

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

In the Matter of)	
)	
Assessment and Collection of Regulatory Fees For Fiscal Year 2013)	MD Docket No. 13-140
)	
Procedures for Assessment and Collection of Regulatory Fees)	MD Docket No. 12-201
)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2008)	MD Docket No. 08-65
)	

To: Secretary, Federal Communications Commission
Attn: The Commission

REPLY COMMENTS OF ECHOSTAR CORPORATION & DISH NETWORK L.L.C.

EchoStar Satellite Operating Company and Hughes Network Systems, LLC (“Hughes”) (together “EchoStar”), and DISH Network L.L.C. (“DISH”), pursuant to Section 1.415 of the Commission’s Rules (47 C.F.R. § 1.415), hereby reply to initial comments in the Commission’s above-captioned proceedings on the collection of regulatory fees for Fiscal Year (FY) 2013.¹ The majority of commenters agree with the positions set forth by EchoStar and DISH in their initial comments that the Commission should adopt its proposed changes in the allocation of Full Time Equivalent (“FTEs”) for FY2013, reject the idea of adopting new categories of revenue-based regulatory fees, limit the impact of year-over-year increases in fees, maintain the current methodology for collecting fees from direct broadcast satellite (“DBS”) licensees and reject imposition of regulatory fees on non-U.S. licensed satellite

¹ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2013 et al.*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, MD Docket Nos. 13-140, 12-201 and 08-65, FCC 13-74, *slip op.* (released May 23, 2013) (“*NPRM*”).

networks. These reply comments respond to the smattering of dissenting opinions that were at variance with these predominant, near-consensus views.

**I. THE COMMISSION SHOULD ADOPT THE FTE REALLOCATION
ADVANCED IN THE NOTICE OF PROPOSED RULEMAKING**

In the *NPRM*, the Commission stated, based on a detailed analysis of International Bureau activities, that “fairness warrants an allocation [of FTEs] that more closely reflects the appropriate proportion of direct costs required for regulation and oversight of International Bureau regulates.”² As a result it concluded that a total of 27 FTEs actually involved in regulation and oversight of International Bureau regulatees should be considered in the direct allocation of FTEs to these licensees for regulatory fee purposes.³ Most commenters agree with the proposed modification as a necessary adjustment that takes into account the International Bureau’s varied, pan-industry responsibilities, and equitably allocates to entities licensed by the International Bureau only those costs attributed to the continuing regulation of these licensees.⁴ A few commenters, each representing the interests of a particular industry segment not subject to direct International Bureau regulation, argue against this modification on one of two contradictory grounds.

A single commenter, the United States Telecom Association (“USTelecom”), argues that the Commission has gone too far in refining its allocation of FTEs within the International Bureau. USTelecom does not contest the accuracy of the Commission’s reallocation of FTEs,

² *NPRM* at 9 (¶ 18).

³ *Id.* at 13-14 (¶ 28).

⁴ *See, e.g.*, Comments of the Satellite Industry Association, MD Dkt. No. 13-140 *et al.*, at 4-9 (filed June 19, 2013); Comments of Intelsat License LLC, MD Dkt. No. 13-140 *et al.*, at 2-3 (filed June 19, 2013). *See also* Comments of the Independent Telephone & Telecommunications Alliance, MD Dkt. No. 13-140 *et al.*, at 2 (filed June 19, 2013) (offering support for the Commission’s FTE reallocation generally).

but instead makes the unfounded assertion that endeavoring to determine the activities engaged in by individual FCC Divisions is the same as requiring individual employees to keep timesheets.⁵ There is no basis for this assertion as such an employee-level approach bears no resemblance to the analysis actually undertaken in the *NPRM*, where the Commission simply looked at the identifiable activities undertaken by individual Divisions within the International Bureau. This type of information is readily available to the FCC, and involves objective analysis, not detailed and cumbersome record-keeping and examination.

In lieu of the actual FTE breakdown underpinning the *NPRM* proposal, USTelecom suggests that the Commission revert to its abandoned 2012 proposal to increase fees charged to International Bureau regulatees, and then simply cut it in half.⁶ But this arbitrary revision of the deeply flawed 2012 *NPRM* proposal is both without supporting justification and contrary to the careful analysis that the Commission has already undertaken in the current *NPRM*. It would be contrary to the Administrative Procedure Act for the Commission to reject its own carefully considered and fact-based revision of the FTE allocation in favor of USTelecom's unsubstantiated proposal.⁷

Two other industry trade associations, CTIA – The Wireless Association (“CTIA”) and the National Association of Broadcasters (“NAB”), take an alternative view, which should be

⁵ Comments of the United States Telecom Association, MD Dkt. No. 13-140, at 7 (filed June 19, 2013) (“USTelecom Comments”).

⁶ USTelecom Comments at 6.

⁷ An “agency must examine the relevant data and articulate a satisfactory explanation for its action[,] including a rational connection between the facts found and the choices made.” *Motor Vehicles Mfg. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). *See also* 5 U.S.C. § 706(2)(a).

similarly rejected as unjustified.⁸ While EchoStar and DISH agree that the Commission should undertake further refinements in its regulatory fee methodology,⁹ the fact that it has not yet examined all bureaus on a division or branch level should not prevent the Commission from adopting the more granular allocation of FTEs that the Commission has correctly proposed in the *NPRM*. Extension of the principles outlined in the *NPRM*'s discussion of FTE allocation is likely only to result in a further modest reduction of FCC costs attributable to satellite licensees, so that the partial reallocation of FTEs is simply a necessary interim step toward the optimal allocation of FCC regulatory costs.¹⁰ No vaguely conceived "fairness" rationale justifies any delay in its implementation.

II. THE COMMISSION SHOULD REJECT CHANGES SUGGESTED IN ITS FURTHER NOTICE OF PROPOSED RULEMAKING

A. The Commission Should Not Alter The Methodology for Collecting Fees from Direct Broadcast Satellite Licensees.

In their initial Comments, EchoStar and DISH, as well as DirecTV, demonstrated that there is no basis for reclassifying DBS licensees for fee purposes.¹¹ The only two commenters

⁸ See Comments of the National Association of Broadcasters, MD Dkt. No. 13-140 *et al.*, at 4 (filed June 19, 2013) ("NAB Comments"); Comments of CTIA – The Wireless Association, MD Dkt. No. 13-140 *et al.*, at 10-11 (filed June 19, 2013).

⁹ EchoStar/DISH Comments at 7.

¹⁰ In this connection, however, the North American Submarine Cable Association ("NASCA") has not made an affirmative case for reduction of submarine cable fees for FY2013. Its assertion that it pays 2.8 percent of all annual regulatory fees is at odds with the data provided in the *NPRM*, exceeding the FCC's own estimate by more than twenty percent (20%). Compare Comments of the NASCA, MD Dkt. 13-140 *et al.*, at 8-9 (filed June 19, 2013) with *NPRM* at 13 (¶ 27) and *Procedures for Assessment and Collection of Regulatory Fees*, 27 FCC Rcd 8458, 8463 (Table 1) (2012). Accordingly, NASCA's fee calculation cannot be credited without further Commission scrutiny and analysis.

¹¹ EchoStar/DISH Comments at 18-20; DirecTV Comments at 1-20.

that express a different view fail to provide any support for their position.¹² EchoStar and DISH demonstrated in their initial Comments that what counts in determining whether two services should pay similar fees is not whether they offer comparable services to end users, but whether the actual regulatory burdens imposed by the regulated aspects of each payor category's regulated businesses are themselves equivalent.¹³ To show that an additional or modified fee category is warranted, a proponent of such change must affirmatively demonstrate that there has been a significant revision in the regulatory activities necessary to oversee this category of licensees, and that this revised approach alters the costs incurred to regulate the entities involved. No such showing is offered by these commenters.

It is not determinative that aspects of DBS operations are regulated by the Media Bureau. This, by itself, does not establish that the Bureau devotes significant regulatory staff resources to DBS providers, in comparison to those directed to regulation of cable providers, or that there is any significant change in the regulatory burden imposed by DBS since Congress established the fee schedule. Such a demonstration would be required under Section 9 of the Act in order to reclassify DBS under a new MVPD category.¹⁴ Media Bureau activities relating to DBS are certainly no greater than they were when the current fee structure was established in 1993.¹⁵ Of the three relatively recent statutory changes affecting DBS providers,

¹² Comments of American Cable Association, MD Dkt. No. 13-140 et al., at 15 (filed June 19, 2013); Comments of AT&T Services, Inc., MD Dkt. No. 13-140 *et al.*, at 5 (filed June 19, 2013).

¹³ See EchoStar/DISH Comments at 19-20.

¹⁴ See 47 U.S.C. § 159(b)(3); EchoStar/DISH Comments at 19.

¹⁵ For example, the most significant Media Bureau regulatory proceeding focused on DBS in the past two decades was initiated in 1993, and completed in 2004. See *Direct Broadcast Satellite Public Service Obligations*, Notice of Proposed Rule Making, 8 FCC Rcd 1589 (1993); *Direct Broadcast Satellite Public Service Obligations*, Second Order on Reconsideration, 19 FCC Rcd 5647 (2004). Notably, the most frequent mention of "DBS" in

one is merely the latest incarnation of satellite legislation that has been in place since that late 1980s,¹⁶ and the other two adopt important technical standards that industry is well-prepared to implement,¹⁷ and will require FCC oversight of the DBS industry only in proportion to the number of DBS operators impacted (two vs. 1,141 cable operators and 6,635 cable systems).¹⁸ Accordingly, the arguments advanced by ACA and AT&T should be rejected as baseless.

B. The Commission Should Reject Imposition of Regulatory Fees on Non-U.S.-Licensed Satellite Networks.

As demonstrated in the EchoStar/DISH Comments, as well as those submitted by several other parties, there is no basis to extend regulatory fees to foreign licensed satellites.¹⁹ Accordingly, Intelsat's solitary comments supporting that view should be rejected.²⁰ Whether some benefits may accrue to a particular group is not the correct threshold in determining whether a regulatory fee is appropriate; benefit itself is merely an adjustment factor to be applied once a regulatory fee has been applied to a category of regulated entities.²¹ To be

Media Bureau decisions over the past decade by a substantial margin is in connection with the many effective competition petitions filed by major cable operators, a context that has nothing to do with DBS regulation and everything to do with the Bureau's allocation of resources to oversight of the cable industry, the dominant service category in the MVPD market. *See also* Hot Dockets in the Media Bureau at <http://apps.fcc.gov/ecfs/bureau/view?code=MB> (no current proceedings listed that are specifically focused on DBS or individual DBS providers).

¹⁶ *See* Satellite Television Extension and Localism Act of 2010, Pub. L. No. 111-175, 124 Stat. 1218 (2010) and Satellite Home Viewer Act of 1988, Title II, Pub. L. No. 100-667, 102 Stat. 3935, 3949 (1988).

¹⁷ *See* Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010); Commercial Advertisement Loudness Mitigation Act, Pub. L. No. 111-311, 124 Stat. 3294 (2010).

¹⁸ *See NPRM* at 21 (¶ 51); *see also* DirecTV Comments at 8-12.

¹⁹ *See, e.g.,* Comments of SES Americom, Inc., Inmarsat, Inc. and Telesat Canada, MD Dkt. No. 13-140 *et al.*, at 2-11 (filed June 19, 2013).

²⁰ *See* Comments of Intelsat License LLC, MD Dkt. 13-140 *et al.*, at 4 (filed June 19, 2013) ("Intelsat Comment").

²¹ *See* 47 U.S.C. §§ 159(a)(1) & (b)(1)(A).

assessed a regulatory fee, an entity must be regulated by the Commission. Congress made this very clear, with particular reference to satellite operators, when it stated in proposing the initial regulatory fee structure that “these fees will only apply to space stations directly licensed by the Commission under Title III of the Communications Act.”²² Accordingly, applying regulatory fees to non-U.S.-licensed satellite operators would be unlawful.

The Congressional mandate not to charge fees to operators licensed by other administrations is grounded in important practical considerations. As EchoStar and DISH detailed in their initial comments, the Commission has consistently upheld U.S. policy not to engage in re-licensing of non-U.S. satellite operators.²³ In addition to complying with the United States’ WTO commitments, this policy advances the interests of U.S. satellite service providers by insulating them from facing reciprocal demands to submit to the licensing processes or cost-recovery programs of foreign administrations which could lead to increased costs to U.S. consumers. This is the reason that the FCC requires non-U.S. operators seeking to offer services to U.S. consumers only to seek a Declaratory Ruling or support a customer’s satellite Earth station application as a means of gaining market access.²⁴ Charging a regulatory fee to these companies would undermine the sound decision not to require a fee for declaratory rulings seeking to add satellites to the FCC’s Permitted List.

²² See H.R. Rep. No. 102-207, at 26 (1991). This House Report dealt fully with the rationale and legal underpinning of the FCC regulatory fee schedule when passed by the House in the 102nd Congress. The report was incorporated by reference in its entirety into the conference report on the legislation that ultimately adopted Section 9 of the Act in 1993 during the 103rd Congress. See Conf. Rep. 103-213, at 449 (1993). See also EchoStar/DISH Comments at 15.

²³ EchoStar/DISH Comments at 15-17.

²⁴ See, e.g., *Amendment of the Commission’s Regulatory Policies to Allow Non-U.S. Licensed Satellites Providing Domestic and International Service in the United States et al.*, 12 FCC Rcd 24094, 24174 (¶ 188) (1997) (“We will not issue a separate, and duplicative, U.S. license for a non-U.S. space station. Issuing a U.S. license would raise issues of national comity, as well as issues regarding international coordination responsibilities for the space station”).

Finally, Intelsat is incorrect in its assertion that many non-U.S. satellite operators actively participate in rulemaking proceedings.²⁵ Intelsat disregards the fact that entities it references as holders of foreign-issued authorizations are also holders of U.S. authorizations for satellite space stations, earth stations, or both.²⁶ Most companies that have satellites on the Ku-band Permitted List, for example, rarely, if ever, participate in the U.S. regulatory process.²⁷ Accordingly, any rule change requiring non-U.S. satellite operators that gain access to the U.S. market be assessed FCC regulatory fees would be both unlawful and imprudent, and should be rejected.

²⁵ Intelsat Comments at 4-5.

²⁶ Intelsat refers to SES Americom, Inc. (“SES Americom”), New Skies Satellites B.V. (“New Skies”) and O3b Limited, as well as Inmarsat, as having participated in last year’s Part 25 rulemaking. SES Americom, in fact, has a much longer corporate history as a U.S. satellite license than does Intelsat. New Skies, while not a U.S. licensee, is under common control with SES Americom.

²⁷ Companies with U.S. market access that are rarely, if ever, participants in U.S. regulatory proceedings, include Eutelsat S.A., Hispasat S.A., MEASAT Satellite Systems Sdn. Bhd, (formerly Binariang Satellite Systems Sdn. Bhd), Satélites Mexicanos (SatMex), Space Communications Corporation, and Star One.

III. CONCLUSION

For the foregoing reasons, EchoStar and DISH urge the Commission to act favorably on the FTE reallocation proposed in the *NPRM* for this fiscal year, and to reject for this or any fiscal year both adoption of a new fee category or methodology for DBS providers or imposition of satellite regulatory fees on non-U.S. licensed operators.

Respectfully submitted,

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