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MAR 25 1997
Federal Communications Commission
Washington, D.C.

March 25, 1997

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

RE: Notice of Proposed Rulemaking
Assessment and Collection of Regulatory Fees
For Fiscal Year 1997
MD Docket No. 96-186
Comments of the Arkansas Broadcasters Association

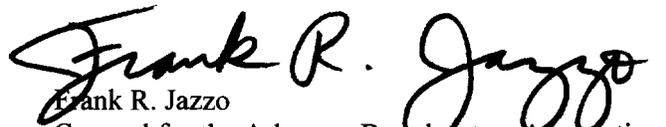
Dear Mr. Caton:

Pursuant to Section 1.419 of the Commission's Rules, transmitted herewith, on behalf of the Arkansas Broadcasters Association, are an original and nine (9) copies of its Comments in the above-referenced proceeding.

Should any questions arise concerning this matter, please communicate directly with this office.

Very truly yours,

FLETCHER, HEALD & HILDRETH, P.L.C.


Frank R. Jazzo
Counsel for the Arkansas Broadcasters Association

Enclosures

cc: Mr. Jay W. Bunyard (By Mail w/ Enclosure)
Ms. Pat Willcox (By Mail w/ Enclosure)

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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

MAR 25 1997

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In the Matter of)
)
Notice of Proposed Rulemaking,)
Assessment and Collection)
of Regulatory Fees)
for Fiscal Year 1997)

MD Docket No. 96-186

To: The Commission

COMMENTS OF THE ARKANSAS BROADCASTERS ASSOCIATION

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March 25, 1997

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of)
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To: The Commission

COMMENTS OF THE ARKANSAS BROADCASTERS ASSOCIATION

I. INTRODUCTION

The Arkansas Broadcasters Association (the "Association"), by its attorneys and pursuant to Section 1.415 of the Rules of the Federal Communications Commission ("FCC" or "Commission"), hereby submits these comments in response to the *Notice of Proposed Rulemaking* ("NPRM"), FCC 97-49, released by the Commission on March 5, 1997.

In these comments, the Association opposes the Commission's continuing disregard for the plight of radio broadcast stations in smaller markets as evidenced by its proposed regulatory fee regime for fiscal year 1997. Accordingly, the Association urges the Commission to adopt a methodology for assessing annual regulatory fees upon licensees of AM and FM broadcast stations that accounts for market size. The Association concludes that the current proposed schedule, based as it is solely upon class of station, fails to reflect the economic realities facing radio broadcast stations and thereby imposes an inequitable burden upon radio broadcast stations in small markets.

As discussed below, in response to the *Notice of Inquiry* in this proceeding, FCC 96-422 (released November 6, 1996), both the Montana Broadcasters Association (“MBA”) and the National Association of Broadcasters (“NAB”) proposed methodologies for the assessment of regulatory fees that more accurately and equitably reflect the economic realities of the broadcasting business, particularly with respect to stations in smaller markets. Accordingly, the annual regulatory fees assessed thereby better serve the public interest by both recognizing the fiscal significance of and accounting for the population density of an AM or FM station's geographic location. The proposals promulgated by the MBA and the NAB posit a schedule of fees that more fairly allocates the regulatory fee burden among the nation's radio stations with no insurmountably adverse affect on the Commission's mandated regulatory fee collections. For the third year, the Commission, while nominally noting that “the population density of a station's geographic location was ... a public interest factor warranting recognition in the fee schedule,” has again turned its head and proposed a regulatory fee schedule that does not account for the population base of an AM or FM station's service area.

II. **CONSISTENT WITH THE PROPOSALS OF BOTH THE MONTANA BROADCASTERS ASSOCIATION AND THE NATIONAL ASSOCIATION OF BROADCASTERS, THE COMMISSION SHOULD ADOPT A SCHEDULE OF REGULATORY FEE ASSESSMENTS UPON AM AND FM BROADCAST STATIONS THAT REFLECTS BOTH CLASS OF STATION AND MARKET SIZE.**

In 1995, the Commission correctly noted that “the population density of a station's geographic location was ... a public interest factor warranting recognition in the fee schedule.” *Notice of Proposed Rulemaking in the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1995*, MD Docket No. 95-3, FCC 95-14, at para. 29 (released January 12, 1995). Again last year, the Commission reiterated its interest in adopting a methodology for the assessment of regulatory fees

upon AM and FM broadcast stations which would "associate population density and service area contours with license data" in reaching fee determinations. *Notice of Proposed Rulemaking In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1996*, MD Docket No. 96-84, FCC 96-153, at paras. 20 to 21 (released April 9, 1996).

Nevertheless, both the 1994 and 1995 regulatory fee schedules for commercial radio stations drew distinctions only between AM and FM stations and, within each service, among the technical classes of stations without any accounting for the population density of a station's service area. Four regulatory fee categories were drawn for AM stations--one for each class, A, B, C, and D. For FM stations, two categories were created: greater coverage area stations, *i.e.*, classes C, C1, C2, and B, and lesser coverage area stations, *i.e.*, classes A, B1, and C3. By this *NPRM*, the Commission again apparently prefers to disregard the economic and public interest realities of the radio broadcasting market place by proposing to adopt a regulatory fee schedule for fiscal year 1997 that does not account for the vast financial differences among broadcast stations depending upon the size of the markets they serve.

III. WHILE THE METHODOLOGIES PROPOSED BY THE MONTANA BROADCASTERS ASSOCIATION AND THE NATIONAL ASSOCIATION OF BROADCASTERS MAY BE FLAWED, EITHER IS GREATLY PREFERABLE TO THE COMMISSION'S CONTINUED ADHERENCE TO ITS INEQUITABLE REGIME.

The Commission in this *Notice of Proposed Rulemaking* points out the shortcomings of the MBA and NAB proposals. Nevertheless, even while conceding that population and market size should be reflected in the regulatory fee schedule, it again proposes a regime that in no way accounts for such acknowledged differences. The inequities that result from the Commission's prior regime are unavoidably obvious and well-documented in these proceedings.

While perhaps somewhat flawed in that they do not fully account--as posited--for the Commission's Fiscal Year 1997 revenue requirements, the methodologies proposed by the MBA and the NAB make tremendous strides toward a balanced and equitable schedule for the assessment of annual regulatory fees upon AM and FM broadcast stations. Both account for what the Commission has labeled a "public interest factor warranting reflection": a station's market size. Their technical flaws can be mitigated with comparatively little effort by the Commission, and the result would be a much fairer regulatory fee regime.

WHEREFORE, the Association, most of whose members operate radio broadcast facilities in small markets, strenuously urges the Commission to adopt a schedule for the assessment of annual regulatory fees similar to those proposed by the MBA and the NAB. Such a revision by the Commission of its regulatory fee schedule to incorporate relative market size as well as the operating class of the radio station would result in considerable progress toward assessments that more closely reflect the realities of the marketplace in which broadcasters operate.

Respectfully submitted,

ARKANSAS BROADCASTERS ASSOCIATION

By 
Frank R. Jazzo

By 
J. Todd Metcalf*

*Formal admission to the bar upon oath pending.

Its Attorneys

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March 25, 1997

CERTIFICATE OF SERVICE

I, Deborah N. Lunt, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., do hereby certify that true copies of the foregoing "Comments of the Arkansas Broadcasters Association" were sent this 25th day of March, 1997, by first class United States mail, postage prepaid, to the following:

Henry L. Baumann, Esquire
Jack N. Goodman, Esquire
National Association of Broadcasters
1771 N Street, NW
Washington, DC 20036

Alexander G. Maxwell, Jr.
Maine Association of Broadcasters
PO Box P
Augusta, ME 04332-0631

Reddy, Begley & McCormick
1001 22nd Street, NW
Suite 305
Washington, DC 20037

A handwritten signature in black ink, appearing to read 'Deborah N. Lunt', written over a horizontal line.

Deborah N. Lunt