

**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
	)	
Procedure 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
	)	

**REPLY COMMENTS**



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The American Cable Association (“ACA”) submits these reply comments in response to the Commission’s Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking and comments filed in the above-captioned dockets.<sup>1</sup>

**I. IPTV SERVICE PROVIDERS SHOULD BEGIN PAYING REGULATORY FEES IN FY 2014 BASED ON THEIR NUMBER OF VIDEO SUBSCRIBERS**

Internet Protocol Television (“IPTV”) providers offer a service that is substantially similar to cable service and should pay regulatory fees commensurate with those paid by cable operators to cover their share of the costs of Media Bureau activities. AT&T, which offers an IPTV service, submitted comments consistent with ACA’s position, suggesting that regulatory fees could be assessed on IPTV providers who do not currently pay regulatory fees for their Multichannel Video Programming Distributor (“MVPD”) service by using a broader fee category than the “Cable TV System” fee category currently in use.<sup>2</sup> ACA recognizes that some IPTV providers, like AT&T, have taken the position that their MVPD service is not a “cable service” as defined in the Act, and in this proceeding ACA does not seek or believe it necessary for the Commission to rule on whether AT&T’s legal interpretation is correct.<sup>3</sup> Accordingly, for the purpose of achieving greater fairness in the regulatory fee system, ACA suggests that the Commission assess fees on all IPTV providers by amending the current title of the “Cable TV System” fee category to include “IPTV providers.” That is,

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<sup>1</sup> *Assessment and Collection of Regulatory Fees, Assessment and Collection of Regulatory Fees for the Fiscal Year 2013, Assessment and Collection of Regulatory Fees for the Fiscal Year 2008*, MD Docket Nos. 12-201, 13-58, 08-65, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 13-74 (rel. May 23, 2013) (“NPRM or FNPRM”).

<sup>2</sup> Comments of American Cable Association at 2-9 (“ACA Comments”); Comments of AT&T at 4-5 (“AT&T Comments”).

<sup>3</sup> See AT&T Comments at 4-5. While AT&T does not quarrel with paying its fair share of Media Bureau costs, it disputes that its U-Verse TV service is a “cable service” provided over a cable TV system. *Id.* at 5. To be clear, and as noted in ACA’s comments, ACA does not take a position on whether AT&T’s U-Verse TV service should be classified as a “cable service” for any regulatory purposes. ACA Comments at 3 n.5. Some IPTV providers consider themselves to be cable operators and already pay regulatory fees on that basis. ACA’s recommendation is simply to bring in IPTV providers who do not make such payments, like AT&T, to the regulatory fee base. ACA also does not take a position whether over-the-top providers of video programming services should be assessed regulatory fees.

the relevant fee category title should be restyled: “Cable TV Systems and Internet Protocol TV Providers.”<sup>4</sup> Such an amendment could be implemented simply and would result in IPTV providers that do not consider themselves to be offering a cable service paying regulatory fees commensurate with those paid by cable operators starting with FY 2014.<sup>5</sup> ACA further agrees with AT&T’s suggestion that IPTV providers, like cable operators, should only pay fees to support Media Bureau FTEs based on the number of video subscribers that they have.<sup>6</sup>

## **II. DBS OPERATORS FAIL TO PROVIDE ANY COMPELLING JUSTIFICATION FOR NOT PAYING THEIR FAIR SHARE TO SUPPORT MEDIA BUREAU REGULATION**

DirecTV repeats its previous unavailing arguments about why DBS providers should not pay regulatory fees on the same basis as cable operators and EchoStar’s arguments largely reflect these points as well.<sup>7</sup> ACA’s comments completely addressed these arguments.<sup>8</sup> However, a few points raised by DirecTV merit a brief additional response.

In support of its theory that insufficient changes in law and regulation have occurred to permit the Commission to assess fees from DBS providers to support Media Bureau FTEs, DirecTV contends that the Commission has made a “specific choice” to maintain the “disconnect between DBS per-satellite payments and Media Bureau” regulation since at least 1996 and that “nothing of consequence has changed” to disturb this choice.<sup>9</sup> DirecTV underestimates the changes to DBS regulation that have occurred during the past 17 years and neglects to acknowledge factors that the Commission may properly consider in setting its regulatory fees.

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<sup>4</sup> See NPRM, Attachments A1, B1, A2, B2, C. We acknowledge that using the descriptor “Cable TV Systems and Internet Protocol TV Providers” would be redundant for those IPTV providers who consider themselves to be cable operators.

<sup>5</sup> See NPRM, ¶ 37.

<sup>6</sup> See AT&T Comments at 5.

<sup>7</sup> See Comments of DIRECTV LLC at 1-20 (“DirecTV Comments”); Ex Parte Response of DIRECTV, LLC, MD Docket Nos. 12-201, 08-65 (filed Nov. 9, 2012); Comments of EchoStar Corporation and DISH Network L.L.C. at 15-20.

<sup>8</sup> See ACA Comments at 13-18.

<sup>9</sup> DirecTV Comments at 6.

The Commission's decision in 1996 to assess DBS providers regulatory fees on a per-space station, as opposed to per-subscriber basis indicates that this choice was closely linked to the applicable regulation and nascent nature of DBS service *at that time*.<sup>10</sup> The Commission's justification for imposing a per-space station fee in 1996 was heavily tied to its regulation of the satellites themselves, as opposed to the MVPD service that the licensees provided over the satellites. The Commission explained that the per-space station fees were appropriate at the time because "costs attributable to regulating DBS operators are more similar to those attributable to regulation of other geosynchronous space stations."<sup>11</sup> The Commission also emphasized the "policy and rulemaking activities" related to the DBS provider's space stations.<sup>12</sup> The Commission's conclusion in 1996 makes sense as it reflected the type of work regarding DBS that Commission FTEs performed — e.g., creating rules for DBS through orbital slot allocation, spectrum usage, and auction rules.<sup>13</sup> This point is not lost on DirecTV either as it also acknowledges that "[in] 1996, Commission was considering some of the most fundamental 'rules of the road' for the DBS service."<sup>14</sup>

Today, however, the fundamental licensing rules of the road have been set and it no longer makes sense for DBS providers to fund only International Bureau FTEs. As ACA explained in its comments, law and regulation related to DBS providers have substantially changed since the mid-1990s as DBS providers have matured into some of the largest MVPDs and Media Bureau post-licensing regulatory activity has substantially increased to regulate the service as it predominantly

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<sup>10</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 1996*, MD Docket No. 96-84, Notice of Proposed Rulemaking, 11 FCC Rcd 16515 ¶¶ 40-41 (1996) ("1996 Regulatory Fee NPRM"); *Assessment and Collection of Regulatory Fees for Fiscal Year 1996*, MD Docket No. 96-84, Report and Order, 11 FCC Rcd 18744 (1996) (incorporating without comment proposal from NPRM).

<sup>11</sup> 1996 Regulatory Fee NPRM, ¶ 41.

<sup>12</sup> *Id.*

<sup>13</sup> See, e.g., *Revision of Rules and Policies for the Direct Broadcast Satellite Service*, IB Docket No. 95-168; PP Docket No. 93-253, Report and Order, 11 FCC Rcd 9712 (1995).

<sup>14</sup> DirecTV Comments at 9 & n.32.

affects the individual subscriber's experience with the service.<sup>15</sup> The Commission recognizes in its FNPRM many of the laws and regulations enacted or substantially updated after 1996 — the Commercial Advertisement Loudness Mitigation Act, the Twenty-First Century Video Accessibility Act, as well as associated video description rules, and the program access rules.<sup>16</sup> ACA has pointed out additional changes with broadcast carriage statutes for DBS providers, and DirecTV has acknowledged them as well.<sup>17</sup> The degree to which changes in these laws have impacted the work of the Media Bureau with respect to DBS providers is an issue that the Commission can answer and set its fees accordingly; the point nevertheless remains that these changes have had an effect on the activities of Media Bureau FTEs.

Accordingly, and contrary to DirecTV's suggestion, the level of subscribership to DBS can be, and has been, a factor that the Commission considers in setting its regulatory fees.<sup>18</sup> The Commission noted that it declined to assess fees on DBS providers for FY 1995 because its "resources devoted to regulation of DBS, other than those involving application processing, were negligible and *because DBS operators then served few subscribers.*"<sup>19</sup> The Commission then justified its assessment of fees on DBS licensees in FY 1996 because the service grew and had more subscribers.<sup>20</sup> This fact alone suggests that subscriber gains are at least relevant to the regulatory fees that DBS providers may be assessed. Just because the Commission decided that in 1996 the DBS rules *then* did not "impose additional regulatory requirements on video service providers that are specifically related to the individual subscriber," does not mean that the

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<sup>15</sup> See ACA Comments at 13, 15-16; Comments of American Cable Association, MD Docket Nos. 12-201, 08-65, at 5-6, 9-12 (filed Oct. 23, 2012).

<sup>16</sup> FNPRM, ¶ 50.

<sup>17</sup> See DirecTV Comments at 10-11.

<sup>18</sup> See *id.* at 7.

<sup>19</sup> 1996 Regulatory Fee NPRM, ¶ 40 (emphasis added).

<sup>20</sup> *Id.* ("For FY 1996, ... we are proposing to assess a fee upon licensees in the DBS service since the service is operational, *servicing numerous subscribers* and, therefore, subject to the regulatory activities (additional resources devoted to policy and rulemaking, enforcement and public information) whose costs are recovered by assessment of a regulatory fee.") (emphasis added).

Commission is forever foreclosed from considering subscriber counts in the fees that these providers pay.<sup>21</sup> The Media Bureau's current focus on the individual DBS subscriber's experience substantially contrasts with the task before the International Bureau in the mid-1990s as illustrated above. The Commission can therefore appropriately consider the service's increased number of subscribers when setting fees. Specifically, as DBS providers have grown to serve over twenty times more subscribers — increasing from approximately 1.5 million subscribers in 1996 to currently serving over 34 million — the Commission has undoubtedly devoted more resources to implementing the rulemaking proceedings and changes in law that affect these very significant providers of subscription video service.<sup>22</sup>

Moreover, as DirecTV itself highlights, “DBS operators offer a single service—video.”<sup>23</sup> This concession stands in stark contrast to the Commission's rationale in 1996 when it concluded that a “facility-based” fee was, at least in part, appropriate because “DBS licensees are not restricted to the provision of video programming, but rather may provide various non-video services.”<sup>24</sup> The DBS providers' decision to concentrate their product offering on Media Bureau-regulated video service fully supports having them pay regulatory fees as other regulated video service providers. Indeed, the DBS providers' opposition to supporting the Media Bureau is ironic given that video programming regulations administered by this bureau have been credited for much of these providers' success.<sup>25</sup>

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<sup>21</sup> See *id.* at ¶ 41.

<sup>22</sup> See *id.* at ¶ 39 (“DBS service is expanding rapidly with total viewership currently estimated at 1,500,000 subscribers”); DIRECTV, SEC Form 10-Q (for the quarter ending Mar. 31, 2013), at 37 (DIRECTV U.S. with 20.1 million subscribers); DISH Network Corporation, SEC Form 10-Q (for the quarter ending Mar. 31, 2013), at 4 (DISH Network with 14.092 million subscribers in the U.S.). The number of DBS subscribers has also grown over 25 percent from its level in 2006 of slightly more than 27 million subscribers. See DIRECTV HOLDINGS LLC, DIRECTV FINANCING CO., INC., SEC Form 10-K (for the year ending December 31, 2005), at 30 (DIRECTV with 15.133 million subscribers); EchoStar Communications Corporation, SEC Form 10-K (for the year ending Dec. 31, 2005), at 1 (DISH satellite service with 12.040 million subscribers).

<sup>23</sup> DirecTV Comments at 18.

<sup>24</sup> See 1996 Regulatory Fee NPRM, ¶ 41.

<sup>25</sup> See *Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements*, First Report and Order, 25 FCC Rcd 746 ¶ 4 & n.16 (2010) (“Competitors to incumbent cable operators widely credit the program access rules for this increase in competition.”), citing *Implementation of the*

In contrast to the constraint that the Commission had in 2006 when it did not “have sufficient time available to modify” its rules, the Commission has appropriately introduced this issue in its FNPRM and can now devote the time and resources to fully consider and resolve this on-going debate.<sup>26</sup> The law and regulation of DBS providers concerning their MVPD service has dramatically changed since 1996, as well as from 2006, and the Commission has ample authority to reform the fees applicable to DBS providers given the regulatory costs they impose on Media Bureau FTEs and the benefits they receive. Further, this much-needed regulatory reform will ensure regulatory parity between cable operators and DBS providers. To the extent that cable operators receive disproportionate benefits or regulation relative to DBS providers, the Commission is capable of addressing this issue through appropriate adjustments in its rate-setting process.

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*Cable Television Consumer Protection and Competition Act of 1992 -- Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act: Sunset of Exclusive Contract Prohibition*, CS Docket No. 01-290, Report and Order, 17 FCC Rcd 12124 ¶ 65 n.205 (2002) (stating that DBS operators credit the exclusivity prohibition in making DBS a competitive option to cable); *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Fourth Annual Report, 13 FCC Rcd 1034, 1149 ¶ 230 (1998) (stating that the program access rules have been credited as having been a necessary factor in the development of both the DBS and the Multichannel Multipoint Distribution Service industries).

<sup>26</sup> See FNPRM, ¶¶ 50-52; *Assessment and Collection of Regulatory Fees for Fiscal Year 2006*, MD Docket No. 06-68, Report and Order, 21 FCC Rcd 8092 ¶ 16 (2006).

### III. CONCLUSION

Reform of the Commission's regulatory fee program is long overdue. ACA commends the Commission for taking significant steps toward modernizing and rationalizing this program, and urges it to adopt the foregoing recommendations aimed at ensuring greater fairness in fee assessments.

Respectfully submitted,

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