

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

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**FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Assessment and Collection)
of Regulatory Fees for)
Fiscal Year 1996)

MD Docket No. 96-84

To: The Commission

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**COMMENTS OF
THE NATIONAL CABLE TELEVISION ASSOCIATION, INC.**

The National Cable Television Association, Inc. hereby submits its comments on the Notice of Proposed Rulemaking ("NPRM") issued in the above-captioned proceeding. NCTA is the principal trade association of the cable television industry in the United States.

INTRODUCTION

In its NPRM, the Commission proposes to revise its Schedule of Regulatory Fees for FY 1996. Section 9(a) of the Communications Act authorizes the Commission to assess and collect annual regulatory fees to recover the costs, as determined annually by Congress, that it incurs in carrying out enforcement, policy and rulemaking, international and user information activities. 47 U.S.C. § 159(a). For FY 1996, Congress has required the FCC to collect \$116,400,000 in regulatory fees, the same amount designated in FY 1995.

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While the total fees remain unchanged for FY 1996, the Commission proposes to adjust the Schedule and associated payment procedures “to reflect changes in the estimated number of payment units associated with services subject to a fee . . .”¹ With regard to cable television, the Commission proposes to increase the regulatory fee for cable systems from \$.49 to \$.50 per subscriber per year. It also proposes to raise the fee for Cable Antenna Relay Service (CARS) stations from \$290 per license to \$295 per license.

DISCUSSION

The Commission’s regulatory fee schedule is statutorily tied to recovery of costs associated with four categories: enforcement, policy and rulemaking, user information services and international activities. 47 U.S.C. § 159. Under section 9(b)(3) of the Communications Act (“Permitted Amendments”), Congress required the Commission to determine whether adjustments to the fee schedule are necessary on an annual basis, and if so, “to add, delete or reclassify services in the Schedule to reflect additions, deletions, or changes in the nature of its services as a consequence of Commission rulemaking proceedings or changes in law.”² Each year, the Commission reassesses each regulated service based on a methodology that includes, among other things, a cost accounting system designed to ensure that the fees are “reasonably related to the regulatory costs of each service.”³

¹ NPRM at ¶ 3, citing 47 U.S.C. 159 (b).

² 47 U.S.C. § 159 (b)(3) (emphasis added).

³ NPRM at ¶ 14.

In the NPRM, the Commission provides no discussion on how it arrived at the adjustments in the cable-related regulatory fees nor how such fees are reasonably related to the costs of regulating cable television under the four relevant categories. But given the undisputed ongoing deregulation of the cable industry, it is perplexing that the Commission proposes to *increase* the cable system and CARS license fees in the coming fiscal year.

Since the adoption of the FY 1995 fee schedule, the cable industry has experienced a series of deregulatory initiatives that have and will significantly lessen FCC oversight of the industry. First, the Commission entered into “social contracts” with several major MSOs that resolved complaints regarding rates inter alia, for cable systems serving approximately 20 percent of the nation’s cable subscribers.

Second, the new Telecommunications Act of 1996 deregulated the cable programming service (CPS) tiers for small cable systems immediately and deregulated the CPS tiers of larger cable companies by March 31, 1999. Under the Act, an estimated 50 percent of cable systems serving approximately 14 percent of cable subscribers are immediately deregulated pursuant to the small system definition. Moreover, small systems that are not subject to deregulation are operating under a streamlined regulatory scheme established last year by the Commission, further reducing the amount of complaints expected to be reviewed by the agency. And the threshold for complaints established under the Act may also reduce the number of complaints filed.

Third, cable systems serving millions of subscribers are expected to be rate deregulated in the near future under the Commission's recently-adopted effective competition standard. This will further reduce complaints to the Commission.

Moreover, as a general matter, cable television systems, unlike broadcast licensees and others, do not undergo a franchise renewal process administered by the Commission. Cable franchise renewals are handled at the local level, where operators are typically required to pay an annual 5 percent franchise fee to the local franchising authority to cover regulatory costs. Thus, the basic licensing function, to which the regulatory fee is directed for other services, is inapplicable here.

Taken together, the foregoing changes in the law mean that traditional rate regulation does not apply to at least one third, and likely more, of all cable subscribers, and this trend will accelerate in FY 1996. The Commission resources formerly devoted to the regulation and administration of cable-related activities have diminished over the past year. As Commissioner Quello aptly noted in addressing the proposed increase in the cable operator regulatory fee:

I question the need for any increase in a fee for a service that will be increasingly deregulated over the next three years. Given the large and growing number of cable subscribers, this one cent increase will generate substantial revenue. If not so, why would we propose it? Moreover, because cable operators collect these fees directly from subscribers and remit them to the Commission, we should ensure that they reflect the level of regulation -- and, thus, the indirect benefit to subscribers -- of our statutory oversight of the cable industry.⁴

⁴ Separate Statement of Commissioner James H. Quello, Assessment and Collection of Regulatory Fees for Fiscal Year 1996, MD Docket No. 96-84, April 5, 1996.

The Commissioner concludes that “I want to ensure, to the extent possible, that the fee schedule reflects the degree of regulation in each industry.”⁵

Finally, it is worth observing that the proposed fees show a marked discrepancy between like services, in particular, cable subscribers and wireless cable subscribers, calling into further question the \$.50 figure. According to the NPRM, the Commission would collect a total of \$160,000 for the 800,000 wireless cable subscribers, or a total of \$.20 per subscriber. The cable fee is \$.50 per subscriber. As noted, the Commission’s traditional rate regulation role is greatly reduced for 20 percent of subscribers and has ended for another 14 percent. And a substantial number of remaining subscribers will not be part of rate regulation proceedings either, based on the number of subscribers involved in the complaint process in prior years and the greater clarity of the remaining rate rules today. While there may be some justification for a somewhat higher rate for cable subscribers, as a matter of regulatory fee, based on the greater regulation of cable over wireless cable, it is hard to imagine that the agency’s burden is, or should be, two and a half times as great, on a subscriber basis. Yet that is the proportional *fee* burden borne by cable subscribers.

⁵ Id.

CONCLUSION

NCTA is willing to support regulatory fees that fairly apportion the work of the agency among the various regulated entities. It is unwilling to support higher fees when the 1996 Telecommunications Act and the Commission's own actions have reduced the regulatory burden placed by the agency on cable operators. In light of these realities, we ask the Commission to reconsider the fee structure and lower, not raise, the fees imposed on cable subscribers for FY 1996.

Respectfully submitted,


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