

**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**



**AMERICAN CABLE**  
A S S O C I A T I O N

The American Cable Association (“ACA”) hereby submits these comments in response to the Federal Communications Commission’s (“Commission”) Notice of Proposed Rulemaking on LPTV, TV Translator and FM Broadcast Station Reimbursement (“NPRM”).<sup>1</sup> The NPRM seeks comment on rules to implement Congress’s directive to reimburse certain low power television (“LPTV”), television translator (“TV translator”), and FM broadcast stations for costs incurred as a result of

---

<sup>1</sup> *LPTV, TV Translator and FM Broadcast Station Reimbursement; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, FCC 18-113, MB Docket No. 18-214; GN Docket No.12-268 (rel. Aug. 3, 2018) (“NPRM”).

the Commission’s spectrum incentive auction.<sup>2</sup> The NPRM proposes to establish a “mechanism for reimbursing these newly eligible entities that is substantially similar to the process [the Commission] currently use[s] to reimburse full power and Class A licensees and MVPDs[.]”<sup>3</sup>

ACA takes no position on the Commission’s proposals related to the procedural rules for the reimbursement of LPTVs, TV translator, and FM broadcast stations, but rather focuses these comments on the NPRM’s inquiries into the use of funds appropriated to the TV Broadcast Relocation Fund (“Reimbursement Fund”) for 2019. The Reimbursement Expansion Act (“REA”) directs specific amounts to be used in 2018 for the reimbursement of LPTV, TV translator, and FM broadcast stations, and for consumer education, but is less specific as to the purpose of an additional \$400 million appropriated for 2019. The NPRM seeks comments on whether the 2019 funds must be used only for reimbursement to full power and Class A stations, and multichannel video programming distributors (“MVPDs”), or whether they may be used for other purposes.<sup>4</sup> Additionally, the NPRM asks whether and how the 2019 funds should be prioritized if the the Commission does interpret the statute to permit the 2019 funds to be used for purposes other than reimbursing full power and Class A stations, and MVPDs for costs reasonably occurred in the repacking process.<sup>5</sup>

The Commission should interpret the REA to give MVPDs, and full power and Class A stations priority access to 2019 funds to ensure that they are reimbursed for

---

<sup>2</sup> *Id.*, ¶ 1, *citing* 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)).

<sup>3</sup> NPRM, ¶ 2.

<sup>4</sup> *Id.*, ¶ 24.

<sup>5</sup> *Id.*, ¶ 25.

reasonable costs incurred in the repacking process. Not only is this interpretation the best reading of the statute, but it is consistent with Congress' priorities. Congress has consistently prioritized reimbursement of MVPDs and full power and Class A stations over all others. In 2012, when Congress first directed the Commission to set aside \$1.75 billion in auction revenues as a Reimbursement Fund, it made clear that those funds were to be used only to reimburse eligible broadcast stations and MVPDs for relocation expenses. It was only years later that the Reimbursement Fund, as part of the REA, was expanded to allow payments for other purposes. Even so, Congress still prioritized the needs of MVPDs and full power and Class A stations in that statute, specifically appropriating \$350 billion to these entities for fiscal year 2018. In contrast, Congress appropriated only \$250 million for the reimbursement of other entities and for other purposes: \$150 million for LPTV and TV translator stations, \$50 million for FM broadcast stations, and \$50 million for consumer education.

The NPRM also asks whether, to the extent that the Commission determines it is permitted to use the \$400 million appropriated for 2019 for these other entities and purposes as well, it should "consider the reimbursement of costs above those aggregate amounts for FM and LPTV/translator stations only after full power and Class A expenses are fully satisfied[.]"<sup>6</sup> As an initial matter, regardless of what authority the Commission may believe it possesses regarding the allocation of the \$400 million for 2019, along with full power and Class A stations, MVPDs must be among those who are fully satisfied before the Commission reimburses FM and LPTV/translator stations, as MVPDs have always been included among Congress's top priorities for reimbursement.

---

<sup>6</sup> NPRM, ¶ 25.

Most MVPDs, and full power and class A stations around the country will incur costs during the repacking process (and, indeed, many already have), and the demand for reimbursement funds has been great. More than 1,200 entities submitted Form 399 – the first step in the reimbursement process – during the spring and summer of 2017 in the hopes of receiving funds from Congress’s initial appropriation of \$1.75 billion. In October of last year, after reviewing over 1,200 requests submitted by broadcast stations, the Commission determined that the aggregate reimbursement demand for that initial allocation was roughly \$1.84 billion – nearly \$100 million more than the total amount originally appropriated by Congress. Since then, broadcasters have submitted over 5,000 additional Form 399s. It was this high demand for the Reimbursement Fund that led Congress to allocate more money to it.

To date, only 136 small and mid-sized MVPDs have filed Form 399, but hundreds more are expected to seek reimbursement over the next two years as over 1,000 broadcast stations complete their transitions and move to new channels. Many small MVPDs did not file Form 399 in time for the Commission’s initial allocation because local broadcasters did not know or share their post-auction transition plans. Others who did file may have underestimated their costs because they did not have sufficient information. Now that the transition is underway, and broadcasters are making cable operators aware of their specific plans, small cable operators have shown a renewed interest in the reimbursement program.<sup>7</sup> It is likely that many of these small cable operators will make more demands of the fund in the future.

---

<sup>7</sup> ACA recently hosted a webinar for its members in which Commission staff explained the post-auction transition process and the steps that cable operators must take to seek reimbursement. This proved to be one of ACA’s most popular webinars of the year, with over 200 participants.

Given the already high demand for reimbursement, and the expectation that further requests will be submitted (especially from small cable operators whose needs are still uncertain), it is likely that the additional \$350 million appropriated for MVPDs and full power and Class A stations in the REA for 2018 will not be enough to reimburse those entities for all reasonable costs. Indeed, it is entirely plausible that the full \$400 million appropriated for 2019 will be needed in order to make those entities completely whole (and even that may not be entirely sufficient). It would be unfair, therefore, to permit LPTV, TV translator, and FM stations to access the funds appropriated for 2019 until all entities for whom the Reimbursement Fund was originally created are fully satisfied.

ACA appreciates that Congress intended for LPTV, TV translator, and FM broadcast stations to be reimbursed for reasonable costs incurred during the post-auction transition, and has appropriated up to \$200 million to be used solely for that purpose (plus an additional \$50 million for consumer education). However, Congress's first priority has been, and continues to be, the reimbursement of funds expended by MVPDs, and full power and Class A stations, which is why it initially excluded all other entities from the Reimbursement Fund. While Congress has put aside a limited amount for other purposes in 2018, there is no question that Congress's primary goal in creating the Reimbursement Fund in the first place was to make MVPDs, and full power and Class A stations whole. To honor Congress's intention, the Commission should interpret the REA so that the \$400 million appropriated for 2019 goes to the needs of MVPDs, and full power and Class A stations. If the Commission believes it has some flexibility to use 2019 funds to reimburse LPTV, TV translator, and FM broadcast

stations, or to conduct further consumer education, it should not commit funds for those purposes until the needs of the MVPDs and full power and Class A stations are accounted for.<sup>8</sup>

Respectfully submitted,



Matthew M. Polka  
President and Chief Executive Officer  
American Cable Association  
Seven Parkway Center  
Suite 755  
Pittsburgh, Pennsylvania 15220  
(412) 922-8300

Mary C. Lovejoy  
Vice President of Regulatory Affairs  
Ross J. Lieberman  
Senior Vice President of Government  
Affairs  
American Cable Association  
2415 39th Place, NW  
Washington, DC 20007  
(202) 603-1735

September 26, 2018

---

<sup>8</sup> At the very least, the Commission should ensure that the \$400 million appropriated for 2019 is proportioned among eligible entities based on the funding ratios established by Congress, taking into account both its appropriations in 2012 and in 2018, such that no more than 10.64 percent of the \$400 million (or \$42.55 million) is allocated to purposes other than reimbursing MVPDs and full power and Class A stations.