Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Assessment and Collection of Regulatory	)	MD Docket No. 08-65
Fees for Fiscal Year 2008	)	RM-11312

REPLY COMMENTS OF AT&T

I. INTRODUCTION

AT&T Inc., on behalf of itself and its affiliates (collectively, "AT&T"), respectfully submits these reply comments to the Commission's regulatory fee assessment and collection FNPRM.[1]

Commenters overwhelmingly agree that the Commission should update the stale full time employee (FTE) data it has been using for the past fourteen years as the basis for allocating regulatory fees.[2] This task is unavoidable as a statutory matter and should be implemented without further delay.

A few commenters want the Commission to start assessing fees immediately on all multichannel video programming distributors ("MVPDs"), including Internet protocol television ("IPTV") services, like those offered by AT&T, which, to date, have not been subject to regulatory fees. AT&T fully agrees that, as an MVPD, it should pay an equitable share of the Commission's regulatory costs. But the commenters' proposal would not accomplish that result. Indeed, these commenters argue strenuously that the current regulatory fee assessment

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[1] *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, MD Docket No. 08-65, RM-11312, Report and Order and Further Notice of Proposed Rulemaking, FCC 08-182 (Rel. August 8, 2008) (FNPRM).

[2] *See* ITTA's Comments at 8; AT&T's Comments at 3; EWA's Comments at 3-4; US Telecom's Comments at 2-3.

methodology for video providers is unfair.[3] Thus, rather than rushing to apply a controversial fee assessment methodology to nascent IPTV services, a far better approach would be to first resolve that controversy and *then* require contributions from IPTV service providers and other non-assessed MVPDs on an equitable basis.

Another group of commenters ask the Commission, in effect, to combine the Wireless Telecommunications Bureau ("WTB") and the Wireline Competition Bureau ("WCB") in order to recover the bureaus' combined costs from all providers of voice services. But this proposal is inconsistent with the requirements of Section 9,[4] due to substantial differences in the bureaus' functions and the "benefits" conferred on the entities regulated by the bureaus, particularly since the management of terrestrial spectrum is a function unique to WTB and the entities it regulates and has no analogue in WCB for Section 9 purposes.

II. DISCUSSION

A. <u>As an MVPD, AT&T Agrees That It Should Pay Regulatory Fees</u>.

NCTA and Verizon argue that the Commission should assess regulatory fees on all MVPDs, including IPTV service providers which currently are not assessed.[5] As an MVPD, AT&T is subject to certain regulation under Title VI and, thus, should pay an equitable share of the costs of that regulation, consistent with Section 9. At the same time, however, NCTA and Verizon vehemently assert that the current fee assessment methodology is inequitable as applied to video service providers.[6] DirecTV and Dish, on the other hand, contend that the current

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[3] *See* Verizon Comments at 1 ("Competing video providers are not treated fairly by the current regulatory fee assessments."). *See also* NCTA at 3.

[4] 47 U.S.C. § 159.

[5] *See* NCTA Comments at 2-4; Verizon Comments at 4-6.

[6] NCTA Comments at 2-3; Verizon Comments at 1-2, 4-5.

methodology is consistent with the law and is working just fine.[7] As this dispute makes clear, there is substantial controversy over whether the present assessment methodology is equitable. Thus, before subjecting new entrants like IPTV service providers, who have only a very modest number of subscribers compared to cable and DBS providers,[8] to any particular assessment methodology, the Commission should first resolve the dispute between the cable industry and the DBS industry and then require IPTV service providers to contribute on an equitable basis.[9]

B. Combining WTB and WCB into One Bureau for Assessment Purposes is Inconsistent with Section 9.

Some commenters recommend that the Commission combine wireline and wireless voice services, and thus the two bureaus that regulate those services, into one category for assessment purposes (*e.g.*, into a single revenue-based ITSP category).[10] They believe this proposal would achieve a "'harmonization' of the assessment basis"[11] and "regulatory parity."[12] This approach, however, is not consistent with Section 9's express requirements.

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[7] Joint Comments of DirecTV and Dish at 1-4.

[8] AT&T's 781,000 IPTV service subscribers, as recently reported (*see* http://newsnow.att.com/newsnow/att_news/at00001727.html), and IPTV services *in toto*, are vastly lower than the 30 million DirecTV and DISH satellite subscribers, *see* Verizon's Comments at 4, and the nearly 70 million cable subscribers nationally. *See* FCC Adopts 13TH Annual Report to Congress on Video Competition and Notice of Inquiry for the 14th Annual Report, MB Docket No. 07-269, Press Release, Nov. 27, 2007. In comparison, interconnected VoIP providers had much stronger market presence before the Commission assessed fees on those providers. *See Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, MD Docket No. 07-81, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15712, 15715 ¶¶ 11-12, 18 (2007) (At the time fees were first ordered to be assessed, VoIP had already experienced "significant" and "explosive" subscriber growth in the voice services market, a trend the Commission "expected to continue").

[9] The resolution of the cable-DBS dispute will require the Commission to address several important Section 9 issues, including the appropriateness of applying different base methodologies for fee assessments (per subscriber for cable, per satellite and earth station for DBS) and the nature and extent of the regulatory activities, costs and presumed benefits associated with the Commission's regulation of DBS and cable video services.

[10] *See* ITTA's Comments at 9-10; NCTA's Comments at 5-6.

[11] ITTA's Comments at 9.

If the Commission combined wireless and wireline services into one bucket for assessments, as ITTA and NCTA suggest, the effect would be to combine the activities of WTB and WCB. Under Section 9, however, the Commission must assess regulatory fees based on the FTEs of its core bureaus and must do so in a manner that accounts for the "benefits" conferred upon the entities regulated by those bureaus.[13] WTB and WCB perform separate functions that involve discrete activities, and the costs involved in their respective operations are not fungible. Most notably, WTB manages terrestrial spectrum through its auction and licensing activity and the entities it regulates derive unique benefits from acquiring and utilizing that spectrum. These costs and benefits have no analogue in WTB or among the wireline entities it regulates. Thus, simply combining the regulatory costs of WTB and WCB into one overarching voice category, as suggested by ITTA and NCTA, would be inconsistent with Section 9's directive to account for the benefits to the regulated entities from the different bureaus' activities. Accordingly, the Commission should not adopt this proposal.[14]

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[12] NCTA's Comments at 5.

[13] *See* 47 U.S.C. §§ 159 (a) and (b)(1).

[14] AT&T offers two final administrative points. First, the Commission presently bills providers *per* earth station, instead of sending one bill to a provider for all of its earth stations. One bill for all earth station fees would be more administratively efficient for regulatees, and presumably also benefit the Commission by streamlining its billing and collections for these facilities, and reducing its administrative costs. Second, the Commission does not provide payment confirmation to payors who submit payments *via* wire transfer. It should do so, which will give payors the opportunity to challenge any "red light" late payment notices issued by the Commission in error due to lags in the Commission's system for processing payments.

III. CONCLUSION

Pursuant to Section 9, the Commission's fee assessment methodology should reflect current headcounts in the core bureaus conducting the activities for which the Commission's costs are to be recovered. Using current FTE data will enable the Commission to expeditiously satisfy that statutory mandate.

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Dated: October 27, 2008