



Virginia Association of Broadcasters Legal Review



Brooks, Pierce, McLendon, Humphrey &
Leonard, LLP
Counsel to VAB • (919) 839-0300

250 West Main Street, Suite 100
Charlottesville, VA 22902 • (434)
977-3716

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Legal Memorandum

In this issue, link to information about

Developments: [Annual Regulatory Fees Adopted](#)
[Overtime Wages: USDOL and Litigation Developments](#)

Deadline: [Annual Regulatory Fees Due September 26, 2017](#)

FCC Sets Fiscal Year 2017 Regulatory Fees and Filing Deadline; Regulatory Fees Due By **September 26**, 2017

The FCC has released its final regulatory fees for fiscal year (“FY”) 2017. In its [Report and Order](#) (“Order”), the FCC determines how it will collect \$356,710,992 (which represents a 7% decrease in regulatory fees from fiscal year 2016) from all regulatees.

Regulatory Fee Payment Window, Deadline, and 25% Late Penalty. By [Public Notice](#), the FCC announced that the Fee Filer system is now open, and the deadline to file regulatory fees is 11:59 p.m. Eastern Time on **September 26, 2017**. Late filing of regulatory fees—even by one minute—automatically results in a 25% late payment penalty (on top of the regulatory fees owed).

Regulatory Fee Amounts for Broadcasters. The FCC has released a [Fact Sheet for Media Bureau](#) licensees (including radio and television stations) discussing the regulatory fees imposed on broadcast stations. (Of course, some broadcast stations hold licenses in certain services other than those governed by the Media Bureau, e.g., Part 25 earth station licenses, which are overseen by the International Bureau.) In addition, several “schedules” setting forth the regulatory fees of greatest interest to broadcasters are attached to this memorandum:

- [Schedule A](#) contains a table of the final FY 2017 regulatory fees for radio stations (and, for the sake of comparison, also includes a table of the final FY 2016 fees that radio stations paid last year);
- [Schedule B](#) contains a table of the final FY 2017 regulatory fees for television stations (and, for the sake of comparison, also includes a table of the final FY 2016 fees that television stations paid last year); and
- [Schedule C](#) contains a table of other final FY 2017 regulatory fees that affect broadcasters.

Satellite Television Stations. Historically (since 1994), the FCC has imposed a lesser amount of regulatory fees for satellite television stations than for the corresponding full-power “parent” television stations. The FCC sought comment on whether to make a change to the regulatory fee treatment of satellite television stations, but the Order observes that the FCC did not receive sufficient feedback to support any change in the methodology for determining regulatory fees for satellite television stations.

Payments by Check Will Not Be Accepted. Consistent with its policy over the last two years, the Commission will not accept checks (including cashier’s checks and money orders) and the accompanying hardcopy “remittance advice” FCC forms (e.g., FCC Forms 159, 159-B, 159-E, 159-W) for the payment of regulatory fees. Instead, all payments must be made by wire transfer, or online via ACH (Automated Clearing House) payment, or credit card. The FCC will reject all other forms of payment (e.g., cash, checks, cashier’s checks, and money orders). Further payment procedure details have been provided by the FCC in [this Public Notice](#).

Maximum Credit Card Transaction Level. The maximum amount that can be charged on a credit card for transactions with federal agencies—including the FCC—is \$24,999.99. Attempted transactions for amounts greater than \$24,999.99 will be rejected. This limit applies to single payments, divided payments, and to combined payments of more than one bill. In other words, the FCC will aggregate multiple transactions attempted on one credit card on one day and treat them as a single transaction subject to the \$24,999.99 limit, and the FCC will not permit a broadcast licensee to divide a transaction over multiple days in order to create smaller payments that would fall below the \$24,999.99 limit each day. Thus, broadcasters who need to pay an amount greater than \$24,999.99 will need to use debit cards (Visa or MasterCard) or make payment by ACH or wire transfer. More information about making payments is available in [this Public Notice](#).

Limited Exemption for De Minimis Regulatory Fees (\$1,000 or Less). Broadcasters whose total FY 2017 annual regulatory fee liability, *including all categories of fees for which payment is due*, is \$1,000 or less are exempt from payment of FY 2017 regulatory fees. This *de minimis* threshold is not a permanent exemption. Rather, each broadcaster will need to reevaluate its total fee liability each fiscal year to determine whether it meets the *de minimis* exemption. Regulatees are responsible for calculating their own total fee obligation to determine whether they qualify for this *de minimis* exemption, and the FCC might request documentation from a broadcaster demonstrating that it really meets the exemption. Thus, if the sum total of all FY 2017 regulatory fees for your station licensee is \$1,000 or less, your fees are considered *de minimis* and you do not

have to pay FY 2017 regulatory fees for that particular licensee. And, if indeed your fees are *de minimis*, you are not required to report this exemption to the Commission.

Important Developments for Broadcasters Relating to Overtime Pay

With the Labor Day holiday weekend behind us, now is a good time to review a few overtime pay developments relevant to broadcasters. These Fair Labor Standards Act (“FLSA”) developments relate only to U.S. Department of Labor (“USDOL”) regulations; individual states may have additional regulations governing overtime wages.

A. **Background: The USDOL’s 2016 Overtime Rule and Resulting Litigation**

The FLSA requires that employees be paid minimum wage and overtime unless they meet certain specific exemptions. To be exempt, an employee must generally (1) perform specific job duties that fall into one of the exempted categories (discussed below), and (2) earn a salary above a certain threshold.

Broadcasters will recall that in 2016, the Obama Administration announced a new set of regulations that would have changed the threshold salary level for these overtime exemptions. The 2016 Overtime Rule was scheduled to take effect on December 1, 2016, and it would have set the wage threshold for administrative, executive, and some professional exempt categories at \$913 per week, more than twice the prior wage threshold of \$455 per week. The 2016 Overtime Rule also would have raised the annual salary requirement for the “highly compensated” employee exemption from \$100,000 to \$134,004.

However, shortly before the 2016 Overtime Rule’s effective date, a federal court in the Eastern District of Texas entered an order preliminarily enjoining the 2016 Overtime Rule on a nationwide basis—so the 2016 Overtime Rule never took effect. The USDOL, under the Trump Administration, has indicated in court filings an intention to draft and implement new rules in lieu of the 2016 Overtime Rule.

Meanwhile, last month, the same federal court in Texas ruled that the USDOL exceeded its authority in promulgating the new salary requirements in the 2016 Overtime Rule. Whether the current USDOL will appeal the federal court’s decision remains to be seen, but some observers think an appeal is unlikely unless the Trump Administration reads the court’s ruling as improperly limiting USDOL authority.

B. **USDOL’s Request for Information**

In July 2017, a month before the court’s order, the Department of Labor published a “[Request for Information](#)” (“RFI”) seeking public feedback to aid it in revising the existing overtime exemption regulations. The RFI asks the public for feedback on the 2016 Overtime Rule, including the following topics:

- Whether a salary level test effectively identifies employees who may be exempt;

- Whether a salary level test set at a different level than the 2016 Overtime Rule (such as a salary level calculated based on the salary level that predated the 2016 Overtime Rule, adjusted for inflation) would be more appropriate;
- Whether a salary level test that varies by region would be appropriate; and
- The extent to which employers actually adjusted salaries and/or work schedules of previously exempt employees in anticipation of the 2016 Overtime Rule taking effect, and the impacts of those adjustments.

Broadcasters (and other stakeholders) who wish to submit feedback on the RFI can do so by following the instructions in the RFI (available at <https://www.gpo.gov/fdsys/pkg/FR-2017-07-26/pdf/2017-15666.pdf>), or by contacting their labor and employment counsel. Any comments submitted in response to the RFI will become a matter of public record and will be posted to www.regulations.gov. Note that personal information contained in comments will not be changed or removed prior to online posting.

The deadline to submit feedback on the RFI to the USDOL is **September 25, 2017**.

C. What These Developments Mean for Broadcasters

The USDOL's RFI indicates that the agency is moving forward with a new rulemaking process. The topics on which the RFI seeks information, along with the federal court's orders on the 2016 Overtime Rule, suggest that the USDOL may be considering revised wage requirements (and exemption standards) that are not as high as the 2016 Overtime Rule, but which are likely to be higher than the requirements currently in effect (i.e., the pre-2016 Overtime Rule requirements). Commentary in the press reinforces this projection. With so many moving parts, though, it is difficult to predict with certainty the outcome of and timeline for the USDOL's rulemaking proceeding regarding overtime rules.

Nonetheless, there are certain proactive steps that employers can take now. For starters, broadcasters can weigh in with the USDOL to explain the implications of any changes to the overtime rules on local station operations. In addition, employers who breathed a sigh of relief when a court put the 2016 Overtime Rule on hold should keep an eye out for further developments and may wish to confer with legal counsel to ensure that employees are properly classified under the existing regulations.

If you have any questions concerning the information discussed in this memorandum, please contact your communications counsel or any of the undersigned.

Stephen Hartzell, Editor

BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.

Wade H. Hargrove
Mark J. Prak
Marcus W. Trathen
David Kushner
Coe W. Ramsey
Charles E. Coble
Charles F. Marshall
Stephen Hartzell
J. Benjamin Davis
Julia C. Ambrose
Elizabeth E. Spainhour
Timothy G. Nelson

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Schedule A

FY 2017 RADIO STATION REGULATORY FEES						
Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C0, C1 & C2
<=25,000	\$895	\$640	\$555	\$610	\$980	\$1,100
25,001 – 75,000	\$1,350	\$955	\$830	\$915	\$1,475	\$1,650
75,001 – 150,000	\$2,375	\$1,700	\$1,475	\$1,600	\$2,600	\$2,925
150,001 – 500,000	\$3,550	\$2,525	\$2,200	\$2,425	\$3,875	\$4,400
500,001 – 1,200,000	\$5,325	\$3,800	\$3,300	\$3,625	\$5,825	\$6,575
1,200,001 – 3,000,000	\$7,975	\$5,700	\$4,950	\$5,425	\$8,750	\$9,875
3,000,001 – 6,000,000	\$11,950	\$8,550	\$7,400	\$8,150	\$13,100	\$14,800
>6,000,000	\$17,950	\$12,825	\$11,100	\$12,225	\$19,650	\$22,225
AM Radio Construction Permits (All Markets) \$555						
FM Radio Construction Permits (All Markets) \$980						

FY 2016 RADIO STATION REGULATORY FEES						
Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1, C3	FM Classes B, C, C0, C1 & C2
<=25,000	\$990	\$715	\$620	\$685	\$1,075	\$1,250
25,001 – 75,000	\$1,475	\$1,075	\$925	\$1,025	\$1,625	\$1,850
75,001 – 150,000	\$2,200	\$1,600	\$1,375	\$1,525	\$2,400	\$2,750
150,001 – 500,000	\$3,300	\$2,375	\$2,075	\$2,275	\$3,600	\$4,125
500,001 – 1,200,000	\$5,500	\$3,975	\$3,450	\$3,800	\$6,000	\$6,875
1,200,001 – 3,000,000	\$8,250	\$5,950	\$5,175	\$5,700	\$9,000	\$10,300
3,000,001 – 6,000,000	\$11,000	\$7,950	\$6,900	\$7,600	\$12,000	\$13,750
>6,000,000	\$13,750	\$9,950	\$8,625	\$9,500	\$15,000	\$17,175
AM Radio Construction Permits (All Markets) \$620						
FM Radio Construction Permits \$1,075						

Schedule B

FULL POWER TELEVISION STATION REGULATORY FEES		
Digital TV (47 CFR part 73) VHF and UHF Commercial	FY 2016 Fees	FY 2017 Fees
Markets 1-10	\$60,675	\$59,750
Markets 11-25	\$45,675	\$45,025
Markets 26-50	\$30,525	\$30,050
Markets 51-100	\$15,200	\$14,975
Remaining Markets	\$5,000	\$4,925
Construction Permits	\$5,000	\$4,925
Satellite Television Stations (All Markets)	\$1,750	\$1,725

Schedule C

Other Regulatory Fees of Interest to Broadcasters

Fee Category	FY 2016	FY 2017
PLMRS (47 CFR part 90) (paid at time application for license is submitted)	\$25	\$25
Microwave (47 CFR part 101) (paid at time application for license is submitted)	\$25	\$25
Low Power TV, Class A TV, TV/FM Translators & Boosters	\$455	\$430
Earth Stations	\$345	\$360
Cable Television Systems (per subscriber)	\$1.00	\$0.95
Direct Broadcast Service (DBS) (per subscriber)	\$0.27	\$0.38