



**ANA-AAAA JOINT POLICY COMMITTEE
ON BROADCAST TALENT UNION RELATIONS**

June 2, 2009

To: JPC Authorizers and Interested Parties
From: Douglas J. Wood, Lead Negotiator
Re: FAQ on Commercial Services Fee

We are pleased to provide additional answers to frequently asked questions received from interested parties regarding the Commercial Service Fee. For purposes of ease of review, we have included our earlier FAQs at the end of this memorandum.

Q: When does the Commercial Service Fee take effect?

July 1, 2009

Q: Who pays the Commercial Service Fee?

The Commercial Service fee is to be paid by:

- (1) any advertiser that is an authorizer to the JPC regardless of whether the advertiser uses an advertising agency that is a JPC authorizer; and
- (2) any advertisers who use advertising agencies who are authorizers to the JPC to produce television commercials employing SAG and/or AFTRA performers.
- (3) **Note:** It is neither the intent nor desire that advertising agencies be responsible for the Commercial Service Fee. In all fairness, the Commercial Service Fee should be the responsibility of the advertiser, even when the advertiser itself is not a JPC authorizer but uses an advertising agency that is an authorizer.

Q. What is a “JPC authorizer”?

A JPC authorizer is an advertiser or an advertising agency who has authorized the JPC to act on their behalf in collective bargaining with SAG and AFTRA for the various commercials agreements. A JPC authorizer is automatically signatory to the commercials agreements.

Q: How can I verify if my agency or my advertiser client is a JPC authorizer?

If you are unsure if your agency is a JPC authorizer, you can contact Kathleen Quinn of the 4A’s via e-mail at: kathleen@aaa.org. We would ask that only one person from the agency make and be responsible for this inquiry. If your agency is a JPC authorizer/signatory, the fee will be charged on all television commercials employing SAG and/or AFTRA performers that you produce for any of your advertiser clients regardless of whether the advertiser itself is a JPC authorizer.

Q: How can I verify if my advertiser employer is a JPC authorizer?

If you are unsure if your advertiser employer is a JPC authorizer, you can contact Marilyn Colaninno at mcolaninno@reedsmith.com.

Q: If my agency is not a JPC authorizer, how do I know if my advertiser client is a JPC authorizer?

If you are unsure if your advertiser client is a JPC authorizer, you can contact Marilyn Colaninno at mcolaninno@reedsmith.com.

Q: How is “new television commercial” defined?

A “new television commercial” is defined with reference to the television commercials agreements. Thus, the Commercial Service Fee will be charged on any television commercial which is considered a “new” commercial under the SAG and AFTRA television commercials agreements. This means the Commercials Service Fee is incurred for:

- (1) any original television commercial produced;
- (2) any television commercial version produced under the integration provisions of the television commercials contract which becomes a new television commercial for the purpose of residuals; and
- (3) any edited version of a television commercial that is not covered or permitted by one of the provisions of Section 26 of the television commercials contracts (“Editing”) and which becomes a new commercial for the purpose of residuals.

Q: Will this fee be charged on radio commercials?

Not at this time. If radio commercials should ever be included, the Commercial Service Fee with respect to radio will be lower than the Commercial Service Fee for television commercials. At the present time, however, there are no plans to include radio commercials in the Commercial Service Fee program.

Q. Will the Commercial Service Fee be charged on “made for” cable, “made for” internet, or “made for” new media commercials ?

The Commercial Service Fee will be charged on made for cable commercials. The Commercial Service Fee will not be charged on made for internet or made for new media commercials until the minimum rate structure for those types of commercials takes effect on April 1, 2011.

Q: How much is the Commercial Service Fee?

It is a one-time fee of \$75.00.

Q: When will the Commercial Service Fee be charged?

The Commercial Service Fee will be charged at the time of the first cycle of use of any new television commercial.

Q. How is the fee invoiced?

The fee will be invoiced and collected by the talent payroll companies and will be included in the talent payroll company invoice covering the first use cycle.

Q. What happens to the monies collected?

These fees will be collected by the talent payroll agencies and remitted to the Association of National Advertisers (ANA). The ANA oversees the funds and budgeting process for the JPC. More detail on this was included in the earlier FAQ, reproduced below.

Q. Is this charge assessed on television commercials with only AFM musician performers?

No

Q. How will the payroll companies know who to charge?

The payroll companies will be given a list of all JPC authorizers. This information will be kept by them in strictest confidence and will not be disclosed or distributed to any other parties.

Q. Is the Commercial Service Fee charge permanent?

Although the Commercial Service Fee is a permanent charge, the JPC anticipates that the per commercial assessment may decrease in future years as funds raised become sufficient to address short and long term budget requirements.

FAQs from earlier memorandum:

Q: Why is there a need to assess a Commercial Service Fee?

When the advertising industry first began negotiating a collective bargaining agreement with SAG and AFTRA, there were three television networks and a collection of independent stations, most of which were affiliates of the networks. Commercials were either aired on a network feed throughout all of that network’s affiliates or advertisers bought individual stations in what became known as the “wild spot” market. That’s when it was relatively simple to come to an agreement on wages with purely economic issues being the only real point of negotiations.

As the industry grew, new media silos’ and distribution mechanisms came into being – syndication, cable, satellite, unwired networks, Internet, and other new media platforms. Advertisers also started airing commercials on a limited basis for holiday seasons while others entered into regional buys for their retailers and dealers. As each of these new media platforms or so-called “media silos” came on line, the industry and the unions negotiated special rates for each silo, each time adding a new rate and increasing costs. Over the 40+ years of this approach, no rates in any silo went down as new silos were added. Hence, costs kept rising in a fashion that had no relationship to media buying or efficiencies.

And while all this was happening, technology kept improving and allowing advertisers to produce versions of commercials now to the point where digital platforms can literally create hundreds of customized versions from digital dashboards. As editing got more sophisticated, the industry and unions negotiated limits and surcharges for certain kinds of edits, also raising the costs without regard to the correlation to return on the investment.

In large part this constant rise in costs and ever expanding jurisdiction of the unions was due to the transient nature of how the JPC functioned. In large part, its’ main purpose was to negotiate a new agreement every three years and to participate in a couple of industry/unions meetings per year to discuss open issues. The time commitment was relatively insubstantial.

Today, this has all changed and now demands unprecedented diligence by the JPC to assure that the future is not a repeat of the past and that the manner in which actors are paid in commercials is logically connected to an advertiser’s return on its investment in

media. As Bob Liodice and Nancy Hill pointed out in their memo, the Commercials Contracts (Television and Radio) are the largest collective bargaining agreements in the entertainment industry costing advertisers more than \$3 billion over the three year term of the contract. Today, it is not sensible to approach this challenge without a sound financial foundation. Too much is at stake and when one deals in even small percentages of such a large number, the economic consequences are considerable and must be monitored.

A good example of the challenge the new media world has created in the commercial production world was aptly illustrated in the most recent negotiations for a new collective bargaining agreement with SAG and AFTRA covering April 1, 2009 through March 31, 2012.

As one can readily see from the Executive Summary and detailed FAQs for the new agreement, it was an extremely complicated negotiation that focused on fundamental change and tackled complex issues that had largely been ignored in the past, including the manner in which actors are paid and limits on pension and health fund contributions. And while a wage increase was agreed upon, it was the lowest of any wage increase in the entertainment industry union agreements. But all this took considerable time of many people, including experts retained by the JPC to assist in understanding complex industry structures, the aggregation of data from disparate sources, and coming to the table across from unions with deep internal philosophical splits on how actors should be paid.

With support of the leadership of ANA and 4A's, a new model to fund the JPC has been adopted, patterned after the manner in which the collective bargaining process is funded in Canada. In Canada, the equivalent of the JPC is funded through a per commercial assessment (\$300) that is split between various organizations that participate in the negotiations, including the unions. The advertising industry representatives are allocated \$100 per commercial.

Q: How are the Commercial Service Fees collected and remitted to the ANA?

To make the process as simple as possible, the Commercial Services Fee will be charged and collected by the talent payroll agencies that are used in the industry to handle payments to actors and to the unions' pension and health funds and state and federal tax authorities. The talent payroll agencies have been provided with a list of JPC authorizers for which they will add the fee when a new commercial is first used. This one time fee will then be collected from the talent payroll agency's client (either the advertising agency or the advertiser). Once collected, it will be remitted to the ANA where it will be held in a separate account.

The key to understanding the fee is that it is charged only on a new commercial when it is first used. It is not charged on allowable edits or renewals. It is truly a one time charge that collectively will raise the funds necessary to operate the JPC in a financially sound manner.

Q: How are the Commercial Service Fees being used?

The JPC has numerous expenses. In addition to fees charged by the Lead Negotiator and legal counsel, the JPC hires consultants to assist it when the need arises. In addition, the JPC has begun taking a more aggressive stance against the unions when union activities pose a large collective threat or cost to authorizers. For example, the unions' Pension & Health Fund Plans' Trustees had for decades been the enforcement arm for disputes over pension and health fund contributions allocated to celebrity endorsement contracts. Because the Plans can resort to relief under complicated federal pension laws, the leverage against advertisers to settle cases for amounts considered unfair was considerable. In 2007, the JPC sued the unions to end this procedure and put the unions, and not the Plans, on the other side of the negotiating table with arbitration being the method for resolving disputes. The unions vigorously defended but the JPC prevailed and the new collective bargaining agreement now ends the old process permanently. This should save the industry millions in future years. This litigation was expensive although well worth the benefit to the industry.

In the new agreement, the unions agreed to work with the JPC in developing a new system of paying actors based upon gross rating points rather than artificial silos. This is a truly watershed event in the history of collective bargaining between advertisers and the unions and will mark a new beginning when the pilot is completed in 2011 and evaluated for adoption as a new payment system. Monitoring and participating in the pilot is time consuming and complex.

The JPC is also looking into new ways media dollars are being spent on actors and how commercials are monitored to assure accurate payments. The JPC is also deeply involved with the unions on initiatives important to both sides of the bargaining table like diversity and foreign language commercials.

Each year, the JPC has numerous meetings with the unions, both in person and telephonically. The JPC also answers many questions from authorizers and negotiates on authorizers' collective behalf when appropriate.

The JPC also incurs costs in conducting seminars/webinars, traveling to meetings with the unions, and other related and necessary costs to support its stewardship for the industry.

So the initiatives and operations the Commercial Services Fee support are mission critical to the industry and have shown that the investment has returned savings to the industry far above the costs.

Q: How does the ANA determine the JPC's annual budget?

Each year, the JPC submits its proposed budget to the ANA. That budget is then reviewed and approved/modified within the ANA. When agreement on the budget is reached, it is then submitted to the ANA Board of Directors for approval. Once

approved, the ANA administers the funds, making sure that all costs are within the budget and authorized.