

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MB Docket Nos. 18–214, GN Docket No. 12–268; FCC 19–21]

### LPTV, TV Translator, and FM Broadcast Station Reimbursement

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission adopts rules to implement Congress's directive in the 2018 Reimbursement Expansion Act (REA) that the Commission reimburse certain Low Power Television and television translator stations and FM broadcast stations, for costs incurred as a result of the Commission's broadcast television spectrum incentive auction. In the REA, Congress provided additional funding for the TV Broadcaster Relocation Fund and expanded the list of entities eligible to receive reimbursement for costs reasonably incurred as a result of the reorganization of broadcast television spectrum to include LPTV/translator and FM stations. This document adopts rules relating to eligibility, expenses, and procedures the Commission will use to provide reimbursement to these entities and mandates the use of various measures designed to protect the Reimbursement Fund against waste, fraud, and abuse.

**DATES:** *Effective date:* These rules are effective April 25, 2019.

*Compliance date:* Compliance will not be required for § 73.3701 until the Commission publishes a document in the **Federal Register** announcing the compliance date.

**FOR FURTHER INFORMATION CONTACT:** Maria Mullarkey, *Maria.Mullarkey@fcc.gov* of the Media Bureau, (202) 418–1067. For additional information concerning the PRA information collection requirements contained in this document, contact Cathy Williams, Federal Communications Commission, at (202) 418–2918, or via email *Cathy.Williams@fcc.gov*.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order (*R&O*), MB Docket Nos. 18–214; GN Docket No. 12–268; FCC 19–21, adopted on March 15, 2019 and released March 15, 2019. The full text is available for inspection and copying during regular business hours in the FCC Reference Center, 445 12th Street SW, Room CY–A257, Portals II, Washington, DC 20554. This document is available in alternative formats

(computer diskette, large print, audio record, and Braille). Persons with disabilities who need documents in these formats may contact the FCC by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

*Compliance date:* The amendments of the Commission's rules as set forth in the Final rules section are effective thirty (30) days after publication in the **Federal Register**. Section 73.3701 contains new or modified information collection requirements that require review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. Compliance will not be required for § 73.3701 until after approval by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing that compliance date.

*Paperwork Reduction Act of 1995 Analysis:* This document contains new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, will invite the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document in a separate **Federal Register** Notice, as required by the Paperwork Reduction Act of 1995, Public Law 104–13, *see* 44 U.S.C. 3507. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

*Congressional Review Act:* The Commission will send a copy of this *R&O* to Congress and the Government Accountability Office (GAO) pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

### Synopsis

1. In this *R&O*, the Federal Communications Commission (Commission) adopted rules to implement Congress's directive in the 2018 Reimbursement Expansion Act (REA) that the Commission reimburse certain Low Power Television (LPTV) and television translator (TV translator) stations (together LPTV/translator stations), and FM broadcast stations (FM stations), for costs incurred as a result of the Commission's broadcast television spectrum incentive auction. In the REA, Congress provided additional funding for the TV Broadcaster Relocation Fund

(Reimbursement Fund) and expanded the list of entities eligible to receive reimbursement for costs reasonably incurred as a result of the reorganization of broadcast television spectrum to include LPTV/translator and FM stations. This *R&O* adopts rules relating to eligibility, expenses, and procedures the Commission will use to provide reimbursement to these entities and mandates the use of various measures designed to protect the Reimbursement Fund against waste, fraud, and abuse.

### Amounts Available for Reimbursement

2. The Commission concludes that the REA permits it to use the funds appropriated to the Reimbursement Fund for fiscal year 2019 to reimburse eligible LPTV/translator and FM stations as well as full power and Class A stations and MVPDs. The Commission also concludes that it will prioritize payments to full power, Class A, and MVPD entities over payments to LPTV/translator and FM stations. Specifically, the Commission will use the \$400 million appropriated for fiscal year 2019 first to reimburse full power, Class A, and MVPD entities for any expenses eligible for reimbursement that have not already been reimbursed before using any remaining fiscal year 2019 funds to reimburse LPTV/translator and FM stations for eligible expenses not already reimbursed above the amounts allocated for those purposes by the REA for fiscal year 2018. All commenters that addressed the issue of the Commission's discretion to use fiscal year 2019 funds agreed that the statute permits the funds to be used to reimburse any eligible recipient of reimbursement funds. No commenter argued that the \$400 million for fiscal year 2019 is only available to reimburse eligible full power and Class A stations and MVPDs.

### Statutory Interpretation

3. The REA appropriates a total of \$1 billion in additional funds for the Reimbursement Fund, \$600 million in fiscal year 2018 and \$400 million in fiscal year 2019. Section 511(j)(2) of the REA discusses the "availability of funds" and provides that, if the Commission makes the required certification, "amounts made available to the TV Broadcaster Relocation Fund by [Section 511(j)(1)] shall be available to the Commission to make" certain specified payments. In particular, Section 511(j)(2)(A) states that funds appropriated in Section 511(j)(1) shall be available to the Commission to make payments required by the Spectrum Act and the REA, including "not more than" \$350 million to reimburse full power and Class A stations and MVPDs from

fiscal year 2018 funds, “not more than” \$150 million to reimburse LPTV and TV translator stations from fiscal year 2018 funds, and “not more than” \$50 million to reimburse FM stations from fiscal year 2018 funds. It also states that funds appropriated in Section 511(j)(1) shall be available to the Commission to make payments “solely for the purposes of consumer education relating to the reorganization of broadcast television spectrum,” including \$50 million from the funds available for fiscal year 2018. The REA contains no such express delineation of how the funds available for fiscal year 2019 are to be allocated. The Commission sought comment in the Notice of Proposed Rulemaking (*NPRM*) (83 FR 43613) on whether the \$400 million appropriated to the Reimbursement Fund for fiscal year 2019 is available only to reimburse eligible full power and Class A stations and MVPDs or whether the REA also permits this money to be used to reimburse LPTV, TV translators, and FM stations as well as to fund the Commission’s consumer education efforts.

4. The Commission concluded that the REA does not prohibit use of the \$400 million appropriated to the Reimbursement Fund for fiscal year 2019 from being paid to any specific category of eligible station or for consumer education. This interpretation of the statute is consistent with widely-accepted principles of statutory construction. The REA contains no limitations on how to allocate the fiscal year 2019 funds among the various eligible entities and consumer education. Therefore, the Commission believes the text of the statute plainly provides it with authority, or at minimum can reasonably be construed as providing the Commission with authority, to use fiscal year 2019 funds to reimburse all entities eligible under the statute and for consumer education.

#### *Prioritization of Fiscal Year 2019 Funds*

5. The Commission will prioritize the payment of fiscal year 2019 funds to full power and Class A stations and MVPDs over the payment of newly eligible LPTV/translator and FM stations. After eligible full power, Class A, and MVPD entities have been reimbursed using fiscal year 2019 funds, any funds remaining from the \$400 million appropriated for fiscal year 2019 will be used to reimburse eligible LPTV/ translators and FM stations. The Commission agreed with American Cable Association (ACA) that this approach toward prioritization of fiscal year 2019 funds is most consistent with Congress’s intent with respect to

reimbursement. Full power, Class A, and MVPD entities were Congress’s top priority for reimbursement when it adopted the Spectrum Act, which established the Reimbursement Fund and allocated \$1.75 billion to be used to reimburse eligible full power and Class A stations and MVPDs for their incentive auction-related expenses. Further, in the REA, Congress appropriated \$350 million for full power, Class A, and MVPD entities in fiscal year 2018 as compared with appropriations of \$150 million for LPTV/translator stations and \$50 million for FM stations in fiscal year 2018. In light of Congress’s prioritization of full power, Class A, and MVPD entities with respect to the amount of money appropriated for reimbursement of these entities, the Commission believed it is appropriate to use the \$400 million appropriated for fiscal year 2019 to first reimburse full power, Class A, and MVPD entities before using any remaining fiscal year 2019 funds to reimburse newly eligible entities.

6. While no commenter argued that the Commission should not prioritize between eligible entities if there is a shortfall of funds, some contended that the Commission should postpone a prioritization decision until more information is available. However, the Commission disagreed with National Association of Broadcasters (NAB) and HC2 that it should wait to adopt a prioritization scheme until after LPTV/ translator and FM stations have submitted cost estimates and, at that point, only if it becomes clear that the demand on repacking funds will exceed the funds available, making prioritization necessary. If the Commission were to defer making a prioritization decision until LPTV/ translator and FM station cost estimates are submitted and evaluated by the Commission and Fund Administrator, this could delay payments to all reimbursable entities from the fiscal year 2019 funds, as none of those funds could be spent until a full assessment of the demand of all entities was completed. In addition, establishing a prioritization method later could require additional public comment, further delaying the distribution of fiscal year 2019 funds. As noted above, the Commission’s determination that the \$400 million allocated for 2019 should be used first to pay full power, Class A, and MVPD entities is consistent with congressional priorities, making any delay in developing a prioritization scheme unnecessary.

7. The Commission also declined to adopt NAB’s argument that primary full

power FM stations should be prioritized over secondary LPTV and TV translator stations. NAB argued that, because LPTV stations are secondary licensees and therefore subject to displacement by full power and Class A television stations, they should “yield to primary licensees with respect to reimbursement” as they do with respect to licensing. The Commission rejected this approach. The text of the statute suggests no such priority for FM stations vis-à-vis LPTV and TV translator stations, which serve as an important source of programming in many communities.

#### **LPTV and TV Translator Stations—Eligibility and Expenses**

##### *Stations Eligible for Reimbursement*

8. *LPTV/Translator Stations.* The Commission found that pursuant to the REA, LPTV/TV translator stations, as defined by the Commission’s rules, are eligible for reimbursement from the Reimbursement Fund if they satisfy the remaining eligibility criteria.

9. *Special Displacement Window Criteria.* The Commission adopted its tentative conclusion that, in order to be eligible for reimbursement, a station must be an LPTV/translator station that was eligible to file and did file an application during the Special Displacement Window. In order to be eligible to file in the Special Displacement Window, the LPTV/ translator station must have been “operating” on April 13, 2017—the date of the release of the Closing and Channel Reassignment Public Notice. For this purpose, a station was “operating” if it either had licensed its authorized construction permit facilities or had an application for a license to cover on file with the Commission on that date. Further, in order to be eligible to file in the Special Displacement Window, a station must also have been “displaced . . . as a result of the broadcast television spectrum incentive auction.”

10. The Commission further adopted its tentative conclusion that, to be eligible for reimbursement, a station’s displacement application filed during the Special Displacement Window (or prior to the window with grant of a waiver, or subsequently amended prior to the close of the Settlement Window) must have been granted. The Commission continues to believe that this additional criterion is essential to ensure the integrity of the reimbursement program and is consistent with Section 511(k)(1), which requires reimbursement of only costs reasonably incurred to “relocate . . .

television service from one channel to another channel . . . or otherwise modify [a] facility.” The Commission believes that eligibility must be limited to stations with valid displacement construction permits, obtained through the procedural mechanisms associated with the Special Displacement Window, that will permit them to construct the displacement facilities for which they receive reimbursement. Otherwise, providing reimbursement to eligible stations whose applications are not granted will result in reimbursement for expenses related to facilities that will not be constructed to “relocate . . . television service from one channel to another channel . . . or otherwise modify [a] facility.” NAB supported defining eligibility to include stations that were granted displacement construction permits as a result of filing a Special Displacement Window application, arguing that “any other outcome would risk reimbursing stations for facilities that they are ineligible to construct, which would only waste funds.” No commenter opposed this tentative conclusion.

11. The Commission adopted its tentative conclusion that if an LPTV/translator station displaced by the repacking process filed in the Special Displacement Window, had its application dismissed, and subsequently files a displacement application when the Media Bureau lifts the freeze on the filing of such applications, it will be eligible for reimbursement under the REA if its later-filed displacement application is granted. NAB and HC2 supported this tentative conclusion, and no one opposed it. Although they would receive their construction permit through a displacement application that was not filed during the Special Displacement Window, the Commission concluded that these stations meet the threshold eligibility criteria under the REA because such stations were “eligible to file and [did] file an application” in the Special Displacement Window. The Commission concluded that such stations are affected by the reorganization of broadcast television spectrum in the same way as other displaced LPTV/translator stations. Such stations may request and be granted a waiver of any reimbursement program filing deadlines that occur prior to that station’s filing of the construction permit application. However, for practical purposes, the Commission will limit such stations to only those that have a granted construction permit by whatever final

deadline the Commission set for the submission of reimbursement expenses and only to the extent funds remain available for LPTV/translator stations in the Reimbursement Fund.

12. *Licensed and Transmitting Eligibility Criteria.* The Commission adopted its proposals as set forth in the *NPRM* defining the REA’s mandate that stations must be “licensed and transmitting for at least 9 of the 12 months prior to April 13, 2017” to be eligible to receive reimbursement. The statute specifies that “the operation of analog and digital companion facilities may be combined” for purposes of the “licensed and transmitting” requirement. Stations that were licensed or that had an application for a license to cover on file with the Commission on April 13, 2017, will be considered “licensed” for purposes of REA reimbursement eligibility.

13. With regard to the “transmitting” element, the Commission adopted its proposed definition requiring that LPTV/translator stations must have been operating not less than 2 hours in each day of the week, and not less than a total of 28 hours per calendar week for 9 of the 12 months prior to April 13, 2017, in order to be eligible for reimbursement. This approach relies on the Commission’s minimum operating schedule rule for commercial full power television broadcast stations. Given the finite nature of the Reimbursement Fund, it is necessary to give reasonable meaning to the eligibility criteria set forth in the REA, including the requirement that stations must have been “transmitting” during the relevant period. The Commission believes that this requirement reflects the legislative mandate that only “transmitting” stations be eligible to receive reimbursement.

14. HC2 supported imposing minimum operating requirements for stations to meet the “transmitting” component of the reimbursement eligibility criteria, and NAB expressed general agreement with the Commission’s proposals to define LPTV/translator stations eligible for reimbursement. The Commission agreed with HC2 that “it is appropriate for the limited pool of LPTV reimbursement funds to be applied to LPTV stations that have demonstrated their commitment to, and have invested resources in, consistent operations.” The Commission disagreed with the LPTV Spectrum Rights Coalition (LPTV Coalition) that, because there is no minimum daily operating requirement for LPTV/translator stations in the Commission’s rules, the Commission’s proposal is inconsistent with actual

business practices based on the rules. The Commission did not believe that the current rules on LPTV/translator station operating requirements should be determinative of the meaning of “transmitting” in the REA for purposes of eligibility for reimbursement. Congress expressly included a “transmitting” requirement in the statute, and the Commission found that the inclusion of this requirement reflects Congress’s intent to ensure that reimbursement funds are placed into the hands of stations that are actually operating and whose viewers stand to lose service as a result of their displacement absent such reimbursement. Further, because there are no minimum operating requirements for LPTV/translator stations in the Commission’s rules, Congress could not have intended to use the transmitting rule applicable to LPTV/translator stations to define “transmitting” because that would render the term superfluous.

#### *Other Eligible Stations*

15. *Early Displaced Stations.* The Commission adopts the *NPRM*’s proposal that LPTV/translator stations that were displaced prior to the opening of the Special Displacement Window but were eligible to file and did file in the Special Displacement Window are eligible for reimbursement under the REA. Commenters support the proposal, and no commenter opposes it. As noted above, approximately 340 LPTV/translator stations were displaced prior to the Special Displacement Window due to T-Mobile’s decision to commence operations or conduct FAA testing on some of its 600 MHz spectrum prior to the Special Displacement Window. The Commission provided tools for these early-displaced stations to continue to be able to operate, including allowing the stations to submit displacement applications prior to the opening of the Special Displacement Window with a request for waiver of the current displacement freeze, together with a request for Special Temporary Authority to temporarily operate the facility. The Commission also explained that it would treat these applications as if filed on the last day of the Special Displacement Window and process them in accordance with the rules for that window. As a result, these stations are eligible for reimbursement.

16. *Replacement Translators.* The Commission adopts the *NPRM*’s proposal finding that analog-to-digital replacement translators (DRTs) are eligible for reimbursement pursuant to the REA. In the *Incentive Auction R&O* (79 FR 48442), the Commission

concluded that DRTs authorized pursuant to § 74.787(a)(5) of the Commission's rules that were displaced by the incentive auction and repacking process were eligible to file displacement applications during the Special Displacement Window. Because DRTs were displaced as a result of the reorganization of broadcast television spectrum, were eligible to file in the Special Displacement Window, and are considered "TV translators" and licensed under the same part 74 rules as other TV translator stations, the Commission concluded that displaced DRTs also are eligible for reimbursement pursuant to the REA, provided that they meet the other eligibility requirements. NAB generally supports this proposal, and no commenter opposes it.

17. The Commission adopts the NPRM's tentative conclusion that digital-to-digital replacement translators (DTDRTs) are not eligible for reimbursement under the REA. In the *LPTV DTV Third R&O* (81 FR 5041), the Commission established a new DTDRT service to allow eligible full power television stations to recover lost digital service area that could result from the repacking process. The Commission concluded that full power stations could begin to file for DTDRTs beginning with the opening of the Special Displacement Window on April 10, 2018, and ending one year after completion of the incentive auction transition period. Although they were eligible to file in the Special Displacement Window, and DTDRTs are similar to DRTs in that they are considered "TV translators" and licensed under the same Part 74 rules as other TV translator stations, the Commission concludes that new DTDRTs are not eligible for reimbursement under the REA because they would not have been "licensed and transmitting" for 9 of the 12 months prior to April 13, 2017, as required by the statute. In addition, even if they were otherwise eligible under the statutory criteria, DTDRTs are newly established facilities and thus are not "relocat[ing] . . . from one channel to another channel" or "modify[ing]" their facilities as required by the statute. NAB generally supports this tentative conclusion, and no commenter opposes it.

18. *Class A Television Licensees.* The Commission adopts its tentative conclusion in the NPRM that (1) Class A stations reimbursed from funds under the Spectrum Act or the additional full power/Class A funding in the REA are not eligible for reimbursement from funds dedicated to LPTV/translator reimbursement under the REA; and (2)

"a low power station that has been accorded primary status as a Class A television licensee that receives reimbursement under Section 511(k)(1) of the REA" and "that filed in the Special Displacement Window" is not eligible for reimbursement under the Spectrum Act. No commenter disagrees with its interpretation.

19. Further, the Commission finds that the group of Class A stations (the "Class A Commenters") that filed for and obtained their Class A licenses after February 22, 2012, but were not eligible to participate in the incentive auction or receive reimbursement under the Spectrum Act and were subsequently displaced as a result of the repacking process but availed themselves of the opportunity to file for a new channel in the first "priority" filing window for repacked stations in 2017, are not eligible for reimbursement from REA funds dedicated to LPTV/translator stations. The Class A Commenters assert that their Class A stations should be eligible for reimbursement under the REA. In the incentive auction proceeding, the Commission declined to protect in the repacking process Class A licensees that did not file an application for a Class A authorization until after February 22, 2012, the date of enactment of the Spectrum Act. The Class A Commenters' stations were among the Class A stations that were not protected in the repacking as a result of this decision. Moreover, they were not eligible for reimbursement under the Spectrum Act. The Class A Commenters acknowledge that the REA establishes certain eligibility criteria in order to claim reimbursement of costs reasonably incurred as a result of the repacking. They contend, however, that their Class A stations meet these eligibility criteria for reimbursement under the REA. The Commission disagrees.

20. The REA specifies that a "low power television station" eligible for reimbursement is one "defined in § 74.701 of title 47, Code of Federal Regulations . . . that was licensed and transmitting for at least 9 of the 12 months prior to April 13, 2017." The Class A Commenters' stations have been Class A television stations, which are authorized under part 73 of its rules, since 2013 when they filed license applications to convert their low power television stations to Class A status. At no time during the relevant time period for reimbursement under the REA—April 13, 2016, through April 13, 2017—were they authorized or operating as low power television or television translator stations under part 74 of its rules. Although Class A Commenters

argue that Congress must have intended to include Class A stations in the definition of LPTV in the REA because otherwise Section 1452(k)(3) would be rendered "superfluous," the Commission disagrees. Rather, the Commission believes that Section 1452(k)(3) reinforces Congress's intent that for purposes of the REA, like the Spectrum Act and reimbursement program generally, the two categories of stations remain distinct.

21. In addition, the REA provides that "[o]nly stations that are eligible to file and do file an application in the Commission's Special Displacement Window are eligible to seek reimbursement." The Commission interprets the statutory term "Special Displacement Window" in accordance with the Commission's use of that term before the passage of the REA because neither the REA nor the Communications Act defines the term, and "Congress' repetition of a well-established term generally implies that Congress intended the term to be construed in accordance with pre-existing regulatory interpretations." Consistent with the Commission's use of the term "Special Displacement Window," the Commission interprets that term as limited to the filing window opening on April 10, 2018 and closing on June 1, 2018 during which operating LPTV/translator stations subject to displacement had an opportunity to file for a new channel. In contrast, the Class A Commenters filed construction permit applications for new channels during the first "priority" filing window for repacked stations in 2017, and not during the Special Displacement Window that opened in 2018, and thus they fail to satisfy the second prong of the statutory eligibility standard. The Commission disagrees that the term "Special Displacement Window" in the REA should be interpreted to include applications filed in the first priority filing window. When the Commission declined to exercise its discretion to protect approximately 100 out-of-core Class A eligible LPTV stations that had not filed a Class A application by February 22, 2012, it stated that any LPTV station that filed a Class A application after that date and was displaced in connection with the incentive auction would be provided "with an advance opportunity to locate a new channel." The Commission later specifically identified that "advance opportunity" as the "first filing opportunity" for alternate channels. Commission statements evidence an intent that the early filing opportunity for displaced Class A stations be treated

separately from the Special Displacement Window for displaced LPTV/translator stations. Thus, the Commission disagrees that the term “Special Displacement Window” in the REA should be interpreted to include applications filed by the Class A Commenters during the first priority filing window.

22. Class A Commenters also argue that finding them eligible would be consistent with “Congress’s desire to ensure that all broadcasters are reimbursed for their costs incurred as a result of the post-auction transition.” The REA, however, does not require that the Commission reimburse all broadcasters for their costs. The REA specifically limits reimbursement to costs reasonably incurred after January 1, 2017, by LPTV/translator stations that were displaced by the incentive auction, were licensed and operating for nine of the 12 months prior to April 13, 2017, and which filed during the Special Displacement Window. Congress restricted eligibility under the REA to LPTV/translator stations that, as defined by § 74.701 of the rules, filed displacement applications during the Special Displacement Window—a group that does not include part 73 Class A television stations that were permitted to file for and obtain new channels outside the Special Displacement Window.

#### *Expenses Eligible for Reimbursement*

##### *Costs Reasonably Incurred*

23. The REA provides that the Commission “shall reimburse costs reasonably incurred by a television translator station or low power television station on or after January 1, 2017, in order for such station to relocate its television service from one channel to another channel or otherwise modify its facility as a result of the reorganization of broadcast television spectrum” under the Spectrum Act. The Commission adopts the *NPRM*’s tentative conclusion that equipment and other costs necessary for an eligible LPTV/translator station to construct the facilities authorized by the grant of the station’s Special Displacement Window application shall be considered costs “reasonably incurred,” subject to the specific restrictions described herein. Commenters generally support its tentative conclusion that equipment and other costs necessary to construct the facilities authorized by grant of a Special Displacement Window application be considered “reasonably incurred” under the REA.

24. The Commission affirms its belief that the “comparable” facilities

reimbursement standard adopted for repacked full power and Class A stations cannot, as a technical matter, be applied to displaced LPTV/translator stations. As it explained in the *NPRM*, the post-auction channel assignments for full power and Class A stations specified in the *Closing and Channel Reassignment PN* were made at stations’ existing locations and largely replicated stations’ pre-auction facilities, while displaced LPTV/translator stations may need to move their transmitter and antenna locations as well as change channels. In addition, in order to continue providing service to viewers from a new site, displaced stations may need to increase effective radiated power and height which could require the purchase of other equipment not necessarily “comparable” to existing equipment. Below, the Commission offers additional clarification about the eligibility of specific expenses that were addressed in the record.

25. *Full Service Mask Filters*. The Commission finds that the costs for full service mask filters are reimbursable if they were specified in the station’s Special Displacement Window application as granted by the Commission. Consistent with its finding that the equipment and other costs necessary to construct the facilities authorized by grant of a Special Displacement Window application will be deemed “reasonably incurred” under the REA, the Commission also finds that displaced stations will be permitted to seek reimbursement for the costs associated with the emission mask specified in their granted construction permit application. The Commission notes that even prior to the release of the *NPRM* in August 2018, LPTV/translator stations that filed in the Special Displacement Window had already determined what level of filter to utilize and specified that filter in the station’s Special Displacement Window application. To date, over 94 percent of these applications have already been granted or dismissed. Given that these stations selected their mask filter level without knowing whether this equipment would be reimbursed, the Commission finds that their selection of a particular level is unlikely to have been influenced by the availability of reimbursement.

26. Several commenters support reimbursement for the costs of full service mask filters, and only one, NTA, objects. Although NTA opposes reimbursement for full service mask filters on the grounds that “there is no justification for a station adopting a particular filter beyond its own needs, and receiving government

reimbursement [for that expense],” the Commission finds, given the timing of their selection as discussed above, that there was no incentive for a station to specify a level of filter that is not appropriate for its needs. Moreover, the Commission notes, that as a practical matter, unless there are adjacent channel facilities in a displaced LPTV/translator station’s vicinity, specifying a full service mask rather than a simple or stringent mask confers no benefit to the station. Use of a full service mask permits a displaced station to choose a channel that would not otherwise be available because a simple or stringent mask would not adequately confine out-of-channel emissions to operations on adjacent channels. For these reasons, the Commission believes that its approach of reimbursing the mask filter that was specified in the displacement applications is a reasonable one.

27. *Translator Microwave/STL Facilities*. The Mohave County Board of Supervisors (Mohave County) filed comments describing how the repacking of the television band has impacted its network of translators in western Arizona, including modifications to existing terrestrial microwave facilities to allow a displaced translator station to continue to feed its signal on its new channel to another translator station. Mohave County requests that the Commission reimburse such costs. The Commission believes that Mohave County’s request is best addressed on a case-by-case basis in the context of a request for reimbursement. Further, LPTV Coalition maintains that displaced LPTV stations may need to replace studio transmitter links (STLs) and requests that the Commission reimburse such costs. The Commission finds that there may be some instances where reimbursement for STLs may be appropriate, such as where LPTV stations incur expenses for STL adjustments associated with a change in location resulting from the reorganization of broadcast television spectrum. The Fund Administrator and the Media Bureau will review the specific circumstances presented by any entity claiming reimbursement for microwave facilities or STLs to determine whether they are eligible for reimbursement under the statute.

28. *Displacement Caused by Modification Filings*. In the *NPRM* the Commission noted that, while the Commission’s reorganization of television spectrum under Section 1452(b) of the Spectrum Act was completed with the issuance of the *Closing and Channel Reassignment PN*, the Commission also afforded reassigned stations the opportunity to

file applications for alternate channels or expanded facilities during two filing windows that ended on September 15, 2017, and November 2, 2017. While applications filed by reassigned stations during the two filing windows were not required under Section 1452(b) of the Spectrum Act, they may have resulted in displacement of LPTV/translator stations making those stations eligible to file applications in the Special Displacement Window. Accordingly, the Commission sought comment on whether the REA's requirement that the Commission reimburse costs reasonably incurred "as a result of the reorganization of broadcast television spectrum" extends to include costs incurred by LPTV/translator stations that were displaced solely due to modifications made by full power and Class A facilities as a result of receiving authorizations through these two filing windows. The Commission agrees with NAB that "these filing windows were authorized by the Commission in its incentive auction framework order and plainly constitute part of the repack." Thus, it concludes that reimbursing LPTV/translator stations for such costs is consistent with the REA. No commenter opposes this proposal.

#### Equipment Upgrades and Reuse of Existing Equipment

29. The Commission adopts the *NPRM's* proposal with respect to equipment upgrades and reuse of existing equipment. In implementing the Spectrum Act's reimbursement provisions, the Commission concluded that it would not reimburse stations for new, optional features in equipment that are not already present in the equipment being replaced, and the Commission proposed to apply the same approach to eligible LPTV/translator stations. In addition, consistent with its approach for full power and Class A stations, the Commission proposed a similar requirement that displaced LPTV/translator stations reuse their own equipment to the extent possible, and that displaced LPTV/translator stations seeking reimbursement provide a justification why it is reasonable to purchase new equipment rather than reuse existing equipment.

30. Consistent with the approach the Commission has taken when reimbursing full power and Class A stations, the Commission will not provide reimbursement for optional features beyond those already present in the station's facilities. NAB and HC2 support the proposal not to reimburse stations for new or optional features that are not already present in the equipment being replaced, but also note that

"technological advances may mean some features are now standard in equipment and some upgrades may thus be inevitable." The Commission acknowledges that some stations may not be able to replace older, legacy equipment with equipment that is precisely comparable in functionality because of advances in technology. If the cost to replace certain equipment is reasonably incurred so that an LPTV/translator station can construct its granted Special Displacement Window construction permit facility, the Commission will reimburse for the cost of that equipment, recognizing that the equipment may include some improved functionality.

31. With respect to equipment repurposing, consistent with the approach the Commission has taken in reimbursing full power and Class A stations, LPTV/translator stations should reuse their own equipment to the extent possible and, if seeking reimbursement for new equipment, provide a justification when submitting their cost estimates as to why the cost to purchase new equipment rather than modify their current equipment to conform to their displacement construction permit is "reasonably incurred." LPTV Coalition asserts that "[m]any in the LPTV industry did not reinvest[] into new equipment if they knew they were going to be displaced by the auction [and] many of the transmission systems are in need of replacement and upgrading. Upgrading when they build out their new construction permits should be allowed as much as possible." The Commission disagrees. The Commission does not believe that the cost for new equipment can be considered "reasonably incurred" if the station already has a functional piece of equipment it can use rather than replace. The Commission also notes that almost 80 percent of LPTV/translator stations transitioned from analog to digital, mostly since the end of the DTV transition in 2009, and it has no basis for concluding that a significant amount of this relatively new digital equipment is in need of replacement.

#### Interim Facilities

32. The Commission will consider on a case-by-case basis whether expenses for interim facilities are eligible for reimbursement under the REA for LPTV/translator stations. The Commission acknowledges that in the *Incentive Auction R&O*, the Commission concluded that stations that are assigned a new channel in the incentive auction repacking process may need to use interim facilities to avoid prolonged periods off the air during the transition

and decided to reimburse full power and Class A stations for such facilities under the Spectrum Act reimbursement provisions. Because of their lower operating power and the fact that the engineering work that is involved in changing channels is more limited than for full power television stations, the Commission stated in the *NPRM* that it did not believe that LPTV/translator stations will need to construct interim facilities as part of the displacement process and the Commission proposed that such expenses should not be eligible for reimbursement under the REA for LPTV/translator stations. However, LPTV Coalition contends that LPTV stations may need to implement interim facilities in certain circumstances. While the Commission thinks it is unlikely that LPTV stations will need interim facilities, it will consider the facts presented on a case-by-case basis.

#### Lost Revenues

33. The REA, like the 2012 Spectrum Act, explicitly prohibits reimbursement of LPTV/translator stations for "lost revenues." As proposed in the *NPRM*, the Commission adopts the same definition it adopted in the *Incentive Auction R&O* and that it apply to full power and Class A stations in the existing reimbursement program for "lost revenues." Specifically, it defines "lost revenues" as those "that a station loses as a direct or ancillary result of the reorganization of broadcast television spectrum, including the repacking process and the reallocation of UHF spectrum in conjunction with the incentive auction." Under this definition, for example, it will not reimburse a station's loss of advertising revenues while it is off the air during its displacement, or for refunds a station is required to make to advertisers for payments for airtime as a result of being off the air in order to implement a channel change. The Commission agrees with LPTV Coalition that it simply is not practical to permit reimbursement for lost revenues and also believe that allowing reimbursement for these expenses would unduly burden the Reimbursement Fund.

#### Costs To Resolve Mutually Exclusive Applications

34. The Commission adopts the *NPRM's* proposals to prohibit reimbursement of costs associated with resolving mutually exclusive applications. The REA provides that "[t]he Commission may not make reimbursement . . . for costs incurred to resolve mutually exclusive applications, including costs incurred in any auction

of available channels.” Applications filed during the Special Displacement Window that remain mutually exclusive will be resolved through competitive bidding. The Commission interprets the prohibition against reimbursing for “costs incurred in any auction” to mean that the Commission may not reimburse LPTV/translator station auction bidders under the REA for the costs related to filing an auction application associated with a competitive bidding process, participating in such an auction, and winning bid payments. The Commission also concludes that costs associated with the Settlement Window to resolve mutual exclusivity will not be reimbursed under the REA. Thus, the Commission will not reimburse stations for costs in resolving mutual exclusivity, including engineering studies and preparing application amendments, or the payment of other stations’ expenses as part of a settlement. However, the Commission will permit reimbursement for certain engineering costs reasonably incurred in constructing the facilities resulting from settlement and coordination between mutually exclusive applicants. For example, as suggested by LPTV Coalition, the cost for a channel study used to settle a mutually exclusive group may be reimbursed if it can be demonstrated that the same channel study is subsequently used to support an amendment to a displacement application.

#### Stations With Other Sources of Funding

35. The Commission finds that stations that receive or have received reimbursement of certain expenses from sources of funding other than the Reimbursement Fund are not eligible to receive reimbursement for those expenses from the Reimbursement Fund. Section 511(k)(3)(A) of the REA specifies that Class A stations that receive reimbursement from “any other source” may not receive reimbursement under the REA. While the REA did not explicitly set forth an identical requirement for LPTV/translator stations, the Commission believes that the statute as reasonably interpreted extends a similar prohibition to LPTV/translator stations. The REA requires the Commission to “reimburse costs reasonably incurred.” Congress did not define these terms in the REA, the Spectrum Act, or the Act. The dictionary definition of the term “reimburse” is to “pay back to someone: repay”; “to make restoration or payment of an equivalent to.” For stations that are reimbursed by a third party, there is nothing for the Commission to “pay back” or for which to “make

restoration” because the stations have already been made whole. Indeed, as a practical matter, monies from the Reimbursement Fund would be used to reimburse T-Mobile, which does not qualify as an entity eligible for reimbursement under the REA.

36. NAB and Class A Commenters agree that stations that have already received, or will receive, funding from other sources should not be eligible for reimbursement. T-Mobile disagrees, arguing that “a cost that is reimbursed by another source of funding is still a ‘cost . . . incurred’ by the station under the statute, given that a station must first incur such costs before seeking reimbursements from third parties.” LPTV Coalition likewise contends that the Commission should reimburse stations pursuant to the REA even if they have received funding from other sources. The Commission disagrees. Those commenters’ position ignores the fact that the station will be made whole for certain expenditures through reimbursement from another source of funding. Such an approach could potentially result in windfall payments to LPTV/translator stations above the costs they reasonably incurred to relocate from one channel to another or otherwise modify their facilities, and at a minimum would require the Commission to investigate the private contractual or other relationships between parties to assure that duplicate payments are not made. The Commission believes it far more likely that Congress did not intend to permit such obvious windfalls. In any case, the Commission finds it axiomatic that sound administration of federal funds requires that no expense is eligible for reimbursement if the same expense is funded from another source. Such a conclusion could subject the Reimbursement Fund to waste, fraud, and abuse.

37. Consistent with its holding above that the REA prohibits duplicative payments, the Commission will not reimburse displaced stations for costs for which they have already received reimbursement funding from T-Mobile’s Supplemental Reimbursement Program or its translator reimbursement grant program administered through PBS. In the *NPRM*, the Commission sought comment on whether displaced LPTV/translator stations that have received reimbursement from T-Mobile for a particular expense should receive reimbursement for that expense pursuant to Section 511(k)(1). In its comments, T-Mobile argues that stations that receive funding from third parties should be eligible for reimbursement under the REA after making a

certification to prevent the double recovery of their relocation expenses. The Commission rejects this argument and agrees with NAB that the Commission “should not effectively reimburse” third parties that already made a voluntary commitment to fund the relocation of displaced LPTV/translator stations before they were aware that any federal source of funding would be available through the REA. The Commission should not, after those business arrangements are established, stand as an insurer of T-Mobile’s commitment. There is no question that entities that are not displaced stations, such as T-Mobile and PBS, are not eligible to receive direct reimbursement from the Reimbursement Fund because they do not meet the eligibility requirements under the REA. While T-Mobile proposes that stations certify that they will use their REA reimbursement proceeds to promptly reimburse third parties such as T-Mobile and PBS, the Commission does not believe that such certification would satisfy the Commission’s obligation to ensure that the limited fund is administered only to reimburse costs that are not otherwise subject to reimbursement from other sources. Furthermore, T-Mobile does not propose a mechanism for the Commission to audit and ensure that the REA reimbursement funding is in fact transferred between these private parties. The Commission believes that such a certification could require the Commission staff to act as an auditor for the two reimbursement programs established by T-Mobile at both risk and expense to the government. The Commission should not insert itself into such private commercial transactions absent clear statutory direction that it does not find in the REA. The Commission finds, however, that if T-Mobile’s reimbursement is less than the amount for which the station would be eligible under the reimbursement rules and procedures adopted in this proceeding, the station may request reimbursement from the Reimbursement Fund for any shortfall.

38. The Commission requires displaced stations to certify on their reimbursement submissions that they have not received nor do they expect to receive reimbursement from other sources for costs for which they are requesting reimbursement from the REA, and it also requires stations to first seek reimbursement from other sources before seeking reimbursement of any potential shortfall under the REA. This includes but is not limited to sources of funding such as insurance or existing

state grants. This is consistent with the approach taken in connection with reimbursement of full power and Class A stations, where, for example, it has required stations to first seek reimbursement from an insurer before seeking reimbursement from the Commission. NTA asks that the Commission clarify that it will reimburse state or municipal government-owned translators where the reimbursement funds will be returned to the governmental entity. According to NTA, “Congress did not intend to penalize states and local governments that maintain translators,” and reimbursing these government-owned translators should not be considered a duplicative payment. The Commission agrees with NTA and clarifies that its decision on duplicative payments does not implicate the eligibility of translators that are licensed to governmental entities. Such translators are eligible for reimbursement, just as any other eligible translator station that files in the Special Displacement Window and incurs costs due to its displacement.

#### **FM Broadcast Stations—Eligibility and Expenses**

##### *Stations Eligible for Reimbursement*

39. The Commission finds that pursuant to the REA, FM stations are eligible for reimbursement from the Reimbursement Fund if they satisfy the criteria described below.

##### **FM Broadcast Stations and FM Translator Stations**

40. The Commission adopts the tentative conclusion in the *NPRM* that “FM broadcast stations” includes both full-service FM stations and FM translator stations. NAB supports this tentative conclusion, and no commenter disputes it. Congress defined “FM broadcast stations” in the REA by referencing §§ 73.310 and 74.1201 of the Commission’s rules. Section 73.310 defines an FM broadcast station as “[a] station employing frequency modulation in the FM broadcast band and licensed primarily for the transmission of radiotelephone emissions intended to be received by the general public.” Additionally, Congress specifically stated that FM translator stations as defined in § 74.1201 of the Commission’s rules would be eligible for reimbursement.

41. The Commission also concludes that low-power FM (LPFM) stations qualify for reimbursement. In the *NPRM*, the Commission sought comment on whether LPFM stations, which were not specifically referenced

in the REA, should nonetheless be considered “FM broadcast stations” for reimbursement purposes. It noted that such stations meet the criteria for “FM broadcast station” set forth in § 73.310 of the rules and are licensed under part 73 of the rules like full-service FM stations. Both NAB and REC are in favor of reimbursement eligibility for LPFM stations, and no commenter opposes this interpretation. REC argues that even though LPFM stations are secondary services, because they originate programming, have Emergency Alert System equipment, and hold responsibilities as broadcasters, they should be considered FM broadcast stations for reimbursement purposes. For all these reasons the Commission concludes that LPFM stations qualify for reimbursement.

##### **Licensed and Transmitting at Time of Repack**

42. For LPTV/translator stations, as noted above, the REA defines eligibility by reference to licensing and transmitting prior to a specific date (April 13, 2017). It includes no such specific reference in addressing FM stations. The Commission adopts its tentative conclusion that to be eligible for reimbursement under the REA, an FM station must have been licensed and transmitting on this same date, using facilities impacted by a repacked television station. The Commission also adopts its tentative conclusion that only those costs associated with the impact at that location will be considered eligible. It believes it is necessary and appropriate to impose some reasonable standards on the eligibility of stations to be reimbursed from the Reimbursement Fund, and it concludes that it should place the same limitation on FM stations that is applied to LPTV/translator stations. As explained in the *NPRM*, the Commission chose this date because it is the date on which reverse auction winners and the television stations subject to the repack were identified in the *Closing and Channel Reassignment PN*, and it tentatively concluded that any FM station that began operating on a facility or at a location impacted by a repacked television station after that date voluntarily assumed the risk of any potential disruption of service to the FM station. NAB, the only commenter to address this issue, agrees with this rationale and supports using a “licensed and transmitting on April 13, 2017” standard for eligibility of FM stations. Thus, the Commission adopts this tentative conclusion and finds that any costs incurred by FM stations that undertook such a risk are not

“reasonably incurred” under the statutory standard and therefore are not eligible for reimbursement under the REA.

43. The Commission affirms its conclusion that there must be a causal link between the facilities for which reimbursement is sought and repack-related work to a full power or Class A television station. The REA requires reimbursement “to reasonably minimize disruption of service as a result of the reorganization of broadcast television spectrum under [47 U.S.C. 1452(b)].” In the *NPRM*, the Commission tentatively concluded that an FM station can experience a service disruption “as a result of the reorganization of broadcast television spectrum under [47 U.S.C. 1452(b)]” either because a full power or Class A television station has been reassigned to a new channel in the *Closing and Channel Reassignment PN*, or because a full power or Class A television station relinquished spectrum usage rights in the reverse auction. In either case, modification of the full power or Class A television station may impact the FM station. The Commission interpreted the statutory language to require a causal link between the facilities being reimbursed and the activities associated with the station relinquishing spectrum rights or the repacked full power or Class A television station, and likewise interpreted this provision to mean that only the FM broadcast facilities directly impacted by the repacked television station would be eligible for reimbursement. The Commission believes that this interpretation of the REA is consistent with Congress’s provision of limited funds for FM facility reimbursement. NAB agrees that the clear intent of the REA was to require a causal link between work done because of repacking or channel relinquishment and expenses for which an FM station seeks reimbursement, and no commenter disputes its interpretation.

44. Consistent with its finding with respect to LPTV/translator stations, the Commission concludes that reimbursing FM stations for costs incurred due to television station modifications resulting from authorizations received through the alternate channel/expanded facilities filing windows is consistent with the REA. The Commission sought comment on whether the REA’s requirement that it reimburse costs incurred by FM stations to “reasonably minimize disruption of service as a result of the reorganization of broadcast television spectrum under [47 U.S.C. 1452(b)]” extends to costs incurred by FM stations solely due to modifications

made by full power and Class A facilities as a result of receiving authorizations through the two alternate channel/expanded facilities filing windows. NAB urges the Commission to permit reimbursement under the REA for work done because of modifications as a result of receiving authorizations through the alternate channel/expanded facilities filing windows. The Commission agrees with NAB that “these filing windows, authorized by the Commission in its incentive auction framework order, plainly constitute part of the repack.”

#### Categories of Eligible FM Stations

45. In the *NPRM*, the Commission proposed three categories of stations that the Commission anticipated will encounter any disruption of service as a result of the reorganization of broadcast television spectrum such that they would be eligible for reimbursement under the REA. The Commission adopts its proposal to assign affected FM stations to the three categories of service disruption set forth below, and to allow reimbursement to FM stations in these three categories:

46. *Category (1)—Stations Forced to Relocate Permanently.* The Commission proposed that this eligibility category include FM stations required either to vacate their towers, and which therefore incur costs for alternative facilities at a different site, or to relocate permanently their antennas to a different level of their current towers.

47. *Category (2)—Stations Forced to Temporarily Dismantle Equipment or Make Other Changes Not Requiring Commission Approval.* The Commission proposed that this eligibility category include FM stations required temporarily to dismount or disassemble equipment, most likely antennas, in order to accommodate work on a television antenna or a tower. The Commission also proposed that this category include FM stations required to physically move their transmitter to accommodate new television transmission equipment, and also include other types of necessary equipment modifications that do not require Commission approval.

48. *Category (3)—Stations Forced to Temporarily Reduce Power or Cease Transmission on Their Primary Facility to Accommodate Antenna or Tower Modifications.* The Commission proposed that this eligibility category would include those FM stations that are required to reduce power or go off the air to protect workers making modifications to television facilities on a tower from RF exposure. FM stations in other eligibility categories could also

qualify as Category (3) stations if they otherwise meet the reimbursement requirements.

49. As noted in the *NPRM*, the Commission believes that reimbursing FM stations for the types of service disruptions described in these categories is consistent with its statutory mandate to reimburse FM stations for “costs . . . for facilities necessary for such station to reasonably minimize disruption of service as a result of the reorganization of broadcast television spectrum.” NAB “agrees that these three categories should cover the universe of affected stations,” and no commenter disagrees with the categorization of FM stations proposed above or suggests additional categories.

50. The Commission also adopts its tentative conclusion that FM stations will be required to certify that they have not received or do not expect to receive payment from other sources for interim facilities constructed or leased as a result of repack-related service disruptions. Section 511(l)(1)(C) of the REA specifies that an FM station that has received payment for “interim facilities” from either a television station that was reimbursed under the Spectrum Act or “from any other source” may not receive “any reimbursements” under the REA. Based on the statutory language, the Commission concludes that any FM station that has received such payment for “interim facilities,” is ineligible for any reimbursement under the REA. Commenters agree with these conclusions. As discussed above, the Commission believes the government should not act as an insurer with regard to voluntary reimbursements made by third parties.

#### Expenses Eligible for Reimbursement

51. In the *NPRM*, the Commission observed that the REA requires the Commission to provide reimbursement for “costs reasonably incurred by an FM broadcast station for facilities necessary for such station to reasonably minimize disruption of service as a result of the reorganization of broadcast television spectrum.” The Commission tentatively concluded that tying reimbursement to a requirement for some level of disruption of service to eligible FM stations is reasonable, and noted that the public interest requires that the Commission seek to maximize the limited funds available for all facilities to address the most significant service disruptions to ensure that the most needed facilities are fully funded. The Commission thus sought comment on how to define what costs are “reasonably incurred” and on how to

interpret the phrase “to reasonably minimize disruption of service” as contemplated by the REA, and proposed an approach for prioritization of reimbursement to FM stations. Below the Commission describes expenses that the Commission find are eligible for reimbursement pursuant to the REA.

#### Costs Reasonably Incurred

52. First, as proposed in the *NPRM*, the Commission finds that eligible costs for Category (1) and Category (2) stations are similar to eligible costs for full power and Class A stations in the repack, and therefore should be reimbursed in a similar manner. No commenter took issue with this proposal, and the Commission therefore adopt it as discussed in greater detail below. As a result, if sufficient funds are available in the Reimbursement Fund to fully reimburse FM stations, Category (1) and Category (2) stations should be eligible for reimbursement for up to 100 percent of eligible costs similar to the reimbursements provided to impacted full power and Class A stations.

53. Second, the Commission declines to adopt its proposal that reimbursement for Category (3) stations should be subject to a graduated priority system based on the significance and duration of service disruption. No commenter supports this proposal. Instead, as discussed in more detail below, the Commission concludes that if sufficient funds are available in the Reimbursement Fund to fully reimburse FM stations, Category (3) stations that experience more than a *de minimis* level of service disruption will be eligible for reimbursement for up to 100 percent of eligible costs.

#### Replacing or Restoring Facilities—Category (1) and (2) Stations

54. *Category (1) Stations.* The Commission concludes that Category (1) stations are eligible for reimbursement of up to 100 percent of eligible costs. In the *NPRM*, the Commission stated its belief that reimbursement of costs associated with Category (1) FM stations should be based on a standard similar to that developed for the existing reimbursement program for full power and Class A stations because the nature of the relocation of the FM station and types of costs incurred are similar. As such, the Commission noted that the goal for Category (1) stations should be to rebuild their facilities to reasonably replicate the station’s coverage area and population served, similar to the standard applicable to full power and Class A stations. The Commission also stated that Category (1) stations should be eligible for reimbursement for costs

similar to full power and Class A stations to move and reconstruct the current facilities at a new site or tower location, including costs of equipment, professional services such as engineering, and tower and construction work. With no opposition from commenters, the Commission thus affirms its conclusions and find that, if sufficient funds are available in the Reimbursement Fund to fully reimburse FM stations, Category (1) stations are eligible for reimbursement for up to 100 percent of eligible costs similar to the reimbursements provided to impacted full power and Class A stations. The Commission continues to believe that only a very small number of stations are likely to be included in this category, and therefore the Commission does not believe the reimbursement of these stations is likely to constitute a significant portion of payments to FM stations from the Reimbursement Fund.

55. The Commission further adopts its proposals with respect to specific types of reimbursable equipment costs for Category (1) stations. Specifically, the Commission finds that examples of reimbursable equipment costs that could be reasonably incurred include transmitters, antennas, coaxial cable or wave guides, and associated equipment needed to reasonably replicate the service being lost. The Commission also finds that existing equipment should be reused as appropriate and that, to the extent that existing equipment cannot be reused, new equipment be reimbursable if needed to reasonably replicate service and coverage area. Additionally, the Commission finds that the costs of engineering to determine what technical facilities are needed to replace existing service at a new site should be considered reimbursable expenses, as well as transportation costs of physically moving equipment to a new site or new location on a tower and any engineering costs associated with the move. Finally, the Commission adopts its proposal not to reimburse FM stations for equipment that is used solely to emit transmissions that are not "radiotelephone emissions intended to be received by the general public," such as Traffic Message Channels and digital metadata. No commenter disagrees with these proposals.

56. The Commission finds that expenses related to STLs are eligible for reimbursement in certain circumstances. In the *NPRM*, the Commission initially proposed not to reimburse FM stations for the costs of STLs and related equipment. NAB urges the Commission to permit the reimbursement of STL expenses in light of the fact that, unlike television

stations, FM stations will not change channels but will, in some cases, be forced to change locations, necessitating readjustment of STL facilities. Although the Commission concludes that stations utilizing microwave STL links should ordinarily be able to reuse their transmission and reception equipment and antennas, the Commission finds that there may be certain limited instances where reimbursement may be appropriate, such as where FM stations incur expenses due to a change in the FM station's antenna location. The Commission directs the Media Bureau to reimburse reasonably incurred expenses on a showing that existing STL facilities could not be adapted for use at the new tower site and that their unsuitability is due to the specific relocation of the antenna and not the repack generally. The Commission distinguishes this situation from the use of STLs in the context of full power and Class A services. In those situations, the issue addressed by the Commission in the *Incentive Auction R&O*, and reaffirmed herein, is whether a station may be reimbursed for non-comparable equipment in lieu of a displaced secondary service that is not itself eligible for reimbursement, whereas here the Commission anticipates replacement of existing equipment due to a location change.

57. *Category (2) Stations.* The Commission concludes that Category (2) stations are eligible for reimbursement of up to 100 percent of eligible costs. In the *NPRM*, the Commission stated its belief that it is also in the public interest to develop a similar standard for eligible expenses for reimbursement of Category (2) stations. The Commission noted that Category (2) stations could reasonably incur costs that are related to their need to temporarily dismantle equipment or modify their physical facilities, for example, costs of equipment, professional services such as engineering, and tower and construction work, similar to the costs incurred by full power and Class A stations. Additionally, the Commission observed that, similar to Category (1), the service disruptions associated with these costs are likely to be significant in magnitude, but the number of stations incurring such costs is likely to be very small, and payments to such stations from the Reimbursement Fund will likewise be relatively small compared to total reimbursements for FM stations. With no opposition from commenters, the Commission thus affirms these conclusions and adopt its proposal that, if sufficient funds are available in the Reimbursement Fund to fully reimburse

FM stations, Category (2) stations should be reimbursed for up to 100 percent of eligible costs similar to full power and Class A stations.

#### Interim Facilities—Category (3) Stations

58. The Commission adopts its proposal that Category (3) stations be reimbursed for the cost of constructing new auxiliary facilities or upgrading existing auxiliary facilities to maximize signal coverage. The Commission observed in the *NPRM* that, in the full power and Class A reimbursement program, the costs of interim facilities are reimbursed in the same manner as other costs incurred for a station to change channels, and the Commission stated that the Commission would apply the same approach to FM stations. This would permit FM stations to continue broadcasting while their primary facilities are off the air due to the need to protect tower personnel working on modifications related to the reorganization of broadcast television spectrum. Reimbursable costs could include costs of equipment, professional services such as engineering, and tower and construction work. No commenter disagrees with its proposal.

59. The Commission adopts its tentative conclusion that it is reasonable for there to be some temporary disruption of FM service to permit construction work or maintenance on a collocated, adjacent, or nearby station. FM stations regularly power down or remain silent for temporary periods to accommodate tower or antenna work and transmitter maintenance, and because of this the Commission stated that it is appropriate to reimburse costs for interim facilities only if they are needed to avoid service interruptions that would otherwise exceed ordinary construction or maintenance requirements. The Commission further adopts its tentative conclusion that operating from interim facilities does not require service that is identical to the station's primary service, as indicated by the REA's requirement that the Commission considers what expenses "reasonably minimize" disruption of service, rather than the Spectrum Act's mandate to reimburse expenses resulting from a channel change. There was no opposition in the record to these particular conclusions.

60. However, the Commission rejects the proposal in the *NPRM* to apply a graduated priority system to reimburse Category (3) stations that would have linked the length of service disruption avoided to the level of reimbursement eligibility. In the *NPRM*, the Commission tentatively concluded that Category (3) FM stations should qualify

for maximum reimbursement on a graduated scale, with those stations off the air longest qualifying for the greatest percentage of reimbursement, because the Commission believed it would preserve finite funds for the most significant instances of service disruption. NAB and NPR strenuously oppose this proposal and dispute its tentative conclusion that the longer the lost airtime, the more service disruption and, thus, the greater justification for reimbursement for the construction of permanent auxiliary facilities. NAB labels the scaled reimbursement proposal as arbitrary and capricious, while NPR asserts that many stations, especially noncommercial educational (NCE) stations, would forego installation of interim facilities if reimbursed for only half the cost. The Commission shares the concerns expressed regarding this proposal, and the Commission does not adopt it.

61. Instead, the Commission will allow all Category (3) stations whose service is subject to more than a reasonably minimal disruption, as defined below, for more than a *de minimis* amount of time (discussed in paragraph 80 below) to be reimbursed for their reasonably incurred costs to the same extent as Category (1) and (2) stations. If the \$50 million fiscal year 2018 allocation for FM stations should prove insufficient to fully reimburse all categories of FM station claimants, then the Media Bureau will allocate funds in the same manner among all FM claimants in all three categories, for instance by allocating the same percentage of funds to stations in all three categories. Although the Commission has agreed with NAB and NPR that funds for reimbursement may exceed the \$50 million specifically earmarked for FM stations in fiscal year 2018, it is too soon to know whether any additional funds will be available or be sufficient to provide 100 percent reimbursement to all FM stations, particularly given the prioritization of full power and Class A stations and MVPDs with respect to fiscal year 2019 funds. Should additional fiscal year 2019 funds be available for reimbursement of FM stations, the Commission directs the Media Bureau to distribute those funds in the same manner among all FM station categories.

62. NPR asks the Commission to clarify that those FM stations able to seek reimbursement for interim facilities should not be limited to stations forced to go off air with their regular facilities, but should also include stations forced to reduce power to the point that they cannot cover 80 percent of their normal covered area or population. The

Commission concurs with NPR that reimbursable interim facilities need not be limited to FM stations forced to go off air completely during repack-related work. In determining what would constitute “reasonably minimiz[ing] disruption of service” with respect to Category (3) stations, the Commission observed in the *NPRM* that transmissions from interim facilities would not exactly replicate the areas or populations covered from the licensed transmitter site. The Commission therefore proposed that 80 percent of an FM station’s coverage area or covered population should be replicated by the interim facility in order to constitute substantial interim coverage meeting the “reasonably minimiz[ing] disruption of service” standard. This was based on Commission precedent in other contexts holding that, when a rule requires provision of a certain strength signal to an entire community, provision of that signal strength to 80 percent or more of either the area or the population of the community is considered to be substantial compliance with the rule. NAB, in its comments, prefers a standard under which only a station that can cover *both* 80 percent of its full-service covered population *and* 80 percent of its full-service covered area would be deemed to have a minimal disruption of service and, thus, be ineligible for reimbursement. Under NAB’s modification to its proposal, any station unable to achieve either coverage standard would be eligible to be reimbursed for interim facilities.

63. The Commission is convinced by NAB that if an FM station that must reduce power to accommodate repack work can still achieve, from its primary facility or an existing auxiliary facility, both 80 percent or more of its normal population coverage and 80 percent or more of its normal area coverage, its service will be considered to be a reasonably minimal disruption of its service, and therefore such a station will not be deemed eligible for reimbursement to construct interim facilities. Thus, an FM station that would lose over 20 percent of either its normal covered population or its normal coverage area as a result of repack-related work will be eligible for reimbursement to construct or improve interim facilities to achieve both coverage benchmarks. The Commission is persuaded by NAB’s argument that radio is in large part an out-of-home medium that relies on mobile listeners, and that covered population does not always accurately represent a radio station’s listenership, especially during morning and evening “drive time”

periods. The Commission therefore believes that NAB’s modification to its proposal more fully takes into account the adverse effects on an FM station’s service caused by repack-related tower work, and the Commission therefore modify its proposal as suggested by NAB.

64. When evaluating the sufficiency of interim facilities, the Commission is similarly persuaded that its original proposal to use coverage benchmarks, that is, to reimburse for the costs of the interim facility only if it is able to achieve either 80 percent of the station’s full-service covered population or 80 percent of its full-service covered area, is not the most reasonable approach. Both NAB and NPR note that there will likely be situations in which an FM broadcaster affected by repack work will not have the ability to locate an interim site that would achieve 80 percent of the main facility’s population or area coverage. This could be due to the time available for repack-related construction work, lack of suitable sites from which to maximize signal coverage, or other factors. Moreover, the Commission believes that a temporarily displaced FM broadcaster has the incentive to optimize interim service based on coverage area, covered population, and availability of auxiliary sites, as well as to minimize its time off air or operating with reduced facilities, and that this incentive is in line with Congress’s expressed desire to minimize FM service disruption. The Commission thus expects that an affected licensee will attempt to find an interim site that maximizes signal coverage and minimizes time off air to the extent possible in the time allotted. The Commission therefore does not adopt its proposal to require that the interim facility meet a minimum amount of area or population coverage in order to qualify for interim facility cost reimbursement. The Commission instead will reimburse FM broadcasters forced to construct new or improve existing interim facilities during repack work for interim facilities that (1) are operating during the time the station’s main facility is off air or operating at reduced power due to repack-related construction for a television station, and (2) provide greater signal coverage than existing facilities can provide during such construction. To demonstrate this, the licensee must submit contour maps demonstrating that the interim facility for which reimbursement is sought provides both greater population coverage and greater area coverage than the powered-down main facility.

65. Relatedly, in the *NPRM*, the Commission proposed that the

Commission will not reimburse for tower lease payments for interim facilities except during the period when the repacked television station's construction work is actively preventing the FM station from broadcasting from its primary facility and not for any period of time thereafter. NPR and NAB both seek clarification on this issue. Both argue that some owners of towers that are potential interim transmitter sites may require minimum lease periods longer than the actual time off air or operating with reduced power during repack-related construction, and that therefore "the Commission should provide public radio stations with the flexibility and resources they need by allowing reimbursement for a range of reasonable temporary tower leasing arrangements." Neither commenter provides concrete examples of such lessors; at most NPR states that "some public radio stations report" that potential lessors will require such minimum leases. The Commission concludes that reimbursing for minimum lease terms beyond the period of interim operations necessitated by repack work is not a cost "reasonably incurred . . . to reasonably minimize disruption of service as a result of the reorganization of broadcast television spectrum." The Commission seeks to minimize any potential for manipulation by, for example, tower owners taking advantage of potential tenants' eligibility for REA reimbursement to impose unnecessarily expensive and/or lengthy lease terms. The Commission therefore adopts its initial conclusion that FM station operators should be reimbursed only for the period of interim operations necessitated by repack work.

66. The Commission does clarify, as suggested by NPR, that the Commission will reimburse for leasing interim facilities even if they are not used continuously during a repack-related construction period. NPR notes that given the uncertainties of tower work due to repacking, an FM station might not be required to reduce power or go off air for a continuous period of time, but might have multiple periods where interim operation is necessary, interspersed with periods of construction downtime in which the station can operate at full power from its primary site. In such instances, given that auxiliary facilities do not operate simultaneously with main facilities, the Commission will consider the time off air or operating with reduced facilities, for which the FM station may claim reimbursement for leasing interim facilities, to begin on the first day an FM

station must reduce power or shut down due to repacking work, and to run until the completion of repack-related tower work and the resumption of full-power operation from the primary site, without deducting any intervals during that time period during which the FM station is temporarily able to resume normal operation.

67. Additionally, the Commission refines its proposed definition of *de minimis* disruption of service with regard to interim facilities to mean time off air for less than 24 hours, or time off air confined to the hours of 12:00 midnight and 5:00 a.m. local time. In the *NPRM*, the Commission proposed to consider *de minimis*, and thus non-reimbursable, any stations forced off air due to repacking work for time periods that are (a) less than 24 hours; (b) during the hours of 10:00 p.m. to 6:00 a.m. local time; or (c) less than five non-peak broadcast hours per day. NAB counters that the Commission should consider as *de minimis* only time off air confined to no more than five overnight work periods between the hours of 12:00 midnight and 5:00 a.m. The Commission continues to believe that a station off the air for less than one day is unlikely to undergo the considerable time and expense of securing interim facilities for such a short period, and that such an interruption in service is consistent with normal station maintenance efforts. Although the Commission agrees with NAB's justification for a shorter overnight period, the Commission believes that a station that must only go off air during the least-listened-to hours of the broadcast day—between midnight and 5:00 a.m.—has already reasonably limited its service disruption, no matter how many days it is off air, and thus should not require reimbursement for interim facilities to cover those hours. Moreover, the Commission finds that NAB presents no reasonable justification for limiting the *de minimis* definition to just five overnight periods, and so the Commission adopts as part of its *de minimis* definition time off air, for whatever period of days, limited to the hours of 12:00 a.m. to 5:00 a.m. local time. The Commission also eliminates the third prong (item (c) above) of its proposed definition. While no commenter specifically addressed this prong, the Commission finds that the term "non-peak hours" could be subject to a variety of interpretations and therefore may be difficult to administer.

68. Although its decision not to adopt the proposed graduated reimbursement scale for Category (3) stations reduces the significance of the total time an FM station's primary facilities must be off

air or operating with reduced power, the Commission nevertheless adopts its proposal to require an FM station seeking reimbursement to certify the amount of time it could not broadcast from its primary facility due to construction work on a repacked television station. As noted above, the Commission must have a mechanism to evaluate the total time needed to, among other things, lease interim facilities. The Commission further adopts its proposal that such certifications may be subject to audits, data validations, and site visits, as appropriate, to prevent waste, fraud, and abuse. The Commission therefore requires a repacked television station to provide, upon request, a statement or other information regarding the dates that work was done on a tower that impacted the FM station.

#### Channel Change Equipment

69. In the *NPRM*, the Commission expressed its expectation that no FM station will be forced to change its frequency as a result of the reorganization of broadcast television spectrum and, thus, tentatively concluded that expenses for retuning or replacing antennas or transmitters to accommodate channel changes will not be eligible for reimbursement. No commenter disputes its stated expectation, and the Commission therefore concludes that expenses for retuning or replacing antennas or transmitters for channel changes will not be eligible for reimbursement.

#### Equipment Upgrades and Reuse of Existing Equipment

70. The Commission adopts its tentative conclusion in the *NPRM* that the full power and Class A comparable facilities reimbursement standard cannot be applied in the same manner to FM stations in Categories (1) and (2) because the goal is to reasonably replicate the service type and area from a different location (Category (1)) or restore service using alternate equipment (Category (2)). In some cases, this can be accomplished using existing equipment or its equivalent, but in other cases this will require modified or differently configured equipment. The Commission concludes that Category (1) and (2) stations need not necessarily construct comparable facilities in order to be reimbursed, but should be reimbursed based on constructing facilities that replicate as closely as feasible the signal contours of the facility they replace, using existing equipment if possible but new equipment as needed.

71. The Commission also adopts its proposal that, to the extent that a

Category (1) station must construct a new tower, the Commission would reimburse tower construction expenses only upon a showing that no space is available on other local towers that would enable it to reasonably replicate current service. NAB supports this proposal. Even with such a showing, the Commission sought comment as to whether and how the Commission should discount any reimbursement for tower construction costs, given that such “vertical real estate” carries with it the potential for revenue generation for the FM station, perhaps in substantial amounts. NAB opposes the possibility of a discount, labeling such revenues as “wholly speculative” and stating that any such revenues “could be rivaled by increased operating expenses associated with a new tower.” The Commission believes that, in the rare cases in which construction of a new tower is the only way to ensure the replacement of an FM station forced to relocate as a result of the television station repack, the decision whether to discount any reimbursement for tower construction costs should be made on a case-by-case basis, and the Commission directs the Media Bureau to make these determinations.

72. The Commission proposed to adopt a requirement, similar to that applied to full power and Class A stations, that FM stations reuse their own equipment to the extent possible rather than acquiring new equipment, and to justify why it is reasonable under the circumstances to purchase new equipment rather than modifying existing equipment. As noted, the Commission does not expect that FM stations will be required to change frequencies, so channel-related equipment modifications will not be required. Thus, the Commission believes it is reasonable to require FM stations seeking reimbursement to provide a justification why it is reasonable to purchase new equipment rather than reuse existing equipment. No commenter objects to this proposal as applied to FM stations, and the Commission adopts this requirement.

73. Further, the Commission adopts its proposal to follow the Commission’s determination in the existing reimbursement program that the Commission should not reimburse stations for new, optional features in equipment that are not already present in the equipment being replaced. For example, the Commission would not reimburse an analog-only FM station to add hybrid digital capability, nor would the Commission reimburse an FM station for rule-compliant modifications that would expand its service area

beyond its current facilities, although it could seek reimbursement of costs needed to restore its original coverage area. NAB generally supports this policy, but states that “technological advances” may render previously optional features standard, thus making some upgrades “inevitable.” As discussed above, the Commission acknowledges that some stations may not be able to replace older, legacy equipment with precisely comparable equipment due to advances in technology. FM stations can seek reimbursement for the costs demonstrated to be necessary for constructing facilities that replicate as closely as feasible the signal contours of the facility they replace, recognizing that the equipment may include some improved functionality. The Commission also clarifies, at NAB’s request, that maintaining an FM station’s digital (HD) capability on interim facilities will be reimbursable, as long as the station’s main facilities were broadcasting in HD as of April 13, 2017.

74. Finally, the Commission adopts its tentative conclusion that FM stations that receive or have received reimbursement of expenses from sources of funding other than the Reimbursement Fund, such as co-located television stations and/or tower owners providing reimbursement under contractual provisions, will not receive reimbursement for those expenses from the Reimbursement Fund. While the REA specifies that an FM station that has received reimbursement for “interim facilities” may not receive any reimbursements under the REA, the Commission believes that a similar prohibition should extend to an FM station that has received reimbursement from third parties for costs other than interim facilities. For stations that are reimbursed by a third party, there is nothing for the Commission to reimburse because the stations have already been made whole. The Commission also finds that a cost that is reimbursed by another source of funding is not a “cost . . . incurred” by the FM station under Section 511(l)(1)(A). NAB supports this tentative conclusion and other commenters did not address it. FM stations will be required to certify on their reimbursement submissions that they have not received or do not expect to receive reimbursement from other sources for costs for which they are requesting reimbursement from the REA. This is consistent with its treatment of LPTV/translator stations, as discussed above. Also, consistent with

its approach for LPTV/translator stations, the Commission will require that FM stations first seek reimbursement from other sources before seeking reimbursement of any potential shortfall under the REA.

#### *Lost Revenues*

75. The REA, like the 2012 Spectrum Act, prohibits reimbursement of FM stations for “lost revenues.” The Commission adopts its proposal to define “lost revenues” for purposes of reimbursing FM stations similar to how the Commission defined it in the *Incentive Auction R&O*—specifically, “revenues that a station loses as a direct or ancillary result of the reorganization of broadcast television spectrum, including the reverse auction and the repacking process.” Under this definition, for example, the Commission would not reimburse a station’s loss of advertising revenues while it is off the air implementing either replacement or interim facilities, or for refunds a station is required to make to advertisers for payments for airtime as a result of being off the air in order to implement such a facility change. Commenters did not oppose its conclusions regarding lost revenues. This, again, is consistent with the definition of “lost revenues” adopted with regard to LPTV/translator stations, above.

#### **Reimbursement Process**

76. As the Commission stated in the *NPRM*, its goal is to adopt a reimbursement process for the newly eligible entities that is as simple and straightforward as possible to minimize both the costs associated with reimbursement as well as the burdens on affected parties and the Commission. At the same time, the Commission is committed to a process that is fair to all eligible entities and that maximizes the funds available for reimbursement by avoiding waste, fraud, and abuse.

77. As discussed below, the Commission adopts a reimbursement process for LPTV/translator and FM stations that is substantially similar to the process currently being used by the Commission to provide reimbursements to full power and Class A stations and MVPDs, and will make an effort to simplify the forms and certain processes and procedures where appropriate. As the Commission stated in the *NPRM*, the Commission believes that using a process and resources that have proven effective and that already are familiar to many of the entities that will be seeking reimbursement will help result in a smooth and efficient reimbursement process. Several commenters urge the Commission to adopt procedures that

closely mirror those currently in use as they are well-understood by broadcasters as well as the consultants and attorneys they employ. At the same time, its goal is to create reimbursement forms and processes for use by the newly eligible entities that are as streamlined and easy to understand as possible to facilitate reimbursement for these entities.

#### *Eligibility Certification and Estimated Expenses*

78. As proposed in the *NPRM*, all newly eligible entities that believe they meet the eligibility requirements and intend to request reimbursement for eligible expenses must file a certification indicating that they intend to request reimbursement funds and meet the criteria for eligibility (Eligibility Certification), as well as a form that provides information on their existing broadcasting equipment and estimated costs eligible for reimbursement (Reimbursement Form). The Reimbursement Form will be a modified version of the reimbursement form used for full power and Class A stations in the existing program (FCC Form 2100, Schedule 399). The Media Bureau will release the form(s) and announce the deadline by which LPTV/translator and FM entities that intend to request reimbursement must file the Eligibility Certification and Reimbursement Form.

79. Entities must certify on the Eligibility Certification, *inter alia*, that they meet the eligibility criteria adopted in this proceeding and provide documentation or other evidence to support their certification. With respect to LPTV/translator stations, the Commission adopts its proposal that these stations must certify compliance with the minimum operating requirement adopted herein and provide supporting documentation, which could, by way of example, include evidence of programming aired by the station during the relevant period such as program guides, electric power bills, or other evidence showing that the station was transmitting during this time period. HC2 recommends that the Commission “be flexible with respect to such evidence, and accept evidence that reasonably verifies operation during the designated time period, such as internet access bills.” The Commission agrees with HC2. To facilitate the certification process while also limiting the burden on stations attempting to comply, the Commission find that examples of documentation above are illustrative and recognize that there may be other types of supporting evidence of LPTV/translator minimum operating

requirements. With respect to FM stations, the Commission adopts its proposal that such stations must certify that they were licensed and transmitting at the facility implicated by the reorganization of broadcast television spectrum on April 13, 2017, or had an application for a license to cover on file with the Commission on that date. As noted above, the Commission also require LPTV/translator and FM stations to certify on their reimbursement submissions that they have not received or do not expect to receive reimbursement from other sources for costs for which they are requesting reimbursement from the REA.

80. Entities that certify that they meet the eligibility criteria may be subject to audits, data validations, site visits, or other verifications to substantiate the supporting evidence and representations with respect to eligibility, and such entities may be directed to make available any relevant documentation upon request from the Commission or its contractor. A false certification may result in disqualification and other sanctions provided for in the Communications Act and the Commission’s rules.

81. LPTV/translator and FM stations must also list their existing broadcasting equipment and the types of repacking-related costs they expect to incur on the Reimbursement Form. Similar to the reimbursement form used by full power, Class A, and MVPD entities, the Reimbursement Form for newly eligible entities will include a cost catalog that provides a list of the types of costs LPTV/translator and FM stations are most likely to incur together with a range of prices applicable to such expenses. The Media Bureau has sought comment on a proposed cost catalog of potentially reimbursable costs that may be incurred by LPTV/translator and FM stations as a result of the incentive auction and repacking process to facilitate the process for reimbursing these entities. The final version of the cost catalog will be embedded in the revised Reimbursement Form. Entities may select the estimates indicated on the form or, alternatively, may choose to provide their own estimates. The Commission note that some LPTV/translator and FM stations will have already incurred costs eligible for reimbursement by the time the rules adopted in this proceeding become effective and the Commission begin accepting Eligibility Certifications and Reimbursement Forms. As proposed in the *NPRM*, these entities may indicate on their Reimbursement Form their actual costs and provide their invoices, instead of providing estimates, for costs

already incurred before the Reimbursement Form is filed. Entities must also indicate on the form whether they will need to purchase new equipment in order to continue operating or whether they can reuse some of their existing equipment.

82. In response to the Commission’s invitation in the *NPRM* for comment on ways to streamline the reimbursement process for LPTV/translator and FM stations, NTA proposes that the Commission use a “Fast Track” approach to streamline reimbursement applications for stations willing to accept a strict dollar cap on their reimbursement. NTA further proposes that stations that opt to use the proposed “Fast Track” approach be exempt from certain reimbursement requirements, including the requirement to submit cost estimates and the requirement to reuse existing equipment. While the Commission shares the goals these commenters are seeking to achieve of simplifying and expediting the reimbursement process, the Commission finds that the “Fast Track” proposal is not a feasible option. First, it is critical that the Commission obtain an accurate estimate of eligible expenses from all entities requesting reimbursement to ensure that the Commission are not over-allocating for a particular entity and that the Commission has the information regarding the total demand on the Reimbursement Fund. It is only by having an accurate estimate of the total demand on the Fund that the Media Bureau can make reasoned allocation decisions and ensure a fair and equitable distribution of reimbursement funds. The Commission also notes that the REA itself contemplates that entities seeking reimbursement will submit cost estimates. Section 511(m)(2) of the REA provides that “[t]he rulemaking completed under paragraph (1) shall include . . . procedures for the submission and review of cost estimates and other materials related to those costs consistent with the regulations developed by the Commission” for reimbursement of full power, Class A, and MVPD entities under Section 6403(b) of the Spectrum Act. Second, although NTA’s proposal for a “Fast Track” contains few details, the intent of the proposal appears to be to avoid requiring entities that avail themselves of this approach from the necessity to file certain information and/or follow certain procedures that would otherwise apply. The Commission notes that the Commission cannot, consistent with the REA, excuse entities from making the certifications in the Eligibility

Certification that are necessary to ensure that entities seeking reimbursement meet the criteria for eligibility established in this proceeding. Similarly, the Commission must obtain other information from entities seeking reimbursement, such as their existing broadcasting equipment, to ensure that the Commission have adequate information upon which to make reasoned allocation decisions and avoid waste, fraud, and abuse. As explained above, the Commission believe that it is critical to have estimates. Thus, upon consideration, the Commission cannot identify any filings or procedures that could be eliminated in a manner that would make a "Fast Track" achievable.

83. The Commission declines to treat non-profit entities differently from for-profit entities in the reimbursement process for newly eligible entities. NPR proposes that, in distributing reimbursement funds, the Commission should "prioritize the availability and timing of reimbursement for non-profit public radio stations (and possibly other non-profits), which have less ability to absorb or 'front' the cost" of activities needed to avoid time off-air or at reduced power during the transition. Its goal is to streamline and expedite its reimbursement process for all newly eligible entities, including the payment of initial and any subsequent allocations and the processing of reimbursement requests. The Commission expects all entities to be able to access reimbursement funds quickly once its reimbursement process is underway, thereby avoiding any need to prioritize the timing of allocations and/or reimbursement payments to non-profit or other entities. While the Commission stated its intention in the *Incentive Auction R&O* to issue NCE broadcasters initial allocations equivalent to a higher percentage of their estimated costs than commercial broadcasters due to the unique funding constraints faced by NCEs, the Commission does not believe a similar approach is warranted with respect to newly eligible entities. As noted above, many newly eligible entities will already have incurred eligible expenses by the time they can begin requesting reimbursement pursuant to the rules adopted in this proceeding. In addition, their average total expenses eligible for reimbursement is likely to be less than for full power stations. The Commission therefore believes it is less important that the Commission provide a higher initial allocation to NCE entities, or otherwise prioritize these entities in the reimbursement process, to ensure they can fund the modifications they must

make as a result of the repacking process.

#### *Reimbursement Allocations*

84. As proposed in the *NPRM*, once the Media Bureau completes its review of the Eligibility Certification and Reimbursement Form, it will issue an initial allocation from the Reimbursement Fund to each eligible LPTV/translator and FM station. These funds will be available for the entity to draw down as expenses are incurred. The amount of the initial allocation, as well as the total amount allocated to each entity, will depend in part on the number of newly eligible entities that file an Eligibility Certification and the amount available for reimbursement for each type of entity from fiscal year 2018 funds. In the *NPRM*, the Commission noted that, in the context of the existing reimbursement process for full power and Class A stations and MVPDs, the Media Bureau determined the appropriate allocation amount based on the circumstances and information available from submitted Reimbursement Forms. Consistent with this approach, the Commission has directed the Media Bureau to make allocation decisions for stations eligible for reimbursement under the REA.

85. After the initial allocation of reimbursement funds, the Media Bureau may issue one or more subsequent allocation(s). As proposed in the *NPRM*, the timing and amount of these subsequent allocation(s) will depend in part on the fiscal year 2018 funds remaining in the Reimbursement Fund for each type of entity and the amount, if any, allocated from fiscal year 2019 funds, the eligible expenses entities have incurred, and the Commission's goal in terms of the amount of eligible costs the Commission expect to be able to cover for each entity. As discussed above, fiscal year 2019 funds will be subject to prioritization of reimbursement for full power and Class A stations and MVPDs. The Commission directs the Media Bureau to allocate fiscal year 2019 funds consistent with this prioritization approach.

86. NAB argues that the FCC should not hold back funds for multiple allocations unless there is reason to believe that the available funds will be insufficient. Instead, NAB proposes that, as soon as the Commission receives cost estimates and assuming sufficient funds are available, the Commission should immediately make 80 percent of estimated costs available to all eligible entities and should consider making even more available in its initial allocation unless there is a concrete reason to believe the available funds

will be insufficient. The Commission declines at this time to adopt NAB's proposal. The Commission believes the best approach is for the Media Bureau to determine initial allocation amounts after cost estimates are submitted and total demand on the Reimbursement Fund is assessed, consistent with its experience with the full power and Class A reimbursement program.

87. Similarly, the Commission believes the best approach is for the Media Bureau to determine the timing and number of any additional allocations, consistent with the approach the Commission have taken with respect to full power, Class A, and MVPD entities, based on prudent fund administrative practices, the amount of estimated expenses, the amount of funds drawn down, and the amount remaining in the Reimbursement Fund for each type of eligible entity.

#### *Prioritization of Types of Costs*

88. The Commission will permit entities to be reimbursed for both hard costs, such as new equipment and tower rigging, and soft costs, such as legal, engineering, and project management expenses, as proposed in the *NPRM*. In addition, the Commission will not prioritize hard costs over soft costs.

89. The Commission noted in the *NPRM* that the total amount of reimbursement funds available to LPTV/translator or FM stations may not be sufficient to cover all eligible expenses at the end of the program and it may therefore be necessary to establish a prioritization scheme for reimbursing eligible expenses. The Commission sought comment on whether the Commission should, at least with respect to initial allocations, prioritize the payment of certain costs, such as certain equipment and engineering expenses, over other types of expenses, such as project management fees. While some commenters who address this issue support prioritization of hard costs over project management and other soft costs, others oppose such an approach. The Commission is persuaded by NPR's position that "soft costs" such as project management fees may be just as important to stations as "hard costs" and should be reimbursed in the same manner and priority as such costs, and find no basis in the current record, nor any statutory direction, to prioritize hard costs over soft costs. Thus, the Commission concludes that the Commission will reimburse all costs, hard and soft, in the same manner in order to allow entities to determine how best to manage their reimbursement funds in light of their own transition needs.

### Procedures for Submission of Invoices, Financial Forms, and Payments

90. As proposed in the *NPRM*, the Commission will use substantially similar procedures for the submission of reimbursement requests and the issuance of reimbursement payments to the newly eligible entities as the Commission use in the existing full power and Class A station reimbursement program. Specifically, LPTV/translator and FM stations must submit requests for reimbursement for expenses they have incurred, together with any required supporting documentation, using the Reimbursement Form (FCC Form 2100, Schedule 399), which the Media Bureau will revise for this purpose. As required for full power and Class A stations and MVPDs, LPTV/translator and FM stations will submit the Reimbursement Form electronically via the Commission's LMS database. After an allocation is made, stations will be able to draw reimbursement payments from the U.S. Treasury as they incur expenses eligible for reimbursement and submit invoices that are approved for payment.

91. As also proposed in the *NPRM*, the Commission will revise versions of the financial forms currently being used by full power, Class A, and MVPD entities for purposes of reimbursing eligible LPTV/translator and FM stations. These procedures are set forth in the *Financial Procedures PN*. At the beginning of the reimbursement process, LPTV/translator and FM stations will be required to use a procedure and form similar to its existing FCC Form 1876 to submit payment instructions to the Commission and to provide bank account information for the reimbursement payment recipient in the CORES Incentive Auction Financial Module. Entities will be able to track reimbursement payments using the Auction Payments component of the CORES Incentive Auction Financial Module.

92. Prior to the end of the reimbursement period, entities must provide information regarding their actual and, if applicable, any remaining estimated costs and will be issued a final allocation, if appropriate, to cover the remainder of their eligible costs. If any allocated funds remain in excess of the entity's actual costs determined to be eligible for reimbursement, those funds will revert back to the Reimbursement Fund. In addition, if an overpayment is discovered, even after the final allocation has been made, the entity receiving an overpayment must return the excess to the Commission.

93. As the Commission proposed in the *NPRM*, the Commission will simplify and streamline the forms to be used by newly eligible entities to facilitate and expedite the reimbursement process. NPR urges the Commission to incorporate specific features to make the forms easier to use, including avoiding character or word count restrictions and including print and "cut and paste" functionality in the web-based forms. The Commission plans to pay close attention to these and other suggestions for improving its processes as the Commission develop forms and procedures for use by newly eligible entities. The Commission is also mindful, however, of those commenters who urge the Commission to make as few changes as possible to the existing forms to avoid the need for broadcasters and others who are used to the current forms to spend time and resources familiarizing themselves with new forms. Its goal is to incorporate changes that facilitate and streamline the reimbursement process while avoiding unnecessary changes that could negatively impact users.

### Measures To Prevent Waste, Fraud, and Abuse

94. As proposed in the *NPRM*, the Commission establishes strong measures to protect against waste, fraud, and abuse with respect to disbursements from the Reimbursement Fund for newly eligible entities. For example, entities must document their actual expenses, including by providing all relevant invoices and receipts, and retaining other relevant records to substantiate their certifications and reimbursement claims. Similar to the existing requirement for full power, Class A, and MVPD entities, LPTV/translator and FM stations seeking reimbursement must retain all relevant documents pertaining to construction or other reimbursable changes or expenses for a period ending not less than 10 years after the date on which the entity receives final payment from the Reimbursement Fund.

95. The Media Bureau will develop a Reimbursement Form for use by LPTV/translator and FM stations that will contain certifications similar to those on the Reimbursement Form used by full power, Class A, and MVPD entities. Thus, an LPTV/translator or FM station seeking reimbursement must certify, *inter alia*, that it believes in good faith that it will reasonably incur all of the estimated costs that it claims as eligible for reimbursement on the estimated cost form, it will use all money received from the Reimbursement Fund only for expenses it believes in good faith are

eligible for reimbursement, and it will comply with all policies and procedures related to reimbursement.

96. As noted above, the Commission will conduct audits, data validations, and site visits, as appropriate, to prevent waste, fraud, and abuse and to maximize the amount of money available for reimbursement. The Commission disagrees with HC2's contention that audits or other validations by a third-party are unnecessary to substantiate certifications such as the minimum operating requirements for LPTV/translator stations. The Commission has previously determined that, with respect to the incentive auction reimbursement program, "audits, data validations, and site visits are essential tools in preventing waste, fraud, and abuse, and that use of these measures will maximize the amount of money available for reimbursement." Based on its experience administering the reimbursement program for full power and Class A stations and MVPDs, the Commission continues to believe that audits, site visits, and other validation mechanisms are essential for preventing waste, fraud, and abuse. The Commission reminds stations that a false certification may result in disqualification and other sanctions provided for in the Communications Act and the Commission's rules. If the Commission discovers evidence of intentional fraud, the Commission will refer the matter to the Commission's Office of Inspector General or to law enforcement for criminal investigation, as appropriate.

97. Finally, to ensure transparency with respect to the Reimbursement Fund, the Commission will make eligibility and actual cost information available to the public as well as information regarding Reimbursement Fund disbursements. This is similar to the process used with respect to full power, Class A, and MVPD reimbursement.

### Other Issues

98. *Reimbursement of Indirect Expenses for Full Power and Class A Stations.* The Commission declines a suggestion put forth by Cox and supported by NAB to permit full power television stations to seek reimbursement under the new REA provisions for costs that are not the result of their own channel change, but instead are the result of a collocated station's repacking activities. The *NPRM* did not propose to revisit issues with respect to reimbursement of full power and Class A stations. The Commission therefore dismisses this request because

it is beyond the scope of the *NPRM*. On alternative and independent grounds, the Commission notes that Cox has in any event provided no basis for revisiting its prior decision, which is compelled by its reading of the statute. Cox and NAB acknowledge that the Commission has previously declined to allow reimbursement for stations that incur indirect expenses due to repacking activities for other stations based on concerns over potential exhaustion of available repacking funds. However, because in some cases a repacked station may not have an express contractual obligation to reimburse collocated stations for repack expenses, Cox maintains that there exists an “inequitable situation where some full-power television stations can have their direct repack expenses reimbursed, whereas other stations must pay for their costs themselves, depending on when their tower leasing agreements were drafted.” Although the Commission is sensitive to the fact that it is possible that some stations may incur expenses as a result of a repacked station implementing its post-auction channel facilities, consistent with the Spectrum Act, the Commission only allows reimbursement of a television station’s own repack expenses, that is, expenses “to relocate its television service from one channel to the other.” In the scenario posited by Cox, the expenses are not incurred by the station “to relocate its television service from one channel to the other,” but instead are incurred because of a different station’s repacking activities. Thus, the Commission does not have statutory authority to permit reimbursement of such expenses. As the Commission said in the *Incentive Auction R&O*, the Commission allow reimbursement to the repacked station in this scenario if it had an express contractual obligation to pay the expenses of other collocated stations as of the date of release of the *Incentive Auction R&O*.

### Final Regulatory Flexibility Act Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), Initial Regulatory Flexibility Analyses (“IRFAs”) were incorporated in the Notice of Proposed Rulemaking (“NPRM”). The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFAs. Because the Commission amended the rules in this *R&O*, it included this Final Regulatory Flexibility Analysis (“FRFA”) which conforms to the RFA.

### Need for and Objectives of the Rules

In the Report and Order, the Commission adopted rules to implement Congress’s directive in the 2018 Reimbursement Expansion Act (REA) that it reimburse certain Low Power Television (LPTV) and television translator (TV translator) stations (together LPTV/translator stations), and FM broadcast stations (FM stations), for costs incurred as a result of the Commission’s broadcast television spectrum incentive auction. In the REA, Congress provided additional funding for the TV Broadcaster Relocation Fund (Reimbursement Fund) and expanded the list of entities eligible to receive reimbursement for costs reasonably incurred as a result of the reorganization of broadcast television spectrum to include LPTV/translator and FM stations. The Report and Order adopts rules relating to eligibility, expenses, and procedures the Commission will use to provide reimbursement to these entities, and mandates the use of various measures designed to protect the Reimbursement Fund against waste, fraud, and abuse.

As proposed in the NPRM, the Commission adopts a process to reimburse the newly eligible entities that is substantially similar to that which it currently uses to reimburse full power and Class A stations and multichannel video programming distributors (MVPDs) as established in the Incentive Auction R&O. Specifically, the Commission:

- Concludes that the REA permits the Commission to use the funds appropriated to the Reimbursement Fund for fiscal year 2019 to reimburse eligible LPTV/translator and FM stations as well as full power and Class A stations and MVPDs, and that the Commission will prioritize payments to full power, Class A, and MVPD entities over payments to LPTV/translator and FM entities.

- Conclude that LPTV/translator stations are eligible for reimbursement if: (1) They filed an application during the Commission’s Special Displacement Window and obtained a construction permit, and (2) were licensed and transmitting for at least 9 of the 12 months prior to April 13, 2017, as required by the REA.

- Conclude that the Commission will reimburse LPTV/translator stations for their reasonable costs to construct the facilities authorized by the grant of the station’s Special Displacement Window application.

- Conclude that full power and low power FM stations and FM translators that were licensed and transmitting on

April 13, 2017, using the facilities impacted by the repacked television station are eligible for reimbursement under the REA. The Commission finds that this will include FM stations that incur costs because they must permanently relocate, temporarily or permanently modify their facilities, or purchase or modify auxiliary facilities to provide service during a period of time when construction work is occurring on a collocated, adjacent, or nearby repacked television station’s facilities.

- Conclude that the Commission will reimburse up to 100 percent of the costs eligible for reimbursement for FM stations that must relocate permanently, temporarily or permanently modify facilities, or purchase or modify auxiliary equipment to avoid going silent as a result of the repacking process.

- Conclude that the Commission will not reimburse LPTV/translator or FM stations for costs for which they have already received reimbursement funding from other sources.

- Require LPTV/translator and FM stations seeking reimbursement to file with the Commission one or more forms certifying that they meet the eligibility criteria established in this proceeding for reimbursement, providing information regarding their current broadcasting equipment, and providing an estimate of their costs eligible for reimbursement.

- Find that, after the submission of information, the Media Bureau will provide eligible entities with an allocation of funds to be available for draw down as the entities incur expenses. The Media Bureau will make an initial allocation toward eligible expenses, followed by subsequent allocation(s) as needed, to the extent funds remain for LPTV/translator stations and FM stations in the Reimbursement Fund.

- Conclude that the Commission will use revised versions of the financial forms currently being used by full power, Class A, and MVPD entities for purposes of reimbursing eligible LPTV/translator and FM stations, and use the same procedures to provide reimbursement payments to these newly eligible entities.

- Discuss the measures the Commission will take to protect the Reimbursement Fund against waste, fraud, and abuse.

### Summary of Significant Issues Raised by Public Comments in Response to the IRFA

No formal comments were filed on the IRFA but some commenters raised

issues concerning the impact of the various proposals in this proceeding on small entities. These comments were considered in the Report and Order and in the FRFA.

#### **Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration**

No comments were filed on the IRFAs by the Small Business Administration.

#### **Description and Estimate of the Number of Small Entities to Which the Rules Will Apply**

The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A “small business concern” is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

*Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment. The Small Business Administration has established a size standard for this industry of 750 employees or less. Census data for 2012 show that 841 establishments operated in this industry in that year. Of that number, 819 establishments operated with less than 500 employees. Based on this data, the Commission concludes that a majority of manufacturers in this industry are small.

*Audio and Video Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing electronic audio and video equipment for home entertainment, motor vehicles, and public address and musical instrument amplification. Examples of products made by these establishments are video cassette recorders, televisions, stereo equipment, speaker systems, household-

type video cameras, jukeboxes, and amplifiers for musical instruments and public address systems. The SBA has established a size standard for this industry, in which all firms with 750 employees or less are small. According to U.S. Census data for 2012, 492 audio and video equipment manufacturers were operational in that year. Of that number, 476 operated with fewer than 500 employees. Based on this Census data and the associated size standard, the Commission concludes that the majority of such manufacturers are small.

*Radio Stations.* This economic Census category “comprises establishments primarily engaged in broadcasting aural programs by radio to the public.” The SBA has created the following small business size standard for this category: Those having \$38.5 million or less in annual receipts. Census data for 2012 shows that 2,849 firms in this category operated in that year. Of this number, 2,806 firms had annual receipts of less than \$25,000,000, and 43 firms had annual receipts of \$25,000,000 or more. Because the Census has no additional classifications that could serve as a basis for determining the number of stations whose receipts exceeded \$38.5 million in that year, the Commission concludes that the majority of television broadcast stations were small under the applicable SBA size standard.

Apart from the U.S. Census, the Commission has estimated the number of licensed commercial AM radio stations to be 4,619 stations and the number of commercial FM radio stations to be 6,754, for a total number of 11,373. Of this total, 9,898 stations had revenues of \$38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) in October 2014. In addition, the Commission has estimated the number of noncommercial educational (NCE) FM radio stations to be 4,135. NCE stations are non-profit, and therefore considered to be small entities. Therefore, the Commission estimates that the majority of radio broadcast stations are small entities.

*Low Power FM Stations.* The same SBA definition that applies to radio stations would apply to low power FM stations. As noted above, the SBA has created the following small business size standard for this category: Those having \$38.5 million or less in annual receipts. The Commission has estimated the number of licensed low power FM stations to be 2,172. In addition, as of December 31, 2018, there were a total of 7,952 FM translator and FM booster stations. Given that low power FM stations and FM translators and boosters

are too small and limited in their operations to have annual receipts anywhere near the SBA size standard of \$38.5 million, we will presume that these licensees qualify as small entities under the SBA definition.

The Commission notes again, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations must be included. Because the Commission does not include or aggregate revenues from affiliated companies in determining whether an entity meets the applicable revenue threshold, its estimate of the number of small radio broadcast stations affected is likely overstated. In addition, as noted above, one element of the definition of “small business” is that an entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific radio broadcast station is dominant in its field of operation. Accordingly, its estimate of small radio stations potentially affected by the proposed rules includes those that could be dominant in their field of operation. For this reason, such estimate likely is over-inclusive.

*Television Broadcasting.* This economic Census category “comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.” These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for Television Broadcasting firms: Those having \$38.5 million or less in annual receipts. The 2012 economic Census reports that 751 television broadcasting firms operated during that year. Of that number, 656 had annual receipts of less than \$25 million per year. Based on that Census data the Commission concludes that a majority of firms that operate television stations are small. The Commission therefore estimates that the majority of commercial television broadcasters are small entities.

The Commission notes, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. The Commission’s estimate, therefore, likely overstates the

number of small entities that might be affected by its action because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of “small business” is that the entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

In addition, the Commission has estimated the number of licensed NCE television stations to be 388. These stations are non-profit, and therefore considered to be small entities.

There are also 2,295 LPTV stations, including Class A stations, and 3,654 TV translator stations. Given the nature of these services, the Commission will presume that all of these entities qualify as small entities under the above SBA small business size standard.

#### **Description of Projected Reporting, Recordkeeping and Other Compliance Requirements**

The *R&O* adopts the following revised reporting or recordkeeping requirements. To implement the REA, eligible entities must file forms to demonstrate their eligibility and estimated costs for reimbursement. Specifically, the Report and Order states that entities will use revised versions of the forms currently being used by full power, Class A, and multichannel video programming distributors (MVPD) entities from the incentive auction for purposes of reimbursing eligible LPTV/translator and FM stations. The Report and Order also states that the Commission will use the procedures to provide reimbursement payments to these newly eligible entities that are similar to those it used for reimbursement in the incentive auction. For example, LPTV, TV translators, and FM stations will be required to submit their Eligibility Certification, cost estimates, and subsequent requests for reimbursement for expenses they have incurred, together with any required supporting documentation, using the Reimbursement Form (FCC Form 2100, Schedule 399), which the Media Bureau will revise for this purpose. As required for full power and Class A stations and MVPDs, LPTV/translator and FM stations will submit the Reimbursement Form electronically via the Commission’s Licensing and

Management System (LMS) database. In addition, LPTV/translator and FM stations that seek reimbursement will use a procedure and form similar to the existing FCC Form 1876 to provide financial information to the Commission in order to receive reimbursement payments and will file electronically in the CORES Incentive Auction Financial Module.

These new reporting requirements will not differently affect small entities.

#### **Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered**

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.”

The Report and Order adopts rules to implement the REA. The rules are designed allow all entities, including small entity broadcasters, to seek reimbursement in a manner that is streamlined and the least burdensome. The Report and Order adopts a reimbursement process for newly eligible LPTV/translator and FM stations that is substantially similar to the current reimbursement process. The Commission concludes that using a process and resources that have proven effective and that are already familiar to many of the entities that will be seeking reimbursement will help result in a smooth and efficient reimbursement process for newly eligible entities. At the same time, the Commission indicated in the item that it will simplify and streamline the forms to be used by newly eligible entities, to the extent possible, in order to expedite and facilitate the reimbursement process. Some commenters urged the Commission to make as few changes as possible to the existing forms to avoid the need for broadcasters and others who are used to the current forms to spend time and resources familiarizing themselves with new forms. As the Commission stated in the item, its goal is to incorporate changes that facilitate and streamline the reimbursement process while avoiding unnecessary

changes that could negatively affect users.

The Commission considered and ultimately rejected a proposal that it use a “Fast Track” approach to streamline reimbursement applications for stations willing to accept a strict dollar cap on their reimbursement. NTA proposed that stations that opt to use the proposed “Fast Track” approach be exempt from certain reimbursement requirements, including the requirement to submit cost estimates and the requirement to reuse existing equipment. While the Commission shared the goals these commenters are seeking to achieve of simplifying and expediting the reimbursement process, it concluded that the “Fast Track” proposal is not a feasible option because it is critical that it obtain an accurate estimate of eligible expenses from all entities requesting reimbursement to ensure that is not over-allocating for a particular entity and that we have the information regarding the total demand on the Reimbursement Fund. The Commission also note that the REA itself contemplates that entities seeking reimbursement will submit cost estimates. In addition, although NTA’s position on this is unclear, the Commission cannot, consistent with the REA, excuse entities from making the certifications in the Eligibility Certification that are necessary to ensure that entities seeking reimbursement meet the criteria for eligibility established in this proceeding. Similarly, the Commission must obtain other information from entities seeking reimbursement, such as their existing broadcasting equipment, to ensure that it has adequate information upon which to make reasoned allocation decisions and avoid waste, fraud, and abuse. Thus, upon consideration, the Commission could not identify any filings or procedures that could be eliminated in a manner that would make a “Fast Track” achievable.

#### **Report to Congress**

The Commission will send a copy of the *R&O*, including the FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *R&O*, including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *R&O* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

#### **List of Subjects in 47 CFR Part 73**

Television.

Federal Communications Commission.

**Marlene Dortch,**  
Secretary.

## Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

### PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. Add § 73.3701 to read as follows:

#### § 73.3701 Reimbursement under the Reimbursement Expansion Act.

(a) *Definitions*—(1) *Eligibility Certification/Reimbursement Form*. For purposes of this section, the term *Eligibility Certification/Reimbursement Form* means the form(s) developed by the Media Bureau for processing reimbursement requests under the Reimbursement Expansion Act.

(2) *FM station*. For purposes of this section, the term *FM station* means an “FM broadcast station” as defined in § 73.310.

(3) *Incentive Auction*. For purposes of this section, the term *Incentive Auction* means the broadcast television spectrum incentive auction and repacking process conducted under section 6403 of the Spectrum Act specifying the new channel assignments and technical parameters of any broadcast television stations that are reassigned to new channels.

(4) *Licensed*. For purposes of this section, the term *licensed* means a station that was licensed or that had an application for a license to cover on file with the Commission on April 13, 2017.

(5) *Low power television station*. For purposes of this section, the term *low power television station* means a low power television station as defined in 47 CFR 74.701.

(6) *Predetermined cost estimate*. For purposes of this section, *predetermined cost estimate* means the estimated cost of an eligible expense as generally determined by the Media Bureau in a catalog of expenses eligible for reimbursement.

(7) *Reimbursement Expansion Act or REA*. For purposes of this section, the term *Reimbursement Expansion Act or REA* means Division E, Financial Services & General Appropriation Act, 2018, Title V Independent Agencies, Public Law 115–141, Section 511 (codified at 47 U.S.C. 1452(j)–(n)) adopted as part of the Consolidated

Appropriations Act, 2018, Public Law 115–141 (2018).

(8) *Reimbursement period*. For purposes of this section, *reimbursement period* means the period ending July 3, 2023, pursuant to section 511(j)(3)(B) of the REA.

(9) *Replacement translator station*. For purposes of this section, the term *replacement translator station* means analog to digital replacement translator stations authorized pursuant to 47 CFR 74.787(a)(5).

(10) *Spectrum Act*. For purposes of this section, the term *Spectrum Act* means Title VI of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112–96).

(11) *Special Displacement Window*. For purposes of this section, the term *Special Displacement Window* means the displacement application filing window conducted April 10, 2018 to June 1, 2018 for low power television, TV translator, and analog-to-digital replacement translator stations that were displaced by the incentive auction and repacking process.

(12) *Transmitting*. For purposes of this section, the term *transmitting* means a low power television station, TV translator station, or replacement translator station operating not less than 2 hours in each day of the week and not less than a total of 28 hours per calendar week for 9 of the 12 months prior to April 13, 2017.

(13) *Reimbursement Fund*. For purposes of this section, the *Reimbursement Fund* means the additional funding established by the REA.

(14) *TV translator station*. For purposes of this section, the term *TV translator station* means a “television broadcast translator station” as defined in 47 CFR 74.701.

(b) *Eligibility for reimbursement*. Only the following entities are eligible for reimbursement of relocation costs reasonably incurred:

(1) *Low power television stations*. Low power television stations that filed an application for construction permit during the Special Displacement Window and such application was subsequently granted. Station must have been licensed and transmitting for not less than 2 hours in each day of the week and not less than a total of 28 hours per calendar week for 9 of the 12 months prior to April 13, 2017.

(2) *TV translator stations*. TV translator stations that filed an application for construction permit during the Special Displacement Window and such application was subsequently granted. Station must have been licensed and transmitting for not

less than 2 hours in each day of the week and not less than a total of 28 hours per calendar week for 9 of the 12 months prior to April 13, 2017.

(3) *Replacement translator stations*. Replacement translator stations that filed an application for construction permit during the Special Displacement Window and such application was subsequently granted. Station must have been licensed and transmitting for not less than 2 hours in each day of the week and not less than a total of 28 hours per calendar week for 9 of the 12 months prior to April 13, 2017.

(4) *FM station*. FM stations licensed and transmitting as of April 13, 2017, that experienced, at the site at which they were licensed and transmitting on that date, a disruption of service as a result of the reorganization of broadcast television spectrum under 47 U.S.C. 1452(b).

(c) *Reimbursement process*—(1) *Estimated costs*. (i) All entities that are eligible to receive reimbursement will be required to file an estimated cost form providing an estimate of their reasonably incurred costs and provide supporting documentation.

(ii) Each eligible entity that submits an estimated cost form will be required to certify on its Eligibility Certification/Reimbursement Form inter alia, that:

(A) It is eligible for reimbursement;

(B) It believes in good faith that it will reasonably incur all of the estimated costs that it claims are eligible for reimbursement on the estimated cost form;

(C) It will use all money received from the Reimbursement Fund only for expenses it believes in good faith are eligible for reimbursement;

(D) It will comply with all policies and procedures relating to allocations, draw downs, payments, obligations, and expenditures of money from the Reimbursement Fund;

(E) It will maintain detailed records, including receipts, of all costs eligible for reimbursement actually incurred;

(F) It will file all required documentation of its relocation expenses as instructed by the Media Bureau;

(G) It has not received nor does it expect to receive reimbursement from other sources for costs for which they are requesting reimbursement from the REA; and

(H) Low power television stations, TV translator stations, and replacement translator stations must certify compliance with the minimum operating requirement set forth in paragraph (b)(1), (2), or (3) of this section.

(I) FM stations must certify that they were licensed and transmitting at the facility implicated by the Incentive Auction on April 13, 2017.

(iii) If an eligible entity seeks reimbursement for new equipment, it must provide a justification as to why it is reasonable under the circumstances to purchase new equipment rather than modify its corresponding current equipment.

(iv) Eligible entities that submit their own cost estimates, as opposed to the predetermined cost estimates provided in the estimated cost form, must submit supporting evidence and certify that the estimate is made in good faith.

(2) *Final Allocation Deadline.* (i) Upon completing construction or other reimbursable changes, or by a specific deadline prior to the end of the Reimbursement Period to be established by the Media Bureau, whichever is earlier, all eligible entities that received an initial allocation from the Reimbursement Fund must provide the Commission with information and documentation, including invoices and receipts, regarding their actual expenses incurred as of a date to be determined by the Media Bureau (the “Final Allocation Deadline”).

(ii) If an eligible entity has not yet completed construction or other reimbursable changes by the Final Allocation Deadline, it must provide the Commission with information and documentation regarding any remaining eligible expenses that it expects to reasonably incur.

(3) *Final accounting.* After completing all construction or reimbursable changes, eligible entities that have received money from the Reimbursement Fund will be required to submit final expense documentation containing a list of estimated expenses and actual expenses as of a date to be determined by the Media Bureau. Entities that have finished construction and have submitted all actual expense documentation by the Final Allocation Deadline will not be required to file at the final accounting stage.

(4) *Documentation requirements.* (i) Each eligible entity that receives payment from the Reimbursement Fund is required to retain all relevant documents pertaining to construction or other reimbursable changes for a period ending not less than 10 years after the date on which it receives final payment from the Reimbursement Fund.

(ii) Each eligible entity that receives payment from the Reimbursement Fund must make available all relevant

documentation upon request from the Commission or its contractor.

[FR Doc. 2019–05598 Filed 3–25–19; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

#### 49 CFR Part 192

[Docket ID: PHMSA–2018–0086]

#### Pipeline Safety: Exercise of Enforcement Discretion Regarding Farm Taps

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Announcement of enforcement discretion.

**SUMMARY:** PHMSA is announcing its exercise of enforcement discretion with respect to portions of its regulations that pertain to farm taps. Pursuant to the exercise of enforcement discretion announced in this document, PHMSA will not take enforcement action against operators who forego the new maintenance and inspection requirements established in March 2017 and instead mitigate any future risk associated with farm taps through compliance with the existing Distribution Integrity Management Program (DIMP) regulations. This will provide regulatory flexibility to pipeline operators while at the same time maintaining an equivalent level of safety.

**DATES:** This action is effective March 26, 2019.

**FOR FURTHER INFORMATION CONTACT:** For additional information or questions, contact Chris McLaren at [chris.mclaren@dot.gov](mailto:chris.mclaren@dot.gov) or 281–216–4455.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On January 23, 2017, PHMSA published in the *Federal Register* a final rule titled, “Operator Qualification, Cost Recovery, Accident and Incident Notification, and Other Pipeline Safety Changes.”<sup>1</sup> This final rule, effective March 24, 2017, modified 49 CFR 192.1003 by adding an exemption from the distribution integrity management program (DIMP) regulations for an individual service line directly connected to a transmission, gathering,

or production pipeline. Additionally, PHMSA added maintenance and inspection requirements in a new section (§ 192.740) to ensure the safety of pressure regulating, limiting, and overpressure protection for individual service lines directly connected to production, gathering, or transmission pipelines.

Individual service lines directly connected to transmission, gathering, or production pipelines are also called “farm taps.” Farm taps are typically located in rural areas, and provide gas to a customer. Prior to the final rule, PHMSA worked with stakeholders to best identify how to address risk with farm taps in an appropriate and cost efficient manner. The result of this work is contained in the final rule with the exemption of farm taps from the DIMP regulations in § 192.1003(b), and the addition of § 192.740, which requires certain maintenance and inspection tasks be performed on a periodic basis.

On September 18, 2017, the American Gas Association (AGA) sent to PHMSA a Regulatory Impact Position Paper titled, “Pipeline Safety: Operator Qualification, Cost Recovery, Accident and Incident Notification, and Other Pipeline Safety Changes Final Rule.” In its paper, AGA encourages PHMSA to consider revising §§ 192.740 and 192.1003 to give operators the choice of managing the risk to farm taps under either of these regulatory sections. On November 9, 2017, AGA, the American Petroleum Institute, and the Interstate Natural Gas Association of America submitted joint comments to DOT’s Regulatory Reform Docket, which sought comment on whether existing regulations may be repealed, replaced, or modified without compromising safety (e.g., for burdening domestic energy production, for imposing costs that exceed benefits, or for eliminating jobs or inhibiting job creation).<sup>2</sup> The joint comments endorsed the recommendations of the AGA paper, and included that paper as an appendix.

AGA believes that PHMSA significantly underestimated the costs associated with the new farm tap inspection requirements. AGA also questions the pipeline safety enhancements attributed to the new regulatory requirements, noting that operators have continuously monitored farm taps for heightened levels of risk under their DIMP plans since 2011, when the DIMP rule became effective. AGA also notes that operators currently are obligated to periodically perform leak surveys on farm taps under

<sup>1</sup> 82 FR 7972, also available in Docket No. PHMSA 2013–0163 at [www.regulations.gov](http://www.regulations.gov).

<sup>2</sup> See <https://www.regulations.gov/document?D=DOT-OST-2017-0069-1504>.