

## Regulatory Fees Due by September 24

The FCC has established the amounts for regulatory fees for the fiscal year ending September 30, 2021, in a *Report and Order* (FCC 21-98) in Docket 21-190. The Communications Act requires the Commission to collect fees from most of the entities that it regulates. Congress has mandated the FCC to collect \$374 million this year to cover the agency's operating costs.

These fees must be paid by 11:59 p.m. Eastern time on September 24. Tables at the conclusion of this article list the fees imposed on most types of authorizations of interest to broadcasters, except for full service television stations. The tables compare the amount of the fee assessed in each category with the figure that was proposed in the *Notice of Proposed Rulemaking* (FCC 21-49) in this proceeding earlier this year. The tables also show the amounts that were charged for fiscal year 2020. The 2021 fee assessed for any broadcast station can be found on the FCC's website at <http://fccfees.com>.

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## Partial FM Filing Freeze Begins October 5

The FCC will conduct a nationwide filing window from November 2 through 6 p.m. Eastern time on November 9 for applications for new noncommercial stations and major changes to existing noncommercial stations. These applications will propose facilities on the portion of the FM band reserved for noncommercial broadcasting – from 88.1 to 91.9 MHz.

In conjunction with this filing window, the FCC will freeze the filing of all FM minor change applications or amendments to pending applications that could preclude or conflict with applications that could be filed during the filing window. This will create a stable environment for prospective noncommercial applicants to evaluate and pursue available channels. The freeze will affect any frequency adjacent to a noncommercial frequency – 88.1 to 92.5 MHz – and any frequency in an intermediate frequency relationship with a frequency in the noncommercial band – 98.7 to 102.7 MHz. The FCC will not accept minor change applications or amendments on these frequencies beginning on October 5 and continuing through the close of the filing window.

## Court Finds Locast Subject to Copyright Liability

The United States District for the Southern District of New York, sitting in New York City, has ruled that the Locast television programming retransmission service operated by Sports Fans Coalition NY, Inc. ("SFC") is subject to copyright liability. This decision came in response to a motion for summary judgment from the broadcaster plaintiffs in a lawsuit against SFC for infringing the broadcasters' copyright in their television programming. The broadcasters' motion asked the court to dismiss SFC's affirmative defense that Locast was exempt from copyright liability because of its nonprofit status. The plaintiffs included the four major commercial television networks and other major producers and distributors of video content.

As explained by SFC in the course of the proceeding, Locast was created to offer Americans free access to local, free television which, for technical and geographic reasons,

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For more information about or help with any of the items reported in **Antenna™** please contact:

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# Kidvid Accessibility To Be Surveyed

The FCC's Media Bureau has released a *Public Notice* (DA 21-1115) soliciting comment about the accessibility of children's educational and informational television programming to children with disabilities. The FCC's Rules require full service and Class A television stations to address the educational and informational needs of children. These regulations include a processing guideline that Commission staff can follow in the course of reviewing a station's license renewal application. If the renewal applicant demonstrates that it has consistently aired a minimum amount of qualifying programming intended for children, the Commission staff will conclude that the station has met its requirements for children's programming during the license term. If the station has not broadcast enough programming to satisfy the processing guideline, the Commission will scrutinize the station's practices during the license term in more detail.

In 2019, the FCC amended the rules so as to permit a limited amount of short-form programming (less than 30 minutes in length), and up to 13 hours per quarter of regularly scheduled programming on a multicast stream to count toward the minimum needed to meet the renewal processing guideline. Commenters at the time raised concerns that these changes could have the effect of reducing the amount of children's programming accessible to children with disabilities.

Children's educational and informational programming, including short-form content, and programming aired on multicast channels, is subject to the closed captioning rules. However, much of the programming in these categories might be exempt from the FCC's captioning requirements. Short-form content could be exempt if it is 10 minutes or less in duration and is interstitial material, a promotional announcement, or a public service announcement. Short-

form programming may also be exempt from captioning if it is locally produced by the station, has no repeat value, is of local public interest, is not news programming, and cannot be captioned using the electronic news room technique. Furthermore, program streams with gross revenues of less than \$3 million are completely exempt from captioning. Thus, programming on most multicast streams is exempt because multicast channels typically do not meet that revenue threshold. Multicast streams are also exempt from the audio description requirements.

With a nod to these concerns, the Commission adopted the amendments to the children's programming rules with a proviso directing the Media Bureau to investigate the extent to which short-form programming and regularly scheduled weekly programs on multicast channels are closed captioned and/or video described. The Bureau was instructed to undertake this inquiry no later than two years after the amended rules became effective. This *Public Notice* results from those instructions.

The Bureau seeks specific data on the amount of short-form programming and programming on multicast channels that is closed captioned and/or video described, expressed in minutes, hours, or as a percentage of the short-form programming on a channel or as the percentage of regularly scheduled weekly programming on a multicast stream. The Bureau asks to be updated on the changes that have taken place in the market since the Commission adopted these revisions to its rules – especially with regard to children's programming offered on multicast streams.

Comments in response to this *Public Notice* must be filed in Docket 18-202 by October 7. The deadline for reply comments is November 8.

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## Ideas Sought for New Reg Fee Categories

In the same release announcing the regulatory fees for 2021, the FCC included a *Notice of Proposed Rulemaking* (FCC 21-98) in Docket 21-190 to invite public comment on new ways to approach regulatory fees. Congress sets the total amount to be assessed and collected each year. Section 9 of the Communications Act requires the Commission's methodology for assessing fees to "reflect the full-time equivalent number of employees within the bureaus and offices of the Commission, adjusted to take into account factors that are reasonably related to the benefits provided to the payer of the fee by the Commission's activities." Within those parameters, the FCC has discretion to determine how to allocate the total amount among its regulatees.

The Commission says that it received comments in this proceeding to suggest that it should consider new categories of fees to be assessed on parties presently not liable for such fees. The National Association of Broadcasters urged that unlicensed spectrum users, especially large technology companies, should be required to pay regulatory fees. In querying how to organize such a group of regulatees, the

Commission notes that many unlicensed spectrum users neither apply for nor need authorization from the FCC. The Commission asks for comment on this proposal for unlicensed spectrum users.

The Commission asks how such a category of regulatees could be addressed within the current formula for apportioning fees. In the alternative, it also asks whether the regulatory fees should be assessed on some other basis, such as advantages received from the Commission's universal service or other activities.

The Commission solicits comment as to other fee categories that should be added, deleted, or reclassified, and the impact such changes might have on existing categories. Comment is also invited on possible new or different methodologies for recalculating the regulatory fee allocation system.

Comments in Docket 21-190 will be due 30 days after notice of this proceeding is published in the Federal Register. The deadline for reply comments will be 45 days after that publication.

# C-Band Earth Station Operators Urged To Report

The FCC's International Bureau has been informed by the C-Band Relocation Coordinator, RSM US LLP ("RSM"), that there are over 200 incumbent C-band satellite earth stations that RSM believes are inactive, but which remain listed as active in the International Bureau Filing System ("IBFS"). The FCC is in the process of clearing Fixed Satellite Service operations from the lower portion of the C-band, 3.7 to 4.0 GHz, and reallocating that spectrum to 5G wireless services. Operators of earth stations in this band have been offered reimbursement for their expenses to relocate to alternate spectrum. In the alternative, unused earth stations should be deactivated. Despite multiple directives for earth station owners to declare their plans and make preparations to relocate, these stations identified by RSM appear to remain

in the band, inattentive to the looming transition.

The International Bureau has released a *Public Notice* (DA 21-893) directing the owners of these 229 earth stations to submit either of two filings by October 21, 2021: (1) file to remove the antenna from the IBFS database as no longer operational as required by the Commission's rules, or (2) file a statement in Docket 20-205 to affirm that the earth station is still operational. Failure to submit such a filing by October 21 affirming the continued operation of the earth station and an intention to participate in the C-band transition will result in the automatic termination of the authorization.

The list of these 229 incumbent C-band earth stations is in an appendix attached to the *Public Notice*, and is available here: <https://docs.fcc.gov/public/attachments/DA-21-893A2.xlsx>.

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## October 12 Is Deadline for Foreign Disclosure Report

The FCC's Media Bureau has released a *Public Notice* (DA 21-1133) to announce a deadline of October 12, 2021, for United States-based foreign media outlets to file disclosure reports. The Commission is required by law to collect this information and submit summary reports to Congress.

The disclosure must include the outlet's name and a description of its relationship to the foreign principal, including a description of the legal structure of the relationship and any funding that the outlet receives from the foreign principal.

A United States-based foreign media outlet is defined as an entity that:

(1) produces or distributes video programming that is transmitted, or intended for transmission, by a multichannel

video programming distributor to consumers in the United States; and

(2) would be an agent of a foreign principal for purposes of the Foreign Agents Registration Act of 1938, except for certain exceptions listed in the Act. The law excepts any news or press service or association organized under the laws of the United States (and certain other publications registered with the U.S. Postal Service because of bona fide news or journalistic activities), provided that such entity (a) is at least 80 percent beneficially owned by, and its officers and directors are United States citizens, and (b) is not owned, directed, supervised, controlled, subsidized, or financed, and none of its policies are determined by a foreign principal or the agent of a foreign principal.

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## Don't Forget the License Application

In a rash of recent actions, the FCC's Media Bureau has proposed forfeitures against the holders of FM translator construction permits for failing, after constructing the station, to file an application for a license to cover the operating translator. The Bureau has issued a *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* separately to five permittees, collectively holding six construction permits.

In each case, it appears that the permittee constructed the station and placed it on the air without filing an application for a license. When the construction permit expired, the station was operating without any authorization in violation of Section 301 of the Communications Act. Failure to timely file a license application is itself a violation of Section 73.3598 of the FCC's Rules.

The FCC's forfeiture guidelines provide for a base fine of \$3,000 for failure to file a required form, and a base fine of

\$10,000 for operating a station without an authorization. The Commission has the discretion to adjust the base figures as circumstances may warrant in each specific case. In each of these FM translator cases, the Media Bureau proposes a total fine of \$3,500 per station. Absent a finding of other serious problems, the Bureau said it would consider granting license applications for these permittees upon satisfactory resolution of the forfeitures.

The proper sequence of events in establishing a new FM translator station is (1) to obtain a construction permit, (2) to build the station in accord with the authorized parameters, (3) to file an application for a license, and (4) to place the station in operation. Unlike the process for other types of stations, the translator license application is to be filed before the station goes on the air.



# DEADLINES TO WATCH



## License Renewal, FCC Reports & Public Inspection Files

- October 1      Deadline to file license renewal applications for radio stations in **Alaska, American Samoa, Guam, Hawaii, Mariana Islands, Oregon, and Washington**, and television stations in **Iowa and Missouri**.
- October 1      Deadline to place EEO Public File Report in Public Inspection File and on station's Internet website for all nonexempt radio and television stations in **Alaska, American Samoa, Florida, Guam, Hawaii, Iowa, Mariana Islands, Missouri, Oregon, Puerto Rico, Virgin Islands, and Washington**.
- October 1      Deadline for all broadcast licensees and permittees of stations in **Alaska, American Samoa, Florida, Guam, Hawaii, Iowa, Mariana Islands, Missouri, Oregon, Puerto Rico, Virgin Islands, and Washington** to file annual report on all adverse findings and final actions taken by any court or governmental administrative agency involving misconduct of the licensee, permittee, or any person or entity having an attributable interest in the station(s).

- October          Radio stations in **Alaska, American Samoa, Guam, Hawaii, Mariana Islands, Oregon, and Washington**, and television stations in **Iowa and Missouri** begin broadcasting post-filing announcements within five business days of acceptance of application for filing and continuing for four weeks.
- October 10      Deadline to place quarterly Issues/Programs List in Public Inspection File for all full service radio and televisions stations and Class A TV stations.
- October 10      Deadline for noncommercial stations to place quarterly report re third-party fundraising in Public Inspection File.
- October 10      Deadline for Class A TV stations to place certification of continuing eligibility for Class A status in Public Inspection File.

**FY 2021 REGULATORY FEES DUE  
SEPTEMBER 24, 2021**

**NATIONWIDE EAS TEST  
ETRS Form Three Due      SEPTEMBER 27**

**TELEVISION STATIONS IN REPACK  
PRE-PHASE 1 AND PHASES 1-5  
DEADLINE TO SUBMIT INVOICES FOR  
REIMBURSEMENT  
OCTOBER 8, 2021**

**FILING WINDOW FOR  
BIENNIAL OWNERSHIP REPORTS  
OCTOBER 1 – DECEMBER 1, 2021**

**FILING WINDOW FOR APPLICATIONS  
FOR NEW AND MAJOR CHANGES TO  
NONCOMMERCIAL FM STATIONS  
NOVEMBER 2 – 9, 2021**



# DEADLINES TO WATCH



## Deadlines for Comments in FCC and Other Proceedings

DOCKET

COMMENTS REPLY COMMENTS

(All proceedings are before the FCC unless otherwise noted.)

Docket 20-299; Public Notice (DA 21-945) Clarification of Foreign Government Programming Sponsorship Identification		September 17
Docket 21-263; NPRM (FCC 21-84) Radio technical rules update		September 20
Docket 21-321; Public Notice (DA 965) Univision Holdings II, Inc. request for Declaratory Ruling re foreign ownership		September 22
Docket 98-204; FNPRM (FCC 21-88) EEO rules and policies	September 30	November 1
Docket 21-293; NPRM (FCC 21-91) Political programming and recordkeeping	October 1	October 18
Docket 18-349; Public Notice (DA 21-657) Updating record in 2018 Quadrennial Regulatory Review	October 1	
U.S. District Court for District of Columbia United States vs. Gray Television, Inc. Civil Case No.1:21-cv-02041-CJN Proposed Final Judgement re Gray Television's acquisition of Quincy Media.	October 4	N/A
Docket 18-202; Public Notice (DA 21-1115) Kidvid accessibility	October 7	November 8
Docket 15-94; FNPRM (FCC 21-77) Emergency Alert System	October 19	November 18
Docket 21-190; NPRM (FCC 21-98) Regulatory fees	FR+30	FR+45

*FR+N means the filing deadline is N days after publication of notice of the proceeding in the Federal Register.*

## Paperwork Reduction Act Proceedings

The FCC is required by the Paperwork Reduction Act to periodically collect public information on the paperwork burdens imposed by its recordkeeping requirements in connection with certain rules, policies, applications and forms. Public comment has been invited about this aspect of the following matters by the filing deadlines indicated.

TOPIC	COMMENT DEADLINE
Sponsorship identification, Section 73.1212	Sep. 20
Public Inspection Files, Sections 73.3526, 73.3527	Sep. 20
Political files, Section 73.1212, 73.1943	Sep. 20
Digital LPTV, Sections 74.787, 74.790, 74.794, 74.796, 74.798	Oct. 4
Broadcast modification applications, Sections 73.3538, 73.1690(e)	Oct. 12
Broadcast applications for assignment and/or transfer of control	Oct. 15

**DEADLINE TO FILE  
SEMI-ANNUAL FOR  
FOREIGN MEDIA DISCLOSURE REPORT  
OCTOBER 12, 2021**

**C-BAND EARTH STATION OPERATORS  
THAT HAVE NOT FILED NOTICES  
RE OPERATIONAL STATUS  
DEADLINE TO FILE:  
OCTOBER 21, 2021**

# Regulatory Fees Due by September 24 continued from page 1

Fees for full service television stations are calculated specifically for each station on the basis of the population within its service contour. The regulatory fee is \$0.007793 multiplied by the service area population. Population data comes from the *TVStudy*. The Commission had proposed a factor of \$0.008525 to multiply by the population. However, along with most other broadcast fees, the Commission decided to assess fees that were lower than originally proposed for reasons explained below.

The FCC continued its practice from 2020 of special calculations for the population covered by television stations in Puerto Rico. The service contour population figures are reduced by 16.9 percent from the *TVStudy* to reflect the relative decline in Puerto Rico's population. Further, the combined population count for a primary station and commonly owned satellite stations will be capped at 3.1 million people.

Regulatory fees must be paid through the FCC's Fee Filer system with a credit card or a wire transfer. Checks and money orders are not accepted. Fees that are not paid by the deadline will incur interest and a 25 percent late penalty. A regulatee whose fees are late may be placed in a "red light" status, meaning that any application it submits will not be processed and may be dismissed.

Fees are calculated on the basis of the status of the authorization as of October 1, 2020. For example, if a station only had a construction permit on October 1, 2020, but subsequently became licensed, the owner would be liable only for the regulatory fee associated with the construction permit. A fee will be due for a license that existed on October 1, 2020, but which later expired without renewal. Nonprofit and government entities are exempt from regulatory fees regardless of the type of authorization that they may hold. A regulatee whose total 2021 fees for all categories is less than \$1,000 is also exempt from payment because sums of fees below that threshold are considered de minimis.

In a *Public Notice* (DA 21-1137), the Commission announced procedures for requests for waiver, reduction, deferral and installment payment of regulatory fees. Although the FCC has limited authority to offer assistance to regulatees experiencing financial hardship, the agency announced that it will extend through this fiscal year the relief measures it offered last year for regulatees suffering from financial difficulties due to the pandemic. Relief may be granted only to those regulatees who unambiguously articulate extraordinary circumstances that outweigh the public interest in recouping the cost of the Commission's regulatory services. A request for waiver or reduction must be filed by September 24 and accompanied by either (a) full payment of the FY 2021 fee or a request to defer payment, and (b) financial documentation demonstrating the financial hardship. Such requests should be emailed to 2021regfeerelief@fcc.gov. A regulatee proposing a plan for installment payments should follow the same procedure.

Most of the FY 2021 fees adopted for broadcast regulatees are significantly lower than those that were originally proposed. These reductions came about after broadcasters objected that part of the fees they were being asked to pay had no relation to the cost of regulating their industry. The Commission adopted the statutorily required framework for allocating the liability for fees, just as it has in past years. Fees are allocated on the basis of staff time, measured in full time equivalents ("FTEs"), estimated to be necessary to serve each regulated entity. The Commission identifies the number of FTEs employed within each of its four core bureaus (Media, International, Wireless Telecommunications, and Wireline Competition). The regulatees of each bureau are then assigned responsibility for a portion of the total regulatory fees proportionate to their bureau's respective FTEs. The FTEs in the non-core bureaus and offices are allocated proportionately among the core bureaus.

Of the \$374 million in regulatory fees that Congress directed the FCC to assess and collect this year, \$33 million is designated for implementing the Broadband DATA Act. This legislation requires the FCC to collect standardized data on the availability and quality of both fixed and mobile broadband Internet access services, to create a common dataset of all locations where fixed broadband Internet access service can be installed, and to create publicly available coverage maps. In its original calculations, the Commission treated this \$33 million earmark like the FTEs for the non-core bureaus, and allocated it proportionately among the core bureaus.

Commenters representing broadcasters objected to the assessment on broadcasters of any part of the \$33 million designated by Congress to cover the costs of the Broadband DATA Act. They argued that broadcasters are not regulated by nor do they benefit from implementation of this legislation. In response, the FCC decided to adjust fee calculations so as to remove the Broadband DATA earmark from the segment of the FCC's expenses allocated to broadcasters' regulatory fees. The Commission said that it was justified in doing so under these unusual circumstances, taking into account the nature and magnitude of the earmark, the statutory text, the legislative history of the Act, and the record in this proceeding. The FCC found that this one-time modification of its regulatory fee allocation formula was consistent with its longstanding goals of implementing "a fair, sustainable and administrable regulatory fee regime." Broadcasters' fees were reduced accordingly.

The following tables list the fiscal year 2021 regulatory fee for most types of authorizations of interest to broadcasters (except for full service television stations). Comparisons are made to the amounts originally proposed earlier in this proceeding, and the fees actually assessed for fiscal year 2020.

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# Regulatory Fees Due by September 24 continued from page 6

## REGULATORY FEES FOR FISCAL YEAR 2021

Type of Authorization	Actual FY 2021	Proposed FY 2021	Actual FY 2020
Full Power TV Construction Permit	\$5,100	\$5,150	\$4,950
Class A TV, LPTV, TV/FM Translator & Booster	320	350	315
AM Radio Construction Permit	610	660	610
FM Radio Construction Permit	1,070	1,150	1,075
Satellite Earth Station	595	585	560

### ACTUAL FY 2021 REGULATORY FEES FOR RADIO

Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM A, B1, C3	FM B,C,C0,C1,C2
0-25,000	\$ 975	\$ 700	\$ 610	\$ 670	\$ 1,070	\$ 1,220
25,001-75,000	1,465	1,050	915	1,000	1,605	1,830
75,001-150,000	2,195	1,575	1,375	1,510	2,410	2,745
150,001-500,000	3,295	2,365	2,060	2,265	3,615	4,125
500,001-1,200,000	4,935	3,540	3,085	3,390	5,415	6,175
1,200,001-3,000,000	7,410	5,320	4,635	5,090	8,130	9,270
3,000,001-6,000,000	11,105	7,975	6,950	7,630	12,185	13,895
6,000,000+	16,665	11,965	10,425	11,450	18,285	20,850

### PROPOSED FY 2021 REGULATORY FEES FOR RADIO

Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM A, B1, C3	FM B,C,C0,C1,C2
0-25,000	\$ 1,050	\$ 760	\$ 660	\$ 725	\$ 1,150	\$ 1,325
25,001-75,000	1,575	1,150	990	1,100	1,725	2,000
75,001-150,000	2,375	1,700	1,475	1,625	2,600	2,975
150,001-500,000	3,550	2,575	2,225	2,450	3,875	4,475
500,001-1,200,000	5,325	3,850	3,350	3,675	5,825	6,700
1,200,001-3,000,000	7,975	5,775	5,025	5,500	8,750	10,075
3,000,001-6,000,000	11,950	8,650	7,525	8,250	13,100	15,100
6,000,000+	17,950	13,000	11,275	12,400	19,650	22,650

### ACTUAL FY 2020 REGULATORY FEES FOR RADIO

Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM A, B1, C3	FM B,C,C0,C1,C2
0-25,000	\$ 975	\$ 700	\$ 610	\$ 670	\$ 1,075	\$ 1,225
25,001-75,000	1,475	1,050	915	1,000	1,625	1,850
75,001-150,000	2,200	1,575	1,375	1,500	2,425	2,750
150,001-500,000	3,300	2,375	2,050	2,275	3,625	4,150
500,001-1,200,000	4,925	3,550	3,075	3,400	5,450	6,200
1,200,001-3,000,000	7,400	5,325	4,625	5,100	8,175	9,300
3,000,001-6,000,000	11,100	7,975	6,950	7,625	12,250	13,950
6,000,000+	16,675	11,975	10,425	11,450	18,375	20,925

# Court Finds Locast Subject to Copyright Liability continued from page 1

ordinary consumers would be unable to access without commercial pay-television services. As of May 2021, Locast was capturing and retransmitting over the Internet the over-the-air signals of local television stations in 32 markets. Viewers had access to this programming 24 hours per day.

Locast offered retransmitted programming online to any registered user in the market designated geographic area, including those who could access original over-the-air signals using regular television receive antennas. Users had free access to the complete range of local broadcast stations. However, Locast would interrupt the service every 15 minutes while a viewer was tuned to a single channel with a 15-second solicitation for contributions. To avoid these interruptions, viewers could contribute a monthly donation of \$5.

The court characterized these “donations” as fees for uninterrupted service. The record showed that Locast was almost fully funded by such payments from viewers. Additional revenue came from multichannel video programming distributors, some of whom integrated the Locast application into their own smart-TV platforms, and thereby were able to direct their customers to uninterrupted service during channel blackouts (such as during a retransmission consent dispute).

SFC’s claim to being exempt from copyright liability was based on Section 111(a)(5) of the Copyright Act. The statute provides that the secondary retransmission of a copyrighted work embodied in a primary transmission (i.e., a broadcast television signal) is not an infringement of that copyright if it is made by a nonprofit organization without any purpose of direct or indirect commercial advantage and without charge to recipients other than assessments necessary to defray the actual and reasonable costs of maintaining and operating the secondary transmission service.

The court rejected SFC’s claim to be exempt, finding that the “undisputed facts” make it clear that the Locast service

was not offered without charges other than those that are necessary to defray the cost of providing the service. The court said that the charges paid by users are assessed to avoid constant service interruptions regardless of whether SFC called them “recommended donations.” It is of no consequence that some users do not make the monthly payments.

The court found that Locast’s total cost of operating in 2020 was \$2.436 million. At that time, Locast was offering service in 16 markets, and expanding to nine additional markets. Locast’s revenue in 2020 was \$4.519 million, \$4.372 million of which came from users. The court concluded that during 2020, Locast had made far more money from user charges than was necessary to defray its costs for maintaining and operating the service.

SFC argued that its funding paradigm qualified for the statutory exemption because the revenues from users that exceed operating costs are reinvested to cover the cost of expansion of the service to new markets. SFC asserted that Congress did not intend to exclude the costs of expansion from the allowable amounts that could be collected from users to support the nonprofit enterprise.

The court disagreed. Under the statute, income from charges to recipients of the service can only be used to defray the actual and reasonable costs of maintaining and operating the service. There is no mention of expansion to new markets as a legitimate category of costs that can be covered. The court concluded that because Locast’s revenues from its users exceeded the actual and reasonable costs of maintaining and operating its retransmission service, it did not qualify to be exempt from copyright liability under Section 111. The plaintiffs’ motion to strike SFC’s affirmative defense was granted.

Press reports indicate that Locast has subsequently suspended its operations in all markets.

The decision is *American Broadcasting Companies, Inc., et al. v. David R. Goodfriend and Sports Fans Coalition NY, Inc.*, 2021 U.S. Dist. LEXIS 164978.