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BRIEF FOR RESPONDENTS

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 13-1270  
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SKY TELEVISION, L.L.C.,

PETITIONER,

v.

FEDERAL COMMUNICATIONS COMMISSION  
AND UNITED STATES OF AMERICA,

RESPONDENTS.

\_\_\_\_\_  
ON PETITION FOR REVIEW OF AN ORDER OF THE  
FEDERAL COMMUNICATIONS COMMISSION  
\_\_\_\_\_

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## **CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES**

### **1. Parties.**

The petitioner is Sky Television, L.L.C. The respondents are the Federal Communications Commission and the United States of America. There are no intervenors or amici. All parties appearing before the Federal Communications Commission are listed in the Brief for Sky Television, L.L.C.

### **2. Ruling under Review.**

*In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2013; Procedures for Assessment and Collection of Regulatory Fees; Assessment and Collection of Regulatory Fees for Fiscal Year 2008,* Report and Order, 28 FCC Rcd 12351 (2013) (JA ).

### **3. Related Cases.**

The order on review has not previously been before this Court. Counsel is not aware of any related cases that are pending before this Court or any other court.

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## GLOSSARY

Commission or FCC	Federal Communications Commission
Communications Act or Act	47 U.S.C. §§ 151, <i>et seq.</i>
FY	fiscal year (October 1 through September 30)
<i>FY 2013 NPRM</i>	<i>In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2013; Procedures for Assessment and Collection of Regulatory Fees; Assessment and Collection of Regulatory Fees for Fiscal Year 2008, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 28 FCC Rcd 7790 (2013) (JA )</i>
FTEs	full-time employees
<i>Order on Review</i>	<i>In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2013; Procedures for Assessment and Collection of Regulatory Fees; Assessment and Collection of Regulatory Fees for Fiscal Year 2008, Report and Order, 28 FCC Rcd 12351(2013) (JA )</i>
Section 9	Communications Act § 9, 47 U.S.C. § 159
Sky	Sky Television, L.L.C.
UHF	Ultra High Frequency
VHF	Very High Frequency

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PETITIONER,

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FEDERAL COMMUNICATIONS COMMISSION  
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ON PETITION FOR REVIEW OF AN ORDER OF THE  
FEDERAL COMMUNICATIONS COMMISSION

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**JURISDICTION**

The Federal Communications Commission (“FCC” or “Commission”) rulemaking order that is the subject of this petition for review was adopted on August 8, 2013, released on August 12, 2013, and published in the Federal Register on August 23, 2013. The Court generally has jurisdiction to review final orders of the Commission pursuant to 47 U.S.C. § 402(a) and 28 U.S.C. § 2342(1). As we explain below, in part I of the Argument, petitioner Sky Television, L.L.C. (“Sky”)’s challenge to the Commission’s final order is not justiciable because the order on review belongs to a class of final Commission orders for which judicial review is precluded by statute, *see* 47

U.S.C. § 159(b), and because Sky did not present any of its arguments in support of review to the Commission in the first instance, *see id.* § 405.

### **QUESTIONS PRESENTED**

1. Should the petition for review be dismissed because judicial review is precluded by law?

2. Should the petition for review be denied because the agency action for which review is being sought was reasonable?

### **STATUTES AND REGULATIONS**

The pertinent statutory provisions and regulations are set forth in the appendix to this brief.

### **COUNTERSTATEMENT**

#### **I. BACKGROUND**

As mandated by Section 9 of the Communications Act, the FCC is largely funded by fees collected from licensees. Those fees are set each year, and vary based on category of licensee, the amount of the Commission's work that is based on regulating that type of licensee, and other factors. In this proceeding, the FCC decided to combine two categories of licensees—TV stations broadcasting in the VHF and UHF frequencies—but made that change prospective, starting in the 2014 fiscal year. Petitioner argues that the change should instead have been made effective in the 2013 fiscal year. But the statute precludes this Court from considering that argument. And Sky

never made that argument to the Commission, which prevents it from raising it here. In any event, the Commission's decision was entirely reasonable because Section 9 mandated that the Commission give Congress 90 days' advance notice before implementing this change, and the change was adopted less than 90 days before the end of the 2013 fiscal year.

#### **A. Statutory and Regulatory Framework**

Section 9 of the Communications Act, 47 U.S.C. § 159, requires the Commission to “assess and collect regulatory fees to recover the costs of the following regulatory activities of the Commission: enforcement activities, policy and rulemaking activities, user information services, and international activities.” 47 U.S.C. § 159(a)(1). The regulatory fees, however, “shall be collected only if, and only in the total amounts, required in Appropriations Acts” by Congress. *Id.* § 159(a)(2).

Under Section 9, regulatory fees “shall” be assessed “by determining the full-time equivalent number of employees” at the Commission performing the specified regulatory activities, as “adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities.” *Id.* § 159(b)(1)(A). The fees assessed annually must be “established at amounts that will result in collection, during each

fiscal year, of an amount that can reasonably be expected to equal the amount appropriated for such fiscal year.” *Id.* § 159(b)(1)(B).

When Congress first enacted Section 9, in 1993,<sup>1</sup> it specified that the assessed regulatory fees would “be the fees established by the Schedule of Regulatory Fees in subsection (g) [of Section 9]” “until adjusted or amended by the Commission pursuant to [Section 9(b)(2) or 9(b)((3)].” *Id.* § 159(b)(1)(C). Section 9(b)(2) provides that the Commission annually must adjust Section 9 fees by “revis[ing] the Schedule of Regulatory Fees by proportionate increases or decreases to reflect,” among other things, “changes in the amount appropriated for the performance of the [regulatory] activities.” *Id.* § 159(b)(2) (entitled “Mandatory adjustments of schedule”). The Commission is required to “transmit to the Congress notification of any adjustment made pursuant to [this provision] immediately upon the adoption of such adjustment.” *Id.* § 159(b)(4)(A). Congress specified that “[i]ncreases or decreases in fees made by adjustments pursuant to [Section 9(b)(2)] shall not be subject to judicial review.” *Id.* § 159(b)(2).

In addition to the annual adjustments under Section 9(b)(2), Section 9(b)(3) authorizes the Commission to “amend the Schedule of Regulatory

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<sup>1</sup> Omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66, 107 Stat. 397.

Fees” “if the Commission determines that the Schedule requires amendment to comply with” the overall requirements of Section 9(a)(1). In particular, the Commission must “add, delete, or reclassify services in the Schedule to reflect additions, deletions, or changes in the nature of its services as a consequence of Commission rulemaking proceedings or changes in law.” *Id.* § 159(b)(3). Amendments made pursuant to Section 9(b)(3) must be “transmit[ted] to the Congress . . . not later than 90 days before the effective date of such amendment.” *Id.* § 159(b)(4)(B). Here again Congress specified that “[i]ncreases or decreases in fees made by amendments pursuant to [Section 9(b)(3)] shall not be subject to judicial review.” *Id.* § 159(b)(3).

### **B. The Proceeding Below**

On March 26, 2013, in the Consolidated and Further Continuing Appropriations Act, 2013, Pub. L. 113-6, 127 Stat. 198, Congress directed the Commission to assess and collect regulatory fees in the amount of \$339,844,000 for fiscal year 2013.<sup>2</sup> On May 23, 2013, the Commission initiated “two interrelated proceedings”: (1) “on our annual process of

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<sup>2</sup> Specifically, Congress authorized the Commission to collect regulatory fees for fiscal year 2013 in the same amount – \$339,844,000 – that Congress had authorized for fiscal year 2012. *See* Pub. L. 113-6, 127 Stat. 198 at Division F (2013); Financial Services and General Government Appropriations Act, 2012, Pub. Law 112-74, 125 Stat. 786 at Division C (2011).

assessing regulatory fees to offset the Commission's FY 2013 appropriation, as directed by Congress," and (2) "on more long-range proposals to reform and revise our regulatory fee schedule after FY 2013 (for FY 2014 and beyond)." *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2013; Procedures for Assessment and Collection of Regulatory Fees; Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 28 FCC Rcd 7790, 7791 at ¶ 1 (2013) ("FY 2013 NPRM") (JA ).

In particular, the Commission first proposed *adjusting* the FY 2013 Schedule of Regulatory Fees under Section 9(b)(2), by changing the manner in which it allocated FTEs [full-time employees] to specific regulatory activities. It explained that while "we are required by section 9 of the Act to calculate regulatory fees based on an allocation of FTEs, we are not required to use the same methodology year after year." *Id.* at 7797 ¶ 16 (JA ). The Commission thus "tentatively conclude[d] that our methodology . . . should be revised to more accurately reflect the direct and indirect costs for [specified] regulatees," but noted that "[s]uch revisions should take into account the impact on all regulatees, because any change in the allocation of the total regulatory fee amount for one category of fee payors necessarily affects the fees paid by payors in all the other fee categories." *Ibid.* (JA ).

The Commission also proposed *amending* the Schedule of Regulatory Fees under Section 9(b)(3). As relevant here, the Commission noted that, “[a]fter the transition to digital television on June 12, 2009,” it had received comments “suggesting that the Commission combine the UHF and VHF regulatory fee categories” which “would in effect eliminate any distinctions between UHF and VHF services.” *Id.* at 7805 ¶ 35 (JA ). Based on these comments, the Commission proposed that “the UHF and VHF full service television station categories be combined into one fee category, divided into tiers based on market size, with one resulting rate.” *Id.* ¶ 36 (JA ). The Commission noted that “[t]his proposal, if adopted, will be implemented in FY 2014.” *Id.* ¶ 36 (JA ). The Commission sought “comment on [the] proposal,” *ibid.*, and established filing dates of June 19, 2013 for comments and June 26, 2013 for reply comments. *See id.* at 7790 (JA ).

On June 19, 2013, Sky filed comments that “strongly support[ed] the Commission’s proposal to eliminate the disparity between regulatory fees that are assessed to digital VHF and UHF broadcast stations,” but “urge[d] that this standard be adopted so that it applies to the regulatory fees assessed for FY 2013 and not delayed until FY 2014 as proposed by the Commission.” *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2013; Procedures for Assessment and Collection of Regulatory Fees;*

*Assessment and Collection of Regulatory Fees for Fiscal Year 2008*,  
Comments of Sarkes Tarzian, Inc. and Sky Television, L.L.C. at 1 (JA ).  
Sky asserted that “[t]he Commission offer[ed] no justification [in the *FY 2013 NPRM*] for further delaying the elimination of this fee irrational distinction,  
and no compelling justification for such a delay exists.” *Id.* at 1 (JA ).

## II. THE ORDER ON REVIEW

On August 8, 2013, the Commission adopted, and on August 12, 2013, it released a final order that “conclude[d] the rulemaking proceeding initiated to collect \$339,844,000 in regulatory fees for Fiscal Year (FY) 2013, pursuant to Section 9 of the Communications Act . . . and the FY 2013 Further Continuing Appropriations Act,” and announced that “[t]hese regulatory fees are due in September 2013.”<sup>3</sup> *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2013; Procedures for Assessment and Collection of Regulatory Fees; Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Report and Order, 28 FCC Rcd 12351 ¶ 1 (2013) (“*Order on Review*”) (JA ).

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<sup>3</sup> The Commission later announced that FY 2013 regulatory fee payments must be received by the Commission no later than 11:59 PM, Eastern Daylight Time, on September 20, 2013. *Payment Methods and Procedures for Fiscal Year 2013 Regulatory Fees*, Public Notice (rel. Sept. 4, 2013) (JA ).

The Commission adjusted the FY 2013 Schedule of Regulatory Fees under Section 9(b)(2) per its proposal. Sky's fees were increased from \$39,800 to \$42,775. *Compare Order on Review*, 28 FCC Rcd at 12377 (Attachment C) (FY 2013 fees) (JA ), *with id.* at 12391 (Attachment G) (FY 2012 fees) (JA ).

The Commission also adopted its proposed amendment to the Schedule of Regulatory Fees “to combine the VHF and UHF stations in the same market area into one fee category beginning in FY 2014 and eliminate the fee disparity between VHF and UHF stations.” *Id.* at 12362 ¶ 30 (JA ).

Addressing Sky's “request that the Commission implement this proposal in FY 2013,” the Commission concluded that “[c]ombining UHF and VHF full-service television stations into one fee category constitutes a reclassification of services in the regulatory fee schedule as defined in section 9(b)(3) of the Act, and pursuant to section 9(b)(4)(B) must be submitted to Congress at least 90 days before it becomes effective.” *Id.* at 12362 ¶ 31 (JA ). Because it adopted the proposed amendment on August 8, 2013, the Commission explained that there was “not . . . sufficient time to implement this change before September 30, 2013” – the end of the fiscal year – “and therefore we will implement this change in FY 2014.” *Ibid.* (JA ).

Sky did not seek agency reconsideration and instead filed this petition for review.

### **SUMMARY OF ARGUMENT**

The petition for review should be dismissed. Sky's challenge to its FY 2013 regulatory fee – which increased by \$2,975 over FY 2012 – is precluded by Section 9 of the Communications Act, which provides that “increases or decreases in fees” made by adjustments or amendments to FCC regulatory fees “shall not be subject to judicial review.” 47 U.S.C. § 159(b)(2), (3).

Even if review were not otherwise precluded by statute, the Court would lack jurisdiction because Sky did not present any of its arguments in support of review to the Commission in the first instance – either in its initial comments or by filing a petition for reconsideration – which is a “condition precedent” to judicial review under the Communications Act, 47 U.S.C. § 405.

Finally, if the Court were to reach the merits, the petition for review should be denied because the Commission acted well within its statutory authority and discretion in amending the Schedule of Regulatory Fees with respect to the assessment and collection of FY 2013 regulatory fees.

## STANDARD OF REVIEW

Statutory preclusion of review is a question of law, which this Court reviews de novo. *Gentiva Healthcare Corp. v. Sebelius*, 723 F.3d 292, 297 (D.C. Cir. 2013).

If the Court determines that it has jurisdiction to consider the merits of Sky's challenge to the *Order on Review*, then the Court must deny the petition for review unless Sky demonstrates that the challenged agency action is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). This "[h]ighly deferential" standard of review "presumes the validity of agency action." *AT&T Corp. v. FCC*, 220 F.3d 607, 616 (D.C. Cir. 2000). The scope of review "is narrow and a court is not to substitute its judgment for that of the agency." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) ("*State Farm*"). The agency "must examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'" *Ibid.* (quoting *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962)). A court is bound to "uphold a decision of less than ideal clarity if the agency's path may reasonably be discerned." *Ibid.* (quoting *Bowman Transp. Inc. v. Arkansas-Best Freight Sys.*, 419 U.S. 281, 286 (1974)).

## ARGUMENT

### I. THE COURT LACKS JURISDICTION TO CONSIDER SKY'S CHALLENGE TO THE *ORDER ON REVIEW*.

#### A. Judicial Review Is Precluded by Statute.

Under the Administrative Procedure Act, a person “adversely affected or aggrieved by agency action within the meaning of the relevant statute” – here, the Communications Act – “is entitled to judicial review,” 5 U.S.C. § 702, “*except to the extent that*” the relevant statute “preclude[s] judicial review.” 5 U.S.C. § 701 (emphasis added). “If a no-review provision shields particular types of administrative action, a court may not inquire whether a challenged agency decision is arbitrary, capricious, or procedurally-defective, but it must determine whether the challenged agency action is of the sort shielded from review.” *Amgen Inc. v. Smith*, 357 F.3d 103, 113 (D.C. Cir. 2004).

As Sky acknowledges, “[t]his case is about the annual regulatory fees that the FCC charged broadcast television stations for the 2013 fiscal year . . . under Section 9 of the Communications Act.” Pet. Br. 3. Section 9 requires the Commission to establish a Schedule of Regulatory Fees, as adjusted or amended by the Commission, to collect, “during each fiscal year,” “an amount that can reasonably be expected to equal the amount appropriated [by Congress] for such fiscal year,” 47 U.S.C. § 159(b)(1), and further provides

that “[i]ncreases or decreases in fees” “made by adjustments” or “made by amendments” to the Schedule of Regulatory Fees “shall not be subject to judicial review,” *id.* § 159(b)(2) & (3).

In accordance with this process, as Sky admits, “[f]or FY 2013, as it has done historically, the FCC based the amount of the [regulatory] fee charged to a television station on two factors: the size of the station’s market and whether the station operates on a VHF or UHF television channel. *See* 47 C.F.R. § 1.1153.” Pet. Br. 3-4. Specifically, as an outcome of the agency’s action in the *Order on Review*, the Schedule of Regulatory Fees set forth, as relevant here, a regulatory fee of \$42,775 for VHF television stations operating in the same-sized market as Sky. *See* 28 FCC Rcd at 12400 (JA ); Pet. Br. 5. This fee was an increase of \$2,975 over the fee imposed on stations of the same size in FY 2012. *Id.* at 12391 (Attachment G) (JA ).

The crux of Sky’s challenge to the *Order on Review* is that the agency’s actions in adjusting and amending the Schedule of Regulatory Fees resulted in Sky being “required to pay higher regulatory fees than justified.” Pet. Br. 14. Thus, contrary to Sky’s contention (*id.* at 15), Sky plainly seeks to have the Court review “an increase . . . in fees” for which it is liable, judicial review of which is expressly precluded by the Communications Act. 47 U.S.C. § 159(b)(2). In short, “the specific and emphatic statutory

language” of the Communications Act “prohibit[s] judicial review” here. *See Tex. Alliance for Home Care Servs. v. Sebelius*, 681 F.3d 402, 408 (D.C. Cir. 2012).

*COMSAT Corp. v. FCC*, 114 F.3d 223 (D.C. Cir. 1997), cited by Sky in its brief (Pet. Br. 15), is not to the contrary. In *COMSAT*, the Court held that there was jurisdiction to review a Commission fee decision under Section 9 “[w]here . . . the Commission ha[d] acted outside the scope of its statutory mandate.” 114 F.3d at 227; *see* 47 U.S.C. § 159(b)(2) & (3) (precluding judicial review of increases or decreases in fees made “pursuant to” the relevant paragraphs). But here, and unlike in *COMSAT*, there is no question that the Commission adjusted and amended its regulatory fees in accordance with Section 9’s grant of its authority to do so, and Sky does not contend otherwise. Indeed, *COMSAT* itself acknowledges that “an amendment to increase the amount of an existing fee – for a statutorily permissible reason – would be covered by section 9.” 114 F.3d at 227. *See also Sw. Airlines Co. v. TSA*, 554 F.3d 1065, 1071 (D.C. Cir. 2009) (likewise recognizing that under Section 9, “the courts may not review the Commission’s actions where

the Commission has acted within the scope of its authority under the controlling statute.”) (internal quotation marks omitted).<sup>4</sup>

**B. None of the Arguments That Sky Offers in Support of the Petition for Review Was Raised Before the Commission.**

Even if Section 9 did not preclude this action, under 47 U.S.C. § 405(a) Sky’s failure to raise its contentions by filing a petition for reconsideration with the Commission prevents this Court from reaching the merits of Sky’s claims.

In its brief, “Sky does not dispute that Section 9 requires the Commission to give Congress 90 days’ notice of certain changes to the Schedule of Regulatory Fees, such as the decision to charge VHF and UHF stations the same amount.” Pet. Br. 17. But Sky contends that neither “the 90-day notice requirement” nor “the apparent September 30, 2013 deadline” would have posed an obstacle to Commission action “had the FCC given Congress notice when it initiated the proceeding.” *Ibid.*

But Sky did not make this argument – or the other arguments it offers in support of its petition for review – to the Commission. Instead, in its

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<sup>4</sup> The two additional cases on which Sky relies do not discuss Section 9’s preclusion-of-review provisions at all. See *PanAmSat Corp. v. FCC*, 198 F.3d 890, 898 (D.C. Cir. 1999); *COMSAT Corp. v. FCC*, 283 F.3d 344 (D.C. Cir. 2002).

comments to the Commission before the *Order on Review* was adopted, Sky only made an unadorned request that the Commission's proposal to eliminate the disparity between VHF and UHF broadcast television regulatory fees be "applie[d] to the regulatory fees assessed for FY 2013 and not delayed until FY 2014." Sky Comments (June 19, 2013) (JA ). And, while Sky asserted that there was "no compelling justification" for delaying the implementation of the reform, Sky nowhere acknowledged the statute's requirement that Congress be given 90 days' notice of any amendment to the Schedule of Regulatory Fees, nor explained how the Commission could avoid that requirement's impact in taking this action. *Ibid.* Having failed to grapple with Section 9's congressional notice requirement before the Commission, Sky was obliged to file a petition for reconsideration to bring its supporting arguments on this issue to the Commission's attention. Because it did not do so, Sky is now precluded from raising these arguments before the Court. 47 U.S.C. § 405(a) (A petition for reconsideration is "a condition precedent to judicial review" of an FCC order if it "relies on questions of fact or law upon which the Commission . . . has been afforded no opportunity to pass."); *see also In re Core Commc'ns*, 455 F.3d 267, 276 (D.C. Cir. 2006) (The Court "generally lack[s] jurisdiction to review arguments that have not first been

presented to the Commission.” (internal quotation marks and citation omitted)).

**II. ON THE MERITS, THE COMMISSION ACTED WELL WITHIN ITS STATUTORY AUTHORITY AND ITS DISCRETION WITH RESPECT TO SKY’S CHALLENGE TO THE *ORDER ON REVIEW*.**

Even if Sky were to overcome the statutory bar on judicial review, there would be no basis for the Court to disturb the Commission’s decision. The Commission acted well within its authority and discretion in revising the Schedule of Regulatory Fees and, in the *Order on Review*, the Commission articulated “a satisfactory explanation for its action.” *State Farm*, 463 U.S. at 43.

The petition for review concerns two interrelated but distinct actions the Commission took with respect to revising the Schedule of Regulatory Fees. First, exercising its authority under Section 9(b)(2), the Commission adjusted the Schedule in order to assess and collect regulatory fees for fiscal year 2013, as required by Congress. *See, e.g., Order on Review*, 28 FCC Rcd at 12358 ¶ 21 (“Because we are required by statute to set regulatory fees that will recover the entire amount of our appropriation, any reduction in the proportion of all regulatory fees paid by licensees in one fee category will necessarily result in an increase in regulatory fees paid by licensees in others.”) (JA ). Sky does not challenge this action taken by the Commission.

Second, exercising its authority under Section 9(b)(3), the Commission amended the Schedule of Regulatory Fees “[e]ffective FY 2014,” *id.* at 12361 (JA ), in a manner consistent with its determination that, for the purpose of assessing and collecting regulatory fees, UHF and VHF television stations should be reclassified and combined into one new category, digital television stations. *Id.* at 12362 ¶ 30 (“[W]e adopt our proposal [beginning in FY 2014] to combine UHF and VHF full service television station categories into one fee category.”) (JA ).

Sky challenges the Commission’s decision to implement this second change in FY 2014 as “unreasonable, arbitrary and capricious.” Pet. Br. 15 (capitalization and boldface omitted); *see generally id.* at 15-25. That charge is unfounded. As the Commission explained, “[c]ombining UHF and VHF full-service television stations into one fee category constitutes a reclassification of services in the regulatory fee schedule as defined in section 9(b)(3) of the Act, and pursuant to 9(b)(4)(B) must be submitted to Congress at least 90 days before it becomes effective.” *Order on Review*, 28 FCC Rcd at 12362 ¶ 31 (JA ). In light of the statute’s requirement that Congress be given 90 days’ notice of any amendment of the Schedule, the statutory provision specifying that fees should be collected “during each fiscal year,” 47 U.S.C. § 159(b)(1)(B), and the fact that the *Order on Review* was adopted

less than 90 days before the end of FY 2013, it was entirely reasonable for the Commission to make the amendment effective in FY 2014.

Sky contends (Pet. Br. 13) that the Commission could have complied with the 90-day notice requirement, even though the *Order on Review* was adopted 53 days before the end of the fiscal year, by providing the requisite notice to Congress when it *initiated* the fee reform proceeding in May 2013. The text of the statute plainly rebuts this argument. Section 9(b)(4)(B) requires notice to Congress “of any amendment” that is “*made*” to the Schedule of Regulatory Fees, not simply one that is proposed. *See* 47 U.S.C. § 159(b)(4)(B) (emphasis added). The relevant amendment was “made” on August 8, 2013, not when the proposal was first released; indeed, notice to

Congress before the final determination to amend the Schedule arguably would have entailed prejudging the outcome of the rulemaking proceeding.<sup>5</sup>

Sky also contends that the FCC “could have deferred collection of FY 2013 fees during FY 2013 from VHF stations until after completion of the 90-day notice requirement.” Pet. Br. 23. But Section 9 directs the Commission to make assessments and adjustments so that the fees assessed “be established at amounts that will result in collection, *during each fiscal year*, of an amount that can reasonably be expected to equal” the amounts appropriated for the Commission’s regulatory activities. *See* 47 U.S.C. § 159(b)(1)(B) (emphasis added); *see also id.* § 159(b)(2)(B). Even assuming Section 9 does not mandate that fees be collected during the fiscal year (*cf. id.* § 159(c)(1)), it is, as Sky acknowledges (Pet. Br. 24), the Commission’s “established practice” to collect regulatory fees “during a September filing

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<sup>5</sup> Nor can there be any argument that the Commission was delinquent in conducting this rulemaking. Congress set the Commission’s budget – and the amount of regulatory fees it was to collect through this rulemaking proceeding – on March 26, 2013. Less than two months later, on May 23, the Commission issued the 52-page *FY 2013 NPRM*. Comments to the *FY 2013 NPRM* were due 27 days later, on June 19, 2013, and reply comments were due 7 days after that, on June 26, 2013. In order to have provided 90 days’ notice to Congress, the Commission would have had to have reviewed all comments and reply comments, drafted the *Order on Review*, and adopted that order – all within *six days*. Given the exceptional difficulty of such a feat, the Commission’s statement in the *FY 2013 NPRM* that “th[e] proposal, if adopted, will be implemented in FY 2014,” 28 FCC Rcd at 7805 ¶ 36 (JA ), was an entirely reasonable statement of the obvious.

window in order to collect the required amount by the end of [its] fiscal year.” *Assessment and Collection of Regulatory Fees for Fiscal Year 2012*, 27 FCC Rcd 8390, 8391 (¶ 1) (2012). Sky does not explain how the Commission could have deferred fees for VHF stations without either violating the requirement to collect sufficient fees to fund the Commission’s regulatory activities for FY 2013, or requiring additional collections or refunds once the new reforms became effective in FY 2014. At a minimum, in light of the practical and fiscal difficulties of administering such an alternative, it was reasonable for the Commission to adhere to its established practice and implement the reforms so as to affect fees only for the fiscal year in which the reforms became effective. *See, e.g., Covad Commc’ns Co. v. FCC*, 450 F.3d 528, 538-39 & n.6 (D.C. Cir. 2006) (“administrability” concerns are relevant to reasonableness of FCC decisions).

Sky also complains that the Commission “applied the 90-day requirement inconsistently in the [*Order on Review*],” and has “ignored” the requirement “in the past without any consequence.” Pet. Br. 17. Without at all conceding the truth of Sky’s claims, we submit that they are entirely irrelevant. The issue in this case is the reasonableness of Commission action based on *compliance* with the statutory notice requirement; claims of

noncompliance in other circumstances and at other times are therefore entirely beside the point.<sup>6</sup>

In the final portion of its brief, Sky recapitulates its contentions as a claim that the Commission's decision to reform its broadcast TV regulatory fees was "unreasonably delayed" – although the Commission has now acted. Pet. Br. 25-32. This claim adds nothing to Sky's claim that the Commission's decision to implement the reforms in FY 2014 was arbitrary and capricious, and (if the Court were to reach the merits) fails for the same reasons.

In sum, if judicial review is not precluded by 47 U.S.C. § 159(b)(2) & (3) and Sky's failure to present its arguments to the Commission in the first instance, the Court should uphold the Commission's decision to implement

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<sup>6</sup> We do take the opportunity to note that the FCC's reallocation of FTEs in the International Bureau in the *Order on Review* was not subject to the statute's requirement of 90 days' notice, even though the reallocation may have "had the effect of non-proportionately decreasing fees for some regulated entities and increasing fees for others." Pet. Br. 19. See 28 FCC Rcd at 12356 ¶ 14 (JA ). Section 9 requires 90 days' notice to Congress only where the Commission "amend[s] the Schedule of Regulatory Fees" pursuant to its authority under Section 9(b)(3). See 47 U.S.C. § 159(b)(4)(B). The reallocation of International Bureau FTEs was part of an adjustment to the fees under Section 9(b)(2) "[to more] accurately reflect the regulatory activities performed by FTEs in the core [FCC] bureaus." *Order on Review*, 28 FCC Rcd at 12355 ¶ 14 (JA ); 47 U.S.C. § 159(b)(1)(A). The Commission therefore was not required to give 90 days' notice to Congress before that reallocation became effective.

its broadcast television regulatory fee reforms in FY 2014 as entirely reasonable. As the Commission explained, it was unable to provide Congress the 90 days' notice required by Section 9 of the Communications Act before this amendment could become effective prior to the end of FY 2013.

### CONCLUSION

The petition for review should be dismissed for lack of jurisdiction. If not, the petition for review should be denied.

Respectfully submitted,

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March 31, 2014

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SKY TELEVISION, L.L.C.,

PETITIONER,

v.

FEDERAL COMMUNICATIONS COMMISSION AND  
UNITED STATES OF AMERICA,

RESPONDENTS.

No. 13-1270

CERTIFICATE OF COMPLIANCE

Pursuant to the requirements of Fed. R. App. P. 32(a)(7), I hereby certify that the accompanying Brief for Respondents in the captioned case contains 4,854 words.

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March 31, 2014

## STATUTORY APPENDIX

### Communications Act Provisions:

47 U.S.C. § 159

47 U.S.C. § 405

### FCC Rules:

47 C.F.R. § 1.1153 (Effective September 2, 2012-August 22, 2013)

47 C.F.R. § 1.1153 (Effective August 23, 2013-present)

## 47 U.S.C.

### § 159. Regulatory fees

#### (a) General authority

##### (1) Recovery of costs

The Commission, in accordance with this section, shall assess and collect regulatory fees to recover the costs of the following regulatory activities of the Commission: enforcement activities, policy and rulemaking activities, user information services, and international activities.

##### (2) Fees contingent on appropriations

The fees described in paragraph (1) of this subsection shall be collected only if, and only in the total amounts, required in Appropriations Acts.

#### (b) Establishment and adjustment of regulatory fees

##### (1) In general

The fees assessed under subsection (a) of this section shall--

(A) be derived by determining the full-time equivalent number of employees performing the activities described in subsection (a) of this section within the Private Radio Bureau, Mass Media Bureau, Common Carrier Bureau, and other offices of the Commission, adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities, including such factors as service area coverage, shared use versus exclusive use, and other factors that the Commission determines are necessary in the public interest;

(B) be established at amounts that will result in collection, during each fiscal year, of an amount that can reasonably be expected to equal the amount appropriated for such fiscal year for the performance of the activities described in subsection (a) of this section; and

(C) until adjusted or amended by the Commission pursuant to paragraph (2) or (3), be the fees established by the Schedule of Regulatory Fees in subsection (g) of this section.

## (2) Mandatory adjustment of schedule

For any fiscal year after fiscal year 1994, the Commission shall, by rule, revise the Schedule of Regulatory Fees by proportionate increases or decreases to reflect, in accordance with paragraph (1)(B), changes in the amount appropriated for the performance of the activities described in subsection (a) of this section for such fiscal year. Such proportionate increases or decreases shall--

(A) be adjusted to reflect, within the overall amounts described in appropriations Acts under the authority of paragraph (1)(A), unexpected increases or decreases in the number of licensees or units subject to payment of such fees; and

(B) be established at amounts that will result in collection of an aggregate amount of fees pursuant to this section that can reasonably be expected to equal the aggregate amount of fees that are required to be collected by appropriations Acts pursuant to paragraph (1)(B).

Increases or decreases in fees made by adjustments pursuant to this paragraph shall not be subject to judicial review. In making adjustments pursuant to this paragraph the Commission may round such fees to the nearest \$5 in the case of fees under \$1,000, or to the nearest \$25 in the case of fees of \$1,000 or more.

## (3) Permitted amendments

In addition to the adjustments required by paragraph (2), the Commission shall, by regulation, amend the Schedule of Regulatory Fees if the Commission determines that the Schedule requires amendment to comply with the requirements of paragraph (1)(A). In making such amendments, the Commission shall add, delete, or reclassify services in the Schedule to reflect additions, deletions, or changes in the nature of its services as a consequence of Commission rulemaking proceedings or changes in law. Increases or decreases in fees made by amendments pursuant to this paragraph shall not be subject to judicial review.

(4) Notice to Congress

The Commission shall--

(A) transmit to the Congress notification of any adjustment made pursuant to paragraph (2) immediately upon the adoption of such adjustment; and

(B) transmit to the Congress notification of any amendment made pursuant to paragraph (3) not later than 90 days before the effective date of such amendment.

(c) Enforcement

(1) Penalties for late payment

The Commission shall prescribe by regulation an additional charge which shall be assessed as a penalty for late payment of fees required by subsection (a) of this section. Such penalty shall be 25 percent of the amount of the fee which was not paid in a timely manner.

(2) Dismissal of applications for filings

The Commission may dismiss any application or other filing for failure to pay in a timely manner any fee or penalty under this section.

### (3) Revocations

In addition to or in lieu of the penalties and dismissals authorized by paragraphs (1) and (2), the Commission may revoke any instrument of authorization held by any entity that has failed to make payment of a regulatory fee assessed pursuant to this section. Such revocation action may be taken by the Commission after notice of the Commission's intent to take such action is sent to the licensee by registered mail, return receipt requested, at the licensee's last known address. The notice will provide the licensee at least 30 days to either pay the fee or show cause why the fee does not apply to the licensee or should otherwise be waived or payment deferred. A hearing is not required under this subsection unless the licensee's response presents a substantial and material question of fact. In any case where a hearing is conducted pursuant to this section, the hearing shall be based on written evidence only, and the burden of proceeding with the introduction of evidence and the burden of proof shall be on the licensee. Unless the licensee substantially prevails in the hearing, the Commission may assess the licensee for the costs of such hearing. Any Commission order adopted pursuant to this subsection shall determine the amount due, if any, and provide the licensee with at least 30 days to pay that amount or have its authorization revoked. No order of revocation under this subsection shall become final until the licensee has exhausted its right to judicial review of such order under [section 402\(b\)\(5\)](#) of this title.

### (d) Waiver, reduction, and deferment

The Commission may waive, reduce, or defer payment of a fee in any specific instance for good cause shown, where such action would promote the public interest.

### (e) Deposit of collections

Moneys received from fees established under this section shall be deposited as an offsetting collection in, and credited to, the account providing appropriations to carry out the functions of the Commission.

(f) Regulations

(1) In general

The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section.

(2) Installment payments

Such rules and regulations shall permit payment by installments in the case of fees in large amounts, and in the case of fees in small amounts, shall require the payment of the fee in advance for a number of years not to exceed the term of the license held by the payor.

(g) Schedule

Until amended by the Commission pursuant to subsection (b) of this section, the Schedule of Regulatory Fees which the Federal Communications Commission shall, subject to subsection (a)(2) of this section, assess and collect shall be as follows:

SCHEDULE OF REGULATORY FEES	
Bureau/Category	Annual Regulatory Fee
Private Radio Bureau	

## Exclusive use services (per license)

Land Mobile (above 470 MHz, Base Station and SMRS) (47 CFR Part 90)	\$16
Microwave (47 CFR Part 94)	16
Interactive Video Data Service (47 CFR Part 95)	16
Shared use services (per license unless otherwise noted)	7
Amateur vanity call-signs	7
Mass Media Bureau (per license)	
AM radio (47 CFR Part 73)	
Class D Daytime	250
Class A Fulltime	900
Class B Fulltime	500
Class C Fulltime	200
Construction permits	100
FM radio (47 CFR Part 73)	
Classes C, C1, C2, B	900
Classes A, B1, C3	600
Construction permits	500
TV (47 CFR Part 73)	
VHF Commercial	
Markets 1 thru 10	18,000
Markets 11 thru 25	16,000
Markets 26 thru 50	12,000
Markets 51 thru 100	8,000
Remaining Markets	5,000
Construction permits	4,000
UHF Commercial	
Markets 1 thru 10	14,400
Markets 11 thru 25	12,800

Markets 26 thru 50	9,600
Markets 51 thru 100	6,400
Remaining Markets	4,000
Construction permits	3,200
Low Power TV, TV Translator, and TV Booster (47 CFR Part 74)	135
Broadcast Auxiliary (47 CFR Part 74)	25
International (HF) Broadcast (47 CFR Part 73)	200
Cable Antenna Relay Service (47 CFR Part 78)	220
Cable Television System (per 1,000 subscribers) (47 CFR Part 76)	370
Common Carrier Bureau	
Radio Facilities	
Cellular Radio (per 1,000 subscribers) (47 CFR Part 22)	60
Personal Communications (per 1,000 subscribers) (47 CFR)	60
Space Station (per operational station in geosynchronous orbit) (47 CFR Part 25)	65,000
Space Station (per system in low-earth orbit) (47 CFR Part 25)	90,000
Public Mobile (per 1,000 subscribers) (47 CFR Part 22)	60
Domestic Public Fixed (per call sign) (47 CFR Part 21)	55
International Public Fixed (per call sign) (47 CFR Part 23)	110
Earth Stations (47 CFR Part 25)	
VSAT and equivalent C-Band antennas (per 100 antennas)	6
Mobile satellite earth stations (per 100 antennas)	6
Earth station antennas	
Less than 9 meters (per 100 antennas)	6
9 Meters or more	
Transmit/Receive and Transmit Only (per meter)	85
Receive only (per meter)	55
Carriers	
Inter-Exchange Carrier (per 1,000 presubscribed access lines)	60

Local Exchange Carrier (per 1,000 access lines)	60
Competitive access provider (per 1,000 subscribers)	60
International circuits (per 100 active 64KB circuit or equivalent)	220

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(h) Exceptions

The charges established under this section shall not be applicable to (1) governmental entities or nonprofit entities; or (2) to amateur radio operator licenses under part 97 of the Commission's regulations (47 C.F.R. Part 97).

(i) Accounting system

The Commission shall develop accounting systems necessary to making the adjustments authorized by subsection (b)(3) of this section. In the Commission's annual report, the Commission shall prepare an analysis of its progress in developing such systems and shall afford interested persons the opportunity to submit comments concerning the allocation of the costs of performing the functions described in subsection (a) of this section among the services in the Schedule.

**§ 405. Petition for reconsideration; procedure; disposition; time of filing; additional evidence; time for disposition of petition for reconsideration of order concluding hearing or investigation; appeal of order**

(a) After an order, decision, report, or action has been made or taken in any proceeding by the Commission, or by any designated authority within the Commission pursuant to a delegation under [section 155\(c\)\(1\)](#) of this title, any party thereto, or any other person aggrieved or whose interests are adversely affected thereby, may petition for reconsideration only to the authority making or taking the order, decision, report, or action; and it shall be lawful for such authority, whether it be the Commission or other authority designated under [section 155\(c\)\(1\)](#) of this title, in its discretion, to grant such a reconsideration if sufficient reason therefor be made to appear. A petition for reconsideration must be filed within thirty days from the date upon which public notice is given of the order, decision, report, or action complained of. No such application shall excuse any person from complying with or obeying any order, decision, report, or action of the Commission, or operate in any manner to stay or postpone the enforcement thereof, without the special order of the Commission. The filing of a petition for reconsideration shall not be a condition precedent to judicial review of any such order, decision, report, or action, except where the party seeking such review (1) was not a party to the proceedings resulting in such order, decision, report, or action, or (2) relies on questions of fact or law upon which the Commission, or designated authority within the Commission, has been afforded no opportunity to pass. The Commission, or designated authority within the Commission, shall enter an order, with a concise statement of the reasons therefor, denying a petition for reconsideration or granting such petition, in whole or in part, and ordering such further proceedings as may be appropriate: *Provided*, That in any case where such petition relates to an instrument of authorization granted without a hearing, the Commission, or designated authority within the Commission, shall take such action within ninety days of the filing of such petition. Reconsiderations shall be governed by such general rules as the Commission may establish, except that no evidence other than newly discovered evidence, evidence which has become available only since the original taking of evidence, or evidence which the Commission or designated authority within the Commission believes should have been taken in the original proceeding shall be taken on any reconsideration. The time within which a petition for review must be filed in a proceeding to which [section 402\(a\)](#) of this title applies, or within which an appeal must be taken under [section 402\(b\)](#) of this title in any case, shall be computed from the date upon which the Commission gives public notice of the order, decision, report, or action complained of.

(b)(1) Within 90 days after receiving a petition for reconsideration of an order concluding a hearing under [section 204\(a\)](#) of this title or concluding an investigation under [section 208\(b\)](#) of this title, the Commission shall issue an order granting or denying such petition.

(2) Any order issued under paragraph (1) shall be a final order and may be appealed under [section 402\(a\)](#) of this title.

## 47 C.F.R.

Effective: September 4, 2012 to August 22, 2013

Subpart G. Schedule of Statutory Charges and Procedures for Payment

### § 1.1153 Schedule of annual regulatory fees and filing locations for mass media services.

Fee amount	Address
Radio [AM and FM] (47 CFR part 73):	
1. AM Class A:	
< = 25,000 population	\$725 FCC, Radio, P.O. Box 979084, St. Louis, MO 63197-9000.
25,001-75,000 population	1,475
75,001-150,000 population	2,200
150,001-500,000 population	3,300
500,001-1,200,000 population	4,775
1,200,001-3,000,000 population	7,350
>3,000,000 population	8,825
2. AM Class B:	
< = 25,000 population	600 FCC, Radio, P.O. Box 979084, St. Louis, MO 63197-9000.
25,001-75,000 population	1,225
75,001-150,000 population	1,525
150,001-500,000 population	2,600
500,001-1,200,000 population	3,975
1,200,001-3,000,000 population	6,100
>3,000,000 population	7,325
3. AM Class C:	
< = 25,000 population	550 FCC, Radio, P.O. Box 979084, St. Louis, MO 63197-9000.
25,001-75,000 population	850
75,001-150,000 population	1,125

150,001-500,000 population	1,675
500,001-1,200,000 population	2,800
1,200,001-3,000,000 population	4,200
>3,000,000 population	5,325
4. AM Class D:	
< = 25,000 population	625 FCC, Radio, P.O. Box 979084, St. Louis, MO 63197-9000.
25,001-75,000 population	950
75,001-150,000 population	1,600
150,001-500,000 population	1,900
500,001-1,200,000 population	3,175
1,200,001-3,000,000 population	5,075
>3,000,000 population	6,350
5. AM Construction Permit	550 FCC, Radio, P.O. Box 979084, St. Louis, MO 63197-9000.
6. FM Classes A, B1 and C3:	
< = 25,000 population	700 FCC, Radio, P.O. Box 979084, St. Louis, MO 63197-9000.
25,001-75,000 population	1,425
75,001-150,000 population	1,950
150,001-500,000 population	3,025
500,001-1,200,000 population	4,800
1,200,001-3,000,000 population	7,800
>3,000,000 population	9,950
7. FM Classes B, C, C0, C1 and C2:	
< = 25,000 population	875 FCC, Radio, P.O. Box 979084, St. Louis, MO 63197-9000.
25,001-75,000 population	1,550
75,001-150,000 population	2,875
150,001-500,000 population	3,750
500,001-1,200,000 population	5,525
1,200,001-3,000,000 population	8,850
>3,000,000 population	11,500
8. FM Construction Permits	700 FCC, Radio, P.O. Box 979084, St. Louis, MO 63197-9000.

## TV (47 CFR, part 73) VHF Commercial:

1. Markets 1 thru 10	80,075 FCC, Radio, P.O. Box 979084, St. Louis, MO 63197-9000.
2. Markets 11 thru 25	73,475
3. Markets 26 thru 50	39,800
4. Markets 51 thru 100	20,925
5. Remaining Markets	5,825
6. Construction Permits	5,825

## UHF Commercial:

1. Markets 1 thru 10	35,350 FCC, UHF Commercial, P.O. Box 979084, St. Louis, MO 63197-9000.
2. Markets 11 thru 25	32,625
3. Markets 26 thru 50	21,925
4. Markets 51 thru 100	12,750
5. Remaining Markets	3,425
6. Construction Permits	3,425

## Satellite UHF/VHF Commercial:

1. All Markets	1,425 FCC Satellite TV, P.O. Box 979084, St. Louis, MO 63197-9000.
2. Construction Permits	895
Low Power TV, Class A TV, TV/FM Translator, & TV/FM Booster (47 CFR part 74)	385 FCC, Low Power, P.O. Box 979084, St. Louis, MO 63197-9000.
Broadcast Auxiliary	10 FCC, Auxiliary, P.O. Box 979084, St. Louis, MO 63197-9000.

Effective: August 23, 2013

Subpart G. Schedule of Statutory Charges and Procedures for Payment

**§ 1.1153 Schedule of annual regulatory fees and filing locations for mass media services.**

	Fee amount	Address
Radio [AM and FM] (47 CFR part 73)		
1. AM Class A		
<=25,000 population	\$775	FCC, Radio, P.O. Box 979084, St. Louis, MO 63197- 9000.
25,001-75,000 population	1,550	
75,001-150,000 population	2,325	
150,001-500,000 population	3,475	
500,001-1,200,000 population	5,025	
1,200,001-3,000,000 population	7,750	
>3,000,000 population	9,300	
2. AM Class B		
<=25,000 population	645	FCC, Radio, P.O. Box 979084, St. Louis, MO 63197- 9000.
25,001-75,000 population	1,300	
75,001-150,000 population	1,625	
150,001-500,000 population	2,750	
500,001-1,200,000 population	4,225	
1,200,001-3,000,000 population	6,500	
>3,000,000 population	7,800	
3. AM Class C		
<=25,000 population	590	FCC, Radio, P.O. Box 979084, St. Louis, MO 63197- 9000.
25,001-75,000 population	900	
75,001-150,000 population	1,200	

150,001-500,000 population	1,800
500,001-1,200,000 population	3,000
1,200,001-3,000,000 population	4,500
>3,000,000 population	5,700
<b>4. AM Class D</b>	
<=25,000 population	670 FCC, Radio, P.O. Box 979084, St. Louis, MO 63197-9000.
25,001-75,000 population	1,000
75,001-150,000 population	1,675
150,001-500,000 population	2,025
500,001-1,200,000 population	3,375
1,200,001-3,000,000 population	5,400
>3,000,000 population	6,750
<b>5. AM Construction Permit</b>	590 FCC, Radio, P.O. Box 979084, St. Louis, MO 63197-9000.
<b>6. FM Classes A, B1 and C3</b>	
<=25,000 population	750 FCC, Radio, P.O. Box 979084, St. Louis, MO 63197-9000.
25,001-75,000 population	1,500
75,001-150,000 population	2,050
150,001-500,000 population	3,175
500,001-1,200,000 population	5,050
1,200,001-3,000,000 population	8,250
>3,000,000 population	10,500
<b>7. FM Classes B, C, C0, C1 and C2</b>	
<=25,000 population	925 FCC, Radio, P.O. Box 979084, St. Louis, MO 63197-9000.
25,001-75,000 population	1,625
75,001-150,000 population	3,000
150,001-500,000 population	3,925

500,001-1,200,000 population	5,775
1,200,001-3,000,000 population	9,250
>3,000,000 population	12,025
8. FM Construction Permits	750 FCC, Radio, P.O. Box 979084, St. Louis, MO, 3197-9000.
TV (47 CFR, part 73) VHF Commercial	
1. Markets 1 thru 10	86,075 FCC, TV Branch, P.O. Box 979084, St. Louis, MO 63197-9000.
2. Markets 11 thru 25	78,975
3. Markets 26 thru 50	42,775
4. Markets 51 thru 100	22,475
5. Remaining Markets	6,250
6. Construction Permits	6,250
UHF Commercial	
1. Markets 1 thru 10	38,000 FCC,UHF Commercial, P.O. Box 979084, St. Louis, MO 63197-9000.
2. Markets 11 thru 25	35,050
3. Markets 26 thru 50	23,550
4. Markets 51 thru 100	13,700
5. Remaining Markets	3,675
6. Construction Permits	3,675
Satellite UHF/VHF Commercial	
1. All Markets	1,525 FCC Satellite TV, P.O. Box 979084, St. Louis, MO 63197-9000.
2. Construction Permits	960
Low Power TV, Class A TV, TV/FM Translator, & TV/FM Booster (47 CFR part 74)	410 FCC, Low Power, P.O. Box 979084, St. Louis, MO 63197-9000.
Broadcast Auxiliary	10 FCC, Auxiliary, P.O. Box 979084, St. Louis, MO 63197-9000.

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

**Sky Television, LLC**  
**Petitioner**

**v.**

**Federal Communications Commission  
and United States of America**  
**Respondents**

**CERTIFICATE OF SERVICE**

I, Pamela Smith, hereby certify that on March 31, 2014, I electronically filed the foregoing Brief for Respondents with the Clerk of the Court for the United States Court of Appeals for the D.C. Circuit by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

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