



# PUBLIC NOTICE

Federal Communications Commission  
445 12<sup>th</sup> St., S.W.  
Washington, D.C. 20554

News Media Information: 202-418-0500  
Internet: [www.fcc.gov](http://www.fcc.gov)  
TTY: 888-835-5322

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**THE INCENTIVE AUCTION TASK FORCE AND MEDIA BUREAU ADOPT FILING REQUIREMENTS FOR THE TRANSITION PROGRESS REPORT FORM BY STATIONS THAT ARE NOT ELIGIBLE FOR REIMBURSEMENT FROM THE TV BROADCAST RELOCATION FUND**

**MB Docket No. 16-306  
GN Docket No. 12-268**

## I. INTRODUCTION

1. On January 10, 2017, the Media Bureau adopted transition progress reporting requirements for broadcast television stations that are eligible to receive reimbursement (Reimbursable Stations) of expenses from the TV Broadcast Relocation Fund (Reimbursement Fund).<sup>1</sup> This Public Notice adopts the same progress reporting requirements for broadcast television stations that will be changing channels during the post-incentive auction transition but are not eligible to receive reimbursement from the Fund (Non-Reimbursable Stations).<sup>2</sup>

2. In the *Incentive Auction R&O*, the Commission determined that Reimbursable Stations will be required, on a regular basis, to provide progress reports (Transition Progress Reports or Reports) to the Commission showing how disbursed reimbursement funds have been spent and what portion of their construction is complete.<sup>3</sup> The Incentive Auction Task Force and Media Bureau subsequently released the *Transition Progress Report Public Notice* describing the information that Reimbursable Stations must provide in FCC Form 2100–Schedule 387 (Transition Progress Report Form or Form) and describing

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<sup>1</sup> *The Incentive Auction Task Force and Media Bureau Release Transition Progress Report Form and Filing Requirements for Stations Eligible for Reimbursement from the TV Broadcast Relocation Fund and Seek Comment on the Filing of the Report by Non-Reimbursable Stations*, Public Notice, 32 FCC Rcd 256 (IATF/MB 2017) (*Transition Progress Report Public Notice*). Reimbursable Stations include full power and Class A stations that were protected during the repacking process and involuntarily assigned to a new channel. *Id.* at 257-58, para. 4.

<sup>2</sup> Non-Reimbursable Stations include stations with a winning reverse auction bid to move to the low or high very-high frequency (VHF) bands (Band Changing Stations), otherwise reimbursement-eligible stations that accept a waiver of the Commission's service rules to allow them to make flexible use of their reassigned spectrum to provide services other than broadcast television services in lieu of receiving reimbursement (Service Rule Waiver Stations), and a small number of Class A stations that were not protected during the repacking process and are displaced (Displaced Class A Stations). *Transition Progress Report Public Notice*, 32 FCC Rcd at 257-58, para. 4.

<sup>3</sup> *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, 6825, para. 634 (2014) (*Incentive Auction R&O*); see also 47 CFR § 73.3700(e)(5) ("Broadcast television station licensees and MVPDs that receive payment from the TV Broadcaster Relocation Fund are required to submit progress reports at a date and frequency to be determined by the Media Bureau.").

when and how the Transition Progress Report Forms must be filed.<sup>4</sup> In addition, the public notice proposed to require Non-Reimbursable Stations to file progress reports in the same manner and on the same schedule as Reimbursable Stations, and sought comment on that proposal.<sup>5</sup> We received a small number of comments and reply comments,<sup>6</sup> some of which raised issues outside the scope of the request for comment because they addressed the requirements for Reimbursable Stations. Because these comments and reply comments were filed within the timeframe for filing petitions for reconsideration of the *Transition Progress Report Public Notice*,<sup>7</sup> we treat these suggestions as requests for reconsideration, which we deny for the reasons stated below.

## II. BACKGROUND

3. On April 13, 2017, the Incentive Auction Task Force and the Media and Wireless Telecommunications Bureaus released the *Closing and Channel Reassignment Public Notice*, which, among other things, announced the results of the repacking process and identified the channel reassignments of television channels, and established the beginning of the 39-month post-auction transition period (transition period).<sup>8</sup> That public notice also provides information about each station's transition schedule, including the assignment to one of 10 transition phases and assigned phase testing and completion dates for each transition phase.<sup>9</sup> By the end of the transition period, all stations reassigned to new channels as a result of a reverse auction winning bid or the repacking process must complete construction of their post-auction channel facilities, commence operation on their post-auction channel, cease operation on their pre-auction channel, and file a license application.<sup>10</sup>

4. Acting pursuant to delegated authority, we adopted the Transition Progress Report Form, which is designed to gather information regarding Reimbursable Stations' completion of tasks necessary to meet major expenditure and construction milestones, such as taking delivery of specific pieces of equipment or completing all necessary permitting and tower work, and identify potential problems which stations believe may make it difficult for them to meet their construction deadlines.<sup>11</sup> We concluded that

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<sup>4</sup> See *Transition Progress Report Public Notice*.

<sup>5</sup> See *id.* at 259-60, paras. 11-13.

<sup>6</sup> We received comments from Cohen, Dippell and Everist, P.C. (CDE), T-Mobile USA, Inc. (T-Mobile), and the National Association of Broadcasters (NAB), and reply comments from CDE, NAB, and the Competitive Carriers Association (CCA).

<sup>7</sup> See 47 CFR § 1.106.

<sup>8</sup> *Incentive Auction Closing and Channel Reassignment Public Notice: The Broadcast Television Incentive Auction Closes; Reverse Auction and Forward Auction Results Announced; Final Television Band Channel Assignments Announced; Post-Auction Deadlines Announced*, Public Notice, DA 17-314 (rel. April 13, 2017) (*Closing and Channel Reassignment Public Notice*). Auction 1000—which was composed of a reverse auction in which broadcasters offered to voluntarily relinquish some or all of their spectrum usage rights, a forward auction of new, flexible-use licenses suitable for providing mobile broadband service, and a repacking process to reorganize the broadcast television bands so that television stations that remain on the air after the transition will occupy a smaller portion of the ultra-high frequency (UHF) band—was conducted pursuant to Title VI of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6402 (codified at 47 U.S.C. § 309(j)(8)(G)), 6403 (codified at 47 U.S.C. § 1452), 126 Stat. 156 (2012) (*Spectrum Act*).

<sup>9</sup> See *Closing and Channel Reassignment Public Notice* at § V. Detailed transition data for each station can also be found on the Commission's website ([www.fcc.gov/incentiveauctions](http://www.fcc.gov/incentiveauctions)). The first phase completion date is November 30, 2018 and the tenth and final phase completion date is July 3, 2020. *Closing and Channel Reassignment Public Notice*, Appx. G.

<sup>10</sup> *Transition Progress Report Public Notice*, 32 FCC Rcd at 256-57, para. 3.

<sup>11</sup> *Id.* at 258, paras. 6-7.

these Reports will help the Commission, broadcasters, those involved in the construction of broadcast facilities, and other interested parties assess how disbursed funds have been spent and monitor the construction of stations during the transition.<sup>12</sup> We also adopted a quarterly filing process, starting with the first full calendar quarter after release of the *Closing and Channel Reassignment Public Notice*, and further required that Reimbursable Stations file Transition Progress Reports: (1) 10 weeks before the end of their assigned construction deadline; (2) 10 days after they complete all work related to construction of their post-auction facilities; and (3) five days after they cease broadcasting on their pre-auction channel.<sup>13</sup> The Transition Progress Reports will be filed electronically using the Commission's electronic filing system,<sup>14</sup> and the Commission will make the filings viewable in stations' online public inspection files.<sup>15</sup>

### III. DISCUSSION

5. Below we first adopt a Transition Progress Report Form and Filing Requirements for Non-Reimbursable Stations. Next we consider and deny requests for reconsideration of the Transition Progress Report Form and Filing Requirements for Reimbursable Stations.

#### A. Transition Progress Report Form and Filing Requirements For Non-Reimbursable Stations

6. In the *Transition Progress Report Public Notice*, we tentatively concluded that Non-Reimbursable Stations should file regular progress reports using the same form as Reimbursable Stations, and at the same intervals, using the Commission's electronic filing system.<sup>1</sup> We believed that obtaining information from only Reimbursable Stations would not fully capture the progress of the overall transition and would thus compromise the ability of the Commission, broadcasters, tower companies, equipment providers, engineering consultants, other interested parties, and the public to monitor the progress of the transition, track resource requirements, and identify potential problems during the 39-month transition period.<sup>2</sup> We also sought comment on whether to include different questions in the Form for Non-Reimbursable Stations or require different filing intervals or filing mechanics.<sup>3</sup>

7. Commenters uniformly supported requiring Non-Reimbursable Stations to file Transition Progress Reports. T-Mobile states that failure to capture data about the progress of Non-Reimbursable Stations will compromise the integrity of the transition, since these stations must transition apace with their Reimbursable Station counterparts or risk disrupting the transition.<sup>4</sup> Moreover, because transitioning stations are technically intertwined and reliant upon the progress of stations in physical and interference proximity, transparency among all transitioning stations is crucial.<sup>5</sup> T-Mobile also believes that Non-Reimbursable Stations should be required to file the same Transition Progress Reports as Reimbursable Stations, and according to the same filing schedule.<sup>6</sup> NAB also agrees with our tentative conclusion that Non-Reimbursable Stations should submit reports, since these stations will be drawing on the same pool

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<sup>12</sup> *Id.* at para. 7.

<sup>13</sup> *Id.* at 258-59, para. 8. Once a station has filed a Transition Progress Report certifying that it has completed all work related to construction of its post-auction facilities and that it has ceased operating on its pre-auction channel, it is no longer required to file quarterly Transition Progress Reports. *Id.* at n.17.

<sup>14</sup> *Id.* at 259, para. 9.

<sup>15</sup> *Id.* at para. 10.

<sup>1</sup> *Id.* at paras. 11-12. We also proposed to automatically link the Transition Progress Reports to Non-Reimbursable Stations' online local public inspection files on the Commission's web site, in order to assist the public to track the transition status of stations that they view. *Id.* at para. 12.

<sup>2</sup> *Id.* at para. 11.

<sup>3</sup> *Id.* at 260, para. 13.

<sup>4</sup> T-Mobile Comments at 5.

<sup>5</sup> *Id.*

of resources as Reimbursable Stations, and further, that their progress is no less important when it comes to clearing the new wireless band.<sup>7</sup> CCA states that it agrees with T-Mobile and NAB that it is “essential” that Non-Reimbursable Stations file progress reports and that “[t]he need to collect information from Non-Reimbursable Stations is further bolstered by the fact that there are no commenters in the record that oppose imposing additional reporting requirements on these stations.”<sup>8</sup>

8. Based on the comments received in response to the *Transition Progress Report Public Notice*, we will require Non-Reimbursable Stations to file the same Transition Progress Reports adopted for Reimbursable Stations and at the same filing intervals using the Commission’s electronic filing system. We will also link the Reports to these stations’ online local public inspection file.<sup>9</sup> No commenter proposed any variations in the content or requirements applicable to Reimbursable versus Non-Reimbursable Stations and we see no reason to impose any variations.

#### **B. Proposals for Modification of the Transition Progress Report Form and Filing Requirements for Reimbursable Stations.**

9. NAB and T-Mobile both proposed changes to questions contained in the Transition Progress Report Form adopted for Reimbursable Stations. In addition, NAB proposed changes to the filing procedures. We consider these proposals as requests for reconsideration of the *Transition Progress Report Public Notice*, and, for the reasons discussed below, we decline to adopt them.<sup>1</sup> We also find CDE’s requests for clarification to be unnecessary.

10. *Proposals for Modification of the Transition Progress Report Form.* NAB states that although it generally believes the questions in the Form are substantively appropriate, “many questions simply are not amenable to yes or no responses [because] [t]hroughout the repacking process, broadcasters will face numerous uncertainties.”<sup>2</sup> NAB continues that “[f]orcing licensees to guess in response to such questions places them in the uncomfortable position of potentially providing inaccurate information to the Commission [or] mislead[ing] the Commission and stakeholders as to the pace and progress of the transition.”<sup>3</sup> According to NAB, this issue can be addressed “by simply incorporating a response of ‘unknown at this time’ into the reporting form for every question” and allowing stations to submit a brief explanation why the facts are unknown.<sup>4</sup>

11. After consideration we conclude that the Form would not be improved by the addition of the answer “Unknown at this Time.” We disagree that “virtually every question on the proposed form may be subject to uncertainty.”<sup>5</sup> For instance, Question 5 asks if a station has placed orders for five different types of equipment. There should be no uncertainty whether the station completed the act of ordering—the only necessary options are Yes (equipment has been ordered), No (equipment has not been ordered), or N/A (station does not need to acquire one or more of the specified types of equipment). Similarly, Question 7 asks if a station has received its equipment. Again, the only necessary options are Yes

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<sup>6</sup> *Id.*

<sup>7</sup> NAB Comments at 4-5.

<sup>8</sup> CCA Reply at 3-4.

<sup>9</sup> FCC Form 2100 - Schedule 387 (Transition Progress Report) will be submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act.

<sup>1</sup> We also address CDE’s requests for “clarification” with respect to the Form.

<sup>2</sup> NAB Comments at 3.

<sup>3</sup> *Id.* at 4.

<sup>4</sup> *Id.* CDE states that it “agrees with NAB’s concern that the Reporting Form does not allow for the many uncertainties that arise from A to Z in the planning, coordination and construction of a repacked TV station.” CDE Reply at 2.

<sup>5</sup> NAB Comments at 4.

(equipment has been received), No (equipment has not been received), or N/A (station did not need any new equipment).<sup>6</sup> In addition, adding the option “Unknown at this Time” and allowing a narrative explanation would adversely impact the usefulness of the Form. The Form is designed to gather information from all stations at specific points in time to provide a snapshot of progress and identify potential problems. It is not intended to elicit detailed information or impose a burden on broadcasters to provide detailed explanations. Thus the Form contains a limited number of questions regarding the completion of tasks necessary for stations to meet major expenditure and construction deadlines, with filing deadlines that occur when stations can be expected to have responsive information. Requiring only simple Yes, No, and N/A answers serves to minimize the burden on broadcasters while also ensuring that the information is easily machine readable and aggregable for reporting purposes.

12. We also find that adding an “Unknown at this Time” option is unnecessary with respect to Questions 1, 2, 3, 4, and 8, which ask whether a station requires FAA approval, government permits, RF or structural tower studies, or tower construction/modification work in order to construct its post-auction facility. According to NAB, a station will not be able to provide a meaningful response “until tower studies have been completed” or “it receives engineering analysis of the station’s new channel and determines whether it needs a new antenna and, if so, the size and weight of that antenna.”<sup>7</sup> The first form is not due to be filed, however, until October 2017. The timing of the first filing was selected because stations should be well into planning the construction of their post-auction facilities by then.<sup>8</sup> Stations received a confidential letter with information regarding their post-auction channel assignments during the week of February 6, 2017<sup>9</sup> and the *Closing and Channel Reassignment Public Notice* was released April 13, 2017. Broadcast-related entities are actively planning the construction of post-auction broadcast facilities.<sup>10</sup> Stations are required to file construction permit applications proposing modified facilities to operate on their post-auction channels by July 12, 2017.<sup>11</sup> Reimbursable Stations also must file FCC Form 2100, Schedule 399 (Reimbursement Form) by July 12, 2017 to submit the estimated costs for equipment and services they expect to purchase to complete their post-auction channel transition.<sup>12</sup> These cost estimates include costs related to tower modifications and construction, including tower mapping and structural engineering load tower studies,<sup>13</sup> RF studies, environmental assessments, FAA approval,<sup>14</sup> and any required federal/local permitting.<sup>15</sup> Accordingly, by the due date for the first Transition Progress Report in October 2017, stations will have sufficient information to make the answers to the questions on

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<sup>6</sup> Questions 6 and 9-14 are similar. See *Transition Progress Report Public Notice* at Appx. A. NAB argues that Question 6, which asks a station to indicate whether the station anticipates whether it will receive all necessary equipment in time to meet its construction deadline, is not amenable to just a Yes or No answer because stations may have incomplete cost estimates. NAB Comments at 4. The fact that a station may not yet have “secure[d] firm quotes from their chosen vendors” has no bearing on a station’s opinion, at the time of filing the report and based on the totality of circumstances, whether it will receive necessary equipment in order to meet its construction deadline.

<sup>7</sup> NAB Comments at 3.

<sup>8</sup> See *Closing and Channel Reassignment Public Notice* at Appx. G (First Transition Progress Reports to be filed by October 10, 2017).

<sup>9</sup> See *The Incentive Auction Task Force, with the Media and Wireless Telecommunications Bureaus, Releases a Public Notice Concerning: Confidential Letters Regarding Post-Incentive Auction Channel Assignments; Limited Waiver of Prohibited Communications Rules; and Broadcast Station Sales and Transfers*, GN Docket No. 12-268, Public Notice, 32 FCC Rcd 1109 (2017).

<sup>10</sup> See, e.g., Letter from Christine M. Crowe, Counsel to American Tower Corporation, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268 (filed Feb. 23, 2017); Letter from Davina S. Sashkin, Counsel for T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268 (filed Apr. 3, 2017).

<sup>11</sup> *Closing and Channel Reassignment Public Notice* at Appx. G.

<sup>12</sup> *Id.*

the Form meaningful to the Commission's and the public's understanding of the progress that is being made on the transition.<sup>16</sup> We recognize that during the course of the transition, answers to these and other questions may change as additional information becomes available to stations. Subsequent filings will capture the information that has changed.

13. With respect to Question 10(d), which asks whether a station has completed testing on its new auxiliary antenna system such that it may cease broadcasting on its pre-auction channel, NAB argues that in most cases an auxiliary antenna system allows a television station to cover only a portion of its coverage area, and that "Question 10(d) suggests that a station may be forced to operate with significantly diminished coverage" in contravention of the Spectrum Act.<sup>17</sup> NAB asserts that "a decision this substantial, with potential ramifications for large numbers of viewers, should certainly be decided by the Commission itself, rather than the Media Bureau and Incentive Auction Task Force [and] not be effectively decided in a form for reporting repacking progress."<sup>18</sup> Question 10(d) does not require any station to operate an auxiliary antenna system. Indeed, a station that answered No in response to Question 10, indicating that it did not require a new auxiliary antenna system, would not be required to answer Question 10(d). In addition, as NAB admits, the *Transition Progress Report Public Notice* adopted "a form for reporting repacking progress"; the Transition Progress Report Form does not require a station to do anything other than answer Yes, No, or N/A, and possibly provide a narrative explanation, in response to a series of questions geared towards gathering information regarding stations' completion of tasks necessary to meet major expenditure and construction milestones, and identifying potential problems stations may face.<sup>19</sup> Accordingly, we do not agree that any of the changes proposed by NAB are necessary.<sup>20</sup>

14. T-Mobile proposes that the Form require additional information, including "date of commencement/completion of specific construction milestones; date of filing/approval of necessary Federal, State and/or local permits/construction approvals; equipment manufacturer information; structural engineering firms and vendors employed; third-party management/ownership; necessary

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<sup>13</sup> See *Incentive Auction Task Force and Media Bureau Finalize Catalog of Reimbursement Expenses*, MB Docket No. 16-306, Public Notice, 32 FCC Rcd 1199 at 1217-18, 1226 (IATF/MB 2017).

<sup>14</sup> *Id.* at 1220, 1222.

<sup>15</sup> *Id.*

<sup>16</sup> Stations unable to construct facilities that meet the technical parameters in the *Closing and Channel Reassignment Public Notice* will file a waiver request 60 days after release of that public notice and then file their initial construction permit applications in the priority window. They may file the Reimbursement Form within 30 days after receiving a construction permit for an alternate channel or expanded facilities. See *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Auction Broadcast Transition*, MB Docket No. 16-306, Public Notice, 32 FCC Rcd 858, 866-68, paras. 27-31, 884 n.180 (IATF/MB 2017) (*Broadcast Transition Procedures Public Notice*). We expect that these stations will nevertheless be deeply engaged in construction planning in advance of the October 2017 filing deadline for Transition Progress Report Forms.

<sup>17</sup> NAB Comments at 6-7.

<sup>18</sup> *Id.* at 8.

<sup>19</sup> While the Commission expects that many stations will need to utilize auxiliary facilities and equipment during the transition, there is no requirement that they do so. See *Incentive Auction Task Force and Media Bureau Adopt a Post-Incentive Auction Transition Scheduling Plan*, MB Docket No. 16-306, Public Notice, 32 FCC Rcd 890, 918-19, paras. 62-63 (IATF/MB 2017).

<sup>20</sup> NAB also asks that we add an additional subpart to Question 10 to ask whether the station is now prepared to cease broadcasting on its pre-auction channel. *Id.* We find this suggestion to be largely duplicative of Question 13 and decline to add an additional inquiry.

electrical service upgrades; and project manager contact information.”<sup>21</sup> T-Mobile believes this information will provide greater accountability and visibility that will allow the Commission and others to accurately assess progress and address issues before they create unnecessary delay.<sup>22</sup> T-Mobile also believes additional information is required given recent revisions to industry standards for work on communications towers.<sup>23</sup> NAB objects to a number of T-Mobile’s proposals as unnecessary and redundant, such as requiring stations to identify their vendors and engineering firms; according to NAB, “[s]tations will already be required to submit this information in cost estimates and/or receipts for reimbursable expenses.”<sup>24</sup> NAB also objects to stations having to disclose the name, phone number, email and mailing address of a “transition project manager” because making this information public risks subjecting station personnel to needless marketing or status inquiries.<sup>25</sup> CCA and CDE agree that expanding the scope of reporting requirements should not duplicate existing reimbursement reporting requirements, but generally support T-Mobile’s recommendations.<sup>26</sup>

15. After consideration we conclude the Form would not be materially improved by inclusion of T-Mobile’s proposals. As noted above, the Transition Progress Report Form is designed to gather information regarding the status of stations’ construction of their post-auction facilities and identify potential problems individual broadcasters may face, while balancing the burdens imposed on broadcasters to provide the reports and considering other data and information provided by broadcasters via other requirements.<sup>27</sup> We do not believe that the level of detail suggested by T-Mobile assists in achieving these goals. For example, we have imposed a quarterly filing requirement as well as requiring filing at certain critical times during the construction process. Between those filing deadlines we do not believe it is necessary to collect additional data on the precise dates on which certain activities occurred, such as filings with the FAA.<sup>28</sup> Similarly, we do not believe the Commission needs to collect contact information for vendors chosen by stations for purposes of the Transition Progress Report.<sup>29</sup>

16. With respect to Question 1, CDE seeks clarification “if and what FAA approval is required for the post-auction facility.”<sup>30</sup> We do not believe any clarification is necessary. That question asks if the station requires FAA approval, and if so, whether it has requested or received such approval, and in no way affects the antenna notification requirements set forth in the rules.<sup>31</sup> With respect to Question 5, CDE seeks clarification regarding under what circumstances equipment will be fully reimbursable. The Transition Progress Report Form does not seek to consider the merits of specific

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<sup>21</sup> T-Mobile Comments at 3 and attached proposed Transition Progress Report.

<sup>22</sup> T-Mobile Comments at 3.

<sup>23</sup> T-Mobile Comments at 4-5.

<sup>24</sup> NAB Reply at 2.

<sup>25</sup> NAB Reply at 2-3.

<sup>26</sup> CCA Reply at 3; CDE Reply at 3; *see also* CDE Comments at 2.

<sup>27</sup> *Transition Progress Report Public Notice*, 32 FCC Rcd at 258, para. 7.

<sup>28</sup> We also see no need to add language to Question 2 explaining that the Federal permitting process may involve seeking approval from the Bureau of Indian Affairs and/or Bureau of Land Management. T-Mobile Comments at 4-5. Adding this language could be read to suggest that stations do not have to report the need for other possible Federal approvals.

<sup>29</sup> Invoice information necessary for reimbursement purposes will be collected by the Commission pursuant to that process.

<sup>30</sup> CDE Comments at 2.

<sup>31</sup> *See* 47 CFR § 17.7.

reimbursement requests and CDE's request is outside the scope of this proceeding.<sup>32</sup> Finally, we disagree with CDE that the term "necessary" requires additional clarification for purposes of this Form.<sup>33</sup>

17. *Proposals for Changes to the Filing Requirements for the Transition Progress Report Form.* NAB requests that the Commission adjust the submission requirements for Reimbursable Stations. First, NAB asserts that rather than require quarterly reports, the Commission should require submission of reports every six months and that those reports be supplemented with reports at major milestones.<sup>34</sup> NAB also suggests that the Commission permit, but not require, stations to provide updates prior to the next six month deadline if events occur that materially change any previous answers.<sup>35</sup> NAB also requests that the Commission allow "group owners to file a single unified report, with information on the progress made by every station, rather than individual forms for every station," or alternatively, "provid[e] staggered reporting deadlines for stations so that no group owner is forced to file dozens of individual Transition Progress Reports on the same day."<sup>36</sup> CCA disagrees that a six month interval for filing reports is sufficient, stating that a six month reporting interval "would fail to capture meaningful developments occurring on much shorter timeframes, and could increase any time lags between the reporting of transition problem areas and the Commission's efforts in mitigating them."<sup>37</sup>

18. We agree with CCA that "[q]uarterly reporting is a more appropriate interval [than six-months] to ensure the consistent flow of information necessary to assess the progress of the transition in near-real time, and allow visibility into the ongoing status of the transition."<sup>38</sup> We believe the quarterly reporting period properly balances the need to collect information with the burden the report imposes on broadcasters. Requiring regular quarterly reports will provide a useful snapshot of the progress of all stations that are transitioning to new channels that can be easily analyzed.<sup>39</sup> We also conclude that the current schedule already adequately addresses NAB's suggestion that stations supplement the reports "at major milestones" because stations will be required to file reports 10 weeks before the end of their assigned construction deadline, 10 days after they complete all work related to construction of their post-auction facilities, and five days after they cease broadcasting on their pre-auction channel. These filing deadlines allow the Commission, broadcasters, and others to track the progress and focus resources on ensuring successful completion of the transition.

19. We also reject NAB's proposal that we permit group owners to file a single report for all of their stations. The Transition Progress Reports will be used to track the progress of stations assigned to each of the ten construction phases, and we believe that allowing group owners to submit one Form with information on multiple stations in varying phases would make it difficult for the Commission, broadcasters, and other interested parties to analyze the information and identify potential problems. Group owners are familiar with filing individual station reports at the same interval for all of their

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<sup>32</sup> CDE Comments at 3. CDE also states that if a response to these two questions is limited to 255 characters, stations will not be able to adequately respond. *Id.* These questions, however, only require a Yes, No, or N/A answer, with no need for a text box for a narrative explanation.

<sup>33</sup> CDE Reply at 3.

<sup>34</sup> NAB Comments at 5. NAB agrees that stations should file a report ten weeks prior to the station's construction deadline and when the station has ceased operation on its pre-auction channel. *Id.*

<sup>35</sup> *Id.* at 5-6.

<sup>36</sup> *Id.* at 6.

<sup>37</sup> CCA Reply at 2.

<sup>38</sup> *Id.*

<sup>39</sup> With respect to NAB's request that stations be permitted to provide updates prior to the next filing deadline if events occur that materially change previous answers, stations may file outside of the filing requirement deadlines to provide additional information but are not required to do so.



stations,<sup>40</sup> and given that the Transition Progress Report Form is comprised mostly of questions that can be answered by checking Yes, No, or N/A, requiring group owners to file the Form for all of their stations at the same time is not unduly burdensome.<sup>41</sup> We do not believe the burden of including information about multiple stations on a single form would be significantly different than the burden of including the same information on multiple forms. Similarly, we do not believe that staggering the submission deadlines would significantly impact any filing burden; on the contrary, doing so would negatively impact the usefulness of the data collected. The filing schedule adopted will permit the Commission, broadcasters, and other interested parties to get a snapshot of progress at regular intervals and critical periods within each transition phase.

#### **IV. ADMINISTRATIVE MATTERS**

##### **C. Final Regulatory Flexibility Act Analysis**

20. Pursuant to the Regulatory Flexibility Act of 1980, as amended,<sup>1</sup> a Final Regulatory Flexibility Analysis (FRFA) relating to this Public Notice is attached as Appendix A.

##### **D. Initial Paperwork Reduction Act Analysis**

21. This document contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

##### **E. Additional Information**

22. For additional information on this proceeding, contact Joyce Bernstein, [Joyce.Bernstein@fcc.gov](mailto:Joyce.Bernstein@fcc.gov), (202) 418-1647, or Kevin Harding, [Kevin.Harding@fcc.gov](mailto:Kevin.Harding@fcc.gov), (202) 418-7077. Press contact: Charles Meisch, [Charles.Meisch@fcc.gov](mailto:Charles.Meisch@fcc.gov), (202) 418-2943.

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<sup>40</sup> *See, e.g.*, §§ 73.3526(e)(11)(iii) (quarterly Children's Television Programming Reports), 73.3612 (annual employment reports), 73.3615 (biannual ownership reports).

<sup>41</sup> Group owners may choose to file quarterly reports for their stations anytime between the end of the quarter and the filing deadline, i.e., October 1 through October 10.

<sup>1</sup> *See* 5 U.S.C. § 604.

## APPENDIX A

## Final Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (“RFA”),<sup>1</sup> an Initial Regulatory Flexibility Analysis (“IRFA”) was incorporated in the *Transition Progress Report Public Notice*. The Incentive Auction Task Force and Media Bureau sought written public comments on the proposals in the *Transition Progress Report Public Notice*, including comment on the IRFA. Because we adopt filing requirements for stations in the Public Notice, we have included this Final Regulatory Flexibility Analysis (“FRFA”), which conforms to the RFA.<sup>2</sup>

**A. Need for, and Objectives of, the Rule Changes**

2. The Federal Communications Commission (Commission) adopted a 39-month transition period during which television stations that are assigned to new channels in the incentive auction must construct their new facilities. The Commission determined that reassigned television stations that are eligible for reimbursement from the TV Broadcast Relocation Fund are required, on a regular basis, to provide progress reports to the Commission showing how the disbursed funds have been spent and what portion of construction is complete. In the *Transition Progress Report Public Notice*, the Media Bureau adopted a form for such progress reports and set the filing deadlines for such reports. The Public Notice requires that reassigned television stations that are not eligible for reimbursement from the TV Broadcast Relocation Fund (Non-Reimbursable Stations) provide the same progress reports to the Commission on the same schedule as that specified for stations eligible for reimbursement. The Transition Progress Report Form requires all reassigned stations to certify that certain steps toward construction of their post-auction channel either have been completed or are not required, and to identify potential problems which they believe may make it difficult for them to meet their construction deadlines. The information in the progress reports will be used by the Commission, stations, and other interested parties to monitor the status of reassigned stations’ construction during the 39-month transition period.

**B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA**

3. No formal comments were filed on the IRFA.

**C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration**

4. No comments were filed on the IRFA by the Small Business Administration.

**D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply**

5. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.<sup>1</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>2</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>3</sup> A small business

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> See 5 U.S.C. § 604.

<sup>1</sup> 5 U.S.C. § 603(b)(3).

<sup>2</sup> 5 U.S.C. § 601(6).

<sup>3</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after

concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>4</sup> Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

6. *Television Broadcasting.* This Economic Census category “comprises establishments primarily engaged in broadcasting images together with sound.”<sup>5</sup> These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: those having \$38.5 million or less in annual receipts.<sup>6</sup> The 2012 Economic Census reports that 751 firms in this category operated in that year. Of that number, 656 had annual receipts of \$25,000,000 or less, 25 had annual receipts between \$25,000,000 and \$49,999,999 and 70 had annual receipts of \$50,000,000 or more.<sup>7</sup> Based on this data we therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

7. The Commission has estimated the number of licensed commercial television stations to be 1,384.<sup>8</sup> Of this total, 1,264 stations (or about 91 percent) had revenues of \$38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on February 24, 2017, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 394.<sup>9</sup> Notwithstanding, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

8. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations<sup>10</sup> must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an

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opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” 5 U.S.C. § 601(3).

<sup>4</sup> 15 U.S.C. § 632.

<sup>5</sup> U.S. Census Bureau, 2012 NAICS Definitions, “515120 Television Broadcasting,” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>. This category description continues, “These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources.”

<sup>6</sup> 13 CFR § 121.201; 2012 NAICS code 515120.

<sup>7</sup> U.S. Census Bureau, Table No. EC1251SSSZ4, *Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (515120 Television Broadcasting). [https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ4&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table).

<sup>8</sup> *Broadcast Station Totals as of December 31, 2016*, Press Release (MB, rel. January 5, 2017) (*January 5, 2017 Broadcast Station Totals Press Release*), <https://www.fcc.gov/document/broadcast-station-totals-december-31-2016>.

<sup>9</sup> *January 5, 2017 Broadcast Station Totals Press Release*.

<sup>10</sup> “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both.” 13 CFR § 21.103(a)(1).

element of the definition of “small business” is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

9. *Class A TV Stations.* The same SBA definition that applies to television broadcast stations would apply to licensees of Class A television stations. As noted above, the SBA has created the following small business size standard for this category: those having \$38.5 million or less in annual receipts.<sup>11</sup> The Commission has estimated the number of licensed Class A television stations to be 417.<sup>12</sup> Given the nature of these services, we will presume that these licensees qualify as small entities under the SBA definition.

#### **E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

10. The Public Notice adopted the following new reporting requirements. Non-Reimbursable Stations must file the Transition Progress Report on a quarterly basis, with the first Report being filed beginning for the first full quarter after the release of a public notice announcing the completion of the incentive auction. The deadline for filing the first Report is October 10, 2017. We further require that Non-Reimbursable Stations file Transition Progress Reports: (1) 10 weeks before the end of their assigned construction deadline; (2) 10 days after they complete all work related to construction of their post-auction facilities; and (3) five days after they cease broadcasting on their pre-auction channel. The Transition Progress Reports will be filed electronically using the Commission’s electronic filing system, and the Commission will make the filings viewable in stations’ online public inspection files. All reassigned stations are assigned to one of 10 Post-Auction Transition Plan Phase with construction deadline requirements ranging from November 30, 2018 to July 3, 2020. Once a station has ceased operating on its pre-auction channel, it no longer needs to file reports.

#### **F. Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered**

11. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standard; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>13</sup>

12. The reporting requirement adopted in the Public Notice will allow the Commission, broadcasters (including those filing the Reports), and other interested parties to more closely monitor that status of construction during the transition, and focus resources on ensuring successful completion of the transition by all reassigned stations and continuity of over-the-air television service. In addition, the burdens of the reporting requirements are minimal and we believe the benefits of the reporting requirements, which will facilitate the successful post-incentive auction transition, outweigh any burdens associated with compliance.

#### **G. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rule**

13. None.

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<sup>11</sup> 13 CFR § 121.201; NAICS code 515120.

<sup>12</sup> See *Broadcast Station Totals*, *supra*.

<sup>13</sup> 5 U.S.C. § 603(c).

**H. Report to Congress**

14. The Commission will send a copy of the Public Notice, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. A copy (or summary thereof) will also be published in the Federal Register.

**I. Report to Small Business Administration**

15. The Commission will send a copy of the Public Notice, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.