

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Review of the Commission's Assessment) MD Docket No. 22-301
and Collection of Regulatory Fees)

**JOINT REPLY COMMENTS OF THE
STATE BROADCASTERS ASSOCIATIONS**

The Alabama Broadcasters Association, Alaska Broadcasters Association, Arizona Broadcasters Association, Arkansas Broadcasters Association, California Broadcasters Association, Colorado Broadcasters Association, Connecticut Broadcasters Association, Florida Association of Broadcasters, Georgia Association of Broadcasters, Hawaii Association of Broadcasters, Idaho State Broadcasters Association, Illinois Broadcasters Association, Indiana Broadcasters Association, Iowa Broadcasters Association, Kansas Association of Broadcasters, Kentucky Broadcasters Association, Louisiana Association of Broadcasters, Maine Association of Broadcasters, MD/DC/DE Broadcasters Association, Massachusetts Broadcasters Association, Michigan Association of Broadcasters, Minnesota Broadcasters Association, Mississippi Association of Broadcasters, Missouri Broadcasters Association, Montana Broadcasters Association, Nebraska Broadcasters Association, Nevada Broadcasters Association, New Hampshire Association of Broadcasters, New Jersey Broadcasters Association, New Mexico Broadcasters Association, The New York State Broadcasters Association, Inc., North Carolina Association of Broadcasters, North Dakota Broadcasters Association, Ohio Association of Broadcasters, Oklahoma Association of Broadcasters, Oregon Association of Broadcasters, Pennsylvania Association of Broadcasters, Radio

Broadcasters Association of Puerto Rico, Rhode Island Broadcasters Association, South Carolina Broadcasters Association, South Dakota Broadcasters Association, Tennessee Association of Broadcasters, Texas Association of Broadcasters, Utah Broadcasters Association, Vermont Association of Broadcasters, Virginia Association of Broadcasters, Washington State Association of Broadcasters, West Virginia Broadcasters Association, Wisconsin Broadcasters Association, and Wyoming Association of Broadcasters (collectively, the “State Associations”) hereby file these Joint Reply Comments in response to the Commission’s Notice of Inquiry in the above-captioned proceeding.¹

I. THE REGULATORY FEE ASSESSMENT PROCESS FAILS TO REFLECT THE FUNCTIONS OF THE FCC OR THE BENEFITS RECEIVED BY FEE PAYORS

The State Associations appreciate the Commission initiating this inquiry into improving the regulatory fee process outside the compressed timeframe of the annual regulatory fees proceedings. The fee assessment process is complex, and the Commission is wise to consider solutions that would increase the accuracy and fairness of the fees during this interim period.

The State Associations have previously explained that the Commission’s legacy system for allocating regulatory fees is an “increasingly crude tool” that no longer aligns with how the Commission functions and forces broadcasters to shoulder an excessive share of the fee burden.² The Commission’s robotic classification of full-time employees (“FTEs”) as either “direct” (located within one of four “core” bureaus) or “indirect” (located within one of the remaining 14 bureaus and offices), and the use of that

¹ *Review of the Commission’s Assessment and Collection of Regulatory Fees*, Notice of Inquiry, MD Docket No. 22-301 (rel. Sep. 14, 2022) (“Notice”).

² Joint Comments of the State Broadcasters Associations, MD Docket Nos. 21-190, 22-223, at 4 and 10-12 (July 5, 2022) (“State Associations 2022 Comments”).

classification to distribute the full cost of the agency's operations among the regulatees of the four core bureaus, makes little sense in today's rapidly converging telecommunications ecosystem. This binary approach is a remnant of an obsolete organizational structure from when the Commission might have more easily been able to silo regulation of various industries within specific bureaus. Allocating regulatory fees among regulated entities and licensees based solely on the percentage of FTEs within only the four core bureaus fails to adhere to the RAY BAUM'S Act of 2018 ("RBA"), placing an old formula above substance.

The current fee process results in a fee schedule that reflects the actual work performed by only a quarter of the Commission's employees. Extrapolating the proportion of FTEs in the core bureaus to the indirect FTEs in the remaining 75% of the Commission produces a system in which fees are apportioned with no regard for the actual work performed by indirect FTEs, or whether fee payors receive any benefits from such work.³ As a result, broadcasters are assessed an outsized share of the costs associated with indirect FTEs simply because they are regulated by the Media Bureau, which happens to house the largest number of FTEs among the four core bureaus.⁴

A fee assessment process that requires broadcasters to pay for a substantial portion of Commission activities that have nothing to do with broadcasters is also fundamentally unsustainable. We have previously noted that broadcasters account for only 0.07% of allocated spectrum, yet shoulder more than 16 percent of the costs of the

³ Comments of the National Association of Broadcasters ("NAB"), MD Docket No. 22-301, at 3 (Oct. 26, 2022) ("NAB NOI Comments"); Comments of the Satellite Industry Association ("SIA"), MD Docket No. 22-301, at 3 (Oct. 26, 2022) ("SIA Comments").

⁴ Joint Reply Comments of the State Broadcasters Associations, MD Docket Nos. 20-190, 21-190, at 6 (June 21, 2021).

Commission's operations.⁵ Moreover, the number of broadcasters on whom the Commission can impose the fees is declining. As a result, the burden of paying the fees increases for all remaining broadcasters, since the Commission's claimed costs to regulate broadcasting has remained level or increased even though there are fewer broadcasters to regulate. Ultimately, as more stations cease operations, the fees assessed to broadcasters will become so unsustainable that there will be few (or none) left to pay them.⁶

Furthermore, the disconnect between the work performed by indirect FTEs and the allocation of fees disregards the Commission's statutory mandate under the RBA to adjust regulatory fees in accordance with "the benefits provided to the payor of the fee by the Commission's activities."⁷ The State Associations have repeatedly urged the Commission to bring its fee assessment process more in line with the RBA, to no avail, but we are encouraged by the issuance of this Notice that the Commission stands ready to increase the fairness and accuracy of the fee-setting process, even if doing so requires the introduction of a slightly modified methodology.

To that end, we agree with NAB and SIA that the Commission should better account for the work performed by FTEs in the indirect offices and bureaus and that such accounting can be implemented without sacrificing administrability of the fee process.⁸ The first step is to review the actual work of indirect FTEs to determine

⁵ Joint Reply Comments of the State Broadcasters Associations, MD Docket No. 21-190, at 3 (Nov. 5, 2021).

⁶ *Id.*

⁷ 47 U.S.C. § 159(d); *see also Telesat Canada. v. FCC*, 999 F.3d 7707, 712 (D.C. Cir. 2021).

⁸ *See, e.g.*, SIA Comments at 3-4.

whether there are identifiable groups of FTEs working in the non-core bureaus and offices whose work obviously benefits the regulatees of only certain categories of regulatees. If so, the Commission should treat such employees as direct FTEs for the relevant fee payor categories, for purposes of determining the fees.⁹ For example, the costs associated with indirect FTEs whose work consistently focuses on non-broadcast issues like broadband should be allocated as direct costs to fee payors that provide broadband internet access services. As it stands today, broadcasters not only pay a great deal for Commission activities that have nothing to do with them, but we also are forced to subsidize work done for the benefit of *our competitors*.

As NAB states, such a review need not be unduly burdensome. “Scientific precision” is not necessary to begin introducing more fairness now. Nor would it necessarily require Commission staff to log their time.¹⁰ Even a periodic, cursory analysis would likely identify FTEs in non-core bureaus and offices whose functions primarily focus on certain categories of fee payors and thus should be the responsibility of those fee payors. Also, as NAB points out, in situations where there are identifiable groups of FTEs that work on issues benefiting multiple fee categories, the Commission has an administratively feasible methodology to disaggregate those FTEs.¹¹

⁹ This is why the State Associations introduced the concept of Intersectional Employees in their 2022 Comments.

¹⁰ NAB Comments at 9. The State Associations agree with NAB’s feedback on specific bureaus and offices whose work appears to largely correspond to non-broadcast licensees, but is funded in large part by radio and television stations. *Id.* at 9-10.

¹¹ NAB Comments at 14.

II. ALL COSTS ASSOCIATED WITH NON-HIGH COST UNIVERSAL FUND FTES MUST BE BORNE BY THOSE FEE CATEGORIES THAT BENEFIT FROM THOSE FTES' WORK

That said, regardless of whether the Commission changes its approach with respect to indirect FTEs in the non-core bureaus and offices more broadly, the State Associations strongly support NAB's proposal regarding FTEs in the Wireline Competition Bureau ("WCB") that work on non-high cost Universal Service Fund ("USF") issues. We agree that it is critical that FTEs in the core bureaus whose work benefits some, but not all fee payors, remain classified as direct to their core bureaus, with those FTEs divided among only the fee payors that actually benefit from such work. The Commission's recent decision to continue classifying the USF FTEs within WCB as indirect while exempting Media Services licensees from only certain of the associated costs fails to correct the harm imposed on broadcasters by the original reclassification decision.¹² Exempting broadcasters from only certain of the costs attributable to these FTEs, while appreciated, still forces broadcasters to bear a larger share of the Commission's costs while receiving no additional benefits, and simultaneously reduces the share of the Commission's costs paid by regulatees that actually do benefit from the work of these very same FTEs.¹³ The Commission should restore the classification of employees that work on USF as direct FTEs and allocate them for regulatory fee purposes among the categories of fee payors that benefit from such work.¹⁴ Such an approach would be more reasonable and sustainable than the method adopted in the

¹² *Assessment and Collection of Regulatory Fees for Fiscal Year 2022*, Report and Order, MD Docket No. 22-223, at ¶¶ 70-71 (rel. Sept 2, 2022).

¹³ NAB Comments at 15.

¹⁴ *Id.* at 18; see *also* State Associations 2022 Comments at 14-17.

2022 Order and would be more consistent with the Commission's statutory mandate regarding regulatory fees.

CONCLUSION

For the reasons stated above, the State Associations respectfully request that the Commission amend its regulatory fees assessment process consistent with these Joint Reply Comments.

Respectfully submitted,

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