

FCC MAIL SECTION

Federal Communications Commission

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DISPATCHED Before the FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554

In the Matter of)
Implementation of Section 9)
of the Communications Act) MD Docket No. 96-186
Assessment and Collection)
of Regulatory Fees for)
Fiscal Year 1997)

REPORT AND ORDER

Adopted: October 17, 1997 ; Released: October 27, 1997

By the Commission:

1. In the Further Notice of Proposed Rulemaking in this proceeding, the Commission proposed to adopt several new procedures in order to more efficiently and equitably collect the annual regulatory fees required by Section 9 of the Communications Act, 47 U.S.C. § 159. See Further Notice of Proposed Rulemaking in the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1997, 62 Fed. Reg. 40036 (July 25, 1997)(FNPRM). We address below the comments filed in this proceeding and adopt the proposed new procedures with some modifications. 1

2. Specifically, we adopt a requirement that non-profit entities claiming an exemption from regulatory fees make a one-time filing of documentation establishing their exempt status. We also adopt a requirement that for-profit purchasers or assignees of stations or facilities previously owned by non-profit entities notify the Commission of such reassignment or sale. Additionally, we adopt a requirement that licensees of Commercial Mobile Radio Services (CMRS) maintain, and submit upon request, documentation supporting the calculations of their fee payments. Finally, the amendments will authorize the Managing Director to publish annually in the Federal Register the names of all fee payers.

1 See Appendix B for a list of commenters who responded to the FNPRM.

Documentation for Non-Profit Entities

3. Section 1.1162(c) of the Commission's Rules currently exempts from payment of regulatory fees those entities possessing non-profit status under Section 501 of the Internal Revenue Code, 26 U.S.C. § 501, or certification as a non-profit corporation or other non-profit entity by a state or other governmental authority. See 47 C.F.R. § 1.1162(c). The FNPRM proposed a one-time requirement that non-profit entities claiming exemptions from the regulatory fee requirement submit documentation establishing their non-profit status. Currently, non-profit entities are required to file such documentation only when requested by the Commission. In its comments, the National Telephone Cooperative Association (NTCA) opposed this proposed requirement, arguing that the FNPRM failed to demonstrate a need for the filing requirement.

4. We are adopting the requirement for filing non-profit documentation as proposed. We believe this requirement will substantially assist us in administering the fee program. Development of a comprehensive data base of exempt entities will enable us to assure that only those entities entitled to the exemption benefit from it. It will also help assure that we calculate fees based upon a more accurate assessment of the number of entities expected to pay fees. The one-time filing requirement will thus enable us to more equitably establish appropriate fees for all payers. Further, although NTCA expresses concern regarding the burden of the filing requirement, we believe that duplication and mailing of a document already retained in the ordinary course of an entity's business for tax and other purposes results in only a minimal administrative burden. We will thus require that all entities claiming an exemption from payment of regulatory fees file a copy of the documentation supporting their non-profit status. These documents must be submitted to the Secretary of the Commission at a time to be established in a Public Notice which will be published in the Federal Register. Entities claiming non-profit status must also notify the Secretary within sixty days of any change in their non-profit status; and for-profit purchasers or assignees of stations or facilities previously owned or operated by non-profit entities must also notify the Secretary of the purchase or reassignment within 60 days of the purchase or assignment.

5. NTCA also requested that we permit entities claiming exemption from payment of a regulatory fee to establish their non-profit status using types of documentation other than their current IRS determination letters or certification from a state or other governmental authority. Specifically, NTCA argues that an entity's Articles of Incorporation are the best evidence of its non-profit status and the Commission should also accept the Articles, annual state reports or similar documents. NTCA believes that its proposal will lessen the administrative burden on small entities. We note that IRS determination letters and state or government certifications are generally one or two page documents maintained as part of an entity's business files, which can easily be copied and filed with the Commission. Nevertheless, if for some reason an entity is unable to produce governmental certification, the amended rules also permit submission of other documents establishing non-profit status, as long as the documents bear evidence that non-profit status has been approved by a state or other governmental authority, consistent with the laws or regulations of the jurisdiction.

Documentation of CMRS Fees

6. The FNPRM proposed to require Commercial Mobile Radio Service (CMRS) licensees to retain documents used in the calculation of their regulatory fees for a period of three years. A number of commenters argued that the Commission should not specify a format for those documents; that CMRS licensees should continue to retain flexibility in maintaining record keeping systems; that they should not be required to generate new or additional paperwork; and that they should not be required to substantiate fees in a manner not required for other services. See Comments filed by Bell Atlantic, NYNEX Mobile, Inc., Rural Cellular Association, Rural Telecommunications Group and GTE Service Corporation (GTE).

7. We agree that CMRS licensees should have maximum flexibility to determine what documents they will use to calculate fees and that they should not be required to generate new or additional paperwork. Our proposal required only that CMRS entities retain the work papers used or developed in the course of calculating their fees. Thus, we were not requiring that CMRS licensees undertake new or additional paperwork, or utilize any particular format for calculating their fees. Also to the extent this proposal imposed somewhat different requirements on CMRS licensees, we believe those differences were justified. We have identified several discrepancies between projected and actual CMRS regulatory fees which are of concern. For example, for FY 1996 the actual number of units for which regulatory fees were paid was 18.1% below the total that was used to formulate the CMRS fees. While this disparity may result from errors in estimating the overall number of subscribers in the CMRS services, we believe that closer oversight of CMRS fee payments is prudent. Assessing more accurate fees would also benefit, without any significant burden, all CMRS licensees by helping to ensure that all CMRS fee payers fully comply with their obligation to contribute to the recovery of our costs of regulating CMRS. Thus, we will require CMRS licensees to retain, and submit to the Commission upon request, those documents which were actually used in the calculation of their fee payments and that demonstrate the accuracy of the payment. This will enable the Commission to efficiently audit the fee payments of CMRS licensees without creating any undue additional burden.

8. GTE and United States Cellular Corporation (USCC) also argue that our proposed requirement that CMRS regulatees maintain their payment records for a three year period is unreasonable. GTE notes that our rules require telephone companies to retain their billing records for only eighteen months. See 47 C.F.R. § 42.6. We agree that requiring CMRS licensees to retain these records for three years is unnecessary. We expect that any verification of fee payments would be accomplished within two years from the time that the fee payments are made. Thus, we are modifying our proposal and will require only a two year retention period for this documentation. Southwestern Bell Mobile Systems, Inc. also asserts that the fee documentation may contain highly confidential customer information. In this regard, CMRS licensees with concerns about the disclosure of sensitive information in any submissions to the Commission may request confidential treatment pursuant to Section 0.459 of the Rules. See 47 C.F.R. § 0.459.

Publication of Fee Data

9. In the FNPRM, we proposed to publish in the Federal Register a list of all commercial regulatees that have paid their regulatory fees, along with the amount of the fee paid by each fee payor, and the volume or number of units upon which the fee payment was based.² Many commenters opposed our proposal, contending that publication of fee payments and units would require regulatees to disclose highly confidential business information.

10. We agree that the proposal to publish payment data could result in the disclosure of sensitive marketing information in some instances. We also conclude that there is an insufficient basis at this time to warrant disclosure of such information. Thus, we will not publish either fee payment information or the unit totals upon which a fee payment is calculated. We believe, however, that publication of the names of commercial fee payers may serve as a deterrent to non-payment. Thus, we delegate to the Managing Director authority to issue annually a Public Notice setting forth the names of commercial regulatory fee payers and to publish the Public Notice in the Federal Register.

Final Regulatory Flexibility Analysis

11. As required by the Regulatory Flexibility Act (RFA),³ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Further Notice of Proposed Rulemaking In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1997, 62 FR 40036 (July 25, 1997). The Commission sought written public comments on the proposals in its FNPRM, including on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA, as amended.⁴

I. Need For and Objectives of this Report and Order:

12. This rulemaking proceeding was initiated in order to modify our collection procedures for regulatory fees in order to help assure increased accuracy and timeliness of regulatory fee payments.

² Southwestern Bell Mobil Systems also contends that the FNPRM's statement that regulatory fee payments by CMRS licensees shall be calculated on the "number of pagers, cellular telephones, or PCS units" is inconsistent with the fee payment requirements set forth in the Report and Order. We disagree. The Report and Order established fees for cellular telephone and PCS units in the CMRS Mobile Services and a fee for paging units in the CMRS Messaging Service.

³ 5 U.S.C. § 603.

⁴ See 5 U.S.C. § 604. The RFA, see 5 U.S.C. § 601 *et seq.*, has been amended by the Contract with America Advancement Act (CWAAA), Public Law 104-121, 110 Stat. 847 (1996). Title II of the CWAAA is "The Small Business Regulatory Enforcement Fairness Act of 1996" (SBREFA).

II. Summary of Significant Issues Raised by Public Comments In Response to the IRFA:

13. None.

III. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply:

14. Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. § 601(6). The RFA, 5 U.S.C. §601(3), generally defines the term "small business" as having the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. § 632. A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).

15. The proposals adopted in this Report and Order affect a very broad array of small entities, including small entities described as cable services or systems, common carrier services and related entities, international services, mass media services, and wireless and commercial mobile services. In the rulemaking proceeding in this docket preceding the FNPRM, we extensively described the small entities that might be affected by this action, and have also described the numbers of such entities. (See "Final Regulatory Flexibility Analysis," Attachment A of Report and Order, MD Docket No. 96-186, FCC 97-215, released June 26, 1997, 62 FR 37408 (July 11, 1997).) We hereby incorporate into this FRFA, by reference, those descriptive sections from the previous Report and Order.

IV. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements:

16. With certain exceptions, the Commission's Schedule of Regulatory Fees applies to all Commission licensees and regulatees. In the rulemaking proceeding in this docket preceding the FNPRM, we described the methodology used by affected entities to determine required fee amounts, the procedures for calculating and filing fee payments, the skills necessary to file, and the results of not filing in accordance with the rules. (See Report and Order, FCC 97-215 supra. at Attachment H and § 1.1157 through 1.1167 of the Commission's Rules, 47 CFR §§ 1.1157 through 1.1167.) We hereby incorporate into this FRFA, by reference, those descriptions. In addition, we note that the proposals adopted here require Commercial Mobile Radio Service (CMRS) licensees to maintain and make available to the FCC, upon request, documentation concerning the basis for their fee payments and that these documents be retained by the payer for two years; require that non-profit entities exempt from the regulatory fee requirement submit documentation of their non-profit status; that for-profit entities purchasing a station from a non-profit entity notify the Commission of the sale or reassignment; and authorize the Commission to publish annually, in the Federal Register, a list of those firms and individuals who paid a fee for the preceding fiscal year and who engaged in the provision of communications for commercial purposes.

V. Steps Taken to Minimize Any Significant Economic Impact on Small Entities, and Significant Alternatives Considered:

17. As described in the Paragraph 16, the Commission proposed certain modifications to the collection procedures for regulatory fees in order to help assure increased accuracy and timeliness of regulatory fee payments. Each of the above-described proposals that require compliance would entail some level of economic impact, and this impact would fall on some small entities. We believe, however, that these proposals, if adopted, would help ensure the integrity of the regulatory fees program. We have reduced the impact as a result of public comments. Documentation concerning the basis for CMRS fees must be retained for only two years rather than three, and need not be submitted to the Commission unless requested. Further, this Report and Order authorizes the Managing Director the option to publish only the names of fee payers and not fee amounts and unit counts objected to by commenters.

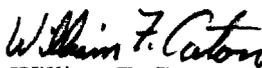
Report to Congress: The Commission shall include a copy of this Final Regulatory Flexibility Analysis, along with this Report and Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 601(a)(1)(A). A copy of this FRFA (or summary thereof) will also be published in the Federal Register, along with this Report and Order.

Ordering Clauses:

18. ACCORDINGLY, IT IS ORDERED, That the rule changes as specified above and as set forth in Appendix A ARE ADOPTED.

19. IT IS FURTHER ORDERED that the rule changes made herein will become effective 30 days from the date of publication in the Federal Register. This action is taken pursuant to Sections 4(i), 4(j), 9 and 303(r) of the Communications Act as amended, 47 U.S.C. §§ 154(i), 154(j), 159 and 303(r).

FEDERAL COMMUNICATIONS COMMISSION


William F. Caton
Acting Secretary

APPENDIX A

Part 1 of Title 47 of the Code of Federal Regulations is amended as follows:

Part 1 -- Practice and Procedure

1. The authority citation for Part 1 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 154, 207, 303 and 309(j) unless otherwise noted.

2. Section 1.1162 is amended by adding new paragraphs (c)(1) and (c)(1)(i) to read as follows:

§ 1.1162 General exemptions from regulatory fees

* * * * *

(c) * * *

(1) Any permittee, licensee or other entity subject to a regulatory fee and claiming an exemption from a regulatory fee based upon its status as a nonprofit entity, as described above, shall file with the Secretary of the Commission (Attn: Managing Director) written documentation establishing the basis for its exemption within 60 days of its coming under the regulatory jurisdiction of the Commission or at the time its fee payment would otherwise be due, whichever is sooner, or at such other time as required by the Managing Director. Acceptable documentation may include Internal Revenue Service determination letters, state or government certifications or other documentation that non-profit status has been approved by a state or other governmental authority. Applicants, permittees and licensees are required to file documentation of their nonprofit status only once, except upon request of the Managing Director.

(i) Within sixty (60) days of a change in nonprofit status, a licensee or permittee previously claiming a 501(C) exemption is required to file with the Secretary of the Commission (Attn: Managing Director) written notice of such change in its nonprofit status or ownership. Additionally, for-profit purchasers or assignees of a license, station or facility previously licensed or operated by a non-profit entity not subject to regulatory fees must notify the Secretary of the Commission (Attn: Managing Director) of such purchase or reassignment within 60 days of the effective date of the purchase or assignment.

§ 1.1157 Payment of charges for regulatory fees.

* * * * *

3. Section 1.1157 is amended by adding a new paragraph (d) to read as follows:

(d) Any Commercial Mobile Radio Service (CMRS) licensee subject to payment of an annual regulatory fee shall retain for a period of two (2) years from the date on which the regulatory fee is paid, those business records which were used to calculate the amount of the regulatory fee.

§ 1.1159 Filing locations and receipts for regulatory fees

4. Section 1.1159 is amended by adding a new paragraph (e) to read as follows:

(e) The Managing Director may issue annually, at his discretion, a Public Notice setting forth the names of all commercial regulatees that have paid a regulatory fee and shall publish the Public Notice in the Federal Register.

APPENDIX B

Comments were filed by the following parties:

GTE Service Corporation
United States Cellular Corporation
Saco River Cellular Corporation
Citizens Utilities Company
Cellular XL Associates
Cellular Telecommunications Industry Association
American Mobile Telecommunications Association
BellSouth Corporation
PrimCo Personal Communications
Rural Cellular Association
Bell Atlantic NYNEX Mobile, Inc.
Rural Telecommunications Group
National Telephone Cooperative Association
Southwestern Bell Mobile Systems, Inc., et. al.
Personal Communications Industry Association