

Regulatory Fees Due September 28

The FCC has set the Regulatory Fees for Fiscal Year 2022, ending September 30, 2022, in *Report and Order and Notice of Inquiry* (FCC 22-68) in Dockets 22-223 and 22-301. The Commission is required by statute to collect these fees from the entities that it regulates every year to offset the cost of operating the agency. The total amount to be collected this year is \$381,950,000.

The deadline for most payors to submit these fees is September 28. The Commission extended that deadline until September 30 for entities affected by Hurricane Fiona. Fees must be paid online through the FCC's CORES webpage by midnight Eastern Time on the due date. Payments received after then will be subject to a 25 percent late fee. The Commission may also suspend the processing of applications for entities with past-due balances. Payors seeking waivers, reductions or deferrals should refer to the story on those topics elsewhere in this issue.

The FCC calculates the amount of the fee to be paid by each regulated entity by estimating the cost in personnel time spent on servicing and regulating that entity. Staff time is measured in "full time equivalents" (or "FTEs") and allocated among the agency's four core bureaus as direct FTEs. The four core bureaus are Media, International, Wireless Telecommunications, and Wireline Competition. For this fiscal year, there are 329 direct FTEs in the Commission among these four bureaus. The percentage of the total direct FTEs needed for each bureau to function was found to be 36.47 percent for Media, 8.51 percent for International, 21.28 percent for

continued on page 2

Full Compliance Now Required for Foreign Sponsorship ID Rule

New requirements for broadcast stations to ascertain whether programming on leased channels is provided or sponsored by a foreign government or the agent of a foreign government, and to disclose such sponsorship to the audience, came into effect on March 15. Programming under new contracts that were entered into after that date

continued on page 3

Commercial Error in One Series Leads to Big KidVid Fines

The FCC has issued a *Notice of Apparent Liability for Forfeiture* (FCC 22-70) addressed to 21 television licensees concerning the admitted broadcast of program-length commercials directed to children on 115 stations. The Commission has proposed forfeitures totaling \$3,338,000.

The Children's Television Act of 1990 required the FCC to adopt rules to restrict the amount of commercial matter that television stations may air during children's programming and to evaluate compliance with these rules at license renewal time. Implementing this mandate, the Commission adopted section 73.670 of the Rules, which limits the amount of commercial matter that may be aired during children's programming to 10.5 minutes per hour on weekends and 12 minutes per hour on weekdays. The Commission has also stated that a program associated with a product, in which commercials for that product are aired, would be treated as a program-length commercial, (i.e., the

continued on page 7

IN THIS ISSUE

Regulatory Fee Relief	2
Journalism Boosted by Congress	2
Deadline for Foreign Disclosure Report	3
Deadlines to Watch.....	4-5

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FCC Offers Limited Regulatory Fee Relief Measures

Regulatory fees are generally due to be paid by midnight Eastern Time on September 28 (or September 30 for Hurricane Fiona victims). However, there are limited means for obtaining relief from the burden of paying fees that an entity cannot afford. Due to the ongoing economic effects of the pandemic, the FCC has extended the temporary COVID-19 relief measures it adopted for the FY 2020 and FY 2021 fees. The Commission may waive, reduce, or defer payment of a regulatory fee in the specific case where the regulatee demonstrates good cause for the relief and that the relief would promote the public interest. Relief can be granted only for regulatees “unambiguously articulating

extraordinary circumstances outweighing the public interest recouping the cost of the Commission’s regulatory activities.

A request for a waiver or reduction of a regulatory fee based on financial hardship must be filed on or before September 28 and be accompanied by (1) a full payment of the fee or a request to defer payment and, (2) financial documentation to demonstrate the hardship. To justify waivers, reductions, or deferments, the payor must demonstrate that it lacks sufficient funds to pay its 2022 fee in full while maintaining service to the public. The request should be submitted by email to regfeerelief@fcc.gov.

Journalism Boosted by Congress

Congress has recently passed and the President has signed the Journalism Competition and Preservation Act. This law allows news content creators to jointly negotiate with social media giants for the rights to the creators’ content without exposure to the restrictions of antitrust law. The antitrust exemption is temporary—lasting only four years.

To qualify as a “news content creator,” an entity must:

(a) be a print, broadcast, or digital news organization that:

(i) has a dedicated professional editorial staff that creates and distributes original news and related content concerning local, national, or international matters of public interest on at least a weekly basis; and

(ii) is marketed through subscriptions, advertising, or sponsorship; and

(b) (i) provides original news and related content, with the editorial content consisting of not less than 25 percent current news and related content; or

(ii) is an FCC-licensed broadcaster offering original news and related content.

An “online content distributor” is any operator of a website that displays, distributes or directs users to news articles or works of journalism with not less than one billion active monthly users.

The exemption covers joint negotiations by groups of news content creators with a distributor regarding the terms upon which the news content may be distributed by the distributor if the negotiations

(a) are not limited to price;

(b) are nondiscriminatory as to similarly situated news content creators;

(c) are directly related to the quality, accuracy, attribution or branding, and interoperability of news; and

(d) pertain to terms that would be available to all new content creators.

Regulatory Fees Due September 28

continued from page 2

Wireless Telecommunications, and 33.74 percent for Wireless Competition. The 943 FTEs employed in all other bureaus and offices of the Commission were labelled as indirect FTEs, and allocated proportionately to each of the core bureaus.

Broadcast interests argued in comments in this proceeding that their share of the total amount to be collected was too high. They suggested that some of the indirect FTEs do not benefit them and that they should not be charged for them. They also said that FTEs in the Media Bureau devoted to broadband services should not be charged to Media entities. The Commission responded that indirect FTE indirectly benefit everyone and must be covered. The FCC also said it had given broadcasters a one-time discount last year to compensate for the broadband FTEs.

The tables at the end of this article show the regulatory fee imposed this year for most of the authorizations of interest to broadcasters. The current year fees are compared to the fees that had been proposed for this year and the fees that were imposed for FY 2021. The fees for full service television stations are based entirely upon the population within the station’s

projected noise-limited service contour as shown in the FCC’s *TVStudy* database. The population figure is multiplied by \$0.008430 to calculate the amount of the regulatory fee for the station. Each station has its own specific fee. The amount of the fee for each television station is shown online at <http://www.fcc.gov/licensing-databases/fees/regulatory-fees>.

If an entity’s total aggregated fee is less than \$1,000, it is considered de minimis, and the entity is exempt from the obligation to pay. Nonprofit and government entities are also exempt.

In the *Notice of Inquiry* portion of the release, the Commission requests comment on the broad question of whether restructuring the methodology for covering indirect FTEs would be beneficial, and, if so, how to do it. The Commission asks whether it should designate more core bureaus. The Commission invites comment on ways to minimize the burden on certain payors while still collecting the entire required annual appropriation.

Comments will be due 30 days after publication of notice of this proceeding in the Federal Register. The due date for reply comments will be 60 days after that publication.

continued on page 6

October 12 Is Deadline for Foreign Disclosure Report

The FCC's Media Bureau has released a *Public Notice* (DA 22-942) to remind United States-based foreign media outlets that they must file disclosure reports by October 12, 2022. The Commission is required by the National Defense Authorization Act for FY 2019 ("NDAA") to collect this information semi-annually and to submit summary reports to Congress. The Commission's next report to Congress on this topic is due November 9.

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 its policies are not determined by a foreign principal or the agent of a foreign principal.

Disclosure reports should include a subject heading to indicate the filing entity's name and a reference to the NDAA disclosure requirement. The disclosure statement must be submitted to the FCC by email to ndaareport@fcc.gov.

Full Compliance Now Required for Foreign Sponsorship ID Rule

continued from page 1

was subject to the required identification immediately. Broadcasters were allowed six additional months to bring programming into compliance under contracts that were in effect on March 15. That catch-up period for pre-existing contracts expired on September 15.

These regulations pertain to programming for which the ultimate source and/or the sponsor is an entity or individual that is a foreign government, a foreign political party, an agent acting on behalf of such entities, or a U.S.-based foreign media outlet. The broadcast licensee has the responsibility to take reasonable care to conduct due diligence about the source of programming for a leased channel. The FCC advises that such diligence would include at least the following:

(1) inform the lessee at the time of agreement and at renewal of the requirement to disclose the foreign sponsorship;

(2) inquire of the lessee at the time of agreement and at renewal whether it falls into any of the categories that qualify it as a foreign government entity;

(3) inquire of the lessee at the time of agreement and at renewal whether it knows if any party upstream in the chain of producing and/or distributing the subject programming

qualifies as a foreign government entity and/or has provided some type of inducement to air the programming; and

(4) memorialize these inquiries and investigations to track compliance in the event that documentation is required to respond to a future Commission inquiry on the issue.

The rule as originally adopted by the FCC would also have obligated the broadcaster to consult government databases of foreign agents to further investigate whether a programmer was indeed a foreign agent. The U.S. Court of Appeals for the D.C. Circuit has vacated this provision.

When disclosures are required, an announcement should be aired in the language of the programming associated with it at the beginning and conclusion of the programming block, and at 60-minute intervals if the leased segment is longer than 60 minutes. The sponsorship arrangements that are covered by these rules must also be disclosed on the station's online public inspection file.

Paid advertising is already subject to the sponsorship identification requirements of Section 73.1212 of the FCC's Rules. This increased level of diligence and required disclosure that pertains to leases of discrete blocks of program time does not apply to traditional short-form advertising.



DEADLINES TO WATCH



License Renewal, FCC Reports & Public Inspection Files

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, the Mariana Islands, Missouri, Puerto Rico, Oregon, the Virgin Islands, and Washington.	October	Television stations in Alaska, American Samoa, Guam, Hawaii, the Mariana Islands, Oregon, and Washington begin broadcasting post-filing announcements within five business days of acceptance for filing of license renewal application for filing and continuing for four weeks.
October 3	Deadline to file license renewal applications for television stations in Alaska, American Samoa, Guam, Hawaii, the Mariana Islands, Oregon, and Washington.	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 3	Deadline for all broadcast licensees and permittees of stations in Alaska, American Samoa, Florida, Guam, Hawaii, Iowa, the Mariana Islands, Missouri, Puerto Rico, Oregon, the 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 10	Deadline for all noncommercial stations to place reports about third-party fundraising in Public Inspection File.
		October 10	Deadline for all Class A TV stations to place quarterly statement of Class A qualifications in Public Inspection File.

Deadlines for Comments in FCC and Other Proceedings

DOCKET	COMMENTS	REPLY COMMENTS
(All proceedings are before the FCC unless otherwise noted.)		
Docket 22-239; NPRM (FCC 22-55) DMA assignments for TV stations		Sep. 26
Docket 22-317; Public Notice (DA 22-917) Petition for Declaratory Ruling re foreign ownership of America-CV Station Group, Inc.	Oct. 3	Oct. 13
Docket 22-261; 6thNPRM (FCC 22-58) Digital LPTV	Oct. 24	Nov. 7
Docket 22-301; NOI (FCC 22-68) Review of Regulatory Fees	FR+30	FR+60

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

**DEADLINE TO FILE SEMI-ANNUAL
DISCLOSURE STATEMENT FOR
FOREIGN MEDIA OUTLETS**

OCTOBER 12, 2022



DEADLINES TO WATCH



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 record-keeping 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
Deletion or repositioning of television signal on cable system, Section 76.1601	Nov. 7
Initial must carry notice, Section 76.1617	Nov. 7
Principal cable headend, Section 76.1607	Nov. 7
Alternative Broadcast Inspection Program Compliance Notification	Nov. 15

Cut-Off Date for AM and FM Applications to Change Community of License

The FCC has accepted for filing the applications identified below proposing to change the community of license for each station. These applications may also include proposals to modify technical facilities. The deadline for filing comments about any of the applications in the list below is **October 31, 2022**. Informal objections may be filed any time prior to grant of the application.

PRESENT COMMUNITY	PROPOSED COMMUNITY	STATION	CHANNEL	FREQUENCY
Clayton, GA	Toccoa, GA	WRBN	239	95.7
Greenville, MS	Inverness, MS	WIBT	250	97.9
Laurel, MS	Ellisville, MS	WMXI	251	98.1
Buffalo, MO	Fair Grove, MO	KBFL-FM	260	99.9
Bozeman, MT	Belgrade, MT	KYWL(AM)	n/a	1490
Lordsburg, NM	Mescal, AZ	KPSA-FM	253	98.5
La Follette, TN	Greenback, TN	WPLA	285	104.9

**LOWEST UNIT CHARGE
PERIOD CONTINUES THROUGH
NOVEMBER 8, 2022**

**DEADLINE TO PAY
REGULATORY FEES
SEPTEMBER 28, 2022**

Regulatory Fees Due September 28 continued from page 2

REGULATORY FEES FOR FISCAL YEAR 2022

Type of Authorization	Actual FY 2022	Proposed FY 2022	Actual FY 2021
Full Power TV Construction Permit	\$5,200	\$5,210	\$5,100
Class A TV, LPTV, TV / FM Translator & Booster	330	340	320
AM Radio Construction Permit	655	690	610
FM Radio Construction Permit	1,145	1,210	1,070
Satellite Earth Station	620	615	595

ACTUAL FY 2022 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	\$ 755	\$ 655	\$ 720	\$ 1,145	\$ 1,310
25,001-75,000	1,575	1,135	985	1,080	1,720	1,965
75,001-150,000	2,365	1,700	1,475	1,620	2,575	2,950
150,001-500,000	3,550	2,550	2,215	2,435	3,870	4,430
500,001-1,200,000	5,315	3,820	3,315	3,645	5,795	6,630
1,200,001-3,000,000	7,980	5,740	4,980	5,470	8,700	9,955
3,000,001-6,000,000	11,960	8,600	7,460	8,200	13,040	14,920
6,000,000+	17,945	12,905	11,195	12,305	19,570	22,390

PROPOSED FY 2022 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	\$ 1,105	\$ 795	\$ 690	\$ 760	\$ 1,210	\$ 1,380
25,001-75,000	1,660	1,195	1,035	1,140	1,815	2,070
75,001-150,000	2,485	1,790	1,555	1,710	2,725	3,105
150,001-500,000	3,735	2,685	2,330	2,570	4,090	4,665
500,001-1,200,000	5,590	4,025	3,490	3,845	6,125	6,985
1,200,001-3,000,000	8,400	6,040	5,245	5,775	9,195	10,490
3,000,001-6,000,000	12,585	9,055	7,860	8,655	13,780	15,720
6,000,000+	18,885	13,585	11,790	12,990	20,680	23,585

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

Commercial Error in One Series Leads to Big KidVid Fines continued from page 1

entire program would be counted as commercial time). In order to verify compliance with these Rules, commercial full power and Class A TV stations are required to file an annual Commercial Limits Certification. As part of a station's license renewal application, a licensee must certify that the station has complied with these limits on commercial matter in children's programming and with Commission's commercial limit policies related to host-selling and program-length commercials.

Beginning with the license renewal applications that were due by June 1, 2020, a number of renewal applicants informed the Commission of repeated violations of the children's programming commercial rules. Broadcasters responded "No" to the question in their applications entitled "Children's Programming Commercial Limitations," indicating that during the previous license term, the station failed to fully comply with the commercial limits on children's television programming specified in section 73.670 of the Rules, and the Commission's commercial limit policies related to host-selling and program-length commercials. These licensees reported that a commercial for Hot Wheels Super Ultimate Garage was inadvertently aired on 11 occasions during eight 30-minute-long episodes of Team Hot Wheels between November 10, 2018, and December 16, 2018, and that the commercial was removed from the program as soon as the violation was realized. It came to light that the program had been provided by the Sinclair television group. It was aired on 83 Sinclair stations and distributed to numerous others, including seven Nextar stations.

Because the commercial and the program in which it appeared featured the same theme, the entire program was considered a program-length commercial. Congress and the Commission have been especially concerned about programming where the distinction between the commercial and the program content is blurred. Children often have difficulty distinguishing between commercials and other program content even when there is no overlap of program character and commercial advocate. Given this concern, the Commission has made clear that program-length commercials, by their very nature, are extremely serious violations of the children's television commercial limits. The program-length commercial policy "directly addresses a fundamental regulatory concern, that children who have difficulty enough distinguishing program content from unrelated commercial matter, not be all the more confused by a show that interweaves program content and commercial matter. Airing a Hot Wheels-themed commercial during a Hot Wheels-themed show fits squarely within the Commission's definition regarding what constitutes a

program-length commercial. In the context of the cognitive abilities of young children, airing a commercial for a "Hot Wheels Super Ultimate Garage" playset during the "Team Hot Wheels" program presents the clear risk for confusion between "program content" and "commercial matter" that this regulation was designed to avoid.

Section 1.80 of the Commission's Rules specifies \$8,000 as the base amount of the forfeiture for violating Section 73.670. The Commission said that in enforcing the commercial limitation regulations generally, it historically has not multiplied the number of overages by the base forfeiture amount and then adjusted up or down from there as circumstances may warrant. Rather, historically, it has started with the base forfeiture amount without any multiplication and has adjusted up or down from there, including by using the number of overages as justifying an upward adjustment. The Commission chose not to depart from that precedent in this case. However, the Commission advised television station licensees, satellite providers, and cable operators that the agency may revise its approach to forfeiture calculations under the Children's Television Act in future cases. Assessing forfeitures on a per-violation basis is supported by the language of the statute as well as the text of the rules setting forth base forfeiture amounts, and that approach also would reflect the fact that the regulations are of long standing and so should be well understood by broadcasters.

In this case, the Commission said upward adjustments for each station are supported by multiple factors, including (1) the number of instances of commercial overage; (2) the length of each overage; (3) the period of time over which the overages occurred; (4) whether or not the licensee established an effective program to ensure compliance; and (5) the specific reasons that the licensee gave for the overage. The forfeiture proposed for each Sinclair station is adjusted upward to \$32,000, taking into account that Sinclair has been fined or admonished 11 times for violations of the program-length commercial rule. The Commission also found it aggravating that this violation would be committed by a large and experienced broadcast organization where over the course of a month, not a single employee noticed the violation. Furthermore, the national footprint of the Sinclair's stations means that impact of its error on the child audience was substantial. The forfeiture proposed for each Nextar station was \$26,000, on reasoning similar to that for the Sinclair stations. Finally, the amount proposed for each of the other non-Sinclair stations was \$20,000. Each licensee has 30 days in which to pay the fine, or request cancellation or reduction of the forfeiture.

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