

**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



The American Cable Association (“ACA”) hereby submits these reply comments in response to comments filed regarding the Federal Communications Commission’s (“Commission”) Notice of Proposed Rulemaking on LPTV, TV Translator and FM Broadcast Station Reimbursement (“NPRM”).¹ In its initial comments, ACA urged the Commission to interpret the Reimbursement Expansion Act² (“REA”) in the manner most consistent with Congress’s intention by giving priority access to funds appropriated

¹ *LPTV, TV Translator and FM Broadcast Station Reimbursement; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, FCC 18-113, MB Docket No. 18-214; GN Docket No.12-268 (rel. Aug. 3, 2018).

² 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)).

to the TV Broadcast Relocation Fund (“Reimbursement Fund”) for 2019 to MVPDs, and full power and Class A stations.³ In these reply comments, ACA reiterates its position and encourages the Commission to make clear that all MVPDs and full power and Class A stations will be made completely whole before 2019 funds are released for other purposes.

In its initial comments, ACA explained that Congress has consistently prioritized reimbursement of MVPDs and full power and Class A stations over all others, beginning in 2012, when it directed the Commission to set aside \$1.75 billion in auction revenues to reimburse those entities – and only those entities – for relocation expenses. While Congress did eventually appropriate funds for the reimbursement of LPTV, TV translator and FM broadcast stations, Congress still prioritized the needs of MVPDs and full power and Class A stations, allocating \$350 million for these entities, versus \$250 million for the reimbursement of other entities and for other purposes: \$150 million for LPTV and TV translator stations, \$50 million for FM broadcast stations, and \$50 million for consumer education. Further, as the National Association of Broadcasters (“NAB”) points out in its comments, secondary licensees, such as LPTV stations, “were not guaranteed protection or replacement channels by the Spectrum Act,” and are subject to displacement by full power television stations at any time.⁴ ACA agrees with NAB that “these secondary licensees should yield to primary licensees with respect to

³ *LPTV, TV Translator and FM Broadcast Station Reimbursement; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, MB Docket No. 18-214, Comments of the American Cable Association (filed Sept. 26, 2018).

⁴ *LPTV, TV Translator and FM Broadcast Station Reimbursement; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, MB Docket No. 18-214, Comments of the National Association of Broadcasters at 8 (filed Sept. 26, 2018) (“NAB Comments”).

reimbursement just as they do with respect to licensing decisions.”⁵ While MVPDs are not broadcast licensees, in the context of reimbursement of relocation expenses, Congress has placed them on equal footing with primary licensees.

While some commenters express confidence that the \$1 billion appropriated by the REA will be sufficient to ensure that every entity seeking reimbursement is made whole,⁶ no commenters suggest that, if the funds prove insufficient, prioritizing MVPDs and Class A and full power stations is inappropriate. ACA is less optimistic that there will be enough money for all impacted parties. As more and more broadcast stations approach their transition dates, many small and mid-sized MVPDs – who were unaware of their in-market stations’ transition plans to date – will submit first-time reimbursement requests to cover their associated costs. Many others who did initially file Form 399 may have underestimated their costs and will therefore seek additional funds in the coming months and years. Given the already high demand for reimbursement from broadcasters and MVPDs, and the expectation that further requests will be submitted (especially from small cable operators whose needs are still uncertain), it is likely that the additional \$350 million appropriated for MVPDs and full power and Class A stations in the REA for 2018 will not be enough to reimburse those entities for all reasonable costs.⁷ It would be an improper interpretation of the REA and unfair for the Commission

⁵ *Id.*

⁶ See, e.g., NAB Comments at 7.

⁷ If ACA’s fears prove unfounded and the additional funds appropriated in the REA are sufficient to make whole MVPDs and Class A and full power stations affected by the repack, then ACA has no objections to the distribution of the remaining funds – should they be insufficient to cover all LPTV, TV translator, and FM stations costs – to be prioritized for non-profit entities and others who, like ACA members, operate on limited budgets and cannot easily absorb additional expenses. See, *LPTV, TV Translator and FM Broadcast Station Reimbursement; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, MB Docket No. 18-214, Comments of National Public Radio at 12 (filed Sept.

to commit to allocating any of the \$400 million appropriated for 2019 to LPTV, TV translator, and FM stations until all entities for whom the Reimbursement Fund was originally created are fully satisfied.

Respectfully submitted,



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26, 2018) ("In distributing reimbursement funds, NPR proposes that the Commission prioritize the availability and timing of reimbursement for non-profit public radio stations (and possibly other non-profits), which have less ability to absorb or "front" the cost of permanent or temporary facilities needed to avoid time off-air or at reduced power during local spectrum transitions.").