

FCC Regulatory Fees Order for FY 2016 Released; September 27 Payment Deadline Set

September 6, 2016

On September 6, 2016, the Federal Communications Commission 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. Most federal licensees and other regulated entities must pay one or more categories of regulatory fees which are designed to offset costs associated with the FCC's enforcement, public service, international, policy, and rulemaking activities. Fact sheets detailing the types of fees, fee codes, payment methods and options can be found on the FCC's [website](#).

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.

- **Telecommunications Service Providers.** Interstate telecommunications service providers (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 pay 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 \$0.080 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 [here](#).
- 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.

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 may also request the Commission waive, reduce or defer regulatory fees upon a showing of good cause and a determination that the requested action would serve the public interest. Entities making such requests must pay the fee, which would be refunded upon a grant of the request, or support the request with documentation of financial hardship. Such waiver/reduction/exemption request – and the fee payment or hardship documentation – are due before the September 27, 2016 fee due date. Filers must be sure to submit the request to the Commission Secretary as submissions sent directly to Commission staff or other contacts such as the Fee help desk may be dismissed. Requests submitted after the September 27, 2016 deadline will be dismissed and any unpaid fees will be delinquent and will trigger a 25% late payment penalty and other sanctions.

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.

Payors must pay by [online](#) 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.

Attorneys in Kelley Drye & Warren’s Communications practice group are experienced in addressing FCC regulatory fees issues and are able to assist clients in submitting payments. For further information, please contact Steve Augustino at (202) 342-8612, Denise Smith at (202) 342-8614 or your usual Kelley Drye attorney.