

**Before the
Department of Commerce
National Telecommunications and Information Administration
1401 Constitution Avenue, NW
Washington, D.C. 20230**

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Low-Power Television and Translator)
Upgrade Program)
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Submitted via E-mail to: lptv@ntia.doc.gov

COMMENTS OF THE ASSOCIATION OF PUBLIC TELEVISION STATIONS

The Association of Public Television Stations (“APTS or Public Television”)¹ hereby submits comments in response to the *Notice of Proposed Rulemaking* in the above-captioned proceeding.² The National Telecommunications and Information Administration (NTIA) seeks comments on several issues related to the implementation of a Low-Power Television and Translator Upgrade Program (“Upgrade Program”) authorized under Section 3009 of Public Law 109-171, as amended. APTS represents numerous television licensees that rely heavily on networks of translator stations to reach millions of rural and otherwise unserved viewers. Public Television believes that both the NTIA and translator licensees would benefit from an Upgrade Program that is easy to navigate, offers assistance to as many licensees as possible, and enables

¹ APTS is a non-profit organization whose membership comprises the licensees of nearly all of 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 public.

² *In re Low-Power Television and Translator Upgrade Program*, Advanced Notice of Proposed Rulemaking, 47 CFR Chapter III (rel. October 9, 2008) (hereinafter “*NPRM*”).

the NTIA to process applications and award grants expeditiously. These comments are offered with these goals in mind.

I. STATION ELIGIBILITY

Section 3009 provides that an “ ‘eligible low power television station’ means a . . . station—(1) that is itself broadcasting exclusively in analog format; and (2) that has not converted from analog to digital operations prior to” February 8, 2006. APTS asserts that it is consistent with this definition to consider eligible for reimbursement those stations that were broadcasting exclusively in analog format prior to February 8, 2006, but have since begun operating a digital companion channel or flash-cut to digital. In addition, APTS asserts that it is consistent with this definition to consider eligible any station that holds a license or program test authority to operate in analog and is so operating as of the closing date for the receipt of Upgrade Program applications for the applicable grant round. These interpretations ensure the broadest possible station eligibility within the parameters set forth by Congress.

II. ELIGIBLE COMMUNITIES

Section 3009 requires that an eligible station must be “in eligible rural communities” (defined in 7 U.S.C. § 950bb(b)(2) as “any area of the United States that is not contained in an incorporated city or town with a population in excess of 20,000 inhabitants.”). APTS believes that the best balance of fairness and simplicity would be achieved if the NTIA determines an eligible rural community based on the population within the station’s community of license. The FCC’s predicted 50/50 or low power protected contours assume flat terrain and thus frequently overestimate the reach of stations; many stations appear to extend into urban areas where they in fact do not. More sophisticated predictive analyses, such as Longley-Rice models, are beyond

the financial reach of many licensees of low-power and translator stations. While the community of license model is far from perfect, it is easy to implement and fairly inclusive.

With regard to stations that are licensed to larger cities but serve mostly rural communities, the NTIA should consider evaluating such stations and granting eligibility using a rurality analysis such as the one used in the Rural Utilities Service Public Television Station Digital Television Grant Program (“RUS”). For RUS, stations receive a score of 0 to 50 through a formula measuring the rural vs. urban population of the station’s core coverage area.³ In short, each applicant to the Upgrade Program should be able to establish its eligibility in one of two ways: (1) through the population of its community of license; or (2) by demonstrating a rurality score above a certain benchmark established by the NTIA.

III. REIMBURSEMENT

The statute provides for reimbursement to an otherwise eligible station that has not converted from analog to digital operations prior to February 8, 2006. APTS believes that the NTIA should accept all expenditures for eligible costs after February 8, 2006, for reimbursement in order to make this Upgrade Program as inclusive as possible within the statutory language and not to penalize stations that have made early transitions. At the very least, the NTIA should accept all expenditures for eligible costs after October 29, 2007, the date of publication of the announcement of the Low-Power Television and Translator Digital-to-Analog Conversion Program, because that announcement includes mention of the Upgrade Program.

With regard to eligible costs under the Upgrade Program, Section 3009 states that reimbursement shall be given for “equipment to upgrade low-power television stations from analog to digital.” In the interest of simplifying the administration of this program, the NTIA

³ See Public Television Station Digital Transition Grant Application Guide – FY 2008 at pp. 11-12, available at <http://www.usda.gov/rus/telecom/ptdtgrant/pdf/2008-ptvappguide.pdf>

should set a per-station cap on reimbursable expenses at \$30,000 for a station that is remaining on its frequency and \$40,000 for a station that must change channels. Within those parameters, stations should be permitted to receive reimbursement for equipment including digital transmitters, digital transcoders/processors, microwave systems, microwave dishes, towers, receive antennas/mounts, transmit antennas/mounts, and transmission lines/connectors. Stations should also receive reimbursement for equipment costs related to retrofitting existing equipment, because the Upgrade Program should be encouraging cost efficiency.

APTS further recommends that the NTIA give stations one year from the date of the award to complete the project and seek reimbursement, and permit stations to seek a one-year extension by demonstrating good cause. These parameters will enable licensees that are working within strict budget cycles to carry out their conversions and will also ensure that money that is not timely used can be returned to the pool and awarded to another applicant.

Finally, APTS recognizes that certain licensees are extremely small and may lack the capital to complete conversion projects up front even if they would be able to receive reimbursement. We are concerned that some of these smaller licensees, many of whom relay public television signals, will wind up sitting out the transition. APTS thus encourages the NTIA to consider whether in certain cases it might be possible to advance funding to licensees based on their demonstrated need.

IV. PRIORITY REIMBURSEMENT

Section 3009 provides that priority reimbursement shall be given to “eligible low-power television stations in which the license is held by a non-profit corporation and eligible low-power television stations that serve rural areas of fewer than 10,000 viewers.” APTS believes that the plain language of the statute makes clear that a station need not fulfill both categories to be

eligible for priority reimbursement. It is sufficient that a station is either licensed by a non-profit corporation *or* serves rural areas of fewer than 10,000 viewers.

In addition, APTS asserts that a governmental subsidiary may be considered a nonprofit corporation and therefore may qualify for priority reimbursement. Governmental entities by their nature are not profit-seeking enterprises. Furthermore, numerous non-profit corporation licensees, including many public television stations, have their signals relayed through translator stations licensed by municipalities or other government entities. Permitting these stations to be eligible for priority reimbursement will ensure that more of them make a successful transition.

With regard to the population standard, APTS recommends the same benchmarks in determining the priority reimbursement population requirement as in determining the base eligibility requirement: community of license, and a rurality analysis for those who do not satisfy the community-of-license standard. In the case of the rurality analysis, the NTIA would establish a score cutoff that is presumably much closer to 50 than the benchmark it sets for determining base eligibility.

V. ADMINISTRATION OF PROGRAM

APTS recommends that the NTIA administer one closed grant cycle per year for each of the four years of the program. In order to encourage licensees to conduct expeditious transitions, and to permit unused money to be returned to the pool, the NTIA should offer more money in the first years. APTS suggests the following as a possible division of funds: \$38 million for 2009, \$15 million for 2010, \$7 million (plus any returned funds from 2009 cycle) for 2011, and \$5 million (plus any additional returned funds) for 2012. Each grant cycle should last no more than three or four months to ensure that the Upgrade Program does not interfere with licensees' eligibility for other federal grant programs.

For ease of application and efficiency of processing, the NTIA should institute a web-based application for the Upgrade Program. Each licensee should be able to submit one application for numerous translator stations, but those translator stations should be considered separately for the purposes of awarding grants.

Several Public Television licensees have expressed an interest in being able to submit applications with respect to translators that are not owned by the Public Television licensee but do retransmit a Public Television signal. Often these translators are owned by small municipalities or private companies that lack grant-seeking savvy. To ensure that these translators are not left behind by the digital transition, the NTIA should consider permitting licensees of Public Television stations to submit applications to the Upgrade Program with respect to such translators where the licensee of the translator certifies that it has authorized the Public Television licensee to apply on its behalf.

APTS suggests that each grant cycle should begin with a 30- to 60-day period for applications for priority reimbursement. After that, the cycle should be open to all applicants. For the sake of simplicity and efficiency, awards should be granted on a first-come, first-served basis, with a per-station cap on reimbursable expenses at \$30,000 for a station that is remaining on its frequency and \$40,000 for a station that must change channels.

As discussed above, APTS recommends that the NTIA give stations one year from the date of the award to complete the project and seek reimbursement, and permit stations to seek a one-year extension by demonstrating good cause. Stations should have a valid digital construction permit in order to receive reimbursement.

CONCLUSION

APTS appreciates the opportunity to offer comments and suggestions on the implementation of the Upgrade Program, and we are hopeful that these comments will assist the NTIA in expeditiously providing grants to a large number of eligible stations. Please feel free to contact the undersigned if we can be of any further assistance.

Respectfully submitted,

/s/

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