

Before the  
Federal Communications Commission  
455 12th Street S.W.  
Washington D.C. 20554

ET Docket No. 02-135, FCC-02-322  
In the Matter of Commission seeks Comment on Spectrum Policy Task Force Report  
Comments of Thomas C. Smith

#### Opening Summary

I would like to comment on the Report to the Commission on the findings of the Spectrum Policy Task Force. In reading this Report and the reports of the four working groups, I find much to be concerned about the future management of the radio spectrum in the United States. While there were many good points raised concerning interference issues, it seemed that the major recommendations of the report concerning the actual management of the spectrum by the FCC was by allowing a free-for-all among users by the greater use of unlicensed spectrum or the abdication of the FCC's responsibilities by the exclusive sale of blocks of spectrum to what could be only referred to as a reseller in the guise of bandmanagers. Many of the proposals in this report seem to be Wall Street and theoretical economists answers to the allocation of Spectrum. These theories are to similar to those that in the last couple of years have proved to be disastrous for many large corporations in this nation.

I have been a technician in the broadcast industry for over 33 years and have been involved as a local frequency coordinator in the Society of Broadcast Engineers Coordination Program for 10 years. In that time, I have seen many different interference issues and problems with various FCC allocation and licensing methods. I have come to the conclusion that the shortage spectrum is not driven by demand only, but be due in large part to problems concerning the licensing methods of new users and FCC management of the spectrum, mainly caused by poor inventorying of spectrum from poor recordkeeping caused by poor database management include the poor use or lack of use of computer technology.

There will be greater demands on the spectrum in the coming years with many useful new services, but there will also be many requests for spectrum that is wasteful. In the last few years, we have seen new technologies that allow us to use spectrum in ways that were never thought possible. The use of 800 MHz and 2 GHz spectrum for phones and data without regard for line of sight transmission would never have be conceived of even 30 years ago. But, we still have many longtime users that still need to be accommodated including radio, TV, and satellite broadcasting, land mobile and public safety radio, and common carrier and private microwave. These services either still earn much money or add to the economy in ways that may not be able to be measured. We also have to ask is it good spectrum management for someone to use spectrum to avoid the one time cost of wiring an office building for Computer networks or phone service.

#### Spectrum Management Issues

In this section, I wish to express my views on Spectrum Management along with Spectrum Rights and Responsibilities. These issues are what concern me the most about all the reports proposals. I fear that in these proposals, the task force is suggesting what may be the giving away of the store. They are suggesting that the FCC abandon its traditional role in the management of spectrum from the "Command and Control" model to either allowing others to

purchase the right to management spectrum in the "Exclusive Use" model or have a spectrum free-for-all in an unlicensed or what is called the "Commons" model. All of the systems have problems, but I believe the traditional Regulatory system along with a limited amount of unlicensed usage should be the objective for spectrum management. The abdication of the FCC's responsibilities under the "Exclusive" model and to have large numbers of unlicensed and unregulated users of spectrum can and most likely will cause many of the same types of chaotic problems the caused the creation of the 1927 and 1934 Communication Acts. The existing "Command and Control" system can and needs to be fixed no matter what other methods of regulation are adopted. I believe there are better ways of traditional management particularly with better use of technology.

Finally, I would like to address the use of auctions for awarding licenses. Auctions were started as both a way to quickly settle license disputes and pay public for the use of their airwaves by way of the government. From day one, I have questioned the use of auctions on the issues of fairness to small business people and with the amount of problems such as defaults and rule makings concerning auctions, I question if they are more efficient in awarding licenses.

#### Traditional Spectrum Management "Command and Control"

I believe that there is nothing wrong with the basic method of "Command and Control" spectrum management. But the FCC needs to adopt new and more flexible methods of dealing with the quicker licensing of users, adopting rule changes, and far better management of databases.

The FCC has failed on a number of occasions in the licensing process. Some that come to mind were when the 80-90 FM applications and the Low-power TV applications were first opened and when any new broadcast applications are opened. When the 80-90 FM and LPTV spectrum was opened, the FCC was charging little or no fees to apply. That made applying for a license almost as good as the lottery. For very little, mostly fees for getting the application filled out, one had a chance of walking away a winner. The odds were better than the lottery. There were sometimes 40 to 50 applicants for an 80-90 FM license and around 25,000 applicants in the first round of LPTV. Other services also have had large numbers of applicants in the past. This has distorted the apparent demand for spectrum as many of the applications were speculative and not serious enough to warrant consideration. What the FCC needed and probably still needs is a more businesslike method for the application process. The system needs to be predictable and more straight forward. Applicants should also know what is required to be considered qualified financially and otherwise. Some of the recent problems with auctions which was suppose to fix the problems of licensing came from defaults cause by applicants being either financially unqualified or bidding over their heads or in the case of the early auctions such as for Interactive Digital Video Service in the 200 MHz band, there was no business plan for the service.

The other problem the FCC has had with its management of the spectrum is not knowing what was being used. As the Commission has converted to the Universal Licensing System, they have had to have the licensees verify their license information as the FCC was missing records on them. It seems that the agency that is to suppose to manage a important part of our nations technology has not embraced it themselves, mainly the use of computer databases. The ULS is starting to become a useful tool, but the FCC needs to do better in identifying who is using what and were it is being used.

Finally with the online application process, there is no reason that some services could not have nearly instant licensing. Many of the services that

require an 601 application could qualify. When an application is filed, a program could do a search and identify any interference conflicts. If it finds none, a temporary license and a bill for any fees charged could be printed and the users could start construction. The system for finding open channels for Low-power FM is an example of a automated system that could be used to do interference searches. Most licenses that the FCC issues are for services that are used by a signal user and are not for subscriber services like Cell or PCS phones or Wireless cable or Broadcasting, but are for point to point microwaves or two-way communication. The FCC can relieve its burden with simpler licensing systems for many services.

The FCC also needs to speed up many of its more routine rulemaking procedures. An example is the allowing of digital modulation on broadcast auxiliary bands. This was a no-brainer. All the FCC had to do was create an emission mask for transmissions in those bands and open it for comments. It should of taken less than five or six months. It ended up taking several years. It seems at times that simple technical issues take forever to get through the rule making process, but a spectrum allocation change that results in a possible auction breezes through in a few weeks or months.

The current system of licensing and spectrum management still provides the best protection of airwaves for the public and the most certainly for the users. But, the system needs be flexible enough to absorb new technologies and methods. Commercial users of the spectrum need to know with certainly what spectrum is available and what the procedure is, so they can create a realistic business plan. Neither of the other two management models assures that.

#### The "Exclusive" Management Model

This model I have lots of problems with for several reasons. The first is that the FCC is awarding or selling control of the spectrum to a third party who may use part of it and resell the rest. The FCC may have little or no control of whom the secondary licenses are and may have trouble enforcing the rules for these bands as the new licenses may feel more beholding to the bandmanager then the FCC depending on how the lease contract is written. The FCC is basically abandoning its responsibilities to the public trust for money. This is not what was envisioned when the Communications Act was written and not what the public understands the FCC mission to be.

Another problem is that the gatekeeper or bandmanager may withhold spectrum for its own future use or to get a higher price later on which would limit access for new services. This makes the use of the spectrum less certain to other potential service providers.

The biggest problem with the "Exclusive" model that I have is the possible enrichment that could occur to the rights holder of this spectrum and the lost to the citizens of this nation. In the last auction for spectrum in the UHF-TV band of channels 52-59, there were a number of winners who had winning bids of less than \$5,000 and many more that fell in the \$5,000 to \$10,000 range. Is it fair to the taxpayers if they turn around and lease spectrum for many times that amount and the government gets next to nothing.

The FCC should pass on this idea and be the one to issue all licenses and collect the revenue from the issuing of new licenses.

#### The "Commons" Management Model

This could be call a non-management model. By allowing unlicensed users in great number, chaos and interference could become the norm. This is not to say there is not room for unlicensed operation, but the use of unlicensed spectrum for long haul point to point transmissions and wireless ISP's is of great concern to me. I believe that most unlicensed activity should be short range transmissions that remain on one's own property or a least in a small area of a community. Things such as cordless phones, wireless computer networks and other communication devices are a great convenience and can increase productivity. Allowing students access to a schools network and the Web without everyone having to plug their laptops in is great, so is it to have the person in a warehouse get an order relayed to his or her handtruck or forklift. In fact I would like to see other services have some unlicensed spectrum. One I can think of is in land mobile. I would like to see handheld radios used on the job site unlicensed. The General Mobile Radio service shares some spectrum with the Family Radio Service which is unlicensed. Both are limited range non-exclusive shared band units and since the introduction of FRS, many of the units sold have ended up in the workplace. Why should two nearly identical services operate under different rules.

I have a problem with long and medium haul point to point systems and wireless ISP's due to their stronger power levels and the potential to cause interference and the fact that they are using the airwaves to make money and the government would have no way of collect for use of the public airwaves. The FCC would also have a difficult time of settling interference issues as there would be no record of who went on when or where. It is suggested that there be a coordinator or bandmanager, but from experience in coordination of broadcast auxiliary spectrum, coordination does not occur many times. Most of the time as a SBE Frequency coordinator, I do not get a call from an visiting broadcast producer or football team Coach-Com users for coordination and sometimes local users call me as an after they have put most of the application together and they need the coordination number. I hardly never hear from any other users of wireless mikes in the broadcast band. The track record of the FCC in dealing with interference issues is also poor do to lack of staffing.

The low-power and high power unlicensed equipment should operate in different bands as much as possible. The users of higher powered equipment in these band should also be required to register their operations with the FCC. This could be done on the Web and the users information posted there. This information would tell new users of whom is using the spectrum in their area and if there is a conflict or new interference, it would also tell who was there first and last. This would enable users to identify the last user to begin operation and have them fix the problem as in other non-exclusive bands such as broadcast auxiliary require.

One place that unlicensed operation should not be increased is in the Broadcast bands. Because most receive equipment is consumer installed and the installations vary so in quality and signal strength, the potential for interference is great. The AM and FM Bands are full in most area's and with the DTV transition and have both analog and digital transmitters on the air, the TV bands are also nearly full. I have been doing channel searches for a university football team when the go visit other school for conflicts with their Coachs intercom and I have been surprised how many full power, DTV and low-power transmitters are within the 70 mile area they have to protect as a secondary user. I get six to ten pages of printouts back in most cities with an average 20 stations, applications or construction permits to a page. A portion of the applications and constructions permits are for change facilities, but most are for unbuilt DTV transmitters. Next year it will be worse as most, if not all,

the DTV transmitter should be on the air. Within 70 miles of my home there are or will be 46 full power analog or DTV transmitters and 16 LPTV transmitters with a number more pending full or LPTV applications. There were only a half dozen LPTV's that were on the same channel as another LPTV or full power station. The 70 mile number comes from the required distance that a wireless mike needs to be from a TV transmitter in the same channel. The TV band is more congested than one would expect by scanning the band with an antenna on the back of the set.

Finally, I could see the possibility of the FCC allowing the point to point spread spectrum units to share limited use of some point to point microwave bands as long as the units are coordinated and registered with the FCC.

The Commission should allow for the growth of both low-power and higher power unlicensed devices. Low-power devices should be limited for on-premise devices in home, office, factory or work site and higher power devices should have to be registered into some kind of FCC database. Problems with unlicensed use will appear from high power devices first. And remember the 70's and CB radio. This was an unlicensed service and it finally became unusable for a time due to interference from too many users.

#### Interference and Band Sharing

I generally agree with the concept of establishing a noise limit for figuring interference limits. But, it has to be done with great care. There are a number of examples of interference caused by the increase of noise from new operations. The prime example is the congestion in the AM broadcast band. Many stations can barely serve their local community. Stations were packed in so tightly that interference became a limiting factor. Add to that, interference from electrical devices such as dimmers, electronic ballasts for fluorescent lights and noise from the electric utilities distribution system and the band is slowly becoming unusable. DTV has also caused trouble with interference problems into analog stations reception. Here in Wisconsin, we have had problems with a Channel 26 DTV station interfering with an analog channel 26 station within the analog stations Grade B area. The case in Maryland on Channel 40 has been covered in the broadcast press to great detail. Digital transmission is supposed to be noise like and just increase the noise floor a little when received on an analog TV receiver, but if the digital signal is strong enough it becomes a conflict between two sources of RF energy.

As we begin to transmit using more and more digital, we will need to develop new interference standards. Receivers will need to lock and time themselves to incoming signal which may help to reduce interference like synchronous detectors do on AM signals. As more frequency hopping systems such as spread-spectrum are introduced, we will have to set some standards for the rate of collisions between carriers from different transmitters. As transmitters increase, the likelihood of collisions will increase and cause data errors beyond what can be cured by data bit-rate correction methods. The Commission did raise the question of receiver standards. This issue came up during the Low-power FM proceeding. The question of eliminating second and third adjacent protection requirements was proposed to allow for the creation of more stations. It was found the receiver varied from receivers with very good rejection of interference of 2nd and 3rd adjacent to those that could not separate station four channels apart. The table for FM was created in 1962 when radios did not have the technology that exists today. The standards for allocation should be determined by standards that represent a reasonable level of today's technology. The Commission should set standards for allocations based on particular set of

minimum receiver specifications. Manufacturers need not adhere to standards to build receivers that meet the specifications for many services, but the Commission should not waste spectrum to protect them, just so they can save a few cents in manufacturing costs. The standards should be reviewed from time to time and a date set for new standards to take effect, giving time for receivers to be redesigned and marketed and older receiver to be phase out.

Not all transmissions will go to digital transmission and interference to them will need to be considered. And one has to remember that all transmitters can only be modulated either by changing the amplitude or frequency of the signal whether the transmission is digital or analog.

One of the proposal that concerns me as far as interference is sharing of a band with different types of services whether licensed or unlicensed. The mixing of mobile or fixed omni-directional antennas with large numbers of fixed paths and receive antennas for other services is asking for trouble. And allowing unlicensed use is even worse as the average consumer has not idea of what else may be operating on that band. Find and fixing an interference problem could be a nightmare. The Commission has proposed the use of "smart" radios that would either look for existing transmissions and select and unused part of the spectrum or radios that use GPS and a built-in database of licensed stations. I didn't believe either is a reasonable answer. A radio that listens for open spectrum may not have the antenna or sensitivity of units using the licensed band, such as having a small whip antenna versus a roof-top antenna that will pick-up much weaker signals. The GPS and built-in database system has the problem of enforcing the updating of the database. Both systems have the problem of cost which may make a product to expensive for the consumer market.

I believe that like services can share a band. The rules for PCS allowed operation of digital two-way transmission between a fixed base station and mobile or multi-point fixed stations. Those transmissions could be mobile phone, voice, data or video. Most elected to do mobile phone. Satellite systems carry digital data, FM video and FM Audio carriers on the same satellite. Satellites even carry multiple carriers of different bandwidths or data rates on the same transponder. Instead of separate bands for fixed point to point microwave, there is no reason that common carrier, interconnecting links such as those used by Cellular and PCS providers, links between offices and industry, utilities, and broadcasters could not use the same bands which could allow for better usage of the spectrum. Because of the very directional antennas and the many different paths, frequencies in these bands can be reused to a very high degree. Mobile and temporary microwave links need to be managed differently due to the unpredictability.

The various bands should be allocated by type of use and not service. Types of use could be defined as point to point such as microwave, fixed point to mobile multipoint such as cellular and PCS, Mobile multipoint such as land mobile and public safety, fixed point to multipoint such as broadcasting, satellite and various special categories such as aircraft, marine, radar as required by international agreement. The idea is to eliminate categories such as common carrier bands in microwave and forestry in land mobile.

By creating broader categories for bands, I feel that spectrum can be better managed with less confusion to the users. New users may then be accommodated more easily be filling spectrum that may previously not been used by other services or is no longer needed by some of the previous users of the band.

Auctions

Auctions were supposed solve many problems for both the FCC and Congress. For the FCC, it was suppose to solve licensing problems. For Congress, was to raise larger sums of money to balance the budget. It seems to done neither. After the Technology bubble broke, the amounts raise by auctions has gone down from the billions to the millions. For the FCC, there have been defaults, postponements, and lawsuits. Until recently, for every new auction, the FCC has had to modify the rules. In many notices of rule making for a new service, the rules concerning the conduct of the auction takes more space than information on the frequencies to be auction and the service that will occupy the spectrum.

The spectrum auctions have always presented fairness issues to me, particularly in broadcasting. Auctions favor those with deep pockets whether they are the most qualified or not. Auctions make the spectrum look like a piece of property. I have been unable to find anything about further payment at renewal, so the auction amount looks like a one time payment which is the same as buying property. When huge amounts of money is spent like in many of the first auctions, how is the FCC going to reclaim any of the spectrum for either different uses or because the licensee is in violation of FCC or Federal rules or law. The NextWave suite proves that the lawsuits could be long and expensive.

The NextWave issue brings up another point, defaults which started with the Interactive Digital Video Service Auction. At the end of that auction many winners came to the realization that the proposed service for that spectrum was not a viable business and they tried to bail out. The FCC then had to start collection proceedings which ended in the reauctioning of the spectrum for other uses. Like NextWave, there have been other defaults because bidders overbid or were unable to raise the money to meet the bid. Part of the problem is the multi-round bidding. Anyone who has gone to a estate, charity or farm auction may have seen someone get caught up in the bidding and make a unwise choice and overbid for more than the item is worth. I believe the FCC's spectrum auctions are almost constructed to have that occur. If auctions had to occur, I would have preferred a single round sealed bid were the participants could have make a sound business decision on the value of the licensed frequency or spectrum he was seeking.

Auctions also stifle innovation both in the broadcast band and for new services. The Congress and the FCC has created a licensing system that has to result in auctions. The law, as I understand it, is the when there are two or more applicants an auction must be held. Congress has also demanded that they get certain amounts from the auction of spectrum. This means that the FCC needed to set up the system to have multiple applicants, so that an auction can occur. In broadcasting that happens because of the requirement for the amending the allocation table before applying for a FM or TV license. This has always been a bad rule as it allows others to take advantage of a person's initiative. I for one have found FM frequencies for different communities, but have never applied because I could not afford to fight a another applicant in the comparative system or outbid anyone with any amount of money. Another example of the stifling of innovation is the proposed terrestrial Multi-point Distribution System on the DBS band. The group that developed the system ask for a license on the spectrum and the first thing that occurred was the creation of an auction. They created the concept, but in the end may be left out in the cold.

Finally, Congress asks for more money for auction and the FCC has to find X amount of spectrum whether there is a use or not. This may mean the moving of

existing users and amounts bid for less than Congress expected. I read a number of comments in the filings in the June, 2002 comment period for this report that the complainant complained that the FCC's actions concerning the reallocation of spectrum was for the sole purpose of auctioning it many times with no clear plan for the use of the spectrum. This may be a waste of spectrum as the spectrum may get used for some trivial purpose and would be unavailable when we need it for a more important use it may later.

Congress and the FCC need to look at some other models for granting licenses and charging for the use of spectrum for the long term. Auctions are unfair to the small business person, distort the allocation process and only bring income to the government once.

#### Fixing the License Process

I believe that the licensing process is major part of the problem in spectrum management. The FCC cannot leave the management of the spectrum to the marketplace and private managers because Communications makes up too important a part of our economy. Leaving it to the marketplace has failed the FCC in the past, all one has to look at is the Stereo AM decision and the current transition to DTV.

Licensing in the FCC is very different than licensing by other government agencies. Most agencies license for health and safety issues. There is no limitation other than the marketplace to go into a certain business, but the government needs to know you are out there, so they can check on qualifications or do inspections. With the FCC, the licenses that they issue is to use a part of the publicly owned spectrum. Unlike other business, I can't move someplace else, if I don't like the terms. I believe the FCC is in the franchising business.

For many years, the FCC did act like they were in the franchise business by selecting applicants on the basis of qualifications. But over the years, the differences between applicants became less and then the qualification requirements became less stringent. Because most applicants were qualified and there were little or no fee requirements, the licensing process led to an avalanche of applicants. People's interest was also peaked by stories about large profits in broadcasting and other services. This overloaded the system and auctions were started. I don't know if the hassle of an auction is any better to license a small radio station in the middle of rural America.

What I would like to see is a first come, first serve system with an reasonable upfront fee like most franchisers would charge. The upfront fee would help to discourage speculators much as minimum bid payments have. In the case of broadcasting, I would like to see the amending of the table of assignments made part of the application. This would discourage others from taking advantage of the original applicants engineering. In other services all applications would be first come, first serve after the initial opening of a new band. The only applications filed would be those filed during the periodic filing window. There would be a period to file objections to the application, but no competing applications unless the initial applicant is rejected. If happens that more than one applicant filed, there could be a short negotiation period between applicants and if no settlement a sealed bid auction. The government would then charge a fee based on a share of revenue like is required for pay services in DTV. To compensate for public service obligations, the spectrum fee would be waived on the first X amount of income. This is a model used by the Canadian government where they deduct the first \$500,000 for a radio

station and the first \$2 million for a TV station. ( See Appendix after comments) That deduction would be different than Canada and could also be for requirements for wireless phones. A fee on a percentage of revenue could also be phased in for existing users such as broadcasters, 800 MHz Cellular, common carrier and DBS, who have never paid at auction.

Any licensing plan must be fair to all class of users from the biggest to the smallest, and assure that the applicants are serious about applying for a license. It is difficult to gauge true demand if many applicants are just looking for a way to cash in on the system and that is a problem with the pass and current systems.

#### Closing Summary

I know that the FCC cannot take actions on the Task Forces report or on the suggestions and proposals made by the comments entered concerning this report by itself. So Actions have to be made by changes in the law by Congress or to address actions by the Courts. But, actions by the Commission have a large place in how spectrum is managed.

I have written about my concerns about auctions, unlicensed spectrum and bandmanagers. I know that many in my industry will disagree with me about fees, but I believe we should pay something before having are spectrum auctioned off to someone that will. When I read about some of the proposals concerning multi-round auctions, two-sided auctions, secondary markets and exclusive rights, I fear that the spectrum will become privatized as some have called for. This goes against 75 years of government policy that the airwaves belong to the people which is one theory most of the public understands. In fact, the idea of two-side auctions, secondary markets and some of the other auction proposals sound like something that came from Enron or Worldcom, not a agency of the government. Many of these proposals are theories only from Academia or Wall Street Economists and Considering the state of the new Tech economy, neither group as been doing to well lately.

The FCC holds a special place among government agencies. They hold complete power over whole industries. If you want to play in those industries, you must go to the FCC whether you run a 250 watt AM radio station or a nationwide cellular phone company. I do not know of any other types of businesses that cannot go to another agency or place if they do not like the requirements set for them. This is something the Commission should remember as it deals with both large and small entities.

The FCC should take care in making changes in the managing of the spectrum. Some of the actions and changes proposed cannot be easily changed once made and could be subject to years in the Courts. With the possibility of large amounts of money involved, it will be near impossible to recover any spectrum as the Nextwave case proved.

I ask that the Commission Take great care in making any changes to the way it manages spectrum and the way it does business in general. Thank you for any consideration of my comments.

Respectfully Submitted  
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Thomas C. Smith  
1310 Vandenburg Street  
Sun Prairie, WI 53590-1077

Appendix # 1

From Canadian Radio-Television Commission Web Site  
(www.crtc.gc/eng/legal/licence.htm)

BROADCASTING ACT  
BROADCASTING LICENCE FEE REGULATIONS, 1997  
INTERPRETATION

1. The definitions in this section apply in these Regulations. "associated corporation" has the meaning assigned to that expression in section 256 of the Income Tax Act. (société associée)

"exemption level" means

- (a) for a distribution undertaking, \$175,000;
- (b) for a television undertaking, \$1.5 million; and
- (c) for a radio undertaking,

- (i) subject to subparagraph (ii),

- (A) where the fee revenue of the undertaking is \$2 million or less, \$2 million,

- and

- (B) where the fee revenue of the undertaking is greater than \$2 million,

- \$500,000, and

- (ii) in the case of a joint radio undertaking,

- (A) where the combined fee revenue of the radio undertakings is \$4 million or

- less, \$4 million, and

- (B) where the combined fee revenue of the radio undertakings is greater than \$4

- million, \$500,000. (franchise)

"fee revenue", in respect of a licensee of a broadcasting undertaking, means the gross revenue derived during a return year from the licensed activity of the licensee, whether received by the licensee or by an associated corporation, and, without limiting the generality of the foregoing, includes

- (a) any revenue received in respect of all transmitters forming part of the undertaking, where the broadcasting undertaking consists of more than one transmitter;

- (b) the estimated annual revenue, based on the trends of the market in which the undertaking is licensed to operate, the previous financial performance of the undertaking, and, where applicable, the licensee's business plan for the first 12 months of operations, where the licensee has not filed a licence fee return covering 12 months of the most recently completed return year; and

- (c) revenue that is derived from the sale of air time of the broadcasting undertaking by the Corporation and paid by the Corporation to the licensee.

This definition does not include any amount received by the licensee from another licensee, other than the amounts received from the Corporation for the sale of air time. (recettes désignées)

"fiscal year" means the one-year period beginning April 1 in any year.

(exercice)

"joint radio undertaking" means an AM radio undertaking and an FM radio undertaking operated by the same licensee, or by a licensee and an associated corporation, where any part of the FM 3 mV/m contour overlaps any part of the AM daytime 15 mV/m contour.

(entreprise de radio conjointe)

"licensee" means a person licensed to carry on a broadcasting undertaking.  
(titulaire)

"Part I licence fee" means the licence fee set out in Part I. (droits de licence de la partie I)

"Part II licence fee" means the licence fee set out in Part II. (droits de licence de la partie II)

"radio undertaking" includes a broadcasting undertaking licensed by the Commission as a (Radio) Programming Undertaking, a (Pay-Audio) Programming Undertaking or a (Radio) Network. (entreprise de radio)

"return year" means the one-year period beginning September 1 in any year. (année de rapport)

"television undertaking" includes a broadcasting undertaking licensed by the Commission as a (Television) Programming Undertaking, a (Pay-TV) Programming Undertaking, a (Satellite-to-Cable) Programming Undertaking, a (Specialty) Programming Undertaking, a (Direct-to-home pay-per-view) Programming Undertaking, a (Video-on-demand) Programming Undertaking or a (Television) Network. (entreprise de télévision)

#### APPLICATION

2. These Regulations apply to all licensees other than

(a) a radio undertaking or a television undertaking licensed by the Commission as a student broadcasting undertaking, a native broadcasting undertaking, a community broadcasting undertaking or a campus/community broadcasting undertaking;

(b) broadcasting undertakings carried on by the Corporation; and

(c) an independent corporation, as defined in the Direction to the CRTC (Ineligibility to Hold Broadcasting Licences), which derives none of its revenues from the sale of air time.

#### FEES

3. Every licensee shall pay annually to the Commission

(a) a Part I licence fee, payable 30 days after the date of the invoice from the Commission; and

(b) a Part II licence fee, payable on or before November 30 in each year.

4. Where a fee referred to in section 3 has become due but remains unpaid, the licensee shall pay interest and administrative charges in accordance with the Interest and Administrative Charges Regulations.

#### LICENCE FEE RETURNS

5. On or before November 30 in each year, every licensee whose fee revenue for the most recently completed return year exceeds the exemption level shall file with the Commission a licence fee return, on the form provided by the Commission, with respect to each broadcasting undertaking that is carried on by the licensee.

6. A licence fee return filed pursuant to section 5 shall contain the information required in the form referred to in that section for the one-year period beginning September 1 of the year preceding the calendar year in which the return is required to be filed.

#### PART I

##### PART I LICENCE FEE

7. The components of a Part I licence fee shall consist of

(a) an initial amount calculated in accordance with subsection 8(1); and

(b) an annual adjustment amount calculated in accordance with subsection 8(2).

8. (1) The initial amount shall be calculated by the Commission using the formula

$(A / B) \times C$  where A is the licensee's fee revenues for the most recently completed return year, less that licensee's exemption level for that return year;

B is the aggregate fee revenues for the most recently completed return year of all licensees whose fee revenues exceed the applicable exemption levels, less the aggregate exemption level for all those licensees for that return year; and C is the estimated total regulatory costs of the Commission for the current fiscal year as calculated in accordance with section 9.

(2) The annual adjustment amount shall be calculated by the Commission using the following formula

$(A / B) \times D$  where A is the licensee's fee revenues for the most recently completed return year, less that licensee's exemption level for that return year; B is the aggregate fee revenues for the most recently completed return year of all licensees whose fee revenues exceed the applicable exemption levels, less the aggregate exemption level for all those licensees for that year; and D is the difference between the estimated total regulatory costs and the actual total regulatory costs of the Commission for the fiscal year as calculated in accordance with section 9. (3) The annual adjustment amount referred to in subsection (2) shall be charged or credited to the licensee in the following year's invoice and shall not, in any case, result in a disbursement of monies on the part of the Commission.

9. (1) The estimated total regulatory costs of the Commission for the current fiscal year is the sum of the following amounts as set out in the Commission's Expenditure Plan published in Part III of The Estimates of the Government of Canada:

(a) the costs of the Commission's Broadcasting Activity; and

(b) the share that is attributable to the Commission's Broadcasting Activity of

(i) the costs of the Commission's administrative activities, and

(ii) the other costs that are taken into account to arrive at the net cost of the

Commission's program, excluding the costs of regulating the broadcasting spectrum.

(2) The actual total regulatory costs of the Commission shall be calculated in accordance with subsection (1) using actual amounts.

10. The Commission shall publish, each year, the estimated total regulatory costs referred to in subsection 9(1) in a public notice in the Canada Gazette, Part I.

## PART II

### PART II LICENCE FEE

11. A Part II licence fee shall consist of an annual licence fee, based on the fee revenue of a licensee for the return year that terminated in the current calendar year or during that portion of that return year in which the licensee held the licence to operate the undertaking, the amount of which shall be calculated as follows:

(a) for a distribution or a television undertaking, 1.365 per cent of the amount by which the fee revenue exceeds the applicable exemption level; and

(b) for a radio undertaking,

(i) subject to subparagraph (ii), 1.365 per cent of the amount by which the fee revenue exceeds the applicable exemption level, and

(ii) in the case of a joint radio undertaking, 1.365 per cent of the amount by which the combined fee revenue exceeds the applicable exemption level.

REPEAL

12. The Broadcasting Licence Fee Regulations are repealed.

COMING INTO FORCE

13. These Regulations come into force on April 1, 1997.

Date modified: 2001-12-13