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BY ELECTRONIC FILING

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20054

Re: *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*,
MD Docket No. 08-65, RM No. 11312

Dear Ms. Dortch:

Yesterday, Linda Kinney of DISH Network, Stacy Fuller of DIRECTV, Inc. ("DIRECTV"), and Michael Nilsson of Harris, Wiltshire & Grannis LLP on behalf of DIRECTV met with Roland Helvajian and Mika Savir of the Office of Managing Director to discuss regulatory fees. The discussion reflected the attached talking points. We also distributed a copy of *COMSAT Corp. v. FCC*, 114 F.3d 223 (D.C. Cir. 1997), which held that Section 9(b)(3) of the Communications Act "clearly limits the Commission's authority to promulgate amendments" to the regulatory fee schedule to those "imposed in response to any such 'rulemaking proceeding[] or change[] in law.'" *Id.* at 225.

If you have any questions, please do not hesitate to contact me.

Respectfully submitted,

/s/

Michael Nilsson
Counsel for DIRECTV, Inc.

Cc: Roland Helvajian
Mika Savir

REGULATORY FEES

I. Cable Has Not Met the Legal Standard for Amending the Schedule of Regulatory Fees

- A. Section 9 of the Communications Act provides that the Commission may amend the GSO fee schedule only if the following is true:
 - i. new rulemaking proceedings or changes of law . . .
 - ii. have caused additions, deletions, or changes to the nature of the GSO service category such that . . .
 - iii. the GSO fee no longer reasonably relates to . . .
 - iv. the regulatory costs caused by the GSO service for certain regulatory activities, as those costs may be “adjusted” by the benefits to GSO operators of such activities.
- B. Only two years ago, the Commission found cable “[had] not shown that the requirements of section 9 would be better satisfied by the reclassification of DBS and the assessment of the DBS fee on a per subscriber basis.”
- C. There have been no significant new rulemaking proceedings or changes of law since then. Nor has cable presented any other legitimate reason to revisit this decision.
- D. On this record, the Commission lacks authority to amend the schedule.

II. Cable’s “Regulatory Parity” Arguments are Baseless

- A. The mere fact that DBS competes with one part of the cable bundle is irrelevant. Many services compete with one another – but this is not the basis on which Congress allows changes to the regulatory fee schedule.
- B. In 1996, the Commission found that “the number of subscribers to a DBS service does not significantly affect the regulatory costs arising from DBS services.” This is still true today.
- C. Regulatory fees must relate to *regulatory costs, as “adjusted” by benefits*. On this score, cable operators and DBS operators are in very different positions.

- i. There are two DBS operators. There are 942 cable operators and 6,635 cable systems. Signal leakage reports alone for these systems generated more than 200,000 pages of filings last year.
- ii. Cable operators are now leaders in the residential broadband market. Comcast's network management practices proceeding generated over 43,000 pages of regulatory submissions since the proceeding began. This is 14 times the number of pages submitted in the only two significant satellite-specific proceedings conducted during the same time period.
- iii. Most cable operators are dominant incumbents – and as such, are subject to unique regulation. Time Warner Cable alone served DIRECTV with approximately 5,000 pages of effective competition petitions this year.
- iv. Any regulatory fee “disparity” merely reflects a disparity in regulatory burdens caused by the two industries.

III. Cable Has Not Detailed How Its Proposal Would Work

- A. Would DBS operators be required to pay *both* “MVPD” and GSO fees?
- B. If not, would other GSO operators have to pay more to make up the shortfall?
- C. How would regulatory fees work for hybrid satellites that offer both direct-to-home video and other services?
- D. Who would be part of a new “MVPD” category? (Wireless providers? Broadcasters? Internet-based services?) If not, the category would be perpetually under-inclusive and would fail even the misleading “parity” demand of cable providers.