

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

In the Matter of)	
)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2015)	MD Docket No. 15-121
)	
Amendment of Part 1 of the Commission's Rules)	MD Docket No. 15-121
)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2014)	MD Docket No. 14-92

***COMMENTS OF
ARSO RADIO CORPORATION***

Arso Radio Corporation (“ARSO”)¹ submits these comments in response to the Commission’s *Notice of Proposed Rulemaking*² (“NPRM”) relative to the assessment of regulatory fees to broadcast licensees for Fiscal Year 2015.

The *NPRM* invites comments, beginning at paragraph 15, regarding a letter and petition filed by the Puerto Rico Broadcaster’s Association (“*PRBA Letter*”) on December 10, 2014, seeking regulatory fee relief for broadcasters in Puerto Rico.³ The *PRBA Letter* requests that the Commission take into consideration significant population declines and economic factors when determining the regulatory fees owed by radio station operators in Puerto Rico. The *PRBA Letter* cites numerous factors and reasons for

¹ Arso is an FCC licensee of 8 radio stations located in Puerto Rico, with affiliated companies serving as FCC licensee of another 7 radio stations.

² *Notice of Proposed Rulemaking* in MD Docket Nos.15-121 and 14-92 (rel. May 21, 2015)(“*Notice*” or “*NPRM*”)

³ See Letter from Messrs. Francisco Montero, Esq. and Jonathan R. Markman, Esq., Counsel for the Puerto Rico Broadcasters Association, filed in Docket No. 14-92, to Marlene Dortch, Secretary, Federal Communications Commission (Dec. 10, 2014) (“*PRBA Letter*”)

the desired relief, and the *NPRM* requests comment on the following proposals that would address the issue:

- (i) moving the Puerto Rico market stations to a different rate (*e.g.*, reducing them down to a lower population strata) because of the downward trend in the population and other factors;
- (ii) creating a separate fee category for the Puerto Rico market at a lower rate; or
- (iii) adopting a special provision in our rules for economically depressed geographic areas to seek a “fast track” waiver of regulatory fees.

Comments

The Commission’s election to offer some level of relief to licensees in Puerto Rico regarding regulatory fees is a welcome step in aiding the broadcasters on the island who are struggling along with the rest of the island population with an economic catastrophe of far greater impact than any natural catastrophe. As detailed in the *PRBA Letter* and the *NPRM*, the economic conditions, unique geography and declining population have combined to create a maelstrom of misfortune for broadcasters in Puerto Rico who are all struggling to keep pace with their obligations and remain fiscally viable businesses in the face of overwhelming obstacles.

The threshold issue posed by the *NPRM* is whether these unique circumstances warrant some form of relief to broadcasters in Puerto Rico relative to the annual regulatory fees. ARSO would argue yes, and that there is ample precedent for same. As

far as precedent, the Commission has a long history of treating broadcasters in Puerto Rico differently than those on the mainland United States because of its unique character and geography. For example, the Commission recognized in *St. Croix Wireless Co., Inc.*, 8 FCC Rcd 7329, 74 Rad. Reg.2d (Pike & Fisher) 202 (1993) that adoption of alternative standards for purposes of determining protected and interfering contours was prudent and necessary to accommodate the greater permissible HAAT that Puerto Rico and Virgin Island stations antennas are allowed (to overcome geographic obstacles). This was later adopted as rule revision in the Commission’s Second Report and Order in MM Docket 98-93 (*In the Matter of 1998 Biennial Regulatory Review - Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules – FCC 00-368*), 15 FCC Rcd 2149 (2000), all as a result of the “unique topography” of the island (see Short-spaced FM Station Assignments by using Directional Antennas, *MM Docket 87-121, FCC 91-273*, 6 FCC Rcd 5356 at 51); see also 47 C.F.R. §73.211(b)(3). Other examples include 47 C.F.R. §73.1210 (TV/FM Dual Language broadcasting in Puerto Rico) and 47 C.F.R. §73.807 (Minimum distance separation between LPFM stations). The economic and geographic obstacles are further exacerbated by the fact that there are a greater number of AM and FM stations licensed to the island of Puerto Rico than to a comparable geographic sized area in the mainland United States,⁴ meaning there are a larger number of competitors seeking an ever-shrinking slice of economic pie.

As to justification for relief, the stark picture of the Puerto Rican economy painted by the *PRBA Letter* and in the *NPRM*’s captures the reality of economic conditions today on the island and need not be further recounted here.

⁴ BIA’s FCC Geographic Market List shows there are 127 “Full Power” radio stations licensed to Puerto Rico. The island is a rectangular shape of land approximately 35 miles north to south and 100 miles east to west.

Having concluded that relief is warranted, the next question is the form of relief which should be provided regarding annual regulatory fees for licensees in Puerto Rico. The *NPRM*'s three proposals are each worthy of consideration, and ARSO would advocate for any of them to be implemented, but for the reasons set forth below, ARSO suggests that the best option is (ii) creating a separate fee category for the Puerto Rico market at a lower rate.

The initial *NPRM* proposal to reduce regulatory fees by shifting Puerto Rico stations down to a lower population strata in the regulatory fee schedule is a viable solution which could yield the same result as option (ii), but could prove to be unwieldy because of the wide variations in population strata categories in the regulatory fee scheme. For example, the same fees is assessed for stations that cover anywhere from 150,000 to 500,000 persons, as well as 500,000 to 1,200,000, and 1,200,000 to 3,000,000. These expansive categories have the net effect of charging stations with wide disparity in population coverage the same regulatory fee. Thus a Class C2 FM station covering 2.9 million persons on the island is slotted into the same strata as a Class B FM station with coverage just over 1.2 million persons, or approximately 41% of the C2 FM station. As proposed, each of those stations would get moved down a category to the 500,000 – 1,200,000 strata and have their regulatory fee reduced from \$9,250 to \$5,775. While each station yields the same savings (approximately 37%), the Class B FM station is disadvantaged because its' net population reduction and fee reduction is much less than that of the C2 FM station. The Commission recognized this population strata issue generally in the *NPRM* in paragraph 13 where it sought comments on the overall structure of allocating regulatory fees to radio stations by population rather than market, while

noting any change would be prospective beyond the 2015 regulatory fee cycle.

Parenthetically, it should be noted that any shift from population to market based calculations for regulatory fees would adversely affect Puerto Rico because of the current “market” definition of the island, which is subject to a pending rulemaking in Docket 14-50.

Thus, while option (i) does overall provide the relatively same amount of relief to radio licensees from a percentage of dollars perspective by moving everyone down one population strata, it retains the fundamental disparity between some stations that fall on either end of the applicable strata. Nevertheless, it would be an acceptable solution that would overall provide some relief to the embattled radio station owners on the island.

Option (iii) proposes a “fast track” waiver process for economically disadvantaged areas to seek relief from regulatory fees. This is the least plausible solution for a number of reasons. Initially, the Commission would have to develop a “fast track” process for addressing waiver requests. Historically, such requests to the OMD office typically take months if not years to be resolved. Creating such a process would involve resources and personnel which the Commission does not readily have available. Even if it could provide the resources and personnel to develop such a system, the next hurdle would be to define the scope of “economic disadvantage” that would entitle a broadcaster to seek relief. That in turn would require a rulemaking procedure and the timeline to develop and implement such provisions would far exceed the immediate needs of Puerto Rican radio stations. Even if all of this could be done relatively quickly, such a process would, as noted in the *NPRM*, shift the burden of regulatory fees from less disadvantaged radio stations who had the resources to file a

waiver request to the most disadvantaged radio stations who barely have the resources to pay the regulatory fee, who then would have to spend more money to counsel and file a waiver request and wait for it to be processed in some fashion. The potential savings from a grant of such a waiver request would likely be consumed by the cost of making application for the waiver, leaving the broadcaster in no better situation than they are now.

Thus, option (ii) is both the fairest solution as well as the easiest to implement quickly. Retain the existing categories of radio stations and population strata fields in the regulatory fee schedules, but create a separate fee structure for radio stations licensed to Puerto Rico with fee amounts that are 35% less than those assessed on the mainland. This amount is consistent with the amount of reduction generated by moving everyone down one population strata, while retaining the existing population counts for each station pending the availability of the next “block level census data”, at which time stations can be re-slotted into the correct population strata and the necessity of retaining the separate fee structure for Puerto Rico can be re-assessed. This across the board reduction will have the effect of treating all Puerto Rico radio broadcasters equally so that none are disadvantaged by the revisions, and also permit true savings to such broadcasters as they will not need to expend funds in order to obtain a waiver. It does retain the fundamental disparity between similar powered stations on opposite ends of the population strata, but addressing that disparity is beyond the scope of these comments and is not one that can be addressed in time to effect real change for these stations with the 2015 regulatory fee payment. It cannot be overemphasized that the need for real immediate relief is now, and by implementing this simple change that is uniformly

applied beginning with the 2015 regulatory fee period, the Commission will help mitigate the economic havoc faced by Puerto Rico radio stations at this time.

By creating this form of immediate relief, the Commission will enable Puerto Rico radio stations to at least retain current programming and staffing levels. Compensation laws in the Commonwealth are some of the most onerous, requiring employers to provide for payment of significant amounts of vacation/sick time, together with a compulsory fixed annual bonus based on compensation amounts. It is also exceedingly difficult to terminate an employee without cause in the Commonwealth. The combination of these factors make labor costs one of the most expensive parts of a radio station's operating budget. Any relief, such as provided by a reduction of regulatory fees, will enable broadcasters to try and maintain existing staffing levels. Maintaining employment levels is also key to the overall island's economic survival, as the population flight from Puerto Rico is driven by lack of employment opportunities. It should also be noted that such relief should be only an interim solution and not permanent. The Commission should re-evaluate the economic conditions on Puerto Rico in 24 months and determine if the economic conditions have sufficiently improved to sunset the regulatory fee relief provisions.

Finally, such an interim, across-the-board adjustment of fees for Puerto Rico radio stations is a process that satisfies the requirement to demonstrate that compelling and extraordinary circumstances outweigh the public interest in recouping the Commission's regulatory costs. As both the *NPRM* and the *PRBA Letter* have more than adequately demonstrated, the vast difference between the current US mainland economic conditions and those in Puerto Rico warrant extraordinary relief. The proposed solution is elegant in

its simplicity to enact and administer and its fundamental fairness to all affected radio stations. While the public interest in recouping the Commission's regulatory costs is great, absent this relief many stations may no longer be able to remain viable and that loss of programming to the local community, loss of employment to citizens of Puerto Rico, and loss of diversity of stations on the island will fundamentally diminish the quality of life in Puerto Rico and fundamentally diminish the viability of commercial radio broadcasting on the island, which we believe outweighs the aforementioned public interest in collecting regulatory fees.

Conclusion

For the foregoing reasons, ARSO recommends that the Commission act on the *PRBA Letter* and provide one form of relief as it relates to payment of regulatory fees. In ARSO's opinion, option (ii) proposed by the *NPRM* is the best of the alternatives offered since it can be easily implemented and uniformly applied, while still providing relief to every radio broadcaster on the island.

Respectfully Submitted



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