

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

| | | |
|-----------------------------------|---|----------------------|
| In the Matter of |) | |
| |) | |
| Post-Incentive Auction Transition |) | MB Docket No. 16-306 |
| Scheduling Plan |) | GN Docket No. 12-268 |

To: Secretary, Federal Communications Commission
Attention: Media Bureau

**COMMENTS OF THE PUBLIC BROADCASTING SERVICE,
AMERICA’S PUBLIC TELEVISION STATIONS, AND
THE CORPORATION FOR PUBLIC BROADCASTING**

The Public Broadcasting Service (“PBS”)¹, America’s Public Television Stations (“APTS”)², and the Corporation for Public Broadcasting (“CPB”)³ (collectively, “PTV”) submit these comments in response to the Public Notice in MB Docket No. 16-306 and GN Docket No. 12-268 titled *Incentive Auction Task Force and Media Bureau Seek Comment on Post-Incentive Auction Transition Scheduling Plan* (released September 30, 2016) (“Public Notice”).

¹ PBS, with its 349 member stations, offers all Americans the opportunity to explore new ideas and new worlds through television and online content. Each month, PBS reaches nearly 109 million people through television and over 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.

² APTS is a non-profit organization whose membership comprises the licensees of nearly all the nation’s 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 people.

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.

Introduction

PTV recognizes the importance of planning for the post-auction relocation of television stations assigned to new channels in the repacking process and acknowledges the complexities of developing a plan that is tailored to stations' individual circumstances. PTV appreciates the Commission's efforts to do so.

Consistent with the goal of taking individual circumstances into account while ensuring a successful and timely transition, PTV encourages the Commission to consider the impact of state procurement requirements applicable to many public television stations, which will in many cases affect their ability to meet construction deadlines as quickly as their commercial counterparts. These procurement processes in some cases will last many months, delaying stations' ability to order equipment and engage professional services firms critical to effectuating their channel changes. In addition, potential vendors may not prioritize (or even participate in) public bidding processes where such companies are already being pushed to their capacity limits addressing the needs of other television stations that do not require vendors to navigate complicated state procurement processes.

These factors need to be considered and accommodated in assigning public television stations to particular phases of the transition plan and thus setting construction deadlines. In addition, the Commission should ensure that a process is in place for consideration of extensions in construction deadlines for public television stations that are delayed because of these factors.

Furthermore, public television stations rely heavily on TV translators to provide public television service to large areas of the country, and it will undoubtedly be necessary for stations to file displacement applications to preserve essential public

television service. The FCC has previously stated that a window for this purpose will be opened after reassigned full-power and Class A stations have filed their construction permit applications and have had an opportunity to request alternate channels or expanded facilities. However, the timing for a translator window is not discussed in the Public Notice as part of the “phased” transition plan. PTV therefore urges the FCC to schedule the window now, as it establishes the phased transition, and to set the date for the window as soon as possible after issuance of construction permits for full-power and Class A stations. The goal should be to ensure that the translator window and the processing of window-related applications can take place well in advance of the completion of any given phase of the transition.

Procurement Requirements

State-mandated procurement rules commonly apply to public television stations that are licensed to governmental entities such as state agencies and commissions, public universities, community colleges, and public school districts. Over 40 percent of the licensees of PBS member stations are governmental entities. They are thus frequently subject to strict requirements for the acquisition of goods and services which mandate formal processes for advertising and accepting bids, evaluating bids, issuing awards, and resolving disputes raised by unsuccessful bidders.

Many public television stations seeking to acquire equipment and services critical to the transition will need to comply with these requirements, likely resulting in longer-than-expected periods before equipment can be ordered and services contracted for. This is particularly a challenge because these processes cannot be launched until stations are

informed by the Commission that they have been repacked, and the channel and technical parameters that have been assigned.

Thus, for example, Arizona Public Media's ("AZPM") noncommercial educational television stations, KUAT-TV and KUAS-TV in Tucson, Arizona, are licensed to the Arizona Board of Regents for benefit of the University of Arizona, the governing board of Arizona's public university system. The State and University have contracting and purchasing policies and regulations designed to promote transparency and fair business practices and to obtain the lowest costs for goods and services. These rules require requests for proposals ("RFPs") and other formal bidding processes for all expenditures greater than \$50,000, and they would apply to AZPM's acquisition of goods and services even where federal reimbursement may be available for some or all of the cost of such goods and services. AZPM reports that these processes can be lengthy, generally requiring a period of three to six months or more from start to finish.

Another public television licensee, New Jersey Public Broadcasting Authority ("NJPBA"), licensee of four noncommercial educational television stations serving New Jersey, reports that formal competitive advertised bidding processes will be required to acquire equipment and services related to the repacking of any of the NJPBA stations. These processes typically will take between 18 and 24 months. If it is subject to repacking, NJPBA may seek a waiver of customary advertised bidding, but the waiver process will itself take a considerable period of time, with uncertain results. Even if a waiver allows a somewhat more speedy process, NJPBA will still need to obtain competitive bids in one form or another.

Milwaukee Area Technical College ("MATC"), licensee of noncommercial educational television stations WMVS and WMVT in Milwaukee, Wisconsin, is also

required to follow a state-mandated RFP process for any purchase over \$50,000. This process generally takes at least three months from the release of an RFP to an award, MATC board approval, and final issuance of a purchase order. MATC notes that multiple separate RFP processes will likely be required for: engineering consulting services, facility design, FCC application and construction of the transmission facilities, engineering work related to tower issues, purchases of transmitters and antennas, tower work, and installation services.

Kentucky Authority for Educational Television (“KET”), an agency of the Commonwealth of Kentucky, is the licensee of 16 UHF-band noncommercial educational television stations comprising Kentucky statewide public television network. Based on the sheer number of stations and their current channel positions in the UHF band, a number of KET stations may very well be repacked. Capital expenditures of the level necessary for these changes (whether or not reimbursed) will require multiple levels of approval within the Executive branch of government in Kentucky, with the procurement process managed by the Finance and Administration Cabinet of the state. An expenditure of such a large magnitude could require legislative action as well. Even after KET has budget authorization, the procurement processes necessary to purchase transmitters, antennas, transmission lines, and professional services from multiple vendors are likely to take several months.

In addition, PTV is concerned that companies offering equipment and services necessary for the transition may be unwilling to prioritize (or even participate in) a time-consuming public bidding process where such companies are already being pushed to their capacity limits addressing the needs of commercial television stations and non-governmental entity public television stations that do not require vendors to navigate

complicated state procurement processes. Thus, the delays occasioned by formal bidding processes may be extended if vendors are reluctant to participate in such processes given the abundance of other potential customers for their products and services.

Furthermore, to the extent that federal reimbursement of transition expenses does not cover all expenses of the transition, or licensees are required to expend their own funds and seek reimbursement at a later time, or licensees reasonably determine to replace or upgrade aging equipment during the transition that is not reimbursable, licensees of public television stations may need to seek capital funding from their states or institutions. This too can be a valid source of delay in completing the transition.

For example, MATC operates on a July 1 through June 30 fiscal year, and capital budget requests must be submitted by November of the previous year. So if the Commission were to announce the end of the auction and the repack of one or both of MATC's stations early in 2017, MATC would not have had an opportunity to submit a capital budget request for expenditures through June 30, 2018. This would substantially delay its ability to plan for and acquire the equipment and services required to begin – much less complete – the transition.

If additional funding is required for KET to supplement FCC reimbursements, KET will be required to request those funds through a biennial state budget process. Biennial budgets are prepared in odd numbered years and may take between 6 to 9 months from submission to legislative approval. Of course, if state funding is not available, KET would need to seek alternative sources of funding.

As a result of these factors, PTV urges the Commission to build into the transition plan appropriate mechanisms to identify licensees of repacked public television stations that will experience delay, factor anticipated delays into the assignment of such stations

to particular phases of the transition plan, and to include a clear process for public television stations to obtain extensions for delays caused by these factors outside of their reasonable control.⁴ This is not a new challenge for the FCC. The Commission faced, acknowledged, and accommodated similar concerns during the DTV transition. For example, in *Advanced Television Systems and their Impact upon the Existing Television Broadcast Service*, 12 FCC Rcd 12809, at ¶ 104 (1997), the Commission stated as follows:

At the outset, we note our commitment to noncommercial educational television service and our recognition of the high quality programming service noncommercial stations have provided to American viewers over the years. We also acknowledge the financial difficulties faced by noncommercial stations and reiterate our view that noncommercial stations will need and warrant special relief measures to assist them in the transition to DTV. Accordingly, we intend to grant such special treatment to noncommercial broadcasters to afford them every opportunity to participate in the transition to digital television, and we will deal with them in a lenient manner.

PTV seeks similar consideration and assistance by the Commission in the repack transition.

Accommodation of Translators in Repack Transition

Public television stations rely heavily on TV translators, individually and through networks and relays, to provide public television service to large areas of the country,

⁴ Thus, the Commission should offer governmental licensees an opportunity to inform the Commission of their expected procurement processes and potential delays, and factor this information into the Commission's assignment of stations to particular transition phases. The Commission may also want to consider designating a particular FCC staff member or members who would be familiar with the special difficulties faced by state and institutional licensees and could be made available for purposes of supporting the efforts of such licensees to speed up state or institutional processes or seek waiver of such processes as appropriate. FCC staff could be helpful in acknowledging to appropriate state and institutional officials the FCC's understanding of their circumstances, but could also help station staff present the importance and urgency of the transition plan and the necessity of individual stations' adherence to their schedules.

including remote and rural areas, in furtherance of the Congressional mandate in Section 396(a)(9) of the Communications Act “to ensure that all citizens of the United States have access to public telecommunications services.” See Exhibit A, attached map of PBS Member Station Translator Coverage. At last count, there were 583 television translator stations operated by PBS member stations. A 2014 Booz & Co. study found that, at the 120 MHz clearing target, 200 to 250 of these translators would need to relocate to a new frequency (at costs of approximately \$50,000 per translator, for a total PTV industry cost over \$10 million) and up to another 200 of these translators would be forced to cease broadcasting altogether due to a lack of available broadcast spectrum frequencies. Even at the current or lower clearing targets, however, loss of coverage and the costs of relocating translator service are critical considerations for PTV.⁵ PBS member station translators currently serve approximately *37.7 million people* across the United States.

PTV is concerned whether public television translator service – often the only public television service available to an area – will be able to continue during and after the repack transition and, if so, with the least amount of disruption. The Public Notice mentions briefly, in Paragraph 24 and in footnote 71, the “special filing window” for TV translator stations that are displaced as a result of the repacking process. The

⁵ For example, California and Nevada communities are served by over 60 translators, including 28 translators used by KNPB in Reno to reach 423,000 of 845,000 people covered by its public television service, which includes 27 tribal communities with about 32,400 residents. In Wyoming, translators provide service to 69 percent of the public television stations’ coverage area. Approximately 50 percent of New Mexico public television viewers are reached by 31 translators. The Navajo Nation would be disproportionately affected by loss of this service. Public TV stations in Utah rely on over 150 translators through extended daisy chains to reach communities throughout the state. The University of North Carolina uses 24 translators to serve the state, including in the congested Raleigh-Durham and Charlotte markets. Idaho Public Television relies on 43 translators to provide public television services to viewers across the state of Idaho.

Commission has stated that this window will open after reassigned full-power and Class A stations have filed their construction permit applications and have had an opportunity to request alternate channels or expanded facilities. However, the timing for this “special filing window” is not discussed as part of the proposed “phased” transition.

PTV urges the Commission to: (i) schedule the “special filing window” now, as part of establishing the phased transition; (ii) set the date for the window as soon as possible after issuance of construction permits for full-power and Class A stations and other pre-“special filing window” tasks are completed; and (iii) ensure that the translator window and the processing of window-related applications take place well in advance of the completion of any given phase of the transition, so that public television translators will be able to plan for, budget, engage in appropriate procurement processes (if necessary), and relocate from displaced channels before the testing and end of any particular phase. This is particularly important for public television translators that are displaced by Phase 1 or Phase 2 transitions, as those translators will have the least amount of lead time for planning and implementing post-displacement facilities.

PTV also urges the Commission to commit to, and arrange for, appropriate Video Division staffing for a liberal (and expedited) Special Temporary Authority policy, as well as a limited interference waiver policy for displaced public television translators that provide sole public television service to an area (including those displaced by any temporary channel assignments of full-service and Class A stations) in order to help ensure continuity of public television service for any displaced translators that are awaiting the outcome of the “special filing window.” As explained above, state budget processes and state procurement rules will also significantly impact the funding and implementation timeline for public television translator displacements.

Finally, PTV notes that these displaced public television translator stations (and all displaced LPTV and TV translator stations) need to draw on the same constrained vendor and supply resources, during the same time frame, as full-power and Class A stations, in order to preserve continuity of service to the public. Thus, the FCC's modeling needs to take into account the extra burden that displacement of some portion of the 2,090 LPTV stations and 3,658 TV translator stations⁶ (which numbers include the 583 PBS member television translator stations) will place on already constrained repacking resources. PTV understands that the repack for full-power stations may take priority because of statutory considerations, but the planned phases, time frames, and available resources impact all broadcast stations, including public television translators. It is not feasible for the FCC to establish the full-power station repack schedule, then wait to establish the affected TV translator displacement schedule – both schedules are interrelated and need to be developed simultaneously because the proposed phased repack will result in sequential phases of TV translator displacement.

Conclusion

PTV urges the Commission to consider and accommodate public television stations licensed to governmental entities that will face delays in the transition due to procurement and/or appropriations processes. PTV also requests the Commission to establish the process and determine the timing of an early opportunity for the filing of translator displacement applications.

⁶ *Public Notice* at para. 17 and fn 20.

Respectfully submitted,

/s/

William Weber
Vice President, Government Affairs and
Associate General Counsel
Eric J. Wolf
Vice President, Technology Strategy and
Planning
Thomas Rosen
Assistant General Counsel
PUBLIC BROADCASTING SERVICE
2100 Crystal Drive
Arlington, VA 22202

/s/

Todd D. Gray
Margaret L. Miller
GRAY MILLER PERSH LLP
1200 New Hampshire Ave. NW, Suite 410
Washington, DC 20036

Of Counsel

/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/

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

October 31, 2016

Exhibit A

PBS Member Station Translator Coverage

