

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

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| In the Matter of: |) | |
| |) | |
| Review of the Commission's Assessment and Collection of Regulatory Fees |) | MD Docket No. 22-301 |
| |) | |
| Assessment and Collection of Regulatory Fees for Fiscal Year 2023 |) | MD Docket No. 23-159 |
| |) | |

**COMMENTS OF
THE NATIONAL ASSOCIATION OF BROADCASTERS**

June 14, 2023

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I. INTRODUCTION AND SUMMARY

The National Association of Broadcasters (NAB)¹ hereby submits the following comments in response to the Commission’s Notice of Proposed Rulemaking in the above-referenced proceeding.²

NAB applauds the Commission for making substantial improvements to its regulatory fee process in the Notice by evaluating the work performed by FTEs in the non-core bureaus and offices of the Commission to determine its regulatory fee allocations. The Commission is required to set regulatory fees so that they “reflect the full-time equivalent number of employees within the bureaus and offices of the Commission, adjusted to take into account

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

² *Review of the Commission’s Assessment and Collection of Regulatory Fees; Assessment and Collection of Regulatory Fees for Fiscal Year 2023*, Report and Order and Notice of Proposed Rulemaking, MD Docket Nos. 22-301, 23-159 (rel. May 15, 2023) (NPRM or Notice).

factors that are reasonably related to the benefits provided to the payor of the fee by the Commission’s activities.”³ For Fiscal Year 2023, the Commission must collect \$390,192,000 in regulatory fees, a 2.1% increase over last year’s fee collection.⁴ NAB and other commenters have long advocated that the Commission’s traditional approach of allocating regulatory fees based on the number of direct FTEs in only four of its bureaus and offices (approximately 25 percent of Commission FTEs) ignored the Commission’s statutory mandate to determine who is benefiting from the work of *all* the bureaus and offices of the Commission and adjust the fee schedule accordingly.⁵ As the GAO first recognized in 2012, the Commission’s historic approach left its regulatory fee methodology rooted in a “framework [that] is based on a telecommunications environment that no longer exists” as a

³ 47 U.S.C. § 159(d).

⁴ NPRM at ¶ 2.

⁵ See, e.g., Comments of NAB, MD Docket No. 22-301, at 6-15 (Oct. 26, 2022) (NOI Comments); Comments of NAB, MD Docket No. 19-105, at 7 (June 7, 2019) (questioning the Commission’s allocation of direct FTEs on a one-to-one basis); Comments of NAB, MD Docket No. 20-105, at 5 (June 11, 2020) (noting that proportional allocation unfairly forces broadcasters to bear a higher portion of indirect costs); Comments of NAB, MD Docket No. 21-190, at 10 (June 3, 2021) (stating that proportional allocation of indirect FTEs does not “accurately capture the amount of work being done by the indirect offices and bureaus of the Commission on behalf of regulatees in the core bureaus.”); Comments of NAB, MD Docket No. 21-190, at 4-8 (Oct. 21, 2021) (advocating that the Commission undertake an accounting of the actual functions of FTEs in the noncore offices and bureaus of the Commission to ensure that fees bear a reasonable relationship to the amount of work the Commission performs for the benefit of the payor.”); Reply Comments of NAB, MD Docket No. 21-190, at 4-6 (Nov. 5, 2021) (explaining that “the Commission must change its methodology to conform to the Ray Baum’s Act and accurately account for the work being performed by the Commission and the beneficiaries of that work” including “tak[ing] action to reassess its proportional allocation of fees related to the Commission’s indirect bureaus and offices”).

result of convergence in the marketplace.⁶ By accounting for the work performed by FTEs in certain non-core bureaus and offices of the Commission, this year's fee proposal makes significant strides towards modernizing the fee structure to reflect today's telecommunications marketplace.

NAB appreciates the important work Commission staff have performed to critically assess FTE time spent in the non-core bureaus and offices for regulatory fee purposes.⁷ The resulting fee proposal is based on the work performed by closer to half, rather than only a quarter of Commission FTEs, and therefore more accurately captures the benefits provided to fee payors by the Commission's activities.⁸ Specifically, the NPRM proposes to reallocate 63 FTEs in the Office of Economics and Analytics (OEA), the Office of General Counsel (OGC), and the Public Safety and Homeland Security Bureau (PSHSB) as direct for regulatory fee purposes because the Commission's analysis revealed that discernible FTE time in these bureaus and offices was spent "on the regulation and oversight of a regulatory fee payor."⁹ NAB urges the Commission to adopt the proposed reallocations and to continue to perform a similar high-level analysis of the functions performed in the non-core bureaus and offices on

⁶ See Government Accountability Office, *Federal Communications Commission: Regulatory Fee Process Needs to be Updated*, GAO 12-686 at 22 (Aug. 2012), available at <https://www.gao.gov/assets/gao-12-686.pdf> (GAO Report).

⁷ See NPRM at 1 ("To address longstanding concerns of some stakeholders, we have undertaken a high-level, yet comprehensive, staff analysis of the work being performed by Commission employees to determine if identifiable full time equivalent (FTE) time is related to the oversight and regulation of fee payors such that it should be taken into consideration in applying our fee methodology.").

⁸ *Id.* ("Based on this review, we are proposing to increase the number of Commission employees that are allocated as direct FTEs to the licensing bureaus by almost nineteen percent.").

⁹ See *id.* at ¶¶ 21-22.

an annual basis to ensure that the Commission’s classification of FTEs remains consistent, accurately reflects the work performed by the Commission, and accounts for the changing nature of the communications marketplace.

NAB also supports proposals to ease both financial and administrative regulatory fee burdens on smaller fee payors.¹⁰ NAB appreciates the Commission’s recognition of the significant market pressures broadcasters face due to increased competition, shrinking advertiser bases, and the inability to pass on regulatory fee increases to a subscriber base.¹¹ The Commission should adopt its proposal to create a new fee tier for the smallest AM and FM radio stations, with reduced fee amounts.¹² NAB agrees with the Commission that creating the new tier will help “ensure that broadcaster fees are more equitably distributed among all radio broadcasters” and is consistent with the statute’s requirements.¹³ NAB also supports the extension of measures implemented in 2020 through 2022 that streamline the Commission’s waiver process and make it easier for struggling fee payors to obtain installment payment relief.¹⁴ Many parts of the economy, including the advertising market, have not yet fully recovered from the adverse impacts of the COVID-19 pandemic. It is manifestly in the public interest for the Commission to make it

¹⁰ *Id.* at ¶¶ 77, 86-90.

¹¹ *Id.* at ¶ 77.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at ¶¶ 86-89 (discussing measures Commission implemented in FY 2020-2022 including streamlining the filing process for seeking relief, reducing the interest rate and waiving the down payment for installment payments of regulatory fees, partially waiving the red light rule to permit delinquent debtors to seek relief, conditioned on the debtor’s satisfactory resolution of its delinquent debt, and permitting a regulatee to submit financial documentation after its request is filed if it is determined that additional documents are needed to render a decision on the request.).

possible for struggling broadcasters and other fee payors to apply for installment plans or waivers on more reasonable terms so that regulatory fees do not pose an insurmountable hurdle to their ability to serve the public interest.

Although the Commission's current fee proposal makes significant improvements to the Commission's allocation of regulatory fees, for the reasons set forth below and in earlier filings,¹⁵ NAB respectfully requests that the Commission reconsider its determination that all of the FTEs in the Wireline Competition Bureau (WCB) working on non-high cost USF and other FCC programs¹⁶ (USF FTEs) should be classified as indirect, rather than allocated as direct among the regulatory fee categories that benefit from their activities. Broadcasters appreciate the Commission's acknowledgement that broadcasters do not participate in these programs and therefore, at a minimum, should be shielded from the indirect costs associated with the USF FTEs. However, as discussed in greater detail below, regulatory fee payors in the wireline, wireless, cable, and satellite industries receive substantial benefits from the USF FTEs' activities, but the Commission's current methodology does not result in

¹⁵ See, e.g., NAB NOI Comments at 15-22; Notice of Ex Parte from R. Kaplan (NAB) to M. Dortch (FCC), MD Docket No. 22-223 (Aug. 15, 2022) (NAB Aug. 15 Ex Parte); Notice of Ex Parte from R. Kaplan (NAB) to M. Dortch (FCC), MD Docket No. 22-223 (Aug. 9, 2022) (NAB Aug. 9 Ex Parte); Notice of Ex Parte from R. Kaplan (NAB) to M. Dortch (FCC), MD Docket No. 22-223 (July 27, 2022) (NAB July 27 Ex Parte); Notice of Ex Parte from R. Kaplan (NAB) to M. Dortch (FCC), MD Docket No. 22-301 (Dec. 16, 2022) (NAB Dec. 16 Ex Parte).

¹⁶ The NPRM suggests that the indirect FTEs in WCB are working not only on the non-high cost USF programs, but also more recently established broadband affordability and other programs, including the Affordable Connectivity Program, the Emergency Connectivity Fund, the COVID-19 Telehealth Program, and the Secure and Trusted Communications Networks Reimbursement Programs. See NPRM at n. 80 ("Below we seek comment on allocating as indirect certain Wireline Competition Bureau FTE time on the non-high cost Universal Service Fund programs, the Affordable Connectivity Program, the Emergency Connectivity Fund, the COVID-19 Telehealth Program, and the Secure and Trusted Communications Networks Reimbursement Programs").

regulatory fees that accurately reflect the benefits provided to those fee payors. The regulatees that benefit from the USF FTEs' work do not have those benefits reflected in their direct FTE counts and resulting share of regulatory fees, forcing broadcasters that do not participate in the Commission's USF and other affordability programs to pay for a higher percentage of all Commission costs.

II. THE COMMISSION SHOULD MOVE FORWARD WITH ITS PROPOSAL TO REALLOCATE FTES IN OEA, OGC, AND PSHSB AS DIRECT FOR REGULATORY PURPOSES TO BETTER COMPLY WITH THE LAW AND ENSURE A FEE SYSTEM THAT IS FAIR, ADMINISTRABLE, AND SUSTAINABLE

The Commission should move forward with its proposal to reclassify 63 FTEs in OEA, OGC, and PSHSB as direct for regulatory fee purposes to better comply with the statute's requirements. The Commission's methodology bases regulatory fees on the percentage of direct FTEs attributable to a fee payor's fee category. The Commission historically has considered only those FTEs in the four "core" bureaus as direct FTEs for regulatory fee purposes, failing to account for the work performed on behalf of regulatees in the other bureaus and offices of the Commission. In 2018, Congress amended the Commission's fee authority and specifically directed 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."¹⁷ Congress eliminated prior references to what the Commission refers to as "core bureaus," clearly indicating that the Commission should consider benefits provided to the fee payor by the activities of all the bureaus and offices of the Commission, regardless of whether fee

¹⁷ 47 U.S.C. § 159(d).

payors benefited from work performed in a “core” or non-core bureau or office. Nothing in the statute limits the Commission’s review to only four bureaus, and indeed entails a much broader review of FTE functions across the agency.

This year’s proposal brings the Commission’s fee methodology closer to compliance with its statutory mandate. Rather than relying solely on the number of direct FTEs in the core bureaus, the Commission’s proposal includes a high-level and comprehensive evaluation of FTE time in the non-core bureaus and offices that determined that the work performed by groups of FTEs in OEA, OGC, and PSHSB is focused on the oversight and regulation of regulatory fee payors.¹⁸ As a result, the NPRM includes these FTEs when calculating the total percentage of Commission costs for which each regulatory fee payor is responsible, consistent with the statute’s requirements that regulatory fees reflect FTEs within all bureaus and offices of the Commission, adjusted to account for the benefits provided to fee payors by the Commission’s activities.

The Commission’s proposal is not only more consistent with the law, but also more in alignment with the Commission’s fairness, administrability, and sustainability goals. NAB agrees that implementing the proposal “should better reflect the burdens that certain segments of the telecommunications industry impose on the Commission and our workforce” while also allowing the Commission to “assess and collect regulatory fees to cover the costs of meeting those obligations.”¹⁹ The Commission’s analysis of the work performed by FTEs in the non-core bureaus and offices of the Commission did not unduly strain resources or delay the completion of the rulemaking proceeding. Moreover, the

¹⁸ *Id.* at ¶ 25.

¹⁹ *Id.* at ¶ 1.

proposed reallocations do not create major, unplanned shifts in the total percentage allocation of regulatory fees that significantly differ from what fee payors already experienced due to fluctuations in the number of FTEs in each of the four core bureaus from year to year. To ensure that the Commission's allocation of FTEs remains accurate in future years, the Commission should perform a similar analysis on an annual basis by consulting with bureau and office staff to ensure that significant shifts in priorities have not occurred or that certain types of work performed have not been created or eliminated.

Importantly, future reviews of work performed by FTEs in the non-core bureaus of the Commission should not be limited solely to FTEs in OEA, OGC, and PSHSB, but also include the other non-core bureaus and offices of the Commission that the NPRM continues to designate as indirect largely because FTE time in these bureaus and offices is spent on both fee payors and non-fee payors.²⁰ The fact that some work performed pertains to non-fee payors does not mean that discernible FTE time spent on matters relating to the oversight and regulation of fee payors should not be allocated to those fee payors in calculating their regulatory fees. For example, the NPRM notes that FTEs in the Enforcement Bureau's Fraud Division work on investigations that "may involve voice service providers" as well as investigations that focus on entities that are not regulatory fee payors.²¹ Similarly, the NPRM acknowledges that it has "recently adopted rules regarding voice service providers that carry illegal robocall traffic."²² To the extent a significant portion of FTE time is centered on

²⁰ See NPRM at ¶¶ 64-75. As NAB has addressed previously, the work of the Commission continues to evolve, and the Commission should consider whether the base of fee payors should be expanded to include some of the non-fee payors that benefit from the work performed by these FTEs.

²¹ *Id.* at ¶ 68.

²² *Id.* at ¶ 69.

investigations or the development and enforcement of rules regarding voice service providers, that FTE time is directly tied to the oversight and regulation of a particular regulatory fee category and should be considered as such.

In addition, the Commission should ensure that its policy rationale for treating certain FTEs as indirect remains consistent across bureaus and offices. For instance, the NPRM notes that FTEs in the Enforcement Bureau should also remain indirect because, “[a]s a policy matter, [FCC] regulatory fees should not be based on [FCC] investigations of generalized disputes or the actions of parties that have violated the Commission’s rules.”²³ Based on that rationale, the Commission should consider whether FTEs in the Media Bureau that are focused on enforcement of Commission rules should also be considered indirect for regulatory fee purposes. Specifically, “the Media Bureau has enforcement responsibilities in certain discrete areas, including enforcement of the Commission’s political programming rules, the cable and broadcast must-carry rules, and the rules related to broadcast retransmission consent, among others.”²⁴ Like FTEs in the Enforcement Bureau, the work of the Media Bureau FTEs performing these functions is generated by “disputes or the actions of parties that have violated the Commission’s rules,” yet this FTE time is directly allocated to Media Bureau fee payors, thereby “inflat[ing] or skew[ing]” their fee calculations due to the Commission’s enforcement of its rules that are related to the bad actors within the industry.²⁵ Given the Commission’s stated rationale for continuing to classify all Enforcement Bureau FTEs as indirect, NAB respectfully submits that Media Bureau regulatees should not

²³ *Id.* at ¶ 74.

²⁴ FCC, *Enforcement Overview*, available at: https://www.fcc.gov/sites/default/files/public_enforcement_overview.pdf.

²⁵ NPRM at ¶ 74.

be forced to bear higher fees due to work generated by bad actors in their industries simply as a function of how the Commission has decided to divide enforcement duties among its bureaus and offices.

III. THE COMMISSION SHOULD REVISIT ITS DECISION TO CLASSIFY USF FTEs IN THE WIRELINE COMPETITION BUREAU AS INDIRECT FOR REGULATORY FEE PURPOSES

Since 2017, the Commission has classified 38 FTEs in WCB working on non-high cost USF programs as indirect because they work on the Commission's non-high cost USF programs which benefit multiple regulatory fee categories across bureaus, but not broadcasters. As NAB has advocated in numerous prior filings, given the critical importance of the number of direct FTEs assigned to each regulatory fee category to the Commission's existing methodology, it is essential that core bureau FTEs that benefit some, but not all, fee payors remain direct and are distributed among those regulatory fee categories that benefit from their activities.²⁶ Last year, the Commission acknowledged that broadcasters do not benefit from the Commission's USF activities, but determined that the USF FTEs should remain indirect while exempting broadcasters from paying for certain indirect costs. The NPRM proposes to do the same this year, while adjusting the number of WCB FTEs it proposes to classify as indirect significantly downward to 23.75.²⁷

NAB commends the Commission for performing the analysis necessary to ensure that the number of USF FTEs accurately reflects the amount of work performed on non-high cost USF and other FCC programs. However, for all the reasons given in NAB's prior filings, at least some portion of these FTEs should be considered direct and allocated to regulatory fee

²⁶ See, e.g., NAB NOI Comments at 15-22; NAB Aug. 9 Ex Parte; NAB July 27 Ex Parte; NAB Dec. 16 Ex Parte.

²⁷ NPRM at ¶¶ 57-58.

payors that benefit from the work that they perform. Exempting broadcasters from only the indirect costs does not satisfy the requirements of the statute, because broadcasters are still forced to bear a higher portion of all Commission costs as a result of the reclassification of these FTEs as indirect, while those who do benefit from the work the USF FTEs perform receive a discount.

The NPRM requests that “any commenters asserting that these indirect FTEs should be reassigned as direct FTEs to a core bureau to provide an explanation of how these FTEs provide a direct benefit to other fee payors.”²⁸ As an initial matter, the Commission based its 2017 decision to reclassify the USF FTEs on the grounds that the work that they performed benefited multiple categories of fee payors.²⁹ Wireline, wireless, cable, and satellite providers all provide eligible services and therefore receive considerable amounts of funding under these programs. Furthermore, by participating in these programs, fee payors receive funding in the form of subsidies to offer eligible services. These entities are thereby able to expand their subscriber base to include consumers that would otherwise not be able to purchase their services while still receiving full payment for the services they provide. Indeed, according to industry stakeholders, “wireless providers serve over 95 percent of Lifeline customers” and more than 60 percent of Affordable Connectivity Program participants use their subsidy for mobile wireless services.³⁰

²⁸ *Id.* at ¶ 57.

²⁹ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2017*, Report and Order, 32 FCC Rcd 7057, 7063 (2017).

³⁰ Reply Comments of CTIA, GN Docket. No. 22-69, at 2 (April 20, 2023) (“Over 95 percent of Lifeline customers . . . have elected to use their subsidy for mobile wireless.”); Comments of CTIA, WC Docket. Nos. 11-42, 21-450, and 22-238, at 4 (Aug. 18, 2022) (“Wireless providers have long been the backbone of the Commission’s efforts to connect low-income

Telecommunications carriers participating in the Lifeline program receive reimbursements directly from the program that are equal to the discount that they offer to customers.³¹ Alternatively, these regulatory fee payors can treat the amount eligible for support as an offset against their universal service contribution for the year.³² In 2023 alone, eligible wireless and wireline providers have received over \$442.34 million in funding from the Lifeline program.³³ Similarly, the E-Rate program allows schools and libraries to receive eligible services provided by fee payors at a discounted price, with discounts ranging from 20 to 90 percent. The “USF compensates the schools’ and libraries’ vendors for the amount of the discount,” giving telecommunications providers access to another stable revenue source,³⁴ Regulatory fee payors providing eligible services for the Affordable Connectivity Program, the Emergency Connectivity Fund, and the COVID-19 Telehealth Program receive similar financial benefits. The Secure and Trusted Communications Networks Reimbursement Program also provides financial benefits to regulatees in the wireline, wireless, and cable industries, as it “is a \$1.9 billion program created by the FCC at the direction of Congress to reimburse providers of advanced communications services with ten million or fewer customers for reasonable expenses incurred in the removal,

consumers. In fact, wireless providers serve over 95 percent of Lifeline customers and more than 60 percent of the more than 13 million households that have enrolled in the ACP to date.”).

³¹ See 47 C.F.R. § 54.407 (describing reimbursements for offering Lifeline).

³² *Id.*

³³ See Universal Service Administrative Co. *Lifeline Disbursements Tool*, available at: <https://opendata.usac.org/Lifeline/Lifeline-Disbursements-Tool/rink-mije> (last visited June 12, 2023).

³⁴ See FCC, *Universal Service Fund*, available at: <https://www.fcc.gov/general/universal-service-fund>.

replacement, and disposal of communications equipment and services produced or provided by Huawei Technologies Company (Huawei) or ZTE Corporation (ZTE) from their networks.”³⁵ The work performed by the USF FTEs on all of these programs therefore clearly benefits these fee payors by directly contributing to their bottom lines, expanding their subscriber bases, and funding the removal and replacement of certain equipment.

In addition to the financial benefits, the Commission also oversees and regulates fee payors’ compliance with various program requirements. For example, Commission rules impose a number of obligations on eligible telecommunications carriers in the Lifeline program, including requirements to verify subscriber eligibility, implement policies and procedures for ensuring that their Lifeline subscribers are eligible to receive such services, make Lifeline services available and publicize their availability, de-enroll subscribers who are no longer eligible to participate in the program, submit annual certifications, and adhere to minimum service requirements set by WCB.³⁶ Commission FTEs must also devote time to review and approve compliance plans submitted by regulatory fee payors.³⁷ FTEs working on the Secure and Trusted Communications Networks Reimbursement Program also review and approve reimbursement applications and review and grant or deny all submitted reimbursement claims.³⁸ Thus, at least some portion of the 23.75 FTEs that the

³⁵ See FCC, *Secure and Trusted Communications Networks Reimbursement Program*, available at: <https://www.fcc.gov/supplychain/reimbursement>

³⁶ See 47 C.F.R. §§ 54.404-54.406, 54.408, 54.410.

³⁷ In addition, regulatory fee payors that participate often petition for waiver of the Lifeline reimbursement rules and submit audit information in accordance with FCC’s Biennial Independent Audits for the Lifeline Program.

³⁸ See *Wireline Competition Bureau Reminds Secure and Trusted Communications Networks Reimbursement Program Recipients of the July 17, 2023 Deadline to File an Initial*

Commission continues to identify as working on non-high cost USF programs, the Affordable Connectivity Program, the Emergency Connectivity Fund, the COVID-19 Telehealth Program, and the Secure and Trusted Communications Networks Reimbursement Program must perform functions directly in furtherance of the oversight and regulation of regulatory fee payors that provide participating services and should be allocated as direct to those regulatory fee payors on that basis.

Given that the Commission has rejected adding a fee category for broadband internet access service providers, and its recognition that broadcasters do not participate in and benefit from USF-related activities, it is imperative that regulatory fee payors that benefit from the Commission's USF and other broadband-related programs pay regulatory fees that reflect the benefits that they receive. The Commission has justified its decision to not add a fee category for broadband service providers in part on the grounds that they already pay regulatory fees. If the Commission continues to treat its broadband and USF-related work as indirect, the regulatory fee structure will fail to reasonably reflect the total benefits entities that provide these services receive. As a result, regulatees that also provide broadband service will pay less for all Commission costs, while broadcasters pay more without receiving similar benefits.

NAB also reiterates that the Commission should not treat all the USF FTEs as indirect simply because the non-high cost USF programs also impact entities that are not required to pay regulatory fees. As explained above, the work USF FTEs perform provides a direct financial benefit to regulatory fee payors. In addition, at least some USF FTE time involves

Reimbursement Claim, Public Notice, WC Docket No. 18-89 (May 24, 2023) (describing process for submission of reimbursement claims).

overseeing and regulating the activities of regulatory fee payors that are eligible to participate in these programs. As NAB indicated in its previous filings, the Commission routinely requires regulatees to pay for FTEs in the core bureaus that perform functions on behalf of exempt entities. For example, the Commission currently requires broadcasters to pay for FTEs attributable to non-commercial broadcast stations, which are exempt by statute. In fact, the Commission has expressly rejected broadcasters' argument that these costs should be treated as indirect on the grounds that "[t]here are exempt entities in most of the regulatory fee categories" and therefore it is "consistent with section 9 of the Act to include those costs that are attributable to all regulatees in each bureau's revenue requirement."³⁹ It is arbitrary and capricious for the Commission to treat FTEs attributable to non-commercial stations as direct based on this logic, while continuing to treat the USF FTEs as indirect.⁴⁰

Moreover, there are reasonable and fair ways to allocate the USF FTEs as direct among the fee payors that directly benefit. NAB respectfully disagrees with the NPRM's assertion that broadcasters "have not identified a methodology for reallocating the FTE burden associated with these programs to the core bureau."⁴¹ NAB has provided the FCC with detailed information outlining how the FTEs could be proportionally allocated to fee payors that directly benefit from the FCC's non-high cost USF programs. NAB noted that this approach would appropriately account for the Commission's previous findings that WCB regulatees are not the sole beneficiaries of the USF FTEs' activities, require other regulatees

³⁹ See *Assessment and Collection of Regulatory Fees for FY 2021*, Report and Order and Further Notice of Proposed Rulemaking, 36 FCC Rcd 12990, 13003.

⁴⁰ To that end, should the Commission not adjust its current proposal for non-high cost FTEs, it should at the very least deem the FTEs working on matters benefitting non-commercial broadcast stations as indirect.

⁴¹ NPRM at ¶ 57.

that do directly benefit to pay for a portion of the FTEs, and minimize the impact on broadcasters' share of regulatory fees.⁴² Other methodologies would also be reasonable. If the Commission believes that all regulatees that provide eligible services benefit equally from the USF FTEs' work, then the USF FTEs could be allocated equally among such regulatees. Alternatively, the Commission could base its allocations on the level of participation by regulatory fee payors in each of the non-high cost and other FCC programs. For example, if over 95% of Lifeline subsidies go to wireless providers, then perhaps 95% of FTE time spent on Lifeline should be allocated to WTB.

NAB agrees with the State Broadcasters that “[a]s convergence in the wireline and wireless industries continues and the Commission’s regulation of those industries evolves” the work of FTEs “working on long-standing priorities of the Commission, such as USF and broadband, will converge across bureau lines” and that simply treating these FTEs as indirect “will predictably and unfairly burden identifiable categories of payors who do not benefit” from their work.⁴³ It is not fair, sustainable, or statutorily permissible to require broadcasters to pay a higher percentage of all Commission costs when there are fair and administrable ways to divide these FTEs among the regulatory fee payors that participate in and benefit from the Commission’s USF activities. The result will be a fee methodology that more accurately reflects the benefits provided to fee payors by the Commission’s activities.

⁴² See, e.g., NAB July 27 Ex Parte; NAB Dec. 16 Ex Parte.

⁴³ See Joint Comments of the State Broadcasters Associations, MD Docket Nos. 21-190, 22-223, at 18 (July 5, 2022).

IV. CONCLUSION

NAB applauds the Commission's efforts to employ a fee methodology that is fairer, more transparent, and more consistent with the law. The Commission has made substantial improvements to its regulatory fee methodology and should adopt its proposed reallocations of certain indirect FTEs as direct for regulatory fee purposes and continue to examine the work performed by FTEs in the non-core bureaus and offices on an ongoing basis. To further its own goals of fairness and sustainability, the Commission must ensure that the regulatory fees paid by regulatees that participate in the Commission's non-high cost USF programs reflect the financial benefits that regulatees receive from these programs and the work the Commission performs in overseeing and regulating their participation in them.

Respectfully submitted,

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