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

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In the Matter of)
)
Implementation of Section 9)
of the Communications Act)
)
Assessment and Collection of)
Regulatory Fees for the 1994)
Fiscal Year)

MD Docket No. 94-19

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TO: The Commission

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Petition for Reconsideration
of the
National Association of Broadcasters**

The National Association of Broadcasters ("NAB")¹ submits this petition for reconsideration of the Commission's *Report and Order* in this proceeding released June 8, 1994.² NAB seeks reconsideration of a single issue — the decision to impose on satellite television stations the same fees that would be charged to full power stations offering a regular program service.

¹ NAB is a nonprofit incorporated association of radio and television broadcast stations and networks. NAB serves and represents America's broadcasting industry.

² *Implementation of Section 9 of the Communications Act*, FCC 94-140, 59 Fed. Reg. 30984 (June 16, 1994). Under sections 1.4(b)(1) and 1.106(f) of the Commission's Rules, this petition may be filed within 30 days of the publication of the *Report and Order* in the *Federal Register*.

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In comments filed in response to the Commission's *Notice of Proposed Rulemaking*, NAB argued that satellite television stations should be assessed for Fiscal Year 1994 the same level of fees as translator stations.³ The Commission failed to respond to many of NAB's arguments in the *Report and Order*, and it should therefore reconsider its decision to require satellite stations to pay the same level of fees as full-service stations.

In the *Report and Order* (§ 82), the Commission concluded, in response to an argument raised by KBS License L.P., that Congress intended to assess a full regulatory fee on satellite stations. It is impossible to determine how the Commission reached such a conclusion, since neither the statutory language nor the legislative history indicate that Congress gave any consideration at all to satellite television stations. Under the doctrine of *Chevron U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837 (1984), if Congress' intention cannot be gleaned from the statute or the relevant legislative history, an agency is entitled to interpret its governing statute in order to achieve Congress' objectives.

That is what NAB argued — that imposing a full regulatory fee on satellite television stations would be inconsistent with Congress' objectives in enacting Section 9 of the Communications Act. NAB pointed out that Congress adopted a schedule of fees which placed a greater financial burden on television stations in large markets with greater revenue bases. Imposing a full fee on satellite stations would, NAB argued, result in stations in sparsely populated television markets, but which cover large geographic areas, paying regulatory fees *greater* than the fees paid by the licensees of stations in the largest televi-

³ Comments of the National Association of Broadcasters, MD Docket No. 94-19 (filed April 7, 1994) at 2-4.

sion markets.⁴ Although the imposition fees in a way that results in smaller market stations paying more than large market stations seems to be directly contrary to Congress' intentions, the Commission did not address this argument.

Further, NAB argued that satellite stations, by their very nature, function as translators, fulfilling their programming and public service obligations almost entirely through the programming of their parent station. Therefore, they impose virtually no independent regulatory burden on the Commission. Since Section 9 is intended to recoup to the government the costs of regulation from those on whose behalf it is incurred, licensees which require low levels of regulatory activity should appropriately have a lower fee level. The Commission also failed to address this point, noting only that *low power translators* are not subject to the full obligations imposed upon full power stations. It ignored entirely the fact that satellite stations effectively have no such obligations separate from their parents.⁵

While the Commission is not obliged to respond to every point raised in comments, the courts require agencies to “respond in a reasoned manner to the comments received, [and] to explain how the agency resolved any significant problems raised by the comments.” *Action on Smoking and Health v. CAB*, 699 F.2d 1209, 1216 (D.C. Cir.

⁴ For example, because Station KFYZ-TV, Bismarck, North Dakota, constructed three satellite stations to provide free, over-the-air service to less populated areas of North Dakota, it will be liable for 20,000 dollars in regulatory fees, 2,000 dollars more than the licensee of a VHF station in New York or Los Angeles. The total population of the television households in KFYZ-TV's service area is only 349,300.

⁵ Furthermore, the Commission's assumption that low power stations impose no regulatory burden on the Commission is incorrect. Low power stations seeking mandatory cable carriage must, as a condition of such carriage, accept all of the programming and other obligations imposed upon full power stations. 47 C.F.R. § 76.55(d)(2).

1983), quoting *Rodway v. Department of Agriculture*, 514 F.2d 809, 817 (D.C. Cir.

1975). Professor Davis also teaches that:

“If a comment criticizes in detail some characteristic of the agency’s proposed rule . . . and the agency retains that characteristic in the final rule without including in its statement of basis and purpose a relatively detailed response to that criticism, a reviewing court is likely to hold the rule unlawful on the grounds that the statement of basis and purpose is inadequate and the rule is arbitrary and capricious.”

I K. DAVIS & R. PIERCE, ADMINISTRATIVE LAW TREATISE § 7.4 (1994). The Commission improperly failed to address NAB’s arguments that it should exercise discretion to reduce the fees imposed on television satellite stations. That error renders the *Report and Order* arbitrary and capricious.

The Commission should, therefore, reconsider its decision and hold that satellite television stations must pay the regulatory fee established for translator stations.

Respectfully submitted,

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July 18, 1994

Certificate of Service

I, Kimberly Washington, hereby certify that I have, this 18th day of July, 1994, caused to be served by mail, first class postage prepaid, a copy of the foregoing "Petition for Reconsideration of the National Association of Broadcasters" to:

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