

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

In the Matter of:)
)
Assessment and Collection of Regulatory Fees) MD Docket No. 19-105
For Fiscal Year 2019)
)

**COMMENTS OF
THE NATIONAL ASSOCIATION OF BROADCASTERS**

The National Association of Broadcasters (NAB)¹ hereby submits comments on the above-captioned Further Notice of Proposed Rulemaking concerning regulatory fees.² Specifically, we request that the Commission revise the proposed regulatory fees for VHF stations to more accurately reflect their actual population served.³

Regulatory fees for television stations were historically based on Nielsen Designated Market Area (DMA) groupings. The Commission in 2018 amended its rules to use the population covered by a station’s contours instead of DMAs to more accurately reflect the audience served by a full-power broadcast television station for purposes of assessing regulatory fees, with implementation in Fiscal Year 2019.⁴ This new approach has produced significant changes in fees for some broadcasters. We generally agree with the Commission that broadcasters within the same DMA may have vastly different budgets. For example, if one

¹ The National Association of Broadcasters (NAB) is the nonprofit trade association that advocates on behalf of free local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies and the courts.

² *Assessment and Collection of Regulatory Fees for Fiscal Year 2019*, Report and Order and Further Notice of Proposed Rulemaking, MD Docket No. 19-105, (Aug. 27, 2019) (Further Notice); *Assessment and Collection of Regulatory Fees for Fiscal Year 2019*, Notice of Proposed Rulemaking, MD Docket No. 19-105 (May 8, 2019) (Notice).

³ Notice at ¶ 68.

⁴ *Assessment and Collection of Regulatory Fees for Fiscal Year 2018*, Report and Order and Order, 33 FCC Rcd 8497, 8501-8502 (2018) (FY 2018 Order).

station primarily serves only a remote corner of a DMA while another covers a far more populous metropolitan area within the same DMA, the stations' reach and revenues will likely vary.⁵ The revised regulatory fee approach attempts to account for these differences.

One flaw in the Commission's new approach is that basing fees on a station's noise limited service contour (NLSC) appears to unjustly tax VHF stations operating at power levels above their normal maximum level to overcome environmental noise in a digital world.⁶ Basing the fees on the population within a VHF station's projected NLSC may not accurately reflect the actual population receiving a viewable signal from some VHF stations. Service should include receiving a reliable digital picture, without pixilation and well above the so-called "digital cliff."⁷

Following the digital transition, some VHF channels have encountered environmental noise that has materially and adversely impacted the ability of VHF broadcasters to serve their over-the-air viewers with a reliable digital signal.⁸ Environmental noise levels of 16 and 9 dB were included in the definition of analog Principal Community ("City Grade") service at Channels 2-6 and 7-13, respectively.⁹ Although environmental (electrical) noise also affects

⁵ FY 2019 Order at ¶ 31.

⁶ Comments of Maranatha Broadcasting Company, Inc., MD Docket 19-905 (June 6, 2019), at 2 ("Of particular concern is the adverse impact [of the FCC's proposal] on VHF stations – particularly those operating with powers in excess of the normal Class maximum for these stations as they try to ameliorate the inferiority of the VHF television signal in a digital world.").

⁷ Comments of TZ Sawyer Technical Consultants, MD Docket No. 19-105 (June 7, 2019), at 2.

⁸ Reply Comments of NAB, MD Docket No. 19-105 (June 25, 2019), at 8-9. See also, *In the Matter of Amendment of Section 73.622(i), Final DTV Table of Allotments, Television Broadcast Stations (Chicago, Illinois)*, MB Docket No. 09-146 (granting request by WLS-TV to substitute channel 7 for channel 44 in order to address VHF digital reception issues after the DTV transition); CDBS File No. BPCDT- 20120216ADO (requesting power increase pursuant to waiver of FCC's rules and a multi-party interference agreement in order for WABC-TV to resolve VHF digital coverage problems after the DTV transition); LMS File No. 0000035792 (discussing digital reception problems faced by VHF stations in the Philadelphia, PA DMA due to general environmental noise).

⁹ Sixth Report and Order, Docket Nos. 8736, *et al.*, 41 FCC 148, 267-75 (1952).

VHF digital television reception, no such adjustments were included in the digital “City Grade” service planning factors.¹⁰ The Commission itself conceded that some of these lost areas would result from unavoidable engineering changes that stations were required to implement to avoid interference on their post-transition digital channel.¹¹ For example, the Commission created the digital replacement translator (DRT) service to help allay this problem by enabling some full power stations to reach existing analog viewers that would not otherwise receive service following the DTV transition.¹²

Additionally, some VHF stations have obtained Commission authority to increase power above their normally permitted levels in order to overcome such noise by boosting their signal strength to reestablish service within their core market area.¹³ Of course, raising power levels also increases the predicted reach of a station’s predicted contour, which increases the theoretical population served by a VHF station for purposes of calculating regulatory fees.

However, the new fees methodology fails to account for the fact that television reception by many such viewers is usually weak due to various hindrances, including the distance the signal must travel, the effects of terrain, building obstacles, higher levels of ambient environmental noise on the VHF band and interference from co-channel and adjacent channel signals.¹⁴ Stations have implemented power increases for the these reasons.¹⁵ Accordingly, the new regulatory fees for some VHF stations are artificially high

¹⁰ *Review of the Commission’s Rules and Policies Affecting the Conversion To Digital Television*, Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd 20594 (2001).

¹¹ *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Replacement Digital Low Power Television Translator Stations*, MB Docket No. 08-253, Report and Order, 24 FCC Rcd 5931, 5932-33 (2009).

¹² *Id.*

¹³ See, e.g., *supra* at n. 8.

¹⁴ Comments of PMCM TV, LLC, MD Docket No. 19-105 (June 7, 2019), at 2.

¹⁵ See, e.g., LMS File No. 0000034890 (granting special temporary authority for WPVI-TV, Philadelphia, PA to increase power to conduct tests to determine whether it could provide a sufficient signal level to those viewers that experience problems receiving an over-the-air

because they are based on viewer population figures that include viewers who are not able to receive a viewable signal.

Moreover, as part of the broadcast spectrum repack, some television stations are moving from the UHF band to the VHF band or shifting from high frequency VHF channels to lower frequency VHF channels. These broadcasters are not yet in a position to determine the impact on their coverage area or population served.¹⁶ Therefore, these stations are unable to discern the effect of the new regulatory fees approach on their operating budgets, or provide meaningful comments on the Further Notice.

As described in our earlier comments, NAB believes that a more reasonable approach would be to calculate fees for such VHF stations based on a station's contour under the Commission's original assignment of technical parameters during the DTV transition. These parameters were calculated so that a station's post-transition NLSC would approximately replicate the station's pre-transition analog Grade B coverage contour,¹⁷ as well as the population served. NAB submits that the population within this original contour of a digital VHF station is a more accurate reflection of a VHF station's actual coverage and population reach, and thus should be the relevant factor in calculating regulatory fees for VHS stations.

digital signal from WPVI, particularly those in large apartment buildings and condominiums in the city of Philadelphia).

¹⁶ The Commission has acknowledged that stations relocating to VHF channels as a result of the auction might face challenges due to "increased signal interference caused by the higher levels of ambient noise from electronic devices operating on or near the low VHF frequency range" and, thus, has stated that it will look favorably upon requests to exceed the VHF power and height limits for repacked VHF stations that require such relief in order to address coverage issues. See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, 6725-26 (2014).

¹⁷ *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order, 13 FCC Rcd 857 (1998), at Appendix B.

For the reasons discussed above, NAB requests that the Commission revise the proposed regulatory fees to more accurately reflect the actual population served by VHF television stations.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Rick Kaplan", with a long horizontal line extending to the right from the end of the signature.

Rick Kaplan
Larry Walke

December 6, 2019