

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

**COMMENTS OF
NATIONAL PUBLIC RADIO, INC.**

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COMMENTS OF NATIONAL PUBLIC RADIO, INC.

Introduction

National Public Radio, Inc. (“NPR”), a non-profit membership corporation, submits these comments in response to the *Notice of Proposed Rulemaking*¹ in the above-captioned proceeding. These comments are offered on behalf of the public radio system, a uniquely American public service, not-for-profit media enterprise broadcasting to more than 42 million American listeners weekly. Dozens of the independent, locally owned and operated public radio stations are adversely affected by the post-incentive auction TV repack process.

Summary

NPR respectfully urges the Commission to adopt a policy of maximizing relief and minimizing harm to FM stations whose operations are disrupted by the TV spectrum reallocation but which are to gain no benefit from its outcome. These innocent bystander radio stations are

¹ 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 (rel. Aug. 3, 2018) (“NPRM”).

caught in the repack shuffle. Local public radio stations in particular have limited resources to reasonably minimize service disruptions.

Based on NPR's informal station survey, a significant number of noncommercial radio stations are affected by the TV repack process because their FM transmitter antennas are located on or near towers used by one or more repacked TV stations. At least three public radio stations must move their FM antennas to new towers, at least two stations must relocate their antennas on the same tower, and at least a dozen public radio stations (including some of the foregoing) must temporarily dismantle equipment or make other temporary or permanent equipment changes due to the TV repack. These stations serve communities across the country, including in Alabama, Florida, Oregon, North Dakota, South Carolina, Texas, Vermont, and West Virginia. In addition, most of these public radio stations plus several dozen more are being forced to temporarily reduce power and signal coverage or go completely off the air to accommodate the TV repack work (and some must both reduce power for some period and cease transmission for another). Many public radio stations are still trying to determine if, when, how, and for how long their operations will be disrupted.

Radio stations' attempts to plan and to minimize disruption from the TV repack are fraught with uncertainty. Most public radio stations are at the mercy of a tower operator, which may not communicate repack plans or requirements in a timely manner, or may fail to coordinate plans to avoid disruption during critical funding drives, ratings periods, or seasonal programming or public safety initiatives. In addition, inclement weather, delivery and installation delays, and lack of availability of qualified tower crews could cause unexpected delays and service disruptions, especially as the multi-phase TV repack process unfolds over the coming months and years. Radio stations have virtually no control over the timing of these disruptions.

The Reimbursement Expansion Act (“REA”) directs the Commission to reimburse FM broadcast stations for “costs reasonably incurred” (except lost revenues) for facilities necessary “to reasonably minimize disruption of service” as a result of the TV repack.² Full reimbursement for all reasonable costs to minimize service disruption is particularly needed for local public radio stations, which have limited financial and operational resources to absorb the impact of the TV repack. These stations provide irreplaceable local programming, including local news, emergency alerts and public safety information, unique community and cultural perspectives, and other programming to meet the needs of unserved and underserved audiences. The Commission should ensure that the reimbursement process is flexible and manageable, reimburses these noncommercial educational broadcast stations to the fullest extent permitted by the REA, and avoids disrupting the critical local services they provide.

There is no easy way to measure the significance of the service disruption caused when stations are forced off-air or required to broadcast at reduced power to a smaller coverage area. Even brief service disruptions can be devastating for public radio stations and their listeners. One public radio station reported that the tower company appeared at its station with no notice, gave the station no chance to rig a temporary antenna, and forced the station off air for 11 days during a funding drive. As a consequence, the station estimates that it lost thousands of dollars in donations. This situation could have been avoided if the station been able to secure alternative facilities in advance. Although not authorized to compensate radio stations for lost revenues, the Commission *is* authorized to fully reimburse FM stations for the costs to establish temporary auxiliary facilities needed to avoid such drastic outcomes.

² 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)).

As set forth below, the Commission should adopt a number of measures and clarifications to avoid service disruptions and to ensure that listeners who rely on their vital local public radio stations aren't left in silence. In particular, NPR urges the Commission *not* to adopt the proposed graduated priority system for stations required to temporarily reduce power or go completely off-air, and to fully reimburse public radio stations in a manner that will allow them to ensure continued broadcasts to all (or virtually all) of their coverage area and population through the TV repack work. NPR also urges the Commission to reimburse project management services in the same manner and with the same priority as reimbursement for equipment and other professional services. Finally, NPR urges the Commission to allocate and prioritize reimbursement of funds appropriated in FY 2019 (in addition to FY 2018 appropriations) to ensure sufficient funds to reimburse public radio stations to the fullest extent allowed.

Discussion

A. The Commission Should Make a Broader Array of Costs and Categories of Service Disruption Eligible for Full Reimbursement at Equal Priority.

NPR respectfully urges the Commission to construe its new statutory authority to reimburse radio stations impacted by the TV repack broadly and flexibly, to assure full cost reimbursement for radio stations and to minimize service disruptions for listeners.

1. The Commission Should Fully Reimburse Stations Forced to Relocate Antennas, Temporarily Dismantle Equipment, or Make Other Equipment Changes .

NPR supports the Commission's proposal to reimburse (up to) 100 percent of the reasonable costs incurred by FM stations forced to vacate their towers, relocate their antennas to a different level of their current towers, temporarily dismantle their equipment to accommodate work on a television antenna or tower, and/or make other temporary or permanent facility modifications. As noted above, a number of public radio stations fall into each of these

categories of disruption to their facilities. NPR also supports the Commission's tentative conclusion that "FM broadcast station" as used in the REA includes full-service FM stations and FM translator stations. NPRM ¶ 51. NPR urges the Commission to adopt reimbursement standards and other measures to permit all such stations to secure the equipment, labor, and professional services they need to replace or restore their facilities and replicate service to their coverage area and population.

2. The Commission Should Fully Reimburse Public Radio Stations So They Can Stay on Air and Maintain Full Service during the TV Repack.
 - i. The NPRM's proposed graduated, prioritized reimbursement system for new or modified auxiliary equipment is flawed.

The NPRM's proposed graduated prioritized scale, based solely on time off-air, for reimbursing the costs of building or modifying auxiliary facilities to permit continued broadcasting during repack construction work is arbitrary, unnecessary, and unacceptable. This proposal could leave some public radio stations off-air or operating at significantly reduced power with reduced coverage area for days or weeks, with thousands of listeners in silence, and a devastating impact on station finances and operations.

Time off air is not the sole measure of the level of service disruption or the need for facilities to "reasonably minimize" service disruptions. Radio stations forced to broadcast at reduced power or to cease transmissions, even for a matter of days, can cause significant disruption reasonably warranting remediation depending on factors such as the number of listeners and service area affected, the type of programming disrupted, the timing of the disruption (e.g., during hurricane or wildfire season, funding drives, etc.), and other impacts on the station's listeners and communities.

In particular, the nature of the local public radio programming potentially disrupted supports the reasonableness of measures to avoid service disruptions (except minor service disruptions like those experienced during routine operations and maintenance). Numerous public radio stations report that without interim facilities, crucial local news and public safety information will go off the air or be broadcast to a reduced coverage area to accommodate the TV repack work. In addition, a variety of original, often unique local programming will be disrupted, including broadcasts in foreign languages, military news, senior citizen reports, radio reading for the visually impaired, and other programming to meet the needs of unserved or underserved audiences. Much of this local programming cannot be replaced by other services.

The expected amount of reimbursement matters a great deal as local public radio stations consider their ability to minimize such service disruptions. The difference between expected reimbursement of 50%, 75% or 100% of costs could determine their ability to remediate the harm caused by repack projects. NPR's informal survey revealed that for about three out of four public radio stations forced to reduce power or go off air, the amount of reimbursement could make a difference in their plans to build or modify auxiliary facilities. A number of stations expect to reduce power or cease transmission for more than 24 hours but less than 30 days; a number of stations are uncertain. Without necessary reimbursement, many affected public radio stations will be forced to go off the air or reduce their geographic coverage, which will in turn cut off their unique local broadcast programming for their listeners. This harm will also be felt by the stations, whose fundraising efforts will be curtailed, which will affect future service and programming. Put simply, graduated reimbursement scales based on arbitrary off-air benchmarks are not justified, not in the public interest, and not necessary, especially if the Commission maximizes the funding available to reimburse radio stations, as discussed in Section II below.

- ii. The Commission should reimburse stations forced to broadcast in low power for costs of auxiliary facilities necessary to maintain substantial coverage.

The Commission should not limit reimbursement for interim facilities to stations that would otherwise be forced completely off-air. Although the NPRM recognizes that stations forced to reduce power temporarily (as well as stations required to go off the air or cease transmissions) could qualify for reimbursement as a “Category (3)” station (NPRM ¶ 53), the NPRM’s subsequent discussions of prioritized reimbursement for new or upgraded interim facilities speak in terms of stations whose primary facilities are “off the air” or “off-air” (*see* NPRM ¶¶ 61-65). The Commission should clarify that these references to “stations off-air” include radio stations operating at reduced power, or at least radio stations operating at reduced power that reduces coverage to less than 80% of its regular coverage area or covered population.

Many public radio stations surveyed by NPR report that while they may be able to keep their facilities operational during the local spectrum reorganization work, to do so, they will be required to broadcast at significantly lower power levels. Doing so will curtail each station’s geographic reach and the number of listeners able to receive its signal. Reductions in power may be required during rigging and de-rigging caused by the repack projects, or may be a consequence of temporarily moving to an auxiliary tower with a reduced broadcast power level or broadcast radius. Other public radio stations report that they will be required to operate at reduced power for some periods and to completely cease transmissions for additional periods. The Commission should consider both types of service disruptions in considering the reasonableness of costs and measures to minimize service disruptions.

- iii. Reimbursement should cover tower leases for interim facilities beyond actual downtime.

The NPRM proposes to reimburse stations for payments to lease tower space for new auxiliary facilities only “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.” NPRM ¶ 68 (emphasis added). This proposal is impractical. First, as noted above, the repack process is fraught with uncertainty and delays, and radio stations do not know in advance exactly when TV tower construction work will actively prevent (or reduce power to) their transmissions. Tower companies may not provide notice to public radio stations before they show up to deactivate and reorganize broadcast facilities. Even if they do, inclement weather and the availability of tower crews can foul the best laid plans. Second, some public radio stations are subject to multiple phases of TV repack and tower work, and it is reasonable and potentially less costly to lease auxiliary tower space to cover the entire period, beyond active construction periods. Third, some public radio stations report that leases for alternative tower facilities are only available in blocks of time longer than actual or anticipated downtime. Again, in order for these radio stations to plan and secure continuity for their broadcasts, they must pay for more than the actual time during which their primary facilities will be offline or at reduced power. Accordingly, the Commission should provide public radio stations with the flexibility and resources they need by allowing reimbursement for a range of reasonable temporary tower leasing arrangements.

B. Project Management Costs Should Be Reimbursed and Prioritized in the Same Manner as Other Expenses to Minimize Disruption Caused by the TV Repack.

NPR urges the Commission to make the costs of outside project management services for FM radio stations fully reimbursable, in the same manner and at the priority as other expenses incurred to minimize disruption caused by the TV repack. This is especially critical to reduce TV repack’s burden and costs for public radio stations. As the Commission has acknowledged,

public radio stations are non-profits, and therefore considered to be “small entities” with limited resources. NPRM, App. B at 10. Like the noncommercial television broadcast stations discussed in the Widelity Report, noncommercial radio stations “may not have the in-house capabilities to manage the equipment procurement process, RFP creation, legal agreements, state procurement processes, and engineering.”³ These public radio stations should not be punished for lacking the in-house capability to quickly transform their operations in the face of unpredictable disruptions to their facilities or to manage the administrative burdens of mitigation projects.

About half of the affected public radio stations that NPR surveyed indicated that they will need outside help to manage their station’s response to the TV repack. They will need to rely heavily on outside consultants to provide advice and services to implement equipment modifications to minimize service disruptions caused by the TV repack, as well as to assist with documentation required for the Commission’s reimbursement process. These are necessary costs outside the limited budgets of public radio stations, and should not be forced upon these non-profit entities due to a spectrum relocation program in which they have had no input and stand to derive no benefit. Full and timely reimbursement matters. In some cases, if the station does not have assurance that it will be reimbursed for such project management costs, it will be forced to power down for temporary periods to accommodate tower crews because it won’t have the temporary auxiliary facilities necessary to remain on air.

C. Reimbursement Forms and Procedures Should Be Flexible and User-Friendly.

The NPRM proposes reimbursement forms and procedures similar to those currently being used to provide reimbursements to full power TV stations, with appropriate revisions for FM stations and other newly eligible entities. While it supports the Commission’s efforts to

³ Widelity Report at 33-34, attached to Public Notice, Media Bureau Seeks Comment on Widelity Report and Catalog of Potential Expenses and Estimated Costs, GN Docket 12-268, DA 14-389 (rel. March 20, 2014).

simplify and streamline the relevant forms and procedures to the extent possible, NPR also encourages flexibility for radio stations to seek reimbursement for unanticipated and unusual expenses. The Commission should incorporate practical features to facilitate the forms' flexibility and usability, such as the use of "other" fields, avoiding character or word count restrictions, and including print and "cut and paste" functionality in web-based forms.

D. FY 2019 Appropriations to the Repack Reimbursement Fund Should Be Available to Reimburse FM Stations for Expenses Resulting from Spectrum Reorganization.

The NPRM seeks comment on how to allocate and prioritize the \$400 million fiscal year 2019 appropriation for the Reimbursement Fund pursuant to the REA. In contrast to the more proscriptive aggregate limits for FY 2018 appropriations, the REA leaves the Commission with wide discretion to distribute the FY 2019 appropriation. Notably, no statutory language restricts the FY 2019 funds to reimbursing full power and Class A TV stations, or imposes aggregate caps on the funds available to various categories of newly eligible entities. The Commission should look afresh upon the remaining claims for reimbursement and distribute the FY 2019 funds according to the needs of eligible entities and the public benefit.

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.

Conclusion

For the reasons above, NPR urges the Commission to maximize flexibility in the funds and expenses eligible for reimbursing public radio stations and permit them to minimize disruption caused by the TV spectrum reorganization. Doing so will ensure the public's continued access to critical public radio programming during and after the TV repack process.

Respectfully submitted,
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