Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Assessment and Collection of Regulatory Fees	)	MD Docket No. 16-166
for Fiscal Year 2016	)	

COMMENTS

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I. INTRODUCTION AND SUMMARY

The American Cable Association ("ACA") submits these comments in response to the Notice of Proposed Rulemaking ("NPRM") in the above-captioned docket.[1] The NPRM seeks comment on the Commission's proposal to assess regulatory fees on Direct Broadcast Satellite ("DBS") providers at the baseline rate of 24 cents per subscriber per year, together with a three cent per subscriber facility relocation fee for fiscal year ("FY") 2016, while proposing to assess a $1.00 per year per subscriber fee on cable television and IPTV providers ("Cable/IPTV").[2] These comments focus primarily on the need to raise the level of fees assessed on the DBS subcategory of the Cable/IPTV fee category to ensure a more equitable distribution of the burden of supporting activities of Media Bureau full time equivalent employees ("FTEs") in administering regulation of the multichannel video programming distributor ("MVPD") services that cable, IPTV and DBS MVPDs provide. The creation of a DBS subcategory was based on the finding that Media Bureau FTE employees were working on issues and proceedings that include DBS as well as other MVPDs and increasingly exercising regulatory oversight over DBS's provision of MVPD services through rulemaking and adjudicatory proceedings.[3] Specifically, the NPRM notes that "'although DBS is not identical to cable television and IPTV, the services all receive oversight and regulation as a result of the work of Media Bureau FTEs on MVPD issues. The burden imposed on the Commission is therefore similar.'"[4] ACA's review

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[1] *Assessment and Collection of Regulatory Fees, Assessment and Collection of Regulatory Fees for the Fiscal Year 2016,* MD Docket No. 16-166, Notice of Proposed Rulemaking (rel. May 19, 2016) ("NPRM").

[2] *Id.*, ¶ 10.

[3] *Assessment and Collection of Regulatory Fees, Assessment and Collection of Regulatory Fees for the Fiscal Year 2015,* Report and Order and Further Notice of Proposed Rulemaking, 30 FCC Rcd 10268, ¶¶ 19-20 (2015) ("FY 2015 Order and FNPRM").

[4] NPRM, ¶ 9, *quoting Assessment and Collection of Regulatory Fees for Fiscal Year 2015*, Notice of Proposed Rulemaking, Report and Order, and Order, 30 FCC Rcd 5354, ¶ 33 (2015) ("FY 2015 NPRM and Order").

of the activities of the cable and DBS industry on Media Bureau related items since the Commission's Order, demonstrates that the burden continues to be comparable.

ACA submits that given the Commission's past findings and the evidence presented in this record, there is absolutely *no* basis for keeping the proposed DBS fee levels over 75 percent below those proposed for other entities in the Cable/IPTV category as the NPRM proposes. DirecTV, now owned by AT&T, is part of the largest MVPD in the nation, serving a combined 26.3 million MVPD (DBS and IPTV) subscribers. Dish Network, now the fourth largest MVPD, serves 13.9 million DBS subscribers.[5] Rather than requiring cable operators and IPTV providers, particularly the hundreds of ACA members that serve in aggregate about half the total subscribers served by DISH Network alone, to continue to provide the lion's share of the support for Media Bureau FTE activities benefiting the entire MVPD industry, the Commission should assess all payors in the Cable/IPTV fee category the same level of fees, thus achieving full parity in FY 2016, or, at a minimum, the Commission should double the proposed baseline DBS fee for FY 2016 and commit to bringing DBS into full parity with cable and IPTV by FY 2017.

In addition, the NPRM seeks comment on steps the Commission could take to address the disparity in regulatory fees for wireless and wireline payors into the Interstate Telecommunications Service Provider ("ITSP") fee category. ACA continues to support reform of the ITSP fee category to better align ITSP regulatory fees with the actual work of the Commission in administering regulation of wireless and wireline voice services through the work of Wireline Competition Bureau ("WCB") FTEs on programs utilized by both types of voice services providers.[6]

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[5] Mike Farrell, *Eat or Be Eaten, Consolidation Creates a Top-Heavy List of 25 Largest MVPDs*, Multichannel News (Aug. 17, 2105), *available at* http://www.multichannel.com/sites/default/files/public/pdf/Coverstory_8_17_15_0.pdf.

[6] FY 2015 Order and FNPRM, ¶¶ 31-34; *Assessment and Collection of Regulatory Fees for Fiscal Year 2015*, Comments of the American Cable Association (filed Nov. 9, 2015) ("ACA FNPRM Comments");

II. ALL PAYORS IN THE CABLE/IPTV FEE CATEGORY IMPOSE SIMILAR BURDENS ON MEDIA BUREAU RESOURCES USED TO ADMINISTER MVPD REGULATION

A foundational principle of the Commission's regulatory fee assessment system is fairness – the principle that those entities that share in causing regulatory costs and receiving regulatory benefits from a Commission subdivision like the Media Bureau should share equitably in paying the fees that support the Bureau.[7] The Commission has underscored its commitment to this principle in regulatory fee assessments repeatedly over the years, including when the Commission recently began assessing IPTV providers the same per-subscriber regulatory fee as cable operators for support of the Media Bureau's regulation of MVPD operations, explaining that "IPTV and cable service providers [both] benefit from Media Bureau regulation as MVPDs," and that they should both pay for that regulation at the same rate because there is a "relatively small difference from a regulatory perspective" between the two types of MVPDs.[8] Further, in last year's regulatory fee order, the Commission recognized that DBS providers "are subject to regulation and oversight of the Media Bureau and should share in the Media Bureau FTE burden attributed to MVPDs."[9] It also found that there are a "host of requirements that apply to all MVPDs and thus apply equally to DBS providers" and that "DBS providers actively participate in Media Bureau proceedings involving MVPD oversight and regulation."[10]

Reply Comments of the American Cable Association (filed Dec. 7, 2015) ("ACA FNPRM Reply Comments").

[7] *Procedures for Collection and Assessment of Regulatory Fees*, Notice of Proposed Rulemaking, 27 FCC Rcd 8458, ¶ 3 (2012); *see* NPRM, ¶ 6 (noting the Commission's intent to "continue[] to improve the regulatory fee process by ensuring a more equitable distribution of the regulatory fee burden").

[8] *Assessment and Collection of Regulatory Fees for Fiscal Year 2013*, Report and Order, 28 FCC Rcd 12351, ¶ 32 & n.81 (2013) ("2013 Fee Order").

[9] FY 2015 NPRM and Order, ¶ 28.

[10] *Id*.

Despite this prescient observation, out of what can best be described as "an over-abundance of caution," and to avoid putative claims of "rate shock," the Commission set the first-time DBS fee level at 12 cents per subscriber per year, or one cent per month for FY 2015.[11] This contrasted sharply with the fee assessment on cable and IPTV providers of 96 cents per subscriber per year or eight cents per month, amounting to a difference eight times as much. At the same time, the Commission plainly stated that it would "update this rate for future years, based on relevant information, as necessary for ensuring an appropriate level of regulatory parity and considering resources dedicated to this new regulatory fee subcategory."[12] Now, noting that DBS providers continue to receive oversight and regulation as a result of the work of Media Bureau FTEs, the NPRM proposes to revise the DBS fee rate upward to 27 cents per subscriber per year for FY 2016.[13] While this represents an upward adjustment, the proposed Cable/IPTV fee – which the Commission also proposes to increase despite the proposed DBS increase – still far exceeds the proposed DBS fee level.[14]

It is unarguable that cable, IPTV and DBS providers impose roughly the same burden on Media Bureau resources devoted to regulation of MVPD services. The NPRM itself acknowledges that in recent years, "the Commission has adopted numerous requirements that apply to all MVPDs, as part of its implementation of the Commercial Advertisement Loudness Mitigation Act (CALM Act), the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), as well as the Satellite Television Extension and Localism Act (STELA) Reauthorization Act of 2014 (STELAR)."[15] The pace of Media Bureau regulatory and oversight

[11] *See* NPRM, ¶ 9; FY 2015 Order and FNPRM, ¶ 20.

[12] FY 2015 NPRM and Order, ¶ 31.

[13] NPRM, ¶ 10.

[14] The proposed $1.00 per subscriber per year Cable/IPTV fee is the highest per-subscriber fee assessed by the Commission for FY 2016 on any class of fee payors that are assessed regulatory fees on a per-subscriber basis.

[15] NPRM, ¶ 8 (citations omitted).

activities with respect to MVPDs remains substantial, as does DBS participation in these proceedings. As the NPRM notes:

> In addition to the activities described in our FY 2015 regulatory fee proceeding, DBS, along with other MVPDs, continues to receive oversight and regulation as a result of the Media Bureau FTEs. For example, the Commission recently adopted a Report and Order requiring cable operators, DBS providers, and certain other licensees to post their public file documents to the FCC hosted online database. In addition, the Commission recently released a Notice of Proposed Rulemaking regarding unlocking the set-top box of cable and DBS operators.[16]

The aforementioned are not the only recent Media Bureau activities applicable to DBS providers and other MVPDs. For example, the Commission this year also adopted a Second Report and Order allocating the responsibilities for "video programming providers" and "video programming distributors" – a category including DBS and other MVPDs – with respect to the provision and quality of closed captions on television programing pursuant to the Commission's TV closed captioning rules.[17] DirecTV and Dish Network were both active participants in all phases of this rulemaking,[18] as were Media Bureau FTEs.[19] Furthermore, cable and DBS providers have both also participated in non-rulemaking proceedings before the Media Bureau, including broadcast license transfer and assignment proceedings.[20] For example, ACA and

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[16] *Id.*, ¶ 10 (citations omitted).

[17] *Closed Captioning of Video Programming, Telecommunications for the Deaf and Hard of Hearing, Inc.*, Second Report and Order, 31 FCC Rcd 1469 (2016).

[18] *See id.*, ¶ 14 nn. 44, 46; ¶ 20 n.74; ¶ 22 n.84; ¶ 24 n.96.

[19] *See*, *e.g.*, *Closed Captioning Video Programming, Telecommunications for the Deaf and Hard of Hearing, Inc.*, CG Docket No. 05-231, Letter from William M. Wiltshire, Counsel to DirecTV, to Marlene H. Dortch, Secretary (filed Dec. 9, 2013) (summarizing meeting with Commission staff, which included Media Bureau staff, on various potential approaches to establishing quality standards for closed captioning of video programming).

[20] Just this year Dish Network, along with ACA and ITTA petitioned to deny or condition a broadcast license transfer application involving two major broadcast affiliate groups, Nexstar Broadcasting Group, Inc. and Media General, Inc. to restrain the merging parties from using their increased bargaining leverage to unfairly increase retransmission consent fees. *See Applications of Nexstar Broadcasting Group, Inc. and Media General, Inc. For Consent to Transfer Control of Licenses*, Petition to Deny or Impose Conditions of Dish Network, L.L.C, the American Cable Association, and ITTA, MB Docket No. 16-57 (filed Mar. 18, 2016). More recently, Dish Network has indicated it may seek Commission assistance in resolving a retransmission consent impasse with Tribune Broadcasting. *See* Tess Stynes,

DBS providers both have been active participants in the Media Bureau's public notice seeking comment on the petition for rulemaking seeking FCC authorization for the permissive use of the "Next Generation TV" broadcast television standard, ATSC 3.0.[21] Furthermore, AT&T/DirecTV and other cable/IPTV providers have participated in the Media Bureau's inquiry into promoting diverse and independent sources of video programming.[22]

Dish Network or DirecTV (as part of AT&T), or both, like ACA, have participated in nearly all proceedings affecting MVPDs that have been administered in whole or in part by the Media Bureau since September 2015.[23] Together these DBS providers have made roughly two-dozen filings over that time.[24] Most of the above-mentioned proceedings are rulemakings or inquiries the outcome of which will affect all MVPDs. Moreover the pace of Media Bureau oversight of DBS MVPD offerings is unlikely to significantly decrease in the future, as the rulemakings described above give rise to further proceedings, compliance and enforcement activities.

Dish Network Proposes Arbitration to Tribune in Fee Dispute, Wall Street Journal (Jun. 16, 2016), *available at* http://www.wsj.com/articles/dish-network-proposes-arbitration-to-tribune-in-fee-dispute-1466086439.

[21] *See Media Bureau Seeks Comment on Joint Petition for Rulemaking of America's Public Television Stations, the AWARN Alliance, the Consumer Technology Association, and the National Association of Broadcasters Seeking to Authorize Permissive Use of the "Next Generation TV" Broadcast Television Standard,* GN Docket No. 16-142, Comments of the American Cable Association (filed May 26, 2016); Comments of DISH Network, LLC (filed May 26, 2016); Comments of AT&T (filed May 26, 2016).

[22] *See* Notice of Inquiry, MB Docket No. 16-41, Promoting the Availability of Diverse and Independent Sources of Video Programming, Comments of AT&T (filed Mar. 30, 2016).

[23] In a few limited cases, one or the other the DBS provider participated in an MVPD-related proceeding where ACA did not, and vice-versa. For instance, DISH Network participated in this complaint proceeding in which ACA nor any other MVPD participated. See, e.g., MB Docket No. 14-258, Sun Broadcasting, Inc. Complaint Against OpticalTel Telecommunications, Inc. Concerning Retransmission of WXCW(TV), Naples, FL, Letter to Marlene Dortch, Secretary, FCC, from Alison Minea, Director and Senior Counsel for DISH Networks, LLC, MB Docket No. 14-258 (filed Jan. 5, 2016) and Letter to Marlene Dortch, Secretary, FCC, from Alison Minea, Director and Senior Counsel for DISH Networks, LLC, MB Docket No. 14-258 (filed Mar. 3, 2016). Similarly, ACA participated in this license transfer review in which neither AT&T/DIRECTV nor DISH participated. *See* In the Matter of Fireweed Communications, LLC, Assignor, and Gray Television Licensee, LLC, Assignee, For Consent to Assign the License of Station KYES-TV, Anchorage Alaska, FCC File No. BALCDT – 201510009ADJ, Informal Objection of the American Cable Association (filed Dec. 17, 2015).

[24] To arrive at this number, ACA reviewed filings by DISH Network and DirecTV (including AT&T after its acquisition of DirecTV was completed) in the Commission's ECFS database. ACA's informal survey did not include filings submitted by EchoStar that relate to the offering of DISH Network service.

Because cable, IPTV and DBS providers impose similar burdens on the Media Bureau, they should be assessed similar regulatory fees to support Media Bureau MVPD regulation.

III. ALL PAYORS IN THE CABLE/IPTV FEE CATEGORY SHOULD BE ASSESSED THE SAME LEVEL OF FEES SUPPORTING MEDIA BUREAU MVPD REGULATORY ACTIVITIES

It is time for the Commission to finish the task of bringing greater fairness and competitive and technological neutrality by creating complete regulatory fee parity for all payors in the Cable/IPTV fee category. In light of the Commission's conclusion that the Media Bureau increasingly devotes its time to issues involving the entire MVPD industry, and that "although DBS is not identical to cable television and IPTV, the services all receive oversight and regulation as a result of the work of the Media Bureau FTEs on MVPD issues"[25] – in other words, that there is a "relatively small difference from a regulatory perspective" between DBS and Cable/IPTV, the Commission should require DBS operators to pay the same rate as Cable/IPTV. Regulatory fee parity for all MVPDs paying into the Cable/IPTV fee category is fully justified for the same reasons creating the DBS subcategory was justified. Yet, for FY 2016, the NPRM proposes to assess cable operators and IPTV providers $1.00 per subscriber per year in regulatory fees while only proposing to assess DBS providers a baseline fee of 24 cents per subscriber per year.[26] This represents only a modest 12 cents per subscriber per year increase in the baseline fee over last year. The only explanation provided in the NPRM for setting the baseline fee level at 24 cents is that it is being done "for reasons similar to those discussed in the FY 2015 NPRM and Report and Order," and the Commission's "analysis of the resources dedicated to this subcategory, including the resources dedicated to the pending

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[25] FY 2015 NPRM and Order, ¶¶ 33-34.

[26] The 27 cents per subscriber per year assessed on the DBS providers "includes a 24 cent per subscriber baseline with a proportional adjustment of three cents per subscriber associated with facilities reduction costs." NPRM, ¶ 10. ACA presumes that here the Commission intended to reference its facility "relocation," not "reduction" costs.

portfolio of MVPD proceedings."[27] This explanation, however, makes no sense in light of the Commission's past findings that the various payors into the Cable/IPTV fee category all benefit from Media Bureau activities related to the provision of MVPD service and that the differences from a regulatory perspective between cable operators, IPTV providers and DBS providers are "relatively small."[28] It is also inconsistent with the current workload pending before the Bureau. There is no basis for holding the fees paid by DBS providers for FY 2016 at a level that is the artificially and disproportionately four times as low as that assessed to cable operators and IPTV providers.

As discussed above, ACA and NCTA have shown that the resources utilized by DBS providers are roughly similar to those used by cable operators and IPTV providers,[29] and the NPRM provides no data or analysis to give ballast to the conclusion. ACA and NCTA have pointed out that there is no rational way to apportion the resources "dedicated" to DBS when examining Media Bureau activities with respect, for example, to retransmission consent reform.[30] Nor can one do so with respect to the Commission's pending set-top box proposal, or any of the other matters currently before the Media Bureau. Any rules adopted in these

[27] *Id*.

[28] 2013 Fee Order, ¶ 32.

[29] *See Procedures for the Assessment and Collection of Regulatory Fees for Fiscal Year 2014, Assessment and Collection of Regulatory Fees for Fiscal Year 2013, Assessment and Collection of Regulatory Fees*, MD Docket Nos. 14-92, 13-140, 12-201, Comments of the National Cable & Telecommunications Association and the American Cable Association at 6-7, Attachments A&B (filed Nov. 26, 2014) ("NCTA-ACA 2014 Comments") (describing high level of DBS participation in Media Bureau regulatory activities concerning MVPD services); Reply Comments of the National Cable & Telecommunications Association and the American Cable Association at 8-14 (explaining why the Commission need not find absolute parity of use of Media Bureau regulatory oversight and resources in order to assess all payors in the same fee category the same level of fees).

[30] *See Procedures for Assessment and Collection of Regulatory Fees for Fiscal Year 2015*, MD Docket No. 15-121, Reply Comments of the National Cable & Telecommunications Association and American Cable Association at 4-6 (filed July 6, 2015) ("NCTA-ACA 2015 Reply Comments"); NCTA-ACA 2014 Comments at 11.

proceedings will impact MVPDs uniformly, barring adoption of exemptions for certain classes of MVPDs, such as smaller MVPDs, as ACA and others have requested.[31]

AT&T's acquisition of DirecTV only exacerbates the folly of maintaining such wildly disproportional fee levels for cable, IPTV and DBS providers.[32] AT&T, now the nation's largest MVPD, operates two types of services – its U-verse IPTV service and its DirecTV DBS service. Yet, AT&T will be assessed starkly lower regulatory fees for its approximately 20 million DirecTV subscribers than it will pay for its approximately 6 million IPTV subscribers, even though all of these services make absolutely comparable use of Media Bureau FTE resources and AT&T's advocacy in the rulemakings is on behalf of all its MVPD subscribers.[33] AT&T should be paying the same Media Bureau regulatory fee for all of its MVPD subscribers. The Commission must put an end to such unfair and illogical fee assessments.

Rather than assess yet another arbitrarily low fee level for the DBS subcategory, the Commission should bring greater fairness to its fee program and avoid the inequity of having cable and IPTV providers, particularly smaller and more rural providers, cross-subsidizing their much larger, primary and direct competitors, the DBS providers. That is, the Commission should impose the same per-subscriber fee on all payors into the Cable/IPTV fee category so that, regardless of the technology they use to deliver MVPD service, they all bear the same level

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[31] *See*, *e.g.*, *Expanding Consumers' Video Navigation Choices, MB Docket No. 16-42, Commercial Availability of Navigation Devices*, MB Docket No. 16-42, CS Docket No. 97-80, Comments of the American Cable Association at 85-110 (filed Apr. 22, 2016); Reply Comments of the American Cable Association at 67-76 (filed May 23, 2016); Comments of WTA at 7-8 (filed Apr. 22, 2016); Comments of ITTA at 16-17 (filed Apr. 22, 2016).

[32] *Applications of Applications of AT&T Inc. and DirecTV; For Consent to Assign or Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 30 FCC Rcd 9131 (2016).

[33] See, e.g., *Implementation of Section 103 of the STELA Reauthorization Act of 2014*, MB Docket Nos. 15-216 and 10-71, Ex Parte Letter to Marlene Dortch, Secretary, FCC, from Sean A. Lev, Counsel to AT&T Services, Inc. (filed Mar. 16, 2016). Moreover, AT&T is transitioning its U-verse subscribers to its DBS offering, a corporate decision that will have the added benefit of lowering its Media Bureau regulatory fee burden while commensurately increasing that of its cable operator competitors. Scott Moritz, AT&T Takes U-Turn on U-Verse as It Pushes User Toward DirecTV, Bloomberg (Feb. 16, 2016), *available at* http://www.bloomberg.com/news/articles/2016-02-16/at-t-takes-u-turn-on-u-verse-as-it-pushes-users-toward-directv.

of regulatory fee burden. Doing so will avoid the competitive distortions the current fee structure creates by having cable operators and IPTV providers, most of whom are far smaller than the DBS providers, cross-subsidize the fee burden of their primary and direct competitors in the marketplace.

At the very least, the Commission must significantly increase the fee level proposed for DBS for FY 2016. ACA, together with NCTA, previously proposed a three-year phase-in to full fee parity for DBS providers, with an initial baseline fee level projected to go from 24 cents in 2015, to 48 cents in 2016 to 76 cents in 2017, based the Commission's 2015 collection of $339,844,000 in regulatory fees.[34] ACA continues to believe that a brief and limited phase-in period to avoid any conceivable claim of "rate shock" while DBS providers had the opportunity to adjust to the new fee schedule was the correct approach.[35] However, the DBS providers have already had the benefit of an adequate phase-in and should now be brought quickly up to parity with cable and IPTV. To meet its FY 2016 regulatory fee collection target of $384,012,497, the Commission should either assess all payors in the Cable/IPTV fee category the same level of fees, or, at a minimum, assess DBS fee payors a 48 cent per subscriber per year baseline fee[36] and commit to raising that baseline level to 72 cents per subscriber per year in 2017, which (adjusted as necessary) should roughly approximate the fees assessed on cable operators and IPTV providers. Such amounts cannot reasonably be characterized as likely to cause "rate shock." DBS providers have had one year to adjust to full implementation of fees similar to those paid by cable operators and IPTV providers. The ramp-up period that the Commission

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[34] *Procedures for Assessment and Collection of Regulatory Fees for Fiscal Year 2015*, MD Docket No. 15-121, Comments of the National Cable & Telecommunications Association and American Cable Association at 2, 6-8 (filed June 22, 2015) ("NCTA-ACA 2015 Comments"); NCTA-ACA 2015 Reply Comments at 4-8.

[35] Looking back, there is no evidence that rate shock was a legitimate concern or that adopting a higher rate at that time would have created any shock.

[36] The Cable/IPTV rate should decrease by a commensurate level once this adjustment is made.

has already afforded the DBS providers is far beyond the length of any reasonable phase-in period that might be needed to prevent any "rate shock" that DBS subscribers may experience.[37]

There is nothing unique about DBS operators to justify any deviation from the Commission's past approach. Similarly, there is nothing about the imposed fee level that calls for special consideration. The Commission should apply the same principle of fairness that has always governed regulatory fee assessments and assess DBS a regulatory fee rate comparable to that paid by others in the same regulatory fee category.

IV. THE COMMISSION SHOULD ENSURE THAT WIRELESS VOICE PROVIDER BURDENS ON WIRELINE COMPETITION BUREAU RESOURCES ARE REFLECTED IN ITS REGULATORY FEE PROGRAM

Today, wireless voice providers contribute nothing to support the work of WCB FTEs in regulating the provision of interstate voice telephone services, despite their use of WCB resources and the benefits accruing to the wireless voice providers from the work of WCB in administering the universal service program, numbering, pole attachment regulation, CALEA and other regulatory programs applicable to all regulated voice providers. The NPRM seeks comment on a proposal by ITTA – The Voice of the Mid-Size Communications Companies ("ITTA") to combine wireless voice and wireline services into the ITSP category, or, alternatively, to re-assign certain WCB FTEs to other fee categories for regulatory fee purposes.[38] It also seeks comment on whether to allocate some portion of the direct FTEs that devote time to universal service or numbering issues as additional indirect FTEs in lieu of adopting ITTA's proposals.[39] Under the Commission's proposed FY 2016 fee schedule, ITSP regulatory fees

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[37] As ACA and NCTA have previously noted, the Commission has not historically afforded either VoIP or IPTV providers the luxury of such an extended ramp-up period when assessing first time fees to support Commission regulatory activities. No phase-in was provided to IPTV when it was added to the Cable/IPTV category or to VoIP services when they were added to the ITSP fee category; in each case full implementation of the new fees was merely delayed for one year. See NCTA-ACA 2015 Comments.

[38] NPRM, ¶ 18.

[39] *Id.*, ¶ 19.

would account for nearly $147 million of the approximately $384 million that the Commission must recover through regulatory fees, leaving ITSP fee payors and their customers responsible for nearly 40 percent of the Commission's total regulatory fee burden, even as the Commission's resources devoted to regulating wireline voice providers decreases relative to other sectors. As ITTA has repeatedly explained, providers and consumers of wireline voice service have borne a disproportionate regulatory fee burden relative to other industry sectors for more than a decade, a disparity that the Commission can and should address.[40]

Consistent with its previous filings, ACA agrees with ITTA that the work of WCB FTEs supports providers of interstate telecommunications services other than existing ITSPs, particularly providers of commercial mobile radio services ("CMRS") and continues to support fee reforms to ensure that these burdens should be distributed in a fair, equitable and competitively neutral manner.[41] The NPRM acknowledges that WCB FTEs perform work on cross-cutting telecommunications service issues such as the various universal service fund ("USF") support programs and numbering issues, but nonetheless concludes that the proposals put forth by ITTA to combine wireless voice and wireline services into the ITSP category, or alternatively, to reassign certain WCB FTEs to other fee categories for regulatory fee purposes or to adopt a new regulatory fee category for CMRS, as a subcategory of the ITSP regulatory

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[40] *See, e.g.*, *Procedures for the Assessment and Collection of Regulatory Fees for Fiscal Year 2014, Assessment and Collection of Regulatory Fees for Fiscal Year 2013, Assessment and Collection of Regulatory Fees*, MD Docket Nos. 14-92, 13-140, 12-201, Comments of ITTA – The Voice of Mid-Size Communications Companies (filed Nov. 26, 2014); Comments of ITTA – The Voice of Mid-Size Communications Companies, the Eastern Rural Telecom Association, and Windstream Corporation (filed July 7, 2014); Comments of the Independent Telephone & Telecommunications Alliance (filed June 19, 2013); *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, MD Docket No. 08-65, Comments of the Independent Telephone & Telecommunications Alliance (filed June 6, 2008); Reply Comments of the Independent Telephone & Telecommunications Alliance (filed Sept. 25, 2008).

[41] FY 2015 Order and FNPRM, ¶¶ 31-34; ACA FNPRM Comments, at 5-7; ACA FNPRM Reply Comments, at 3-6.

fee category, are not consistent with Commission orders implementing Section 9 of the Communications Act.[42]

If, as the NPRM confirms, WCB FTEs are performing work for wireless service providers, then the Commission, consistent with the Act, should assess regulatory fees on these providers to reflect this work.[43] The only remaining question is the best way to accomplish this goal. ACA maintains that while the analogies may not be perfect, the situation ITTA seeks to rectify is not dissimilar to that addressed by the Commission's inclusion of VoIP in the ITSP fee category and DBS as a subcategory of the Cable/IPTV fee category. Put another way, a class of entities is making substantial use of the resources of one of the Commission's core bureaus – WCB – for the provision of its primary service – in this case wireless voice service – but paying none of the direct costs of supporting the WCB FTEs working on issues governing and affecting the provision of that service. This is consistent with the Commission's charge under Section 9 to ensure that regulatory fees are to "be derived by determining the full-time equivalent number of employees performing" Commission activities, "adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities. . . ."[44] Wireless voice providers unarguably benefit from WCB work on universal service and numbering. As ACA noted in its comments, for example, wireless providers participated extensively in the bureau's work in reforming the Lifeline program, and Tracfone, a wireless provider, is the single largest recipient of Lifeline support.[45]

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[42] NPRM, ¶ 17.

[43] *See id.*, ¶ 19 (finding, inter alia, that over a six to twelve-month period, seven WCB FTEs work on numbering issues and 52 FTEs work on universal service issues (approximately 16 on the high-cost program, 13 on the schools and libraries program, nine of the Lifeline program for low income consumers (lifeline) and seven on the rural healthcare program, and seven on USF contributions); ACA FNPRM Reply Comments at 2.

[44] 47 U.S.C. § 159(b)(1)(A).

[45] ACA FNPRM Comments at 5-6.

While ACA appreciates the Commission's hesitancy to make changes to the assignment of FTEs in its fee calculations, for fear of creating unintended adverse consequences for its other fee payors, it urges the Commission to continue to consider ways to implement ITTA's proposals, including creating a new subcategory of the ITSP fee category for wireless voice providers, the approach taken by the Commission to assess Media Bureau fees on DBS providers. Although ACA is not generally supportive of creating subcategories within the various fee categories on the grounds that they are established to include broadly similar services rather than scientifically-precise distinct groupings,[46] it may make sense in this particular instance. Here, the Commission has found "substantial differences between the services in terms of regulatory oversight by [WTB and WCB]" such that combining the two fee categories would not be justified.[47] Assuming, but not conceding, that this is correct, the finding may nonetheless support creation of a subcategory in the ITSP fee category for wireless voice providers to permit the Commission to more fairly allocate the burdens imposed by these providers on WCB resources that apply equally to wireless and wireline voice providers. ACA again urges the Commission to continue to study this matter based on the data and analysis uniquely available to it.

V. CONCLUSION

ACA is heartened that the Commission continues to reform its regulatory fee process. The Commission should now take the next step toward ensuring greater fairness in fee assessments by creating full regulatory fee parity for all payors in the Cable/IPTV fee category, or at a minimum, double the proposed FY 2016 DBS baseline fee level and commit to raising it again in FY 2017 to achieve full parity with the fees assessed on cable operators and IPTV providers. For similar reasons, the Commission should take steps to ensure that burdens

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[46] *See* NCTA-ACA 2015 Comments at 8-9 (creation of a separate DBS fee category is unnecessarily complicated and inconsistent with Commission precedent).

[47] NPRM, ¶ 18.

imposed upon WCB, including those imposed by wireless providers, are assessed in a fair, equitable and competitively neutral manner. By taking such actions, the Commission will make its regulatory fee process more fair, sustainable, and administrable.

Respectfully submitted,

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