

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

In the Matter of	)	
	)	
Review of the Commission's Assessment	)	MD Docket No. 24-86
and Collection of Regulatory Fees for Fiscal	)	
Year 2024	)	

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 responding to the Commission’s Second Notice of Proposed Rulemaking in the above-captioned proceeding.<sup>1</sup>

## **INTRODUCTION AND SUMMARY**

The State Associations applaud the Commission’s continuing efforts in the *FY2024 NPRM* to identify those FTEs whose work benefits particular regulatory fee payors in order to more accurately distribute the regulatory fee burden among its regulatees. That has been a critical first step in building a fairer and more sustainable regulatory fee structure. The State Associations have long argued that the Commission’s regulatory fee-setting methodology unfairly burdens broadcasters by failing to acknowledge the work of many Commission employees that substantially benefits specific categories of fee payors but which is not accurately captured in the fee-setting process simply because those employees are not assigned to the core licensing bureau regulating those categories of payors. The State Associations urge the

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<sup>1</sup> *Review of the Commission’s Assessment and Collection of Regulatory Fees for Fiscal Year 2024, Second Notice of Proposed Rulemaking, MD Docket No. 24-86, FCC 24-68 (“FY2024 NPRM”) (rel. June 13, 2024).*

Commission to conduct broad annual reviews of its indirect full time equivalent employees to minimize the number that are simply treated as overhead in the fee-setting calculation.

While that first step will necessarily be an ongoing process, a critical further step is for the Commission to expand its pool of payors. Both as a matter of fairness and to comply with the governing statute, the Commission must look beyond its current payor base to financially support its operations. It must also assess regulatory fees upon the many entities who especially benefit from the Commission's work because their businesses profit from FCC proceedings without enduring the regulatory burdens associated with holding an FCC authorization. Whether it be equipment manufacturers allowed to import and sell their electronic products in the United States because of the FCC's equipment certification process, or those whose business is selling equipment that utilizes the spectrum set aside by the Commission for unlicensed use, the Commission must follow the directive of the law to fairly allocate regulatory fees among all who benefit from the Commission's work, and not merely those who hold an FCC authorization.

One fee category that merits particular attention for FY 2024 is the earth station category. The Commission's reorganization of the former International Bureau into the Space Bureau and Office of International Affairs has resulted in significant reallocations of FTEs. As a result, the total fee for this category is proposed to increase significantly over past years, highlighting a weakness in the FCC's methodology that broadcasters have previously noted. In setting the fees for transmit earth stations, the Commission should recognize the very different benefit that broadcasters derive from a single or small number of transmit earth station antennae per authorization versus the benefit that holders of blanket authorizations for hundreds or thousands of antennae receive and create a separate fee category with lower fees for broadcasters' transmit earth stations.

Finally, in addition to working toward a fairer allocation of regulatory fees among all FCC beneficiaries, the Commission should maximize fairness in the payment process itself. An important way to do that is to continue, rather than end, the availability of the extraordinary relief measures for financially distressed regulatees. The Commission’s proposals to end measures that have proven useful during the pandemic to alleviate administrative and financial barriers for payors seeking regulatory fee relief effectively make any relief illusory without any countervailing public benefit. The Commission’s processes should err on the side of supporting distressed payors’ ability to continue to serve the public.

## **I. The State Associations Support the Commission’s Continued Efforts to Reduce the Number of FTEs Treated As “Overhead”**

The State Associations have previously criticized the Commission’s regulatory fee-setting process in large part because the process limits the pool of regulatory fee payors to only those entities regulated by one of the Commission’s “core bureaus” (currently, the Wireline Competition, Wireless Telecommunications, Media and Space Bureaus, as well as the Office of International Affairs), and because it establishes the fee amounts due from those regulatees based only on the numbers of full time equivalent employees (“FTEs”) assigned to work in the core bureaus (“direct FTEs”).<sup>2</sup> This process is inconsistent with the RAY BAUM’S Act of 2018<sup>3</sup> (“RBA”), which requires the Commission to consider the benefit derived from the work of all of its FTEs.

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<sup>2</sup> See, e.g., Joint Comments of the Named State Broadcasters Associations, MD Docket No. 19-105 (filed June 7, 2019), at 3-14.

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

Moreover, as implemented by the Commission, the process is too rigid to take into account factors relevant to the “benefit” received. These include the unique public service provided by broadcasters, which by its nature does not permit a paid subscriber base to pass regulatory fees on to, much less to recover the other fees broadcasters pay to the Commission. Instead, the Commission maintains that its assignment of FTEs to a core bureau “reflects the time spent by FTEs on a regulatory fee category, which is in itself a reflection of the ‘benefit’ to the fee category”<sup>4</sup> and in any event, “regulatory fee assessments are based on the burden imposed on the Commission, not benefits realized by regulatees.”<sup>5</sup> That is simply inconsistent with the RBA.

While not changing this underlying methodology, last year the Commission’s staff undertook “a high-level, yet comprehensive” analysis of the work being performed by FTEs assigned to bureaus and offices *other than* the core licensing bureaus. This marked a significant step forward in that, absent such a review, the work of these FTEs, known as “indirect FTEs,” is essentially ignored, in violation of the RBA.

As the State Associations have laid out in detail in the past,<sup>6</sup> the Commission’s fee-setting process simply divides the agency’s entire budget up among the regulatees of its core bureaus. Since the core bureaus are not the same size, with some having more direct FTEs than others, the agency’s budget is divided among its regulatees in proportion to the number of direct FTEs assigned to each core bureau. The existence of the indirect FTEs and precisely what work

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<sup>4</sup> *FY2024 NPRM* at ¶ 5.

<sup>5</sup> *Id.* at ¶ 5 n.19.

<sup>6</sup> *See, e.g.,* Joint Reply Comments of the State Broadcasters Associations, MD Docket Nos. 22-301, 23-159 (filed June 29, 2022) at 6; Joint Comments of the Named State Broadcasters Associations, MD Docket No. 19-105 (filed June 7, 2019) at 7-8.

they might be doing is not even considered. This methodology, at best, assumes that all regulatees of the core bureaus “benefit” from the work of the agency’s indirect FTEs and as a result, regulatees of bureaus with more direct FTEs pay a much higher portion of the agency’s entire budget, including the salaries of the indirect FTEs and all other overhead costs of the agency, than those assigned to bureaus with fewer direct FTEs.

Broadcasters have previously noted numerous instances where the methodology’s assumption that all regulatees of the core bureaus benefit from the work of the agency’s indirect FTEs was flawed. For example, the Commission has categorized certain FTEs working on Universal Service Fund (“USF”) matters as indirect FTEs ostensibly because the work of these FTEs is not limited to overseeing a single payor category in a core bureau, but rather a whole “program” that benefits various payor categories as well as non-payors, such as schools and libraries. Nevertheless, the Commission has acknowledged that broadcasters do not benefit from this program and do not share in the millions of dollars in funding it pays to other regulatees to provide service to new customers they would not otherwise have in its absence. But, because these FTEs are considered indirect, broadcasters have had to pay a portion of their salaries despite the fact that their work directly benefits *only* other categories of fee payors. While the FCC appears to now be shielding broadcasters from those salaries,<sup>7</sup> because these FTEs are not assigned as direct FTEs to the core bureaus whose work they *do* contribute to, those core bureaus become a smaller percentage of the FCC’s total direct FTEs and their regulatees therefore pay a smaller portion of the agency’s total budget. This in turn increases the share of the Commission’s budget that broadcasters must fund through their regulatory fees. Thus, the

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<sup>7</sup> See *FY2024 NPRM* at ¶ 25.



Commission’s methodology still results in broadcasters paying a higher portion of the Commission’s overhead.<sup>8</sup>

Indeed, the Commission’s first high-level review in FY 2023 identified a total of 63 FTEs in three indirect bureaus and offices (the Office of General Counsel, the Office of Economics and Analytics, and the Public Safety and Homeland Security Bureau) whose work dictated that they should be deemed a direct employee of one of the Commission’s core bureaus, rather than be treated as mere overhead to be shared proportionally among all regulatory fee payors. Accordingly, the FCC reallocated those 63 FTEs from indirect to direct for purposes of calculating regulatory fees. This meant that the work of these FTEs, which was found to be “spent on the regulation and oversight of a regulatory fee payor,”<sup>9</sup> as well as those FTEs’ proportionate share of agency overhead, began to be paid for by the industry category benefiting from their work, rather than being improperly distributed among other payor categories, such as broadcasters.

The State Associations supported those reallocations because reducing the large “catch-all” pool of indirect FTEs and allocating the FTEs whose work significantly benefits particular payor categories to those payors’ core bureaus helps to alleviate “the distortive effect of a small number of direct employees determining who pays for a far larger number of indirect employees,

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<sup>8</sup> It remains unclear why these FTEs cannot be reallocated in the same way FTEs in the Public Safety and Homeland Security Bureau (who also administer programs that involve regulatees in industries regulated by different core bureaus as well as for non-payors such as non-profit entities and myriad governmental agencies) have been allocated. 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, the State Associations believe it remains imperative that the Commission allocate USF FTEs as direct to the actual beneficiaries of that work.

<sup>9</sup> *FY2024 NPRM* at ¶ 14.

as well as the non-personnel costs of the FCC,”<sup>10</sup> thereby helping to improve the fairness and accuracy of the regulatory fee process.

The State Associations have urged the Commission to formalize an expansive annual review of indirect FTEs’ actual work as part of its regulatory fee-setting process because the rapid evolution of the industries that the Commission regulates will inevitably result in associated changes in its employees’ work.<sup>11</sup> The State Associations have also urged the Commission, in conducting these annual reviews, to look beyond the three bureaus and offices it considered in FY 2023 “so that the Commission is not looking for changes only where it already expects to find them, but rather wherever they may occur.”<sup>12</sup>

This year, the Commission did not undertake a wide-ranging “high-level but comprehensive” staff review of the work of its employees.<sup>13</sup> Rather, in light of FY 2024 being the first year that the Commission’s division of the former International Bureau into the Space Bureau and the Office of International Affairs will impact the regulatory fee-setting process, and given a significant increase in FTEs in the Public Safety and Homeland Security Bureau, the Commission focused its review on those two areas, as well as on reviewing the 63 FTE reallocations made in FY 2023 to be sure they remain valid.<sup>14</sup>

Following this year’s review, the Commission is proposing to reallocate a total of 69 FTEs for regulatory fee purposes in FY 2024, including reaffirming nearly all of the 63 FTE

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<sup>10</sup> Joint Reply Comments of the State Broadcasters Associations, MD Docket Nos. 22-301, 23-159 (filed June 29, 2022) at 6; *see also* Joint Comments of the Named State Broadcasters Associations, MD Docket No. 19-105 (filed June 7, 2019) at 9.

<sup>11</sup> Joint Reply Comments of the State Broadcasters Associations, MD Docket Nos. 22-301, 23-159 (filed June 29, 2022) at 9-10.

<sup>12</sup> *Id.* at 10.

<sup>13</sup> *FY2024 NPRM* at ¶ 16.

<sup>14</sup> *Id.* at ¶ 15.

reallocations undertaken in FY 2023. The State Associations appreciate the work that the Commission’s staff has put into the above reviews, including opening a separate proceeding to address the impact of the reorganization of the International Bureau on regulatory fees.<sup>15</sup> Nevertheless, it is important that for FY 2025, the Commission return to the more broad-ranging review that the State Associations urged last year, and that such review be conducted annually going forward. As is clear from 69 FTE reallocations among a limited number of non-core offices and bureaus, there are assuredly other indirect FTEs not considered in these non-comprehensive reviews whose work benefits particular payor fee categories and therefore merit reallocation.

As the State Associations noted last year, because these reviews are rooted in the Commission’s headcounts and task assignments, the Commission is the only party in a position to conduct them, and must therefore ensure they are expansive and thorough. This will ensure that indirect FTEs that have never been considered in such a review are properly categorized, and that indirect FTEs whose tasks have changed in the past year are properly recategorized.

## **II. The Burden and Benefit of Regulation of Broadcasters’ Earth Stations Dictate That They Incur a Lower Regulatory Fee**

In the *FY2024 NPRM*, the Commission noted it had commenced a separate rulemaking proceeding through the *Space and Earth Station Regulatory Fees NPRM* to address a host of issues raised by the reorganization of the former International Bureau into the Space Bureau and Office of International Affairs.<sup>16</sup> Chief among these for broadcasters is the division of

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<sup>15</sup> *Assessment and Collection of Space and Earth Station Regulatory Fees for Fiscal Year 2024*, Notice of Proposed Rulemaking, MD Docket No. 24-85, FCC 24-31 (“*Space and Earth Station Regulatory Fees NPRM*”) (rel. March 13, 2024).

<sup>16</sup> *FY2024 NPRM* at ¶ 17.

regulatory fees between the space station payors and the earth station payors. As this issue was not resolved before issuance of the *FY2024 NPRM*, the Commission provided two regulatory fee amounts for earth stations, depending on whether the separate rulemaking proceeding is completed in time to be effective for FY 2024.

At the outset, as there is currently only one category of earth station payor, the FCC proposes to increase the per station fee for all earth stations from \$575.00 in FY 2023 to \$1,120.00 in FY 2024.<sup>17</sup> Given that there has been no change in the Commission's appropriation from last year to this year and no change in the number of earth stations paying regulatory fees, this increase appears to be entirely due to the reallocation of FTEs to direct FTEs of the new Space Bureau and Office of International Affairs. In the event that the proposals in the *Space and Earth Station Regulatory Fees NPRM* are adopted in time to be effective for FY 2024, the Commission estimates that the fee per earth station will further jump to \$2,907.00.<sup>18</sup>

The State Associations note that broadcasters utilize these earth stations in gathering, delivering and distributing important news, emergency information, sports and entertainment to the public. While vital to their service to the public, these facilities are in addition to the licenses they hold to broadcast, and represent an additional regulatory fee that they must pay to maintain the same level of service to the public. Moreover, to provide this important service to the public, broadcasters typically utilize only one or a small number of antennae per authorization. The State Associations agree with the Reply Comments filed by the National Association of Broadcasters in the *Space and Earth Station Regulatory Fees NPRM* proceeding<sup>19</sup> noting that the

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<sup>17</sup> *Id.* at ¶ 19 and Appendix A.

<sup>18</sup> *Id.* at ¶ 20 and Appendix E.

<sup>19</sup> Reply Comments of the National Association of Broadcasters, MD Docket 24-85 (filed April 29, 2024) at 4-5.

benefit that broadcasters receive from the Commission's regulation of this fee category should be seen as substantially different from that of a regulatee deploying hundreds or thousands of antennae under a single blanket license, and that the earth stations broadcasters use should therefore incur a lower regulatory fee.<sup>20</sup>

As a practical matter, the fee amounts proposed for a transmit earth station exceed those proposed for several classes of radio broadcast stations. This makes little sense, and it would be a truly perverse result if regulatory fees caused broadcasters to relinquish such earth stations, particularly since they are often used to uplink breaking news content in a station's market to networks and stations nationwide. Their loss would undercut the public's access to important and timely news content.

### **III. The Commission Must Continue to Expand Its Regulatory Fee Payor Base to More Fairly Allocate the Regulatory Fee Burden Among Those Who Benefit From Its Work**

As discussed above, the reallocations of indirect FTEs that the Commission has undertaken in the last two years enhances the fair distribution of the regulatory fee burden among its *existing* payors. But the reallocations only address one of the State Associations' concerns with the fee-setting process – that it is a zero-sum game where a small number of direct FTEs dictate who pays for the much greater number of indirect FTEs and non-employee costs of the agency. To be truly fair, and because the RBA mandates it, the payor base must expand to include the many industries who *doubly* benefit from the work of the Commission. These are the entities that earn profits from the work of the Commission, avoid the heavy regulation and

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<sup>20</sup> The State Associations support the Commission's decision not to seek regulatory fees for receive-only earth stations. Broadcasters use these earth stations to receive programming to relay to the public and particularly given that their registration with the FCC is voluntary, they impose little burden on the FCC's resources.

compliance costs associated with holding an FCC authorization, while avoiding paying regulatory fees for that benefit, simply because they do not hold a license or are not regulated by one of the Commission’s core bureaus.

As the State Associations and other parties have noted, the Commission’s statutory authority no longer requires it to consider only the FTEs in certain named bureaus when collecting regulatory fees.<sup>21</sup> Instead, the RBA mandates that the Commission 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.<sup>22</sup> Thus, the Commission’s fee-setting process should not remain fixated on only the regulatees of its so-called core bureaus. Because of this, parties have called for the Commission to consider establishing regulatory fee categories for entities like broadband service providers and manufacturers of equipment that utilizes unlicensed spectrum.<sup>23</sup> Indeed, the Commission itself has noted 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.”<sup>24</sup>

However, the Commission has been resistant to addressing FTE time dedicated to the regulation of equipment authorization simply because this would treat the Office of Engineering

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<sup>21</sup> See 47 U.S.C. § 159(a)(1) (2017).

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

<sup>23</sup> See e.g., Reply Comments of the National Association of Broadcasters, MD Docket No. 21-190 (filed July 5, 2022) at 6-14; Comments of Satellite Coalition, MD Docket No. 21-189 (filed Oct. 21, 2021) at 5-8.

<sup>24</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2023*, Report and Order and Notice of Proposed Rulemaking, 38 FCC Rcd 4580 at ¶ 66 (2023) (“FY2023 NPRM”).

and Technology as a new “core” bureau.<sup>25</sup> And it has not otherwise significantly broadened its fee categories or pool of payors. But, as the State Associations have previously noted, the Commission not only can do such things, it has in fact done them on occasion. The Commission added the International Bureau as a “core” bureau even though it was not originally named in its authorizing statute,<sup>26</sup> and the Commission is now reorganizing that bureau into two new core entities.<sup>27</sup> The Commission has also created new fee categories, such as for DBS, and expanded the pool of regulatees included in existing fee categories, such as for certain non-U.S. licensed space stations.<sup>28</sup>

The technologies that the Commission regulates are changing rapidly, and the organization of the FCC is changing with them. Similarly, the Commission’s regulatory priorities are changing, as is the work of its FTEs to accomplish those priorities. What has not changed is the FCC’s regulatory fee-setting methodology. The time has come for the Commission to acknowledge these facts and meet the requirements of the RBA.

#### **IV. Extraordinary Relief Procedures Make the FCC’s Regulatory Fee Process Fairer and More Administrable for the Most Vulnerable Payors and Should be Retained Regardless of Pandemic Status**

In the *FY2024 NPRM*, the Commission proposes to terminate a number of procedures that it had put in place to allow regulatees experiencing financial hardship during the pandemic

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<sup>25</sup> See *id.* at ¶ 65 n.117.

<sup>26</sup> See *Procedures for Assessment and Collection of Regulatory Fees*, MD Docket No. 12-201, FCC 12-77 (rel. July 17, 2012) at ¶ 5 n. 5.

<sup>27</sup> See also Comments of the National Association of Broadcasters, MD Docket Nos. 23-159, 22-301 (submitted June 14, 2023) 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.”).

<sup>28</sup> *FY2023 NPRM* at ¶ 14 and n. 41.

to more easily access available forms of relief relating to their regulatory fee obligations. In particular, the Commission proposes to (a) reinstate the redlight rule's ban that prevents regulatees already in debt to the Commission from seeking reduction, deferral or waiver of the current year's regulatory fee obligations; (b) require that regulatees seeking relief submit documentation supporting their financial hardship with their initial requests, without opportunity to supplement or update; and (c) require regulatees seeking regulatory fee relief in the form of an installment plan to pay a downpayment and higher interest rate.<sup>29</sup> The Commission also seeks to end its policy of presuming that stations that are dark, recently dark, or bankrupt are experiencing financial hardship and therefore need not submit documentation demonstrating that financial hardship.<sup>30</sup>

The Commission portrays itself as serving dual masters in attempting to meet both its statutory obligation to assess and collect regulatory fees and its commitment to ensuring that its process is administratively manageable for regulatees to meet their obligations.<sup>31</sup> However, the FCC is not a collection agency. It is the expert agency charged with maximizing service to the public. In light of this, the State Associations do not believe the above proposals, especially taken in the aggregate, strike the appropriate balance in achieving the Commission's principal mission.

Dismissing petitions for relief as defective likely hastens the point in time at which the debtor can be transferred to Treasury and its armada of debt collectors. While this may (or may not) ultimately result in collection of the debt, it also has the potential to cause stations to go

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<sup>29</sup> *FY2024 NPRM* at ¶¶ 42-45.

<sup>30</sup> *Id.* at ¶ 47.

<sup>31</sup> *Id.* at ¶ 51.



silent, potentially permanently. There is no choice to be made here. Avoiding loss of service to the public, while providing a struggling broadcaster with as much flexibility as possible to meet its regulatory fee obligations, successfully achieves the goals of both the Communications Act and the FCC's regulatory fee obligations.

Accordingly, the State Associations believe that rather than reinstating the ban on existing debtors filing requests for relief of current year fees, the Commission should extend its suspension of the ban indefinitely. In the alternative, if the Commission decides to reinstate the ban, the agency should extend to payors who are already behind in their regulatory fee payments to the Commission the same filing flexibility it adopted last year for those who are not yet in debt to the Commission.<sup>32</sup> This flexibility allows a payor to (i) file a single document to request both a waiver or reduction of its current year regulatory fees and a deferral of the deadline to pay the fees while the FCC works on the request for waiver or reduction, and (ii) file that document via email. (Previously, the request for waiver or reduction and request for deferral had to be two separate pleadings, and they had to be submitted in paper to the FCC Secretary's office in Washington, DC.) The Commission should extend this same flexibility to a payor who is already behind in their regulatory fee payments, so that such payor can make a single submission containing all requests for relief, and submit it via email.<sup>33</sup>

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<sup>32</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2023*, Report and Order, MD Docket No. 23-159, FCC 23-66 (rel. Aug. 10, 2023) (“*FY2023 R&O*”) at ¶ 127.

<sup>33</sup> Extending this flexibility is justified because these payors are the ones most in need of it and because it is likely that the same evidence and documentation that supports waiver of the redlight rule also supports the request for waiver or reduction of the current year fees. As a result, allowing a combined filing reduces the respective burdens of submitting and processing the request on the broadcaster and the Commission. If, however, the Commission declines to extend this flexibility to existing debtors, it should add language to its annual fee waiver Public Notice to describe how a payor can request a waiver of the redlight rule, including how and where it must be filed and how and when prior year debt must be brought current, as it has not done so in past fee waiver Public Notices.

Relatedly, the State Associations urge the Commission to retain its policy adopted during the pandemic of allowing regulatees who petition for extraordinary relief an opportunity to cure any deficiencies that the Managing Director identifies in the regulatee's support for its financial hardship claim.<sup>34</sup> The Managing Director's decisions are not public, so it is difficult for petitioners to look up prior cases and learn what sorts of information and circumstances result in a positive ruling. This is an enormous disincentive to even filing a petition for relief, given the expense incurred in preparing it, only to potentially later discover that the financial documentation submitted to prove financial hardship is not sufficient. A simple opportunity to cure would make up for the filer's inability to research ahead of time what documentation will likely be found acceptable.

With respect to dark, recently dark, or bankrupt stations, the *FY2024 NPRM* claims that the Commission's policy of presuming that these stations are suffering a financial hardship was based on an assumption that most stations go dark due to financial distress, but that in the FCC's experience, equipment damage or failure is often the cause.<sup>35</sup> When the Commission adopted this policy in 1995, however, it noted that petitions to go dark are frequently based on financial hardship and that the payment of regulatory fees may be an impediment to restoring service to the public.<sup>36</sup> The Commission also astutely noted that "[w]hen a station is dark, it generally is either without or with greatly reduced revenues."<sup>37</sup> This observation is really the crux of the matter. A station may initially go dark because it is the victim of a helicopter or lightning strike

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<sup>34</sup> As it did last year, the Commission could limit this opportunity to cure documentation to a single cure opportunity and/or set a short time limit on it. *See FY2023 R&O* at ¶ 125.

<sup>35</sup> *FY 2024 NPRM* at ¶¶ 47-48 and n. 158.

<sup>36</sup> *Implementation of Section 9 of the Communications Act*, Memorandum Opinion and Order, 10 FCC Rcd 12759, 12762 (1995).

<sup>37</sup> *Id.*

on its tower, or due to loss of its tower lease (which may be difficult to replace with similar rent and coverage). But the moment of going dark is always going to create a money-losing proposition, and not just because of the cost of repairing whatever damage was caused or of obtaining a new tower site. All advertising revenue stops at the moment operations cease, and if the station remains off the air for any period of time, it may permanently lose its audience and its advertisers. These facts seem self-evident, unchanged, and are the reason the Commission adopted this policy in the first place.

Ultimately, there appears to be nothing in the *FY2024 NPRM* or the record of this proceeding indicating that the practices the Commission proposes to end have undercut its ability to collect regulatory fees sufficient to meet its budget these past several years. However, the impact upon broadcast service to the public of increasing the costs of seeking relief, or of blocking a struggling broadcaster from relief entirely, is all too obvious. Erecting barriers to relief is not in the public interest, particularly where the most likely result is not the Commission's collection of more regulatory fees, but reduced broadcast service to the public.

## CONCLUSION

For the reasons stated above, the State Associations respectfully request that the Commission implement its proposed FTE recategorizations, retain its pandemic-era and non-operational station fee relief policies, and take all other actions consistent with these Joint Comments.

Respectfully submitted,

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