

FCC Announces 2020 Regulatory Fees Calculation, No Widespread Forgiveness for COVID-19 Pandemic

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On August 31, 2020, the Federal Communications Commission (“FCC” or the “Commission”) released its [Report and Order](#) (Order) establishing new methodologies for calculating 2020 annual regulatory fees, which are due September 25, 2020. In the Order, the FCC flatly rejected arguments by the National Association of Broadcasters and others that the FCC’s new calculation methodology (which will result in a 2-4% increase for most broadcasters) was flawed. But, while the FCC did not grant any widespread relief from payment of regulatory fees, it did implement several measures to soften the economic blow of the COVID-19 pandemic when it comes to this year’s regulatory fee payments.

In particular, the Commission streamlined its procedures by which regulated entities may request waiver, reduction, deferral, or installment payment terms for regulatory fees due to financial hardship. Typically, the FCC requires such requests to be made through separate pleadings. Given the ongoing pandemic, however, the FCC waived this requirement to permit parties to combine waiver, reduction, deferral, and installment payment requests into a single pleading which now can be filed via email. Nevertheless, the Commission did not waive the requirement that financial documentation must be provided to demonstrate financial hardship, but did state that its Office of Managing Director would work with individual filers to determine what supporting documentation will suffice. While we caution that financial hardship waivers are exceedingly hard to obtain (and there is no reason to think they won’t still be elusive this year), we applaud the FCC’s lowering of the hoops to secure installment payments to spread out the pain of regulatory fees this year.

The Commission also waived the red light rule to permit debtors experiencing financial hardship to request relief with respect to regulatory fees. Typically, the

red light rule restricts the FCC from acting on any application or relief request if the requesting party has an unpaid debt owed to the Commission. In light of the pandemic, the Commission waived that rule by permitting regulatees owing money to the Commission to request waiver, reductions, deferrals, and installment payment terms – which the Office of Managing Director will review and approve on a case-by-case basis. Recipients of a red light rule waiver, however, will be required to resolve all delinquent debt with the FCC by either entering into an installment agreement to repay the debt and/or cure-all outstanding payments owed the FCC under existing installment agreements.



While the Commission granted limited relief from regulatory fee obligations for regulatees affected by the pandemic, the Commission stated in the order that was constrained by statute from outright waiving this year’s regulatory fees or the 25% late payment penalty. Similarly, the Commission stated that it was unable to extend the regulatory fee deadline beyond September 30th – which marks the end of the agency’s fiscal year. However, the Commission did throw licensees a couple of small bones: it will no longer additionally assess administrative costs on delinquent regulatory fees and it will lower the interest rate charged on outstanding debts.

While the adopted 2020 regulatory fees were largely the same as those proposed in the May 13, 2020 [Notice of Proposed Rulemaking](#) (NPRM), the Commission slightly lowered the fees for radio broadcasters due to an undercounting of the number of radio stations subject to regulatory fees. The fees for television stations largely remained the same as proposed in the NPRM.

Should you have any questions or would like any assistance with payment of your regulatory fees – or to request waiver, reduction, deferral, or an installment payment plan – please contact your attorney.

FCC Moves to Add New Fees (and Lower the Cost of Others)

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The FCC has released an [NPRM](#) proposing the first major overhaul of FCC application fees in 30 years. Licensees (and hopeful licensees) should take heed: while certain fees are proposed to be lowered, many are proposed to increase, some by a substantial amount. Of particular interest are numerous new fees proposed for certain applications that, until now, have had no associated filing fees.

For example, wireless providers might feel some heartburn digesting the FCC's proposal to begin charging application fees of "geographic-based services that do not have fees [such as] the Advanced Wireless Service, Broadband Personal Communications Service, and the 600 MHz, 700 MHz, 3.5 GHz, and 3.7-4.2 GHz Services..." The fee for Common Carrier tariff filings is slated to be lowered from \$960 to \$930, but the FCC also proposes new, more substantial fees for "complex" tariff filings — as much as \$6,540 for price cap local exchange carriers (LECs) and entities involving more than 100 LECs ("Complex Large" tariff filings), and \$3,270 for other entities ("Complex Small" tariff filings). If the FCC gets its way, Voice over Internet Protocol (VOIP) providers will have to start paying a fee for numbering authorization.



On the broadcast media side, filing fees for Class A television stations are proposed to be moved from the Low Power TV (LPTV) category to the full power TV category, raising fees for minor facilities changes from zero to \$1,335, and license assignments would increase from \$160 to \$1,245. New fees would be imposed on pre-auction short-form radio and TV applications and on applications for declaratory rulings to permit foreign media ownership, and FM translator minor change application fees would increase from zero to \$210. Satellite operators might be the only group that sees a substantial benefit from the proposed fee changes: whereas they currently pay \$136,930 to apply to launch a communication satellite, the FCC proposes to reduce the fee to \$3,555.

The proposed new fees all have their genesis in the RAY BAUM'S Act of 2018, which directs the Commission to, among other things, evaluate fees and propose changes to better reflect actual costs associated with the processing of applications by the Commission. The FCC explains what it thinks its costs are, but with no explanation or analysis of how it came up with the numbers. As seen in ongoing disputes between the National Association of Broadcasters and the FCC over annual regulatory fees, there are real questions about the Commission's methodologies when it comes to cost calculations. And it begs the question: were the staff costs used to come up with regulatory fees the same ones used here? In other words, is the FCC proposing to charge licensees fees *twice* for the *same* staff hours?

We encourage FCC license holders to review the proposed fee changes and consider commenting if they feel the changes are not justified. The deadline for comments has not yet been announced but likely will be within the next 60 days.

FCC Repeals Radio Duplication Prohibitions

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On Thursday, August 6, the FCC voted to repeal Section 73.3556 of its Rules and Regulations – a rule that formerly prohibited more than 25% duplication of programming by commonly owned radio stations in the same service (AM or FM) that have 50% or more overlap of their primary service contours.

We [wrote](#) about the proposals on January 3, 2020. The FCC's initial conclusion was to repeal the rule for only AM stations, since many such stations are financially strained, and allowing duplication might facilitate transitioning AM stations to all-digital service while preserving the same programming on the analog signal of a separate station. However, during the final week before voting, the Commissioners changed their minds and decided to nuke the rule altogether – a decision that led Commissioner Starks to raise his eyebrows because the change had not been put out for public comment. Because the rule change is a removal of a restriction rather than an imposition of a new restriction, the repeal will become available immediately when the [Report and Order](#) is published in the *Federal Register*.

As we noted in January, the rule restricting program duplication has been tweaked several times since it was first adopted in 1964. Sometimes the FCC tightened the rule; other times, it loosened the rule. It is pretty easy to make a case either way: Some will say that duplication wastes spectrum and reduces program diversity, so it should be restricted. Others will take the position that that duplication can allow desirable programming to reach more listeners, and marketplace forces are adequate to ensure that broadcasters will provide optimum service to the public, so the government should respect the First Amendment and keep its fingers out of the programming pie.

In the end, it appears that adjustments to the rule over the years have depended at least in part on the viewpoints of Commissioners in office at the time. Today's Commissioners are looking for ways to lift some types of regulations (some people argue that they should lift many more). This rule was relatively easy to eliminate, as there was no strong opposition to repeal, and no one seriously threatened to haul the FCC back to the dreaded Third Circuit Court of Appeals that has repeatedly pounded the FCC with a

sledgehammer over the agency's attempts to relax broadcast multiple ownership restrictions.

So now, as soon as the repeal becomes effective, station owners will be allowed to present the same programming not only on one AM and one FM station in a market, which has always been permitted, but also on two AM or two FM stations – or three or four or all of their stations in a market in the unlikely event that they think that would make good business sense.

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FCC Establishes Procedures for Auction of C-Band Spectrum – Auction to Begin on December 8, 2020

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Recently, the FCC released a Public Notice that establishes the procedures for Auction 107, which will make available spectrum in the lower portion of the C-Band, at 3.7-3.98 GHz. The auction will be for new flexible-use overlay licenses, intended primarily to further the deployment of fifth-generation (5G) wireless, the Internet of Things (IoT), and other advanced spectrum-based services. The bidding for these spanking-new licenses is scheduled to commence on December 8, 2020. Short-form applications must be filed in a window between September 9 and September 22, 2020, and upfront payments will be due by November 2, 2020.

Auction 107 will offer 5,684 new flexible-use overlay licenses, subject to clearing of incumbent users. The 280 megahertz of spectrum available in Auction 107 will be licensed on an unpaired basis in three blocks divided into 20-megahertz sub-blocks by partial economic area (PEA) in the 48 contiguous states and the District of Columbia. Specifically, the A Block will cover 100 megahertz from 3.7–3.8 GHz in five 20-megahertz sub-blocks: 3700–3720 MHz (A1), 3720–3740 MHz (A2), 3740–3760 MHz (A3), 3760–3780 MHz (A4), and 3780–3800 MHz (A5). The B Block will cover 100 megahertz from 3.8–3.9 GHz in five 20-megahertz sub-blocks: 3800–3820 MHz (B1), 3820–3840 MHz (B2), 3840–3860 MHz (B3), 3860–3880 MHz (B4), and 3880–3900 MHz (B5). The C Block

will cover 80 megahertz from 3.9–3.98 GHz, and four 20-megahertz sub-blocks will be licensed for flexible use: 3900–3920 MHz (C1), 3920–3940 MHz (C2), 3940–3960 MHz (C3), and 3960–3980 MHz (C4). The 20 megahertz at 3980–4000 MHz will be a guard band and not available for auction.

3.7 GHz Service licenses will be issued for 15-year, renewable license terms. A licensee in the 3.7–3.98 GHz band may provide any services permitted for terrestrial fixed or mobile allocations in the Commission’s rules.

Previously, the Commission announced that incumbent satellite operators in the C-Band had, in aggregate, made sufficient commitments to clear the 3.7–4.0 GHz band on an accelerated timeline. As a result, licenses in the A Block in 46 of the top 50 PEAs will be subject to the Phase I accelerated relocation deadline, and licenses in the B and C Blocks in the 46 PEAs and in the A, B, and C Blocks in the remaining 360 PEAs will be subject to the Phase II accelerated relocation deadline.

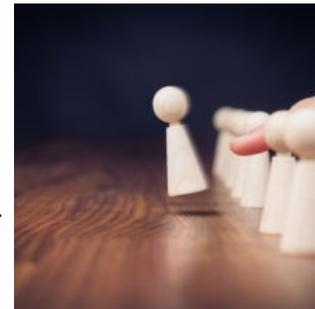
As is the case in many recent auctions, designated entity bidding credits will be available to applicants in Auction 107 demonstrating eligibility for a small business (15% and 25%) or a rural service (15%) provider bidding credit who subsequently win licenses. Bidding credit discounts of 15% are available to entities whose average gross revenues for the preceding five years do not exceed \$55 million, and discounts of 25% are available to entities whose average gross revenues for the preceding five years do not exceed \$20 million. These bidding credits will not be cumulative—an applicant is permitted to claim either a small business bidding credit or a rural service provider bidding credit, but not both. In addition, the FCC adopted a \$25 million cap on the total amount of bidding credit discounts that may be awarded to an eligible small business and a \$10 million cap on the total amount of bidding credit discounts that may be awarded to an eligible rural service provider.

There are a number of other important and complex legal requirements discussed in the Public Notice, regarding disclosures of ownership and bidding arrangements, prohibited communications, and compliance with Antitrust laws, so potential bidders should review these carefully, and consult with communications counsel. If you have any questions or are interested in participating in the auction, please contact us.

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O’Rielly Re-nomination Dismissed

In a rare move, Commissioner Michael O’Rielly – a Republican – had his re-nomination to the FCC rescinded by President Trump. O’Rielly’s re-nomination first stalled when Oklahoma Republican Senator James Inhofe, Chairman of the Senate Armed Services Committee, put it on hold over objections to an FCC decision allowing wireless communications firm Ligado Networks access to L-band spectrum. It seems in this case that O’Rielly’s priority of advancing U.S. 5G capability, which he elaborated on in a letter to President Trump in April, was at loggerheads with the Department of Defense’s (“DoD”) fear of GPS interference. Some have also speculated that O’Rielly’s questioning of the recent Executive Order to regulate social media companies’ ability to block harmful posts and accounts was a reason for his dismissal.



In addition to O’Rielly’s nomination being revoked, the Ligado dispute is also making waves on Capitol Hill. A number of lawmakers have sided with the DoD in opposing the Ligado plan. That said, Congress can only overturn this decision through legislation at this point, and it remains to be seen if legislation can make it through both houses and get signed before the end of this congress. It should be noted that there are members of the House and Senate who support the FCC’s decision to allow Ligado access to the L-band including Virginia Senator Mark Warner and Texas Representative Michael Burgess. We will be following these developments to see how it all shakes out and will update accordingly.

Now Available: 2020 Political Broadcasting Rules Refresher

Fletcher, Heald & Hildreth attorneys, Frank Montero and Dan Kirkpatrick, along with the FCC’s political programming experts, Bobby Baker, Gary Schonman, and Sima Nilsson, discussed the requirements and latest developments in the FCC’s political broadcasting rules, including equal time, lowest unit rates, PAC ads, BCRA, and record keeping.

If you didn’t catch the webinar live or just want to see it again, you can download and print the presentation’s PowerPoint slides [here](#). You may also watch the full video recording of the webinar on [YouTube](#).

With the 2020 election season in full swing, this webinar will help answer any compliance questions that you may have concerning political broadcasting.



Upcoming FCC Broadcast Deadlines for September – November

Broadcast Deadlines:

September 25, 2020

Annual Regulatory Fees – These fees will be due and payable for Fiscal Year 2020 and will be based upon a licensee's/permittee's holdings on October 1, 2019, plus anything that might have been purchased since then and less anything that might have been sold since then. The fees must be paid through the Federal Communications Commission's ("FCC" or the "Commission") online Fee Filer, and once again this year, the FCC will not accept checks as payment of the fees but will require some form of electronic payment (credit card, ACH transfer, wire transfer, and the like). Please keep in mind that timely payment is critical, as late payment results in a 25 percent penalty, plus potential additional interest charges.



October 1, 2020

Must-Carry/Retransmission Consent Election Deadline – By October 1, all full power and Class A commercial TV stations must upload their must-carry/retransmission consent elections for the 2021-2023 election cycle to their online public inspection files. Stations are now required to send copies of their elections to MVPDs only if they are changing the election they made for the previous term (i.e. from must-carry to retransmission consent or vice versa). Stations now need only upload a copy of their election to their public file. Separate elections for each MVPD are also no longer required. One blanket election for all MVPDs is sufficient, provided the station is making the same election for all such MVPDs. If a station elects retransmission consent on some systems and must-carry on others, it must upload separate notices or specify in its notice which election applies to which MVPDs and systems.

Radio License Renewal Applications Due – Applications for renewal of license for radio stations located in Iowa and Missouri must be filed in the Licensing and Management System (LMS). These applications must be accompanied by Schedule 396, the Broadcast Equal Employment Opportunity (EEO) Program Report, also filed in LMS, regardless of the number of full-time employees.

Radio Post-Filing Announcements – As of this writing, radio stations licensed in Iowa and Missouri must begin broadcasts of their post-filing announcements concerning their license renewal applications on October 1. These announcements must continue on October 16, November 1, November 16, December 1, and December 16. Once complete, a certification of broadcast, with a copy of the announcement's text, must be posted to the Online Public Inspection File (OPIF) within seven days, or by December 23. It is, however, possible that the updated rules governing public notices will go into effect during the period of the announcements, in which case, stay tuned for updates on transition to the new requirements.

Television License Renewal Applications Due – Applications for renewal of license for television stations located in Florida, Puerto Rico, and the Virgin Islands must be filed in LMS. These applications must be accompanied by Schedule 396, the Broadcast EEO Program Report, also filed in LMS, regardless of the number of full-time employees. **Television Post-Filing Announcements** – Under current regulations, television stations licensed in Florida, Puerto Rico, and the Virgin Islands must begin broadcasts of their post-filing announcements concerning their license renewal applications on October 1. These announcements must continue on October 16, November 1, November 16, December 1, and December 16. Once complete, a certification of broadcast, with a copy of the announcement's text, must be posted to the OPIF within seven days, or by De-

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ember 23. As noted above, however, it is possible that the updated rules governing public notices will go into effect during the period of the announcements, in which case, stay tuned for updates on transition to the new requirements.

EEO Public File Reports – All radio and television station employment units with five or more full-time employees and located in Alaska, American Samoa, Florida, Guam, Hawaii, Iowa, the Mariana Islands, Missouri, Oregon, Puerto Rico, the Virgin Islands, and Washington must place EEO Public File Reports in their OPIFs. For all stations with websites, the report must be posted there as well. Per announced FCC policy, the reporting period may end ten days before the report is due, and the reporting period for the next year will begin on the following day.