

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Assessment and Collection of Regulatory) MD Docket No. 07-81
Fees for Fiscal Year 2007)
)
To: The Commission)

COMMENTS

Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP (“BloostonLaw”), on behalf of its clients with Broadband Radio Service interests, and pursuant to Section 1.415 of the Commission’s Rules, hereby submits the foregoing comments to the Further Notice of Proposed Rulemaking (“Further Notice”) in the above-captioned proceeding. In the Further Notice, the Commission has requested comment on the methodology for implementing its revised BRS regulatory fees, which are to be based upon a combination of (a) the market tier in which the BRS license is held and (b) the amount of spectrum held by the BRS licensee. The Commission has tentatively concluded that this would result in a reduction of the burden placed upon licensees in rural areas. BloostonLaw opposes this conclusion because there is insufficient information in the Further Notice to evaluate the Commission’s proposal and conclusion.

I. The Further Notice Contains Insufficient Information to Evaluate the Commission's Proposal.

The Further Notice in the captioned proceeding does not contain enough information to fully evaluate the Commission's proposed formula for assessing regulatory fees in the BRS. Currently, the FCC has divided BRS licenses into three tiers, based upon population served. The first tier includes those licenses in the top 60 markets, the second tier includes those in markets ranked 61 to 200 and the final tier includes those ranked 201 to 493. As a result, the Commission has proposed the following formula:

For Tier One – BTAs 001 – 60:	(3x)(Amount of Spectrum in MHz)
For Tier Two – BTAs 61 – 200:	(2x)(Amount of Spectrum in MHz)
For Tier Three – BTAs 201 – 463:	(1x)(Amount of Spectrum in MHz)

In the above formula, the Commission has indicated that x = the “pro-rated revenue requirement for BRS divided by the weighted total number of BRS Payment Units.”¹ Unfortunately, the Further Notice does not define the term “weighted total number of BRS Payment Units” or explain how the payment units are weighted. As a result, the variable “ x ” is an unknown quantity and BloostonLaw is unable to determine (a) whether the Commission's proposal equitably spreads the regulatory fee burden among the BRS licensees and (b) whether rural licensees receive the intended relief from regulatory fees.² BloostonLaw accordingly urges the Commission to provide additional information in another Further Notice so that the formula can be fully evaluated by the public.

¹ For Fiscal Year 2007, the pro-rated revenue requirement is \$327.07 per license (rounded down to \$325.00).

² See Further Notice at para 76.

II. Adjustments Should be Made to the Methodology to Create a Safe Harbor for Rural Licenses located in Populated Market Areas.

The Commission should adjust its proposed fee calculation methodology to accurately reflect the actual population of any BRS license that does not cover the entire market area. In the captioned proceeding, it appears that the Commission has overlooked the size of the licensed service area when proposing its fee methodology. This issue becomes relevant in two contexts: (a) site-based licenses that were converted to geographic area licenses and (b) market area licenses that have been the subject of partitions. In each circumstance, the BRS licensee does not have license rights over the entire area.

A good illustration is the Washington DC Basic Trading Area (BTA 461), which is comprised of both urbanized and associated rural areas, including: the District of Columbia, as well as the suburbs of Montgomery, Prince Georges and Frederick Counties in Maryland and Arlington, Fairfax, Prince William, Loudoun, Fauquier, Stafford, Culpepper and Rappahannock Counties in Virginia and the Cities of Alexandria, Fairfax, Manassas and Manassas Park in Virginia. In 1990, the Washington, DC BTA had a population of 4,118,628. If, for example, the market area licensee were to partition Rappahannock County to another entity, that partitionee would only have access to a coverage area with 6,622 pops based upon the 1990 census.³ On the other hand, the

³ According to the US Census Bureau, the 2000 population for Rappahannock County, Virginia was 6,983.

1990 population for Fairfax County, Virginia was 818,584; for Prince William County, Virginia was 216,686; and for Montgomery County, Maryland was 757,027. When compared to these larger jurisdictions, it is obvious that Rappahannock County is rural in nature. Because the Commission auctioned BRS licenses by Basic Trading Area (“BTA”), it is well aware of the relevant population for each BTA. Further, in the context of a partition application, the Commission requires the applicants to provide population data for the partitioned service area on the FCC Form 603 application. As a result, because the Commission can take official notice of the population of partitioned service areas, the Commission should automatically be able to adjust its fee methodology to transfer a rural license from one tier to another in order to meet its intent of “mitigating on rural operators, already stretched thin by low population density.”⁴ BloostonLaw recognizes that it may be more difficult for the Commission to calculate population coverage for licenses that were originally site based. In that circumstance, licensees should be permitted to make specific population coverage showings in order to justify movement from one fee payment tier to another. Again, using the Washington, DC BTA as an example, if a licensee had a site based transmitter in Rappahannock County, Virginia, it should be entitled to an adjustment since it is not providing service to the more populated area of the market.

⁴ See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, WT Docket No. 03-66, Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order, 21 FCC Rcd 5606, 5756-59, ¶ 376 (2006).

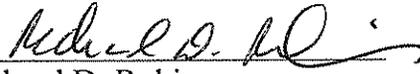
III. Conclusion

For the foregoing reasons, BloostonLaw urges the Commission to provide further information in connection with its proposed formula. Notwithstanding the insufficient data to evaluate the Commission's proposal, BloostonLaw also urges the Commission to establish safe harbors for licenses that may be located in more populated market areas, but in fact feature less populated rural areas.

Respectfully submitted,

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