

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Procedures for Assessment and Collection of Regulatory Fees)	MD Docket No. 12-201
)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2013)	MD Docket No. 13-140
)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2008)	MD Docket No. 08-65

**COMMENTS OF
THE NATIONAL ASSOCIATION OF BROADCASTERS**

The National Association of Broadcasters (“NAB”)¹ submits these comments on the above-captioned Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking regarding policies for assessing regulatory fees.² Among other proposals, the Commission plans to update the full-time equivalent (“FTE”) data on which fees are based to 2012 figures. NAB supports that proposal. The Notice also seeks comment on reallocating fees to more closely reflect the current subject matters worked on by certain Commission staff, particularly those in the Wireline Competition Bureau (“Wireline”) and International Bureau (“International”). As expressed herein, NAB believes this proposal requires closer examination.

¹ NAB 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 *Procedures for Assessment and Collection of Regulatory Fees*, MD Docket No. 12-201; *Assessment and Collection of Regulatory Fees for Fiscal Year 2013*, MD Docket No. 13-140; *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, MD Docket No. 08-65, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 13-74 (*rel.* May 23, 2013) (“Notice”).

NAB supports updating the FTE data underlying the regulatory fees to current figures.³ Since 1998, when the Commission last revised the FTE data, there have been significant shifts in the amount of time Commission staff spend on various activities. Notice at ¶8. As a result, some regulatory fees have become misaligned.⁴ NAB agrees that regulatory fees should be based on current FTE data to more accurately reflect the current allocation of Commission staff.⁵

The Commission expresses concern, however, that using updated FTE data without further examining the precise regulatory functions certain FTEs perform would be “incomplete.” According to the Notice, using updated FTE calculations “without other significant changes” in methodology, also would subject certain regulatees to substantial fee increases. Notice at ¶15.

In this regard, the Notice proposes to reallocate a number of Wireline FTEs to reflect the growth of wireless services and the attendant change in Commission regulatory activity. The Notice also seeks comment on reallocating many FTEs in the International Bureau to other core bureaus. Specifically, the Commission reviewed the actual functions of the staff in the various divisions of the International Bureau, finding

³ Assessing regulatory fees is a multi-step process. First, Congress establishes an annual total collection target. Second, the Commission allocates percentages of that target amount among 86 various regulatory fee categories, based on the relevant percentages of FTEs who work directly on feeable activities in each of the Commission’s four core bureaus: Wireline, International, Media Bureau (“Media”), and the Wireless Telecommunications Bureau (“Wireless”). The Commission then assesses fees for each payor category among the relevant licensees based on some objective measure, such as revenues, market size, number of subscribers or number of facilities.

⁴ See *Federal Communications Commission, Regulatory Fee Process Need to be Updated*, Report to Congressional Requesters, U.S. Government Accountability Office, GAO-12-686 (Aug. 2012) (“GAO Report”).

⁵ Comments of the National Association of Broadcasters, MD Docket Nos. 12-201 and 08-65, filed Sep. 17, 2012 (“NAB 2012 Comments”).

that the entire Strategic Analysis and Negotiations Division should be reallocated among all core Bureaus as indirect FTEs because they are responsible for the Commission's participation in intergovernmental functions and international forums and other functions in support of the other core bureaus, rather than strictly International licensees. *Id.* at ¶¶ 20-21. The Notice reaches a similar conclusion for almost all FTEs in the International Bureau's Policy Division. *Id.* at ¶¶24-28.

As a result, a substantial number of International FTEs would be reallocated as indirect FTEs among the other core bureaus, leading to fee reductions for Wireline and International regulatees, and sizeable increases for many other licensees, including television and radio broadcasters. The Notice seeks comment on these various proposals, as well as two options designed to reduce their immediate impact on licensees and provide a reasonable transition period. First, the Notice proposes to limit any rate increases resulting from the reallocation of FTEs to 7.5 percent or some other amount for this fiscal year. Second, the Notice asks whether the Commission should defer on an interim basis the use of updated FTE data and the reallocation of FTEs. *Id.* at ¶¶30-32.

NAB has reservations about aspects of the proposed changes to the regulatory fee process. The current process for calculating the fees is already a product of "rough justice," in that fees are based on the number of FTEs in each of the core bureaus, and not the actual functions of Commission staff.⁶ Here, for the first time, the Commission

⁶ NAB 2012 Comments at 2; Reply Comments of the National Cable & Telecommunications Association, MD Docket Nos. 12-201 and 08-65, filed Sep. 17, 2012 ("NCTA Comments").

plans to allocate certain FTEs, but not all, based on their actual activities. Such an approach raises several potential problems.

The proposal is “half a loaf.” Reallocating only certain FTEs in the Wireline and International Bureaus based on their actual duties ignores similarly situated staff in other core bureaus. For example, if some International FTEs regulate non-International licensees, it is equally true that some Media FTEs regulate other licensees, such as Media Bureau staff who work on spectrum and wireless-related issues, including the incentive auctions proceeding. Media Bureau staff also work on program access and retransmission consent complaints, and implementation of the Commercial Advertisement Loudness Mitigation (“CALM”) Act and the Twenty-First Century Communications and Video Accessibility (“CVAA”) Act,⁷ all of which benefit satellite companies. Similarly, Wireline Bureau staff will increasingly work on the Connect America Fund, which also benefits satellite companies.⁸

The Commission should either undertake a complete accounting of the actual functions of all FTEs in the core bureaus, and allocate regulatory fees accordingly, or consider retaining the existing process of allocating fees based on the percentages of FTEs in the core bureaus. The Commission’s proposal essentially blurs the line between the two different approaches, thereby raising more questions about the transparency and fairness of the regulatory fee process than it answers.

⁷ Letter from Barbara S. Esbin, Cinnamon Mueller LLC, to Marlene Dortch, Secretary, Federal Communications Commission, MD Docket Nos. 12-201 and 08-65 (Feb. 22, 2013), at 3.

⁸ NCTA Comments at 5.

As NAB previously discussed,⁹ the current system for assessing regulatory fees is only a roughly estimated proxy for calculations based on the actual functions of Commission employees. The proposal to reassign a substantial number of FTEs in the International and Wireline Bureaus would magnify the flaws of the current system. Media licensees, for example, would be unduly impacted because the additional FTEs from Wireline and International to be redesignated as indirect FTEs would be allocated proportionally and the Media Bureau has the most FTEs who work on directly feeable activities.¹⁰ As a result, Media Bureau licensees will become responsible for financially supporting more of the Commission's activities. The Government Accountability Office found in 2012 that certain entities are already likely subsidizing regulatory activities that benefit others. GAO Report at 17-18. The Commission should refrain from adopting proposals that would amplify such imbalances.

Finally, the Commission seeks comment on how to apportion FTEs to reach a "fair and equitable," as well as sustainable, regulatory fee allocation. Notice at ¶¶ 17, 20. NAB observes that, unlike cable and satellite television operators, wireless service providers and most other licensees, radio and television stations cannot simply pass through regulatory fee increases as a line-item on consumers' bills. As the GAO stated, the Commission's regulatory fees are incorporated into a broadcaster's operating costs, and are paid out of a station's general revenues. Any fee increases will directly impact

⁹ NAB 2012 Comments at 2-3.

¹⁰ Under the proposal, the share of the Commission's total fee target collected from Media licensees would increase from 30.2 percent to 37.50 percent, an increase of nearly 25 percent. Even if the 7.5 percent cap on fee hikes is imposed, Media licensees' share of all fees would still rise to 33.33 percent, or an increase of 10.36 percent. Notice at ¶16.

some local stations' bottom lines and their ability to invest in more service to their communities. GAO Report at 21.

We also urge the Commission to be cognizant of the burden that regulatory fees impose on some Commission licensees, particularly the smallest broadcast stations, which may have as few as two or three permanent staff. Regulatory fees can impact a small station's ability to retain an employee,¹¹ particularly given the current difficult advertising climate,¹² and new challenges from growing competitors,¹³ which have no obligation to maintain a local studio with public files or Emergency Alert System equipment. As the GAO notes, this potential impact on certain small companies "underscores the importance that [the] FCC assess regulatory fees on a fair and equitable basis. . . ." ¹⁴ *Id.*

For the reasons stated above, NAB respectfully requests that the Commission temporarily defer the implementation of the proposals set forth in the Notice to allow time for additional analysis. NAB submits that, at a minimum, the proposals to

¹¹ GAO Report at 21.

¹² Robert Channick, *WBBM Remains at Top Amid Revenue Decline at Local Radio Stations*, Chicago Tribune (Mar. 29, 2013), available at http://articles.chicagotribune.com/2013-03-29/business/chi-wbbm-remains-at-top-amid-revenue-decline-at-local-radio-stations-20130329_1_radio-revenue-stations-political-advertising;

¹³ Tomeo Geron, *Taking on Radio Stations, Pandora Targets Local Ad Dollars*, Forbes (Nov. 2, 2011), available at <http://www.forbes.com/sites/tomiogeron/2011/11/22/pandora-beats-street-but-shares-drop-after-hours/>.

¹⁴ For instance, the FCC should consider the fairness of imposing regulatory fee hikes on small and rural radio stations (and other small media services licensees) while reducing the burden on International licensees, who are often large global entities, with much greater financial resources. Compared to the impact on small independent radio stations, the proposed fee increases would "have little to no direct financial impact" on these satellite television providers and other companies with earth and space stations. GAO Report at 21.

reallocate FTEs in the International and Wireless Bureaus require further consideration. Evaluating the potential impact of the proposed system on various licensees is particularly complex. Among other issues, the extent to which FTEs in other core bureaus such as the Media Bureau may perform regulatory activities that benefit regulatees of the International and Wireless Bureaus, should be examined more closely.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jane E. Mago".

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