



# Virginia Association of Broadcasters Legal Review



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## Legal Memorandum

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[FCC to Propose “Blue Alert” EAS Code in June](#)

### Fiscal Year 2017 Regulatory Fees Proposed; FCC Seeks Comment on the Accuracy of Its List of TV “Satellite” Stations

The FCC has released its proposed regulatory fees for fiscal year (“FY”) 2017. In the [Notice of Proposed Rulemaking](#) (“NPRM”), the FCC proposes to collect \$356,710,992 from all regulatees, which represents a 7 percent decrease in regulatory fees from fiscal year 2016. The FCC expects to collect approximately \$59 million from radio and television stations, roughly the same amount from cable systems, and about \$12.3 million from DBS providers. **If you read no other part of this article, please review the paragraph below concerning satellite television stations, as there is an action item for any commercial television broadcaster who believes that it operates a “satellite” station.**

*Proposed Amounts for Broadcasters.* Attached to this memorandum is a series of “schedules” setting forth the proposed regulatory fees of greatest interest to broadcasters:

- [Schedule A](#) contains a table of the proposed 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 table of the proposed 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 proposed 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. For example, in FY 2016, all full-power satellite television stations, irrespective of DMA, were assessed a \$1,750 regulatory fee. By comparison, full power television stations were assessed \$5,000, \$15,200, \$30,525, \$45,675, or \$60,675, depending on their DMA. The NPRM makes clear that the FCC is considering a change, and the FCC is seeking comment on whether to increase the regulatory fees for satellite television stations. More specifically, the FCC is proposing to increase the amount to 50 percent or 75 percent of the amount assessed on television stations in DMAs 101-210 (FY 2016 the regulatory fee amount for television stations in DMAs 101-201 was \$5,000, and the FCC is proposing \$4,950 for FY 2017). The FCC observes in the NPRM that “some stations claim to operate as ‘satellites,’ and pay a lower regulatory fee . . . although they have not been officially granted satellite status by the Commission. Because satellite status may be derived only as a result of Commission action, only stations granted such status by the Commission may pay the satellite television regulatory fee.” Attached to the [NPRM \(at Appendix E\)](#) is a list of stations that the FCC considers to be bona fide satellite stations according to its records, and the FCC seeks comment on the accuracy of the list. Thus, all television broadcasters who believe that they operate a “satellite” television station should check the FCC’s list and consult with legal counsel if they do not see a station they expect to find on the list.

*Payments by Check Will Not Be Accepted.* Consistent with the last two years, the Commission will not accept checks (including cashier’s checks and money orders) and the accompanying hardcopy “remittance advice” 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. Other forms of payment (e.g., cash, checks, cashier’s checks, money orders) will be rejected. Further payment procedure details will be provided when the FCC issues a public notice announcing the regulatory fees payment window.

*Maximum Credit Card Transaction Level.* Since June 1, 2015, the 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.

*Limited Exemption for De Minimis Regulatory Fees.* Historically, the FCC exempts regulated entities from paying regulatory fees when their total fee obligation is *de minimis*. Last year, broadcasters (and other regulated entities) whose total FY 2016 annual regulatory fee liability was \$500 or less were exempt from payment of FY 2016 regulatory fees. In years prior, the *de minimis* threshold had been \$10 (yes, ten dollars). In the NPRM, the FCC proposes to increase the *de minimis* threshold to \$1,000 and solicits comments on whether \$1,000 (or any other amount) is the appropriate threshold by which to define “*de minimis*” for purposes of the regulatory fee exemption. The *de minimis* threshold applies only to filers of annual regulatory fees, and it is not a permanent exemption. In other words, each licensee must reevaluate their total fee liability each fiscal year to determine whether they meet the *de minimis* exemption in any particular year.

*Regulatory Fee Payment Window and Deadline.* As in past years, after the FCC finalizes and adopts the regulatory fees, it will announce, in a public notice, a period of time (the “window”) during which regulatory fees may be timely paid and the deadline for making timely payment. The deadline traditionally falls in September. We will keep you apprised of developments.

*Comments on Proposed Regulatory Fees.* Broadcasters who wish to weigh in on the proposed regulatory fee amounts, on the *de minimis* threshold for exemption from regulatory fees, on the accuracy of the satellite station list, or on any other issue raised in the NPRM, must file comments by June 22, 2017, and reply comments by July 7, 2017.

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## FCC Releases Filing Requirements for Post-Auction TV Transition Progress Reports for Non-Reimbursable Stations; Filing Schedule Is Identical to Reimbursable Stations (First Reports Due By October 10)

In a recent [Public Notice](#) (“Notice”), the FCC announced that it is imposing post-Auction progress reporting requirements on those full power and Class A television stations that are not eligible for reimbursement of expenses from the TV Broadcast Relocation Fund but that will be moving to a new channel assignment as part of the rest of the post-Auction transition (“Non-Reimbursable Stations”). Non-Reimbursable Stations include stations with winning Auction bids to move from UHF to a VHF channel, stations that elected no reimbursement funds in exchange for receiving a waiver of the FCC’s service rules, and a handful of Class A television stations previously deemed by the FCC not to be eligible for reimbursement of relocation costs. (The FCC also used the Notice to reject several requests by NAB and others to modify Form 387 and the filing requirements.)

The progress reporting requirements adopted for Non-Reimbursable Stations may sound familiar: they are the same requirements that the FCC [adopted back in January](#) for those stations that are eligible for reimbursement of repacking expenses (“Reimbursable Stations”). As discussed further below, that means that Non-Reimbursable Stations will have to file “Transition Progress Reports” on FCC Form 387 both on a quarterly basis starting in third quarter 2017 and at certain other intervals in the transition process.

The FCC had asked for comments in January regarding whether the reporting requirements for Reimbursable Stations should be applied to Non-Reimbursable Stations. The Notice concludes that requiring progress reports from both Reimbursable and Non-Reimbursable Stations will improve the ability of the Commission, broadcasters, tower companies, equipment providers, engineering consultants, other industry participants, and the public to monitor and fully capture the progress of the transition, track resource requirements, and identify potential problems during the 39-month transition period.

Non-Reimbursable Stations will be required to file Form 387 on a quarterly basis, beginning in October 2017. Form 387 must be electronically filed via the FCC's LMS (Licensing and Management System) by the tenth day of the month after the end of the relevant calendar quarter (i.e., October 10 for the third quarter, January 10 for the fourth quarter, etc.—in other words, on the same schedule as Children's Television Programming Reports). Thus, both Non-Reimbursable and Reimbursable Stations must file their first Form 387 by October 10, 2017.

In addition to the quarterly reports, the Notice establishes that the FCC will require each Non-Reimbursable Station to file a Transition Progress Report: (1) ten weeks before the end of the station's assigned construction deadline; (2) ten days after completion of all work related to construction of the station's post-Auction facilities; and (3) five days after the station ceases broadcasting on its pre-Auction channel. After a station files a Transition Progress Report certifying that it has completed all work related to construction of its post-Auction facilities and that it has ceased operating on its pre-Auction channel, it will no longer be required to file quarterly Transition Progress Reports.

To reiterate, these same deadlines all apply to Reimbursable Stations as well.

All information provided in the reports will be made publicly available both in the FCC's LMS electronic filing system and in each station's respective online public inspection file.

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## NOAA Will Begin Using Three New EAS Codes on June 1, 2017

June 1, 2017, marks the official start of the [2017 Atlantic Hurricane Season](#), which means that it is also the date that NOAA/NWS will begin making use of the three new EAS codes—EWW (extreme wind warning), SSA (storm surge watch), SSW (storm surge warning)—[approved by the FCC](#) in July 2016.

As we advised last year, these three new codes should present relatively little burden on broadcasters. First, implementation of the three new codes is voluntary for broadcasters: In the words of the Commission, “We will not mandate installation of these codes” by stations; “EAS Participants are free to implement them if and when they see fit.” Second, manufacturers of EAS gear are required to integrate the new codes into new equipment (and make software upgrades available to stations). Once EAS manufacturers integrate the new codes, stations may voluntarily upgrade their existing equipment to implement the new codes. (According to the FCC—based on EAS vendor filings made in the proceeding—an upgrade for many stations will consist of

“minimally burdensome and low cost software downloads.”) Finally, only when it comes time for a station to *replace* its existing EAS equipment will the station then be required to procure equipment that has the new codes integrated.

In the interest of public safety and service to the local community, each station should go ahead and carefully consider when to update its EAS equipment to account for these three new important codes. That way, stations will be prepared at an appropriate time to give effect to EAS messages from NWS that use the EWW, SSA, SSW designations.

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## Another New EAS Code? Chairman Pai Proposing to Add “Blue Alert” Code to the EAS Lexicon

Drawing on the success of AMBER Alerts distributed via EAS, Chairman Pai has announced that the Commission will vote in June on a Notice of Proposed Rulemaking to add a “Blue Alert” code to the Emergency Alert System (“EAS”) protocol to help protect law enforcement officers and the public.

Blue Alert EAS messages would be used voluntarily by state authorities to notify the public of threats to law enforcement and to help apprehend dangerous suspects. Generally, Blue Alerts would be used to warn the public when there is actionable information related to a law enforcement officer who is missing, seriously injured or killed in the line of duty, or when there is an imminent credible threat to an officer. Accordingly, a Blue Alert distributed via EAS could quickly warn the public if a violent suspect may be in a particular community and provide instructions to listeners and viewers to stay safe and steps to take if the suspect is spotted.

If adopted by the FCC, the proposal would amend the FCC’s EAS rules by creating a dedicated Blue Alert event code so that state and local authorities have the option to send these warnings to the public through EAS channels. Currently a majority of states have enacted Blue Alert legislation, but a very small minority of such states contemplate the use of EAS for Blue Alert message distribution (most Blue Alert states distribute messages via releases to broadcasters and other media, via online and digital platforms, via highway signs, and the like). The FCC’s Notice of Proposed Rulemaking is highly unlikely to make Blue Alert EAS messages mandatory for states or stations.

We will keep you apprised of information as this proceeding develops.

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

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*Schedule A*

FY 2017 RADIO STATION REGULATORY FEES (proposed)						
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	\$1,050	\$750	\$650	\$715	\$1,150	\$1,300
25,001 – 75,000	\$1,575	\$1,125	\$975	\$1,075	\$1,725	\$1,950
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 – 3,000,00	\$7,975	\$5,700	\$4,950	\$5,425	\$8,750	\$9,875
3,000,001 – 6,000,00	\$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) \$650						
FM Radio Construction Permits \$1,150						

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 Proposed Fees
Markets 1-10	\$60,675	\$60,100
Markets 11-25	\$45,675	\$45,300
Markets 26-50	\$30,525	\$30,225
Markets 51-100	\$15,200	\$15,150
Remaining Markets	\$5,000	\$4,950
Construction Permits	\$5,000	\$4,950
Satellite Television Stations (All Markets)	\$1,750	\$1,725

*Schedule C*

**Other Regulatory Fees of Interest to Broadcasters**

Fee Category	FY 2016	FY 2017 (proposed)
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	\$435
Earth Stations	\$345	\$360
Cable Television Systems (per subscriber)	\$1.00	\$0.96
Direct Broadcast Service (DBS) (per subscriber)	\$0.27	\$0.38