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FEDERAL COMMUNICATIONS COMMISSION
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AM/FM Radio
Regulatory Fee Focus Group
March 31, 1995 9:00 A.M.

1. The meeting was held at Booz•Allen & Hamilton, Inc., 8251 Greensboro Drive, McLean, VA 22102. The list of attendees is at enclosure 1.

2. **Introduction.** Booz•Allen facilitators welcomed the focus group attendees and reviewed the focus group's purpose. The primary purpose of the session was to discuss the FCC regulatory fees for the AM/FM class category, and to determine if there was another plan for setting regulatory fees within this category that payees would find more acceptable than what is currently proposed. Facilitators cautioned the group to focus on the methodology used to partition the fees within a fee category, rather than the fee amount for the category. Facilitators would introduce other topics for discussion as time permitted. Questions for the FCC other than the fee setting would be accepted for submission to the FCC, with answers forthcoming in the near future.

The group first reviewed some of the history of the regulatory fees. The fees for the Commission as a whole are $116 million, up from $60 million last year. Overall, FCC customers can expect a 93% increase in fees in FY95. This $116 million is divided into major fee categories — common carrier, mass media, private radio, and cable— by estimating the number of full-time equivalents (FTEs) involved in regulatory activities for that category and dividing the $116 million accordingly. The amount assigned to a major category is further subdivided within the major fee category based on Congressional recommendations and other factors such as station benefits and the number of paying units. FCC representatives stressed that the FCC has no discretion over the money it is attempting to recover, just from whom it gets the money. Breaks for one category of customers means an increased burden on others; thus, attendees should focus on fairness to all licensees.

3. **FCC Methodology For Partitioning Regulatory Fees Among AM/FM Payees.**

A. General Reactions.

(1) The representative from the National Translator Association (NTA) submitted a statement for the FCC (see enclosure 2). In general, the NTA objected to any FCC fees for translators on the principle that the majority of translators merely pass the signal onto the public. Primary stations that use translators already pay the FCC fees to broadcast the signal; in the eyes of the NTA, this additional fee on translators equates to a double fee for the same signal. Due to the small revenue involved, and public need to reach as much of the population as possible, it seemed counterproductive to place this fee on translators.

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(2) Discussion then focused on the methodology proposed to partition the fees for AM/FM stations. This methodology uses two factors — station class (indicator of station power) and Arbitron ratings (an indicator of radio market share) to divide the regulatory fee among the payees. The two industry representatives (Community Broadcasters Association (CBD) and National Association of Broadcasters (NAB)) agreed that the fairest method of partitioning fees includes market share as a factor. However, there has been a lot of controversy with defining the radio market share using Arbitron ratings. While it is fairly easy to identify market share in the TV industry, in radio it is more quixotic. The NAB representative suggested a waiver for those stations who disputed the claimed market share rating.

The issue regarding Arbitron ratings involves the fact that inclusion of a station in the Arbitron ratings can depend upon whether that station buys Arbitron services within a particular market. Furthermore, from one ratings book to another, stations may or may not be included based on short-term events. Addition of a waiver mechanism would greatly improve the use of Arbitron ratings as a measure of market share. Stations could then correct misrepresentations by saying, "I am a much smaller station or I have been included in only that one book."

(3) The discussion continued on how the Arbitron ratings misrepresent the market share for many stations. When one looks below the top 150 markets, one can find areas where ranked stations are much smaller than unranked stations. One reason for this is that the activity of the Arbitron sales force in an area impacts whether stations are included in the ratings. To apply equally to Arbitron and non-Arbitron customers, adjustment factors need to be included in the calculations.

(4) There was a question as to whether there is a fee difference for the top ranked and bottom ranked Arbitron stations. There is no fee difference at this time. One suggestion involved using total station revenues to partition fees, but the FCC suggested that then the fee might resemble a tax.

B. Discussion Of A Measure Of Population Served To Partition Fees.

(1) The group discussed the possibility of using the population served as a factor rather than Arbitron ratings. There is an enormous range of population served in radio. One way to estimate population served involves determining population within signal strength contour/population analysis. However, the Commission currently does not have the information needed for this measure and measure development would require an up-front cost to the Commission to gather the necessary data. If this method were used, it should be used in conjunction with station class to account for exceptional cases.

The FCC stated that this option requires a significant investment in FTEs, computers, etc. by the Commission. The cyclical nature of the calculation (every 5-10 years) makes the resource requirements even more burdensome.

Contract support was mentioned as a possibility. Development of this measure requires a database for signal strength in terms of contours and population estimates. The group suggested census information as a source for the population estimates.

(2) The FCC asked industry representatives if they would support the inclusion of a weight based on market share in addition to the population measure. Industry resisted any suggestions on using the market share numbers, again because not all stations subscribe to those types of services. To be fair, the FCC would have to gather that information themselves. It would obviously be a more precise measure, but the cost and effort that would be involved to regularly gather that information may be prohibitive.

(3) The idea of a "per capita" population served regulatory fee was advanced. This might lead to a different fee amount for every station. Industry felt that it would be difficult for the FCC to keep track of individual fee levels. The industry representatives suggested that the signal strength contour/population analysis be translated into three to five sectors. The FCC could then determine the fee magnitude for the service categories and then establish fee levels for each signal strength contour/population sector.

C. Discussion Of Gross Revenues As A Criteria For Regulatory Fee Distribution.

(1) The group discussed basing fees on annual financial reports from the stations. This would require the development of extensive accounting processes and the reinstatement of policies to collect annual financial reports from stations. The other option involved using a check-off form where stations could pick their own fee category. Industry felt that the reinstitution of annual financial reports would be largely opposed because of cost.

(2) The FCC suggested piggy-backing their categories on the information that the member associations (such as the NAB) collect when they generate dues statements. The NAB representative stated that this option was not viable for several reasons; (1) the information is not public, (2) they only have membership for about 45% of the industry, and (3) their information is still not completely accurate.

(3) The FCC pointed out that one of the tenets of the Commission's regulations is that they believe that stations are honest in their representations. If the FCC began to investigate a station's financial matters, then the view might be taken that they are in the position of becoming police, deciding what the penalties for misrepresentation are, and administering those penalties. This is not the position the FCC desires.

D. Discussion Returned To Issues Regarding The Collection Of Population-Served Information.

(1) The group discussed the best possible way to institute collection of signal strength contour/population analysis data. Industry felt that this should be an FCC responsibility rather than an industry task, and should be contracted out. As to the cost of the surveys, the cost could be amortized over the period of the survey (i.e., 10-year cycles) to ensure the survey would not cost more than the fees themselves.

(2) Industry suggested that, if the FCC decided to institute the practice for next year, a small survey developing the data might suffice as a beginning estimate. The group agreed that there are pit falls with this approach. The data must be irrefutable to avoid complaints.

4. Issues With The FY95 Fee schedule.

A. The group discussed the reaction of the stations to the Arbitron-based fees. Many stations thought last year's fees were a one-time fee, rather than an annual fee. The FCC asked if the FY95 fee process would be more palatable to the stations if the FCC announced its intention to use the signal strength contour/population analysis process for FY96 fees. Industry responded that it would depend. Many stations felt they were wrongly included in the Arbitron rankings. Some who complained deserved to be there, but others seem to have legitimate concerns that they are not really competitors in certain markets.

B. The FCC advanced the idea of having only the top 100 markets pay the fees and exempting the others. This would place the burden on the largest and most powerful stations. Industry pointed out that there was still the problem of small stations being placed geographically in the major market segments through Arbitron ratings, thus making them vulnerable to those larger fees. Industry believed there is a need to show equal burdens shared by all stations.

C. The issue of whether it is better to use or not use Arbitron ratings to partition fees was discussed. Industry identified Arbitron ratings as the best current way to decide FY95 fees, but future fixes are necessary. They reiterated the desire that the FCC should conduct the signal strength contour/population analysis rather than have the stations provide their own signal strength data. It would be more accurate, cause less problems, and produce fewer industry questions. The option could remain to pass on the costs of the survey to the stations through the fees assessed.

D. The FCC forwarded an idea to decrease the lower fees or increase the higher fees to help specific station categories (or vice versa). This led to a discussion of the desirability of forming a third fee category. This middle category of fees would be equivalent to rates from last year.

(1) For example, using Class C FM radio, FY94 and FY 95 fees are as follows:

	FY95	FY94
Arbitron	$1525	$900
Non-Arbitron	$565	$900

(2) The categories could include a $1525 high range, $900 middle range, and $565 low range with stations placed in each category based on market share.

(3) Industry resisted suggestions that the Arbitron ratings might be improved upon to define the middle ground. Arbitron remains the only rating service available, and is limited by the fact that it is a commercial service designed to serve its customers, not the radio industry. It is very different from TV. There were efforts made in the TV arena to gather industry-wide data. It did not happen that way in radio; it has been commercial, not industry-wide.

In addition, there does not appear to be a way to "tweak" the Arbitron data to make it more acceptable to industry. In each book they determine geography, and their books change. In the large markets, it is easier to defend the Arbitron rankings.

For example, Arbitron defines a market, say New Orleans. They note that there are so many parishes in that market. Every station located in those parishes are in that market. In addition, those outside the area, but have listeners in that area are included (e.g., a station 75 miles away from the market may be included in that market). This is a problem because where it is heard is now the market, regardless of geographic location/population within which the station is located (this scenario is true for TV also). The small station does not understand why it should be included in that market. They do not get the benefit of being a competitor in "New Orleans" and they do not get the advertising dollars (Base the advertising dollars on experience and real or perceived ratings). The small stations can get local advertising, but the New Orleans area will not provide the small station with advertising dollars.

E. Revisiting The Gross Revenue Issue.

(1) The group then revisited the gross revenue issue. One participant suggested that the FCC was really trying to find a non-revenue way to get revenue information and that revenue information was the real interest. Discussion focused on what it would take to make a revenue measure work.

Currently, the FCC does not collect revenue information. The Commission once required financial reports, but at that time they were not used for anything other than surveys for fees. Industry stopped providing financial information.

(2) One option is to use last year's IRS tax returns to determine next year's fees. This option is limited since federal taxes are filed by companies, not station by station. Discussion concerned how does the Commission get revenue information without causing an undue burden on the industry. Gross revenue is not an easy number that just pops-up in the record books, nor is it easy to define. To be successful, this approach would require a return to station accounting. The industry will not support that. In addition, the cost of maintaining annual records and auditing the stations will cost the commission considerably. For fees in the hundreds or thousands of dollars, it will be very cost intensive for both industry and the FCC to implement.

F. Revisiting The Population Coverage Criteria.

(1) The group returned to discussions surrounding the contour map and the population coverage. Compared to the gross revenue and Arbitron ratings, this is the best "close to revenue" number. It could also be contracted out rather than being an internal FCC function. There will be some who see this as unfair, since a small and large station in the same class would be paying different fees.

(2) The majority of stations are in the lower fee category. This may cause some resentment when they see their fees rising to the middle rate category. The top stations (as ranked by the Arbitron ratings) are not complaining about the fees - it is the smaller stations in smaller markets that are most concerned with a $1500 fee. Industry has not seen a great outpouring of objections to the fees - based on what they found in FY94, the communication industry as a whole has recognized that Congress has mandated increased fees.

G. Revisiting The Middle Range For FY95 Regulatory Fees.

(1) The group discussed whether the FCC should keep those stations currently proposed as paying $565 in the same range and divide the top range so that some pay higher than $1500 and others pay $900. Industry did not agree that those currently in the $565 category should remain in that group. It was pointed out that the FY95 proposal is a reduction from the previous year, so those small stations will not be surprised if it goes back to the original fee (of $900). It would be worse for those at the top to have fees raised to more than $1500. The better strategy is to pull from both categories to make the middle one.

(2) There is also no need for a three category limit. The divisions might range from the top 50 stations, 51-100, 100-200, below 200, and non-ranked stations. The division of stations into ranked order would require a cooperative effort between the FCC and member associations. Work with Arbitron might also be required to quickly obtain their data and feedback.

(3) Another option discussed is surveying the FM stations, and breaking out the rankings by class on the forms they complete. It has a value of being simple, and ignores market size altogether. It would have the advantage of saying that class b and c have different fees, but it is unknown how that would work. On last year's forms, some of the stations did not know what class they were in. It cost them more money to get class information than to file their fees. That was a big problem.

H. Low Power TV And Translators

(1) Translators don't want to pay regulatory fees — they feel they should be exempt. A question was raised as to whether it was possible to exempt construction permits (CPs), auxiliary services, and translators from fees and have the rest of the stations cover the load since these categories are assessed such a small amount (maybe a dollar per licensee). In general, the industry representatives had no strong objection to combining all fees into one station fee except in the case of CPs. As a practicality, it might be a good suggestion; but as a political reality, no one will want to pay for the CPs because they are the future competition. For the auxiliary services and translators, if these groups were equally distributed across the station categories, then it would be easy to distribute the fees. Industry believed this to be the case for auxiliary services, but not for translators.

(2) Low power TV representatives have no objections to the fees in general. The success of low power TV lies in its ability to have a reason to exist through niche broadcasting. The regulatory fees are just the price of business.

I. A question was asked if whether the proposed satellite TV fees are too low. The new satellite TV fees are a substantial reduction from the previous year - so now the remaining stations had to pay more. The initial impact on the smaller TV stations was substantial, since the burden was shared equally among the large and small stations. Initially, the satellites were paying high fees to service low market rural areas. These adjustments were not contested by the TV market.

J. A question was asked if fees are developed in relation to the burden on FCC administrative costs. The answer is not entirely. Initially they are, but the FCC also considers power, coverage, and "any other pubic interest points deemed appropriate" (Congressional language). There would be inequities if the fees were based strictly on administrative costs. If the FCC could relegate fees based on just how their administrative time was spent, it would be easier; but, Congress tells the FCC how much to collect and when. In addition, some say it does not make sense to strictly use administrative expenses as a basis, because of the translators or the satellite TV stations. Cable can not be compared to this because of rate regulation; they can pass on their costs to the customer. Industries that cannot pass on their fees to customers have more angst.

5. Implementation.

A. An industry representative mentioned that last year's form for collecting fee information was extremely difficult and long. Customers had difficulties with poor instructions, and could not figure out how to put the information in each box. One suggestion was for FCC to send a bill and justify the reason for the fee. This may not be a feasible option for the FCC because of lack of staff and implementation procedures, but it would reduce the burden on the stations.

B. This long form required assistance and interpretation by the member associations. In some cases, stations paid too much. Although these stations ultimately received a refund, it was a source of great unhappiness. It was a tremendous burden to answer thousands of questions about the form, both for the member associations and the FCC's hotline. Additional problems occurred because the FCC hotline representatives did not have sufficient expertise on the issue. Frequently, hotline callers received incorrect information or callers endured multiple referrals. The FCC stated that they had learned from their first attempts, and plan to institute changes in their hotline.

C. The FCC plans to cross-reference the licensees against the fees submitted. This will act as an audit for compliance of regulatory fees.

6. General FCC Customer Information.

The group then focused on general customer service issues. The low power TV stations have a problem trying to compete with the cable industry. To get air time on a television station, FCC policies encourage people to rent/lease a channel from a cable company on a basic tier rather than trying to broadcast on a low power TV station. There needs to be some way for a low power TV station to broadcast on cable. The FCC could possibly establish some must carry policies which encourage this. Stations that do not have cable access suffer and may possibly go off the air and those taken off cable will also have significant problems. There have been petitions before Congress and the FCC on this issue.

In addition, a new class station with restrictions with the same interference standards as cable needs to be developed. This new class would allow low powered TV to increase its power within those standards. Also, low powered TV stations need to be able to take advantage of Part 73 regulations. Most low powered television stations are individual-owned and very pure with regards to a focus on local, live programming. Seventy percent are in the black. Unfortunately the FCC fee allocation plan makes it even more difficult for low powered TV stations to pay. That is why a different class of station is required.

Focus Group Attendees

Name	Organization	Phone Number
Andrew Fishel	FCC	202-418-1919
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James Burtle	FCC	202-418-2660
Peter Herrick	FCC	202-418-0443
Sherwin Grossman	Community Broadcasters Association	305-592-4141
John Shoreman	National Translator Association	202-737-6222
Jack Goodman	National Association of Broadcasters	202-429-5459

NATIONAL TRANSLATOR ASSOCIATION

OUR AIM - TO PROVIDE FM and TV SIGNALS in EVERY HOME

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**Statement of the National Translator Association
Concerning Regulatory Fees Applicable to Translators**

The National Translator Association (NTA) is an association of persons and organizations concerned with the preservation and expansion of free over-the-air FM Radio and Television service to the underserved areas of this country. The officers and directors contribute their time and effort on a volunteer basis because of their interest in the objectives of the association. The NTA, for the reasons which follow, believes any FCC fees required of translators work against the objective of providing an adequate selection of free over-the -air FM Radio and Television to all of America.

While the present concern is with FM translators the comments which follow apply equally to TV translators. Both fill in areas of inadequate direct coverage or extend signals to those rural areas with little or no direct service from primary stations.

Translators are owned and operated by 1) primary stations, 2) local governmental entities, 3) local organizations which exist specifically to provide needed translator service and 4) a few individuals. While some of these organization are fee exempt by their nature, many are not.

Translators are auxiliaries to primary stations, required by the service limitations of the primaries. They overcome terrain limitations and the fact that primary stations are not evenly distributed. With the possible exception of some primary station-owned translators they generally produce little or no revenue for their owners

Primary stations pay a spectrum fee to distribute their signals and have an implied obligation, in the aggregate, to get the signals to as much of the population as possible. It is counterproductive to charge an additional spectrum fee for the supplemental devices which are required to overcome the limitations imposed by terrain features or distance.

Boosters, in particular, which can only be owned by primary stations, use the same frequency, and only fill in shadowed areas within the primary's service area would seem to be covered by the spectrum fee of the primary station.

The previously imposed application fees have resulted in the some loss of translators and service to the public. The requirement to pay a spectrum usage fee will only result in the further loss of translators, a result which surely is not in the public interest.

The most likely loss will be among station owned translators where the station decides they are no longer economically justified, and small translator groups some of which serve less than 100 homes.

It should be noted that the relatively new requirement for both application and spectrum fees have resulted in many translator licenses being transferred to fee-exempt local governmental entities. However, this is not always practical and the contrast between those translators that can find a shelter and those that cannot becomes more stark.

CONCLUSION

The NTA believes a significant number of translators will be lost as the result of the requirement to pay a spectrum usage fee, and further the primary station is already paying to distribute the signal. Thus simple fairness and the public interest would both be best served by exempting all translators from the requirement to pay a regulatory fee.

Respectfully submitted,
Darwin Hillberry, President
Byron W. St. Clair, Board Member

March 30, 1995