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November 17, 2014

**Via ECFS**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Washington, DC 20554

**Re: Assessment and Collection of Regulatory Fees for Fiscal Year 2014, MD  
Docket Nos. 14-92, 13-140, 12-201**

Dear Ms. Dortch:

On November 13, 2014, Ross J. Lieberman, Senior Vice President of Government Affairs, American Cable Association (“ACA”), and the undersigned, representing ACA, together with Neal Goldberg, General Counsel, National Cable & Telecommunications Association (“NCTA”) and Tara Corvo, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., representing NCTA, met with Mika Savir, Enforcement Bureau, and Roland Helvajian and Thomas Buckley, Office of the Managing Director. We discussed the Commission’s proposal to amend its Schedule of Regulatory Fees to create a new fee category for Direct Broadcast Satellite (“DBS”) providers based on the Media Bureau full-time equivalents (“FTEs”) performing work related to regulating these entities as multichannel video programming distributors (“MVPDs”) described in the Second Further Notice in the above referenced dockets.<sup>1</sup> During the meeting, representatives for ACA and NCTA highlighted the following points:

- ACA and NCTA were pleased that the Commission partially addressed the inequities of cable operators being the only MVPDs to support Media Bureau MVPD regulatory activities through fee payments last year by bringing IPTV providers into the same fee category as cable operators. This was done in recognition of the fact that while not identical, both IPTV and cable providers are quite similar and benefit in a similar fashion from Media Bureau regulation as MVPDs.<sup>2</sup> For the same reason, and to be evenhanded and maintain competitive and technological neutrality, the Commission should assess regulatory fees on DBS providers DirecTV and DISH Network, two of the largest MVPDs, on the same basis the FCC assesses those fees on cable and IPTV providers.
- DBS providers should pay the same fees supporting Media Bureau regulatory activities pertaining to the provision of MVPD services as do cable operators and IPTV providers. There are a number of ways to accomplish this end.

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<sup>1</sup> *Procedures for Assessment and Collection of Regulatory Fees for Fiscal Year 2014, Assessment and Collection of Regulatory Fees for Fiscal Year 2013, Procedures for the Assessment and Collection of Regulatory Fees, Report and Order and Further Notice of Proposed Rulemaking*, 29 FCC Rcd 10767, ¶¶ 38-43 (2014) (“*Second Further Notice*”).

<sup>2</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2013, Procedures for the Assessment and Collection of Regulatory Fees, Report and Order*, 28 FCC Rcd 12351, ¶¶ 32-33 (2013) (“*FY 2013 Regulatory Fees Order*”).

- The Commission can add DBS to the existing “cable television systems and Internet Protocol TV service providers” (“Cable/IPTV”) fee category in the same way that it added IPTV to the “Cable TV” category in its FY 2013 Regulatory Fees Order.
- In the alternative, the Commission can, as proposed in the Second Further Notice, adopt a new fee category for DBS, based on the Media Bureau FTEs which perform work related to these regulatates.<sup>3</sup>
- Or, the Commission can adopt a new fee category for MVPDs, which would include cable and IPTV providers as well as DBS providers, as NCTA and ACA have recommended since 2005.<sup>4</sup>

What the Commission should not do is continue to place the entire burden of Media Bureau FTE support for MVPD services on cable and IPTV providers – and their customers-- alone.

- In a market as competitive as the MVPD market, continuing to require only cable and IPTV providers to support Media Bureau MVPD regulation places cable and IPTV providers at a competitive disadvantage vis-a-vis their DBS competitors. Not only must cable and IPTV providers effectively cross-subsidize the regulatory fee burden of their direct competitors, but their subscribers are forced to help shoulder this burden when this cost of service is passed through, in whole or in part, to those customers. Placing 100% of the MVPD regulatory fee burden on cable and IPTV providers and their subscribers when they represent less than 60% of the total MVPD marketplace is simply inequitable.
- The Commission’s system of grouping providers into broad categories of similar, but not identical, services for regulatory fee purposes has worked well by avoiding unnecessary complexity; there is no reason to deviate from that approach for DBS.
  - For example, the Interstate Telecommunications Service Provider (ITSP) fee category includes a broad range of providers: facilities-based carriers as well as resellers; incumbent and competitive local exchange carriers; interexchange carriers; voice over Internet protocol (VoIP) service providers; and even payphone service providers, prepaid calling card providers, and audio bridging services. These providers do not place identical burdens on the Wireline Competition Bureau, but the Commission has found them to be similar enough to be grouped into the same fee category and pay fees on the same basis.
  - When establishing the Cable/IPTV fee category, the Commission agreed that the services were not identical but did not consider that justification for a different fee category.

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<sup>3</sup> *Second Further Notice*, ¶ 38.

<sup>4</sup> *See Assessment and Collection of Regulatory Fees for Fiscal Year 2005*, Comments of the National Cable and Telecommunications Association, at 2-13 (Mar. 8, 2005); *Assessment and Collection of Regulatory Fees for Fiscal Year 2005*, Reply Comments of the American Cable Association, at 4-5 (Mar. 18, 2005). *See also Assessment and Collection of Regulatory Fees for Fiscal Year 2013*, Reply Comments of the National Cable & Telecommunications Association, at 2-5 (June 26, 2013); *Assessment and Collection of Regulatory Fees for Fiscal Year 2013*, Comments of the American Cable Association, at 13-19 (June 19, 2013); *Assessment and Collection of Regulatory Fees for Fiscal Year 2013*, Reply Comments of the American Cable Association, at 2-6 (June 26, 2013).

- It would be difficult and unproductive to attempt to assess, on an FTE-by-FTE basis, how many Media Bureau FTEs are “devoted” to “DBS” issues as opposed to other “MVPD” issues.
  - The Media Bureau’s regulatory burden for support of DBS has many overlapping areas with the work it does to support cable and IPTV providers; much of the Bureau’s regulation of MVPD services is independent of the technology used to deliver the video services and spans several Divisions and includes the Bureau’s Front Office personnel.
  - DBS operators have freely availed themselves of the services of the Media Bureau. For example, over the past twelve months, DBS operators have made 113 filings in Media Bureau dockets. Thirty of these were DirecTV filings in support of its proposed merger with AT&T, but DirecTV and DISH also filed 83 times in the past year in other dockets like the Comcast/TWC merger, retransmission consent, media ownership, and the CVAA. In comparison, the 12 largest cable and IPTV providers each averaged only 31 filings in Media Bureau dockets over the same period – and more than half of that total was made in certain providers’ own merger dockets.
- If DBS providers are assessed regulatory fees similar to the fees paid by cable and IPTV providers, DBS should not receive an off-set based on payments made to the International Bureau.
  - Regulatory fee assessments for Media Bureau support should be fairly allocated among all MVPDs that use the Bureau. There is no logical reason to provide an offset for fees some MVPDs pay to support other bureaus for other regulatory services.
  - There is no offset given to cable operators or IPTV operators for fees paid for CARS licenses they may use in delivering their video services.
  - Regulatory fees for satellite services paid by DBS providers support International Bureau FTEs. These fees reflect the burden that the DBS providers impose on that Bureau. Those fees should not and need not be off-set by reducing the fees DBS providers pay to support Media Bureau FTEs. DBS providers are multi-billion dollar operations that will not incur hardship without an off-set.
- The Commission has authority under Section 9(b)(3) of the Communications Act to assess fees on DBS similar to those assessed on cable and IPTV providers; the Commission may amend its regulatory fee schedule “to reflect additions, deletions, or changes in the nature of its services as a consequence of Commission rulemaking, proceedings or changes in law.”
  - Although DBS providers claim that this section prevents assessing new fees on them because there have been no rulemakings or changes in law to trigger its implementation, that is wrong.
  - There have been numerous rulemakings involving DBS operators since the current DBS fee schedule was adopted in 1996.
  - Similarly, there have been numerous changes in the law that have been implemented by the Commission and the Media Bureau, including the satellite reauthorization acts in 1998, 2004 and 2010; the Commercial Advertisement Loudness Mitigation Act (CALM Act); and the Twenty-First Century Video Accessibility Act (CVAA).

- Nothing in section 9(b)(3) suggests that only recently occurring regulatory or statutory changes may be taken into account in amending the fee schedule. In any case, many of the rulemaking proceedings or statutory changes *are* relatively recent (e.g., CALM Act, CVAA).
- A phase-in process can mitigate any “rate shock” that might be experienced by DBS providers.
  - While assessing regulatory fees on the DBS providers at the same rates applicable to cable and IPTV operators could result in annual fee increases of millions of dollars for DBS providers, the two DBS operators are multi-billion dollar corporations – and the nation’s second and third largest MVPDs. These providers are able to absorb the increased costs with minimal disruption to their operations and no threat to their operational viability. To the extent DBS operators argue that having to pass this fee through to their subscribers would cause subscribers to switch MVPDs, DBS providers, like cable and IPTV providers, can decide to absorb this increase in their cost of service, or pass it through to their subscribers only in part. Moreover, if it is true that subscribers will switch MVPDs over the cost of regulatory fees, that fact only underscores that imposing the fee only on cable and IPTV providers creates an unfair playing field among MVPDs.
  - In the past, the Commission began assessing fees on IPTV providers and VoIP service providers, it avoided rate shock in each case (despite the substantial increase in fees for each of those providers) by announcing the decision in one year but waiting until the following year’s regulatory fee collection to begin collecting the fees. It could pursue the same approach here.
  - To the extent the Commission is concerned that DBS operators, despite their size, may be harmed by too rapid an increase in regulatory fees, assessing regulatory fees on DBS providers similar to the fees paid by cable and IPTV providers could be accomplished over a series of years by, for example, charging one-third the rate in the first year, two-thirds the rate in the second year, and the full rate in the third year.
  - It must be remembered that although DBS providers and their subscribers, should they pass the increased costs through their retail rates, will see an increase in fees, sharing costs more equitably will benefit the approximately two-thirds of MVPDs and their subscribers not served by DBS.

This letter is being filed electronically pursuant to section 1.1206 of the Commission’s rules.

Sincerely,



Barbara Esbin

Cc: Mika Savir  
Roland Helvajian  
Thomas Buckley