

BACKGROUND: FCC Amateur Radio Application Fees

While there is a long history of the FCC considering fees that goes back to Federal Radio Commission proposals in 1929, I strictly limit this discussion to the “modern” historical antecedents of the current fee proposal that is relevant to today’s consideration.

Briefly: in 1952 Congress provided that agencies should collect fees for any license, permit, or similar thing of value provided to any person; and that such activity should be “self-sustaining to the full extent possible.” In 1963 the FCC enacted its first fees schedule, intended to recover about 25 percent of its budget. Amateur licenses were included.

In 1970, the FCC increased the fees to recover a larger portion of its budget, and the fees charged amateur licensees were adjusted accordingly. Ultimately, in 1974, the U.S. Supreme Court struck down the FCC’s fees generally, finding them not to have been sufficiently justified as being based on the cost of providing the service. Congress can delegate to agencies the collection of “fees” based upon the cost of providing services to individuals (including companies), but collecting more than the cost of providing the service crosses the line into “taxation”, and taxes may be levied only by Congress and their levying cannot be delegated. The Court found that the FCC had not sufficiently demonstrated that their fees were strictly based on the cost of providing the services being provided.

Following this seminal Supreme Court ruling, the FCC promulgated a new fees schedule that it believed complied with the Court’s requirements. However, upon appeal, the U.S. Court of Appeals again rejected the FCC fees schedule, finding that it was insufficiently justified as being based only upon the cost of the services being provided. The Commission was required to refund the fees.

At this point the Commission literally threw up its hands and ceased collecting any fees. It turned to Congress for help. Since Congress itself can assess fees AND levy taxes, it could adopt a table of fees that is not appealable on the grounds upon which the FCC’s fees schedule twice had been struck down. Agreeing with the FCC that it was difficult (if not impossible) to sufficiently demonstrate compliance with the courts’ requirements, Congress statutorily enacted a very specific fees schedule down to specifying the service and fee. It also provided for periodic adjustment based upon the cost-of-living. Amateur radio was not included in the Congressionally-adopted fees schedule and therefore exempt. (In the 1990’s the FCC imposed a “regulatory” fee on vanity licensing, but this was discontinued in 2015 for the stated reason that refunding fees for applications not granted exceeded the revenue collected.)

As years passed, the FCC authorized new services that were not recognized in the Congressionally-adopted Table *and* the cost of performing some of its licensing functions had significantly shifted due in part to computerization. While the statutory table remained and was statutorily updated several times, Congress appeared to have lost its appetite for enacting periodic adjustments. So it came to be that in 2018 Congress, working with the FCC, enacted provisions directing the FCC to collect fees for its services.

One might say that we're back to where this all started in 1968, except with a more specific statute from Congress and a little more insight into Constitutional interpretation of what the FCC is being directed by Congress to do (collect a "fee") and what the FCC may not do (assess a "tax").

Whether anyone will challenge the current FCC fees raising the Constitutional argument, and whether the cost justification offered by the Commission can pass muster as "fees" rather than including some elements of "taxes", is yet to be seen.

Draft with citations omitted

David Siddall
Sept. 15, 2020

Options

1. Oppose all fees. (This is the preferred option by the vast majority of commenting amateurs to date)
2. Ask for reduction of fee to something like \$10. per application?
3. Ask for exception for (1) first license, and/or (2) exception based on age: for anyone (a) under 26 years old and/or (b) over 70 years old and/or (c) disabled/veteran/ other individual situation.
4. Collect \$50. (or alternative amount) for ten years, but upgrades by examination treated as minor modification with no additional fee.
5. This can be structured to oppose totally, but in the alternative
6. Query: position on fees for vanity and second ("club") station licenses should be...
 - Maybe a one-time fee for the extra work entailed with vanity callsigns?
 - "Clubs" ?

Draft Arguments Against FCC Fees for Radio Amateurs

1. Unlike operators in other FCC licensed services, Amateur Radio operators by law – domestic and international -- must eschew using their license for *any* pecuniary interest. Amateurs are prohibited from earning or charging any money for any communications activity. Their equipment and education all must come out of their own pockets with no opportunity for reimbursement or payment.
2. Amateurs contribute to the public good. They provide an emergency communications backbone capability at no taxpayer cost. Repeatedly over the years arguments have been made that radio amateurs are outdated and their emergency communications expertise unneeded. Yet, consistently we have seen that storms and natural disasters can and do completely wipe out internet, cellular, and other means of communication. Radio amateurs uniquely fill that void on an unmatched, flexible basis wherever needed.
3. The United States is experiencing a severe lack of RF engineers and expertise at the very time when it is most needed by the burgeoning wireless industries. Amateur radio is helping to meet the deficit, but much more is needed and youngsters (High School and College-aged) are least able to afford the cost. To maintain U.S. leadership in wireless industries RF knowledge, as well as programming, is desperately needed.
4. Amateur radio is self-regulating. (a) Amateur examinations are written and administered solely by radio amateur volunteers. (b) Examination results and paperwork increasingly are submitted electronically to the FCC. Electronic submission could be required if there is a const savings to the Commission. (c) Amateur radio educational classes are conducted by volunteers who by-and-large do not charge fees or tuition for teaching. (d) The amateur service, in cooperation with the FCC's Enforcement Bureau, monitors the airwaves and donates all services for observing and enforcing the amateur regulations. The amateurs also observe non-amateur signals both within amateur spectrum and outside it, and report anything unusual or suspicious.
5. Amateur radio continues to be a source of significant technological innovation that should be encouraged, not discouraged. [insert examples - send me your favorite]
6. I WOULD NOT USE THE BELOW POINT GENERALLY WITH OTHER HAMS, LESS THEY SERIOUSLY BOLLUX IT UP. UNLESS THEY ARE ATTORNEYS CAPABLE OF MAKING AN ACCURATE STATEMENT OF THE LAW, THIS PARTICULAR ISSUE IS COMPLEX AND NOT

FOR THE UNTRAINED. BUT IT ALSO MAY BE A STRONG ONE, GIVEN THE LACK OF DETAIL ON COSTS IN THE FCC NPRM.

The proposed fee lacks justification that it solely represents the cost of providing the service, as required for all agency-levied fees by the Supreme Court's 1974 *NCTA* decision.

NOTES

- I do not recommend arguing that the \$50. fee every 10 years, which amounts to \$5.00 a year, will “kill” amateur radio. Although, of course, as proposed this is for each covered application, which includes upgrade application. So Tech-General-Extra would be \$150. if exams taken at different sessions, a substantial amount. But it “rings” the wrong way to say the whole avocation turns on \$50. a pop.
- The Commission argues that the charges are **required** by the statute. The word used is “shall”, which is mandatory, not optional. But the statute does not set the amount, nor does it prohibit reasonable exceptions – evidenced by the Commission’s proposal to exempt from fees generally all administrative update applications based on policy grounds.
- There is language in the statute about waivers. While I still need to look into this more, unfortunately the language is identical to that in the 1986 law, and the FCC consistently held that the language in question permits consideration of individual hardship cases, but **not** exclusion of a whole service for public interest or other purposes. There may be a way to formulate the argument in a way that distinguishes the language by context, I will be looking at the legislative history and earlier decisions on the same language.
- This is not “aimed at amateur radio to kill it.” The people at the FCC we are trying to influence roll their eyes at that one. There is a long history and precedent on charging fees for the licensing service involved, just as there is for passports, green cards, drivers licenses (issued by states), etc.
- This proceeding originates and is being handled in the FCC’s Office of Managing Director (OMD), not in one of the policy bureaus. The focus of OMD is accounting – budgets and the like for the entire Commission. There is no sign that this is policy driven for any purpose other than recovering the cost of services as directed by Congress. The proposals cover every service across the board.