

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

In the Matter of)	
)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2013)	MD Docket No. 13-140
)	
Procedures for Assessment and Collection of Regulatory Fees)	MD Docket No. 12-201
)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2008)	MD Docket No. 08-65
)	

To: The Commission

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

Sarkes Tarzian, Inc., and Sky Television, L.L.C. (the “Commenters”), licensees of digital VHF channel television stations, strongly support the Commission’s proposal to eliminate the disparity between the regulatory fees that are assessed to digital VHF and UHF broadcast stations.¹ However, the Commenters urge that this standard be adopted so that it applies to the regulatory fees assessed for FY 2013 and not delayed until FY 2014 as proposed by the Commission.² The Commission offers no justification for further delaying the elimination of this fee irrational distinction, and no compelling justification for such a delay exists.

¹ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2013 et al.*, NPRM and FNPRM, MD Docket Nos. 13-140, 12-201, and 08-65, ¶ 36 (Rel. May 23, 2013) (“NPRM”).

² *Id.*

The Commenters have advocated that the Commission should eliminate this unfair disparity on numerous occasions.³ In response to the Commenters' previous statements on this matter, the Commission has acknowledged that the decrease in the number of VHF stations following the digital transition – generally completed in 2009 – has affected its 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.”⁴

The Commission has thus far made only minor adjustments to the methodology by which it calculated the fees for the two categories of stations in order “to move toward a combined fee category.”⁵

As a result, the regulatory fees assessed against VHF stations in 2012 in many markets were more than double those assessed to UHF stations in the same market. For example, VHF stations in the top ten television markets were each assessed a fee of \$80,075 while UHF stations in the same market were each assessed a fee of \$35,350.⁶

This irrational disparity is further illustrated by the fact that Sky Television's non-network affiliated VHF station in the Norfolk-Portsmouth-Newport News, Virginia

³ See *Reply Comments of Sarkes Tarzian, Inc. and Sky Television, L.L.C.*, MD Docket Nos. 12-201 and 08-65 (Filed Oct. 23, 2012); and see *Comments of VHF Stations*, MD Docket No. 10-87 (Filed May 4, 2010); *Notice of Ex Parte Presentation*, Attorneys for Sarkes Tarzian, Inc. and Sky Television, L.L.C. MD Docket Nos. 12-201 and 08-65 (Filed Feb. 15, 2013).

⁴ *Assessment and Collection of Regulatory Fees for Fiscal Year 2010*, Report and Order, 25 FCC Rcd 9278, 9285 (2010).

⁵ *Id.*, at 9286.

⁶ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2012*, Report and Order, 27 FCC Rcd 8390, Attachment C (2012) and see *Local Television Market Universe Estimates*, Nielsen, available online at <http://www.nielsen.com/content/dam/corporate/us/en/docs/solutions/measurement/television/2012-2013-DMA-Ranks.pdf>.

market (Market 44 with 709,730 TV Homes) was assessed a regulatory fee for FY2012 of \$39,800, which is 11% higher than the fees assessed to UHF stations in New York City (Market 1 with 7,384,340 TV Homes).⁷ Similarly, Sarkes Tarzian’s VHF station in the Chattanooga, Tennessee market (Market 87 with 353,710 TV Homes) was assessed a regulatory fee of \$20,925, which is merely \$1,000 lower than the regulatory fee assessed against UHF stations in the much larger Indianapolis, Indiana market (Market 26 with 1,089,700 TV Homes).⁸

In this proceeding, the Commission observes that VHF stations were preferred historically over UHF stations due to the “greater prestige and larger audience” of VHF stations and those stations were accordingly assessed higher regulatory fees than those for UHF stations in comparable markets.⁹ However, the Commission recognizes the reality that now “digital VHF stations are less desirable than digital UHF channels,” and there is, therefore no longer a basis to continue to assess higher regulatory fees on VHF stations.¹⁰

This conclusion is consistent with other actions the Commission has taken that recognize that UHF spectrum is preferable to VHF spectrum for purposes of digital television operations, including:

- Permitting certain VHF stations, on a case-by-case basis, to permanently increase their effective radiated power to levels that would otherwise be prohibited to address reception challenges.¹¹
- Proposing to allow certain categories of VHF stations to permanently increase their effective radiated power above currently-permitted levels to address reception challenges.¹²

⁷ *Id.*

⁸ *Id.*

⁹ NPRM, at ¶ 36.

¹⁰ *Id.*

¹¹ *See, for example* WABC-TV, New York, NY, Ch. 7, BLCDT-20121031ABC.

- Seeking public comment on a study released by the Government Accountability Office that notes, in part, that between fiscal year 1998 and fiscal year 2011, the number of VHF stations declined by 48% while the number of UHF stations increased by 30%.¹³
- Allowing broadcasters initially assigned VHF channels 2 - 6 to participate in a special round of the permanent digital channel election process.¹⁴

The disparity between VHF and UHF digital operations has also been recognized by Congress. The *Middle Class Tax Relief and Job Creation Act of 2012*, which directs the Commission to conduct an incentive auction to repurpose certain spectrum currently used for broadcast operation for broadband wireless operation, expressly prohibits the Commission from involuntarily reassigning any UHF television broadcaster that wants to continue to provide service following the auction to operation in the less-desirable VHF band.¹⁵ Instead, UHF television broadcasters will be able to submit a bid option to obtain a portion of the proceeds generated by the spectrum auction to voluntarily relocate to a channel in the VHF spectrum.¹⁶

It is well-settled that spectrum in the VHF band is decidedly less preferable than UHF spectrum for purposes of digital television broadcasting. As a result, there is no justification based on current data for the Commission to continue to assess higher regulatory fees for digital VHF stations than for UHF stations. Instead, and without yet

¹² See *Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF*, Notice of Proposed Rulemaking, 25 FCC Rcd 16498 (2010).

¹³ See *Office of Managing Director Seeks Comment On Government Accountability Office Regulatory Fees Reform Report*, Public Notice, DA 12-1527 (Rel. Sept. 24, 2012).

¹⁴ See *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, 19 FCC Rcd 18279, 18306 ¶ 63 (2004).

¹⁵ Pub. L. No. 112-96 § 6403(g)(1)(B) (2012).

¹⁶ *Id.* at § 6403(a)(2).

another year's delay, the two categories of digital broadcast television stations should be combined into a single category for purposes of assessing FCC regulatory fees.

Respectfully submitted,

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