



PUBLIC NOTICE

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DA 15-1238
Released: October 30, 2015

MEDIA BUREAU FINALIZES REIMBURSEMENT FORM FOR SUBMISSION TO OMB AND ADOPTS CATALOG OF EXPENSES

GN Docket No. 12-268

In the *Incentive Auction R&O*,¹ the Commission established the post-auction process for reimbursing eligible broadcasters and MVPDs from the \$1.75 billion TV Broadcaster Relocation Fund (“Fund”) established in the Spectrum Act.² The Commission delegated authority to the Media Bureau to develop the form to be used by entities to claim reimbursement from the Fund, to develop a catalog of eligible expenses, and to make other determinations regarding eligible costs and the reimbursement process.³ In this Public Notice, we announce that the final version of the Reimbursement Form, FCC Form 2100, Schedule 399 (Reimbursement Form or Form), which is attached as Appendix A, will be submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act. We also adopt a catalog of expenses, which is embedded in the Form.⁴ As the Commission has explained, the catalog of expenses is not intended to be a definitive list of all reimbursable expenses.⁵ Rather, it is a means of facilitating the reimbursement process of claiming reimbursement by setting forth categories of expenses that are most likely to be commonly incurred by relocated broadcasters and MVPDs. The Form itself provides broadcasters and MVPDs with the ability to seek reimbursement for

¹ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6567 (2014), *affirmed*, *National Association of Broadcasters v. FCC*, No. 14-1154 (D.C. Cir. June 12, 2015) (“*Incentive Auction R&O*”); *see also* *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket 12-268, Second Order on Reconsideration, FCC 15-69, 30 FCC Rcd 6746 (2015).

² Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6402, 6403, 125 Stat. 156 (2012) (“Spectrum Act”) at § 6403(d)(1); 47 U.S.C. § 309(j)(8)(G)(iii)(I). The Spectrum Act requires that the Commission “reimburse costs reasonably incurred by” broadcast television licensees that are reassigned to new channels as a result of the incentive auction. 47 U.S.C. § 1452(b)(4)(A)(i). In addition, the Spectrum Act requires the Commission to reimburse MVPDs that reasonably incur costs in order to continue to carry the signals of licensees reassigned to new channels as a result of the reverse auction or repacking process. *Id.* at § 1452(b)(4)(A)(ii).

³ *Incentive Auction R&O*, 29 FCC Rcd at 6820, para. 619.

⁴ The paper version of the Form attached as Appendix A is a representation of the data points contained in the electronic version of the form.

⁵ *See Incentive Auction R&O*, 29 FCC Rcd at 6817-18, para. 611 (stating that the catalog “will contain a list of many, but not necessarily all, of the modifications” an eligible entity may have to make).

expenses other than those listed in the catalog. Finally, we provide additional information clarifying how the Form will be used during the reimbursement period.

FCC Form 2100, Schedule 399. After considering the public comments on a draft of the Form released in 2014⁶ and further refining the reimbursement process, the Media Bureau has made certain changes to the FCC Form 2100, Schedule 399. In general, comments on the draft Form consisted of requests that we add potential expenditures to the catalog of expenses⁷ and suggestions for making the on-line version of the Reimbursement Form user-friendly.⁸ First, based on the Widelity Report and the record,⁹ we adopt a catalog of expenses, which is embedded in the Form. This catalog includes categories for those expenses that relocated broadcasters and MVPDs will most commonly incur as a result of the channel repack. Where appropriate, we modified the catalog to add a specific type of equipment.¹⁰

As stated above, the catalog is not intended to be exhaustive of the expenses eligible for reimbursement. Instead, the catalog is designed to be used as a guide to add structure to the process of claiming reimbursement for equipment and services commonly required when constructing new broadcast facilities. Accordingly, the Reimbursement Form includes a catch-all entry (labeled “other”) within each cost category which will allow applicants to submit other expenses not specifically listed in the catalog.¹¹ We

⁶ *Media Bureau Seeks Comment on Draft TV Broadcaster Relocation Fund Reimbursement Form* GN Docket No. 12-268, Public Notice, 29 FCC Rcd 11451 (2014) (“*Draft Reimbursement Form PN*”). Although that Public Notice sought comment on the draft Form and confidentiality, several commenters addressed issues relating to the reimbursement process that were outside the scope of the Public Notice. *See, e.g.*, National Association of Broadcasters (NAB) Comments at 4-5; The Public Broadcasting Service, Corporation for Public Broadcasting Service, and Association of Public Television Stations (PBS/CPB/APTS) Comments at 5, 7-8. The Media Bureau will address additional issues pertaining to the reimbursement process in a series of Public Notices designed to provide additional information and notice about the reimbursement process.

⁷ Cohen, Dippell and Everist, P.C. (Cohen Dippell) Comments at 3; PBS/CPB/APTS Comments at 2, 5-6; NAB Comments at 7-8.

⁸ Cohen Dippell Comments at 2; PBS/CPB/APTS Comments at 3-5; NAB Comments at 8.

⁹ Prior to developing the Form, the Media Bureau sought comment on the Widelity Report, which included a catalog of eligible expenses and estimated costs. *Media Bureau Seeks Comment on Widelity Report and Catalog of Potential Expenses and Estimated Costs*, GN Docket No. 12-268, Public Notice, 29 FCC Rcd 2989 (2014) (“*Widelity Report PN*”); *See also 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, 28 FCC Rcd 13787 (2013). We will adopt the baseline estimated costs for the expenses in the catalog in a future Public Notice. Before doing so, we intend to seek comment on the appropriate means of adjusting the baseline costs for the commonly purchased equipment and services included in the catalog from year-to-year.

¹⁰ For example, we added waveguide as a type of transmission line (PBS/CPB/APTS Comments at 6) within III.B.1.3.c, “Other Transmitter Costs.”

¹¹ Many of the potential expenses singled out by commenters could be submitted in one of the catch-all categories of the Form, for example: land for new tower or facilities (NAB Comments at 7-8) (III.B.4.3.d.1, “Other Tower Expenses Not Listed”); voltage regulators, surge protectors, generators, uninterruptable power supplies and other back-up power (PBS/CPB/APTS Comments at 7) (III.B.1.3.c.1, “other electrical service” in “Other Transmitter Costs”); architectural and engineering services (NAB Comments at 8) (III.B.5.1.b.1, “Other Professional Service Expenses Not Listed”); grant-related expenses (NAB Comments at 7-8)(III.B.6.1.b.1 “Other Expenses,” “Other Miscellaneous Expenses Not Listed”). Some commenters suggested adding expenses that were already included in the draft Form and are incorporated into the final version, for example: coverage verification (PBS/CPB/APTS Comments at 7) (*see* III.B.5.1.a.4, “comprehensive coverage verification via field study” in “RF Engineering Studies”); environmental studies and FAA assessment (Cohen Dippell Comments at 2) (*see* III.B.5.1.a.3, “NEPA

believe this approach provides sufficient flexibility for applicants to seek reimbursement for any expense without searching through an expansive catalog that includes every conceivable potential cost, including those that might be claimed by only a small sub-section of broadcasters. Second, in response to comments regarding the functionality of the on-line Form, our goal is to establish a simple submission process for broadcasters and MVPDs filing required information, while facilitating expedient administrative review of the information submitted. As we finalize development of the on-line Form, we will take into consideration the practical suggestions offered by commenters to enhance the functionality of the Form. Finally, we note that, in the final version of the Form we have added a few additional data points to facilitate administration and processing of expense requests,¹² and deleted some that are no longer required.¹³

Banking and Payment Information. All eligible broadcasters and MVPDs will receive an initial allocation of funds based on estimated costs.¹⁴ This money, which will be held in the U.S. Treasury, will be available for draw down as the entities incur expenses.¹⁵ The Reimbursement Form has been updated to reflect that the Media Bureau, working with the Commission's Office of Managing Director (OMD), will disburse reimbursement payments via the agency's internal vendor payment system. Although the Media Bureau stated previously that payments from the Fund would be processed through the U.S. Treasury Department's Automated Standard Application for Payments (ASAP) system,¹⁶ we have determined that an in-house disbursement process is a more efficient approach that, among other benefits, is easier and less expensive to implement (thus reducing waste) and eliminates the need for recipients to enroll in Treasury's ASAP system. Also, using the Commission's in-house payment mechanism will provide the Commission with more oversight over the establishment of accounts, further enhancing our ability to prevent waste, fraud and abuse.¹⁷ Instead of using Treasury's ASAP system, eligible broadcast

Section 106 environmental review", "environment assessment" and "FAA Consultation (including preparation of FAA Form 7460)" in "Attorney and Other Outside Consultant Costs"); and expenses resulting from removing and disposing of equipment being replaced (PBS/CPB/APTS Comments at 6) (*see* III.B.6.1.a.4, "disposal costs" in "Other Miscellaneous Expenses").

¹² Specifically, we added the following: fields that require the user to identify which banking account and contact address from those stored in the CORES system will be used for payment (*see* discussion of banking and payment information, *infra*); a question asking whether a station's existing antenna is located near an antenna farm; the name of vendor providing the equipment or service and, if provided on its invoice, the vendor's employer identification number (EIN) or taxpayer identification number (TIN) (vendor name and EIN/TIN will not be viewable by the public; *see* discussion of confidentiality, *infra*); and invoice number and invoice amount. In addition, the instructions to the Form remind recipients that, consistent with 47 C.F.R. 73.3700(e)(5), they must file progress reports, at a date and frequency to be determined by the Media Bureau. Entities will upload progress reports to LMS as supporting documentation (*i.e.*, a separate document) during the reimbursement period, as directed by the Media Bureau.

¹³ Treasury ASAP account and contact information and certification is no longer required (*see* discussion of banking and payment information, *infra*).

¹⁴ *Incentive Auction R&O*, 29 FCC Rcd 6816, para. 609.

¹⁵ *Id.*

¹⁶ *See Draft Reimbursement Form PN*, 29 FCC Rcd at 11452. *See also, Incentive Auction R&O*, 29 FCC Rcd 6816, para. 609.

¹⁷ *See Incentive Auction R&O*, 29 FCC Rcd 6820 at para. 619 ("Finally, we delegate authority to the Media Bureau to adopt the necessary policies and procedures relating to allocations, draw downs, payments, obligations, and expenditures of money from the Reimbursement Fund in order to protect against waste, fraud, and abuse and in the event of bankruptcy. (footnote omitted) Given the importance of maintaining the integrity of the Fund, the Media

stations and MVPDs will submit information for the bank account for which they wish to receive reimbursement payments through the Commission's Registration System (CORES). To provide additional visibility into payment process, OMD is in the process of implementing a user portal that will allow recipients to track their expense reimbursement history. As a result, recipients will be utilizing a system that is functionally equivalent to Treasury's ASAP system. We will release additional information regarding the submission of banking information closer to the start of the reimbursement period.

Multiple Submissions of Reimbursement Form. Eligible entities will draw down money from their Fund allocation as they incur expenses. This means that a broadcaster or MVPD will have to submit information on the Reimbursement Form each time it makes a request for reimbursement from the Fund, not only at the beginning and end of the reimbursement period. Actual cost documentation showing the entity incurred an expense associated with channel reassignment must accompany every reimbursement request. At the beginning of the reimbursement period, an eligible entity will log in to the Media Bureau's Licensing and Management System (LMS) to submit its estimated costs. Periodically thereafter, each time an entity seeks reimbursement for specific costs incurred during construction, it will update its Reimbursement Form by identifying the equipment or service for which it seeks reimbursement and uploading cost documentation, such as an invoice from a vendor. Pursuant to our process, broadcasters and MVPDs will have the flexibility to submit each invoice for payment upon receipt from the vendor (submitting the Reimbursement Form and cost documentation each time they incur an expense), or to pay their vendors directly and submit claims in batches.¹⁸ The online version of the Reimbursement Form within LMS will be designed so that the user can navigate directly to any section of the Form, and can easily view previous submissions.

Treatment of Certain Information as Confidential. The Media Bureau sought comment on whether any data submitted on the Reimbursement Form should be considered confidential or not subject to public disclosure.¹⁹ We conclude that the cost documentation submitted by entities seeking reimbursement for actual costs (for example, invoices), as well as the name, address, and other identifying information pertaining to the vendor providing equipment or service to a specific broadcaster or MVPD, will not be made publicly available.²⁰ We find that copies of invoices and the name, address, and other identifying information pertaining to the vendor from which a broadcaster or MVPD purchases equipment or services are confidential commercial information and therefore not routinely available for public inspection pursuant to Exemption 4.²¹ We expect that publicly identifying the rates charged by specific vendors may hinder competition in the market for transition-related equipment and services. Moreover, we expect to receive thousands of requests for reimbursement with cost documentation attached. To reduce the burdens on broadcasters and MVPDs, we decline to require individual requests for

Bureau will consult with the Office of General Counsel and the Office of the Managing Director in acting pursuant to this delegation.”).

¹⁸ Under the latter approach, the entity would make an out-of-pocket payment to its vendor prior to being reimbursed from the Fund, but would avoid the need to file frequent claims.

¹⁹ *Draft Reimbursement Form PN*, 29 FCC Rcd at 11453. We received one comment on this issue. See Cohen Dippell Comments at 3 (stating that all outside professional services and other expenses reported in Sections III.B.5 and III.B.6 of the Form are proprietary and should be confidential).

²⁰ See 47 C.F.R. § 0.457(d)(2) (“In the absence of a request for non-disclosure, the Commission may . . . determine on its own motion that the materials should not be routinely available for public inspection.”); *id.* § 0.459(f).

²¹ 5 U.S.C. § 552(b)(4) (exempting from disclosure “trade secrets and commercial or financial information obtained from a person and privileged or confidential”). See also 47 C.F.R. § 0.457(d).

confidentiality of cost documentation to be submitted with each reimbursement request. Apart from these limitations, we reiterate that we will err on the side of transparency and disclosure in making information, particularly the amount disbursed to each broadcast station and MVPD, available to the public.²² For example, we will make publicly available through LMS the amount for which a broadcaster has requested reimbursement, as well the amount disbursed, for a piece of equipment or service, but we will not make publicly available the invoice or the name, address, or other identifying information pertaining to the vendor.²³

For additional information on this proceeding, contact Pamela Gallant, Pamela.Gallant@fcc.gov, (202- 418-0614) of the Media Bureau, Video Division. Press contact: Janice Wise, Janice.Wise@fcc.gov, (202- 418-8165).

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²² *Incentive Auction R&O*, 29 FCC Rcd at 6817, para. 610 n. 1724.

²³ The actions in this Public Notice have not changed our Final Regulatory Flexibility Analysis (FRFA), which was set forth in the *Incentive Auction Report and Order*. See *Incentive Auction Report and Order*, 29 FCC Rcd at 6947, Appendix B.