

**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)	

**COMMENTS OF THE ASSOCIATION OF PUBLIC TELEVISION STATIONS,
CORPORATION FOR PUBLIC BROADCASTING, AND
PUBLIC BROADCASTING SERVICE**

Lonna Thompson
Executive Vice President, Chief Operating
Officer, and General Counsel
ASSOCIATION OF PUBLIC TELEVISION
STATIONS
2100 Crystal Drive, Suite 700
Arlington, VA 22202

Craig A. Sperling
Vice President and Deputy General
Counsel
Thomas Rosen
Senior Counsel
Eric J. Wolf
Vice President, Technology Strategy and
Planning
PUBLIC BROADCASTING SERVICE
2100 Crystal Drive
Arlington, VA 22202

J. Westwood Smithers, Jr.
Senior Vice President and General Counsel
CORPORATION FOR PUBLIC BROADCASTING
401 Ninth Street, NW
Washington, DC 20004

Matthew S. DelNero
Lindsey L. Tonsager
COVINGTON & BURLING LLP
1201 Pennsylvania Avenue, NW
Washington, DC 20004

November 4, 2013

TABLE OF CONTENTS

EXECUTIVE SUMMARY i

I. FURTHER IMPROVEMENTS SHOULD BE MADE TO THE CATALOG OF ELIGIBLE EXPENSES TO ENSURE THAT NONCOMMERCIAL EDUCATIONAL BROADCASTERS ARE MADE WHOLE AND TO AVOID DISRUPTIONS TO THE PUBLIC’S TELEVISION SERVICE 3

II. THE REIMBURSEMENT PROCESS MUST BE EFFICIENT AND FLEXIBLE TO MINIMIZE COSTS WHILE ACCOMMODATING DIFFERENCES IN STATION OPERATIONS 8

A. Stations Should Be Encouraged, But Not Required, To Engage in Bulk Purchasing Based on Geographic Areas 9

B. Stations Should Have Flexibility and Discretion To Use Single-Source Purchasing Instead of Competitive Bidding..... 10

C. Equipment Repurposing Is Unlikely To Mitigate the Costs Associated with Stations’ Channel Reassignments 11

D. Interim Equipment Should Be Used Only in Exceptional Circumstances, in Which Case Television Broadcast Stations Should Be Reimbursed for the Costs Associated with Such Equipment 12

E. The Commission Should Leverage the Experience of Other Agencies and Entities in Administering Reimbursement Programs To Help Ensure That the Process Is As Efficient and Flexible As Possible 13

III. CONCLUSION 15

EXECUTIVE SUMMARY

A fundamental objective of Congress in enacting the Spectrum Act was to ensure that any broadcast television licensee that is forced to relocate as a result of the repacking is made whole and held harmless through the TV Broadcaster Relocation Fund.¹ The statutory mandate to make reassigned broadcast television stations whole in the repacking is particularly important for noncommercial educational television stations. These stations provide critical services to the American public, including news and public affairs, arts, and children’s educational programming that cannot be found anywhere else on television, as well as a broad range of services that provide emergency alert messaging, promote ethnic and regional diversity, and ensure accessibility in order to meet the needs of every community across the nation. The public television system has successfully leveraged over forty years of public investment in noncommercial educational television stations, including investment in station equipment, facilities, and operations, which could be impacted by the repacking. To promote the critical services that these stations provide to the public and to avoid undermining the public’s significant investment in the nation’s public television system, the Association of Public Television Stations (“APTS”), the Corporation for Public Broadcasting (“CPB”), and the Public Broadcasting Service (“PBS”) (collectively, “PTV”) strongly encourage the Commission to adopt reimbursement policies and procedures that ensure noncommercial educational television stations are made whole and held fully harmless in the repacking.

PTV and the noncommercial educational television stations that PTV supports have decades of experience using scarce public funds responsibly to purchase and maintain

¹ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 226 (Feb. 22, 2012) (codified at 47 U.S.C. § 1452).

facilities and equipment that are needed to deliver video programming services of the highest quality to all American viewers. Based on this experience, PTV believes that the Catalog of Eligible Expenses (the “Catalog”) attached to the Media Bureau’s Public Notice is a good start for identifying the costs that broadcasters are most likely to incur in the repacking. There are, however, a number of respects in which the Catalog can and should be improved to ensure that broadcast television station licensees, and noncommercial educational television stations in particular, are made whole. The details of these suggested improvements to the Catalog are provided in the PTV comments below. However, because it not feasible to anticipate all potential eligible costs that will arise in connection with the repacking at this stage, PTV encourages the Commission to develop a process by which stations will be able to seek reimbursement for costs that are not explicitly listed in the Catalog. This process should include the formation of an advisory board of television broadcasters to leverage the industry’s expertise and knowledge of the challenges that are likely to arise throughout the repacking process.

The Public Notice seeks comment not only on the Catalog, but also on a number of other issues related to the reimbursement of broadcaster channel reassignment costs. While there may be some instances where bulk purchasing or competitive bidding may be a useful best practice and where the use of equipment repurposing or interim equipment might be necessary as a last resort, PTV encourages the Commission to provide broadcast television stations flexibility to make purchasing decisions based on their experienced judgment, unique station operations and needs, and regional differences. Because bulk purchasing, competitive bidding, equipment repurposing, and interim equipment involve a number of transaction costs and other indirect costs that might outweigh any potential cost savings and because the utility of these strategies

will be highly situational, the Commission should not require stations to rely on any of these procurement methods.

**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)	

**COMMENTS OF THE ASSOCIATION OF PUBLIC TELEVISION STATIONS,
CORPORATION FOR PUBLIC BROADCASTING, AND
PUBLIC BROADCASTING SERVICE**

The Association of Public Television Stations (“APTS”),² the Corporation for Public Broadcasting (“CPB”),³ and the Public Broadcasting Service (“PBS”)⁴ (collectively, “PTV”) submit these comments in response to the Media Bureau’s September 23, 2013 Public Notice regarding the proposed Catalog of Eligible Expenses (the “Catalog”) and other issues related to the reimbursement of broadcast television station licensees that must move to new channels as a result of the repacking.⁵

² APTS is a non-profit organization whose membership comprises the licensees of nearly all of the nation’s 364 CPB-qualified noncommercial educational television stations. The APTS mission is to support the continued growth and development of a strong and financially sound noncommercial television service for the American public.

³ CPB is a private, non-profit corporation created and authorized by the Public Broadcasting Act of 1967 to facilitate and promote a national system of public telecommunications. Pursuant to its authority, CPB has provided millions of dollars in grant monies for support and development of public broadcasting stations and programming.

⁴ PBS, with its nearly 360 member stations, offers all Americans — from every walk of life — the opportunity to explore new ideas and new worlds through television and online content. Each month, PBS reaches 120 million people through television and nearly 28 million people online, inviting them to experience the worlds of science, history, nature, and public affairs; to hear diverse viewpoints; and to take front row seats to world-class drama and performances.

⁵ Public Notice, *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, DA 13-1954 (rel. Sept. 23, 2013).

In developing the Catalog and the related procedures for administering the TV Broadcaster Relocation Fund, PTV urges the Commission to fully embrace the fundamental objective of Congress in the Spectrum Act of ensuring that any broadcast television station licensee that is forced to relocate as a result of the repacking is made whole and held fully harmless. This congressional intent is explicit in the text of the statute, which requires the Commission to reimburse all costs reasonably incurred (other than lost revenues) by broadcast television station licensees that are required to relocate their television services to new channels.⁶ This congressional intent is also indicated through the statutory directive that broadcasters' participation in the reverse auction remain strictly voluntary.⁷ If non-participating broadcast television stations have reason to believe that they will not be fully reimbursed because, for example, some of their reasonable costs will be deemed ineligible, the Commission is unlikely to make all payments before the statutory three-year reimbursement period expires, or the Commission is likely to exceed its \$1.75 billion budget for the repacking, then these stations, in effect, could be unduly pressured to participate in the reverse auction.

PTV and the noncommercial educational stations that PTV supports have decades of experience using scarce public resources responsibly to acquire and maintain the equipment and facilities needed to deliver video programming services of the highest quality and emergency alert messaging to viewers across the country.⁸ Based on this experience, PTV believes that the

⁶ 47 U.S.C. § 1452(b)(4)(A), (C).

⁷ See, e.g., 47 U.S.C. § 1452(a) (emphasizing that the reverse auction will “determine the amount of compensation that each broadcast television licensee would accept in return for *voluntarily* relinquishing some or all of its broadcast television spectrum usage rights”) (emphasis added).

⁸ The public television system provides a pathway for geo-targeted wireless emergency alert messages to be distributed from the Federal Emergency Management Agency to cellular carrier subscribers through the Warning, Alert, and Response Network program. Transmitting across over 360 local broadcast stations in all states and territories, the distribution of wireless emergency alert messages can reach virtually any cellular network operations center in the country.

Catalog is a good start in identifying the costs that broadcasters are most likely to incur in the repacking. As explained in Section I below, however, there are a number of ways in which the Catalog can and should be improved to ensure that the reimbursement process makes noncommercial educational stations whole and to avoid any disruptions to the critical services that these stations provide to the public.

PTV also appreciates that there may be some instances where bulk purchasing or competitive bidding may be a useful best practice and where the use of equipment repurposing or interim equipment might be necessary as a last resort. However, as described more fully in Section II below, these procurement methods can also include a number of transaction costs and other indirect costs that could outweigh any potential cost savings. Consequently, PTV encourages the Commission to provide broadcast television stations flexibility to make purchasing decisions based on their experienced judgment, unique station operations and needs, and regional differences.

I. FURTHER IMPROVEMENTS SHOULD BE MADE TO THE CATALOG OF ELIGIBLE EXPENSES TO ENSURE THAT NONCOMMERCIAL EDUCATIONAL BROADCASTERS ARE MADE WHOLE AND TO AVOID DISRUPTIONS TO THE PUBLIC’S TELEVISION SERVICE.

While the Spectrum Act clearly directs the Commission to make every broadcast television station licensee who is required to move to a new channel as a result of the repacking whole through the reimbursement process,⁹ it is particularly important that noncommercial educational television station licensees are reimbursed fully for the reasonable costs that they incur in the repacking process given the critical public services they provide and the unique

⁹ 47 U.S.C. § 1452(b)(4).

financial challenges that they face. Consistent with the Public Broadcasting Act’s mandate to facilitate “telecommunications services for all the citizens of the Nation,”¹⁰ noncommercial educational television stations play a crucial role in ensuring that the American public has universal access to robust, commercial-free television services of the highest quality. And unlike commercial entities, noncommercial educational broadcasters face distinct financial challenges because they depend on direct financial support from private donations and funding from the federal and state governments. By ensuring that noncommercial educational television stations are made whole through the reimbursement process, the Commission can support the government’s and the public’s decades-long commitment to and investment in the nation’s public television system and can avoid disruptions in the public’s access to important public interest programming and services.

One essential element in making noncommercial educational television stations whole in the reimbursement process is to provide these stations advance payments based on their estimated costs.¹¹ To the extent the Commission may be considering any limits on advance reimbursement payments, such as capping a station’s advance reimbursement to a percentage of the station’s total estimated costs that would be reconciled through a subsequent true-up to

¹⁰ *Id.* § 396(a)(5); *see also id.* § 396(a)(7) (“[I]t is necessary and appropriate for the Federal Government to complement, assist and support a national policy that will most effectively make public telecommunications services available to all citizens of the United States.”).

¹¹ Comments of the Association of Public Television Stations, Corporation for Public Broadcasting, and Public Broadcasting Service, *In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, at 27–28 (Jan. 25, 2013). As explained in comments PTV previously filed with the Commission, another essential component of making stations whole is to take steps to limit the impact of the repacking on viewers who receive their television signals from television translators and to: (1) avoid condensing the band more in rural areas than in urban areas; (2) permit translators to operate out-of-core indefinitely until they are displaced by a winning bidder that actually builds out and makes use of the spectrum acquired in the forward auction; and (3) provide noncommercial educational station translators selection priority over other low power television stations in any displacement relief process available after the repacking. *See id.* at 12–14.

ensure that stations experiencing a shortfall are fully covered, PTV encourages the Commission to provide noncommercial educational broadcasters advance payment in full or at a substantially higher percentage. This approach would appropriately recognize that, unlike commercial entities, noncommercial educational stations — which often are owned by state governments and other public institutions — are constrained by unique cash flow limitations that may include, for example, state budgeting restrictions and limited access to private lending markets that could increase the financial challenges of the repacking.

Another essential element in making noncommercial educational television stations whole in the reimbursement process is to ensure that the advance reimbursement payments account for all of the reasonable expenses incurred by such stations as a result of the repacking, other than lost revenues (which are excluded by statute). PTV believes that the Catalog is a good first step in identifying the most common types of eligible expenses that broadcasters are likely to incur. However, there are a number of important respects in which the Catalog can and should be improved to maintain the government's and the public's significant investment in the nation's public television system.

Specifically, Section II.G.2 of the Catalog (Miscellaneous Expenses — Other) should be revised to account for grant-related expenses that many noncommercial educational television stations will incur as a result of the repacking. For example, stations operating under grants from the U.S. Department of Agriculture's Rural Utilities Service, the National Telecommunications and Information Administration, and other state and private entities are often required to retain equipment acquired under such grants for a specified period of time and dispose of such equipment pursuant to specified procedures. As a result, these stations may incur additional costs for storing, transporting, insuring, or disposing of their existing equipment,

even if such equipment can no longer be used and must be replaced as a result of the repacking.¹² These grant-related costs are reasonable expenses that public broadcasters will have to incur if compelled to relocate and should be fully covered by the TV Broadcaster Relocation Fund.

Section II.G.2 of the Catalog should also include costs incurred in connection with co-located facilities. For example, in order to relocate its television services to a new channel, a noncommercial broadcast television station licensee may also need to relocate its public radio equipment that currently is co-located on the licensee's television tower. The costs of such public radio equipment that is directly impacted by the television repacking will need to be reimbursed.¹³ Similarly, a broadcast television station licensee who has contractual obligations to unaffiliated radio station operators and other operators of equipment co-located on the licensee's television station tower could incur liabilities that should be eligible for reimbursement if the licensee is required to move or upgrade its tower in ways that negatively impact the co-located operators.

Section H of the Catalog should be expanded to include a number of other professional services related to circumstances outside the jurisdiction or control of the Commission but that must be resolved in order for the station to complete its relocation to a new channel. For example, some television station licensees' equipment is located on towers that are owned by third parties that are not regulated by the Commission. There may be little or no incentive for these third parties to make the upgrades necessary for a station licensee to complete its channel relocation. In such circumstances, the television station licensee may need to incur costs associated with legal or other professional services to enforce its contractual rights against

¹² See, e.g., 15 C.F.R. § 2301.22 (addressing protection, acquisition, and substitution of equipment).

¹³ For more information on these radio equipment expenses, see the Comments of National Public Radio, Inc., in response to this Public Notice, GN Docket No. 12-268.

the third-party tower owner or take other steps to complete its relocation. In addition, because some sites will not support additional towers, some stations may need to purchase or lease new land for their facilities and, as a result, will require additional professional services to seek changes to local zoning and similar land-use laws.

In addition, some of the assumptions included in the Catalog should be adjusted because they do not reflect standard industry practices, and the Catalog should be expanded to include a number of additional types of expenses that licensees may incur. For example:

- Section II.A.1 (Transmitters and In-Building Expenses — Retune Existing Transmitter) assumes certain power level maximums for VHF solid state transmitters. However, these power level maximums are not sufficiently high because some stations operate such transmitters above 10 kW.
- Section II.A.2 (New Transmitters) should include liquid-cooled VHF transmitters, and not just air-cooled VHF transmitters.
- Section II.A.3 (Other Transmitter Expenses) should differentiate between pad and pole mounted transformers for electrical services.
- Section II.A.3 should be expanded to more clearly address the potential need for new power poles or increased power capacity in mountainous areas.
- Section II.A.3 should recognize explicitly that stations requiring an increase in power will be compensated for the corresponding increased operating costs during and after the relocation.
- Section II.A.3 should recognize explicitly that transmitter reassignments may require stations to purchase new generators, rather than simply increasing the power output of their existing generator.
- Section II.B (Antennas) should be expanded to account for back-up equipment. For example, the reimbursement made to a station that currently has back-up support, including a back-up antenna, should be sufficient to allow that station to have the same level of back-up support after the repacking.
- Section II.D (Tower Equipment and Rigging) should recognize the costs associated with updating certain existing towers to comply with the latest tower standards applicable at the time of the modifications, as published by the Telecommunications Industry Association.
- Section II.D appears to assume that new towers will not include elevators. This section should be amended to include the cost of an elevator whenever one exists at the current facility that is being replaced. It is standard industry practice and a critical safety measure to include an elevator on tall towers.

- Section II.D also should account for the potential cost of acquiring or leasing new land if a new tower is required. As noted above, some existing tower sites cannot support additional towers, so the television station licensee may be forced to relocate its tower to new land.

While these comments identify a number of areas in which the Catalog can and should be improved to more accurately reflect the types of eligible expenses that noncommercial educational television licensees likely will incur as a result of the repacking, it is worth emphasizing that this list is illustrative, and not exhaustive. For instance, unexpected manufacturing, weather, and tower crew limitations could result in additional expenses, making it impossible to fully predict all of the costs that should be eligible for reimbursement.

Consequently, PTV encourages the Commission to develop a process for stations to seek reimbursement for unanticipated expenses that are incurred as a result of the repacking but that are not included in the Catalog. To assist in this process, the Commission should convene an advisory board consisting of television broadcasters to leverage the industry's knowledge of the on-the-ground challenges that are likely to arise throughout the repacking process. This advisory board should include station engineering and management professionals, who could provide expert counsel to inform the Commission's administration of the relocation fund. The creation of such an advisory board would be consistent with the process used by NTIA for the Public Telecommunications Facilities Program, which similarly provided funds for broadcasters to purchase transmission equipment.

II. THE REIMBURSEMENT PROCESS MUST BE EFFICIENT AND FLEXIBLE TO MINIMIZE COSTS WHILE ACCOMMODATING DIFFERENCES IN STATION OPERATIONS.

The Public Notice seeks comment on whether a variety of procurement methods and practices — including bulk purchasing, competitive bidding, equipment repurposing, and

interim equipment — could be used to help mitigate the costs broadcasters incur as a result of the repacking. There may be some instances where bulk purchasing or competitive bidding serve as a useful best practice and where the use of equipment repurposing or interim equipment could be necessary as a last resort. However, PTV encourages the Commission to provide broadcast television stations flexibility to make purchasing decisions based on their experienced judgment, unique station operations and needs, and regional differences to avoid the possibility that transaction costs and other indirect costs outweigh any potential cost savings. To help ensure that the reimbursement process is as efficient and flexible as possible, PTV encourages the Commission to leverage the experience other agencies and third parties have in administering reimbursement programs. Specifically, the Commission should consult with these third parties and consider entering into a services agreement with one or more of them to help administer the relocation fund.

A. Stations Should Be Encouraged, But Not Required, To Engage in Bulk Purchasing Based on Geographic Areas.

Bulk purchasing by stations within a specific geographic area can help reduce installation fees and other costs in some circumstances. For example, where multiple stations within the same designated market area (“DMA”) need to purchase the same equipment or have different equipment installed at the same time, it is sometimes possible for these stations to negotiate volume discounts or discounts on installation fees. Consequently, PTV agrees that there may be some scenarios in which bulk purchasing by broadcasters potentially could help mitigate costs associated with channel reassignments.

In most circumstances, however, bulk purchasing is unlikely to be available. This is because much of the equipment and facilities upgrades required for a broadcast television station licensee to relocate to a new channel are specialized. For example, the heating,

ventilation, and air conditioning duct installation and radio frequency systems for a station's operating facility are unique depending on the specific location of the facility. Transmission equipment specifications also vary greatly from one station to the next. In such circumstances, volume discounts generally are not available because the manufacturer cannot achieve economies of scale.¹⁴

In evaluating the potential value of any bulk purchasing arrangement, it also is necessary to consider whether the potential transaction costs or other indirect costs outweigh any potential savings. Negotiating a bulk purchasing agreement involving multiple parties can also take considerable time. However, time is of the essence in the repacking because Congress has required the Commission to make all reimbursements out of the TV Broadcaster Relocation Fund no later than three years after the forward auction is complete.¹⁵

Consequently, PTV encourages the Commission to provide stations flexibility in making their purchasing decisions and to avoid requiring stations to participate in bulk purchasing arrangements.

B. Stations Should Have Flexibility and Discretion To Use Single-Source Purchasing Instead of Competitive Bidding.

Various state procurement laws, policies, and guidelines constrain how many state-owned noncommercial educational television stations are allowed to acquire new equipment. Consequently, it is critical that the Commission provide stations flexibility and

¹⁴ PTV does not believe that the Commission or other federal agencies are likely to be well-positioned to coordinate bulk purchasing arrangements on behalf of stations, especially given regional and station-specific differences.

¹⁵ 47 U.S.C. § 1452(b)(4)(D).

discretion in how they make their purchasing decisions to avoid subjecting stations to conflicting legal obligations.

Regardless of whether a station is bound by legal limitations on its procurement practices, price alone is unlikely to be the only — or even the most important — factor in deciding what equipment to acquire. Equipment with the lowest upfront cost can be much more expensive in the long term compared to market alternatives. For example, the equipment with the lowest upfront price might cost the station more in terms of maintenance and power, might not have an adequate warranty or vendor support, or might need to be replaced more frequently than other equipment. Instead, stations should have the flexibility to make purchasing decisions based on the technology, product quality, and the planned use of the equipment, as well as price.

Like bulk purchasing, competitive bidding involves considerable transaction costs. For example, because it might take several months for a station to complete the bid process, competitive bidding can delay build-outs and place undue pressure on the Commission's ability to make all reimbursements within the statutorily mandated three-year period.

Consequently, PTV urges the Commission to provide noncommercial educational television stations latitude to choose between competitive bidding, single-source purchasing, and alternative procurement methods in order to mitigate the costs associated with their channel reassignments. These stations, which have long been committed to using scarce public resources in a responsible and productive manner, are well-positioned to make these decisions based on their decades of experience and unique operational needs.

C. Equipment Repurposing Is Unlikely To Mitigate the Costs Associated with a Station's Channel Reassignment.

Equipment repurposing will entail significant costs that likely will outweigh any minimal cost savings. Repurposing the equipment of broadcasters who are required to move to

new channels in the repacking will involve a number of significant transaction costs and other indirect costs. For example, the logistics of matching a willing buyer and seller of repurposed equipment will be complicated and time consuming. Even if a match can be made, there likely will be additional costs, such as transporting the equipment from a seller, who — unlike the buyer’s local distributor — might be located thousands of miles away. At the same time, equipment repurposing generally will provide only minimal cost savings because repurposed equipment may be the wrong frequency, may not be directly exchangeable, and is likely to be old (thereby increasing maintenance and support costs).

Moreover, equipment repurposing could create a number of practical problems for the acquiring broadcast television station licensee. The repurposed equipment will not become available until the station with the equipment completes its own transition to a new channel. In the meantime, the acquiring station either would experience service disruptions, which must be avoided, or would require interim facilities, which are inefficient and would increase (rather than decrease) costs. In addition, because repurposed equipment is likely to be old, it might be out of warranty and the vendor may no longer offer the acquiring station support or necessary parts.

Because the costs of equipment repurposing likely would outweigh any marginal savings and would raise a number of practical problems for the acquiring station, PTV requests that the Commission not require reassigned broadcasters to purchase repurposed equipment.

D. Interim Equipment Should Be Used Only in Exceptional Circumstances, in Which Case Television Broadcast Stations Should Be Reimbursed for the Costs Associated with Such Equipment.

Use of interim equipment, which implies a multi-phase relocation process for the television station in question, would create at least three practical challenges: (1) viewer confusion; (2) delays in completion; and (3) increases in cost. First, interim equipment increases

the risk of marketplace confusion because viewers would need to repeatedly rescan their television sets to locate stations that switch channels multiple times or at different times because they are on different equipment schedules. With no budget for consumer education, there is a significant risk that consumers would be confused and either have difficulty finding the station or not know whether the station is even still broadcasting.¹⁶ Second, a multi-phase process involving interim equipment would be inefficient and time-consuming, making it more difficult for the Commission to meet the statutory mandate to make all reimbursement payments within three years of completion of the forward auction.¹⁷ Third, interim equipment is likely to substantially increase the total amount of costs that need to be reimbursed and therefore would place added pressure on the \$1.75 billion amount of the TV Broadcaster Relocation Fund.

Consequently, PTV urges the Commission to design the forward and reverse auctions and repacking process to minimize the need for interim equipment so that it is necessary only in exceptional circumstances. In the rare instances in which the use of interim equipment is unavoidable, the Commission would need to reimburse the station for any costs associated with acquiring, using, and disposing of such equipment.

E. The Commission Should Leverage the Experience of Other Agencies and Entities in Administering Reimbursement Programs To Help Ensure That the Process Is As Efficient and Flexible As Possible.

A number of federal agencies and other third-party entities — including the National Telecommunications and Information Administration (NTIA) — have extensive

¹⁶ For example, during the DTV transition many receivers were unable to find stations that moved from one channel to another. A factory reset was often required and that procedure was not described in many of the receiver user manuals. Public television station personnel spent a significant amount of time assisting viewers in locating the proper reset procedures and walking viewers through the necessary steps.

¹⁷ 47 U.S.C. § 1452(b)(4)(D).

experience administering complex, nationwide reimbursement programs. For example, NTIA administered the Low Power Television and Translator Digital Upgrade Program, which reimbursed licensees of eligible low power television stations for equipment to upgrade their stations from analog to digital operations in rural communities.¹⁸ Like the TV Broadcaster Relocation Fund, the program had a capped amount of funds available for reimbursement and tight statutory deadlines to make reimbursement payments.¹⁹ For over forty years, NTIA also administered the Public Telecommunications Facilities Program, which awarded funds to eligible entities to purchase various equipment required to provide public telecommunications services.²⁰ PTV encourages the Commission to regularly consult with entities such as NTIA to learn from and leverage their decades of experience administering reimbursement programs similar to the TV Broadcaster Relocation Fund reimbursement process.

The Commission also should consider entering into a services agreement with one or more of these entities to help administer the reimbursement program. There is ample precedent for this approach. For example, the Commission designated the Universal Service Administrative Company (“USAC”) in 1997 to administer the Universal Service Fund (the “Fund”) and the High Cost, Lifeline, Rural Health Care, and Schools and Libraries programs that are supported through the Fund.²¹ Through this arrangement, the public has benefited from USAC’s significant expertise in collecting universal service funds and distributing these funds to

¹⁸ See 74 Fed. Reg. 22402 (May 12, 2009).

¹⁹ See Deficit Reduction Act of 2005, Pub. L. No. 109–171, § 3009, 120 Stat. 4, 26 (Feb. 8, 2006); DTV Transition Assistance Act, Pub. L. No. 110–295, 122 Stat. 2872 (July 30, 2008); DTV Delay Act, Pub. L. No. 111–4, 123 Stat. 112 (Feb. 11, 2009).

²⁰ See 15 C.F.R. §§ 2301.1–2301.26.

²¹ See Memorandum of Understanding Between the Federal Communications Commission and the Universal Service Administrative Company (Sept. 9, 2008), available at <http://transition.fcc.gov/omd/usac-mou.pdf>.

provide access to affordable telecommunications services. At the same time, however, the Commission rightly has retained full authority over the Fund and oversight over USAC.

Similar to its arrangement with USAC, the Commission could enter into a services agreement with a third-party entity experienced in reimbursement programs to manage the daily administration of the TV Broadcaster Relocation Fund on the Commission's behalf and subject to the Commission's oversight and instruction. This approach could help relieve the Commission of a substantial administrative burden and ensure that advance reimbursement payments and any subsequent true-up are made as efficiently and flexibly as possible.

III. CONCLUSION

PTV appreciates the Media Bureau's thoughtful efforts to catalog the most common expenses that broadcast television stations likely will incur in connection with the repacking and to identify different options to try to mitigate such costs. These efforts are a good first step in ensuring that television broadcasters — particularly noncommercial educational television stations — are made whole and held harmless for the reasonable costs they incur as a result of the repacking. Based on decades of experience working with noncommercial educational broadcasters to put scarce public resources to their most efficient and productive use, PTV encourages the Commission to make a number of improvements to the draft Catalog and to develop a process for stations to seek reimbursement for unanticipated expenses. In addition, to avoid the possibility that transaction costs and other indirect costs associated with bulk purchasing, competitive bidding, equipment repurposing, and interim equipment outweigh any potential cost savings, PTV requests that the Commission provide broadcast television stations flexibility to make purchasing decisions based on their experienced judgment and understanding of their individual station operations.

Respectfully submitted,

/s/

Lonna Thompson
Executive Vice President, Chief Operating
Officer, and General Counsel
ASSOCIATION OF PUBLIC TELEVISION
STATIONS
2100 Crystal Drive, Suite 700
Arlington, VA 22202

/s/

Craig A. Sperling
Vice President and Deputy General
Counsel
Thomas Rosen
Senior Counsel
Eric J. Wolf
Vice President, Technology Strategy and
Planning
PUBLIC BROADCASTING SERVICE
2100 Crystal Drive
Arlington, VA 22202

/s/

J. Westwood Smithers, Jr.
Senior Vice President and General Counsel
CORPORATION FOR PUBLIC BROADCASTING
401 Ninth Street, NW
Washington, DC 20004

/s/

Matthew S. DelNero
Lindsey L. Tonsager
COVINGTON & BURLING LLP
1201 Pennsylvania Avenue, NW
Washington, DC 20004

November 4, 2013