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

In the Matter of	)	
	)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2018	))	MD Docket No. 18-175

COMMENTS OF NCTA – THE INTERNET & TELEVISION ASSOCIATION

NCTA – The Internet & Television Association ("NCTA") submits these comments in response to the Commission's Notice of Proposed Rulemaking ("*NPRM*") in the above-captioned proceeding,[1] specifically addressing the assessment and collection of regulatory fees for Direct Broadcast Satellite ("DBS") services. The Commission should make the DBS regulatory fee equal to that paid by cable/IPTV providers, and should set the fee in an amount that facilitates automated billing systems, to ensure the greatest possible simplicity and ease for consumers and providers.

INTRODUCTION

NCTA appreciates the Commission's continued efforts to adjust the regulatory fee level for DBS operators to achieve parity among the contribution levels of multichannel video programming distributors ("MVPDs"). The proposed fiscal year ("FY") 2018 regulatory fee for cable television, Internet Protocol TV ("IPTV") and DBS providers is another step in the right direction. However, the proposed DBS fee still lags well behind the proposed rate to be paid by cable/IPTV providers, and the amount of the proposed increase is actually lower than in previous years. There is no reason to continue this disparity.

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1 *Assessment and Collection of Regulatory Fees for Fiscal Year 2018*, Report and Order and Notice of Proposed Rulemaking, MD Docket No. 18-175, FCC 18-65 (rel. May 22, 2018) ("*FY 2018 NPRM*").

Allowing the two DBS operators – both currently among the five largest MVPDs in the nation – to continue to pay lower regulatory fees than other MVPDs makes no sense in light of their significant and ongoing use of Media Bureau resources. Over the past year, as in prior years, DBS providers have continued to meet with Media Bureau staff, submit filings in Media Bureau dockets, and otherwise use Media Bureau resources at a rate significantly exceeding the vast majority of MVPDs, and comparable only to the other largest MVPDs. As such, and given that DBS operators have now had several years of notice that they will be subject to Media Bureau regulatory fees, the increase in the DBS rate should not be limited to the current glacial pace. Instead, the Commission should remove the fee disparity between cable/IPTV and DBS providers now. An equitable distribution of regulatory fees among *all* MVPDs would foster competitive parity and technological neutrality – thus furthering strong Congressional interests and Commission principles – and would better reflect the reality of today's Media Bureau oversight and regulation activities.

I. DBS AND CABLE/IPTV PROVIDERS SHOULD BE ASSESSED THE SAME REGULATORY FEE FOR MEDIA BUREAU ACTIVITIES

While the Commission asks whether increasing the DBS regulatory fee by $0.10 to $0.48 per subscriber per year is justified,[2] it should be asking whether, given the Commission's "long-standing commitment to competitive neutrality,"[3] there is any legitimate reason to continue allowing DBS operators to pay less than cable – especially, $0.29 less – given the repeated conclusions that DBS operators use Media Bureau resources extensively, and the long-past expiration of any possible concern about DBS consumer "rate shock." The answer is no.

DBS providers impose regulatory costs and receive benefits from the activities of the

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2 *FY 2018 NPRM* ¶¶ 17-20.

3 *Id.* ¶ 19.

Media Bureau that affect MVPDs, yet the Commission's proposed fees would inexplicably and unfairly require cable and IPTV operators to pay a significantly higher rate than the DBS providers with whom they directly compete for subscribers.

The Commission has repeatedly acknowledged that DBS providers should share in the burden of paying Media Bureau regulatory fees. Examining the facts about Media Bureau use, the Commission has raised the DBS fee each year for the past several years, concluding that –

- there are a "host of requirements that apply to all MVPDs and thus equally apply to DBS providers;"[4]
- "DBS providers actively participate in Media Bureau proceedings involving MVPD oversight and regulation;"[5]
- "although DBS is not identical to cable television and IPTV, the services all receive oversight and regulation as a result of the work of Media Bureau [full-time-employees ("FTEs")] on MVPD issues" and that "[t]he burden imposed on the Commission is therefore similar;"[6]
- "[w]hen adopting the new regulatory fee subcategory for DBS within the cable and IPTV category, we determined 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;"[7]
- "DBS providers impose regulatory costs and receive benefit from the activities of the Media Bureau FTEs that affect all MVPDs;"[8]and
- "the DBS and cable television/IPTV oversight and regulatory work of Media Bureau FTEs is similar."[9]

While NCTA and others have disagreed with the unusually slow phase-in approach the

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4 *Assessment and Collection of Regulatory Fees for Fiscal Year 2015*, Notice of Proposed Rulemaking, Report and Order, and Order, 30 FCC Rcd. 5354, ¶ 31 (2015).

5 *Id*.

6 *Id.*, ¶¶ 32-33, n.111 (pointing to numerous requirements adopted in recent years that apply to all MVPDs, including DBS providers).

7 *Assessment and Collection of Regulatory Fees for Fiscal Year 2015*, Report and Order and Further Notice of Proposed Rulemaking, 30 FCC Rcd. 10268, ¶ 20 (2015) ("*FY 2015 Order*").

8 *Assessment and Collection of Regulatory Fees for Fiscal Year 2016*, Report and Order, 31 FCC Rcd. 10339, ¶ 26 (2016) ("*FY 2016 Order*").

9 *FY 2016 Order*, ¶ 30.

Commission has used to increase DBS regulatory fees,[10] we were encouraged that the Commission was moving the DBS fee – albeit slowly – towards competitive parity with the fee paid by all other MVPDs. This year, however, the Commission appears to be backsliding in its efforts to accomplish that goal.

While the Commission does propose an increase in the DBS regulatory fee for FY 2018, it proposes an even smaller rate of increase than in the past – a mere $0.10 – and appears to be questioning whether the DBS fee should *ever* be equal to the cable regulatory fee, by asking numerous questions about the specific number of FTEs that the Media Bureau devotes to DBS operators compared to cable and IPTV providers, and whether their regulatory burdens are similar.[11] There is no need for the Commission to undertake such a specific comparison.

As the Commission has underscored in the past, neither the Communications Act nor Commission precedent requires an entity to pay regulatory fees exactly equal to an entity's FTE interaction with a Bureau or Commission office.[12] Instead, the Commission groups similar services for regulatory fee purposes, regardless of the varying regulatory obligations of each and without calculating how many FTEs are devoted to each individual regulation. This is because activity levels and participation in specific proceedings may change from year to year, and it

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[10] *See, e.g.*, Comments of NCTA – the Internet and Television Association, Docket No. 17-134, at 9 (June 22, 2017) (explaining that "the Commission has phased in rate increases for DBS unusually slowly"); Comments of the American Cable Association, Docket No. 17-134, at 2 (June 22, 2017) (arguing that there is "no reason to further delay bringing DBS into full parity with Cable/IPTV for FY 2017"); Letter from Tara M. Corvo, Counsel for NCTA, to Marlene H. Dortch, Secretary, FCC, Docket No. 16-166 (Jan. 31, 2017) ("DBS operators have now been on notice for several years that they will be subject to Media Bureau regulatory fees, and those fees have been phased in unusually slowly.").

[11] *FY 2018 NPRM* ¶ 19.

[12] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2016*, Notice of Proposed Rulemaking, 31 FCC Rcd. 5757, ¶ 9 n.41 (2016) (noting that "[t]he agency is not required to calculate its costs with "scientific precision" and that "[r]easonable approximations will suffice."); *FY 2015 NPRM and Report and Order* ¶33 ("We also reject the argument raised by DIRECTV and DISH that section 9 of the Act requires us to 'show that DBS and cable occupy a comparable number of FTEs.'").

would be difficult and unproductive to attempt to assess on an FTE-by-FTE basis how many resources are devoted to particular issues.[13]

Concerns about any possible consumer "rate shock" if the DBS fee is raised[14] are also unmerited. DBS providers have had more than enough time to prepare their subscribers for increased rates to avoid any possible concerns about increases. The Commission has been increasing the DBS regulatory fee since FY 2015, and has been clear that it plans to continue to increase the DBS fee. That DBS operators' concerns about rate shock are invalid is confirmed by their repeated decision to raise rates. Even if DBS regulatory fees were made equal to cable, it would amount to pennies per month, while the DBS operators regularly implement rate increases many times that amount. Just this year, DISH announced rate increases of $5 per month and DIRECTV/AT&T announced increases of up to $8 per month.[15] They cannot credibly claim that their consumers would be shocked by an increase of a few cents.

What *is* important to examine in determining that DBS operators should pay an equal share of Media Bureau regulatory fees is the extensive manner in which DBS operators continue to occupy Media Bureau resources, by participating actively in Media Bureau proceedings, submitting numerous filings in Media Bureau dockets, holding *ex parte* meetings with Media Bureau staff advocating for various policies, rules, and authorizations, and generally falling

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13 *See FY 2015 NPRM and Report and Order* ¶ 33 (citing *FY 2007 Report and Order* ¶¶ 19-20). As NCTA has noted in the past, when the Commission began assessing IPTV providers regulatory fees, it imposed an identical fee, even while recognizing that cable television and IPTV services are not regulated identically. *Assessment and Collection of Regulatory Fees for Fiscal Year 2013*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 28 FCC Rcd. 7790, ¶ 32-33 (2013) ("*FY 2013 NPRM*"); *Assessment of Collection of Regulatory Fees for Fiscal Year 2014*, Notice of Proposed Rulemaking and Second Further Notice of Proposed Rulemaking, and Order, 29 FCC Rcd 6417 ¶12 (2014).

14 *FY 2018 NPRM* ¶ 19.

15 "Comcast, DirecTV, Dish, Charter Set Rate Hikes for 2018," *Variety* (Dec. 22, 2017).

under the oversight of the Bureau. A review of the Commission's electronic filing systems confirms this to be the case.[16]

As an initial matter, given that it is the Media Bureau's specific charge to "develop[], recommend[], and administer[] the policy and licensing programs for the regulation of media, including . . . satellite services in the United States," and to advise the Commission in matters pertaining to multichannel video programming distribution policy,[17] DBS operators occupy Media Bureau resources daily. Regardless of whether dockets are opened, or meetings are held, the Media Bureau is specifically charged with considering whether DBS operators warrant more or less regulation, the impact of proposed rules on DBS operators, any trends in DBS service requiring attention, and other matters and as such, is continuously engaged in devoting resources to DBS operators.

More specifically, even a cursory review of the current Media Bureau dockets since January 1, 2017 indicates that DIRECTV/AT&T and DISH have engaged Media Bureau resources nearly continuously. Together, they have submitted over one hundred filings (*e.g.*, comments and *ex parte* notices) in Media Bureau dockets.[18] Moreover, in the first quarter of 2018 alone, DIRECTV/AT&T and DISH were involved in a hotly contested proceeding in which Gray Television Licensee, LLC sought a TV market modification for the satellite carriers. The docket generated over two thousand filings from the public, and required both DBS providers to

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16 *See FCC's Electronic Comment Filing System*, https://www.fcc.gov/ecfs/ (search in name of filer search bar for "AT&T" or "DISH").

17 47 C.F.R. §0.61.

18 *See supra* n.16.

submit multiple rounds of filings, meet with Media Bureau staff, and respond to additional inquiries from staff.[19]

Additionally, DISH has been embroiled in a must-carry proceeding since last fall,[20] and DIRECTV/AT&T and DISH have both met on multiple occasions – in person and via telephone – with several members of the Media Bureau to discuss the media rule modernization proceedings and the Tribune/Sinclair transaction.

The DBS operators also continue to participate actively in a wide variety of other Media Bureau proceedings, including, media ownership, STELA, retransmission consent and must-carry, video programming delivery, and merger proceedings. Given this data, the Commission's stated goal of "regulatory fee parity for all MVPDs,"[21] and Congress and the Commission's goals of promoting competitive and technological neutrality,[22] the Commission should adjust the proposed Media Bureau regulatory fees so that cable/IPTV and DBS providers share the burden equally.

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19 *In re Gray Television Licensee, LLC*, Memorandum Opinion and Order, MB Docket No. 18-8, DA 18-500 (MB rel. May 16, 2018).

20 *See Minority Television Project, Inc. Licensee of Noncommercial Television Station KMTP, Channel *32*, Memorandum Opinion and Order, 33 FCC Rcd. 216 (MB 2018); Opposition of DISH Network L.L.C. To Petition for Reconsideration, MB Docket No. 17-313 (filed Feb. 15, 2018).

21 *Assessment and Collection of Regulatory Fees for Fiscal Year 2016*, Report and Order, 31 FCC Rcd. 10339 ¶30 (2016) (explaining that the Commission remains committed to the goal of "regulatory fee parity for all MVPDs").

22 *See, e.g.*, FCC Strategic Plan (2018-2022), https://www.fcc.gov/document/strategic-plan-2018-2022 ("a key priority for the FCC is to foster competitive, dynamic, and innovate market for communications services"); *Restoring Internet Freedom*, Declaratory Ruling, Report and Order, and Order, WC Docket No. 17-108, Oral Statement of Chairman Ajit Pai (touting the benefits of regulatory parity for the economy); Commissioner Michael O'Rielly, *International Efforts to Regulate the Internet Continue*, FCC Blog (Apr. 17, 2017), www.fcc.gov/news-events/blog/2017/04/21/international-efforts-regulate-internet-continue (stating that abandoning technological neutrality "will stymie future innovation from competing technologies").

II. THE COMMISSION SHOULD SET A REGULATORY FEE AMOUNT THAT ACCOMMODATES AUTOMATED BILLING SYSTEMS

In addition to ensuring that all MVPDs regulated by the Media Bureau share equally in Media Bureau regulatory fees, the Commission should set a regulatory fee for the cable/DBS/IPTV category that is divisible by 12, in light of increased use of automated billing and paying systems.

Most cable operators today use automated billing systems in which the rate of each service and fee is entered once and then billed in the same amount each month. When the regulatory fee for the year is not divisible by 12, the fee is different for some months. As a result, operators are forced to manually adjust customer bills in those months, or reset their billing systems several times in several months, which is not only complicated, but also leaves bills vulnerable to errors.

Moreover, consumers – who are generally unaware of the nuances associated with these fees – are left with a monthly bill that suddenly fluctuates. This raises questions from subscribers and in the case of subscribers who have instructed their bank to pay the cable company a particular amount each month, those customers' accounts are suddenly under- or over-paid, causing further distress.

The rate variation and constant adjustments are expensive for operators and confusing for subscribers. The Commission should avoid these results by selecting a fee that is divisible by 12 so that the subscribers' rates remain constant each month.[23]

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[23] This could be accomplished in various ways. Pursuant to Appendix A in the *FY 2018 NPRM*, expected cable and DBS FY 2018 revenue combined is $62,330,000. By proposing a fee of $0.72 per subscriber for both cable and DBS operators, the Commission would generate expected revenue of $43,920,00 from cable operators and $23,040,000 from DBS operators, for a total of $66,960,000. Alternatively, to the extent the Commission feels that it must continue to phase DBS fees in slowly, it could set a $0.72 fee for cable, generating $43,920,000 and a $0.60 fee for DBS, generating $19,200,000, for a total of $63,120,000, an amount close to the current proposed total.

CONCLUSION

NCTA applauds the Commission's efforts to raise the DBS regulatory fee and continued yearly analysis of the fair assessment of regulatory fees. In adopting its FY 2018 regulatory fee schedule, however, the Commission should recognize that the time has come to set the regulatory fees for DBS operators at the same rate assessed cable television and IPTV providers, and should make that regulatory fee divisible by 12 to ensure the greatest possible simplicity and ease for consumers and providers.

Respectfully submitted,

/s/ Rick Chessen

Rick Chessen
Neal M. Goldberg
NCTA – The Internet & Television Association
25 Massachusetts Avenue, NW
Suite 100
Washington, DC 20001-1431

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