

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

In the Matter of)	
)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2021)	MD Docket No. 21-190
)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2022)	MD Docket No. 22-223
)	
)	

To: The Commission

**JOINT COMMENTS OF THE
STATE BROADCASTERS ASSOCIATIONS**

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The Alabama Broadcasters Association, Alaska Broadcasters Association, Arizona Broadcasters Association, Arkansas Broadcasters Association, California Broadcasters Association, Colorado Broadcasters Association, Connecticut Broadcasters Association, Florida Association of Broadcasters, Georgia Association of Broadcasters, Hawaii Association of Broadcasters, Idaho State Broadcasters Association, Illinois Broadcasters Association, Indiana Broadcasters Association, Iowa Broadcasters Association, Kansas Association of Broadcasters, Kentucky Broadcasters Association, Louisiana Association of Broadcasters, Maine Association of Broadcasters, MD/DC/DE Broadcasters Association, Massachusetts Broadcasters Association, Michigan Association of Broadcasters, Minnesota Broadcasters Association, Mississippi Association of Broadcasters, Missouri Broadcasters Association, Montana Broadcasters Association, Nebraska Broadcasters Association, Nevada Broadcasters Association, New Hampshire Association of Broadcasters, New Jersey Broadcasters Association, New Mexico

Broadcasters Association, The New York State Broadcasters Association, Inc., North Carolina Association of Broadcasters, North Dakota Broadcasters Association, Ohio Association of Broadcasters, Oklahoma Association of Broadcasters, Oregon Association of Broadcasters, Pennsylvania Association of Broadcasters, Radio Broadcasters Association of Puerto Rico, Rhode Island Broadcasters Association, South Carolina Broadcasters Association, South Dakota Broadcasters Association, Tennessee Association of Broadcasters, Texas Association of Broadcasters, Utah Broadcasters Association, Vermont Association of Broadcasters, Virginia Association of Broadcasters, Washington State Association of Broadcasters, West Virginia Broadcasters Association, Wisconsin Broadcasters Association, and Wyoming Association of Broadcasters (collectively, the “State Associations”), by their attorneys in this matter, hereby file these Joint Comments in response to the Commission’s Report and Order and Notice of Proposed Rulemaking released June 2, 2022 in the above-captioned proceeding.¹

INTRODUCTION AND SUMMARY

The increase in regulatory fees that broadcasters have been assessed for FY2022 almost equals the *entire* increase in the Commission’s budget over FY2021, yet there is no explanation in the *FY2022 NPRM* as to why. This omission greatly handicaps broadcasters in their efforts to navigate the opaque fee-setting process and provide the Commission with answers for how it can comply with its statutory obligation to distribute the regulatory fee burden fairly. Examination of available information from the Commission’s budget reveals that the source of the increase is likely the FCC’s broadband work, which the Commission has previously acknowledged does not

¹ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2022*, Report and Order and Notice of Proposed Rulemaking, MD Docket No. 22-223, FCC 22-39 (“*FY2022 NPRM*”) (rel. June 2, 2022).

benefit broadcasters,² but for which the Commission appears to be assessing broadcasters in FY2022 regardless.

The State Associations appreciate the Commission conducting a rulemaking last year aimed at making its regulatory fee assessment process more fair and in line with the RAY BAUM'S Act of 2018 ("RBA").³ However, the Commission has not yet acted on most proposals in that proceeding. It therefore appears that the Commission needs a new tool, in situations where it declines to create a new fee category, to deal with intersectional work that involves FTEs from non-core and core bureaus working together collaboratively or across bureau lines for the benefit of the regulatees of only a few of the core bureaus.

In these situations where ongoing work by an identifiable number of indirect FTEs benefits regulatees in only a few of the core bureaus, the Commission should treat those FTEs as indirect FTEs only for the bureaus whose regulatees benefit from that work. Simply reclassifying core bureau direct FTEs as indirect has resulted in unfair reallocations of the costs of regulating certain classes of regulatees onto the shoulders of completely unrelated regulatees, such as broadcasters. This is not tenable, particularly where broadcasters are one of the few groups of Commission regulatees that do not have a subscription-based model which allows them to recoup those misaligned costs by merely adding a line item to their bills and passing that cost directly to the public.

The Commission's binary classification of its employees as either direct, and the full responsibility of the appropriate payors of one core bureau, or indirect, and the responsibility of

² See *Assessment and Collection of Regulatory Fees for Fiscal Year 2021*, Report and Order and Notice of Proposed Rulemaking, 36 FCC Rcd 12990, 12998 (2021) ("*FY2021 Fee Order*").

³ Pub. Law No. 115-141 § 102, 132 Stat. 348, 1082-86 (2018) (codified at 47 U.S.C. §§ 159 and 159A).

all categories of payors in all four core bureaus, is becoming an increasingly crude tool with the growth of intersectional and cross-bureau work at the FCC, and does not align with the various new ways the Commission regulates certain of its regulatees. To address this increasingly consequential failing, a hybrid designation should be employed instead. With such a tool in place, the Commission could more fairly distribute the costs of certain of its work that it has already acknowledged is unfair to charge to broadcasters because broadcasters do not benefit from that work.⁴

In addition, given the financial hardship annual regulatory fees pose to small regulatees, when setting the amount of its de minimis fee exemption, the Commission should make a searching examination of the true costs of collection and ensure it has accounted for all of them in setting the threshold below which fees are not collected because the expense of collecting the fee is greater than the fees that are due. While only the Commission has complete information on what these costs would be, it should include potentially overlooked costs, such as the added costs of helpdesk services and other Commission employee time that would be disproportionately spent providing technical assistance or other advice to these small regulatees, who typically have a lower level of experience with the Commission's fee collection process and systems. Similarly, it should include the projected costs of dedicating additional Commission resources to processing requests for fee waivers and deferrals that such regulatees would submit

⁴ See, e.g., *FY2021 Fee Order* at 12998 ¶ 16 (“The maps required by the Broadband DATA Act pertain to ‘broadband internet access service,’ which the broadcasters do not offer. Therefore, in this unique instance, we will exclude ‘Media Services’ licensees from recovery of the \$33 million earmark for Broadband DATA Act implementation.”) (*citations omitted*); *Assessment and Collection of Regulatory Fees for Fiscal Year 2016*, Report and Order, 31 FCC Rcd 10339, 10348 ¶ 24 (2016) (“ITTA’s proposal to reassign some or all of the Wireline Competition Bureau FTEs working on universal service as indirect FTEs ignores licensees not involved in high-cost and Lifeline universal service issues, such as radio and television broadcasters, that would be responsible for contributing to the cost of those Wireline Competition Bureau FTEs.”).

in the absence of being designated as below the de minimis threshold. Finally, the Commission should include at least a portion of the cost of its own employees who calculate penalties and bill delinquent payors, and any third-party collection and payment processing costs, all of which would be disproportionately increased but for a higher de minimis threshold.

I. The Large Increases Proposed for Broadcast Regulatory Fees in 2022 Are Indefensible and the Product of an Opaque and Flawed Regulatory Fee Assessment Scheme

In the *FY2022 NPRM*, the Commission states that it is required to collect \$381,950,000 in regulatory fees for FY2022, and that this amount represents a modest 2.13% increase over its FY2021 appropriation of \$374,000,000.⁵ However, as shown in the excerpt from Appendix B of the *FY2022 NPRM* below, the fee amounts the FCC expects to charge payors in broadcast fee categories this year reveals an average fee increase for broadcasters of 13% over their FY2021 fee amounts – an increase that is approximately *six times* greater than the increase in the FCC’s budget overall. In absolute numbers, the FCC’s FY2022 budget increase over FY2021 totals \$7,950,000. Incredibly, based on the huge increases proposed for broadcast payors this year, the FCC proposes to raise \$7,315,881 more from broadcasters in FY2022 than in FY2021 – an amount **almost equal to the entire increase in the FCC’s budget this year.**

Fee Category	FY 2021 Revenue Estimate	Expected FY 2022 Revenue	Y/Y Change
AM Class A	290,745	326,740	35,995
AM Class B	3,610,880	4,054,050	443,170
AM Class C	1,291,125	1,450,360	159,235
AM Class D	4,267,835	4,793,460	525,625
FM Classes A, B1 & C3	8,886,395	10,109,400	1,223,005

⁵ *FY2022 NPRM* at 1 and n.2.

FM Classes B, C, C0, C1 & C2	11,100,080	12,378,460	1,278,380
AM Construction Permits	3,660	3,450	-210
FM Construction Permits	58,850	19,360	-39,490
Digital Television (including Satellite TV)	25,416,380	28,897,591	3,481,211
Digital TV Construction Permits	20,400	20,840	440
LPTV/Class A/Translators FM Trans/Boosters	1,649,920	1,858,440	208,520
Totals:	56,596,270	63,912,151	7,315,881

There is no discussion in the *FY2022 NPRM* alerting broadcasters as to why the increase for them is so much higher than for the Commission as a whole or for other regulatees. As a result, the State Associations again find themselves in the position of having to peer into a black box to ferret out the source of the increase in their fees and attempt to provide meaningful commentary in this proceeding.

In an effort to do so, the State Associations reviewed the FCC’s 2022 Budget Estimates to Congress, but gained only a little additional insight. The seemingly helpfully named “Crosswalk – Summary of Changes for Regulatory Fees”⁶ purports to show the FY2021-enacted regulatory fee requirement for each Commission office and bureau, the FY2022 additions to (or subtractions from) the FY2021 amount applicable to each office and bureau, and the final FY2022 regulatory fee requirement for that office or bureau. For the Media Bureau, the Crosswalk shows that the Base Amount remained the same for FY2022 as it was for FY2021 –

⁶ Federal Communications Commission, 2022 Budget Estimates to Congress, May 2021, at 29 (available at <https://docs.fcc.gov/public/attachments/DOC-372853A1.pdf>) (last visited July 1, 2022).

\$22,512,000. To that Base Amount, the Commission added an additional \$335,000 which is identified only as “Base Realignments.” The Commission then added three more amounts that are somewhat better described: a 2.7% salary increase totaling \$666,000, a 2% Non-Salary Inflationary Increase that totals \$17,000, and a One-Time Request of \$1,250,000, which appears to be for Media Ownership and Diversity Studies described elsewhere in the Budget Estimates to Congress. In all, the Budget Estimates reflect total additions to the FY2021 Base Amount for the Media Bureau of \$2,268,000, a roughly 10% increase over FY2021.

Since broadcasters account for less than half of the Media Bureau’s fee requirement, one might expect any addition to broadcaster fees over FY2021 to total no more than \$1,040,505 (45.9% of \$2,268,000) for these direct costs. Instead, as noted above, the proposed increase for broadcast regulatory fee categories is \$7,315,881, more than *seven times* higher.

Stated differently, instead of a 2.13% increase that would be consistent with the overall year to year increase in the FCC’s total budget, or the greater 4 to 5% increase the Crosswalk suggests should be expected (whether justified or not), broadcasters are facing a whopping **13%** increase over FY2021 fee amounts without any explanation, rational or otherwise. Indeed, based on the sparse information provided by the Commission, there can be no rational explanation for such a startling increase. Other than the mystery surrounding the “Base Realignments” figure, there does not appear to be anything different about the Media Bureau than the other offices and bureaus of the Commission shown on the Crosswalk, nor any significant changes in the work of the Media Bureau that could account for broadcasters appearing to shoulder almost the entire year-over-year increase in the Commission’s budget.

Delving further into the stated Budget Estimates reveals that, while the total increase in the Commission’s budget for FY2022 over its FY2021 budget might appear to be a relatively

modest 2.1%, that figure overlooks the fact that the FY2021 budget included a one-time Congressional appropriation of \$33 million pursuant to the Broadband DATA Act,⁷ which amount was earmarked for broadband mapping activities and totaled 9% of the Commission’s budget, a significant increase over its FY2020 budget.⁸

At broadcasters’ urging, the Commission ultimately did not assess any portion of that \$33 million earmark to broadcasters in FY2021, as it was clear that they were “not regulated by and did not benefit from”⁹ the Commission’s activities involving broadband mapping. The Commission stated that it only provided this relief because of “unique” circumstances including: “(1) a Congressional earmark of a one-time, large and explicitly quantified amount within our annual appropriation, to be recovered through regulatory fees, for a specific regulatory activity that involves all core bureaus of the Commission except one bureau, and (2) the presence of a category of payors within that one bureau (broadcasters, or “Media Services” licensees) that as a group claim no regulatory impact or benefit from the activity.”¹⁰

While the Commission may have expected that the Broadband DATA Act-related work would be a one-time occurrence that would be completed primarily in FY2021, taper off thereafter, and be performed by employees only temporarily redeployed from other bureaus and offices besides the Media Bureau,¹¹ that does not appear to have occurred. The Broadband Taskforce’s work is continuing apace. Collection of the data called for by the Broadband DATA

⁷ The Broadband Deployment Accuracy and Technology Availability Act, Pub. L. No. 116-130, 134 Stat. 228 (2020) (codified at 47 U.S.C. §§ 641-646) (“Broadband DATA Act”).

⁸ *FY2022 NPRM* at n.1.

⁹ *FY2021 Fee Order* at 12997 ¶ 12.

¹⁰ *Id.* at 12998 ¶ 16.

¹¹ *Id.* at 12997 ¶ 11.

Act will not even begin until September 2022.¹² Throughout 2022, the Taskforce has been involved in outreach to, and creating training and helpdesk resources for, those who will use the newly created reporting system, none of which are broadcasters.¹³ Even thereafter, the data will be collected biannually and must be processed by the FCC's staff.

As a result, the Commission's budget for FY2022 did not return to its FY2020 level (before the \$33 million supposedly one-time Broadband DATA Act increase made in FY2021). Nor did the Commission seek additional funding in its FY2022 Budget Estimates to support on-going broadband work. As a result, it appears that, despite recognizing that broadcasters are not regulated by and receive no benefit from these activities, and despite exempting broadcasters from paying a share of them last year (in compliance with the requirements of the RBA), the Commission is dismissing that concern this year and treating these costs as nothing more than Commission overhead. As a result, it appears that simply designating these costs unrelated to broadcasting as overhead costs of the Commission attributable to broadband work accounts for a significant portion of the startling increases in proposed regulatory fees broadcasters face this year.

¹² See *Public Notice*, Broadband Data Task Force and Office of Economics and Analytics Announce Inaugural Broadband Data Collection Filing Dates, DA 22-184 (released Feb 22, 2022).

¹³ *Id.* See also *Public Notice*, Broadband Data Task Force and Office of Economics and Analytics Publish Data Specifications for the Broadband Data Collection, DA 22-229 (released March 4, 2022); *Public Notice*, Broadband Data Task Force Announces Access to Preliminary Broadband Serviceable Location Fabric to Fixed Service Providers and Guidance for Filing Fixed Broadband Availability Data, DA 22-413 (released April 14, 2022); *Public Notice*, Broadband Data Task Force Issues Guidance to State, Local, and Tribal Governmental Entities for Filing Verified Broadband Availability Data as Part of the Broadband Data Collection, DA 22-417 (released April 14, 2022); *Public Notice*, Broadband Data Task Force, Wireless Telecommunications Bureau, Wireline Competition Bureau and Office of Economics and Analytics Seek Comment on Competitive Carriers Association Petition for Declaratory Ruling or Limited Waiver Regarding the Requirement for a Certified Professional Engineer to Certify Broadband Data Collection Maps, DA 22-543 (released May 17, 2022).

The State Associations have repeatedly noted in these regulatory fee-setting proceedings that the RBA requires the FCC to assess regulatory fees based upon the benefits the Commission's services convey to a party, and repeatedly the Commission instead continues to rely on its "old" pre-RBA methodology to set fees, with increasingly erratic results. Nothing could better demonstrate how badly the FCC's fee-setting approach is broken than the irrational increase in fees it has proposed for broadcasters this year with no concomitant increase in FCC benefits.

Indeed, the methodology is so broken that to create a more equitable assessment in FY2021, the Commission had to simply ignore its methodology and manually extract and redistribute the \$33 million fee burden created by its Broadband Data Act obligations and place those costs on those that actually benefit from it. Reverting to the Commission's prior, less equitable approach is indefensible under the RBA.

To understand how this could possibly have occurred when broadcasters are acknowledged to not benefit from the Commission's broadband work, one must understand the FCC's fee allocation methodology and how it unfairly burdens Media Bureau regulatees with nearly 40% of the cost of operating the agency. As has been explained by the State Associations in greater detail previously,¹⁴ under the FCC's regulatory fee calculation methodology, the costs for FTEs who work for one of the four "core" licensing bureaus (International Bureau, Media Bureau, Wireless Telecommunications Bureau and Wireline Competition Bureau) are assessed against the regulatees of that core bureau ("direct FTEs"), while the costs for FTEs who work

¹⁴ See Joint Comments of the Named State Broadcasters Associations, MD Docket No. 19-105 (filed June 7, 2019), at 7-8 (incorporated herein by reference).

outside of the four core bureaus are assessed to the agency's overhead ("indirect FTEs").¹⁵ The costs of agency overhead, including the indirect FTEs, are paid for by the four "core" bureaus in proportion to the number of direct FTEs in that core bureau. This assessment is done robotically, based only on the relative size of the core bureau's staff, without regard to the amount of time indirect FTEs do or don't spend working on issues related to that core bureau or whether that work provides any benefit to the regulatees of the core bureau paying for its allocated portion of those costs.

Because broadband work involves FTEs in various core bureaus and non-core bureaus and offices, the Commission treats it all as an indirect overhead cost, the same as building security or human resources and payroll. Because the Media Bureau is the largest core bureau with nearly 40% of the agency's FTEs that are classified as "direct," its regulatees must then pay almost 40% of the Commission's costs to regulate broadband, whether they benefit from that work or not.

This methodology was developed in 2012, at a time when the authorizing language in Section 9 of the Communications Act¹⁶ directed the Commission to recover the costs of its enforcement, policy and rulemaking, user information services, and international activities by

determining the full-time equivalent number of employees performing [those activities] within the Private Radio Bureau, Mass Media Bureau, Common Carrier Bureau, and other 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

¹⁵ Direct FTEs in each bureau are then further broken down between those that are direct for a specific fee category of payors within the core bureau and those who are indirect FTEs assessed against the payors in all the fee categories within that core bureau. *See Procedures for Assessment and Collection of Regulatory Fees*, Notice of Proposed Rulemaking, 27 FCC Rcd 8458, 8461 ¶ 8 (2012) ("the total FTEs for each fee category includes the direct FTEs associated with that category, plus proportional allocations of indirect FTEs from inside and outside the bureau.").

¹⁶ 47 U.S.C. § 159(a)(1) (2017).

Commission's activities, including such factors as service area coverage, shared use versus exclusive use, and other factors that the Commission determines are necessary in the public interest.”¹⁷

Thus, the FCC’s regulatory fee process was initially geared to the way the FCC had traditionally regulated industries – through the issuance of paper licenses by one of the four licensing bureaus.

But, as a result of the National Broadband Plan, the Commission’s processes have been transformed to emphasize using auctions whenever possible to distribute initial licenses, and to avoid issuing licenses at all in favor of unlicensed use of spectrum. In line with that transformation, in 2018, Congress revised the FCC’s regulatory fee authority as part of the RBA. In the RBA, Congress directed the FCC to “assess and collect regulatory fees at such rates as the Commission shall establish in a schedule of regulatory fees that will result in the collection, in each fiscal year, of an amount that can reasonably be expected to equal the amounts”¹⁸ of the Commission’s annual appropriation. Gone are the limitations tying the Commission’s assessment and collection to regulatees of particular bureaus or offices and basing the assessments on the number of FTEs in such bureaus and offices. Rather, the RBA equips the Commission with the flexible authority (and mandate) to assess and collect fees based on the benefit of its work to the regulated category, not arbitrary factors such as whether the payor holds a license or how the Commission has organized itself.

The RBA does instruct the Commission to **amend** its schedule of regulatory fees, when necessary, so that the fees that the Commission has already established “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**

¹⁷ 47 U.S.C. § 159(a)(1) (2017). The bureaus named in the original version of Section 9 are the predecessors to those that the FCC currently considers its four “core” licensing bureaus.

¹⁸ 47 U.S.C. § 159(b).

of the fee by the Commission's activities."¹⁹ But the point of that provision is to align the work of those FTEs with the benefit they deliver to the payor.

The U.S. Court of Appeals for the D.C. Circuit confirmed that the RBA shifted the focus of regulatory fee making from licenses to benefits, stating that:

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.²⁰

The Commission, however, remains steadfast in its position that its pre-RBA FTE counts are the measure of benefit received by a regulatee, and as such, has not changed its methodology in response to the passage of the RBA: "[G]iven the Communication Act's explicit language that fees must 'reflect' FTEs, the FTE counts are by far the most administrable starting point for regulatory fee allocations."²¹ As further support, the Commission stated that it "does not assign direct FTEs within a bureau to specific fee categories by rote or at random, but rather in a manner that reflects the time spent by FTEs on such regulatory fee category, which is in itself a reflection of 'benefit' to the fee category."²² While the placement of *direct* FTEs into various fee categories may reflect time spent working for the fee category by core bureau direct FTEs, the fact remains that two-thirds of the FCC's staff is assigned to a non-core bureau or office and the FCC refuses to examine the work these indirect FTEs do to determine whether they benefit certain groups of regulatees rather than others.

¹⁹ 47 U.S.C. § 159(c) (emphasis added).

²⁰ *Telesat Canada v. FCC*, 999 F.3d 707, 712 (D.C. Cir. 2021).

²¹ *FY2022 NPRM* at 4.

²² *Id.*

While the FCC has balked at conducting a searching, employee by employee analysis of how each FTE spends their time, it is likely that throughout the FCC there are identifiable groups of FTEs working in non-core bureaus and offices or collaboratively across bureaus and offices whose work obviously benefits the regulatees of only one, two or three of the core bureaus or whose work can clearly be identified as not benefitting a significant category of regulatees, such as broadcasters. Last year, the Commission was able to identify those of its FTEs that were working on broadband mapping matters and definitively stated that none were contributed by the Media Bureau.²³ In addition, it was able to conclude that their work did not regulate or benefit broadcasters either, and based on that, did not attribute those indirect employees to broadcast regulatees.

The Commission referred to the Broadband DATA Act situation as unique.²⁴ However, as industries converge and Commission employees work together collaboratively on similar issues, these hybrid situations are occurring more frequently. Whenever such situations occur, these FTEs should be seen not as indirect FTEs whose work “benefits the Commission and the industry as a whole,”²⁵ because their work in fact obviously does not benefit large identifiable categories of regulatees. Rather, they should be seen as intersectional employees assessed against only those fee categories that benefit from those FTEs’ work.

Another example is employees working on USF matters. The Budget Estimates for FY2022 indicate that there are 108 FTEs working on USF matters, only one of whom is

²³ *FY2021 Fee Order* at 12998 ¶ 16.

²⁴ *Id.*

²⁵ *See, e.g., id.*

contributed by the Media Bureau.²⁶ This is a huge number of FTEs, more than 10% of the Commission's indirect FTEs overall. The treatment of these FTEs as indirect FTEs substantially impacts the costs that all fee category payors must pay. Broadcasters do not receive USF funds and do not provide services paid for with USF funds, yet they are shouldering nearly 17% of the costs for these USF employees. Again, an obvious symptom of a broken fee-setting methodology.

Just as the Commission did last year with the Broadband DATA Act FTEs, these FTEs, whether handling USF or broadband matters, should not be assessed against Media Services categories. Similarly, in the Enforcement Bureau, it appears there are groups of FTEs who specialize in certain types of enforcement cases such as USF fraud or robocall violations that have a consistent enough workload from year to year that they too can be seen as intersectional FTEs and their headcount assessed against only those regulatees that benefit from their work.

Utilizing a third category – an Intersectional FTE – one that is neither direct to only one core bureau nor fully indirect to all core bureaus, would allow the FCC to much more fairly align the costs of the work of (a) FTEs in the non-core bureaus and (b) those in core bureaus working across bureau lines on similar issues, with the regulatees who actually benefit from that work. Such an approach would bring the Commission much closer to compliance with the RBA and, as a simple variation to the Commission's longstanding FTE-based approach, be readily administrable. Indeed, the Commission was able to do this very thing last year with regard to the

²⁶ Federal Communications Commission, 2022 Budget Estimates to Congress, May 2021, at 26 (available at <https://docs.fcc.gov/public/attachments/DOC-372853A1.pdf>) (last visited July 1, 2022).

Broadband DATA Act FTEs. Such an approach needs to be adopted again this year, and made permanent thereafter.

II. Merely Reclassifying FTEs From Direct to Indirect Unfairly Redistributes the Regulatory Fee Burden

In the *FY2022 NPRM*, the Commission asks whether its practice of reclassifying certain core bureau FTEs from direct to indirect has resulted in more accurate fee assessments and whether it should “consider different calculation methods when reclassified FTEs work on issues that clearly do not benefit certain classes of licensees.”²⁷ As indicated above, under the Commission’s current method of classifying FTEs, there are only two options – either an FTE is considered a “direct” FTE whose costs are 100% the responsibility of the payors of the appropriate fee category(ies) inside of a single core bureau, or the FTE is considered an “indirect” FTE whose costs are the proportional responsibility of every payor of every fee category in every core bureau, regardless of whether the payor receives any benefit from the FTE’s work. Because broadcast payors are responsible for approximately 17% of the Commission’s overhead, for each FTE that another core bureau is able to reassign to “indirect” status, broadcasters must bear approximately 17% of the costs, regardless of any benefit received.

As the State Associations have noted before,²⁸ this process has unfairly burdened broadcast payors while substantially lightening the regulatory fee load of regulatees who receive

²⁷ *FY2022 NPRM* at 23 ¶ 52.

²⁸ Joint Comments of the Named State Broadcasters Associations, MD Docket No. 19-105 (filed June 7, 2019), at 3-14.

at least some benefit from the work of the reclassified indirect FTEs.²⁹ In FY2017, the Commission reassigned 38 FTEs who work on USF matters from direct FTEs of the Wireline Competition Bureau to indirect obligations of all four core bureaus. While the FCC in 2016 had rejected calls to reclassify such FTEs precisely because broadcasters would be forced to pay a portion of their costs despite not benefitting from the work of those FTEs,³⁰ in 2017 it reversed course, reasoning that the Universal Service Fund benefits regulatees of almost every bureau, including wireless, broadband, satellite, and cable,³¹ and that the regulatory fee process will never be “pure.”³² The Commission appears poised to do the same again this year by assessing broadcasters for indirect FTEs engaged in broadband work which does not benefit broadcasters. However, in its handling of the Broadband DATA Act costs last year, the FCC demonstrated that it can manage situations such as this one more equitably by not assessing indirect FTEs against

²⁹ *Id.* at 8-9 (“regulatees of other bureaus have over the years mastered the art of persuading the Commission to move those bureaus’ employees for regulatory fee purposes from “direct” FTEs of that bureau to “indirect” FTEs, with the result that the regulatees of the Media Bureau have often ended up shouldering the largest share of these additional “overhead” costs. Broadcasters and other Media Bureau regulatees therefore face a stacked deck whereby their ability to comment in the absence of process transparency is largely limited to debating how fees should be allotted among Media Bureau regulatees, rather than addressing whether Media Bureau regulatees as a whole are paying disproportionately more than regulatees of other bureaus for (in the words of the statute) the “benefits provided” them by the Commission that warrant regulatory fees.”) (*citation omitted*).

³⁰ *See Assessment and Collection of Regulatory Fees for Fiscal Year 2016*, Report and Order, 31 FCC Rcd 10339, 10348 ¶ 24 (2016) (“ITTA’s proposal to reassign some or all of the Wireline Competition Bureau FTEs working on universal service as indirect FTEs ignores licensees not involved in high-cost and Lifeline universal service issues, such as radio and television broadcasters, that would be responsible for contributing to the cost of those Wireline Competition Bureau FTEs.”).

³¹ *See Assessment and Collection of Regulatory Fees for Fiscal Year 2017*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 7057, 7061-62 ¶ 10 (2017).

³² *Id.* at 7062 ¶ 11.

those fee categories that demonstrably do not benefit from the work of an identifiable group of FTEs.

As convergence in the wireline and wireless industries continues and the Commission's regulation of those industries evolves, it is predictable that the work of considerable numbers of indirect FTEs working on long-standing priorities of the Commission, such as USF and broadband, will converge across bureau lines or involve non-core bureau FTEs. Continuing to reassign direct FTEs in the same manner the FCC has done in the past will predictably and unfairly burden identifiable categories of payors who do not benefit from the work of these indirect FTEs. In the absence of a specific fee category such as Broadband Provider to address inequities such as these, the Commission should adopt the proposed new third classification of Intersectional FTE to avoid unfair burdens such as the ones that broadcasters have been shouldering.

III. The Commission Must Take All Costs Into Account When Setting Its De Minimis Fee Exemption Threshold

In the *FY2022 NPRM*, the Commission asks what costs of collection should go into its calculation of a de minimis fee level below which it would not seek to collect assessed regulatory fees because the costs of collection would likely exceed the amount collected. The Commission has not provided detailed information as to this aspect of its operations. However, the State Associations concur that to be most accurate and fair, *all* costs of collection should be considered, including costs incurred prior to the fees' due date like confirming a payor's regulatory fee status and less direct costs like the added information technology, helpdesk, and similar resource and employee costs the Commission would incur if smaller regulatees – who typically have less experience with the Commission's processes and systems and therefore would

tend to use a disproportionate amount of those resources and staff time attempting to understand their regulatory fee obligations and navigate the fee payment platform – were not exempted from paying fees because of the de minimis exception.

Similarly, the Commission should include in its calculation the projected costs it would incur in dedicating additional Commission resources to processing requests for fee waivers and deferrals that such regulatees would submit in the absence of being designated as below the de minimis threshold. For the same reasons, the Commission should include at least a portion of the cost of its own employees who calculate penalties and bill delinquent payors, and any third-party debt collection and payment processing costs, that would be disproportionately increased in the absence of a higher de minimis threshold, along with added Commission staff costs incurred in interfacing with those outside parties.

CONCLUSION

For the reasons stated above, the State Associations respectfully request that the Commission amend its proposed FY2022 fee schedule and regulatory fee processes consistent with these Joint Comments.

Respectfully submitted,

THE STATE BROADCASTERS ASSOCIATIONS

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