

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

In the Matter of

Assessment and Collection of Regulatory
Fees for Fiscal Year 2015

MD Docket No. 15-121

COMMENTS OF DIRECTV, LLC

DIRECTV, LLC (“DIRECTV”) hereby submits these comments in response to the Commission’s proposed 2015 regulatory fee for Direct Broadcast Satellite (“DBS”) providers.¹ In its recent *Order and Notice*, the Commission created a new DBS subcategory of Media Bureau MVPD fees, in accordance with the cable industry’s longstanding wishes. DIRECTV continues to disagree with that decision. The Commission now asks, however, about the specific regulatory fee for this new subcategory.² It proposes MVPD fees of \$0.12 per subscriber for DBS operators and \$0.95 per subscriber for cable operators. If the Commission is to have such a category, DIRECTV agrees with this aspect of the proposal. While DIRECTV does not know the full-time equivalent hours (“FTEs”) devoted by the

¹ *Assessment and Collection of Regulatory Fees for Fiscal Year 2015*, Notice of Proposed Rulemaking, Report and Order, and Order, FCC 15-59, MD Docket Nos. 15-121, 14-92 (rel. May 21, 2015) (“*Order and Notice*”).

² *Id.* ¶ 9.

Media Bureau to DBS versus cable regulation, all available evidence supports the Commission’s tentative conclusion.

As the parties have plowed this territory extensively over the years, DIRECTV will be brief here. The Commission described the legal regime applicable to DBS fees in its recent *Order and Notice*.³ Section 9 created regulatory fees to “recover the costs” of four kinds of regulatory services provided by the Commission—“enforcement activities, policy and rulemaking activities, user information services, and international activities.”⁴ It specifies that regulatory fees must reflect “the full-time equivalent number of employees performing [the four listed activities]. . . .”⁵ It then provides that such fees 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.”⁶ This language requires the Commission to “recover the costs” that the Media Bureau expends regulating “the payor”—in this case, DBS providers—in terms of FTEs, subject to some “adjustment.”

As the Commission also pointed out, Section 9’s cost recovery language does not mean that regulatory fees must *exactly* reflect the Commission’s costs of regulating DBS versus cable.⁷ This language must, however, mean that the fees paid by DBS operators must reflect the basic costs of regulating them—as adjusted by the benefits of such regulation. Otherwise, the statutory directive to “recover the costs” of regulation is written out.

³ *Id.* ¶ 31.

⁴ 47 U.S.C. § 159(a)(1).

⁵ *Id.* (incorporating 47 U.S.C. § 159(b)(1)(A)).

⁶ *Id.*

⁷ *Order and Notice*. ¶ 35 (“To the extent that DIRECTV and DISH are suggesting by these arguments that the number of FTEs dedicated to a service is wholly determinative of their regulatory fees, we disagree.”).

At present only the Commission itself possesses information related to Media Bureau FTEs. Presumably, this information forms the basis of the Commission’s proposal to charge DBS operators \$0.12 per subscriber in Media Bureau fees (in addition to its International Bureau fees).⁸ This figure corresponds with information the satellite industry has submitted over the years concerning the Media Bureau’s workload—including special rules applicable to the dominant market position of cable operators, rules related to cable facilities regulation, and the number of individual cable operators subject to all Media Bureau regulation.⁹

DIRECTV notes that the Commission appeared to dismiss some of these arguments in determining that DBS operators should pay *some* Media Bureau fees. It did not, however, consider these arguments in determining the relative fees for cable and satellite operators. Thus, the Commission found that the fact that much Media Bureau regulation applies only to cable operators does not “refute our conclusion that a significant number of Media Bureau FTEs work on MVPD issues that include DBS.”¹⁰ Likewise, it found that the larger number of cable operators, and the larger number of cable filings, did not demonstrate “a lack of Media Bureau oversight and regulation of the DBS industry.”¹¹ Neither of these findings relate to the proper allocation *within* the Media Bureau as between cable and satellite.

We note here only two additional points. First, the Commission’s proposed fees will already cost satellite subscribers more than \$4 million annually.¹² Were the Commission to

⁸ *Id.* ¶ 9.

⁹ *E.g.*, Reply Comments of DIRECTV, LLC and DISH Network L.L.C., MD Docket Nos. 14-92, 13-140, 12-201 at 4-10 (filed Dec. 26, 2014).

¹⁰ *Order and Notice* ¶ 33.

¹¹ *Id.* ¶ 34.

¹² *Id.* App. B.

impose cable fees on satellite, this figure would rise to nearly \$35 million annually.¹³ This is, by any definition, “rate shock.” It would represent an unfortunate victory for a cable industry that has made a habit of trying to increase taxes paid by its competitors. To DIRECTV’s knowledge, the Commission has never raised fees so precipitously, and it should not start here.¹⁴

Second, as the Commission acknowledged, DBS operators must now pay two sets of fees for video service—one to the Media Bureau, and the other to their licensing bureau, the International Bureau.¹⁵ DIRECTV continues to think it unfair that, alone among all FCC regulatees, DBS operators must pay two regulatory fees for a single service. The double payments assessed against DBS should constitute an additional reason *not* to blindly lump DBS and cable together.

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¹³ *Competition in the Mkt. for the Delivery of Video Programming*, 30 FCC Rcd. 3253, ¶ 26 (2015) (“2015 Video Competition Report”) (setting forth DBS subscriber numbers).

¹⁴ For example, when the Commission recently added toll free numbers to its regulatory fee regime, *Assessment & Collection of Regulatory Fees for Fiscal Year 2014*, 29 FCC Rcd. 10,767 ¶ 28 (2014) (“2014 Order”), those new fees totaled \$4,380,000. *Order and Notice* App. B. When the Commission added IPTV fees, *2014 Order*, App. B. those new fees totaled roughly \$ 5.5 million based on reported subscribership of IPTV providers. *2015 Video Competition Report* ¶ 27 (2015). When the Commission created submarine cable fees, those new fees totaled less than \$8 million, and were almost certainly *less* than those operators had been paying under the previous regime. *Assessment & Collection of Regulatory Fees for Fiscal Year 2009* *Assessment & Collection of Regulatory Fees for Fiscal Year 2008*, 24 FCC Rcd. 10301 App. B (2009). When the Commission added interconnected VoIP, the maximum those new fees could have totaled was less than \$10 million. *Compare Assessment & Collection of Regulatory Fees for Fiscal Year 2008*, 24 FCC Rcd. 6388 App. C. (2008) (expected revenues for ITSPs with VoIP) *with Assessment & Collection of Regulatory Fees for Fiscal Year 2007*, 22 FCC Rcd. 15712 App. B. (2007) (expected revenues for ITSPs without VoIP).

¹⁵ *Order and Notice* ¶ 41.

