

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

In the Matter of)
)
Assessment and Collection of Regulatory Fees for) MD Docket No. 06-68
Fiscal Year 2006)

COMMENTS OF



NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION

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The National Cable & Telecommunications Association, Inc. (“NCTA”), by its attorneys, hereby submits its comments in the above-captioned proceeding concerning the assessment and collection of regulatory fees for fiscal year 2006. NCTA is the principal trade association for the U.S. cable industry, representing cable operators serving more than 90 percent of the nation's cable television households and more than 200 cable program networks. The cable industry is the nation’s largest broadband provider of high speed Internet access after investing \$100 billion over ten years to build a two-way interactive network with fiber optic technology. Cable companies also provide state-of-the-art digital telephone service to millions of American consumers.

INTRODUCTION AND SUMMARY

Cable operators bear a grossly disproportionate regulatory fee burden relative to their main competitors, DBS operators. Under the FY 2006 proposed fees, cable’s burden is over 1000% greater. DBS providers serve 30% of multichannel video customers, yet they pay less than 4% of the FCC’s cost of regulating the MVPD marketplace. This absurd and unfair result stems from using a *per subscriber* fee for cable and a *per license* fee for DBS. The gap continues to widen year after year. Indeed, this year the Commission proposes to *increase* the

annual regulatory fee for cable television systems on a per subscriber basis from 72 cents to 77 cents, a 7% increase, while it proposes to *decrease* the per license fee for DBS by 3.6%. NCTA believes that this disparity is unwarranted and that it is long past time for the Commission to rectify this imbalance by adopting a per-subscriber fee scheme for DBS similar to the one applied to cable.

NCTA is pleased that this year the Commission acknowledges the different treatment of cable and DBS and seeks comment on whether it should modify DBS' regulatory fee methodology. As NCTA argued last year, the Commission's per-license fee scheme for DBS still rests on the out-dated and faulty premise that the Commission's regulatory responsibilities with respect to DBS are unrelated to the number of end users of satellite services. The video landscape has radically changed since this approach was adopted over ten years ago. Today cable and DBS vigorously compete head-to-head for multichannel video customers. And as DBS has grown and cable subscribership has declined, cable has been deregulated in many areas, reducing the industry's utilization of Commission resources.

Furthermore, given the rise in regulatory responsibilities for DBS, costs associated with DBS rulemakings should be borne by DBS providers and their customers, not cable subscribers. The current regulatory fee structure, however, has resulted in DBS's share of fees inexplicably *decreasing* even as the FCC's regulatory responsibilities specifically tied to DBS have grown. The increase in fees assessed on cable customers over that same time period suggests that cable may well be paying significantly more than its fair share. Now is the time to bring a halt to this disparate fee treatment and more fairly assign regulatory costs. There is no legal or policy basis to continue to assess DBS providers a facilities-based per-license fee, while cable operators are charged an end-user based per subscriber fee.

I. THE COMMISSION HAS AUTHORITY TO MODIFY THE STRUCTURE FOR ASSESSING DBS REGULATORY FEES AND SHOULD DO SO GIVEN CHANGED CIRCUMSTANCES

As the Notice explains, since the inception of its regulatory fee program, cable operators have been assessed fees using a per-subscriber approach, while regulatory fee assessments for DBS providers are based on a per-license approach. This disparity has resulted in a wide gap in regulatory costs imposed on the different customers of each multichannel video programming distributor (“MVPD”). The FCC has ample reason to modify the methodology for assessing fees on DBS. And the Communications Act provides the Commission with the flexibility to remedy this unfairness in its regulatory fee assessments.

When Congress created its initial 1994 regulatory fee schedule, it did not freeze it in place. Instead it understood that the level of Commission activities in a particular area – and the nature of services and entities regulated – could change over time. Section 159(b)(3) provides the FCC with authority to amend the fee schedule to take into account “factors that are reasonably related to the benefits provided to the payor of the fee by the Commission’s activities, including such factors as service area coverage, shared use versus exclusive use, and other factors that the Commission determines are necessary in the public interest.”¹ Congress also gave the FCC authority to “add, delete, or reclassify services in the Schedule to reflect additions, deletions, or changes in the nature of its services as a consequence of Commission rulemaking proceedings or changes in law.”²

The Commission should exercise its authority to update its treatment of DBS. Much has changed since the FCC adopted its fee structure for cable and DBS. The FCC can and should

¹ 47 U.S.C. § 159(b)(3).

² *Id.*

use this opportunity to remedy a fee structure that has grown increasingly indefensible as the laws governing DBS and cable have changed, as have the relative regulatory responsibilities exercised for each MVPD.

A. DBS Should Be Reclassified as a Separate Service and Regulatory Fees Should be Assessed on a Per Subscriber Basis

When regulatory fees were first imposed by Congress in 1994, DBS as it is offered today by EchoStar and DirecTV did not really exist. Costs associated with policies and rules surrounding this new multichannel video programming service were not even assessed on DBS licenses, let alone customer counts.³ When the FCC first imposed regulatory fees on DBS in 1996, FCC regulatory involvement was very much tied to application processing, licensing, due diligence requirements relating to construction and launch, and launch itself.⁴ And given the original licensing options for DBS – as a “broadcaster” or “common carrier” at the licensee’s election – the focus of the service was on the license itself, not customers.

In 1996, the Commission considered assessing a fee on DBS on the same basis as its cable assessment.⁵ The FCC rejected that approach because, it reasoned, “DBS rules do not impose additional regulatory requirements on video service providers that are specifically related to the individual subscriber.”⁶ And the agency worried that “a subscriber-based formula would

³ The FCC’s first order imposing regulatory fees declined to impose any fees on DBS, explaining that “DBS is not expected to become operational prior to the time for calculating fee payments for FY 1994.” *Implementation of Section 9 of the Communications Act*, 9 FCC Rcd. 5333 at ¶ 85 (1994). The FCC acknowledged in its 1995 Regulatory Fee Order that “much of our policy and rule making efforts are expended in the development of new and emerging technologies and services (e.g., PCS, DBS, and LEOs),” but that “as a practical matter, we had to allocate the costs associated with these activities to existing licensees in other services because there were no operational systems or customer base on which to assess a fee for these new services.” *Assessment and Collection of Regulatory Fees for Fiscal Year 1995*, 10 FCC Rcd 13, 512 at ¶ 6 (1995) (emphasis supplied).

⁴ The 1992 Cable Act imposed a public interest set-aside requirement on DBS. The district court struck down this provision of the Act, which ultimately was not reinstated until the Court of Appeals reversed the lower court and the FCC adopted rules in 1998.

⁵ *Assessment and Collection of Regulatory Fees for Fiscal Year 1996*, 61 Fed. Reg. 16432 (Apr. 15, 1996).

⁶ *Id.* at ¶ 41.

penalize DBS licensees who win more subscribers with less space station capacity (and hence lower regulatory costs).”⁷

These concerns no longer justify the disparate fee treatment between competing MVPDs. Congress has amended the law governing DBS so that its video service offerings and regulatory requirements are in many ways comparable to cable. For example, several years after the FCC decided that DBS regulation was unrelated to its service to subscribers, Congress changed the Communications Act to permit DBS to offer local broadcast stations to customers subject to various regulatory requirements.⁸ The Satellite Home Viewer Improvement Act of 1999 (“SHVIA”) permitted DBS for the first time to deliver “local-into-local” broadcast stations. SHVIA resulted in more DBS-specific subscriber-based benefits and regulations. It also imposed additional regulatory responsibilities on the FCC, which conducted a series of rulemakings to implement SHVIA.⁹

FCC regulation of DBS has only increased since Congress adopted a new DBS-specific law in 2004 – the Satellite Home Viewer Extension and Reauthorization Act of 2004 (“SHVERA”). Congress assigned the FCC significant new responsibilities in SHVERA. It directed the agency to conduct inquiries and to establish rules in multiple new areas relating to

⁷ *Id.*

⁸ Pub. L. No. 106-113.

⁹ *See, e.g., Implementation of the Satellite Home Improvement Act of 1999; Retransmission Consent Issues*, Notice of Proposed Rulemaking, CS Docket No. 990363, 14 FCC Rcd. 21,736 (1999); *Implementation of the Satellite Home Viewer Improvement Act of 1999; Enforcement Procedures for Retransmission Consent Violations*, FCC 00-22, 15 FCC Rcd. 2522 (2000); *Implementation of the Satellite Home Viewer Improvement Act of 1999; Application of Network Non-Duplication, Syndicated Exclusivity, and Sports Blackout Rules to Satellite Retransmissions*, CS Docket No. 00-2, 15 FCC Rcd. 434 (2000); *Establishment of an Improved Model for Predicting the Broadcast Television Field Strength Received at Individual Locations*, ET Docket No. 00-11 (2000).

DBS service to customers.¹⁰ The FCC has been implementing these DBS-specific provisions ever since. The agency has adopted rules relating to DBS carriage of significantly viewed television stations¹¹; DBS carriage of local broadcast stations in Alaska and Hawaii;¹² and several others.¹³

None of these responsibilities was assigned to the FCC when the agency last evaluated whether to apply the DBS regulatory fees on a per subscriber basis.¹⁴ None of these bears any obvious relationship to the number of satellites used by a DBS provider. And there is no reason to assume other, equally complicated broadcast related questions will not arise as the nation migrates to digital over the air transmissions.

¹⁰ The FCC was required to adopt rules implementing the statutory provision allowing DBS to carry significantly viewed broadcast stations subject to certain conditions and limitations (47 U.S.C. §340(c)(1)(A) and (B)); to revise the retransmission consent/must carry election rules for satellite carriers (47 U.S.C. §340(h)(1) and (3)); to complete an inquiry and report to Congress on whether, for purposes of identifying digital white areas, the current digital signal strength standard or testing procedures should be changed to take into account types of antennas available to customers (47 U.S.C. §339(c)(1)); to adopt rules under which DBS is to give notice to television stations of carriage rights (47 U.S.C. §338(h)(2)); to adopt rules implementing the good faith retransmission consent negotiation requirements (47 U.S.C. §325(b)); to complete an inquiry and report to Congress on the impact of retransmission consent and blackout rules on competition in the MVPD market (Section 208 of SHVERA); to revise rules governing broadcast signal strength test measurements (47 U.S.C. §339(c)(4)); to adopt rules concerning DBS carriage of television stations in Alaska and Hawaii (47 U.S.C. §338(a)); and to ensure compliance with the single dish rule (47 U.S.C. §338(a)(2)). The FCC is well aware of the complicated tasks involved.

¹¹ MB Docket No. 05-49.

¹² MB Docket No. 05-181.

¹³ See, e.g., ET Docket No. 05-182 (digital signal measurement for DBS carriage); *Implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004*, Order (Mar. 30, 2005) (establishing carriage election, retransmission consent negotiations, and notification rules); *Retransmission Consent and Exclusivity Rules: Report to Congress Pursuant to Section 208 of the Satellite Home Viewer Extension and Reauthorization Act of 2004* (Sept. 8, 2005).

¹⁴ Moreover, while much cable regulation takes place at the local level, DBS is solely regulated by the FCC. To the extent customers have complaints or questions about DBS, the FCC handles them. The quarterly report of complaints and inquiries shows that this FCC responsibility can be extensive. For the last quarter of 2005, for example, the FCC's Consumer and Governmental Affairs Bureau handled nearly two thousand issues specifically related to satellite, including more than 500 inquiries related to over-the-air reception devices; more than an additional 500 inquiries connected to satellite home viewer improvement act issues; and almost a thousand concerning general "satellite issue." While the FCC's reporting approach makes difficult any mathematical comparison with precision, the charts reveal that satellite inquiries outpaced cable inquiries last quarter.

For all these reasons, the agency should not – and need not – remain wedded to its distorted fee structure. Rather, as in the past, the Commission should modify the basis of payment to “ensure that the fees are reasonably related to the benefits of the Commission’s regulatory activities.”¹⁵ Reclassifying DBS and revising the regulatory fee schedule is permissible here where “a revision to the Regulatory Fee Schedule better reflects the relative benefits licensees receive from our regulatory activities and achieves a more equitable distribution of the fee burden.”¹⁶

The Commission previously recognized that “the statutory fee schedule generally reflects higher fees for types of regulatees that are authorized to use larger amounts of, or more desirable, spectrum, or that are larger and have more customers.”¹⁷ DBS operators and their millions of customers benefit from a variety of newly adopted regulations which have enabled DBS to grow as an MVPD competitor and to provide essentially much the same video programming to customers as cable (with some limited exclusivity by DBS and cable). The time has come for the Commission to reclassify DBS and move it from its “space station” fee category to its own category, with per-subscriber fees assessed on the same basis as they are assessed on cable customers.

B. The Commission Should Reduce Cable Regulatory Fees to Ensure that Cable Customers Are Not Paying More Than Their Fair Share

There is no reason why the increased rulemaking activities relating to DBS service, which have taken up a considerable amount of the FCC’s Media Bureau’s attention, should be

¹⁵ *Assessment and Collection of Regulatory Fees for Fiscal Year 1995*, 10 FCC Rcd. 13,512 at ¶ 87 (1995).

¹⁶ *Id.*

¹⁷ *Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, 19 FCC Rcd. 11,662 at ¶ 8 (2004) (hereinafter “2004 Regulatory Fees”).

financed almost entirely by customers to DBS's primary competitor, cable. But that appears to be the case.

Just as FCC regulatory activities relating to DBS-specific rulemakings have dramatically increased, cable-specific rulemakings have been on the wane. At the time of initial regulatory fees, cable television rate regulation and a variety of other cable-specific mandates that arose under the 1992 Cable Act were a major source of Commission business. When the Commission last examined whether regulatory fees for cable should decrease, it pointed to new responsibilities under the 1996 Act, among other things, that led it to conclude that fees should not be lessened.¹⁸

But these rulemaking responsibilities are old news. The growth in the competitive multichannel video marketplace has been accompanied by the *deregulation* of cable in significant areas. Most notably, rate regulation of the cable programming service tier (CPST) ended in 1999.¹⁹ With it went the entire CPST rate review activity.²⁰

To the extent MVPD competition has benefited from any rulemakings that apply to all multichannel providers, DBS has also been involved and absorbed Commission resources. DBS and cable are subject to a host of comparable, and in some cases service-specific, regulations. DBS providers, like cable operators, are required to comply with regulations governing mandatory carriage obligations for broadcast signals; retransmission consent for the carriage of

¹⁸ *Assessment and Collection of Regulatory Fees for Fiscal Year 1996*, 11 FCC Rcd. 18,774 at ¶ 55 (1996).

¹⁹ The regulation of cable rates and other aspects of cable service under the 1992 Cable Act had necessitated the establishment of an entirely separate Bureau at the Commission – the Cable Services Bureau – which at its height in FY 1995 had nearly 180 full-time employees. Federal Communications Commission, 61st Annual Report, Fiscal Year 1995. With deregulation, this Bureau, reduced to approximately 85 employees, was merged into a new Media Bureau in 2002. www.fcc.gov/Reports/fcc2003budget_appendix_c.pdf; “FCC Announces Organization of New Media Bureau,” Press Release, March 8, 2002.

²⁰ Note that effective competition petitions, which constitute the remaining FCC rate regulation activity, are subject to a separate application fee under 47 U.S.C. § 158.

broadcast signals; network non-duplication, syndicated exclusivity and sports programming blackout requirements. And the Commission regulates disputes related to market determinations for carriage of local broadcast stations for both cable and satellite. DBS is also subject to regulations covering public interest obligations, political broadcasting requirements, and commercial limits on children's programming. Similar to cable, it must comply with equal employment opportunity rules and reporting requirements.

A review of the filings by DirecTV and EchoStar over the past year show, for example, that along with major and extensive SHVERA proceedings, they participated in various other policy, rulemaking and merger review proceedings. These proceedings include: the emergency alert system, closed captioning, video programming competition, spectrum usage by satellite network earth stations, carriage of digital broadcast signals, program access, children's television obligations, digital multicast carriage, DTV transition, biennial regulatory review, vertical and horizontal ownership limits and the proposed acquisition of Adelphia by Comcast and Time Warner.

It is true that the number of policy and rulemaking proceedings that cable and DBS have participated in may not be exactly the same. For example, cable has been active as a new provider of VoIP service and as a provider of broadband service. Meanwhile, DBS has been active in International Bureau activities. While both DBS and cable may provide regulated and non-regulated services in addition to their core video business, the Commission's current regulatory fee structure is way out of sync with the agency's expenditure of resources in the regulation of cable and DBS. It is not based on – and bears no apparent relationship to – the relative costs associated with regulating these two industries. Instead, it appears that the fee schedule for cable has increased this year, as in past years, through application of an across-the-

board “per unit” percentage adjustment in order to reach a total fee recovery required by law.²¹ These adjustments do not appear to take into account the relative regulatory costs that may have changed since the initial fee schedule was adopted and the initial service categories were assigned. Yet there is no reason for cable customers alone to bear substantially all the costs of these Media Bureau activities, as the fee schedule seemingly requires.

For all these reasons, the Commission is right to reevaluate whether it should modify its regulatory treatment of DBS. The FCC has ample authority to change its regulatory fee schedule for “permissive” reasons to properly account for the change in the law and concomitant increased regulatory benefits accorded to the two DBS operators. And as the Court of Appeals for the District of Columbia Circuit made clear, the FCC “might reasonably endeavor to prevent ... cross-subsidization”²² of regulatory costs by a competitor. DBS companies – rather than cable customers – should be required to bear their fair share of the costs of providing these regulatory benefits. As described below, the current method for assessing fees results in an unjustifiable scheme that, at least with respect to cable customers, is seriously out of whack.

II. THE COMMISSION SHOULD RECTIFY THE GROSS DISPARITY IN THE FEES ASSESSED FROM CABLE OPERATORS, AS COMPARED TO DBS, A SIMILARLY-SITUATED COMPETITOR

The ever-widening gap in the regulatory fee burden of cable vs. DBS, identified by NCTA a year ago, is even more compelling this year. In FY 2005, for example, cable operators paid a total of \$47.8 million as compared to \$1.9 million paid by DirecTV and EchoStar, the two

²¹ 2006 Regulatory Fees at ¶4; *id.* at Attachment B, 2005 Regulatory Fees at ¶ 2 (using base revenues from prior year and adjusting fee category upward by 2.6 percent to reflect increase in regulatory fees from FY 2004 to FY 2005, then dividing by number of payment units in each fee category); 2004 Regulatory Fees at ¶ 2 (same methodology, adjusting upward by 1.5 percent).

²² *Comsat Corp. v. FCC*, 283 F.3d 344, 347 (D.C.Cir. 2002).

primary DBS providers, serving over 99.9% percent of the DBS customers.²³ Viewed on a per capita basis, DirecTV and EchoStar, in 2005, paid on average *less than 8 cents* per subscriber to cable's *72 cents* per subscriber. This gross disparity will only worsen in FY 2006 under the Commission's proposal to *increase* cable's fee by 7%, from 72 cents per subscriber to 77 cents per subscriber. Meanwhile, the fee applied to DBS, as a component of the broader category of geostationary space stations, will *decrease* by 3.6% (from \$111,925 per space station to \$107,825 per space station).

Another way to see this: while more than 1 out of 4 MVPD subscribers (approximately 30%) take DBS service, DBS operators pay less than 4% of the Commission's cost of regulating MVPD providers.

This is illogical and just plain wrong. DBS is a full-fledged competitor to cable nationwide. Its multichannel video services are routinely regarded as substitutable or interchangeable with cable service. In the most recent Video Competition Report, for example, the Commission noted that, in addition to over-the-air broadcast television, almost all consumers have the choice between "a cable service, and at least two DBS providers."²⁴ Last year's Report noted that with competitive choices in the delivery of video programming, "consumers are exercising their ability to switch among MVPDs."²⁵

DBS subscribership has experienced double digit growth annually over the past 4 years, while cable has declined 2 percent since June 2001.²⁶ Cable is still the largest MVPD overall,

²³ *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 05-255 (rel. March 3, 2006) at 72-73 ("Twelfth Annual Report").

²⁴ *Id.*

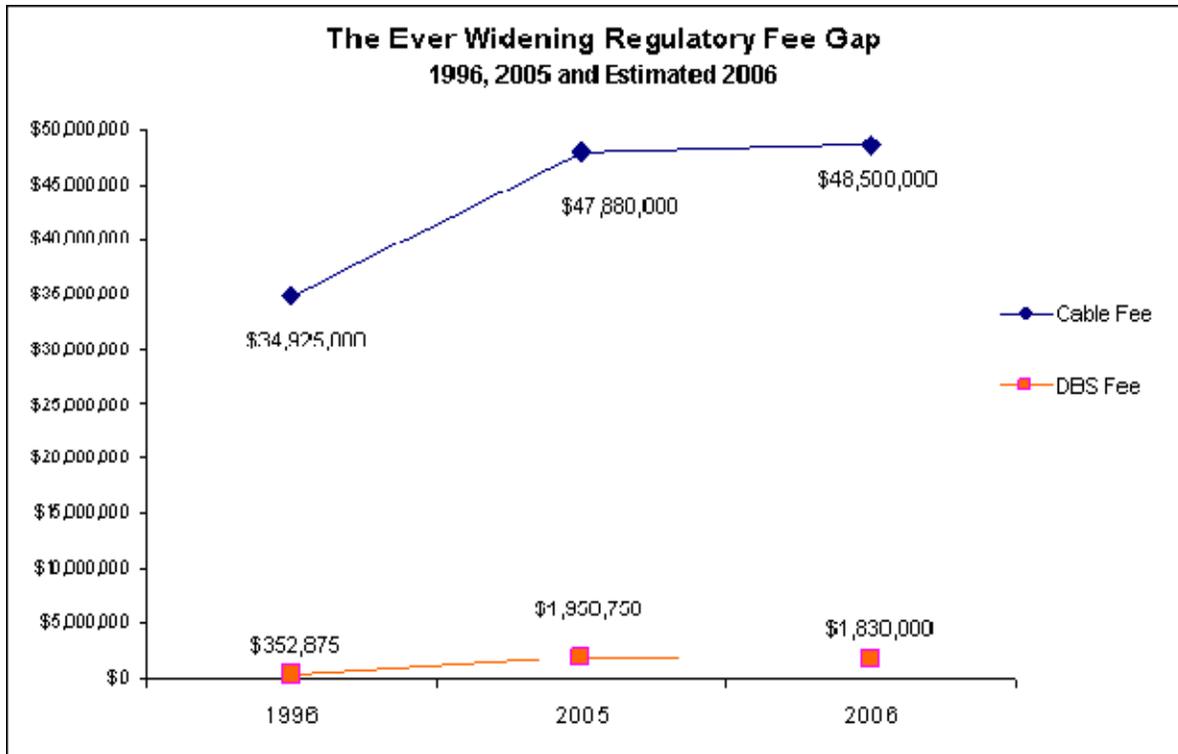
²⁵ *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 20 FCC Rcd. 2755 (2005), ¶ 6, 54 ("Eleventh Annual Report").

²⁶ *See e.g.*, Twelfth Annual Report at ¶ 72; Eleventh Annual Report at ¶ 10.

but DBS now serves 27 million customers, as compared to the 4 million it served when regulatory fees were first applied to the industry in 1996. DirecTV and EchoStar are now the *second* and *third* largest MVPDs, respectively.²⁷

Despite the dramatic changes in the video landscape over the past ten years, and the deregulation of cable described above, cable's regulatory fees continued to rise. And ironically, the regulatory fee gap widened over a period when DBS subscribership went from 4 million to 27 million customers and cable subscribership declined. Since 2000, the cable industry's regulatory fees have risen nearly 70 percent, from 47 cents in 2000 to 77 cents in 2006. DBS's regulatory fee assessment for its license of geostationary space stations increased for fiscal years 2000 through 2003, but decreased in FY 2004 and FY 2005 and proposed FY 2006. The following graph demonstrates the growing fee differential between cable and DBS over the past ten years.

²⁷ Twelfth Annual Report at ¶ 6.

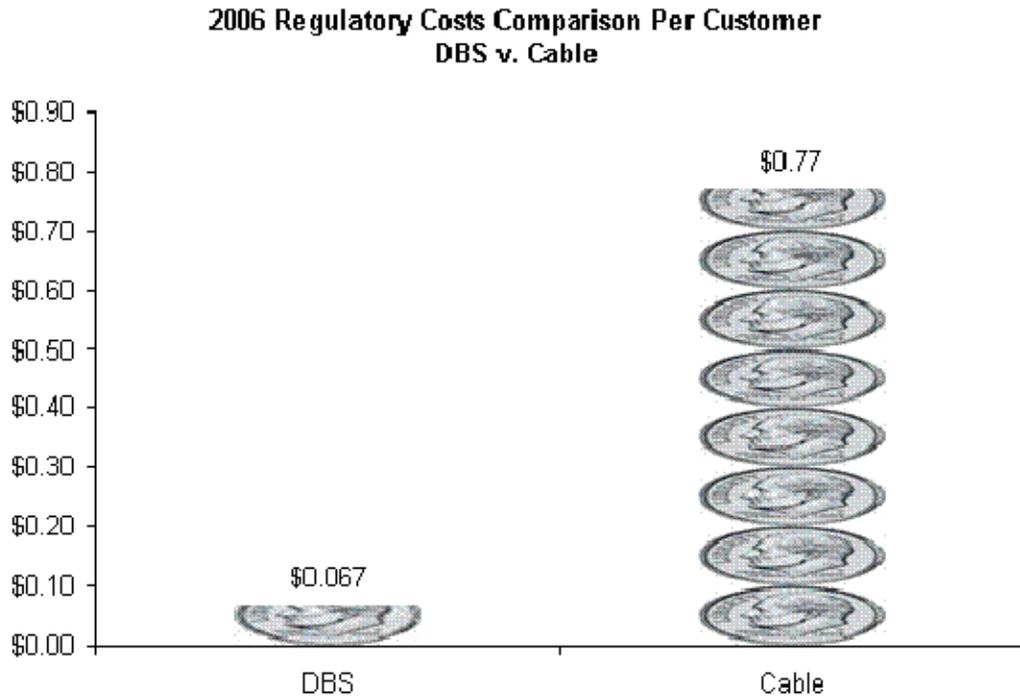


There is no basis for this stark difference. With comparable regulatory costs and benefits for cable and DBS, the discriminatory and ever-widening fee gap is unfair and distorts the workings of a highly competitive marketplace. DirecTV and EchoStar, combined, have a total of 17 satellites (out of the total 87 geostationary space station units in that fee category).²⁸ As noted earlier, based on the Commission’s FY 2006 proposed fees, DirecTV and EchoStar would pay an estimated total of 1.83 million dollars in regulatory fees (\$107,825 x 17) as compared to cable’s 48.5 million fee.²⁹ As shown below, on a per capita basis, in 2006, the two major DBS providers

²⁸ See e.g., www.directv.com, Investor Relations, General Information, <http://phx.corporate-ir.net/phoenix.zhtml?c=127160&p=irol-homeprofile>; www.dishnetwork.com, <http://www.dishnetwork.com/content/aboutus/satellites/index.shtml>.

²⁹ DBS providers also pay a small amount for certain earth stations, but we do not have the information to ascertain that figure. Cable operators also pay fees for CARS stations. In the proposed FY 2006 fee assessment, cable operators will pay \$170 per CARS station for a total of 850 stations (up 9.67% from the \$155 FY 2005 fee).

would pay on average 6.7 cents per subscriber to cable's 77 cents per subscriber. This amounts to over a 1,000% higher fee for cable than DBS.



When DirecTV and EchoStar's fees are compared to, for example, mid-sized cable operators, such as Mediacom and Insight, the unfairness of the Commission's scheme is readily apparent. In FY 2006, Mediacom with roughly 1.42 million subscribers [based on 4Q '05 data] would pay nearly \$1.1 million (1,423,000 subs in 23 states at .77 per sub). Insight would pay approximately \$978,670 (1,271,000 subs in four states) in FY 2006.

This does not even take into account a loophole that compounds the disparity. To the extent DBS operators utilize a provision of the facility-based fee formula that permits DBS operators to consider "multiple technically identical geostationary satellites co-located at the same orbital location" as one station for the purpose of per space station regulatory fee

calculation,³⁰ their regulatory fees may be even lower.³¹ But the problem is bigger than the loophole. The problem is that providers to 30% of MVPD customers pay less than 4% of their subscribers' regulatory costs.

In a competitive marketplace, success should be determined by the capabilities of competitors to meet consumer demand most efficiently – not by artificially skewing the marketplace in favor of one provider over another with disparate regulatory fees. When the second and third largest MVPDs pay fees that are dramatically less than competitors that serve customers a fraction of their size, something is very wrong.

III. THE COMMISSION SHOULD ESTABLISH THE SAME FEE FOR BOTH CABLE AND DBS SUBSCRIBERS

The Notice asks whether the benefits of any proposed change outweigh the cost of the established assessment methodology.³² And the Commission in past proceedings has expressed concern that “the reduction of fees in one category must be counter balanced by increases in other categories to ensure that the total amount specified by Congress is collected.”³³ The Commission can easily adjust its regulatory fee schedule to introduce a fairer assessment of “costs plus benefits” for all MVPDs without affecting its overall fee collection.

³⁰ See Regulatory Fees Fact Sheet, What You Owe – International and Satellite Services Licensees (July 2003) at 2, www.fcc.gov/fees/factsheets.

³¹ The unfairness of the Commission's current fee allocation scheme as it pertains to cable and DBS is further evidenced by the fact that the costs attributable to governmental entities, non-profit entities and certain other regulatees, which do not pay regulatory fees, are allocated on a pro-rata basis to all fee payors. Assuming the FCC spreads this cost across the total number of payment units per regulated category, cable with 63 million payments units as compared to DBS' fewer than 17 payment units (total number of geostationary space stations for 2006) bears a drastically higher share of the burden of these costs.

³² *Assessment and Collection of Regulatory Fees for Fiscal Year 2006*, MD Docket No. 06-68 at ¶ 8 (rel. Mar. 27, 2006).

³³ 2004 Regulatory Fees at ¶ 10.

It would be possible for the fees to remain revenue neutral and applied on a per-subscriber basis. If the combined estimated regulatory fee payment of \$50,343,025 (cable's \$48.51 million and DBS's \$1.83 million) were spread out evenly over all 90 million MVPD customers, the per subscriber fee for both cable and DBS could be set at 56 cents per MVPD subscriber. This would result in no loss of regulatory fees to the FCC and would represent a much fairer distribution of fee payment responsibilities.

CONCLUSION

The difference in the way cable and DBS are treated for regulatory fee purposes is so compelling this year that the Commission should take action. We urge the Commission to adopt a more rational regulatory fee scheme, consistent with changes in the communications landscape over the past ten years, the deregulation of cable at the federal level in a variety of areas, and the comparable and service-specific regulation of cable and DBS. The Commission should reclassify DBS and modify the regulatory fee assessment for DBS to apply it on a per subscriber basis and make it comparable to the fee scheme applied to cable customers.

Respectfully submitted,

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