

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

In the Matter of)
)
Assessment and Collection of Regulatory Fees) MD Docket No. 08-65
for Fiscal Year 2008) RM-11312
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COMMENTS OF VERIZON

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Verizon supports the Commission’s initiative to examine critically how it assesses its regulatory fees. While exploring “more equitable and reasonable approaches to assessing regulatory fees,”² the Commission must remain focused on its oft-stated goal of regulatory parity for competing providers and, in particular, require that all video providers pay the same per subscriber fee.

While the communications industry has undergone massive changes, including noteworthy steps towards deregulation, the total assessed fees have steadily increased. Over the last ten years, regulatory fees have almost doubled and reflect a Compounded Annual Growth Rate (CAGR) of almost 7%, which includes a sizeable increase of 23% in 2003. Given the magnitude of the fees at issue and the burdens that they impose on payors, it is increasingly important that the Commission assess its fees equitably among all communications providers.

Competing video providers are not treated fairly by the current regulatory fee assessments. The current fee structure requires a video provider operating a cable television

¹ The Verizon companies participating in this filing (“Verizon”) are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

² Report and Order and Further Notice of Proposed Rulemaking, *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, MD Docket No. 08-65, RM-11312, FCC 08-182, ¶ 30 (Aug. 8, 2008) (“FNPRM”).

system to pay fees based on the number of its subscribers, but a DBS provider to pay fees based on the number of licenses it has. This results in DBS providers paying far lower fees than cable providers. What's more, as the Commission observed, there is no requirement for ILECs providing video services that are not classified as a cable provider to pay any regulatory fees.³ Because much of the Commission's regulation of video services applies to and/or benefits all video providers, regardless of whether they are classified as cable providers, the Commission should require *all* video providers to pay the same fee per subscriber. Regulatory parity dictates that cable providers – including non-incumbent providers like Verizon – not face a cost disadvantage from higher regulatory fees when they are competing for the same customers as other video providers.

Within other regulatory fee categories, there is less need for change to the Commission's fee assessment methodology. Before implementing modifications, the Commission should consider the administrative costs that those changes would impose on fee payors, especially when there may be immaterial changes in the amount of the resulting fee payments. For example, wireless fees should continue to be based on the number of subscribers, instead of revenue. In addition, the FCC should not adopt new regulations that migrate calculations based on wireline providers' revenues to subscribers until the shift from revenues to numbers takes place for universal service (USF) purposes.

I. Regulatory Parity Requires That All Competing Video Providers Pay Equivalent Fees.

The Commission has repeatedly recognized the importance of parity among direct competitors offering the same service. For example, the Commission recently prohibited exclusive contracts for telecommunications services in apartment buildings on the ground that

³ See FNPRM ¶ 47 (“Presently, ILECs that provide video service are not subject to regulatory fees for their video service, unless they are classified as a cable provider.”).

such an “order provides regulatory parity between telecommunications and video service providers in the increasingly competitive market for bundled services.”⁴ Moreover, in the broadband context, the Commission has identified the importance of adopting rules that further “the goal of developing a consistent regulatory framework across platforms by regulating like services in a similar functional manner.”⁵ And, in the context of wireless broadband Internet access, the Commission established a regulatory approach that “furthers [its] efforts to establish a consistent regulatory framework across broadband platforms by regulating like services in [a] similar manner.”⁶ The Commission’s rationale for regulatory parity is simple: “All market players deserve the certainty and regulatory evenhandedness necessary to spark investment, speed competition, empower consumers, and make America a stronger player in the global economy.”⁷

Under the Commission’s current regulatory fee methodology, parity does not exist among providers of video services.⁸ Competing video providers are assessed different fees depending on whether they fall under the regulatory classification of cable providers or not – a fact that has

⁴ News Release, *FCC Bans Exclusive Contracts For Telecommunications Services In Apartment Buildings*, WC Docket No. 99-217 (Mar. 19, 2008).

⁵ Report and Order and Notice of Proposed Rulemaking, *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, 20 FCC Rcd 14853, ¶ 1 (2005), *petitions for review denied*, *Time Warner Telecomms. v. FCC*, 507 F.3d 205 (3d Cir. 2007); *see also id.* ¶ 17 (describing its regulatory goal of “crafting an analytical framework that is consistent, to the extent possible, across multiple platforms that support competing services”).

⁶ Declaratory Ruling, *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, 22 FCC Rcd 5901, ¶ 2 (2007) (“Broadband Declaratory Ruling”).

⁷ Statement of Commissioner Robert M. McDowell, *attached to* Broadband Declaratory Ruling.

⁸ The existing disparity in regulatory fees for competing video providers is not new. NCTA first brought this issue to the Commission’s attention in comments filed in 2005. *See generally* National Cable & Telecommunications Association, Comments, *Assessment and Collection of Regulatory Fees for Fiscal Year 2005*, MD Docket No. 05-59 (“NCTA Comments”) (March 8, 2005).

little to no relevance to the Commission's regulatory efforts. A closer examination of the variation of the assessed fees makes clear that the Commission must rectify its disparate treatment of video competitors.

Specifically, operators of cable television systems are assessed regulatory fees of 80¢ per subscriber (based on subscribers as of December 31, 2007) for FY 2008. By contrast, DBS providers are assessed fees of \$119,300 per space station license (as of October 1, 2007) and \$195 per earth station. In order to compare the two fees, the DBS fees must be calculated on a per subscriber basis. According to their own reported data, DirecTV owned or leased 10 satellites⁹ while DISH Network (owned by Echostar) owned or leased six.¹⁰ As a result, DirecTV will pay regulatory fees around \$1.2 million, and DISH Network will pay fees just over \$715,000.¹¹ At the end of 2007, DirecTV had over 16.8 million subscribers,¹² and DISH Network had around 13.8 million subscribers.¹³ Therefore, on a per subscriber basis, DirecTV's regulatory fees are approximately 7¢, and DISH Network's fees are around 5¢. While these fees are far lower than 80¢, at least these competitors are required to pay some fee to the Commission. Video providers other than cable providers and DBS providers – a category that includes providers of Internet Protocol TV (IPTV) – are not assessed regulatory fees at all.

⁹ See DirecTV 10-K Annual Report (December 31, 2007) (“DirecTV 2007 10-K”) at 8, <http://www.secinfo.com/dVut2.t1K1.htm>.

¹⁰ See DISH Network, http://www.dishnetwork.com/content/about_us/our_satellites/index.shtml.

¹¹ These figures omit the nominal fee per earth station that DBS providers must also pay because the number of DirecTV's and DISH Network's earth stations is not readily available. However, it is unlikely that the inclusion of these fees would increase the per subscriber fees calculated above such that they would come close to 80¢.

¹² See DirecTV 2007 10-K at 3.

¹³ See DISH Network 10-K Annual Report (December 31, 2007) at 1, <http://files.shareholder.com/downloads/DISH/406110750x0xS1140361%2D08%2D4989/1001082/filing.pdf>.

This unequal treatment of video providers cannot be justified under the statutory requirement that the Commission must consider its costs to regulate and the benefits of its regulations when assessing fees.¹⁴ Recent Commission activity has affected video providers relatively equally. For instance, the Commission has attempted to foster competition among video providers by restricting limitations on program access and by banning exclusive contracts with multiple dwelling units (MDUs).¹⁵ These orders particularly benefit DBS providers and new entrants like IPTV providers as they prohibit incumbent cable companies from unreasonably excluding their competitors from programming and potential customers. Moreover, the Commission has imposed substantial DTV education requirements on all video providers and is currently considering implementing a quiet period for must-carry/retransmission consent during the DTV transition to benefit all video providers.¹⁶ The Commission is also considering imposing two-way plug-and-play standards on all video providers.¹⁷ In addition to recent

¹⁴ See 47 U.S.C. § 159.

¹⁵ See Fourth Report and Order and Further Notice of Proposed Rulemaking, *The Commission's Cable Horizontal and Vertical Ownership Limits; Implementation of Section 11 of the Cable Television Consumer Protection and Competition Act of 1992; Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996; Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests; Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry Reexamination of the Commission's Cross-Interest Policy*, 23 FCC Rcd 2134 (2008); Report and Order, *Promotion of Competitive Networks in Local Telecommunications Markets*, 23 FCC Rcd 5385 (2008).

¹⁶ DTV Consumer Education Order ¶¶ 38-45; Cequel Communications, LLC d/b/a Suddenlink Communications et al, Petition for Expedited Rulemaking, *Establishment of a Digital Transition Quiet Period for Retransmission Consent*, Docket No. PRM08MB (April 24, 2008).

¹⁷ Third Further Notice of Proposed Rulemaking, *Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment*, 22 FCC Rcd 12024 (2007).

Commission activity, examples of regulatory action in 2005 that affected and benefited all video providers can be found in NCTA's previously filed comments.¹⁸

Nor does the disparate treatment of competitors make sense in today's marketplace. DBS providers are no longer small enterprises struggling to enter a marketplace. In fact, both DirecTV and DISH Network have more subscribers than all but two cable providers, and together they have over *twenty* times the number of Verizon subscribers. Yet Verizon, which had around 943,000 subscribers at the end of 2007,¹⁹ will pay higher regulatory fees for its video services than DISH Network (with about 13.8 million subscribers).

Finally, arguments that video providers classified as cable providers require more Commission oversight cannot withstand scrutiny. While incumbent cable operators typically require more oversight to protect consumers and to ensure that the market is opened to competition, once Verizon began offering cable services and acquiring cable franchises, legacy cable operators are no longer the only cable providers. The imposition of higher regulatory fees for only those video providers that offer cable services would penalize a company attempting to get a toehold in the market through a cable franchise.

As the Commission correctly observed, "From the customer's perspective, there is likely not much difference between IPTV and other video services, such as cable service."²⁰ The same is true for DBS video service. By imposing equal per subscriber fees on all video providers, the Commission would eliminate the artificial cost advantage enjoyed by some competitors and encourage robust competition on the merits of competitors' offerings and prices, all of which redound to the benefit of consumers.

¹⁸ See NCTA Comments at 7-9.

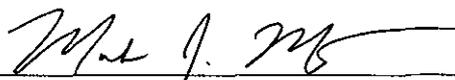
¹⁹ See "Verizon Caps Successful Year With Strong 4Q Results," <http://investor.verizon.com/news/view.aspx?NewsID=885> (Jan. 28, 2008).

²⁰ FNPRM ¶ 48.

II. Conclusion

The Commission should encourage parity by assessing competing providers of services equivalent fees.

Respectfully submitted,

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