
FCC Sets Annual Regulatory Fees for 2009; Payment Deadline Expected in September

by Richard R. Zaragoza and Christine A. Reilly

The FCC has released its final schedule of Annual Regulatory Fees for FY 2009. It is expected that those fees will become due and payable sometime in September. We will issue a further Client Advisory as soon as the Commission issues a Public Notice announcing the applicable deadline.

The FCC has released the text of its Report and Order adopting a new schedule of annual regulatory fees. The fees for FY 2009 are almost 10% more than for FY 2008. A copy of the FCC's Report and Order, including the FY 2009 fee schedule, may be viewed by clicking this link http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-09-62A1.pdf. Specifically, broadcaster related fees are provided in Appendix C, pages 21 - 23, of the FCC's Report and Order. The FY 2009 regulatory fees are scheduled to become effective 30 days after publication in the Federal Register.

Annual regulatory fees are owed for most FCC authorizations held as of October 1, 2008 by any licensee or permittee which is not otherwise exempt from the payment of such fees. As a general rule, these fees do not apply to governmental entities and non-profit entities.

Where a station and related FCC authorizations have been sold during FY 2009 (October 1, 2008 – September 30, 2009), payment of the full amount of the regulatory fee is the responsibility of the new owner/holder of the authorization(s). Parties to such transactions should have made arrangements regarding the apportionment of the fees among themselves as part of their negotiations.

Television stations operating with analog and digital facilities as of October 1, 2008 will only be assessed a regulatory fee based on their analog operations. Television stations operating with digital only facilities as of October 1, 2008 will not be assessed a regulatory fee for FY 2009. The FCC expects to begin collecting annual regulatory fees for digital operations in FY 2010, which begins October 1, 2009.

The FCC stated that it intends to continue its practice of mailing "fee assessment notices" to certain licensees/permittees reflecting the FCC's understanding of their required payment obligations. Those notices may not include all of a holder's authorizations and will not take into account any of associated auxiliary licenses for which fees are also due. Accordingly, regulatees should neither await receipt of such notice before acting in a timely manner nor assume that the notice is complete or otherwise correct.

Unlike previous years in which the FCC accepted manually generated Remittance Advice Forms (“FCC Form 159”), the FCC now requires all filers to electronically generate FCC Form 159-E. Consequently, all authorization holders subject to annual regulatory fees, regardless of their preferred method of payment (i.e. check, credit card, money order or wire transfer), must **prepare** an FCC Form 159 using the Commission’s online FeeFiler system, found at <http://www.fcc.gov/fees/feefiler.html>. If an authorization holder prefers not to pay online, the holder must either (i) *mail* its full payment along with the completed FCC Form **159-E** to: Federal Communications Commission, Regulatory Fees, P.O. Box 979084, St. Louis, Missouri 63197-9000, or (ii) send its full payment along with the completed FCC Form 159-E *by courier* to: Federal Communications Commission, Regulatory Fees, C/O U.S. Bank - Government Lockbox 979084, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, Missouri 63101.

The penalty for late or non-payment of the annual regulatory fee is 25% of the total amount owed and not paid. In addition, the Commission will refuse to process a licensee’s/permittee’s applications until full payment, including any applicable penalty, has been received. Lastly, failure to pay in full may also subject a regulatee to loss of its authorization(s).

For more information on the fees, including assistance in preparing and filing them with the Commission, please contact any of the lawyers in the Communications Practice Section.

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