

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)
)

REPLY COMMENTS OF
THE NATIONAL ASSOCIATION OF BROADCASTERS

November 5, 2021

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I. INTRODUCTION AND SUMMARY

The National Association of Broadcasters (NAB)¹ submits these reply comments regarding the Commission’s Notice of Proposed Rulemaking concerning broadening the base of regulatory fee payors and reforming the regulatory fee process.²

The Commission is statutorily required to collect regulatory fees in a manner that accounts for the benefits to the payor of the Commission’s activities. However, every year the Commission takes the path of least resistance to apportion its costs amongst an unduly limited universe of beneficiaries of its activities based on an outdated methodology that is unlawful, unfair, and unsustainable. To bring the Commission’s failure into focus, this year alone, broadcasters will be responsible for nearly \$3.5 million dollars in Commission costs to oversee the Universal Service Fund (USF), in addition to nearly 20% of all broadband costs

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*, Report and Order and Notice of Proposed Rulemaking, 86 Fed. Reg. 52429 (Sept. 21, 2021) (R&O and NPRM).

even though broadcasters do not benefit directly from the Commission's broadband activities. The Commission itself has recognized that broadcasters receive no benefit from these activities. In addition to covering the costs the Media Bureau incurs regulating broadcasters, broadcasters will also pick up the tab for nearly 20% of all other Commission costs, regardless of whether that percentage corresponds in any meaningful way to the percentage of full-time equivalent employee (FTE) hours in the so-called "indirect" bureaus and offices that work on matters benefiting broadcasters. In the meantime, under the current system, the largest beneficiaries of the Commission's expansive portfolio of broadband and unlicensed spectrum activities will pay nothing.

The initial comments in this proceeding are notable for three reasons. First, none of those opposed to NAB's prior suggestions offer any cogent reasons for why broadcasters (or others) are currently paying the correct amount of regulatory fees. Second, giant technology companies and many other corporations that benefit from FCC decision-making *really* do not want to pay fees for a number of business reasons despite standing to gain billions of dollars collectively from Commission resources. None, however, seem to acknowledge that those same business concerns apply to all Commission payors. Third, many initial comments appear myopically focused on unlicensed spectrum, rather than the larger issue of how the Commission can lawfully continue to robotically categorize as "indirect" costs incurred by bureaus and offices such as the Consumer and Governmental Affairs Bureau (CGB), the Enforcement Bureau, and the Office of Economics and Analytics, which each, in addition to the Office of Engineering and Technology (OET) and others, have clear industry beneficiaries.

The Commission must recognize that it is patently unfair, unlawful, and contrary to the public interest in free broadcast service to require broadcasters to absorb significant fee increases year after year to not only pay for the costs that the Commission incurs to pay for

the Commission's regulation of broadcasters, but also for Commission activities that are primarily for the benefit of other entities in the telecommunications ecosystem. To fix the defects in the Commission's fee methodology, NAB has advocated that the Commission reassess its allocation of indirect Commission costs and reform its fee methodology to expand the base of payors to include Big Tech companies and broadband service fee providers that clearly benefit from the Commission's unlicensed spectrum and broadband activities.

Commenters representing unlicensed spectrum-using companies admit that they depend on the Commission's work to bring new technologies and products to market, but argue that they do not benefit as much as licensed users and that it is easiest for the Commission to require broadcasters to pick up their tab. These commenters also suggest that they should be excused from paying regulatory fees, because such fees can affect competition and harm small businesses, impede innovation, increase consumer costs or economic burdens for entities that cannot pass on such costs to consumers, and be duplicative of other FCC fees that regulatory fee payors are currently assessed. But these are not reasons to exclude Big Tech companies, while forcing broadcasters that are required by law to provide a free service to their local communities and comply with other public interest mandates to endure the very same parade of horrors. Indeed, given the potentially harmful effects regulatory fees can have on businesses, it is essential that the Commission's fee regime accurately reflect both the beneficiaries of the Commission's activities and the level of benefits each beneficiary receives from the Commission's activities. The current system does neither. Absent meaningful changes to the Commission's methodology, regulatory fees will continue to fail to properly account for the benefits received by broadcasters in plain violation of the law.

II. THE RECORD IN THIS PROCEEDING DEMONSTRATES THAT THE COMMISSION MUST ENSURE THAT ITS FEE METHODOLOGY ACCURATELY REFLECTS THE BENEFITS RECEIVED BY THE PAYORS OF ITS FEES

As the sheer number of comments and level of interest in this proceeding indicate, regulatory fees have real and potentially detrimental impacts on businesses. It is for this very reason that NAB calls upon the Commission to reassess its fee methodology to ensure that broadcasters are not being forced to subsidize other industries and are thereby hamstrung in their ability to effectively compete in a competitive marketplace. As the Commission well knows, broadcasters must absorb every dollar in fee increases in their operational budgets, unlike other fee payors who can pass these fees on to consumers. And, broadcasters cannot simply increase advertising prices to cover these costs as they compete for advertising dollars against others in the telecommunications ecosystem that are not required to bear any of their regulatory costs.³

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 being performed by the Commission and the beneficiaries of that work. As discussed in detail below, part of that change should be to broaden the base of payors to include broadband service providers and Big Tech companies. However, as NAB explained in its comments, the Commission must also take action to reassess its proportional allocation of fees related to the

³ NAB has warned about the pernicious effects of regulatory asymmetry in other proceedings, citing numerous studies showing that “retaining legacy asymmetric regulations in an era of increased competition creates regulatory distortions, drives up the regulated industry’s costs, causes already scarce capital to flow to less regulated industries, deters new firm entry and places the more heavily regulated companies at a competitive disadvantage relative to companies that provide similar services but are able to avoid regulatory classifications and constraints.” See Comments of NAB, MB Docket No. 18-349, at 15-16, n. 35 (Sept. 2, 2021)

Commission's indirect bureaus and offices to ensure that broadcasters are not being forced to subsidize these entities and existing regulatory fee payors.⁴

Despite there being no statutory language requiring it to do so, the Commission apportions regulatory fees based on an analysis of the actual functions performed by only the so-called "core" bureaus, or 25% of its FTEs. The fees that broadcasters pay for the remaining 75% of Commission FTEs and overhead may have no relationship to the amount of actual work performed by the indirect offices and bureaus of the Commission relating to broadcasters because the Commission fails to do any analysis of the actual functions these offices and bureaus perform. Given the universal agreement that regulatory fees in this proceeding have a detrimental impact on a business's ability to compete and innovate in a competitive marketplace, the Commission can no longer base its fee methodology on 75% guesswork.

The Commission must do better. Broadcasters pay for nearly 20% of all the Commission's "indirect" costs based solely on the number of FTEs in the Media Bureau working on broadcast issues. As NAB advocated in its comments, the Commission can and should examine the actual functions performed by the FTEs in the indirect bureaus and offices of the Commission to determine how costs should be apportioned amongst industries and to determine whether it makes sense to continue to adhere to the Commission's proportional allocations. For example, the Commission should assess whether it is reasonable to require broadcasters to pay for nearly 20% of Enforcement Bureau costs when Media Bureau FTEs handle the majority of broadcast enforcement matters. The Commission should also assess whether it is reasonable to require broadcasters to pay for nearly 20% of costs

⁴ Comments of NAB, MB Docket No. 21-190, at 4-8 (Oct. 21, 2021).

associated with CGB when a cursory review of CGB headlines and consumer complaint data reveals that much of CGB's work is focused on robocall and broadband issues,⁵ that should be paid for by broadband and telephone service providers. The same inquiry should be done for each of the other indirect bureaus and offices of the Commission. Though some of the offices' work may be so cross-cutting as to not allow for this type of accounting, the Commission has shown through its ability to account for auction-related activities that it is possible for FTEs to account for their time in a more granular manner in many of the indirect bureaus. To the extent the proportional allocations do not hold up in this analysis, the Commission should determine whether some of the FTEs in the indirect bureaus should instead be categorized as direct and reallocate indirect costs accordingly.

III. THE RECORD SUPPORTS ADDING A BROADBAND FEE CATEGORY

The Commission must act immediately to add a broadband service fee category to which the Commission should allocate the broadband and USF costs it currently treats as "indirect." Absent a change, in FY 2022 alone, broadcasters will be forced to pay approximately \$3.5 million for the Commission's regulation of the Universal Service Fund.⁶ Continuing to require broadcasters to pay for these "indirect costs" is unlawful, especially given the fact that the Commission has conceded that broadcasters have nothing to do with the Commission's broadband activities. Indeed, the Commission has known and

⁵ See *Consumer and Governmental Affairs Headlines*, FCC, available at: https://www.fcc.gov/news-events/headlines/509?field_released_date_value%5Bvalue%5D%5Byear%5D=&items_per_page=25. For example, in the last three months there have been no items except for arguably the announcement of advisory committee meetings that have anything to do with broadcasters. In contrast, there were five items dealing with broadband and USF issues and five items addressing do not call issues, robocalls and robotexts.

⁶ See FY 2022 Budget Estimate at 26.

acknowledged that broadcasters should not be paying for these activities for years. In the FCC's FY 2016 budget request, the FCC sought to have USF funds pay for the Commission's costs of regulating the program, and represented to Congress that broadcasters do not benefit in any manner from USF activities:

In addition to these requested increases, the budget also proposes aligning sources of funds with uses to maximize fairness . . . the Commission determined that FY 2016 would be the optimal time to properly align our USF expenditures with cost outlays. Accordingly, the FY 2016 budget proposes shifting USF funds to cover our salary and compensation expenditures directly related to universal service activities. With this funding realignment we will make USF pay for USF. It will reduce by \$25,000,000 the Section 9 regulatory fee burden on licensees with no universal relationship. USF will pay these costs instead of forcing entities such as small, local broadcasters and marine licensees to pay for USF FTE activities at the Commission. It will take the pressure off of our other licensees at a critical juncture and it will ensure that there is adequate enforcement of USF programs. Overall it would reduce Section 9 fee burdens by about six percent. For example, the impact on a large market broadcaster would be several thousand dollars per year . . . Although regulatory fairness supports this transfer request, the importance and ongoing complexity of our universal service work underscores the need for this funding.⁷

Though Congress declined to shift the funding at that time, two years later Congress amended the Commission's Section 9 authority, allowing the Commission to assess fees on all beneficiaries of its activities, not just licensees. Yet, the Commission has continued to turn a blind eye and rather than add a fee category for broadband service providers, has knowingly forced broadcasters to withstand fee increases year after year, in part to pay millions of dollars to support USF activities from which they do not benefit. That is unacceptable and

⁷ See *Statement of Chairman Tom Wheeler, Federal Communications Commission*, Hearing on the FCC's Fiscal Year 2016 Budget Request Before the Subcommittee on Financial Services and General Government Committee on Appropriations U.S. House of Representatives, at 4-5 (March 24, 2015), available at: <https://www.fcc.gov/document/chairman-wheeler-statement-house-committee-appropriations>.

unlawful and must be addressed expeditiously by either adding a broadband service category or exempting broadcasters from all USF and other broadband-related costs.

No commenter in this proceeding has made any argument that would suggest that the Commission should not add a fee category for broadband service providers and at least one other commenter explicitly supports it.⁸ In addition, several commenters support having broadband service providers contribute to USF, on the grounds that broadband service providers benefit from the USF programs.⁹ If broadband providers benefit from USF programs they also directly benefit from the Commission's oversight of USF activities. There is no rational policy argument that supports requiring broadcasters to pay for these costs rather than broadband service providers themselves.

IV. UNLICENSED SPECTRUM USERS FAIL TO JUSTIFY WHY THEY SHOULD BE UNIVERSALLY EXEMPT FROM REGULATORY FEES

NAB supports the Commission taking a pragmatic approach to assessing regulatory fees on Big Tech companies that benefit from the Commission's unlicensed spectrum and broadband proceedings. Though admitting that they do benefit from the Commission's work to make unlicensed spectrum available, commenters nevertheless argue that all unlicensed

⁸ See Comments of Telesat Canada, Kepler Communications Inc., WorldVu Satellites Limited (d/b/a OneWeb), O3b Limited, and SES Americom, Inc., MB Docket No. 21-190, at 6 (Oct. 21, 2021) ("With numerous services migrating to broadband platforms, the time has come for the Commission to adopt a fee category for Broadband Internet Access Services. The costs associated with the various rulemakings or other proceedings that result from such market shifts should be borne by those who benefit from them.") (Satellite Coalition Comments)

⁹ See *Universal Service Fund (USF) and the Need for Reform*, Public Knowledge, at 2-3 (Sept. 15, 2021), available at: <https://www.publicknowledge.org/documents/one-pager-on-usf-and-need-for-reform/> (parties including INCOMPAS and Public Knowledge support having broadband providers contribute to USF because it is "smart public policy" as "[b]roadband internet access service is the primary form of access to networks today" and "all four USF programs now support broadband connectivity and broadband should contribute to support connectivity for every American.")

spectrum users should remain on the sidelines of the “zero sum” regulatory fee game primarily because i) the Commission does not have the authority to impose regulatory fees on unlicensed spectrum users;¹⁰ ii) unlicensed spectrum users are not the primary beneficiaries of the Commission’s activities;¹¹ and iii) imposing regulatory fees on unlicensed spectrum users would be administratively difficult.¹² For the reasons set forth below, none of these arguments justify requiring broadcasters and other licensees to pay for the Commission’s unlicensed spectrum priorities while the largest beneficiaries of those activities pay nothing.

A. Big Tech companies benefit from Commission activities and therefore should pay regulatory fees.

The Commission has the authority to assess regulatory fees on entities that benefit from the FCC’s activities, regardless of whether those entities are licensees. In interpreting the Commission’s statutory authority, the D.C. Circuit Court of Appeals rejected the notion that there are any statutory limits on the Commission’s authority to charge regulatory fees to entities that benefit from the Commission’s activities beyond the exemptions listed in Section 9.¹³ Far from dictating how and to whom regulatory fees can be assessed, the court found

¹⁰ See, e.g., Comments of New America’s Open Technology Institute, Public Knowledge, Benton Institute for Broadband & Society, Access Humboldt, Center for Rural Strategies, Tribal Digital Village, Schools, Health, Libraries & Broadband Coalition, MB Docket No. 21-190 (Oct. 21, 2021) (Public Interest Spectrum Coalition Comments); Comments of the Motor & Equipment Manufacturers Association, MB Docket No. 21-180 (Oct. 21, 2021).

¹¹ See, e.g., Public Interest Spectrum Coalition Comments at 7-8; Comments of the Association of Home Appliance Manufacturers, MB Docket No. 21-190, at 7-8 (Oct. 21, 2021); Comments of Wi-Fi Alliance, MB Docket No. 21-190, at 7-8 (Oct. 21, 2021) (Wi-Fi Alliance Comments); Comments of the Information Technology Industry Council, MB Docket No. 21-190, at 3 (Oct. 21, 2021); Comments of NCTA—The Internet & Television Association, MB Docket No. 21-190, at 6 (Oct. 21, 2021); Comments of the DECT Forum, MB Docket No. 21-190, at 9 (Oct. 21, 2021).

¹² See, e.g., Wi-Fi Alliance Comments at 9-10.

¹³ See *Telesat Can. v. FCC*, No. 20-1234, 2021 U.S. App. LEXIS 16677 at *12-13 (D.C. Cir. June 4, 2021) (*Telesat*).

that Section 9 merely “provides a general guide to the FCC that it should charge regulatory fees to those that benefit from its regulations.”¹⁴ The court expressly affirmed NAB’s longstanding position that the primary consideration for whether the Commission may charge an entity regulatory fees are the benefits the entity receives from the Commission’s activities.¹⁵

Commenters’ argument that unlicensed spectrum users do not specifically “benefit” from Commission activities because these proceedings also benefit the general public is nonsensical. First, at one level, nearly every benefit conferred by the Commission serves the same purpose. For example, broadcasters or licensed wireless operators often provide services to the general public as a result of Commission action. Second, Section 9 does not somehow permit the Commission to discount benefits that a party or industry receives that also affect a wider group. And Section 9 certainly does not suggest that others who receive no benefit whatsoever from a Commission activity should have to foot the bill as a result. Third, the primary goal of the Commission’s unlicensed spectrum proceedings are to allow these companies to make new technologies and products available to consumers.¹⁶ Big Tech

¹⁴ *Id.* at *7. The court also made clear that the Commission is not in any way limited to charging regulatory fees to only those entities that appeared on the original Section 9 fee schedule because “the [Ray Baum’s] Act notes that the Commission retains flexibility to adjust or amend regulatory fees...” *Id.*

¹⁵ *Id.* at *12-13 ([Through the Ray Baum’s Act] Congress made clear that the Commission’s regulatory fee schedule should take account of ‘the benefits provided to the payor of the fee by the Commission’s activities.’ 47 U.S.C. § 159(d). *This suggests benefits—not licenses—should be the touchstone for whether it is reasonable for the FCC to collect regulatory fees*) (emphasis added).

¹⁶ *Unlicensed Use of the 6 GHz Band; Expanding Flexible Use in Mid-Band Spectrum Between 3.7 and 24 GHz*, 35 FCC Rcd 3852 (5), 3853 (rel. Apr. 24, 2020) (“In making broad swaths of 6 GHz band spectrum available for unlicensed use, we envision new innovative technologies and services...”) (6 GHz Order); Statement of Chairman Ajit Pai, ET Docket No. 18-295, GN Docket No. 17-183, FCC 20-51 (“So today, we take a bold step to increase the supply of

companies are not giving these new technologies and products away for free, but selling them for a profit and have lauded the opportunities that the FCC’s unlicensed spectrum activities will provide for their businesses.¹⁷ Contrary to some commenters’ suggestions¹⁸ the Commission acknowledges that participation by entities in rulemakings “either individually or through involvement in industry trade organizations—demonstrates that they recognize benefits from Commission action . . . since they would not participate in such proceedings if they held no possibility of benefit to them.”¹⁹

unlicensed spectrum: we’re making the entire 6 GHz band—a massive 1,200 megahertz test bed for innovators and innovation—available for unlicensed use. By doing this, we are effectively increasing the amount of mid-band spectrum available for Wi-Fi by almost a factor of five. This will be a huge benefit to consumers and innovators across the nation.”).

¹⁷ See Ry Crist, *FCC Unlocks a Massive Amount of Bandwidth for Next-Gen Wi-Fi Devices*, CNET (Apr. 29, 2020), available at: <https://www.cnet.com/home/internet/the-fcc-voted-6-ghz-wi-fi-6e-here-we-come/> (quoting Apple statement that the FCC’s decision concerning the 6 GHz band “will help us create innovative, new product experiences for our customers” and Facebook’s statement that 6GHz will be a ‘booster’ for AR/VR applications).

¹⁸ Some commenters suggest that the Commission cannot or does not charge regulatory fees to recoup the costs of its rulemaking proceedings. The Public Interest Spectrum Coalition, in particular, states that “[t]he Commission may not ‘charge for general activities which independently benefit the public at large,’ such as rulemakings...If participation in rulemakings at the Commission to influence rules to support ‘business models’ were subject to fee assessment, the NAB and its members would pay far higher fees for the privilege of urging relaxation of the broadcast ownership rules.” Public Interest Spectrum Coalition Comments at 11. This argument ignores two key facts. First, broadcasters pay 100% of the costs the Commission incurs in broadcast ownership proceedings because the fees broadcasters pay recover 100% of costs associated with Media Bureau FTEs that work on those proceedings. Second, while NAB and its members would welcome a world where the Commission’s rulemaking costs were deducted from their regulatory fees, the Commission has stated before that “regulatory fees . . . are designed to defray the costs of Commission regulatory activities (which [the Commission] undertake[s] to serve the overall interests of the public, including all parties engaged in the communications marketplace).” See FY 2020 R&O and NPRM at ¶ 13. The Commission’s regulatory activities include rulemaking, and the Commission can recover its costs from entities that benefit from those activities.

¹⁹ *Assessment and Collection of Regulatory Fees for Fiscal Year 2020; Assessment and Collection of Regulatory Fees for Fiscal Year 2019*, MD Docket Nos. 20-105, 19-105, at ¶ 21 (rel. May 13, 2020).

One need only look to Big Tech companies' filings at the Commission for confirmation that these entities use Commission resources not just for the benefit of humankind generally, but to benefit their businesses. For example:

Microsoft has supported these [unlicensed spectrum and broadband mapping] measures because expanded connectivity is both good for the country and for our business . . . It also increases Microsoft customers' access to our cloud services. Microsoft's business interests are therefore well-aligned with the Commission's public interest objective of expanding broadband connectivity. Just as broadband connectivity is a precondition for full participation in modern economic and cultural life, it is also a precondition for the use of Microsoft's cloud services.²⁰

Moreover, the fact that some of the rules the Commission implements in connection with these proceedings are designed to protect licensed uses does not erase these benefits or make it justifiable for broadcasters to bear the costs of the Commission's rulemaking and other unlicensed spectrum activities. Apart from actual enforcement of existing rules, no serious argument can be advanced that revising a band plan, for example, to accommodate new unlicensed operations confers a benefit to the licensed services that are displaced.

Unlicensed commenters also ignore the fact that Big Tech companies use significant Commission resources to initiate and engage in proceedings that are focused not on licensed uses, but instead on promoting coexistence amongst unlicensed uses.²¹ Commenters fail to

²⁰ Reply Comments of Microsoft Corporation, WT Docket No. 20-443, GN Docket No. 17-183, at 4 (May 7, 2021).

²¹ See, e.g., *In the Matter of Amendment of Section 15.255 of the Comm'n's Rules*, Notice of Proposed Rulemaking, ET Docket No. 21-264, FCC 21-83 (rel. July 14, 2021); Letter from Alan Norman (Facebook, Inc.), *et. al*, to Marlene Dortch (FCC), ET Docket No. 20-121, *et al.*, at 2 (July 1, 2020) (advocating the Commission "to commence a comprehensive rulemaking proceeding" to update rules for the 60 GHz band); Letter from 60 GHz Coexistence Study Group to M. Dortch (FCC), GN Docket No. 14-177 *et. al* at 1-2 (June 17, 2021) (letter from group including Facebook and Google encouraging the Commission to amend its technical rules to "ensur[e] reasonable coexistence of various unlicensed technologies operating in 60 GHz frequencies" and to "commence a comprehensive rulemaking proceeding to (i) generally

articulate why broadcasters should also pay for the Office of Engineering and Technology's work in those proceedings which have little to do with protecting licensed uses, while the beneficiaries pay nothing.

Moreover, if the Commission were to adopt unlicensed spectrum users' proposition that because they are required to follow certain rules they do not "benefit" from Commission activities, then it would also need to address broadcasters' arguments that the "bulk of the money spent on FTEs with regard to broadcasting is not spent on producing a benefit for the fee payor, but on reducing the benefit derived from an FCC license in an economically visceral way."²² The State Broadcasters have long noted that "[f]illing out and filing ownership report forms (which also carry an application fee despite the fact that the FCC does not process or grant them), quarterly issues/programs reports, Children's Television Programming Reports, commercial limits certifications, employment outreach reports, Class A television continuing eligibility certifications, and maintaining a public inspection file, are examples of FCC-imposed tasks that no business would perform in the absence of a regulatory mandate."²³ These too

promote innovative communications and radar applications, services and devices in the 60 GHz band, and (ii) in particular, address the range of technical and policy issues necessary to preserve reasonable coexistence between radars and field disturbance sensors..."); Comments of Google LLC, ET Docket No. 21-264 (Sept. 20, 2021) (commenting on NPRM and stating that "Google generally supports the approach proposed in the NPRM, which would foster reasonable coexistence across unlicensed communications and radar technologies using 60 GHz frequencies"); Reply Comments of Facebook, Intel, and Qualcomm, ET Docket No. 21-264 (Oct. 18, 2021) (advocating that the Commission adopt technical rules that permit "higher-power radar applications should be enabled only in a manner that allows for coexistence with communications applications" and that "the Commission's aim should be coexistence with other 60 GHz unlicensed technologies."); Reply Comments of Apple Inc., ET Docket No. 21-264 (Oct. 18, 2021) (recommending that "the Commission adopt rules that do not favor one type of unlicensed device over another.").

²² Joint State Broadcasters Associations, MB Docket No. 20-105, at 11 (June 12, 2020) (State Broadcasters' Comments).

²³ *Id.* at 10.

are activities that arguably are more for the benefit of the “general public,” yet broadcasters still have to pay for them. Quite simply, in a world in which the Commission treats regulatory burdens and benefits the same for purposes of assessing regulatory fees, unlicensed spectrum users “benefit” from all of the Commission’s work that allows them to use unlicensed spectrum to market and sell products and services to consumers and should be required to pay a portion of those costs.

B. It is the Commission’s duty to find a way to avoid requiring broadcasters and other regulatees to pay for activities that benefit other industries.

Commenters suggest that the Commission should stick with its current fee methodology and base of payors because to require other beneficiaries of the Commission’s activities to contribute would be difficult to administer and would amount to the Commission imposing a “Wi-Fi tax” on every Wi-Fi user in the country.²⁴ Far from suggesting that every Wi-Fi user be required to pay regulatory fees, NAB has advocated that Big Tech companies that use Commission resources to profit from the Commission’s unlicensed spectrum and broadband activities be required to pay regulatory fees. They are no different than any other current payor. As discussed above, there is no question that Big Tech companies benefit from the Commission’s unlicensed spectrum activities as evidenced by their participation in

²⁴ It is important to note that the Commission already recognizes that unlicensed spectrum users (including, potentially, end users) may have to pay costs associated with their regulation. For instance, AFC system operators are permitted to charge fees to unlicensed spectrum users for their services which are required by FCC rule for unlicensed spectrum users to operate in certain bands. The Commission does not require broadcasters to pay these fees because they benefit from the resulting interference protection. Unlicensed spectrum users in those proceedings have generally supported these fees. See, e.g., 6 GHz Order at 3872, ¶ 56 (citing support in the record from unlicensed spectrum users and permitting AFC system operators to “charge a fee for providing registration and channel availability functions” and that such fees “could be charged on a transaction basis every time a device is registered, or when it receives an update from an AFC system” as it has for white space database and CBRS SAS administrators).

rulemaking proceedings and the fact that such activities allow Big Tech companies to bring new technologies to market from which they profit. In addition, Big Tech benefits from the Commission's broadband and USF activities. Big Tech companies have explicitly stated in FCC filings that they are invested in and benefit from making broadband available to all Americans and even actively participate in proceedings that are focused on USF programs that will help subsidize the purchase of their products.²⁵ Big Tech companies should therefore also be responsible for a portion of the Commission's costs in promoting broadband and USF activities. While NAB believes that the Commission as part of its reassessment of the work performed by its indirect bureaus could determine the percentage of FTEs working on these matters and allocate them to a Big Tech fee category, ultimately it is the Commission has the data and information necessary to determine how best to achieve that result.²⁶

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 Big Tech 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 in order to subsidize massive technology companies that on their own dwarf the entire broadcasting industry. To

²⁵ See, e.g., Reply Comments of Apple Inc., WC Docket No. 21-93 at 2 (Apr. 23, 2021) (commenting on the Commission's definition of connected devices and services used in remote learning for purposes of the Emergency Connectivity Fund to close the "Homework Gap" and advocating that "ECF eligibility for connections and connected devices should be sufficiently broad to cover tablets with built-in LTE connectivity and service plans for these devices. iPads with LTE service are an effective solution for enabling learning beyond the classroom when students do not have access to the internet outside of school.").

²⁶ Though NAB's comments are focused on adding Big Tech to the base of payors, the Satellite Coalition has proposed several other unlicensed entities that NAB agrees the Commission should also consider adding to the base of regulatory fee payors as they too benefit from the Commission's activities. See Satellite Coalition Comments at 5-8.

the extent the Commission believes it is not administratively possible to assess regulatory fees on unlicensed spectrum users, then the Commission should work with broadcasters and other stakeholders to seek relief from Congress to minimize the regulatory fee burdens on existing regulatory fee payors. This relief could come in the form of requesting that Congress explicitly require Big Tech to contribute regulatory fees, permit auction funds to also fund the Commission's unlicensed work, allow the Commission to deduct application fees from the amount of regulatory fees payors owe, and/or that Congress directly appropriate funds to cover the costs of the Commission's unlicensed spectrum activities.

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 longer delay taking the steps necessary to modernize its fee schedule to ensure that broadcasters and others 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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November 5, 2021