

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

To: The Commission

**JOINT REPLY COMMENTS OF THE
STATE BROADCASTERS ASSOCIATIONS**

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STATE BROADCASTERS ASSOCIATIONS**

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 Reply Comments supporting the Comments of the National Association of Broadcasters (“NAB”)¹ and responding to the Commission’s Notice of Proposed Rulemaking in the above-captioned proceeding.²

INTRODUCTION AND SUMMARY

The State Associations greatly appreciate the Commission’s efforts in the *FY2023 NPRM* to create a fairer and more accurate regulatory fee process, rendering proposed FY2023 fee assessments that are better calibrated to the benefits delivered by the FCC’s activities as required by its statutory mandate governing the process.

¹ Comments of the National Association of Broadcasters, MD Docket Nos. 22-301, 23-159 (filed June 14, 2023) (“*NAB Comments*”).

² *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. 22-201, 23-159, FCC 23-34 (“*FY2023 NPRM*”) (rel. May 15, 2023).

The State Associations have criticized the regulatory fee-setting process in past years for its dependence on the categorization of only a quarter to a third of the agency's Full Time Equivalent (FTE) employees – those that it deems to be performing work directly for the regulatees of one of the Commission's four core bureaus – to apportion the agency's entire regulatory fee-supported budget. This year, the Commission acted on the State Associations' and NAB's previous requests and has attempted to better capture the work done by a greater portion of its FTEs, particularly by looking more carefully at the work performed by certain of its employees assigned to bureaus and offices deemed "indirect" (i.e., those working outside of the four core bureaus of the agency). With the additional information gathered through this review, the Commission has been able to bring greater precision in allocating the regulatory fee burden among its various existing payors. This is an important first step which should in the Commission's ongoing and future proceedings be followed by including as payors other parties that unquestionably "benefit" from the Commission's activities. The State Associations fully support these efforts, both to make the Commission's existing methodology more accurate through its recategorization of FTEs identified in the *FY2023 NPRM*, as well as to ensure that regulatory fees are always being apportioned among the correct group of payors – not just those that happen to receive their benefits in the form of a physical FCC license.

The State Associations therefore urge the Commission to continue to conduct such reviews of the work of its indirect FTEs annually, as well as to identify additional ways that the Commission's regulatory fee process can be made fairer and remain current with changes in the agency's tasks and the technologies that it regulates. One such advancement is the Commission's proposal this year to create a new tier of radio station fee payor for the smallest radio stations. This new tier will help to "right-size" the regulatory fee burden for those small

stations that operate in an entirely different economic reality than most Commission fee payors, particularly those outside the broadcast industry who are able to pass their regulatory fee expenses on to a subscriber base.

Finally, the State Associations fully support extending to FY2023 the Commission's various measures adopted during the pandemic to alleviate administrative and financial barriers for payors seeking regulatory fee relief, and indeed suggest that such measures should be adopted permanently. While the new radio fee category helps to address economic issues faced by smaller radio operators, economic hardship from regulatory fees can impact other types of stations and payors as well. To the extent the solutions proposed – such as removing barriers and extra expense from installment payment plans – can moderate the fee burden and enable payors to continue to provide service to their communities, the State Associations support such proposals for FY2023 and beyond.

I. The State Associations Support the Commission's Efforts to Make the Regulatory Fee Process More Reflective of the Benefits of the Agency's Work

The State Associations have long noted that the Commission's process unfairly places a disproportionate and indefensible share of the costs of operating the agency on broadcasters and, in doing so, violates the RAY BAUM'S Act of 2018³ ("RBA").⁴ This occurs for several reasons. First, the Commission's process does not at the outset take into account factors such as the benefit to the category of payors of the agency's regulation of its industry (as required by the

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

⁴ *See, e.g.*, Joint Comments of the Named State Broadcasters Associations, MD Docket No. 19-105 (filed June 7, 2019), at 3-14. *See also NAB Comments* at 2, n.5.

RBA), the unique service that the industry provides to the public, other fees that the industry pays to the Commission, or the industry's ability to recoup regulatory fee payments from subscribers. Rather, the Commission's process focuses almost exclusively on the number of agency employees directly involved in regulating the industry or industry segment, which the Commission refers to as that industry's "burden" on the agency (a concept nowhere to be found in the RBA).⁵

Second, the Commission's process considers only the burden (i.e., FTE work) attributable to FTE work performed by its four core bureaus – the Wireline Competition Bureau, Wireless Telecommunications Bureau, Media Bureau, and International Bureau.⁶ The work of all other FTEs is essentially ignored for purposes of determining "burden" on the Commission.⁷

Third, the Commission's process only spreads payment responsibility for its regulatory fee-supported budget among those industries regulated by its four core bureaus. Thus, this subset of users of Commission services is made responsible for the entirety of the agency's budget. Almost every other user of the agency's services – or more specifically, every other "beneficiary" – escapes paying for those services.

⁵ *FY2023 NPRM* at ¶ 1, 5, n.25. *See also Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15712, 15719 (2007) at ¶ 19.

⁶ The Commission has recently reorganized the former International Bureau into a new Space Bureau and a new Office of International Affairs, but as that reorganization will not affect FY2023 regulatory fees, reference is made to the bureau's former name, the International Bureau, herein.

⁷ *See also NAB Comments* at 6 ("The Commission historically has considered only those FTEs in the four 'core' bureaus as direct FTEs for regulatory fee purposes, failing to account for the work performed on behalf of regulatees in the other bureaus and offices of the Commission.").

And, finally, because the Commission has rooted its methodology in its internal headcounts, only the Commission has access to that information, limiting meaningful participation by payors in the fee-setting process.

As the State Associations have described the Commission's methodology in the past,⁸ FTEs assigned to one of the four core bureaus are considered "direct" FTEs for purposes of the Commission's regulatory fee analysis.⁹ All other FTEs are assigned to bureaus and offices outside of the four core bureaus and are considered "indirect" FTEs. The costs of the agency's operations are divvied up among the industries regulated by its four core bureaus. Because the four core bureaus are not of the same size (i.e., the core bureaus have differing numbers of direct FTEs), the costs of operating the agency are divided among the core bureaus in proportion to the number of direct FTEs each core bureau employs. From there, each core bureau's share of the FCC's budget is then divided among the industry(ies) or industry segment(s), known as payor categories, assigned to that core bureau. Then, that number is ultimately allocated among the individual payors in that industry/segment.

As a result of this process, the share of the Commission's budget that a payor category's payors are expected to cover is dictated by the number of FTEs in the core bureau which regulates that category. If the industry is regulated by a core bureau that has few FTEs, its payors will pay a smaller share of the Commission's overall budget. If the industry is regulated

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

⁹ 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. *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.").

by a core bureau that has many FTEs, its payors will pay a larger share of the agency’s overall budget.

The Commission has frequently explained, and does so again in the *FY2023 NPRM*, 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 a regulatory fee category, which is in itself a reflection of ‘benefit’ to the fee category.”¹⁰ All FTEs whose work cannot fit through the eye of that needle are simply assigned to an indirect office or bureau and considered overhead to be shared proportionally among the regulatees of the four core bureaus.¹¹ It is through this historical process that the Commission has arrived at a situation in which the categorization of essentially a handful of its FTEs, the direct FTEs assigned to one of the four core bureaus, determines which Commission regulatees must pay for the work performed by the vast majority of the agency’s FTEs in its numerous and diverse other offices and bureaus, as well as the agency’s other operating costs.

The Commission acknowledges this fact, stating that its “high percentage of indirect FTEs demonstrates that many of our activities and costs are not limited to a particular fee category.”¹² Yet, this perception of the Commission as a multidisciplinary, collaborative, cross-practice government agency is totally at odds with the fact that its funding structure is entirely dependent on leaving behind a few FTEs siloed in work for a specific fee payor category to fund the agency. Put another way, the benefits of the agency’s FTE work would be more fairly distributed among payors if the number of indirect FTEs in that calculation were minimized.

¹⁰ *FY2023 NPRM* at ¶ 7.

¹¹ *Id.* at ¶ 8, n.26.

¹² *Id.* at ¶ 11.

As a result, broadcasters have long argued that the large “catch-all” pool of indirect FTEs, while certainly encompassing some FTEs whose work is truly indirect because it benefits *all* regulatees or the Commission as a whole (such as security guards or human resources personnel), likely also harbors FTEs whose work significantly benefits particular payor categories in the core bureaus or benefits industries for which there is no designated payor category. If that is the case, that work should be directly captured in the regulatory fee analysis and paid for by those categories and industries that benefit from the work, rather than being treated as generic overhead costs.¹³ Given that most data concerning these matters is solely in the hands of the Commission, broadcasters have found it challenging to demonstrate this to the Commission’s satisfaction.

This year, however, without changing its underlying methodology or delaying the annual regulatory fee rulemaking proceeding, the Commission has taken an enormous step towards making its methodology fairer and more in line with the RBA by looking at the work of a larger cross-section of its FTEs to determine if fee burdens have in fact been properly distributed among its existing payor categories. Specifically, the Commission has undertaken a “high-level, yet comprehensive, staff analysis of the work being performed by Commission employees to determine if identifiable full time equivalent (FTE) time is related to the oversight and regulation of fee payors such that it should be taken into consideration in applying our fee methodology.”¹⁴ Based on this review, the Commission identified 63 additional FTEs in three indirect bureaus and offices, the Office of General Counsel, the Office of Economics and Analytics, and the

¹³ See *NAB Comments* at 10. (“[G]iven the critical importance of the number of direct FTEs assigned to each regulatory fee category to the Commission’s existing methodology, it is essential that core bureau FTEs that benefit some, but not all, fee payors remain direct and are distributed among those regulatory fee categories that benefit from their activities.”).

¹⁴ *FY2023 NPRM* at ¶ 1.

Public Safety and Homeland Security Bureau, whose actual work dictates that they should instead be considered a direct employee of one of the Commission's four core bureaus. This increases by almost 20% the number of direct FTEs at the Commission for regulatory fee purposes.¹⁵ For the first time, their work is captured by and considered in the regulatory fee allocation process, which in turn helps to right-size the allocation of the agency's overall budget among the payor categories of the four core bureaus.

The State Associations commend the effort that led to identifying these 63 FTEs and recategorizing them as direct employees of a core bureau for regulatory fee allotment purposes. The recategorization of these employees would seem to mitigate at least in part the concerns raised above and in prior State Association submissions regarding the distortive effect of a small number of direct employees determining who pays for a far larger number of indirect employees, as well as the non-personnel costs of the FCC. The Commission should move expeditiously to implement these recategorizations, as they will immediately begin to improve the fairness and accuracy of the Commission's regulatory fee assessment process.

In addition, having demonstrated both the feasibility and efficacy of this approach, the Commission should formalize it as a standard annual preparatory step in assessing the correct assignment of FTEs for each year's fee-setting process. As the State Associations have previously commented, the industries that the Commission regulates are evolving rapidly, and increasingly they, and the Commission's work, are converging across the old lines that once separated its core (and other) bureaus. It is clear that the work of at least some of the

¹⁵ *Id.* at ¶ 53.

Commission's indirect employees has changed in a short period of time¹⁶ and it is to be expected that it will continue to do so. The State Associations therefore applaud the Commission's acknowledgement that such annual reviews of "certain" indirect FTEs may be necessary,¹⁷ but urge it to adopt a broader review as a regular part of this annual proceeding, so that the Commission is not looking for changes only where it already expects to find them, but rather wherever they may occur.¹⁸

Given that this work funds the Commission, a comprehensive examination is the baseline, not the apex, of such a review. It is particularly important that the Commission commit to doing this review as a matter of course because it alone is uniquely in control of the underlying data needed to conduct it. No other party will have the information needed to be able to inform the Commission of the places where changes occurred since last year but which the Commission did not consider in reviewing only "certain" FTEs.

II. The Commission Should Continue to Search for Ways to Achieve a Fairer Regulatory Fee Process

In addition to subsequent annual reviews of the work of its indirect FTEs, the Commission should continue to look for other ways to ensure fairness in its regulatory fee-

¹⁶ For example, the Commission notes that of the 38 FTEs working on non-high cost Universal Service Fund matters who were recategorized from direct employees of the Wireline Competition Bureau to indirect employees in 2017, only 27.75 will continue to be classified as such in FY2023. *See FY2023 NPRM* at ¶ 58.

¹⁷ *Id.* at ¶ 26.

¹⁸ *See NAB Comments* at 8 ("Importantly, future reviews of work performed by FTEs in the non-core bureaus of the Commission should not be limited solely to FTEs in OEA, OGC, and PSHSB, but also include the other non-core bureaus and offices of the Commission that the NPRM continues to designate as indirect largely because FTE time in these bureaus and offices is spent on both fee payors and non-fee payors.").

setting process, including consistency in the categorization of FTEs.¹⁹ For example, broadcasters have in the past identified other groups of FTEs whose work benefits identifiable industries other than broadcasting, but for which broadcasters continue to pay under the Commission's fee-setting methodology despite receiving no benefit from that work. These are not FTEs whose work benefits all regulatees or allows the agency to function, such as Human Resources FTEs who enable the agency to fill job vacancies across its ranks and pay its employees. Rather, these are FTEs whose work benefits particular payor industries, but is not accurately captured in the regulatory fee process.

In particular, as broadcasters have commented before, the Commission has categorized certain FTEs working on Universal Service Fund matters as indirect FTEs. Because these FTEs are not categorized as direct to the industries that benefit from their work, the Media Bureau's direct FTE headcount, relative to the other core bureaus' direct FTE headcounts, is inflated, which results in broadcasters paying for a larger share of *all* costs agency-wide. The Commission argues that the work of these FTEs is not limited to overseeing a single payor category in its core bureaus, but rather a whole "program" that benefits various payor categories as well as non-payors, such as schools and libraries.²⁰ It asks commenters who disagree with its conclusion to identify how these FTEs directly benefit any payor category.²¹ But the answer to

¹⁹ *See id.* at 9-10.

²⁰ The State Associations agree with the NAB that the Commission must be consistent in how it treats exempt entities. If the payor category is not expected to cover the costs of regulating the exempt entities in its ranks, then broadcasters should not be paying for the regulation of NCE and non-profit owned broadcast stations. If, as the Commission has told the State Associations in the past, there exist exempt entities in almost every payor category, then the Commission's concern for the impact were those FTEs to be uniformly recategorized as direct, is misplaced. *See NAB Comments* at 14-15.

²¹ *FY2023 NPRM* at ¶ 57.

that is glaringly obvious. The USF program provides service providers with millions of dollars in funding to provide service to various groups who otherwise would not be able to afford service and provides them both with customers they otherwise would not have and assurance of payment via the government for the extraordinary expenditures required to serve these customers.²² If the program were to be discontinued, the service providers would cease to receive such funding and lose such customers. It is hard to imagine a more direct impact on a set of regulatees. And yet the regulatees experiencing that impact would not be broadcasters.

The problem seems to be that the Commission believes that its methodology cannot account for benefits dispersed across industries regulated by multiple core bureaus. Yet, the Public Safety and Homeland Security Bureau FTEs administer programs that involve regulatees in industries regulated by different core bureaus, as well as non-payors such as non-profit entities and myriad governmental agencies, and the *FY2023 NPRM* proposed to recategorize some indirect PSHSB FTEs as direct FTEs to the core bureaus.²³ Given the impact that categorizing FTEs as direct to a core bureau has on the share of total agency costs all payor categories must bear, it is imperative that the Commission allocate USF FTEs as direct to the actual beneficiaries of that work in some reasonable manner.

To the extent that the Commission feels that it cannot “determine the precise costs attributable to FTEs and the precise benefits flowing from Commission regulation,”²⁴ the State Associations note that “precision” has never been the touchstone of the regulatory fee program,²⁵

²² See *NAB Comments* at 11-14.

²³ *FY2023 NPRM* at ¶¶ 36-50.

²⁴ *Id.* at ¶ 56.

²⁵ See, e.g., *id.* at n.58 (“In undertaking this exercise, because we were reviewing the amount of work performed by various groups within bureaus and offices, we applied conservative estimates

but basic fairness should be. It seems obvious that any imprecision in assigning these costs among regulatees who benefit in some way from those FTEs, rather than placing them on regulatees the Commission acknowledges receive no benefit, would be far less than the current imprecision. So regardless of whether the specific aim is precision, or simply greater fairness, reforming the treatment of these USF FTEs is the correct outcome.²⁶

Finally, in addition to ensuring that the benefits of FTE work are properly distributed among the agency's current payors, the Commission's fee-setting mechanism is made fairer by assuring that as many users of its services as possible pay for the services they use. While the Commission's statutory authority at one time directed it to consider the FTEs in certain named bureaus when collecting regulatory fees,²⁷ with the passage of the RBA, that reference has been removed. Yet, the Commission's process remains preoccupied with finding regulation by one of the four "core" bureaus before collection of regulatory fees is seen as justified. For example, the *FY2023 NPRM* acknowledges that "a significant amount of FTE time is devoted to equipment authorization . . . management of the equipment authorization system . . . and rulemaking activities such as updating testing and laboratory certification standards."²⁸ However, where broadcasters have suggested that the Commission attempt to capture any of that FTE time, perhaps from the users of the equipment authorization process, the Commission has rejected the suggestion, as it would make the Office of Engineering and Technology into a "core" bureau.²⁹

to our proposed reallocations so as not to imply a false sense of precision in the proposed reallocation. Specifically, where the amount of work under consideration equaled .5 FTE or less, we rounded down to the nearest whole FTE and only proposed our reallocations in one full FTE increments.").

²⁶ See *NAB Comments* at 15-16.

²⁷ 47 U.S.C. § 159(a)(1) (2017).

²⁸ *FY2023 NPRM* at ¶ 66.

²⁹ See *id.* at n.117.

The State Associations wish to stress that the creation of a new “core” bureau, deeming an existing bureau as core for regulatory fee purposes, or the addition of a new payor category, should not be dismissed out of hand by the Commission as an impossibility. The Commission has added a new core bureau before. The International Bureau was not originally named in the Commission’s authorizing statute, but was added as a core bureau,³⁰ and that bureau will now be reorganized into the Space Bureau and the Office of International Affairs, which will need to be addressed with regard to fees for FY2024. The Commission has also added new fee categories and new regulatees to existing fee categories, such as for DBS providers and certain non-U.S. licensed space stations.³¹

Such changes over time should be expected and addressed by the agency precisely because the technology that the FCC regulates is changing and converging. As we have previously stated:

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”³² 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.³³

The Commission has broadened its regulatory fee payor base in the past, and it should expect to do so again; likely with increasing frequency given the speed with which the technologies it

³⁰ *See id.* at n.175.

³¹ *Id.* at ¶ 14, n.41.

³² 47 U.S.C. § 159(b).

³³ Joint Comments of the State Broadcasters Associations, MD Docket Nos. 21-190, 22-223 (filed July 5, 2022), at 12.

regulates are changing. It should not be slowed in this process simply because it has not previously treated a particular bureau as a core bureau.³⁴

III. The Commission Should Implement the Proposed New Radio Tier to More Fairly Distribute the Burden of Regulatory Fees for These Small Payors

The State Associations appreciate the Commission's recognition of the marketplace challenges faced by the smallest radio station payors and the impact that Commission regulatory fees can have on their ability to continue to serve their local communities. The Commission's proposal to add an additional radio station payor tier focused on stations located in small communities is therefore a welcome proposal. Like all broadcasters, these stations face competition from satellite radio, streaming, and other sources, but have no ability to pass the costs of Commission regulatory fees on to a subscriber base. They are also often independently owned, lacking support from sibling stations located in larger markets, and must fund their operations from a base of "Main Street" local advertisers that is stagnant or shrinking in the face of massive online competitors.

The Commission's recognition of the importance of the local service these stations provide to their communities and its attempts to fashion a fairer distribution of the regulatory fee burden among radio broadcasters are important and appropriate. The State Associations therefore support the creation of the new fee tier and urge the Commission to implement it in time for the FY2023 payment due date.³⁵

³⁴ See *NAB Comments* at 7 ("Nothing in the statute limits the Commission's review to only four bureaus, and indeed entails a much broader review of FTE functions across the agency.").

³⁵ See *id.* at 4.

IV. The Commission Should Continue Its Measures to Eliminate Administrative and Financial Barriers for Payors Seeking Regulatory Fee Relief

The State Associations believe that the Commission's experience with certain measures implemented in response to the COVID-19 emergency demonstrates the importance of assuring to the greatest extent possible that administrative processes do not create unnecessary barriers or expense for those seeking to access extraordinary relief for distressed payors. Such obstacles can make debt insurmountable, resulting in costly collection activity, legal proceedings, and potentially the loss of licenses and service to the public, all while failing to assist in actually funding the Commission.

The Commission is already adopting permanently some of the temporary relief measures it extended to payors during the pandemic, including making it simpler to file multiple requests for relief in a single pleading, simplifying the filing process to request an installment payment plan, and allowing electronic submission of these requests for relief via email.³⁶ The State Associations applaud the permanent adoption of these changes and, to the extent approval is not received from OMB in time to permanently implement them for FY2023, the State Associations support their extension for FY2023 on a temporary basis.

In the *FY2023 NPRM*, the Commission asks whether it should extend for FY2023 some of the additional temporary relief measures it adopted during the pandemic, namely waiving its downpayment requirement for installment plans, partially waiving its bar on delinquent payors seeking relief, using its discretion to reduce the interest rate charged on installment plans, and allowing payors to supplement their requests with additional documentation to support their

³⁶ *FY2023 NPRM* at ¶ 16.

submissions after they are initially filed. The State Associations submit that good cause exists for extending these measures for FY2023 given that many communities have still not fully recovered economically from the stresses brought on by the pandemic.³⁷ Moreover, these additional temporary initiatives strengthen the measures the Commission is already adopting on a permanent basis so that its installment payment plan option in particular does not become illusory – promising the availability of relief, but exacting such a high financial penalty or imposing such a difficult paperwork burden that distressed payors, especially those operating without the assistance of counsel, cannot effectively access the relief offered.

The Commission itself recounts that, in its experience during the pandemic, these measures better enabled those payors that needed financial relief to seek it and to do so without incurring yet additional costs for outside professional help simply to get requests for relief on file with the Commission.³⁸ The Commission also states that it has a robust installment payment program to assist payors that need more time to pay their assessed fees.³⁹ Such a program can only meet its objectives, however, where the obstacles to utilizing it are minimized.

Unfortunately, the FCC’s regulatory fee-setting process and calculation methodology itself limits payors’ ability to effectively plan ahead for annual fee assessments. In the State Associations’ experience, broadcasters’ fees almost always vary by a significant amount from year to year and the exact amount payors will owe is not known until shortly before it must be

³⁷ See *NAB Comments* at 4-5 (“Many parts of the economy, including the advertising market, have not yet fully recovered from the adverse impacts of the COVID-19 pandemic. It is manifestly in the public interest for the Commission to make it possible for struggling broadcasters and other fee payors to apply for installment plans or waivers on more reasonable terms so that regulatory fees do not pose an insurmountable hurdle to their ability to serve the public interest.”).

³⁸ *FY2023 NPRM* at ¶ 17.

³⁹ *Id.* at ¶ 91.

paid. This is exactly why the State Associations have previously commented that a permanent installment **pre-payment** program that would eliminate or at least reduce the need for annual individual requests for relief would be helpful to small payors. The *FY2023 NPRM* asks about the utility of such a program, but notes that the very factors that make it difficult for payors to plan ahead on their own for their annual fee payment also make it administratively difficult for the FCC to create a program to assist them in doing so.⁴⁰

Given this administrative conundrum, it would be manifestly unfair to double down on payors who are unable to pay the full amount of their assessed obligation on the short notice that the FCC's process gives them by exacting a 25% late payment penalty, imposing a considerable downpayment amount and high interest rate, and, if the payor is still unable to become current on one year's debt, barring that already distressed payor from seeking any fee relief in the succeeding year. Properly implemented, these temporary measures, if made permanent, could perhaps obviate the need for an installment pre-payment program.

The measures the Commission adopted during the pandemic have demonstrated their value in preventing significant negative consequences for struggling payors while reducing burdens on the Commission in terms of post-default debt collection. They should be extended for FY2023, particularly given that much of the country and many individual businesses are still struggling to return to the levels of economic activity experienced pre-pandemic. Moreover, given that these measures appear to have enabled payors and the FCC's staff to craft appropriate relief and avoid costly collections processes and regulatory consequences for distressed payors (while, most importantly, preventing the loss of broadcast service to local communities), the Commission should consider making these or similar measures permanent.

⁴⁰ *Id.* at ¶ 91-92.

CONCLUSION

For the reasons stated above, the State Associations respectfully request that the Commission implement its proposed FTE recategorizations, new radio payor tier and payor relief measures, and take all other actions consistent with these Joint Reply Comments.

Respectfully submitted,

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