



## LEGAL REVIEW

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June 6, 2022

# Legal Memorandum

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## FCC Issues Notice of Proposed Rulemaking on FY 2022 Regulatory Fees

Late last week, the Commission released its annual [Notice of Proposed Rulemaking](#) (the “Notice”) contemplating proposed regulatory fees for the current fiscal year—i.e., Fiscal Year 2022 (“FY 2022”). Although the Notice seeks comment on multiple different issues, naturally the most significant item on which broadcasters may wish to comment is the FCC’s proposed regulatory fee schedule for FY 2022. If adopted in its current form, the proposed regulatory fee schedule would increase both radio and television regulatory fee payments as compared to the last several years. The Commission is also seeking comment on a number of other issues of note, including: (1) the methodology for calculating television broadcaster fees based on population; (2) whether to increase the annual de minimis threshold; and (3) whether to adopt any new regulatory fee categories.

**REMEMBER:** All the fee amounts discussed below are currently *just proposals* set forth in the Notice. It is possible for the proposed fees to change prior to the FCC’s formal FY 2022 Regulatory Fees Order.

*The Notice’s Proposed Regulatory Fee Amounts for Radio Broadcast Stations.* Under the Notice’s regulatory fee proposal for radio broadcast stations, it appears that most radio stations would see a fee increase of approximately **13%** if the Notice is adopted as currently drafted. Below, please find a chart comparing the FY 2021 regulatory fees that were ultimately adopted for radio stations, followed by the Notice’s proposed FY 2022 radio station regulatory fees.

<b>FY 2021 RADIO STATION REGULATORY FEES</b>						
<b>Population Served</b>	<b>AM Class A</b>	<b>AM Class B</b>	<b>AM Class C</b>	<b>AM Class D</b>	<b>FM Classes A, B1 &amp; C3</b>	<b>FM Classes B, C, C0, C1 &amp; C2</b>
<b>&lt;=25,000</b>	\$975	\$700	\$610	\$670	\$1,070	\$1,220
<b>25,001 – 75,000</b>	\$1,465	\$1,050	\$915	\$1,000	\$1,605	\$1,830
<b>75,001 – 150,000</b>	\$2,195	\$1,575	\$1,375	\$1,510	\$2,410	\$2,745
<b>150,001 – 500,000</b>	\$3,295	\$2,365	\$2,060	\$2,265	\$3,615	\$4,125
<b>500,001 – 1,200,000</b>	\$4,935	\$3,540	\$3,085	\$3,390	\$5,415	\$6,175
<b>1,200,001 – 3,000,000</b>	\$7,410	\$5,320	\$4,635	\$5,090	\$8,130	\$9,270
<b>3,000,001 – 6,000,000</b>	\$11,105	\$7,975	\$6,950	\$7,630	\$12,185	\$13,895
<b>&gt;6,000,000</b>	\$16,665	\$11,965	\$10,425	\$11,450	\$18,285	\$20,850

<b><i>*PROPOSED*</i> FY 2022 RADIO STATION REGULATORY FEES <i>*PROPOSED*</i></b>						
<b>Population Served</b>	<b>AM Class A</b>	<b>AM Class B</b>	<b>AM Class C</b>	<b>AM Class D</b>	<b>FM Classes A, B1 &amp; C3</b>	<b>FM Classes B, C, C0, C1 &amp; C2</b>
<b>&lt;=25,000</b>	\$1,105	\$795	\$690	\$760	\$1,210	\$1,380
<b>25,001 – 75,000</b>	\$1,660	\$1,195	\$1,035	\$1,140	\$1,815	\$2,070
<b>75,001 – 150,000</b>	\$2,485	\$1,790	\$1,555	\$1,710	\$2,725	\$3,105
<b>150,001 – 500,000</b>	\$3,735	\$2,685	\$2,330	\$2,570	\$4,090	\$4,665
<b>500,001 – 1,200,000</b>	\$5,590	\$4,025	\$3,490	\$3,845	\$6,125	\$6,985
<b>1,200,001 – 3,000,000</b>	\$8,400	\$6,040	\$5,245	\$5,775	\$9,195	\$10,490
<b>3,000,001 – 6,000,000</b>	\$12,585	\$9,055	\$7,860	\$8,655	\$13,780	\$15,720
<b>&gt;6,000,000</b>	\$18,885	\$13,585	\$11,790	\$12,990	\$20,680	\$23,585

As radio broadcasters likely recall, last year (FY 2021) the FCC also initially proposed regulatory fee increases for radio broadcasters, in amounts ranging approximately 5% to 15% higher than FY 2020 regulatory fees. Vigorous advocacy from NAB and other industry participants successfully persuaded the Commission to reconsider and lower those FY 2021 fees (as well as those for television broadcasters). This year, the NAB has again taken note of the proposed increases in the current, FY 2022 Notice, issuing a [press release](#) last Friday calling the “staggering 13% fee increase” for radio broadcasters “unjustified” and a risk to “undermining the unique locally focused service that our communities rely upon.”

*Population-Based Fees for Television Broadcast Stations.* We have written to you before about how, until recently, regulatory fees for television broadcast stations were assessed based on the market served by a given station, as defined by Nielsen Designated Market Areas (“DMAs”). Four years ago, however, the FCC adopted a new methodology for assessing regulatory fees for full-power broadcast television stations by using the actual population covered within the station’s noise-limited service contour (“NLSC”), instead of DMAs. The Commission has used this “population-based” methodology exclusively since FY 2020.

This year, the Commission has chosen not to reopen that decision and proposes to continue to assess fees for full-power broadcast television stations based on the population covered by a full-service broadcast station’s NLSC. The Notice does, however, open the floor for discussion regarding the proposed mechanism for calculating regulatory fees in accordance with the population-based methodology.

For those interested in the fine details of how the current methodology works, it operates by calculating fees using the population covered by the station’s projected NLSC, multiplied by a factor derived by taking the revenue amount required from all television fee categories and dividing it by the total population count of all “feeable” call signs. For FY 2022, the Notice proposes adopting a factor of .88 of one cent (\$.008803) per person served within a full-service broadcast station’s NLSC, which is an increase over the \$.007793 multiplication factor used for FY 2021. Appendix G of the Notice lists all relevant proposed fee information for each television licensee. If the proposals in the Notice are adopted as-is, our review shows that most television broadcasters can expect a fee increase ranging anywhere from several hundred to several thousand dollars (or more, in the case of certain larger broadcasters).

*De Minimis Threshold and Additional Regulatory Fee Categories.* Two prior proposals from NAB are flagged in the Notice as items on which comments are solicited: (1) how the Commission should calculate the costs of collecting regulatory fees in establishing the annual de minimis threshold of \$1,000, and (2) whether unlicensed spectrum users, especially large technology companies, should be required to pay regulatory fees.

Regarding the de minimis threshold, under the Communications Act, if the Commission determines that the cost of collecting a regulatory fee would exceed the amount being collected from a party, the Commission is permitted to exempt that party from paying regulatory fees. The FCC has previously explained that the fee collection process involves many steps, such as: invoicing; processing payments; responding to debtor questions and disputes; debt transfer for third-party collection; and data compilation, preparation, and validation. Since 2017, the Commission has estimated that the cost of such processes exceeds \$1,000 on average and that therefore the de minimis threshold should be set at the current, \$1,000 level.

Last year, in response to an FCC request for comments as to how the Commission can improve its regulatory fee process overall, NAB proposed that the de minimis threshold be increased above \$1,000 to assist smaller broadcasters. The Notice for FY 2022 now seeks comment on NAB’s proposal and requests that commenters discuss, among other things: (1) to what level the de minimis threshold should be increased; (2) whether the cost of collecting a regulatory fee begins after the fees are due and once delinquencies occur; (3) how the FCC should calculate the costs of collection; and (4) whether the cost of collection should begin when the FCC collects data on the licensee’s regulatory fee status, which generally occurs before the due date for such fees.

Additionally, as noted above, the Notice seeks comment on whether the Commission should adopt “new regulatory fee categories”—a proposal advanced last year by NAB in specific relation to adding unlicensed spectrum users, especially “Big Tech,” into the regulatory fee payor base. Although the Notice does not expressly address NAB’s comments that unlicensed spectrum users “take up significant Commission resources . . . yet pay no associated regulatory fees as a result,” additional comment is solicited in order to help inform FCC consideration of those and other issues related to the adoption of new regulatory fee categories (if any).

Comments on the Notice’s various proposals are due by July 5, 2022. Reply comments are due by July 18.

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*Tim Nelson, Editor*

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