

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

REPLY COMMENTS OF AT&T SERVICES, INC.

AT&T Services, Inc., on behalf of its affiliates (“AT&T”), submits these reply comments on the issues regarding the Commission’s proposed regulatory fees for satellite and terrestrial International Bearer Circuits (“IBCs”) and direct broadcast satellite (“DBS”) providers raised in response to the Notice.¹

Satellite and Terrestrial IBCs. AT&T supports the Commission’s decision to delay the adoption of a multi-tiered rate structure for satellite and terrestrial IBCs until information is available on non-common carrier circuit volumes. As stated by the Notice, the use of a multi-tier rate structure in place of the existing per-circuit fees for satellite and terrestrial IBCs will be “competitively neutral, easier for the Commission to administer, and promote better compliance by providers.”² The Commission also has concluded that it lacks the necessary information to establish a tiered rate structure for Fiscal Year (“FY”) 2018 because of the absence of data on non-common carrier terrestrial circuits, which are not currently subject to regulatory fees or otherwise reported. To address this deficiency, the Commission proposes to continue to charge

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

the existing per-circuit fees on satellite and terrestrial IBCs in FY 2018 and use the information obtained thereby on non-common carrier terrestrial circuits, which are newly subject to these fees this year, to obtain “sufficient information to be able to propose a tiered rate structure for FY 2019.”³

The two parties filing comments on IBC fees in response to the Notice show no basis to change this reasonable approach. Indeed, CenturyLink (p. 3) continues to contend that the two-tier system proposed by its affiliate Level 3 would “not serve as a barrier to entry for smaller providers while ensuring that larger providers pay a fair and equitable portion of the fee category,” but provides facts that strongly suggest otherwise. According to CenturyLink (p. 2), if its internal data is representative of the larger industry, even a “50% increase in the number of reportable IBCs” would be a “significant underestimate” of “increases from the addition of non-common carrier circuits and organic growth from sales of assessable IBCs.” Unless this massive expected growth in the number of reportable IBCs is evenly distributed throughout the industry, it will further increase the already wide disparities in satellite and terrestrial providers’ IBC circuit volumes that likely would make any two-tier fee structure both unfair and inequitable.⁴

As AT&T has emphasized, any two-tier rate structure likely would increase rates for smaller providers while lowering them for larger providers. The Notice similarly “recognizes that a tiered rate structure such as that proposed by Level 3 could result in higher fees if carriers

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² *Id.*, ¶ 25.

³ *Id.*

⁴ See Reply Comments of AT&T Services, Inc, filed Dec. 18, 2017, MD Docket No. 17-134, at 3-4 & n.4; Comments of the Satellite Industry Association (“SIA”), filed Dec. 1, 2017, MD Docket No. 17-134, at 4-6.

with fewer active circuits are grouped with carriers with a much larger quantity of active circuits.”⁵ In contrast, the Notice finds that a multi-tier rate structure is “more equitable than a two-tier system because it better takes into account the quantity of active circuits of each regulatee when determining a fee payment.”⁶ The huge increase in IBC capacity anticipated by CenturyLink further highlights these concerns.

The scale of CenturyLink’s projected increase in IBC volumes also underscores the importance of obtaining FY 2018 information before the Commission seeks to develop a multi-tiered rate structure for satellite and terrestrial IBCs. In the absence of this critical information, any attempt to identify specific tiers or other features as necessary to avoid or mitigate impacts on small providers, as SIA proposes (p. 5), would be premature.

To allow providers to assist the Commission to develop a multi-tiered rate structure for FY 2019, the Commission should make available the FY 2018 data prior to the FY 2019 rulemaking. In addition to showing total industry IBCs, such data should state the total number of providers reporting IBCs. The Commission also should indicate the number of providers that would be assessed in each tier of any proposed structure based on FY 2018 data. Access to such data may allow providers to identify potential impacts more clearly and propose more narrowly tailored alternatives.

DBS Providers. In his dissent last year, Commissioner O’Rielly identified inadequate facts and data supporting several regulatory fee increases, including the Commission’s 11 cent

⁵ Notice, ¶ 25.

⁶ *Id.*

increase to the DBS per subscriber regulatory fee.⁷ While he “hesitantly” agreed to last year’s DBS increase, Commissioner O’Rielly made clear that, going forward, “far more analysis” is necessary to “support any additional increases” to the DBS per subscriber fee.⁸ Yet, one year later, the Commission is proposing another rate hike on DBS providers, citing even less factual support than in prior years. Indeed, this year, the Commission seemingly proposes abrogating its statutory responsibility altogether by asking the industry “how many FTEs does the Media Bureau devote to DBS as compared to cable?”⁹ Just as perplexing, the few proceedings the Commission does cite in the Notice to support the latest proposed rate *increase* to DBS providers are the exact proceedings the Commission cites to support a proposed rate *cut* to cable operators even though these proceedings confer no advantage on DBS providers vis-à-vis cable operators or otherwise affect DBS providers more than cable operators.¹⁰

The Commission appears to base its latest proposed DBS increase on “bring[ing] the DBS rate closer to the cable television/IPTV rate. . . .” However, as AT&T and DISH explained in their joint comments, such a results-driven proposal is wholly unsupported by the facts and thus is inconsistent with the law.¹¹ Predictably, the two cable trade associations, American Cable Association and NCTA, urge the Commission to achieve parity in per subscriber regulatory fees

⁷ 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, FCC 17-111, Report and Order and Notice of Proposed Rulemaking, rel. Sept. 5, 2017 (“2017 Statement of Commissioner O’Rielly on Regulatory Fees”).

⁸ *Id.*

⁹ Notice, ¶ 19.

¹⁰ *Id.*, ¶ 19 & n.68.

¹¹ See Joint Comments of DISH Network L.L.C. and AT&T Services, Inc., filed June 21, 2018, MD Docket No. 18-175 (“Joint Comments”).

in FY 2018 by assessing DBS providers and cable operators the same amount.¹² Of course, to do so requires the Commission to ignore Congress’s statutory command that the Commission base these fees on the number of FTEs performing certain 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. . . .”¹³ As Commissioner O’Rielly explained last year in his dissent,

Clearly, some believe that DBS providers should pay an equal share of the Media Bureau’s costs to regulate MVPDs. The cable industry, however, is far more regulated than DBS (and more than necessary), so future increases should be accompanied by detailed analyses of all services the Media Bureau provides MVPDs and how these burdens affect both cable and DBS providers.¹⁴

The Commission has failed to supply the “substantial analysis demonstrating that the redistribution of fees is appropriate” between the nation’s two DBS providers and hundreds of cable operators.¹⁵ For the reasons detailed in the Joint Comments and above, the Commission

¹² Comments of American Cable Association, filed June 21, 2018, MD Docket No. 18-175; Comments of NCTA – The Internet & Television Association, filed June 21, 2018, MD Docket No. 18-175.

¹³ 47 U.S.C. § 159(b)(1)(A) (also stating that the Commission must factor in shared use versus exclusive use). *See also* Joint Comments at 8 (identifying numerous 2017 Media Bureau Notices of Proposed Rulemaking that, if adopted, would benefit cable operators but that would have no effect on DBS providers).

¹⁴ 2017 Statement of Commissioner O’Rielly on Regulatory Fees.

must reconsider its latest proposed rate hike on DBS providers as well as reject the cable trade associations' demand for parity; instead, it should maintain the existing DBS provider per subscriber fee in FY 2018.

Respectfully submitted,

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¹⁵ *Id.*