

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

In the Matter of:	)	
	)	
Assessment and Collection of Regulatory Fees	)	MD Docket No. 19-105
For Fiscal Year 2019	)	
	)	

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

**I. INTRODUCTION AND SUMMARY**

With the passage of the 2018 RAY BAUM’S Act, Congress intended to better calibrate the regulatory fee system in line with the “benefits provided to the payor” of the fees.<sup>1</sup> To do so, the Act both untethers regulatory fees from the functions performed by employees in the Commission’s “core” bureaus and removes the prior reference to “licensees” when designating which entities must pay regulatory fees. However, the above-captioned NPRM fails to meet the Act’s goal and only further submerges the process in ambiguity.<sup>2</sup> The NPRM imposes a steep increase in radio station regulatory fees disproportionate to other fee payor categories, as well as the increase in the Commission’s overall budget. The proposed radio fees are also based on flawed data. In addition, the NPRM does not explain significant changes in regulatory fees for both satellite and VHF television stations. The Commission must address the ambiguities in both the radio fees and the new fees for satellite and VHF stations to meet its statutory obligation to entities the FCC deems responsible for paying regulatory fees.

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<sup>1</sup> 47 U.S.C. § 159(d).

<sup>2</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2019*, Notice of Proposed Rulemaking, MD Docket No. 19-105 (May 8, 2019) (NPRM).

## **II. THE COMMISSION MUST CLARIFY THE PROPOSED DISPROPORTIONATE RADIO REGULATORY FEE INCREASES**

The record supports NAB's view that increasing the radio industry regulatory fees by 18-20 percent is unjustified and disproportionate to the overall 5.3 percent increase in the FCC's budget.<sup>3</sup> The NPRM's inexplicable decrease in radio fee payment units of nearly 800 radio stations from 2018 is inaccurate and reflects a flawed methodology for calculating radio stations.<sup>4</sup> Additionally, Media Bureau regulatees responsible for paying the Bureau's allocation of the FCC's total fees are unfairly burdened by the increasing number of "indirect" Full Time Employees ("FTEs") and unexplained allocation of "direct" FTEs, on which regulatory fee calculations depend. Given these failings, stakeholders have not received a meaningful opportunity to comment on the NPRM and cannot exercise their right to do so without receiving clarification and corrected data from the Commission.<sup>5</sup>

### **A. The Data Used to Calculate Payment Units for Radio is Inaccurate and Fatally Flawed**

The NPRM's baffling reduction of nearly 800 payment units in the radio industry and subsequent hike in regulatory fees is based on flawed data.<sup>6</sup> As NASBA notes, this makes little sense as the number of radio payment units in 2019 dropped dramatically from the "relatively steady number" of units in the past six years.<sup>7</sup> As a result, remaining stations must shoulder a larger share of fees allocated to the radio industry. For example, the number of AM Class B

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<sup>3</sup> Comments of the National Association of Broadcasters (NAB), MD Docket No. 19-105 (filed June 7, 2019); Joint Comments of the Named State Broadcasters Associations (NASBA), MB Docket No. 19-105 (June 7, 2019).

<sup>4</sup> NPRM at Appendix D.

<sup>5</sup> *Rural Cellular Ass'n v. FCC*, 588 F.3d 1095, 1101 (D.C. Cir. 2009) (stating that under the Administrative Procedure Act, the opportunity for comment "must be a meaningful opportunity").

<sup>6</sup> NAB Comments at 5.

<sup>7</sup> NASBA Comments at 5.

stations decreased by 8.8 percent and the number of AM Class D stations decreased by a whopping 16.5 percent.<sup>8</sup> The NPRM bases its calculations on 9,528 radio payment units for 2019, which bears no relation to published data from the Media Bureau reporting 11,363 radio payment units within the same time frame.<sup>9</sup> The NPRM merely issues a chart of sharply higher regulatory fees for radio, without attempting to explain this discrepancy and forcing commenters to theorize about potential explanations. Perhaps the stations lost their way in the Bermuda Triangle, or disappeared in a “Sudden Departure.”<sup>10</sup>

NAB earlier discussed the possibility that the sharp decrease in payment units may be partially due to the removal of stations that did not pay their regulatory fees in 2018.<sup>11</sup> If true, this fundamentally unfair system would reward delinquent stations by forcing compliant stations to subsidize fees while these stations continue operating and retaining their licenses.<sup>12</sup> Clearly, the Commission should not punish broadcasters who responsibly remit their regulatory fees.

NASBA suggests that some of the discrepancy could be due to radio stations falling into a fee-exempt category such as non-profit entities holding commercial radio licenses.<sup>13</sup> However, as NASBA states, “[F]or that to explain the entire difference would require that one out of every six commercial radio stations in the country be licensed to a non-profit entity.”<sup>14</sup> This is simply not the case; yet, due to the NPRM’s opacity, we are forced to base our

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<sup>8</sup> *Id.*

<sup>9</sup> *Broadcast Station Totals as of March 31, 2019*, News Release (Apr. 2, 2019) available at: <https://www.fcc.gov/document/broadcast-station-totals-march-31-2019>.

<sup>10</sup> See <https://www.hbo.com/the-leftovers>.

<sup>11</sup> NAB Comments at 5. Again, this “possibility” is based on rumor, which is all parties have to go on due to the lack of proper explanation in the NPRM.

<sup>12</sup> *Id.* at 6.

<sup>13</sup> NASBA Comments at 6.

<sup>14</sup> *Id.*

comments on conjecture. In any event, NASBA makes a worthy point. Non-exempt regulatees should be responsible for paying their allocated regulatory fees, but the FCC's costs to regulate fee-exempt broadcast stations should be borne by all Commission regulatees instead of only Media Bureau regulated entities, or worse, by other broadcasters alone.<sup>15</sup>

NAB simply asks the Commission to show its homework by explaining its calculations of the radio regulatory fees, instead of merely issuing a chart of final fees. It is frustrating that the Commission has not seen fit to issue an interim public notice or some other document with additional data that could help inform stakeholders' responses to the NPRM. Given the apparent inaccuracy of the NPRM's count of radio station fee payors, and the lack of information and clarity, affected parties are simply unable to provide meaningful input into the regulatory fee process.

**B. Media Bureau Should Not Shoulder a Disproportionate Share of Indirect Full Time Employees**

In addition to the inaccurate radio data discussed above, we agree with NASBA that the current system of allocating indirect FTEs among the core bureaus for purposes of calculating regulatory fees likely unfairly impacts Media Bureau regulatees. Since indirect FTE costs are assessed in proportion to the number of direct FTEs in each core bureau, the "regulatees of the bureaus that have the most employees end up paying more than the regulatees of other bureaus," including "overhead" costs like the Commission's new office move.<sup>16</sup> This distribution could be justifiable if radio stations and other Media Bureau regulatees were the actual "beneficiaries" of 36 percent of indirect FTE activity; however, the Commission consistently fails to provide a clear breakdown of the allocation of direct and

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<sup>15</sup> *Id.* at 13.

<sup>16</sup> *Id.* at 8.

indirect FTEs, as well as direct FTEs within the Media Bureau, making it impossible for stakeholders to provide informed feedback.

For example, in 2019 the Commission reassigned 95 FTEs to the newly created Office of Economics and Analytics (“OEA”). However, the Commission fails to detail how many Media Bureau direct FTEs were part of this process. As NASBA notes, given that Media Bureau regulatees are responsible for 36 percent of the FCC’s total fee allocation, if more than a certain number of Bureau FTEs were reassigned to OEA, then Media Bureau regulatees should see a fee decrease.<sup>17</sup> Again, the NPRM fails to explain its methodology behind the FTE redistribution, making it impossible to meaningfully comment on the burden shift.

### **III. THE FCC SHOULD CAREFULLY CONSIDER THE POTENTIAL IMPACT OF THE PROPOSED CHANGES TO REGULATORY FEES FOR CERTAIN TELEVISION STATIONS**

#### **A. Satellite Stations May Be Unduly Harmed by the Proposed Changes to the Fee System**

Historically, regulatory fees for full-power television stations turned on a station’s Designated Market Area (DMA), with stations in higher ranked DMAs paying larger fees than stations in lower ranked markets.<sup>18</sup> In the NPRM, the Commission proposes to alter this practice to assess TV fees based on the population covered by a television station’s contours, with the goal of more accurately reflecting the actual market served by a full-power station for purposes of calculating their regulatory fees, similar to the process for radio fees.<sup>19</sup> In doing so, however, the Commission perfunctorily applies this new approach to satellite television

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<sup>17</sup> *Id.* at 10–11.

<sup>18</sup> NPRM at ¶ 20.

<sup>19</sup> NPRM at ¶¶ 20-21. The Commission plans to phase in implementation of a purely population-based fee by first imposing an interim blended fee based on an average of the DMA methodology and the population covered by a station.

stations, which previously incurred a reduced flat regulatory fee.<sup>20</sup> As a result, the regulatory fees for some satellite stations will increase exponentially to amounts that could impose a substantial financial hardship.<sup>21</sup>

The Commission fails to adequately explain this change, and implementation may be inconsistent with the purpose and regulatory demands of satellite stations on Commission staff.<sup>22</sup> As Nexstar/Gray notes, the rationale for assessing a reduced flat fee on satellite stations, separate from the fee for full power stations, remains no less sound than when the Commission adopted this approach in 1995.<sup>23</sup> First, satellite stations consume only a very small percentage of the FCC's resources, and require much less oversight than full power stations.<sup>24</sup> In fact, recent changes to the procedures for satellite television construction permits and the reauthorizing of stations that are assigned or transferred have further reduced the need for FCC attention to satellite stations to almost nothing.<sup>25</sup> Thus, given the statutory requirement that regulatory fees must reasonably relate to the benefits provided to the payor of fees by the FCC's activities,<sup>26</sup> there is no reason to change the way fees are imposed on satellite stations, and certainly no basis for increasing such fees.

Second, by definition, satellite stations may only be used to reach viewers in remote areas that are underserved by full powered stations, and where no other broadcaster is ready

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<sup>20</sup> Comments of Ramar Communications, Inc., MD Docket No. 19-105, at 2 (June 7, 2019) (satellite station regulatory fee was \$1,500 in 2018).

<sup>21</sup> *Id.* at 4; Joint Comments of Nexstar Broadcasting, Inc. & Gray Television Inc., MD Docket No. 19-105, at 4 n. 11, (June 7, 2019) (Nexstar/Gray Comments).

<sup>22</sup> *Id.*

<sup>23</sup> Nexstar/Gray Comments at 2-3.

<sup>24</sup> *Id.* at 4-5.

<sup>25</sup> *Id.* at 5.

<sup>26</sup> 47 U.S.C. § 159(d).

or able to construct or purchase and operate the satellite as a full-power station.<sup>27</sup> Indeed, the Commission itself found in 1995 that applying the full-power television station fees to satellite stations “would place in unfair and illogical burden on” such small market licensees.<sup>28</sup> As Ramar states, satellite stations are typically used to rebroadcast the programming of a parent station that serves the primary city in a market, and are not considered independent stations by competitors, advertisers or program suppliers.<sup>29</sup> Simply put, modifying regulatory fees for satellite stations as proposed would essentially punish these licensees for providing service in rural and economically depressed areas.<sup>30</sup>

Finally, similar to the NPRM’s failing concerning radio fees, the Commission provides absolutely no explanation for changing course regarding satellite station fees. The entirety of the relevant text in the NPRM is four words: “including each satellite station,” within a short paragraph discussing the proposed changes to fees for full-power stations.<sup>31</sup> Nowhere else does the NPRM discuss this substantial change. Instead, the Commission simply issues a chart listing the new fees for satellite stations. Clearly, more is required to provide parties a reasonable opportunity to comment on the FCC’s rationale, and the NPRM’s indifference also may raise concerns whether sufficient notice of the change was provided.<sup>32</sup>

#### **B. The Proposed Fee System May Unfairly Harm VHF Stations**

The Commission should also further consider the impact of the proposed changes to television regulatory fees on VHF stations. Specifically, the new methodology may unfairly

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<sup>27</sup> 47 C.F.R. § 73.3555 n.5.

<sup>28</sup> *Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, ¶81 (1994).

<sup>29</sup> Ramar Comments at 3.

<sup>30</sup> Nexstar/Gray Comments at 6.

<sup>31</sup> NPRM at ¶ 21.

<sup>32</sup> Nexstar/Gray Comments at 7-8.

burden VHF stations that are operating at power levels above the normal maximum for their class in order to overcome the limits of certain VHF signals in a digital world.<sup>33</sup> As MBC explains, the FCC's proposal to base regulatory fees on the population within a station's projected noise-limited contour may not accurately reflect the actual service provided by such VHF stations,<sup>34</sup> given that following the digital transition, some VHF channels have faced challenges from environmental noise that can degrade VHF signal quality.<sup>35</sup>

Specifically, some VHF stations have implemented power increases beyond the maximum levels normally allowed under the Commission's rules, in order to boost signal strength to overcome man-made noise sources and restore service within a station's core market.<sup>36</sup> However, increasing power also expands the predicted reach of a station's contour, even though reception by distant viewers is typically poor due to certain technical limits of VHF signals, the high levels of environmental noise that exist on the VHF band and interference from other VHF stations that have implemented similar power increases. Thus, under the proposed approach, regulatory fees for VHF stations are based on viewer numbers that include theoretical distant viewers who are unable to actually view the station.<sup>37</sup> As a result, some VHF stations are scheduled to incur drastically higher regulatory fees.

The regulatory fee proposal should be reconsidered for such VHF stations. NAB submits that a more equitable approach would be to calculate fees for these stations based on a station's contour pursuant to the Commission's original allotment of technical

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<sup>33</sup> Comments of Maranatha Broadcasting Company, Inc. (MBC), MD Docket No. 19-105 (June 7, 2019); Comments of PMCM TV, LLC, MD Docket No. 19-105 (June 7, 2019).

<sup>34</sup> MBC Comments at 3.

<sup>35</sup> PMCM Comments at 3.

<sup>36</sup> *Id.* at 2.

<sup>37</sup> *Id.* at 3.



parameters during the DTV transition. These parameters, including effective radiated power, were intended to allow the station's post-transition noise-limited service contour to approximately replicate the station's pre-transition analog Grade B coverage contour.<sup>38</sup> The population within this initial contour of a digital VHF station is a more accurate measure of a station's actual coverage. Again, similar to satellite stations, the new regulatory fee system will essentially punish VHF broadcasters for trying to provide a usable signal to parts of their market.

#### **IV. CONCLUSION**

Given the flawed data and lack of transparency contained within this NPRM, NAB renews its call for further explanation of the proposed regulatory fees for the 2019 fiscal year. The radio industry faces a steep increase disproportionate to the overall budget. Additionally, both satellite and VHF television stations are unfairly impacted by significant fee structure changes, without any explanation. Until these issues are adequately addressed, parties

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<sup>38</sup> *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order, 13 FCC Rcd 857 (1998), at Appendix B.

cannot provide the critical information the Commission requires to make regulatory fee determinations consistent with the will of Congress.

Respectfully submitted,

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BROADCASTERS**

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

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Rick Kaplan  
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June 24, 2019