

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Procedures for Assessment and Collection of Regulatory Fees)	MD Docket No. 12-201
)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2008)	MD Docket No. 08-65
)	

**COMMENTS OF
THE NATIONAL ASSOCIATION OF BROADCASTERS**

The National Association of Broadcasters (“NAB”)¹ submits these brief comments on the above-captioned Notice of Proposed Rulemaking regarding proposals to reform the Commission’s policies for assessing and collecting regulatory fees.² Specifically, NAB is concerned that a lack of transparency in the regulatory fee process makes it difficult to determine the foundation or fairness of certain changes proposed in the Notice.

Historically, regulatory fees have been calculated in a three-step process. First, Congress establishes an annual total collection target. Second, the Commission allocates percentages of that target amount to 86 various regulatory fee categories, based on the number of full-time equivalents (“FTEs”) in each of the core bureaus: Media Bureau (“MB”); Wireline Competition Bureau (“WB”); Wireless Telecommunications Bureau (“WTB”); and the International Bureau (“IB”). Third, the

¹ NAB 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 *Procedures for Assessment and Collection of Regulatory Fees*, MD Docket No. 12-201; *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, MD Docket No. 08-65, Notice of Proposed Rulemaking, FCC 12-77 (*rel.* July 17, 2012) (“Notice”).

Commission allocates the amount for each fee category among the relevant licensees based on some objective measure, such as revenues or number of subscribers.

NAB supports the Commission's initiative to modernize the regulatory fee process to reflect changes in the communications marketplace since 1998, when the Commission last revised the FTE data on which the fees are based. Notice at ¶ 12. The amount of time that Commission staff spend on various activities has undoubtedly shifted over the past 14 years. Given the rise of new technologies, changes in consumer habits, and increased intermodal competition and cross-industry FCC proceedings, allocation of FTEs among fee categories is increasingly complicated. *Id.* As a result, it is likely that some licensees are over-paying, and essentially subsidizing entities in other fee categories.³

However, the Notice's proposals for addressing these developments raise several concerns. The existing process for assessing regulatory fees is already a product of "rough justice," as the fees are based on the number of FTEs in each of the core bureaus, instead of the actual functions of Commission employees.⁴

Licensees in Media Bureau service categories, including radio and television broadcasters, currently pay 31.9 percent of all the regulatory fees collected by the Commission.⁵ This figure is derived from the percentage of MB FTEs who are "directly"

³ *Federal Communications Commission, Regulatory Fee Process Needs to be Updated*, Report to Congressional Requesters, U.S. Government Accountability Office, GAO-12-686 (Aug. 2012) ("GAO Report").

⁴ The Commission considered ways to more calculate fees based on employee time-cards in the mid-1990s but abandoned this approach because of administrative difficulties. *Assessment and Collection of Regulatory Fees for Fiscal Year 1997*, Report and Order, MD Docket No. 96-186, 12 FCC Rcd 17161, 17165 (1997).

⁵ The figures for the other bureaus are: WTB 17.4 percent; WB 44.0 percent; and IB 6.7 percent. Notice at ¶¶ 24-25.

involved in a feeable activity, compared to similar FTEs in the other core bureaus, plus an equivalent percentage of MB FTEs who perform support functions and FTEs who are not assigned to any of the four core bureaus. *Id.* at ¶¶ 19-20.

The Notice proposes to update this calculation by using current FTE data, which has the effect of substantially increasing the share of IB licensees from 6.7 percent to 22.0 percent, decreasing the share of WB licensees from 44.0 percent to 27.7 percent, and leaving the remainder largely unchanged. *Id.* at ¶ 25. NAB supports adjustment to more accurately reflect the current status of Commission staffing.

The proposal for addressing the resulting impact on IB licensees is more troublesome. Expressing concern about the potential fee increase on IB licensees, the Notice suggests reallocating 50 percent of the FTEs in the International Bureau to the other three core bureaus as “indirect” costs, like FTEs within non-core bureaus (e.g., Office of General Counsel, Enforcement Bureau). *Id.* at ¶¶ 26-27. This approach would increase the share of fees assessed to entities licensed by other bureaus, including Media.

This suggested approach suffers from several flaws. First, the 50 percent figure of IB FTEs is unsupported. The Notice contains no evidence or data to support the assertion that half of IB employees work on “matters covering services other than international services.” *Id.* at ¶ 27. Nor does the Notice discuss whether any of these “non-international” matters are exclusively domestic, or may involve elements of both international and domestic services, or involve wireless or broadcast services or some other constituencies. Shifting a portion of IB licensees’ fee obligations to broadcasters and other licensees also is questionable because similar concerns could be raised

about other Commission staff. For example, there may be personnel in WTB or MB who work on matters of relevance to international licensees, and thus should be reallocated, at least in part, back to IB. Similarly, the majority of FTEs in the Public Safety and Homeland Security Bureau may support wireline and wireless services rather than broadcast services, meaning the allocation of their costs is misaligned. And, as the Notice acknowledges, there has been a significant increase in cross-service projects at the Commission that may not be accurately reflected in fee assessments. Notice at ¶ 12.

Essentially, the proposed treatment of IB's FTEs mixes two different approaches to calculating fees – one based on the respective numbers of FTEs in the bureaus, and another based on the actual workload of Commission staff. *Id.* at ¶ 15. If the Commission seeks to utilize the second approach, then it should do so consistently.

Second, the proposed reallocation of IB FTEs lacks transparency. As the GAO recently concluded, the FCC's regulatory fee process has not been clearly described in published documents. GAO Report at 23. As a result, fee payers and others are uncertain about the process, and find it difficult to comment on the calculation of fees, or meaningfully participate in efforts to modify the system. *Id.* In particular, GAO concluded that the Commission has not been transparent in describing the impact of fee adjustments for one category on licensees in other categories. *Id.* at 24.

The current Notice suffers from these problems noted by GAO. Specifically, the Notice fails to explain the effect that reducing the fee obligations of IB licensees would have on other licensees. It is clear that broadcasters and other MB licensees would have to pay more, but there is no data on the increased burden on specific licensees or

categories of licensees. The GAO report suggested that, when proposing modifications to the fee system, the Commission should fully explain the projected costs, projected fee allocations, and the assumptions underlying those projections. *Id.* The Notice provided no such data regarding the proposed reallocation of IB FTEs.

Third, the proposal would amplify the inaccuracies already inherent in the regulatory fee process. Shifting half of the IB FTEs to the other core bureaus would increase the relative obligation of other licensees for all regulatory fees as follows: MB from 32.9 percent to 37.54 percent; WB from 27.7 percent to 31.59 percent; and WTB from 17.4 percent to 19.9 percent. MB licensees would be burdened the most, because the additional IB FTEs would be reallocated proportionally and the Media Bureau currently has the most FTEs who work directly on feeable activities. But, as discussed above, the current system for assessing regulatory fees is only a roughly estimated proxy for calculations based on the actual functions of Commission employees. Expanding the universe of FTEs to include half the International Bureau would thus magnify the inequities of the current system.

Finally, the Commission asks whether the proposed approach would be “fair.” *Notice* at ¶ 26. This question is difficult to answer definitively, given the lack of data relevant to both the specific proposal and the regulatory fee process overall. For example, without information on the actual functions of the relevant FTEs in the International Bureau, it is impossible to determine if reallocating a portion of them to the licensees of other bureaus would be fair, and how such a distribution should work. One can argue that a majority of the International Bureau work in question primarily benefits satellite television providers, rather than radio and television broadcasters.

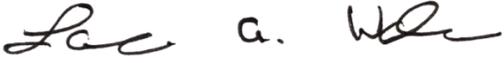
Thus, it may be more appropriate to allocate a larger percentage of the additional IB FTEs to satellite licensees.⁶

Similarly, one may question whether it is fair to raise fees for certain MB licensees, such as small, rural radio stations, instead of placing the added burden on IB licensees, who are international by definition, and more likely to be larger entities with greater resources. We additionally note that, unlike cable television and satellite operators, radio and television broadcasters cannot simply pass through increased regulatory fees as a line-item on consumer bills. Regulatory fees are incorporated directly into broadcasters' operating costs, and any increases reduce the financial resources available to support local stations' services. See GAO Report at 21.

Without more information and specificity about the proposals, NAB is unable to comment further at this time. For the reasons stated above, NAB respectfully requests that no cross-Bureau adjustments be made to the calculation and assessment of regulatory fees without further explanation and additional input by interested parties.

⁶ Cable operators have complained for several years that satellite companies pay fees on a per facility basis, while their fees are assessed based on subscriber figures, even though both entities have subscribers and provide similar services. It is possible that implementing the proposal regarding IB FTEs would only heighten this alleged discrepancy. GAO Report at 19; Comments of the National Cable & Telecommunications Association, MD Docket No. 08-65 (filed Sep. 25, 2008).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jane E. Mago". The signature is fluid and cursive, with the first name being the most prominent.

Jane E. Mago
Jerianne Timmerman
Larry Walke
NATIONAL ASSOCIATION OF BROADCASTERS
1771 N Street N.W.
Washington, D.C. 20036
(202) 429-5430

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