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August 6, 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 Aug. 5, 2013, Ross Lieberman, Vice President of Government Affairs, American Cable Association ("ACA") and the undersigned, counsel to ACA, met separately, with Matthew Berry, Chief of Staff, Office of Commissioner Pai and Valery Galasso, Confidential Assistant and Special Advisor, Office of Commissioner Rosenworcel, 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 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 ensuring greater fairness should be the Commission's primary goal, and suggested that this could be achieved by (i) assessing regulatory fees on all providers of Internet Protocol television ("IPTV") in the same manner as cable operators, related to the work done by the Media Bureau and (ii) adopting the fee increase cap proposed in the NPRM.[2] By making these changes, the Commission can make measureable and much-needed progress in addressing the inequities of the current regulatory fee system.[3]

[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, 28 FCC Rcd 7790 (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"). *See also* Letter from Barbara S. Esbin, Counsel to ACA, to Marlene H. Dortch, Secretary, FCC (July 12, 2013).

[3] *See* GAO, *Federal Communications Commission Regulatory Fee Process Needs to Be Updated*, GAO 12-686, at 17, 18 (rel. 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.").

ACA again noted that IPTV providers that do not consider themselves cable operators should pay regulatory fees that match the per subscriber fees paid by cable operators to cover the costs of Media Bureau activities. The largest of these self-described non-cable IPTV providers, AT&T, acknowledges that in its provision of the U-Verse video service, AT&T should pay regulatory fees to support Media Bureau FTEs.[4] New IPTV entrant, Google Fiber, concedes this point as well.[5] ACA stated that assessing Media Bureau fees on these IPTV providers will create a more equitable system for the many cable operators who compete head-to-head against them.

ACA urged the Commission to take this action now and reject AT&T's request that IPTV providers, like themselves, not be assessed Media Bureau fees until DBS providers can also be assessed Media Bureau fees.[6] ACA noted that AT&T neither disputes that its U-Verse service is substantially similar to cable service, nor that the Commission lacks regulatory authority to assess regulatory fees on all IPTV providers to support Media Bureau activities. AT&T's sole argument is that the Commission should not do so until all MVPDs, including DBS providers, are assessed such fees.[7] While ACA readily acknowledged that the Media Bureau fee assessments would be made even fairer by also bringing into the fold DBS providers, it urged the Commission not to wait with respect to IPTV providers that do not currently pay these fees. The question of equitably assessing Media Bureau regulatory fees on DBS providers is somewhat more complicated, and would take more time to resolve, than the question of assessing such fees on all IPTV providers who deliver multichannel video programming service over wireline networks.[8]

ACA also refuted AT&T's argument that it should not pay fees to cover Media Bureau expenses until the Commission assesses such fees on all non-cable MVPDs, notably DBS providers, because the MVPD market share of its U-Verse service is only 4.3% compared with cable's 61.64% share.[9] ACA explained that there is no exemption from paying regulatory fees to support Media Bureau activities for cable operators that have fewer than a minimum number of subscribers. Moreover, what the statistic about U-Verse's share of the total MVPD market does not say is that AT&T, now the seventh largest MVPD, serves 4.8 million video subscribers, a subscriber count nearly five times larger than that of ACA's largest member. It is also orders of magnitude higher than the average number of subscribers served by ACA's membership of approximately 850 small and mid-sized cable operators, all of whom pay yearly per subscriber regulatory fees to support Media

[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.").

[5] 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.").

[6] *See* Letter from Myra Creeks, Manager, Regulatory Relations, AT&T Services, to Marlene H. Dortch, Secretary, FCC, at 2-4 (July 29, 2013) ("AT&T July 29 Ex Parte").

[7] AT&T also half-heartedly raises "no change of law" arguments similar to those advanced by DirecTV, and answered in ACA's initial comments in this proceeding. *See* AT&T July 29 Ex Parte at 2-3; ACA Comments at 14-17.

[8] To resolve it, the Commission may also need to address the type and level of fees assessed on DBS providers as geosynchronous space station operators that support the policy and licensing activities of International Bureau FTEs. *See* Comments of DirecTV at 17, 19-20 (filed June 19, 2013); Comments of Echostar Corporation and Dish Network L.L.C at 5-8 (filed June 19, 2013).

[9] AT&T July 29 Ex Parte at 3.

Bureau regulation of all video service providers, including AT&T.[10] In fact, excluding ACA's four largest members (Mediacom, WOW!, Cable One, and RCN), AT&T U-Verse has more subscribers than all other ACA members combined.

ACA argued that the Commission's decision to defer consideration of the fact that DBS providers are not paying regulatory fees for the work of the Media Bureau in the FNPRM should not serve as a reason to delay taking the simpler and immediate step of assessing Media Bureau regulatory fees on self-described non-cable IPTV providers, as the NPRM proposes.[11] 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 slightly more complex question of how best to assess Media Bureau regulatory fees on *all* MVPDs.[12]

Finally, even assuming that AT&T's U-Verse service is brought within a Media Bureau fee category for FY 2014, ACA stressed the critical need, in light of the anticipation of *lowered* future cable per subscriber regulatory fees that will come through inclusion of all IPTV providers in FY 2014, for the Commission to limit interim FY 2013 fee increases for cable operators. Although ACA supports use of updated FTE data, and understands the rationale behind the reallocation of FTEs from the International Bureau to the Media and other Bureaus, each of these changes will cause cable fee assessments to rise in the short term.[13] 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 unbudgeted increases in operating costs, even increases that might appear small could be the final straw.[14]

[10] It is noteworthy that 82% of ACA member companies serve 5,000 or fewer subscribers, 64% serve 2,000 or fewer subscribers, and 28% serve 500 or fewer subscribers.

[11] *See* NPRM, ¶ 37.

[12] To achieve this goal, 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." ACA Reply Comments at 1-2.

[13] See NPRM, ¶ 32 (proposing, as an alternative to FY 2013 fee increases based on use of updated FTE data and reallocation of FTEs, for the interim maintaining historical allocations, with some adjustments for the ITSP category, for purposes of calculating 2013 fees).

[14] The Commission's 15th Annual Video Competition Report acknowledged the recent shuttering of over 800 small cable systems. *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 12-203, Fifteenth Report, FCC 13-99 ¶ 78 & n. 244 (rel. July 22, 2013) (acknowledging ACA's data showing that over the past five years, nearly 800 cable systems serving over 35,000 subscribers in mostly smaller and rural markets have ceased operations while noting that the Commission does not collect data on the reasons why systems close). *See also* Comments of American Cable Association, MB Docket No. 12-203, at 5 & n.13, 8 & n.19 (filed Sept. 10, 2012) (citing as potential causes for system closures rising programming costs and pole attachment fees).

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): Matthew Berry
Valery Galasso