

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

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| In the Matter of |) | |
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| Assessment and Collection of |) | MD Docket No. 17-134 |
| Regulatory Fees for Fiscal Year 2017 |) | |
| |) | |

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

DISH Network L.L.C. (“DISH”) and AT&T Services, Inc. on behalf of its affiliate DIRECTV LLC (collectively, “AT&T”) respectfully submit these comments in response to the Commission’s proposal to increase the annual per-subscriber regulatory fee imposed on Direct Broadcast Satellite (“DBS”) for FY 2017.¹ After requiring DBS providers to pay a per-subscriber regulatory fee of 12 cents in 2015 to purportedly “recover the burden of regulation and oversight”² by Media Bureau full time employees (“FTEs”), the Commission now proposes to increase this fee to a total of 38 cents per subscriber, up from 27 cents last year.³ While the Commission portrays its proposal as an “incremental increase,”⁴ it amounts

¹ See Assessment and Collection of Regulatory Fees for Fiscal Year 2017, *Notice of Proposed Rulemaking*, MD Docket No. 17-134, FCC 17-62, ¶¶ 15-17 (rel. May 23, 2017) (“*2017 Regulatory Fees NPRM*” or “*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 See *2017 Regulatory Fees NPRM* ¶ 17. This increase breaks down to a “regulatory fee of 36 cents per subscriber per year, plus two cents due to the increase in the Commission’s budget for moving expenses” and represents a 12-cent per subscriber increase over the baseline regulatory fee charged for FY 2016.

⁴ *2017 Regulatory Fees NPRM* ¶ 17.

to a staggering 217% increase since 2015.⁵ Such an increase cannot be supported based on Commission activities cited in the *NPRM* and DISH and AT&T oppose it. And, as Chairman Pai observed recently, although the Commission is “an entirely fee-funded agency,” it is “important to remember that someone is still paying [the FCC’s] freight.”⁶ At the end of the day, fee payers ultimately “pass along those fees to American consumers.”⁷

Indeed, in proposing these consumer-borne fees, the Commission has failed to explain how regulatory developments in the last year justify a dramatic rate increase for the third consecutive year. The Commission’s statement that such a rate increase “would result in bringing the DBS industry regulatory fees closer to those for cable television/IPTV”⁸ runs counter to the Commission’s acknowledgement that “DBS is not identical to cable television”⁹ and evidence in the record that *two* DBS operators have never generated, and do not generate now, anything approaching the regulatory costs that hundreds of cable operators do.¹⁰

⁵ Even without the two cents related to the Commission’s upcoming move, the increase from 12 cents in 2015 to the proposed 36 cents is still 200 percent.

⁶ Statement of Chairman Ajit Pai, Hearing on the FCC’s Fiscal Year 2018 Budget Request, Subcommittee on Financial Services and General Government, Committee on Appropriations, U.S. Senate, June 20, 2017, at 1, *available at* <https://www.appropriations.senate.gov/imo/media/doc/062017-Pai-Testimony.pdf>.

⁷ *Id.*

⁸ *2017 Regulatory Fees NPRM* ¶ 17.

⁹ *2015 Regulatory Fees R&O and NPRM* ¶ 33.

¹⁰ See Reply Comments of DISH Network L.L.C. MD Docket No. 16-166 p. 4-6 (Jul. 5, 2016); Letter from Alison A. Minea, DISH, to Marlene H. Dortch, FCC, MD Docket No. 16-166, Dec. 16, 2016; Letter from Alison A. Minea, DISH, to Marlene H. Dortch, FCC, MD Docket No. 16-166, Aug. 10, 2016; DTV/DISH Nov. 2014 Joint Comments at 10-15; DTV/DISH Dec. 2014 Joint Comments at 4-9. See also *Assessment and Collection of Regulatory Fees for Fiscal Year 2016*, MD Docket No. 16-166, 31 FCC Rcd 10339, Appendix F ¶ 22 (stating that there are currently 4,600 active cable systems in the United

I. THE PROPOSED RATE INCREASE IS NOT IN THE PUBLIC INTEREST AND WILL HARM CONSUMERS

The Commission's proposal to dramatically raise the per-subscriber regulatory fee imposed upon DBS providers for the third consecutive year will harm DBS customers, who will once again be forced to shoulder the burden of any fee increases. Any per-subscriber regulatory fee imposed will be passed on to DISH's and AT&T's DBS subscribers along with other fees and taxes they pay already, thus raising their monthly bills. The Commission has failed to justify the fee increase, leaving consumers vulnerable to arbitrary and unjustified rate hikes for the third straight 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."¹¹ 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 the payer of the fee by the Commission's activities."¹² In addition, the statute requires that regulatory fees "be established at amounts that will result in collection, during each fiscal

States); *2017 Regulatory Fees NPRM*, Appendix F ¶ 22 (same); American Cable Association's website (stating that it has almost 750 small and midsize independent providers as members), available at http://www.americancable.org/about_us.

¹¹ *2017 Regulatory Fees NPRM* ¶ 2, citing 47 U.S.C. § 159(a).

¹² *Id.* ¶ 2, citing 47 U.S.C. § 159(b)(1)(A).

year, of an amount that can reasonably be expected to equal the amount appropriated for such fiscal year for the performance”¹³ of the regulatory activities enumerated above.

A. The Commission Has Not Provided Transparency in the Fee Setting Process.

Despite this directive, the Commission has failed to provide information in the record sufficient to determine whether the fee proposed for FY 2017 is “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 fee increase proposed for FY 2017.

Instead, the Commission generally states: “[b]ased on our updated analysis of the cable television/IPTV category, we find Media Bureau resources devoted to MVPD proceedings, including DBS, supports revising the DBS regulatory fee again.” The Commission fails to provide any transparency surrounding its “updated analysis,” instead citing four proceedings in a footnote in an attempt to justify its regulatory fee revision for FY 2017. These include: a *Notice of Proposed Rulemaking* regarding unlocking the set-top boxes of cable and DBS operators; a *Notice of Inquiry* regarding Independent Programmers; a *Report and Order* regarding new rules that require cable, DBS, and other licensees to post their public file documents to a Commission-hosted database; and a *Report and Order* regarding new rules to enable commercial television stations, satellite carriers and cable operators to apply for market modifications.¹⁴ It is unclear how these proceedings – the only ones cited by the Commission and with no additional analysis – have increased the work load

¹³ 47 USC § 159(b)(1)(B).

¹⁴ 2017 *Regulatory Fees NPRM* ¶ 17, FN 55.

of Media Bureau FTEs sufficient to justify a sharp per-subscriber rate increase for DBS providers for the third consecutive year.

B. The Commission Has Failed to Adequately Justify How Regulatory Developments in the Last Year Support the Proposed Fee Increase.

As an initial matter, the Commission cites three of the four proceedings discussed above in previous regulatory fee *Orders* as justification for the rate hikes imposed during those years. For example, the set-top box and online public file proceedings were cited last year as the two proceedings that justified the fee increase of 12 cents imposed on DBS providers in 2016. If 12 cents was the appropriate fee to assess to cover the burden imposed by a proposed rulemaking and inquiry on Media Bureau staff in 2016, and we disagree that it was, it is unclear how these same proceedings could once again contribute to a significant fee increase for FY 2017 given that the set-top box proceeding did not produce any new rules¹⁵ and the online public file proceeding was initiated in 2014 and final rules were issued in January of 2016.¹⁶

Similarly, the Commission's proceeding regarding new rules to enable commercial television stations, satellite carriers and cable operators to apply for market modifications was

¹⁵ In addition, the set-top box proceeding initiated by the Commission 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. Further, as DISH has explained, the FCC's *NPRM* in that proceeding failed to adequately address issues relevant to DBS providers. 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 rate increase for two consecutive years.

¹⁶ Even though final rules in this proceeding were issued almost a year and a half ago, the Commission 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. Moreover, there are only 2 DBS providers and 2 DBS provider online public files. By contrast, there are hundreds of cable operators with several thousands of cable system public files for the Commission to maintain.

cited in 2015 as part of the Commission’s underlying justification for creating the per-subscriber DBS fee of 12 cents. It is unclear how this proceeding, already apparently accounted for in 2015 when the Commission determined the rate for FY 2015, justifies a rate hike once again.

The final proceeding that the Commission cites also raises questions about the extent of the burdens imposed on Media Bureau staff. The *NOI* regarding independent programmers sought comment on “principle issues that independent video programmers confront in gaining carriage in the current marketplace and possible actions the Commission and others might take to address those issues.”¹⁷ However, the Commission has not issued any final rules in the proceeding. It is therefore difficult to understand how this proceeding impacted the resources allocated by the Media Bureau, as the Commission has not provided any visibility into how the *NOI* proceeding has impacted Media Bureau resource allocation, especially as it relates to DBS providers

Aside from citing the four proceedings discussed above (which alone do not support the proposed rate increase), the Media Bureau has failed to provide any additional internal accounting or other explanation in the record to justify the 38-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

¹⁷ Promoting the Availability of Diverse and Independent Sources of Video Programming, *Notice of Inquiry*, MB Docket No. 16-41, FCC 16-19, ¶ 2 (rel. Feb. 18, 2016).

Commission's proposal is consistent with the agency's statutory directive in setting and collecting regulatory fees.¹⁸

III. THERE IS NO LEGAL BASIS TO CHARGE DBS PROVIDERS THE SAME REGULATORY FEES AS CABLE AND IPTV PROVIDERS

As discussed above, the Commission has failed to provide transparency surrounding the process by which it sets the per-subscriber regulatory fee. Aside from the opaque assertions of its "updated analysis," the Commission remarks that its proposed fee increase "would result in bringing the DBS industry regulatory fees closer to those for cable television/IPTV"¹⁹ This statement is puzzling, given that the Commission has recognized that "DBS is not identical to cable television,"²⁰ "the two DBS providers and their trade association had fewer filings than the top 25 cable operators and their two trade associations (combined),"²¹ and there are just two DBS providers whereas there are several thousand cable systems to regulate.²²

In addition, there is voluminous evidence in the record that DBS operators have never generated, and do not generate now, anything approaching the regulatory costs that cable operators do.²³ Indeed, just because some Media Bureau rulemakings apply equally to cable

¹⁸ See 47 USC § 159(b).

¹⁹ 2017 Regulatory Fees NPRM ¶ 17.

²⁰ 2015 Regulatory Fees R&O and NPRM ¶ 33.

²¹ *Id.* ¶ 34.

²² See, e.g., 2017 Regulatory Fees NPRM, Appendix F ¶ 22.

²³ See Reply Comments of DISH Network L.L.C., MD Docket No. 16-166 (Jul. 5, 2016); Comments of DISH Network L.L.C., MD Docket Nos. 14-92 and 15-121, pp. 3-6 (Jun. 22, 2015); Further Comments of DIRECTV, LLC and DISH Network L.L.C., MD Docket Nos. 14-92, 13-140, and 12-201, pp. 10-15 (Nov. 26, 2014) ("DTV/DISH Nov. 2014 Joint Comments"); Further Reply Comments of DIRECTV, LLC and DISH Network L.L.C., MD

and DBS, or include participation by DBS providers, does not mean that the Media Bureau regulates the two industries equally overall such that the burden of regulation and oversight of these two industries is equivalent.

The Commission can only impose fees consistent with its statutory mandate to “recover the cost” of regulation. The Commission has failed to meet this burden with respect to the proposed fee increase for FY 2017. Given the differences in the way cable and DBS are regulated, the sheer number of cable operators versus DBS providers, and the resulting disparity in the burdens such regulations place on Media Bureau FTEs, any suggestion that there must be parity in the fees imposed upon DBS and cable providers lack legal foundation and should be rejected.

IV. CONCLUSION

For the reasons discussed herein, DISH and AT&T oppose the Commission’s proposal to increase the per-subscriber DBS fee by 50% for the third consecutive year. This increase will only harm consumers, who will be forced to pay the additional fees. Among other things, the Commission has failed to explain how regulatory developments in the last year justify a significant increase for the third consecutive year.

Docket Nos. 14-92, 13-140, and 12-201, pp. 4-9 (Dec. 26, 2014) (“DTV/DISH Dec. 2014 Joint Comments”).

Respectfully submitted,

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