



July 23, 2018

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: Notice of Ex Parte Communication, MB Docket No. 18-214, GN Docket No. 12-268

Dear Ms. Dortch:

On July 19, Robert Weller and the undersigned, both of the National Association of Broadcasters (NAB), met with staff from the Incentive Auction Task Force and the Media Bureau. A complete list of meeting attendees is set forth below. During this meeting, NAB discussed the draft Notice of Proposed Rulemaking and Order in the above-referenced docket.<sup>1</sup>

NAB expressed its surprise and concern over the draft NPRM's tentative conclusion that the Commission should adopt a graduated payment scale for reimbursement of expenses incurred by FM stations to stay on the air while collocated television stations are repacked. It is unclear to NAB on what basis this tentative conclusion was developed. If adopted, this proposal would restrict funding available to bystander FM stations before the Commission even knows whether restrictions will be necessary due to a lack of funds. Moreover, if anything, the draft tentative conclusion creates perverse incentives, including encouraging stations to reduce service unnecessarily so that they can be reimbursed.

This proposed tentative conclusion is even more problematic because the draft NPRM adopts an incorrect (and unnecessarily restrictive) view of the Commission's authority to distribute the additional funds Congress made available in the Reimbursement Expansion Act. The NPRM asserts that the Commission has authority only to reimburse FM stations up to \$50 million from funds appropriated for Fiscal Year 2018, ignoring the fact that funds appropriated for Fiscal Year 2019 have no such restriction. The NPRM as currently drafted

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<sup>1</sup> LPTV, TV Translator, and FM Broadcast Station Reimbursement, *Draft Notice of Proposed Rulemaking and Order*, MB Docket No. 18-214, GN Docket No. 12-268, FCC-CIRC1808-5 (circulated July 12, 2018) (Draft NPRM).

sets the stage for the possibility that FM stations may not be fully reimbursed for reasonable expenses necessary to maintain service but that the Commission may return to the Treasury funds not expended for other purposes – an outcome that would ill-serve the public interest and would almost certainly result in litigation.

NAB strongly urges the Commission to eliminate the draft NPRM's tentative conclusion to adopt a graduated payment scale for FM radio stations, and instead seek comment on the necessity of adopting a prioritization scheme in this or a future proceeding. We further urge the Commission to revise its draft to seek comment on its authority to distribute reimbursement funds rather than simply assume a reading of the statute that is at odds with the drafters' intent and its best reading.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Patrick McFadden", with a long horizontal flourish extending to the right.

Patrick McFadden  
Associate General Counsel,  
National Association of Broadcasters

cc: Jean Kiddoo  
Hillary DeNigro  
Rachel Kazan  
Charles Eberle  
Kim Matthews  
Pamela Gallant  
Jim Bradshaw  
Tom Nessinger  
Maria Mullarkey