

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

In the Matter of )  
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Assessment and Collection of Regulatory Fees ) MD Docket No. 10-87  
for Fiscal Year 2010 )  
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Fireweed Communications LLC operates Full Service television station, KYES-TV, licensed to Anchorage Alaska and several LPTV/translator stations used to extend coverage of KYES-TV in the area around Anchorage, a sparsely populated region.

Fireweed Communicaitons predecesor company, Fireweed Communications Corporation recently emerged from bankruptcy.

**The difference in fees between UHF and VHF fees must be changed.**

TV channels come in three ranges, 2-6 (Low V), 7-13 (High V), and 14 plus (UHF). Regulatory fees for UHF TV have historically been lower than fees for VHF. The made sense, as VHF used to be considered superior to UHF. Since transition to digital TV, the advantage now resides with UHF.

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The FCC has released a Notice of Proposed Rule Making (FCC 10-51) proposing regulatory fees for the 2010 fiscal year. Last year fees were based on TV stations' analog license; this year, they will apply to the remaining digital TV license. I was surprised to see the FCC has retained a significant differential between UHF and VHF TV stations, with VHF TV stations paying significantly more in fees. This is surprising, considering that in most markets, the UHF stations now provide far more reliable reception than the VHF stations. It directly contradicts an implied recommendation in the National Broadband Plan to move more DTV stations to VHF to make more of the more desirable UHF broadcast spectrum available to wireless carriers for broadband.

Doug Lung, TV Technology, 4/16/2010

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Since the transition to digital, experience has demonstrated that UHF is superior to High VHF and that High VHF is superior to Low VHF. High VHF is subject to interference from FM stations, which has been a factor causing holes in high VHF coverage. UHF has no such interference issue. Low band VHF has multiple potential sources of interference such as compact florescent lamps, power lines, nearby FM stations, computer electronic noise, as well as physics of the universe.

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**You mentioned high-band VHF. What about low-band VHF. Is that a particular problem?**

We don't recommend using those channels. I know that several people have gone back to ch. 6, but I don't think that's a wise idea.... I don't think they should have gone there in the first place. It's spectrum the commission may recover eventually. I don't think it works very well. There have been different studies done and papers published that talk about man-made noise, celestial noise in those frequencies. (Interview with Richard Mertz, Consulting Engineer. <http://www.tvnewscheck.com/articles/2009/09/24/daily.2/>)

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In Appendix A of this NPRM the total of all market VHF television stations is given as 479. However, from outside the Commission, and with the limited resources available to Fireweed, we get varying numbers of VHF channels depending upon which data source we use and how it is analyzed. The list of stations available at [www.dtv.gov](http://www.dtv.gov) shows 483 stations in channels 2-13, but only 40 in the range 2-6.

As channels 2-6 are considered very much less desirable than other channels, we looked at VHF channel occupancy. If low VHF is really not a favored band, then we should see migration of stations to higher numbered channels. And we do. We looked at listings on the FCC search page, made a list of facilities in channels 2-6, and looked at each for license status, construction permits, special temporary authorizations applied for or granted, and applications for changes to new channels in an attempt to determine what channel the station was actually using or soon would be using. As of this time we found *only eight (8) licensed low band broadcasters* not planning to move to UHF. We found 25 low band VHF construction permits sans evidence of plans to convert to UHF. In 2009 there were 293 VHF broadcasters<sup>1</sup> This NPRM says there are 199 VHF broadcasters, and that may be so. Prior to DTV conversion, across the nation, the spectrum hosted about 52 full service stations per channel. Post DTV transition, that number in low band VHF appears to be lower than, maybe much lower than 7 stations per channel.

47 U.S.C. §159 (b) requires the Commission adjust fees,

“...to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission’s activities, including such factors as service area coverage, shared use versus exclusive use, and other factors that the Commission determines are necessary in the public interest.

This NPRM proposes to continue to assess a higher fee for VHF than for UHF. If the lower fee for

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<sup>1</sup> “Payment Units”. Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Notice of Proposed Rulemaking and Order, Adopted May 11, 2009, Released: May 14, 2009

UHF was previously justified based upon “benefits provided to the payor of the fee by the Commission’s activities ”, then it is clear the situation is now reversed and fees need revision.

Therefore, common sense suggests the Commission recalculate fees based upon actual station band occupancy, that fees be split into three tiers according to which of the three bands is occupied, bands assessing fees properly assessing realities of DTV broadcasting.

**Fee if not licensed:** The NPRM at paragraph 15, “Assessment Notifications Media Services *Licensees*,” making several references to “Licensees”. Paragraph 7 refers to operation under an STA. There the NPRM says. “ For FY 2010 regulatory fee purposes, these facilities operating under an STA will be considered to be fully operational *licensed* facilities and will be obligated to pay the same regulatory fee as a *licensed* full-service television station.”

The question of licensing needs clarification. Several stations, such as ours, filed for license renewal in 2006, but the renewals have not been granted. Since transition some stations such as KYES-TV have had problems keeping authority current, as STAs only last six months. In regard to use of the term “Licensee”, which is peppered throughout fee, orders, and NPRMs and rules, a plain English rendition of which broadcast facilities create a fee liability (or not) should be helpful. Is a station with no current authority as liable for a fee.

**Regulatory Flexibility Act:** The RFA boilerplate attached to every FCC decision is central to the situation I am addressing. It should be kept in mind that stations to which the RFA should apply are least able to retain counsel. And if, as is the case here, they take the time to prepare comments, that time itself reduces the time staff and owners can take working for the station and addressing public issues, needs, and issues (or to address regulatory issues). We suggest the Commission open a rulemaking to determine how best to facilitate the RFA within the context of this proceeding.