

CASH BACK FROM THE REPACK

By PAUL A. CICELSKI

NOW THAT THE TV BROADCAST SPECTRUM AUCTION has ended, many full-power and Class A station owners are asking how and when they can expect to be reimbursed for certain expenses.

The costs relate to the involuntary “repacking” of TV channels into a smaller amount of frequency within the ultra-high frequency (UHF) bands, thereby making room for more flexible wireless transmissions within the former TV bands. The Federal Communications Commission (FCC), which conducted the auction, will refund all costs that are “reasonably incurred” by a broadcaster that was required to change channels.

In the Spectrum Act, Congress appropriated \$1.75 billion dollars for a television broadcaster relocation fund to repay stations that are reassigned to a new channel.

While repacked stations can expect to be compensated for their “reasonable” purchases of new equipment and services related to their channel change, the FCC has the final say in determining whether a station’s repack costs are reasonable and eligible for reimbursement.

One of the most important things to keep in mind is that the FCC will only reimburse stations for replacement equipment comparable to what the station is currently using, as discussed later in this article.

REIMBURSEMENT TIMELINE

The reimbursement process is a highly technical and complicated. It begins once the FCC releases its channel reassignment public notice, which marks the beginning of the 39-month post-auction repack period. At press time, the FCC was expected to release the notice in April.

The notice will provide details for TV station post-auction channel assignments, including technical parameters and repacking deadlines for stations to cease

**THE FCC HAS A
\$1.75 BILLION
REALLOCATION
FUND FOR TV
STATIONS SEEKING
REIMBURSEMENT
FOR REASSIGNED
CHANNELS – AND
VERY SPECIFIC
REQUIREMENTS.**





operation on their pre-auction channels. Only full-power and Class A television stations involuntarily repacked to a new channel are eligible for reimbursement compensation from the FCC.

Once the notice is released, stations will have 90 days to file a construction permit application for their new facilities on their new channels and to submit their estimated relocation costs for reimbursement using the FCC reimbursement form.

The form will be used for two purposes: first, to report estimated construction-related costs, and secondly, to provide actual cost invoices on a rolling basis as invoices are submitted. As mandated by the Spectrum Act, the FCC must make all reimbursements within three years from the end of the forward auction (Spring of 2020).

ELIGIBLE EXPENSES

The FCC has released a predetermined “Catalog of Potential Expenses and Estimated Costs” to provide broadcasters with guidance on specific categories of repack expenses that will generally be reimbursed.

Although the cost catalog is relatively comprehensive, the FCC has nevertheless indicated that it is not meant to provide an exhaustive list of every reimbursable expense. Instead, the FCC will evaluate the “reasonableness” of all estimated reimbursable costs on a case-by-case basis, using the cost catalog as a blueprint.

The catalog covers the potential expenses and provides dollar amount ranges for certain categories of expenses. These categories are:

TRANSMITTERS – Depending on the individual circumstances of the station being repacked, this may include retuning or replacing transmitters, or interim transmitters, if necessary.

ANTENNAS – Repack expenses commonly involve purchase and installation of replacement antennas, as well as interim antenna rentals.

TRANSMISSION LINES – This expense kicks in when a station’s current transmission lines cannot be used as a result of the channel change.

TOWER EQUIPMENT AND RIGGING – A repack may require a station to replace an existing antenna or to purchase additional ones.

OUTSIDE PROFESSIONAL COSTS – This category includes RF (radio frequency) consulting engineering fees, attorney fees

and other consultant fees.

MISCELLANEOUS – This catch-all category includes necessary building permits; local permits; equipment disposal and delivery costs; handling and storage charges. It also includes channel-change notifications to viewers, multichannel video programming distributors and medical facilities.

The cost catalog is embedded in the FCC’s reimbursement form. The prices included in the catalog will automatically populate in the form’s cost section spreadsheet as anticipated equipment changes are added.

When filing estimated costs, reassigned stations must provide the FCC with an inventory of their current equipment (whether it is operational or not) and all

costs stations expect to incur in order to change channels.

Cost estimates can be based either on dollar amounts listed in the cost catalog, or actual itemized price quotes from vendors. Once the estimated costs are approved, stations will receive an initial allocation of the funds requested to pay for their channel change.

As reassigned stations incur actual construction costs, station licensees are required to file claims for all incurred costs along with supporting invoices and cost documentation. Stations therefore will likely submit multiple reimbursement requests as they incur expenses during the repack period.

Prior to the conclusion of the three-year reimbursement period, the FCC will initiate a final cost “true-up” period. At that time, if they have not done so already, stations will be required to submit documentation of actual expenses and estimated remaining expenses. The FCC will then distribute additional funds as appropriate or will reclaim any remaining funds that a station has not spent.

When submitting actual costs, broadcasters should keep in mind that all reimbursement claims are subject to strict FCC engineering review and financial accounting audits. Consequently, stations should keep meticulous records and invoices for their actual costs.

The FCC’s reimbursement fund has a statutory cap of \$1.75 billion. So, if the fund runs out of cash, the commission will be unable to reimburse stations in full for their relocation costs, even if the costs would otherwise be eligible for a refund.

Because many anticipate that \$1.75 billion will be insufficient to cover the relocation costs for all repacked stations, there is at least one bill currently circulating on Capitol Hill proposing an increase in the amount of the fund. If the dollar amount is not increased by Congress, station licensees can expect to receive only a *pro rata* portion of their eligible costs for reimbursement from the funds that remain available and will have to pay the difference out of pocket.

INELIGIBLE EXPENSES

The Spectrum Act allows only repacked stations to receive reimbursement payments. The FCC has stated that expenses for non-repacked parties can be reimbursed only if

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FCC Releases the public notice, which:

- Provides the repack channel assignments for stations remaining on-air post-auction;
- Triggers the start of the 39-month repack transition period;
- Assigns stations to one of 10 transition phases with sequential testing periods and construction deadlines.

Repacked stations have three months from the release date of the public notice to submit:

- Construction permit applications for repacked facilities;
- A request for reimbursement with the estimates of the anticipated costs related to the construction of the new station facilities.

The FCC will make an initial allocation of funds to repacked stations of up to 80% of estimated costs for commercial TV stations and up to 90% of estimated costs for non-commercial TV stations.

Once a station begins to incur construction costs it must submit actual invoices for cost reimbursement.

All stations must cease operating on their pre-auction channels at the end of the 39-month post-auction transition period regardless of whether stations have completed their repack construction.

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the repacked broadcaster has a contractual obligation to pay the expenses for interference to any non-repacked third-party tower occupants, or if the FCC determines on a case-by-case basis that the reimbursement of such expenses is reasonable as part of a station's repack.

Of note to FM radio station owners: there are potential adverse consequences for FM radio stations that operate from television towers that could suffer "collateral damage" to their radio operations while a TV station implements a channel change on the same tower.

The FCC has indicated that radio stations that incur costs due to a repacked TV station may only be reimbursed pursuant to a contract or if they benefit indirectly from the repacked TV station's reimbursement.

The FCC may not reimburse stations for lost revenues, which it defines as dollars lost as a "direct or ancillary result" of the repack. For example, the commission has stated that it will not reimburse lost advertising revenues or lost airtime, even if a station has to go off-air to put its new

channel into operation.

Broadcasters can use the repack process as an opportunity to upgrade their station's facilities, but they will be required to pay the out-of-pocket difference between the amount the station could have paid for new equipment comparable to the setup a station used pre-repack, and the amount

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actually paid for any subsequent voluntary equipment upgrades.

As a result, stations seeking reimbursement should be prepared to reuse their old (current) equipment to the extent possible to avoid paying for things that will not be considered a comparable and therefore "reasonable" cost.

The FCC hasn't categorically excluded equipment related to ATSC 3.0

technology from their reimbursement list. Instead, all requests for ATSC 3.0 compatible equipment will be evaluated for reasonableness on a case-by-case basis. The commission has stated that it does not "anticipate providing reimbursement for new, optional features in equipment unless the station . . . documents that the feature is already present in the equipment that is being replaced." Consequently, in most instances any ATSC 3.0 enhancements will likely be considered non-reimbursable upgrades unless the station currently uses ATSC 3.0 equipment.

There is little doubt that the process for stations to receive reimbursement from the FCC is extremely complicated and time-consuming. Yet, given that there are potentially millions of dollars at stake, television stations owners should take great care to familiarize themselves with the repack process to make sure they are properly reimbursed.

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