Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
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

REPLY COMMENTS OF HC2 BROADCASTING HOLDINGS INC.

I. INTRODUCTION

HC2 Broadcasting Holdings Inc. ("HC2" or the "Company") is engaged in the strategic acquisition of a varied portfolio of broadcast assets. Since late 2017, HC2 has acquired, or is in the process of acquiring, television stations in 130 markets across the country, including 13 full-power stations, 49 Class A Television stations, and 103 Low Power Television Stations ("LPTVs"). The Company is investing substantial capital in these assets because it believes in the future economic and innovation opportunities that broadcast spectrum has to offer, not only with respect to delivering video content to viewers over the air, but also with respect to new applications for broadcast spectrum and the efficiencies enabled by the one-to-many broadcast architecture. The Company is committed to maximizing the value of this spectrum, particularly the LPTV spectrum, in creative ways that include, but also go beyond, the traditional broadcast model. HC2 appreciates Congress' recognition of the importance and the potential of LPTV spectrum through its commitment of repack reimbursement funds for LPTV service in the

Reimbursement Expansion Act ("REA"),[1] and HC2 looks forward to working with the FCC to help shape this supplemental reimbursement process through this Notice of Proposed Rulemaking (the "NPRM").[2]

II. FISCAL YEAR 2019 FUNDS

The NPRM seeks 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, FM broadcast stations, and the Commission's consumer education efforts.[3] HC2 agrees with the National Association of Broadcasters' (the "NAB") analysis and conclusion that the Commission has the necessary discretion to allocate fiscal year 2019 funds beyond full power and Class A television stations, and to include LPTV stations in that allocation.[4] As the NAB explains in detail, in the REA Congress did not limit fiscal year 2019 reimbursement funds to any particular service, and therefore the Commission should not either. HC2 believes that the fiscal year 2019 funds under the REA should be available to reimburse eligible LPTV stations for their reasonable reimbursement costs, and that it is fully within the Commission's authority and discretion to determine how to allocate the use of fiscal year 2019 funds. HC2 also believes that it is too early for the Commission to predetermine in this proceeding how fiscal year 2019 funds should be allocated; rather, the Commission should only make such a determination after it has collected adequate data about the funding needs of all stakeholders.

[1] 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)).
[2] *LPTV, TV Translator, and FM Broadcast Station Reimbursement,* Notice of Proposed Rulemaking and Order, MB Docket No. 18-214, GN Docket No. 12-268, FCC 18-113 (Aug. 3, 2018).
[3] NPRM at para. 24.
[4] *See* Comments of National Association of Broadcasters, MB Docket No. 18-214 at 4-5 (filed September 26, 2018).

Similarly, the Commission should not prioritize reimbursement payments from fiscal year 2019 funds without first understanding the reimbursement needs of all eligible services. Only after understanding the needs of each class of service, and whether or not there will be a shortfall of funds should the Commission determine whether and how to prioritize payments, if at all.

III. ELIGIBILITY CRITERIA

HC2 agrees generally with the eligibility criteria for LPTVs set forth in the NPRM, including requiring minimal operating requirements for stations to meet the criteria that a station be "transmitting" in order to be eligible for reimbursement.[5] We believe that it is appropriate for the limited pool of LPTV reimbursement funds to be applied to LPTV stations that have demonstrated their commitment to, and have invested resources in, consistent operations. HC2 also believes it is appropriate to require such stations to certify that they meet such minimum transmitting requirements. However, for stations that an operator acquired after April 13, 2016, we propose that new owners be allowed:

(i) to limit this certification to the period that they owned such station, and

(ii) to reasonably rely on representations from the seller of such station for the period between April 13, 2016 and the date a purchase is consummated, to the extent the new owner obtains such representations.

In the NPRM, the Commission specifically proposes to require evidence, including documentation, to support such certifications.[6] We understand that verification is an important

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[5] The Commission proposes 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. *See* NPRM at para. 32.
[6] Examples of such evidence could include documentation of the programming aired, electric power bills, or other concrete evidence to prove transmission during the designated time period. *Id*. at paras. 33 and 77.

element in approving stations' reimbursement eligibility, but those verifications must be easily obtainable, especially for stations that were acquired after April 13, 2016. We also recommend that the Commission be flexible with respect to such evidence, and accept evidence that reasonably verifies operation during the designated time period. The Commission's proposal of electric power bills is a good example of reasonable verification documentation. We would recommend internet access bills as similarly reasonable documentation.

The Commission also seeks comment on whether a third-party auditor should conduct audits or other validations to validate minimum operating requirements.[7] We believe that the evidentiary requirements discussed above are sufficient to demonstrate that the "transmitting" requirement has been satisfied, and the Commission should avoid creating any unnecessary and duplicative efforts for LPTVs to qualify for reimbursement. The introduction of third parties certainly increases that risk. Efforts to coordinate with third parties to obtain additional documentation, plan multi-party site visits with tower owners, and gather additional data would in many cases likely be costly and wasteful, and should not be necessary if simple, reliable evidentiary requirements are developed. HC2 also recommends that, to the extent the Commission requires such third-party coordination, the station's soft costs associated therewith (including internal staff time, project management, legal, and consulting fees) be reimbursable, as is the case with full-power repacked TV stations.

HC2 further supports the Commission's proposal that LPTV stations that were displaced early, were eligible to file in the Special Displacement Window, and did file a displacement application prior to the Special Displacement Window, be eligible for reimbursement under the REA.[8] HC2 also supports the Commission's tentative conclusion that a station will be eligible

[7] *Id.* para. 33.
[8] *Id.* para. 34.

for REA reimbursement if it filed in the Special Displacement Window, had its application dismissed, but subsequently files a displacement application when the Media Bureau lifts the freeze on the filing of such applications, and such application is granted.[9]

IV. REIMBURSABLE COSTS

HC2 agrees with the Commission's tentative conclusion that the equipment and other costs necessary for an eligible LPTV station to construct the facilities authorized by grant of the station's Special Displacement Window application should be considered costs that are "reasonably incurred" and therefore reimbursable. HC2 proposes that such a standard include costs necessary to provide replacement facilities of comparable coverage. We believe it is appropriate for the Commission to treat LPTVs similarly to full-power and Class A television stations with respect to the prohibition on reimbursement for technical upgrades to encourage reusing equipment where possible. However, given the difficulty of imposing the "comparable facilities" standard on LPTV, as cited in the NPRM,[10] the Commission should not consider it to be an upgrade if an LPTV station is required to use non-comparable equipment to broadcast on a newly allocated channel with coverage comparable to its prior allocation.

Similarly, an LPTV station should not be penalized if it cannot repurpose its current equipment because it has been assigned a new frequency and/or geographic location. Indeed, in the Company's experience, it is very common that the only way to resolve a potential MX situation on a new channel is to move broadcast tower locations. And, in many instances, tower leases do not expire for some time, which requires an LPTV broadcaster to remain at an existing site with an extremely compromised facility during that period. This means any subsequent reasonable costs involved in moving to new facilities merit "reasonable" repack reimbursement.

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[9] *Id.* para. 30.
[10] *Id*. para. 41.

The Commission should also recognize that advancements in broadcast technology that incorporate previously optional functionality may now be considered standard, and therefore should not necessarily be considered "upgrades" from an existing LPTV station's equipment.

We also believe that costs "reasonably incurred" should include the cost of full service transmission mask filters. Such filters are already in use by some LPTV stations (and therefore should not be deemed an "upgrade"). This is because such mask filters diminish unnecessary noise in the band, and will ultimately promote the Commission's stated goal of spectral efficiency of the band. In short, the use of an efficient mask filter should not be considered an "upgrade" by the Commission. HC2 submits that the FCC should conclude that LPTV stations be fully compensated for the purchase and installation of spectrally efficient mask filters as "reasonably incurred" costs subject to reimbursement as permitted by the REA, and to further the public interest.

V. SIMPLIFYING THE APPLICATION PROCESS

The Commission has proposed modifying the online Schedule 399 in an effort to simplify the application process, especially for those reimbursement applicants that may not have sufficient resources to assist them with the reimbursement process. We agree with the Commission's intention but are not convinced that this proposal will sufficiently simplify the process to eliminate the need for application assistance. In fact, there is a risk that modifying the Schedule 399 at this stage will actually increase soft costs incurred, because consultants will need to get up to speed to relearn the application process using any new procedures that are developed by the FCC. Given the time and expense that has been required for more than a year by TV broadcasters (working closely with FCC staff) to become familiar with the Schedule 399, HC2 believes that the most efficient and prudent way to move forward with the reimbursement process is to make as few changes as possible to the Schedule 399, since both broadcasters and the FCC staff are by now completely familiar with the current Schedule 399. Otherwise, the FCC risks having broadcasters and FCC staff alike have to start over with respect to understanding the preparation, filing, and processing of any new version of the Schedule 399 that includes significant changes.

HC2 supports the proposal of the National Translator Association that the Commission adopt an optional "Fast Track" approach to streamline reimbursement applications, with a general limit on each Fast Track applicant's reimbursement of $31,000.[11] The Company believes that this option will make it easier for those LPTV station owners with limited resources to apply for reimbursement funds in an efficient manner. With this approach, not only will a portion of LPTV reimbursements be capped, and therefore predictable, but also such station owners may not need to engage outside lawyers or consultants to handle the reimbursement process. This, in turn, will likely reduce overall "soft cost" reimbursement requests.

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[11] *See generally*, Comments of the National Translator Association, MB Docket 18-214 (filed September 21, 2018).

VI. CONCLUSION

For the reasons stated above, HC2 urges the Commission to maximize flexibility in the REA reimbursement funds eligible for LPTV stations, and looks forward to working with the Commission to minimize the disruption of service to the viewing public resulting from the involuntary repack and displacement of LPTV facilities.

Respectfully submitted,

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