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
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

COMMENTS OF DISH NETWORK L.L.C.

DISH Network L.L.C. ("DISH") hereby submits comments in response to the Commission's proposal to impose, for the first time, a per-subscriber annual regulatory fee in the amount of 12 cents on Direct Broadcast Satellite ("DBS") providers.[1] The Commission has already made a determination in the *2015 Regulatory Fees R&O and NPRM* to create a new DBS fee subcategory within the existing cable television and IPTV fee category to "recover the burden of regulation and oversight"[2] by Media Bureau Full Time Equivalent employees ("FTEs"). The Commission, however, set comment due dates to determine the appropriate *amount* of the new DBS fee prior to the deadline for challenging the decision on which that new DBS fee is predicated, *i.e.*, the creation of the DBS fee subcategory. As DISH

[1] *See* Assessment and Collection of Regulatory Fees for Fiscal Year 2015, Amendment of Part 1 of the Commission's Rules; Assessment and Collection of Regulatory Fees for Fiscal Year 2014, *Notice of Proposed Rulemaking, Report and Order, and Order*, MD Docket Nos. 15-121 and 14-92, FCC 15-59 (rel. May 21, 2015) ("*2015 Regulatory Fees R&O and NPRM*").

[2] *Id.* ¶ 28.

has explained previously, creating a new Media Bureau fee for DBS providers faces legal hurdles, and DISH reserves the right to challenge the *Report and Order* once the filing deadlines to do so are established.

In response to the Commission's current proposal to impose a 12 cent per-subscriber regulatory fee on DBS providers, however, DISH urges the Commission to consider the ongoing significant differences between the regulatory work undertaken by the Media Bureau relating to cable and DBS providers. While 12 cents is less than the 95 cent per-subscriber rate proposed for cable providers, the *2015 Regulatory Fees R&O and NPRM* suggests that the Commission's proposed 12 cent per-subscriber fee is merely a starting point and implies that DBS providers may expect to pay more in future years. If true, this open-ended approach to establishing and increasing regulatory fees for DBS providers suffers from legal deficiencies, leaves the industry and DBS subscribers uncertain as to what to expect, and fails to address the potential for "rate shock."

The record provides evidence that DBS operators have never generated, and do not generate now, anything approaching the regulatory costs that cable operators do. Indeed, just because some Media Bureau rulemakings apply equally to cable and DBS does not mean that the Media Bureau regulates the two industries equally overall such that "the burden of regulation and oversight" of these two industries is equivalent. If the Commission believes that 12 cents is the right number to charge for 2015 in order to recover the direct costs of regulating DBS providers by the Media Bureau, and absent changes in future years regarding the nature of DBS regulation, then 12 cents should remain the per-subscriber fee going forward. Alternatively, in light of the fact that DBS is regulated more lightly than cable, the

Commission could clarify that DBS providers' Media Bureau fees will continue to represent a given ratio or percentage of the fee amount that cable pays.

I. THE COMMISSION MAY ONLY ADD A DBS REGULATORY FEE IN RESPONSE TO CHANGES IN THE "NATURE" OF DBS REGULATION

The *2015 Regulatory Fees R&O and NPRM* seeks comment specifically on the appropriate per-subscriber fee amount for DBS providers beginning this year. DISH incorporates by reference its longstanding legal objections to the premise that there has been a change to the "nature" of DBS regulation that would justify *any* new per-subscriber DBS regulatory fee.[3]

II. ANY REGULATORY FEES IMPOSED ON DBS MUST TAKE INTO ACCOUNT THE DIFFERENCES IN HOW DBS AND CABLE ARE REGULATED

Setting aside the possible legal infirmities with creating a new regulatory fee subcategory for DBS, the Commission now proposes to set this per-subscriber rate at 12 cents for 2015, while implying that DBS providers may expect to pay more in future years. The record provides evidence that DBS operators have never generated, and do not generate now, anything approaching the regulatory costs that cable operators do.[4] Going forward, the Commission must therefore ensure that the rates paid by DBS versus cable always account for the actual differences in how the two industries are regulated.

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[3] *See, e.g.*, Comments of DIRECTV, LLC and DISH Network L.L.C., MD Docket Nos. 14-92, 13-140, 12-201 (Jul. 7, 2014); Further Comments of DIRECTV, LLC and DISH Network L.L.C., MD Docket Nos. 14-92, 13-140, 12-201 (Nov. 26, 2014); and Further Reply Comments of DIRECTV, LLC and DISH Network L.L.C., MD Docket Nos. 14-92, 13-140, 12-201(Dec. 26, 2014).

[4] *See* Further Comments of DIRECTV, LLC and DISH Network L.L.C., MD Docket Nos. 14-92, 13-140, and 12-201, pp. 10-15 (Nov. 26, 2014); Further Reply Comments of DIRECTV, LLC and DISH Network L.L.C., MD Docket Nos. 14-92, 13-140, and 12-201, pp. 4-9 (Dec. 26, 2014).

As the record indicates, DBS and cable generate markedly different regulatory costs, even if, as the Commission has suggested, "certain rules" apply to DBS and cable operators alike.[5] To begin with, the mere fact DBS and cable both provide multichannel video service[6] is not a reasonable or permissible basis to impose similar regulatory fees on cable and DBS.[7] For a "parity" argument to have merit, it would need to show that DBS and cable are in a position of *regulatory* parity. In other words, a parity argument would have to show that DBS and cable occupy a comparable number of FTEs and so justify equivalent regulatory fees. This case has not and cannot be made.

Indeed, in its *Report and Order*, the Commission recognized that "DBS is not identical to cable television"[8] and that "the two DBS providers and their trade association had fewer filings than the top 25 cable operators and their two trade associations (combined)."[9] Despite this recognition, the Commission then explained that DBS and cable "services all receive oversight and regulation as a result of the work of Media Bureau FTEs on MVPD issues"[10] and declared that the "burden imposed on the Commission is therefore similar."[11]

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[5] Assessment and Collection of Regulatory Fees for Fiscal Year 2014, *Report and Order and Further Notice of Proposed Rulemaking*, MD Docket Nos. 14-92, 13-140, and 12-201, 29 FCC Rcd. 10767, ¶ 40 (2014).

[6] *Id.* ¶ 38.

[7] *See* Comments of DIRECTV, LLC and DISH Network L.L.C., MD Docket Nos. 14-92, 13-140, 12-201 (Jul. 7, 2014); Further Comments of DIRECTV, LLC and DISH Network L.L.C., MD Docket Nos. 14-92, 13-140, 12-201 (Nov. 26, 2014); and Further Reply Comments of DIRECTV, LLC and DISH Network L.L.C., MD Docket Nos. 14-92, 13-140, 12-201(Dec. 26, 2014).

[8] *2015 Regulatory Fees R&O and NPRM* ¶ 33.

[9] *Id.* ¶ 34.

[10] *Id.* ¶ 33.

[11] *Id.*

However, as DISH has explained, just because some Media Bureau rulemakings apply equally to cable and DBS does not mean that the Media Bureau regulates the two industries equally overall, or that the two services impose *equal* burdens on Commission staff.

As an initial matter, there are far more cable operators and cable systems than there are DBS providers. There are 845 cable operators and 4,932 cable systems in the United States, compared with two DBS providers.[12] Each cable system generates its own regulatory costs and imposes a regulatory burden on Commission resources. Even if all other things were equal (and they are not), the total scope of regulation would be much larger for cable than it is for satellite.

The paperwork volume also reflects this disparity. Over the last three years, the cable industry has filed more than nineteen times the number of pages in docketed proceedings as DBS, in nearly six times the number of pleadings.[13] Moreover, cable operators have many recordkeeping requirements that do not apply to DBS, and generally must keep records for *each* of their systems. These include the following:

- Political File (47 C.F.R. § 76.1701)
- EEO File (47 C.F.R. § 76.1702)
- "Kid Vid" File (47 C.F.R. § 76.1703)
- Proof-of-Performance Test Data File (47 C.F.R. § 76.1704)
- Signal Leakage Logs and Repair Records File (47 C.F.R. §76.1706)
- Aeronautical Notifications (47 C.F.R. § 76.1804)

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[12] *See* Television and Cable Factbook 2014 D-1235 to D-1283 (Paul L. Warren & Daniel Y. Warren, eds., 2014) ("Warren").

[13] *See* Further Comments of DIRECTV, LLC and DISH Network L.L.C., MD Docket Nos. 14-92, 13-140, and 12-201, p. 13, FN 53 (Nov. 26, 2014).

- Leased Access File (47 C.F.R. § 76.1707)
- Principal Headend File (47 C.F.R. § 76.1708)
- Availability-of-Signals File (47 C.F.R. § 76.1709)
- Operator Interests in Video Programming File (47 C.F.R. § 76.1710)
- Emergency Alert System File (47 C.F.R. § 76.1711)
- Complaint Resolution File (47 C.F.R. § 76.1713)
- Regulatory File (47 C.F.R. § 76.1714)
- Sponsorship Identification File (47 C.F.R. § 76.1715).[14]

The collective volume of this paperwork, all of which is subject to Commission review, is substantial. Just one of these reports—signal leakage reports required under 47 C.F.R. § 76.611—generated more than 200,000 pages in 2013.[15] This is 225 times more than the volume of all filings made by both DIRECTV and DISH in docketed proceedings in 2013.[16]

The above represents a small sample of the significant differences between the regulatory burdens imposed by DBS and cable operators on the Media Bureau staff. Thus, it cannot be said that there is parity between cable and DBS sufficient to justify similar per-subscriber fee payments to recover costs incurred by the Media Bureau. As explained below, these significant differences in how DBS and cable are regulated must be taken into account if the Commission were to impose rates higher than 12 cents per DBS subscriber in future years.

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[14] DBS operators keep political files, EEO files, "kid vid" files, and EAS files. As there are only two DBS operators, there are only two of each such file.

[15] Multiplying the six pages of each annual signal leakage report by the 33,462 cable communities that have to file such reports each year results in approximately 200,772 total pages.

[16] ECFS reflects that DIRECTV and DISH Network filed 890 pages across all dockets for the period beginning January 1, 2013 and ending December 31, 2013.

III. THE PROPOSED DBS FEES LEAVE THE INDUSTRY UNDERTAIN ABOUT 2015 FEES AND POTENTIAL STEEP INCREASES IN YEARS TO COME

The *2015 Regulatory Fees R&O and NPRM* proposes DBS providers pay "the initial rate at 12 cents per year."[17] The Media Bureau, however, has not provided in the record any internal accounting to justify this figure for interested parties to verify, question, or confirm it. DISH therefore is limited in its ability to comment either way as to whether the number is appropriate or whether it adheres to relevant statutory requirements.

In any event, DISH urges the Commission provide assurance that the per-subscriber fee will not rise dramatically and arbitrarily in the years to come. There is no limiting principle that would stop the Commission from doubling or tripling the rate next year. Such an outcome would not be legally justified. In addition, it would not be in the public interest, and would negatively impact DBS subscribers who will bear the cost of the new regulatory fees.

DISH is also unclear regarding the Commission's view about the potential for rate shock. On the one hand, the Commission asks whether a 12 cent per-subscriber fee for DBS providers will cause "rate shock."[18] At the same time, elsewhere in the *2015 Regulatory Fees R&O and NPRM*, the Commission appears to dispose of possible rate shock concerns. The Commission explains that it has "decided to phase in the DBS fee and introduce it initially as a subcategory of the cable television and IPTV category" and that this phased in approach "addresses DIRECTV and DISH's concerns"[19] regarding rate shock. But if anything, including DBS within the cable category heightens the concern that the Commission would

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[17] *2015 Regulatory Fees R&O and NPRM* ¶ 9.

[18] *Id*.

[19] *Id*. ¶ 38.

attempt to raise DBS rates to be closer to cable levels without providing any caps on potential rate increases. As explained in Section II, DBS is regulated in a dramatically different and lesser way compared to cable.

If the Commission believes 12 cents is the right number to charge for 2015 in order to recover the direct costs of regulating DBS providers by the Media Bureau, and absent changes in future years regarding the nature of DBS regulation, then 12 cents should remain the per-subscriber fee going forward. Alternatively, in light of the fact that DBS is regulated much more lightly than cable, the Commission could clarify that DBS providers' Media Bureau fees will continue to represent a given ratio or percentage of the fee amount that cable pays. Either of these two options (fixing 12 cents as the rate absent changes in law or regulation, or confirming a DBS-to-cable fee ratio) would help to confront rate shock concerns that remain unaddressed in the *2015 Regulatory Fees R&O and NPRM.*

IV. CONCLUSION

DISH reserves its right to challenge the *2015 Regulatory Fees R&O* at the appropriate time. In the interim, DISH urges the Commission to justify the proposed DBS fee amount and to explain how it will ensure that the rate is appropriately tailored to reflect the substantial differences in how cable and DBS are regulated.

Respectfully submitted,

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