

**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
)	

REPLY COMMENTS OF DISH NETWORK L.L.C.

DISH Network L.L.C. (“DISH”) submits these reply comments in response to the Commission’s proposal to impose a per-subscriber annual regulatory fee in the amount of 12 cents on Direct Broadcast Satellite (“DBS”) providers.¹ DISH has already expressed the legal hurdles associated with the Commission’s decision to create a new Media Bureau fee for DBS providers.² However, if the Commission moves forward in setting a per-subscriber annual regulatory fee for DBS providers, the Commission must reject proposals in the record to require DBS providers to pay regulatory fees similar to those paid by cable and IPTV providers.³

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 DISH reserves the right to challenge the *Report and Order* at the appropriate time.

³ See Comments of ITTA – The Voice of Mid-Size Communications Companies, MD Docket Nos. 15-121 and 14-92, pp. 5-7 (Jun. 25, 2015) (“*ITTA Comments*”); Comments of the National Cable &

The statutory underpinning of the regulatory fee regime requires, among other things, the Commission to recover the costs that the Media Bureau expends regulating DBS activities, and the record provides ample evidence that such costs are substantially lesser for DBS than for cable. Any arguments that the Commission must increase the proposed DBS regulatory fee either immediately or over time to equal the cost of fees paid by cable and IPTV providers as a matter of “fairness” lack legal foundation and should be rejected. In addition, such a result would subject DBS providers to “rate shock.”

As DISH has explained, 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. THERE IS NO JUSTIFICATION TO CHARGE DBS PROVIDERS THE SAME REGULATORY FEES AS CABLE AND IPTV PROVIDERS

The Commission should reject calls by commenting parties that seek to require DBS providers to pay regulatory fees similar to those paid by cable and IPTV providers. As the record indicates, DBS and cable generate markedly different regulatory costs. 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. Thus, any arguments that

Telecommunications Association and the American Cable Association, MD Docket No. 15-121 (Jun. 25, 2015) (“*NCTA/ACA Comments*”).

the Commission should increase the proposed DBS regulatory fee as a matter of “fairness”⁴ lack legal foundation and must be rejected. DISH already has addressed cable’s misplaced argument that “fairness” somehow requires less-regulated entities offering one service (like DBS) to pay the same regulatory fees as more-regulated entities offering multiple services (like cable) many times in the record.⁵ In addition, the fact that cable and DBS providers compete against one another to provide pay-TV service does not mean they must be subject to similar fee payments, given the differences in the way their respective services are regulated.

The Commission can only impose fees consistent with its statutory mandate to “recover the cost” of regulation. The record provides substantial evidence that DBS operators have never generated, and do not generate now, anything approaching the regulatory costs that cable operators do.⁶ 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 similar. The Commission should therefore reject any calls⁷ to increase DBS regulatory fees along the

⁴ See *NCTA/ACA Comments* at 2-4.

⁵ See Comments of DISH Network L.L.C., MD Docket Nos. 14-92 and 15-121, pp. 3-6 (Jun. 25, 2015); 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).

⁶ *Id.*

⁷ See *NCTA/ACA Comments* at 2 (suggesting that a “a reasonable phase-in schedule would be to assess DBS FY 2015 fees at 24 cents per subscriber (two cents per subscriber per month), with projected DBS FY 2016 fees at 48 cents per subscriber (four cents per subscriber per month) and DBS FY 2017 fees at 72 cents (6 cents per subscriber per month)”); *ITTA Comments* at 6 (“ITTA believes the changes resulting from establishing this new fee category should be implemented as quickly as possible, consistent with the Commission’s commitment to complete a comprehensive overhaul of its regulatory fee regime within a short timeframe. Phasing in the resulting regulatory fee increases and decreases over an extended period of time only further delays much-needed reform.”).

lines that cable and IPTV providers pay, and similarly reject any proposals that advocate in favor of a limited phase-in to equal rates.

Regarding the 12-cent proposal, as DIRECTV pointed out, while “[a]t present only the Commission itself possesses information related to Media Bureau FTEs . . . 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.”⁸

II. THE COMMISSION MUST GUARD AGAINST RATE SHOCK

The Commission should reject any calls to impose regulatory fees along the lines that cable pays, given the differences articulated above and in the record regarding the way DBS and cable are regulated. The Commission should similarly reject any proposals that advocate in favor of a limited phase-in to equal rates in order to guard against “rate shock.” Any rapid rise in fee payments 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. As DIRECTV pointed out, “the Commission’s proposed fees will already cost satellite subscribers more than \$4 million annually. Were the Commission to impose cable fees on satellite, this figure would rise to nearly \$35 million annually. This is, by any definition, ‘rate shock.’”⁹ DISH agrees.

If the Commission believes its proposed 12-cent per-subscriber fee is the correct amount to charge for 2015, and absent changes in future years regarding the nature of DBS

⁸ Comments of DIRECTV, LLC, MD Docket No. 15-121, p. 3 (Jun. 25, 2015).

⁹ *Id.* at 3-4 (*citations omitted*).

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*.

III. 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 reject the well-worn arguments put forth by cable that the Commission must increase the proposed DBS regulatory fee either instantly or over time to equal the cost of fees paid by cable and IPTV providers as a matter of "fairness" because such arguments lack legal foundation.

Respectfully submitted,

/s/

Jeffrey Blum
Senior Vice-President and
Deputy General Counsel
Alison A. Minea
Director & Senior Counsel
Regulatory Affairs
Hadass Kogan
Corporate Counsel
DISH NETWORK L.L.C.
1110 Vermont Avenue NW,
Suite 750
Washington, DC 20005
(202) 293-0981

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