FILE

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

MAR 1 0 2004

OFFICE OF
MANAGING DIRECTOR

Glenn V. Holterhaus
Manager
Sky Television, LLC
Post Office Box 269
Kitty Hawk, NC 27949

Re: Request for Reduction of FY 2003
Regulatory Fees
WSKY-TV, Manteo, North Carolina
Fee Control No. 00000RROG-04-008

Dear Mr. Holterhaus:

This is in response to your request dated August 22, 2003, for a partial refund of the regulatory fee for fiscal year (FY) 2003, filed on behalf of WSKY-TV, Manteo, North Carolina. Our records reflect that you have paid the FY 2003 regulatory fee of $30,125.00 assessed to Station WSKY-TV as a VHF station in Designated Market Numbers (DMAs) 26-50.

In your request, you assert that the regulatory fee for WSKY-TV, which is included in the Norfolk-Portsmouth-Newport News, Virginia DMA (the 41st largest DMA in the nation), should be reduced given the limited coverage of the station's signal. You state that Manteo has a population of 1,052 and "is located far outside the metropolitan area of the principal cities in the DMA" on Roanoke Island, which is located between the mainland and the Outer Banks of North Carolina. You also state that WSKY-TV's predicted Grade B contour reaches only half the area reached by the other full-service television stations in the DMA and covers only two of the four major communities in the DMA (i.e., Newport News and Hampton). You state that "WSKY-TV's predicted Grade B signal reaches only 65 percent of the population in the Norfolk DMA – 1,141,383 people out of a total of 1,752,446." You assert that the predicted Grade B contour "vastly" overstates the extent of WSKY-TV's interference-free service because WSKY-TV is subject to interference from another station, causing WSKY-TV to provide "a predicted interference-free Grade B signal to only 110,354 people in the DMA or 6 percent of the total population of 1,752,446." You state that WSKY-TV's predicted Grade A signal reaches only 82,833 people, which is 5 percent of the market. You state that the *2003 Television and Cable Factbook* lists WSKY-TV as serving 94,840 TV households. Noting that the 100th largest DMA (i.e., Youngstown, Ohio) has a population of 708,000 with 277,760 television households, you assert that WSKY-TV should be assessed a

regulatory fee comparable to stations located in market numbers 101 and higher (i.e., Remaining Market stations), i.e., $4,450.00.[1] You state that the "reduced value of the license for WSKY-TV *vis a vis* other full service television licenses in the Norfolk DMA" is reflected in the fact that the net auction price for Channel 4, Manteo, (i.e., the instant station) was 32.5 percent of the net auction price for Channel 21, Virginia Beach, Virginia, which is also located in the Norfolk DMA and was auctioned at the same time as Channel 4. In addition, you state that WSKY-TV is not affiliated with a network.

The Commission has set standards for determining whether the regulatory fees for a television station may be reduced below the fees assessed for stations in the relevant Designated Market Area (DMA). *Implementation of Section 9 of the Communications Act*, 10 FCC Rcd 12759, 12763 (1995). The Commission will reduce fees for television stations having certain characteristics. *Id.* Such a station must be located outside the metropolitan area of the principal city in the assigned DMA and may not provide a Grade B signal to a substantial portion of the assigned market's metropolitan areas. *Id.* Stations that meet these criteria and request fee reductions will be assessed regulatory fees based on the number of households they serve; stations that serve fewer television households than are in the top 100th market will be assessed the regulatory fee for remaining market stations. *Id.*

We find that because WSKY-TV is located outside the metropolitan area of the principal city in its assigned DMA and does not provide a Grade B signal to a substantial portion of its market's metropolitan area, WSKY-TV has met the Commission's standards, as set forth above, for reduction of WSKY-TV's regulatory fee for FY 2003. In light of Nielsen data in the *2003 Television and Cable Factbook* indicating that WSKY-TV serves 94,840 TV households and thus serves fewer households than a station in the top 100th market (*see* discussion *supra*), we find that it is appropriate that WSKY-TV be treated as comparable to a VHF commercial station in the Remaining Markets and be subject to a $4,450.00 regulatory fee for FY 2003.[2]

You also assert that the regulatory fee should be reduced another 50 percent from $4,450.00 to $2,225.00 because WSKY-TV "is one of a handful of full-service television broadcast stations authorized to operate on only one channel [as opposed to two]" and is the only licensed station in the Norfolk DMA with no paired DTV allotment. The Commission recently rejected WSKY-TV's proposal that the Commission adopt an additional regulatory fee classification for single-channel National Television System Committee (NTSC) full-service broadcast television stations (such as WSKY-TV) and

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[1] Stations in market numbers 26-50 cover between 1,004,220 and 612,300 television households. *2003 Television and Cable Factbook* at C-40. Stations in market numbers 101 and higher cover 276,330 and fewer television households. *Id.*

[2] *See* C.F.R. §1.1153.

assess a fee for this category of single-channel stations that is 50 percent of the fee assessed against stations with paired NTSC/DTV allotments.[3] In rejecting WSKY-TV's proposal, the Commission stated that

> [t]he Commission's broadcast television regulatory fees are already designed to only capture the costs of analog broadcast activities. Although DTV licensees are subject to Section 8 application fees, the Commission does not yet assess Section 9 regulatory fees to recover the costs of the agency's DTV-related activities. Therefore, there is no need for the Commission to take action on this matter, because the analog-only regulatory fee category that WSKY-TV requests is already in effect. *Id.*

For the same reasons that the Commission rejected WSKY-TV's proposal for a regulatory fee reduction for single-channel stations in the *2003 Regulatory Fee Report and Order*, we deny your request to reduce WSKY-TV's regulatory fee based upon its authorization to operate on only one channel as opposed to two.

Accordingly, we grant your request to treat WSKY-TV as comparable to a VHF commercial station in the Remaining Markets subject to a $4,450.00 regulatory fee for FY 2003 and we deny your request in all other respects. For purposes of regulatory fee assessments in subsequent years, and absent significant changes in the factual situation, WSKY-TV will not be treated as a station in the Norfolk-Portsmouth-Newport News, Virginia DMA. WSKY-TV will be required to submit the regulatory fee for VHF commercial stations in the Remaining Markets. You should note that WSKY-TV is under a continuing obligation to report to the Commission any changes in its operations that could affect its qualification for a regulatory fee reduction. Finally, you should retain this letter and submit a copy of it with any future correspondence with the Commission concerning the regulatory fee for WSKY-TV.

A check made payable to the maker of the original check, and drawn in the amount of $25,675.00 (reflecting the difference between WSKY-TV's FY 2003 regulatory fee assessment as a VHF station in market numbers 26-50 (*i.e.*, $30,125.00) and the amount charged to a VHF Remaining Market station (*i.e.*, $4,450.00), will be sent to you at the earliest practicable time. If you have any questions concerning this letter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

Mark A. Reger
Chief Financial Officer

[3] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2003*, 18 FCC Rcd 15985, 15993 (2003) (*2003 Regulatory Fee Report and Order*).

00000 RROG-04-008

ORIGINAL

SKY TELEVISION, LLC
P.O. Box 269
Kitty Hawk, NC 27949

(1) 30d Letter
(2) Patty, Tom & Roland Hill
(3) 30d Tickler
8/25 MK

August 22, 2003

RECEIVED - FCC
AUG 2 2 2003
Federal Communication Commission
Bureau / Office

Mr. Andrew S. Fishel
Office of the Managing Director
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Attention: Regulatory Fee Reduction Request

Re: **Request for Reduction of 2003 Regulatory Fees**
WSKY-TV, Manteo, North Carolina
Facility ID # 76324

Dear Mr. Fishel:

Sky Television, LLC hereby requests a reduction of the 2003 regulatory fee for WSKY-TV, Manteo, North Carolina.

Fiscal Year 2003 is the first year that WSKY-TV owes a regulatory fee as a licensee.[1] WSKY-TV operates on VHF Channel 4. The Station is assigned by Nielsen to the Norfolk-Portsmouth-Newport News, Virginia, Designated Market Area. The Norfolk DMA is the 41st largest DMA, *Television & Cable Factbook* at C-40 (2003 edition). Accordingly, the regulatory fee for Fiscal Year 2003 for WSKY-TV is $30,125.

WSKY-TV Is Entitled to a Regulatory Fee Reduction Because It Does Not Provide a Grade B Signal to a Substantial Portion of Its Market's Metropolitan Area.

In *Implementation of Section 9 of the Communications Act*, 10 FCC Rcd 12759, 12763 (1995), the Commission established standards for determining whether regulatory fees for a television station should be reduced below the fees assessed for stations in its Nielsen Designated Market Area generally. The Commission delegated authority to the Managing Director to reduce fees for television stations located outside the metropolitan area of the principal city in the assigned DMA that do not provide a Grade B signal to a substantial portion of the assigned

1 WSKY-TV obtained its underlying authorization at Closed Broadcast Auction No. 25. The Commission granted the underlying construction permit for WSKY-TV on March 2, 2001, and WSKY-TV paid a regulatory fee for FY 2002 as a permittee. The Commission granted Sky's application for license on December 26, 2001.

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market's metropolitan areas. Stations that meet these criteria and request fee reductions will be assessed regulatory fees based on the number of households they serve. *Id.*

WSKY-TV operates as an independent station: it is not affiliated with any network.

As indicated above, WSKY-TV is assigned to the Norfolk DMA. Its community of license is Manteo, North Carolina, which is located far outside the metropolitan area of the principal cities in the DMA. The community of Manteo (population 1,052 according to the 2000 Census) is located on Roanoke Island, which is between the mainland and Outer Banks of North Carolina. WSKY-TV's transmitter site is located on a peninsula in Currituck County, North Carolina.

Because of the station's location, WSKY-TV's predicted Grade B contour reaches only about half of the area reached by the other full-service television stations in the DMA. *See* Attachment A, which is a map showing the predicted Grade B contours of all of the full-power television stations in the Norfolk DMA. Section 76.51 of the Commission's Rules identifies four major communities in the Norfolk DMA – Norfolk, Newport News, Portsmouth and Hampton. As shown on Attachment B hereto, WSKY-TV does not place a predicted Grade B contour over two of the four major communities – Newport News and Hampton. Moreover, WSKY-TV does not place a predicted Grade A signal over any of the four cities.[2]

In terms of population, WSKY-TV's predicted Grade B signal reaches only 65 percent of the population in the Norfolk DMA – 1,141,383 people out of a total of 1,752,446. *See* Attachment B hereto. In contrast, the predicted Grade B contours of the other three VHF television stations in the market – WTKR, Channel 3, WAVY-TV, Channel 10, and WVEC-TV, Channel 13 – reach 96 percent of the population in the DMA. *See* Attachments C-E. WSKY-TV's predicted Grade A signal reaches only 82,833 people – 5 percent of the market – versus the 85 – 90 percent served by the predicted Grade A contour of the other three VHF stations in the DMA. *See* Attachments B-E.

Moreover, the predicted Grade A and Grade B contours vastly overstate the extent of WSKY-TV's interference-free service. As provided in the Commission's Rules, Grade A and Grade B contours "indicate the approximate extent of coverage over average terrain *in the absence of interference from other television stations.*" 47 C.F.R.§ 73.683(a) (emphasis added). In WSKY-TV's case, the station is subject to interference from an adjacent channel station, WTKR, Channel 3, Norfolk. The area of greatest interference occurs in the middle of the Norfolk DMA where WTKR's signal is at its strongest and WSKY-TV's signal is at its weakness. The result is that WSKY-TV provides a predicted interference-free Grade B signal to

2 The Grade A contour of a station defines the limit of expected satisfactory service at least 90% of the time for at least 70% of the receiving locations. Grade B service represents expected satisfactory service at least 90% of the time for at least 50% of the receiving locations. *Television & Cable Factbook* at A-13 (2003 edition).

only 110,354 people in the DMA or 6% of the total population of 1,752,446. *See* Attachment F. In contrast, the other three UHF signals in the market provide interference-free Grade B signals to 92-95 percent of the population. *See* Attachments G-I.

WSKY-TV's inferior signal relative to the other stations in the market is reflected in its TV household coverage. According to *Television & Cable Factbook*, WSKY-TV serves 94,840 TV households. *See* WSKY's "Estimated Station Totals," *Television & Cable Factbook* at A-1192 (2003 edition), Attachment J hereto. In contrast, WTKR, Channel 3, Norfolk, serves 646,800 households. *See Television & Cable Factbook* at A-1683, Attachment K hereto.

On the basis of the foregoing, WSKY-TV should be assessed the same regulatory fee as stations not located in the top-100 markets. The 100th largest DMA is Youngstown, Ohio, which had a 2003 population of 708,000 people and 277,760 television households. *See* BIAfn Media AccessPro 3.1 Television Analyzer Database; *Television & Cable Factbook* at C-40 (2003 edition).[3] WSKY-TV serves fewer people and households. As explained above, WSKY-TV's predicted interference-free Grade B signal reaches only 110,354 people, fewer than the number of people in the Youngstown, Ohio, DMA. As also explained above, *Television & Cable Factbook* (2003 edition) reports that WSKY-TV serves 94,840 households, which is fewer than the number of TV households in the Youngstown DMA. Accordingly, the 2003 regulatory fee for WSKY-TV should be reduced from $30,125, the fee for VHF stations in markets 25-50, to $4,450, the fee for VHF stations in markets below 100.

The Marketplace Recognizes the Reduced Value of the Channel 4, Manteo License.

Yet another indication of the reduced value of the license for WSKY-TV vis à vis other full service television licenses in the Norfolk DMA is the price paid for Channel 4, Manteo at auction. As mentioned above, WSKY-TV obtained its underlying authorization at Closed Broadcast Auction No. 25. The winning bid for Channel 4, Manteo, i.e., the net amount paid, was $2,842,450. At the same auction, the Commission sold a construction permit for channel 21, Virginia Beach, Virginia, which is also located in the Norfolk DMA. The net winning bid for Channel 21 was $8,752,000. In other words, the net auction price for the construction permit for Channel 4, Manteo was 32.5 percent of the net auction price for Channel 21, Virginia Beach, notwithstanding that VHF Channel 4 is supposedly more desirable than UHF Channel 21. There is a simple reason for the discrepancy in valuations – location, location, location. Channel 4, Manteo, simply does not serve the Norfolk DMA as well as Channel 21, Virginia Beach. If Channel 21 were licensed, it would owe a regulatory fee of $8,025 as a UHF station in the markets 26-50. As the Commission's auction demonstrates, the Channel 4 Manteo license is

3 The Commission uses the figures reported in *Television & Cable Factbook* for purposes of determining the appropriate regulatory fee. *See* Letter from Mark A. Reger, Chief Financial Officer, Office of Managing Director, to Joseph A. Belisle (dated March 19, 2001) (used households reported in *Television & Cable Factbook* to determine regulatory fee for WWSB(TV), Sarasota, Florida).

worth only 32.5% of the Channel 21, Virginia Beach license. Using this logic, the fee for WSKY-TV should be only $2,624 ($8,025 times 32.5%), which is less than the $4,450 fee for VHF stations in markets below 100.

WSKY-TV Should Receive a Further Reduction Because It Lacks a Paired DTV Allotment.

In addition to a regulatory fee reduction based on the number of TV households served, WSKY-TV should also receive a regulatory fee reduction because it is one of a handful of full-service television broadcast stations authorized to operate on only one channel. Of the 1,719 authorized full-service broadcast television stations as of December 31, 2002,[4] all but 90 to 100 stations have been allotted two channels — one NTSC and one DTV. The remaining 90-100 stations – stations whose construction permits were granted after April 3, 1997 – are allotted only one channel.[5] WSKY-TV has no paired DTV allotment.

WSKY-TV filed Comments in MD Docket No. 03-83 proposing that the Commission adopt an additional regulatory fee classification for single-channel full-service broadcast television stations and assess a fee for single-channel stations that is 50 percent of the fee assessed against stations with paired NTSC/DTV allotments. In a Report and Order released July 25, 2003, *Assessment and Collection of Regulatory Fees for Fiscal Year 2003,* FCC 03-184, the Commission rejected WSKY-TV's proposal. WSKY-TV has filed a petition for reconsideration or clarification, a copy of which is attached hereto as Attachment L. Whether or not the Commission grants the petition for reconsideration, the Commission should reduce the regulatory fee owed by WSKY-TV to take into account the fact that it is the only licensed station in the Norfolk DMA with no paired DTV allotment and reduce the fee by another 50 percent. If the Commission decides that the appropriate fee for WSKY-TV is $4,450, which is the fee owed by VHF stations in markets below 100, the fee should be reduced another 50 percent to $2,225 to account for the fact that WSKY-TV has no paired DTV allotment.

Conclusion.

In summary, the Commission should reduce the regulatory fee owed by WSKY-TV for the following reasons:

- WSKY-TV is an independent station, not affiliated with any network. It is licensed to a small town in a distant part of the DMA, which is not in any

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4 *See* FCC News Release, "Broadcast Station Totals as of December 31, 2002" (January 13, 2003).

5 Sky understands from informal conversations with Commission staff that there are about 90-100 single-channel full-service television stations. This is less than 6 percent of the 1719 authorized full service television stations. *See* FCC News Release, "Broadcast Station Totals as of December 31, 2002" (January 13, 2003).

metropolitan area. Its predicted Grade B signal covers only a portion of the Norfolk DMA – basically below the James River. It does not place a predicted Grade B contour over two of the four designated major cities in the Norfolk DMA. It does not place a Grade A signal over any of the four major designated cities. Its predicted Grade B contour reaches only 65% of the people in the Norfolk DMA, whereas the other stations reach 96%; its predicted Grade A signal reaches only 5% of the people in the DMA, whereas the other VHF stations reach 85-90%. Moreover, it reaches only 6% of the market with an interference-free Grade B signal, versus 92-95% reached by the other VHF stations in the market. Thus, WSKY-TV serves only 94,840 TV households according to *Television & Cable Factbook* (2003 edition), which is fewer TV households than the 100th largest market.

- At the Commission's auction for WSKY-TV's underlying authorization, the net auction price for Channel 4, Manteo, was only 32.5% of the net auction price for Channel 21, Virginia Beach, which is located in the same DMA. The reason for the lower valuation is obvious. The signal for Channel 4, Manteo, reaches only a portion of the market.
- Unlike all other licensed stations in the DMA, WSKY-TV has no paired DTV allotments.

Accordingly, for the reasons set forth above, the 2003 regulatory fee for WSKY-TV should be reduced to no more than $2,225.

In accordance with Section 1.1166 of the Commission's Rules, WSKY-TV will make the full regulatory fee payment if this request has not been acted upon by September 24, 2003, which is the deadline for 2003 regulatory fee payments.

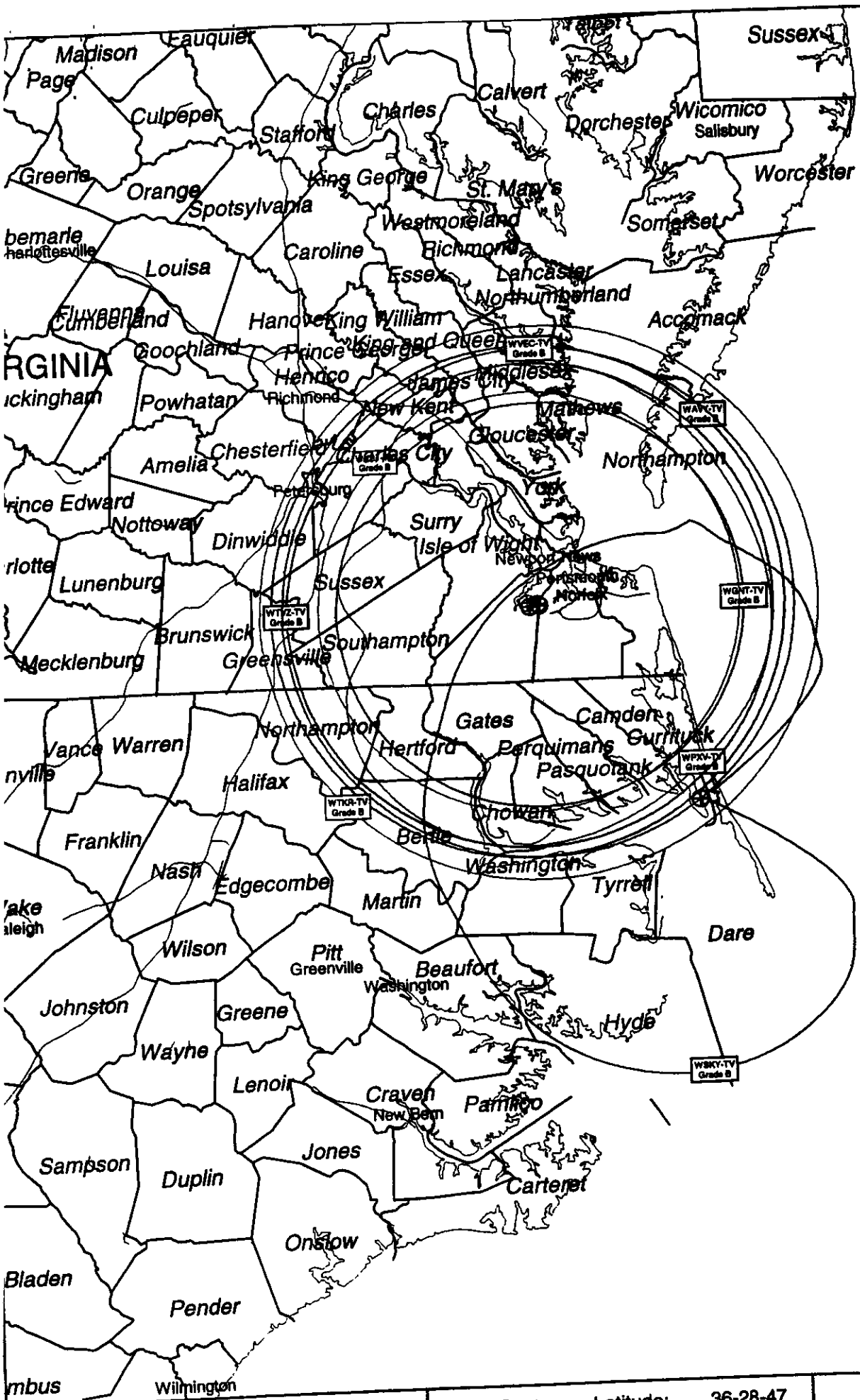
Respectfully submitted,

SKY TELEVISION, L.L.C.

By: Glenn V. Holterhaus / nss

Glenn V. Holterhaus, Manager

P.O. Box 269
Kitty Hawk, NC 27949



Grade B Contours

Map Center: Latitude: 36-28-47
Longitude: 76-25-22

Map Scale: 1:2,000,000

Miles
20 0 20 40

BIA Map Viewer ©1995-2001 SiteSafe

Attachment A

SMITH AND FISHER

POPULATION DATA
NORFOLK-PORTSMOUTH-NEWPORT NEWS DMA

WSKY-TV
CHANNEL 4 - MANTEO, NORTH CAROLINA

County	Total Population	Grade A Population	Grade A Percent	Grade B Population	Grade B Percent
Camden, NC	6,885	5,282	77	6,885	100
Chowan, NC	14,526	–	0	14,526	100
Currituck, NC	18,190	16,872	93	18,190	100
Dare, NC	29,967	23,442	80	25,545	87
Gates, NC	10,516	–	0	9,973	95
Hertford, NC	22,601	–	0	2,353	10
Pasquotank, NC	34,897	32,505	93	34,897	100
Perquimans, NC	11,368	3,887	34	11,368	100
Accomack, VA	38,305	–	0	–	0
Chesapeake City, VA	199,184	36	<1	199,184	100
Gloucester, VA	34,780	–	0	–	0
Hampton City, VA	146,437	–	0	–	0
Isle of Wight, VA	29,728	–	0	–	0
James City, VA	48,102	–	0	–	0
Mathews, VA	9,207	–	0	–	0
Newport News City, VA	180,150	–	0	–	0
Norfolk City, VA	234,403	–	0	234,403	100
Northampton, VA	13,093	–	0	–	0
Portsmouth City, VA	100,565	–	0	100,565	100
Southampton, VA	17,482	–	0	–	0
Suffolk City, VA	63,677	–	0	58,237	91
Surry, VA	6,829	–	0	–	0
Virginia Beach City, VA	425,257	829	< 1	425,257	100
York, VA	56,297	–	0	–	0
TOTAL	1,752,446	82,633	5	1,141,383	65

Attachment B

SMITH AND FISHER

POPULATION DATA
NORFOLK-PORTSMOUTH-NEWPORT NEWS DMA

WTKR
CHANNEL 3 - NORFOLK, VIRGINIA

County	Total Population	Grade A Population	Grade A Percent	Grade B Population	Grade B Percent
Camden, NC	6,885	2,448	36	6,885	100
Chowan, NC	14,526	20	< 1	14,526	100
Currituck, NC	18,190	6,824	38	18,190	100
Dare, NC	29,967	–	0	3,045	10
Gates, NC	10,516	9,234	88	10,516	100
Hertford, NC	22,601	2	< 1	22,601	100
Pasquotank, NC	34,897	4,135	12	34,897	100
Perquimans, NC	11,368	195	2	11,368	100
Accomack, VA	38,305	–	0	2,135	6
Chesapeake City, VA	199,184	199,184	100	199,184	100
Gloucester, VA	34,780	10,947	31	34,780	100
Hampton City, VA	146,437	146,437	100	146,437	100
Isle of Wight, VA	29,728	29,728	100	29,728	100
James City, VA	48,102	14,576	30	48,102	100
Mathews, VA	9,207	–	0	9,207	100
Newport News City, VA	180,150	180,150	100	180,150	100
Norfolk City, VA	234,403	234,403	100	234,403	100
Northampton, VA	13,093	–	0	13,093	100
Portsmouth City, VA	100,565	100,565	100	100,565	100
Southampton, VA	17,482	8,213	47	17,482	100
Suffolk City, VA	63,677	63,677	100	63,677	100
Surry, VA	6,829	4,940	72	6,829	100
Virginia Beach City, VA	425,257	425,213	< 100	425,257	100
York, VA	56,297	51,653	92	56,297	100
TOTAL	1,752,446	1,492,544	85	1,689,354	96

Attachment C

SMITH AND FISHER

POPULATION DATA
NORFOLK-PORTSMOUTH-NEWPORT NEWS DMA

WAVY-TV
CHANNEL 10 - PORTSMOUTH, VIRGINIA

County	Total Population	Grade A Population	Grade A Percent	Grade B Population	Grade B Percent
Camden, NC	6,885	3,773	55	6,885	100
Chowan, NC	14,526	1,079	7	14,526	100
Currituck, NC	18,190	9,916	55	16,400	90
Dare, NC	29,967	–	0	50	<1
Gates, NC	10,516	10,516	100	10,516	100
Hertford, NC	22,601	4,251	19	22,601	100
Pasquotank, NC	34,897	20,053	57	34,897	100
Perquimans, NC	11,368	1,522	13	11,368	100
Accomack, VA	38,305	–	0	–	0
Chesapeake City, VA	199,184	199,184	100	199,184	100
Gloucester, VA	34,780	20,121	58	34,780	100
Hampton City, VA	146,437	146,437	100	146,437	100
Isle of Wight, VA	29,728	29,728	100	29,728	100
James City, VA	48,102	39,425	82	48,102	100
Mathews, VA	9,207	1,434	16	9,207	100
Newport News City, VA	180,150	180,150	100	180,150	100
Norfolk City, VA	234,403	234,403	100	234,403	100
Northampton, VA	13,093	851	6	10,413	80
Portsmouth City, VA	100,565	100,565	100	100,565	100
Southampton, VA	17,482	12,849	73	17,482	100
Suffolk City, VA	63,677	63,677	100	63,677	100
Surry, VA	6,829	6,816	<100	6,829	100
Virginia Beach City, VA	425,257	425,257	100	425,257	100
York, VA	56,297	56,297	100	56,297	100
TOTAL	1,752,446	1,568,304	89	1,679,754	96

Attachment D

SMITH AND FISHER

POPULATION DATA
NORFOLK-PORTSMOUTH-NEWPORT NEWS DMA

WVEC-TV
CHANNEL 13 - HAMPTON, VIRGINIA

County	Total Population	Grade A Population	Grade A Percent	Grade B Population	Grade B Percent
Camden, NC	6,885	4,472	65	6,885	100
Chowan, NC	14,526	971	7	14,526	100
Currituck, NC	18,190	10,737	59	17,199	95
Dare, NC	29,967	–	0	223	<1
Gates, NC	10,516	10,516	100	10,516	100
Hertford, NC	22,601	2,684	12	22,601	100
Pasquotank, NC	34,897	25,675	74	34,897	100
Perquimans, NC	11,368	1,573	14	11,368	100
Accomack, VA	38,305	–	0	3	<1
Chesapeake City, VA	199,184	199,184	100	199,184	100
Gloucester, VA	34,780	19,444	56	34,780	100
Hampton City, VA	146,437	146,437	100	146,437	100
Isle of Wight, VA	29,728	29,728	100	29,728	100
James City, VA	48,102	38,170	79	48,102	100
Mathews, VA	9,207	1,477	16	9,207	100
Newport News City, VA	180,150	180,150	100	180,150	100
Norfolk City, VA	234,403	234,403	100	234,403	100
Northampton, VA	13,093	1,215	9	10,809	83
Portsmouth City, VA	100,565	100,565	100	100,565	100
Southampton, VA	17,482	11,987	69	17,482	100
Suffolk City, VA	63,677	63,677	100	63,677	100
Surry, VA	6,829	6,430	94	6,829	100
Virginia Beach City, VA	425,257	425,257	100	425,257	100
York, VA	56,297	55,613	99	56,297	100
TOTAL	1,752,446	1,570,365	90	1,683,181	96

Attachment E

SMITH AND FISHER

POPULATION DATA
NORFOLK-PORTSMOUTH-NEWPORT NEWS DMA

INTERFERENCE - FREE

WSKY-TV
CHANNEL 4 – MANTEO, NORTH CAROLINA

County	Total Population	Grade A Population	Grade A Percent	Grade B Population	Grade B Percent
Camden, NC	6,885	5,282	77	5,947	86
Chowan, NC	14,526	–	0	12,510	86
Currituck, NC	18,190	16,950	93	16,992	93
Dare, NC	29,967	23,424	78	25,257	84
Gates, NC	10,516	–	0	219	2
Hertford, NC	22,601	–	0	98	<1
Pasquotank, NC	34,897	32,505	93	33,929	97
Perquimans, NC	11,368	3,861	34	11,331	<100
Accomack, VA	38,305	–	0	–	0
Chesapeake City, VA	199,184	36	<1	116	<1
Gloucester, VA	34,780	–	0	–	0
Hampton City, VA	146,437	–	0	–	0
Isle of Wight, VA	29,728	–	0	–	0
James City, VA	48,102	–	0	–	0
Mathews, VA	9,207	–	0	–	0
Newport News City, VA	180,150	–	0	–	0
Norfolk City, VA	234,403	–	0	–	0
Northampton, VA	13,093	–	0	–	0
Portsmouth City, VA	100,565	–	0	–	0
Southampton, VA	17,482	–	0	–	0
Suffolk City, VA	63,677	–	0	–	0
Surry, VA	6,829	–	0	–	0
Virginia Beach City, VA	425,257	829	<1	3,955	<1
York, VA	56,297	–	0	–	0
TOTAL	1,752,446	82,887	5	110,354	6

Attachment F

SMITH AND FISHER

POPULATION DATA
NORFOLK-PORTSMOUTH-NEWPORT NEWS DMA

INTERFERENCE - FREE

WTKR
CHANNEL 3 - NORFOLK, VIRGINIA

County	Total Population	Grade A Population	Grade A Percent	Grade B Population	Grade B Percent
Camden, NC	6,885	2,448	36	3,084	45
Chowan, NC	14,526	20	< 1	105	<1
Currituck, NC	18,190	6,624	38	10,820	59
Dare, NC	29,967	--	0	784	3
Gates, NC	10,516	9,230	88	10,516	100
Hertford, NC	22,601	2	< 1	20,094	89
Pasquotank, NC	34,897	4,135	12	7,025	20
Perquimans, NC	11,368	203	2	302	3
Accomack, VA	38,305	--	0	740	2
Chesapeake City, VA	199,184	199,184	100	199,184	100
Gloucester, VA	34,780	10,797	31	34,780	100
Hampton City, VA	146,437	146,437	100	146,437	100
Isle of Wight, VA	29,728	29,728	100	29,728	100
James City, VA	48,102	14,196	30	48,102	100
Mathews, VA	9,207	--	0	9,207	100
Newport News City, VA	180,150	180,150	100	180,150	100
Norfolk City, VA	234,403	234,403	100	234,403	100
Northampton, VA	13,093	--	0	12,258	94
Portsmouth City, VA	100,565	100,565	100	100,565	100
Southampton, VA	17,482	8,318	48	17,242	99
Suffolk City, VA	63,677	63,677	100	63,677	100
Surry, VA	6,829	4,940	72	6,829	100
Virginia Beach City, VA	425,257	425,213	< 100	425,257	100
York, VA	56,297	51,435	91	56,297	100
TOTAL	1,752,446	1,491,905	85	1,617,566	92

Attachment G

SMITH AND FISHER

POPULATION DATA
NORFOLK-PORTSMOUTH-NEWPORT NEWS DMA

INTERFERENCE - FREE

WAVY-TV
CHANNEL 10 – PORTSMOUTH, VIRGINIA

County	Total Population	Grade A Population	Grade A Percent	Grade B Population	Grade B Percent
Camden, NC	6,885	3,773	55	6,786	99
Chowan, NC	14,526	67	<1	67	<1
Currituck, NC	18,190	9,916	55	14,728	81
Dare, NC	29,967	–	0	50	<1
Gates, NC	10,516	9,827	93	9,827	93
Hertford, NC	22,601	1,484	7	2,723	12
Pasquotank, NC	34,897	20,463	59	30,275	84
Perquimans, NC	11,368	960	8	960	8
Accomack, VA	38,305	–	0	–	0
Chesapeake City, VA	199,184	199,184	100	199,184	100
Gloucester, VA	34,780	20,107	58	34,718	<100
Hampton City, VA	146,437	146,437	100	146,437	100
Isle of Wight, VA	29,728	29,728	100	29,728	100
James City, VA	48,102	39,230	82	48,102	100
Mathews, VA	9,207	1,424	16	9,207	100
Newport News City, VA	180,150	180,150	100	180,150	100
Norfolk City, VA	234,403	234,403	100	234,403	100
Northampton, VA	13,093	858	7	8,403	64
Portsmouth City, VA	100,565	100,565	100	100,565	100
Southampton, VA	17,482	12,841	73	15,315	88
Suffolk City, VA	63,677	63,677	100	63,677	100
Surry, VA	6,829	6,825	<100	6,829	100
Virginia Beach City, VA	425,257	425,257	100	425,257	100
York, VA	56,297	56,297	100	56,297	100
TOTAL	1,752,446	1,563,483	89	1,623,688	93

Attachment H

SMITH AND FISHER

POPULATION DATA
NORFOLK-PORTSMOUTH-NEWPORT NEWS DMA

INTERFERENCE - FREE

WVEC-TV
CHANNEL 13 – HAMPTON, VIRGINIA

County	Total Population	Grade A Population	Grade A Percent	Grade B Population	Grade B Percent
Camden, NC	6,885	3,018	44	6,885	100
Chowan, NC	14,528	172	1	14,528	100
Currituck, NC	18,190	8,559	47	17,199	95
Dare, NC	29,967	–	0	223	<1
Gates, NC	10,516	10,382	99	10,516	100
Hertford, NC	22,601	212	<1	22,054	98
Pasquotank, NC	34,897	7,529	22	34,897	100
Perquimans, NC	11,368	613	5	11,368	100
Accomack, VA	38,305	–	0	3	<1
Chesapeake City, VA	199,184	199,184	100	199,184	100
Gloucester, VA	34,780	14,509	42	33,848	97
Hampton City, VA	146,437	146,437	100	146,437	100
Isle of Wight, VA	29,728	29,728	100	29,728	100
James City, VA	48,102	25,959	54	45,746	95
Mathews, VA	9,207	8	<1	9,207	100
Newport News City, VA	180,150	180,150	100	180,150	100
Norfolk City, VA	234,403	234,403	100	234,403	100
Northampton, VA	13,093	17	<1	7,695	59
Portsmouth City, VA	100,565	100,565	100	100,565	100
Southampton, VA	17,482	10,354	59	16,546	95
Suffolk City, VA	63,677	63,677	100	63,677	100
Surry, VA	6,829	5,321	78	6,002	88
Virginia Beach City, VA	425,257	425,257	100	425,257	100
York, VA	56,297	53,800	96	56,297	100
TOTAL	1,752,446	1,519,834	87	1,672,413	95

Attachment I

North Carolina — Manteo

WSKY-TV

Ch. 4

Licensee: Sky Television LLC, Box 269, Kitty Hawk, NC 27949.

Studio: 258-B Foster Forbes Rd., Powells Point, NC 27966.

Mailing Address: 258-B Foster Forbes Rd., Powells Point, NC 27966.

Phone: 252-491-4242; 800-414-0911. **Fax:** 252-491-9277.

Web Site: http://www.wsky4.com

Technical Facilities: Channel No. 4 (66-72 MHz). Authorized power: 100-kw max. visual. Antenna: 1030-ft above av. terrain, 1034-ft. above ground, 1030-ft. above sea level.

Latitude	36°	08'	08"
Longitude	75°	49'	28"

Note: Latitude and longitude coordinates shown are based on the North American Datum of 1927 (NAD 27) as currently required by the Mass Media Bureau of the FCC.

Ownership: Sky Television LLC (Group Owner).

Began Operation: October 1, 2001. Sale to present owner by DanBeth Communications Inc. approved by FCC August 19, 2002.

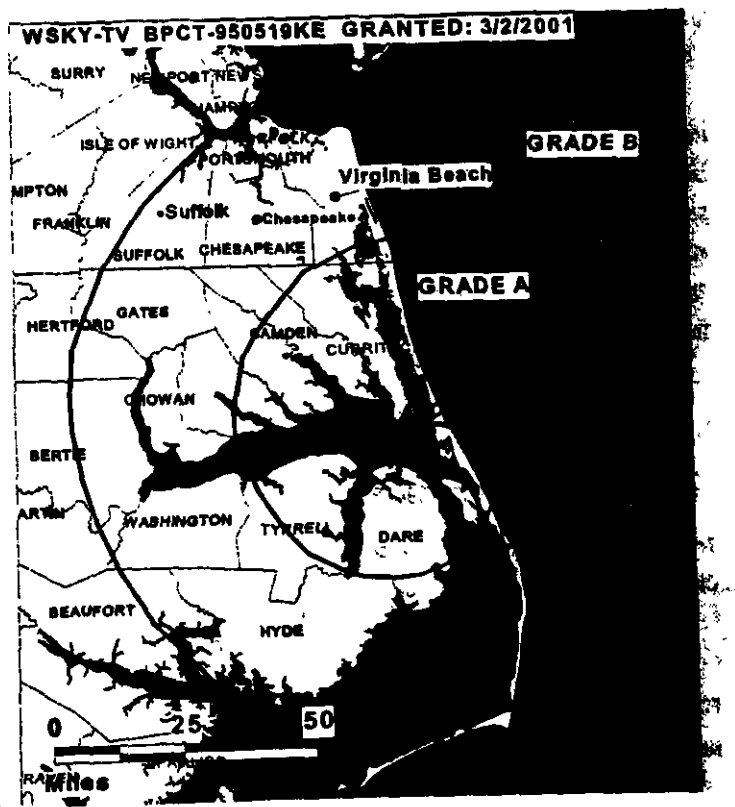
Personnel:

Glenn V. Holterhaus, President & General Manager.

City of License: Manteo. **Station DMA:** Norfolk-Portsmouth-Newport News, VA.

Rank: 41.

There is no
more visible place for your advertising message
than the pages of the
Television & Cable Factbook



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GrandTotal	Cable TV Households	Non-cable TV Households	Total TV Households
Estimated Station Totals *	87,390	7,450	94,840
Average Weekly Circulation (2002)	5,227	714	5,941
Average Daily Circulation (2002)			1,473

Station DMA Total	Cable TV Households	Non-cable TV Households	Total TV Households
Estimated Station Totals *	87,390	3,770	91,160
Average Weekly Circulation (2002)	5,227	427	5,654
Average Daily Circulation (2002)			1,151

Other DMA Total	Cable TV Households	Non-cable TV Households	Total TV Households
Estimated Station Totals *	0	3,680	3,680
Average Weekly Circulation (2002)	0	287	287
Average Daily Circulation (2002)			22

*Estimated station totals are sums of the Nielsen TV and Cable TV household estimates for each county in which the station registers viewing of more than 5% as per the Nielsen Survey Methods.

Attachment J

WTKR
Ch. 3

Network Service: CBS.

Licensee: New York Times Management Services, 2202 N. Westshore Blvd., Suite 370, Tampa, FL 33607.

Studio: 720 Boush St., Norfolk, VA 23510.

Mailing Address: 720 Boush St., Norfolk, VA 23510.

Phone: 757-446-1000. **Fax:** 757-640-0164.

Web Site: http://www.wtkr.com

Technical Facilities: Channel No. 3 (60-66 MHz). Authorized power: 100-kw max. visual, 10-kw max. aural. Antenna: 980-ft above av. terrain, 1029-ft. above ground, 1049-ft. above sea level.

Latitude	36°	48'	56"
Longitude	76°	28'	00"

Transmitter: 5277 Nansemond Pkwy., Suffolk.

Digital Facilities: Channel No. 40 (626-632 MHz). Power: 950-kw max. visual. Antenna: 1237-ft above av. terrain, 1224-ft. above ground, 23-ft. above sea level.

Latitude	36°	48'	31"
Longitude	76°	30'	13"

FCC Digital File Number: BPCDT-20001116ABE. Granted: April 17, 2001.

Note: Latitude and longitude coordinates shown are based on the North American Datum of 1927 (NAD 27) as currently required by the Mass Media Bureau of the FCC.

News Services: NNWS, CBS Newspath, AP, UPI.

Ownership: The New York Times Co. (Group Owner).

Began Operation: April 2, 1950. Sale to Knight-Ridder by Landmark Television approved by FCC January 16, 1981 (Television Digest, Vol. 20:33; 21:4). Sale to Narragansett Television approved by FCC April 26, 1989 (Vol. 29:9). Sale to present owner by Narragansett Television approved by FCC May 9, 1995 (Vol. 34:50; 35:10).

Represented (legal): Kotsen & Naftalin LLP.

Represented (sales): Eagle Television Sales.

Personnel:

Frank A. Chebale, President & General Manager.

Jon Erkenbrack, General Sales Manager.

Ted Hand, Chief Engineer.

Lori LeBlanc, Controller.

John Wessling, News Director.

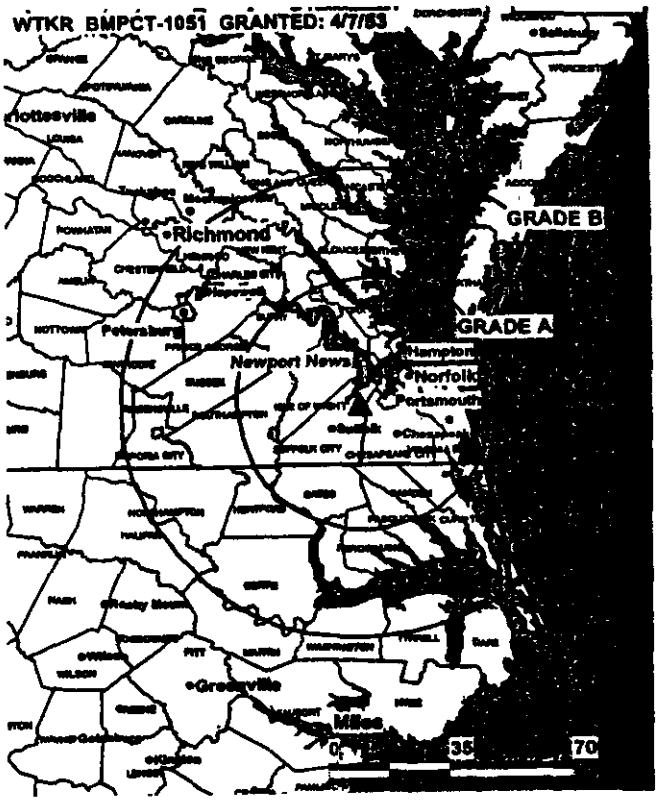
Janie Jenkins, Programming Director.

Deborah Frazier, Traffic Manager.

Kerry Marsten, Local Sales Manager.

Brent Lane, National Sales Manager.

Ambler Hackett, Research Director.



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Rates: On request.

City of License: Norfolk. **Station DMA:** Norfolk-Portsmouth-Newport News, VA.

Rank: 41.

Circulation © 2002 Nielsen. Coverage based on Nielsen study.

GrandTotal	Cable TV Households	Non-cable TV Households	Total TV Households
Estimated Station Totals *	506,210	140,590	646,800
Average Weekly Circulation (2002)	337,399	83,600	420,999
Average Daily Circulation (2002)			197,875

Station DMA Total	Cable TV Households	Non-cable TV Households	Total TV Households
Estimated Station Totals *	489,920	121,100	611,020
Average Weekly Circulation (2002)	332,854	80,510	413,364
Average Daily Circulation (2002)			195,134

Other DMA Total	Cable TV Households	Non-cable TV Households	Total TV Households
Estimated Station Totals *	16,290	19,490	35,780
Average Weekly Circulation (2002)	4,545	3,090	7,635
Average Daily Circulation (2002)			2,741

*Estimated station totals are sums of the Nielsen TV and Cable TV household estimates for each county in which the station registers viewing of more than 5% as per the Nielsen Survey Methods.

Attachment K

Federal Communications Commission

The FCC Acknowledges Receipt of Comments From ...

Sky Television L.L.C.

...and Thank You for Your Comments

Your Confirmation Number is: '2003821662550 '

Date Received:	**Aug 21 2003**
Docket:	**03-83**
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updated 02/11/02

Attachment L

Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, DC 20554

In the Matter of	)	
	)	
Assessment and Collection of	)	MD Docket No. 03-83
Regulatory Fees For Fiscal Year 2003	)	

To: The Commission

PETITION FOR RECONSIDERATION OR CLARIFICATION

Pursuant to Section 1.106 of the Commission's Rules, Sky Television, L.L.C. ("Sky") hereby petitions for reconsideration or clarification of the Report and Order, FCC 03-184, in the above-captioned docket released July 25, 2003 (the "Report and Order") concerning regulatory fees and classifications for Fiscal Year 2003.[1] Specifically, Sky seeks clarification or reconsideration of the Commission's rejection of the proposal that the Commission adopt an additional regulatory fee classification for single-channel full-service broadcast television stations and assess a fee for single-channel stations that is 50 percent of the fee assessed against stations with paired NTSC/DTV allotments. *See* Comments of Sky Television, L.L.C. (filed April 25, 2003) (for the Commission's convenience, Sky is attaching a copy of the Comments to this Petition).

---

[1] The Report and Order was published in the *Federal Register* on August 13, 2003, 68 Fed. Reg. 48446 (2003).

In rejecting Sky's proposal, the Commission stated:

> The Commission's broadcast television regulatory fees are already designed to only capture the costs of analog broadcast activities. Although DTV licensees are subject to Section 8 application fees, the Commission does not yet assess Section 9 regulatory fees to recover the costs of the agency's DTV-related activities. Therefore, there is no need for the Commission to take action on this matter, because the analog-only regulatory fee category that WSKY-TV requests is already in effect.

Report and Order at ¶ 25. Sky first seeks clarification of this language, which can be interpreted two or three ways.

Literally, paragraph 25 of the Report and Order says that the Commission does not even attempt to recover the costs of the Commission's DTV-related regulatory activities. If this interpretation is correct, and if the statement is true, then the Commission is in violation of Section 9 of the Communications Act, which mandates the Commission to recover regulatory costs without distinguishing between analog television and DTV-related costs.

The language in paragraph 25 also could mean that none of the $269,000,000 revenue requirement for the agency as a whole that is recovered through regulatory fees, including the $14,955,050 revenue requirement assigned to full-service television stations, is intended to offset the Commission's regulatory activities with respect to DTV. The Report and Order contains no citation to any source for this statement, so Sky has no way of evaluating its accuracy. On its face, however, the statement does not appear to be plausible, because $269,000,000 is all but $2,000,000 of the amount that Congress appropriated to the Commission for Fiscal Year 2003. Public Law No. 108-7, 117 Stat. 95.

It would appear therefore that notwithstanding the statement in paragraph 25 of the Report and Order, the Commission does in fact attempt to recover the costs of its DTV-related regulatory activities and that collections under Section 9 are used to offset these costs. Sky nevertheless requests clarification of the Commission's position.

It has also been informally suggested to Sky that what the Commission meant in paragraph 25 is that it does not assess Section 9 regulatory fees against DTV construction permits and licenses. This interpretation is not supported by the language itself, and the Commission has never previously stated that it does not assess fees for DTV authorizations. If true, however, this policy also violates Section 9, which contains no exception for DTV construction permits and licenses.[2] Sky seeks clarification if this is what the Commission meant in paragraph 25.

In any event, this interpretation of paragraph 25 is entirely unresponsive to the issue that Sky raised in its Comments in this proceeding. Sky is aware that the Commission does not assess a separate regulatory fee for DTV allotments. This policy makes sense in that DTV allotments do not exist separate from the paired analog allotment. In the Comments, however, Sky faulted the Commission for failing to distinguish between television stations with paired DTV allotments ("two-channel stations") and stations with no paired DTV allotment ("single-channel stations"). If paragraph 25 means simply that stations with single allotments and stations with paired allotments are assessed the same amount, then paragraph 25 does nothing more than restate the facts that led Sky to file its Comments in the first place. It does not explain

[2] Section 9(g) provides only for exceptions to the charges assessed against TV licenses and construction permits for governmental and nonprofit entities. 47 U.S.C. § 159(h). There is no exception for DTV authorizations.

why the Commission's failure to distinguish between two-channel stations and single-channel stations complies with Section 9.

Section 9(b)(3) of the Communications Act requires the Commission to add new classifications for regulatory fee purposes to reflect changes in services and to reclassify services to reflect changes arising from rulemaking proceedings or changes in law. In the Comments, Sky pointed out that the Commission's prior decisions to grant a paired digital allotment to most, but not all television stations, represents a fundamental change in the broadcast television allotment scheme sufficient to require a change in the Schedule of Regulatory Fees under Section 9(b)(3).[3] As Sky explained in detail in its Comments in this proceeding, it is clear that there have been changes in the nature of full-power television broadcast services since 1993 as a consequence of Commission rulemaking proceedings. In 1997, the Commission granted a paired digital allotment to all licensees and permittees of full service broadcast stations as of April 3, 1997. In 1998, the Commission confirmed that it would not grant a paired digital allotment to new broadcast television stations – i.e., to stations with original construction permits granted after April 3, 1997.[4] The Report and Order, however, contains no discussion of Section 9(b)(3) nor any explanation why the Commission does not believe it applies here.

---

[3] *See PanAmSat Corp. v. FCC*, 198 F.3d 890, 897-99 (D.C. Cir. 1999) (Commission's decision to include non-common carriers in the international circuit category beginning FY 1997 is justifiable on the basis of changes in the Commission's services that flow from earlier rulemakings).

[4] *Fifth Report and Order, Advanced Television Systems and Their Impact Upon Existing Television Broadcast Service*, 12 FCC Rcd 12809, 12816 (1997) (initial DTV licenses limited to full service broadcast television station permittees and licensees as of April 3, 1997), *recon. denied, Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order*, 13 FCC Rcd 6860, 6865 (1998) (new NTSC permittees will not be awarded a second channel to convert to DTV, but may convert on their single 6 MHz channel), *further recon. denied, Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders*, 14 FCC Rcd 1348, 1355-57 (1998).

Moreover, the Commission has added new classifications for regulatory fee purposes even where there has been no underlying change in the service or the law. For example, in 1995, the Commission added categories for satellite television station licenses and construction permits even though there had been no change in the nature of the service or in the law with respect to such stations. *See Assessment and Collection of Regulatory Fees for Fiscal Year 1995*, 10 FCC Rcd 13512, 13534-35 (1995). If there is justification for a separate category for satellite television stations, which have a paired digital allotment if granted as of April 3, 1997, then there is even a more compelling reason for a separate category for single-channel stations.[5]

The Report and Order also contains no explanation why, in setting the amount of the regulatory fee for the new single-channel television station category, the Commission has ignored the mandate of Section 9(b)(1)(A), which requires the Commission to take into account the benefits provided to the payor by the Commission's regulatory activities.[6] The Report and Order does not dispute the fact that much of the Commission's current regulatory activities with respect to broadcast television do not benefit single-channel stations and that single-channel stations are using only one-half of the spectrum used by stations with paired NTSC/DTV allotments.[7]

---

[5] *See also Implementation of Section 9 of the Communications Act: Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year*, 10 FCC Rcd 12763 (1995) (reduced FY 1994 fees for satellite television stations that had filed petitions for reconsideration or waiver or reduction), *recon. granted*, 12 FCC Rcd 10621 (1997) (Commission retroactively reduced FY 1994 regulatory fees for all satellite television stations).

[6] *See Comments* at 5-7.

[7] *See Comments* at 5. The Commission itself has told Congress that one of its "high growth areas" is "high definition digital television." FY 2003 Budget Estimates to Congress at 9, which can be found at www.fcc.gov/Reports/fcc2003budget.html.

In sum, the Report and Order contains no lawful or logical explanation of why the Commission rejected Sky's proposal for a new regulatory fee service category for single-channel full-service broadcast television stations. Accordingly, Sky requests the Commission either to clarify its position, particularly its explanation in paragraph 25 of the Report and Order, or reconsider its decision and add a classification for regulatory fee purposes for single-channel stations and assess such stations a fee commensurate with the benefits received. Sky suggests that because single-channel television stations use one-half of the spectrum used by stations with paired NTSC/DTV allotments, the fee assessed against single-channel stations should be no more than 50 percent the fee assessed against two-channel stations.

Respectfully submitted,

SKY TELEVISION, L.L.C.

By: /s/ Glenn V. Holterhaus

Glenn V. Holterhaus, Manager

P.O. Box 269
Kitty Hawk, NC 27949

August 21, 2003

ATTACHMENT

Comments of Sky Television, L.L.C.

Federal Communications Commission

The FCC Acknowledges Receipt of Comments From ...

Sky Television, L.L.C.

...and Thank You for Your Comments

Your Confirmation Number is: '2003425578568 '

Date Received: Apr 25 2003

Docket: 03-83

Number of Files Transmitted: 1

File Name	File Type	File Size (bytes)
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updated 02/11/02

Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, DC 20554

In the Matter of	)	
	)	
Assessment and Collection of	)	MD Docket No. 03-83
Regulatory Fees For Fiscal Year 2003	)	

To: The Commission

COMMENTS OF SKY TELEVISION, L.L.C.

Sky Television, L.L.C. ("Sky") hereby comments on the Notice of Proposed Rule Making in the above-captioned docket released March 16, 2003 ("NPRM") concerning regulatory fees and classifications for Fiscal Year 2003. Sky urges the Commission to adopt an additional regulatory fee classification for single-channel full-service broadcast television stations and assess a fee for single-channel stations that is 50 percent of the fee assessed against stations with paired NTSC/DTV allotments.

I. Factual Background

Sky is the licensee of television station WSKY-TV, Channel 4, Manteo, North Carolina. WSKY-TV obtained its underlying authorization at Closed Broadcast Auction No. 25. The Commission granted the underlying construction permit for WSKY-TV on March 2, 2001, and WSKY-TV paid a regulatory fee for FY 2002 as a permittee. The Commission granted Sky's application for license on December 26, 2001. FY 2003 is

therefore the first year that WSKY-TV will be required to pay a regulatory fee as a licensee.[1]

WSKY-TV is one of the handful of full-service broadcast stations authorized to operate on only one channel. In other words, WSKY-TV has no paired DTV allotment. Of the 1,719 authorized full-service broadcast television stations as of December 31, 2002,[2] all but 90 to 100 stations have been allotted two channels — one NTSC and one DTV. The remaining 90-100 stations – stations whose construction permits were granted after April 3, 1997 – are allotted only one channel.[3]

At present, the Schedule of Regulatory Fees does not distinguish between television stations with paired DTV allotments ("two-channel stations") and stations with no paired DTV allotment ("single-channel stations"). With one exception, the Commission has not changed the classifications for full-service broadcast television stations since Congress enacted Section 9 of the Communications Act in 1993, 47 U.S.C. § 159(b)(3), and all television stations are classified for regulatory fee purposes by band – either VHF or UHF – and market size. The one exception is the separate classification for satellite television stations, which the Commission added in 1995.[4]

---

[1] WSKY-TV is located in the Portsmouth-Norfolk-Newport News DMA, which is the 42nd market. WSKY-TV operates on VHF Channel 4. Therefore, the proposed regulatory fee for FY 2003 for WSKY-TV is $30,125.

[2] *See* FCC News Release, "Broadcast Station Totals as of December 31, 2002" (released January 13, 2003).

[3] Sky understands from informal conversations with Commission staff that there are about 90-100 single-channel full-service television stations. This is less than 6 percent of the 1719 authorized full service television stations. *See* FCC News Release, "Broadcast Station Totals as of December 31, 2002" (released January 13, 2003).

[4] *See Assessment and Collection of Regulatory Fees for Fiscal Year 1995*, 10 FCC Rcd 13512, 13534-35 (1995).

II. Discussion

Under Section 9(b)(3) of the Communications Act, the Commission is required to add new classifications for regulatory fee purposes to reflect changes in services. Section 9(b)(3) requires the Commission to:

> amend the Schedule of Regulatory Fees if the Commission determines that the Schedule requires amendment to comply with the requirements of paragraph (1)(A) [of Section 9(b)]. In making such amendments, the Commission shall add, deletes, 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 on changes in law.

In other words, the Commission must reclassify services to reflect changes arising from rulemaking proceedings or changes in law.[5]

It is clear that there have been changes in the nature of full-power television broadcast services since 1993 as a consequence of Commission rulemaking proceedings. In 1997, the Commission granted a paired digital allotment to all licensees and permittees of full service broadcast stations as of April 3, 1997. In 1998, the Commission confirmed that it would not grant a paired digital allotment to new broadcast television stations – i.e., to stations with original construction permits granted after April 3, 1997.[6]

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[5] *See COMSAT Corp. v. FCC*, 114 F.3d 223, 227-28 (D.C. Cir. 1997) (vacated Commission's addition of a "signatory fee" classification for COMSAT because there had been no change in the nature of services as a consequence of a rulemaking or change in law). *But see Assessment and Collection of Regulatory Fees for Fiscal Year 1995*, 10 FCC Rcd 13512, 13534-35 (1995) (Commission created new classifications for satellite television licenses and construction permits under its "authority to make permissive amendments to our regulatory fees" to "take into account public interest factors reflected in comments filed in the proceeding to adopt the FY 1994 Schedule of Regulatory Fees," notwithstanding that there had been no change in the nature of the service as a consequence of a rulemaking proceeding or other change in law); *Implementation of Section 9 of the Communications Act: Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year*, 10 FCC Rcd 12759, 12763 (1995) (reduced FY 1994 fees for satellite television stations that had filed petitions for reconsideration or waiver or reduction), *recon. granted*, 12 FCC Rcd 10621 (1997) (Commission retroactively reduced FY 1994 regulatory fees for all satellite television stations).

[6] *Fifth Report and Order, Advanced Television Systems and Their Impact Upon Existing Television Broadcast Service*, 12 FCC Rcd 12809, 12816 (1997) (initial DTV licenses limited to full service broadcast

The grant of a paired digital allotment to most, but not all television stations, is a fundamental change in the broadcast television allotment scheme, which is clearly sufficient to require a change in the Schedule of Regulatory Fees under Section 9(b)(3). *See PanAmSat Corp. v. FCC*, 198 F.3d 890, 897-99 (D.C. Cir. 1999) (Commission's decision to include non-common carriers in the international circuit category beginning FY 1997 is justifiable on the basis of changes in the Commission's services that flow from earlier rulemakings). In 1995, the Commission added categories for satellite television station licenses and construction permits even though there had been no change in the nature of the service or in the law.[7] If there is justification for a separate category for satellite television stations, which have a paired digital allotment if granted as of April 3, 1997, then there is even a more compelling reason for a separate category for single-channel stations.

In setting the amount of the regulatory fee for the new single-channel television station category, the Commission must take into account the fact that much of its current regulatory activities with respect to broadcast television do not benefit single-channel stations and that single-channel stations are using only one-half of the spectrum used by stations with paired NTSC/DTV allotments. Section 9(b)(1)(A) of the Communications Act, 47 U.S.C. § 159(b)(1)(A), requires the Commission to adjust fees:

> 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

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television station permittees and licensees as of April 3, 1997), recon. denied, *Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order*, 13 FCC Rcd 6860, 6865 (1998) (new NTSC permittees will not be awarded a second channel to convert to DTV, but may convert on their single 6 MHz channel), further recon. denied, *Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders*, 14 FCC Rcd 1348, 1355-57 (1998).

[7] See n. 5 *supra*.

> versus exclusive use, and other factors that the Commission determines are necessary in the public interest.

Such regulatory activities that benefit only television stations with paired NTSC/DTV allotments would include rulemaking proceedings relating to the transition from analog to digital, simulcast requirements, cable and direct broadcast satellite carriage and other issues; DTV allotment proceedings; international coordination with Mexico, Canada and other nations; waiver requests; spectrum management; and consumer information services with respect to DTV. *See Assessment and Collection of Regulatory Fees for Fiscal Year 2002*, 17 FCC Rcd 13203, 13205 and 13276-77 (2002) (description of FCC activities). For example, just this month, the Commission completed a rulemaking proceeding on the remedial measures to be followed when requests to extend DTV construction deadlines are denied. *Remedial Steps for Failure to Comply with Digital Television Construction Schedule,* FCC 03-77 (released April 16, 2003). This rulemaking proceeding is simply irrelevant to single-channel television stations, as the decision itself acknowledges. *Id.* at n. 25. The decision illustrates that much of the Commission's current regulatory activities benefit only television stations with paired NTSC/DTV allotments and therefore that the costs of these activities should not be allocated to single-channel stations.

Sky has no way of knowing how much of the $14,955,050 revenue requirement assigned to full-service television stations, *NPRM* at Attachment C, is attributable to the Commission's activities with respect to DTV, and apparently the Commission also does not have access to this data.[8] In the absence of actual cost data, Sky can only estimate

[8] Section 9(i) of the Communications Act requires the Commission to "develop accounting systems necessary to making the adjustments authorized by subsection (b)(3)." Last year, however, the

what an appropriate allocation would be. Given the substantial Commission resources devoted to DTV, it would be safe to assume that single-channel stations should be assessed no more than 50% of the regulatory fees assessed against two-channel stations. A fee for single-channel stations of 50% of the two-channel fee is also justifiable since single channel stations use only 50% of the spectrum used by two-channel stations. *See, e.g.*, *Assessment and Collection of Regulatory Fees for Fiscal Year 1997*, 12 FCC Rcd 17161, 17184-17185 (1997) (Commission created a new CMRS Messaging Service fee category, distinguishing between the CMRS Mobile Services and CMRS Messaging Services fee categories by the amount of bandwidth authorized consistent with policy to "assess fees based upon the quality of the channels provided to licensees").

The creation of a new regulatory fee category for single-channel stations is not likely to have a significant overall revenue impact. Although there are an estimated 90 to 100 single-channel stations, many of these stations are either noncommercial stations, which are exempt from regulatory fees, or satellite stations, which are already subject to a substantially lower fee ($1,000 for satellite TV licensees proposed for FY 2003, as compared to fees for full-service television stations ranging from $1,425 to $57,650, depending upon band and market rank).

III. Conclusion

In sum, Section 9(b)(3) of the Communications Act requires the Commission (1) to add or reclassify services in the Schedule of Regulatory Fees to reflect changes in the nature of services as a consequence of Commission rulemakings and (2) to adjust regulatory fees to take into account, among other things, the benefits provided to the

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Commission decided "it would be best to discontinue efforts to base the schedule on our available cost data." *Assessment and Collection of Regulatory Fees for Fiscal Year 2002*, 17 FCC Rcd at 13206.

payor of the fee by the Commission's activities. Of the 1,719 authorized full-service broadcast television stations, all but 90 to 100 stations are authorized to operate on two channels — one NTSC and one DTV. The remaining 90 to 100 stations — stations with original construction permits granted after August 3, 1997 — are allotted only one channel. These new entrants use only 50% of the spectrum used by two-channel stations and are not beneficiaries of many of the Commission's regulatory activities with respect to DTV. Therefore, the Commission is required to add a classification for regulatory fee purposes for single-channel stations and assess such stations a fee commensurate with the benefits received. Sky suggests that because single-channel television stations use one-half of the spectrum used by stations with paired NTSC/DTV allotments, the fee assessed against single-channel stations should be no more than 50 percent the fee assessed against two-channel stations.

Respectfully submitted,

SKY TELEVISION, L.L.C.

By: _____

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P.O. Box 269
Kitty Hawk, NC 27949

April 25, 2003

RAMIS ACCOUNTS RECEIVABLE - (c) DSG, Inc.
RECEIPTS DETAIL REPORT
SORTED BY TRANSACTION DATE, CD No., FEE CONTROL No

CD No.	CD DATE	FEE CONTROL No.	FRN	PAYER NAME	TRANSACTION DATE	RECEIPT AMOUNT
560813	9/26/03	0309268835060003	0006002141	Sky Television, LLC	9/25/03	$30,145.00

Seq: 1 Call Sign: WSKYTV FCC Code 1: 76324 FCC Code 2: NCMANTEO Tin Number.
PTC: 0355 QTY: 1 Applied Amt: 30125.00
Applicant Name: SKY TELEVISION LLC
Address: 1417 N BATTLEFIELD BLVD

Seq: 2 Call Sign: WPUC814 FCC Code 1: FCC Code 2: Tin Number:
PTC: 0369 QTY: 1 Applied Amt: 10.00
Applicant Name: SKY TELEVISION LLC
Address: 1417 N BATTLEFIELD BLVD

Seq: 3 Call Sign: WPUC818 FCC Code 1: FCC Code 2: Tin Number:
PTC: 0369 QTY: 1 Applied Amt: 10.00
Applicant Name: SKY TELEVISION LLC
Address: 1417 N BATTLEFIELD BLVD

Total: $30,145.00

refund
$25,675.00

FCC Collection System - [illegible]

File FCC Search Credit Card NSF Payment Search Report

Payment Search Detail

Fee Control Number	Payor Name	Payment Amt	Overage Amt
0307298180892198	Wilkins Management Services	$50.00	$0.00
0307298190892206	Wilkins Management Services	$145.00	$0.00
0309268035020004	WILKINS MANAGEMENT SERV	$14,780.00	$0.00
0309260035060003	SKY TELEVISION LLC	$30,145.00	$0.00
0309308190885836	Leventhal, Senter and Lerman I	$145.00	$0.00
9406138165008004	ORION COMMUNICATIONS LTI	$55.00	$0.00

Sequence	Quantity	Payment Type Code	Payment Amount	Trans Code	CallSign Other Id	Treasury Symbol	
2	1	0369	$10.00	PMT	WPUC814	27X6088	05
3	1	0369	$10.00	PMT	WPUC818	27X6088	05
1	1	0355	$30,125.00	PMT	WSKYTV	27X6088	05

Credit Card Info
Payor Info
Bad Check Info
Changer Info
Acct Info
☑ Also Show JV'd Transactions
Move to Unapplied
FCC Code Info
Applicant Info
Treasury Info
Modify Payment
Close

First Screen

Start | Microsoft Offic... | funnies - Micro... | Untitled - Mess... | FCC Collectio... | 3:25