

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

In the Matter of)
)
Assessment and Collection of Regulatory Fees) MD Docket No. 16-166
for Fiscal Year 2016)

***COMMENTS OF
ARSO RADIO CORPORATION***

Arso Radio Corporation (“ARSO”)¹ submits these comments in response to the Commission’s *Notice of Proposed Rulemaking*² (“2016 NPRM”) relative to the assessment of regulatory fees to broadcast licensees for Fiscal Year 2016.

The 2016 NPRM invites comments, beginning at paragraph 12, regarding increasing regulatory fees for radio stations based, in part, upon population served, and to standardize increases to such regulatory fee amounts as population increases. However, the 2016 NPRM fails to address the issue of population decreases, a matter which was brought to the attention of the Commission in connection with FY 2015 regulatory fees NPRM (the “2015 NPRM”) by 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 requested that the Commission take into consideration significant population declines and economic factors when determining the

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 No.16-116 (rel. May 19, 2016)(“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”)

regulatory fees owed by radio station operators in Puerto Rico. The *PRBA Letter* cited numerous factors and reasons for the desired relief, and the *2015 NPRM* requested 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.

Ultimately, the Commission chose, in the FY 2015 Regulatory Fee proceeding’s *Report and Order and Notice of Further Rulemaking*⁴, to not address the *PRBA Letter* request and said it would be addressed in a separate proceeding.⁵ As of the date of these comments, no separate proceeding has been commenced to address the issues raised by the *PRBA Letter*, and economic conditions have continued to deteriorate on the island.

Comments

ARSO was disappointed by the Commission’s election to not offer any level of relief to licensees in Puerto Rico regarding regulatory fees in the *2015 Report and Order* but was heartened by the suggestion that a separate proceeding would address the issue. It is now a year later however, and no separate proceeding has commenced, and the circumstances on the island of Puerto Rico continue to deteriorate. Population flight

⁴ *Report and Order and Notice of Further Rulemaking* in MD Docket 15-121, released September 2, 2015. (the “*2015 Report & Order*”)

⁵ *2015 Report & Order*, at paragraph 25.

continues unabated, and the economic situation on the island has only worsened. Thus, the proposed increases contained in the *2016 NPRM*, while applicable to all stations, disproportionately affects Puerto Rico radio stations because the fee increases coupled with the population calculations (which are no longer even remotely accurate) constitute a further step down the path of economic ruin for Puerto Rico radio broadcasters. As detailed in the *PRBA Letter* and the *2015 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 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,⁶ meaning there are a larger number of competitors seeking an ever-shrinking slice of economic pie.

While the Commission suggested, in the *2015 Report and Order*, that the Commission's existing waiver processes were available to Puerto Rican broadcasters who wanted to petition for reduction or waiver of regulatory fees⁷, waiver/reduction requests, for the following reasons, are not entirely practical in this situation. The current waiver or reduction request process is prescribed in 47 USC §159(d) and 47 CFR §1.1116 and requires "good cause shown" and a finding of the reduction/waiver as being in the "public interest". The Commission's rules currently require such requests to be accompanied by full payment of the prescribed regulatory fees, and while requiring a

⁶ 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.

⁷ *2015 Report & Order*, at paragraph 25

showing of “financial hardship” for waiver requests, the rules do not state the standards or showings necessary for reduction requests. Furthermore, since the only means to prosecute such a request is to make the full payment, absent a mechanism for “fast track” resolution of such requests by staff, such waiver/reduction requests offer no immediate relief to the radio broadcasters struggling to remain viable as historically, staff responses to such requests take months, if not longer, to be completed. Creating a “fast track” 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 shift the burden of regulatory fees from less disadvantaged radio stations who had the resources to file a waiver/reduction requests to the most disadvantaged radio stations who barely have the resources to pay the regulatory fee, who then would have to spend more money for counsel to prepare and file a waiver/reduction 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, ARSO proposes the Commission consider (again) a separate temporary 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 request a reduction/waiver (while still paying the full amount up front in order to seek such relief). 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 2016 regulatory fee period, the Commission will help mitigate the economic havoc faced by Puerto Rico radio stations at this time. Otherwise, ARSO, which owns a diverse group of both AM and FM facilities in various population centers, faces an approximate 7% increase in regulatory fees over 2015, but that is much less than other Puerto Rico broadcasters who have a smaller number of stations but fall into categories with significant increases in the *2016 NPRM*.

By creating this form of immediate relief, the Commission will enable Puerto Rico radio stations to at least retain current programming and staffing levels, a necessary element given recent changes to Commission rules, such as the Online Public File Reporting system, which requires radio broadcasters (some as of June 24th, 2016, some no later than March 1, 2018) to transition their public files to the FCC’s online systems, requiring additional time and effort to scan and upload existing material to the FCC and train and develop procedures for staff to upload/import material on a going forward basis,

all of which takes equipment and resources. 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, and the Commission's recent requirements for online public file transitioning only increases those labor costs. 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 has been recounted ad nauseam in multiple media reports⁸, 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

⁸ Including the Supreme Court's decision on June 13, 2016 to abrogate Puerto Rico's efforts at a Commonwealth level to restructure its debt, which the Court said could only be done by Congress. *Commonwealth of Puerto Rico v. Franklin California Tax-Free Trust*, 579 U.S. _____ (2016) Docket 15-233)

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 requests that the Commission amend its proposals in the 2016 NPRM and offer radio stations licensed to Puerto Rico an across the board 35% discount over the final rates for each class of station and each population strata in the regulatory fee matrix. In ARSO's opinion, this can be easily implemented and uniformly applied, while still providing relief to every radio broadcaster on the island.

Respectfully Submitted



Anthony T. Lepore, Esq.
Radiotvlaw Associates, LLC
Counsel for ARSO
4101 Albemarle St NW #324
Washington, DC 20016-2151
202.681.2201 (Tel)
anthony@radiotvlaw.net
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