BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2009	)	MD Docket No. 09-65
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Assessment and Collection of Regulatory Fees for Fiscal Year 2008	)	MD Docket No. 08-65
	)	

JOINT COMMENTS OF THE
NAMED STATE BROADCASTERS ASSOCIATIONS

The Alabama Broadcasters Association, Arizona Broadcasters Association, Arkansas Broadcasters Association, California Broadcasters Association, Colorado Broadcasters Association, Connecticut Broadcasters Association, Florida Association of Broadcasters, Georgia Association of Broadcasters, Hawaii Association of Broadcasters, Idaho State Broadcasters Association, Illinois Broadcasters Association, Indiana Broadcasters Association, Iowa Broadcasters Association, Kansas Association of Broadcasters, Kentucky Broadcasters Association, Louisiana Association of Broadcasters, Maine Association of Broadcasters, MD/DC/DE Broadcasters Association, Massachusetts Broadcasters Association, Michigan Association of Broadcasters, Minnesota Broadcasters Association, Mississippi Association of Broadcasters, Missouri Broadcasters Association, Nebraska Broadcasters Association, Nevada Broadcasters Association, New Hampshire Association of Broadcasters, New Jersey Broadcasters Association, New Mexico Broadcasters Association, The New York State Broadcasters Association, Inc., North Dakota Broadcasters Association, Ohio Association of

Broadcasters, Oklahoma Association of Broadcasters, Oregon Association of Broadcasters, Pennsylvania Association of Broadcasters, Rhode Island Broadcasters Association, South Carolina Broadcasters Association, South Dakota Broadcasters Association, Tennessee Association of Broadcasters, Texas Association of Broadcasters, Utah Broadcasters Association, Vermont Association of Broadcasters, Virginia Association of Broadcasters, Washington State Association of Broadcasters, West Virginia Broadcasters Association, Wisconsin Broadcasters Association, Wyoming Association of Broadcasters (collectively, the "State Associations"), by their attorneys in this matter, hereby jointly comment in the FCC's Notice of Proposed Rulemaking adopted on May 11, 2009 and released on May 14, 2009 (FCC 09-38), in the above-referenced proceeding ("NPRM").

Despite the current economic climate and ongoing financial crises, Congress has directed the FCC to collect Fiscal Year 2009 regulatory fees totaling nearly $342 million, representing an increase of nearly 10% compared to the amount assessed last year which, in turn, represented an approximately 7.6% increase over the fees charged to FCC regulatees in Fiscal Year 2007, which is an approximately 17% increase in two years.[1] While the State Associations realize that the FCC has an obligation to collect regulatory fees to fund the Commission's operations, the Federal government should be mindful that its proposal to increase regulatory fees by nearly 10% is substantially more than even the rate of inflation. According to the Bureau of Labor Statistics, the rate of inflation rose in 2008 at approximately 0.1%.[2] As a result, the Commission's proposed fees for Fiscal Year 2009 would require Commission licensees to pay an increase of nearly *one hundred times* the rate of inflation. Given the current state of the economy

[1] *See* NPRM, Appendix H.
[2] *See* U.S. Department of Labor, Bureau of Statistics, Consumer Price Index Detailed Report, Table A, Percent changes in CPI for All Urban Consumers (CPI-U) Unadjusted 12-mos. ended Dec. 2008 http://www.bls.gov/cpi/tables.htm (visited June 1, 2009).

and the financial challenges facing the broadcast industry, the Commission should take all necessary steps to ease the financial burden on broadcasters by: (1) reducing the amount of regulatory fees it is proposing to require broadcasters to pay and (2) showing greater flexibility in reviewing waiver and deferral requests for stations that are unable to pay regulatory fees due to financial hardship.

As the Commission is aware, the broadcast industry is reeling from double-digit percentage declines in revenues and the shares of publicly held broadcast companies are at historic lows. Stations are going dark. Television broadcasters have spent billions of dollars on the digital transition. If all this were not enough, Congress is being asked to impose a "performance tax" on music radio stations that will, if adopted, siphon billions of additional dollars from the broadcast industry. Where will those replacement dollars come from? According to *Broadcasting & Cable*, Commissioner Adelstein has "called it 'almost a perfect storm for the broadcasting industry,' citing the unprecedented downturn in advertising due to a variety of factors" and Commissioner McDowell "said he hoped the FCC would take broadcasters' 'extreme economic duress' into account when it makes new policy."[3]

The economic hardship currently facing the broadcast industry is very real. Late last year, two established broadcasting companies, Tribune Company (operating 24 broadcast stations) and Equity Media Holdings (operating 31 broadcast properties), both declared bankruptcy.[4] More recently, Young Broadcasting Inc. (owner of 10 CBS and ABC TV affiliates), and Ion Media Networks Inc. (the owner and operator of 60 TV stations), also

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[3] *See* http://www.broadcastingcable.com/article/277999-FCC_Says_35_Stations_To_Go_Dark_June_12.php (visited June 3, 2009).

[4] *See* http://archives.chicagotribune.com/2008/dec/09/business/chi-081208tribune-bankruptcy; http://juantornoe.blogs.com/hispanictrending/2008/12/equity-media-tv-station-owner-files-for-bankruptcy-.html (visited May 30, 2009).

declared bankruptcy.[5] Other station groups are struggling to remain viable. For example, Multicultural Television Broadcasting placed four of its stations in trust while the company waits to sell the stations to cover loans that have defaulted.[6] And other broadcasters that were previously on very sound economic footing like Gannett and Media General are laying off hundreds of employees and furloughing other employees without pay to avoid even more layoffs.[7] Lenders are foreclosing on their station loans and credit for broadcast station operations and transactions is virtually non-existent.

Moreover, the NBC network recently announced that it would attempt to lower programming costs by reducing the amount of hours it fills with programming from its entertainment division.[8] The *New York Times* recently ran an article with the headline "Broadcast TV Faces Struggle to Stay Viable" and reported in another article that cost-cutting by television broadcasters has resulted in the firing of many experienced television anchors.[9] The *Las Vegas Sun* has reported that the significant decline in advertising revenue has put substantial pressure on the broadcast industry.[10] According to BIA Advisory Services, LLC ("BIA"), television industry revenues have fallen 21.2% between 2007 and 2009.[11] The results are similarly gloomy for the radio industry. Radio revenues declined by 8.5% in Fiscal Year 2008,

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5 *See* http://cbs5.com/local/young.broadcasting.bankrupcty.2.935042.html; http://www.crainsnewyork.com/article/20090522/FREE/905229997 (visited May 30, 2009).

6 *See* http://www.rbr.com/tv-cable/tv_deals/11110.html (visited May 30, 2009).

7 *See* http://uk.reuters.com/article/mideast/idUKTRE50D5S720090114; http://www.bizjournals.com/tampabay/stories/2009/03/30/daily12.html (visited May 30, 2009).

8 *See* http://www.broadcastingcable.com/article/160535-Jay_Leno_Taking_Over_10_P_M_On_NBC.php?q=leno+cost (visited May 30, 2009).

9 *See* http://www.nytimes.com/2009/02/28/business/media/28network.html; http://www.nytimes.com/2008/12/01/business/media/01anchor.html?_r=1&scp=1&sq=television%20anchors&st=cse (visited May 30, 2009).

10 *See* *http://www.lasvegassun.com/news/2009/apr/22/ad-revenue-decline-puts-pressure-broadcast-confere/* (visited May 30, 2009).

11 *See* http://www.bia.com/pr090504-tvrevenue.asp (visited May 30, 2009).

and BIA predicts that radio revenues will decline by an additional 10% in Fiscal Year 2009.[12] With some analysts predicting that local advertising stalwarts General Motors and Chrysler may close as many as 3,000 dealerships during the next year and with other advertisers similarly having difficulty coping with the recession, it is unlikely that advertising levels will recover at TV and radio stations anytime soon. As President Obama stated in a recent weekly address to the nation, "We are still in the midst of a deep recession that was years in the making, and it will take time to fully turn this economy around."[13]

The FCC's proposed annual regulatory fees, when combined with its collection of its application filing fees, far exceed what is necessary to fund the Commission's operations. As FCC Commissioner McDowell recently explained, the FCC is essentially "taxing" its regulatees to such an extent that it has become a for-profit entity. In a speech before the Federal Communications Bar Association on February 2, 2009, Commissioner McDowell stated the following:

> We should also work with Congress to examine how the Commission continues to collect administrative fees under Section 8 of the Act. Let's take another look at why we continue to levy a tax of sorts of allegedly $25 million or so per year on industry, after the Commission has fully funded its operations though regulatory fees. That money goes straight to the Treasury and is not used to fund the agency. Every year, we increase those fees to stay current with the Consumer Price Index. Why? Our regulatees pass along those costs to consumers and they are the ones who ultimately suffer from unnecessary fee collection.

Commissioner's McDowell's point, as evidenced by the Commission's own Fiscal Year 2009 Budget Request to Congress, is that the FCC is using its Section 8 application filing fees – which

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[12] *See* http://www.rwonline.com/article/77120 (visited June 2, 2009). A survey of First Quarter 2009 Radio Revenues, shows that radio stations groups are suffering from steep declines in revenue. For example, Spanish Broadcasting System's Q1 2009 revenue dropped 24 percent; Univision Communications Inc.'s Q1 net revenue was down 12 percent; Beasley Broadcast Group's Q1 net revenue fell by 23.2 percent; CBS Radio's Q1 revenue fell by 29 percent; CC Media Holdings (the parent company of Clear Channel) Q1 revenue fell by 23 percent; Radio One's Q1 revenue fell by 16 percent; and Entravision Communications' net revenue fell by 25 percent. http://www.fmqb.com/article.asp?id=1328668 (visited June 2, 2009).

[13] Remarks of President Barack Obama, Weekly Address, Washington, D.C. (May 10, 2009).

were increased just this April by nearly 5%[14] – to extract fees from its regulatees to a tune of approximately 20-25 million dollars a year above and beyond what is necessary to pay for work performed by the very staffers who are already being paid through the annual regulatory fees used to fund the agency's operations.[15] In that sense, the FCC and Congress are making a windfall profit for the U.S. Treasury on the backs of the FCC's regulatees. This "double counting" practice of the Federal government is highly suspect in good times; it is devastatingly injurious to those regulatees in these times of economic crisis.

This "double counting" practice of the Federal government should be remedied in a way that is fair and equitable to all regulatees that are adversely affected by the practice. The State Associations are aware that a benefit to the regulatee theory underlies the fees for application processing. However, in view of the fact that the FCC's regulatees are already paying to keep the FCC operational, and for the salaries and benefits of the Commission's staffers who process those applications, the annual regulatory fees and/or the application filing fees must be reduced, both retroactively and going forward. This can be accomplished by amending the FCC's Schedule of Regulatory Fees as is permitted by Paragraph (b)(3) of Section 9.[16] As noted above, it is patently unfair to have the FCC and the U.S. Treasury to make a windfall profit while many of the FCC's television and radio licensees are struggling to just to stay on the air.

If the "double counting" were not enough, the Commission has made obtaining meaningful relief from these fees extremely difficult by granting financial hardship waivers of the requirement to pay regulatory fees based on a very narrow definition of what is deemed to be

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[14] *See* http://www.thefederalregister.com/d.p/2009-04-13-E9-8369.

[15] *See* http://www.fcc.gov/Reports/fcc2009budget.html, at p.42.

[16] *See* 47 U.S.C. § 159(b)(3).

"extraordinary and compelling circumstances."[17] In practice, this has generally meant no relief for licensees based upon financial hardship unless the licensee's station is silent, the licensee is in Chapter 11 bankruptcy or in receivership, or if the licensee can otherwise demonstrate that it has no cash flow. The State Associations submit that the Commission should not wait until one of these ruinous events has occurred prior to entertaining a waiver request and instead should recognize the unique and unstable state of the broadcast industry today by showing greater flexibility in accepting waiver filings.

For example, especially during this period of deep recession, if a station shows the Commission (i) that its revenues are down substantially and that it has had to cut expenses, including employee layoffs, furloughs, and salary reductions in order to keep the station operating, or (ii) that it has broken, or is close to breaking, loan covenants or is otherwise in default of its financing, or (iii) that it is on the brink of some form of foreclosure or bankruptcy, a waiver of the FY 2009 regulatory fee payment requirement should be granted.[18] As detailed above, the current recession is crippling stations nationwide. The Commission should not stand idly by raising fees while ignoring the current state of the economy and simultaneously refusing to provide sufficiently meaningful relief. No less than the health and vitality of the broadcast industry are at stake. By adopting these proposals, the Commission would provide timely, meaningful, and much needed relief to broadcasters.

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[17] *See, e.g., Waivers, Reductions, and Deferments of Regulatory Fees*, DOC-260098A7 (2005).

[18] The Commission should provide similar flexibility to stations seeking to temporarily defer FY 2009 regulatory fee payments under Section 1.1166(b) of the FCC's rules. *See* 47 C.F.R. § 1.1166(b). Such deferrals should also be permitted for at least a full year rather than the limited six month time period currently permitted.

Conclusion

The State Associations respectfully urge the Commission to act in a manner fully consistent with these Joint Comments.

Respectfully submitted,

By: ______/s/___________

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Dated: June 4, 2009