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

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

COMMENTS OF
THE NATIONAL ASSOCIATION OF BROADCASTERS

September 26, 2018

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I. INTRODUCTION AND SUMMARY

The National Association of Broadcasters (NAB)[1] submits the following comments 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]

The successful close of the broadcast spectrum incentive auction in 2017 marked the end of the first phase of an innovative new model for spectrum reallocation. It also marked the beginning of a massive, complex and unprecedented relocation of nearly a thousand

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[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).

broadcast television stations to new channels. With the scope of this relocation more clearly understood, Congress acted in March to address four specific challenges for television viewers and radio listeners.

First, Congress allocated additional funding to reimburse television stations for their involuntary relocation, recognizing that the amount originally allocated had proved to be insufficient given the number of stations the Commission chose to repack. Second, because the scope of the repack meant that potentially hundreds of FM radio stations located on or near towers supporting repacked television stations could have to reduce power or shut down entirely for extended periods of time to protect tower workers, Congress made FM stations eligible for reimbursement for expenses needed to maintain service during repacking. Third, Congress made Low Power Television and TV Translator stations (LPTV stations) displaced by the auction and repack eligible for reimbursement for expensed necessary to move to new facilities. Fourth, Congress made funding available for consumer education efforts to ensure that viewers understand the steps necessary to ensure they can continue to receive over-the-air television signals.

As the Commission moves forward preparing to implement these provisions, it should be guided by the goals of minimizing disruption to viewers and listeners and treating broadcasters involuntarily affected by the repack fairly. As an initial matter, that means the Commission should not read into the appropriations language limitations that do not exist. In particular, the Commission should not treat the limitations Congress set forth for Fiscal Year 2018 funds as ceilings, since Congress included no such limitations for Fiscal Year 2019 funds.

Additionally, while NAB generally supports the Commission’s proposals with respect to both FM radio and LPTV stations’ eligibility for reimbursement, the Commission should not adopt a sliding scale for FM radio reimbursement based on the length of time a station will be off the air. This misguided proposal is wholly unnecessary, especially absent any indication that funding will be insufficient to reimburse all disrupted FM radio stations. It is also unduly restrictive and appears to be based on erroneous assumptions concerning the impacts of relatively brief disruptions of service. Further, it would have significant unintended consequences that would disproportionately impact small and rural radio stations and their listeners.

Finally, NAB generally supports the Commission's proposed processes and requirements for reimbursement, which largely mirror the existing reimbursement framework for repacked television stations. We urge the Commission to slightly modify this process to increase fairness and predictability for affected broadcasters and ensure that funds are made available as quickly as possible. In particular, we urge the Commission not to make reimbursement funds available in multiple allocations unless necessary, and instead to make 80 percent or more of reimbursable expenses available to impacted FM stations immediately.

NAB appreciates the speed with which the Commission is moving to implement Congress's directives, and the considerable thought the Commission has put into its proposals. We look forward to working with the Commission and all stakeholders to seek to minimize disruption and loss of service associated with the involuntary repack.

II. THE COMMISSION'S STATUTORY AUTHORITY

On March 23, 2018, Congress passed the Reimbursement Expansion Act (REA or Act).[3] The REA appropriated additional funding to reimburse repacked full power television stations,

[3] 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)).

made FM radio stations eligible for reimbursement for expenses for facilities necessary to reasonably minimize disruptions of service due to repacking,[4] and made LPTV stations that were displaced by the auction and repack eligible for reimbursement of expenses associated with moving to new channels.[5] The REA also authorized funding for the Commission to engage in consumer education related to the repack.[6] The NPRM seeks comment on the Commission's authority to use FY 2019 funds appropriated under the REA to reimburse only full power and Class A television stations, or to reimburse other broadcasters as well.[7] As described below, the Commission has authority to reimburse other broadcasters, not only repacked television stations, using FY 2019 funds.

A. The Commission Has Flexibility in Allocating Fiscal Year 2019 Funds

Of the $1 billion Congress appropriated in the REA, $600 million was appropriated for Fiscal Year 2018, and $400 million for Fiscal Year 2019.[8] While the REA specifically delineates maximum levels of funding for the FY 2018 funds, it sets forth no such spending caps for the FY 2019 funds.[9] Accordingly, the REA provides the FCC flexibility to determine how to allocate of FY 2019 funds.

At the outset, the plain language of the REA includes no limitations on how to allocate FY 2019 funds, in stark contrast to the express limitations for FY 2018 funds. It is a well-recognized principle of statutory construction that where "Congress includes particular

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[4] 47 U.S.C. § 1452(l)(1)(A).

[5] 47 U.S.C. § 1452(k)(1).

[6] 47 U.S.C. § 1452(j)(2)(A)(iv).

[7] NPRM at ¶ 24.

[8] 47 U.S.C. § 1452(j)(1)(A)-(B).

[9] 47 U.S.C. § 1452(j)(2)(A).

language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion."[10] In this instance, Congress specifically delineated how the FCC should allocate the FY 2018 funds. At the same time, Congress said nothing specific about expenditures from the $400 million FY 2019 fund. That does not suggest that Congress instructed the use of FY 2019 funds to only one of the previously delineated categories. If Congress had intended to limit the uses of FY 2019 funds to repacked television stations only, it knew how to state that expressly. Because Congress did not include any such specific limitations on the use of FY 2019 funds, the Commission should not now read them into the statute. Accordingly, the best reading of the statute is that Congress provided the Commission with discretion to use the FY 2019 funds to reimburse the affected services as it saw fit.

Furthermore, the particular language of the REA confirms that FY 2019 funds may supplement the funding levels made available in 2018. For example, section 511(j)(2)(A)(iii) of the Act provides that funds "shall be available to the Commission to make . . . payments" to FM stations, "*including* not more than $50,000,000 . . . from funds made available" for Fiscal Year 2018 (i.e., $600 million).[11] The term "including" must be read to allow for additional payments made to FM stations; payments that could only come from FY 2019 appropriations. In addition, in section 511(j)(2)(C)(iii), which concerns permissible payments to FM stations after April 13, 2020, the Act refers to "[a]mounts made available to the TV Broadcaster

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[10] *Rodriguez v. United States*, 480, U.S. 522, 525 (1987) (citing *Russello v. United States*, 464 U.S. 16, 23 (1983)).

[11] 47 U.S.C. § 1452(j)(2)(A)(iii) (emphasis added).

Relocation Fund by paragraph (1)" and does not suggest that such payments to FM stations are limited to only subsection A of that paragraph (i.e., FY 2018 funds).[12]

Finally, a contrary interpretation would lead to absurd results. There is no reason to assume that the absence of a specific direction as to how to allocate FY 2019 funds means the funds should only be available for full power and Class A television stations. If the Commission were to take the position that, because FM radio stations are not specifically mentioned with respect to FY 2019 funds they are not eligible for reimbursement from these funds, the Commission would be forced to conclude that *no* entities are eligible for reimbursement using FY 2019 funds because the REA does not specifically mention any eligible entities for these funds. Plainly, Congress did not appropriate $400 million for no one's use.

In short, as a matter of general statutory construction, specific analysis of the statutory language at play and the avoidance of an absurd, wasteful and harmful outcome, the only permissible interpretation of the REA is that Congress provided the Commission with discretion to allocate the FY 2019 funds as needed.

B. The Commission Should Only Prioritize Payments if Necessary

The NPRM asks how the Commission whether and how the Commission should prioritize reimbursement payments from FY 2019 funds if it is indeed authorized to use these funds to reimburse FM and LPTV stations.[13] NAB urges the Commission to adopt a prioritization scheme only if the facts prove that prioritization is necessary – which will be

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[12] 47 U.S.C. § 1452(j)(2)(C)(iii)

[13] NPRM at ¶ 25.

known once FM radio and LPTV stations have submitted cost estimates under rules adopted in this proceeding.

The Commission presently has no reason to believe that the $1 billion Congress appropriated will prove inadequate to reimburse all eligible entities for expenses associated with repacking and a limited basis, if any, for guessing where shortfalls are likely to arise. The Commission may have sufficient funds available to reimburse all eligible entities for expenses incurred during repacking, meaning that any prioritization at this point could prove unnecessary. Worse, establishing prioritization now could risk sending the wrong signals to, for example, FM radio stations considering investing in auxiliary facilities to maintain service during extended disruptions, potentially discouraging or minimizing such investment unnecessarily.

Instead, the Commission should wait until it has better information on the number of FM radio and LPTV stations impacted by the repack and the expected costs to construct auxiliary facilities. The Commission has a statutory deadline of March 23, 2019 to establish reimbursement rules for FM and LPTV stations.[14] At some point shortly thereafter, FM and LPTV stations will submit cost estimates. Together with updated information the Commission will have regarding the repacking expenses of television stations and MVPDs, these estimates will provide the Commission and all stakeholders with a more complete picture of total demands on available repacking funds. At that point, the Commission can more appropriately determine: (a) whether there is likely to be a shortfall; (b) what the likely magnitude of the shortfall will be; and (c) how best to prioritize payments, if necessary.

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[14] 47 U.S.C. § 1452(m)(1); NPRM at ¶ 8.

Waiting to see whether prioritizing reimbursement will be necessary is the most reasonable approach. If the Commission insists, however, on establishing a priority for payments now – before it is even clear if one will be needed – NAB recommends that the Commission proceed as follows. First, the Commission should allocate funds as soon as possible to ensure FM stations are reimbursed for 80 percent of actual or estimated costs and that FM stations are allocated at least the $50 million specified for FY 2018 funds. Second, the Commission should fully reimburse full power and Class A television stations that are involuntarily repacked. Third, the Commission should, assuming funds are available, fully reimburse FM radio stations affected by the repacking process. Fourth, the Commission should use remaining funds to reimburse displaced LPTV stations and translators for any costs exceeding $150 million.

NAB respectfully submits that full power television and radio stations should have priority over secondary services. LPTV stations, as secondary licensees, are subject to displacement by full power television stations at any time. The allocation of up to $150 million for these licensees – which were not guaranteed protection or replacement channels by the Spectrum Act – should be adequate. In the event it is not, these secondary licensees should yield to primary licensees with respect to reimbursement just as they do with respect to licensing decisions. Among full-power licensees, if the Commission is forced to establish rules for prioritization due to a shortfall in funds, full power and Class A television stations should receive priority because they will be moving to new permanent facilities – and a shortfall in funding could have a permanent impact on the facilities those stations are able to construct. Finally, the Commission should expend remaining funds on consumer education efforts only in the unlikely event additional funding is necessary and prudent.

III. FM STATION REIMBURSEMENT

A. Station Eligibility

NAB generally supports the Commission's proposals to define those FM radio stations eligible for reimbursement. NAB supports the NPRM's tentative conclusion that the term "FM broadcast station" as used in the REA includes both full-service FM radio stations and FM translator stations. The REA expressly provides that the term includes both classes of stations, and both classes meet the definitions set forth in the sections of the Commission's rules cited by the REA.[15] The NPRM also seeks comment on whether low-power FM (LPFM) stations should be considered "FM broadcast stations" under the REA and eligible for reimbursement. Because these stations meet the criteria for "FM broadcast stations" set forth in the sections of the Commission's rules the REA cites, they are plainly eligible for reimbursement.[16]

NAB also supports the Commission's proposal to require a causal link between reimbursable expenses and work associated with a repacked or license relinquishment station. The REA provides for reimbursement for FM stations for facilities necessary to minimize disruption "as a result of the reorganization of broadcast television spectrum" necessitated by the incentive auction.[17] Congress's intent was plainly to protect FM radio listeners by providing FM radio stations with funding for auxiliary facilities to stay on the air in the event they were forced to power down primary facilities located on or near those of an affected television station. The causal link the Commission describes is thus a reasonable gating requirement for reimbursement eligibility.

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[15] 47 U.S.C. § 1452(l)(2) citing 47 CFR §§ 73.310 and 74.1201.
[16] 47 U.S.C. § 1452(l)(2) citing 47 CFR § 73.310.
[17] 47 U.S.C. § 1452(l)(1).

NAB also supports the Commission's tentative conclusion that, to be eligible for reimbursement, FM stations must have been licensed and transmitting as of April 13, 2017, the date the incentive auction closed and the Commission released channel reassignments for repacked stations.[18] NAB agrees with the FCC that FM radio stations that began operations after this date, when information was publicly available with respect to the scope of the repack and the television stations specifically implicated, assumed the risk of disruption of service during repacking.[19]

Finally, the Commission should allow reimbursement for stations impacted by modifications made by television stations as a result of the alternate channel and expanded facilities windows.[20] These filing windows, authorized by the Commission in its incentive auction framework order,[21] plainly constitute part of the repack. Regardless of whether a television station is moving to its original channel or an alternate channel, an FM radio station's listeners will still be disrupted if the station must reduce power to accommodate repacking work.

B. Reimbursable Expenses

NAB supports many of the Commission's proposals with respect to defining eligible expenses for FM stations impacted repacking. In the NPRM, the Commission identifies three categories of FM stations potentially affected by repacking: (1) stations forced to relocate permanently; (2) stations forced to temporarily dismantle equipment or make other changes

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[18] NPRM at ¶ 52.

[19] *Id.*

[20] *Id.*

[21] *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report an Order, 29 FCC Rcd 6567, ¶ 553 (2014).

not requiring Commission approval; and (3) stations forced to temporarily reduce power or cease transmission on their primary facility to accommodate antenna or tower modifications.[22] NAB agrees that these three categories should cover the universe of affected stations and that the first two categories will likely include relatively few stations while the third category will be the largest.[23]

NAB further agrees that the REA's instruction that the Commission reimburse FM stations for facilities necessary to "reasonably minimize disruptions of service"[24] due to repacking means that FM stations may need to accept some minimal level of disruption during the repack.[25] The REA does not provide that disruptions of service be prevented entirely, only that they should be reasonably minimized. In defining this standard, we urge the Commission to seek to curtail listener disruption wherever possible, and not to take unnecessary or arbitrary shortcuts that harm stations or their listeners. Accordingly, we recommend that the Commission modify certain of its proposals as described below.

1. The Commission Should Clarify its 80 Percent Coverage Standard

The NPRM proposes a standard of 80 percent coverage of population or area served for interim facilities to minimize disruption for Category 3 stations. Under this proposal, then, a station would be eligible for reimbursement if it was forced to reduce power that resulted in a loss of service to 20 percent or more of its current population served or coverage area, and would be eligible for reimbursement for facilities necessary to cover 80 percent of the

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[22] NPRM at ¶ 53.

[23] *Id.*

[24] 47 U.S.C. § 1452(l)(1)(A).

[25] NPRM at ¶ 56.

population or service area it presently covers.[26] This 80 percent standard is borrowed from the Commission's standard for when a station provides service to a given community.[27] NAB does not object to this standard, with certain clarifications and modifications.

First, the Commission should clarify that stations should be reimbursed for interim facilities that cover at least 80 percent of coverage area and 80 percent of population served, not one or the other. If a service area has a significant percentage of its population concentrated in an urban core, it would certainly be unreasonably disruptive for the bulk of a station's listeners to lose service even though the station continued to provide service to 80 percent of the geographic area it serves. Similarly, because radio is a mobile medium and many listeners tune in on the go, preserving service only to an area where 80 percent of the population lives but not where they drive, work or travel would prove unreasonably disruptive.

Second, as a logical corollary, the Commission should clarify that stations are eligible for reimbursement if they must reduce power to accommodate repacking work and as a result will lose more than 20 percent coverage area or population served.

Third, while NAB does not object to the 80 percent threshold as a general rule, there may be instances where an FM station is simply unable to construct interim facilities that will cover 80 percent of its coverage area. For example, a station may be unable to find space on an existing tower that can accommodate interim facilities, and unable to secure necessary approvals for an alternate tower in time to avoid a loss of service. The Commission should make plain that stations will still be eligible for reimbursement for interim facilities even if

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[26] NPRM at ¶ 64.
[27] *Id.*

those facilities are unable to provide coverage to 80 percent of the station's service area or population served.

2. The Commission Should Not Adopt Its Proposed Graduated Scale for Reimbursement

The NPRM sets out a proposal for graduated reimbursement for stations depending on how long the service disruption due to repacking lasts.[28] Under this proposal, stations off the air for 10 or fewer days would be eligible for 50 percent of the expenses for interim facilities, stations off the air for 30 or fewer days would be eligible for would be eligible for 75 percent, and stations off the air for more than 30 days would be eligible for 100 percent.[29] This proposal fundamentally misapprehends the dramatic and damaging effect of going off air for FM stations and their listeners. It also would have disastrous and unintended policy consequences that could disproportionately impact small and rural broadcasters and their listeners. Moreover, since it is not based on any articulated rationale – i.e., why a station's length of time disrupted should correspond to what percentage of its costs are reimbursed – it is arbitrary and capricious. The Commission should abandon this proposal, and instead make at least 80 percent of reimbursable expenses available to all impacted FM stations in an initial allocation, without applying arbitrary distinctions based on the length of time a station will be off the air.

As described above, NAB agrees that the REA anticipates that FM stations may need to endure *some* level of disruption during repacking. NAB respectfully submits that the Commission's proposed 80 percent standard for coverage and population served already reflects a meaningful amount of disruption. Reimbursing stations fully for facilities to preserve

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[28] NPRM at ¶ 65.

[29] *Id.*

at least 80 percent of coverage, with exceptions for a limited number of overnight disruptions, represents a reasonable approach. The proposed graduated reimbursement scale, by contrast, would cause severe and unreasonable disruption to FM stations and their listeners.

First, the proposed off-air periods are wholly disconnected from the reality radio station owners and operators know all too well. Being off the air for a few days, which, under the NPRM's proposal would make a station eligible for only 50 percent reimbursement, would have dramatic and potentially irreversible impacts on listenership. If a station is off the air for days, listeners will simply conclude that they are no longer able to receive that station's signal, and they will stop attempting to tune in. For example, listeners typically have a limited number of "presets" to tune their favorite stations in their car. If a station is no longer available, even briefly, listeners will replace that preset with another station. Once that happens, it is incredibly difficult – and exorbitantly expensive – to win those listeners back through other avenues. The proposal's apparent assumption that a couple of days here and there is no big deal is simply uninformed.

Second, there is currently *no basis* for believing that the proposal, or anything like it, is necessary to preserve funds, and adoption of the proposal at this time would discourage efforts to maintain service during repacking. To the best of NAB's knowledge, the Commission has prepared no public or internal estimate for FM repacking expenses that suggests those expenses are likely to exceed $50 million, let alone any estimate that would suggest the draconian reimbursement scale set forth in the NPRM is required. Moreover, as noted above, the Commission has the ability to reimburse FM stations beyond $50 million, if necessary. Thus, the proposal risks sending dangerous messages to affected FM radio stations for no reason at all. If the Commission adopts this proposal, many small and rural FM stations that are unable to afford covering the expenses for interim facilities on their own may simply give up and make no effort to invest in such facilities. As a result, the proposal could discourage FM stations from standing up interim facilities and deprive listeners of important service for no good reason.

Third, the proposal creates perverse incentives for repacking vendors to extend the disruption of FM stations to ensure that those stations will be eligible for reimbursement – which will generate more business for the same vendors. The Commission has no jurisdiction over these vendors and is ill-equipped to even attempt to police slow-rolling.

A better and fairer approach would reimburse disrupted stations for all of their expenses associated with preserving service, while reflecting current practices for maintenance and tower work that FM stations follow today. Presently, broadcasters make every effort to coordinate work to limited overnight periods. Maintenance or service work is typically very limited in duration and conducted overnight wherever possible.

Accordingly, NAB recommends that, once the Commission has received cost estimates or actual expenses from impacted FM stations, it should immediately make 80 percent or more of costs available – including at a minimum the $50 million allocated in FY 2018 funds. We recommend that the Commission consider *de minimis* those service disruptions that can be confined to no more than five overnight work periods, with those periods defined as between the hours of 12:00-5:00 a.m., not the 10:00 p.m.-6:00 a.m. overnight window the NPRM suggests. Many stations have late programming that extends past 10:00 p.m., such as sports broadcasts, and many stations consider 5:00 a.m. to be the beginning of morning drive time. This proposal, combined with the Commission's 80 percent coverage standard, reflects the need for FM stations to be flexible and accept *some* disruption of service during repacking and is more consistent with actual industry practice. Finally, if and only if the Commission concludes that prioritization of payments is required based on cost estimates or actual expenses submitted by FM stations, the Commission should prioritize reimbursement of equipment costs and installation costs, followed by project management and other costs.

3. Additional Specific Recommendations

NAB generally supports the Commission's proposal not to reimburse FM stations for new or optional features that are not already present in a station's existing facilities. We caution, however, that technological advances may in some cases mean that previously optional or unavailable features are now standard. As a result, some upgrades may be inevitable. We also urge the Commission to clarify that maintaining a station's existing HD radio capability on interim auxiliary facilities should not be considered an upgrade or an optional feature.[30]

The NPRM also seeks comment on whether the REA would permit reimbursement of new studio transmitter link (STL) equipment for repacked television stations in light of a report accompanying an earlier version of the REA that instructed the FCC to consider reimbursement for STL equipment.[31] The NPRM notes that such costs are not currently considered reimbursable for repacked television stations.[32] In light of the REA, however, the Commission should reconsider this policy – and should certainly allow reimbursement for STL facilities for FM stations if needed. In some cases the justification for new STL facilities for FM stations may even be stronger than for television stations, since most television stations will be relocating to new channels but maintaining their facilities in their existing location. Impacted FM stations, on the other hand, will always need to move to new facilities – the very reason FM stations are affected at all by repacking is that they may need to power down at

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[30] NPRM at ¶ 71.

[31] *Id.* at ¶ 40, n. 131.

[32] *Id.* at ¶ 59, n. 182.

their current location to protect tower workers. Accordingly, while television stations may need new STL facilities if their existing equipment is located in the 600 MHz band, many affected FM stations may be even more likely to require new facilities.

The FCC should also be flexible in reimbursing stations for the minimum leasing term for a tower lease associated with auxiliary facilities. The NPRM proposes to reimburse stations only for lease payments incurred during the period of disruption, even if the minimum lease term is significantly longer.[33] We understand the FCC's concern that reimbursing, for example, a year long lease when disruption will only last for a month will result in additional demands on available funding. The only alternative, however, would be for stations themselves to absorb the additional costs associated with the minimum term of a tower lease, as stations will be powerless to "force" tower owners to accept a shorter term. This could result in some stations, particularly smaller or rural stations, being unable to establish interim facilities and maintain service.

NAB supports the proposal to reimburse tower construction expenses only upon a showing that no space is available on local towers that would allow the replication or preservation of service.[34] We expect that these instances will be very rare. Nevertheless, in the event a station is forced to construct a new tower, the Commission should not discount reimbursement based on the possibility that the new tower may provide the opportunity for new revenue.[35] Such revenues would be wholly speculative and, in any event, could be rivaled by increased operating expenses associated with a new tower.

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[33] NPRM at ¶ 68.

[34] *Id.* at ¶ 71.

[35] *Id.*

Finally, NAB supports the tentative conclusion that FM stations that have already received reimbursement from either a repacked television station that is already eligible for reimbursement or any other source should not be eligible for reimbursement. We also support the tentative conclusion that FM stations applying for reimbursement should be required to certify whether they have already received payments from any other source.[36]

IV. LPTV STATION REIMBURSEMENT

A. Station Eligibility

NAB generally supports the Commission's proposals to define LPTV and translator stations eligible for reimbursement. In particular, we support the proposal to define eligibility to include stations that were granted displacement construction permits as a result of filing applications in the FCC's Special Displacement Window (or prior to the window with a grant of a waiver, or subsequently amended prior to the close of the window).[37] We agree that any other outcome would risk reimbursing stations for facilities that they are ineligible to construct, which would only waste funds.

NAB also supports including stations whose applications were initially dismissed, but that refile an application when the Media Bureau lifts the freeze on such applications, assuming that application is ultimately granted.[38] Further, NAB supports the proposal to include analog-to-digital replacement translators that were eligible and did file displacement applications during the window.[39]

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[36] *Id.* at ¶ 55.
[37] NPRM at ¶ 29.
[38] *Id.* at ¶ 30.
[39] *Id.* at ¶ 35.

B. Reimbursable Expenses

NAB generally supports the Commission's proposals with respect to expenses eligible for reimbursement. In particular, we support the tentative conclusion to consider reasonable equipment and other costs necessary to construct facilities authorized by the grant of the station's displacement application as "reasonably incurred."[40] We urge the Commission to allow reimbursement for costs incurred by LPTV and translator stations that were displaced due to modifications by full power stations during the alternate channel and expanded facilities windows. As discussed above with respect to FM stations, these filing windows were authorized by the Commission in its incentive auction framework order and plainly constitute part of the repack.[41]

Also, as discussed above, NAB supports the proposal not to reimburse stations for new or optional features that are not already present in equipment being replaced. We note, however, that technological advances may mean some features are now standard in equipment and some upgrades may thus be inevitable.[42]

The NPRM also seeks comment on whether to reimburse LPTV stations and translators that may have received funding from other sources.[43] NAB respectfully submits that these stations should not be eligible for reimbursement for amounts they have already received or will receive from other sources. NAB recognizes that certain entities, including T-Mobile, volunteered to reimburse some LPTV or translator stations for the costs of relocation before

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[40] *Id.* at ¶ 40.

[41] *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report an Order, 29 FCC Rcd 6567, ¶ 553 (2014).

[42] NPRM at ¶ 43.

[43] *Id.* at ¶

Congress appropriated funding for this purpose. Those entities made their decisions when it appeared uncertain that reimbursement would be forthcoming from any other source and, to the extent the Commission has concerns that there may be insufficient funds to reimburse all eligible stations, the Commission should not effectively reimburse groups that have already made the decision to fund the relocation of displaced stations.

Finally, with respect to the prioritization of payments, if the Commission determines, after receiving cost estimates and actual expenses from displaced LPTV stations, that funding is insufficient to reimburse all expenses incurred by displaced LPTV stations, we support the Commission's proposal to prioritize the payment of certain hard costs, including equipment and installation over soft costs, such as project management fees.

V. THE REIMBURSEMENT PROCESS

The NPRM proposes reimbursement procedures that largely mirror those already in place for repacked television stations. At this point, these processes are well-understood by broadcasters as well as the consultants and attorneys they employ. Accordingly, NAB generally supports the NPRM's proposals for the submission of cost estimates and the process for making funds available. In particular, because many FM stations seeking reimbursement are likely to have already expended funds, we support the Commission's proposal to allow FM stations and LPTV or translator stations to submit actual expenses rather than cost estimates for costs already incurred.[44]

We do, however, recommend one modification to the FCC's proposals. We urge the FCC not to hold back funding for multiple allocations, as it has for repacked television stations, unless there is any reason to believe the available funds will be insufficient. Instead, as soon

[44] NPRM at ¶ 80.

as it receives cost estimates from FM stations and LPTV and translator stations, assuming sufficient funds are available, the FCC should immediately make 80 percent of estimated costs available to all eligible entities. Unless there is a concrete – not speculative – reason to believe the available funds will be insufficient, the FCC should consider making even more available in its initial allocation.

VI. CONCLUSION

NAB commends the Commission and its staff for moving quickly to implement the requirements of the REA. The NPRM has generally advanced a framework that will treat stations fairly and will protect viewers and listeners of broadcast television and radio stations that, through no fault of their own and with no potential benefit, will be forced to reduce service or relocate to new facilities.

We urge the Commission to embrace the flexibility that the plain text of the REA provides with respect to FY 2019 funds and reject an unsupported and unduly restrictive reading that would limit the Commission's discretion to allocate FY 2019 funds based on limits that plainly apply only to FY 2018 funds. Because the Commission has flexibility to allocate FY 2019 funds, it should avoid developing elaborate prioritization schemes that will likely prove unnecessary. In any event, the NPRM's proposed graduated reimbursement scale for FM radio stations is wholly disconnected from industry realities, will create wasteful incentives for repacking vendors and will disproportionately harm listeners of small and rural radio stations. The Commission should abandon this concept in its entirety.

We look forward to continuing to work with the Commission to resolve the limited number of outstanding issues and ensure that affected stations, as well as their viewers and listeners, are treated fairly in this process.

Respectfully submitted,

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