

## **UPDATE**

### **April 9, 2019**

#### **FCC Releases Pay or Show Cause Order on Licensee for Failure to Pay Regulatory Fees**

On April 8, 2019, the FCC's Media Bureau released an [Order to Pay or to Show Cause](#), initiating a proceeding to revoke the license held by KSBH (FM), Coushatta, Louisiana (the "Station"), for failure to pay delinquent regulatory fees and associated interest and penalties owed to the FCC.

With the Order, the Media Bureau directed the Station to pay the overdue regulatory fees, including any associated interest, penalties, and charges of collection, or show cause why the payment demanded is inapplicable or should otherwise be waived or deferred.

**Background.** Under Section 9 of the Communications Act, the FCC is required to "assess and collect regulatory fees" to recover the costs of certain regulatory activities. When the required payment is received late or is incomplete, the FCC must assess a penalty equal to "25 percent of the amount of the fee that was not paid in a timely manner."

Here, the Media Bureau alleges that the Station has unpaid regulatory fee debt (including penalties, accrued interest and other charges) for fiscal years 2009 (\$1,681.25), 2011 (\$1,836.16), 2012 (\$2,007.83), 2013 (\$2,017.53), 2014 (\$1,946.50) and 2017 (\$1,897.50). When the Station did not pay regulatory fees for these years, the FCC transferred the debt to the Treasury Department for collection. However, in order to consolidate the collection process, the Treasury transferred the regulatory fee debt back to the FCC for further collection.

Accordingly, the FCC's Order requires the Station to file with the Media Bureau documented evidence within 60 calendar days that full payment of all outstanding regulatory fee debt has been made, or show cause why the payment is inapplicable or should be waived or deferred. Failure to provide such evidence of payment or to show cause within the 60-day period could result in revocation of the Station's license.

**Takeaway.** Timely payment of annual regulatory fees is an important obligation for all FCC licensees. Even at relatively low monetary amounts, failure to pay can result in increased penalties and revocation of FCC licenses. All FCC licensees, including cable operators, should ensure that they make their required annual regulatory fee payments.

If you have any questions about your regulatory fee obligations, please contact Scott Friedman at (314) 462-9000 or [sfriedman@cinnamonmueller.com](mailto:sfriedman@cinnamonmueller.com).

#### **FCC Grants Georgia County Satellite Market Modification Request**

On April 4, 2019, the FCC's Media Bureau adopted a [Memorandum Opinion & Order](#) granting a petition filed by Stephens County, Georgia seeking to make four Georgia television stations available to satellite subscribers in the County. For historical and geographic reasons, residents in the County generally receive only South Carolina and North Carolina television stations, limiting their access to Georgia-specific news, sports, weather and politics.

The FCC's Order will permit County residents to receive these four Georgia stations through DISH Network and DirecTV. Importantly, even though the statutory factors to obtain market modification are identical for both satellite and cable market modifications, the Order does not apply to cable operators serving subscribers in the County. Cable operators serving Stephens County must file for a separate market modification to gain the opportunity to provide these stations to their subscribers in Stephens County.

A station's local market for must-carry and retransmission consent purposes is not set in stone. In particular, for MVPDs without access to an in-state station, a 2014 change in the law provides support for adding in-state stations for cable systems that are grouped into an out-of-state DMA. Market modification cases, however, can be complex and require a fair amount of fact-gathering. To make sure you are prepared, we cover in this update the procedures and required evidence to seek a market modification.

**Background.** The Communications Act entitles commercial broadcast stations to assert mandatory carriage rights on cable systems located within their markets. A station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen Media Research.

The Communications Act and FCC regulations provide detailed procedures under which the FCC may include or exclude communities from a station's local market in response to a petition by a broadcast station or cable system. The procedure is called "market modification." The idea behind market modification is that a station's DMA may not accurately reflect the area served by a station or the station's actual economic market.

**Factors considered.** The FCC is required to consider five statutory factors in determining whether to grant or deny a petition:

1. Historical cable carriage of the station;
2. Signal coverage;
3. Access to stations that originate in consumers' State of residence;
4. Carriage of other must-carry stations serving local programming needs; and
5. Viewing patterns in cable and non-cable households in the community in question.

The Commission decides each petition on a case-by-case basis. None of the five factors, considered individually, is dispositive. The FCC is free to – and frequently does – disregard one or more of the elements and will consider additional factors.

**Required evidence.** FCC regulations require that a petitioner include certain evidence. The Commission will dismiss a petition that does not include any of the required items. Required evidence includes:

- A map illustrating the relevant communities and other features.
- Maps of the station's technical service area.
- Data on shopping and labor patterns in the local market.
- Station programming information.
- Cable system channel lineups or other exhibits establishing historic carriage.
- Published audience data.

- If applicable, a statement that the station is licensed to a community within the same state as the relevant community.

**New law emphasizing access to in-state stations.** The Satellite Television Extension and Localism Act Reauthorization Act of 2014, or STELAR, added a fifth factor for the FCC to consider – whether modifying the market would promote consumers’ access to in-state broadcast signals.

**Decision timing.** By statute, the FCC must decide a market modification petition within 120 days of filing.

The FCC has also published a [Guide](#) which provides an overview of the process for requesting modification of a station’s local market.

If you have further questions about market modifications or carriage of a broadcast station outside of its DMA, please contact Scott Friedman at (314) 462-9000 or [sfriedman@cinnamonmueller.com](mailto:sfriedman@cinnamonmueller.com) or Bruce Beard at [bbeard@cinnamonmueller.com](mailto:bbeard@cinnamonmueller.com) or (314) 394-1535.

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