
November 22, 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 November 20, 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, Roland Helvajian and Thomas Buckley (via teleconference), of the Office of the Managing Director, and Thomas Sullivan, Chief of Staff, International Bureau, to discuss ACA’s views on reform of the Commission’s regulatory fees.¹

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 by assessing fees to support the Media Bureau on *all* multichannel video programming distributors (“MVPDs”), consistent with the comments ACA has previously filed in this proceeding.² ACA reiterated that fairness should be the primary goal. ACA agreed with the Commission’s step toward this goal in its *2013 Regulatory Fees Order* where the cable system fee category was re-designated, consistent with ACA recommendations,³ to explicitly include non-cable IPTV providers in the category of payors supporting MVPD-related activities of the Media Bureau.⁴

¹ See *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 (rel. May 23, 2013).

² See 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”).

³ See Letter from Barbara E. Esbin, Counsel to ACA, to Marlene H. Dortch, Secretary, FCC at 2 (filed July 12, 2013) (recommending the addition of “Internet Protocol TV” providers to the Media Bureau support base to capture IPTV providers who do not deem themselves cable operators without taking a position on the appropriate regulatory classification of such providers); ACA Comments at 2-9; ACA Reply Comments at 1-2.

⁴ *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, Report and Order, 28 FCC Rcd 12351 ¶¶ 32-33 (rel. Aug. 12, 2013)

To complete the move toward fairness, ACA stressed that the Commission must proceed with the creation of a new regulatory fee category for all MVPDs, including direct broadcast satellite service (“DBS”) providers. Such a move would address the current inequity of cable and non-cable IPTV operators continuing to cross-subsidize these direct competitors in the video distribution market.⁵ ACA also emphasized the unfairness of the current fee system which requires small and mid-sized cable operators, most of whom serve rural and sparsely populated areas, to pay fees supporting Media Bureau MVPD-related regulation, while their direct and primary MVPD competitors – the DBS providers – pay nothing toward these Media Bureau costs.

In addition, meeting participants discussed reforms of the Commission’s regulatory fee program that would reduce the Commission’s administrative costs and offer fair relief for very small cable operators who use the fewest administrative resources among cable operators, and are often disproportionately burdened by regulations and regulatory fees. ACA noted that such reforms would not materially impact the revenue generated by the Commission. These alternatives included increasing the amount of the “de minimis” exemption from fee payments and/or creating a tiered fee schedule.

Meeting participants discussed a cut-off level for the de minimis exemption that would appropriately balance the following factors: reducing the Commission’s administrative costs, ensuring the Commission meets its revenue requirements, and providing relief for very small cable operators. In this regard, we note that between the ACA and National Cable Television Cooperative, these groups have 413 members that serve 1,000 or fewer subscribers among all their systems. These members cumulatively serve approximately 186,000 cable subscribers.⁶ At the current cable operator regulatory fee of \$1.02 per subscriber (a rate which is expected to decrease in 2014 due to the addition of IPTV to the cable payor category), exempting very small cable operators with 1,000 or fewer subscribers would account for less than \$190,000 of the fees collected by the Commission. This is less than 0.056% of the roughly \$339.8 million that the Commission will likely collect for FY 2014 (estimate based on FY 2013 revenue requirements). ACA explained that there are numerous ways for the Commission to recoup this sum, but the overall amount needed would be offset in part by administrative cost savings. By not subjecting these very small operators to fees, the Commission would reduce its expenditures associated with fee collection, particularly costs attributed to collecting late payments.

ACA also explained that increasing the “de minimis” exemption for cable operators with 1,000 or fewer subscribers is appropriate and fair. Within the MVPD industry, these cable operators generate the lowest administrative burden for the Media Bureau among all cable operators because of the wide variety of exemptions that apply to operators of this size; accordingly they receive the fewest benefits from the Bureau’s work. We provided several examples of exemptions that apply to only these operators.⁷

(“IPTV and cable service providers benefit from Media Bureau regulation as MVPDs. We agree that IPTV providers should be subject to the same regulatory fees as cable providers.”) (“2013 Regulatory Fees Order”).

⁵ The Commission stated that it would revisit the issue of whether DBS providers should be included in the category of fee payors supporting Media Bureau regulation of MVPDs. *Id.*, ¶ 33.

⁶ ACA believes its current membership along with the National Cable Television Cooperative includes all or very nearly all very small cable operators in the United States and U.S. territories, and any existing operators that may not be included within their membership would not materially change the calculations set forth in this ex parte notice.

⁷ See, e.g., 47 C.F.R. §§ 76.95(a), 76.106(b), 76.111(f) (network non-duplication, syndicated exclusivity, and sports blackout rules do not apply to cable systems serving fewer than 1,000 subscribers); 47 C.F.R.

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

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

§ 76.601(d) (proof-of-performance testing exception for cable systems having fewer than 1,000 subscribers); 47 C.F.R. § 76.605 NOTE 1 (local franchise authorities of cable systems serving fewer than 1,000 subscribers may adopt less stringent technical standards); 47 C.F.R. § 76.1111 (cable systems serving fewer than 1,000 subscribers are exempt from the requirement to keep a record of each test and activation of the Emergency Alert System procedures for three years); 47 C.F.R. § 1700(a) (the operator of every cable system having fewer than 1,000 subscribers is exempt from the public inspection requirements contained in sections 76.1701 (political file), 76.1702 (EEO records), 76.1703 (commercial records for children's programming), 76.1704 (proof-of-performance test data), 76.1706 (signal leakage logs and repair records), and 76.1715 (sponsorship identification); 47 C.F.R. § 76.1714(b) (cable systems serving fewer than 1,000 subscribers do not have to keep a current copy of the part 76 rules or an EAS Operating Handbook). The fact that operators serving 1,000 or fewer subscribers are exempt from so many cable regulatory requirements is directly relevant to the decreased burdens they impose on Media Bureau staff and resources.