



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

**May 28, 2009**

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

As Bob Liodice and Nancy Hill announced and as indicated in the FAQs and Executive Summary of the new SAG/AFTRA Commercials Contracts, advertisers who are JPC authorizers, and advertisers who use advertising agencies that are JPC authorizers, will be responsible for a one time fee of \$75.00 per commercial, payable on the first use of each such commercial (the “Commercial Services Fee”).

This memorandum explains in detail why the Commercial Services Fee is being assessed, how the fee is collected and remitted to the ANA, what the proceeds are used for, and how the JPC’s budgeting process is handled.

**I. Why is there a need to assess a Commercial Services 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 silo’s 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.

## **II. How are the are the Commercial Services 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.

## **III. How are the Commercial Services 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.

#### **IV. 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.

If you have any other questions about the Commercial Services Fee, please feel free to contact me by telephone – 212 549-0377 – or by email at [dwood@reedsmith.com](mailto:dwood@reedsmith.com).