September 4, 2020

Legal Memorandum

*In this issue, please find information about*

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| *Deadlines:* | **[September 14, 2020:](#_C-band_Lump_Sum_1)**[C-band Lump Sum Elections Due](#_C-band_Lump_Sum_1)**[September 23, 2020:](#_Enforcement_Bureau_Issues)** [Deadline for](#_Enforcement_Bureau_Issues)[Commercial](#_Enforcement_Bureau_Issues)[Radio Stations to Opt-in to RMLC and SESAC License Agreement for Period Covering January 1, 2019, through December 31, 2022](#_Enforcement_Bureau_Issues)**[September 25, 2020:](#_FCC_Finalizes_Regulatory)** [FY 2020 Regulatory Fees Due](#_FCC_Finalizes_Regulatory)  |

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# FCC Finalizes Regulatory Fee Amounts for Fiscal Year 2020;Payments Due by **September 25, 2020**

The FCC has finalized the regulatory fee amounts broadcasters will be required to pay for Fiscal Year 2020, according to a recently released [Report and Order and Further Notice of Proposed Rulemaking](https://docs.fcc.gov/public/attachments/FCC-20-120A1.pdf) (the “Order”). Despite sustained advocacy from NAB and others requesting that the Commission reconsider and lower the fees proposed for radio broadcasters, the FCC declined to meaningfully alter those fee amounts.

In all, the FCC will collect $339,000,000 from all regulates in FY 2020 fees—the same amount in regulatory fees as were assessed in fiscal year 2019. The Commission’s allocation to the Media Bureau (which includes fees collected from radio, television, cable, and DBS operators) increased from 35.9% in FY 2019 to 37.3% in FY 2020.

*Regulatory Fee Amounts for Broadcasters*. Broadcasters may recall that the Commission had proposed regulatory fees for radio stations approximately 4% to 5% higher than the corresponding FY 2019 fees and proposed to completely transition to a methodology to calculate full-power television stations’ regulatory fees based solely on population.

 The Order largely adopts each of those proposals, and in so doing declines requests by NAB and others to calculate regulatory fees in a different manner and to substantially lessen the fee amounts assessed to radio broadcasters. Although the Order indicates that the Commission discovered a “computational error” in its proposed calculation for radio broadcaster regulatory fees, the corresponding adjustment made in the Order lowers those fees by only approximately 2.5%.

 Attached to this memorandum please find a series of “schedules” that set forth the FY 2020 regulatory fees of greatest interest to broadcasters:

* [Schedule A](#SchedA) contains a table of the FY 2020 regulatory fees for radio stations (and, for the sake of comparison, it also includes a table of the final FY 2019 fees that radio stations paid last year).
* [Schedule B](#SchedB) contains a 46-page document detailing the TV regulatory fees organized by station call sign. As discussed in detail below, the Commission’s methodology for calculating TV stations’ fees has changed. Please note that this may cause a fairly substantial deviation between your FY 2020 and FY 2019 regulatory fee payment amounts.
* [Schedule C](#SchedC) contains a table of other FY 2020 regulatory fees that affect broadcasters; it too includes a table of such fees assessed in FY 2019.

*Change in Methodology for Television Broadcast Stations.* Prior to FY 2019, television broadcast stations paid regulatory fees based on the market they serve, as defined by Nielsen Designated Market Areas (DMAs). Last year, however, the FCC adopted a new methodology for how regulatory fees would be assessed for full-power broadcast television stations in FY 2019 and beyond. The new methodology bases calculations on the actual population served by the station’s noise limited service contour (“NLSC”), instead of DMAs. In order to facilitate the transition to the new fee structure, last year’s FY 2019 regulatory fees took a “blended” approach to assessing television regulatory fees, i.e., the FY 2019 fees took into account both DMA size and the actual population covered by the station, based on the station’s NLSC.

 For FY 2020 (and going forward), the Order indicates that the FCC has now fully transitioned to assessing television regulatory fees based on the actual-population methodology, which is calculated using the population covered by the station’s projected NLSC, multiplied by a factor of $.007837 for FY 2020 (the multiplication “factor” is reassessed each year and is equal to the revenue amount required from all television fee categories divided by the total population count of all feeable call signs).

 The 46-page document attached as “Schedule B” to this memo lists, by TV station call sign, the population data, and the resulting population-based regulatory fee for FY 2020 for each full-power broadcast television station, including each satellite station. The same information can also be found in the Order’s Appendix G. Note that, for some stations, the fee amount for FY 2020 is substantially different than the fee amount for FY 2019.

*Payment Flexibility in Light of the COVID-19 Pandemic*. Although the Commission declined to meaningfully lower or defer regulatory fee payments for FY 2020, the Order adopts several other forms of relief intended to assist regulatees (including broadcasters) who have been financially harmed by the COVID-19 pandemic, including the following:

* The FCC will not require separate filings for requests for fee waivers, reductions, deferrals, or extended payment terms (i.e., installment payment requests) for financial hardship, and instead will accept single submissions requesting any combination (or all) of the foregoing forms of relief. Such requests may be submitted electronically to 2020regfeerelief@fcc.gov.
* The Order reduces the interest rate the Commission charges on installment payments to an unspecified “nominal rate,” and waives the typical requirement to provide a down payment in order to be eligible for installment payments.
* In recognition of the fact that “demonstrating financial hardship caused by the pandemic may require different financial documentation than the documentation the Commission has traditionally accepted,” the Order directs the Managing Director (who is responsible for the administration and management of the FCC) to “work with individual[s]” who request relief to obtain any additional documents necessary to render a decision on the request.
* The Order partially waives the FCC’s “red light” rule by giving the Managing Director discretion to permit regulatees with outstanding debts owed to the Commission to nonetheless request waivers, reductions, deferrals, and installment payment terms for FY 2020 fees. (Please note, however, that regulatees for whom the red light rule is waived will be required to resolve all delinquent debt currently owed by one of the several methods outlined in the Order.)

 Further information regarding how to apply for the forms of relief set forth above (and the documentation applicants are recommended to submit) are described in a recently issued [Public Notice](https://docs.fcc.gov/public/attachments/DA-20-1033A1.pdf). Among other things, please note that a request for waiver or reduction of a FY 2020 regulatory fee based on financial hardship must be filed on or before the payment deadline of September 25, 2020.

*Payments By Check Will Not Be Accepted*. The Commission will not accept regulatory fee payment by check (including cashier’s checks and money orders) or by hardcopy “remittance advice” forms (e.g., FCC Forms 159, 159-B, 159-E, 159-W). Instead, all payments must be made by wire transfer or online via ACH (Automated Clearing House) payment, or credit card. Other forms of payment will be rejected. We will provide further payment procedure details as we get closer to the **September 25, 2020**, payment deadline.

*Late Payment Penalty.* Although multiple parties urged the FCC to waive the customary late payment penalty of 25%, the FCC declined the request to do so. On the first day following the deadline for paying the FY 2020 fees, regulatees will be assessed a late payment penalty of 25% of any unpaid amount of regulatory fees owed, and will begin accumulating interest on both the 25% penalty amount and the unpaid amount of regulatory fees owed.

*Maximum Credit Card Transaction Level.* As has been the case for several years now, 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.

*Limited Exemption for De Minimis Regulatory Fees*. The FCC exempts regulated entities from paying regulatory fees when their total fee obligation is considered “*de minimis*.” The *de minimis* threshold is currently $1,000. This means that broadcasters (and other regulated entities) whose total FY 2020 annual regulatory fee liability is $1,000 or less are exempt from payment of FY 2020 regulatory fees. The *de minimis* threshold applies only to filers of annual regulatory fees. Each licensee must reevaluate its total fee liability each fiscal year to determine whether its meets the *de minimis* exemption in any particular year.

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# C-band Lump Sum Elections Due **September 14, 2020,** for Qualifying Incumbent Earth Stations\*Things to Consider When Deciding Whether or Not to Elect\*

With less than two weeks until the Monday, **September 14, 2020**,deadline by which all registrants and licensees of qualifying incumbent earth stations must determine whether or not to elect lump sum reimbursement for the costs they will incur as part of the impending C-band transition, we wish to provide you with several important items you may wish to consider in making your decision.

*Background*. We’ve recently written to you multiple times about the C-band—the swath of spectrum between 3.7 and 4.2 GHz, a large portion of which the Commission will make available via a public auction for new terrestrial wireless uses. (If you would like us to resend any of our prior memoranda on the subject, each of which contains additional background on the proceeding, please let us know.) Currently, registrants and licensees of qualifying, incumbent earth stations (i.e., those that are eligible for reimbursement) face a **September 14, 2020**, deadline by which to either (1) elect to receive a lump sum payment to cover the average, estimated costs of transitioning all of their qualifying, incumbent earth stations, or (2) forego the lump sum payment in favor of remaining eligible for reimbursement of the actual, reasonable costs of relocating their qualifying, incumbent earth stations.

*Considerations When Determining Whether to Make a Lump Sum Election*. Although each broadcaster faces and must carefully analyze unique circumstances regarding whether or not to make a lump sum election for their qualifying, incumbent earth stations, below we catalog several especially important considerations that all broadcasters may wish to consider:

* **If you elect lump sum reimbursement, you must do so for all of your earth stations.** You cannot treat your earth stations “piecemeal,” which means that you may only elect lump sum reimbursement if you do so for all of your earth stations. Because the costs associated with transitioning earth stations can vary widely (more on this below), it will be important for broadcasters with multiple qualifying, incumbent earth stations to carefully analyze the costs and benefits of transitioning each and every one of their earth stations.
* **If you elect lump sum reimbursement, your election is irrevocable.** If you elect lump sum reimbursement, you must disclaim all rights to reimbursement for the actual, reasonable costs of relocating your qualifying, incumbent earth stations. This means that if you elect lump sum reimbursement and the actual costs of relocating your earth station end up exceeding the amount you received as a result of your lump sum election, you will not be able to recoup any of those excess costs.
* **If you elect lump sum reimbursement, you assume sole responsibility for ensuring that you successfully transition your earth stations, and you must do so by deadlines established by the Satellite Operators.** Each of the Satellite Operators is required by the FCC to hit specific deadlines associated with their commitment to clear the band on an expedited basis (note that, for broadcasters, the relevant Satellite Operators are primarily SES and Intelsat). Accordingly, each Satellite Operator has established its own deadlines and timelines for successfully transitioning the C-band (and with it, all associated earth stations), as generally outlined in the final transition plans each Satellite Operator has filed with the FCC. If you elect lump sum reimbursement, you will assume all responsibility for successfully transitioning your earth stations by the deadlines that have been established by the Satellite Operators (whereas, by contrast, if you forego lump sum reimbursement in favor of remaining eligible for reimbursement of the actual, reasonable relocation costs of transitioning your qualifying, incumbent earth stations, the Satellite Operators will have the ultimate responsibility for transitioning your earth station(s) by the relevant deadlines). Because not every Satellite Operator’s transition plan goes into specific detail regarding the required deadlines each earth station registrant/licensee must hit, we strongly encourage you to contact the following help lines (depending on which Satellite Operator corresponds to your earth stations) to obtain additional details on the anticipated (1) specifics and (2) timing for the transition of your specific earth stations.

**INTELSAT:** Intelsat has contracted with WESCO (formerly Satellite Engineering Group) to perform broadcaster outreach for the transition. You may contact them via email at intelsat@wesco.com or by phone at (719) 388-7546.

**SES:** You may contact the SES help desk regarding the C-band transition via email at [CbandHelp@ses.com](file:///C%3A%5CUsers%5Cpatrcros%5CND%20Office%20Echo%5CVAULT-YQ4LR0TH%5CCbandHelp%40ses.com) or by phone at (609) 987-4400.

* **The anticipated actual costs of transitioning earth stations vary widely between licensees and registrants.** As noted above, the actual anticipated costs of transitioning earth stations can differ substantially, based on, for example: the current location of your dishes; the age of your antennas and/or facilities; and whether you will need to transition to receiving signal from a different satellite after the transition or from various different satellites *during* the transition. For precisely this reason, the lump sum amounts represent only the FCC-estimated average cost of transitioning various classes of earth stations—i.e., it will likely cost substantially more than the applicable lump sum amount for some earth stations to successfully transition. Consequently, in addition to calling the help lines set forth above, it will be very important to gain a thorough understanding of what is likely to be required for the transition of your specific earth station(s), including by engaging your engineering team or a qualified consulting engineer to help with that analysis.
* **Regardless whether or not you elect lump sum reimbursement, you are unlikely to receive any payment until sometime next year.** As a purely practical matter, the Relocation Payment Clearinghouse (i.e., the entity that will be in charge of administering lump sum payments and reasonable, actual-cost reimbursement) will not begin to receive funding until after the forthcoming [December auction](https://docs.fcc.gov/public/attachments/FCC-20-23A1.pdf) of new flexible-use overlay licenses in the 3.7-3.98 GHz band. Accordingly, making a lump-sum election does not necessarily mean that you will receive payment any sooner than if you were to instead forego lump sum payment in favor of reimbursement for the actual, reasonable costs of relocating your eligible, incumbent earth stations.

We hope you find the foregoing non-exclusive list of considerations helpful in determining whether or not to elect lump sum reimbursement by the September 14, 2020, deadline. We strongly encourage you to contact your communications counsel to discuss the factual specifics of your particular reimbursement situation.

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# RMLC and SESAC Finalize New Radio Performance License Agreement; Eligible Commercial Radio Stations Must Opt-in by **September 23, 2020**

The Radio Music License Committee (“RMLC”) and the performing rights organization SESAC have reached an agreement regarding commercial radio station licensing and royalty rates for the musical works contained in SESAC’s repertoire for the four-year period covering January 1, 2019, to December 31, 2022. Eligible commercial radio stations may opt-in to the agreement by Wednesday, **September 23, 2020**, by visiting [www.sesac.com/#!/rmlc](https://www.sesac.com/#!/rmlc) and (1) submitting a 2019 Annual Report and (2) reviewing and signing the agreement.

*Background*. The Radio Music License Committee (“RMLC”) represents commercial radio stations in music licensing matters with (more often *against*) performing rights organizations such as ASCAP, BMI, SESAC, and GMR. While BMI and ASCAP licenses and rate-setting are governed by longstanding consent decrees, SESAC licensing and rate-setting are not—and that set the stage for litigation between SESAC and RMLC. RMLC filed an antitrust lawsuit against SESAC in 2012, which was later settled in 2015 on the basis that SESAC would agree to have its license fees determined by binding arbitration on rates for the next 20 or so years. The first such arbitration was completed in 2017, and it covered the period January 1, 2016, through December 31, 2018. Commercial radio stations then had until March 31, 2018, to opt-in to representation by RMLC in negotiations with SESAC for the next license period, covering January 1, 2019, through December 31, 2022.

*The New Agreement*. The new agreement (i.e., the agreement that covers January 1, 2019, through December 31, 2022) maintains the terms and royalty rates from the prior agreement. The rates include a blanket license fee of 0.2557% of net revenue and an “All-Talk” rate of 0.0575% of revenue (to qualify for “All-Talk” rates, a station must certify that it is “currently broadcasting programs consisting substantially of news narration or dialogue, devoid of feature musical presentations, such musical elements as are broadcast being interwoven with commercial announcements, or as background music in live and/or recorded coverage of news events and the like”). The agreement applies to commercial radio stations’ over-the-air broadcasts, simulcast streams, and HD signals. A copy of the agreement is available both at the SESAC opt-in link set forth above, as well as [on RMLC’s website](https://dehayf5mhw1h7.cloudfront.net/wp-content/uploads/sites/893/2020/08/24160819/SESAC-2019-Blanket-License.pdf).

*Which Stations are Eligible to Participate.* Participation in the new agreement is limited to commercial radio stations that initially authorized the RMLC by March 31, 2018, to represent them in negotiations against SESAC for the license term of January 1, 2019, through December 31, 2022, and that maintained their eligible status throughout that process.

*What to Do*. First, determine if your station is eligible to participate in the new agreement. Any questions you have about eligibility can most directly be answered by the [RMLC](http://www.radiomlc.org/contact-us/). Second, if your station is eligible, complete and submit the agreement forms, applicable exhibits, and 2019 annual report online via the [reporting portal](https://licensees.sesac.com/login?returnUrl=%2Fhome) on [SESAC’s website](https://www.sesac.com/#!/rmlc) no later than **September 23, 2020**. Please note that owners of multiple stations wishing to opt-in should complete the Group Amendment and Annex 1, and that stations using an “All-Talk” format as of January 1, 2019, that changed to an All-Talk format during 2019, or that were purchased with an All-Talk format in place during 2019, must complete an “All-Talk Amendment.”

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*Tim Nelson, Editor*

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This Legal Review should in no way be construed as legal advice or a legal opinion on any specific set of facts or circumstances. Therefore, you should consult with legal counsel concerning any specific set of facts or circumstances.

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**Schedule A**

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| **FY 2020 RADIO STATION REGULATORY FEES** |
| Population Served | AM Class A | AMClass B | AMClass C | AMClass D | FM ClassesA, B1 & C3 | FM Classes B, C, C0, C1 & C2 |
| <=25,000 | $975 | $700 | $610 | $670 | $1.075 | $1,225 |
| 25,001 – 75,000 | $1,475 | $1,050 | $915 | $1,000 | $1,625 | $1,850 |
| 75,001 – 150,000 | $2,200 | $1,575 | $1,375 | $1,500 | $2,425 | $2,750 |
| 150,001 – 500,000 | $3,300 | $2,375 | $2,050 | $2,275 | $3,625 | $4,150 |
| 500,001 – 1,200,000 | $4,925 | $3,550 | $3,075 | $3,400 | $5,450 | $6,200 |
| 1,200,001 – 3,000,000 | $7,400 | $5,325 | $4,625 | $5,100 | $8,175 | $9,300 |
| 3,000,001 – 6,000,000 | $11,100 | $7,975 | $6,950 | $7,625 | $12,250 | $13,950 |
| > 6,000,000  | $16,675 | $11,975 | $10,425 | $11,450 | $18,375 | $20,925 |

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| **FY 2019 RADIO STATION REGULATORY FEES** |
| Population Served | AM Class A | AMClass B | AMClass C | AMClass D | FM ClassesA, B1 & C3 | FM Classes B, C, C0, C1 & C2 |
| <=25,000 | $950 | $685 | $595 | $655 | $1,000 | $1,200 |
| 25,001 – 75,000 | $1,425 | $1,000 | $895 | $985 | $1,575 | $1,800 |
| 75,001 – 150,000 | $2,150 | $1,550 | $1,350 | $1,475 | $2,375 | $2,700 |
| 150,001 – 500,000 | $3,200 | $2,325 | $2,000 | $2,225 | $3,550 | $4,050 |
| 500,001 – 1,200,000 | $4,800 | $3,475 | $3,000 | $3,325 | $5,325 | $6,075 |
| 1,200,001 – 3,000,000 | $7,225 | $5,200 | $4,525 | $4,975 | $7,975 | $9,125 |
| 3,000,001 – 6,000,000 | $10,825 | $7,800 | $6,775 | $7,450 | $11,950 | $13,675 |
| > 6,000,000  | $16,225 | $11,700 | $10,175 | $11,200 | $17,950 | $20,500 |

**[Schedule B](#SchedB)**

**(Attached as Separate PDF)**

**Schedule C**

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| **OTHER REGULATORY FEES OF INTEREST TO BROADCASTERS** |
| Fee Category | FY 2020  | FY 2019  |
| PLMRS (47 CFR part 90) (per license) (exclusive use) | $25 | $25 |
| Microwave (47 CFR part 101) (per license) | $25 | $25 |
| Low Power TV, Class A TV, TV/FM Translators & Boosters | $315 | $345 |
| Earth Stations | $560 | $425 |
| Cable Television Systems (per subscriber) | $0.89 | $0.86 |
| Direct Broadcast Satellite (DBS) (per subscriber) | $0.72 | $0.60 |