

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

In the Matter of)	
)	
Assessment and Collection of Regulatory)	MD Docket No. 19-105
Fees for Fiscal Year 2019)	

COMMENTS OF AT&T SERVICES, INC. AND DISH NETWORK L.L.C.

AT&T Services, Inc., on behalf of its affiliate DIRECTV LLC (collectively, “AT&T”), and DISH Network L.L.C. (“DISH”) respectfully urge the Commission to reject its proposal to increase the DBS per-subscriber regulatory fee for Fiscal Year 2019.

I. RECENT FCC ACTIONS HAVE UPDATED MEDIA REGULATIONS FOR CABLE OPERATORS, NOT DBS PROVIDERS

Since the Commission issued its last regulatory fee order,¹ it has continued its steady review of media regulations, issuing frequent rulemakings or orders to simplify or eliminate media rules that are no longer necessary. AT&T and DISH support the Commission’s efforts to modernize its media regulations and appreciate the brisk pace at which the Commission is considering and revising outdated media rules. However, it is indisputable that most of the Media Bureau’s recent attention has been focused on media rules that have no relevance to the nation’s two direct broadcast satellite (“DBS”) providers. That the overwhelming majority of media-related Commission orders, proposed rulemakings, and public notices issued in the last year concern the hundreds of cable operators and thousands of broadcasters, not the two DBS

¹ *Assessment and Collection of Regulatory Fees for Fiscal Year 2018*, MD Docket No. 18-175, Report and Order and Order, 33 FCC Rcd 8497 (2018) (“FY 2018 Regulatory Fee Order”).

providers, is not surprising. Congress requires the Commission to regulate cable operators and broadcasters more heavily than DBS providers. Consequently, there simply are more cable and broadcaster regulations for the Commission to enforce, review, and amend, where appropriate. AT&T and DISH have previously documented examples of the many media regulations that apply to cable and not DBS, illustrating that there will always be an imbalance in the amount of Media Bureau staff time directed at regulating these two different categories of multichannel video programming distributors (“MVPDs”).²

II. THE COMMISSION CONTINUES TO SEEK CABLE-DBS FEE PARITY WITHOUT JUSTIFICATION

The regulatory fees that the Commission imposes on a category of regulatees should bear some rational relation to the costs that these regulatees, in turn, impose on the Commission. After all, Congress directs the Commission to “adjust[]” its fees to “take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission’s activities.”³ In its Fiscal Year 2019 Notice of Proposed Rulemaking (“*NPRM*”), the Commission proposes increasing the DBS per subscriber fee by twenty-five percent from last year’s rate.⁴ If adopted, DISH and AT&T, and their customers, will have experienced an astounding *400 percent increase* in their per subscriber regulatory fees since Fiscal Year 2015. We are not aware that the Commission has ever subjected any other category of regulatee (and their customers) to such a rate hike. Worse yet, the Commission has done so not because the nation’s

² See, e.g., Comments of DISH Network L.L.C. and AT&T Services, Inc., MD Docket No. 18-175, at 7-9 (filed June 21, 2018) (“2018 DISH and AT&T Joint Comments”).

³ 47 U.S.C. § 159(d).

⁴ *Assessment and Collection of Regulatory Fees for Fiscal Year 2019*, MD Docket No. 19-105, Notice of Proposed Rulemaking, FCC 19-37 (2019).

two DBS providers have caused the Commission to incur significant full-time equivalent (“FTE”) employee costs that would warrant such an increase, but because the Commission desires regulatory fee parity between cable operators and DBS providers,⁵ which is not a permissible basis for adjusting regulatory fees under the statute.⁶

Nowhere in this march to parity has the Commission addressed the fact that it requires DBS providers to pay other regulatory fees to provide the same type of service (multichannel video programming) in competition with cable. Specifically, the Commission requires both AT&T and DISH to pay regulatory fees for the satellites and earth stations we use to provide video service.⁷ By contrast, cable does not pay other regulatory fees associated with its provision of video service. When the Commission first considered a DBS per subscriber fee, it sought comment on “whether DBS providers should pay a regulatory fee under this category at a much lower rate than that for other MVPDs, such as one-tenth of the anticipated revenue if DBS were combined with MVPD, to recognize the International Bureau FTE fees DBS providers will continue to pay as well as the Media Bureau FTEs related to DBS regulation.”⁸ As it evaluates any change to the DBS per subscriber fee, we ask that the Commission factor in the other fees it requires us to pay in the provision of our video service offering.

⁵ See *id.* at ¶ 19 (proposing to “continue the phase-in” and seeking comment on whether it should include “DBS fully in the cable television/IPTV rate” for Fiscal Year 2019).

⁶ 47 U.S.C. § 159(d) (requiring the Commission to amend the regulatory fee schedule “so that such fees reflect the [FTE] number of employees within the bureaus and offices of the Commission,” and permitting adjustment only based on factors “that are reasonably related to the benefits provided to the payor of the fee by the Commission’s activities”).

⁷ See *NPRM*, App. A, “Space Station (Geostationary Orbit),” with a proposed fee of \$159,625 per satellite, and “Earth Stations,” with a proposed fee of \$425 per earth station.

⁸ *Assessment and Collection of Regulatory Fees for Fiscal Year 2014 et al.*, MD Docket No. 14-92, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 10767, ¶ 41 (2014).

In addition, when it established the DBS per subscriber regulatory fee in 2015 at 12 cents per subscriber based on its “data and analysis,” the Commission stated it would update this rate “as necessary for ensuring an appropriate level of regulatory parity and considering the resources dedicated to [DBS].”⁹ The Commission did *not* conclude four years ago that “an appropriate level of regulatory parity” meant the DBS per subscriber rate must be identical to the cable rate.¹⁰ Nor did it indicate that it would be appropriate to increase the DBS per subscriber rate based solely on industry-wide proceedings, without regard to “resources dedicated to [DBS providers].”

AT&T and DISH submit that the Commission reached the appropriate level of regulatory parity, as reflected by the DBS and cable per subscriber rates, several years ago and that any further increase to the DBS rate is unfairly shifting cable-caused FTE costs to DBS providers. In its *NPRM*, the Commission notes that the DBS fee is based on the “significant number of Media Bureau FTEs that work on MVPD issues that include DBS”¹¹ and that the Commission uses “a pool of Media Bureau FTEs to oversee MVPD issues.”¹² These statements fail to acknowledge that the “MVPD issues” are predominantly cable-specific issues that have *no applicability to DBS providers*. They also fail to consider the level of “resources *dedicated* to [DBS providers],” as supported by Commission “data and analysis.”¹³ In prior years, the Commission listed

⁹ *Assessment and Collection of Regulatory Fees for Fiscal Year 2015*, Report and Order, 30 FCC Rcd 10268, ¶ 20 (2015) (“*FY 2015 Regulatory Fee Order*”).

¹⁰ Indeed, the Commission was quite clear that “DBS is not identical to cable television.” *Id.* at ¶ 33.

¹¹ *NPRM* at ¶ 17 (citing *FY 2018 Regulatory Fee Order* at ¶ 11).

¹² *Id.* at ¶ 18 (citing *FY 2018 Regulatory Fee Order* at ¶ 11).

¹³ *FY 2015 Regulatory Fee Order* at ¶ 20 (emphasis added).

proceedings that purportedly justified its proposed DBS per subscriber rate increase.¹⁴ This year, the Commission has not listed a single proceeding to support its latest proposed twenty-five percent rate increase. Commissioner O’Rielly has complained before about the inadequate justification for the DBS increase and this year’s *NPRM*, which is devoid of *any* “data or analysis” supporting the rate hike, also is inconsistent with the Chairman’s statements about the need for data-driven decisions.¹⁵

To support maintaining the current DBS per subscriber regulatory fee level, AT&T and DISH provide an accounting of Media Bureau releases affecting some or all MVPDs issued since August 29, 2018, the date of the *FY 2018 Regulatory Fee Order*. The following information comes from the Media Bureau’s “Headlines” web page.

- By our count, the Commission adopted and/or released approximately twelve orders affecting non-DBS MVPDs, and all but one (related to open video system (“OVS”) providers) affected one or more cable operators.¹⁶

¹⁴ To be sure, as detailed in DISH and AT&T’s joint comments, we disagreed that the Commission’s cited proceedings justified *any* increase to the DBS subscriber fee rate. *See, e.g.*, 2018 DISH and AT&T Joint Comments at 4-6.

¹⁵ *See* Statement of Comm’r Michael O’Rielly Approving in Part and Dissenting in Part Re: *Assessment and Collection of Regulatory Fees for Fiscal Year 2017*, MD Docket No. 17-134, Report and Order and Notice of Proposed Rulemaking, FCC 17-111 (2017); *see, e.g.*, Statement of Chairman Pai on the FCC’s Selection as a Finalist for the Franz Edelman Award, 2018 WL 305628 (rel. Jan. 4, 2018) (commending the agency’s incentive auction team whose work is exemplary of “the data-driven approach to policymaking that I believe should be this agency’s hallmark”). We also note that the number of Media Bureau FTEs has decreased since last year, which should warrant a decrease in regulatory fees, not a twenty-five percent increase to the DBS rate. *See NPRM* at n.45.

¹⁶ *Leased Commercial Access et al.*, MB Docket Nos. 07-42 et al., Report and Order and Second Further Notice of Proposed Rulemaking, FCC 19-52 (adopted June 6, 2019) (“*Leased Commercial Access Order and FNPRM*”) (amending or eliminating leased access rules applicable to cable operators); *Telpak Networks, Inc. d/b/a C Spire Fiber*, MB Docket No. 18-381, Memorandum Opinion and Order, DA 19-320 (rel. April 18, 2019) (granting a market modification at the request of a cable operator); *Channel Lineup Requirements – Sections 76.1705 et al.*, MB Docket Nos. 18-92 et al., Report and Order, FCC 19-33 (rel. April 12, 2019) (eliminating rules pertaining to cable operators’ channel lineups); *beIN Sports, LLC v. Comcast Cable Communications, L.L.C.*, MB Docket No. 18-384, Order, DA 19-234 (rel. March 29, 2019) (dismissing program carriage complaint filed against a cable operator); *beIN Sports, LLC v. Comcast Cable Communications, L.L.C.*, MB Docket No. 18-384, Order, DA 19-65 (rel. Feb. 8, 2019) (adopting a protective order at the request of a cable operator); *Modernization of Media Regulation*

- During this same period of time, the Commission released approximately four orders affecting DBS providers, three of which were related market modification decisions and the fourth addressed the electronic delivery of cable notices.¹⁷
 - Notably, market modifications are not made for the primary benefit of DBS providers nor have DBS providers initiated these proceedings. Rather, DBS providers' participation in market modification proceedings typically is limited to indicating whether a proposed modification is technically and economically infeasible to implement, and, in certain limited circumstances, to ensuring other statutory rights of DBS providers are protected.
 - The Commission's *Electronic Delivery of Cable Notices Order and FNPRM* was done almost entirely for the exclusive benefit of cable operators, not DBS

Initiative et al., MB Docket Nos. 17-105 et al., Order, DA 18-1204 (rel. Nov. 27, 2018) (extending comment cycle for cable rate regulation Notice of Proposed Rulemaking); *Coastal Television Broadcasting Company LLC v. MTA Communications, LLC*, MB Docket No. 18-208, Memorandum Opinion and Order, DA 18-1126 (rel. Nov. 2, 2018) (denying a broadcaster's good faith complaint filed against a cable operator); *Modernization of Media Regulation Initiative: Procedural Revisions to the Filing of Open Video System Certification Applications*, MB Docket No. 17-105, Order, FCC 18-150 (rel. Oct. 25, 2018) (permitting prospective OVS providers to make electronic submissions to the Commission); *Modernization of Media Regulation Initiative, Revisions to Cable Television Rate Regulations et al.*, MB Docket Nos. 17-105, 02-144 et al., Further Notice of Proposed Rulemaking and Report and Order, FCC 18-148 (rel. Oct. 23, 2018) (eliminating rules related to cable programming service tier regulation); *Cablevision of Raritan Valley, Inc., et al., Petitions for Determination of Effective Competition et al.*, CSR 6108-E et al., Order, DA 18-1022 (rel. Oct. 4, 2018) (granting a request to withdraw applications for review involving a cable operator's request for an effective competition determination); *Petition for Modification of Dayton, OH Designated Market Area with Regard to Television Station WHIO-TV, Dayton, OH*, MB Docket No. 13-201, Memorandum Opinion and Order, FCC 18-130 (rel. Sept. 19, 2018) (denying an application for review of a market modification order that granted in part and denied in part a petition filed by a cable operator); and *Time Warner Cable Inc. Petition for Determination of Effective Competition in 8 Communities in New Jersey*, CSR 7547-E, Memorandum Opinion and Order, FCC 18-129 (rel. Sept. 19, 2018) (denying an application for review of an order granting a cable operator's petition for a determination of effective competition).

¹⁷ *Stephens County, GA Petitions for Modification of Satellite Television Markets of WSB-TV, WGCL, WAGA, and WXIA-TV et al.*, MB Docket No. 18-358 et al., Memorandum Opinion and Order, DA 19-256 (rel. April 4, 2019) (granting a county's request for a market modification); *Electronic Delivery of MVPD Communications et al.*, MB Docket Nos. 17-317 et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 18-166 (rel. Nov. 16, 2018) ("*Electronic Delivery of Cable Notices Order and FNPRM*") (permitting cable operators to email required cable-specific notices to customers and permitting MVPDs to email privacy notices); *Hart County, GA Petition for Modification of Satellite Television Markets of WSB-TV, WAGA, WXIA, and WGCL*, MB Docket No. 18-250, Memorandum Opinion and Order, DA 18-1048 (rel. Oct. 12, 2018) (granting a county's request for a market modification); and *Franklin County, GA Petitions for Modification of Satellite Television Markets of WSB-TV, WAGA, WXIA, and WGCL et al.*, MB Docket Nos. 18-158 et al., Memorandum Opinion and Order, DA 18-954 (rel. Sept. 17, 2018) (granting a county's request for a market modification).

providers. There is just one subscriber notice out of many addressed in that order that also affects DBS providers (related to privacy notices).

- Of the approximately five notices of proposed rulemaking issued since August 29, 2018, only one is of interest to DBS providers – the Commission’s Quadrennial Review proceeding. The others addressed cable-only issues.¹⁸
- Finally, of the approximately fifteen public notices released during this period of time, only three had some relevance to DBS providers: the Media Bureau’s equal employment opportunity (“EEO”) audit announcement, its request for comment on video description in television programming, and its request for comment on NAB and NCTA’s carriage election proposal. The other public notices had no applicability to DBS providers, though all but one of the public notices applied to cable operators.¹⁹

¹⁸ *Leased Commercial Access Order and FNPRM; 2018 Quadrennial Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket No. 18-349, Notice of Proposed Rulemaking, FCC 18-179 (rel. Dec. 13, 2018); *Electronic Delivery of Cable Notices Order and FNPRM* (requesting comment on other forms of electronic delivery of cable notices); *Modernization of Media Regulation Initiative, Revisions to Cable Television Rate Regulations et al.*, MB Docket Nos. 17-105, 02-144 et al., Further Notice of Proposed Rulemaking and Report and Order, FCC 18-148 (rel. Oct. 23, 2018) (proposing amendments to rules governing cable rate regulation); and *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311, Second Further Notice of Proposed Rulemaking, FCC 18-131 (rel. Sept. 25, 2018) (proposing rules related to local franchise authority regulation of cable operators).

¹⁹ *Media Bureau Seeks Comment on Google Fiber’s Amended Petition for Limited Waiver of Accessible User Interfaces Requirements*, MB Docket No. 12-108, Public Notice, DA 19-430 (rel. May 16, 2019); *Media Bureau Action Fourth Quarter 2018 Inflation Adjustment Figures for Cable Operators Using FCC Form 1240 Now Available*, Public Notice, DA 19-235 (rel. April 2, 2019); *Comment Deadlines Set for Further Notice of Proposed Rulemaking Seeking Comment on Expanded Electronic Delivery of Certain MVPD Notices*, MB Docket Nos. 17-105, 17-317, Public Notice, DA 19-163 (rel. March 7, 2019); *Media Bureau Announces Comment and Reply Comment Dates for Industry Proposal for Carriage Election Notice Modernization*, MB Docket No. 17-317, Public Notice, DA 19-83 (rel. Feb. 14, 2019); *Media Bureau Seeks Comment on Recent Developments in the Video Description Marketplace to Inform Report to Congress*, MB Docket No. 11-43, Public Notice, DA 19-40 (rel. Feb. 4, 2019); *Media Bureau Extends Comment and Reply Comment Dates for Industry Proposal for Carriage Election Notice Modernization*, MB Docket No. 17-317, Public Notice, DA 19-25 (rel. Jan. 29, 2019); *Media Bureau Action Third Quarter 2018 Inflation Adjustment Figures for Cable Operators Using FCC Form 1240 Now Available*, Public Notice, DA 18-1305 (rel. Dec. 27, 2018); *Media Bureau Seeks Comment on Industry Proposal for Carriage Election Notice Modernization*, MB Docket No. 17-317, Public Notice, DA 18-1250 (rel. Dec. 13, 2018); *Media Bureau Announces Effective Date of OVS Electronic Filing Requirements*, MB Docket No. 17-105, Public Notice, DA 18-1220 (rel. Nov. 30, 2018); *Media Bureau Announces Extended Comment and Reply Deadlines for the Revisions to Cable Television Rate Regulations FNPRM*, MB Docket Nos. 17-105, 02-144, Public Notice, DA 18-1207 (rel. Nov. 27, 2018); *Media Bureau Action Establishment of “Permit-But-Disclose” Ex Parte Procedures for Charter Communications, Inc.’s Petition for Determination of Effective Competition*, MB Docket No. 18-283, Public Notice, DA 18-1154 (rel. Nov. 13, 2018); *Media Bureau Reminds Covered Mid-Sized and Smaller*

While the above-mentioned proceedings show that Media Bureau staff have been busy, they also demonstrate that the overwhelming majority of staff's work has been on matters that have little or no relevance to DBS providers.

In defense of its proposed phase-in increases to the DBS per subscriber rate, the Commission notes that a variety of wireline providers pay the same Interstate Telephone Service Provider ("ITSP") regulatory fee even though they are subject to different degrees of regulatory oversight.²⁰ However, that statement says nothing about the respective costs that these different providers impose on the Commission, nor the extent to which such entities benefit from the Commission's activities. AT&T and DISH document above how Media Bureau FTEs working on MVPD issues in the last year were mostly focused on cable-centric issues, not ones that affected DBS providers. It is unclear whether that is the case for the different types of carriers that pay the ITSP fee. For example, different types of wireline carriers are involved with pricing issues (including disputes over intercarrier compensation), interconnection issues, numbering issues (including local number portability), and, among other things, participate in the Commission's universal service programs. All of these regulatory costs are borne by Wireline Competition Bureau FTEs and are funded through the ITSP regulatory fee.

MVPDs of December 20, 2018 Accessible User Interfaces Deadline, MB Docket No. 12-108, Public Notice, DA 18-1132 (rel. Nov. 5, 2018); *Comment and Reply Comment Dates Set for NPRM Addressing Cable Franchising Issues*, MB Docket No. 05-311, Public Notice, DA 18-1069 (rel. Oct. 18, 2018); *Media Bureau Action Inflation Adjustment Figures for Cable Operators Using FCC Forms 1220 and 1240 Now Available*, Public Notice, DA 18-1027 (rel. Oct 5, 2018); and *Media Bureau Continues 2018 EEO Audits*, Public Notice, DA 18-1020 (rel. Oct. 4, 2018).

²⁰ *NPRM* at ¶ 19 & n.54.

III. RECENT STATUTORY CHANGES DO NOT SUPPORT A SHARP, UNJUSTIFIED FEE INCREASE

The Commission asks whether the “continued ‘phase in’ is still permissible under the RAY BAUM’S Act.”²¹ Notwithstanding our belief that no further DBS per subscriber fee increases are warranted, simply put, there is nothing in the text or legislative history of the RAY BAUM’S Act that speaks to, or affects the applicability of, the phase in. Tellingly, RAY BAUM’S Act was enacted last year and the Commission made changes to its regulatory fee rules as required by the new law.²² Despite the fact that the Commission completed its rulemaking to implement the changes required by this Act, the issue was never raised in that proceeding – neither by the Commission nor by any commenter. The Commission can only impose fees consistent with its statutory mandate to “recover the cost” of regulation. RAY BAUM’S Act did not alter that obligation.²³ As we explain above, increasing the DBS per subscriber fee as proposed in the *NPRM* is inconsistent with this statutory command as there is no data or analysis that demonstrates DBS providers caused any increase in Media Bureau FTEs over the past year – let alone a twenty-five percent increase. Consequently, there simply is no increased cost associated with DBS providers that the Commission must “recover.”

IV. THE FCC SHOULD BASE REGULATORY FEES ON MORE RECENT SUBSCRIBER COUNTS

Finally, AT&T and DISH respectfully request that the Commission use an MVPD subscriber snapshot that is closer in time to the release of its regulatory fee order. Previously, the

²¹ *Id.* at ¶ 19.

²² *FY 2018 Regulatory Fee Order* at ¶ 2.

²³ *See* 47 U.S.C. § 159(a), as amended by RAY BAUM’S Act.

Commission has required MVPDs to provide their subscriber counts as of the end of the prior calendar year. As the Commission is well aware, MVPD subscriber counts are declining over time. Given these trends, it is difficult for MVPDs that recover their regulatory fee costs from their customers to do so on a 1:1 basis (*i.e.*, \$0.48 per DBS subscriber and \$0.86 per cable subscriber for Fiscal Year 2018). Either the MVPD does not recover all of its regulatory fee costs from its subscribers or it must recover more on average from its remaining subscriber base. Directing MVPDs to provide their subscriber snapshot as of July 1 of the current calendar year would reduce the disparity between the number of subscriber units upon which the MVPD pays regulatory fees and the actual number of subscribers the MVPD has when it makes that payment.

V. CONCLUSION

For the foregoing reasons, AT&T and DISH urge the Commission to hold DBS regulatory fees at 2018 levels and base the calculation of that fee on a subscriber count that is tallied closer in time to the fee due date.

Respectfully submitted,

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