

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

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

**REPLY COMMENTS OF
THE NATIONAL ASSOCIATION OF BROADCASTERS**

I. INTRODUCTION

The National Association of Broadcasters (NAB)¹ hereby replies to comments submitted in response to the Commission’s Notice of Proposed Rulemaking concerning the reimbursement of LPTV, TV Translator and FM Radio stations for reasonable expenses incurred as a result of the repacking of full power and Class A television stations following the close of the broadcast spectrum incentive auction.²

NAB’s replies focus on a limited number of issues parties raised in their initial comments in this proceeding. First, the Commission should not adopt the proposed graduated scale of reimbursement for FM radio stations indirectly impacted by the repack. This approach

¹ The National Association of Broadcasters (NAB) is the nonprofit trade association that advocates on behalf of free local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

² *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 (Aug. 3, 2018) (NPRM).

would have devastating consequences, particularly for small FM radio stations. Second, the Commission should look for opportunities to streamline the reimbursement process, including the fast track proposal set forth by the National Translator Association. This proposal could not only help streamline filing requirements for small entities that lack dedicated staff, it could also help contain costs by encouraging parties to file for fast track reimbursement capped at a reasonable level. Third, the Commission's primary goal in this proceeding should be to establish reimbursement rules for broadcasters that will minimize service disruptions for viewers and listeners. Congress appropriated additional funding to protect broadcasters, viewers and listeners – not to provide ancillary benefits to other entities.

II. THE COMMISSION SHOULD ABANDON THE PROPOSAL FOR GRADUATED REIMBURSEMENT FOR FM RADIO STATIONS

No party supported the proposal set forth in the NPRM for graduated reimbursement for bystander FM radio stations that must reduce power or go off the air to accommodate repacking work on nearby television facilities. At bottom, the NPRM's proposal appears to be based on an assumption that many FM radio stations can simply absorb significant costs associated with constructing auxiliary facilities even if those costs are not fully reimbursed or, worse, a prediction that some stations will simply decide to accept being forced entirely off the air temporarily by the Commission's repacking process.

In fact, as National Public Radio, Inc. (NPR) states in its comments, the proposal could leave listeners in silence and have a "devastating impact on station finances and operations."³ In particular, NPR observes that the difference between expected

³ Comments of National Public Radio, Inc. at 7, MB Docket No. 18-214, GN Docket No. 12-268 (Sept. 26, 2018).

reimbursement levels of 50 and 100 percent will likely determine whether public radio stations plan to build or modify auxiliary facilities to stay on the air during the repack.⁴ Small commercial radio stations will likely face the same dilemma – if they are told that they will only be eligible for perhaps 50 percent reimbursement, they will be unable to make up the difference and many will have no choice but to go off air. This proposal strays far from Congress’s clear goal of minimizing listener disruption and would leave many stations paralyzed by uncertainty and their listeners without service. Moreover, it would be doing so based on absolutely no evidence that such a drastic approach is necessary to preserve funding.

As the Commission develops rules to provide additional funding, it should be sensitive to the context of repacking and the implications for bystander stations that had absolutely nothing to do with the broadcast spectrum incentive auction. The repack is not an Act of God; it is the result of policy choices made by the Commission. The FCC chose to develop a repacking approach that did not consider FM radio stations, make any effort to minimize disruption to those stations or allow sufficient time to ensure that work could be completed during off-peak hours. In implementing legislation intended to mitigate the consequences of those policy choices, the Commission should not adopt a punitive policy that would unnecessarily cut off reimbursement based on wholly arbitrary conceptions of the effects associated with temporary service disruptions.

NAB urges the Commission not to adopt this flawed proposal, but instead to fully reimburse bystander FM radio stations for reasonable costs associated with maintaining service during the repack.

⁴ *Id.* at 8.

III. THE COMMISSION SHOULD STREAMLINE THE REIMBURSEMENT PROCESS FOR SMALL ENTITIES BY ADOPTING A “FAST TRACK” REIMBURSEMENT OPTION

The National Translator Association has proposed a streamlined “fast track” reimbursement process under which stations that agreed to limit repacking expenses to \$31,000 or less would not need to submit preliminary proposals or estimates.⁵ Rather, these stations would submit paid invoices documenting their expenses and, based on those invoices, would be eligible for reimbursement of 100 percent of their costs.⁶

While NAB generally supports the reimbursement procedures set forth in the NPRM, we urge the Commission to adopt this proposal or a similar process as an exception to those procedures. Many translators have extremely limited staff – in some cases just one person operating on a part-time basis. Preparing and submitting a detailed cost estimate represents a significant burden for these parties. Adoption of NTA’s fast track proposal would significantly reduce the administrative burdens for these stations, as well as for the Commission by reducing the number of cost estimates requiring review.

Further, adoption of this proposal could help contain costs. Stations with repacking expenses slightly higher than the fast track limit might nevertheless choose the fast track proposal for simplicity and certainty regarding reimbursement. This could enhance predictability for the Commission with respect to total demand on funding and actually reduce that demand – both of which could alleviate any perceived need for the Commission to adopt draconian cost control measures.

⁵ Comments of the National Translator Association at 3, MB Docket No. 18-214, GN Docket No. 12-268 (Sept. 21, 2018).

⁶ *Id.*

A fast track approach designed to simplify processing has been used in at least one previous spectrum relocation proceeding. In the 800 MHz band reconfiguration, the Commission's Transition Administrator established a fast track funding process under which relocated licensees with expenses below certain thresholds could receive expedited processing and bypass the ordinary need to negotiate specific costs with Sprint Nextel.⁷ This significantly streamlined the approval process for planning funding agreements for relocated licensees and almost certainly encouraged some licensees to submit funding requests that would allow them to come in under fast track thresholds. The Commission should consider a similar approach in this proceeding.

IV. THE COMMISSION'S FOCUS SHOULD BE ON PROTECTING VIEWERS AND LISTENERS

In considering additional issues raised in initial comments, we urge the Commission to be guided by Congress's clear intention to provide additional funding to ensure that broadcasters are made whole in the repacking process, and that viewers and listeners are protected to the extent possible. Three specific issues raised in initial comments are informed by this standard.

First, NAB urges the Commission to ensure that all repacked television stations are made whole to the extent possible using available funding. Cox Media Group, LLC has identified a situation where a repacked television station, WFOX-TV, will be forced to undergo significant additional expenses unrelated to its own repacking to remain on the air and continue to serve its viewers.⁸ Due to the repacking activities of another station, WFOX-TV will

⁷ 800 MHz Transition Administrator, *800 MHz Reconfiguration Program: Planning Funding Agreement Fast Track*, V 1.1 (Sept. 27, 2013) available at: http://www.800ta.org/content/resources/PFA_Fast_Track_Fact_Sheet.pdf.

⁸ Comments of Cox Media Group, LLC at 2-3, MB Docket No. 18-214, GN Docket No. 17-183 (Sept. 26, 2018).

be forced to choose between going off the air – during hurricane season in Florida – and self-funding facilities to remain on the air.

In its Incentive Auction Framework Order, the Commission declined to allow reimbursement for non-repacked stations that incur indirect expenses due to repacking activities for other stations based on concerns over potential exhaustion of available repacking funds.⁹ As a general matter, WFOX-TV is unquestionably eligible for funding as a repacked television station. The only question is whether the Commission should deem WFOX-TV eligible for funding to prevent viewer disruption due to another station's repacking activities. Now that significant additional funding is available, the Commission should consider whether a different conclusion is warranted to ensure that WFOX-TV's viewers can continue to receive service during the repack.

Second, because the Commission should be focused on protecting broadcast viewers and listeners, it should be wary of using newly appropriated funds to benefit other parties that do not serve those consumers. We continue to recommend that the Commission not allow indirect reimbursement of third parties that have already agreed to provide funding to previously ineligible entities, such as low power and translator stations. In its comments, T-Mobile argues that the Commission should reimburse T-Mobile for its funding of the repacking of displaced low power television and translator (LPTV) stations.¹⁰ These are voluntary commitments T-Mobile made, without the expectation of reimbursement, likely based on T-Mobile's political calculation that its early and aggressive deployment could backfire if it were

⁹ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, ¶ 602 (2014).

¹⁰ Comments of T-Mobile USA, Inc. at 1-2, MB Docket No. 18-214, GN Docket No. 17-183 (Sept. 26, 2018).

seen as forcing LPTV stations off the air. There is no reason for the Commission to act as an insurer for that commitment now, particularly if the Commission has any concern at all that funding may be inadequate. At a minimum, reimbursement for T-Mobile should be the lowest priority for the Commission, made available only after all broadcaster and MVPD expenses are fully reimbursed.

Finally, in its comments, Microsoft urges the Commission to allow displaced LPTV stations to seek reimbursement for filters that comply with the full service transmission mask for low power broadcasters.¹¹ Microsoft asserts that full service filters will better allow Microsoft to make use of white space channels following repacking.¹² Strictly as a technical matter, full service filters are not necessary to allow displaced low power television stations to move to new channels, and Congress's intent in appropriating additional funding to reimburse repacking expenses was certainly not to enable expanded opportunities for white spaces operations. Nonetheless, NAB supports steps to increase efficiency, and improved spectral efficiency may allow better use of the spectrum by both broadcast and non-broadcast users. Accordingly, NAB has no objection to allowing reimbursement for full service filters if these costs will not limit the FCC's ability to reimburse broadcasters for other expenses directly related to preserving or restoring service for displaced stations. Again, however, reimbursing broadcasters for expenses necessary to preserve service should be the Commission's top priority in this proceeding –not looking for opportunities to benefit white spaces proponents.

¹¹ Comments of Microsoft Corporation at 1, MB Docket No. 18-214, GN Docket No. 17-183 (Sept. 26, 2018).

¹² *Id.* at 1-2.

V. CONCLUSION

NAB commends the efforts of the Commission and its staff to develop a framework for reimbursing broadcasters, including newly eligible broadcasters, for expenses they will incur as a result of the involuntary repacking of television stations following the close of the incentive auction. We look forward to continuing to work with the Commission to resolve a limited number of outstanding issues and ensure that affected stations are able to minimize disruption to their viewers and listeners.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Rick Kaplan", with a long horizontal line extending to the right.

Rick Kaplan
Patrick McFadden
Robert Weller

October 26, 2018