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July 12, 2013

Via ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **American Cable Association Notice of Ex Parte Presentation – Assessment and Collection of Regulatory Fees for Fiscal Year 2013, Procedures for Assessment and Collection of Regulatory Fees, Assessment and Collection of Regulatory Fees for Fiscal Year 2008; MD Docket Nos. 13-140, 12-201, 08-65**

Dear Ms. Dortch:

On July 11, 2013, Ross Lieberman, Vice President of Government Affairs, American Cable Association ("ACA") and the undersigned, counsel to ACA, met with Mika Savir of the Enforcement Bureau, and Roland Helvajian, Thomas Buckley and Megan Hartnett, of the Office of the Managing Director, to discuss ACA's views on the above-captioned rulemaking regarding reform of the Commission's regulatory fees.[1]

During the meeting, ACA discussed its views on how the Commission's regulatory fee reform proceeding can best achieve its goals of fairness, sustainability and administrability with respect to the regulatory fee assessments placed on operators of cable systems, consistent with the comments ACA has filed in this proceeding. ACA reiterated that fairness should be the primary goal and described its recommendations that to ensure fairness and ease of administration, the Commission should (i) assess regulatory fees on providers of Internet Protocol television ("IPTV") that choose not to consider themselves cable operators for Fiscal Year 2014 in the same manner that cable operators must pay to help support the work of the Media Bureau; (ii) delay any increase in fees for cable operators as the result of any reallocation of full time equivalent employees to the Media Bureau until IPTV providers are brought into the system, and at the very least adopt the cap proposed by the Commission; and (iii) establish a new fee category for multichannel video programming distributors ("MVPDs") that will also encompass direct broadcast satellite ("DBS") to also help support the work of the Media Bureau.[2] By making these changes, beginning with those related to non-cable IPTV providers and capping Fiscal Year 2013 ("FY 2013") fee increases,

[1] *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2013, Procedures for Assessment and Collection of Regulatory Fees; Assessment and Collection of Regulatory Fees for Fiscal Year 2008; MD Docket Nos. 13-140; 12-201; 08-65*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 13-74 (rel. May 23, 2013) ("NPRM" and "FNPRM").

[2] Comments of the American Cable Association at 1-19 (filed June 19, 2013) ("ACA Comments"); Reply Comments of the American Cable Association at 1-6 (filed June 26, 2013) ("ACA Reply Comments").

particularly for cable operators, the Commission can make measureable and much-needed progress in addressing the inequities of the current regulatory fee system.[3]

ACA again noted that IPTV providers that do not consider themselves cable operators offer a service that is substantially similar to cable service and should pay regulatory fees commensurate with the per subscriber fees paid by cable operators to cover their share of the costs of Media Bureau activities. ACA observed that this is not disputed in the record. The largest non-cable IPTV provider, AT&T, acknowledges that its U-Verse video service is an MVPD service and that as an MVPD, it should pay regulatory fees to support Media Bureau FTEs, as does new IPTV entrant, Google Fiber.[4] ACA noted that addressing this issue would create a more equitable system for many cable operators who compete head-to-head against these IPTV providers.

ACA stated that it strongly supports the eventual creation of a new regulatory fee category for all MVPDs, including both IPTV operators that do not deem themselves cable operators and DBS providers and acknowledged that this would be one way to address the current inequity of cable operators cross-subsidizing competitors (including IPTV providers that elect not to call themselves cable providers) in the video distribution market. ACA, however cautioned that creation of an MVPD fee category should not serve as a reason to delay taking the simpler and immediate step of assessing Media Bureau regulatory fees on non-cable IPTV providers, as the NPRM proposes.[5] ACA reiterated its recommendation that the Commission may easily amend the current fee category to add IPTV providers that elect not to consider themselves cable operators by simply restyling the category: "Cable TV Systems and Internet Protocol TV Providers."[6] By doing so, the Commission can immediately take a "baby step" toward spreading the Media Bureau fee burden more fairly across competing providers while permitting the Commission adequate time to examine the larger and more complex question of how best to assess Media Bureau regulatory fees on *all* MVPDs.

Finally, ACA stressed the critical need, in light of the anticipation of *lowered* future cable per subscriber regulatory fees, for the Commission to limit interim FY 2013 fee increases for cable operators that will arise from the Commission's use of updated FTE counts and its reallocation of FTEs from the International Bureau to the Media Bureau.[7] ACA affirmed that without the proposed 7.5% cap on FY 2013 fee increases, smaller cable operators could face financial hardship. Many small cable systems are already operating under severe financial constraints in a difficult economy and significant unbudgeted increases in operating costs, even increases that might appear small

[3] *See* GAO, *Federal Communications Commission Regulatory Fee Process Needs to Be Updated*, GAO 12-686, at 17, 18 (released Aug. 10, 2012) ("if [the FCC's] division of fees among fee categories is misaligned with its FTEs by fee category, then some entities are most likely overpaying, essentially cross-subsidizing entities in other fee categories, which are underpaying;" one effect of cross-subsidization "is that, if entities in different fee categories are directly competing for the same customers, cross subsidization could result in competitively disadvantaging entities in one fee category over another.").

[4] Comments of AT&T at 5 (filed June 19, 2013) ("If the Commission concludes that it is necessary to revamp its regulatory fee collection process to include IPTV, it should be done in a fashion that reflects the evolving dynamic nature of the MVPD video marketplace . . . [t]o this end, the Commission should either establish a single MVPD fee category that would encompass all MVPDs (including cable operators) or establish a single 'MVPD' fee category for non-cable service MVPDs."); Reply Comments of Google Fiber at 1-2 (filed June 26, 2013) ("If the Commission finds it appropriate to assess regulatory fees on IPTV providers, it should set a per subscriber fee that equitably allocates burdens across different classes of MVPDs, commensurate with the agency's allocation of its own resources.").

[5] *See* NPRM, ¶ 37.

[6] ACA Reply Comments at 1-2.

[7] ACA Comments at 11-12.

could be the final straw. ACA noted its comments in the Commission's 15th Annual Video Competition Report proceeding detailing the recent shuttering of over 800 small cable systems.[8] ACA repeated its request that, pending reform of the Media Bureau fee payor base to include IPTV providers that do not consider themselves cable operators, the Commission at the very least cap those increases at 7.5%, and to consider not increasing fee assessments for cable operators at all for FY 2013.

If you have any questions, or require further information, please do not hesitate to contact me directly. Pursuant to section 1.1206 of the Commission's rules, this letter is being filed electronically with the Commission.

Sincerely,

Barbara Esbin

Barbara Esbin

cc (via email): Mika Savir
Roland Helvajian
Thomas Buckley
Megan Hartnett

[8] *See* Comments of American Cable Association, MB Docket No. 12-203, at 5 & n.13, 8 & n.19 (filed Sept. 10, 2012).