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

In the Matter of	)	
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Assessment and Collection of Regulatory Fees for Fiscal Year 2015	)	MD Docket No. 15-121
	)	
Amendment of Part 1 of the Commission's Rules	)	MD Docket No. 15-121
	)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2014	)	MD Docket No. 14-92

To: The Commission

COMMENTS OF ECHOSTAR SATELLITE OPERATING CORPORATION AND HUGHES NETWORK SYSTEMS, LLC

EchoStar Satellite Operating Corporation and Hughes Network Systems, LLC (together, "EchoStar"), pursuant to Section 1.415 of the Commission's Rules,[1] hereby submit these comments in the Commission's above-captioned proceedings regarding the proposed regulatory fees for Fiscal Year ("FY") 2015.[2] EchoStar urges the Commission to rely on a fact-based analysis to support the assessment and allocation of regulatory fees among Commission licensees. Specifically, the Commission must accurately account for indirect full-time employees ("FTEs") attributable to the specific fee categories of licensees.[3] For example, the

[1] 47 C.F.R § 1.415.

[2] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2015*, MD Docket Nos. 15-121 and 14-92, Notice of Proposed Rulemaking, Report and Order, and Order, FCC 15-59 ¶¶ 7-14 (rel. May 21, 2015) ("*FY 2015 NPRM*").

[3] The allocation of regulatory fees to fee categories is based on the Commission's calculation of FTEs in each regulatory fee category. The Commission allocates FTEs as "direct" if the employee is in one of the four "core" Bureaus, *i.e.*, the International Bureau ("IB"), Wireline Competition Bureau ("WCB"), Wireless Telecommunications Bureau ("WTB"), and Media Bureau ("MB"), and as "indirect" if the employee is in one of the remaining bureaus or offices, such as the Enforcement Bureau ("EB"), Consumer and Governmental Affairs Bureau

Commission should reallocate FTEs for the EB, CGB and OET in a manner that recognizes the *de minimis* nature of the work done by those bureaus for IB licensees. The Commission should also perform further analyses before apportioning IB regulatory fees among the fee categories of IB licensees (*e.g.*, submarine cable, earth stations, and space stations). Finally, consistent with FCC precedent, regulatory fee increases for any fee category should be capped at 7.5 percent per year, and increases to any rate cap should be phased in gradually over time.

I. BACKGROUND

EchoStar operates a fleet of 24 satellites in the Direct Broadcast Satellite ("DBS") Service, the Fixed-Satellite Service, and the Mobile-Satellite Service, making it the largest U.S. geostationary satellite operator and the fourth largest in the world. Through these facilities, EchoStar provides innovative multi-channel video programming distribution, state-of-the art broadband and cutting-edge mobile services. Under contract to DISH Network, EchoStar operates all of the space station and earth station assets, as well as related consumer equipment, necessary to serve nearly 14 million U.S. DBS customers.

EchoStar is also the parent company of Hughes, which is the global leader in providing broadband satellite networks and services for enterprises, governments, small businesses, and consumers. Having pioneered the very small aperture terminal ("VSAT"), Hughes is the world's leading provider of enterprise VSAT services and has built on this expertise to bring high-speed satellite broadband services to consumers and small businesses across the United States. Hughes provides satellite Internet service to over one million active users in North America.

("CGB"), and the Office of Engineering and Technology ("OET"). *See FY 2015 NPRM* ¶ 4 n.16. The total FTEs for each fee category includes the direct FTEs associated with that category, plus a proportional allocation of the indirect FTEs. *See id*.

II. DISCUSSION

A. The Commission Must Make an Accurate Fact-Based Assessment and Allocation of the Indirect FTEs Attributable to IB Licensees.

As the satellite industry has demonstrated in the past, satellite regulation requires a small and decreasing portion of Commission resources outside of the IB.[4] For example, a review of enforcement actions on the EB's web page reveals that of the more than 900 EB actions listed, only four, *i.e*. less than half a percent, appear to involve space station, earth station or submarine cable licensees.[5] While the FCC may have more precise data, the point is clear – IB licensees make up a *de minimis* portion of the EB's work.

The same is true for the work done by the CGB. For example, the FCC's website shows that there are notably fewer complaints regarding satellite providers relative to other service providers. Specifically, current FCC data provides that complaints regarding satellite service providers comprise: 3.1 percent of all Internet service complaints;[6] 7.6 percent of all radio service complaints;[7] 18 percent of all TV service complaints;[8] and from 0 to 8.8 percent of all telephone service complaints.[9] The Commission should reallocate the FTEs for EB and CGB

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[4] *See* Comments of the Satellite Industry Association, MD Docket Nos. 12-201 and 08-65, at 7-12 (Sep. 17, 2012) ("SIA 2012 Comments").

[5] *See* https://transition.fcc.gov/eb/Headlines.html (last visited Jun. 14, 2015).

[6] In contrast, cable, DSL, and wireless providers accounted for 91.6 percent of all Internet service provider complaints during the same period. *See* https://consumercomplaints.fcc.gov/hc/en-us/articles/204646900-Consumer-Complaints-by-Service-Type (last visited Jun. 14, 2015). The publicly available FCC data is based on data from December 29, 2014 through June 7, 2015.

[7] Broadcasters accounted for 92.4 percent of all radio service complaints. *See id*.

[8] Cable providers and broadcasters accounted for 77.6 percent of all TV service complaints. *See id*.

[9] A number of satellite providers, including EchoStar, offer high-quality telephony service using Voice-Over-IP ("VOIP") technology via a satellite connection. *See, e.g.*, http://www.hughesnet.com/plans-and-pricing/hughesnet-voice (last visited Jun. 14, 2015). The

FTEs accordingly. Such an approach would be consistent with Section 159 of the Communications Act, which requires the Commission to "assess and collect regulatory fees to recover the costs of . . . enforcement activities"[10] through fees that are "derived by determining the full-time equivalent number of employees performing the activities."[11] By more accurately allocating the work of these two bureaus to the appropriate licensees, the mandates of the Communications Act will be met.

Similarly, it is reasonable to allocate a portion of FTEs in the OET among all fee categories of Commission licensees subject to a fact-based inquiry of the costs incurred for different types of licensees.[12] A review of the FCC's Experimental Licensing System ("ELS") database shows that the total number of experimental license applications filed in 2014 was 1840 but the number of space-related applications was only 134 or approximately 7 percent.[13] Assuming the proportion of OET's regulatory work is roughly the same, that data suggests that no more than 7 percent of the applicable FTEs for the OET should be allocated to space-related IB licensees.

FCC's website does not specifically identify satellite-based VoIP complaints, but VoIP complaints comprise 8.8 percent of all telephone service complaints.

[10] 47 U.S.C. §159(a)(1).

[11] 47 U.S.C. §159(b)(1)(A).

[12] The FTEs allocated to applications associated with experimental authorizations and acting on equipment authorizations should be subtracted as a first step in this calculation to ensure that work associated with processing applications are not included in regulatory fee assessments. The Commission should also analyze whether the FCC's labs have been engaged in any work with regard to the satellite industry in recent years. EchoStar believes that review of that data would show that lab costs would be more accurately reallocated among other FCC licensees (*e.g.*, wireless service providers), who most benefit from work done by the FCC labs.

[13] *See* https://apps.fcc.gov/oetcf/els/reports/GenericSearch.cfm (last visited June 14, 2015). Specifically, the number of space-related applications is based on the applications received by the ELS database during January 1, 2014 to December 31, 2014 and classified in the "Experiment Type" field as any of the following: big Leo (0), cubesats (46), Inmarsat (5), little LEO (1), satellite (general) (51), satcom-on-the-move (7), or space (24).

B. The Commission Must Make Fact-Based Reallocations For Fee Categories Among the IB Licensees.

The Commission should make available its data on FTEs required for certain tasks to determine the appropriate allocation of regulatory costs with regard to fee categories among the IB licensees. The industry still does not have sufficient information to provide fact-based input on this topic.

Satellite operators currently pay a substantial portion (67.64 percent) of the regulatory fees allocated to IB licensees.[14] While the Commission may be correct that the work of regulating submarine cables is less onerous than that associated with satellites, any such determination must be based on facts and data, not conjecture. Specific changes in regulatory fee payments must be supported and not simply "plucked ... out of thin air,"[15] as the Commission seems to have done here with its proposal to increase by 5 percent the portion of IB regulatory fees paid by satellite and earth station licensees.[16]

Even if only a small handful of IB staff work directly on submarine cable issues, these licensees benefit from the work of many other staff, including those in the Front Office and those in the Policy Division. Thus, more data is needed before the Commission can adopt its proposal to increase the allocation of IB regulatory fees for satellite and earth station licensees.

EchoStar also believes that: (1) it is likely that the regulatory fees for earth station licensing do not accurately reflect the cost of licensing these systems; and (2) that this imbalance has led to space station licensing bearing an unfairly high portion of the costs. Certain types of earth stations, namely larger transmit/receive earth stations, may require a greater amount of staff

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[14] *See FY 2015 NPRM* at ¶ 12.

[15] *See Time Warner Entertainment Co., L.P. v. FCC*, 240 F.2d 1126, 1137 (D.C. Cir. 2001) (rejecting the FCC's adoption of an unsupported numerical limit as arbitrary).

[16] *See FY 2015 NPRM* at ¶ 12.

resources because of the technical and spectrum coordination issues associated with examination of such applications. As an initial step, the Commission should consider a dual fee structure for earth stations: one for receive-only and consumer transmit/receive earth stations, and the other for larger transmit/receive stations. However, this alone will not address the fact that space stations bear an unfair load of the overall regulatory fees. The Commission has not provided sufficient data to enable industry commenters to offer input on how these costs should be reallocated.

Accordingly, in order to determine the proper allocation of FTEs for the IB for regulatory fee purposes, it would be helpful for the Commission to release the number of FTEs in the IB currently focused on space station and earth station licensing, as well as submarine cables. Once this information is released, industry can provide fact-based input on the proper reallocation of fees.

C. Proposed Fee Increases Should Be Capped at 7.5 Percent Per Year and Increases to that Cap Should Be Phased In Over Time.

The Commission proposes a regulatory fee increase of approximately 9 percent for geostationary orbit satellite licenses and 14 percent for earth station licenses.[17] Both proposed rate increases are notably higher than the 7.5 percent rate cap that the Commission implemented recently for the FY 2013 rates to ensure that licensees would not be impacted by sudden, wild fluctuations in regulatory fees. Specifically, in setting a cap of 7.5 percent, the Commission stated that:

[17] *See id*. at Appendix C.

- The purpose of the cap is to "avoid sudden and large changes in the amount of fees paid by various classes of regulatees."[18]

- "[T]he imposition of a cap on fee increases is not unprecedented" and has been used in the past "to avoid the prospect of 'fee shock' resulting from large and unpredictable fluctuations in fees."[19]

- "[W]e cannot 'flash cut' to [new rates] without engendering significant and unexpected fee increases ...."[20]

- "[T]he cap we impose on fee increases for some licensees will unavoidably limit the fee reductions other licensees ... would otherwise enjoy."[21]

Thus, the Commission should not increase regulatory fees for IB licensees by more than 7.5 percent per year without first explaining why these prior statements are no longer valid.[22] Adopting a rate cap is especially important for the satellite industry because satellite capacity is typically sold under long-term agreements and satellite operators are not able to immediately adjust rates to cover a large increase in applicable fees.[23] If higher rates are appropriate, EchoStar recommends that such rates be gradually phased in over time and, specifically,

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[18] *Assessment and Collection of Regulatory Fees for Fiscal Year 2013*, Report and Order, 28 FCC Rcd 12351 ¶ 21 (2013) ("*2013 Fee Order*").

[19] *Id*. ¶ 23.

[20] *Id*. ¶ 25.

[21] *Id*.

[22] An agency must "display awareness that it is changing position"; it cannot "depart from a prior policy previous *sub silentio* or simply disregard rules that are still on the books." *FCC v. Fox Television Stations, Inc*., 556 U.S. 502, 515 (2009). For FY 2014, the FCC did not need to impose a rate cap because it did "not adopt[] any such measures that would result in an increase of over 7.5 percent." *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2014 et al.*, Report and Order, 29 FCC Rcd 10767 ¶ 35 (2014); *see also* Further Comments of DIRECTV, LLC and DISH Network L.L.C., MD Docket Nos. 14-92, 13-140, 12-201, at 16 (Nov. 26, 2014) ("APA would also require the Commission to explain the basis of any fee increases to DBS exceeding 7.5 percent, the cap it set last year.").

[23] *See, e.g.*, SIA 2012 Comments, at 24; Comments of the Satellite Industry Association, MD Docket Nos. 14-92, 13-140 and 12-201, at 9 (Jul. 7, 2014);.

proposes a three-year phase-in period, consistent with the Commission's recent actions with respect to new DBS fees.[24]

III. CONCLUSION

EchoStar requests that the Commission rely on a fact-based analysis to support the assessment and allocation of regulatory fees. In fairness to all licensees, the Commission should accurately account for indirect FTEs attributable to specific fee categories of Commission licensees. Publicly available data shows that the work of a number FCC bureaus and offices attributable to IB licensees is *de minimis*, and the calculation of indirect FTEs and regulatory fees should be adjusted accordingly. As a final matter, consistent with FCC precedent, regulatory fee increases should be capped at 7.5 percent to avoid fee shock, and any increases to rate caps should be phased in gradually to help licensees better plan for fee changes.

Respectfully submitted,

/s/ Jennifer A. Manner
Jennifer A. Manner
Vice President, Regulatory Affairs

/s/ Jesse T. Jachman
Senior Counsel, Regulatory Affairs

EchoStar Satellite Operating Corporation and Hughes Network Systems, LLC
11717 Exploration Lane
Germantown, MD 20876
(301) 428-5893

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[24] *See FY 2015 NPRM* ¶ 38.