

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of)
)
)
Catalog of Eligible Expenses and Other Issues) GN Docket No. 12-268
Related to the Reimbursement of Broadcaster)
Channel Reassignment Costs)
)
)
)

To: The Commission

**Comments of National Religious Broadcasters
Regarding Channel Reassignment Costs**

National Religious Broadcasters (“NRB”), through undersigned counsel, hereby files Comments in response to the Commission’s September 23, 2013 *Public Notice* in the above-captioned matter.¹

Background

National Religious Broadcasters (NRB) is a non-profit association that exists to keep the doors of electronic media open and accessible for religious broadcasters. NRB’s many members include a number of full power, Class A, and low power television broadcasters that produce and/or telecast religious programming. Many of our member stations operate non-commercial stations on minimal budgets and could be severely burdened by the costs associated with channel reassignment. We continue to encourage the Commission to develop procedures to guarantee fairness in reimbursing stations for the financial burdens accompanying reassignment.

¹ *Media Bureau Seeks Comment on Catalog of Eligible Expenses and Other Issues Related to the Reimbursement of Broadcaster Channel Reassignment Costs*, GN Docket No. 12-268, Public Notice (Sept. 23, 2013) (hereinafter “Notice”).

However, we urge the Commission to pay particular attention to the needs of non-commercial stations in this repacking, including, of course, religious television broadcasters like those that are part of the NRB association. To date, as a matter of definition, there appears to be uncertainty in this and in related proceedings, as to what constitutes the pertinent “coverage area” of stations regarding spectrum repacking and channel reassignment. However, one thing seems clear: as a function of antenna patterns and engineering physics, any station affected in the repacking and resulting channel change will necessarily lose some portion of that station’s existing viewing audience. While commercial stations may be able to adjust advertising rates to cover the cost of additional promotion and marketing necessary to grow a new viewing audience segment, non-commercial stations cannot. Donor-viewers who can no longer receive programming from a religious television station will likely stop giving to that station.

With that background in mind, we discuss certain of the Commission’s questions that are of particular importance to our member stations in considering costs related to reassignment.

I. Catalog of Eligible Expenses

“[W]e invite comment on a preliminary Catalog of Eligible Expenses . . . which contains categories and descriptions of expenses that we believe broadcasters and MVPDs are most likely to incur as a result of broadcaster channel reassignments.” *Notice* ¶2.

The Catalog of Eligible Expenses includes professional services expenses, including personnel costs that stations may incur due to enlisting outside assistance during the transition.² However, we encourage the Commission to also include expenses incurred by the station for transition-related services performed by employees of the

² *Notice*, Attachment: Catalog of Eligible Expenses, § II.H.

station itself. Our member stations employ engineers, science and technology directors, and other staff who will spend considerable time on transition-related engineering and other tasks necessary to facilitate the transition. The fact that the transition-related personnel are not outside workers should not limit reimbursement, because the result is still added expense for our member stations. Reasonable reimbursement should be permitted at a rate equal to the station's hourly cost to pay the staff for any additional time rendered necessary by reason of channel reassignment. Stations should also be reimbursed for any additional employees that are necessary to facilitate transition to the new channel assignment.

II. Prices for Hard and Soft Costs

“[W]e seek comment on the prices associated with the hard and soft costs included in the Catalog of Eligible Expenses.” *Notice* ¶3.

For member stations, it is impossible to accurately approximate costs for necessary equipment more than a year away from the purchase date. Equipment costs are diverse, and stations need information such as the channel reassignment and geographic location of the station's transmitter and tower site before they can meaningfully estimate the *costs* of reassignment.

However, as an example, one of NRB's television members, Cornerstone Television in Pennsylvania, has projected, at a minimum, the numerous *categories* of expenses that will necessarily be impacted for its particular broadcasting services. See: Attachment A appended to this Comment. It is clear that these cumulative expenses will be substantial.

In addition, *marketing expenses* represent an additional soft cost that is not included in the Catalog of Eligible Expenses. A large number of our member stations are

non-commercial stations. They rely primarily on donations to fund their programming and cannot benefit from passing reassignment costs on to customers. If the station's viewing area is altered, the station will likely lose support from key partners and will need to spend time and resources marketing itself to a new viewership and filling the voids in its support base. Cornerstone Television has identified several of the marketing and promotional costs that will be necessary as a result of a channel reassignment. See: Attachment A, "Other Costs" – "Marketing Costs," "PR Costs," "Lost Revenue," and "Creative Services."

III. Viability of Bulk Purchasing, Service Arrangements, or Alternatives for Cost Savings Associated with Channel Reassignment

"We . . . seek specific comment on the viability of having broadcasters organize bulk purchasing or services arrangements to generate costs savings." *Notice ¶4.*

The services and equipment necessary for our member stations to accomplish a channel reassignment are too customized to be eligible for bulk purchasing.

Additionally, NRB would like to comment on one particular category in the Catalog of Eligible Expenses. Section II.C., titled, "Transmission Lines," contains a list of "dielectric" flexible transmission lines. However, "dielectric" lines represent only one particular brand, while other companies also manufacture flexible transmission lines (e.g., Myat, Inc.). In this context, the Commission should not restrict the eligible expenses to products from select brands, manufacturers, or distributors. While this is the only instance in the Catalog of Eligible Expenses in which one brand alone is listed, we encourage the Commission not to limit eligible expenses based on brand, manufacturer, or distributor.

IV. Competitive Bid Requirement

“We also seek comment on whether to require entities seeking reimbursement from the Fund to obtain competitive bids for equipment and services that exceed a certain dollar threshold.” *Notice* ¶4.

The Commission recognizes that a requirement to obtain competitive bids may not be feasible for all stations. *Notice* ¶4. Our member stations must carefully weigh their options when it comes to selecting an equipment vender, and while cost is a priority, it must be balanced with the burden of retraining employees on new equipment or equipment servicers. When weighing their options, our member stations may find it more feasible to frequent a small number of vendors rather than spread out their purchases among a field of many vendors. Even if a slightly lower price could be had by seeking competitive bids for the equipment, the resulting burden of retraining employees and adapting to new equipment and servicers could be cost-prohibitive. As such, we encourage the Commission to leave equipment selection to the discretion of the individual stations, rather than to require stations to search for a low bidder to fill equipment and servicing needs.

V. A Hybrid Option for Cost Reimbursements

This Notice proceeding cannot be viewed in a vacuum. It has been made necessary by the several pending NPRMs relating to the spectrum auction. Our comments in this section are a reiteration of suggestions that we have made previously in a related proceeding.³

³ National Religious Broadcasters Comments responding to *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Notice of Proposed Rulemaking, 27 FCC Rcd. 12357 (2012) (*Incentive Auctions NPRM*) at 16-19 (filed Jan. 25, 2013).

The \$1.75 billion limit on the TV Broadcasting Relocation Fund imposes an obligation on the FCC to weigh the capped fund in its analysis of which and how many bids to accept in the auction. Prior to the auction, the FCC should investigate and gain a good understanding of the estimated cost to relocate a station due to spectrum repacking. Armed with that information during the auction, the FCC should then limit the types and number of bids that it will accept so that the number of stations to be directly impacted in spectrum repacking, multiplied by the estimated cost for such relocation, does not exceed the \$1.75 billion fund cap.

While this approach may mean that less spectrum is repurposed for mobile broadband purposes, it ensures that the FCC can carry out its mandate of preserving broadcast service for the public. Accepting bids that would increase the number of stations that must relocate, and thus drive up the total cost of relocation beyond the limits of the reimbursement fund, would jeopardize a station's ability to relocate, and directly violate the Spectrum Act's mandate that the FCC preserve stations' coverage area and population served.⁴

Reimbursement of relocation costs for those whose bids are not accepted, or who decide not to participate, is critical to maintaining the voluntary nature of spectrum repurposing and access to free over-the-air television broadcasts. In connection with relocation cost reimbursement, the Commission has suggested two reimbursement models – one based on estimated costs and the other on actual costs, with eligible broadcasters required to elect between the two.⁵ Those choosing estimated costs would

⁴ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6402, 6403, 6403(b), 125 Stat. 156 (2012).

⁵ *Inventive Auctions NPRM*, 27 FCC Rcd. at 12468, ¶338.

receive an advance payment based upon a formula, and would then have funds on hand to complete a facility modification. Those choosing reimbursement based on actual costs would have to borrow or have cash on hand to fund their facility modification, and receive payment at the end based on actual, proven expenditures. *Id.* Reimbursement would come from the capped \$1.75 billion TV Broadcaster Relocation Fund. *Id.* ¶336.

Because the reimbursement fund is capped, the FCC's proposed reimbursement models force broadcasters to make blind and risky reimbursement decisions. Should they (a) take the advance payment based only on an estimate of their costs so they are at least assured of some reimbursement, even if it is not full reimbursement, or (b) choose to wait until the end of their channel change to obtain actual costs, which would assure full reimbursement unless the capped reimbursement fund is out of money at that point? Neither approach guarantees uninterrupted broadcast service to the American public, and the "choice" mechanism pits the very broadcasters whose service is to be preserved against each other.

NRB opposes the FCC's two model elective approach, and instead proposes a hybrid approach that will ensure that all eligible broadcasters receive the maximum reimbursement amount possible and are treated equally. Under the hybrid approach, each eligible station would be allocated an equal, upfront down payment amount simultaneously with the FCC's public identification of those stations whose facilities are affected by repacking. That allocated amount would be distributed to the station licensee upon the grant of their construction permit for modified facilities. Those funds can be used to make down payments with equipment manufacturers as they order necessary

equipment, and to cover engineering and legal costs associated with the FCC application process and any lease negotiations.

Then, by a set, universal deadline, all stations would submit proof of actual expenses incurred to receive a second “true-up” payment, or to return unused funds. With those submissions, the FCC will be able to determine if there are sufficient funds remaining to fully reimburse all affected broadcasters. If there are sufficient funds, each station receives full reimbursement in accordance with their actual expenses. If there are not sufficient funds to fully reimburse each station, the FCC would then reduce each station’s requested reimbursement amounts by equal percentages until the total reimbursement amount for all stations matches the reimbursement fund balance. Stations would then receive that percentage of their requested reimbursement.

The overriding principle behind NRB’s “hybrid” approach to reimbursement is fairness – each eligible station affected by the repacking gets the same percentage of their expended costs. This approach also encourages stations to negotiate the best deals on equipment and services, as doing so will increase their chances of receiving full reimbursement. While the FCC’s suggestion to prioritize reimbursement requests on a first-come, first-served, or other basis may incentivize broadcasters to speed their construction, such approaches are fundamentally unfair given the limited reimbursement fund and factors outside of a station’s control (i.e., zoning or weather) that delay construction/reimbursement. As to what constitutes “eligible relocation costs,” NRB strongly urges that any expense related to a facility modification made necessary from spectrum repacking should be eligible for reimbursement, and that a comprehensive, rather than limited or “minimum cost,” approach be used. The FCC’s illustrative list

from the microwave relocation and LPTV digital conversion programs in footnote 320 of the NPRM should all be considered as types of relocation costs eligible for reimbursement. In addition, such “soft” costs as (a) FCC filing fees, (b) legal fees for lease negotiations, zoning, and the FCC application process (including channel change requests), (c) zoning application costs, and (d) loan interest and appraisal fees, should also be eligible relocation costs.

Conclusion

For the above reasons, NRB respectfully submits that the Commission should adopt the recommendations that are set forth in these Comments.

Respectfully submitted:

National Religious Broadcasters, by:

Craig L. Parshall, Esq.
Senior Vice-President & General Counsel

Jennifer L. Gregorin, Esq.
Associate Counsel

National Religious Broadcasters
9510 Technology Drive
Manassas, VA 20110
(703) 331-4517 *tel*
(703) 330-7100 *fax*

*Counsel for National Religious
Broadcasters*

Dated October 30, 2013

Attachment A

Cornerstone Television Repacking Hardware and Services List:

I. EQUIPMENT

A. TRANSMITTERS AND IN-BUILDING EXPENSES

1. Retune Existing Transmitters

Single IOT system (30 kW)	WPCB (Pittsburgh)
1 kW system	W29CO (Sharon, PA)
1 kW system	W45BT-D (Brookville, PA)
1 kW system	W46EJ-D (Clarksburg, WV)
7.5-10 kW system	WKBS (Altoona, PA)
1 kW system	W07DP-D (Harrisburg, PA)
30 kW mask filter	WPCB (Pittsburgh)
10 kW mask filter	WKBS (Altoona)
10 kW mask filter	W29CO (Sharon)
10 kW mask filter	W45BT-D (Brookville)
10 kW mask filter	W46EJ-D (Clarksburg, WV)
10 kW mask filter	W07DP-D (Harrisburg)

2. New Transmitters

29.3 kW	WPCB (Pittsburgh)
9.25 kW	WKBS (Altoona)
1 kW	W45BT-D (Brookville, PA)
1 kW	W46EJ-D (Clarksburg, WV)

3. Other Transmitter Expenses

Transformer 3 phase/480v – 300 KVA	WKBS (Altoona)
2" Rigid Conduit and Wiring (Cost per foot)	WKBS (Altoona)

B. ANTENNAS

Single station –200-500 kW	WPCB (Pittsburgh)
Single station –200-500 kW	WKBS (Altoona)
LPTV/Class A single station antenna – basic	W29CO (Sharon)
LPTV/Class A single station antenna – basic	W45BT-D (Brookville)
LPTV/Class A single station antenna – basic	W46EJ-D (Clarksburg, WV)

C. TRANSMISSION LINES

6 1/8"	WKBS (Altoona)
--------	----------------

II. SERVICES

A. TOWER EQUIPMENT AND RIGGING *fees paid to expert tower crews for equipment removal and installation*

Structural engineering tower load study for a documented tower with candelabra WPCB (Pittsburgh)

Structural engineering tower load study for documented tower WKBS (Altoona)

Minor tower reinforcement/modifications (see Fig. 2 for sample minor modifications) WPCB (Pittsburgh)

Short Tower (less than 500') WKBS (Altoona)

Short Tower (less than 500') W29CO (Sharon)

Short Tower (less than 500') W45BT-D (Brookville)

Short Tower (less than 500') W46EJ-D (Clarksburg, WV)

Short Tower (less than 500') W07DP-D (Harrisburg)

B. INTERIM FACILITIES

UHF inside RF system including switching WPCB (Pittsburgh)

C. MISCELLANEOUS EXPENSES

DTV Medical Facility Notification

Markets 1-64 WPCB (Pittsburgh)

Markets 1-64 W07DP-D (Harrisburg)

Markets 65-150 WKBS (Altoona)

Markets 151-199 W46EJ-D (Clarksburg, WV)

Markets 200+ W29CO (Sharon)

Markets 200+ W45BT-D (Brookville)

D. PROFESSIONAL SERVICES

Consulting Radio Frequency Engineer Fees

Perform engineering study for new channel assignment and antenna development WPCB (Pittsburgh), WKBS (Altoona) W29CO (Sharon) W45BT-D (Brookville), W46EJ-D (Clarksburg, WV) W07DP-D (Harrisburg)

Prepare engineering section of Form 301 FCC Construction Permit Application WPCB (Pittsburgh), WKBS (Altoona) W29CO (Sharon) W45BT-D (Brookville), W46EJ-D (Clarksburg, WV) W07DP-D (Harrisburg)

Prepare engineering section of Form 302 FCC License to Cover Application WPCB (Pittsburgh), WKBS (Altoona) W29CO (Sharon) W45BT-D (Brookville), W46EJ-D (Clarksburg, WV) W07DP-D (Harrisburg)

Prepare request for Special Temporary Authorization WPCB (Pittsburgh), WKBS (Altoona) W29CO (Sharon) W45BT-D (Brookville), W46EJ-D (Clarksburg, WV) W07DP-D (Harrisburg)

Attorney Fees

Prepare and File Form 301 WPCB (Pittsburgh), WKBS (Altoona)
W29CO (Sharon) W45BT-D (Brookville), W46EJ-D (Clarksburg, WV)
W07DP-D (Harrisburg)

Prepare and File Form 302 WPCB (Pittsburgh), WKBS (Altoona)
W29CO (Sharon) W45BT-D (Brookville), W46EJ-D (Clarksburg, WV)
W07DP-D (Harrisburg)

Prepare and File request for Special Temporary Authorization
WPCB (Pittsburgh), WKBS (Altoona) W29CO (Sharon) W45BT-D
(Brookville), W46EJ-D (Clarksburg, WV) W07DP-D (Harrisburg)

III. OTHER COSTS:

A. MARKETING COSTS

3:20-21 market of change of position

B. PR COSTS

Explain to partners and friends of organization why these changes are necessary.

C. LOST REVENUE

Donations and support that is altered or deferred because of the changes.

D. CREATIVE SERVICES

Branding and production costs for changing all on air, print and online reference to channel positioning.