
FCC Releases Final Regulatory Fee Amounts

by Lauren Lynch Flick and Scott R. Flick

FCC Eliminates Earlier Proposed Fee Reductions for Radio and Sets Hefty Increases for UHF Television Stations

Last week, just as broadcasters were finishing up with their new Biennial Ownership Report filings, the FCC released its final order setting the annual regulatory fee amounts stations must pay for Fiscal Year 2010. In so doing, the FCC erased promised reductions in annual regulatory fees for radio broadcasters and reallocated the television fee burden from VHF broadcasters to UHF broadcasters, resulting in considerable increases in the fees paid by UHF broadcasters over last year and even over the Commission's prior proposals for FY 2010.

Background

Each year, the FCC reports to the Office of Management and Budget the amount of money that the FCC estimates it will need to run its operations in the coming year. Congress generally accepts this estimate and sets it as the amount that the FCC is statutorily obligated to raise from its licensees through annual regulatory fees. Between 2008 and 2009, fee amounts increased by about 10%, prompting outcries from broadcasters that the fee increases have historically been too high year to year, and that they were simply intolerable in a year in which the industry was so adversely affected by the economic downturn.

Perhaps because of this, for 2010, the Commission requested, and Congress required, that it raise 1.8% less revenue than it had in 2009. Based on that reduction, in April the FCC released a Notice of Proposed Rulemaking proposing modest, across the board cuts in the amounts paid by radio licensees. Only AM construction permits were to increase – by \$20. In contrast to the broad increases in television fees experienced in 2009, the FCC's proposals were for modest increases in some, but not all, television categories. In most television categories where an increase was proposed, it only amounted to a few hundred dollars over the 2009 level. Even the three categories that were hardest hit (VHF stations in Markets 26-50, and UHF stations in Markets 1-10 and Markets 11-25), only saw increases of a few thousand dollars.

The Final Fees

When the FCC released its Report and Order on Friday, it restored all the radio fees to their 2009 levels. The reductions the FCC scrapped had been modest – some were only \$25. Still, the FCC gave no specific reason for eliminating them.

With respect to television fees, several VHF television broadcasters had filed comments in response to the Notice of Proposed Rulemaking and focused on the historically higher fees paid by full power VHF stations over those paid by full power UHF stations. These commenters stated that the transition to digital broadcasting eliminated the technical superiority that analog VHF stations enjoyed over UHF stations, and with it, the historical basis for the higher fees paid by VHF broadcasters. These commenters suggested various approaches to address this change in circumstances. One suggested creating two categories of VHF fees – one for low VHF stations on Channels 2-6, and another, which would pay higher fees, for high VHF stations on Channels 7-14. Another suggestion was to simply combine all television stations in a market into a single fee category without regard to the station's channel assignment.

In the Report and Order, the Commission recognized that, as part of the DTV transition, many stations that formerly operated on VHF channels had transitioned to UHF channels. There are now fewer VHF licensees to share in the overall fee burden that the FCC has allocated to VHF broadcasters. Unless certain adjustments were made, each remaining VHF broadcaster would see an enormous spike in its proportionate share of the size-diminished VHF category and the overall fee it would have to pay.

To begin to address this change in circumstances, the FCC first adjusted its estimates as to how many VHF and UHF full power stations currently exist. It then reallocated a portion of the fee burden it had previously assigned to the VHF category to UHF broadcasters. As a result, the final fees for UHF full power television broadcasters are much higher than were proposed for 2010 or paid in 2009. For example, UHF television licensees in the Top 25 markets will see a fee increase of over \$8,000 above what they paid in 2009. The FCC noted that the increase would have been 20% higher still had it used the simpler method of simply combining the VHF and UHF categories into one. As a result, VHF broadcasters will note that, despite the reallocation, they will still pay higher regulatory fees in 2010 than UHF broadcasters.

Other Changes From Prior Years

Given the completion of the digital transition for full power television stations, the FCC eliminated the fee exemption for DTV-only stations. Also, the Commission acknowledged that some stations may still be operating pursuant to Special Temporary Authority and may not have licensed their full digital facilities. These licensees must pay the full fee applicable to them as if they were fully licensed.

LPTV operators, whether they continue to operate in analog or have converted to digital, pay the same LPTV fee. Where an operator has both an analog and a digital companion simulcast channel, it pays only one LPTV fee, which covers both facilities. This is similar to the way the FCC treated full power stations while they operated both an analog and a digital facility.

What's Ahead

- First, the Commission will release a separate Public Notice announcing the filing window during which regulatory fees must be paid. As has been the case in the past, licensees must use the FCC's electronic filing system to at least start the fee filing process. The actual fee can then be paid at the same time, or separately by check to the FCC's lockbox. Broadcasters should remain alert for that Public Notice.
- In addition, the FCC will again mail to licensees, at their primary and secondary contact addresses as contained in its Consolidated Database System ("CDBS"), a fee assessment notification advising the

licensee of its expected fee amount. Broadcasters should conduct their own review of their authorizations and ensure that all are accounted for and not rely exclusively on the fee assessment.

- The FCC proposed to discontinue paper copy fee assessments in 2011. The Commission will continue to take comment on this proposal from the broadcast community until September 30, 2010. It will issue its decision with regard to the notifications when it releases its proposed fee amounts for 2011.
- The FCC also stated that it would reconsider some aspects of the methodology it uses to assess broadcast regulatory fees. First, with respect to television licensees, the FCC stated that “reform” is needed in how it distributes the fee burden between UHF and VHF licensees. In reallocating some of the VHF fee burden to the UHF category for 2010, the FCC did not address the impact the digital transition may have had on its historical reasons for setting higher regulatory fees for VHF broadcasters. Accordingly, television licensees may wish to comment on a new methodology for determining television regulatory fees in the FCC’s future proceeding to establish the 2011 fees.
- In addition, the FCC said that it would reconsider the current grid that it uses to determine AM and FM regulatory fees. It did not, however, set a specific timeline for that reconsideration. Some parties to the proceeding this year had suggested radically different means of calculating radio station fees than the FCC has used in the past. One suggestion would base the fees on the amount of spectrum occupied and another would attempt to establish a per person fee by which a station would pay based on the number of people within its city grade contour. While the FCC rejected both approaches this year, it did note that it has not updated its methodology in more than a decade.

Conclusion

A chart reflecting each of the broadcast-related fee categories is attached. Please contact any of the group’s attorneys for assistance in filing your fees. Licensees who cannot pay the amounts assessed should contact one of the group’s attorneys for assistance in filing a waiver request.

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