

*Before the
Federal Communications Commission
Washington, D.C. 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 2020)	MD Docket No. 20-105
)	

**JOINT REPLY COMMENTS OF
COLORADO BROADCASTERS ASSOCIATION
FLORIDA ASSOCIATION OF BROADCASTERS
PUERTO RICO BROADCASTERS ASSOCIATION**

The Colorado Broadcasters Association (“CBA”),¹ Florida Association of Broadcasters (“FAB”),² and the Puerto Rico Broadcasters Association (“PRBA”)³ (together, the CBA, FAB, and PRBA are referred to herein as the “Joint Commenters”), by their counsel, hereby respectfully submit their Joint Reply Comments with regard to the Commission’s *Report and Order and Notice of Proposed Rulemaking* (“NPRM”) in the above-referenced proceeding. Assessment and Collection of Regulatory Fees for Fiscal Year 2021/ Assessment and Collection

¹ The Colorado Broadcasters Association is a non-profit trade organization dedicated to building a supporting a better broadcasting industry. Its membership includes 221 radio station licensees and 34 television licensees.

² The Florida Association of Broadcasters is a non-profit corporation chartered by the State of Florida to promote cooperation and understanding among broadcasters, as well as among businesses and other organizations associated with the broadcast industry. FAB counts among its members more than 350 radio stations and 75 television stations.

³ Founded in 1947, the Puerto Rico Broadcasters Association is non-profit trade organization representing more than eighty (80) AM, FM, and LPFM radio stations in the Commonwealth of Puerto Rico.

of Regulatory Fees for Fiscal Year 2020, FCC 21-49, released May 4, 2021 (“NPRM”). With respect thereto, the following is stated.

In light of ongoing economic conditions which have had a unique impact on the broadcasting industry, the Joint Commenters respectfully urge the Commission to (i) reconsider the proposed schedule of annual regulatory fees to reduce rather than once again increase fees assessed to broadcasters; (ii) follow the Congressional mandate to reevaluate the distribution of regulatory fees among regulates and expand fee payment obligations to current non-payors that benefit from the work of the Commission; (iii) take a more realistic view of the standards for broadcasters to obtain financial hardship waivers of their regulatory fee obligations; (iv) continue and expand flexible and reasonable payment plan options for satisfaction of a broadcaster’s regulatory fees over a period of six or more months; and (v) waive the automatic 25% penalty for late payment of regulatory fees.

As the Commission is aware, the coronavirus pandemic and associated lockdowns have had a substantial and continuing impact on broadcasters generally, and Colorado, Florida, and Puerto Rico broadcasters in particular. From the beginning of the pandemic to the present time, advertising revenues have been drastically decreased, as the costs of continuing to operate stations have increased due to the need to find new and creative ways of operating from locations outside the main studio. Such mainstay advertisers as restaurants, auto dealers, and even home contractors have been among the hardest hit by lockdowns, limitations on customers, and supply chain issues. Even as lockdowns and restrictions have gradually eased of late, advertisers have been slow to return to purchases of large or lengthy advertising contracts due not only to simple lack of available funds but also to nervousness about how quickly customers will return, difficulties in re-hiring sufficient employees, and fears of future lockdowns or restriction.

Making matters worse, the broadcaster-sponsored community concerts, expos, festivals and the like, which were necessarily cancelled last year, are returning only slowly, and often with new restrictions and/or diminished capacity, thereby diminishing any hope that such events can be relied upon to help resuscitate still-flagging quarterly revenues.

Nonetheless, despite the reductions in staff and resources, and the difficulties of novel operations, the broadcasters of Colorado have soldiered on in the wake of the coronavirus. Broadcasters provide truly essential services and did not have the option to simply retreat to home and not venture out. Instead, broadcasters stayed on the job to serve their communities by providing important news and information about the many issues and events of the last year, along with much-needed entertainment to provide a haven of cheer and distraction from the grim, troubling events of the day. While many states and territories, including Colorado, Florida, and Puerto Rico, are “opening up” from the more restrictive lockdown, advertising revenue is only slowly recovering as the very businesses which purchase ad time on stations themselves suffered tremendous revenue declines.

In contrast, other businesses, such as those providing broadband services or telephone services, have either not suffered or have actually gained business as a result of the pandemic. The revolution in working and attending school at home necessarily made daily reliance on broadband much more common. Likewise, as co-workers, classmates, and friends were routinely not in the same location, constant communications with the ubiquitous cell phone became vital. Thus, providers of such services could rest assured that they would be able to collect their fees for essential services and had no fear of losing their revenues.

It is incumbent on the FCC to acknowledge the hardships in the industry and do all it can to minimize burdens that are within its power. Joint Commenters understand that the

Commission has a statutory obligation to generate a fixed amount of funds to cover its operating revenue requirements from regulatory fees. Joint Commenters nonetheless submit that the distribution of the payment burden is inequitable and imposes an unfairly high proportion of the burden on broadcasters. Unlike many other FCC regulatees, broadcasters cannot simply add a line item to a bill in order to pass on increased fees to consumers. Rather, regulatory fee must be absorbed into the general cost of doing business for broadcasters. While those costs enter into the broadcaster's calculation of its advertising rates, the broadcaster can raise rates only so much before it starts driving advertisers to reduce buys or take their business elsewhere. After all, an advertiser's decision to buy time is primarily related to its own calculation of increased sales weighed against the cost of advertising. The broadcaster's expenses are irrelevant to that calculation. Those expenses are not irrelevant, however, to the broadcaster's ability to provide high quality, local coverage of critical events, or to hire staff to enhance its community coverage. Broadcasters should not have to choose between paying regulatory fees or keeping employees who provide live, local programming.

Joint Commenters wish to endorse and highlight the conclusion of the National Association of Broadcasters ("NAB") that the Commission is forcing broadcasters to subsidize the regulation of other entities that are contributing either less than their fair share or no part of the fees, and thus are allowed to free ride entirely on the Commission's work.

Congress' most recent amendment to the Communication Act demands a change in regulatory fee assessment methodology. RAY BAUM'S Act requires the Commission, in divining regulatory fees, to "take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities."⁴ In other words, the assessment

⁴ 47 U.S.C. §159(d).

of regulatory fees on any type of FCC licensee is to be determined by the amount of time devoted by FCC staff and the relative use of FCC resources in regulating those entities. The most recent proposed assessments fail to base the fees to be paid by broadcasters on these factors in two, separate ways. First of all, the number of people served by a broadcast station does not increase or decrease the amount of time or FCC resources that are needed to regulate that station, and an allocation of fees among broadcasters which based on population served is therefore completely unsupported and contrary to Congressional mandate. Second, as noted by the NAB in its Comments, the proposed fees unfairly require broadcasters to subsidize the costs of regulating broadband providers, to the tune of some 36 percent of broadband costs. NAB Comments at 5 – 10. Likewise, the broadcast industry is being required to subsidize a portion of the wireless industry’s fair share of revenue payments because of the classification of an undue share of Wireless Telecommunications Bureau Full-Time Employees as auction employees. Moreover, while the broadcast industry does occasionally benefit from an auction of radio or television construction permits, a far greater number of auctions involve non-broadcast frequencies. Therefore, broadcasters should pay a reduced share of the indirect and overhead expenses attributable to auction employees. Finally, as also noted in the NAB’s Comments (NAB Comments at 12- 14), the structure of the regulatory fees essentially forces broadcasters to subsidize Commission work that is solely for the benefit of Big Tech companies such as Microsoft, which pays no regulatory fees but competes directly with broadcasters for advertising and listeners/viewers. It is bitterly ironic that broadcasters are being forced to pay for a competitor’s benefits, which that competitor then turns around and uses against broadcasters. This model is quite clearly not only grossly unfair but also unsustainable.

Moreover, by taking this approach, the Commission has ignored not only the explicit directive given by Congress but also the multiple entreaties by commenters over multiple years that the Commission should evaluate expanding the base of contributors to regulatory fees to more accurately reflect the relative FCC staff utilization across all purposes, not just among licensees. Instead of looking to broaden the pool of fee-payers to include those benefiting from but paying nothing for the Commission's services, or looking at the relative revenues and ability to pay in relation to the services received, it appears that the FCC has decided to follow the familiar, well-trodden path by rote, instead of taking a fresh look as required by statute.

Joint Commenters further oppose the Commission's suggestion that it should move to a tiered rather than individual station approach for calculating television regulatory fees. The stated rationale that such a change would save work for the FCC staff is specious, because no one can know into which tier a particular station fits unless the coverage area has been individually calculated. There is far more chance of miscalculation and misplacement of a licensee's station, thereby creating uncertainty, than any benefit from a more streamlined chart.

Joint Commenters do appreciate and encourages the Commission to retain, if not expand, its flexibility with regard to seeking hardship waivers or payment plans. In particular, the rule requirement to file separate petitions for waiver and deferral of regulatory fees has never served any useful purpose but only serves as a trap for the unwary who do not realize the need to file two, largely repetitive documents. Likewise, allowing electronic filing actually makes life easier for both the Commission staff and regulates, as there is no need to take paper documents to a remote location in order to have them delivered at a later date to the Commission's staff, since the Commission accepts no filings at any location where its staff members are located. Further,

maintaining a reduced interest rate only makes sense in light of the low interest rates that still prevail generally in the marketplace.

Joint Commenters urge the Commission to add further flexibility with regard to granting hardship waivers to stations during these troubled economic times. While the Commission has noted that in the past, it has required licensees to demonstrate that they cannot both pay the regulatory fees and maintain service to the public in order to obtain a waiver, stations should not be required to show that circumstances are so dire that they cannot stay on the air if they pay the regulatory fees. Maintaining service to the public should mean more than simply continuing to emit a signal at a licensed frequency. Broadcasters should not be faced with a life or death choice in order to obtain any relief, but should be provided with a reduction or exemption if relief is necessary in order to maintain staff and continue producing and airing programming that serves the needs of its community. Annual payment burdens that drive broadcasters to the edge of bankruptcy and limit their stations' services are simply not sustainable.

Furthermore, the Commission's process for evaluating a financial hardship claim is not designed to evaluate an abrupt economic crisis such as the current, ongoing one. In order to be approved for a financial hardship waiver, a station licensee must submit financial documentation for the past *three* years, which downplays the significance of even substantial losses over the last year. Even a small profit two or three years ago does not insulate broadcasters from current financial peril. The Commission's financial hardship waiver process must be able to address and provide relief to those who have been somewhat successful but-for the coronavirus.

In line with the adopting a more reasonable financial hardship waiver process, the Commission must adopt flexible and reasonable payment plan options for satisfaction of a broadcaster's regulatory fees over a period of at least six (6) months and as much as a year if the

economy continues to suffer or enters a runaway inflationary period. It is well within the Commission's purview and in the public interest to allow struggling broadcasters the benefit of the doubt as to their claims of financial need for a simple, reasonable payment plan to satisfy their obligations to the Commission.

Finally, and at the very least, the Commission must waive the usurious 25% penalty for late payment of regulatory fees. The automatic and immediate assessment of a 25% late fee on the day after the regulatory fee payment due date is a burdensome and draconian regulation. While it certainly gives a strong incentive for timely payment, that incentive does nothing for broadcast licensees that simply do not have the money to pay. In such circumstances this late fee is not an incentive but a punishment for economic circumstances that are beyond that licensee's control and are the means by which the licensee falls into deeper and deeper debt with little chance to recover.

For the foregoing reasons, Joint Commenters urge the Commission to reconsider its proposed FY 2021 regulatory fees for broadcaster licensees, reallocate the regulatory fee burden among other regulates, and/or expand the scope of entities from who regulatory fees would be extracted. In addition, Joint Commenters urge the Commission to maintain and expand flexibility in fee collection efforts to lessen the burdens and hardships on broadcasters in these unprecedented times.

Respectfully submitted,

**COLORADO BROADCASTERS
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