

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

*In the Matter of*

Assessment and Collection of Regulatory Fees  
for Fiscal Year 2019

MD Docket No. 19-105

**COMMENTS OF  
THE NORTH AMERICAN SUBMARINE CABLE ASSOCIATION**

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## SUMMARY

In its Further Notice of Proposed Rulemaking, the Commission has asked whether it should adjust the apportionment of fees among payors within the International Bureau (“IB”). The unequivocal answer of the North American Submarine Cable Association (“NASCA”) is “yes.” Section 9 of the Communications Act, as amended, requires that the Commission correlate regulatory fees with full-time equivalent employees (“FTE”) data and that such fees be “reasonably related to the benefits provided to the payor of the fee by the Commission’s activities.” In prior years and rulemakings, the Commission expressly recognized that submarine cable system regulatory fees are excessive considering the regulatory activities the IB performs on submarine cable system operators’ behalf. This remains true, despite the Commission’s recent downward adjustments to submarine cable fees.

In this year’s regulatory fee rulemaking, rather than continue to correct the discrepancy between submarine cable fees and FTE data first acknowledged by the Commission in 2013, the Commission has more than tripled the number of FTEs (6.9) assigned to the international bearer circuit (“IBC”) category—87.6 percent (or roughly six FTEs) of which it allocated to submarine cables—in order achieve equivalence with the revenue requirement. NASCA believes, however, that there is no rational basis for this increase in IBC—and, by extension, submarine cable—FTEs. In 2013, when the Commission last undertook a comprehensive FTE assessment, it determined that the number of full-time employee equivalents whose work involves the regulation of submarine cable systems and bearer circuits, equates to only two FTEs. The Commission has not explained this increase in the context of its statutory obligation to ensure that regulatory fees “reflect the full-time equivalent number of employees within the bureaus and offices of the Commission” whose work benefits the payors; and as NASCA has noted in prior

comments and explains again below, there have been no significant changes in the Commission’s regulatory activities relating to submarine cables since 2013.

Accordingly, NASCA urges the Commission to undertake a review of its FTE allocations so that it may accurately align revenue requirements with direct FTEs for particular categories of payors based on the actual number of FTEs that work on matters related to those payors, as required by statute. While the Commission seeks comment on whether it should use capacity or “some other metric” as a basis for this reallocation,<sup>1</sup> NASCA believes that the language of Section 9 makes clear that the only appropriate basis for fee allocation is the number of FTEs within the bureaus focused on each industry segment, adjusted to account for factors that rationally relate to the benefits provided to the payor of the fee by the Commission’s activities.

NASCA supports the reallocation of fees within IB—and the potential creation of new payor categories—in accordance with this statutory mandate. In light of Section 9’s requirements, the projected total revenue requirement of \$339,610,000 for FY 2020, the total FTE estimate of 320.4 for FY 2019, the total IB FTE estimate of 24 for FY 2019 and what NASCA believes to be the correct number of submarine cable FTEs (consistent with the most recent comprehensive FTE data), the Commission should reallocate regulatory fees among the IB payors such that submarine cable operators pay somewhere between \$2,119,112 and \$3,179,869 in fees for FY 2020. The balance of the IB revenue requirement should be allocated to other categories of IB payors based on assignment of those direct FTEs.

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<sup>1</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2019*, Report and Order and Further Notice of Proposed Rulemaking, FCC No. 19-83, MD Docket No. 19-105, ¶ 67 (2019) (“*FY 2019 Reg Fees R&O*”).

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The North American Submarine Cable Association (“NASCA”) submits these comments in response to the Commission’s Further Notice of Proposed Rulemaking<sup>2</sup> to urge the Commission to reform its assessment of regulatory fees for the International Bureau (“IB”). NASCA believes that the regulatory fees for payors regulated by IB must accurately reflect the Commission’s revenue requirements based on the number of full-time equivalent employees (“FTEs”) assigned to each payor category, adjusted to account for additional Commission activities that can reasonably be said to benefit the payor. The Commission’s assignment of six FTEs to submarine cable payors<sup>3</sup> does not, in fact, accurately reflect “the full-time equivalent number of employees within the bureaus and offices of the Commission, 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.”<sup>4</sup> As NASCA has repeatedly pointed out, there has been no meaningful

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<sup>2</sup> *FY 2019 Reg Fees R&O*.

<sup>3</sup> *Id.* at ¶ 20. The Commission assigns 6.9 FTEs to International Bearer Circuits. Submarine cable operators account for 87.6 percent of this total, or approximately 6 FTEs.

<sup>4</sup> 47 U.S.C. § 159(d).

change in the Commission’s activities relating to submarine cables since the last full FTE assessment in 2013, when the Commission concluded that “[t]he Policy Division employees whose work involves the regulation of submarine cable systems and bearer circuits, equates to only two FTEs.”<sup>5</sup> NASCA believes that this number remains accurate, and the Commission has provided no rational explanation to justify the increase in submarine cable FTEs from two to six.

The Commission has repeatedly acknowledged that submarine cable system fees are too high because they bear no relation to the most accurate FTE data or the Commission’s minimal regulation of submarine cables.<sup>6</sup> While the Commission has made modest efforts to correct this misalignment in prior years, it has failed to undertake the necessary holistic assessment of its activities to allocate accurately FTEs, corresponding revenue requirements, and regulatory fees amongst payor beneficiaries. Absent this analysis and a specific factual justification for the change in FTE allocation, NASCA does not believe the change in submarine cable FTEs is supportable. NASCA urges the Commission to align the per category revenue requirements so that they reflect the most accurate FTE numbers, rationally and fairly adjusted to reflect actual benefits received by the payors.

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<sup>5</sup> *Procedures for Assessment and Collection of Regulatory Fees*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 28 FCC Rcd. 7790, 7802 ¶ 27 (2013) (“*FY 2013 Reg Fees NPRM*”). See also *Assessment and Collection of Regulatory Fees for Fiscal Year 2014*, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd. 10,767, 10,772 ¶ 11 (2014) (“*FY 2014 Reg Fees R&O*”) (stating that “only two FTEs in the International Bureau work on submarine cable issues”).

<sup>6</sup> See, e.g., *Assessment and Collection of Regulatory Fees for Fiscal Year 2015*, Report and Order and Further Notice of Proposed Rulemaking, 30 FCC Rcd. 10,268, 10,272 ¶ 10 (2015) (“*FY 2015 Reg Fees R&O*”); *FY 2014 Reg Fees R&O* at 10,772 ¶ 11; *FY 2013 Reg Fees NPRM* at 7802 ¶ 27.

NASCA is the principal non-profit trade association for submarine cable owners, submarine cable maintenance authorities, and prime contractors for submarine cable systems operating in North America. Some of NASCA's members include:

- Alaska Communications System
- Alaska United Fiber System Partnership
- Alcatel Submarine Networks
- Apollo Submarine Cable System Limited
- C&W Networks
- Edge Network Services Ltd.
- Global Cloud Xchange
- Global Marine Systems Ltd.
- GlobeNet
- Hibernia Atlantic
- OPT French Polynesia
- PC Landing Corp.
- Rogers Communications
- Southern Caribbean Fiber
- Southern Cross Cable Network
- Sprint Communications Corporation
- Tata Communications (Americas)
- TE SubCom
- Verizon

NASCA serves both as a forum and advocacy organization for its members' interests. Collectively, NASCA's members pay the great majority of regulatory fees in the submarine cable system category, representing the great majority of active systems landing in the United States.

In these comments, NASCA urges the Commission to undertake a full review of its current FTE assignments to ensure that regulatory fees are consistent with Section 9's mandate that fees rationally relate to the actual work that the Commission performs on behalf of the payor and the resultant benefit that the payor receives. In its most recent complete assessment of FTE data, the Commission very clearly determined that the actual number of FTEs who work on submarine cable matters is somewhere between two and three. NASCA believes that this number accurately reflects the aggregate effort on behalf of submarine cable operators across all FCC employees, but strongly encourages the Commission to undertake a comprehensive reassessment of FTE data in the upcoming year to confirm this. Without such a reassessment and specific factual justification, any change in FTE numbers is arbitrary.

**I. The Commission Should Perform a Comprehensive Reassessment of FTE Data and Reallocate the IB Revenue Requirement Such that Each Payor's Fees Accurately Reflect the Benefit the Payor Receives from the Commission's Activities, as Measured by the FTE Metric**

The Commission has repeatedly conceded that submarine cable system fees are too high because they bear no relation to the Commission's FTE data or the Commission's minimal regulation of submarine cables.<sup>7</sup> In recognition of these facts, the Commission has gradually implemented downward adjustments to submarine cable fees since 2013, the year of the last comprehensive FTE data review. This year, rather than continue to realign submarine cable fees

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<sup>7</sup> *Id.*

with the most recent accurate FTE data, the Commission arbitrarily increased the number of FTEs assigned to submarine cable systems. This assignment is disproportionate to the actual work that the Commission performs for the benefit of submarine cable systems, meaning that submarine cable operators continue to pay excessive fees. The Commission has not identified any legal basis for continuing to collect manifestly excessive fees from submarine cable operators, nor has it identified any factual basis for its adjustment to IB FTE numbers. For FY 2020, the Commission should conduct a new comprehensive FTE assessment for the purposes of fee allocation, and align fees to this FTE data, as opposed to aligning FTE numbers to fees. This would most likely result in a revenue requirement of somewhere between \$2,119,112 and \$3,179,869 for submarine cable operators, as compared to \$6,364,050 in FY 2019.

**A. The Commission Has Repeatedly Acknowledged that It Performs Comparatively Few Assessable Regulatory Activities for the Benefit of Submarine Cable Operators**

The Commission has repeatedly acknowledged that it performs comparatively few regulatory activities for the benefit of submarine cable operators. In 2013, the year of the last comprehensive FTE assessment, the Commission noted that “submarine cable service providers now pay...the sixth highest regulatory fee percentage among all fee categories, notwithstanding the fact that the provision of international submarine cable service involves little regulation and oversight from the Commission after the initial licensing process.”<sup>8</sup> This lack of Commission activity was accurately reflected in the Commission’s FTE data, which revealed the number of FTEs whose work benefited submarine cable operators to be two.<sup>9</sup> Accordingly, in 2014, the

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<sup>8</sup> *FY 2013 Reg Fees NPRM* at 7802 ¶ 27.

<sup>9</sup> *Id.* See also *FY 2014 Reg Fees R&O* at 10,772 ¶ 11 (stating that “only two FTEs in the International Bureau work on submarine cable issues”).

Commission reduced the submarine cable revenue requirement by five percent, stating, “the current regulatory fee assessment for the submarine cable category does not fairly take into account the Commission’s minimal oversight and regulation of the industry.”<sup>10</sup> In 2015, the Commission reduced submarine cable system fees by 7.5 percent, noting the same.<sup>11</sup>

The factual basis for these conclusions remains unchanged. The regulatory regime for submarine cables requires minimal Commission activity. The Commission (and, by delegation, IB) regulates submarine cables pursuant to the Cable Landing License Act (47 U.S.C. §§ 34-39), a statute that consists of a mere 437 words, and Commission regulations that span a mere 7-½ pages. IB has conducted or played a major supporting role in only two submarine cable-specific rulemakings in the last 18 years. IB does not undertake activities on behalf of submarine cable operators in multilateral or bilateral negotiations or treaty conferences, particularly as submarine cables do not use radio spectrum or raise associated coordination or interference issues. Submarine cable operators rarely interact with the Strategic Analysis and Negotiations Division, which focuses on international negotiations mainly involving radio spectrum (and the staff of which the Commission reallocated as indirect FTEs in 2013).<sup>12</sup>

Almost all of IB’s activities involving submarine cables arise from sporadic and comparatively infrequent licensing and transaction reviews, the costs of which the Commission recovers separately through application processing fees. The additional activities related to submarine cable payors include the annual circuit capacity reports and the quarterly reports.

These activities are limited:

- Licensing

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<sup>10</sup> *Id.* at 10,772 ¶ 11.

<sup>11</sup> *FY 2015 Reg Fees R&O* at 4 ¶ 12.

<sup>12</sup> *FY 2013 Reg Fees NPRM* at 7799–7800 ¶ 21.

- IB reviews cable landing license applications under the Cable Landing License Act. There have been 38 new-system applications in the last 10 years. For reference, IB received 607 applications for Launch and Operation Authority for satellites in that same time.
  - IB grants most licenses pursuant to public notice rather than individually drafted orders.
  - IB does not conduct any technical or environmental analysis of cable landing license applications.
  - Most systems are licensed as non-common-carrier systems and are not subject to regulation under the Communications Act of 1934.
- Transaction review
    - IB reviews transactions resulting in assignments and transfers of control, as well as special temporary grants of authority.
    - In the past 10 years, IB has received 112 transfer-of-control filings related to submarine cables. In that time, IB received a total of 2,884 transfer-of-control filings.
    - In the past 10 years, IB has received 51 assignment filings related to submarine cables out of a total of 1,976 assignment filings. Most of these transfer-of-control and assignment-related filings are simply *pro forma* notices.
    - In the past 10 years, IB has reviewed 55 submarine cable system applications for special temporary authority out of a total of 2,844 applications.
- Reporting
    - Since 2017, IB has collected circuit capacity data from submarine cable operators and holders of capacity on submarine cable systems. Filers report capacity annually.
    - IB also collects (but generally takes no further action on) quarterly reports from cable landing licensees regulated as dominant, although these licensees represent a small fraction of the providers regulated by IB as dominant.
- Rulemaking
    - In the past decade, IB has conducted a single rulemaking focused on submarine cable issues, when it scaled back circuit capacity reporting to submarine cable operators and capacity holders.
- Rulings
    - In the past 10 years, IB issued 0 declaratory rulings related to submarine cable systems. For reference, IB issued 68 declaratory rulings related to satellite systems in that same time.

As the Commission has properly noted in its prior regulatory-fee rulemakings addressing submarine cables, these activities are minimal, particularly when compared with the effort of regulating other consumer-oriented services.

**B. Nevertheless, the Commission Has Continued to Over-Recover Regulatory Fees from Submarine Cable Operators for IB FTEs**

Notwithstanding the fact that the Commission's regulatory effort for submarine cable operators equates to only two FTEs, the Commission has continued to over-recover regulatory fees from submarine cable operators for IB FTEs:

- In FY 2013, submarine cable operators were expected to pay \$8,530,139, representing 36.3 percent of IB-related regulatory fees and 2.5 percent of all Commission regulatory fees (\$339,965,741), even though they accounted for only 7.14 percent of IB direct FTEs (two out of 28) and 0.44 percent of total Commission-wide direct FTEs (two out of 458).<sup>13</sup>
- In FY 2014, even with the Commission's five-percent decrease in the revenue requirement, submarine cable operators were expected to pay \$6,586,731, representing 31.6 percent of IB-related regulatory fees and 1.9 percent of all Commission regulatory fees (\$339,847,246), even though they continued to account for only 7.14 percent of IB direct FTEs (two of 28) and approximately 0.44 percent of the total Commission-wide

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<sup>13</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 2013*, Report and Order, 28 FCC Rcd. 12,351, 12,374 Attachment B (2013) ("FY 2013 Reg Fees R&O"). Total IB-related regulatory fees include those expected from: (1) submarine cable operators (\$8,530,139); (2) 64 KB terrestrial and satellite circuits (\$1,032,277); (3) earth stations (\$935,000); (4) GSO space stations (\$12,101,700); and (5) NGSO space stations (\$899,250) totaling \$23,498,366 across the five categories.  $\$8,530,139 / \$23,498,366 = 36.3\%$ .

FTEs.<sup>14</sup>

- In FY 2015, the Commission adopted a 7.5-percent decrease in the revenue requirement for submarine cables and has maintained roughly the same percentage allocation of fees among IB payors since then, even though the underlying FTE data supports a much different allocation.

This allocation resulted in the Commission collecting \$6,364,050, or 25 percent of the fees allocated to IB, from submarine cable systems in 2019<sup>15</sup>—a percentage that does not in any way correspond to the benefits received by submarine cable operators from IB staff. Based on the project revenue requirement for IB in FY 2020 and this year’s FTE data, the Commission presumably expects submarine cable operators to pay \$6,359,197 in regulatory fees, or 25 percent of the fees allocated to IB in 2020.<sup>16</sup>

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<sup>14</sup> *FY 2014 Reg Fees R&O* at 10,793 Appendix B; *Assessment and Collection of Regulatory Fees for Fiscal Year 2014, Assessment and Collection of Regulatory Fees for Fiscal Year 2013, Procedures for Assessment and Collection of Regulatory Fees*, Notice of Proposed Rulemaking, Second Further Notice of Proposed Rulemaking, and Order, 29 FCC Rcd. 6417, 6427 ¶ 27 (2014) (“*FY 2014 Reg Fees NPRM*”). The Commission did not provide final direct FTE data in the *FY 2014 Reg Fees R&O*, but the *FY 2014 Reg Fees NPRM* stated that there were 456 direct FTEs. Total IB-related regulatory fees include those expected from: (1) submarine cable operators (\$6,586,731); (2) 64 KB terrestrial and satellite circuits (\$941,640); (3) earth stations (\$1,003,000); (4) GSO space stations (\$11,505,600); and (5) NGSO space stations (\$797,100) totaling \$20,834,071 across the five categories.  $\$6,586,731 / \$20,834,071 = 31.6\%$ .

<sup>15</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 2019*, Notice of Proposed Rulemaking, 34 FCC Rcd. 3272, 3278 ¶ 14, 3292 Appendix A.

<sup>16</sup> This is based on the Commission’s authorized spending for FY 2020 and the FY 2019 FTE numbers released by the commission earlier this year. Without any explanation, the Commission increased the number of FTEs assigned to submarine cable systems from two in 2013 to six in 2019. See *FY 2019 Reg Fees R&O* at ¶ 20. This results in submarine cable operators paying a full quarter of IB fees.

**C. The Over-Recovery of Regulatory Fees from Submarine Cable Operators Results from the Commission’s Failure to Adjust Downward the Revenue Requirement Previously Assigned to International Bearer Circuits**

The Commission has continued to over-recover regulatory fees from submarine cable operators due to an insufficient downward adjustment of the revenue requirement previously assigned for international bearer circuits and now split between submarine cable operators and terrestrial and satellite circuits—two of the five categories of IB regulatees. NASCA believes that the over-recovery does not result from the split between submarine cable operators (87.6 percent) and terrestrial and satellite circuits (12.4 percent), which the Commission made in 2009 when it adopted a new system-based methodology for submarine cable operators and abandoned the capacity-based fee methodology that had greatly distorted the market for submarine cable capacity connecting the United States.<sup>17</sup> In fact, the Commission has never clearly identified any direct FTEs associated with these circuits.

Instead, NASCA believes that the over-recovery results from the fact that the combined revenue requirement for submarine cable operators and terrestrial and satellite circuits is still set too high as compared with that for the other three categories of IB regulatees (GSO, NGSO, and earth station) that account for the bulk of IB’s regulatory activity and direct FTEs. The current respective revenue requirements for submarine cable operators and terrestrial and satellite circuits on the one hand and GSO space stations/NGSO space stations/earth stations on the other simply bear no relation to the underlying direct FTEs attributable to those services. Rather, the excessive fees assessed against the former—and the correspondingly low fees assessed against

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<sup>17</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Second Report and Order, 24 FCC Rcd. 4208 (2009).

the latter—are the result of the legacy revenue requirement from the old international bearer circuits category.<sup>18</sup>

NASCA also believes that the disproportionate revenue requirement for IBCs is a product of the fact that IBC payors subsidize other beneficiaries of Commission activities. As the Commissions notes, “not all beneficiaries of the International Bureau’s regulatory activities currently pay regulatory fees.”<sup>19</sup> In recognition of this fact, the Commission asks whether it “should or must assess regulatory fees on [non-paying parties] under section 9, given that [these parties] appear to benefit from the Commission’s regulatory activities in much the same manner as [paying parties].”<sup>20</sup> NASCA agrees with past commenters that Section 9 requires the Commission to assess fees against “[all] parties in the telecommunications ecosystem that profitably derive direct benefits from Commission proceedings in which they actively participate.”<sup>21</sup> NASCA urges the Commission to take this opportunity to accurately and equitably allocate fees across all parties in accordance with the benefit said parties derive from the Commission’s activities. If ever there were any doubt as to Congressional intent when drafting Section 9, the recent revisions to the provision under the RAY BAUM’s Act make the standard perfectly clear: parties that derive benefit from Commission activities should be subject

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<sup>18</sup> See *FY 2013 Reg Fees R&O* at 12,355 ¶ 12 (stating that “[w]e find no persuasive argument for perpetuating the use of 14 year-old FTE data as the basis for regulatory fees in FY 2013”).

<sup>19</sup> *FY 2019 Reg Fees R&O* at ¶ 62.

<sup>20</sup> *Id.* at ¶ 64.

<sup>21</sup> Comments of the National Association of Broadcasters at 10, MD Docket No. 19-105 (filed Jun. 7, 2019).

to the payment of fees proportional to the Commission’s regulatory activities on their behalf.<sup>22</sup>

NASCA supports this fundamental statutory principle. All parties who participate in and derive direct benefit from Commission proceedings should pay their share of the IB revenue requirement.

The Commission has previously attempted to justify the disproportionately high fees for submarine cable operators by noting that these fees include services provided to common carriers using the submarine cable circuits, and that the allocation of two direct FTEs to submarine cable regulatees may not have accounted for Commission activities on behalf of common carriers that use submarine cable circuits.<sup>23</sup> But allocation of these services to submarine cable payors goes beyond the mandates of Section 9 of the Communications Act, as amended, which requires the Commission to “reflect the full-time equivalent number of employees within the bureaus and offices of the Commission, 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.”<sup>24</sup> The vast majority of submarine cable system licensees do not receive the benefits of the Commission’s activities for services provided to common carriers using the submarine cable circuits. In prior years, the

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<sup>22</sup> Compare prior section 9(b)(2) (“be adjusted to reflect...unexpected increases or decreases in the number of licensees or units”) with new section 9(c)(1)(A) (“reflect unexpected increases or decreases in the number of units subject to the payment of such fees...”)

<sup>23</sup> *FY 2015 Reg Fees R&O* at 10,273 ¶ 12.

<sup>24</sup> 47 U.S.C. § 159(d) (emphasis added).

Commission noted this same fact, contradicting its later statements.<sup>25</sup> Accordingly, NASCA believes that submarine cable fees should not account for these costs, as this arrangement would be contrary to the provisions within Section 9, as well as the principle of regulatory parity.

**D. The Commission Should Base Its Assessment of Fees on the Number of FTEs Allocated to the Payor Category, Not the Other Way Around**

As amply demonstrated above, the increase in the number of FTEs assigned to submarine cable systems in no way reflects the FTE work performed for the benefit of submarine cable operators. Instead, it appears that the Commission is assigning FTEs to line up with the fees the Commission expects submarine cable operators to pay. This is, of course, backwards. It is not the underlying FTE data but the revenue allocation between IBCs and other IB payors that is erroneous and requires correction. Rather than artificially inflate the number of FTEs allocated to IBCs, the Commission must adjust downward the IBC revenue requirement to align it with the most accurate FTE data. What the Commission is doing reverses the regulatory fee derivative process and breaks that process' chain of logic. NASCA urges the Commission to honor the correct method of fee derivation going forward rather than engaging in precisely the sort of piecemeal adjustment to FTE data against which the Commission and other commenters have previously warned.<sup>26</sup>

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<sup>25</sup> See the Commission's statement in 2015, "We find that apart from the unique nature of the International Bureau FTEs, the work of all the FTEs in a core bureau contributes to the cost of regulating and overseeing the licensees of that bureau. Therefore, we may reasonably expect that the work of the FTEs in the core bureaus would remain focused on the industry segment regulated by each of those bureaus. The work of the FTEs in the remaining (i.e., indirect) bureaus and offices benefits the Commission and the telecommunications industry and is not specifically focused on the licensees of a particular core bureau." *FY 2015 Reg Fees R&O* at 10274 ¶ 15.

<sup>26</sup> *Id.* at 10278 ¶ 24.

To that end, the Commission has asked whether it should base its reallocation of fees on “the number of FTEs working on the issues of various regulatees or reallocate fees based on relative capacity of various services...[o]r...some other metric.”<sup>27</sup> NASCA believes that the Commission has answered this question for itself. As the Commission stated in the *FY 2019 Reg Fees R&O*, “the Act’s requirement that fees must ‘reflect’ FTEs before adjusting fees to take into account other factors, [makes] FTE counts by far the most administrable starting point for regulatory fee allocations.”<sup>28</sup> Indeed, NASCA would argue that FTE numbers are not only the most administrable starting point for regulatory fee allocations, but the only appropriate point given the language of Section 9. This aligns with the Commission’s own statement earlier this year that “the calculation and allocation of FTEs across regulatory fee categories is, *by statute*, at the heart of the Commission’s methodology in calculating regulatory fees” [emphasis added].<sup>29</sup>

NASCA urges the Commission to perform a holistic assessment of the number of FTEs working on the issues of various regulatees so that it may appropriately adjust the schedule of regulatory fees for FY 2020. If, as a result of this process, the Commission reassigns FTEs among categories of IB payors—thereby increasing fees for these payors—it must provide sufficient explanation and supporting data to justify this FTE reassignment and tie it to the realities of the Commission’s regulatory activities for the payor’s benefit. This is no extraordinary request, nor does it “preclude the Commission from ever reassessing its allocation of direct FTEs (and honing [its] allocation processes).”<sup>30</sup> As a matter of fact, the Commission bound itself to this practice in prior regulatory fee rulemakings when it noted that, “[g]iven the

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<sup>27</sup> *FY 2019 Reg Fees R&O* at ¶ 62.

<sup>28</sup> *Id.* at ¶ 8.

<sup>29</sup> *FY 2019 Reg Fees NPRM* at 3277 ¶ 10.

<sup>30</sup> *FY 2019 Reg Fees R&O* at ¶ 17.

significant implications of reassignment of FTEs in our fee calculation, we make changes to FTE classifications only after performing considerable analysis and finding the clearest case for reassignment.”<sup>31</sup> Without this evidence and explication, the FTE metric loses its meaning and the process for fee allocation becomes arbitrary.

**E. Consistent with the Actual Number of FTEs Whose Work Benefits Submarine Cable Systems, the Commission Should Allocate Roughly 10.42 Percent of the IB Revenue Requirement to Submarine Cable Operators**

Following an extensive examination of FTE data in its *FY 2013 Reg Fees NPRM* and *FY 2013 Reg Fees R&O*, when there were 28 direct FTEs allocated to IB, the Commission allocated 25 direct FTEs from the Satellite Division to satellite space station and earth station regulatees, two direct FTEs from the Policy Division to submarine cable regulatees, and one direct FTE from the IB front office (without allocation to specific regulatees).<sup>32</sup> There has not been any meaningful change in Commission activities for submarine cables since that time to warrant more FTEs dedicated to submarine cable system activities. While NASCA urges the Commission to undertake a holistic reassessment of FTE data, NASCA believes that the number of FTEs the Commission assigned to submarine cable systems in its last comprehensive assessment—2.5—is still an accurate proxy for the benefits submarine cable operators receive from Commission activities. Accordingly, the Commission should allocate approximately 10.42 percent of the IB revenue requirement to submarine cable operators to reflect this FTE number. Applying this allocation percentage to the amount appropriated to the Commission for FY 2020, the Commission should seek somewhere between \$2,119,112 and \$3,179,869 from submarine

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<sup>31</sup> *FY 2015 Reg Fees R&O* at 10274–75 ¶ 15.

<sup>32</sup> *FY 2013 Reg Fees R&O* at 12,355–56 ¶ 13, 14; *FY 2013 Reg Fees NPRM* at 7802 ¶ 27.

cable operators in the upcoming year.<sup>33</sup> The balance of the revenue requirement should be allocated to other categories of IB payors so that the revenue requirement for each category of payor is commensurate with the benefit that the payor derives from Commission activities.

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<sup>33</sup> NASCA shares this calculation for illustrative purposes only and recognizes that it does not consider further potential reallocations that could affect IB payors, such as the reallocation of indirect FTEs as direct FTEs for non-IB payors or an increase in the number of payor categories.

## CONCLUSION

For the foregoing reasons, NASCA urges the Commission to undertake a comprehensive reassessment of FTE data and reduce the revenue requirement for submarine cable systems to reflect the benefit that submarine cable system operators receive from Commission activities on their behalf, as measured by the FTE metric.

Respectfully submitted,



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