

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of: )  
 )  
Assessment and Collection of Regulatory Fees ) MD Docket No. 20-105  
For Fiscal Year 2020 )  
 )

**REPLY COMMENTS OF  
THE NATIONAL ASSOCIATION OF BROADCASTERS**

**I. INTRODUCTION AND SUMMARY**

For at least the second consecutive year, the Commission adopted a Notice of Proposed Rulemaking (NPRM) that utterly fails to explain its rationale as to how its methodology for determining regulatory fees is grounded in Congress’s directive to determine such fees by the benefits received by the proposed payors. This abject failure is compounded as the Commission proposes increasing fees on radio broadcasters not only where the Commission’s overall budget remains flat; but also, where broadcasters are facing unprecedented harm to their operations as a result of the current pandemic.<sup>1</sup> The Commission should not proceed with its proposed regulatory fee increases when such fee increases could jeopardize the ability of struggling broadcasters to stay on the air, and when the Commission’s approach violates the law by not properly explaining the basis for the

---

<sup>1</sup> See Comments of the National Association of Broadcasters, MD Dkt No. 20-105 (June 11, 2020) (NAB) Joint Comments of the State Broadcasters Associations, MD Dkt. No. 20-105 (June 12, 2020) (State Broadcasters Associations); Joint Comments of the Colorado Broadcasters Association, Florida Association of Broadcasters, Oregon Association of Broadcasters, and Puerto Rico Broadcasters Association, MD Dkt. No. 20-105 (June 12, 2020) (Select Broadcasters Associations); Comments of Redrock Broadcasting Inc., MD Dkt. No. 20-105 (June 12, 2020); Comments of the New Jersey Broadcasters Association, MD Dkt. No. 20-105 (June 8, 2020) (NJBA); Comments of Fred R. Morton, MD Dkt. No. 20-105 (June 4, 2020).

increases nor tying them to any discernible increase in the work performed on behalf of broadcasters or the benefits received by broadcasters as a result of the Commission's efforts. In addition, the Commission must use its authority to reform its fee collection and waiver processes to ensure that its collection of regulatory fees does not hobble broadcasters' ability to recover from the economic effects of the COVID-19 pandemic.

**II. THE COMMISSION'S PROPOSED REGULATORY FEE INCREASES FOR BROADCASTERS DO NOT REFLECT THE BENEFITS PROVIDED TO BROADCASTERS BY THE COMMISSION'S ACTIVITIES**

As the record demonstrates, the proposed regulatory fee increases for broadcasters should be reconsidered as they fly in the face of the statutory mandate that the Commission when adjusting regulatory fees must take into account "factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities."<sup>2</sup> The Commission's proposed increases to broadcaster regulatory fees bear no rational relationship to any increase in costs the Commission has incurred in regulating the industry or any increase in benefits that broadcasters may have supposedly received as a result of the Commission's work. Instead, the increases are created from whole cloth as a means for the FCC to solve a math problem. According to the NPRM, the number of direct FTEs in the Media Bureau increased by a mere 0.8 percent, from 115.1 to 116 from FY2019 to FY2020. Yet the Commission proposes to increase the Media Bureau's overall share of regulatory fees by 1.37 percent, and therefore impose an average 4 percent increase in regulatory fees on radio broadcasters. Such an increase for radio stations is inexplicable.

---

<sup>2</sup> See e.g., NAB Comments at 4-7; Select State Broadcasters Associations Comments at 4-5; State Broadcasters Associations Comments at 6-9.

As discussed previously, the only discernible reason for such a disproportionate increase in Media Bureau regulatory fees is that both the direct FTE counts and the percentage of regulatory fees allocated to the Wireless Telecommunications Bureau and Wireline Competition Bureau have declined.<sup>3</sup> Consequently, because the total amount of regulatory fees the Commission will collect has remained the same, the Commission's flawed methodology for calculating and apportioning fees requires that Media Bureau regulatees must – by default – bear a much higher proportion of the costs of the Commission's activities.

Given the current economic crisis and the precarious financial status of broadcasters nationwide, the timing could not be worse for the Commission to continue to blindly assess regulatory fee increases by default. The RAY BAUM'S Act requires the Commission to amend the schedule of regulatory fees “so that such fees reflect the full-time equivalent number of employees within the bureaus and 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.”<sup>4</sup> In the same way that the NPRM does not provide information regarding the increased costs incurred or benefits received by Media Bureau regulatees,<sup>5</sup> the NPRM provides no information or data that would allow commenters to confirm that though the direct FTE counts in the Wireless Telecommunications Bureau and Wireline Competition Bureaus may have decreased, the number of indirect FTEs, the costs of the Commission's

---

<sup>3</sup> See NAB Comments at 4-5.

<sup>4</sup> Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, Div. P—RAY BAUM'S Act of 2018, §§ 401-404, 132 Stat. 348, 1087-90 (2018) (RAY BAUM'S Act).

<sup>5</sup> The NPRM likely does not provide any such data because it is readily apparent that broadcasters have not tended to benefit more from the Commission's activities. As the State Broadcasters Associations point out, many of the regulatory activities performed by the FCC on behalf of broadcasters are an economic burden, not a benefit. See State Broadcasters Associations Comments at 9-12.

activities on behalf of these Bureaus, and the benefits received by these Bureaus' regulatees have also decreased in proportionate amounts. If the Commission is unable to produce such information, then the solution simply cannot be to force broadcasters who are providing a free service to the public to arbitrarily bear a larger portion of the Commission's costs. Rather, NAB proposes that the Commission delay or reduce the proposed reductions in the percentage of regulatory fees allocated to these Bureaus and in turn reduce the proposed increases for broadcasters.

The State Broadcasters Associations accurately note that, although "[b]roadcasters are using just 0.07% of allocated spectrum," they cover at least 17% of the FCC's entire budget and offer a free service to the public.<sup>6</sup> Moreover, the State Broadcasters critically note that, while broadcasters are being asked to yet again pay more than their fair share, "the one benefit the Commission can provide to broadcasters – interference-free spectrum – continues to be diminished."<sup>7</sup>

The Commission must address the inequities in its regulatory fee approach, including expanding its payor base to include unlicensed spectrum users that broadcasters and other licensees are currently forced to subsidize. Unlicensed spectrum users use the Commission's resources exhaustively and benefit substantially from the Commission's activities. There is no reason that such entities, which include some of the largest, wealthiest technology companies in the world, should not contribute substantially to the Commission's budget.

NAB also agrees with the State Broadcasters Associations' suggestion that the Commission immediately remedy the unfair regulatory fee burden shouldered by broadcasters

---

<sup>6</sup> *Id.* at 14-15.

<sup>7</sup> *Id.*

by “remov[ing] all FTEs whose work is paid for through application fees from the direct FTE count assessed against broadcasters” or “issu[ing] a credit against the amount of regulatory fees it otherwise collects from broadcasters each year in an amount that equals the ownership report and application filing fees paid by broadcasters in that year.”<sup>8</sup> Given that application fees are intended to cover the costs of processing such applications,<sup>9</sup> there is no justification for requiring broadcasters to pay twice for the FTEs involved in that process through both application fees and the regulatory fee process.

### **III. THE COMMISSION SHOULD REFORM ITS FEE COLLECTION PROCESSES TO HELP BROADCASTERS AFFECTED BY THE COVID-19 PANDEMIC**

As discussed above, the regulatory fee increases the Commission proposes for broadcasters are unwarranted. Moreover, given the current economic crisis, the Commission should take steps to ensure that its collection of any amount of regulatory fees does not serve as an additional, potentially insurmountable hurdle broadcasters must clear in order to stay in business in this extraordinary period of economic upheaval.

As NAB noted in its comments, the FCC should help mitigate the financial struggles faced by broadcasters by offering extended payment terms to broadcasters that would allow stations to make their regulatory fee payments over the course of six to nine months past the end of September, and potentially longer if the situation requires.<sup>10</sup> In offering such terms, NAB urges the Commission to consider broadcasters’ recommendations that the FCC streamline the process that broadcasters must go through to obtain a payment plan and

---

<sup>8</sup> *Id.* at 14.

<sup>9</sup> 47 U.S.C. § 158(a) (“The Commission shall assess and collect application fees at such rates as the Commission shall establish in a schedule of application fees to recover the costs of the Commission to process applications.”).

<sup>10</sup> See NAB Comments at 9.

remove or relax onerous administrative requirements so that as many broadcasters as possible may benefit.<sup>11</sup>

NAB also supports broadcasters' calls for additional temporary reforms to the FCC's processes to ease the regulatory fee burden on broadcasters. Specifically, several broadcasters have called for the FCC to relax the standards imposed on broadcasters to obtain hardship waivers as the current process is not crafted to handle the economic crisis faced by broadcasters now.<sup>12</sup> The FCC should modify its process to meet the present moment by (i) streamlining the process for seeking a waiver by allowing payors to file a simple letter request that combines the request for waiver and the request for deferral into a single filing;<sup>13</sup> (ii) permitting parties that may be in default on payments to the Commission to seek a waiver of this year's fees;<sup>14</sup> (iii) reducing the threshold of financial information that must be provided in order to support such a request;<sup>15</sup> and (iv) taking into account any months that a broadcast station is off the air during the fiscal year when considering requests for waiver, deferral or reduction of regulatory fees.<sup>16</sup> NAB also agrees with commenters who have urged the Commission to waive the automatic 25 percent penalty for late payment of regulatory fees.<sup>17</sup> All of these proposals are reasonable and tailored to helping ensure that broadcasters – many

---

<sup>11</sup> See Select State Broadcasters Associations Comments at 6 (Commission should adopt flexible and reasonable plans that do not include requirements such as “extensive financial documentation, a substantial down-payment and unreasonable administrative fees.”).

<sup>12</sup> *Id.* at 5.

<sup>13</sup> State Broadcasters Associations Comments at 19.

<sup>14</sup> *Id.* at 18.

<sup>15</sup> See Select State Broadcasters Associations Comments at 6 (noting that to obtain a waiver under the current process, a licensee must submit financial documentation for the past three years to demonstrate a pattern of negative cash flow); Morton Comments at 2.

<sup>16</sup> See State Broadcasters Associations Comments at 19.

<sup>17</sup> See Select State Broadcasters Associations Comments at 6; Morton Comments at 2.

of which have received government stimulus funds to survive the COVID-19 's pandemic's economic fallout – are not stymied by the government fee process as they work to continue to stay on the air, pay their employees and serve their local communities.

#### **IV. CONCLUSION**

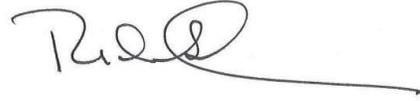
The NPRM fails to support in any meaningful way the proposed regulatory fee increases imposed on broadcasters for the 2020 fiscal year. There has been no change to the total amount of fees the Commission is required to collect, the total number of direct FTEs employed by the Media Bureau has remained steady and no data has been provided to support the notion that broadcasters have derived more benefits from the Commission's activities or caused the Commission to expend more resources than they did in the previous year. Even worse, the Commission continues to force broadcasters to subsidize unlicensed spectrum users that utilize an ever-increasing amount of Commission resources.

The COVID-19 pandemic's effects on broadcasters have further illuminated the inequities in the Commission's approach. The Commission should take immediate steps to support broadcasters' operations by reconsidering its likely unlawful methodology for apportioning regulatory fees and by using its authority to provide as much procedural flexibility as possible to broadcasters when it comes time to make regulatory fee payments.

Respectfully submitted,

**NATIONAL ASSOCIATION OF  
BROADCASTERS**

1 M Street SE  
Washington, DC 20003  
(202) 429-5430

A handwritten signature in black ink, appearing to read "Rick Kaplan", with a long horizontal line extending to the right from the end of the signature.

---

Rick Kaplan  
Larry Walke  
Emily Gomes

June 29, 2020