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

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

To: Media Bureau

COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS

The National Association of Broadcasters ("NAB")[1] submits these comments in response to the Media Bureau's request for comment on its draft TV Broadcaster Relocation Fund Reimbursement Form.[2] NAB appreciates the Bureau beginning work on the reimbursement form well ahead of the incentive auction, and we offer specific suggestions about the draft form and its instructions. We emphasize that the Bureau's and broadcasters' best efforts cannot create a process that mitigates the massive reimbursement shortfall that will result from the Commission's current repacking approach.

---

[1] The National Association of Broadcasters is a 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] *Media Bureau Seeks Comment on Draft TV Broadcaster Relocation Fund Reimbursement Form*, Public Notice, GN Docket No. 12-268, DA 14-1395 (Sept. 25, 2014) ("Bureau Notice").

I. UNLESS THE COMMISSION RE-EVALUATES ITS REPACKING APPROACH, FORMS AND PROCEDURES FOR REIMBURSEMENT CANNOT MAKE BROADCASTERS WHOLE.

The most important consideration for broadcasters facing repacking is not the form they will need to fill out; it is the number of stations that will be repacked. Ultimately, if the Commission proceeds with its wholly unconstrained approach to repacking, requiring well over 1,000 stations to change channels, the best forms, processes and cost estimates the Media Bureau and broadcasters can create will not matter – broadcasters will still be forced to go out of pocket to subsidize the acquisition of spectrum by wireless carriers.

The numbers are stark. NAB's analysis of information the Commission has released confirms that the Commission anticipates repacking more than 1,300 stations to clear 84 MHz of spectrum for auction. The $1.75 billion provided in the TV Broadcaster Relocation Fund will not allow full reimbursement for so many stations. In fact, NAB estimates a shortfall of at least $850 million, which will be born entirely by the broadcast industry, including hundreds of stations in the dozens of markets where the FCC will have no need to buy out stations.[3] Consequently, hundreds of millions of dollars in unrecoverable expenses will fall on stations that have literally nothing to gain from the auction.

Congress cannot possibly have intended this result. The Commission must either constrain repacking to the extent necessary to fit within the budget Congress set, or it

[3] *See* Reply to Oppositions to Petitions for Reconsideration of the National Association of Broadcasters, GN Docket No. 12-268, 3 (November 24, 2014) and Comments of the National Association of Broadcasters, GN Docket No, 12-268, 2-3 (November 12, 2014).

must require winning bidders in the forward auction to reimburse those stations forced to repack that cannot be reimbursed by the TV Broadcaster Relocation Fund.

Until the Commission takes action, NAB understands the Media Bureau has been put in an impossible position. The Commission has directed the Media Bureau to administer a process that will surely fail to fully reimburse participants. The best forms and processes will not solve the problem. Nevertheless, NAB appreciates the Media Bureau's efforts to try to mitigate the harm the current repacking approach will cause. To that end, the Media Bureau should strive to make the reimbursement process as simple as possible for broadcasters, and should provide as much information and as much opportunity for feedback and dialog with the Bureau as possible.

II. THE BUREAU SHOULD PROVIDE ADDITIONAL INFORMATION REGARDING HOW IT WILL EVALUATE PROPOSED COSTS.

Because the Commission currently has no plans to limit the number of stations that will be forced to involuntarily relocate, the Media Bureau should be as transparent as possible with respect to how reimbursement applications will be evaluated and how inevitably difficult decisions will be made. As noted above, NAB's analysis of repacking costs suggest that, using the optimistic cost ranges set forth in the Widelity Report, repacking may cost more than $2.6 billion. The TV Broadcaster Relocation Fund would only allow for reimbursement of about two-thirds of that amount, even ignoring reimbursement for MVPDs. Thus, the Media Bureau will not even be able to make the proposed 80 percent upfront payments available to all broadcasters before the TV Broadcaster Relocation Fund is completely exhausted.[4]

[4] Bureau Notice at 2, n. 8.

Broadcasters deserve as much transparency as possible as to how the Bureau will evaluate proposed costs as they are submitted. What standards will the Bureau use to evaluate and approve costs? Will the Bureau wait to begin approving cost estimates until a large number of cost estimates have been submitted to compare costs submitted by different stations? Will stations that submit cost estimates near the end of the three-month period be judged by different standards? How can Bureau decisions be challenged or appealed? How should stations in the border regions handle preparation of cost estimates if they do not know the channel to which they will be reassigned, or when that reassignment will be coordinated?

Moreover, the Commission has delegated authority to the Bureau to develop a prioritization scheme for reimbursement claims if future developments suggest that $1.75 billion will be insufficient to cover all eligible costs.[5] It now appears that broadcasters could be facing unfunded costs of *at least* $850 million.[6] Accordingly, the Bureau should develop and propose its "prioritization scheme" and seek comment on that scheme. How will the Bureau treat stations in the border regions that may not have channel assignments coordinated in time to submit cost estimates? Will the Bureau attempt to manage to the $1.75 billion fund by approving only portions of cost estimates as they are submitted? Will public broadcasters be reimbursed a higher percentage of their costs are reimbursed, or will all broadcasters will treated equally? Will broadcasters that are unable to submit their cost estimates within the three month period, due to resource constraints,

---

[5] *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, ¶ 650 (2014).

[6] Again, $850 million ignores MVPD reimbursable costs, which could easily drive the unfunded broadcaster mandate to a billion dollars or more.

the number of stations for which they must submit estimates, or other complicating factors, be presumed to be ineligible for reimbursement? The Bureau should be focusing on these questions and begin a public dialog as to how it will prioritize reimbursement as soon as possible.

III. THE BUREAU SHOULD CLARIFY THE "JUSTIFICATION" IT SEEKS WHERE COSTS EXCEED THE AMOUNTS IN THE COST CATALOG.

The instructions to the draft reimbursement form state that stations rejecting the predetermined cost estimates listed in the Cost Catalog as too low "must provide an explanation to justify the higher cost," but offer no insight into what the Bureau believes will constitute an adequate explanation.[7] A number of factors should inform the Bureau's thinking as to what will suffice to justify costs that exceed the predetermined cost ranges.

First, stations will have essentially no bargaining power with their vendors during this transition. The Widelity Report acknowledges that there is a "finite number of skilled, trained, and experienced resources" available to broadcast stations forced to relocate to new channels.[8] The Commission's unbounded approach to repacking exacerbates this already significant challenge, leaving stations largely at the mercy of the vendors during this process. If a station is able to obtain a written quote from its chosen vendor during this time, the Bureau should require no further justification beyond that quote.

Second, due to the compressed, three-month period stations will have for submitting cost estimates, most stations will *not* actually be able to procure firm cost

---

[7] Bureau Notice, Attachment B at 6.

[8] Widelity, Inc., Response to the Federal Communications Commission for the Broadcaster Transition Study Solicitation – FCC13R0003, DA 14-389A2, at 9 (Dec. 30, 2013) ("Widelity Report").

estimates from their vendors. In these cases, the Bureau should accept a statement that requested costs are good-faith estimates based on the experience of a station personnel as adequate justification for departure from the predetermined cost ranges. We understand the desire for speed in this process, in part to begin to distribute funds needed for relocation, but the Bureau cannot expect broadcasters to submit detailed explanations if they are unable to obtain vendor quotes.

Third, the current Widelity Report does not provide presumptively reasonable estimates of the costs associated with moving to new channel assignments. Broadcasters with experience relocating stations to new channels during the DTV transition do not believe the current Widelity Report provides a realistic range of estimated costs. Accordingly, setting a high bar for justifying departures from the cost ranges set forth in the report is unfounded. To the extent that the Cost Catalog ultimately serves as a basis for evaluating the reasonableness of estimated costs, the Bureau should put out a revised Cost Catalog for further comment to ensure the eventual Cost Catalog is as up to date as possible. As of this writing, the Widelity Report is almost a year out of date, and the Commission recently delayed the start of the auction until 2016.[9] The Bureau should also seek to ensure that the Cost Catalog realistically reflects potential price increases due to a surge in demand with more than a thousand stations seeking the services of a limited number of vendors during a limited period of time.

---

[9] Gary Epstein, Incentive Auction Progress Report, available at: http://www.fcc.gov/blog/incentive-auction-progress-report.

Finally, as discussed below, the Widelity Report presently does not reflect comments identifying additional categories of expenses that should be reimbursable.[10] When the Bureau does release a revised Cost Catalog for further comment, that catalog should reflect comments already received in this matter.

IV. THERE ARE A NUMBER OF SPECIFIC ISSUES WITH THE DRAFT FORM ITSELF.

Particularly given the Commission's decision to delay the auction until 2016. The draft reimbursement form is less important than the reimbursement questions discussed above. Nevertheless, NAB appreciates the Bureau's solicitation of comments on the draft form, and offers the following specific recommendations.

First, we have previously identified several categories of expenses that appear to be absent from the form.[11] These include, for example: equipment to change translator input channels; land for new towers or facilities; contractual liability to a tower landlord or other site users; differences in tower rent; new or modified power plant equipment (including generators); the extension of electricity to a new site; new or modified STL and ICR facilities; construction performance bonds; legal fees in connection with zoning, environmental, and historical preservation compliance issues, real estate, and tax advice; expenses to ensure delivery via microwave or fiber to cable headends or satellite local receive facilities that are no longer reached by new facilities or that are necessary on a temporary basis to bridge a gap in full power operations; replacement of wireless

---

[10] *See* NAB Comments, GN Docket No. 12-268, at 6 (April 21, 2014) ("NAB Widelity Report Comments").

[11] *See* NAB Widelity Report Comments at 6; *see also* NAB Comments, GN Docket No. 12-268, Appendix A (Jan. 25, 2013).

microphones, -interruptible foldback (IFB), and headsets that are displaced from now unused TV channels; additional or "bridge" insurance; tax consequences (e.g., depreciation schedules rendered inaccurate); and grant-related expenses (e.g., storage costs for equipment mandated to be retained for the life of the grant but rendered unusable by repacking or granted funds that must be reimbursed due to repacking). While the form does contain generic "other" categories, we respectfully submit that a form that has more cost categories lumped into "other" expenses than listed on the form itself is useful neither for the Bureau nor for broadcasters. Further, because stations are required to explain how costs are developed for cost categories not included in the Cost Catalog, the Bureau should include these categories in the Cost Catalog – which will save both the Bureau and broadcasters time and effort.

Second, there are additional cost categories we would recommend including. Under the section of the form addressing transmission line changes, there should be an option for including costs to modify existing transmission lines, not just for new transmission line costs. Under the section for professional services, a category for outside architectural and engineering services should be included – this is a significant omission.

Third, as a general matter, the form should be made as flexible and user-friendly as possible. For example, where there are text boxes on the form, these should not have a limited number of characters, and stations should have the option of attaching documents providing responses rather than including them in text boxes. Fill-in-the-blank options are generally preferable to a list of fixed selections among which one must choose. Similarly, each category of costs should include an "other" option. It may also be helpful to include the cost ranges in the Cost Catalog next to each line item in the form, to assist broadcasters in determining whether their estimated costs fall within or outside the ranges – rather than forcing broadcasters to continually refer back to the Cost Catalog.

Finally, the form should be easy to amend as broadcasters get more information concerning their cost estimates and the actual transition of their stations. The goal should be for broadcasters to receive complete reimbursement for all costs incurred during the transition to their eventual licensed facilities on new channels.

V. CONCLUSION.

NAB appreciates the Bureau's efforts in engaging the industry to make the reimbursement form as usable as possible, and we hope the Bureau will incorporate our suggestions. Until the Commission takes concrete steps to impose some limits on repacking, however, repacked broadcasters remain at risk of being forced to donate hundreds of millions of dollars to subsidize the incentive auction – a problem that a form cannot fix. We urge the Commission to focus its energies on solving that problem, rather than on how to administer what is shaping up to be a catastrophe for broadcasters.

Respectfully submitted,

NATIONAL ASSOCIATION OF BROADCASTERS
1771 N Street, NW
Washington, DC 20036
(202) 429-5430

Rick Kaplan
Jerianne Timmerman
Patrick McFadden

Victor Tawil
Bruce Franca
Robert Weller

November 26, 2014