

**STATEMENT OF COMMISSIONER MICHAEL O'RIELLY  
APPROVING IN PART AND DISSENTING IN PART**

*Re: Assessment and Collection of Regulatory Fees for Fiscal Year 2017, Report and Order and Further Notice of Proposed Rulemaking, MD Docket No. 17-134.*

It is my longstanding view that the Commission's actions should be supported by facts and quantitative data (as well as the law). Such information should provide the foundation for any decision, whether justifying the adoption or elimination of rules, adjudicatory outcomes, cost-benefit analyses, or other Commission findings. The need also extends to the Commission's imposition of regulatory fees. As some of the decisions in today's item are not adequately supported by sufficient data, I must respectfully dissent in part.

The statute and Commission precedent states that the Commission shall recover the costs of its regulatory activities, and these fees should be derived by determining the full-time equivalent number of employees (FTEs) performing the various activities.<sup>1</sup> Under section 9, the Commission is required "to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities,"<sup>2</sup> and any changes to the fee schedule are supposed to be accompanied by substantial analysis demonstrating that the redistribution of fees is appropriate.<sup>3</sup>

Today's item, however, does not attempt to perform such a calculation or analysis to support the decision to reassign 38 FTEs for non-high-cost universal service fund (USF) regulatory activities from the Wireline Competition Bureau (WCB) to "indirect," meaning that the cost of these programs will be borne by all Commission licensees. While I understand that these activities, such as E-Rate, Lifeline, and Rural Healthcare, may now affect more than just traditional wireline entities, there is no attempt to analyze how these costs should appropriately be partitioned. For instance, it is hard to fathom why broadcasters or submarine cable authorization holders should pay these fees. I also find it hard to believe that satellite licensees should bear an equal share of these costs. While some reallocation of these FTEs may be justified, there is little support for the item's assertion that these costs should be paid by all sectors and doesn't attempt to compare the number of employees in WCB, the Wireless Telecommunications Bureau, Media Bureau, and International Bureau who are working on these issues. I would hope that we will reconsider this decision in the future.

Similarly, there is insufficient analysis supporting the changes to the AM/FM broadcast fee schedule. While I am very sympathetic to the challenges faced by small broadcasters, the statutory requirement is that the Commission generally allocate the costs of the regulations that we impose. However, today's item does not seek to determine the burdens of the past year's regulations, but instead reduces the fees for small businesses, in a year when many proceedings were rightfully initiated to review (and reduce) their burdens, as a type of small business discount. While perhaps well-intentioned, this is not consistent with the statute. As an aside, had the justification been tied to the need to right size past inequities or errors in the fees charged these entities, I could see some merit but that isn't contemplated here.

Finally, I will hesitantly support the increase in this year's DBS regulatory fees to support the work that the Media Bureau performs on behalf of all multichannel video programming distributors (MVPDs). The proceedings initiated over the last year did cover DBS activities and the amount that the

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<sup>1</sup> See 47 U.S.C. § 9(a)(1), (b)(1)(A).

<sup>2</sup> *Id.* § 9(b)(1)(A).

<sup>3</sup> See, e.g., *Assessment and Collection of Regulatory Fees for Fiscal Year 2017, Report and Order and Further Notice of Proposed Rulemaking*, MD Docket No. 16-166, Report and Order, 31 FCC Rcd 10339, 10346 ¶ 21 (2016).

DBS providers will pay this year seems in the ballpark. Going forward, however, I expect far more analysis to support any additional increases. Clearly, some believe that DBS providers should pay an equal share of the Media Bureau's costs to regulate MVPDs. The cable industry, however, is far more regulated than DBS (and more than necessary), so future increases should be accompanied by detailed analyses of all services the Media Bureau provides MVPDs and how these burdens affect both cable and DBS providers.