

November 19, 2014

BY ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: Notice of *Ex Parte* Communication in MD Docket Nos. 14-92, 13-140, 12-201

Dear Ms. Dortch:

On November 17, representatives of DIRECTV, LLC and DISH Network L.L.C. met with Commission staff to discuss regulatory fees. Present on behalf of the Commission were Mika Savir of the Enforcement Bureau; Roland Helvajian and Thomas Buckley of the Office of Managing Director; Michelle Carey and Mary Beth Murphy of the Media Bureau; and Tom Sullivan, Karl Kensinger, and Stephen Duall of the International Bureau. Present on behalf of the satellite carriers were Stacy Fuller of DIRECTV, Michael Nilsson, outside counsel to DIRECTV, and Hadass Kogan of DISH.

The parties discussed the Commission's proposal to amend its Schedule of Regulatory Fees to create a new fee category for Direct Broadcast Satellite operators. DIRECTV and DISH raised the following legal points, each of which have been described in more detail in the parties' submissions over the years.

- The Commission may engage in "permitted amendments" of its regulatory fee schedule only if a change of law or a Commission rulemaking proceeding changes the "nature" of Commission services for which costs must be recovered. 47 U.S.C. § 159(b)(3); *see also COMSAT Corp. v. FCC*, 114 F.3d 223, 225 (D.C. Cir. 1997) (quoting 47 U.S.C. § 159(b)(3)) (holding that Section 9(b)(3) authorizes an amendment to the fee regime only "in response to [a] 'rulemaking proceeding[] or change[] in law.'"). No such changes have occurred.
- Regulatory fees must "recover the costs" of certain regulatory services provided by the Commission. 47 U.S.C. § 159(a). More specifically, they must reflect "the full-time equivalent number of employees performing [specified regulatory activities] . . . , adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities." *Id.* (incorporating 47 U.S.C. § 159(b)(1)(A)). The Commission has yet to demonstrate that any DBS category reflects the number of FTEs dedicated to DBS regulation.

- The Administrative Procedure Act prohibits agency action that is “arbitrary” or “capricious.” 5 U.S.C. § 706(2)(A). Under this standard, the Commission must provide a reasoned explanation for changing its policies. *See Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 41-42 (1983) (requiring an agency to adequately explain a departure from prior policy); *see also e.g., FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515-16 (2009) (requiring an agency to provide reasoned explanation “when, for example, its new policy rests upon factual findings that contradict those which underlay its prior policy”). The record contains no reasoned explanation why the Commission should depart from either its 2006 decision not to reclassify DBS, *Assessment and Collection of Regulatory Fees for Fiscal Year 2006*, 21 FCC Rcd. 8092, ¶ 16 (2006), or its 2013 decision to cap regulatory fee increases generally at 7.5 percent. *Assessment and Collection of Regulatory Fees for Fiscal Year 2013*, 28 FCC Rcd. 12351, ¶ 21 (2013).

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Pursuant to 47 C.F.R. § 1.1206(b)(2), I am filing one copy of this letter electronically in each of the dockets listed above.

Respectfully submitted,

/s/

Michael Nilsson
Counsel to DIRECTV, LLC

cc: Mika Savir
Roland Helvajian
Thomas Buckley
Michelle Carey
Mary Beth Murphy
Tom Sullivan
Karl Kensinger
Stephen Duall