

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

COMMENTS OF DISH NETWORK L.L.C.

DISH Network L.L.C. (“DISH”) submits these comments in response to the Commission’s proposal to increase the annual per-subscriber regulatory fee imposed on Direct Broadcast Satellite (“DBS”) providers by 125 percent.¹ After requiring DBS providers to pay a per-subscriber regulatory fee – for the first time – of 12 cents in 2015 to “recover the burden of regulation and oversight”² by Media Bureau full time employees (“FTEs”), the Commission now proposes to increase this fee by 15 cents, to a total of 27 cents per subscriber.³

DISH opposes the proposed rate increase, which only serves to harm consumers who will ultimately be forced to shoulder the burden of any increased regulatory fees. Among other things, the Commission has failed to explain how regulatory developments in the last

¹ See Assessment and Collection of Regulatory Fees for Fiscal Year 2016, *Notice of Proposed Rulemaking*, MD Docket No. 16-166, FCC 16-61, ¶ 10 (rel. May 19, 2016) (“*2016 Regulatory Fees NPRM*”).

² See Assessment and Collection of Regulatory Fees for Fiscal Year 2015, Amendment of Part 1 of the Commission’s Rules; Assessment and Collection of Regulatory Fees for Fiscal Year 2014, *Notice of Proposed Rulemaking, Report and Order, and Order*, MD Docket Nos. 15-121 and 14-92, FCC 15-59, ¶ 28 (rel. May 21, 2015) (“*2015 Regulatory Fees R&O and NPRM*”).

³ *2016 Regulatory Fees NPRM* ¶ 10.

year justify the dramatic rate increase. And, the Commission’s proposal leaves DBS providers – and their subscribers – vulnerable to exactly the kind of “sudden and large changes in the amount of fees” paid by regulatees that the Commission has sought to avoid in the past.⁴ Finally, the arbitrary and unjustified nature of the Commission’s proposed fee increase leaves the industry uncertain about what to expect in future years, to the detriment of consumers.

I. THE PROPOSED RATE INCREASE WILL HARM CONSUMERS

The Commission’s proposal to dramatically raise the per-subscriber regulatory fee for DBS providers will harm DBS customers, who will be forced to shoulder the burden of any fee increases. Any per-subscriber regulatory fee imposed will be passed on to DISH’s DBS subscribers along with other fees and taxes they pay already, thus raising their monthly bills. The Commission has wholly failed to justify the fee increase, leaving consumers vulnerable to arbitrary and unjustified rate hikes this year, and in future years.

II. THE COMMISSION HAS FAILED TO ADEQUATELY JUSTIFY THE DRAMATIC PROPOSED RATE INCREASE

As the Commission has explained, regulatory fees are collected by the agency “to recover the costs of ... enforcement activities, policy and rulemaking activities, user information services, and international activities.”⁵ Regulatory fees are “derived by determining the full-time equivalent number of employees performing” these activities, “adjusted to take into account factors that are reasonably related to the benefits provided to

⁴ *Assessment and Collection of Regulatory Fees for Fiscal Year 2013*, 28 FCC Rcd. 12351, ¶ 21 (2013) (“2013 Order”).

⁵ *2016 Regulatory Fees NPRM* ¶ 2, citing 47 U.S.C. § 159(a).

the payer of the fee by the Commission's activities."⁶ In addition, the statute requires that regulatory fees "be established at amounts that will result in collection, during each fiscal year, of an amount that can reasonably be expected to equal the amount appropriated for such fiscal year for the performance"⁷ of the regulatory activities enumerated above.

Despite this directive, the Commission has failed to provide information in the record sufficient to determine whether the fee proposed for FY 2016 is in fact "reasonably" equal to the amount of staff resources appropriated for DBS activities. Indeed, the Commission has failed to explain how regulatory developments in the last year have impacted staff resource allocation consistent with the 125 percent fee increase proposed for FY 2016.

A. Just One Year Ago, the Commission Created a New Per-Subscriber Regulatory Fee of 12 Cents for DBS Providers.

In 2015, the Commission created a new regulatory fee subcategory for DBS within the cable and IPTV category and, for the first time, imposed a per-subscriber regulatory fee of 12 cents on DBS providers.⁸ At the time, the Commission reasoned that "a variety of regulatory developments have increased the amount of regulatory activity by the Media Bureau FTEs involving regulation and oversight of MVPDs, including DBS providers."⁹ When setting the per-subscriber regulatory fee, the Commission explained that a rate of 12 cents per subscriber per year was "a sensible fee supported by data and analysis."¹⁰ Among other things, the

⁶ *2016 Regulatory Fees NPRM* ¶ 2, citing 47 U.S.C. § 159(b)(1)(A).

⁷ 47 USC § 159(b)(1)(B).

⁸ *2015 Regulatory Fees R&O and NPRM* ¶ 41.

⁹ *See Assessment and Collection of Regulatory Fees for Fiscal Year 2015, Report and Order and Further Notice of Proposed Rulemaking, MD Docket No. 15-121, ¶ 20* (rel. Sept. 1, 2015) ("*2015 Regulatory Fees Report and Order and FNPRM*").

¹⁰ *Id.*

Commission cited recently adopted “requirements that apply to all MVPDs and thus equally apply to DBS providers 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)”¹¹ in support of the 12 cent fee. In the same *Order*, the Commission noted that any rate adjustments in future years would be “based on relevant information... and considering the resources dedicated to this new regulatory fee subcategory.”¹²

B. The Commission Has Failed to Justify How Media Bureau FTE Resource Allocation Has Changed Over the Past Year to Justify a 125 Percent Per-Subscriber Fee Increase.

Now, just one year later, the FCC proposes to increase the per-subscriber regulatory fee that DBS providers must pay by 125 percent. In support of this dramatic increase, the Commission cites only two additional proceedings conducted over the last year that have impacted the resources that Media Bureau FTEs must expend upon DBS providers (and that would supposedly justify a 15 cent increase): new rules that require cable, DBS, and other licensees to post their public file documents to an FCC-hosted database, and the open *Notice of Proposed Rulemaking* regarding unlocking the set-top boxes of cable and DBS operators.¹³ It is unclear how these two proceedings – the only ones cited by the Commission in support of this enlarged fee – have increased the work load of Media Bureau FTEs sufficient to justify more than doubling the rate that DBS providers must pay.

¹¹ *Id.*

¹² *Id.*

¹³ *2016 Regulatory Fees NPRM* ¶ 10.

As discussed above, the Commission cited a “variety of regulatory developments”¹⁴ in support of establishing a per-subscriber DBS fee at 12 cents. It is therefore difficult for DISH to understand how one or two new proceedings support increasing this fee by 125 percent, as proposed. For example, the Commission has not provided any visibility into how the public file proceeding has impacted Media Bureau resource allocation, especially as it relates to DBS providers. The proceeding, initiated in 2014, involved a total of 118 comments (none of which were provided by DISH). Final rules in the proceeding were issued in 2016 and become effective later this month. The FCC has not provided any information regarding how many Media Bureau staff, or staff hours, contributed to this proceeding, the resulting rules, or the Commission’s implementation.

In addition, the set-top box proceeding initiated by the Commission has impacted a variety of stakeholders, including several (like public interest groups and third-party manufacturers) that do not pay any regulatory fees to the Commission for Media Bureau FTEs. It is unfair, and unsupported by law, to require DISH’s subscribers to shoulder a substantial incremental fee increase on their bills to help pay for a proceeding that impacts so many entities that pay no regulatory fees at all. Further, as DISH has explained, the FCC’s *NPRM* in that proceeding failed to adequately address issues relevant to DBS providers. As DISH and EchoStar noted:

[W]hile the *Notice* recognizes differences in satellite technology – and *references* the need for a gateway device in each DBS subscriber’s home – it makes no effort to explain how satellite carriers might possibly implement the rules as proposed. The

¹⁴ 2015 *Regulatory Fees Report and Order and FNPRM* ¶ 20.

Commission's proposal in its current form cannot work for DBS operators and, of course, their subscribers.¹⁵

Given that DBS-specific issues were not even addressed in the *NPRM* considering new set-top box rules, it is unclear how this *NPRM* has contributed to an increase in staff resources sufficient to justify a 125 percent rate increase for DBS providers.

Aside from citing the two proceedings discussed above (which alone do not appear to justify the proposed rate increase), the Media Bureau has failed to provide any additional internal accounting or other explanation in the record to justify the 27 cent figure for interested parties to verify, question or confirm it. Interested parties must be given the opportunity to understand exactly how DBS providers have usurped the work of such a significant amount of Media Bureau FTEs sufficient to justify this increase. This step is necessary to ensure that the Commission's proposal is consistent with the agency's statutory directive in setting and collecting regulatory fees.¹⁶

III. THE COMMISSION'S PROPOSAL SUBJECTS DBS PROVIDERS TO "RATE SHOCK" AND INJECTS UNCERTAINTY INTO THE REGULATORY FEE PROCESS

The Commission's proposal to increase the per-subscriber regulatory fee by 125 percent leaves DBS providers vulnerable to exactly the kind of rate shock, or "sudden and large changes in the amount of fees" paid by DBS regulatees that the Commission has sought to avoid in the past.¹⁷ And, the arbitrary and unjustified nature of the Commission's proposed fee increase leaves the industry uncertain about what to expect in future years.

¹⁵ Comments of EchoStar Technologies L.L.C. and DISH Network L.L.C., MB Docket No. 16-42, CS Docket No. 97-80 (Apr. 22, 2016).

¹⁶ See 47 USC § 159(b).

¹⁷ 2013 Order ¶ 21.

A. The Proposed Rate Increase Would Subject DBS Providers to Rate Shock.

In addition to the Commission's failure to adequately justify the 27 cent per-subscriber fee proposed for FY 2016, the *2016 Regulatory Fees NPRM* fails to explain how such a significant rate increase comports with the Commission's previous statements regarding rate shock.¹⁸ In fact, the *NPRM* is silent on issues related to rate shock and the negative impact of rate shock on DBS subscribers.

The Commission has previously taken care to avoid rate shock by ensuring that regulatees are not subject to dramatic increases in fees. For example, in 2013, the Commission set a cap of 7.5 percent on fee increases for licensees subject to regulatory fees. In setting that cap, the Commission stated that the purpose was "to avoid sudden and large changes in the amount of fees paid by various classes of regulatees."¹⁹ At the time, the Commission rejected arguments that a cap was inappropriate on the grounds that some payors had paid too little over the years, noting that the Commission "cannot 'flash cut' to immediate, unadjusted use of the FY 2012 FTE data without engendering significant and unexpected fee increases for other categories of fee payors."²⁰

While the Commission's 2015 *Order* establishing a DBS subcategory in the cable and IPTV category declined to adopt a cap in fee increases, the Commission noted that the decision to introduce the DBS fee as a subcategory represented a "phased approach [] consistent with the interim approach the Commission took in the *FY 2013 Report and Order*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* ¶ 25.

to ‘avoid sudden and large changes in the amount of fees.’”²¹ Thus, the Commission was mindful that the imposition of new regulatory fees could subject providers to rate shock and attempted to avoid such an outcome. The Commission now appears to have abandoned the “phased approach” without providing any reasoning for this departure.

B. The Proposed DBS Fee Leaves The Industry and Subscribers Uncertain About Future Fees And Potential Steep Increases In Years To Come.

DISH has previously articulated its concerns regarding the lack of transparency in the way the Commission sets regulatory fees.²² The Commission’s proposal to increase the per-subscriber fee dramatically and without justification for FY 2016 is exactly the kind of arbitrary action DISH feared would result from the Commission’s decision to move forward with a per-subscriber DBS fee.²³ The Commission’s current proposal generates significant concerns for DISH and its subscribers regarding what to expect in future years, given that there appears to be no reasoned basis on which the proposed fee increase is premised. Ultimately, the Commission’s approach leaves consumers to absorb these arbitrary and unjustified rate increases.

IV. CONCLUSION

For the reasons discussed herein, DISH opposes the Commission’s proposal to increase the per-subscriber DBS fee from 12 cents to 27 cents. This fee increase will only harm consumers, who will be forced to pay any increased fee. Among other things, the Commission has failed to explain how regulatory developments in the last year justify a 125

²¹ *2015 Regulatory Fees R&O and NPRM* ¶ 38.

²² See DISH Network L.L.C. Comments, MD Docket No. 15-121, 14-92, at 7 (June 22, 2015).

²³ *Id.*

percent increase in the proposed per-subscriber DBS fee. In addition, the rate increase proposed would be exactly the kind of “sudden and large changes in the amount of fees”²⁴ paid by DBS regulatees that the Commission has sought to avoid.

Respectfully submitted,

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June 20, 2016

²⁴ 2013 Order ¶ 21.