Before the
Federal Communications Commission
Washington, D.C. 20554

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

REPLY COMMENTS

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The American Cable Association ("ACA") submits these reply comments in response to the Public Notice in the above-captioned docket and filings by interested parties.[1]

DISCUSSION

ACA appreciates the Commission's effort to develop a "Catalog of Eligible Expenses" for costs incurred by multichannel video programming distributors ("MVPDs") to continue to carry broadcast television stations after the Commission conducts the incentive auction to reclaim broadcast spectrum for other uses from participating broadcasters. Such a list will provide the clarity required for the Commission to implement Congress' directive in the Spectrum Act[2] that it reimburse costs "reasonably incurred" by MVPDs to "continue to carry" the signal of a broadcast station as a result of broadcast channel reassignments incident to the auction.[3]

ACA supports the positions taken by the National Cable & Telecommunications Association ("NCTA") in its comments urging the Commission to fully account for all of the different scenarios that would require cable operators to incur expenses reimbursable from the TV Broadcaster Relocation Fund ("Fund") in setting a schedule of reimbursable expenses, including all external expenses imposed as a result of repacking, as well as channel sharing.[4] Accordingly, any Catalog of Eligible Expenses must further this statutory purpose and provide for fair reimbursement for any reasonable

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

[2] Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6402, 6403, 126 Stat. 156 (2012) ("Spectrum Act").

[3] Spectrum Act § 6403(b)(4)(A)(ii). The MVPD reimbursement costs are to be paid out from auction proceeds deposited in the "TV Broadcaster Relocation Fund" ("Fund"). Spectrum Act § 6402 (to be codified at 47 U.S.C. § 309(j)(8)(G)(iii)(I)).

[4] *See* Comments of the National Cable and Telecommunications Association at 1-2 n. 7 (filed Nov. 4, 2013) ("NCTA Comments"); Spectrum Act § 6403(b)(4)(A)(ii)(III) (explaining that the Commission shall reimburse MVPDs for costs reasonably incurred to continue to carry the signal of a broadcast television licensee that "voluntarily relinquishes spectrum usage rights under subsection (a) to share a television channel with another licensee . . . ."). This category of costs should be expressly included in any Catalog of Eligible Expenses ("Catalog"). ACA further agrees with NCTA that the Commission must make clear "that the Catalog is not meant to catalog every cost nor is it a 'limitation on expenses for reimbursement'" as reflected in the Public Notice. *See* NCTA Comments at 2 n.7, *citing* Public Notice at 2.

"hard" and "soft" costs that cable operators incur to continue to carry a broadcast signal as a result of a broadcast station voluntarily or involuntarily changing its channel assignment.[5] Particularly with respect to smaller cable operators with constrained administrative and financial resources, some of whose headends lie barely within and sometimes even beyond a broadcast station's signal contour, it is essential that the Commission be comprehensive in its approach to carry out Congress' directive that, subject to fund availability, cable operators are held harmless from any technical changes related to the broadcast incentive auction by giving them the right to seek reimbursement for the costs to continue carrying broadcast signals.

I. CATEGORIES OF ELIGIBLE EXPENSES MUST INCLUDE "OTHER COSTS"

ACA agrees with NCTA that the bulk of anticipated cable operator auction-related expenses will arise from the continued reception of a broadcast station that is transmitting on a new channel, regardless of whether the station move results from repacking or channel sharing.[6] ACA further agrees with NCTA that the Public Notice has correctly identified anticipated "hard" costs as well as "soft" costs that an operator is likely to incur to accommodate a station moving to a new channel position, but that the list of likely costs is not limited to these two categories.[7] In general, these costs assume that the cable operator is receiving the signal via antenna today, and will continue to be able to receive the signal via antenna, albeit with some additional costs, after repacking or channel sharing.

[5] NCTA Comments at 7.

[6] *See id.* at 2 & n.7.

[7] "Hard" costs would be items such as new antennas and receivers, and "soft" costs would be certain professional services that a cable operator might need to use such as engineering, contract labor, and legal. ACA also agrees with NCTA that potential costs which might result from a channel change on a cable system should be included in the Catalog. *Id.* at 4. These may include expenses incurred by cable operators to make changes to their channel line-ups and notify customers of the change when a broadcaster opts for a new post-auction channel position.

As NCTA recommends, the Catalog should include certain *other* categories to comprehensively reflect the potential costs to operators.[8] Notably, the Catalog must go beyond costs incurred "once the broadcaster has delivered its signal to the MVPD" to include expenses an operator may need to incur in order to transport the signal to the cable headend. Changes in broadcast transmitter location due to sharing or repacking may affect the quality of the signal delivered to the cable system. Inevitably, some cable systems will no longer be able to receive a good quality signal via antenna, requiring the cable operator to purchase alternative forms of delivery, such as fiber, microwave or satellite in order to continue carriage of the channel and its availability to their customers. Such outlays should also be eligible for reimbursement from the Fund. Cable systems serving customers in more rural areas, sometimes operating at the inner edge of the contour of a broadcast signal – an operating environment that describes many ACA members, are more likely to need reimbursement for these "other costs" described in NCTA's comments.[9] Unless such costs are reimbursable, cable operators may be unable to continue to carry affected stations for their subscribers, resulting in some cable subscribers losing access to broadcast channels that they receive today. Clearly, the Commission cannot be said to be carrying out the intent of Congress without making these costs eligible for reimbursement because failure to do so will almost surely result in the inability of some operators to continue to carry some stations post-auction. It is noteworthy that the Spectrum Act provides for the reimbursement of costs from auction proceeds deposited in the Fund that are "reasonably incurred" by MVPDs to "continue to carry" broadcast stations after the spectrum incentive auction, without specifying that the MVPD must continue to receive the broadcaster's signal over the air.[10] The structure of the statute and its plain language

[8] *Id*.

[9] *Id*.

[10] Spectrum Act § 6403(b)(4)(A)(ii) (the Commission shall reimburse relocation costs reasonably incurred by "a multichannel video programming distributor in order to continue to carry the signal of a broadcast television licensee that— (I) is described in clause (i); (II) voluntarily relinquishes spectrum usage rights under subsection

demonstrate that Congress explicitly chose to limit only the size of the Fund without categorically excluding *any* category of cost from potential reimbursement, and the Commission should not do so either.

II. ESTIMATED "HARD" AND "SOFT" COSTS

ACA also believes that NCTA's estimates of the prices for items associated with the types of equipment and professional services listed in NCTA's comments appear, for the most part, accurate.[11] In designing its reimbursement rules, the Commission must keep in mind that these costs can also be highly variable and subject to change and therefore build in sufficient flexibility to account for such variability.

Moreover, ACA agrees with NCTA that the types of potential cost savings identified in the Public Notice, such as bulk discounts and competitive bidding, are unlikely to be available to many cable operators, but particularly smaller cable operators.[12] Infrastructure and equipment purchasing decisions, as NCTA notes, are made at the local system level rather than on a company-wide basis. For specialized services such as cable antenna arrays and receivers, cable operators have few choices on the local, let alone nationwide, level. For these reasons, cost-savings measures such as competitive bidding are unlikely to be available to many operators.

Finally, ACA urges that the Commission, in establishing its reimbursement rules, take into account that smaller operators often pay higher prices than larger operators for the same equipment

(a) with respect to an ultra high frequency television channel in return for receiving usage rights with respect to a very high frequency television channel; or (III) voluntarily relinquishes spectrum usage rights under subsection (a) to share a television channel with another licensee").

[11] *See* NCTA Comments at 5. These include "hard" equipment costs related to new receive antennas, new receiver or other RF processing equipment (such a pre-amplifiers), tower-related structural or capacity augments, and tower rigging, as well as "soft" professional services such as tower capacity structural studies and engineering studies. *Id.* In one case, however, ACA believes NCTA's estimated "worst case" cost for new tower construction of $17,600 may be too low. *See* NCTA Comments at 5 n.13. At least one of ACA's rural members reports that the operator typically spends over $200,000 constructing a tower for its wireless business. Even discounting for the fact that a cable television reception tower would not necessarily need to be designed to carry the same load, the member estimates that the total costs including the tower, construction and site acquisition could run well over $100,000.

[12] *See id*. at 6.

and services. If, as NCTA states, larger operators have few ways to save money when accommodating channel line-up changes due to broadcasters moving station allocations, it is likely that smaller cable operators have virtually none. Small cable operators have limited financial and administrative resources. Failure to properly account and reimburse operators for these reasonably foreseeable additional financial burdens would compound the economic challenges already faced by smaller cable operators who often serve smaller market and rural areas. These operators face unique challenges providing competitive video, broadband, and telephony services. As it stands, providing advanced services in these regions is already a financially difficult undertaking as the cost of system builds, upgrades, and maintenance in often sparsely populated and geographically dispersed areas can only be recouped through fees spread over a smaller subscriber base than that served by larger urban operators.[13] Smaller operators are also stressed by the comparatively higher costs from programmers and equipment manufacturers due to their inability to receive the same volume purchasing discounts as larger operators.[14]

[13] *See, e.g.*, *Amendment of Rules and Policies Governing Pole Attachments*, CS Docket No. 97-98, Report and Order, 15 FCC Rcd 6453 ¶ 118 (2000) ("The Commission has recognized that small systems serve areas that are far less densely populated areas than the areas served by large operators. A small rural operator might serve half of the homes along a road with only 20 homes per mile**,** but might need 30 poles to reach those 10 subscribers."); *Caribbean Communications Corp., Petition for Special Relief*, CSR 5825-D, Memorandum Opinion and Order, 17 FCC Rcd 7092 ¶ 14 (MB, 2002) (noting that systems with more than 15,000 subscribers average 68.7 subscribers per mile, while small systems service on average only 35.3 subscribers per mile.).

[14] *See, e.g.*, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 12-203, Fifteenth Report, 28 FCC Rcd 10496 ¶ 78 (2013) (discussing increasing programming costs and pole attachment fees causing cable system closures in small and rural communities); Reply Comments of the American Cable Association at 5-7 (filed in *Basic Services Tier Encryption Compatibility Between Cable Systems and Consumer Electronics Equipment*, MB Docket No. 11-169, WT Docket No. 00-67 on Dec. 12, 2011) (outlining higher costs smaller cable operators face when purchasing and installing equipment).

Respectfully submitted,

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