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

In the Matter of	)	
	)	
Procedures for Assessment and Collection of Regulatory Fees for Fiscal Year 2014	)	MD Docket No. 14-92
	)	
	)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2013	)	MD Docket No. 13-140
	)	
	)	
Assessment and Collection of Regulatory Fees	)	MD Docket No. 12-201
	)	

COMMENTS OF THE NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION AND THE AMERICAN CABLE ASSOCIATION

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COMMENTS OF THE NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION AND THE AMERICAN CABLE ASSOCIATION

The National Cable & Telecommunications Association ("NCTA") and the American Cable Association ("ACA") submit these comments in response to the Commission's Further Notice of Proposed Rulemaking ("FNRPM") in the above-captioned proceeding, specifically addressing the assessment and collection of regulatory fees for Direct Broadcast Satellite ("DBS") services.[1/] Because DBS providers receive numerous regulatory benefits from the activities of the Media Bureau, basic principles of fairness and technological neutrality require that, regardless of how the fee is characterized, the Commission assess DBS service providers the same fees supporting Media Bureau regulatory activities associated with the provision of multichannel video programming distributor ("MVPD") services as are assessed to cable operators and IPTV service providers.[2/]

[1/] *Assessment and Collection of Regulatory Fees for Fiscal Year 2014*, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 10767, ¶¶ 38-43 (2014).

[2/] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2014*, MD Docket No. 14-92, et al., Comments of the National Cable & Telecommunications Association (filed July 7, 2014); *Assessment and Collection of Regulatory Fees for Fiscal Year 2014*, MD Docket No. 14-92, et al., Comments of the American Cable Association (filed July 7, 2014); *Assessment and Collection of*

DBS providers DIRECTV and DISH Network are two of the nation's largest MVPDs – in fact the second and third largest, respectively, with a combined subscriber base of over 34 million[3/] – yet they currently pay no fees to support the Media Bureau's MVPD regulatory services, even though they regularly avail themselves of such services. The Commission's regulatory fee assessment process must no longer place the entire burden of financial support for Media Bureau services provided to all MVPDs solely on cable and IPTV providers and their customers. DBS operators and their customers benefit from these Media Bureau services; they should share equitably in their support.

The Commission can bring DBS operators into the fold of fee assessments for the purpose of supporting Media Bureau services in several ways. There are two good ways to accomplish this end. The Commission could add DBS to the existing Cable and IPTV fee category, in the same way that it added IPTV to the Cable fee category in its 2013 Regulatory Fees Order.[4/] In the short-term, this may be the best and simplest approach. It could also, as has been recommended by NCTA and ACA many times since the proposal was first raised in 2005, adopt a new fee category for MVPDs, which would include any entity that meets the statutory definition of an MVPD, such as DBS, Cable, and IPTV operators.[5/] This is the best long-term

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Regulatory Fees for Fiscal Year 2014, MD Docket No. 14-92, et al., Reply Comments of the National Cable & Telecommunications Association and the American Cable Association (filed July 21, 2014). Because of their relevance to the questions raised in the FNRPM, NCTA and ACA respectfully request that these comments be incorporated by reference into the record of the current proceeding.

3/ SNL Kagan, Global Multichannel Top Operators 2013H2, *at* https://www.snl.com/interactivex/GlobalMultichannelTopOperators.aspx.

4/ *Assessment and Collection of Regulatory Fees for Fiscal Year 2013*, Report and Order, 28 FCC Rcd 12351, ¶ 32 (2013) ("*2013 Fee Order*").

5/ *See Assessment and Collection of Regulatory Fees for Fiscal Year 2005*, MD Docket No. 05-59, Comments of the National Cable and Telecommunications Association, at 2-13 (Mar. 8, 2005); *Assessment and Collection of Regulatory Fees for Fiscal Year 2005*, MD Docket No. 05-59, 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*, MD Docket No. 13-140, Reply Comments of the

solution, because it promotes fairness and equitable treatment of like providers, and is forward-looking, as is appropriate given changing realities in the MVPD marketplace.

A third, and unworkable approach, would be to create a new regulatory fee category applicable only to DBS, as proposed in the NPRM.[6/] This option makes little sense in light of the fact DBS providers offer similar service and benefit similarly from Media Bureau services and regulations, and it would perpetuate the lack of technological neutrality that currently characterizes the regulatory fee system. It would also create unnecessary administrative burdens and difficulties for Media Bureau staff in properly assessing FTEs for a new DBS fee category, which if done correctly should result in totals roughly equaling those of cable and IPTV.

DBS provides a similar multichannel video programming service, receives similar benefits from the regulatory work of the Media Bureau, and therefore should pay similar fees as cable and IPTV providers. That DBS operators are not subject to precisely the same regulations and requirements as cable operators and IPTV providers is not determinative of whether or not it is appropriate for them to pay regulatory fees for Media Bureau activities.[7/] When the Commission determined to include IPTV providers in the same fee category as cable operators, it recognized that while the services are not identical, both IPTV and cable providers provide similar services and benefit in a similar fashion from Media Bureau regulation as MVPDs. This

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National Cable & Telecommunications Association, at 2-5 (June 26, 2013); *Assessment and Collection of Regulatory Fees for Fiscal Year 2013*, MD Docket No. 13-140, Comments of the American Cable Association, at 13-19 (June 19, 2013); *Assessment and Collection of Regulatory Fees for Fiscal Year 2013*, MD Docket No. 13-140, Reply Comments of the American Cable Association, at 2-6 (June 26, 2013).

6/ *FNRPM* ¶ 38.

7/ Most MVPD rules administered by the Media Bureau apply equally to DBS, cable and IPTV. Some are directed solely at DBS service, such as the Over the Air Reception Devices ("OTARD") rules, while others are directed solely at wireline MVPD providers, such as signal leakage and market modification rules. Significantly, the trend is to equalize the application of rules such as the market modification rules, creating greater technical neutrality.

sense of fairness – that operations that are regulated similarly by the Commission within a reasonably broad category of services should be assessed regulatory fees on the same basis – has a long history in the setting of regulatory fees. Like cable and IPTV services, DBS benefits from the MVPD regulatory services of the Media Bureau; it is only fair that DBS should participate in supporting those services.

Principles of competitive and technological neutrality also militate in favor of assessment of a fee on DBS for support of MVPD regulatory services. That DBS operators are assessed no fees for MVPD regulation, while their direct cable and IPTV operator competitors must pay them, when both are often engaged in the same Media Bureau activities, demonstrates that the fees as currently structured fail to be competitively neutral. Similarly, the current fee structure fails technological neutrality by favoring satellite technology, which pays no fee for MVPD regulation, over the cable, fiber, and IP technology used by cable and IPTV providers that must pay fees for MVPD regulatory support.

DBS should pay similar fees as cable and IPTV providers irrespective of other fees they pay for regulatory work conducted by other Bureaus in the agency. While DBS operators pay fees to support the International Bureau's work in licensing and operation of DBS satellite infrastructure, those fees are unrelated and not used to support Media Bureau efforts in regulation of DBS operators' MVPD operations. Consequently, there is no logical reason for satellite regulatory fees to create a reduction or offset in fees paid by DBS for Media Bureau support. Further, despite questions raised by DBS operators in previous comments, the Commission has ample legal authority under section 9 of the Communications Act to assess regulatory fees on DBS operators to support the Media Bureau.

It is logical, fair, and legal for the Commission to adopt a regulatory fee category that applies equally to all MVPDs, including DBS operators, and such action is long overdue. Even if it is not prepared to create a new MVPD category at this time, the Commission could ensure similar fairness by adding DBS operators to the existing Cable and IPTV regulatory fee category. Under either approach, along with consideration of a phase-in period to mitigate "rate shock," it is important that the Commission take prompt action to remedy the current regulatory fee inequity.

I. THE COMMISSION SHOULD NOT CREATE AN INDEPENDENT DBS REGULATORY FEE CATEGORY

One of the key values undergirding the Commission's system of regulatory fee assessment is fairness[8/] – the principle that those entities that share in causing regulatory costs and receiving regulatory benefits of an entity like the Media Bureau should share equitably in paying the fees that support the Bureau. Necessary corollaries to this principle are concepts of competitive and technological neutrality – an understanding that no regulated entity should be advantaged or disadvantaged in assessment of regulatory fees vis-a-vis its direct competitors or on the basis of the technology it uses to provide its regulated services.

These important principles can most expeditiously be implemented by adding DBS to the existing cable category, just as it did recently for IPTV providers. This would modernize the regulatory fee system to more accurately reflect the current competitive marketplace. In the long run, this is best implemented by including DBS in a single MVPD regulatory fee category, along with cable operators and IPTV providers. Either option is far more logical, equitable, and consistent with the Commission's technology neutral approach to competitive issues than the

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8/ *Procedures for Collection and Assessment of Regulatory Fees*, Notice of Proposed Rulemaking, 27 FCC Rcd 8458, ¶ 3 (2012).

Commission's proposal to take the unnecessary and unfair step of creating a new, separate DBS fee category.

A. The Commission Should Require DBS Operators To Pay Media Bureau Regulatory Fees As Cable And IPTV Providers Do.

This year, the Commission took a significant step toward implementing the important concepts of fairness in regulatory fee assessments when it began assessing IPTV providers the same per-subscriber regulatory fee as cable operators pay in making assessments for support of the Media Bureau's regulation of MVPD operations.[9/] In so doing, the Commission recognized that "IPTV and cable service providers [both] benefit from Media Bureau regulation as MVPDs," and that because there is a "relatively small difference from a regulatory perspective" between the two types of MVPDs,[10/] they should both pay for that regulation at the same rate.[11/]

This same principle should apply to inclusion of DBS operators in MVPD regulatory fees. DBS operators, like cable operators and IPTV providers, "benefit from Media Bureau regulation as MVPDs."[12/] As the Commission has recognized, DBS providers avail themselves of many of the services of the Media Bureau, because as MVPDs they "are permitted to file program access complaints and complaints seeking relief under the retransmission consent good faith rules; and . . . are required to comply with Media Bureau oversight and regulation such as

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9/ *2013 Fee Order* ¶ 32.

10/ *2013 Fee Order* n.81.

11/ *2013 Fee Order* ¶ 32.

12/ *See* 47 U.S.C. § 522(13) (defining an MVPD as an entity "such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by sub- scribers or customers, multiple channels of video programming"); 47 C.F.R. § 76.1000(e) (defining an MVPD as "an entity engaged in the business of making available for purchase, by subscribers or customers, multiple channels of video programming").

Commercial Advertisement Loudness Mitigation Act (CALM Act), the Twenty-First Century Video Accessibility Act (CVAA), and the closed captioning and video description rules."[13/]

An examination of Media Bureau filings shows that DBS operators involve themselves in proceedings of the Media Bureau involving MVPD regulation as much as, and often more than, other MVPDs. Over the past twelve months alone, DBS operators 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 regulatory dockets like the Comcast/TWC merger review, retransmission consent reform, media ownership review, television closed captioning quality rules, and implementation of the CVAA. In comparison, the 12 largest cable and IPTV providers each averaged making 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.[14/]

B. Including DBS In A Media Bureau Regulatory Fee Category Is A Matter Of Competitive And Technological Neutrality.

Because of the highly competitive nature of today's market for MVPD services, continuing to require only cable and IPTV providers to support Media Bureau MVPD regulation places cable and IPTV providers at serious competitive disadvantage. DBS providers benefit from the regulatory services of the Media Bureau, yet pay nothing for those services. Their direct competitors – cable and IPTV providers – are required to make up the difference. DBS's ability to shift the cost of the regulatory services to its competitors gives it an unfair competitive advantage, and a fee assessment system that allows it to do so violates basic principles of

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13/ *Assessment and Collection of Regulatory Fees for Fiscal Year 2014*, Notice of Proposed Rulemaking, Second Further Notice of Proposed Rulemaking, and Order, 28 FCC Rcd 7790, ¶ 42 (2013).

14/ *See* Attachment A (summarizing filings from DIRECTV and DISH in Media Bureau dockets in the Commission's Electronic Comment Filing System ("ECFS") between November 1, 2013 and November 11, 2014).

competitive neutrality. Moreover, not only are cable and IPTV providers forced to effectively cross-subsidize the regulatory fee burden of their direct competitors, but their subscribers are forced to help shoulder the burden when this cost of service is passed through, in whole or in part, to those customers.

A system that allows DBS providers to pay nothing to support MVPD regulation, while shifting the burden wholly to cable and IPTV providers also violates basic principles of technological neutrality. Whether intended or not, the system puts the Commission in the position of promoting satellite-delivered services, while discouraging use and expansion of cable and IPTV services. That cable and IPTV providers are also major providers of high-speed broadband services suggests that the lack of technological neutrality in the current MVPD fee structure may be at odds with the broadband expansion goals of the National Broadband Plan.

C. Creation Of A Separate DBS Fee Category Is Unnecessarily Complicated And Inconsistent With Commission Precedent.

The Commission's suggested alternative of creating a new separate fee category for DBS support of Media Bureau operations is unnecessarily complicated and is flatly inconsistent with Commission precedent of creating fee categories that include broadly similar services.[15/]

While the Commission posits that a new category may be appropriate because only "certain rules" apply to DBS,[16/] that distinction is not determinative. When the Commission decided to include IPTV service providers in the same category as cable operators it "agree[d] that the services are not identical," but said it was "not persuaded that the relatively small difference from a regulatory perspective . . . would justify a different regulatory fee methodology

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15/ *FNRPM* ¶ 38.

16/ *FNPRM* ¶ 40.

and rate."[17/] Similarly, several years ago, the Commission decided to place voice over Internet protocol ("VoIP") services in the same Interstate Telecommunications Service Provider ("ITSP") regulatory fee assessment category as telecommunications service providers, despite significant differences in the extent of regulation of the two services.[18/]

Nor does it matter that providers in the same regulatory fee category may have different business models.[19/] So, too, do other fee categories. The ITSP fee category, for example, includes a broad range of providers: facilities-based carriers as well as resellers; incumbent and competitive local exchange carriers; interexchange carriers; VoIP service providers; even payphone service providers, prepaid calling card providers, and audio bridging services. Some, like VoIP services, are very lightly regulated; others, like incumbent local exchange providers ("ILECs") require significant regulatory services. Yet the Commission has determined the similarities of the services outweigh the differences for purposes of assessing regulatory fees.

Within regulatory fee categories some providers – even providers with essentially identical services – will make heavier use of regulatory resources in certain years than others. Within the current Cable/IPTV category, for example, in some years, one cable operator or IPTV provider or another may be involved in a complaint proceeding or a merger that requires significant Media Bureau resources, while in other years the same providers may place relatively little burden on the Bureau. Yet the regulatory fee stays the same. The Commission has rightly recognized that any attempt to particularize regulatory fee assessments to the specific year-to-

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17/ *2013 Fee Order* n.81.

18/ *Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd. 15712, ¶¶ 11-20 (2007) ("*2007 Regulatory Fee Order*").

19/ *FNPRM* ¶ 39.

year or entity-to-entity use that may be made of the Commission's resources would be extremely and unnecessarily complicated.

Just as illogical would be adopting the position taken in this proceeding by the two major DBS providers that Section 9 requires the Commission to apply a regulatory fee to DBS providers that is tied to the number of FTEs "dedicated to DBS regulation."[20/] As the language of the statute makes plain, the Commission has broad discretion to adjust the regulatory fee based on "factors that the Commission determines are necessary in the public interest."[21/] When including VoIP services in the ITSP fee category, the Commission explained that "Section 9 does not require the Commission to engage in a company-by-company assessment of relative regulatory costs. In any given year, companies grouped in the [telecommunications] category, or other regulatory fee categories, might be the subject of more regulation than others, e.g., merger proceedings. As a result, our responsibility here is to identify the category of regulatory fee payees with which interconnected VoIP providers most closely relate."[22/] Plainly, the Commission has never read Section 9(b)(1)(A) of the Act so literally as to require a strict account on a person-by-person basis of the activities of each member of the Media Bureau.

In any event, a cursory review of the ex parte filings of the two largest DBS providers reflects that numerous members of the Media Bureau have dedicated their time to DBS-related matters. Examining filings just in the last few years (since the beginning of 2010) shows that

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[20/] *Assessment and Collection of Regulatory Fees for Fiscal Year 2014*, MD Docket No. 14-92, et al., Notice of *Ex Parte* Communication of Michael Nilsson, counsel to DIRECTV, LLC, at 1 (filed November 19, 2014).

[21/] 47 U.S.C. § 159(b)(1)(A) (providing that regulatory fees should be "derived by determining the full-time equivalent number of employees performing the activities described in subsection (a) of this section," but may be "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, including such factors as service area coverage, shared use versus exclusive use, and other factors that the Commission determines are necessary in the public interest").

[22/] *2007 Regulatory Fee Order* ¶ 19.

DIRECTV representatives had 43 different meetings with 46 different members of the Media Bureau staff.[23/] During this same time period, DISH Network's representatives had 29 meetings with 40 different members of the Media Bureau staff.[24/] Many staffers were present at more than one of these meetings, and while some of these meetings did overlap, it is clear that the Media Bureau has dedicated considerable staff resources to matters of interest to the two DBS providers.

Creating a separate DBS fee category would generate complications by requiring annual allocation of Media Bureau FTEs between DBS, cable, and IPTV categories based on largely arbitrary criteria. Many regulatory functions performed by Media Bureau personnel for DBS operators significantly overlap with the same or similar functions performed for cable and IPTV providers. Most regulatory functions occur independently of the technology used to deliver the service and span several Divisions within the Bureau, including overall management personnel. It would be nearly impossible to evaluate, for example, when a Media Bureau FTE working on retransmission consent reform or closed captioning issues is doing so for "cable" or "DBS" purposes. This frequent functional overlap would make it both 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, as would be necessary for a separate DBS fee category to properly function. Even if it was possible, an accurate assessment would assuredly reveal that the FTE counts for matters concerning DBS are similar to those for cable and IPTV. In comparison to the difficulties of assessing FTEs for DBS-only, recouping Media Bureau costs of MVPD regulation from cable, IPTV and DBS providers would be easy, is the more reasonable

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23/ *See* Attachments B and C (summarizing Media Bureau personnel present at DBS operator *ex parte* meetings from January 2010 - November 2014).

24/ *See id.*

approach, and would be more consistent with the Commission's precedent in assessing regulatory fees for other services.

II. SATELLITE SERVICE REGULATORY FEES SHOULD NOT OFFSET FEES ASSESSED FOR MEDIA BUREAU REGULATION OF DBS MVPD SERVICE

There is no logical basis for the suggestion that DBS operators (whether included in the cable and IPTV fee category, as part of an MVPD fee category, or in a separate DBS fee category) should pay fees at a lesser rate because they also pay substantial fees to support the International Bureau's regulation of their satellite operations.[25/] The regulatory fees paid to the International Bureau relate only to satellite operations, not the DBS MVPD service, which is not regulated by the International Bureau. The fees DBS operators pay for satellite regulation support International Bureau FTEs and do not reduce the number of Media Bureau FTEs that are required for MVPD regulatory services provided to DBS operators. DBS operators receive substantial direct regulatory support from both the International Bureau and the Media Bureau, and there is no reason they should not participate in paying the costs of operation of both bureaus.

Regulatory fee assessments for Media Bureau support should be fairly allocated among all MVPDs that use the services of the Bureau. There is no logical reason to provide an offset for fees that some MVPDs may pay to support other bureaus for other regulatory services. Indeed, 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, yet the logic applied to suggest an offset for satellite fees would apply equally to fees paid for CARS licenses. DBS operators benefit from regulatory services of both the International Bureau (satellite licensing and regulation) and

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[25/] *FNRPM* ¶ 41.

the Media Bureau (MVPD regulation). They should not expect that their equitable support of one of the Bureaus should earn them a discount on their fair share of support of the other Bureau.

III. A PHASE-IN PROCESS CAN MITIGATE ANY "RATE SHOCK" THAT MIGHT BE EXPERIENCED BY DBS OPERATORS

The Commission asks for comment on the "time period the DBS providers should be transitioned into" a new fee category,[26/] but there is no reason to assume such a transition period is necessary. While assessing regulatory fees on DBS at the same rates applicable to cable and IPTV services would result in substantial fee increases for DBS operators, the two DBS operators are multi-billion dollar corporations[27/] – and the nation's second and third largest MVPDs.[28/] These providers are financially capable of absorbing the increased costs with minimal disruption to their operations and no threat to their operational viability.

Concerns that may be raised about rate shock for DBS subscribers should be put into context. Even if the increased fee assessment is fully passed through to subscribers by DBS operators, it should amount to only 6 cents per month per subscriber.[29/] And whatever increase in the cost of the DBS service that may occur[30/] due to an equitable sharing of support for Media

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26/ *FNPRM* ¶ 42.

27/ *See* DIRECTV Annual Report 2013, at 34 (reporting 2013 revenues of $31.8 billion and operating profit of $5.2 billion); DISH Network Annual Report 2013, at 55 (reporting 2013 revenues of $13.9 billion and operating profit of $1.3 billion).

28/ *See* n.3, *supra*.

29/ The fee assessment projected by the Bureau for its DBS fee proposal of $23,120,000 (FNRPM ¶ 39), divided by the 34 million subscribers of the two DBS operators (note 3, *supra*), equals an annual per-subscriber fee assessment of 68 cents, or less than 6 cents per month per subscriber.

30/ Considering that DIRECTV's average revenue per unit (ARPU) customer in the third quarter of 2014 was $107.27 per month (http://variety.com/2014/biz/news/directv-loses-28000-u-s-subscribers-in-q3-as-revenue-rises-1201349475/), and DISH's ARPU over the same period was $84.39 (http://variety.com/2014/biz/news/dish-drops-12000-tv-subscribers-in-q3-misses-earnings-expectations-1201347160/), assessing a $0.06 cent fee per subscriber per month fee would amount to a 0.06% increase for DIRECTV customers and a 0.07% increase for DISH customers.

Bureau regulation, will be offset by the benefit to cable and IPTV consumers who make up two-thirds of the MVPD market and currently bear the full burden of these costs.

To the extent DBS operators argue that having to pass the costs of the fee increase through to their subscribers would cause many subscribers to switch to other MVPD services, the DBS operators can decide to absorb the fee increase as a cost of operation or pass it through to subscribers only in part – decisions that cable operators and IPTV providers have to make every day. Moreover, if it is true that subscribers will switch MVPDs over the cost associated with regulatory fees, that fact only underscores the unfair competitive advantage currently afforded to DBS providers by a system that assesses regulatory fees only on cable and IPTV, the DBS providers' direct competitors. If the costs of regulatory fees are truly determinative for subscribers selecting MVPD services, then it is even more critical that the Commission move quickly to remedy the inequity imposed by the current system.

If the Commission determines that a transition period is necessary, there is ample precedent for how to structure such an approach. For example, the Commission avoided "rate shock" when first applying regulatory fees to IPTV providers and VoIP services by announcing the rate decision in one year, but delaying initial collection of the fee to the subsequent year,[31/] giving the IPTV and VoIP service providers a full year to adjust their operations to the rate increase. If the Commission is concerned that DBS operators, despite their size, may be harmed by too rapid an increase in regulatory fees, regulatory fees could also be phased in over a series of years. For example, the Commission could assess DBS fees in the first year at one-third the

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[31/] *See 2013 Fee Order* ¶ 33; *2007 Regulatory Fee Order* ¶ 20; *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6388, Att. B, n.3 (2008).

equitable rate, assess the fee at two-thirds the rate in the second year, and assess the full rate starting in the third year.

IV. THE COMMISSION HAS AMPLE AUTHORITY TO ADOPT A REVISED FEE STRUCTURE FOR DBS

The Commission has clear statutory authority to change its regulatory fee schedule to assess fees on DBS providers for support of Media Bureau MVPD regulatory services. The Communications Act authorizes changes in the regulatory fee schedule if the Commission determines that the schedule requires amendment to comply with the regulatory cost recovery requirements of the statute, and provides that "the Commission shall 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."[32/] As both NCTA and ACA have previously explained in filings with the Commission, numerous rulemaking proceedings and changes in law since the current DBS fee structure was adopted in 1996 have changed the nature of the regulatory services the Commission, through the Media Bureau, provide to DBS operators.[33/] A modification in DBS regulatory fees to recognize the many changes that have occurred over the past 18 years is clearly within the scope of Commission authority provided by the statute.

[32/] 47 U.S.C. 159(b)(3).

[33/] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2014*, MD Docket No. 14-92, et al., Reply Comments of the National Cable & Telecommunications Association and the American Cable Association, at 3-7 (filed July 21, 2014). *See also, e.g.*, *Assessment and Collection of Regulatory Fees for Fiscal Year 2014*, MD Docket No. 14-92, et al., Comments of the American Cable Association, at 8-9 (filed July 7, 2014); *Assessment and Collection of Regulatory Fees for Fiscal Year 2013*, MD Docket No. 13-140, Comments of the American Cable Association, at 14-16 (filed June 19, 2013); *Procedure for Assessment and Collection of Regulatory Fees*, MD Docket No. 12-201, Reply Comments of the National Cable & Telecommunications Association, at 3-4 (filed June 26, 2013).

CONCLUSION

The Commission should revise its regulatory fee schedule to assess DBS operators a fair and equitable share of the Commission's MVPD regulatory functions.

Respectfully submitted,

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