

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

In the Matter of:	)	
	)	
Review of the Commission’s Assessment and Collection of Regulatory Fees	)	MD Docket No. 22-301
	)	
Assessment and Collection of Regulatory Fees For Fiscal Year 2023	)	MD Docket No. 23-159
	)	
	)	

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

**I. INTRODUCTION AND SUMMARY**

The National Association of Broadcasters (NAB)<sup>1</sup> submits these brief reply comments regarding the Commission’s Notice of Proposed Rulemaking concerning setting regulatory fees for Fiscal Year 2023.<sup>2</sup>

NAB and other commenters support the substantial improvements the Commission has made to its regulatory fee methodology to more accurately account for the work performed by FTEs in the non-core bureaus and offices of the Commission.<sup>3</sup> NAB also agrees

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<sup>1</sup> 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.

<sup>2</sup> *Review of the Commission’s Assessment and Collection of Regulatory Fees; Assessment and Collection of Regulatory Fees for Fiscal Year 2023*, Report and Order and Notice of Proposed Rulemaking, MD Docket Nos. 22-301, 23-159 (rel. May 15, 2023) (NPRM or Notice).

<sup>3</sup> See Comments of NAB, MD Docket Nos. 22-301, 23-159, at 6-10 (June 14, 2023) (urging Commission to move forward with its proposal to reallocate certain indirect FTEs as direct for regulatory fee purposes) (NAB Comments); Comments of Intelsat License LLC, MD Docket Nos. 22-301, 23-159, at 2-4 (June 14, 2023) (urging Commission to adopt proposal to ensure fees comply with the Ray Baum’s Act) (Intelsat Comments); Comments of the Satellite

with other commenters that the Commission's efforts to modernize its fee structure and to ensure compliance with the statute should not end with the modifications proposed in the Notice.<sup>4</sup> Rather, the Commission should continue to review regularly the work performed by FTEs in the non-core bureaus and offices of the Commission and consider whether additional FTEs should be allocated as direct for regulatory fee purposes. In addition, NAB agrees that to ensure the fairness and sustainability of the Commission's regulatory fee system, the Commission must continue to consider expanding the base of fee payors to include other beneficiaries of significant amounts of work the Commission performs, regardless of whether such work is performed in a core or non-core bureau.<sup>5</sup> At a minimum, as explained in NAB's initial comments, the Commission must also ensure that its fee methodology properly accounts for the benefits that even existing fee payors receive from the Commission's non-high cost Universal Service Fund activities by directly allocating the USF FTEs to such fee categories.<sup>6</sup>

## **II. THE RECORD SUPPORTS THE COMMISSION'S PROPOSED REALLOCATION OF FTES IN OEA, OGC, AND PSHSB AND FURTHER EFFORTS TO MODERNIZE THE COMMISSION'S FEE STRUCTURE**

The initial comments in this proceeding make clear that the Commission should move forward with its proposal to reallocate certain indirect FTEs in the Office of Economics and

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Operators, MD Docket Nos. 22-301, 23-159, at 3-4 (June 14, 2023) (supporting proposal to reallocate indirect FTEs as direct) (Satellite Operators' Comments)

<sup>4</sup> See NAB Comments at 8 (urging Commission to perform a similar analysis on an annual basis); Satellite Operators' Comments at 4 (urging Commission to assess indirect FTEs annually); Intelsat Comments at 3 (recommending that the Commission evaluate indirect FTE allocations in future regulatory fee rulemakings annually or biannually to comply with statutory requirements)

<sup>5</sup> See Satellite Operators' Comments at 4-10 (encouraging Commission to issue an FNPRM to lay groundwork for expanding the base of payors.)

<sup>6</sup> See NAB Comments at 10-17.

Analytics (OEA), Office of General Counsel (OGC), and Public Safety and Homeland Security Bureau (PSHSB) as direct for regulatory fee purposes. Several commenters agree with NAB that the Commission's proposal brings the Commission closer to compliance with its statutory mandate, and is fair, administrable, and sustainable<sup>7</sup>. Ultimately, the Commission's more "granular approach" to allocating the work performed by FTEs in these bureaus and offices results in a more balanced and rational fee structure that "more closely aligns recovery of costs with those who benefit from Commission activities."<sup>8</sup>

Commenters also agree that this year's proposed reallocations should be the beginning, and not the end, of the Commission's efforts to modernize its regulatory fee structure.<sup>9</sup> The number of direct FTEs in the Commission has an enormous impact on the apportionment of regulatory fees because regulatory fees are largely determined by the percentage of Commission direct FTEs attributed to each industry. This year's fee proposal improves the Commission's fee structure and better reflects the benefits and burdens imposed by each industry by increasing the percentage of direct FTEs by nineteen percent. Given the importance of the number of direct FTEs to the Commission's methodology, the Commission should perform a similar assessment each fiscal year and endeavor to "identify additional indirect FTEs that can be moved into the direct column."<sup>10</sup> Other commenters also support NAB's position that this analysis 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

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<sup>7</sup> See Intelsat Comments at 2-4; Satellite Operators' Comments at 3-4.

<sup>8</sup> Satellite Operators' Comments at 3.

<sup>9</sup> See Satellite Operators' Comments at 4; Intelsat Comments at 3.

<sup>10</sup> Satellite Operators' Comments at 4.

payors.<sup>11</sup> As Intelsat observes, FTE time “does not need to be ‘solely focused on regulatory fee payors’ in order to bring substantial benefit to them”<sup>12</sup> and those benefits can and should be reflected in the number of direct FTEs attributed to them.

Moreover, to comply fully with its statutory mandate, the Commission must also continue to consider expanding the base of fee payors to capture entities that benefit from the Commission’s activities and resources but do not pay regulatory fees that reflect those benefits. As multiple commenters point out, the NPRM acknowledges that significant amounts of Commission work is dedicated to equipment authorizations, yet to date the Commission has resisted adding a fee category for equipment manufacturers.<sup>13</sup> Similarly, despite the overwhelming emphasis the Commission places on its broadband priorities, the Commission continues to choose to classify work performed in furtherance of those priorities as indirect, rather than adding a fee category for broadband service providers.

NAB agrees with commenters that the Commission has clear authority, and indeed the responsibility, to broaden the base of payors to include these entities and that there are administratively feasible ways to do so.<sup>14</sup> Even those commenters opposed to imposing

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<sup>11</sup> See NAB Comments at 8; Intelsat Comments at 4-5.

<sup>12</sup> Intelsat Comments at 5.

<sup>13</sup> See Intelsat Comments at 5 (noting that the Commission found that “a significant amount of FTE time [in OET] is devoted to equipment authorization,’ which indicates that it would be appropriate to include a regulatory fee category for equipment authorization.”); Satellite Operators’ Comments at 9.

<sup>14</sup> See Comments of NAB, MD Docket Nos. 21-190, 22-223, at 18-23 (July 5, 2022) (explaining basis for Commission to add fee category for broadband service providers); Intelsat Comments at 5 (explaining that FCC’s concern that adding a fee category relating to equipment authorization would transform OET into a core bureau is misplaced because “the current statute declines to specify which bureaus and offices should determine fee payor status” and “does not require that the FCC reassign all FTEs in a bureau as direct if it establishes a new payor category.”); Satellite Operators’ Comments at 4-10 (explaining the

regulatory fees on edge providers or Big Tech cannot dispute that the Commission exercises regulatory authority over equipment manufacturers and broadband service providers and expends numerous resources on equipment authorization and broadband service issues. It is indisputable that such entities also actively participate in Commission proceedings and benefit from the Commission’s work.<sup>15</sup> 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,<sup>16</sup> 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. It is simply unfair and unsustainable to force broadcasters and other regulatees to subsidize the ever-growing benefits that others in the telecommunications marketplace receive.

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Commission’s “authority to create new fee categories to encompass entities that are currently reaping the benefits of Commission labor without paying their share of the costs and should initiate an FNPRM to explore how best to establish and administer these fee categories.”).

<sup>15</sup> See Comments of TechFreedom, MD Docket Nos. 22-301, 23-159 (June 14, 2023) (arguing that the “FCC lacks the statutory authority to require entities it neither licenses nor regulates to pay regulatory fees.”). For the reasons set forth in prior filings, NAB disagrees with TechFreedom that there is no basis for the Commission to assess fees on Big Tech companies and other unlicensed spectrum users that plainly benefit from the Commission’s rulemaking and other activities. See, e.g., Reply Comments of NAB, MD Docket No. 21-190, at 3, 8-16 (Nov. 5, 2021) (explaining that 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 and noting that the D.C. Circuit Court of Appeals has explicitly 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).

<sup>16</sup> 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. § 159d). This suggests benefits—not licenses—should be the touchstone for whether it is reasonable for the FCC to collect regulatory fees.”).

In the absence of a broadband service provider fee category, the Commission should reclassify the USF FTEs as direct as NAB has proposed. As NAB explained in its comments, the work of these FTEs is not reflected in the direct FTE counts of existing fee payors that plainly benefit from the USF FTEs' activities and the corresponding percentage of Commission costs that they are required to bear.<sup>17</sup> Reclassifying the USF FTEs as direct and distributing them among the fee categories that benefit from their activities will ensure that those regulatory fee payors that benefit bear their full fair share of the Commission's costs as required by statute.<sup>18</sup>

### III. CONCLUSION

The Commission should adopt its proposal to modernize its regulatory fee structure by reclassifying certain indirect FTEs as direct for regulatory fee purposes. In addition, the Commission should work to further refine its regulatory fee process by continuing to assess the work performed by FTEs in the non-core bureaus and offices of the Commission, reclassifying the USF FTEs as NAB has proposed, and carefully considering expanding the base of payors.


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<sup>17</sup> See NAB Comments at 10-16.

<sup>18</sup> If the Commission chooses to continue to classify the USF FTEs as indirect, it should treat FTEs in the non-core bureaus and offices that can be identified as working on non-high cost USF and other affordability programs in the same manner and exempt broadcasters from paying for those indirect costs as well. There is no justification for why FTEs in other bureaus and offices of the Commission working on the same issues should be treated any differently or for why broadcasters should not also be exempted from those indirect costs.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Rick Kaplan", with a long horizontal line extending to the right from the end of the signature.

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Rick Kaplan  
Larry Walke  
Emily Gomes

June 29, 2023