

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

In the Matter of)	
)	
Amendment of the Schedule of)	MD Docket No. 20-270
Application Fees Set Forth in Sections)	
1.1102 through 1.1109 of the)	
Commission's Rules)	

**COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS**

I. INTRODUCTION AND SUMMARY

The National Association of Broadcasters (NAB)¹ submits the following comments in response to the Commission's Notice of Proposed Rulemaking (Notice or NPRM) proposing amendments to the schedule of application fees.²

Federal user fee policy dictates that the government recover fees from an entity receiving particular benefits equal to the cost borne by the government providing those benefits.³ The Notice and the Commission's regulatory fee methodology, as set forth in the Commission's recent Report and Order setting regulatory fees for FY2020,⁴ run afoul of this basic principle by proposing to charge broadcasters significantly more in fees than the costs

¹ NAB is a 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 *In the Matter of Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1109 of the Commission's Rules*, Notice of Proposed Rulemaking, MD Dkt No. 20-270, FCC 20-116 (Aug. 26, 2020).

³ See OMB Circular A-25, Transmittal Memorandum #1, User Charges (July 8, 1993), available at <https://www.whitehouse.gov/wp-content/uploads/2017/11/Circular-025.pdf> (If a service "provides special benefits to an identifiable recipient beyond those that accrue to the general public, a charge will be imposed (to recover the full cost to the Federal Government for providing the special benefit, or the market price)").

⁴ *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2020*, Report and Order, MD Dkt No. 20-105, FCC 20-120 (Aug. 31, 2020).

to the government of regulating their activities, while concurrently exempting other beneficiaries of its services from fees altogether.

In this NPRM, the Commission proposes to increase several application fees and add new fee categories⁵ for radio and television broadcasters based on the estimated direct labor costs to the Commission of providing these services. The Commission proposes these changes on the grounds that the RAY BAUM'S Act requires the Commission to establish an application fee schedule that "will recover the costs of the Commission to process applications."⁶ The NPRM distinguishes its authority to collect application fees from its regulatory fee authority and asks whether "the fact that some of the same entities that pay application fees also pay regulatory fees [is] relevant to determining the scope of costs to include in the application fees."⁷ Presumably recognizing that some entities already pay the Commission's full costs to process applications through regulatory fees, and that it is highly unlikely that Congress intended to double the costs for such applicants, the NPRM proposes to take a "careful approach" and to limit the tasks it considers when calculating the Commission's costs to staff involved up to and including the first level of supervisory review and to exclude common, overhead, and other indirect costs.⁸ The Commission's proposed approach, however, is the same regardless of whether a potential applicant pays regulatory fees, causing broadcasters and other entities that pay regulatory fees to pay double for some

⁵ See NPRM ¶¶ 88, 93, 96 (proposing new fees for a minor change FM translator construction permit, broadcast services auction short-form applications and foreign ownership petitions for declaratory rulings).

⁶ 47 U.S.C. § 158(a); NPRM at ¶¶ 7-8.

⁷ NPRM at ¶ 232.

⁸ NPRM at ¶¶ 9, 11.

of the costs to process their applications, while others inexplicably receive a significant discount relative to the costs.

It is difficult to fathom that Congress intended for the FCC's fee collections to yield such unfair results. This proceeding therefore only heightens the need for the Commission to overhaul its regulatory fee methodology to be fair and sustainable as NAB and others have advocated. To date, the Commission has refused to heed calls from broadcasters to address the flaws in its regulatory fee approach. In comments on the Commission's NPRM setting regulatory fees for FY2020,⁹ NAB and other broadcasters urged the Commission to account for broadcasters' payment of application fees when calculating the regulatory fees they owed so that broadcasters would not be forced to pay the Commission's costs of processing these applications twice.¹⁰ NAB also advocated that the RAY BAUM'S Act gave the Commission the statutory flexibility to broaden the base of contributors to cover technology companies, including some of the largest companies in the world, that benefit from the Commission's resources. We urged the Commission to stop requiring licensees to subsidize the costs of these free-riders' participation in Commission actions and proceedings.¹¹ The Commission ignored these requests. As a result, broadcasters and other licensees not only pay twice for the Commission's costs of processing their own applications, but also bear the substantial

⁹ *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2020*, Report and Order and Notice of Proposed Rulemaking, MD Docket No. 20-105, FCC 20-64 (May 12, 2020).

¹⁰ See Comments of NAB, MD Dkt No. 20-105 at 10-12 (June 11, 2020) (NAB Regulatory Fee Comments) (noting that the RAY BAUM'S Act updated the Commission's statutory responsibility to collect regulatory fees by removing statutory limits to the categories of payors from which the Commission may collect regulatory fees); Reply Comments of NAB, MD Dkt No. 20-105 at 4-5 (June 29, 2020) (NAB Regulatory Fee Reply Comments); Joint Comments of the State Broadcasters Associations, MD Dkt No. 20-105 at 16 (Jun. 12, 2020) (State Broadcasters Associations Regulatory Fee Comments).

¹¹ See NAB Regulatory Fee Comments at 9-14; NAB Regulatory Fee Reply Comments at 4.

costs of their competition's fee-free participation in rulemaking and other proceedings. This is not only unjust on its face, but ultimately impedes broadcasters' ability to provide free local broadcast service to the public.

Until the Commission does the work necessary to ensure that its collection of regulatory fees is fair and accurately reflects the work the Commission performs, the Commission must minimize the application fee increases it has proposed by ensuring that only tasks involved in the review of unopposed applications are included and by excluding all levels of supervisory review. Further, the Commission should refrain from imposing any new application fees on broadcasters.

II. THE COMMISSION MUST OVERHAUL ITS REGULATORY FEE METHODOLOGY TO ENSURE THAT ALL BENEFICIARIES OF THE COMMISSION'S SERVICES PAY FOR ITS COSTS

The Commission has the statutory authority to collect both regulatory fees and application fees.¹² However, the Commission has implemented this authority in a manner that is fundamentally inequitable and unsustainable. Currently, broadcasters pay for a disproportionately large share of the Commission's costs relative to the benefits they receive from the Commission's activities. Broadcasters provide a critical and free service to the public, and unlike many other payors, broadcasters do not have a subscriber base to which to pass their regulatory fees.¹³ To fund the gathering and production of local news upon which communities depend, broadcasters must compete for advertising dollars against a proliferation of media and technology companies that pay nothing to fund the Commission's

¹² See 47 U.S.C. §§ 158, 159.

¹³ Government Accountability Office, *Federal Communications Commission: Regulatory Fee Process Needs to be Updated*, GAO 12-686 at 21 (August 2012) available at: <https://www.gao.gov/assets/600/593506.pdf>.

work. Absent meaningful reform, the Commission's costs are likely to continue to rise and the share of these costs imposed on broadcasters will continue to increase, ultimately to the detriment of the public.

The Commission should begin to reform its fee processes by responding to previous requests to ensure that broadcasters are not paying twice for the Commission to process their applications, by either removing the full-time employees (FTEs) involved in the application review process from the number of FTEs attributed to broadcasters for purposes of calculating regulatory fees or crediting application fee payments made in any given year by a broadcaster against their regulatory fees.¹⁴ There is no justification for requiring broadcasters to pay twice for the labor involved in processing applications through both application fees and regulatory fees. Congress could not have intended as much.

Moreover, broadcasters face substantial competition for advertising revenue from unlicensed spectrum users that significantly utilize the Commission's resources to provide for new opportunities for their products but contribute nothing to the Commission's costs. For example, the Commission recently opened up the entire 6 GHz band to uncoordinated unlicensed use, despite significant risk of interference to incumbent operations.¹⁵ In addition to meetings and phone calls, the Commission dedicated substantial resources to reviewing over 100 filings such as ex parte letters, notices and comments filed by technology

¹⁴ See State Broadcasters Associations' Regulatory Fee Comments at 16 (urging the Commission to "remove all FTEs whose work is paid for through application fees from the direct FTE count assessed against broadcasters" or "issue 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"); NAB Regulatory Fee Reply Comments at 4-5.

¹⁵ See *In the Matter of Unlicensed Use of the 6 GHz Band; Expanding Flexible Use in Mid-Band Spectrum Between 3.7 and 24 GHz*, Report and Order and Notice of Proposed Rulemaking, ET Docket No. 18-295, GN Docket No. 17-183, FCC-20-51 (Apr. 20, 2020)

companies including Apple, Google and Microsoft in the proceeding, and several companies publicly acknowledged the benefits of this rulemaking to their businesses.¹⁶ Yet broadcasters were required to pay for 37.3 percent of the work done by the Office of Engineering and Technology and others that work on unlicensed spectrum items while the beneficiaries of these activities paid nothing. To correct this imbalance in which licensed entities essentially subsidize the costs of their competitors to participate in FCC proceedings, and to ensure that the costs of the Commission's activities are fairly allocated across all beneficiaries, the Commission can no longer ignore NAB's repeated requests that the Commission broaden its base of regulatory fee contributors to include such companies that leverage Commission proceedings to their benefit and to broadcasters' detriment.¹⁷ If both the collection of application fees and regulatory fees are supposed to be tied to recovery of the Commission's costs from those that benefit from the Commission's activities, it makes little sense to continue to allow some of the largest and most profitable beneficiaries of the Commission's

¹⁶ See Ry Crist, *FCC unlocks a massive amount of bandwidth for next-gen Wi-Fi devices*, cnet (Apr. 29, 2020) (Broadcom's VP of marketing stated that the 6 GHz decision was "the most substantive decision any Commission has made on unlicensed spectrum in almost 25 years, and one that will empower our wireless experiences for the next 20 years" while Apple applauded the FCC's decision and stated that "[i]t sets the course for the next generation of Wi-Fi networks and will help us to create innovative, new product experiences for our customers."); Conor Reynolds, *US Proposing Making "Entire 6 GHz Band Available for Unlicensed Use"*, CBR (Apr. 2, 2020) (Qualcomm Technologies' general manager of connectivity and networking commented that "we are ready to go with a full suite of Wi-Fi 6E products spanning mobile, personal computing, automotive and networking using this new spectrum, as we demonstrated in February.").

¹⁷ See Comments of NAB, MD Dkt No. 19-105 at 2, 8-11 (June 7, 2019) (FY 2019 NAB Regulatory Fee Comments); NAB Regulatory Fee Comments at 9-14.

unlicensed spectrum activities¹⁸ to free-ride on the regulatory fee contributions of broadcasters.

III. THE COMMISSION SHOULD FURTHER LIMIT THE COSTS IT USES TO CALCULATE APPLICATION FEES FOR BROADCASTERS

The NPRM does not provide enough detail to allow for meaningful comment on the Commission's cost calculations. While the NPRM outlines what tasks are included in the calculations, the NPRM provides no information regarding the amount of hours each task is estimated to take nor does it provide the specific hourly rates used for the calculations, making it difficult to discern whether the estimate for any particular fee is reasonable or accurate. Notwithstanding, given that broadcasters already pay the full costs (including all labor and overhead) of processing their applications through regulatory fees, the Commission should further curtail the costs it proposes to include in its calculation of application fees and refrain from adding any new application fee categories for broadcasters. For instance, the NPRM proposes to calculate application fee costs using direct labor costs through the first level of supervisory review.¹⁹ But the NPRM gives no justification for including *any* supervisory costs. Supervisory tasks are not critical to the basic processing of an application, and even if they could be considered critical, broadcasters already pay for this work through regulatory fees. The Commission therefore should exclude all supervisory tasks and associated costs from its calculations of application fees.

¹⁸ See NAB Regulatory Fee Comments at 9-10 (enumerating proceedings that unlicensed spectrum users initiate or represent the driving force that consume much of the Commission's resources).

¹⁹ NPRM at ¶¶ 11, 237.

In addition, the NPRM states that it has based the proposed application fees on costs involved in processing an unopposed application.²⁰ However, in explaining the cost estimates for several broadcaster application fees, the NPRM notes that “[s]ome applications may involve petitions or objections after the application is filed”²¹ and includes estimated costs for “an attorney reviewing pleadings, and a supervisory attorney reviewing written disposition.”²² The Commission should clarify whether the costs for attorney review of pleadings and written disposition is related to handling petitions or objections after the application is filed. To the extent they do, these costs are inconsistent with the NPRM’s statement that costs are based on tasks involved in processing an unopposed application and therefore should be excluded.

IV. CONCLUSION

Despite the fact that broadcasters already pay more than their fair share of the Commission’s costs through ever-increasing regulatory fees, the NPRM proposes to have broadcasters pay again for much of the labor costs the Commission recovers from broadcasters through regulatory fees, while others in the telecommunications ecosystem that are inexplicably exempt from regulatory fees receive a substantial discount. This outcome is contrary to federal fee policy, unjustified, and unsustainable. The Commission must take steps now to overhaul its fee collection methodologies to ensure that broadcasters are not

²⁰ See *id.* at ¶ 237 (“We also propose basing the application fee on costs for an unopposed application.”).

²¹ See e.g., NPRM at ¶¶ 56 (Full Power TV and Class A TV long-form license assignment and long-form transfers of control); 57 (Full Power TV and Class A TV license renewals, short-form license assignments, short-form transfers of control and STA); 73 (AM radio new construction permits); 74 (AM radio license and license renewal); 75 (long-form applications for AM license assignments and long-form transfers of control); 79 (FM radio new construction permits); 81 (FM radio license applications); 87 (FM translator or FM booster construction permits).

²² *Id.*

paying twice for the same services and that the costs of the Commission are recovered fairly from all beneficiaries of the Commission's work.

Respectfully submitted,

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