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

In the Matter of:	)	
	)	
Assessment and Collection of Regulatory Fees	)	MD Docket No. 21-190
For Fiscal Year 2021	)	
	)	

COMMENTS OF
THE NATIONAL ASSOCIATION OF BROADCASTERS

June 3, 2021

TABLE OF CONTENTS

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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 concerning regulatory fees for Fiscal Year 2021.[2]

For the third consecutive year, the Commission plans to significantly increase regulatory fees for broadcasters to unfair, unsustainable levels, and in a manner that is unlawful and ignores the COVID-19 pandemic's devastating economic impact on broadcasters. This year, broadcasters face a 5-15% increase in regulatory fees,[3] despite the

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[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] *Assessment and Collection of Regulatory Fees for Fiscal Year 2021; Assessment and Collection of Regulatory of Regulatory Fees for Fiscal Year 2020*, Report and Order and Notice of Proposed Rulemaking, MD Docket Nos. 21-190, 20-105, FCC 21-49 (rel. May 4, 2021) (R&O and NPRM).

[3] Radio broadcasters' regulatory fees will increase between 5-15%. Television broadcasters' per population served fee factor is going up by nearly 9%. *See* R&O and NPRM at App'x B, App'x G.

Commission's general salary and expenses budget increasing by only 0.5%.[4] For the first time, the vast majority of full power radio stations, even those that qualify as small business entities, will fall under the de minimis threshold of $1,000 to be exempt from paying regulatory fees.[5] Although the NPRM continues its unfortunate annual tradition of failing to explain the basis of these increases in any meaningful way, the math alone makes it is apparent that broadcasters are not being charged more in regulatory fees because of any increased costs or benefits of their regulation.[6] Rather, the Commission is forcing broadcasters to subsidize the regulation of other entities that are either: (1) contributing less than their fair share of the fees; or (2) allowed to free ride entirely on the Commission's activities.

It is well past time for the FCC's inequitable and unsustainable regulatory fee practices to end. The Commission has an obligation to ensure that its regulatory framework enables TV and radio stations to serve the public interest in free, over-the-air broadcast

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[4] This year's appropriation for the Commission's general salary and expenses is $341,000,000, a $2 million dollar increase over last year's appropriation of $339,000,000. *See* Division E—Financial Services and General Government Appropriations Act, 2021, Title V—Independent Agencies, Federal Communications Commission of the Consolidated Appropriations Act, 2021, Public Law No: 116-260 (Dec. 27, 2020) (appropriating $341,000,000 for "necessary expenses of the Federal Communications Commission, as authorized by law. . .) (FY 2021 Appropriation).

[5] *See* R&O and NPRM at App'x I, ¶ 40 ("The Commission has taken steps to minimize the economic impact on small entities by adopting a de minimis threshold . . . a regulatee is exempt from paying regulatory fees if the sum total of all of its annual regulatory fee liabilities is $1,000 or less for the fiscal year.").

[6] NAB also notes that there appears to be an error in Appendix A of the NPRM. Appendix A suggests that the Commission intends to collect the same amount in fees from all radio fee categories that it did in FY 2020. This cannot be the case when radio's fees are increasing so dramatically. Furthermore, the "Estimated FY 2021 Revenue" column does not add up to the "Total Revenue Estimated to be Collected" listed in the chart. The Commission should review and correct any errors for accuracy and such that broadcasters and other regulatory fee payors can better understand the Commission's fee calculations. *Id*. at App'x A.

service, which means that the broadcast industry must remain economically viable in an increasingly competitive marketplace.[7] As the GAO highlighted nearly a decade ago, the Commission cannot turn a blind eye to the fact that, unlike others, broadcasters cannot simply pass on regulatory costs to consumers in the form of a line item on a bill. The fees come from the bottom line of radio and TV stations, directly undercutting their ability to hire staff and produce news, including the critical live coverage of emergency events during this past year.[8] Imposing regulatory fees that also require the broadcast industry to subsidize the costs of well-funded entities, some of which not only profit from broadcasters' content without fairly compensating them but also serve as broadcasters' primary competitors for advertising dollars,[9] serves no policy goal and does further damage to broadcasters' economic viability and their ability to continue to serve the public.

Although broadcasters appreciate the Commission's proposal to extend the temporary COVID-19 relief measures it approved in FY 2020,[10] that proposed solution will

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[7] *See* Comments of State Broadcasters Associations, MD Docket No. 20-105, at 15 (June 12, 2020) (stating that "it is inconceivable that after decades of government policies to encourage the availability of radio and television service to every community in the country, Congress intended to deprive local communities of access to free over-the-air broadcast service through the imposition of burdensome regulatory fees on broadcasters" and citing FCC proceedings implementing such policies.) (State Broadcasters Comments).

[8] *See* Government Accountability Office, Federal Communications Commission: Regulatory Fee Process Needs to be Updated, GAO 12-686 at 21 (Aug. 2012), available at https://www.gao.gov/assets/gao-12-686.pdf. (GAO Report).

[9] See BIA Advisory Services, *Economic Impact of Big Tech Platforms on the Viability of Local Broadcast News* (2021), available at: Economic Impact of Big Tech Platforms on Local Broadcast News (nab.org) (concluding that broadcasters lose nearly $2 billion per year in value that local broadcasters create for Google and Facebook and for which they are not fairly compensated).

[10] *See* R&O and NPRM at ¶¶ 37-40 (describing temporary measures adopted in FY 2020 to provide relief to regulatees that suffered financial harm due to the pandemic).

only go so far. Many broadcasters simply cannot afford unnecessary expenses in a year when revenues continued to decline due to the economic impacts of the ongoing COVID-19 pandemic, and a slow-moving recovery.[11] NAB therefore urges the Commission to take at least three concrete steps to correct the imbalances in its regulatory fee approach:

- *First*, the Commission should adjust its proposal so that only the beneficiaries of the Commission's broadband mapping activities pay for the associated costs.
- *Second*, the Commission should ensure that the wireless industry pays for its fair share of the Commission's costs by including wireless full-time employees (FTEs) that are charged to auctions in the total Wireless Telecommunications Bureau's (WTB) direct FTE count for purposes of allocating indirect costs.
- *Third*, the Commission must take steps to require Big Tech and other unlicensed spectrum users pay for their fair share of the Commission's activities from which they directly benefit. As broadcasters face year-after-year regulatory fee and application fee increases,[12] it continues to make no sense that the Commission requires broadcasters, other licensees and consumers to subsidize some of the wealthiest, largest companies in the world who leverage Commission proceedings to develop profitable business models without contributing regulatory fees.

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[11] *See BIA: Local Radio's Digital Revenue Will Top $1 Billion In 2020 As Ad Market Recovers*, Inside Radio (May 14, 2021), available at: http://www.insideradio.com/free/bia-local-radio-s-digital-revenue-will-top-1-billion-in-2020-as-ad-market/article_e2e8c868-b47f-11eb-b095-eb6d4b8aa6f9.html (noting that total over-the-air advertising declined 23.6% because of the pandemic exacerbating the impact of new competition and it will take time to recover).

[12] *See Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1109 of the Commission's Rules*, MD Docket No. 20-270, Report and Order (rel. Dec. 29, 2020) (increasing several application fees for radio and television broadcasters and adding new application fee categories).

Furthermore, the Commission should not move forward with its proposal to change from an accurate, individual population-based fee for broadcast television fees to a less precise tiered system. Though the proposal's impacts on broadcast television stations will vary depending on where they fall on the Commission's proposed tiers, the NPRM identifies only minimal burdens on the FCC and on fee payors imposed by the current system that do not justify making the assessment of regulatory fees less accurate overall.

II. BROADCASTERS SHOULD NOT BE FORCED TO SUBSIDIZE THE COSTS OF REGULATING BROADBAND PROVIDERS

The Commission is obligated to collect a total of $374 million in regulatory fees to offset its total FY 2021 appropriation. For only the third time in the FCC's recent history,[13] Congress took the unusual approach of breaking up the appropriation into two distinct buckets: (1) $341 million to cover salaries and expenses (a $2 million increase over last year's appropriation) and (2) an additional $33 million specifically to cover costs associated with the implementation of the Broadband DATA Act (Broadband Costs).[14] Without any explanation, the NPRM proposes to ignore Congress's specific $33 million broadband

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[13] In 2016 and 2017, Congress appropriated additional amounts to fund the Commission's facility costs. Because these costs did not apply to or benefit any subset of payors, they amounted to general overhead costs that were allocated across all regulatory fee categories. *See* Federal Communications Commission 2021 Budget Estimates to Congress, February 2020, at 60 (Feb. 10, 2020) (depicting historical distribution of appropriated budget authority since FY 2010 and noting that "[f]or FYs 2016 and 2017, $44 million and $17 million, respectively, represent amounts provided for the necessary expenses associated with moving the FCC headquarters to a new facility to significantly reduce space consumption.").

[14] *See* FY 2021 Appropriation (appropriating $341,000,000 for "necessary expenses of the Federal Communications Commission, as authorized by law. . . Provided, That *in addition*, $33,000,000, shall be made available until expended for implementing title VIII of the Communications Act of 1934 (47 U.S.C. 641 et seq.), as added by the Broadband DATA Act.") (emphasis added).

mapping appropriation and instead distribute it across all regulatory fee categories, including broadcasters.[15]

The Commission's proposal is unjustifiable when broadcasters are not regulated by nor benefit from implementation of the Broadband DATA Act. Moreover, the Broadband Costs cannot be described as indirect or general overhead costs when they pay for specific tasks performed by only certain of the Commission's core bureaus and there are identifiable entities (namely, broadband service providers) that are regulated by and benefit from the Commission's activities implementing the legislation.[16] Public policy and the public interest counsel in favor of the Commission taking a more nuanced approach and reallocating the Broadband Costs only across the core bureaus that are engaged in the work and whose regulatees benefit from such services.

A. The Commission's Proposal Operates as an Impermissible Subsidy When Broadcasters Are Not Regulated by Nor Benefit from the Broadband DATA Act

The Broadband DATA Act requires the FCC to collect granular service availability data from wired, fixed wireless and satellite broadband providers, set parameters for service availability data collected from mobile broadband providers, take enforcement action against such providers that knowingly or recklessly submit materially inaccurate broadband data and use newly-created maps when making new awards of broadband funding.[17] The FCC has

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[15] *See* R&O and NPRM at ¶ 22 ("Applying the section 9 requirements to calculate regulatory fees, we propose to allocate the total collection target across all regulatory fee categories.").

[16] *See id.* (describing the work of indirect FTEs and offices as that which "benefits the Commission and the telecommunications industry generally and is not specifically focused on the regulatees and licensees of one core bureau.").

[17] *See* Broadband DATA Act, Pub. L. No. 116-130 (March 23, 2020). Notably, these new processes are required because broadband providers overstated coverage in their self-reported map data resulting in a fundamentally flawed FCC data collection process. Why broadcasters should have to pay for the costs of correcting these errors remains a mystery.

issued three notices of proposed rulemaking[18] and has launched a task force consisting of "dedicated staff in the Office of Economics and Analytics, Wireless Telecommunications Bureau, Wireline Competition Bureau, Consumer and Governmental Affairs Bureau, International Bureau, Office of Engineering Technology, and Office of the Managing Director" to implement the Broadband DATA Act's requirements.[19] There is no indication that the Media Bureau has been involved in broadband mapping work, and, because broadcasters do not provide broadband services, they are not subject to any of the regulatory requirements of the legislation.

Yet under the Commission's proposal, Media Bureau regulatees are being charged for more than 36% of the Broadband Costs (nearly $12 million), substantially more than the regulatees in the core bureaus that are implementing the Broadband DATA Act's

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See Millions of Americans Can't Get Broadband Because of a Faulty FCC Map. There's a Fix. CNET (Feb. 19, 2021, available at: https://www.cnet.com/features/millions-of-americans-cant-get-broadband-because-of-a-faulty-fcc-map-theres-a-fix/ (explaining that Form 477 data self-reported by ISPs was not checked by the FCC, allowing ISPs to overstate coverage areas).

[18] *See Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195, 11-10, Report and Order and Second Further Notice of Proposed Rulemaking, 34 FCC Rcd 7505 (rel. Aug. 6, 2019); *Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program,* WC Docket Nos. 19-195, 11-10, Second Report and Order and Third Further Notice of Proposed Rulemaking, 35 FCC Rcd 7460 (rel. July 17, 2020); *Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195, 11-10, Third Report and Order, 366 FCC Rcd 1126 (rel. Jan. 19, 2021).

[19] *Improving Broadband Mapping Data February Open Meeting Presentation* (Feb. 17, 2021), available at: https://docs.fcc.gov/public/attachments/DOC-370061A1.pdf.

requirements.[20] Broadcasters alone are responsible for 16% of Broadband Costs, despite being subject to 0% of the regulatory requirements and receiving 0% of the benefits.[21]

By virtue of this broadcaster-provided subsidy, broadband service providers will pay significantly less than the costs to the Commission of their regulation while reaping all the benefits of the improved maps that the Commission will deliver.[22] Adding insult to injury, broadband providers will ultimately pass on the regulatory costs that they do pay to their subscribers (which include local broadcasters), while broadcasters who cannot pass on their costs will pay more for both broadband service and the privilege of being regulated by the Commission, all while trying to compete for advertising dollars against the very entities that the Commission's proposal requires they subsidize.

The Commission has a duty to avoid the sort of cross-subsidization the NPRM proposes. The GAO previously criticized the FCC's regulatory fee methodology for ignoring equity concerns[23] and noted that while regulatory fees may not ever reflect exactly the cost of regulating a particular fee category in part because regulatory fees must also cover general overhead, fees should be set in such a way that any "cross subsidization occurs in

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[20] *See* R&O and NPRM at ¶ 23 (Under the Commission's proposal, International Bureau regulatees will pay for 8.56% of Broadband Costs, Wireless Telecommunications Bureau regulatees will pay for 22.33%, Wireline Competition Bureau regulatees will pay for 32.72% and Media Bureau regulatees will pay for 36.39%).

[21] Though the NPRM fails to explain how fees are allocated amongst fee categories within a particular bureau, based on the limited information provided in the NPRM, it appears that broadcasters are responsible for 45% of the fees payable by Media Bureau regulatees. *See* R&O and NPRM at ¶ 30 (indicating that the FCC must collect $74.84 million from MVPDs out of the total $136.1 million it must collect from Media Bureau regulatees).

[22] *See Broadband Data*, FCC, available at: https://www.fcc.gov/BroadbandData ("Service providers and governments use broadband maps to make decisions about where service is needed and how to fund the expansion of broadband services.").

[23] *See* GAO Report at 17.

order to promote other policy goals" and "should be aligned with the costs of the activities for which the fee is collected, unless there is a policy decision not to align them."[24] The FCC ignores those considerations entirely as the NPRM provides no justification, much less a reasoned policy decision, for forcing broadcasters to pay for the costs of regulating broadband providers. While NAB recognizes that most years all entities end up paying for some FCC activities that do not directly impact them, that does not justify or explain the FCC taking its usual approach when it comes to Broadband Costs.

B. The Commission Has the Authority to Collect Broadband Costs from the Bureaus that Regulate Broadband Service Providers

Though the NPRM reads as if the Commission had no choice but to saddle broadcasters with a portion of Broadband Costs, that is not the case. Section 9 of the Communications Act permits – if not requires – the Commission to make amendments to its schedule of regulatory fees to "take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities."[25] There is no question that the FCC is not expending any funds appropriated for broadband mapping on regulating broadcasters and that broadcasters do not receive any benefit from the Commission's broadband mapping activities. It is equally clear that the FCC is spending $33 million to regulate broadband providers and that broadband providers will receive myriad benefits as a result of the Commission's activities.[26] Nothing in the Communications Act

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[24] *Id*. at 17-18.

[25] 47 U.S.C. § 159(d).

[26] Indeed, the broadband industry has long been a proponent of improved broadband mapping and the Broadband DATA Act. See *Action Center: Broadband Mapping Initiative*, USTelecom, available at: https://www.ustelecom.org/broadband-mapping-initiative-action-center/ (touting the results of the "Broadband Mapping Initiative" launched by USTelecom, ITTA, WISPA and broadband companies such as AT&T and Verizon, including that "Congress

prohibits the Commission from redistributing the $33 million across only those bureaus that are actively involved in implementing the Broadband DATA Act's directives to account for the work performed by the Commission and the resulting benefits received by their regulatees. Doing so will still result in the Commission collecting the amounts it has been appropriated, while avoiding improper and unnecessary cross-subsidization for which the Commission has been justifiably criticized before.

III. THE FEE METHODOLOGY IMPERMISSIBLY REQUIRES BROADCASTERS TO PAY A PORTION OF THE WIRELESS INDUSTRY'S SHARE OF INDIRECT AND OVERHEAD COSTS

The NPRM continues to adhere to the FCC's traditional, and outdated strategy of simply allocating indirect and overhead costs proportionally to the number of direct FTEs in each of the four core bureaus.[27] As NAB has noted before, this approach 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.[28] Due to the outsized impact the number of direct FTEs in a core bureau has on its allocation of total regulatory fees, the Commission should take steps to ensure that this methodology does not lead to undercharging certain bureaus' regulatees for indirect and overhead costs due to the classification of a bureau's FTEs as auction employees.

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recently approved funding $98 million to implement the Broadband Deployment Accuracy and Technological Availability (DATA) Act, bipartisan legislation enacted in 2020 to create a comprehensive national broadband map.").

[27] *See* R&O and NPRM at ¶ 22 ("We propose that, consistent with past practices, the total FTEs for each fee category include the direct FTEs associated with that category plus a proportional allocation of indirect FTEs.").

[28] *See* Comments of NAB, MD Docket No. 19-105, at 7 (June 7, 2019) (FY2019 NAB Comments); Comments of NAB, MD Docket No. 20-105, at 5 (June 11, 2020) (FY2020 NAB Comments).

For example, according to Commission staff, WTB has amazingly classified *over half* of its workforce as auction FTEs for FY 2021, thereby excluding them from the FCC's allocation of regulatory fees to the wireless industry.[29] That is not a misprint: WTB claims that approximately half of its 153 FTEs work full-time on auctions. Consequently, wireless regulatees will pay *less* of the total percentage of regulatory fees than they did last year.[30] This is frankly illogical in a year when $33 million worth of FCC work is being conducted in part by WTB and for the wireless industry to implement the Broadband DATA Act, and wireless carriers are some of the only companies that thrived during the pandemic.[31]

The NPRM offers no insight as to how it determined that over half of the direct FTEs in WTB should be classified as auction employees. Given the impact that classification has on the total allocation of regulatory fees across the four core bureaus, the Commission must

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[29] *See* Notice of Ex Parte Communication from Rick Kaplan, NAB, to Marlene Dortch, FCC, MD Docket 21-190 (May 18, 2021). FCC staff explained that 80 wireless FTEs were classified as auction employees, leaving the number of direct FTEs included in the regulatory fee calculation steady at only 73. Under the Commission's methodology, this allows the wireless industry to escape an increase in the percentage allocated to it if the FTEs in the other core bureaus remain steady, and affords it a decrease if the number of FTEs in the other core bureaus increase.

[30] Wireless Telecommunications Bureau regulatees will pay only 22.33% of FY 2021 regulatory fees, down from the 23.47% they were required to pay in FY 2020. *See* R&O and NPRM at ¶ 23; FY 2020 R&O at ¶ 8.

[31] *See, e.g.*, *T-Mobile Caps Best Year Ever in 2020 with Strong Q4 Results, is the Only National Wireless provider to Beat Expectations on BOTH Customer Growth and Profitability*, T-Mobile (Feb. 4, 2021), available at: https://investor.t-mobile.com/news-and-events/t-mobile-us-press-releases/press-release-details/2021/T-Mobile-Caps-Best-Year-Ever-in-2020-with-Strong-Q4-Results-Is-the-Only-National-Wireless-Provider-to-Beat-Expectations-on-BOTH-Customer-Growth-and-Profitability/default.aspx (reporting T-Mobile had total revenues of $20.3 billion in Q4 2020 compared to $11.8 billion in Q4 2019); *Verizon ends 2020 with strong earnings and cash flow, and increased wireless service revenue growth,* Verizon (Jan. 26, 2021), available at: https://www.verizon.com/about/news/verizon-ends-2020-strong-earnings-and-cash-flow-and-increased-wireless-service-revenue-growth (reporting total consolidated revenue of $16.7 billion for 2020, a 2.2.% increase year over year).

first show its work. But regardless of whether these FTEs were properly classified, at the very least the Commission should adjust its methodology so that the auction FTEs are not excluded from the calculation of proportional indirect and overhead expenses. Doing so artificially depresses the indirect and overhead costs attributable to the wireless industry and, although the NPRM's woeful lack of transparency makes it difficult to know for certain, the Commission's current practice disadvantages Media Bureau regulatees, as the Media Bureau has substantially fewer of its FTEs classified as auction employees.

IV. THE COMMISSION SHOULD REQUIRE UNLICENSED SPECTRUM USERS TO PAY THEIR FAIR SHARE OF THE COMMISSION'S COSTS

As NAB has highlighted before, the current regulatory fee system is unfair and unsustainable in part because broadcasters subsidize the costs to the Commission of supporting deep-pocketed technology companies' business models through proceedings which reduce the ability of licensed broadcasters to serve our viewers and listeners. Put plainly, broadcasters pay for Big Tech's attempts to degrade our service. For instance, Microsoft is using significant resources of the Office of Engineering and Technology (OET) to urge the Commission to adopt further rule changes that will increase the risk of interference to television broadcasters to support its "Airband Initiative," only months after the FCC adopted earlier rule changes that benefit this technology.[32] Microsoft is also seeking to overturn rules the Commission recently adopted to further the deployment of Next

[32] *See Unlicensed White Space Device Operations in the Television Bands,* Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 12603 (2020); Comments of Microsoft Corporation, ET Docket No. 20-36 (Mar. 29, 2021); Reply Comments of NAB, ET Docket No. 20-36 (Apr. 26, 2021).

Generation TV services that will enhance service to television viewers.[33] Essentially, Microsoft wants the FCC to hinder broadcasters' ability to offer their services in favor of protecting Microsoft's speculative and heretofore disappointing technology. Yet despite the substantial Commission resources Microsoft and other unlicensed users utilize in these and other proceedings for their benefit, they pay *absolutely nothing* in regulatory fees to support the work of OET or the Commission generally, while Media Bureau regulatees pay for over 36% of the Commission's costs.[34] These are only some of the latest examples of proceedings in which companies like Google, Apple, Facebook and others reap the benefits of the Commission's activities at the expense of broadcasters and other regulated entities.[35]

The current fee system therefore neither reflects the actual work the Commission performs nor the entities that utilize its resources and derive substantial benefits from its activities. NAB agrees with Commissioner Carr's recent call for the Commission to finally stop allowing Big Tech companies, many of which generated over $1 trillion in revenue in 2020 alone, to free ride on the Commission's activities.[36] Big Tech companies not only benefit from internet infrastructure as noted by Commissioner Carr, but also utilize

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[33] *See* Petition for Reconsideration by Microsoft Corporation, MB Docket No. 20-74, GN Docket No. 16-142 (May 21, 2021).

[34] See *supra* n. 32.

[35] *See* FY2020 NAB Comments at n. 31 (referencing proceedings that benefit unlicensed spectrum users and that are sometimes initiated at their behest).

[36] See Brendan Carr, *Ending Big Tech's Free Ride,* Newsweek (May 24, 2021), available at: https://www.newsweek.com/ending-big-techs-free-ride-opinion-1593696 (advocating that the FCC ensure Big Tech contributes an equitable amount to funding the internet infrastructure upon which it relies, noting that "Facebook, Apple, Amazon, Netflix and Google generated nearly $1 trillion in revenues in 2020 alone" and that only a tiny fraction of such revenues would be needed to eliminate Universal Service Fund charges that are passed on by telecommunications providers and ultimately operate as a "tax" on consumers' monthly bills).

Commission resources and profitably derive direct benefits from Commission proceedings in which they actively participate. As the Commission's appropriations swell to support activities that are to their benefit, Big Tech and other unlicensed spectrum users should no longer get a free pass on paying for any of these activities through regulatory fees.

For all the reasons NAB and others have set forth in prior years' regulatory fee proceedings, the Commission has the statutory authority to make Big Tech and other unlicensed spectrum users to pay their fair share of regulatory fees and good policy dictates requiring them to do so.[37]

V. THE COMMISSION SHOULD NOT MOVE TO A LESS ACCURATE SYSTEM FOR ASSESSING BROADCAST TELEVISION REGULATORY FEES

The NPRM also seeks comment on its proposal to change the methodology for calculating broadcast television regulatory fees in FY 2022 from an individual fee system based on population served, to a tiered system.[38] Under the current methodology, the FCC multiplies the actual population covered by a station's contour by a fee factor to determine each station's fee and then publishes a table of all call signs and their respective population-based fees.[39] The NPRM notes that publishing the table imposes unspecified administrative costs on the FCC and on a portion of fee payors when discrepancies in the

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[37] *See* FY2020 NAB Comments at 11-15 (explaining that the Commission has the statutory authority to expand its base of payors to include unlicensed spectrum users who utilize Commission resources and benefit from the Commission's activities); State Broadcasters Comments at 3-4 (stating that the Commission must "find ways to bring those who truly are benefiting from the Commission's work into the regulatory fee payment scheme and highlighting the fact that in many cases "the Commission's efforts are specifically designed to permit unlicensed uses, increasing interference and competition to broadcasters"); FY2019 NAB Comments at 2, 8-11 (urging the Commission to require unlicensed spectrum users to contribute to regulatory fees).

[38] *See* R&O and NPRM at ¶¶ 32-33.

[39] *Id.* at ¶ 32.

population data arise.[40] The FCC proposes to address these administrative concerns by eliminating individual fees and establishing ten population tiers, with each station in a given tier paying the same fee.

The FCC adopted the current methodology in 2018 to more accurately reflect the actual market served by a station and therefore the "benefits provided to the payor" of broadcast television regulatory fees.[41] The NPRM's proposal is a concerning departure from that rationale, especially given the limited and vague administrative costs of the current system identified in the NPRM. Because a station will pay the same fee whether it serves a population of 500,001 or 1,500,000 under the tiered proposal, the proposed fees will less accurately reflect the actual market served by a station and the benefits received as a result of the Commission's activities. While stations will be impacted differently under the NPRM's proposal – with stations on the lower end of a particular tier paying significantly more, and those on the higher end paying significantly less[42] – the NPRM's proposal does not adequately justify why a relatively minor administrative convenience should outweigh accuracy and fairness. Accordingly, a reasonable cost-benefit analysis of implementing this proposal would appear to counsel against modifying the current approach.

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[40] *Id.* at ¶ 33.

[41] *Assessment and Collection of Regulatory Fees for Fiscal Year 2018*, Report and Order, 33 FCC Rcd 8497, at 8502 (rel. Aug. 29, 2018).

[42] For example, a station with a population reach of 510,729 would fall into the proposed 500,000-1,500,000 tier and pay nearly $4,000 more in regulatory fees under the tiered system. On the other hand, a station with a population reach of 1,414,014 would pay nearly $4,000 less.

VI. CONCLUSION

As broadcasters try to recover from the economic impacts of the pandemic, they are being forced to bear another painful annual regulatory fee increase largely to pay for $33 million worth of costs that were specifically attributed to activities that neither regulate, nor benefit broadcasters. As discussed herein, the Commission must confront and correct the elements of its regulatory fee proposal that impair broadcasters' ability to remain economically viable in a competitive marketplace, and undermine their ability to provide quality, free service to the public. The Commission should no longer allow broadcasters' well-funded and less-regulated competitors to pay less than their fair share for the Commission's work and force broadcasters to make up the difference.

Respectfully submitted,

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