Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2020	)	MD Docket No. 20-105
	)	
	)	

REPLY COMMENTS OF ACA CONNECTS – AMERICA'S COMMUNICATIONS ASSOCIATION AND NCTA – THE INTERNET & TELEVISION ASSOCIATION

By these reply comments, ACA Connects – America's Communications Association (ACA Connects) and NCTA – The Internet & Television Association (NCTA) respond to the comments on the *NPRM* in the above-captioned proceeding[1] filed by AT&T and DISH, the nation's Direct Broadcast Satellite MVPDs (DBS Providers), opposing the Commission's proposal to increase the Fiscal Year (FY) 2020 DBS regulatory fee by 12 cents per subscriber.[2]

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[1] *Assessment and Collection of Regulatory Fees for Fiscal Year 2020*, Report and Order and Notice of Proposed Rulemaking, FCC 20-64 (May 13, 2020) (*NPRM*).

[2] Some other commenters call for the Commission to readjust the *NPRM*'s proposed regulatory fees applicable to their particular industry segment, and/or for the Commission to relax its waiver standards pertaining to regulatory fees, due to the COVID-19 pandemic. For instance, the National Association of Broadcasters (NAB) urges the Commission to help alleviate the financial burdens experienced by broadcasters as a result of the COVID-19 pandemic by suspending broadcasters' regulatory fee increases or allowing them to pay their regulatory fees in installments over six-to-nine months. *See* NAB Comments at 2-3; *see also, e.g.*, Fred Morton Comments at 1-2; Colorado Broadcasters Association et al. Comments at 2, 6-7; OneWeb Comments at 2-3. ACA Connects and NCTA note that the COVID-19 pandemic and response to it have caused losses of expected revenues across many industries regulated by the Commission, including the MVPD industry. Without addressing the merits of the arguments advanced by NAB or any other commenter seeking regulatory fee reductions and/or procedural relief applicable to it or its specific industry segment as a result of the COVID-19 emergency, ACA Connects and NCTA emphasize that should the Commission reduce regulatory fees for any industry segment for these reasons, such reduction should be implemented on a competitively neutral

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INTRODUCTION

The DBS Providers' arguments against an increase in their regulatory fees are predictable and remain meritless. The Commission must again repudiate them.

ACA Connects and NCTA demonstrated in their initial comments that it is long past time for the Commission to complete its phase-in of the DBS regulatory fee. As it has before, the Commission should reject the DBS Providers' attempts to sidestep the requirements of the Communications Act of 1934, as amended (the Act), that the Commission assess the same regulatory fee on providers using the same Commission resources.[3] It also should again disregard the DBS Providers' repeatedly invalidated claim that they should not be subject to a regulatory fee increase because they do not participate as extensively as cable operators in Media Bureau proceedings. Instead, the Commission should assess all MVPDs, including the DBS Providers, the same regulatory fee to fund the Media Bureau's activities in FY 2020 and onward.

DISCUSSION

The DBS Providers assert that if the Commission adopts the *NPRM*'s proposed increase of the DBS per-subscriber fee to 72 cents, they "will have experienced an astounding *500 percent increase* in their per-subscriber regulatory fees since FY 2015."[4] This assertion is factually accurate but utterly meaningless. As the DBS

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basis and should not be offset by imposing any increase in others' fees relative to those proposed in the *NPRM*.

[3] *See* 47 U.S.C. § 159 (Section 9 of the Act); Comments of NCTA and ACA Connects, MD Docket No. 20-105, at 3 (filed June 12, 2020) (NCTA and ACA Connects FY 2020 Comments).

[4] DBS Providers Comments at 1 (emphasis in original). ACA Connects and NCTA note that in FY 2015, the year establishing the benchmark against which the DBS Providers now measure the increase in their regulatory fees, cable and IPTV operators paid a per-

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Providers know full well, when the Commission first began to assess Media Bureau-based regulatory fees on DBS providers, it decided to phase in the new Media Bureau-based regulatory fee for DBS starting at 12 cents per subscriber per year. Since then, the Commission essentially has added an additional 12 cents per subscriber per year with each annual regulatory fee adjustment, and yet, the DBS providers still pay less than other MVPDs.[5] Although the Commission would have been justified in *immediately* requiring DBS providers to pay the same fee as other MVPDs when it created the DBS subcategory in 2015,[6] the *NPRM* still proposes that DBS providers pay a much lower fee than other MVPDs to support the Media Bureau's work, with no justification other than the observation that the Commission has adopted a phase-in approach for DBS fees each year since FY 2015.[7]

The DBS Providers maintain that the Commission's proposed FY 2020 DBS regulatory fee increase is not related to commensurate full-time equivalent (FTE) costs that their particular segment of the industry caused the Commission to incur, and that

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subscriber regulatory fee that exceeded the DBS Providers' by 700%. *See Assessment and Collection of Regulatory Fees for Fiscal Year 2015*, Report and Order and Further Notice of Proposed Rulemaking, 30 FCC Rcd 10268, 10294-95, Appx. C, FY 2015 Schedule of Regulatory Fees (2015) (*2015 Regulatory Fees Report and Order*) (12 cents per subscriber per year for DBS providers, 96 cents per subscriber per year for other MVPDs).

[5] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2019*, Report and Order and Further Notice of Proposed Rulemaking, 34 FCC Rcd 8189, 8198, ¶¶ 23-24 (2019) (*2019 Regulatory Fees Report and Order*); *2015 Regulatory Fees Report and Order*, 30 FCC Rcd at 10277, ¶ 20.

[6] *See, e.g.,* Comments of NCTA and the American Cable Association, MD Docket No. 15-121, at 2-6 (filed June 22, 2015).

[7] *See NPRM* at 29, ¶ 72 (proposing 72 cents per subscriber per year for DBS providers, 89 cents per subscriber per year for other MVPDs); NCTA and ACA Connects FY 2020 Comments at 6 (citing *NPRM* at 29, ¶ 72).

the Commission's "apparent[] desire[]" for regulatory fee parity between cable/IPTV operators and DBS providers is not a permissible rationale for adjusting regulatory fees under the Act.[8] But this is a straw man; while the Commission would have been fully justified to cite regulatory fee parity in support of its proposal given its declared intent five years ago that it would be updating the DBS fee to ensure regulatory parity,[9] the *NPRM* does not rely on that rationale. Instead, the *NPRM* notes that "[t]he DBS regulatory fee is based on the significant number of Media Bureau FTEs that work on MVPD issues that include DBS."[10]

The DBS Providers' claim that seeking regulatory fee parity between DBS and cable/IPTV is impermissible under the Act is a red herring in any event. It has by now long been established that as MVPDs, cable/IPTV and DBS providers are subject to the same oversight by the Media Bureau and use a common pool of FTEs; the Commission repeatedly has rejected DBS Providers' assertions to the contrary.[11] Moreover, the Commission has remained steadfast that the DBS regulatory fee is not apportioned based on "a particular number of FTEs focused solely on DBS."[12] For example, in rejecting the DBS Providers' argument that section 9 of the Act requires the Commission to "show that DBS and cable occupy a comparable number of FTEs," the Commission explained that requiring DBS providers to "contribute equitably to the FTE burden of MVPD oversight" comports with the Act insofar as DBS, cable, and IPTV

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[8] DBS Providers Comments at 1-2.

[9] *2015 Regulatory Fees Report and Order*, 30 FCC Rcd at 10268, ¶ 20.

[10] *NPRM* at 29, ¶ 72.

[11] *See* NCTA and ACA Connects FY 2020 Comments at 3-4.

[12] *NPRM* at 29, ¶ 72 (citations omitted).

services all receive similar oversight and regulation as a result of the work of Media Bureau FTEs on MVPD issues.[13]

Notwithstanding the Commission's chronicle of pronouncements regarding the work that Media Bureau FTEs do to benefit all MVPDs, including DBS providers and cable operators alike, the DBS Providers still take issue with the *NPRM*'s assertion that the DBS regulatory fee is based on the "significant number of Media Bureau FTEs that work on MVPD issues that include DBS."[14] Once again, they recite their argument that such issues are predominantly cable-specific issues that have no applicability to the DBS Providers,[15] despite the longstanding annual ritual of the Commission soundly rejecting it. In support, they attempt to rely on having catalogued, *in prior regulatory fee submissions*, "the many proceedings initiated by the Media Bureau that impact cable providers, but not DBS providers."[16] The DBS Providers, however, fail to present any nexus between the proposed DBS regulatory fee increase this year and their allegations of differences in *past* years between Media Bureau staff efforts on DBS matters versus cable/IPTV matters. Nor could they, as the Commission repeatedly has emphasized that the DBS regulatory fee is not based on tallying "specific recent proceedings" implicating DBS.[17]

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[13] *Assessment and Collection of Regulatory Fees for Fiscal Year 2015 et al.*, Notice of Proposed Rulemaking, Report and Order, and Order, 30 FCC Rcd 5354, 5369, ¶¶ 32-33 (2015); *see also 2019 Regulatory Fees Report and Order*, 34 FCC Rcd at 8199, ¶ 26 ("Media Bureau employees dedicate substantially similar amounts of time and resources to the regulation of DBS as they do to cable television and IPTV").

[14] *NPRM* at 29, ¶ 72.

[15] *See* DBS Providers Comments at 3.

[16] *Id.*

[17] *See, e.g., NPRM* at 29, ¶ 72 (citations omitted).

Moreover, had the DBS Providers actually attempted to justify different DBS regulatory fees from those applicable to cable/IPTV providers using current information regarding Media Bureau staff work on DBS matters versus cable/IPTV matters, they would have failed. As ACA Connects and NCTA demonstrated, the Media Bureau has its hands full with myriad DBS-targeted proceedings as well as those impacting all MVPDs.[18] Thus, the DBS Providers' suggestion that the *NPRM*'s proposal to increase the DBS per-subscriber fee in FY 2020 is "based solely on industry-wide proceedings"[19] completely misses the mark.

Finally, to adjust for "MVPD subscriber counts . . . increasingly declining over shortened timeframes," the DBS Providers request that the Commission base the total regulatory fees for which each MVPD is responsible on subscriber counts as of July 1 rather than the end of the prior calendar year.[20] While ACA Connects and NCTA do not oppose this request, they could understand the Commission's reluctance to make this change insofar as it could throw into disarray the Commission's FY 2020 regulatory fee proposals for all regulatees, which must result overall in regulatory fee payments "that can reasonably be expected to equal the amount of its appropriation."[21] If the Commission does grant this request, however, whether for the FY 2020 regulatory fees or for those in future years, the revised subscriber count date for the DBS Providers must apply equally to cable/IPTV operators.

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[18] *See* NCTA and ACA Connects FY 2020 Comments at 4-6.

[19] DBS Providers Comments at 2.

[20] *Id.* at 4.

[21] *NPRM* at 2, ¶ 2 (citing section 9(a),(b) of the Act).

CONCLUSION

Even five years after the Commission recognized that the DBS Providers share fully in the benefits of Media Bureau activities and use of Media Bureau resources, the Commission again proposes to continue a "phase-in" approach to the fees DBS providers pay – which would perpetuate the long-inexplicable disparity between cable/IPTV and DBS regulatory fees. Under the statutory framework that governs the Commission's assessment of regulatory fees, the DBS Providers must pay the same regulatory fee as other MVPDs. The *NPRM* provides no rationale for its proposed continued disparity between DBS and cable/IPTV regulatory fees, and the DBS Providers Comments offer no sound legal or factual basis for not closing the remaining gap. It is long past the time for the Commission to abandon this phase-in approach and to finally make cable/IPTV and DBS Media Bureau regulatory fees equal.

Respectfully submitted,

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