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FCC Announces Proposed 2008 Regulatory Fees

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It was nice while it lasted, but you had to figure it wasn't going to last long . . . and it didn't. The FCC has announced its proposed regulatory fees for 2008, and the news is that fees in 60 of the 61 categories all went up. (The lone exception is the reg fee for lowly Broadcast Auxiliary licenses, which is proposed to remain the same as last year, \$10 a pop.) Since last year's fees had shown *decreases* from 2006 in 32 of the 61 categories, and no change at all in 20 categories, this year's across-the-board increases may be a bit jarring. The list of proposed broadcast-related fees (which would be due for payment later this year) is set out in the May, 2008 *Memo to Clients* ([see link below](#)).

And let's be clear – the increases which the FCC has put on the table are by no means small. Commercial VHF TV stations in Markets 26-50, Class C AM stations in the smallest of markets (*i.e.*, 25,000 and under) and AM construction permit holders get squeezed the hardest proportionately. Their reg fees would zoom up 12.3%, 12.5% and 12.5%, respectively. Close behind are Class B AM stations in markets of more than 150,001 and higher power FM's (Classes B, C, C0, C1 and C2) in markets of 500,001 or more. Their fees all are proposed to go up by more than 11%.

Most of the rest of the broadcast industry would not be far behind, with proposed increases ranging from 5% to 10.8%. The only categories of fees which would increase by less than 5% are Class A AM's in the smallest markets, Class A, B1 and C3 FM's in the smallest markets and in markets of 75,001-150,000, and FM construction permit holders.

Since the proceeding is still open, the dates for the payment window have not yet been set. Historically, reg fees are due to be paid sometime between mid-August and the end of September. The Commission is expected to announce the deadline sometime this summer, after comments have been submitted and considered. We'll let you know when it does.

As usual, fee payments must be accompanied by a completed FCC Form 159 (Fee Remittance Advice). Fees can also be paid on line (in which case you can get the FCC's electronic filing system to generate a Form 159 automatically – otherwise, you will need to know the payment type code and other information for the particular fee you are paying). We will, of course, be happy to assist you in the filing of your fee(s).

Note that you can expect to get hit with a 25% late payment fee if your reg fee is not received by the Commission prior to the deadline they will be establishing. That can amount to a hefty penalty in many cases, so it is prudent to take care to make timely payment.

And as we have reminded readers for a couple of years already, timely and full payment of reg fees is particularly important in light of the Commission's "red light" system. Under that system, a licensee which fails to pay the required reg fee is "red lighted". When that occurs, the licensee will *not* be granted *any* new authorization – including grants of assignment/transfer applications as well as new permits or licenses – unless and until the "red light" is cleared either by payment of the outstanding fee or the making of appropriate arrangements with the Commission for such payment. If a delinquent licensee files an application of any kind, that application will be dismissed if the delinquency is not clear up within 30 days. In view of this, we urge everyone who is subject to regulatory fees to be sure to get their payments made in full and on time.

Comments on the Commission's proposed regulatory fees are due to be filed by May 30. Reply comments are due by June 6. Historically, the opportunity to file comments has seemed somewhat – what's the polite word? – perfunctory. The FCC is required (by the Administrative Procedure Act) to solicit comments, but as a general rule, the Commission does not allow itself to be persuaded by any comments that might wander in. The fact that the FCC has provided a mere seven-day period for replies illustrates the limited extent to which the agency encourages and expects public comment. So we can probably expect with reasonable certainty that the final reg fees will very closely resemble the proposed fees as set out in the table on the next page. The Commission should be releasing its Report and Order with the final reg fee amounts by mid-summer. We'll let you know when that happens.