

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

In the Matter of)	
)	
Expanding the Economic and Innovation)	GN Docket No. 12-268
Opportunities of Spectrum Through)	
Incentive Auctions)	

COMMENTS OF HUBBARD BROADCASTING, INC.

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EXECUTIVE SUMMARY

Broadcasters provide an invaluable public service at no charge to tens of millions of Americans. Accordingly, the Commission must, as Congress mandated, ensure that broadcasters who choose not to participate in the incentive auction are not harmed in any way, including with respect to the likely substantial costs many broadcasters will be forced to incur as a result of the involuntary repacking process. For instance, it would be inequitable, and contrary to Congressional direction, for the Commission to impose a “Minimum Necessary Costs Standard” with respect to the extent of eligibility for reimbursement from the Relocation Fund.

Further, while a pre-auction list, or catalog, of the types of costs that will be fully eligible for reimbursement will be useful as general guidance to broadcasters, the Commission should clearly state that such a list, as well as any associated price estimates, will not serve as a cap or otherwise restrict broadcasters’ reimbursement eligibility. Rather, every cost attributable to the repacking process must be fully reimbursed so long as “reasonable.” In other words, all costs required for a station to continue providing its current level of service to the public that would not have arisen *but for* the repacking process should qualify for full reimbursement if the necessary goods and services are fairly bargained for or otherwise acquired at market prices.

For instance, in addition to the equipment and installation costs directly attributable to modifying stations’ facilities to operate on new channels, including any necessary equipment upgrades, transaction and other soft costs related to such modifications also must be fully reimbursed. Less direct costs also should be eligible for reimbursement if stations would not have otherwise been forced to incur these costs but for the repacking process. For instance, costs associated with modifying or replacing the auxiliary facilities relied on by many stations should be fully reimbursed, as well as any costs related to providing a signal to multichannel video programming distributors that retransmit broadcasters’ programming.

Costs related to modifying digital replacement translators as a result of the repacking process should similarly be eligible for reimbursement. Many broadcasters recently spent substantial sums on these facilities – which operate, and are treated by the Commission, as part of a full-power station’s primary service – in order to ensure viewers did not lose over-the-air service as a result of the DTV transition. Equally important, the Commission must fully reimburse stations that are not forced to relocate to new channels but nevertheless incur costs as a result of the repacking process. Because these costs also would be incurred involuntarily, Congress clearly intended for these stations to be held harmless as well.

With respect to mitigating costs, and thus ensuring sufficient funds to fully reimburse every eligible broadcaster, the best approach would be to provide ample time to broadcasters, manufacturers, and tower crews to tackle this undeniably complex and challenging undertaking. The industry as a whole must have time prepare, and these preparations cannot reasonably begin until the auction has closed. Without sufficient time, the currently limited resources, like any scarce commodity, will lead to significantly higher prices for the required goods and services – assuming the repacking process could even be completed absent sufficient time. Specifically, the Commission should adopt a 30-month construction deadline, and this period should not begin to run until final licenses are granted to the forward auction winners, by which time the amount and types of equipment and services needed for repacking will be fairly well-established.

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Hubbard Broadcasting, Inc. (“Hubbard”), the parent company of the licensees of twelve full-power broadcast television stations, submits these comments in response to the Public Notice released September 23, 2013 in the above-captioned proceeding.¹ The Public Notice is intended to allow the Media Bureau to further develop the record regarding certain cost issues on which the Commission sought comment in the Notice of Proposed Rulemaking (“NPRM”) that initiated this proceeding.² For instance, among other things, the Commission sought comment on the types of costs broadcasters are likely to incur as a result of the post-incentive auction “repacking” process, and how to determine whether such costs are “reasonable” for purposes of reimbursement under the Spectrum Act.³ The Bureau also seeks comment on a preliminary Catalog of Eligible Expenses (the “Preliminary Catalog”), as well as on ways to mitigate the costs associated with the repacking process.

I. THE SPECTRUM ACT AND THE PUBLIC INTEREST REQUIRE THAT NON-PARTICIPATING BROADCASTERS BE HELD ENTIRELY HARMLESS

Although broadcasters understandably have some anxiety regarding the potential for the incentive auction process to negatively impact stations that desire to stay on-the-air and continue

¹ See *Media Bureau Seeks Comment on Catalog of Eligible Expenses and Other Issues Related to the Reimbursement of Broadcaster Channel Reassignment Costs*, Public Notice, GN Docket No. 12-268, DA 13-1954 (MB, rel. Sept. 23, 2013).

² See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking, 27 FCC Rcd 12357 (2012). Unless otherwise noted, comments and reply comments cited herein are those filed on January 25, 2013 and March 12, 2013, respectively, in GN Docket No. 12-268.

³ See *id.* at 12470.

to serve their local communities, Hubbard appreciates that one of the Commission’s “central goals” in this proceeding is “preserving a healthy, diverse broadcast television service.”⁴ As the Commission recognized, “[b]roadcast television stations provide free video programming that is often highly responsive to the needs and interests of the communities they serve.”⁵ Previous commenters in this proceeding similarly underscored the substantial public interest benefits stations provide to those living in and around their communities of license.⁶ Perhaps most importantly, “[d]uring emergencies, broadcast television stations serve a vital role by providing critical local news and information, as well as emergency alert warnings.”⁷ For instance, the New York State Broadcasters Association noted that, during both Superstorm Sandy and Hurricane Irene, “local broadcasting was in many cases the only source of news and information to affected people since other communications technologies ... ceased to function.”⁸ The public’s viewing habits further evidence broadcasting’s vital role. For instance, a recent study by the Pew Research Center “confirms that more Americans – almost two-thirds – turn to their local broadcasters rather than any other source for the information they need during a crisis.”⁹

And, despite some claims to the contrary, a significant and increasing number of Americans rely exclusively on over-the-air signals in order to access the educational, emergency,

⁴ *Id.* at 12361.

⁵ *Id.* at 12362.

⁶ *See* Comments of ABC Television Affiliates Association, CBS Television Network Affiliates Association, FBC Television Affiliates Association, and NBC Television Affiliates (“Affiliates Associations”) at 4 (“Local broadcasters have long served the public interest by providing highly-valued, locally-oriented programming responsive to the specific needs and interests of the local communities they serve.”); Comments of Belo Corp. at ii (“[O]ver-the-air broadcast television continues to be a vital national resource, with millions of Americans tuning-in daily to obtain high-quality news, information, and entertainment programming.”); Reply Comments of ION Media Networks, Inc. (“ION”) at 2 (“Television stations address matters of importance for local communities...”).

⁷ NPRM, 27 FCC Rcd at 12362, n 15; *see* Comments of Affiliates Associations at 5 (“[L]ocal television broadcasters provide emergency programming that serves as a veritable lifeline in times of crisis.”).

⁸ Comments of the New York State Broadcasters Ass’n, Inc. (“New York Broadcasters”) at 4; *see* Joint Comments of the Named State Broadcasters Ass’ns at 4 (“Recent emergency situations have inarguably demonstrated that over-the-air broadcast media are the most reliable means of conveying ... life-saving information to the public at large.”).

⁹ Comments of Comcast Corp. and NBCUniversal Media, LLC (“Comcast/NBCUniversal”) at 7; *see* Comments of Belo at ii (“Broadcast television is [] the first place to which many Americans turn during times of ... emergency.”).

and entertainment programming provided by broadcasters at no charge. In fact, research conducted last year by GfK Media found that the number of Americans that rely on over-the-air television reception has increased to almost 54 million, up from 46 million just one year prior.¹⁰ Notably, the survey also found that lower-income households “trend towards broadcast-only television,”¹¹ and that certain “minority groups are more dependent on broadcast reception than the general population,”¹² a fact similarly noted by commenters in response to the NPRM.¹³

Although broadcasters choosing not to participate in the incentive auction have well-founded concerns regarding various aspects of the repacking process,¹⁴ relevant here are the substantial, and involuntary, costs many broadcasters will face during that process. As Harris Broadcast emphasized, for the “auction and corresponding repacking to strengthen the broadcast industry rather than burden it, it is essential that broadcasters not have to incur the costs of a relocation they did not seek.”¹⁵ Commissioner Rosenworcel similarly stressed that “fairness is essential in [the Commission’s] treatment of broadcasters,” a principle she believes is “especially true with regard to the treatment of broadcasters that do not participate in the auction.”¹⁶

Not only would holding non-participating broadcasters harmless be the only “fair” approach regarding the costs associated with the repacking process, it would be the only legal

¹⁰ See *Over-the-air TV Viewership Soars to 54 Million Americans*, NAB Press Release (June 18, 2012) (*available at* <http://www.nab.org/documents/newsroom/pressRelease.asp?id=2761>).

¹¹ *Id.* (“26% of homes with an annual income under \$30,000 receiving TV signals solely over-the-air. In comparison, 11% of homes with incomes \$75,000 or greater rely exclusively on broadcast signals.”).

¹² *Id.* (“28% of Asian households (up from 25% in 2011) and 23% of African-American households (up from 17% in 2011). In addition, 26% of Latino homes (23% in 2011) are broadcast-only, a proportion that increases to 33% among homes in which Spanish is the language of choice...”).

¹³ See Reply Comments of Azteca International Corp. at 2 (“Overwhelming evidence demonstrates that a higher percentage of Spanish-speaking viewers – in some markets as high as 40% – rely on over-the-air broadcast television than the U.S. population as a whole.”); Comments of New York Broadcasters at 8 (“In New York City, the percentage of Hispanic households relying on ‘antenna TV’ is more than double that of the general population.”).

¹⁴ See NPRM, 27 FCC Rcd at 12458 (noting that “implementing the results of the broadcast television spectrum incentive auction will be a complex and challenging undertaking for broadcasters”).

¹⁵ Comments of Harris Corporation, Broadcast Communications Divisions (“Harris Broadcast”) at 16.

¹⁶ NPRM, 27 FCC Rcd at 12555 (Statement of Commissioner Jessica Rosenworcel); *see id.* at 12560 (Statement of Commissioner Ajit Pai Approving in Part and Concurring in Part) (noting his belief that one of the “four principles that will be critical to [] success” is to “implement the law in a manner that is fair to all stakeholders.”).

approach. The Spectrum Act mandates that “the Commission *shall* reimburse costs reasonably incurred” by stations forced to relocate to new channels.¹⁷ As Harris Broadcast explained, by “choosing the phrase ‘shall reimburse,’ the legislature unambiguously indicated that it expected the FCC to reimburse broadcasters for all costs reasonably incurred.”¹⁸

Congress undoubtedly included this provision in recognition of the fact that, in order to make the incentive auction truly voluntary, stations must not be forced to help finance a process in which they chose not to participate. This is particularly so given that stations’ repacking costs could be substantial¹⁹ and, as Rep. Walden noted, broadcasters “just went through an expensive and difficult federally mandated conversion to digital.”²⁰ Moreover, in contrast to the DTV transition, here the costs of modifying station facilities “will not result in additional capacity or the potential to offer new services.”²¹ Hubbard therefore agrees with the Affiliates Associations that “the Commission must focus on ‘making whole’ those stations that choose to continue to serve the public interest by broadcasting and treat such broadcasters equitably.”²² As ION Media emphasized, to “require otherwise would contradict the Spectrum Act’s directive that participation in the incentive auction be truly voluntary for all broadcasters.”²³

¹⁷ Spectrum Act §6403(b)(4)(A) (emphasis added).

¹⁸ Comments of Harris Broadcast at 17; *see* Comments of the National Association of Broadcasters (“NAB”) at 49 (“Congress clearly intended that broadcasters who choose not to participate in the incentive auction should not be harmed by any mandatory channel changes...”); Reply Comments of ION at 4 (“Broadcasters that choose not to participate in the incentive auction must not be forced to incur unrecoverable costs...”).

¹⁹ *See, e.g.*, Comments of NAB at 49 (estimating that “relocation costs will range from \$1 million for a minimal change facility to \$4 million or more for a major change facility,” and that “5% or fewer of affected stations are likely to be ‘minimal change’ stations”); Comments of Affiliates Associates at 47 (“[A] Harris Corporation executive estimated that certain ‘hard’ costs for relocation would range from \$1,125,000 to \$2,258,000 per station, excluding costs for tower modifications, building modifications, and ‘soft’ costs.”); *id.* (noting that data from member stations “show that the costs likely to be incurred as a result of repacking will be at the top end of the Harris and NAB estimates.”).

²⁰ *See* 158 Cong. Rec. H. 907, 914 (Feb. 17, 2012) (Conf. Rep. on H.R. 3630) (statement of Rep. Walden).

²¹ Comments of Harris Broadcast at 16.

²² Comments of Affiliates Associations at 48; *see* Comments of LIN Television Corporation d/b/a LIN Media at 6 (“Congress intended that remaining over-the-air broadcasters be made whole, and the Commission must comply with that intention.”); Comments of Tribune Company at 15 (“[T]he rules must permit broadcasters to receive reimbursement for all repack-related expenses.”).

²³ Reply Comments of ION at 5.

Accordingly, the Commission must not apply the “Minimum Necessary Costs Standard” used for the 800 MHz rebanding. As the Commission explained, under that standard, “licensees would be able to recover only costs that are reasonable, prudent and the *minimum necessary* to provide facilities and services comparable to those presently in use.”²⁴ In contrast, the Spectrum Act simply requires that, in order to be eligible for reimbursement, costs must be “reasonably incurred.”²⁵ In other words, the 800 MHz rebanding standard contains two additional qualifiers – namely, that in addition to being “reasonable,” costs must *also* be “prudent and the minimum necessary.”²⁶ Moreover, as NAB detailed, the “phrase ‘costs reasonably incurred’ appears in other statutes but has not been interpreted to imply a minimum costs standard.”²⁷ The Spectrum Act therefore “neither invites nor allows a ‘minimum necessity’ limitation on reimbursable expenses.”²⁸ Rather, the “natural meaning of ‘costs reasonably incurred’ is those costs for which a broadcaster becomes liable that are fair and sensible, not excessive or extreme.”²⁹

II. ANY CATALOG OF ELIGIBLE EXPENSES SHOULD SERVE ONLY AS A GENERAL GUIDE, AND THE COMMISSION SHOULD STATE UPFRONT THAT ALL COSTS DIRECTLY RELATED TO REPACKING ARE ELIGIBLE FOR REIMBURSEMENT SO LONG AS THEY ARE “REASONABLE”

As the Commission noted, “because signal propagation characteristics vary from channel to channel, the technical facilities of a station assigned to a different channel must be modified in order to replicate its existing coverage area.”³⁰ Clearly, then, the Spectrum Act requires full reimbursement for all of the “hard” costs associated with such modifications. For instance,

²⁴ NPRM, 27 FCC Rcd at 12471 (emphasis added).

²⁵ Spectrum Act §6403(b)(4)(A).

²⁶ See Comments of Harris Broadcast at 50 (“While the two standards both incorporate a touchstone of ‘reasonableness,’ the similarity ends there.”).

²⁷ Comments of NAB at 58 (internal citation omitted).

²⁸ *Id.* at 59; see Comments of Harris Broadcast at 50 (“The Spectrum Act does not incorporate the limiting constraints of ‘prudent and the minimum necessary,’ and it would be inappropriate for the Commission to read such non-existent limitations into the clear language of the statute.”).

²⁹ Comments of NAB at 59.

³⁰ NPRM, 27 FCC Rcd at 12391.

Harris Broadcast explained that, “[b]eyond the transmitter itself, stations may need to replace other channel-specific components, including the channel mask filter and likely the antenna.”³¹ Other hard costs directly related to these modifications include installing new equipment, removing equipment being replaced, and repurposing existing equipment, as well as testing the modified facilities. In addition, “[c]hanges to a tower’s existing equipment load will trigger a structural analysis,” and “[o]lder towers may require extensive and costly modifications or not be capable of being upgraded to Rev. G, requiring construction of a new tower.”³²

Hubbard fully supports the Bureau’s efforts to provide guidance at this stage regarding those costs broadcasters can presume will be eligible for reimbursement. And, with respect to the types of hard costs noted above, Hubbard generally supports the Preliminary Catalog. But Hubbard also agrees with the Affiliates Associations that “no list can truly be exhaustive in its scope.”³³ While a well-formulated list can represent “expenses that are likely to be commonly incurred in the vast majority of cases,” no list can “recognize that idiosyncratic conditions and situations will invariably lead to other expenses that warrant and qualify for reimbursement...”³⁴ Accordingly, the Bureau should not mimic the NTIA’s approach with respect to the low power digital conversion program, which permitted reimbursement only for “certain pre-defined types of equipment.”³⁵ Any reimbursement framework that includes a pre-defined catalog of eligible equipment significantly limits a station’s choices, forcing it to inefficiently engineer around a

³¹ Comments of Harris Broadcast at 14; *see* Comments of Comcast/NBCUniversal at 27 (“[T]he eligible equipment should include, at a minimum, any new antennas, transmission lines, filters, and transmitters required as a result of the repacking process...”).

³² Letter from Peter Starke, Vice President, Broadcast, American Tower Corporation, to Marlene H. Dortch, Secretary, FCC, Docket No. 12-268 (Aug. 22, 2013) (“American Tower Ex Parte”).

³³ Comments of Affiliates Associations at 54.

³⁴ *Id.*; *see* Comments of Belo at 20 (“There may be costs not listed or unanticipated that would also qualify as justifiable expenses eligible for reimbursement from the Relocation Fund.”).

³⁵ NPRM, 27 FCC Rcd at 12470, n. 520.

particular piece of equipment. An inflexible equipment catalog also could force stations to purchase inferior equipment, perhaps even at a higher cost than their preferred equipment.

Hubbard also urges the Bureau not to include prices in any final catalog, except perhaps to provide a rough estimate of potential repacking costs to broadcasters that are less familiar with facility modifications. Otherwise, the listed prices could be mistakenly interpreted as caps on what will be deemed “reasonable,” which would create uncertainty regarding a station’s statutory right to full reimbursement even if the station only acquired goods and services made necessary by the repacking process, and did so at market prices (*i.e.*, incurred only reasonable costs).³⁶ As the Commission noted, “moving to a new channel may be relatively simple for some stations, and more complicated for others.”³⁷ Obviously, this variable nature of the repacking process will cause some stations’ costs to be much higher.³⁸ Thus, Hubbard agrees with commenters that in “no event should the Commission’s estimates be the same for all eligible stations.”³⁹ Rather, as Belo emphasized, “it is critical that the Commission adopt a flexible reimbursement approach.”⁴⁰

Although, as noted, Hubbard generally supports the Preliminary Catalog, several costs that many stations will incur as a direct result of the repacking process are conspicuously absent. For instance, as American Tower explained, “repacking will require review of existing lease terms, which may trigger amending [those] terms, and licensees moving to a new location will need to enter into lease negotiations with the tower owner.”⁴¹ In the NPRM, the Commission

³⁶ See Comments of Affiliates Associations at 51-52 (“So long as products and services are fairly bargained for, the expenses associated therewith should be *prima facie* reasonable and, therefore, reimbursable.”).

³⁷ NPRM, 27 FCC Rcd at 12460 (internal citation omitted).

³⁸ See Comments of Belo at 19 (“The cost of relocating to a post-auction channel allotment will vary from broadcaster to broadcaster for a number of reasons...”); Comments of the Association of Public Television Stations, Corporation for Public Broadcasting, and Public Broadcasting Service (“PTV”) at 28 (“Unexpected challenges ... can significantly increase costs and make it difficult to accurately estimate a station’s relocation costs.”).

³⁹ Comments of PTV at 28.

⁴⁰ Comments of Belo at 19.

⁴¹ American Tower Ex Parte at 1.

similarly recognized that stations may have to negotiate new tower leases.⁴² However, while the Preliminary Catalog includes costs related to constructing or modifying a tower, it does not include costs associated with amending or terminating a current tower lease, or those associated with entering into a new lease. Nor does the Preliminary Catalog acknowledge that stations which own their towers may be forced to construct new towers in different locations.

Hubbard urges the Bureau to correct this omission. As NAB emphasized, these costs, “including land acquisition and contractual liability to landlords and/or other site users, should be fully eligible for reimbursement.”⁴³ Other potential costs include higher lease rates, appraisal costs, and attorneys’ fees. Notably, the Commission’s microwave relocation rules include both “site acquisition” and “site lease renegotiation” expenses as hard costs entitled to reimbursement.⁴⁴ In adopting those rules, although the Commission initially proposed “that PCS licensees should not be required to reimburse incumbents for any ‘extraneous’ expenses, such as fees for attorneys and consultants,” it ultimately concluded “that some reimbursement for outside assistance is necessary...”⁴⁵ The Commission should similarly conclude that these types of transaction expenses, which will be directly attributable to the repacking process, are eligible for reimbursement. If the Commission is concerned that including these costs may lead to abuse, it could mirror the microwave relocation rules and establish a cap for the reimbursement of transaction costs equal to “two percent of the hard costs involved.”⁴⁶

⁴² See NPRM, 27 FCC Rcd at 12462.

⁴³ Comments of NAB at 56.

⁴⁴ See NPRM, 27 FCC Rcd at 12470, n. 520 (citing 47 C.F.R. §27.1238).

⁴⁵ *Amendment of the Commission’s Rules Regarding a Plan for Sharing the Costs of Microwave Relocation*, First Report and Order and Further Notice of Proposed Rule Making, 11 FCC Rcd 8825, 8848 (1996) (“*Microwave Relocation Order*”).

⁴⁶ 47 C.F.R. §101.75(a)(1).

Hubbard also agrees with NAB that a station forced to relocate to a new channel “should be entitled to reimbursement for retuning or replacement of its licensed auxiliary facilities.”⁴⁷ As NAB explained, these back-up facilities are “important to station operations” because they are “used during periods of routine maintenance on the principal licensed facilities or in the event of unexpected failure of the principal licensed facilities.”⁴⁸ As a result, many stations will feel compelled to also modify these facilities, and thereby incur costs that they otherwise would not be subject to absent involuntary channel changes.

Further, as NAB noted, because some repacked stations likely will have somewhat different service areas, “an MVPD receive facility that previously received a good quality signal may no longer be able to do so.”⁴⁹ Similarly, a station may be forced “to go dark for some period during its flash cut,” or a station operating with “temporary facilities [may] not provide a good quality signal to the MVPD receive facility.”⁵⁰ In any of these cases, Hubbard agrees that the “station’s costs for an alternative delivery method should be eligible for reimbursement.”⁵¹

In addition, although stations should be fully reimbursed for all reasonable equipment upgrades made while effectuating channel changes, this cost is not addressed in either the Public Notice or the Preliminary Catalog. However, when the Commission previously sought comment on this issue, it noted that “[s]ome stations may not be able to replace older, legacy equipment and may be required to obtain upgraded or more expensive equipment in order to move to their new channels.”⁵² In other words, these costs would be directly attributable to the involuntary relocation of these stations, and therefore should be eligible for reimbursement. As the

⁴⁷ Comments of NAB at 56.

⁴⁸ *Id.*

⁴⁹ *Id.* at 57.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² NPRM, 27 FCC Rcd at 12471.

Commission noted in its microwave relocation proceeding, “compensation for the depreciated value of old equipment would not enable [an incumbent] to construct a comparable replacement system without imposing costs on the incumbent, which would be inconsistent with [the] relocation rules.”⁵³ Here, it would be inconsistent with the Spectrum Act. Moreover, Harris Broadcast explained that, because a channel change could require substantial modifications to many legacy transmitters, it likely “would be more cost-effective, more time-efficient, and less disruptive to viewers for these stations to replace, rather than modify, their transmitters.”⁵⁴ In other words, reimbursing stations for reasonable equipment upgrades would mitigate overall repacking costs and assist in a smooth transition, while also benefitting the public.

Hubbard further notes that the repacking process could, and likely will, also impose costs on stations that are not forced to change channels.⁵⁵ As Belo explained, these costs “may arise for a number of reasons, including because a non-relocating broadcaster shares a transmission facility with a relocating broadcaster who must make physical changes to that facility.”⁵⁶ Such costs will be directly attributable to the repacking process, and therefore must be eligible for reimbursement.⁵⁷ While the Spectrum Act explicitly requires the Commission to reimburse costs reasonably incurred by a “licensee to relocate ... from one channel to the other,”⁵⁸ the only

⁵³ *Microwave Relocation Order*, 11 FCC Rcd at 8844.

⁵⁴ Comments of Harris Broadcast at 14.

⁵⁵ See Comments of Affiliates Associations at 52 (“There is no question that there will be stations whose channel assignments do not change but that will nevertheless incur real-world expenses...”); Comments of Belo at 21 (“In some cases, stations whose channel assignments do not change will nevertheless incur repacking-related expenses.”).

⁵⁶ Comments of Belo at 21; see Comments of NAB at 58 (“Changes to the facilities of one television station may impact other broadcast stations sharing the tower...”).

⁵⁷ See Comments of Affiliates Associations at 52-53 (“[The] station’s expenses are still incurred involuntarily and should qualify for reimbursement.”); Comments of NAB at 58 (“These examples represent true costs to broadcast stations that would not be incurred but for the repacking process and, accordingly, should be reimbursed to make such broadcasters whole consistent with the intent of the statute.”); Comments of Belo at 21 (“The repacking-related expenses of the non-relocating broadcaster are no less valid than those incurred by the relocating broadcaster, and should therefore be fully reimbursed by the Relocation Fund.”).

⁵⁸ Spectrum Act §6403(b)(4)(A)(i).

limitation on reimbursements is with respect to “lost revenues.”⁵⁹ In other words, as noted by the Affiliates Association, “the Spectrum Act does not *prohibit* reimbursement of repacking expenses incurred by other television stations.”⁶⁰ The Commission therefore “retains discretion to use the Fund to satisfy the reimbursement needs of other television stations that are directly or indirectly affected by the repacking.”⁶¹ Moreover, reimbursing any costs incurred by non-participating stations would be consistent with Congress’ intent to hold these stations harmless.⁶²

Hubbard also urges the Commission to find that any costs associated with modifying digital replacement translators (“DRTs”) as a result of the repacking process be deemed eligible for reimbursement. Like Cox Media and many other broadcasters, Hubbard has “made substantial investments in DRTs in reliance on the Commission’s encouragement of finding creative ways to restore service to viewers that lost it in the DTV transition.”⁶³ Although the Spectrum Act generally does not confer any protection or reimbursement rights upon low-power stations, as Tribune explained, “DRTs are fundamentally different from other LPTV and translator stations, which typically serve areas outside a station’s service contour...”⁶⁴

Not only are DRT operations effectively a part of a full-power station’s primary service, the Commission treats them as such from a regulatory perspective. For instance, “DRT facilities are specified as part of the full-power station’s license,” and the Commission treats applications

⁵⁹ Spectrum Act §6403(b)(4)(C).

⁶⁰ Comments of Affiliates Associations at 52 (emphasis in original); *see* Comments of Belo at 21 (“The Spectrum Act does not prohibit reimbursing these types of expenses.”).

⁶¹ Comments of Affiliates Associations at 52; *see* Comments of NAB at 55 (“The structure of the Spectrum Act [] vests discretion in what the Commission may reimburse...”).

⁶² *See* Comments of Belo at 21 (“Compensating non-relocating broadcasters is fully consistent with Congress’s intent that broadcasters not participating in the voluntary incentive auction suffer no harm...”); Comments of Affiliates Associations at 53 (“These expenses merit reimbursement from the Fund, and nothing in the Spectrum Act would prohibit the Commission from reimbursing them, thereby ensuring that the repacking process does no harm to television broadcasters that are involuntarily affected by the spectrum auction and subsequent repacking.”).

⁶³ Comments of Cox Media Group at 4.

⁶⁴ Comments of Tribune at 18, n. 32; *see* Comments of Affiliates Associations at 39 (“Unlike other translator stations, replacement translators are intended to restore service within a full-power station’s coverage area...”).

for DRTs “as minor modifications to the license of a full-power station itself.”⁶⁵ DRTs also “share the same call sign and facility identification number as the main station, may not be separately assigned or transferred, and are renewed along with the full-power station’s main license.”⁶⁶ Clearly, despite the fact that DRTs operate with low power, these stations are, in essence, a part of the main station’s operations. Accordingly, reimbursing any costs associated with modifying DRTs as a result of the repacking process would be consistent with Congress’ desire to hold non-participating broadcasters harmless. This approach also would advance the public interest. As the Affiliates Associations stressed, because “viewers have come to rely on these translators for continued service,” if these stations are forced to cease operations due to a lack of funding, this “would cause a serious disruption to [] viewers.”⁶⁷

Although the Preliminary Catalog includes costs associated with using interim facilities, the NPRM did not similarly indicate that these costs will qualify for reimbursement. Hubbard therefore stresses the substantial public interest benefits that will accrue from the use of these temporary facilities, which some stations may not be able to justify economically absent a clear statement in advance of the auction that the associated costs qualify for reimbursement.⁶⁸ As the Commission noted, “[u]nlike stations in the digital transition, stations assigned to new channels as a result of the reorganization authorized by the Spectrum Act will not have ... the ability to operate both pre- and post-transition channels.”⁶⁹ As a result, “stations modifying facilities at their existing sites may have to ‘flash cut’ to operation on their new channels...”⁷⁰

⁶⁵ Comments of Tribune at 19.

⁶⁶ Comments of Affiliates Associations at 39; *see* Comments of Tribune at 19; Comments of Cox Media at 4.

⁶⁷ Comments of Affiliates Associations at 39.

⁶⁸ *See* Comments of NAB at 56 (“The various expenses associated with [] temporary facilities should be fully eligible for reimbursement.”).

⁶⁹ NPRM, 27 FCC Rcd at 12464; *see* Comments of NAB at 56 (“Stations will not have the opportunity to utilize a paired channel during the repacking process but instead will need to utilize temporary facilities.”).

⁷⁰ NPRM, 27 FCC Rcd at 12461.

Fortunately, as Harris Broadcast explained, “temporary facilities and channels [] will minimize or eliminate the time that stations will need to go off the air and thus reduce disruption to the viewing public.”⁷¹ As such, ensuring the use of these facilities by reimbursing stations for the associated costs is critical for the Commission to meet its goal of “minimizing disruption to broadcasters and their viewers” during the repacking process.⁷² The broad use of temporary facilities also will lead to a far more efficient, and thus potentially much quicker, transition. For instance, the Commission noted that “many stations may be required to make changes to their facilities during the same time period, making coordination among stations important.”⁷³ The use of temporary facilities will make this required level of coordination far more likely.

III. PROVIDING THE INDUSTRY SUFFICIENT TIME TO COMPLETE THE REPACKING WOULD BEST MITIGATE THE ASSOCIATED COSTS

With respect to mitigating the total costs associated with the repacking process, the single best approach would be to provide broadcasters with ample time to modify their facilities. Simply put, an unnecessarily short timeframe would make discounts from equipment manufacturers and tower crews highly unlikely, and could, in fact, cause goods and services to be priced at a premium. As noted by the Affiliates Associations, the Commission’s “ambitious time frame for the spectrum clearing and repacking process is likely to cause the fair market value of certain critical products and services to be higher than they otherwise would be.”⁷⁴

This is particularly so given that the “broadcast engineering infrastructure simply is not equipped to simultaneously modify the facilities of hundreds of television stations.”⁷⁵ For

⁷¹ Comments of Harris Broadcast at iii.

⁷² NPRM, 27 FCC Rcd at 12464.

⁷³ *Id.* at 12465.

⁷⁴ Comments of Affiliates Associations at 51; *see* Comments of NAB at 57 (“[B]ecause of the limited time frame ... stations will likely have to pay more for certain equipment and more for expedited professional services...”).

⁷⁵ Comments of Harris Broadcast at 12.

instance, there are only fourteen crews qualified to work on broadcast television towers,⁷⁶ and “the number of crews with the right kind of experience to work with heavy steel equipment on very high towers may now be five or fewer.”⁷⁷ And, with respect to manufacturers, the situation recently became markedly worse when Dielectric, which had been the largest antenna supplier, shuttered its operations.⁷⁸ In fact, approximately 63% of full-power stations use Dielectric antennas, while the next largest provider has a 20% market share, and the remaining vendors combine for only 17%.⁷⁹ In other words, currently there is only one major antenna manufacturer. In contrast, for most of the DTV transition, which provided stations many years to construct new facilities, there were three major antenna manufacturers.⁸⁰ As a result of this lack of necessary resources coupled with an unnecessarily short timeframe, demand for the equipment and services required for stations to repack will be extremely high, causing prices to skyrocket.⁸¹

Unfortunately, there is no quick fix to the current lack of resources. For instance, as the New York Broadcasters noted, “[a]ntenna and tower construction is a highly specialized skill and expanding the labor pool is expensive and takes time.”⁸² Moreover, manufacturers and tower companies cannot realistically begin to increase their capacities prior to the completion of the incentive auction because, until that time, it will be impossible to know how many stations will be repacked, the extent of the modifications required to repack these stations, etc. It therefore is critical for the Commission to provide broadcasters with ample time once the auction has closed.

⁷⁶ *Id.*

⁷⁷ Comments of Belo at 6-7.

⁷⁸ See McAdams, D., *Dielectric Demise Raises Repacking Alarm*, TV Technology (Apr. 23, 2013).

⁷⁹ See *id.*

⁸⁰ See Comments of Harris Broadcast at 12, n. 27.

⁸¹ See Comments of Affiliates Associations at 51 (“The greater demand that exists for a product or service will drive up the price of that good or service, and that is particularly true when a good or service is scarce.”).

⁸² Comments of New York Broadcasters at 19.

In particular, Hubbard joins numerous other broadcasters in supporting NAB’s proposal “that the Commission allow 30 months for the construction deadline for new broadcast facilities.”⁸³ Throughout this proceeding, broadcasters have emphasized that the proposed 18-month construction timeframe is “unrealistically short.”⁸⁴ A 30-month construction period also would better align with Congress’ likely intent when it established a reimbursement deadline of “3 years after the completion of the forward auction...”⁸⁵ As Harris Broadcast explained, because “Congress is presumed to know that the Commission’s standard term for a construction permit is three years, it is evident that the structure of the reimbursement scheme was intended to function in harmony with the typical construction period and that the Spectrum Act did not intend to shortchange broadcasters...”⁸⁶ Not only would a 30-month timeframe be more consistent with the typical 3-year construction period, it would better align with the Spectrum Act’s reimbursement deadline. Specifically, in addition to allowing “most stations to complete their facilities within the prescribed period,” a 30-month timeframe would provide stations with six months “to submit documentation of actual expenses and obtain reimbursement for relocation costs before the expiration of the three-year statutory reimbursement period.”⁸⁷

Moreover, in order to provide broadcasters, equipment manufacturers, and tower companies with sufficient time to prepare for the start of this construction period, Hubbard supports the industry proposal “that the Commission should not deem the forward auction to be

⁸³ Comments of NAB at 50; *see, e.g.*, Comments of Belo at 6 (“Belo supports NAB’s proposal to allow 30 months for construction of new broadcast facilities or repacked channels.”).

⁸⁴ *See* Comments of NAB at 50; Comments of Belo at 6; *see also* Comments of Harris Broadcast at 12 (“The limited industry resources to effectuate the transition of so many stations at once would serve as an insurmountable barrier to the ability of many stations to complete their transition within eighteen months.”).

⁸⁵ Spectrum Act §6403(b)(4)(D).

⁸⁶ Comments of Harris Broadcast at 48, n. 117 (internal citation omitted).

⁸⁷ Comments of NAB at 50; *see* Comments of Affiliates Associations at 48 (“[T]he Commission should take all possible steps to ensure that involuntarily repacked stations have the maximum possible amount of time to construct their new facilities and still qualify for reimbursement from the Fund.”).

complete until final licenses are granted to winning bidders.”⁸⁸ As the Affiliates Associations explained, under this approach, the construction period would not begin until “after the time at which television stations that are subject to being repacked actually file applications for construction permits to change channels.”⁸⁹ By that time, the amount and types of equipment and services needed for repacking will be fairly well-established, which will allow manufacturers and tower crews to immediately take steps to meet the likely high demand they will face during the repacking process (*e.g.*, additional hiring, increased production).

Finally, with respect to the Bureau’s inquiry regarding the “viability of having broadcasters organize bulk purchasing or services arrangements to generate cost savings,”⁹⁰ Hubbard notes that the facility modifications that will be made necessary by the repacking are not susceptible to “bulk” agreements. Notably, during the Commission’s September 30, 2013 repacking workshop, the panelists similarly expressed skepticism regarding the feasibility of bulk arrangements. For instance, the panelists explained that the highly-customized equipment purchases, engineering analyses, and construction considerations that will be involved in the repacking process do not lend themselves to bulk rate production. They also noted that bulk discounts generally were not available during the DTV transition.

IV. CONCLUSION

Hubbard believes that, by providing full reimbursement for the types of costs detailed above, the Commission will ensure, as Congress intended, that participation in the incentive auction remains truly voluntary, and that non-participating broadcasters suffer no financial harm as a result of the government’s spectrum reallocation goals. In addition, by allowing sufficient time for broadcasters to complete the repacking process, the Commission would significantly reduce the likely costs associated with this process, and thereby better ensure that the Relocation

⁸⁸ Comments of NAB at 50.

⁸⁹ Comments of Affiliates Associations at 48.

⁹⁰ Public Notice at 2.

Fund will have sufficient funds to reimburse every broadcaster for all “costs reasonably incurred” as a result of stations being involuntarily relocated to new channels.

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