

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

In the Matter of:	)	
	)	
Assessment and Collection of Regulatory Fees For Fiscal Year 2021	)	MD Docket No. 21-190
	)	
Assessment and Collection of Regulatory Fees For Fiscal Year 2022	)	MD Docket No. 22-223
	)	

**REPLY COMMENTS OF  
THE NATIONAL ASSOCIATION OF BROADCASTERS**

July 18, 2022

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**I. INTRODUCTION AND SUMMARY**

The National Association of Broadcasters (NAB)<sup>1</sup> submits these reply comments regarding the Commission’s Notice of Proposed Rulemaking setting regulatory fees for Fiscal Year 2022 (FY 2022).<sup>2</sup>

The Commission’s proposal to impose a 13% fee increase on broadcasters is unfair, unsustainable, and unlawful. As the State Broadcasters Associations have pointed out, the proposed increase in broadcasters’ fee revenue *nearly totals the Commission’s entire budget increase*.<sup>3</sup> This outcome is simply indefensible and the product of an outdated methodology

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<sup>1</sup> 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.

<sup>2</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2021, Assessment and Collection of Regulatory Fees for Fiscal Year 2022, Report and Order and Notice of Proposed Rulemaking*, MD Docket Nos. 21-190, 22-223 (rel. June 2, 2022) (NPRM).

<sup>3</sup> See Joint Comments of the State Broadcasters Associations, MD Docket Nos. 21-190, 22-223, at 5-6 (July 5, 2022) (State Broadcasters’ Comments).

that numerous commenters recognize fails to both properly account for the benefits conferred on fee payors, and unduly limits the universe of beneficiaries that are required to contribute. NAB has emphasized the detrimental impacts unjustified fee increases have on local broadcasters' ability to remain economically viable in a competitive marketplace and to continue to serve their local communities.<sup>4</sup> Others have also commented on the fact that the Commission's methodology requires current regulatory fee payors to cross-subsidize others in the telecommunications ecosystem thereby harming competition.<sup>5</sup> Not only does the methodology fall far short of statutory requirements, but it also harms the industries that the FCC regulates and jeopardizes the sustainability of the fee system as a whole.

To fix the defects in the Commission's fee methodology, NAB has advocated that the Commission reassess its allocation of indirect Commission costs and expand the base of payors to include broadband service providers and Big Tech and other unlicensed spectrum users that clearly benefit – i.e., substantially profit – from the Commission's unlicensed spectrum and broadband activities.<sup>6</sup> There is support in the record for these changes. Many commenters in this proceeding agree that the Commission must reform its methodology to better account for the benefits provided to fee payors by the indirect bureaus and offices of

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<sup>4</sup> See Comments of NAB, MD Docket Nos. 21-190, 22-223, at 4-5, 29-31 (July 5, 2022) (explaining that broadcasters cannot pass on fee increases to consumers and that “[f]ee proposals that require broadcasters to pay more than their fair share of the Commission's costs directly harm broadcasters' ability to compete in the communications marketplace” and harm their ability to serve local communities) (NAB Comments).

<sup>5</sup> See Comments of the Satellite Coalition, MD Docket Nos. 21-190, 22-223, at i, 6 (July 5, 2022) (explaining how “failing to expand the fee base will require fee payors to continue cross-subsidizing rival providers, skewing the competitive landscape”) (Satellite Coalition Comments).

<sup>6</sup> See e.g., NAB Comments at 7-26; Comments of NAB, MD Docket No. 21-190, at 4-8, 10-14 (Oct. 21, 2021) (NAB FY 2021 NPRM Comments); Reply Comments of NAB, MD Docket No. 21-190, at 4-14 (Nov. 5, 2021) (NAB FY 2021 NPRM Reply Comments).

the Commission.<sup>7</sup> In addition, several commenters recognize the need for the Commission to broaden the base of payors to include the beneficiaries of the Commission’s primary strategic objectives – broadband service providers and unlicensed spectrum users.<sup>8</sup>

NAB recognizes that due to time constraints, it may not be feasible for the Commission to perform the work necessary to fully reassess its accounting of indirect FTEs to accurately account for the benefits broadcasters receive as a result of the Commission’s activities.

However, there are four incremental changes that the Commission should not delay making this year to better conform the Commission’s methodology with Section 9’s requirements and to prevent forcing broadcasters to subsidize the costs of other industries at an exorbitant rate:

- *First*, the Commission should continue to exempt broadcasters from paying for costs associated with the Commission’s implementation of the Broadband DATA Act (Broadband Data Costs).

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<sup>7</sup> See e.g., Satellite Coalition Comments at 4 (explaining that indirect FTEs can be assigned as direct costs and that the “Commission can and should give effect to the express Congressional intent demonstrated by [the Ray Baum’s Act] and look beyond the core licensing bureaus in assigning FTEs whose work benefits identifiable groups of Commission-regulated entities.”); State Broadcasters’ Comments at 3-4, 10-18 (advocating that the Commission recategorize costs associated with FTEs that are not fully indirect to all core bureaus to “allow the FCC to much more fairly align the costs or the work of (a) FTEs in the non-core bureaus and (b) those in core bureaus working across bureau lines on similar issues, with the regulatees who actually benefit from that work.”); Comments of the Satellite Industry Association, MD Docket Nos. 21-190, 22-223, at 2-5 (July 5, 2022) (explaining that the Ray Baum’s Act permits the Commission to look beyond the core bureaus to assign costs directly to payors and that “the Commission should consider an alternative allocation mechanism for FTEs outside the core licensing bureaus in cases where the work is not always proportional.”) (SIA Comments).

<sup>8</sup> See Satellite Coalition Comments at 2-6 (urging the Commission to add fee categories for broadband service providers, holders of experimental licenses, holders of equipment authorizations, and database administrators that charge fees to enable unlicensed operations and explaining the evidence that supports adding such categories); SIA Comments at 1-3 (“The record in [the Fiscal Year 2021] proceeding establishes there are several industry segments that are not paying their fair share of regulatory fees, and there are administratively practical methodologies for assessing regulatory fees on those industry segments.”).

- *Second*, the Commission should exempt broadcasters from paying for the Commission’s Universal Service Fund (USF) activities. As NAB explained in its comments, the Commission has long acknowledged that the USF program does not benefit or regulate broadcasters and the costs to the Commission of administering USF are readily identifiable. At a bare minimum, the Commission must reconsider its decision to make broadcasters responsible for a substantial portion of the 38 FTEs in the Wireline Competition Bureau that it reclassified as indirect due to their USF responsibilities. The Commission should redistribute these costs among the regulatees that benefit from the Commission’s USF activities.
- *Third*, the Commission should ensure that broadcasters are not responsible for the costs associated with the 84 direct FTEs in the Media Bureau that are tasked with pursuing a “‘100 percent’ Broadband Policy.”<sup>9</sup> These FTEs should instead be allocated as indirect FTEs or paid for solely by cable/DBS providers to the extent they specially benefit from the broadband work performed.
- *Fourth*, to the extent the Commission unlawfully decides to not make any changes to its methodology, it should nevertheless cap broadcasters’ fee increase at 5% to mitigate the adverse impacts of a large fee increase on broadcasters’ ability to serve their local communities.

The Commission should also reject pleas made by commenters representing some of the largest technology companies in the world and other corporations that benefit from FCC

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<sup>9</sup> See *2022 Budget Estimates to Congress*. Federal Communications Commission, at 15 (May 2021).

decision-making to terminate any consideration of broadening the base of payors.<sup>10</sup> These entities offer no reasonable explanation for why broadcasters and other regulatees should be responsible for costs associated with Commission activities that form the “vital bedrock for technology innovation in the United States” and upon which their industry depends to market devices generating upwards of \$400 billion in annual retail sales.<sup>11</sup> It is entirely inappropriate to treat these costs as mere overhead to be borne by all existing fee payors, when there are identifiable multi-billion dollar industries that admittedly benefit and that can contribute to these costs. And shouting “Wi-Fi Tax!” does nothing to change the equation. These major corporations exploit Commission resources to generate substantial revenues, yet rely on other industries to pay the tab.

The Commission’s fee methodology should keep pace with the changes that have occurred in the last several years in the communications marketplace and reflect the Commission’s current priorities. While new regulatory fee payors may not be pleased about having to pay their fair share, that is not a valid reason for the Commission to continue to impermissibly require existing fee payors to subsidize their costs. NAB and others have provided concrete proposals for how the Commission can go about adding broadband service providers and unlicensed spectrum users to the base of payors in an administratively feasible

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<sup>10</sup> See Comments of the Consumer Technology Association, ACT | The App Association, INCOMPAS, Information Technology Industry Council, Open Technology Institute at New America, R Street Institute, Public Knowledge, TechNet, Telecommunications industry Association, XR Association, MD Docket Nos. 21-190, 22-223, at 2 (July 5, 2022) (CTA Coalition Comments); Comments of INCOMPAS, the Computer & Communications Industry Association, and the Digital Media Association, MD Docket Nos. 21-190, 22-223, at 1-2 (July 5, 2022) (INCOMPAS Coalition Comments) (collectively, Unlicensed Commenters).

<sup>11</sup> Comments of the Consumer Technology Association, ET Docket Nos. 21-232, 21-233, at 9 (Sept. 21, 2021) (CTA Equipment Authorization Comments).

manner,<sup>12</sup> and the Commission should do so to ensure the fairness and sustainability of the regulatory fee system. Indeed, as other commenters have noted, broadening the base of payors “will help to ensure that the burdens associated with supporting the costs of FCC regulation are apportioned equitably” and as a result, “the practical effects of fees on all parties will be minimized. No one should oppose that result.”<sup>13</sup>

**II. THE COMMISSION MUST ENSURE THAT ITS FEE METHODOLOGY DOES NOT REQUIRE BROADCASTERS TO PAY FOR BROADBAND AND USF-RELATED ACTIVITIES FROM WHICH THE INDUSTRY RECEIVES NO BENEFITS**

To limit the anticompetitive effects of the regulatory fee system and preserve the public interest in free, over-the-air broadcasting, the Commission must change its methodology to conform to the Ray Baum’s Act and accurately account for the work the Commission performs and the beneficiaries of that work. The Commission can and should take action to reassess its proportional allocation of fees related to the Commission’s indirect bureaus and offices to ensure that broadcasters are not being forced to subsidize other industries.<sup>14</sup> To that end, NAB agrees with the State Broadcasters that FTEs “in non-core bureaus and offices or collaboratively across bureaus and offices whose work obviously benefits the regulatees of only one, two or three of the core bureaus or whose work can clearly be identified as not benefiting a significant category of regulatees, such as

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<sup>12</sup> See NAB Comments at 18-25 (explaining how the Commission could add a broadband fee category); Satellite Coalition Comments at 2-4 (explaining proposals for adding broadband and equipment authorization fee categories); Joint Reply Comments of the State Broadcasters Associations, MD Docket No. 21-190, at 13 (Nov. 5, 2021) (advocating that to expand the payor base the Commission should look to establish a broadband service provider fee category and look “to those who hold equipment authorizations permitting them to access the U.S. market.”) (State Broadcasters FY 2021 NPRM Reply Comments).

<sup>13</sup> Reply Comments of the Satellite Coalition, MD Docket No. 21-190, at 5-6 (Nov. 5, 2021) (Satellite Coalition FY 2021 NPRM Reply Comments).

<sup>14</sup> See NAB FY 2021 NPRM Comments at 4-8.

broadcasters” should be categorized differently “and their headcount assessed against only those regulatees that benefit from their work.”<sup>15</sup> Though performing a complete analysis may take more time than the Commission has to complete this year’s fee collection, NAB and the State Broadcasters have identified Commission activities that do not benefit broadcasters in any manner whatsoever and therefore present a clear case for reallocation of the associated costs.

For instance, the Commission should continue to exempt broadcasters from paying for the Commission’s ongoing broadband data mapping work. Just last year the Commission recognized that broadcasters do not benefit from these activities, and nothing has changed in terms of the benefits broadcasters receive that would necessitate requiring broadcasters to begin paying Broadband Data Costs. Congress merely incorporated that cost into this year’s budget rather than again calling it out specifically.

In addition, the Commission’s FTE count in the Media Bureau must be incorrect, as the Commission indicated to Congress in its budget request that 84 FTEs in the Media Bureau promote the Commission’s *broadband* goals. Given that the Commission has already established that broadcasters are not involved with broadband in any way, that would require the Commission to immediately shave 84 FTEs off of the Media Bureau’s count, at least as far as broadcasters are concerned. Thus, at worst these FTEs should be reclassified as indirect; more precisely, however, they should be attributed to only those industries that benefit from the Commission’s broadband-related activities.

The Commission must also exempt broadcasters from paying for USF-related FTEs. As NAB and the State Broadcasters have explained, there is no basis for requiring broadcasters

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<sup>15</sup> State Broadcasters’ Comments at 14-15.

to pay for these costs when the Commission has both acknowledged that broadcasters do not benefit from its USF activities and the Commission has a proven alternative methodology for allocating these costs among regulatees that do benefit.<sup>16</sup> Nearly all of the FCC's USF-related programs concern promoting 100% broadband penetration. That certainly has direct beneficiaries – the broadband industry – and also has nothing to do with broadcasters. And it does not simply benefit broadband in some amorphous way; it directly contributes to the industry's bottom line. That already stands in stark contrast to most broadcast-related work the Commission undertakes.

At a minimum, the Commission must ensure that broadcasters bear no responsibility for the 38 FTEs working on non-high cost USF programs in the Wireline Competition Bureau. NAB agrees with the State Broadcasters that by reclassifying these FTEs as indirect and allocating the costs across all fee payors, the Commission ignored its statutory mandate to account for the benefits received by fee payors by unfairly burdening “broadcast payors while substantially lightening the regulatory fee load of regulatees who receive at least some benefit from the work of the reclassified indirect FTEs.”<sup>17</sup> The Commission's decision ran afoul of Section 9's requirements by making “no effort to appropriately analyze how these costs should be apportioned” and offering little support for the decision to saddle all fee categories with the costs.<sup>18</sup>

The Commission's decision to require broadcasters to shoulder a proportionate share of these costs did not have a benign effect on broadcasters' fees and was not so minor that

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<sup>16</sup> See NAB Comments at 15-18; State Broadcasters' Comments at 8-16.

<sup>17</sup> State Broadcasters' Comments at 16-17.

<sup>18</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2017*, Statement of Commissioner Michael O'Rielly Approving in Part and Dissenting in Part, MD Docket No. 17-

the Commission can continue to overlook its impacts. The Commission's proposal would now make broadcasters responsible for over \$5 million in additional fees.<sup>19</sup> Extrapolating that figure over the last five years, broadcasters have likely paid more than \$25 million in additional fees to support the activities of FTEs that the Commission agrees do not benefit or regulate broadcasters. Again, this is not a rounding error for broadcasters that have no ability to pass on these costs to their consumers. That is \$25 million dollars that should have gone to equipment, programming, and resources necessary to serve broadcasters' local communities. If the Commission were to instead divide these FTEs equally among the International, Wireline Competition, Wireless Telecommunications, and cable regulatees, this year's fee increase for broadcasters would be substantially reduced, if not entirely eliminated.<sup>20</sup> Given the crystal clear case for reassignment of these costs to those fee payors that benefit from them, and the Commission's position that it "would be inconsistent with section 9 to delay reallocating [FTEs], where the reallocation is clearly warranted," it is unlawful for the Commission to force broadcasters that provide a free service to the public to

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134 (Sept. 5, 2017), available at: <https://www.fcc.gov/document/fy-2017-regulatory-fees-report-order-and-further-notice/orielly-statement> (expressing disagreement with reclassification decision as contrary to Section 9's requirements and Commission precedent and hoping that the Commission "will reconsider this decision in the future.").

<sup>19</sup> Prior to reallocation of these FTEs, the Media Bureau was responsible for approximately 33% of the Commission's costs. Post-reallocation, the Media Bureau became responsible for approximately 36.5% of the Commission's costs, or an increase of \$11.7 million. Broadcasters appear to bear 45% of the Media Bureau's costs and therefore were saddled with \$5.2 million in fees because of the Commission's decision. See *Assessment and Collection of Regulatory Fees for Fiscal Year 2017*, Notice of Proposed Rulemaking, 32 FCC Rcd 4526, 4529 (May 23, 2017) (explaining initial allocations of FTEs).

<sup>20</sup> NAB takes no position on whether it is appropriate to apportion these FTEs equally among the remaining regulatees based on the relative benefits received by such regulatees. However, it is an administratively feasible option that would ensure that broadcasters do not bear these costs.

bear such a substantial burden to subsidize the costs of activities from which the Commission has acknowledged time and again they receive no benefit.<sup>21</sup>

If the Commission chooses not to make any of these changes to its regulatory fee proposal, it should make some effort to mitigate the adverse economic impacts of such a substantial and unjustified fee increase on broadcasters by capping broadcasters' fee increase at 5%. As explained in NAB's comments, the Commission has capped fee increases in the past to avoid imposing undue economic hardship on regulatees, and it should do so again to help preserve broadcasters' ability to serve their local communities.<sup>22</sup>

### **III. THE COMMISSION SHOULD REJECT ATTEMPTS BY UNLICENSED SPECTRUM USERS TO RECEIVE A FREE PASS ON REGULATORY FEES**

Expanding the base of payors to include broadband service providers and unlicensed spectrum users is essential to meet Section 9's requirements, promote fairness and competition, and ensure the sustainability of the regulatory fee system. As NAB explained in prior filings, there is no question that these entities are the beneficiaries of significant Commission priorities, and both the statute and the public interest counsel in favor of including these entities in the base of payors. NAB agrees with the Satellite Coalition that adding such "fee categories will not only fulfill the statutory directive to assess fees on parties that benefit from Commission regulatory action, it will also promote fairness and enhance competition for communications services."<sup>23</sup> NAB and others have set forth concrete ways the

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<sup>21</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2013*, Report and Order, 28 FCC Rcd 12351, 12357-12358 (Aug. 12, 2013).

<sup>22</sup> See NAB Comments at 28-31.

<sup>23</sup> Satellite Coalition Comments at 6.

Commission can go about the process of assessing these fees in an administrable manner,<sup>24</sup> and no commenter has provided sufficient justification for why such entities should be exempt from paying regulatory fees while forcing broadcasters and other regulatees to subsidize their costs.

The Commission should therefore ignore requests by Unlicensed Commenters to terminate any consideration of expanding the base of payors to include unlicensed spectrum users. Unlicensed Commenters assert they are entitled to an exemption because they provide benefits to the public and vaguely claim that imposing regulatory fees on such users will equate to a “Wi-Fi tax” that “would have a detrimental impact on consumers, state and local governments, corporations, non-profit organizations, schools, libraries, and many more groups” and “inhibit innovation” in the industry.<sup>25</sup> Not only are claims that unlicensed spectrum regulatory fees would amount to a “Wi-Fi tax” and inhibit innovation intellectually dishonest, but also, as NAB and others have explained in the record, they are not sufficient reasons to allow these beneficiaries off the hook.<sup>26</sup>

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<sup>24</sup> See, e.g., NAB Comments at 18-25 (explaining how the Commission could add a broadband fee category); Satellite Coalition Comments at 2-4 (explaining proposals for adding broadband and equipment authorization fee categories).

<sup>25</sup> See CTA Coalition Comments at 2.

<sup>26</sup> See NAB FY 2021 NPRM Reply Comments at 8-14 (explaining how unlicensed spectrum users’ arguments do not justify requiring broadcasters and other licensees to pay for the Commission’s unlicensed spectrum priorities while the largest beneficiaries of those activities pay nothing); State Broadcasters’ FY 2021 NPRM Reply Comments at 5-16 (explaining how unlicensed spectrum users benefit from the Commission’s activities and their failure to explain how the Ray Baum’s Act creates an exception to the Commission’s obligation to collect regulatory fees from such users); Satellite Coalition FY 2021 NPRM Reply Comments at 2-5 (responding to unlicensed spectrum users’ arguments and noting that the same arguments apply with equal force to “parties that currently pay the entire burden of the Commission’s Section 9 fee program”).

The Commission is required to assess regulatory fees on those entities that benefit from its activities.<sup>27</sup> Unlicensed Commenters do not deny that their members receive substantial benefits from the FCC's activities. CTA has explained in other proceedings that the FCC's equipment authorization process "is a vital bedrock for technology innovation in the United States" and that "[i]nnovators of all sizes rely on this process to lawfully import, sell, market and ship radio frequency devices."<sup>28</sup> As CTA also noted "[w]ithout authorization, products are blocked from the vital U.S. technology market" which CTA predicted in 2021 would reach *\$461 billion* in retail sales revenue.<sup>29</sup> Unlicensed spectrum users also place a significant ongoing burden on Commission resources in furtherance of their businesses because, as others have pointed out, "[t]he Commission will forever be involved in amending and monitoring the unlicensed spectrum use process, responding to requests from the innovation economy to use spectrum in new ways and for new technologies, and enforcing its rules, not only to prevent interference to licensed uses, but to ensure the end user can actually use the devices and products marketed to them."<sup>30</sup>

Moreover, as NAB and others have made clear, the very same public interest benefits unlicensed spectrum users provide and the parade of horrors that could befall their businesses as a result of regulatory fee obligations that Unlicensed Commenters cite in support of their requested exemption apply with equal force to all current regulatory fee

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<sup>27</sup> *Telesat Can. v. FCC*, 999 F.3d 707, 712 (D.C. Cir. 2021) (*Telesat*) (Section 9 "provides a general guide to the FCC that it should charge regulatory fees to those that benefit from its regulations."); 47 U.S.C. § 159.

<sup>28</sup> CTA Equipment Authorization Comments at 9.

<sup>29</sup> *Id.*

<sup>30</sup> State Broadcasters' FY 2021 NPRM Reply Comments at 10.

payors and do not justify giving unlicensed spectrum users a free pass.<sup>31</sup> Broadcasters also provide valuable services to the public, and are required by law to offer services free of charge, yet they are still required to pay regulatory fees, a significant portion of which currently pay for benefits conferred on unlicensed spectrum users. Indeed, given the potentially harmful effects regulatory fees can have on businesses, commenters in this proceeding have explained that failing to assess regulatory fees on these entities “violates the Commission’s express goals of regulatory fee fairness and sustainability” and “disrupts the free market for communications services by requiring providers that are subject to fees to cross subsidize their fee exempt competitors.”<sup>32</sup>

Unlicensed Commenters do not address these arguments and fail to explain why they should be exempt under the statute for paying for the benefits Commission proceedings confer on their industry while others in the telecommunications marketplace bear the costs. Instead, they have opted for shallow bumper-sticker advocacy. For instance, Unlicensed Commenters do not explain why broadcasters, or wireless providers, or small cable operators should pay for work the Commission performed at CTA’s behest to make it easier for unlicensed spectrum users to market, import, and sell devices prior to receiving equipment authorization.<sup>33</sup> Likewise, they do not explain why broadcasters, or wireless providers, or small

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<sup>31</sup> See NAB FY 2021 NPRM Reply Comments at 8-14; State Broadcasters’ FY 2021 NPRM Reply Comments at 5-16; Satellite Coalition FY 2021 NPRM Reply Comments at 5-6. Opponents of adding a broadband fee category have made similar arguments that also do not justify an exemption for broadband service providers for the same reasons NAB and others have outlined. See, e.g., Reply Comments of NCTA, MD Docket No. 21-190, at 7-8 (Nov. 5, 2021).

<sup>32</sup> Satellite Coalition Comments at 2.

<sup>33</sup> See *Allowing Earlier Equipment Marketing and Importation Opportunities*, Report and Order, 36 FCC Rcd 10544, 10545 (June 17, 2021) (noting that the Commission initiated the proceeding in response to CTA’s petition “seeking to modify the rules pertaining to RF device

cable operators should bear the costs of Commission rules and proceedings intended to ensure that unlicensed spectrum users are not selling devices that put the nation's communications networks' security at risk and that their devices are safe for consumers to use.<sup>34</sup> These activities plainly confer benefits on unlicensed spectrum users and their consumers and there is no reasonable basis to suggest that broadcasters should be the ones paying for them.

The Commission should also not be swayed by arguments suggesting that requiring unlicensed spectrum users to shoulder their fair share of the Commission's costs will somehow be the death knell for innovation in an industry that derives upwards of \$461 billion in retail revenue per year. Even if the Commission were to classify the entirety of the Office of Engineering and Technology as a direct bureau and allocate all associated costs to unlicensed spectrum users, such users would be responsible for approximately \$64 million in fees or 0.01% of 2021 retail revenue. It is difficult to believe that CTA's members, which include some

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marketing and importation” and that the rule modifications will allow unlicensed spectrum users to “market and import RF devices in new efficient and cost-effective ways . . . which will provide additional options for taking advantage of modern product development practices”).

<sup>34</sup> See, e.g., *Protecting Against National Security Threats to the Communications Supply Chain through the Equipment Authorization Program*; *Protecting Against National Security Threats to the Communications Supply Chain through the Competitive Bidding System*, Notice of Proposed Rulemaking and Notice of Inquiry, 36 FCC Rcd 10578, 10579, 10590 (June 17, 2021) (exploring actions the “Commission can take to further the Commission’s goal of protecting our communications networks from communications equipment and services that pose a national security risk or a threat to the safety of U.S persons” and noting that the Commission’s equipment authorization requirements “not only minimize the potential for harmful interference, but also ensure that those devices comply with the rules that address other policy objectives, such as human RF exposure limits, hearing aid compatibility with mobile handsets, and the Anti-Drug Abuse Act of 1988.”).

of the largest and wealthiest technology companies in the world, would not be able to continue to innovate while also paying for a portion of these costs.<sup>35</sup>

Fundamentally, the Commission cannot continue to place the burden of paying for unlicensed spectrum and broadband activities on broadcasters who are perversely forced to compete with some of the world's largest technology companies unencumbered by regulatory fee burdens in the name of administrative simplicity. It is inconceivable that Congress would prefer to see small broadcasters struggle to provide service to their local communities so they can subsidize massive technology companies that on their own dwarf the entire broadcasting industry.

#### **IV. THE RECORD SUPPORTS EXAMINING AND POTENTIALLY INCREASING THE DE MINIMIS THRESHOLD**

Commenters in this proceeding also support the Commission examining and potentially increasing the de minimis threshold to ensure that the Commission does not burden small broadcasters with fees that fall below the costs of collection. No commenter in this proceeding opposes such a review and a number support it.<sup>36</sup> NAB agrees with the State Broadcasters that the Commission can and should consider all costs of collection to ensure that the de minimis threshold is fair, accurate, and serves its intended purpose.<sup>37</sup>

#### **V. CONCLUSION**

The Commission must take immediate and significant action to ensure that its regulatory fee methodology conforms to the requirement of the law. The Commission can no

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<sup>35</sup> CTA counts Google, Amazon, and Facebook among its members.

<sup>36</sup> See SIA Comments at 6 (supporting review of the de minimis threshold “to ensure that it continues to meet its statutory purpose, particularly in light of recent inflation and other economic changes.”).

<sup>37</sup> State Broadcasters’ Comments at 18-19.

longer delay taking the steps necessary to modernize its fee schedule to ensure that  
broadcasters are not arbitrarily paying more than their share of the Commission's fees and  
unfairly subsidizing regulatory free riders that benefit from the work the Commission performs  
but contribute nothing to support the Commission's efforts.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Rick Kaplan", with a long horizontal line extending to the right.

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Rick Kaplan  
Larry Walke  
Emily Gomes

July 18, 2022