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

In the Matter of	)	
	)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2015	)	MD Docket No. 15-121
	)	
Amendment of Part 1 of the Commission's Rules	)	MD Docket No. 15-121
	)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2014	)	MD Docket No. 14-92

COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS

I. Introduction and Summary

The National Association of Broadcasters (NAB)[1] submits these comments on the above-captioned Notice of Proposed Rulemaking, in which the Commission proposes regulatory fees for fiscal year (FY) 2015, and raises several ideas for adjusting fees imposed on broadcasters.[2] As discussed below, NAB submits that some of these suggestions need more specifics before stakeholders can offer useful feedback, while others should be abandoned because they will reduce the accuracy of the current fees. In addition, NAB requests that the Commission consider how the spectrum incentive auction of television frequencies will impact regulatory fees for television licensees remaining after the auction.

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[1] The National Association of Broadcasters 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] *Assessment and Collection of Regulatory Fees for Fiscal Year 2015; Amendment of Part 1 of the Commission's Rules; Assessment and Collection of Regulatory Fees for Fiscal Year 2014*; Notice of Proposed Rulemaking, Report and Order, and Order; MD Docket Nos. 15-121 and 14-92 (May 21, 2015)(Notice).

II. The Proposal to Reallocate Regulatory Fees Among Radio and Television Licensees Lacks Needed Information and Analysis

Regulatory fees are based on the number of Commission full time employees (FTEs) who work on matters of relevance to the various types of regulated entities. As a proxy for this calculation, the Commission uses the number of FTEs in the Media Bureau (MB), Wireline Competition Bureau (WCB), Wireless Telecommunications Bureau (WTB), and International Bureau (IB).[3]

The Commission notes that radio licensees more than double television licensees in number, while the total amount of fees collected from each category differs only slightly. The Commission thus asks whether it should reexamine the number of radio versus television FTEs and if appropriate, reallocate FTEs to more accurately reflect their activities in the fees. Notice at ¶13. In general, NAB supports Commission efforts to better align fees with the actual functions of employees, however, it is difficult to offer useful feedback on this inquiry without more information. Unlike previous instances when the Commission proposed fee changes because of shifting workloads or market changes,[4] the Notice provides no evidence in support of reallocating fees between radio and television licensees. NAB submits that a Further Notice of Proposed Rulemaking may be needed, in which the Commission specifies how the current fees for radio and television stations relate to the activities of FTEs in the Media Bureau's Audio and Video Divisions, as well as other parts of the bureau and the

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[3] For fiscal year 2015, the Commission will apportion the fees as follows: MB regulatees 34.75%; WTB 20.40%; WCB 38.7%; and IB 6.28%. Notice at ¶7.

[4] *See, e.g.*, *Assessment and Collection of Regulatory Fees for Fiscal Year 2013*, Report and Order, MD Docket No. 13-140, 28 FCC Rcd 12351, 12354-55 (2013) (FY 2013 Report and Order) (reallocating fees from wireline to wireless services to reflect changes in the communications market, and certain IB FTEs to other bureaus to reflect their actual workloads)

Commission overall. Stakeholders also need Commission analysis of the potential impact on small and large entities of modifying the fees, how fee increases would be constrained, and how any changes would be justified, all of which the Commission vetted in proceedings regarding fee changes for other services.[5] Without data on how current fees are calculated, we cannot discern whether any changes would be consistent with the Communications Act's mandate that fees "take into account factors that are reasonably related to the benefits provided to the payer of the fee by the Commission's activities."[6]

We also observe that fairness is one of the Commission's primary goals in setting regulatory fees, which dictates generally that larger companies pay fees at a higher rate because they demand more Commission attention, and have a greater capacity to absorb the fees.[7] These entities would include multichannel video programming distributors (MVPDs) with millions of subscribers and numerous headends, licenses or authorizations.[8] Also, unlike MVPDs and wireless operators, broadcasters cannot simply pass through regulatory fees as a line-item on consumer bills. Regulatory fees directly impact a broadcaster's bottom line,[9] especially radio stations facing growing competition from online services that have no obligations to maintain a local studio, public file, or Emergency Alert

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[5] *Id*., at 12354-58; *see also Assessment and Collection of Regulatory Fees for Fiscal Year 2014*, Report and Order, MD Docket No. 14-92, 29 FCC Rcd 10767 (2014) (adjusting fees for submarine cable and earth station licensees).

[6] 47 U.S.C. § 159(b)(1)(A).

[7] FY 2013 Report and Order, 28 FCC Rcd at 12355-56.

[8] NAB also questions why the Notice limits this inquiry to only radio and television fees, given that MB FTEs also oversee cable and satellite television providers. Since the allocation of FTEs and fees for these other services may impact those for radio and television, a more holistic approach to reexamining FTEs in the bureau and the Commission would be more appropriate.

[9] *Federal Communications Commission Regulatory Fee Process Need to be Updated,* GAO-12-686 (Aug. 2012) (GAO Report) at 21.

System equipment. These circumstances warrant further Commission study of broadcast regulatory fees compared to those for MVPDs and other entities.

Finally, there are MB FTEs who are engaged in the upcoming spectrum incentive auction that will repurpose broadcast television spectrum for wireless broadband use, but apparently remain assigned to media licensees for purposes of regulatory fees. Given that the ultimate goal of this auction is to free up additional spectrum for the benefit of broadband providers, fairness also mandates a review of whether some of these bureau employees should be reallocated and reflected in regulatory fees imposed on wireless carriers. The fact that employees who work on this auction happen to reside in the Media Bureau should not be controlling if these employees are actually providing benefits to other fee payers. The Commission conducted a similar analysis when reassigning IB employees in 2013 to other bureaus that could serve as a model for such a review.

III. The Commission Should Not Pursue Proposals to Eliminate Population Served or Station Type and Class from the Determination of Radio Regulatory Fees

Regulatory fees for radio stations are based on the intersection of three factors, a station's type (AM or FM), class of service,[10] and population served.[11] The Commission asks whether it should assess radio station fees based on market rank instead of population served, and whether it should eliminate the distinction between the types and classes of radio stations in determining fees. Notice at ¶ 13. NAB would oppose either proposal because they would undermine the equity and fairness of the current process, which

[10] For purposes of the regulatory fees, station classes are grouped as follows: AM classes A; AM Class B: AM Class C; AM Class D; FM Classes A, B1 and C3; and FM Classes B, C, C0, C1 and C2.

[11] The "population served" bands are divided as follows: <=25,000; 25,001 to 75,000; 75,001 to 150,000; 150,001 to 500,000; 500,001 to 1,200,000; 1,200,001 to 3,000,000; and >3,000,000.

generally assesses higher fees to larger radio stations and those in larger cities than to smaller stations and those located in less populated areas.[12]

Switching to a market based approach would reduce the accuracy of the fees produced under the population served method. For both AM and FM stations, population served is determined by a station's field strength overlaid on the most recent population data from the U.S. Census Bureau.[13] For AM stations, this equation turns on whether a station uses a nondirectional antenna, the spacing and orientation of a station's tower, radiation patterns for its antenna system, and soil conductivity data, among other factors. For FM stations, the height above average terrain, directional pattern, and field strength propagation are critical. The key in both cases is that the data used to produce a station's population served figure is particular to each station, which helps to generate a regulatory fee amount that reflects a station's actual coverage and reach. Grouping stations within a band of market rankings (*e.g.,* 1-10, 11-25, *etc*.) would diminish this station-specific accuracy, resulting in similar fees for some vastly different stations.

Analysis of population coverage data from BIA Media Access Pro supports this conclusion. Indeed, the data reveals wildly differing population coverages among stations of the same type and class, and within the same market grouping.[14] For example, the population coverages for AM Class A stations within the same 11-25 market rank grouping

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[12] *Assessment and Collection of Regulatory Fees for Fiscal Year 1997*, Report and Order, 12 FCC Rcd 17161, 17183 (1997).

[13] *Assessment and Collection of Regulatory Fees for Fiscal Year 2009*, Report and Order, MD Docket No. 09-65, 24 FCC Rcd 10301 (2009), at Appendix E.

[14] *See* Exhibit A, attached. We have assumed the Commission would use market rank groupings rather than individual markets in keeping with its goal that the fees be administrable. FY 2013 Report and Order, 28 FCC Rcd at 12354.

can differ by more than 15 million people, 9.5 million people among FM Class B stations, and four million among FM Class C stations. Similarly, within a 51-100 market grouping, the population coverage of AM Class C stations can differ by almost 2.5 million people, six million among FM Class B stations, and more than two million among FM Class C0 stations. Clearly, it would make little sense to assess equivalent regulatory fees on stations with such wildly differing population coverages.[15] The population served method is superior to a market approach because it uses station-specific field strength data, thereby producing regulatory fees that better reflect an individual station's reach.

Moreover, eliminating a station's type and class from the calculation of fees, and consolidating all radio stations into a single ratio, would further reduce the accuracy of the current fees. Notice at ¶ 13. AM and FM radio are obviously very different services, with differing Commission policies governing their operations, technical constraints, interference priorities, and signal quality, among other aspects. In addition, within each service type, the various classes further distinguish among stations based on permitted maximum facilities, service contours, and interference priorities. These criteria serve as a proxy for the size, location, reach, and to an extent, the resources of individual radio stations, all of which are reflected in the current process for determining regulatory fees for radio licensees. As a result, fees are generated that fairly reflect an individual radio station's characteristics. NAB fails to see the benefit of removing these elements from the equation, as doing so would only diminish the accuracy and specificity of the current fees.

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[15] We also observe that there are more than 4,000 radio stations located in unrated markets. The Notice provides no guidance on how fees for these licensees would be determined under a market rather than population served approach.

IV. The Commission Should Consider How the Spectrum Incentive Auction Will Impact Regulatory Fees for Television Licensees Remaining After the Auction

The upcoming spectrum incentive auction will have a dramatic effect on television service. Under this process, the Commission will allow television licensees to voluntarily relinquish their usage rights to television spectrum in exchange for a share of the proceeds from an auction of new licenses to use the repurposed spectrum for wireless broadband service.[16] According to the Commission's latest broadcast station totals, as of March 31, 2015, there are a total of 1,785 full power television stations in the U.S., and an additional 405 Class A stations.[17] Depending on the results of the auction, however, hundreds of these stations may relinquish some or all of their spectrum usage rights. The Commission's repacking simulations show that more than 200 stations will relinquish their channels in an auction that clears 84 MHz of spectrum, while an auction that clears 120 MHz of spectrum would mean well over 400 stations will relinquish their channels.[18] Of these stations, some will go off the air entirely, while some may enter channel sharing arrangements.

Such changes to the total number of television licensees will have a corresponding impact on regulatory fees assessed to those stations remaining after the auction. Under the current process, Congress mandates a total amount of fees to be collected that the Commission allocates across all regulated entities based on the number of Commission FTEs devoted to each fee category. For FY 2015, the Commission proposes to collect a total of approximately $23,450,000 from full service commercial television stations, with fees per

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[16] *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auction*, Notice of Proposed Rulemaking, GN Docket 12-268, 27 FCC Rcd 12357, 12358 (2012).

[17] *See* https://apps.fcc.gov/edocs_public/attachmatch/DOC-332923A1.pdf.

[18] Letter from Gary Epstein to Rick Kaplan, GN Docket No. 12-268, ET Docket No. 13-26 (June 30, 2014).

station ranging from $4,800 to $46,450 depending on the size of a television station's market. Notice at Appendix B.

Given that Congress specifies a particular fee total that the Commission must collect, the regulatory fee process is essentially a "zero-sum" proposition, such that decreases for one category of regulated entities will increase the obligation of others, and as here, a reduction in the number of payers in one category will increase the share of other payers in that category.[19] Accordingly, if 200 stations relinquish their licenses in the incentive auction, this would substantially increase fees for the remaining 1,585, while a drop of 400 or more television stations would be devastating for the remaining 1,385 stations.

Moreover, television regulatory fees are divided into market groups (1-10, 11-25, 26-50, 51-100, and below 100), and the stations that elect to discontinue service in the auction may end up relatively concentrated in larger markets, where spectrum is likely more valuable and crucial to the incentive auction. As a result, the stations remaining in those markets following the auction may have to shoulder an even greater share of the fee obligation for their category. For example, for FY 2015, the Commission intends to collect $5,809,800 from a total number of 137 television stations in markets 11-25, or $42,858 each. If 37 stations in these markets relinquish their licenses during the incentive auction, that would leave 100 stations responsible for the total collection amount for this category, or $58,098 each (a 35.5% increase). Similar fee shock would occur in other market groups, and increase as the number of stations participating in the auction increases.

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[19] *Assessment and Collection of Regulatory Fees for Fiscal Year 1999*, Report and Order, 14 FCC Rcd 9868, 9873 (1999); GAO Report at 36.

It is therefore critical that the Commission promptly consider ways to fairly resolve this impending problem. It is only fair that television stations be protected from unjust regulatory fee hikes that may otherwise occur through no fault of their own.

IV. Conclusion

For the reasons set forth above, NAB urges the Commission to issue a Further Notice of Proposed Rulemaking regarding the possible reexamination of regulatory fees assessed to television and radio licensees, abandon proposals to eliminate a radio station's population served, type and class as factors in determining their fees, and initiate a proceeding to consider how television fees may be impacted by the forthcoming spectrum incentive auction.

Respectfully submitted,

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EXHIBIT A

	AM Population Coverage by Class								
	Class A			Class B			Class C		
	Min Pop	Max Pop	Max/Min Percent Difference	Min Pop	Max Pop	Max/Min Percent Difference	Min Pop	Max Pop	Max/Min Percent Difference
Market Rank									
1-10	6,533,495	30,420,660	366%	299,886	21,738,669	7149%	81,745	13,197,585	16045%
11-25	2,929,015	17,610,646	501%	192,684	19,516,518	10029%	46,566	6,928,524	14779%
26-50	2,114,584	13,312,056	530%	230,724	15,358,326	6557%	139,332	12,688,079	9006%
51-100	1,019,176	8,855,222	769%	104,465	13,463,775	12788%	50,614	2,445,114	4731%
101+	379,092	4,703,792	1141%	54,669	14,280,838	26022%	7,988	4,988,603	62351%
Unrated	4,755	98,297	1967%	2,248	8,480,992	377168%	4,474	4,687,117	104663%

	Class D		
	Min Pop	Max Pop	Max/Min Percent Difference
Market Rank			
1-10	173,395	20,838,074	11918%
11-25	102,419	10,669,999	10318%
26-50	60,264	9,890,143	16311%
51-100	56,825	4,493,405	7807%
101+	23,792	9,672,947	40556%
Unrated	4,324	4,396,298	101572%

	FM Population Coverage by Class								
	Class A			Class B			Class B1		
	Min Pop	Max Pop	Max/Min Percent Difference	Min Pop	Max Pop	Max/Min Percent Difference	Min Pop	Max Pop	Max/Min Percent Difference
Market Rank									
1-10	2,078	10,615,180	510736%	785,227	16,420,190	1991%	***only 1 record***		
11-25	213	8,735,511	4101079%	60,652	9,532,635	15617%	307,498	935,521	204%
26-50	8,677	8,497,052	97826%	68,195	6,314,296	9159%	143,446	2,241,412	1463%
51-100	1,141	1,009,990	88418%	72,045	4,802,814	6566%	4,887	1,103,359	22477%
101+	12	1,573,757	13114542%	801	5,090,887	635466%	762	904,753	118634%
Unrated	144	853,914	592896%	1,819	1,248,947	68561%	1,819	335,066	18320%

	FM Population Coverage by Class								
	Class C			Class C0			Class C1		
	Min Pop	Max Pop	Max/Min Percent Difference	Min Pop	Max Pop	Max/Min Percent Difference	Min Pop	Max Pop	Max/Min Percent Difference
Market Rank									
1-10	209216	6,406,882	2962%	1,370,825	5,674,779	314%	342,746	5,960,326	1639%
11-25	652,855	4,858,554	644%	2,450,021	4,945,971	102%	102,369	4,875,283	4662%
26-50	448,112	4,120,833	820%	345,166	2,517,275	629%	10,115	2,925,103	28818%
51-100	432,341	2,195,696	408%	663,560	2,760,866	316%	128,652	1,623,727	1162%
101+	96,869	3,247,621	3253%	117,177	1,195,845	921%	15,837	1,031,425	6413%
Unrated	14,130	1,712,788	12022%	7,662	2,167,264	28186%	1,866	1,990,069	106549%

	FM Population Coverage by Class					
	Class C2			Class C3		
	Min Pop	Max Pop	Max/Min Percent Difference	Min Pop	Max Pop	Max/Min Percent Difference
Market Rank						
1-10	133,943	5,356,163	3899%	74,840	1,456,295	1846%
11-25	47,109	3,900,013	8179%	13,905	2,509,870	17950%
26-50	89,644	2,317,102	2485%	53,226	1,914,236	3496%
51-100	13,292	1,429,397	10654%	13,079	1,051,502	7940%
101+	4,297	1,010,816	23424%	1,416	694,118	48920%
Unrated	759	762,312	100336%	2,658	429,627	16064%

Source: BIA Media Access Pro

Population based on secondary license coverage population area.

FM Class CA and FM Class D returned insufficient data so are excluded from this analysis.