



Annual FCC Regulatory Fees Due September 27, 2016

September 7, 2016

Please be reminded of the upcoming filing listed below:

Annual FCC Regulatory Fees

Most Federal Communications Commission (FCC or Commission) licensees and other regulated entities must pay regulatory fees annually to offset costs associated with the FCC's enforcement, public service, international, policy, and rulemaking activities. Fee amounts change each year and vary by type of activity. On September 6, 2016, the FCC released a [Public Notice](#) announcing a payment deadline for annual regulatory fees of **no later than 11:59 PM Eastern Daylight Time on September 27, 2016**. Although the regulatory fees will not officially become effective until published in the Federal Register, entities that are required to pay fees have discretion to submit payments at any time before the deadline.

The Commission will not issue bills for the regulatory fees and it is the licensee's responsibility to determine the fees owed (regardless of the amount posted on the Fee Filer system).

Regulatory Fees

As noted in the Commission's Assessment and Collection of Regulatory Fees for Fiscal Year 2016 [Report and Order](#) released on September 2, 2016, for FY 2016, the FCC has assessed and plans to collect a total of \$384 million in regulatory fees. The Commission calculates regulatory fees by first determining the number of full time employees (FTEs) who perform the regulatory activities specified in section 9(a) of the Communications Act. These employees, or FTEs, are categorized as either "direct" or "indirect." "Direct" FTEs are employees who perform regulatory activities in one of the "core" bureaus (i.e. the Wireless Telecommunications Bureau, Media Bureau, Wireline Competition Bureau, and part of the International Bureau).

Of note, this year's fees include a one-time, across-the-board increase of approximately 11% - 13% to all fee categories to reflect an additional \$44,168,497 in costs related to moving or reducing the Commission's offices. One fee category experiencing a significant increase is that of Direct Broadcast Satellite (DBS) providers - a category first subjected to regulatory fees last year - which regulatory fees more than doubled this year, from 12 cents per subscriber to 27 cents per subscriber, based on factors including the Commission resources dedicated to pending multichannel video programming distributor proceedings. Additional information about several of the fee categories is included below and fact sheets detailing the types of fees, fee codes, payment methods and options for all regulatory fees can be found on the FCC's [website](#).

- **Telecommunications Service Providers.** The Interstate Telecommunications Service Provider (ITSP) Fee must be paid by most companies, including VoIP providers and audio bridging providers. For FY2016, ITSPs were assessed the second-highest portion of regulatory

fees – approximately \$146.5 million or 38% of the total FTE allocation. Wireline services regulatory fees must be paid for authorizations that were granted on or before October 1, 2015 and, where a permit or license was transferred or assigned after October 1, 2015, the holder of the permit or license as of the fee due date (September 27, 2016) will be responsible for payment. This rule also applies to audio bridging services. The fee for ITSPs is based on end user telecommunications revenues reported on the 2016 FCC Form 499-A and this fee has increased only slightly to \$.00371 per assessable revenue dollar for FY2016.

- **CMRS Providers.** Wireless Telecommunications Bureau regulatees are responsible for approximately \$83.1 million (21.6% of the FTE allocation) in regulatory fees for FY2016. Of this amount, CMRS mobile service providers (cellular, public mobile) must pay a total of approximately \$73 million while CMRS messaging service providers will be responsible for contributing approximately \$184,000. These fees are based on the number of subscribers or telephone number counts as of December 31, 2015. CMRS mobile service providers will pay \$0.20 per subscriber or telephone number, up from \$0.17 for FY2015, while CMRS messaging service providers experienced no rate change and will pay \$0.08 per subscriber or telephone number.
- **Submarine Cable Systems and International Bearer Circuits.** International Bureau regulatees were assessed approximately \$21.3 million in regulatory fees (5.6% of the FTE allocation). Of this fee amount, submarine cable providers are responsible for paying \$5.48 million in regulatory fees, an increase from FY2015's assessment of \$4.65 million but less than the fee amount proposed in the Commission's regulatory fee NPRM. Individual submarine cable system fees are paid on a per cable landing license basis, based on circuit capacity as of December 31, 2015. A detailed chart of fee amounts based on Gbps is available on the Commission's website.
- International bearer circuit fees account for \$638,000 of these regulatory fees and will be paid at a rate of \$0.02 per 64KB circuit for FY2016. The Commission considered but declined to eliminate the distinction between common carrier and non-common carrier terrestrial circuits for regulatory fee purposes. Consequently, non-common carrier terrestrial circuits continue to be excluded from the International Bearer Circuit regulatory fee. While expressing a need to review and update the terrestrial fee methodology to reflect changes in the international market and to simplify administration, the Commission concluded the record was insufficient to make a decision on the issue. The Commission noted such a review, including of the methodology for assessing fees between terrestrial and satellite circuits and the allocation of international bearer circuit fees between submarine cable systems and terrestrial and satellite circuits, must be considered within a separate rulemaking proceeding.
- **Earth Stations.** The FY2016 NPRM sought comment on an EchoStar proposal to assess different levels of regulatory fees on different types of earth station licensees. EchoStar commented that a subsequent FCC adoption of streamlined processing and reporting for earth station licensees had eliminated the need for differentiated regulatory fees. As no commenters supported the proposal, the Commission concluded there was no basis to assess differentiated regulatory fees on earth station licensees. For FY 2016, earth stations will be responsible for contributing a total of approximately \$1.17 million in regulatory fees.
- **Cable TV Systems (including IPTV).** For FY2016 Cable TV providers will be responsible for contributing a total of approximately \$64.2 million in regulatory fees. Cable television providers must pay regulatory fees for the number of basic cable television subscribers and the

Commission notes operators may calculate their subscriber count based on the number of subscribers on a “typical day in the last full week” of December 2015 instead of on a subscriber count as of December 31, 2015. Cable TV Systems (including IPTV) pay \$1.00 per basic cable television subscriber.

De Minimis Exemptions and Requests for Fee Waivers

Under the Commission’s *de minimis* threshold, those entities whose annual regulatory fees, across all fee categories, total \$500 or less, are exempt from paying FY 2016 fees. Entities are responsible for evaluating their fee liability each year to determine if the entity still qualifies for the *de minimis* exemption and must be prepared to provide supporting documentation to the Commission upon request.

Licensees and regulated entities may request waivers, reductions or deferments of regulatory fees. The Commission grants such requests on a case-by-case basis and only where good cause is shown and grant of the request would promote the public interest. Licensees requesting waiver or reduction of regulatory fees must pay the full regulatory fee which will be refunded if the request is granted. If the licensee cannot afford to pay the regulatory fee, it must submit, with the waiver/reduction request, a separate petition, with supporting financial documentation, requesting a financial hardship deferral. Waiver/reduction requests submitted without full regulatory fee payment or the separate deferral petition will be dismissed and the FCC will apply the 25% late payment penalty. Waiver requests filed by delinquent debtors will be dismissed as will deferral petitions that do not contain required financial documentation.

The waiver/reduction request and any deferral petition must be received by the Commission by the **September 27, 2016** regulatory fee payment deadline. Waiver/reduction requests that include a deferral petition must be filed with the FCC Secretary’s office and filings sent to other locations or to FCC staff may be dismissed. Note that, if the request is being submitted to the FCC by messenger or hand delivery, the FCC accepts messenger and hand delivered filings only between 8:00am and 7:00pm.

Note that stringent consequences apply for missing the waiver/reduction request and deferral petition filing due date: dismissal of the waiver/reduction request or deferral petition; the fee payment will be delinquent; the licensee will be placed on red light status; the 25% late payment penalty will be assessed and the licensee will be responsible for payment of the penalty, associated collection charges, interest and additional penalties.

Payment Methods and Late Payment Penalties

As a reminder, fees not paid by the due date are subject to a **mandatory 25% late payment penalty** and delinquent payors are subject to Red Light status. The Commission also imposes administrative processing charges and interest on delinquent fees. The FCC does not waive late payment penalties.

All licensees and regulatees must utilize the FCC's Fee Filer system to coordinate paying any fees. Fee Filer is now available for viewing and payment of 2016 regulatory fees and it can be found at <https://apps.fcc.gov/FeeFiler/login.cfm>. Payors must pay **online** by credit card, Automated Clearing House (ACH) payment or wire transfer – the Commission does not accept payment via check, cashier check or money order. Credit card payments to federal agencies are limited to \$24,999.99 and transactions, including single payments or bundled payments of multiple bills, greater than \$24,999.99 will be rejected. Payment must be **received** by the Commission by the **11:59PM EDT**

September 27, 2016 deadline.

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Please be advised that attorneys in Kelley Drye & Warren's Telecommunications Practice Group are experienced in addressing Federal Communications Commission reporting issues and are able to assist clients in paying regulatory fees. For information on the fee amount applicable to your company, please feel free to contact us or visit our blog at www.commlawmonitor.com.

For further information on any of these filings, please contact your usual Kelley Drye attorney.