

**BEFORE THE**  
**Federal Communications Commission**  
**WASHINGTON, D.C. 20554**

In the Matter of	)	
	)	
Procedures for Assessment and	)	MD Docket No. 12-201
Collection of Regulatory Fees	)	
	)	
Assessment and Collection of	)	MD Docket No. 08-65
Regulatory Fees for Fiscal	)	
Year 2008	)	

To: The Commission

**REPLY COMMENTS OF SARKES TARZIAN, INC. AND**  
**SKY TELEVISION, L.L.C.**

Sarkes Tarzian, Inc. and Sky Television, L.L.C. (“Commenters”), licensees of digital VHF channel television stations, again request that the Commission revise its allocation of FCC regulatory fees for VHF and UHF stations to eliminate any disparity between the regulatory fees assessed for digital UHF stations and VHF stations. At present, although there are many more digital UHF television stations than digital VHF stations, the annual regulatory fees charged to digital VHF stations remain significantly and inappropriately higher.

Two years ago, in response to earlier filings by Commenters and others, the FCC acknowledged that the dramatic drop in the number of VHF stations as a consequence of the digital television transition has affected regulatory fee calculations in a way that “underscores the need for more fundamental, long term reform of our regulatory fee process” and made it “imperative that we take steps under our current fee structure to

mitigate the impact of this shift on television stations still operating on VHF channels.”<sup>1</sup> The Commission modestly adjusted its regulatory fee calculations for VHF and UHF stations “to move toward a combined fee category.”<sup>2</sup> Parity in fees has still not yet been mandated, and it is past time for the Commission to resolve this disparity.

The completion of the comment period in this proceeding, which is a fulfillment of the commitment the FCC made in 2011 to “update [its] record on regulatory fee rebalancing,”<sup>3</sup> has been extended so that interested parties can review, examine, and comment on the September 2012 report released by the Government Accountability Office titled *Federal Communications Commission, Regulatory Fee Process Needs to Be Updated* (the “GAO Report”). That report offers further evidence that continuing to charge digital VHF stations higher regulatory fees than digital UHF stations is unfair and unsupportable as a result of the significant reduction in the number of VHF stations and concomitant increase in the number of UHF stations since the FCC last revised the data on which it establishes the regulatory fees amounts.

Commenters previously advocated establishing a single category of regulatory fees for full power digital television stations.<sup>4</sup> They noted that, while historically VHF channels were seen as more desirable for analog broadcasting and thus assessed higher regulatory fees; this is no longer the case after the transition to digital operation. It is

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<sup>1</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2010*, Report and Order, 25 FCC Rcd 9278, 9285 (2010).

<sup>2</sup> *Id.*, at 9286.

<sup>3</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2011*, Report and Order, 26 FCC Rcd 10812, 10823 (2011).

<sup>4</sup> *Comments of VHF Digital Stations, Assessment and Collection of Regulatory Fees for Fiscal Year 2010*, MD Docket No. 10-87 (May 4, 2010).

well documented that digital VHF channels are less desirable than digital UHF channels. Commenters, and other affected broadcasters, urged action to correct the outdated service distinction in the assessment of regulatory fees in fiscal year 2010. A copy of Commenters' earlier submission is attached; the arguments then made remain valid today, and are repeated and incorporated in these comments.

In the NPRM in this proceeding, the Commission acknowledged that the “[a]llocation of regulatory fee burdens among regulatees should be fair” and recognized that “[a]ll regulatees interact with and benefit from the work of the Commission, but not in equal measure.”<sup>5</sup> The regulatory fees are based in part on the number of full-time equivalent employees (“FTEs”) that perform various functions related to the different types of FCC authorizations, utilizing data from *fiscal year 1998*. Any allocation of relative “interact[ion] and benefit” between VHF and UHF stations on this basis to justify assessing higher regulatory fees for digital VHF stations than for digital UHF stations is inherently wrong and unfair.

The GAO Report confirms this to be the case. Specifically, the GAO Report notes that from fiscal year 1998 to fiscal year 2011, the number of VHF stations declined by 48% while the number of UHF stations increased by 30%.<sup>6</sup> In actual numbers, the GAO Report reflects that in fiscal year 2011, of the total of 1,127 television stations, 261 (23.2%) were digital VHF television stations and 866 (76.8%) were digital UHF stations.<sup>7</sup> The significant move of analog VHF stations to digital UHF stations, resulting in three times as many digital UHF stations than digital VHF stations, is a compelling

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<sup>5</sup> NPRM, at ¶ 14.

<sup>6</sup> GAO Study, at 13.

<sup>7</sup> *Id.*

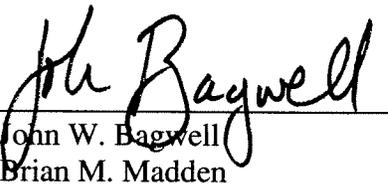
indication that the amount of FCC staff time *now* devoted to UHF and VHF facilities is far different from that historically relied upon to determine any distinction in the regulatory fees imposed on the two service band categories. The data from the GAO Report lead reasonably to the conclusion that the percentage of time spent by the FCC staff on issues related to digital UHF stations is at least equal to, if not significantly greater than, the amount of staff time spent on digital VHF station issues.

There is no justification for any continuation of higher regulatory fees for digital VHF stations based on the current data. The allocation of regulatory fees to the two categories of stations should be realigned to more appropriately reflect the number of stations in each category or the distinction eliminated altogether.

Respectfully submitted,

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## **Attachment**

Commenters' Previously Filed Comments of VHF Digital Stations,  
Submitted May 4, 2010 In MD Docket 10-87.

**BEFORE THE**  
**Federal Communications Commission**  
**WASHINGTON, D.C. 20554**

In the Matter of )  
 )  
Assessment and Collection of ) MD Docket No. 10-87  
Regulatory Fees for )  
Fiscal Year 2010 )

To: The Commission

**COMMENTS OF VHF DIGITAL STATIONS**

Sky Television, L.L.C., Spanish Broadcasting System, Inc., and Sarkes Tarzian, Inc. (“VHF Digital Stations”) hereby comment on the above-captioned Notice of Proposed Rule Making (“NPRM”) concerning regulatory fees and classifications for Fiscal Year 2010. VHF Digital Stations are all licensees of full service digital television stations that operate on VHF channels. VHF Digital Stations urge the Commission (1) to eliminate the separate regulatory fee categories for VHF and UHF commercial television stations and (2) to substitute a new category for full power digital television stations generally, while retaining the sub-categories based on market size.

Previously, the Commission has suggested that when it started collecting regulatory fees from digital television stations, it would create a separate regulatory fee category. *See Assessment and Collection of Regulatory Fees for Fiscal Year 2009*, 24 FCC Rcd 5966, 5969 ¶ 9 (2009); *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, 24 FCC Rcd 6388, 6406 ¶ 45 (2008) (“sought comment on whether to establish a regulatory fee category for digital broadcasters”). The NPRM confirms that beginning with Fiscal Year 2010, the Commission will collect annual regulatory fees

from digital full-power television stations, which had previously been exempt. NPRM ¶ 7.

The NPRM, however, contains no discussion of a separate fee category for digital stations, and the proposed FY 2010 Schedule of Regulatory Fees makes evident that the Commission intends to retain the historical distinction between VHF and UHF channels and to collect more from television stations operating on VHF channels than from television stations operating on UHF channels. NPRM at Appendix B. The differential is substantial, as shown below:

	VHF	UHF	VHF as a % of UHF
Markets 1-10	\$ 78,000	\$ 25,300	308%
Markets 11-25	\$ 60,525	\$ 24,850	244%
Markets 26-50	\$ 40,675	\$ 13,750	296%
Markets 51-100	\$ 22,725	\$ 8,225	276%
Remaining Markets	\$ 5,875	\$ 2,025	290%
Construction Permits	\$ 5,875	\$ 2,025	290%

It makes no sense in the digital era to continue to make a distinction between VHF channels and UHF channels. If anything, television stations operating on VHF channels should pay less than television stations operating on UHF channels, not two and one-half to three times as much.

Presumably, the historical reason for collecting more from VHF than from UHF channels was that analog stations operating on VHF channels generally covered larger service areas than stations operating on UHF channels.<sup>1</sup> Certainly, analog VHF channels have historically been perceived to be better than analog UHF channels.<sup>2</sup>

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<sup>1</sup> We cannot find any explanation of the reason for the distinction, other than that the original Schedule of Regulatory Fees set forth at Section 9(g) of the Act provided for different fees for VHF and UHF stations. Originally, there was only a slight difference between the two classifications. For example, Section 9(g) of the Act provided that VHF stations in Markets 1-10 would initially be assessed \$18,000 and

In the digital era, however, UHF channels are demonstrably preferred over VHF. Low VHF channels (Channels 2-6) are so inferior that television stations initially assigned low VHF digital channels were given the right to participate in a special round in the permanent digital channel election process. *See Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, 19 FCC Rcd 18279, 18306 ¶ 63 (2004). Indeed, *Connecting America: The National Broadband Plan* (released March 16, 2010) contains the following recommendation:

The FCC should pursue additional options to address VHF reception issues, such as increased power limits or adoption of enhanced antenna and receiver standards. Without these measures, VHF stations may continue to request channel reassignments to the UHF band, complicating efforts to reallocate spectrum from that band to mobile broadband use.

*Id.* at 92 (footnote omitted).

The NPRM's proposal to charge digital VHF stations 244-308% of the amount charged digital UHF stations is not consistent with the National Broadband Plan recommendation. Nor is it consistent with Section 9(b)(1)(A) of the Communications Act, which requires the Commission to take into account "service area coverage" in determining the amount of regulatory fees. "[T]he statutory fee schedule generally reflects higher fees for types of regulatees that are authorized to use larger amounts of, or

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UHF stations would be assessed \$14,400. The differential was consistent across all markets. In all markets, VHF stations paid 125% of the fee paid by UHF stations. In Public Law 104-134, Congress required the Commission to change the fee schedule to reduce the amount paid by stations in smaller markets. Pub. L. No. 104-134 (1996). But the VHF/UHF differential in the 1996 fee schedule remained in 125-131% range. *See Assessment and Collection of Regulatory Fees for Fiscal Year 1996*, 11 FCC Rcd 18774, 18786 ¶ 30 (1996). There is no justification in the history of the Commission's regulatory fee decision for a 244-308% differential as proposed for FY 2010.

<sup>2</sup> In 2001, the FCC rejected a request to reduce regulatory fees for UHF stations. The request was based, among other things, on "UHF's competitive handicaps." *Assessment and Collection of Regulatory Fees for Fiscal Year 2001*, 16 FCC Rcd 13525, 13534 ¶ 27 (2001). As explained below, the roles have reversed, and stations operating on UHF channels may now have a competitive advantage over stations operating on VHF channels in terms of service coverage and receivability.

more desirable, spectrum, or that are larger and have more customers.” *Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, 19 FCC Rcd 11662, 11666 ¶ 8 (2004) (emphasis added). As indicated above, VHF channels have no coverage advantage over UHF channels in the digital world and may in fact be inferior.

Under Section 9(b)(3) of the Act, the Commission is required to “add, delete, or reclassify services in the Schedule to reflect additions, deletions, or changes in the nature of its services as a consequence of Commission rulemaking proceedings or changes in law.” The conversion from analog to digital is just such a change. As a consequence, the Commission should create a new regulatory fee category for digital stations, as it has previously indicated it would do.

There is one other problem with the proposed FY 2010 Schedule of Regulatory Fees. In determining the amount of the fees, the Commission appears to have assumed that fees would be paid by 479 full service digital VHF television stations. *See* NPRM at Appendix A (including all of the FY 2010 Payment Units in the VHF classification except for construction permits). This estimate appears to be based on the number of VHF payment units in FY 2009 (490), which was based on the number of analog stations operating on VHF channels prior to the conversion from analog to digital. *See Assessment and Collection of Regulatory Fees for Fiscal Year 2009*, 24 FCC Rcd 5966, 6019 (2009) (Appendix H).

In estimating the amount to be collected from VHF stations for FY 2010, the Commission appears to have missed that fewer stations operate on VHF channels than in the past. Many television stations that previously broadcast on analog VHF channels made the election to move permanently to digital UHF channels. As a result, there are

significantly fewer stations operating on VHF channels than in prior years. For example, Appendix A assumes that there will be 41 payment units in VHF Markets 1-10. A quick search of CDBS reveals that today there are in fact approximately 26 commercial television stations operating on VHF channels in the top 10 markets. (The search was performed at [http://licensing.fcc.gov/cdbs/cdbs\\_docs/pa/dtvsearch/dtv\\_search.cfm](http://licensing.fcc.gov/cdbs/cdbs_docs/pa/dtvsearch/dtv_search.cfm).) It therefore seems evident that the Commission has overestimated expected FY 2010 revenues from VHF stations.

Because VHF channels are no better – in fact are probably worse – than UHF channels for broadcasting digital television signals, VHF Digital Stations respectfully urge the Commission to adopt a separate regulatory fee category for full service digital television stations, adjusted for market size, and to eliminate the anachronistic distinction between VHF and UHF stations.

Respectfully submitted,

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