

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

In the Matter of )  
 )  
Assessment and Collection of Regulatory ) MD Docket No. 08-65  
Fees for Fiscal Year 2008 )

**COMMENTS OF THE  
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

The National Cable & Telecommunications Association (“NCTA”) hereby submits its comments in response to the above-referenced Further Notice of Proposed Rulemaking.<sup>1</sup>

**INTRODUCTION AND SUMMARY**

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 \$130 billion since 1996 to build a two-way interactive network with fiber optic technology. Cable companies also provide state-of-the-art voice service to millions of American homes and are rapidly making these services available nationwide.

In the *Further Notice*, the Commission is considering changes to its system for the collection of regulatory fees from companies subject to FCC regulation. The Commission observes that there have been significant changes in the marketplace since the current system was established in 1994 and that it is time to reassess whether the burdens associated with funding the Commission are being allocated appropriately.<sup>2</sup>

---

<sup>1</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, MD Docket No. 08-65, Report and Order and Further Notice of Proposed Rulemaking, FCC 08-182 (rel. Aug. 8, 2008) (*Further Notice* or *FNPRM*).

<sup>2</sup> *Id.* at ¶ 31.

NCTA agrees that there have been fundamental changes in the marketplace that warrant a fresh approach to the assessment of regulatory fees. In 1994, there was much less competition between companies in different industry segments, and consequently regulatory parity was not an issue that was as relevant in the context of regulatory fees. That is not the case today, as companies using different technologies vigorously compete with each other by offering bundled packages of voice, video, and Internet services. In this highly competitive environment, the Commission must ensure that its regulatory fees do not unfairly burden any one set of competitors. As Chairman Martin has stated, “all providers of the same service should be treated in the same manner regardless of the technology that they employ.”<sup>3</sup> As explained below, the best way for the Commission to achieve this result is to use a subscriber-based formula for all providers of voice service and all multichannel video programming distributors (MVPDs).

**I. THE COMMISSION SHOULD ESTABLISH A SUBSCRIBER-BASED REGULATORY FEE FOR ALL PROVIDERS OF MULTICHANNEL VIDEO PROGRAMMING SERVICE**

In the *Further Notice*, the Commission seeks comment on “whether service providers other than cable operators, such as incumbent local exchange carriers (ILECs) providing video service, should also pay regulatory fees on a per-subscriber basis or otherwise.”<sup>4</sup> The Commission notes the Direct Broadcast Satellite (DBS) providers pay fees based on the number of space stations they operate, rather than the per-subscriber fee that cable operators pay, and asks whether a change is warranted.<sup>5</sup> The Commission also asserts that companies providing

---

<sup>3</sup> *Appropriate Regulatory Treatment of Broadband Access to the Internet Over Wireless Networks*, WT Docket No. 07-53, Declaratory Ruling, Statement of Chairman Kevin J. Martin (rel. Mar. 23, 2007).

<sup>4</sup> *Further Notice* at ¶ 47.

<sup>5</sup> *Id.* at ¶ 50.

Internet Protocol Television (IPTV) services are not currently subject to regulatory fees, but asks whether they should be subject to the same fees as traditional cable operators.<sup>6</sup>

NCTA applauds the Commission's decision to revisit the regulatory fees assessed upon different types of multichannel video providers. As NCTA has demonstrated previously, the fee assessed on cable operators is orders of magnitude higher than the amount paid by DBS providers.<sup>7</sup> Whatever basis the Commission previously had for treating DBS providers differently than cable operators, such disparate treatment cannot be justified in today's highly competitive video marketplace. The fact that the two leading DBS providers now serve one out of every three multichannel video service subscribers is conclusive proof that they are benefiting significantly from the Commission's regulation and that there is no basis for allowing them to continue to benefit from lower fees than the cable operators with whom they compete.

Just as DBS providers should pay FCC regulatory fees on the same basis as traditional cable operators, so too should telephone companies who provide video over their wireline facilities. The same regulatory fees imposed on cable should be required of every MVPD, out of fairness and to avoid giving any MVPD a competitive advantage by virtue of a reduced fee. The *Further Notice* suggests that ILEC video providers are generally not cable operators, and therefore not subject to regulatory fees,<sup>8</sup> but this statement is both erroneous and irrelevant.

---

<sup>6</sup> *Id.* at ¶¶ 47-48.

<sup>7</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 2006*, MD Docket No. 06-68, Comments of the National Cable & Telecommunications Association (filed April 14, 2006) (demonstrating that DBS pays 6.7 cents per subscriber as compared to 77 cents per subscriber for cable).

<sup>8</sup> *Further Notice* at ¶47 (distinguishing between ILECs and cable operators).

Aside from AT&T, most ILECs providing multichannel video service have in fact accepted the benefits and corresponding obligations of cable operators.<sup>9</sup> More importantly, the classification of IPTV service or any other form of multichannel service offered by ILECs is beside the point in this proceeding. The issue before the Commission is whether providers of like services all should pay regulatory fees on the same basis when they impose similar regulatory burdens on the Commission. The answer to that question is clear: the Commission undertakes similar regulatory responsibilities with respect to traditional cable operators and telephone company providers of multichannel video service, and therefore they should pay regulatory fees on the same basis, be it per-subscriber or some other basis.<sup>10</sup> Extending the principle of competitive and technological neutrality to the fees paid by providers of video services would eliminate the significant disparity that exists among providers and would ensure

---

<sup>9</sup> And with respect to AT&T, the only federal court that has addressed the issue has three times rejected AT&T's assertion that its video service is not a "cable service." See *Office of Consumer Counsel and New England Cable and Telecommunications Association v. Southern New England Telephone Company d/b/a AT&T Connecticut, Inc., and Department of Public Utility Control of the State of Connecticut*, 515 F. Supp. 2d 269, 282 (D. Conn. 2007), *recon. denied* 514 F. Supp. 2d 345 (D. Conn. 2007). Just recently, the same District Court rejected AT&T's assertion that Connecticut video franchising legislation had made its earlier rulings moot. *Office of Consumer Counsel and New England Cable and Telecommunications Association v. Southern New England Telephone Company d/b/a AT&T Connecticut, Inc., and Department of Public Utility Control of the State of Connecticut*, Civil No. 3:06cv1106 (JBA), Slip Op. at 12 (filed July 10, 2008). Congress concurs in this assessment. In connection with legislation to amend Title VI, both the House of Representatives and the Senate Commerce Committee rejected the suggestion that use of IP technology is relevant to the definition of "cable service" under the Act. See H. Rep. 109-740, 109<sup>th</sup> Cong., 2d Sess. (2006) at 25; S. Rep. 109-354, 109<sup>th</sup> Cong., 2d Sess. (2006) at 23-24; see also *House Telecom Bill Passes 27-4, Following Lively Debate*, Comm. Daily, Apr. 6, 2006 at 4 (quoting then Committee Chairman Barton as saying, "our friends at AT&T have sent this silly letter [to Congressman Dingell] saying they're not a cable service, which they shouldn't have done.... We explicitly say they're a cable service." (emphasis added); *id.* (quoting then Chairman Barton as saying with respect to AT&T argument: "This is stupido."). NCTA has made a similar argument in the Commission's pending *IP-Enabled Services* rulemaking. See, e.g., Letter from Neal M. Goldberg, NCTA, to Marlene H. Dortch, WC Docket No. 04-36 (filed July 27, 2007); Letter from Neal M. Goldberg, NCTA, to Marlene H. Dortch, WC Docket No. 04-36 (filed Sept. 1, 2005) (attaching Legal Memorandum on the "Applicability of Title VI to Telco Provision of Video over IP"); Letter from Neal M. Goldberg, NCTA, to Marlene H. Dortch, FCC, WC Docket No. 04-36 (filed Nov. 1, 2005) (transmitting "Response of the National Cable & Telecommunications Association" to SBC September 14, 2005 *ex parte* filing).

<sup>10</sup> The Commission took a similar approach in imposing Emergency Alert System obligations on telephone company video services without regard to the regulatory classification of those services. See *Review of the Emergency Alert System*, Second Report and Order, 22 FCC Rcd 13275, 13296-98, ¶¶ 46-50 (2007).

that no entity receives the competitive benefit of lower fees based solely on the technology it uses.<sup>11</sup>

## **II. THE COMMISSION SHOULD ESTABLISH A SUBSCRIBER-BASED (OR NUMBERS-BASED) REGULATORY FEE FOR ALL PROVIDERS OF VOICE SERVICE**

---

In the *Further Notice*, the Commission notes that there may be a disparity between the fees paid by providers of wireless and wireline services and it solicits comment on whether it should include wireless carriers in the Interstate Telecommunications Service Provider (ITSP) category, which is now limited to wireline services, including VoIP.<sup>12</sup> The Commission also asks whether it should assess regulatory fees for ITSPs based on access lines, rather than interstate revenues.<sup>13</sup>

NCTA recommends that regulatory fees for all voice service providers, regardless of technology, be assessed on a per-number or per-subscriber basis. As the Commission observes in the *Further Notice*, a numbers-based approach has been used successfully for many years with respect to wireless providers. Using this same approach for all ITSPs would ensure that no provider has a competitive advantage or disadvantage based on the technology it uses to provide service. In addition to promoting regulatory parity among similarly situated companies, NCTA has explained previously that a numbers-based or subscriber-based approach is superior to a revenue-based approach because it eliminates the need for arbitrary allocations of revenue

---

<sup>11</sup> “[A]ll providers of the same service should be treated in the same manner regardless of the technology that they employ.” *Appropriate Regulatory Treatment of Broadband Access to the Internet Over Wireless Networks*, WT Docket No. 07-53, Declaratory Ruling, Statement of Chairman Kevin J. Martin (rel. Mar. 23, 2007).

<sup>12</sup> *FNPRM* at ¶ 40.

<sup>13</sup> *Id.* at ¶ 41.

among services, which is important in a market in which customers buy bundled packages of services.<sup>14</sup>

**CONCLUSION**

For the reasons explained above, the Commission should establish apply a subscriber-based regulatory fee for all providers of multichannel video service and all providers of voice service.

Respectfully submitted,

**/s/ Daniel L. Brenner**

Daniel L. Brenner  
Neal M. Goldberg  
Steven F. Morris  
Counsel for the National Cable &  
Telecommunications Association  
25 Massachusetts Avenue, N.W. – Suite 100  
Washington, D.C. 20001-1431

September 25, 2008

---

<sup>14</sup> See Reply Comments of the National Cable & Telecommunications Association, WC Docket No. 07-81 (filed May 11, 2007) at 2.