



May 17, 2019

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street SW
Washington DC 20554

Re: Notice of *Ex Parte* Communication, MD Docket No. 19-105

Dear Ms. Dortch:

On May 15, 2019, Rick Kaplan and the undersigned of the National Association of Broadcasters (NAB) spoke by telephone with Deena Shetler, Sarah Stone, Mika Savir and Roland Helvajian of the Office of Managing Director (OMD) about the above-captioned Notice of Proposed Rulemaking setting forth proposed regulatory fees for Fiscal Year 2019.¹ Specifically, we asked about the proposed fees for radio stations for 2019, which represent a remarkable 20% increase on average over the fees assessed to almost all radio stations in 2018.²

The Notice makes no attempt to explain or justify this increase in the Notice, even though the fee hikes will be an unexpected and substantial burden for many broadcasters. For example, some FM stations will see an increase from \$8,350 to \$10,075, and some AM stations will see an increase from \$2,975 to \$3,550, with proportional increases for nearly all others. To make matters worse, the fee surge comes at a time when the radio industry is losing both audience share and advertising revenues to rapidly expanding digital competitors.³

NAB recognizes that the FCC's total budget for 2019 is increasing compared to 2018, causing fee increases for many industries. However, the \$16.9 million overall increase

¹ *Assessment and Collection of Regulatory Fees for Fiscal Year 2019*, Notice of Proposed Rulemaking, MD Docket No. 19-105 (rel. May 8, 2019) (Notice).

² Notice at Appendix B.

³ *Comments of the National Association of Broadcasters, 2018 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996; Rules and Policies to Promote New Entry and Ownership Diversity in the Broadcasting Services*; MB Docket Nos. 18-349 and 17-289 (Apr. 29, 2019), at 7-25.

equates to only a 5.2% difference,⁴ far less than the fee hikes to be imposed on radio broadcasters. An overall budget hike simply does not explain the newly proposed fee hike for the radio industry.

Perhaps one reason for the proposed skyrocketing fees is the Notice's claim that there are substantially fewer radio stations in 2019 than 2018, and those remaining stations must shoulder the burden of the total fees allocated to the industry.⁵ The radio industry, however, has not contracted nearly in the manner suggested by the Notice. Indeed, the Notice provides no explanation for *its* sizeable drop in the total number of radio stations. Nor does it explain why the total number of stations was largely unchanged for at least the past half-decade but suddenly drops significantly for 2019. In fact, according to the Commission's Media Bureau, the total number of AM and commercial FM radio stations has actually increased by one since last year.⁶ Until this is clarified, there is simply no way broadcasters can meaningfully comment on the proposed fees.

Finally, not only is the information in the Notice insufficient, the little data that is provided is presented in a different manner than before, and without any explanation. For example, the FCC has previously provided the actual number of full-time employees (FTEs) in the Media Bureau, for purposes of allocating fees, but not the percentage of Bureau FTEs allocated to radio service. However, the 2019 Notice helpfully provides the latter data but not the former, making it impractical to compare the number of FTEs devoted to radio service year over year, or discern any correlation between the fees and the "benefits provided to the payor of the fee by the Commission's activities," as required under the Communications Act.⁷

These are only a few examples of the Notice's shortfalls that make it virtually impossible for interested parties to usefully comment. NAB appreciates the need to confine our comments to issues within the four corners of the Notice, but the current notice does not meet the barest of standards to which the FCC holds itself and to which Congress holds the Commission.⁸ NAB suggest that the FCC issue another notice that better explains any changes to the fees from the prior year or years, and includes updated numbers so that

⁴ The FCC's 2018 budget was \$322,035,000, compared to \$339,000,000 for 2019.

Assessment and Collection of Regulatory Fees for Fiscal Year 2018, Report and Order and Notice of Proposed Rulemaking, MD Docket No. 18-175 (May 22, 2018) at 2; Notice at 2.

⁵ Notice at Appendix A (total 9,458 AM and FM station FY 2019 payment units) compared to 2018 Order at Appendix A (total 10,255 AM and FM station FY 2018 payment units).

⁶ As of March 31, 2019, there were a total of 11,375 AM and commercial FM stations, compared to 11,374 as of March 31, 2018. Public Notice, *Broadcast Station Totals as of March 31, 2019* (Apr. 2, 2019); Public Notice, *Broadcast Station Totals as of March 31, 2018* (Apr. 9, 2018), both available at <https://www.fcc.gov/edocs/search-results?t=advanced&titleText=broadcast%20station%20totals>.


⁷ 47 U.S.C. § 159(d).

⁸ See *Nuvio Corp. v. FCC*, 473 F.3d 302, 310 (D.C. Cir. 2006) (APA requires notice of "either the terms or substance of the proposed rule or a description of the subjects and issues involved," 5 U.S.C. § 553(b)(3), and that notice "be sufficient to fairly apprise interested parties of the issues involved.").

stakeholders can have some level of confidence in the millions of dollars they are being assessed for their regulation.

NAB appreciates the opportunity to provide our views on this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Larry Walke".

Larry Walke
Associate General Counsel
Legal and Regulatory Affairs
National Association of Broadcasters

cc: Deena Shetler
Sarah Stone
Mika Savir
Roland Helvajian