

ALERT

FCC Extends Deadline for Initial LPTV/ Translator Reimbursement Filings

October 8, 2019

**Note: this is an update to an alert that was originally published on August 27, 2019*

Update: On October 8, 2019, the Federal Communications Commission (FCC or Commission) announced that it is extending the deadline for low power television and TV translator stations to file their initial FCC Form 2100, Schedule 399 from October 15, 2019, to 11:59 p.m. on November 14, 2019. Please note that the October 15 deadline for FM broadcast stations remains unchanged. The Commission is encouraging broadcasters not to wait until the deadlines to file, noting that it will review Form 399s on a rolling basis upon receipt. All other deadline and procedures described below remain unchanged.

On August 15, 2019, the Federal Communications Commission (FCC or Commission) officially commenced the process for reimbursing low power television (LPTV), TV translator, and FM broadcast stations for costs incurred as part of the post-incentive auction repack. First, the FCC issued the Financial Information Public Notice, which includes instructions for broadcasters to submit their financial information required for disbursement of reimbursement payments. Second, the Commission issued its Reimbursement Procedures Public Notice, which sets forth the specific procedures that licensees of eligible stations must follow to obtain reimbursement.

The FCC also announced that it will hold a webinar on August 28, 2019, from 11:00 a.m. to noon Eastern time, to provide additional information about the reimbursement procedures. After the event, a recording of the webinar will be available here under the Education tab.

Authors

John M. Burgett
Partner
202.719.4239
jburgett@wiley.law

Ari Meltzer
Partner
202.719.7467
ameltzer@wiley.law

Joan Stewart
Partner
202.719.7438
jstewart@wiley.law

Practice Areas

Media
Telecom, Media & Technology

Background

In 2018, Congress adopted the Reimbursement Expansion Act (REA), which expanded the list of entities eligible for reimbursement to include LPTV, TV translator, and FM broadcast stations that incurred costs as part of the post-incentive auction repack. The REA included \$1 billion in additional funds for the TV Broadcaster Reimbursement Fund (\$600 million in fiscal year 2018 and \$400 million in fiscal year 2019) and authorized the FCC to use up to \$150 million of the FY 2018 appropriation to reimburse LPTV/translator stations and up to \$50 million to reimburse FM stations. The REA did not place any restrictions on the use of the FY 2019 funds, but the FCC will prioritize the payments of such funds to first reimburse eligible full power and Class A stations before using any remaining funds to reimburse eligible LPTV/translator stations and FM stations.

The Commission adopted rules governing reimbursement eligibility in a March 2019 Report and Order. Concurrent with the adoption of the Report and Order, the FCC also released a catalog of potentially reimbursable costs (the Cost Catalog) which, similar to the catalog used for full power and Class A stations, provides a list of categories and expenses most likely to be incurred as a result of the repacking process, as well as guidance on acceptable price ranges for potential reimbursements.

Financial Information Public Notice

As with the reimbursement process for full power and Class A television stations, licensees of LPTV, TV translator, and FM broadcast stations will need to file FCC Form 1876 to receive reimbursement payments. The Financial Information Public Notice sets forth a three-step process for licensees to submit their financial information to the Commission:

1. The licensee's FRN Administrator must log in to the Commission Registration System (CORES) Incentive Auction Financial Module (CIAFM) and enter all requested information. The CIAFM will then generate a Form 1876 in PDF format for signature.
2. A person with authority to bind the licensee (e.g., a corporate officer or owner) must sign a hard copy of the completed Form 1876, have it notarized, then mail the original signed and notarized Form 1876 to the Commission, together with a bank account verification letter or a redacted bank statement (dated within six months of the signature on the Form 1876) that confirms ownership of the account for each FIN/File Number receiving reimbursement.
3. The FCC staff will confirm that all required information has been provided and send an email notification to the licensee requiring the Authorized Agents(s) to review and verify bank account information within 10 business days.

Although the Commission did not establish a deadline for licensees to complete their Form 1876, it will not release any reimbursement payments to a licensee until the bank account information in the CIAFM is verified by an Authorized Agent. Furthermore, the FCC will only release reimbursement payments to a single payee and account, and will not release payments to creditors or any other third parties on behalf of the licensee.

While the FCC will enable the FIN/File Numbers for LPTV and TV translator stations in CORES for stations that filed applications during the Special Displacement Window, it will not enable the FIN/File Numbers for FM broadcast stations until they file a Form 399 Eligibility Certification (see below). Accordingly, FM stations will need to file their Form 399 before filing Form 1876.

Reimbursement Procedures Public Notice

The Reimbursement Procedures Public Notice outlines the process and deadlines for licensees to submit their eligibility certifications and reimbursement requests via the FCC's Licensing and Management System (LMS).

LPTV and TV translator stations that plan to seek reimbursement must file the Reimbursement Form, including completion of the Eligibility Certification and reimbursement estimates, by 11:59 p.m. on November 14, 2019. FM stations must file their Reimbursement Forms and Eligibility Certifications by 11:59 p.m. on October 15, 2019.

Eligibility

LPTV/translator stations are eligible for reimbursement if they meet the following criteria:

- **Special Displacement Window Criteria.** A station must have (i) been eligible to file an application during the Special Displacement Window, (ii) filed during that window, and (iii) had its application granted. An LPTV/translator station would have been eligible to file in the Special Displacement Window if it was operating on April 13, 2017 and it was displaced as a result of the repacking process.
- **Licensed and Transmitting.** A station must have been "transmitting" (i.e., operating no less than two hours each day of the week and not less than a total of 28 hours per calendar week) for at least nine of the 12 months prior to April 13, 2017.

Early Displaced Stations (stations that were displaced by T-Mobile prior to the Special Displacement Window) and Displaced Analog-to-Digital Replacement Translators (DRTs displaced as a result of the repack) are also eligible for reimbursement.

- **Eligibility Certification.** Licensees must certify that they meet all eligibility requirements for reimbursement. Additionally, licensees must provide proof, in the form of documents (such as an electric bill or programming guide) or other supporting documentation that demonstrate the station's operation for nine of the 12 months prior to April 13, 2017.

Full power FM stations, low power FM stations, and FM translator stations (collectively, "FM stations") are eligible for reimbursement if they meet the following criteria:

- **Licensed and Transmitting.** The station must have been licensed and transmitting on April 13, 2017 using facilities impacted by a repacked television station.

- **Categories of Eligible FM Stations.** The station must have incurred expenses to reasonably minimize disruption of service as a result of the repack by: (a) permanently relocating its main transmission site; (b) temporarily dismantling all or some of the facilities at its main transmission site; or (c) constructing or modifying interim auxiliary facilities (because its primary or existing auxiliary facilities would lose more than 20% of the station's normal covered population or more than 20% of its normal coverage area, and service would be lost for more than 24 hours and would not be limited to the hours 12 a.m. to 5 a.m. local time.

In addition to certifying their eligibility for reimbursement, licensees must also provide:

- contour maps showing 60 and 70 dB μ contours from the main transmission site for both full-power and reduced-power transmissions, including total area covered for all contours and total population covered for all contours, based on Census Bureau population centroids;
- contour maps showing the 60 and 70 dB μ contours from the interim auxiliary facilities transmission site, and state the area and population covered under both contours;
- all date(s) and time(s) that broadcast transmissions at the main transmission site were or will be required to cease or to operate at reduced power from the FM station's primary facility; and
- all date(s) and time(s) that broadcast transmissions were or will be made from the interim auxiliary facilities constructed using funds from the Fund.

Estimates and Incurred Expenses

Each station seeking reimbursement must list on the Reimbursement Form in LMS its existing broadcasting equipment and the types of repacking-related costs it expects to incur. Stations must also indicate on the Form whether they will need to purchase equipment to continue operating or whether they can reuse some of their existing equipment. Stations must also submit estimates (based on the cost catalog embedded in the form) or actual expenses in lieu of estimates.

After reviewing the initial estimates or actual expenses, the Media Bureau will make an initial allocation from the Fund for each eligible LPTV/translator and FM station. To receive reimbursement after an LPTV/translator or FM station incurs an eligible cost, it must file a reimbursement claim along with any required supporting invoices and other cost documentation using the Reimbursement Form via LMS. The Media Bureau may make additional allocations if funds are available.

The Reimbursement Procedures Public Notice offers certain lessons learned from the full power and Class A television reimbursement process:

- Stations should ensure the "Reimbursement Contact" identified on the Reimbursement Form is accurate so that emails from Commission staff and the Fund Administrator are delivered to the proper person.
- Stations should double check that the data entered in the Reimbursement Form matches the invoice, including the vendor name; vendor EIN/TIN; invoice date; invoice number; invoice due date; dollar amount; and station call sign and facility ID.

- Stations should upload an invoice only once for the first line item. Once uploaded, the invoice can be associated with future line items by using a drop-down menu to access the invoice. Stations should not delete an invoice unless instructed to do so by the Fund Administrator or Commission staff.
- If an invoice includes costs for multiple stations, the licensee must document how the expenses are divided among the various stations and explain the reason.
- If a station is requesting a partial payment of the total amount reflected on an invoice (e.g., deducting the cost of upgrades), it should include a cover letter identifying the reimbursement amount requested.
- For professional services, reimbursement requests must be accompanied by a supporting vendor invoice that clearly identifies the period of time during which services were performed. Time and material billings must specify hours worked by resource, the associated rate(s) per hour, and a description of the activities performed by each individual.

The FCC will announce a deadline prior to the July 3, 2023 statutory expiration of the reimbursement program by which stations must submit all requests for reimbursement.

Measures to Prevent Waste, Fraud, and Abuse

Entities will be required to document all actual expenses and retain all relevant documents for at least 10 years after receiving final payment from the reimbursement fund. Entities submitting reimbursement requests will also be required to certify the validity and accuracy of the submission.

If you have any questions about the reimbursement process, please contact the Wiley Rein attorney who regularly handles your FCC matters or one of the attorneys listed on this client alert.