

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

In the Matter of)	
)	
Assessment and Collection of Regulatory Fees)	MD Docket No. 15-121
for Fiscal Year 2015)	
)	

**COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS**

I. Introduction

The National Association of Broadcasters (NAB)¹ submits these comments on the above-captioned Further Notice of Proposed Rulemaking, in which the Commission proposes certain adjustments to regulatory fees for broadcasters and other regulated entities.² As discussed below, NAB submits that Section 9 of the Communications Act requires that the Commission realign fees among television stations, wireless broadband providers and other entities to reflect changes in the nature of its services following the upcoming spectrum incentive auction.³

¹ The National Association of Broadcasters is a nonprofit trade association that advocates on behalf of local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

² *Assessment and Collection of Regulatory Fees for Fiscal Year 2015*, Report and Order and Further Notice of Proposed Rulemaking, MD Docket No. 15-121 (Sep. 2, 2015) (Order or Further Notice).

³ 47 U.S.C. § 159(a), Public Law 113-235, Consolidated and Further Continuing Appropriation Act of 2015.

II. The Commission Must Adjust Regulatory Fees Imposed on Television Licensees Remaining Following the Spectrum Incentive Auction

Section 9 of the Communications Act directs the Commission to collect regulatory fees to recover the costs of its policy and enforcement activities, based generally on the number of full-time employees (FTEs) within the Commission's core bureaus who work on matters of relevance to various categories of regulated entities.⁴ Section 9(b)(1)(3) of the Act also permits the Commission to adjust the fee schedule to reflect changes in the "nature of its services as a consequence of Commission rulemaking proceedings or changes in law."⁵

In response to a request from NAB,⁶ the Commission seeks comment in the Further Notice on whether to invoke this latter provision to adjust regulatory fees to reflect the potentially substantial impact of the impending spectrum incentive auction on the television industry.⁷ Pursuant to Title VI of the Middle Class Tax Relief and Job Creation Act of 2012 ("Spectrum Act"),⁸ the Commission will conduct an auction in 2016 in which television licensees may surrender their rights to use television spectrum in exchange for a share of

⁴ 47 U.S.C. § 159(a)(1) and (b)(1)(A). For fiscal year 2015, the Commission will apportion fees among regulated entities as follows: Media Bureau (MB): 35.28%, \$120.15 million; Wireline Competition Bureau (WCB): 38.99%, \$132.81 million; Wireless Telecommunications Bureau (WTB): 20.28%, \$69.07 million; and the International Bureau (IB): 5.45%, 18.56 million. Order at ¶8.

⁵ *Id.* at § 159(b)(1)(3).

⁶ Comments of the National Association of Broadcasters, MM Docket Nos. 15-121 and 14-92 (filed June 22, 2015), at 7-9.

⁷ Further Notice at ¶ 30.

⁸ Pub. L. No. 112-96, §§ 6402 (codified at 47 U.S.C. § 309(j)(8)(G)), 6403 (codified at 47 U.S.C. § 1452), 126 Stat. 156 (2012).

the proceeds from an auction of new licenses to use the repurposed spectrum for wireless broadband service.⁹

According to the Commission’s latest broadcast station totals, as of September 15, 2015, there are 1,784 full power television stations in the U.S., and an additional 399 Class A stations.¹⁰ As a result of the spectrum auction, hundreds of television stations may relinquish their spectrum usage rights. Indeed, according to the Commission’s own repacking simulations, more than 200 television stations will relinquish their channels in an auction that clears 84 MHz of spectrum, and an auction that clears 120 MHz of spectrum would mean that more than 400 stations will relinquish their channels.¹¹

Such a restructuring would have a corresponding impact on regulatory fees imposed on television stations remaining after the auction, as the regulatory fee process is essentially a “zero-sum” proposition. That is, a reduction in the number of payers in one fee category will increase the share of other payers in that category.¹² Thus, absent Commission steps to correct the regulatory fees going-forward, the departure of 200 to 400 or more television stations will cause an alarming increase in regulatory fees for the remaining stations.

Ample authority and precedent exists for Commission action to realign the fees to prevent “substantial increases which could severely impact the economic wellbeing of . . .

⁹ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auction*, Notice of Proposed Rulemaking, GN Docket 12-268, 27 FCC Rcd 12357, 12358 (2012).

¹⁰ See *Broadcast Stations Totals as of September 15, 2015* (rel. Oct. 9, 2015), available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2015/db1009/DOC-335798A1.pdf.

¹¹ Letter from Gary Epstein to Rick Kaplan, GN Docket No. 12-268, ET Docket No. 13-26 (June 30, 2014).

¹² *Federal Communications Commission Regulatory Fee Process Need to be Updated*, GAO-12-686 (Aug. 2012) (GAO Report) at 36.

licensees.”¹³ The Commission has routinely updated its FTE allocations and fee assessments to reflect industry changes.¹⁴ Earlier this year, the Commission adopted a new fee to recover the growing burden of regulation and oversight of Direct Broadcast Satellite (DBS) providers by MB staff,¹⁵ including the handling of program carriage complaints, and implementation of the Satellite Television Extension and Localism Act Reauthorization Act of 2014.¹⁶

Similarly, in 2014, the Commission found that fewer enforcement, policy and rulemaking activities regarding licensed submarine cable systems warranted a reduction in regulatory fees for those systems.¹⁷ One year earlier, the Commission reduced the amount of fees collected from entities regulated by the Wireline Competition Bureau and increased the amount from Wireless Telecommunications Bureau regulatees, to reflect changes in the activities of Commission staff associated with developments in the telecommunications

¹³ *Assessment and Collection of Regulatory Fees for Fiscal Year 1997*, Report and Order, 12 FCC 17161, 17176 (1997).

¹⁴ See, e.g., *Procedures for Assessment and Collection of Regulatory Fees Assessment and Collection of Regulatory Fees for Fiscal Year 2008*; *Procedures for Assessment & Collection of Regulatory Fees*; Notice of Proposed Rulemaking, 27 FCC Rcd 8458 (2012) (2012 Fees NPRM) (noting a shifting of Commission resources from implementing the 1996 Telecommunications Act to regulation of wireless services).

¹⁵ *Assessment and Collection of Regulatory Fees for Fiscal Year 2015; Amendment of Part 1 of the Commission’s Rules; Assessment and Collection of Regulatory Fees for Fiscal Year 2014*; Notice of Proposed Rulemaking, Report and Order, and Order; 30 FCC Rcd 5354, 5365-73 (2015) (May 2015 Order). DBS providers were already subject to a per-satellite fee based on the work of IB FTEs on satellite regulation.

¹⁶ Pub. L. No.113-200, 128 Stat.2059, 2060-62 (2014).

¹⁷ *Assessment and Collection of Regulatory Fees for Fiscal Year 2014; Assessment and Collection of Regulatory Fees for Fiscal Year 2013*; Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 10767, 10772 (2014).

market.¹⁸ Adjusting regulatory fees to reflect changes in the television industry would be consistent with these earlier movements. As mentioned above, Section 9 of the Act specifies that the purpose of regulatory fees is “to recover the costs of . . . enforcement activities, policy and rulemaking activities”¹⁹ Fewer television stations will mean a decrease in enforcement, policy and rulemaking activity, warranting a commensurate decrease in the share of Commission regulatory fees imposed on the television industry.

Reallocating the fees to reflect the spectrum incentive auction would also be consistent with the Commission’s goal that the regulatory fee process should be “fair,”²⁰ and fairness dictates against simply reapportioning the fees allocated to the television industry to those stations remaining after the auction. Such an approach would lead to untenable fee increases of more than 35% for some stations, which could “severely impact the economic wellbeing” of these licensees.”²¹ Moreover, doing so would essentially punish broadcasters for choosing to continue providing service to the public.

Fairness also prohibits simply reallocating a portion of television fees to other entities regulated by the Media Bureau, since a reduction in MB oversight of television will have no bearing on the regulation of radio, cable or DBS providers. Expanding the share of regulatory fees for these other categories of payers based solely on their coincidental regulation by the Media Bureau makes little sense without a corresponding change in regulatory activity.

¹⁸ *Assessment and Collection of Regulatory Fees for Fiscal Year 2013; Procedures for Assessment and Collection of Regulatory Fees, Assessment and Collection of Regulatory Fees for Fiscal Year 2008, Report and Order, 28 FCC Rcd 12351 (2013).*

¹⁹ 47 U.S.C. § 159(a)(1).

²⁰ 2012 Fees NPRM, 27 FCC Rcd at 8464.

²¹ See *supra* note 13.

Indeed, the only equitable approach is for the regulatory fees to “follow the spectrum.” The spectrum to be repurposed through the incentive auction will benefit wireless service providers. According to the Commission, “the spectrum reclaimed through the incentive auction will promote economic growth and enhance America’s global competitiveness, increase the speed, capacity and ubiquity of mobile broadband service, such as 4G LTE and Wi-Fi like networks, and accelerate the smartphone- and tablet-led mobile revolution, benefitting consumers and businesses throughout the country.”²² The wireless providers also tout the benefits of more spectrum: “A successful incentive auction could nearly double the amount of low-frequency, high-value broadband spectrum for the wireless industry. This increase in broadband capacity would not only allow wireless providers to offer progressively faster, more innovative broadband services, but also increase employment and contribute to the nation’s total productivity.”²³

The spectrum auction will enable wireless service providers to improve service and enlist more customers. As a result, additional Commission regulation and oversight of wireless providers by FTEs in the Wireless Telecommunications Bureau will be demanded, warranting an increase in regulatory fees assessed to wireless providers to recover those costs. Given the nature of the regulatory fee process, in which Congress fixes an amount of fees that the Commission must collect, the most reasonable, equitable method way for the Commission to recoup these costs following the auction is to reallocate fees from television stations fees that cease operations to the wireless broadband providers that will reap the benefits of the repurposed spectrum. This is the best way to fulfill the requirement under

²² *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking, 27 FCC Rcd 12357, 12359 (2012).

²³ Comments of T-Mobile USA, Inc. at 3, WT Docket No. 12-268 (filed Jan. 25, 2013).

Section 9 that regulatory fees assessments must be linked to the nature of Commission activity. Any other approach would violate the Communications Act as well as unfairly harm broadcast licensees remaining after the spectrum auction.

III. Conclusion

For the reasons set forth above, NAB urges the Commission to reallocate a portion of regulatory fees from the television industry to wireless broadband providers, to reflect the benefits that wireless companies will receive from repurposed spectrum obtained during the forthcoming spectrum incentive auction.

Respectfully submitted,

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