

## Federal Communications Commission

## § 1.1116

for broadcast auxiliary stations (subparts D, E, and F of part 74) or stations in the private radio or common carrier services where such authorization is to be used in conjunction with the NCE translator or low power station.

(4) An applicant that is the licensee in the Educational Broadband Service (EBS) (formerly, Instructional Television Fixed Service (ITFS)) (parts 27 and 74, e.g., §§27.1200, *et seq.*, and 74.832(b), of this chapter) is exempt from filing fees where the authorization requested will be used by the applicant in conjunction with the provision of the EBS.

(f) Applicants, permittees or licensees who qualify as governmental entities. For purposes of this exemption a governmental entity is defined as any state, possession, city, county, town, village, municipal corporation or similar political organization or subpart thereof controlled by publicly elected or duly appointed public officials exercising sovereign direction and control over their respective communities or programs.

(g) Applications for Restricted Radiotelephone Operator Permits where the applicant intends to use the permit solely in conjunction with duties performed at radio facilities qualifying for fee exemption under paragraphs (c), (d), or (e) of this section.

NOTE: Applicants claiming exemptions under the terms of this subpart must certify as to their eligibility for the exemption through a cover letter accompanying the application or filing. This certification is not required if the applicable FCC Form requests the information justifying the exemption.

[52 FR 5289, Feb. 20, 1987, as amended at 53 FR 40889, Oct. 19, 1988; 55 FR 19172, May 8, 1990; 56 FR 56602, Nov. 6, 1991. Redesignated and amended at 59 FR 30998, June 16, 1994. Redesignated at 60 FR 5326, Jan. 27, 1995, as amended at 65 FR 49762, Aug. 15, 2000; 69 FR 41177, July 7, 2004; 71 FR 54234, Sept. 14, 2006]

### § 1.1115 Adjustments to charges.

(a) The Schedule of Charges established by §§1.1102 through 1.1107 of this subpart shall be reviewed by the Commission on October 1, 1999 and every two years thereafter, and adjustments made, if any, will be reflected in the next publication of Schedule of Charges.

(1) The fees will be adjusted by the Commission to reflect the percentage change in the Consumer Price Index for all Urban Consumers (CPI-U) from the date of enactment of the authorizing legislation (December 19, 1989) to the date of adjustment, and every two years thereafter, to reflect the percentage change in the CPI-U in the period between the enactment date and the adjustment date.

(2) Adjustments based upon the percentage change in the CPI-U will be applied against the base fees as enacted or amended by Congress in the year the fee was enacted or amended.

(b) Increases or decreases in charges will apply to all categories of fees covered by this subpart. Individual fees will not be adjusted until the increase or decrease, as determined by the net change in the CPI-U since the date of enactment of the authorizing legislation, amounts to at least \$5 in the case of fees under \$100, or 5% or more in the case of fees of \$100 or greater. All fees will be adjusted upward to the next \$5 increment.

(c) Adjustments to fees made pursuant to these procedures will not be subject to notice and comment rulemakings, nor will these decisions be subject to petitions for reconsideration under §1.429 of the rules. Requests for modifications will be limited to correction of arithmetical errors made during an adjustment cycle.

[52 FR 5289, Feb. 20, 1987, as amended at 53 FR 40889, Oct. 19, 1988; 55 FR 19172, May 8, 1990. Redesignated and amended at 59 FR 30998, June 16, 1994. Redesignated at 60 FR 5326, Jan. 27, 1995, as amended at 65 FR 49762, Aug. 15, 2000; 69 FR 41177, July 7, 2004]

### § 1.1116 Penalty for late or insufficient payments.

(a) Filings subject to fees and accompanied by defective fee submissions will be dismissed under §1.1109 (d) of this subpart where the defect is discovered by the Commission's staff within 30 calendar days from the receipt of the application or filing by the Commission.

(1) A defective fee may be corrected by resubmitting the application or other filing, together with the entire correct fee.

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(2) For purposes of determining whether the filing is timely, the date of resubmission with the correct fee will be considered the date of filing. However, in cases where the fee payment fails due to error of the applicant's bank, as evidenced by an affidavit of an officer of the bank, the date of the original submission will be considered the date of filing.

(b) Applications or filings accompanied by insufficient fees or no fees, or where such applications or filings are made by persons or organizations that are delinquent in fees owed to the Commission, that are inadvertently forwarded to Commission staff for substantive review will be billed for the amount due if the discrepancy is not discovered until after 30 calendar days from the receipt of the application or filing by the Commission. Applications or filings that are accompanied by insufficient fees or no fees will have a penalty charge equaling 25 percent of the amount due added to each bill. Any Commission action taken prior to timely payment of these charges is contingent and subject to rescission.

(c) Applicants to whom a deferral of payment is granted under the terms of this subsection will be billed for the amount due plus a charge equaling 25 percent of the amount due. Any Commission actions taken prior to timely payment of these charges are contingent and subject to rescission.

(d) Failure to submit fees, following notice to the applicant of failure to submit the required fee, is subject to collection of the fee, including interest thereon, any associated penalties, and the full cost of collection to the Federal government pursuant to the provisions of the Debt Collection Improvement Act, 31 U.S.C. 3717 and 3720A. See 47 CFR 1.1901 through 1.1952. The debt collection processes described above may proceed concurrently with any other sanction in this paragraph.

[52 FR 5289, Feb. 20, 1987, as amended at 53 FR 40889, Oct. 19, 1988; 55 FR 19172, May 8, 1990. Redesignated and amended at 59 FR 30998, June 16, 1994. Redesignated at 60 FR 5326, Jan. 27, 1995, as amended at 67 FR 67337, Nov. 5, 2002; 69 FR 41177, July 7, 2004; 69 FR 27847, May 17, 2004; 69 FR 41177, July 7, 2004]

EDITORIAL NOTE: At 69 FR 57230, Sept. 24, 2004, § 1.1116(a) introductory text was cor-

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rected by changing the reference to “§ 1.1109(b)” to read “§ 1.1109(d)”; however, the amendment could not be incorporated because that reference does not exist in the paragraph.

### § 1.1117 Petitions and applications for review.

(a) The fees established by this subpart may be waived or deferred in specific instances where good cause is shown and where waiver or deferral of the fee would promote the public interest.

(b) Requests for waivers or deferrals will only be considered when received from applicants acting in respect to their own applications. Requests for waivers or deferrals of entire classes of services will not be considered.

(c) Petitions for waivers, deferrals, fee determinations, reconsiderations and applications for review will be acted upon by the Managing Director with the concurrence of the General Counsel. All such filings within the scope of the fee rules shall be filed as a separate pleading and clearly marked to the attention of the Managing Director. Any such request that is not filed as a separate pleading will not be considered by the Commission. Requests for deferral of a fee payment for financial hardship must be accompanied by supporting documentation.

(1) Petitions and applications for review submitted with a fee must be submitted to the Commission's lock box bank at the address for the appropriate service set forth in §§ 1.1102 through 1.1107.

(2) If no fee payment is submitted, the request should be filed with the Commission's Secretary.

(d) Deferrals of fees will be granted for an established period of time not to exceed six months.

(e) Applicants seeking waivers must submit the request for waiver with the application or filing, required fee and FCC Form 159, or a request for deferral. A petition for waiver and/or deferral of payment must be submitted to the Office of the Managing Director as specified in paragraph (c) of this section. Waiver requests that do not include these materials will be dismissed in accordance with § 1.1109 of this subpart. Submitted fees will be returned if a waiver is granted. The Commission will