

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Assessment and Collection of Regulatory Fees for) MD Docket No. 19-105
Fiscal Year 2019)

Directed to: Office of the Secretary
Attention: The Commission

PETITION FOR RECONSIDERATION

Mid State Television, Inc. (“Mid State”), licensee of television station WMFD-TV, Mansfield, Ohio, hereby respectfully requests reconsideration of the regulatory fees as calculated for WMFD-TV and set forth in the *Report and Order and Further Notice of Proposed Rulemaking*, FCC 19-83, released August 27, 2019 (the “*R&O*”, based on the fact that the figure used for its prior, market-based regulatory fees is incorrect. With respect thereto, the following is stated:

As stated in the *R&O*, regulatory fees for full-power television stations historically have been based on the Nielsen Designated Market Area (“DMA”) groupings 1-10, 11-25, 26-50, 51-100, and remaining markets (DMAs 101-210), and most stations have paid fees based upon the DMA into which they fell. *Id.* at Paragraph 29. For Fiscal Year 2019, however, the Commission decided that it would transition the fees to be paid by broadcast television stations from the historical DMA fee structure to a contour-based methodology, whereby the population within the station’s signal contour is multiplied by a payment fact, and that the Commission would use an average of the historical and contour-based fees in this transition year. *Id.* at Paragraph 30.

Mid State is not seeking reconsideration of these determinations, but rather only the figures used in the calculation of the applicable fee for WMFD-TV. The problem arose because

the Commission averaged the historical fee for stations located in the Cleveland-Akron DMA (\$40,675) with the contour-based fee (\$11,279.89) for a calculated fee of \$25,977.45. The basis for this calculation appears to be an incorrect understanding that WMFD-TV is located in the Cleveland-Akron DMA for purposes of annual regulatory fees. Actually, however, WMFD-TV has been determined to be a remaining markets station and is not included with the Cleveland DMA.

While WMFD-TV is technically included in the Cleveland DMA, the station obtained a letter decision from the Commission in 1995, a copy of which is attached hereto as Exhibit 1, which determined that WMFD-TV should not be charged the regulatory fee due from stations in the Cleveland market. This decision was based upon the fact that WMFD-TV's then-Grade B service contour did not reach Cleveland or any other major metropolitan area. The letter decision further states that "[a]bsent significant changes in population or coverage area, WMFD-TV will be considered as a remaining market station in succeeding years."

There have been no such significant changes, as WMFD-TV demonstrated in connection with previous years' regulatory fees payments. Therefore, in accordance with the Commission's letter decision, WMFD-TV has historically continued to owe each year only the regulatory fee for a VHF station located in a "remaining market." That fee amount for Fiscal Year 2018 was set at \$4,100, and the Remaining Markets amount set for FY 2019 is \$4,450. *Id.* at Appendix B. Therefore, the amount of \$4,450 should be used as the Historical Fee for WMFD-TV.

Using that figure then produces a Blended Fee of \$7,864.95. Obviously, while this figure represents a significant increase (92%) over the amount paid last year, it also is significantly less than the \$25,977.45 which would otherwise be due. That figure would amount to a 534 percent

increase, which is truly staggering. Furthermore, WMFD-TV remains an independent station which covers significantly less population than other stations in its theoretical DMA. That fact is further reflected in the fact that even the population based fee is roughly one-quarter of the Historical Fee for other stations in same DMA.

The Commission took such considerations into account in reducing the regulatory fees due from certain satellite stations. There, rather than averaging the historical fee paid by satellite stations with the contour-based fee, the Commission averaged the non-satellite fee with the contour-based fee. This calculation was found to be in error, and the Commission found that such an increase would have been unjustified and illogical. *Id.* at Paragraph 30. Similarly, the Commission has used for WMFD-TV a Historical Fee which does not accurately reflect history. Just as the Commission determined that it must use the actual historical fees associated with satellite stations to calculate this year's regulatory fees, it must also use WMFD-TV's actual, historical fees in calculating WMFD-TV's FY 2019 regulatory fees. To do otherwise not only would treat similarly situated parties far differently, but also would impose a sudden escalation of one year's fees, which would be more than five times greater than those paid in the past, as well as more than twice what the purely population-based fee would be. The revenues generated by an independent station located at the edge of a larger market simply are not sufficient to support such a large payment.

Accordingly, Mid State hereby requests that the Commission reconsider the regulatory fee assessed to WMFD-TV and lower it to a corrected Blended Fee of \$7,864.95.

Respectfully submitted,

MID STATE TELEVISION, INC.

By: /s/
Anne Goodwin Crump

Its Attorney

FLETCHER, HEALD & HILDRETH, P.L.C.
1300 N. 17th Street – Eleventh Floor
Arlington, Virginia 22209
(703) 812-0400

September 18, 2019

Exhibit 1

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

February 10, 1995

OFFICE OF
MANAGING DIRECTOR

RECEIVED

FEB 14 1995

FLETCHER, HEALD & HILDRETH

Ms. Anne Goodwin Crump, Esquire
Fletcher, Heald & Hildreth
1300 North 17th St.
Rosslyn, VA 22209

Re: Mid-State Television, Inc.
WMFD-TV
Mansfield, Ohio

Dear Ms. Crump:

This is in response to your request for reduction and deferral of the Fiscal Year 1994 regulatory fee for Mid-State Television, Inc., licensee of UHF Station WMFD-TV, Mansfield, Ohio.

You state that although WMFD-TV is assigned by Arbitron to the Cleveland, Ohio ADI (Area of Dominant Influence) Market, its Grade B signal does not reach Cleveland. Thus, you contend that it would be inequitable to require Mid-State to pay the regulatory fee for a Cleveland station, and that because it serves Mansfield, a community with a population of approximately 55,000, it should be assessed the regulatory fee for a UHF station serving a non-top 100 or "remaining market." You further request deferral of any fee payment pending action on your request for reduction.

Your request for deferral and reduction is granted. Our review of the record discloses that Arbitron has included WMFD-TV in the Cleveland, Ohio Market, which constitutes the 12th largest television market. WMFD-TV's Grade B Contour, however, does not reach Cleveland or any other major metropolitan area. Broadcasting & Cable Yearbook 1994, p. c-202, lists Mansfield as a Non-ADI market, i.e., a single-county market whose "preponderance of viewing is not to the home market station." WMFD-TV's home county, Richland County, is assigned to the Cleveland ADI solely because the preponderance of its TV households view the programming of Cleveland stations. Moreover, according to Arbitron, there are 47,600 TV households in WMFD-TV's service area, which is smaller than the number of TV households in the top 100 markets.

Under these circumstances, we will regard Mansfield as a non-top 100 market, and, therefore, WMFD-TV is assessed a regulatory fee for Fiscal Year 1994 of \$4,000, which reflects the fee for a "remaining market" UHF station. Absent significant changes in population or coverage area, WMFD-TV will be considered as a remaining market station in succeeding years.

Ms. Anne Goodwin Crump, Esq.
Page 2

Mid-State should file a completed FCC Form 159 and a copy of this letter together with a check in the amount of \$4,000 for its Fiscal Year 1994 regulatory fee within 30 days from the date of this letter. A copy of this letter should also be maintained and included with any future correspondence concerning the imposition of the regulatory fee for WMFD-TV.

If you have any questions concerning this matter, please call the Chief, Fee Section at (202) 418-1995.

Sincerely,



Marilyn J. McDermett
Associate Managing Director
for Operations