

**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

REPLY COMMENTS OF DIRECTV, LLC

After submitting hundreds of pages on regulatory fees in the last decade, the cable and satellite industries now agree on how the Commission should set fees in the newly created direct broadcast satellite (“DBS”) category.¹ The Act requires the Commission to “recover the costs” of regulating particular classes of payors.² This means that cable operators should not pay regulatory fees to cover DBS regulation.³ DBS operators, likewise, should not pay regulatory fees to cover cable regulation.⁴

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*”). DIRECTV, of course, continues to disagree with the lawfulness of creating this category in the first place, but that is not the subject of this proceeding.

² 47 U.S.C. § 159(a)(1).

³ Comments of the National Cable & Telecommunications Association and the American Cable Association, MD Docket No. 15-121 at 2 (filed June 22, 2015) (“Cable Comments”) (“A foundational principle of the Commission’s regulatory fee assessment system is fairness—the principle that those entities that share in causing regulatory costs and receiving regulatory benefits from a Commission subdivision like the Media Bureau should share equitably in paying the fees that support the Bureau.”).

⁴ In this regard, DIRECTV notes that cable’s proposal to charge DBS and cable the same “MVPD” fees would create a particular unfairness. DBS would contribute on a *pro-rata* basis for cable’s infrastructure-related regulation, because such regulation comes under the Media Bureau’s

Cable and satellite continue to disagree, however, as to exactly what the DBS fee should be in relation to the cable fee. The cable industry finds “no evidence” to justify any meaningful disparity between the two classes of fees.⁵ Yet evidence of these differences abounds. To begin with, the Commission itself—which presumably possesses the best evidence of regulatory costs—proposes very different fees for the two industries. The differences between the two fees, moreover, correspond almost exactly with the differences suggested by the extrinsic evidence that satellite carriers have submitted (and which DIRECTV incorporates herein by reference).⁶ Such differences also reflect the far more extensive nature of cable regulation and the much higher number of cable operators, as repeatedly discussed by the satellite carriers (and incorporated herein by reference).⁷ Against this evidence, the cable industry offers merely bromides purporting to show that DBS

auspices. Cable, however, would not contribute to DBS’s infrastructure related regulation, as that comes under the International Bureau’s auspices, and DBS providers already pay a separate regulatory fee to the International Bureau. In this regard, the cable industry suggests such a disparity would be fair because cable operators receive no offset for CARS license regulation. Cable Comments at 5. Cable CARS payments, however, do not represent all Media Bureau regulation of cable infrastructure. In any event, they are essentially *de minimis*. Even a cable operator the size of Time Warner Cable has only 31 such licenses. Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership, Public Interest Statement, MB Docket No. 15-149 Exh. A (filed June 25, 2015). At \$655 per license, *Order and Notice App. B*, this totals roughly \$20,000 in regulatory fees. DIRECTV by contrast, will pay *100 times* as much in International Bureau fees this year for its launched or to-be-launched satellites.

⁵ Cable Comments at 4.

⁶ Further Reply Comments of DIRECTV, LLC and DISH Network L.L.C., MD Docket Nos. 14-92, 13-140, 12-201 at 6 (filed Dec. 26, 2014) (“Satellite 2014 Reply Comments”) (citing data, undisputed by cable, related to the number of pages and filings submitted by cable and satellite providers, both before the full Commission and the Media Bureau).

⁷ *Id.* at 7-9.

operators “participate in” some (but by no means all) MVPD proceedings “as much as” some cable operators.⁸

DIRECTV has always conceded that the evidence on this subject is far from perfect. It serves only as a rough substitute for the regulatory-fee accounting system required by law.⁹ The Commission, however, has struggled with regulatory-fee accounting issues for years.¹⁰ And numerous barriers may well prevent the Commission from ever delivering a perfect accounting of the hours it spends regulating DBS and cable. In these circumstances, the best evidence available to the public today suggests that the Commission has pegged the relationship between DBS and cable regulatory costs more or less correctly. Unless and until the Commission adds new record evidence to the contrary—which would require separate notice and comment—it cannot lawfully set DBS regulatory fees other than as it proposes.

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⁸ Cable Comments at 4. Cable suggests that each DBS provider participates in this limited subset of MVPD proceedings as much as a cable operator like Suddenlink. It proposes to *charge* DBS providers, however, *seventeen times* the amount that Suddenlink pays in regulatory fees. Satellite 2014 Reply Comments at 7.

⁹ 47 U.S.C. § 159(i) (“The Commission shall develop accounting systems necessary to making the [permitted amendments] authorized by subsection (b)(3) of this section.”).

¹⁰ See Assessment and Collection of Regulatory Fees for Fiscal Year 2003, 18 FCC Rcd. 15,985, (2003) (“2003 Fees Order”) (concurring statement of Commissioner Adelstein) (discussing cost accounting); *Assessment and Collection of Regulatory Fees for Fiscal Year 2001*, 16 FCC Rcd. 13,525, ¶ 7 (2001) (discussing problems with previous cost accounting system).

