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### FCC Proposes New Annual Regulatory Fees for Fiscal Year 2003

The Commission has proposed new annual regulatory fees for Fiscal Year 2003, in which

broadcasters will generally see significant increases over the fees charged in Fiscal Year 2002. In the case of radio stations, the FCC has created a new "population served" category of "over 3,000,000" (the previous top category was "over 1,000,000"), for which the top fee amount (for FM classes B, C, C1 and C2) will be \$8,125.

Commercial VHF television stations will see the most significant increases: in the top 10 markets, those stations will see their annual regulatory fee increase \$10,600, from \$47,050 to \$57,650. The only reductions applicable to broadcasters will come in the case of AM and FM construction permits: AM CPs will now cost \$455 instead of \$540; FM CPs will cost \$1,850 instead of \$2,200.

The only fees applicable to broadcasters that were left unchanged from 2002 are the General Mobile Radio Service (Part 95), which remains \$5.00, and Broadcast Auxiliaries (Part 74), which remains \$10.00.

Overall, the fees applicable to broadcasters rose approximately 20 percent, with some fees (such as Part 101 microwaves) increasing as much as 150% (from \$10 to \$25). Included as an appendix to this **Memorandum** are tables showing the proposed fees. Historically, the FCC has issued a Report and Order on the final fees in July of the year that they take effect. For more information on the fees, contact any of the lawyers in the Communications Practice Group.

### Commission Opens Inquiry into Receiver Standards

The FCC has issued a *Notice of Inquiry* to examine its standards for radio and television receivers, with a view toward possibly strengthening the interference immunity specifications for all receivers, in an effort to promote more efficient utilization of the spectrum. The *Notice* states that "[f]rom a technical standpoint, a radio receiver's susceptibility to interference is largely dependent on the interference immunity of the device, particularly with regard to its rejection of undesired radiofrequency (RF) energy and signals. If the receivers used in connection with a radio service are designed to

provide a certain immunity or tolerance of undesired RF energy and signals, more efficient and predictable use of the spectrum resource can be achieved.”

The *Notice* seeks comments on a very wide range of receiver-related topics and asks for a great deal of very basic information from which to make decisions. Among those of particular concern to broadcasters are:

- ◆ Do new and emerging advanced radio systems, including those employing digital modulation, offer potential for significantly improving receiver immunity to interfering signals? What are the inherent performance limitations on these technologies?
- ◆ What are the characteristics of the RF environment in which existing receivers or groups of receivers operate? If studies were to be carried out, what would be an efficient way to capture any relevant data or pertinent events given the dynamic changing nature of the environment over time?
- ◆ What approaches should the FCC use for implementing receiver immunity performance into its spectrum policies?
- ◆ What benchmarks should the Commission use in determining the approach it should use in implementing specific receiver interference immunity performance guidelines or standards into its spectrum policies?
- ◆ With what organizations should the FCC work to develop receiver performance requirements?
- ◆ How should standards or guidelines be implemented for services in which licensees have control over the receivers that are used, such as the cellular and PCS services, and in which they do not have control over the receivers, such as broadcast services?
- ◆ How should the Commission enforce receiver standards?
- ◆ What minimum interference immunity parameters should be established for analog and analog/digital (hybrid) AM and FM receivers?
- ◆ What would be the additional costs to consumers of radio receivers that would provide interference immunity based on such established guidelines?
- ◆ What protection, if any, should be afforded the millions of analog receivers now in use and available for sale?
- ◆ How should consumers be informed of the differences in radio receiver immunity performance? Would a recognizable label or symbol on a receiver assist consumers in identifying equipment with improved performance?
- ◆ What minimum interference immunity parameter values should be specified for DTV broadcast receivers and how would those minimums compare to the performance of existing equipment used in this service?
- ◆ What would be the additional costs to consumers of DTV receivers that would provide interference immunity as specified in established guidelines?
- ◆ How should consumers be informed of the differences in broadcast receiver interference immunity performance?

These are only some of the many questions put forth in the *Notice* and many of the other matters raised will impact on those identified above and vice versa. Those interested in receiver standards issues are urged to read the entire *Notice* carefully and consult with their engineering advisors regarding it. **Comments in response to the *Notice* are due by July 21, 2003, and reply comments are due by August 18, 2003.** For more information on the *Notice*, including assistance in the preparation and filing of comments and reply comments, please contact any of the lawyers in the Communications Practice Group.

### **FCC Establishes Remedial Measures to Be Used When DTV Construction Deadline Extensions Are Denied**

The Commission has adopted remedial measures to be used in cases where requests to extend DTV construction permits are denied. Under the new procedures, when a station fails to meet its DTV construction deadline, the following set of graduated sanctions will be imposed:

- First, the Commission will deny the request for an unqualified extension and admonish the station for its failure to comply with its DTV construction obligation. The station must submit a report within 30 days outlining the steps it intends to take to complete construction and the approximate date that it expects to reach specified construction milestones. Absent extraordinary and compelling circumstances, the construction completion date will be no later than six months from the date of admonishment. Sixty days after its initial report,

the station must submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time in this six-month period the station fails to demonstrate that it is taking all reasonable steps to complete construction, or the FCC otherwise finds that the station has acted in bad faith, the Commission will consider imposition of additional sanctions including proceeding immediately to the other remedial steps.

- Under the second step, if the station has not come into compliance with the DTV construction rule within the six-month period in Step 1, then, absent extraordinary and compelling circumstances, the FCC will issue a Notice of Apparent Liability for Forfeiture to the licensee and require that the station report every 30 days on its proposed construction milestones and its efforts to meet those milestones. Failure to adequately demonstrate that the station was taking all reasonable steps towards construction or a finding that the station has acted in bad faith, will result in the imposition of additional sanctions.
- Under the third and final step, if the station has continued to fail in its efforts to come into compliance with the DTV construction rule within the second six-month period of time (one year from the date of the formal admonition in the first step), then, absent extraordinary and compelling circumstances, the Commission will consider the station's construction permit for its DTV facilities to have expired and the FCC will take whatever steps are necessary to rescind the station's DTV authorization. Upon imposition of the third element in the FCC's approach, the Commission will delete the allotment made vacant from the DTV Table of Allotments. Deletion would be without prejudice to parties later interested in petitioning to having the channel reallocated in a rulemaking proceeding.

The Media Bureau staff may grant relief from this graduated enforcement scheme, or impose more severe sanctions more quickly, should circumstances in a particular case so warrant. **The Commission's reading of Section 319(b) of the Communications Act informs it that it is not required to hold a hearing on the loss of the DTV authorization.** For more information on the remedial measures, please contact any of the lawyers in the Communications Practice Group.

## FCC Adopts Procedures for Allocation and Licensing of Non-Reserved Broadcast Spectrum Sought by Competing Commercial and Noncommercial Entities

The Commission has adopted new procedures to allocate and license non-reserved broadcast spectrum when conflicting commercial and noncommercial educational (NCE) applicants are involved. Under the Communications Act, the FCC is required to resolve competing applications for commercial station construction permits by means of auctions, while noncommercial entities are specifically exempted from the auction requirement. These opposing statutory mandates have proven problematic for the Commission in instances where a particular construction permit for a non-reserved allocation is sought by both a commercial broadcaster and a noncommercial broadcaster.

The Commission's *Report and Order* makes several important determinations:

- The auction exemption for NCE stations applies to two types of broadcast stations – (1) AM, FM and full-power TV stations that a nonprofit educational organization demonstrates will be used to advance an educational program and are eligible to be licensed as NCE stations pursuant to applicable service-specific standards; and (2) stations that will be used by municipalities to transmit only noncommercial programs for educational purposes. Applicants that do not meet one of these standards will be required to compete at auction for the frequencies.
- Although the Commission will not consider applicants for NCE stations ineligible for non-reserved channels in the way that applicants for commercial stations are ineligible to apply for reserved channels, applications for NCE stations will be dismissed if they conflict with an application for a commercial station after any applicable settlement window closes. This will create an opportunity for applicants to consider engineering solutions prior to an auction, similar to the opportunity currently provided to secondary services such as LPTV and translators.
- The Commission reaffirmed that it will continue to reserve additional FM and TV channels for NCE stations if the proponent of reservation is able to satisfactorily show that it is technically precluded from using an already-reserved channel, and that it will provide needed NCE service to a geographic area. The FCC will allow proponents of a reservation to apply these criteria not only in future allocation proceedings,

but to existing allotments for which the Commission initiated an allocation proceeding prior to the effective date of these new rules, but for which the FCC has never accepted applications.

The new rules will become effective 30 days after their publication in the *Federal Register*, which has not yet occurred. For more information on the new rules, including the effective date, please contact any of the lawyers in the Communications Practice Group.

### **Reminder to TV Stations Regarding Accessibility of Emergency Information by Persons with Hearing or Vision Disabilities**

The FCC recently issued a *Public Notice* reminding video programming distributors of their obligation to make emergency information accessible to those with hearing or vision disabilities. The requirements regarding persons with hearing disabilities, found in Section 79.2 of the FCC's Rules, became effective on August 29, 2000. The requirements regarding persons with vision disabilities became effective on February 2, 2001.

In the case of those with hearing disabilities, emergency information that is provided in the audio portion of programming must be provided using closed captioning or other visual means, including open captioning, crawls or scrolls that appear on the screen. Such presentation should not block closed captioning, and neither should closed captioning block any presentation of emergency information. In the case of persons with visual disabilities, emergency information that is presented in video form must be made accessible using oral descriptions. Any crawls must be preceded by audible tones, to alert those who are blind.

The FCC considers emergency information as that which helps protect life, health, safety or property, and can include information about immediate weather conditions such as tornadoes, hurricanes, floods, tidal waves, earthquakes, icing conditions, heavy snows, and wildfires. It can also include information regarding the discharge of toxic gases, widespread power outages and industrial explosions. For more information on the rule, please contact any of the lawyers in the Communications Practice Group.

### **IBOC Digital Radio Notification Procedures in Effect**

The Media Bureau announced recently by Public Notice that AM and FM radio stations must notify the Commission by letter within 10 days of the

commencement of in-band, on-channel (IBOC) digital transmissions. The new notification requirement replaces the requirement that radio stations obtain special temporary authority prior to beginning digital operation. A sample notification letter is available on the FCC's website at <http://www.fcc.gov/mb/audio/digital>.

Under the rules adopted by the Commission last year, AM and FM stations may begin IBOC operation immediately with the iBiquity hybrid IBOC systems evaluated by the National Radio Systems Committee. The iBiquity systems, known as "HD Radio," are described in the FCC's *IBOC Order* ("Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Broadcast Service") which is available at the same FCC webpage noted above. Stations electing to broadcast digitally must broadcast the same main channel program material in both analog and digital modes, and must use their licensed main antennas. FM stations must excite all radiating elements of their authorized antennas with both analog and digital signals. AM stations must restrict IBOC operation to daytime hours. AM stations with pre-sunrise and post-sunset authority may operate their hybrid IBOC systems during those times.

A copy of the notification letter sent to the FCC must be posted next to the station license, and a copy placed in the appropriate portion of the station public inspection file. For more information on IBOC operation, please contact any of the lawyers in the Communications Practice Group.

### **FCC Strengthens Rule on Submitting Truthful Written Statements**

The Commission has amended Section 1.17 of its Rules, which will now require that those who submit written statements to the FCC in fact-based adjudications and investigations to have a reasonable basis to believe that what they submit is correct and not misleading, imposing on such submitters a duty of due diligence, including a duty to take affirmative steps to determine the truthfulness of what is being submitted to the Commission. Lawyers and engineers acting in their representational capacities are exempt from the new rule.

The new rule applies to investigatory and adjudicatory matters, but not to declaratory ruling or to rulemaking proceedings except for expressions of interest in FM or TV table of allotment proceedings, and tariff proceedings. The revised rule makes the following persons subject to its provisions: "(1) any applicant for, or holder of, any Commission authorization; (2) any person performing without Commission authorization an activity that requires Commission authorization; (3) any recipient of a Commission citation or letter of inquiry, or any person subject to a Commission or staff investigation; (4) in a proceeding to amend the FM or Television Table of

Allotments, any person filing an expression of interest, and (5) to the extent not already covered above, any cable operator or common carrier.”

The revised rule became effective upon its publication in the *Federal Register* on **March 28, 2003**. For more information on the rule, please contact any of the lawyers in the Communications Practice Group.

**FAA Tower Data Now Being Transferred to FCC Electronically; FAA Crackdown on Filing of Completion of Construction Notifications Underway**

The FCC has announced that Federal Aviation Administration data on towers and airspace clearance is now being transferred electronically to the Commission, cutting the processing time of one to two weeks to one day. The FCC says that the change will enable it to process antenna structure registrations much faster than under the old paper-based, manual entry system.

Separately, the FAA has announced that it is cracking down on the filing of completion of construction notifications. Parties must now file their notification of completion of construction with the FAA before the Determination of No Hazard to Air Navigation expiration date, or else face having to refile for a Determination and start the process all over again.

**Media Bureau Seeks Comments on Proposal to Create a Rural Translator Service**

On November 6, 2002, the National Translator Association (NTA) filed a Petition for Rulemaking with the FCC, requesting that the Commission amend its rules to create a “Rural Translator Service.” Public notice of that petition was given on March 6, 2003. In its petition, NTA says that creation of this service will help to ensure the delivery of broadcast services to rural areas, and proposes that in order to apply in this service, applicants would be required to propose a translator that can provide a signal to an area in which its residents are unable to receive at least four “free” primary over-the-air television signals, based on a combination of predictive methods.

**Comments in response to the NTA petition must be filed by May 16, 2003 and reply comments are due by June 16, 2003.** For more information on the petition, including assistance in the preparation and filing of comments and reply comments, please contact any of the lawyers in the Communications Practice Group.

**Effective Date of Digital Broadcast Auxiliary Service Rules Extended to October 16, 2003**

The FCC, responding to a request filed by the Society of Broadcast Engineers (SBE), has delayed the effective date of the new digital Broadcast Auxiliary Service rules which had been set to take effect on April 16, 2003. The new rules are now scheduled to take effect on October 16, 2003. The SBE requested additional time for BAS licensees to provide and to correct BAS receive site information in the FCC licensing database, the Universal Licensing System (ULS), so that the new procedures effectively avert interference to existing services. We reported on the details of the new rules in **Memorandum to Broadcast Clients**, BC No. 03-01 (February 25, 2003). Broadcasters who have not verified the accuracy of their auxiliary information in ULS should do so as soon as possible. For more information on the new rules, as well as ULS, please contact any of the lawyers in the Communications Practice Group.

**New FM Allotments**

The following new FM allotments have been announced recently by the FCC. Allocations marked with an asterisk are reserved for noncommercial educational use. Filing windows will be announced in future auction *Public Notices*. For more information, please contact any of the lawyers in the Communications Practice Group.

Community	Channel
Haileyville, OK	290A
O'Brien, TX	261A
Stamford, TX	233A
Panhandle, TX	291C3
Shamrock, TX	271A
Colorado, TX	257A
Taloga, OK	226A
Reydon, OK	264C2
Roundup, MT	248A
Junction, TX	297A
Owen, WI	242C3
Alamo, GA	287C3
Wapanucka, OK	298A
Comanche, TX	280A
Hollis, OK	274C2
Santa Anna, TX	282A
Mooreland, OK	300C2
Junction, TX	284A
Alton, MO	290A
Taos, NM	228A
McCamey, TX	233C3
Dickens, TX	240A
Hamlin, TX	283C2
Opelousas, LA	279A
Mason, TX	259A
Mullin, TX	224C3
Buffalo, OK	224C2
Clayton, OK	241A
Guthrie, TX	252A
Hebronville, TX	232A
Premont, TX	287A

Roaring Springs, TX  
Rocksprings, TX  
Thomas, OK

276C3  
291A  
288A

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**FCC Proposed Fiscal Year 2003 Schedule of Annual Regulatory Fees Applicable to Broadcasters**

<b>Fee Category</b>	<b>Annual Regulatory Fee (US \$)</b>
PLMRS (per license) (exclusive use) (47 CFR Part 90)	10
Microwave (per license) (47 CFR Part 101)	25
218-219 MHz (former IVDS) (per license) (47 CFR Part 95)	30
General Mobile Radio Service (per license) (47 CFR Part 95)	5
Multipoint Distribution Services (MMDS, LMDS & MDS) (per call sign) (47 CFR Part 21)	265
AM Radio Construction Permits	455
FM Radio Construction Permits	1,850
TV (47 CFR Part 73) VHF Commercial	
Markets 1 to 10	57,650
Markets 11 to 25	43,225
Markets 26 to 50	30,125
Markets 51 to 100	18,075
Remaining Markets	4,450
Construction Permits	4,625
TV (47 CFR Part 73) UHF Commercial	
Markets 1 to 10	15,850
Markets 11 to 25	12,875
Markets 26 to 50	8,075
Markets 51 to 100	4,975
Remaining Markets	1,425
Construction Permits	8,300
Satellite Television Stations (all markets)	1,000
Construction Permits – Satellite Television Stations	515
Low Power TV, TV/FM Translators & Boosters (47 CFR Part 74)	365
Broadcast Auxiliary (47 CFR Part 74)	10
Earth Stations (47 CFR Part 25)	210
International (HF) Broadcast (47 CFR Part 73)	730

**FCC Proposed Fiscal Year 2003 Schedule of Annual Regulatory Fees for Radio Stations**

Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C1 & C2
<= 25,000	600	450	325	400	475	625
25,001 to 75,000	1,200	900	475	600	950	1,100
75,001 to 150,000	1,800	1,125	650	1,000	1,300	2,025
150,001 to 500,000	2,700	1,925	975	1,200	2,025	2,650
500,001 to 1,200,000	3,900	2,925	1,625	2,000	3,200	3,900
1,200,001 to 3,000,000	6,000	4,500	2,450	3,200	5,225	6,250
> 3,000,000	7,200	5,400	3,100	4,000	6,650	8,125