



PUBLIC NOTICE

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DA 18-223

Released: March 8, 2018

INCENTIVE AUCTION TASK FORCE AND MEDIA BUREAU ANNOUNCE A FORTHCOMING ADDITIONAL REIMBURSEMENT ALLOCATION FOR ELIGIBLE BROADCASTERS AND MVPDS

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

The Incentive Auction Task Force and the Media Bureau (Bureau) announce that an additional allocation of the TV Broadcaster Relocation Fund (Fund) is anticipated in approximately four to six weeks to ensure that funding continues to be available to reimburse eligible full power and Class A broadcasters and multichannel video programming distributors (MVPDs) (together, Eligible Entities), for expenses related to the construction of station facilities on reassigned channels.¹ Last Fall when we announced the initial allocation, we stated that we will “monitor closely the draw-down of Fund amounts and allocate additional amounts later in the transition period.”² Our monitoring indicates it is appropriate to release an additional allocation of the available Fund as described herein.

Background. As described in more detail in the *Initial Allocation PN*,³ in order to be a prudent steward of taxpayer money, we will carefully evaluate cost estimates and invoices when administering the Fund to prevent waste, fraud, and abuse.⁴ As contemplated by the Commission in the *Incentive Auction R&O*,⁵ we will allocate funding in tranches. This approach will serve multiple purposes, including: helping stations cover expenditures as they arise in the construction process; allowing the Bureau to take into account the most accurate and complete information available over time as Eligible Entities refine their construction projects; promoting equitable distributions among all repacked stations; and reducing the likelihood of a reduction in future allocations or a claw-back of payments that have already been drawn down.⁶

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

² *Incentive Auction Task Force and Media Bureau Announce the Initial Reimbursement Allocation for Eligible Broadcasters and MVPDs*, Public Notice, 32 FCC Rcd 7556, 7556 (IATF/MB 2017) *Initial Allocation PN*.

³ *Initial Allocation PN*, 32 FCC Rcd at 7556-7557.

⁴ See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, 6820, para. 619 (noting the importance of “maintaining the integrity of the Fund,” and delegating authority to the Bureau to “adopt the necessary policies and procedures relating to allocations, draw downs, payments, obligations, and expenditures of money from the [] Fund in order to protect against waste, fraud, and abuse and in the event of bankruptcy.”), *affirmed*, *National Association of Broadcasters v. FCC*, 789 F.3d 165 (D.C. Cir. 2015) (*Incentive Auction R&O*).

⁵ See *id.* at 6812-6826, paras. 598-636. See also, *supra* n. 1.

⁶ *Initial Allocation PN*, 32 FCC Rcd at 7556-7557.

On October 16, 2017, the Bureau allocated approximately \$1 billion to Eligible Entities representing approximately 52 percent of then-current verified cost estimates for commercial stations and MVPDs, and 62 percent for noncommercial educational broadcasters (NCEs).⁷ The amount of the initial allocation was informed by the total verified cost estimates submitted by Eligible Entities at that time and an assessment of the reimbursement demand by discrete cost categories. Based on this review, the Bureau concluded that this amount would be sufficient to cover “up-front costs, down payments on equipment, and other associated starting costs, as well as other ‘pre-implementation’ and ‘early implementation’ costs billed in the ordinary course of trade.”⁸ At that time, we stated that we would monitor the draw-down amounts and revised estimates and make an additional allocation when it appears that Eligible Entities are beginning to incur eligible costs that exceed their initial allocation. We encouraged Eligible Entities to promptly submit for reimbursement of costs that have been incurred and, to the extent applicable, modify their cost estimates based on more refined quotations from vendors and other new information. Having up-to-date estimates and invoices will provide us with the best information available when calculating the amount of an Eligible Entity’s allocation.⁹

Second Allocation. Since the issuance of the *Initial Allocation PN*, numerous Eligible Entities have sought reimbursement for costs reasonably incurred related to a broadcast television station transitioning to a new channel. Although the vast majority of Eligible Entities are not yet approaching the point of exhausting their initial allocation, reimbursement requests for a number of entities are now at a level where they likely will soon reach or, in some cases, exceed the entity’s initial allocation amount. Additionally, since the date of the initial allocation, various Eligible Entities have provided revised and more granular cost estimates as their planning has proceeded and engineering studies have been completed. In the *Initial Allocation PN* we noted that the \$1,863,971,470.42 “verified estimates used for purposes of this initial allocation are likely to rise as Eligible Entities are able to produce adequate justification for their unverified initial estimates and refine and supplement their estimates as their construction planning and execution continues, including, for instance, as stations more fully evaluate tower and rigging needs, incur engineering and other consulting costs, and realize the impact of cost increases in equipment and services over the three-year transition period.”¹⁰ Consistent with that expectation, the total verified and unverified estimates submitted by Eligible Entities as of March 7, 2018, was approximately \$1.95 billion. As a result, we anticipate making an additional allocation in approximately four to six weeks in an amount that will take into account the verified estimates on file at that time.

The second allocation, in conjunction with the initial allocation, will not amount to the total estimated reimbursement for Eligible Entities’ actual costs. Rather, it is intended to provide entities with ongoing access to reimbursement funding sufficient to continue the transition process, while preserving flexibility to respond to unforeseen changes that may arise while undertaking transition activities. As contemplated in the *Incentive Auction R&O*, the next allocation will continue to provide NCEs access to 10 percent more of their verified cost estimates to reflect the “unique funding constraints” of NCEs.¹¹ At

⁷ The precise allocation was \$1,000,003,751.80. *Id.* at 7558, n.15.

⁸ *Id.* at 7558.

⁹ *Id.* at 7559.

¹⁰ *Id.* at 7558. See also *Incentive Auction Task Force and Media Bureau Finalize Catalog of Reimbursement Expenses*, Public Notice, 32 FCC Rcd 1199, 1205, para. 12 (IATF/MB 2017) (adopting methodology for annually updating baseline costs listed in the Cost Catalog using the Producer Price Index (PPI), WPUFD4 series, as calculated by the Bureau of Labor Statistics, to ensure that the baseline costs remain current throughout the reimbursement period, and further noting that if actual price increases outpaced the PPI we would propose adjusting the baseline costs accordingly).

¹¹ *Incentive Auction R&O*, 29 FCC Rcd at 6818, para. 614 (citing PTV Comments at 28–29).

the end of the program, all Eligible Entities will provide information regarding any actual or remaining estimated costs and, if appropriate, will be issued a final allocation percentage out of the remainder of the Fund. If overpayment is discovered, entities will be required to return the excess funds to the Commission.¹²

Phase Transition Deadlines. All stations transitioning to new channels should be mindful of the applicable phase transition deadline, and should plan for and initiate the various stages of their construction project in a timely manner to satisfy their deadlines. We have provided several tools that will allow us to provide relief to stations that are ultimately unable to satisfy certain deadlines due to circumstances beyond their control.¹³ Such relief will be granted on a case-by-case basis to accommodate stations that face unforeseen circumstances to prevent a station from going dark. Failure to timely initiate a construction project or undertake necessary steps to complete the transition by the phase transition date due to the amount of any allocation will not be weighed favorably as a factor in considering such grants of relief.

Resources. Educational and reference materials about the reimbursement process and the Reimbursement Form are accessible via the Commission's website at: <https://www.fcc.gov/incentiveauctions/reimbursement>. These materials are updated frequently with practical tips on how to submit various types of requests and what expenses are not reimbursable, and guidance on providing sufficient documentation. We encourage Eligible Entities to review them regularly throughout the reimbursement period to facilitate prompt payment of reimbursement requests.

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

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¹² *Id.* at 6815-16, para. 607; and see *Incentive Auction Closing and Channel Reassignment Pub. Notice the Broad. TV Incentive Auction Closes; Reverse Auction and Forward Auction Results Announced; Final TV Band Channel Assignments Announced; Post-Auction Deadlines Announced*, Public Notice, 32 FCC Rcd 2786, 2816, para. 90 (2017).

¹³ These tools include temporarily operating on the post-auction channel at variance with reduced power, temporarily operating from an interim or an auxiliary facility, temporarily operating on an alternate channel, temporarily engaging in the joint use of another channel, or other arrangements agreed upon by the other affected stations. See *Incentive Auction Task Force and Media Bureau Adopt a Post-Incentive Auction Transition Scheduling Plan*, Public Notice, 32 FCC Rcd 890 (IATF/MB 2017); and *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Auction Broadcast Transition*, Public Notice, 32 FCC Rcd 858 (IATF/MB 2017).