing facility. For example, Category (2) stations could reasonably incur costs that are related to their need to temporarily dismantle equipment or modify their physical facilities. Examples of reimbursable costs could include costs of equipment, professional services such as engineering, and tower and construction work, similar to the costs incurred by full power and Class A stations. Additionally, similar to Category (1), the service disruptions associated with these costs are likely to be significant in magnitude, but the number of stations incurring such costs is likely to be very small and not the most significant drain on the Reimbursement Fund. Therefore, we propose that, if sufficient funds allocated to reimburse FM stations exist in the Reimbursement Fund, Category (2) stations should be reimbursed for up to 100 percent of eligible costs similar to full power and Class A stations. We seek comment on this proposal.

¹⁸⁰ *Id.* at 6622, paras 120-21.

¹⁸¹ *Id.* at 6812-30, paras. 598-644.

¹⁸² We do not propose to reimburse FM stations for the costs of studio transmitter link (STL) transmitters and related equipment, consistent with our approach for full power and Class A stations. Further, we do not propose to reimburse FM stations for equipment that is used solely to emit transmissions that are not "radiotelephone emissions intended to be received by the general public." 47 CFR § 73.310(a). For example, some FM stations transmit Traffic Message Channels (TMC), which are digital traffic data transmitted in the FM signal that can only be received by certain Global Positioning System (GPS) units, and some FM stations transmit digital metadata consisting of information such as the names of songs and artists, as well as textual descriptions of advertisements. *See, e.g., id.* § 73.310(c) (defining "visual transmissions" provided by FM stations as "[c]ommunications or message [sic] transmitted on a subcarrier intended for reception and visual presentation on a viewing screen, teleprinter, facsimile printer, or other form of graphic display or record"). To the extent equipment is used solely to provide such transmissions, it would not be eligible for reimbursement.

(ii) Interim Facilities – Category (3) Stations

61. In the full power and Class A reimbursement program, the costs of interim facilities are reimbursed in the same manner as other costs incurred for a station to change channels. With respect to the types of costs that would qualify for reimbursement as interim facilities, we seek to apply the same approach to FM stations. We propose that Category (3) stations be reimbursed for the cost of constructing new auxiliary facilities or upgrading existing auxiliary facilities. This would permit FM stations to continue broadcasting while their primary facilities are off the air due to the need to protect tower personnel working on modifications related to the reorganization of broadcast television spectrum. Reimbursable costs could include costs of equipment, professional services such as engineering, and tower and construction work.

62. As described in more detail below, we tentatively conclude that reimbursement of interim facility costs should be linked to the level of service disruption avoided by resorting to interim facilities, and therefore propose to reimburse on a graduated priority system reflecting a percentage of total costs for these interim facilities. We further tentatively conclude that it is not unreasonable for there to be some temporary disruption of service to permit construction work or maintenance on a collocated, adjacent, or nearby station. FM stations regularly power down or remain silent for temporary periods to accommodate tower or antenna work and transmitter maintenance, and we conclude from this fact that such actions are ordinary and reasonable occurrences. We therefore believe that it is appropriate to reimburse costs for interim facilities only if they are needed to avoid service interruptions that would otherwise exceed ordinary construction or maintenance requirements. Furthermore, operating from interim facilities does not require service that is identical to the station's primary service. We believe this different approach is justified by the different standard enunciated in the REA, requiring us to consider what expenses "reasonably minimize" disruption of service rather than the Spectrum Act's mandate to reimburse expenses resulting from a channel change. Furthermore, we anticipate that the majority of reimbursement requests from FM stations will be in Category (3), and that they will account for the majority of the demand by FM stations for resources from the Reimbursement Fund. Thus, we tentatively conclude that a graduated scale is in the public interest because it properly reflects the level of service disruption, which could vary from hours to weeks or even months, and therefore balances our need to preserve finite funds for the most significant instances of service disruption. Under this proposal, reimbursement percentages in excess of those proposed below might be available if, after making all the payments for interim facilities and other eligible expenses, there is sufficient money to pay a higher reimbursement percentage to FM stations in the Reimbursement Fund. We seek comment on these proposals herein.

63. We believe that the amount of broadcaster reimbursement for interim facilities should be linked to the amount of time the FM station is off the air due to the reorganization of broadcast television spectrum. These time periods will likely range from hours to, in extreme and hopefully rare cases, months. Additionally, we believe that the times of day during which stations are off the air should also play a part in our calculus. Some stations may be subject to limited service disruptions, for instance, if tower work or work on co-tenant antennas is limited to nighttime hours which would minimize broadcast time lost during peak listening hours. Such stations will not be as adversely affected as those required to reduce power or go off-air for extended periods of time. As to the latter group of affected stations, we find that the reimbursement for interim facilities should be greater the longer they are required to be off the air. The longer the lost airtime, the more service disruption and, thus, the greater justification for reimbursement for the construction of permanent auxiliary facilities.¹⁸³

64. Further, we note that transmissions from interim facilities would not exactly replicate the areas or populations covered from the licensed transmitter site.¹⁸⁴ Thus, we propose that 80 percent of an

¹⁸³ It will then be up to a Category (3) station to determine, for instance, whether one week's worth of lost revenue justifies spending half the cost of construction of a new auxiliary facility that it will own for years.

¹⁸⁴ An FM radio station provides a certain level of signal coverage from its licensed site, determined by its effective radiated power (ERP) and antenna height above average terrain (HAAT), as well as any directional component of its antenna. Our rules dictate the level of service to be provided by certain classes of FM broadcast stations. *See, e.g.,*

FM station's coverage area or covered population should be replicated by the interim facility in order to constitute reasonably minimal disruption of service. In another context, when a rule requires provision of a certain strength signal to an entire community, the Commission has held that when a station provides that signal strength to 80 percent or more of either the area or the population of the community, such a signal may be considered to be in substantial compliance with the rule.¹⁸⁵ We believe this 80 percent standard is an acceptable yardstick for measuring interim FM service, especially given that near-exact replication of a station's coverage area from an alternative site, in many if not most cases, may not be achieved without significant expense.¹⁸⁶ Accordingly, we propose that FM signal coverage of either 80 percent of the area or 80 percent of the population covered by an FM station at its licensed site be considered to be substantial interim coverage and, thus, tentatively conclude it would meet the REA standard of reasonably minimizing disruption of service. We invite comment on this proposal, including comment on the costs of requiring a greater or lesser level of interim service.

65. We seek comment on the need to develop a prioritization scheme for reimbursement of FM broadcast stations under either statutory interpretation of the amounts available to reimburse such stations.¹⁸⁷ We seek comment on the following graduated priority system of reimbursement for interim facilities constructed to minimize service disruptions to FM broadcast stations forced to go off-air due to the reorganization of broadcast television spectrum. We note that additional percentages for reimbursement might be available if, after making all the payments for interim facilities and other eligible expenses, there is sufficient money to pay a higher reimbursement percentage to FM stations in the Reimbursement Fund. If adopted, we propose to direct the Media Bureau to determine whether and what higher percentage of funds should be paid to Category (3) stations.

- Stations Off-Air for Less Than 24 Hours, or Off-Air Only During Hours from 10:00 p.m. – 6:00 a.m. Local Time or Less Than Five Non-Peak Broadcast Hours Per Day: No reimbursement. We propose that such periods off-air be considered a *de minimis* disruption of service.
- Stations Off-Air for 24 Hours to 10 Days: May be reimbursed up to 50 percent of eligible costs reasonably incurred to construct new auxiliary facilities, to upgrade existing auxiliary facilities to cover 80 percent of the covered area and/or population of the existing facility, or to build interim facilities for eligible secondary services.¹⁸⁸
- Stations Off-Air for 11 Days to 30 Days: May be reimbursed up to 75 percent of eligible costs reasonably incurred to construct new auxiliary facilities, to upgrade existing auxiliary facilities to cover 80 percent of the covered area and/or population of the existing facility, or to build interim facilities for eligible secondary services.
- Stations Off-Air for More than 30 Days: May be reimbursed up to 100 percent of eligible costs reasonably incurred to construct new auxiliary facilities, to upgrade existing auxiliary facilities to cover 80 percent of the covered area and/or population of the existing facility, or

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47 CFR §§ 73.315 (FM transmitter shall be located so as to provide a 70 dB μ signal over the entire community of license), 73.515 (noncommercial educational FM transmitter shall be located so as to provide a 60 dB μ signal over 50 percent of the area or the population of the community of license).

¹⁸⁵ See, e.g., *CMP Houston-KC, LLC*, Memorandum Opinion and Order, 23 FCC Rcd 10656, 10657 n.8 (2008). See also *Barry Skidelsky*, Order, 7 FCC Rcd 5577, 5577, para. 3 (1992) (citing *John R. Hughes*, Memorandum Opinion and Order, 50 Fed. Reg. 5679 (1985)) (“The Commission traditionally accepts proposals that would cover at least 80 percent of the community of license as constituting substantial compliance with the rule.”).

¹⁸⁶ For example, such coverage replication could require the design and fabrication of a unique directional antenna.

¹⁸⁷ See *supra* Section III.A.

¹⁸⁸ Licensees of secondary service stations, such as FM translators, are not eligible to apply for auxiliary facilities. In such cases, we envision a secondary licensee eligible for reimbursement requesting either a temporary facility modification or special temporary authorization (STA) under 47 CFR § 73.1635 to broadcast from an interim site.

to build interim facilities for eligible secondary services.

66. We seek comment on these issues and on whether reimbursing FM stations on a graduated scale is in the public interest. In particular, we seek comment on whether failing to pro-rate the amount of reimbursement for interim facilities might reduce reimbursement for all affected FM stations, given the total amount of money available to FM stations for reimbursements. We also request comment on the time off-air benchmarks set forth in paragraph 65, and whether they should be adjusted up or down. In particular, we seek comment on whether time off-air during nighttime and early morning hours should be considered *de minimis* and, if not, what level of reimbursement for auxiliary facilities should be allowed for such stations to provide interim nighttime service. If commenters disagree with the proposed reimbursement scheme, what alternative proposals do they recommend to ensure we allocate the limited funds fairly and equitably across all FM stations?

67. We acknowledge that the graduated scale could be subject to manipulation where the construction project is prolonged in order to reach a number of days that correlates to a higher reimbursement percentage. We believe that this concern is mitigated by the fact that the FM station will ordinarily not be in control of the repacked television station's construction project, and that a repacked television station is unlikely to prolong for the benefit of the FM station the time period that it employs vendors and service providers to perform construction. Nevertheless, in order to minimize the potential for gaming the system, we seek comment on whether to pay reimbursement for interim stations only after the period of time has expired and the number of days can be and is certified by the station. We also seek comment on whether to require certification by the FM station concerning the number of days the station could not broadcast from its primary facility due to construction work of a repacked television station. As noted herein, we intend to conduct audits, data validations, and site visits, as appropriate, to prevent waste, fraud, and abuse.¹⁸⁹ As part of that process, we could require a repacked television station to provide, upon request, a statement or other information regarding the dates that work was being done that impacted the FM station. We seek comment on these issues and on additional ways we can minimize this potential problem.

68. To the extent that a Category (3) station is required to lease tower space for a new auxiliary facility, we propose to allow reimbursement only for those lease payments covering the period of time during which the primary station is off the air due to the reorganization of broadcast television spectrum. In other words, we will not reimburse for tower lease payments except during the period when the repacked television station's construction work is actively preventing the FM station from broadcasting from its primary facility and not for any period of time thereafter. We request comment on this proposal.

b. Channel Change Equipment

69. We expect that no FM broadcast station will be forced to change its frequency as a result of the reorganization of broadcast television spectrum and, thus, we tentatively conclude that expenses for retuning or replacing antennas or transmitters to accommodate channel changes will not be eligible for reimbursement. We seek comment on this expectation.

c. Equipment Upgrades and Reuse of Existing Equipment

70. As noted above, full power and Class A stations can be reimbursed only for comparable facilities, while we propose that LPTV/translators may in certain cases require modified facilities due to the fact that LPTV/translators may need to change locations and not just channels.¹⁹⁰ Similarly, we tentatively conclude that the full power and Class A comparable facilities reimbursement standard cannot be applied in the same manner to FM stations in Categories (1) and (2) because the goal is to reasonably replicate the service type and area from a different location (Category (1)) or restore service using

¹⁸⁹ See *infra* para. 89.

¹⁹⁰ See *supra* paras. 40-41.

alternate equipment (Category (2)). In some cases, this can be accomplished using existing equipment or its equivalent, but in other cases this will require modified or differently configured equipment. For instance, a move of an FM station's antenna to a lower spot on the same tower could, in order to replicate the station's existing signal contours, require replacement equipment with an increase in ERP, either by using a transmitter with higher power output or an antenna with higher gain. In the (we expect rare) cases in which a station is forced to move to another tower, reasonably replicating current service might involve both of those options and/or design and construction of an antenna with a directional pattern, in order to avoid prohibited interference to other FM stations.

71. To the extent that a Category (1) station would propose to construct a new tower, we propose to reimburse tower construction expenses only upon a showing that no space is available on other local towers that would enable it to reasonably replicate current service. Even if it were able to make such a showing, we seek comment on whether and how we should discount any reimbursement for tower construction costs, given that such "vertical real estate" carries with it the potential for revenue generation for the FM station, perhaps in substantial amounts. We seek comment on this proposal.

72. Similar to our tentative conclusion above concerning LPTV/translators, we also propose that we will follow the Commission's determination in the existing reimbursement program and not reimburse stations for new, optional features in equipment that are not already present in the equipment being replaced.¹⁹¹ For example, we would not reimburse an analog-only FM station to add hybrid digital capability.¹⁹² A station that contemplates a rule-compliant modification to a higher station class or to an expanded service area as part of a required move may do so, but we propose to limit reimbursement only to costs needed to return the station to its original service area. We seek comment on these proposals. While the REA contains a provision precluding duplicative payments relating only to "interim facilities,"¹⁹³ we tentatively conclude that FM broadcast stations that receive or have received reimbursement of expenses from sources of funding other than the Reimbursement Fund, such as co-located television stations and/or tower owners providing reimbursement under contractual provisions, will not receive reimbursement for those expenses from the Reimbursement Fund. We tentatively conclude that a cost that is reimbursed by another source of funding is not a "cost . . . incurred" by the FM broadcast station under Section 511(l)(1)(A).¹⁹⁴ We seek comment on this tentative conclusion.

73. In addition, the Commission required full power and Class A stations seeking reimbursement to reuse their own equipment to the extent possible, rather than acquiring new equipment to be paid for from the Reimbursement Fund, and to "provide a justification when submitting their estimated cost form as to why it is reasonable under the circumstances to purchase new equipment rather than modify their . . . current equipment. . . ." ¹⁹⁵ We propose to adopt a similar requirement that FM stations reuse their own equipment, to the extent possible. As noted above, we expect that FM stations will not be required to change frequencies, so there should be no issues regarding channel-related equipment modifications. Thus, we believe it is reasonable to require FM stations seeking reimbursement to provide a justification why it is reasonable to purchase new equipment rather than reuse existing equipment. We seek comment on this proposal.

¹⁹¹ *Incentive Auction R&O*, 29 FCC Rcd at 6822, para. 624.

¹⁹² For example, an analog-only Category (1) FM station would not be reimbursed for an upgrade to hybrid analog-digital service, except to the amount necessary to replace its prior analog-only service. We likewise do not propose to reimburse for HD Radio license fees for the use of the proprietary FM digital transmission system.

¹⁹³ *See supra* para. 55; note 97.

¹⁹⁴ 47 U.S.C. § 1452(l)(1)(A).

¹⁹⁵ *Id.* at 6832, para. 651. *See also Finalized Catalog of Reimbursement Expenses PN*, 32 FCC Rcd at 1210, 1216, Appendix A (noting that, in some instances, transmission lines can be reused in the event of a channel change and that broadcasters may be able to retune existing transmitters on the new channel rather than replacing them).

d. Lost Revenues

74. The REA, like the 2012 Spectrum Act, prohibits reimbursement of FM broadcast stations for “lost revenues.”¹⁹⁶ In the *Incentive Auction R&O*, the Commission defined “lost revenues” to include “revenues that a station . . . loses as a direct or ancillary result of the reverse auction or the repacking process.”¹⁹⁷ We propose to adopt a similar definition of “lost revenues” for purposes of reimbursing FM broadcast stations: “revenues that a station loses as a direct or ancillary result of the reorganization of broadcast television spectrum, including the reverse auction and the repacking process.” Under this definition, we would not reimburse a station’s loss of advertising revenues while it is off the air implementing either replacement or interim facilities, or for refunds a station is required to make for payments for airtime as a result of being off the air in order to implement such a facility change.¹⁹⁸ We seek comment on our proposal and whether there are other additional categories of costs that FM stations may incur that would constitute “lost revenues” not eligible for reimbursement under the REA.

D. Reimbursement Process

75. Our goal is to develop a reimbursement process for the newly eligible entities that is as simple and straightforward as possible to minimize both the costs associated with reimbursement as well as the burdens on affected parties and the Commission. At the same time, we are committed to a process that is fair and equitable to all eligible entities and that maximizes the funds available for reimbursement by avoiding waste, fraud, and abuse.

76. As discussed below, we propose to reimburse eligible LPTV, TV translator, and FM broadcast stations using a procedure that is substantially similar to what is currently being used by the Commission to provide reimbursements to full power and Class A stations and MVPDs.¹⁹⁹ We believe that using a process and resources that have proven effective is a reasonable approach as it should result in a smooth and expeditious reimbursement process for LPTV/translator and FM stations.²⁰⁰ At the same time, we propose to make certain adjustments and simplifications to this process as we describe below. We invite comment generally on whether and how the process might be further streamlined in light of the fact that the money available to reimburse LPTV/translator and FM stations is less than that allocated to full power, Class A, and MVPD entities, individual entity expenses may also be expected to be smaller, and many of the stations seeking reimbursement may already have incurred the costs associated with the transition.

1. Eligibility Certification

77. We propose to require LPTV/translator and FM stations that believe they meet the eligibility requirements and intend to request reimbursement for eligible expenses, to file a form (Eligibility Certification) indicating that they intend to request reimbursement funds. We seek comment

¹⁹⁶ See 47 U.S.C. § 1452(1)(1)(B).

¹⁹⁷ *Incentive Auction R&O*, 29 FCC Rcd at 6824-25, para. 630.

¹⁹⁸ *Id.* See also *supra* note 147.

¹⁹⁹ *Incentive Auction R&O*, 29 FCC Rcd at 6812-33, paras. 598-654.

²⁰⁰ We note that the REA provides for “reimbursement” of full power and Class A stations and MVPDs, but provides for “payments” to LPTV/translators and FM stations. Compare 47 U.S.C. § 1452(j)(2)(A)(i) with §§ 1452(j)(2)(A)(ii)-(iii). Given that other parts of the REA direct the Commission to “reimburse costs reasonably incurred” by LPTV/translators and FM stations, e.g., 47 U.S.C. §§ 1452(k)(1) and (l)(1)(A), we conclude that Congress was using the terms interchangeably and was not mandating any particular distinction with respect to the programs the Commission develops for LPTV/translators and FM stations as compared to full power and Class A stations and MVPDs other than those of the types proposed herein, but we invite comment as to whether any particular distinctions were intended and if so what they might be.

on this proposal.²⁰¹ We propose that entities be required to certify on the Eligibility Certification that they meet the eligibility criteria adopted in this proceeding and provide documentation or other evidence to support their certification. For example, LPTV/translator stations may be required to provide evidence to support their certification that they meet the minimum operating requirement adopted in this proceeding to be eligible for reimbursement under the REA.²⁰² Such evidence could include evidence of the programming aired by the station during the period of time in question, as well as electric power bills, and we seek comment on other types of evidence that might be used to demonstrate that a station was transmitting during the relevant time period. Similarly, FM stations could be required to identify the repacked TV station that caused it to be eligible for reimbursement and to provide evidence to support its certification that it was off the air for a sufficient period of time to be eligible for reimbursement for interim facilities, and the period of time it was, or expects to be, silent.²⁰³ As stated previously, the Commission previously determined that, with respect to the incentive auction reimbursement program, “audits, data validations, and site visits are essential tools in preventing waste, fraud, and abuse, and that use of these measures will maximize the amount of money available for reimbursement.”²⁰⁴ With respect to reimbursing low-power broadcast stations, we contemplate that a third party firm on behalf of, or in conjunction with, the Media Bureau may conduct audits, data validations, site visits or other verifications to substantiate the supporting evidence and representations of entities that certify that they meet the eligibility criteria adopted in this proceeding to the extent necessary. We propose to direct such entities to make available any relevant documentation upon request from the Commission or its contractor. We emphasize that a false certification may result in disqualification and other sanctions provided for in the Communications Act and the Commission’s rules.²⁰⁵ We invite comment on this approach and on possible other kinds of evidence and/or documentation the Media Bureau should require LPTV/translator and FM stations to submit to support their Eligibility Certifications.

2. Estimated Expenses

78. We also propose to require LPTV/translator and FM stations to list on a revised Reimbursement Form their existing broadcasting equipment and the types of costs they expect to incur. In the full power and Class A program, the Media Bureau developed a list of the types of costs stations were most likely to incur together with a range of prices applicable to such expenses. This cost catalog is embedded in the Reimbursement Form used by full power and Class A stations. We intend to develop a revised cost catalog to help LPTV/translator and FM stations provide estimated costs. Alternatively, these stations, like full power and Class A stations, may choose instead to provide their own estimates or actual costs. As noted above, in the *Incentive Auction R&O*, the Commission required full power and Class A broadcasters and MVPDs eligible for reimbursement to file a form providing estimates of their channel relocation costs.²⁰⁶ We propose to adopt a consistent approach for entities newly eligible for reimbursement. Specifically, similar to the current process used by full power and Class A stations and MVPDs using the Reimbursement Form, we propose that eligible LPTV/translator and FM stations

²⁰¹ The Eligibility Certification may be combined with the form we propose to require entities to file to estimate their expenses eligible for reimbursement (Estimated Cost Form) or may be a separate form.

²⁰² See *supra* para. 33.

²⁰³ See *supra* para. 67.

²⁰⁴ *Incentive Auction R&O*, 29 FCC Rcd at 6826, para. 635.

²⁰⁵ Section 1.17 of the Commission’s rules requires that licensees must provide truthful and accurate information in all interactions with the Commission. 47 CFR § 1.17. Violation of this rule may subject the applicant to a monetary forfeiture pursuant to Sections 502 and/or 503 of the Communications Act, 47 U.S.C. §§ 502 and 503. An intentional false certification also may be sanctioned under Section 1001 of Title 18 of the United States Code, 18 U.S.C. § 1001, which makes it a crime, punishable by a \$10,000 fine, or five years imprisonment, or both, to knowingly and willfully make “any false, fictitious or fraudulent statements or representation” with respect to any matter within the jurisdiction of a federal agency.”

²⁰⁶ *Incentive Auction R&O*, 29 FCC Rcd at 6817-18, paras. 610-13.

submit a revised version of our existing Reimbursement Form that will contain a new cost catalog. The new cost catalog will offer ranges of prices for the potential expenses that can be used to generate total estimated costs. For example, LPTV/translator stations may be required to indicate whether they will need to purchase new equipment in order to operate on their new channel, or whether they can reuse some of their existing equipment. FM stations may be required to indicate whether they will need to move to a different tower or a different location on the same tower, and whether they will have to go silent or power down temporarily to move or to permit work on their existing tower as a result of changes being made to a repacked full power or Class A station.

79. We note that some LPTV/translator and FM stations will already have incurred costs eligible for reimbursement by the time we adopt rules in this proceeding and begin accepting Eligibility Certifications and Reimbursement Forms. We propose to permit entities to indicate their actual costs instead of providing estimates on the Reimbursement Form for costs already incurred in their initial filings with the Commission. We seek comment on this proposal.

80. We tentatively conclude that the Reimbursement Form for use by newly eligible entities should be simpler and easier to use than the forms used by full power and Class A stations and MVPDs. We seek comment on how we can modify the Form to make it simpler to use. We propose to consider methods by which the revised cost catalog could more readily determine a reasonable estimate for newly eligible stations than the current form used by full power and Class A stations. Are there other ways that a reasonable estimate of expenses can be more readily derived than under the current process? We tentatively conclude that an approach that would eliminate altogether the requirement to submit estimated expenses would not provide the Commission with information concerning the potential total demand on the Reimbursement Fund and other information necessary for the Media Bureau and Fund Administrator to make reasoned allocation decisions and determine whether reimbursement claims are reasonable, as required by the REA. To the extent, however, that parties disagree with our tentative conclusion, we seek comment on how a reimbursement process without the submission of estimates would work? Without estimates, how would the Media Bureau determine allocations that assure a fair and equitable distribution of the finite Reimbursement Fund? Supporters of a reimbursement process without estimated expenses should also address how such an approach is consistent with Section 511(m)(2) of the REA.²⁰⁷ We seek comment on our tentative conclusions.

3. Reimbursement Allocations

81. We propose that, once the Media Bureau completes its review of the Eligibility Certifications and Reimbursement Forms, it will issue an initial allocation from the Reimbursement Fund to each eligible LPTV/translator and FM station, which will be available to the entity to draw down as expenses are incurred. In the context of the existing reimbursement process for full power and Class A stations, the Media Bureau exercised discretion to determine the appropriate allocation amount based on the circumstances and information available from submitted Reimbursement Forms. Consistent with this approach, as noted in the *Order* below, we direct the Media Bureau to make allocation decisions for stations eligible for reimbursement under the REA.²⁰⁸ The amount of the initial allocation, as well as the total amount allocated to each entity, will depend in part on the number of LPTV/translator stations and the number of FM stations that file an Eligibility Certification and the amount available for reimbursement for each type of entity. For example, the Media Bureau may give entities an allocation that is a percentage of their total costs eligible for reimbursement, similar to the approach we took for full power and Class A stations and MVPDs. Alternatively, it could allocate the same fixed amount to entities that must take similar steps as a result of, or are similarly affected by, the reorganization of broadcast

²⁰⁷ Section 511(m)(2) of the REA provides that “[t]he rulemaking completed under paragraph (1) shall include . . . procedures for the submission and review of cost estimates and other materials related to those costs consistent with the regulations developed by the Commission” for reimbursement of full power, Class A, and MVPD entities under Section 6403(b) of the Spectrum Act. 47 U.S.C. § 1452(m)(2). *See also supra* para. 19.

²⁰⁸ *See infra* para. 91.

television spectrum (*i.e.*, a fixed amount to all FM stations that must be off the air for 11-30 days, and a different fixed amount to all FM stations that must be off the air for 24 hours to 10 days).²⁰⁹ We invite comment on each of these approaches.

82. *Subsequent Allocations.* We propose that, after the initial allocation of reimbursement funds to eligible LPTV/translator and FM stations, the Media Bureau may issue one or more subsequent allocation(s). The timing and amount of these subsequent allocation(s) will depend in part on the funds remaining in the LPTV/translator and FM portions of the Reimbursement Fund,²¹⁰ the eligible expenses entities have incurred, and the Commission's goal in terms of the percentage or total dollar amount of eligible costs we expect to be able to cover for each entity based on the steps they must take as a result of the reorganization of broadcast television spectrum. We seek comment generally on this proposed reimbursement process.

83. *Prioritization of Certain Costs.* To the extent that the total amount of reimbursement funds available to LPTV/translators or FM stations may not be sufficient to cover all eligible expenses at the end of the program, it may be necessary to establish a prioritization scheme for reimbursing eligible expenses. We propose to direct the Media Bureau to perform this prioritization, if necessary. In order to assist the Media Bureau, we seek comment on whether we should prioritize the payment of certain costs, such as certain equipment and engineering expenses, over other types of expenses, such as project management fees, for LPTV/translator and FM stations. For instance, project management fees have proven difficult for the Media Bureau and Fund Administrator to validate in the context of the ongoing reimbursement effort for full power and Class A stations and MVPDs. Given that the amount available for reimbursement for LPTV/translator and FM stations may not be sufficient to cover all eligible expenses incurred by these entities, we believe it may make sense to prioritize, at least initially, certain expenses to maximize the possibility that these costs are covered for all eligible entities. The Media Bureau could, for example, limit the initial allocation provided to LPTV/translator stations to an amount necessary to cover the costs related to any necessary transmitter, transmission line, and antenna equipment, as well as engineering expenses necessary to locate a new channel. Any funds remaining in the LPTV/translator portion of the Reimbursement Fund after these expenses are covered could be distributed in a subsequent allocation. We seek comment generally on this approach. If we were to prioritize certain equipment and engineering costs, which such costs should be prioritized for LPTV/translator stations and which should be prioritized for FM stations?

4. Requests for Reimbursement

84. Once the Commission has issued an initial allocation to each eligible LPTV/translator and FM station, we propose to allow these entities to submit claim(s), together with any required supporting invoices and other cost documentation, for reimbursement for any eligible costs they have incurred, using a method consistent with the existing process. We propose that the Media Bureau, together with the Fund Administrator, will review each reimbursement claim and, if approved, authorize a draw down from the entity's individual allocation. We propose to allow entities to submit multiple reimbursement requests as they incur expenses throughout the reimbursement period. As noted above, we also propose to allow entities that have already incurred costs at the time they make their initial filings with the Commission to submit actual costs instead of estimates. We seek comment on these proposals.

E. Financial Forms and Procedures

85. We propose to use revised versions of the financial forms currently being used by full power, Class A, and MVPD entities for purposes of reimbursing eligible LPTV/translator and FM stations. We also propose to use the same procedures to provide reimbursement payments to these newly

²⁰⁹ See *supra* para. 65.

²¹⁰ See *supra* para. 5.

eligible entities. These procedures were set forth in the *Financial Procedures PN*.²¹¹ We seek comment generally on this approach. Are there any procedures that we should alter for purposes of reimbursing these newly eligible entities?

86. Specifically, we propose to require LPTV, TV translators, and FM stations to submit their Eligibility Certification, cost estimates, and subsequent requests for reimbursement for expenses they have incurred, together with any required supporting documentation, using the Reimbursement Form (FCC Form 2100, Schedule 399), which we plan to revise for this purpose. As required for full power and Class A stations and MVPDs, we propose that LPTV/translator and FM stations submit the Reimbursement Form electronically via the Commission's LMS database.²¹² We propose to require LPTV/translator and FM stations to use a procedure and form similar to our existing FCC Form 1876²¹³ and file electronically in the CORES Incentive Auction Financial Module.²¹⁴ Entities will be able to track reimbursement payments using the Auction Payments component of the CORES Incentive Auction Financial Module.²¹⁵

87. As discussed in the *Order* below,²¹⁶ we direct the Media Bureau together with the Office of Managing Director to revise these reimbursement forms and procedures as necessary for use by LPTV/translator and FM stations.

F. Measures to Prevent Waste, Fraud, and Abuse

88. As with full power, Class A, and MVPD entities,²¹⁷ we intend to establish strong measures to protect against waste, fraud, and abuse with respect to disbursements from the Reimbursement Fund for newly eligible entities. The Media Bureau, with assistance from the Fund Administrator, will review the information entities provide in their Eligibility Certification and may require additional information to validate whether the entity is, in fact, eligible for reimbursement pursuant to the criteria established in this proceeding. We propose to require entities to document their actual expenses, including by providing all relevant invoices and receipts, and to retain other relevant records substantiating their certifications and reimbursement claims. Similar to the existing requirement for full power, Class A, and MVPD entities,²¹⁸ we also propose to require LPTV/translator and FM stations seeking reimbursement to retain all relevant documents pertaining to construction or other reimbursable changes or expenses for a period ending not less than 10 years after the date on which it receives final payment from the Reimbursement Fund. We invite comment on these proposals.

89. We anticipate that the Reimbursement Form we develop for use by LPTV/translator and FM stations will contain certifications similar to those on the Reimbursement Form used by full power, Class A, and MVPD entities.²¹⁹ Thus, an LPTV/translator or FM station seeking reimbursement will be required to certify, *inter alia*, that it believes in good faith that it will reasonably incur all of the estimated costs that it claims as eligible for reimbursement on the estimated cost form, it will use all money received from the Reimbursement Fund only for expenses it believes in good faith are eligible for

²¹¹ See *Financial Procedures PN*, 32 FCC Rcd at 2019-32, paras. 59-108; *supra* para. 21.

²¹² FM broadcasters currently file applications and other documents with the Commission using our CDBS database. We are in the process of converting FM stations to the LMS database.

²¹³ See *Financial Procedures PN*, 32 FCC Rcd at 2023-25, paras. 70-78.

²¹⁴ *Id.* at 2025-31, paras. 79-101.

²¹⁵ *Id.* at 2031, paras. 103-04.

²¹⁶ See *infra* para. 91.

²¹⁷ See *Incentive Auction R&O*, 29 FCC Rcd at 6825-26, paras. 631-36.

²¹⁸ See 47 CFR § 73.3700(e)(6).

²¹⁹ See *id.* § 73.3700(e)(2)(ii).

reimbursement, and it will comply with all policies and procedures related to reimbursement.²²⁰ In addition, we intend to conduct audits, data validations, and site visits, as appropriate, to prevent waste, fraud, and abuse and to maximize the amount of money available for reimbursement. To ensure transparency with respect to the Reimbursement Fund, we plan to make eligibility and actual cost information available to the public as well as information regarding Reimbursement Fund disbursements. If we discover evidence of intentional fraud, we intend to refer the matter to the Commission's Office of Inspector General or to law enforcement for criminal investigation, as appropriate. We invite comment on these proposals. Are there other steps we should take to avoid potential fraud and ensure that appropriate safeguards are applied to the Reimbursement Fund?

IV. ORDER

90. *Reimbursement Contractor.* Similar to the approach the Commission took with respect to full power, Class A, and MVPD entities,²²¹ we direct the Media Bureau to engage a contractor to assist in the reimbursement process and administration of the Reimbursement Fund for LPTV/translator and FM stations. We direct the Media Bureau to engage a third-party contractor to assist in the reimbursement process, which will be overseen by the Bureau.

91. *Reimbursement Process.* We direct the Media Bureau to revise the forms to be used by eligible LPTV/translator and FM stations to claim reimbursement from the Reimbursement Fund and for any other Reimbursement Fund-related purposes. We also direct the Media Bureau to calculate the amount of the allocations to eligible entities from the Reimbursement Fund, develop a revised Catalog of Eligible Expenses, and make other determinations regarding eligible costs and the reimbursement process. Finally, we direct the Media Bureau to implement the necessary policies and procedures relating to eligibility certifications, allocations, draw downs, payments, obligations, and expenditures of money from the Reimbursement Fund in order to protect against waste, fraud, and abuse and in the event of bankruptcy. Given the importance of maintaining the integrity of the Fund, the Media Bureau will consult with the Office of General Counsel and the Office of the Managing Director in acting pursuant to this direction.

92. *Reimbursement Period.* As discussed above, the REA provides that the Commission must make all reimbursements using the additional funds appropriated by the REA to the Reimbursement Fund by July 3, 2023.²²² With respect to LPTV/translators and FM stations, we authorize the Media Bureau to announce, in one or more public notices to be issued following the adoption of an Order in response to the *NPRM*, the date by which these entities must file their Eligibility Certification, when allocations to these entities will be made, the deadline by which these entities must file any remaining requests for reimbursement, and the final date when reimbursement funds will be issued.

93. The Commission indicated in the *Incentive Auction R&O* that the Media Bureau will announce the date by which full power, Class A, and MVPD entities must submit their final expense documentation to the Commission.²²³ At the time of that delegation, the Spectrum Act imposed a deadline for the Commission to make all required reimbursements to full power, Class A, and MVPD

²²⁰ *Id.*

²²¹ See *Incentive Auction R&O*, 29 FCC Rcd at 6820, paras. 618-19.

²²² See 47 U.S.C. § 1452(j)(3)(B); *supra* para. 6. Section 511(j)(3)(C) provides that, if all reimbursements pursuant to the Spectrum Act and the REA have been made before July 3, 2023, “the Commission shall submit to the Secretary of the Treasury a certification that all such reimbursements have been made.” 47 U.S.C. § 1452(j)(3)(C). In addition, as noted above, the REA provides that reimbursement payments to LPTV/translator and FM stations may not be made after April 13, 2020 unless the Commission “submits to Congress a certification that such payments are necessary to reimburse costs reasonably incurred” by such stations. See 47 U.S.C. § 1452(j)(2)(C)(ii), (iii); *supra* para. 6.

²²³ See *Incentive Auction R&O*, 29 FCC Rcd at 6819, para. 617.

entities of April 13, 2020.²²⁴ The REA permits the Commission to extend the deadline for reimbursements to full power, Class A, and MVPD entities, from the funds appropriated for this purpose by the REA, beyond April 13, 2020,²²⁵ but no later than July 3, 2023, as long as the certification requirements set forth in the REA are met.²²⁶ The *Incentive Auction R&O* stated that the Media Bureau may announce the final date reimbursement funds will be issued to full power and Class A stations and MVPDs and a deadline for the submission of final expense documentation, and we clarify that the Bureau also is authorized to set deadlines for funds appropriated by the REA.

94. *Consumer Education.* As noted above,²²⁷ the REA provides that at least \$50 million from the funds appropriated to the Reimbursement Fund will be available to the Commission to make “payments solely for the purposes of consumer education relating to the reorganization of broadcast television spectrum” under 47 U.S.C. § 1452(b).²²⁸ We interpret this provision as providing at least \$50 million for use by the Commission to fund its efforts to educate consumers about the reorganization of broadcast television spectrum under 47 U.S.C. § 1452(b), with any unused funds to be returned to the U.S. Treasury. We anticipate, among other initiatives, hosting a dedicated consumer service call center to provide consumers technical support and assistance on such matters as rescanning and other means to resolve potential reception issues. We also intend to perform targeted outreach to specific communities about rescanning, and, where appropriate, we may use local media or other outreach to disseminate rescanning information. Consumer education funding could also be used in developing additional online resources to support consumers. In all our activities, we will coordinate closely with industry stakeholders to ensure that our consumer education efforts are complementary to, and not duplicative of, industry efforts. In so doing, we will guard against unnecessary or wasteful spending. We welcome input from consumers and industry on other ways we can best use the funding to help mitigate disruption by consumers during the transition period.

V. PROCEDURAL MATTERS

95. *Ex Parte Rules.—Permit But Disclose.* The proceeding this *NPRM* initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.²²⁹ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in

²²⁴ See *supra* note 73. As discussed above, the deadline for full power and Class A stations to transition to their new channels is July 13, 2020. See *supra* para. 11.

²²⁵ *Id.*

²²⁶ See 47 U.S.C. § 1452(j)(2)(C)(i); *supra* para. 6.

²²⁷ See *supra* para. 5.

²²⁸ 47 U.S.C. § 1452(j)(2)(A)(iv).

²²⁹ 47 CFR §§ 1.1200 *et seq.*

their native format (e.g., .doc, .xml, .ppt, searchable.pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

96. *Initial Regulatory Flexibility Act Analysis.*—The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice and comment rulemaking proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

97. With respect to this *NPRM*, an Initial Regulatory Flexibility Analysis (IRFA) under the Regulatory Flexibility Act²³⁰ is contained in Appendix B. Written public comments are requested in the IRFA, and must be filed in accordance with the same filing deadlines as comments on the *NPRM*, with a distinct heading designating them as responses to the IRFA. The Commission will send a copy of this *NPRM*, including the IRFA, in a report to Congress pursuant to the Congressional Review Act (CRA). In addition, a copy of this *NPRM* and the IRFA will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the *Federal Register*.

98. Because the actions taken in the *Order* do not require notice and comment, the Regulatory Flexibility Act²³¹ does not apply.

99. *Paperwork Reduction Act.*—The *NPRM* contains proposed new or modified information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements proposed in the *NPRM*, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002 (SBPRA), Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

100. The *Order* does not contain new or modified information collection requirements subject to the PRA. In addition, therefore, it does not contain any new or modified information collection burdens for small business concerns with fewer than 25 employees, pursuant to the SBPRA.

101. *Filing Requirements.—Comments and Replies.* Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's

²³⁰ *See* 5 U.S.C. § 603.

²³¹ 5 U.S.C. § 601 *et seq.* *See id.* § 601(2).

Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

102. *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

103. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th St., SW, Room CY-A257, Washington, DC 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

104. *Additional Information.* For additional information on this proceeding, please contact Joyce Bernstein, Joyce.Bernstein@fcc.gov, (202) 418-1647, or Shaun Maher, Shaun.Maher@fcc.gov, (202) 418-2324, of the Media Bureau, Video Division; Thomas Nessinger, Thomas.Nessinger@fcc.gov, (202) 418-2709, of the Media Bureau, Audio Division; or Kim Matthews of the Media Bureau, Policy Division, Kim.Matthews@fcc.gov, (202) 418-2154.

VI. ORDERING CLAUSES

105. Accordingly, **IT IS ORDERED** that, pursuant to the authority contained in Sections 1, 4, 303, and 336(f) of the Communications Act of 1934, as amended, Section 6403 of the Middle Class Tax Relief and Job Creation Act of 2012, and Section 511, Division E, Title V of the Consolidated Appropriations Act, 2018, Pub. L. 115-141 (2018), 47 U.S.C. §§ 151, 154, 303, 336(f), 1452, the *Notice of Proposed Rulemaking IS ADOPTED*.

106. **IT IS FURTHER ORDERED** that, pursuant to the authority contained in Sections 1, 4, 5(b), 5(c), 303, and 336(f) of the Communications Act of 1934, as amended, Section 6403 of the Middle Class Tax Relief and Job Creation Act of 2012, and Section 511, Division E, Title V of the Consolidated Appropriations Act, 2018, Pub. L. 115-141 (2018), 47 U.S.C. §§ 151, 154, 155(b), 155(c), 303, 336(f), 1452, the *Order IS ADOPTED* and **WILL BECOME EFFECTIVE** upon publication of the *Order* in the Federal Register.

107. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this *Notice of Proposed Rulemaking and Order*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

108. **IT IS FURTHER ORDERED** that the Commission will send a copy of the *Order* 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).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A**Proposed Rules****PART 73 – RADIO BROADCAST SERVICES**

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 309, 310, 334, 336 and 339

2. A new rule Section 73.3701 is added as follows:

§ 73.3701 Reimbursement Under the Reimbursement Expansion Act.

(a) Definitions -

(1) FM station. For purposes of this section, the term FM station means those stations authorized by 47 CFR section 73.310.

(2) Incentive Auction. For purposes of this section, the term Incentive Auction means the broadcast television spectrum incentive auction conducted under section 6403 of the Spectrum Act specifying the new channel assignments and technical parameters of any broadcast television stations that are reassigned to new channels.

(3) Licensed. For purposes of this section, the term licensed means a station that was licensed or that filed a license application prior to April 13, 2017.

(4) Low power television station. For purposes of this section, the term low power television station means those stations authorized by 47 CFR section 74.701.

(5) Predetermined cost estimate. For purposes of this section, predetermined cost estimate means the estimated cost of an eligible expense as generally determined by the Media Bureau in a catalog of expenses eligible for reimbursement.

(6) Reimbursement Expansion Act or REA. For purposes of this section, the term Reimbursement Expansion Act or REA means Division E, Financial Services & General Appropriation Act, 2018, Title V Independent Agencies, Pub. L. No 115-141, Section 511 (codified at 47 U.S.C. § 1452(j)-(n)) adopted as part of the Consolidated Appropriations Act, 2018, Pub. L. No. 115-141 (2018).

(7) Reimbursement period. For purposes of this section, reimbursement period means the period ending July 3, 2023 pursuant to sections 510(j)(1)(A) and (B) of the REA.

(8) Replacement translator station. For purposes of this section, the term replacement translator station means analog to digital replacement translator stations authorized pursuant to 47 CFR section 74.787(a)(5).

(9) Spectrum Act. For purposes of this section, the term Spectrum Act means Title VI of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112-96).

(10) Special Displacement Window. For purposes of this section, the term Special Displacement Window means the displacement application filing window conducted April 10, 2018 to June 1, 2018 for low

power television, TV translator, and analog-to-digital replacement translator stations that were displaced by the incentive auction and repacking process.

(11) Transmitting. For purposes of this section, the term transmitting means operating not less than 2 hours in each day of the week and not less than a total of 28 hours per calendar week for 9 of the 12 months prior to April 13, 2017.

(12) TV Broadcaster Relocation Fund. For purposes of this section, the TV Broadcaster Relocation Fund means the fund established by the REA.

(13) TV translator station. For purposes of this section, the term TV translator station means those stations authorized by 47 CFR section 74.701.

(b) Only the following entities are eligible for reimbursement of relocation costs reasonably incurred:

(1) Low power television stations. Low power television stations that filed an application for construction permit during the Special Displacement Window and such application was subsequently granted. Station must have been licensed and transmitting for at least 9 of the 12 months prior to April 13, 2017.

(2) TV translator stations. TV translator stations that filed an application for construction permit during the Special Displacement Window and such application was subsequently granted. Station must have been licensed and transmitting for at least 9 of the 12 months prior to April 13, 2017.

(3) Replacement translator stations. Replacement translator stations that filed an application for construction permit during the Special Displacement Window and such application was subsequently granted. Station must have been licensed and transmitting for at least 9 of the 12 months prior to April 13, 2017.

(4) FM station. FM stations that experienced a disruption of service as a result of the reorganization of broadcast television spectrum under 47 U.S.C. § 1452(b).

(c) Reimbursement process.

(1) Estimated costs.

(i) All entities that are eligible to receive reimbursement will be required to file an estimated cost form providing an estimate of their reasonably incurred costs.

(ii) Each eligible entity that submits an estimated cost form will be required to certify, inter alia, that:

(A) It is eligible for reimbursement;

(B) It believes in good faith that it will reasonably incur all of the estimated costs that it claims are eligible for reimbursement on the estimated cost form;

(C) It will use all money received from the TV Broadcaster Relocation Fund only for expenses it believes in good faith are eligible for reimbursement;

(D) It will comply with all policies and procedures relating to allocations, draw downs, payments, obligations, and expenditures of money from the TV Broadcaster Relocation Fund;

(E) It will maintain detailed records, including receipts, of all costs eligible for reimbursement actually

incurred; and

(F) It will file all required documentation of its relocation expenses as instructed by the Media Bureau.

(iii) If an eligible entity seeks reimbursement for new equipment, it must provide a justification as to why it is reasonable under the circumstances to purchase new equipment rather than modify its corresponding current equipment.

(iv) Eligible entities that submit their own cost estimates, as opposed to the predetermined cost estimates provided in the estimated cost form, must submit supporting evidence and certify that the estimate is made in good faith.

(2) Final Allocation Deadline.

(i) Upon completing construction or other reimbursable changes, or by a specific deadline prior to the end of the Reimbursement Period to be established by the Media Bureau, whichever is earlier, all eligible entities that received an initial allocation from the TV Broadcaster Relocation Fund must provide the Commission with information and documentation, including invoices and receipts, regarding their actual expenses incurred as of a date to be determined by the Media Bureau (the “Final Allocation Deadline”).

(ii) If an eligible entity has not yet completed construction or other reimbursable changes by the Final Allocation Deadline, it must provide the Commission with information and documentation regarding any remaining eligible expenses that it expects to reasonably incur.

(3) Final accounting. After completing all construction or reimbursable changes, eligible entities that have received money from the TV Broadcaster Relocation Fund will be required to submit final expense documentation containing a list of estimated expenses and actual expenses as of a date to be determined by the Media Bureau. Entities that have finished construction and have submitted all actual expense documentation by the Final Allocation Deadline will not be required to file at the final accounting stage.

(4) Documentation requirements.

(i) Each eligible entity that receives payment from the TV Broadcaster Relocation Fund is required to retain all relevant documents pertaining to construction or other reimbursable changes for a period ending not less than 10 years after the date on which it receives final payment from the TV Broadcaster Relocation Fund.

(ii) Each eligible entity that receives payment from the TV Broadcaster Relocation Fund must make available all relevant documentation upon request from the Commission or its contractor.

APPENDIX B

Initial Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Federal Communications Commission (Commission) has prepared this present Initial Regulatory Flexibility Analysis (IRFA) concerning the possible significant economic impact on small entities by the policies and rules proposed in the *Notice of Proposed Rulemaking (NPRM)*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the *NPRM*. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rules

2. The *NPRM* proposes rules to implement Congress's recent directive that the Commission reimburse certain Low Power Television (LPTV), television translator (TV translator), and FM broadcast stations for costs incurred as a result of the Commission's broadcast television spectrum incentive auction.⁴ When Congress authorized the Commission to conduct the incentive auction as part of the 2012 Spectrum Act,⁵ it required the Commission to reimburse certain costs incurred by full power and Class A television licensees that were reassigned to new channels as a result of the auction, as well as certain costs incurred by multichannel video program distributors (MVPDs) to continue to carry such stations.⁶ On March 23, 2018, Congress adopted the Reimbursement Expansion Act (REA), which amends Section 6403 of the Spectrum Act to expand the list of entities eligible to be reimbursed for auction-related expenses to include LPTV, TV translator, and FM broadcast stations,⁷ and to provide additional funds to the Reimbursement Fund to be used for this purpose.⁸ The REA also increases the funds available to reimburse full power and Class A stations and MVPDs, and provides funds to the Commission for consumer education.⁹

3. The *NPRM* proposes a mechanism for reimbursing the newly eligible entities that is substantially similar to the process currently used by the Commission to reimburse full power and Class A licensees and MVPDs as established in the *Incentive Auction R&O*.¹⁰ The *NPRM*:

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 (CWAAA).

² See 5 U.S.C. § 603(a).

³ See *id.*

⁴ 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)).

⁵ See 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).

⁶ 47 U.S.C. § 1452(b)(4)(A).

⁷ See 47 U.S.C. § 1452(k), (l).

⁸ See 47 U.S.C. § 1452(j)(1).

⁹ See 47 U.S.C. § 1452(j)(2)(A)(i).

¹⁰ See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, 6812-6833, paras. 598-654 (2014), *affirmed*, *National Association of Broadcasters v. FCC*, 789 F.3d 165 (D.C. Cir. 2015) (*Incentive Auction R&O*). See also *Expanding the Economic and Innovation*

- Tentatively concludes that LPTV and TV translator stations (collectively referred to as LPTV/translator stations) are eligible for reimbursement if (1) they filed an application during the Commission's Special Displacement Window and obtained a construction permit, and (2) were licensed and transmitting for at least 9 of the 12 months prior to April 13, 2017, as required by the REA.¹¹
- Tentatively concludes that the Commission will reimburse LPTV/translator stations for their reasonable costs to construct the facilities authorized by the grant of the station's Special Displacement Window application, but will require stations to reuse existing equipment and take other measures to mitigate costs where possible.¹²
- Tentatively concludes that both full power FM stations and FM translators that were licensed and transmitting on April 13, 2017, using the facilities impacted by the repacked television station¹³ are eligible for reimbursement under the REA.¹⁴ The *NPRM* proposes that this will include FM stations that incur costs because they must permanently relocate, temporarily or permanently modify their facilities, or purchase or modify auxiliary facilities to provide service to at least 80 percent of their primary station's coverage area or population during a period of time when construction work is occurring on a collocated repacked television station's facilities.¹⁵
- Proposes to reimburse up to 100 percent of the costs eligible for reimbursement for FM stations that must relocate permanently, or temporarily or permanently modify facilities,¹⁶ and seeks comment on a graduated, prioritized system to reimburse FM stations for the cost to purchase or modify auxiliary equipment to avoid going silent as a result of the repacking process.¹⁷
- Proposes to require LPTV/translator and FM stations seeking reimbursement to file with the Commission one or more forms certifying that they meet the eligibility criteria established in this proceeding for reimbursement, providing information regarding their current broadcasting equipment, and providing an estimate of their costs eligible for reimbursement.¹⁸ The *NPRM* invites comment on ways to streamline the submission of this information for these entities.
- Proposes that after the submission of information, the Media Bureau will provide eligible entities with an allocation of funds, to be available for draw down as the entities incur expenses.¹⁹ The *NPRM* proposes that the Media Bureau will make an initial allocation toward eligible expenses, followed by subsequent allocation(s) as needed, to the extent funds remain for LPTV/translator stations and FM stations in the Reimbursement Fund, and seeks comment on how to determine the amount of these allocations.

(Continued from previous page) _____

Opportunities of Spectrum Through Incentive Auctions, Second Order on Reconsideration, 30 FCC Rcd 6746, 6820-28 (2015).

¹¹ See *NPRM*, Section III.B.1.

¹² See *NPRM*, Section III.B.2.

¹³ For purposes of the *NPRM*, the term "repacked TV station" refers to a full power or Class A television station that was either reassigned to a new channel in the *Closing and Channel Reassignment PN* or that relinquished its spectrum usage rights in the reverse auction.

¹⁴ See *NPRM*, Section III.C.1.

¹⁵ See *id.*

¹⁶ See *NPRM*, Section III.C.2.

¹⁷ See *id.*

¹⁸ See *NPRM*, Sections III.D.1-2.

¹⁹ See *NPRM*, Section III.D.3.

- Proposes to use revised versions of the financial forms currently being used by full power, Class A, and MVPD entities for purposes of reimbursing eligible LPTV/translator and FM stations, and proposes to use the same procedures to provide reimbursement payments to these newly eligible entities.²⁰
- Discusses the measures the Commission proposes to take to protect the Reimbursement Fund against waste, fraud, and abuse.²¹

B. Legal Basis

4. The proposed action is authorized pursuant to Sections 1, 4, 303, and 336(f) of the Communications Act of 1934, as amended, Section 6403 of the Middle Class Tax Relief and Job Creation Act of 2012, and Section 511, Division E, Title V of the Consolidated Appropriations Act, 2018, Pub. L. 115-141 (2018), 47 U.S.C. §§ 151, 154, 303, 336(f), 1452.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

5. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.²² The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”²³ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.²⁴ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.²⁵ Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

6. Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.²⁶ The Small Business Administration has established a size standard for this industry of 750 employees or less.²⁷ Census data for 2012 show that 841 establishments operated in this

²⁰ See *NPRM*, Section III.E.

²¹ See *NPRM*, Section III.F.

²² 5 U.S.C. § 603(b)(3).

²³ *Id.* § 601(6).

²⁴ *Id.* § 601(3) (incorporating by reference the definition of “small-business concern” in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” 5 U.S.C. § 601(3).

²⁵ 15 U.S.C. § 632.

²⁶ <https://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

²⁷ 13 CFR § 121.201; NAICS Code 334220

industry in that year. Of that number, 819 establishments operated with less than 500 employees.²⁸ Based on this data, we conclude that a majority of manufacturers in this industry are small.

7. Audio and Video Equipment Manufacturing. This industry comprises establishments primarily engaged in manufacturing electronic audio and video equipment for home entertainment, motor vehicles, and public address and musical instrument amplification. Examples of products made by these establishments are video cassette recorders, televisions, stereo equipment, speaker systems, household-type video cameras, jukeboxes, and amplifiers for musical instruments and public address systems.²⁹ The SBA has established a size standard for this industry, in which all firms with 750 employees or less are small.³⁰ According to U.S. Census data for 2012, 466 audio and video equipment manufacturers were operational in that year. Of that number, 465 operated with fewer than 500 employees.³¹ Based on this Census data and the associated size standard, we conclude that the majority of such manufacturers are small.

8. Radio Stations. This economic Census category “comprises establishments primarily engaged in broadcasting aural programs by radio to the public.”³² The SBA has created the following small business size standard for this category: those having \$38.5 million or less in annual receipts.³³ Census data for 2012 shows that 2,849 firms in this category operated in that year.³⁴ Of this number, 2,806 firms had annual receipts of less than \$25,000,000, and 43 firms had annual receipts of \$25,000,000 or more.³⁵ Because the Census has no additional classifications that could serve as a basis for determining the number of stations whose receipts exceeded \$38.5 million in that year, we conclude that the majority of television broadcast stations were small under the applicable SBA size standard.

9. Apart from the U.S. Census, the Commission has estimated the number of licensed commercial AM radio stations to be 4,429 stations³⁶ and the number of commercial FM radio stations to be 6,741, for a total number of 11,170.³⁷ Of this total, 9,898 stations had revenues of \$38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) in October 2014. In addition, the Commission has estimated the number of noncommercial

²⁸

http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_31SG2&prodType=table.

²⁹ <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

³⁰ 13 CFR § 121.201; NAICS Code 334310.

³¹

http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_31SG3&prodType=table.

³² U.S. Census Bureau, 2012 NAICS Definitions, “515112 Radio Stations,” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>. This category description continues, “Programming may originate in their own studio, from an affiliated network, or from external sources.”

³³ 13 CFR § 121.201; NAICS code 515112.

³⁴ U.S. Census Bureau, Table No. EC0751SSSZ4, *Information: Subject Series – Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (515112), http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ4&prodType=table.

³⁵ *Id.*

³⁶ This number is derived from subtracting the total number of noncommercial educational stations (204) from the total number of licensed AM stations (4633). See FCC News Release, Broadcast Station Totals as of March 31, 2018 (rel. Apr. 8, 2018).

³⁷ *Id.*

educational FM radio stations to be 4125.³⁸ NCE stations are non-profit, and therefore considered to be small entities.³⁹ Therefore, we estimate that the majority of radio broadcast stations are small entities.

10. Low Power FM Stations. The same SBA definition that applies to radio stations would apply to low power FM stations. As noted above, the SBA has created the following small business size standard for this category: those having \$38.5 million or less in annual receipts.⁴⁰ The Commission has estimated the number of licensed low power FM stations to be 2150.⁴¹ In addition, as of June 30, 2017, there were a total of 7604 FM translator and FM booster stations.⁴² Given that low power FM stations and FM translators and boosters are too small and limited in their operations to have annual receipts anywhere near the SBA size standard of \$38.5 million, we will presume that these licensees qualify as small entities under the SBA definition.

11. We note again, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations⁴³ must be included. Because we do not include or aggregate revenues from affiliated companies in determining whether an entity meets the applicable revenue threshold, our estimate of the number of small radio broadcast stations affected is likely overstated. In addition, as noted above, one element of the definition of “small business” is that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio broadcast station is dominant in its field of operation. Accordingly, our estimate of small radio stations potentially affected by the proposed rules includes those that could be dominant in their field of operation. For this reason, such estimate likely is over-inclusive.

12. Television Broadcasting. This economic Census category “comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.”⁴⁴ These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for Television Broadcasting firms: those having \$38.5 million or less in annual receipts.⁴⁵ The 2012 economic Census reports that 751 television broadcasting firms operated during that year. Of that number, 656 had annual receipts of less than \$25 million per year. Based on that Census data we conclude that a majority of firms that operate television stations are small. We therefore estimate that the majority of commercial television broadcasters are small entities.

13. We note, however, that in assessing whether a business concern qualifies as small under

³⁸ *Id.*

³⁹ 5 U.S.C. §§ 601(4), (6).

⁴⁰ 13 CFR § 121.201; NAICS Code 515112.

⁴¹ See FCC News Release, Broadcast Station Totals as of March 31, 2018 (rel. Apr. 8, 2018).

⁴² *Id.*

⁴³ “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both.” 13 CFR § 21.103(a)(1).

⁴⁴ U.S. Census Bureau, 2012 NAICS Code Economic Census Definitions, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

⁴⁵ 13 CFR § 121.201; NAICS code 515120.

the above definition, business (control) affiliations must be included.⁴⁶ Our estimate, therefore, likely overstates the number of small entities that might be affected by our action because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of “small business” is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

14. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 390.⁴⁷ These stations are non-profit, and therefore considered to be small entities.⁴⁸

15. There are also 2,309 LPTV stations, including Class A stations, and 3727 TV translator stations.⁴⁹ Given the nature of these services, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

16. The *NPRM* proposes the following revised reporting or recordkeeping requirements. To implement the REA, it is proposed that eligible entities file forms to demonstrate their eligibility and estimated costs for reimbursement. Specifically, the *NPRM* proposes to use revised versions of the financial forms currently being used by full power, Class A, and multichannel video programming distributors (MVPD) entities from the incentive auction for purposes of reimbursing eligible LPTV/translator and FM stations. The *NPRM* proposes to use the procedures to provide reimbursement payments to these newly eligible entities that are similar to those it used for reimbursement in the incentive auction. For example, the *NPRM* proposes that LPTV, TV translators, and FM stations be required to submit their Eligibility Certification, cost estimates, and subsequent requests for reimbursement for expenses they have incurred, together with any required supporting documentation, using the Reimbursement Form (FCC Form 2100, Schedule 399), which the Commission plans to revise for this purpose. As required for full power and Class A stations and MVPDs, the *NPRM* proposes that LPTV/translator and FM stations submit the Reimbursement Form electronically via the Commission’s Licensing and Management System (LMS) database. The *NPRM* proposes to require LPTV/translator and FM stations to use a procedure and form similar to the existing FCC Form 1876 and to file electronically in the CORES Incentive Auction Financial Module.

17. The Commission, as part of its continuing effort to reduce paperwork burdens, will invite the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements proposed in this document, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

18. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account

⁴⁶ “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both.” 13 CFR § 121.103(a)(1).

⁴⁷ See FCC News Release, Broadcast Station Totals as of March 31, 2018 (rel. Apr. 8, 2018).

⁴⁸ See generally 5 U.S.C. § 601(4), (6).

⁴⁹ See FCC News Release, Broadcast Station Totals as of March 31, 2018 (rel. Apr. 8, 2018).

the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.”⁵⁰

19. The *NPRM* proposes rules to implement the REA. The proposed rules are designed allow small entity broadcasters to seek reimbursement in such a manner that is streamlined and the least burdensome. The Commission will consider all comments submitted in connection with the *NPRM* including any suggested alternative approaches to implementing the REA that would reduce the burden and costs on smaller entities.

20. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), the Commission will seek specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rule

21. None

⁵⁰ 5 U.S.C. § 603(c)(1)-(c)(4).

**STATEMENT OF
CHAIRMAN AJIT PAI**

Re: *LPTV, TV Translator, and FM Broadcast Station Reimbursement*, MB Docket No. 18-214;
Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions,
GN Docket No. 12-268

I'd like to thank Congress for passing legislation which provides additional reimbursement funds for full power and Class A stations, reimbursement funds for newly-eligible LPTV, TV translator, and FM stations, and funds for the Commission to use for consumer education purposes.

Additionally, I'd like to thank the dedicated Commission staff who helped us move quickly on formulating this *Notice*: from the Incentive Auction Task Force, Hillary DeNigro and Jean Kiddoo. From the Media Bureau, Joyce Bernstein, Jim Bradshaw, Michelle Carey, Martha Heller, Tom Horan, Barbara Kreisman, Shaun Maher, Kim Matthews, Maria Mullarkey, Tom Nessinger, Holly Saurer, and Al Shuldiner. And from the Office of General Counsel, Dave Konczal and Bill Scher.

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: *LPTV, TV Translator, and FM Broadcast Station Reimbursement*, MB Docket No. 18-214;
Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions,
GN Docket No. 12-268

In this item, the Commission takes important steps to fulfill its Congressional mandate to adopt rules under the Reimbursement Expansion Act (REA), enacted as part of RAY BAUM's Act of 2018. REA expands the list of entities eligible for reimbursement from the broadcast television incentive auction to include LPTV/translator and FM stations, and provides additional funding for the Reimbursement Fund. As I have stated before, the incentive auction is of utmost importance and all Americans will benefit from putting spectrum to its highest and best use. Fortunately, thanks to further Congressional action, the commitment to hold broadcasters harmless throughout the incentive auction repack process should be a firm reality.

First, I want to thank the Chairman for seeking comment on the Commission's interpretation of how to allocate Fiscal Year 2019 (FY19) funds under REA. While Congress carefully outlined how it intended FY18 monies to be spent, it provided less clarity for FY19. Should these funds be allocated similar to FY18 funds? Should television stations have priority? The answers to these questions will affect how interested parties are reimbursed for relocating during the repacking process, and the Commission should ensure, to the extent possible, that we adopt the appropriate statutory interpretation. Such questions will also give an opportunity for the Congressional authors to weigh in on the matter.

The item also seeks comment on a graduated reimbursement system. While the previous draft tentatively concluded that this was the best approach, we alter that today by clarifying that this is just one potential reimbursement mechanism, and we seek comment on other potential ways to reimburse radio. The graduated reimbursement system assumes that time equals money. However, parties engaged on the matter dispute this assumption, emphasizing that repack costs to a radio station will not necessarily correlate with the amount of time they are off the air. Thus, I expect commenters to suggest the best mechanism to allocate funding, in the case that the \$50 million – which stations have consistently advocated is the amount needed – will not cover all the costs to radio stations seeking reimbursement.

Turning to consumer education and outreach, I think it is important to ensure that while we have been allocated \$50 million to fund our education efforts, we must be responsible stewards of this funding. Certainly, the Commission has a role to play in hosting a dedicated consumer service call center and providing technical support and assistance on rescanning. This targeted action is important for consumers. What we should not be doing is duplicating efforts undertaken by broadcasters or other stakeholders, or take on initiatives outside of our expertise, such as producing advertising spots. I appreciate the additional language in today's item that emphasizes that the Commission intends to establish strong measures to coordinate closely with industry stakeholders and protect against unnecessary or duplicative spending. We also should take into account any lessons already learned. For example, as we complete Phase 0, were consumers confused? If so, why? If not, why not? Importantly, the item now reiterates the statute by stating that any funding not spent on consumer education will be returned to the U.S Treasury.

Finally, I support edits in this item that will mitigate the use of delegated authority, as well as remove the tentative conclusion that third parties who made funding arrangements with LPTVs prior to the passage of REA are ineligible for funding. Prior to REA, it was very uncertain whether LPTVs would be reimbursed at all – as Congress considered and rejected the notion in 2012. Third parties who stepped up to fill this funding gap can now make the case to the Commission as to whether they should be rewarded for this foresight.

I approve of today's rulemaking to begin implementing REA and look forward to reviewing the comments.

**STATEMENT OF
COMMISSIONER BRENDAN CARR**

Re: *LPTV, TV Translator, and FM Broadcast Station Reimbursement*, MB Docket No. 18-214;
Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions,
GN Docket No. 12-268

In the Spectrum Act of 2012, Congress recognized the need to make more spectrum available for mobile broadband through the broadcast incentive auction. Congress also recognized that broadcasters should be reimbursed for costs they incur in the repacking process.

But the Spectrum Act imposed limits on the FCC's authority to reimburse the more than 2,000 Low Power TV (LPTV) stations and TV translators that could be impacted by the repacking process, as well as hundreds of FM stations. Thankfully, Congress addressed this issue in the Reimbursement Expansion Act, which passed this year. In it, Congress allocated additional funding and gave the FCC the authority to reimburse LPTVs, FM stations, and translators. This is an important step that will likely help keep many of these stations on the air and minimize disruptions in service associated with the repack. Today's Notice begins the process of implementing those decisions.

This additional funding will help keep diverse voices on the air and help the many rural and remote communities that rely on these stations for emergency alerts and information.

I want to thank the Media Bureau for its work on the Notice. It has my support.