

§ 0.41 Functions of the Office.

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(g) To serve as the Commission's advocate for competition throughout the telecommunications industry and, specifically, to help to ensure that Commission policy development employs uniform or consistent analysis and that FCC policy encourages and promotes competitive market structures in affected industry segments by providing bureaus/offices with the necessary support to identify, evaluate, and effectively resolve competitiveness issues.

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(m) To advise the Commission in the preparation and revision of rules and the implementation and administration of ethics regulations and the Freedom of Information, Privacy, Government in the Sunshine and Alternative Dispute Resolution Acts.

(n) To assist and make recommendations to the Commission, and to individual Commissioners assigned to review initial decisions, as to the disposition of cases of adjudication and such other cases as, by Commission policy, are handled in the same manner and which have been designated for hearing.

1. Section 0.251 is amended by revising paragraph (b); and removing and reserving paragraphs (c), (d) and (e), to read as follows:

§ 0.251 Authority delegated.

* * * * *

(b) Insofar as authority is not delegated to any other Bureau or Office, and with respect only to matters which are not in hearing status, the General Counsel is delegated authority:

(1) To act upon requests for extension of time within which briefs, comments or pleadings may be filed.

(2) To dismiss, as repetitious, any petition for reconsideration of a Commission order which disposed of a petition for reconsideration and which did not reverse, change, or modify the original order.

(3) To dismiss or deny petitions for rulemaking which are repetitive or moot or which, for other reasons, plainly do not warrant consideration by the Commission.

(4) To dismiss as repetitious any petition for reconsideration of a Commission order denying an application for review which fails to rely on new facts or changed circumstances.

(c) [Reserved]

(d) [Reserved]

(e) [Reserved]

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47 CFR Part 1

[MD Docket No. 94-19; FCC 95-257]

FY 1994 Regulatory Fees

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In June 1994, the Commission adopted rules to implement Section 9 of the Communications Act to provide for the assessment and collection of regulatory fees to recover the cost of the Commission's enforcement, policy and rulemaking, user information and international activities. This MO&O is responding to petitions for reconsideration and clarification of the *FY 1994 Report and Order*. This MO&O clarifies the standards under which waivers, reductions or exemptions will be granted and the rule adopted broadens the scope of the exemptions for nonprofit entities. The intended effect of this MO&O is to provide guidance to the public and avoid any potential uncertainty.

EFFECTIVE DATE: September 5, 1995.

FOR FURTHER INFORMATION CONTACT: Jerome D. Remson, Office of General Counsel, (202) 418-1780.

SUPPLEMENTARY INFORMATION: A summary of the Commission's *Memorandum Opinion and Order* (MO&O), adopted June 15, 1995 and released June 22, 1995, is set forth below. The full text of this document is available for inspection and copying during normal business hours in the Administrative Law Division, Office of General Counsel (Rm. 616), 1919 M Street, N.W., Washington, D.C. The full text may also be purchased from the Commission's copy contractor, International Transcription Service, Inc. (ITS), 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

Summary of Memorandum Opinion and Order

1. Introduction. In the *Implementation of Section 9 of the Communications Act*, 59 FR 30984 (June 16, 1994), 9 FCC Rcd 5333 (1994) (*FY 1994 Report and Order*), the Commission adopted rules to implement Section 9 of the Communications Act, as amended, 47 U.S.C. 159. Those rules provide for the assessment and collection of regulatory fees to recover the cost of the

Commission's enforcement, policy and rulemaking, user information and international activities. 47 U.S.C. 159(a). Now before the Commission are petitions for reconsideration and clarification of the *FY 1994 Report and Order*. A list of the parties filing petitions for reconsideration are set forth in Appendix A. We also considered several issues arising from petitions for waiver, reduction or exemption of the regulatory fees assessed for the 1994 fiscal year (FY 94).

2. Discussion. *Small Entities*. We properly rejected Fireweed's contention that our efforts to distribute the *NPRM* to small businesses were inadequate. As noted in the *FY 1994 Report and Order*, 9 FCC Rcd at 5337 n.6, 5 U.S.C. 609 requires that we "assure that small entities have been given an opportunity to participate in the rulemaking." Although the statute lists appropriate measures which the Commission may use to ensure that the small entities have such an opportunity to participate, the Act does not require the Commission to follow any specific procedure.

3. We also rejected Fireweed's contention that our rules are biased against small entities. To the contrary, in implementing the fee schedule, we have expressly adopted procedures for payment of fees that are designed to minimize the burden on small entities, in accordance with congressional intent. Congress provided that the Commission may grant individual waivers of the fees, and it is our policy to grant individual waivers where imposition of the regulatory fee would be inequitable or would impinge on a regulatee's ability to serve the public. To the extent that Fireweed objects to specific fees, the fees for FY 1994 were adopted by Congress, and we did not depart from the fee schedule for FY 1994.

4. *Nonprofit Entities*. Section 9(h) exempts nonprofit entities from the regulatory fee requirement. 47 U.S.C. 159(h). In the *FY 1994 Report and Order*, we held that the nonprofit exemption will be available only to those regulatees who establish their nonprofit status under section 501 of the Internal Revenue Code. 26 U.S.C. 501. 9 FCC Rcd at 5340 ¶ 17. We have received requests for exemptions from the regulatory fees from regulatees that have been certified as nonprofit entities by state agencies (*i.e.*, they hold nonprofit status at the state level) but which do not possess Section 501 IRS Certification. Thus, there are instances where *bona fide* nonprofit entities should be accorded exemptions under Section 9(h) even though they have not established their tax exempt status

under Section 501. Therefore, while we will continue to grant an automatic exemption for nonprofit status to all Section 501 tax exempt organizations, we are amending our rules to allow entities to demonstrate nonprofit status by certification from a state or other government entity. See 47 CFR 1.1162(c).

5. *Confidentiality.* The *FY 1994 Report and Order*, 9 FCC Rcd at 5372, ¶ 110, denied a request to amend Section 0.457 of the rules to protect the confidentiality of data submitted with regulatory fee payments. We noted that regulatees could request confidentiality for such data when they submitted their fee payments. NYNEX and Cellular Telecommunications Industry Association (CTIA) now request the Commission to reconsider this determination. For FY 1994, common carrier fee calculations were based on the number of a carrier's presubscribed lines, access lines, or subscribers. The carriers argue that this information should be regarded as confidential because it can be used by competing carriers to determine the extent of market penetration and thereby gain a competitive advantage. Thus, the carriers conclude that the Commission should amend Section 0.457 of the rules to protect the confidentiality of the fee calculations.

6. The requests to amend the rules will be denied. There has been no convincing showing of a need to modify the rules. We are unaware of any FOIA requests for access to fee data. Moreover, if any regulatee perceives a need to protect information filed with the Commission from public disclosure, they can request confidential protection pursuant to 47 CFR 0.459 when they file information with the Commission.

7. *Bearer circuits:* Sprint Corporation (Sprint) filed a petition requesting reconsideration of the language in the *FY 1994 Report and Order*, 9 FCC Rcd at 5367 ¶ 98, which reads:

The fee is to be paid by the facilities-based common carrier activating the circuit in any transmission facility for the purpose of service to an end user or resale carrier. Private submarine cable operators also are to pay fees for circuits sold on an indefeasible right of use (IRU) basis or leased in their private submarine cables to any customer of the private cable operator.

Sprint asserts that this language applies the regulatory fees for active 64 Kilobyte per second international circuits to both the operators of private submarine cable systems and to the common carriers who use circuits on such systems to provide international telecommunication services. This policy results in Sprint paying two regulatory

fees for the PTAT-1 cable circuits used by Sprint Communications Co. L.P. for common carrier services. Sprint complains that this results in it being double charged as both the international carrier and the private cable operator for the same private cable circuits. Sprint points out that there is no similar double charge for other common carrier cable systems, and that the double charges place it at a severe and unjustified competitive disadvantage.

8. We agree with Sprint, and we will eliminate the double charge assessments for private submarine cable system circuits used by international common carriers. We will modify the above quoted language to read:

Private submarine cable operators also are to pay fees for circuits sold on an indefeasible right of use (IRU) basis or leased to any customer other than an international common carrier authorized by the Commission to provide U.S. international common carrier services.

9. *Waiver Issues.* In the *FY 1994 Report and Order*, 9 FCC Rcd at 5344 ¶ 29, we stated that we would waive the regulatory fees "on a case by case basis in extraordinary and compelling circumstances upon a showing that a waiver * * * would override the public interest in reimbursing the Commission for its regulatory costs." However, the *FY 1994 Report and Order* did not establish specific standards for waivers of the fees or define with specificity what information would be required.

10. We will grant waivers of the fees on a sufficient showing of financial hardship. Mere allegations or documentation of financial loss, standing alone, will not support a waiver request. Rather, we will grant a waiver only when the impact of the regulatory fee will affect a regulatee's ability to serve the public. It will be incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fees and to maintain its service to the public. Regulatees may be asked to provide information such as a balance sheet and profit and loss statement (audited if available), a cash flow projection for the next twelve months (with an explanation of how it is calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information.

11. Evidence of bankruptcy or receivership is sufficient to establish financial hardship. Moreover, where a bankruptcy trustee, receiver, or debtor in possession is negotiating a possible transfer of a license, the regulatory fee

could act as an impediment to the negotiations and the transfer of the station to a new licensee. Thus, we will waive the regulatory fees for licensees whose stations are bankrupt, undergoing Chapter 11 reorganizations or are in receivership.

12. We will also grant petitions for waivers of the regulatory fees on grounds of financial hardship from licensees of broadcast stations which are dark (not operating). When a station is dark, it generally is either without or with greatly reduced revenues. Moreover, broadcast stations which are dark must request permission to suspend operation pursuant to Section 73.1740(a)(4) of the Rules. 47 CFR 73.1740(a)(4). Petitions to go dark are generally based on financial hardship. Under these circumstances, imposition of the regulatory fees could be an impediment to the restoration of broadcast service, and it is unnecessary to require a licensee to make a further showing of financial hardship.

13. We will waive the regulatory fee for community-based translators if the licensee: (1) Is not licensed to, in whole or in part, and does not have common ownership with, the licensee of a commercial broadcast station; (2) does not derive income from advertising; and (3) is dependent on subscriptions or contributions from the members of the community served for support. Waivers will also ease the regulatory burden on these regulatees. However, the burden will remain on the translator licensees to document their eligibility for the waiver.

14. Congress in adopting the Schedule of Fees of FY 1994 did not distinguish between the fees for full service and satellite television stations. Thus, licensees with a full-service station and satellite stations, may be assessed with separate but identical fees for their full service stations and each of their supporting satellite stations. We find, however, that the regulatory fees can be particularly inequitable for licensees operating satellite stations. Thus, for those licensees that have timely filed petitions for reconsideration or for waiver or reduction of the regulatory fees for satellite stations, we will grant partial waivers and reduce the fees for licensees operating satellite stations so each set of parent and satellite stations will pay a regulatory fee based on the total number of television households served, and will be assessed a single regulatory fee comparable to the fee assessed stations serving markets with the same number of television households.

15. Withers Broadcasting Company of Texas also argues that the Commission

should reduce the regulatory fees for certain television stations operating in large markets, but which are part of that market only because the residents in the station's service area primarily view the market's principle city's stations. These stations are generally UHF stations, they lack network affiliations, and are located outside of the principle city's metropolitan area and do not provide a Grade B signal to a substantial portion of the market's metropolitan areas. Often these stations are not carried by cable systems serving the principal metropolitan areas. These stations will be assessed a fee based on the number of television households served, and will be charged the same fee as stations serving markets with the same number of television households. For example, stations that do not serve the principal metropolitan areas within their assigned markets and serve fewer than 242,000 television households will be assessed the same regulatory fee as stations not located in the top-100 markets. We will entertain requests for reductions in the regulatory fee assessments from those licensees that have filed timely petitions for waiver or reduction of the regulatory fee.

16. COMSAT General Corporation (COMSAT) petitioned the Commission to either reduce or waive the regulatory fee for FY 1994 for its D-2 satellite. COMSAT deorbited its D-2 satellite on December 16, 1993, and *inter alia*, it urges the Commission to reduce proportionally the regulatory fee to reflect the limited period in which it was in operation. Fees are assessed on an annual basis and the Commission, will not issue pro rata refunds. COMSAT's request for a proportional reduction of the regulatory fee is denied. However, COMSAT's request for a waiver of the fee, as well as other requests for waivers discussed here, will be considered by the Office of Managing Director pursuant to its delegated authority to rule upon requests to waive, reduce or defer regulatory fees. 47 CFR 1.1166(a).

Ordering Clauses

17 Accordingly, it is ordered that the Petitions for Reconsideration identified in Appendix are granted to the extent indicated in the full text and in all other respects are denied.

18. It is further ordered that the rule changes as specified above and below are adopted.

19. It is further ordered that the rule changes made herein will become effective 60 days after publication in the **Federal Register**. This action is taken pursuant to Section 4(i), 4(j), 9 and 303(r) of the Communications Act, as

amended, 47 U.S.C. 154(i), 154(j), 159 and 303(r).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Appendix

Petitions for Reconsideration were filed by:

Dennis C. Brown & Robert H. Schwaninger

Cellular Telecommunications Industry Association

Fant Broadcasting Company

Fireweed Communications

National Association of Broadcasters

NYNEX Corporation

Southwestern Bell Telephone Company

Sprint Corporation

Withers Broadcasting Company of Texas

Rule Change

Part 1 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for Part 1 continues to read:

Authority: 47 U.S.C. 151, 154, 303, and 309(j) unless otherwise noted.

2. Section 1.1162 is amended by revising paragraph (c) to read as follows:

§ 1.1162 General exemptions from regulatory fees.

* * * * *

(c) Applicants and permittees who qualify as nonprofit entities. For purposes of this exemption, a nonprofit entity is defined as: an organization duly qualified as a nonprofit, tax exempt entity under section 501 of the Internal Revenue Code, 26 U.S.C. 501; or an entity with current certification as a nonprofit corporation or other nonprofit entity by state or other governmental authority.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 675 and 677

[Docket No. 950414105-5166-02; I.D. 033095A]

RIN 0648-AH69

Groundfish of the Bering Sea and Aleutian Islands Area; Chum Salmon Savings Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is implementing Amendment 35 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI). This amendment prohibits the use of trawl gear in a specified area of the Bering Sea during the pollock non-roe season. Regulatory amendments also are implemented that would increase 1995 observer coverage for mothership processor vessels and for some shoreside processors receiving pollock harvested in the catcher vessel operational area (CVOA), and would require the mothership processor vessels and shoreside processors to obtain the capability for electronic transmission of daily observer reports. This action is necessary to reduce chum salmon bycatch amounts in the pollock fishery and is intended to promote the objectives of the FMP.

EFFECTIVE DATE: August 1, 1995.

ADDRESSES: Copies of Amendment 35 and the environmental assessment/regulatory impact review/final regulatory flexibility analysis (RIR/FRFA) prepared for Amendment 35 are available from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: 907-271-2809.

FOR FURTHER INFORMATION CONTACT: Kaja Brix, 907-586-7228.

SUPPLEMENTARY INFORMATION: Fishing for groundfish by U.S. vessels in the exclusive economic zone of the BSAI is managed by NMFS according to the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson Act), and is implemented by regulations governing the U.S. groundfish fisheries