

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

In the Matter of:)
)
Review of the Commission’s Assessment and) MD Docket No. 24-86
Collection of Regulatory Fees for)
Fiscal Year 2024)

**COMMENTS OF
THE NATIONAL ASSOCIATION OF BROADCASTERS**

I. INTRODUCTION AND SUMMARY

The National Association of Broadcasters (NAB)¹ hereby submits the following comments in response to the Commission’s Second Notice of Proposed Rulemaking in the above-referenced proceeding setting regulatory fees for FY 2024.²

The Notice proposes to use the same methodology used in FY 2023 to allocate regulatory fees among fee payors, with additional adjustments to account for the creation of the Space Bureau and Office of International Affairs and for increased staffing levels in the Public Safety and Homeland Security Bureau (PSHSB).³ NAB appreciates the Commission’s continuation of the substantial improvements it made in FY 2023 to its regulatory fee methodology to more accurately account for the work performed by FTEs in the non-core

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 *Review of the Commission’s Assessment and Collection of Regulatory Fees for Fiscal Year 2024*, Second Notice of Proposed Rulemaking, MD Docket No. 24-86 (rel. June 13, 2024) (Notice).

³ *Id.* at ¶ 15.

bureaus and offices of the Commission and largely supports the proposed FY 2024 regulatory fee allocations. However, as further explained below, the Commission should clarify how it is calculating the earth station regulatory fee to allow for meaningful comment on the appropriateness of the proposed fee.

In addition, the Commission should continue its efforts to modernize and ensure the fairness and sustainability of the regulatory fee structure. Specifically, as NAB and other commenters have explained previously, the Commission should review regularly the work performed by FTEs in all of the non-core bureaus and offices of the Commission, consider expanding the base of fee payors to include other beneficiaries of significant amounts of work the Commission performs, regardless of where in the Commission the work is performed, and ensure that the methodology properly accounts for the benefits that even existing fee payors receive from the Commission's non-high cost Universal Service Fund activities.⁴

The Notice also seeks comment on its proposals to end pandemic-related measures designed to ease administrative and financial burdens on regulatory fee payors seeking relief, and to end a longstanding policy of accepting a station's silence as evidence of financial hardship.⁵ While the pandemic may be over and certain sectors of the economy may be rebounding, many broadcasters continue to face challenges as they struggle to

⁴ See, e.g., Comments of NAB, MD Docket Nos. 22-301, 23-159, at 8-16 (June 14, 2023) (FY 2023 NAB Comments); Reply Comments of NAB, MD Docket Nos. 22-301, 23-159, at 3-5 (June 29, 2023) (FY 2023 NAB Reply Comments). Comments of the Satellite Operators, MD Docket Nos. 22-301, 23-159, at 4-10 (June 14, 2023); Comments of Intelsat License LLC, MD Docket Nos. 22-301, 23-159, at 3-5 (June 14, 2023).

⁵ See Notice at ¶¶ 42-50.

compete in a hyper-competitive communications marketplace.⁶ Imposing additional burdens on those payors in need of regulatory fee relief will only make it more difficult for struggling broadcasters to fulfill their regulatory obligations and serve the Commission’s localism goals.

II. NAB SUPPORTS THE NOTICE’S FY 2024 PROPOSED ALLOCATIONS AND FURTHER EFFORTS TO MODERNIZE THE REGULATORY FEE STRUCTURE

The Commission is required statutorily to set fees that “reflect the full-time equivalent number of employees within the bureaus and offices of the Commission, adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission’s activities.”⁷ The Commission’s methodology bases regulatory fees on the percentage of direct FTEs attributable to a fee payor’s fee category.⁸ Prior to FY 2023, the Commission considered only those FTEs in the four “core” bureaus as direct for regulatory fee purposes. Consequently, regulatory fees were based on the work performed by a mere quarter of Commission FTEs. In response to concerns raised for several years by NAB and other commenters, last year the Commission “also conducted a high level analysis of the work of the Commission’s indirect FTEs in non-core bureaus and offices and, where the Commission could determine with reasonable accuracy for FY 2023 that such work was spent on the regulation and oversight of a regulatory fee payor, the Commission reallocated the burden of that work as direct to a core bureau.”⁹

⁶ See Moody’s Investor Service, *Record US Political ad spend insufficient to save TV broadcasters from looming threats* (Apr. 2, 2024) (describing economic headwinds broadcasters face).

⁷ 47 U.S.C. § 157(d).

⁸ Notice at ¶¶ 4-5.

⁹ *Id.* at ¶14.

The Notice states the Commission used the same methodology to calculate regulatory fees in FY 2024, and also “reviewed FTEs that were previously allocated to the International Bureau as direct for regulatory fee purposes” and determined “whether such FTEs should be allocated to the Office of International Affairs or to the Space Bureau.”¹⁰ In addition, rather than evaluating the work performed in all non-core bureaus and offices, the Notice states that the Commission exercised its “discretion regarding where to focus its analytical efforts each year” and limited its review of work performed in the non-core offices and bureaus of the Commission to an analysis of the work of the FTEs in the Office of General Council, Office of Economics and Analytics, and PSHSB that were reallocated in FY 2023 as direct “to determine whether their work assignments continue to merit allocation of those FTEs as direct to a core bureau for regulatory fee purposes.”¹¹ The Notice states that the Commission opted not to conduct a high-level analysis of all FTEs within the Commission “because we believe the adjustments we made for FY 2024 reasonably reflect the major changes in the burden of work within the Commission.”¹²

NAB appreciates the Commission’s commitment to looking beyond the four core bureaus and offices when making its regulatory fee allocations. The improvements the Commission made last year and continues this year increase the percentage of direct FTEs included in the regulatory fee calculation and brings the Commission closer to compliance with its statutory mandate. However, further improvements can and should be made moving forward. NAB reiterates its view that the Commission’s analysis of the work performed by

¹⁰ *Id.* at ¶ 15.

¹¹ *Id.*

¹² *Id.* at ¶ 16.

FTEs in non-core bureaus should not exclude FTEs in some of the non-core bureaus and offices simply because they may work on matters that also pertain to non-fee payors.¹³ The benefits that are provided to regulatory fee payors by such FTEs can and should be reflected in the number of direct FTEs attributed to them.¹⁴ To ensure that the entire regulatory fee system remains sustainable, the Commission should also work with industry stakeholders to determine a path towards expanding the base of payors to capture entities that benefit from the Commission’s activities and resources but do not pay regulatory fees.¹⁵ Given 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, in order for the fee structure to be fair or sustainable, it must ensure that its base of fee payors fully reflects the work FTEs perform and the beneficiaries of that work.¹⁶

For similar reasons, the Commission should also revisit its decision to classify USF FTEs in the Wireline Competition Bureau as indirect for regulatory fee purposes. As NAB has advocated in numerous prior filings, given the critical importance of the number of direct FTEs assigned to each regulatory fee category to the Commission’s existing methodology, it is essential that core bureau FTEs that benefit some, but not all, fee payors remain direct

¹³ FY 2023 NAB Comments at 8; FY 2023 NAB Reply Comments at 3-4.

¹⁴ *Id.*

¹⁵ See FY 2023 NAB Reply Comments at 4-5 (urging the Commission to expand the base of fee payors and explaining that the Commission has the authority to do so).

¹⁶ See *Telesat Can. v. FCC*, 999 F.3d 707, 713 (D.C. Cir. 2021) (“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.”).

and are distributed among those regulatory fee categories that benefit from their activities.¹⁷ Because the Commission has rejected NAB's arguments in favor of adding a fee category for broadband internet access service providers in part on the grounds that these providers offer other services that pay regulatory fees, it is imperative that the regulatory fee structure reflect the total benefits entities that provide these services receive.¹⁸

III. THE COMMISSION SHOULD CLARIFY HOW IT IS CALCULATING EARTH STATION REGULATORY FEES FOR FISCAL YEAR 2024

The Notice includes two regulatory fee proposals for earth stations – one based on the existing methodology for calculating earth station fees and one based on changes proposed in the Space and Earth Station Regulatory Fees NPRM.¹⁹ While the Notice extensively cites that NPRM, it does not account for the Order the Commission released on

¹⁷ See, e.g., FY 2023 NAB Comments at 10-16; Comments of NAB, MD Docket No. 22-301, at 15-22 (Oct. 26, 2022); Notice of Ex Parte from R. Kaplan (NAB) to M. Dortch (FCC), MD Docket No. 22-223 (Aug. 15, 2022) (NAB Aug. 15 Ex Parte); Notice of Ex Parte from R. Kaplan (NAB) to M. Dortch (FCC), MD Docket No. 22-223 (Aug. 9, 2022) (NAB Aug. 9 Ex Parte); Notice of Ex Parte from R. Kaplan (NAB) to M. Dortch (FCC), MD Docket No. 22-223 (July 27, 2022) (NAB July 27 Ex Parte); Notice of Ex Parte from R. Kaplan (NAB) to M. Dortch (FCC), MD Docket No. 22-301 (Dec. 16, 2022) (NAB Dec. 16 Ex Parte).

¹⁸ In FY 2022 and FY 2023, the Commission acknowledged that broadcasters do not benefit from the work USF FTEs performed and exempted broadcasters from the indirect costs associated with the FTEs. The Commission should continue to do so this year if the USF FTEs continue to be indirect. The Notice does not explicitly state that it is continuing this practice. However, the Notice separates the regulatory fee percentage allocations for the Media Bureau into broadcast and cable/DBS subcategories. See Notice at ¶ 25. NAB therefore assumes that the Commission is continuing to exempt broadcasters from the indirect costs. The Commission should confirm how its proposal treats these costs.

¹⁹ See Notice at ¶ 17 (“In this NPRM we propose regulatory fee rates in Appendices A and B, based on our existing methodology, and regulatory fee rates in Appendix E based on the proposals set forth in the Space and Earth Station Regulatory Fees NPRM”); *Assessment and Collection of Space and Earth Station Regulatory Fees for Fiscal Year 2024*; *Review of the Commission’s Assessment and Collection of Regulatory Fees for Fiscal Year 2024*. Notice of Proposed Rulemaking, MD Docket Nos. 24-85, 24-86 (Mar. 13, 2013) (Space and Earth Station Regulatory Fees NPRM).

June 13, 2024 that decided not to adopt the proposed changes to earth station fees.²⁰ It is therefore difficult for commenters to ascertain which earth station regulatory fee proposal they should be commenting on in this proceeding and to determine how the Commission calculated the proposed fee.

Given the Order, NAB assumes that the proposed regulatory fee for earth stations in Appendix E is no longer relevant, and that it should be concerned only with the proposed regulatory fee for earth stations calculated using the existing methodology in Appendices A and B. According to Appendices A and B, earth station fees will increase by nearly 95% in FY 2024. NAB is unable to comment on whether the increase is appropriate under the Commission's existing methodology, because conflicting statements in the Notice and the Space and Earth Station Regulatory Fees NPRM make it very unclear as to how the fee was calculated. The Notice explains that "[u]nder the existing methodology of calculating regulatory fees for space and earth station payors, the Commission multiplies the space station and earth station FTE allocation percentages by the target goal of collections (overall total amount to collect), respectively, to determine the amount to be collected from each regulatory fee category."²¹ However, this explanation that the earth station fee is based on an FTE allocation, contradicts the Space and Earth Station Regulatory Fees NPRM's statement that earth station fees are not assessed "as a percentage of overall bureau

²⁰ See *Assessment and Collection of Space and Earth Station Regulatory Fees for Fiscal Year 2024; Review of the Commission's Assessment and Collection of Regulatory Fees for Fiscal Year 2024*. Report and Order, MD Docket Nos. 24-85, 24-86 at ¶ 2 (June 13, 2024) ("At this time, we defer action on other proposals made in the Notice of Proposed Rulemaking that was adopted and released on March 13, 2024. We are continuing to consider the other proposals in light of the record received on those issues and will decide which, if any, may benefit from further development of the record.") (Order).

²¹ Notice at ¶ 19.

regulatory burdens. Rather, the assessment of regulatory fees for earth stations has been based on the initial per unit fee for earth stations . . . that was established by the Commission in 1995” and has been adjusted “usually only in terms of a percentage change in the fee to reflect the changes in the amount of appropriated S&E each year and the number of anticipated units of payors.”²² The Commission should therefore clarify how the earth station fee in Appendices A and B was calculated to allow for meaningful comment on whether the proposed fee is appropriate.²³

IV. THE COMMISSION SHOULD RECONSIDER ENDING POLICIES THAT MAKE IT EASIER FOR BROADCASTERS TO SERVE THEIR LOCAL COMMUNITIES

The Notice proposes ending temporary regulatory fee relief measures for payors experiencing financial hardship implemented during the COVID-19 pandemic, as well as a policy designed to ease the regulatory burden placed on silent stations seeking regulatory fee relief due to financial hardship. Specifically, the Notice proposes to no longer partially waive section 1.1910 of the Commission’s rules to allow regulatees on “red light” and experiencing financial hardship to nonetheless request relief; set nominal interest rates and waive down payments on installment plans; or permit parties seeking regulatory fee relief to submit additional financial documentation after filing their initial requests.²⁴ With respect to silent stations, the Notice also proposes to end “a policy of presuming that dark or silent stations have experienced financial hardship and therefore merit grant of a request for

²² Space and Earth Station Regulatory Fees NPRM at ¶ 69.

²³ NAB attempted to obtain clarification and was informed by Commission staff that to the extent there is a conflict, a bureau-specific NPRM that describes how regulatory fees are calculated for fee categories in that bureau cannot necessarily be relied upon to accurately explain the calculations.

²⁴ Notice at ¶¶ 42-46.

waiver of regulatory fees on the basis of financial hardship, without requiring submission of evidence of actual financial hardship.”²⁵

NAB agrees with the State Broadcasters Associations that the temporary measures the Commission is considering ending “have enabled payors and the FCC’s staff to craft appropriate relief and avoid costly collections processes and regulatory consequences for distressed payors” while preventing the loss of service to local communities.²⁶ It is therefore in the public interest to make these measures permanent. In the same vein, the Commission’s policy of not requiring silent stations to provide evidence of actual financial hardship to support a request for waiver of regulatory fees on that basis removes burdens on broadcasters that are trying to get back on the air and potential barriers to investment in recently dark or bankrupt stations. The Notice does not suggest that broadcasters are exploiting this policy, and it is difficult to understand the Commission’s rationale for eliminating a policy that serves only to help silent stations get back on the air.²⁷

Fundamentally, as NAB has explained in other proceedings, broadcasters are the only FCC-regulated entities required to provide a free service to the public.²⁸ No other service is required to provide its product directly to the public through local outlets for free, in communities large and small across the country and regardless of those communities’

²⁵ *Id.* at ¶ 47.

²⁶ Joint Reply Comments of the State Broadcasters Associations, MD Docket Nos. 22-301, 23-159, at 18 (June 29, 2024).

²⁷ Notice at ¶ 47 (noting that the policy “is rarely used.”).

²⁸ See, e.g., Reply Comments of NAB, MB Docket No. 24-14, at 2-4 (Apr. 8, 2024) (explaining that broadcasters are required to provide a free service to the public and that “to promote localism effectively, the Commission should focus its efforts on policies that enable broadcasters to compete in today’s hyper-competitive marketplace.”).

capability of generating the advertising revenues needed to support non-subscription services. To promote its localism goals effectively, the Commission should not be making it more difficult for broadcasters to fulfill their obligations and stay on the air or deter investment in dark or bankrupt stations. Indeed, if the FCC has a true interest in communities receiving free, local news and information, it should embrace policies that make it easier for broadcasters to fulfill their regulatory obligations and serve their local communities.

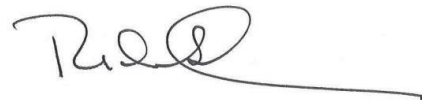
V. CONCLUSION

NAB appreciates the Commission's efforts to improve its regulatory fee process. The Commission should continue to modernize its fee structure and should embrace policies that help struggling broadcasters obtain relief and continue to serve their local communities.

Respectfully submitted,

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July 15, 2024