

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Assessment and Collection of Regulatory Fees For Fiscal Year 2014	)	MD Docket No. 14-92
	)	
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. 13-140
	)	

To: Secretary, Federal Communications Commission  
Attn: The Commission

**COMMENTS OF ECHOSTAR SATELLITE OPERATING COMPANY, HUGHES  
NETWORK SYSTEMS, LLC, AND 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 submit comments in the Commission’s above-captioned proceedings on the collection of regulatory fees for Fiscal Year (“FY”) 2014 and on proposals to reform the Commission’s policies and procedures for assessing and collecting regulatory fees.<sup>1</sup>

EchoStar and DISH urge the FCC to rely on a fact-based analysis to support any reallocation of regulatory fees. The allocation of regulatory fees to fee categories is based on the Commission’s calculation of full time employees (“FTEs”) in each regulatory fee category – the Commission allocates FTEs as “direct” if the employee is in one of the four “core” Bureaus<sup>2</sup> and

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<sup>1</sup> See Assessment and Collection of Regulatory Fees for Fiscal Year 2014, *Notice of Proposed Rulemaking, Second Further Notice of Proposed Rulemaking, and Order*, MD Docket Nos. 14-92, 12-201 and 13-140, FCC 14-88 (rel. June 13, 2014) (“NPRM”).

<sup>2</sup> The four “core” Bureaus are as follows: Wireline Competition Bureau, Wireless Telecommunications

as “indirect” if the employee is in one of the remaining Bureaus or Offices. The total FTEs for each fee category includes the direct FTEs associated with that category, plus a proportional allocation of the indirect FTEs.<sup>3</sup> To ensure that licensees covered by the International Bureau (“IB”) are fairly assessed for regulatory fees, the Commission must accurately account for indirect FTEs attributable to the IB. First, the Commission should reallocate FTEs for the Enforcement Bureau (“EB”) and Consumer and Government Affairs Bureau (“CGB”) in a manner that recognizes the *de minimis* nature of those Bureaus’ work on IB licensees. Further, EchoStar and DISH urge the FCC to perform further analysis before reallocating the FTEs of the Office of Engineering and Technology (“OET”) among FCC licensees. The Commission should also perform further analysis before reallocating certain categories of fees (such as submarine cable and earth stations) for IB licensees. In implementing any FY 2014 fee increases, the Commission should limit such increases to the rate of inflation with a phased-in approach for any more significant increases.

Finally, the Commission should not to adopt any new fees covering non-U.S.-licensed satellites. Because the Commission does not regulate non-U.S. satellite facilities, it lacks statutory authority to impose regulatory fees on those providers under Section 9 of the Communications Act of 1934, as amended (“the Act”).

## **I. BACKGROUND**

EchoStar and DISH are homegrown U.S. satellite operators and service providers founded by Charlie Ergen in 1980 that have grown to operate a fleet of 24 satellites in the Direct Broadcast Satellite (“DBS”) service, the Fixed-Satellite Service, and the Mobile-Satellite Service. These facilities provide innovative multi-channel video programming distribution and

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Bureau, Media Bureau, and International Bureau.

<sup>3</sup> See *NPRM* ¶ 5.

state-of-the-art broadband services. DISH serves over 14 million U.S. customers with its video distribution business and EchoStar and DISH provide broadband services to well over one million U.S. consumers today.

In 2008, the satellite technology, operations, and non-DBS services aspects of EchoStar's business were spun off into EchoStar Corporation, the fourth largest commercial geostationary satellite operator in the world, with the consumer DBS service remaining in the original EchoStar entity under a new name, DISH Network Corporation. Under contract to DISH, EchoStar operates nearly all of the space station and earth station assets necessary for DISH's consumer DBS business, as well as related consumer equipment. EchoStar also operates satellites for service in other parts of the world, including Mexico, Canada, the European Union, and Brazil.

EchoStar is also the parent company of Hughes, which is the global leader in providing broadband satellite services. This high speed broadband service is especially important to EchoStar's customers living in rural communities or markets with limited terrestrial broadband build-out.

## **II. DISCUSSION**

### **A. FTE Reallocations**

The satellite industry has demonstrated that satellite regulation actually requires a small and decreasing portion of Commission resources outside of the International Bureau.<sup>4</sup>

Accordingly, EchoStar and DISH support the proposal to reallocate EB and CGB FTEs as direct FTEs to the Wireless Telecommunications Bureau, the Wireline Competition Bureau, and the Media Bureau.<sup>5</sup> Given the very small amount of work those two Bureaus do on matters involving

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<sup>4</sup> See Satellite Industry Association Comments, MD Docket Nos. 12-201 and 08-65, p.7-12 (Sept. 17, 2012).

<sup>5</sup> See *NPRM* ¶ 23.

IB licensees,<sup>6</sup> EchoStar and DISH propose that only a *de minimis* portion (such as 5 percent) of the FTEs for EB and CGB be allocated to IB licensees. Such an approach is consistent with Section 159 of the Communications Act, which requires the Commission to “assess and collect regulatory fees to recover the costs of ... enforcement activities”<sup>7</sup> through fees that are “derived by determining the full-time equivalent number of employees performing the activities.”<sup>8</sup> By allocating the work of these Bureaus to the appropriate licensees, the mandates of the Communications Act will be met.

At the same time, DISH and EchoStar believe it is reasonable to allocate a portion of FTEs in the OET among all Commission licensees subject to a fact-based inquiry of the costs incurred for different types of licensees. The Commission should ensure first that it properly allocates FTEs for the OET’s experimental and equipment authorizations, because these authorized entities should properly be subject to the costs of this work.<sup>9</sup> The FTEs allocated to experimental authorizations and acting on equipment authorizations should be subtracted as a first step in this calculation. With this cost eliminated, the Commission could then allocate on a *pro rata* basis the rest of the FTEs among all other licensees based on actual costs.

**B. The Commission Must Make Fact-Based Reallocations With Fee Categories For the International Bureau**

Any approach the Commission takes with regard to setting regulatory fees must be fact-based. Accordingly, the Commission should make available its data on FTEs required for certain tasks to determine the appropriate allocation of costs with regard to submarine cable and earth station licensing in the IB. At this time, industry does not have sufficient information to provide fact-based input on the proper reallocation of fees.

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<sup>6</sup> *Id.* ¶ 24.

<sup>7</sup> 47 U.S.C. §159(a)(1).

<sup>8</sup> 47 U.S.C. §159(b)(1)(A).

<sup>9</sup> However, it is unclear that the FCC’s labs have been engaged in work with regard to the satellite industry in recent years. Thus, the labs costs would most likely be best reallocated among the other FCC licensees (e.g., wireless service providers) who most benefit from such work.

As the *NPRM* correctly notes, satellite operators currently pay a substantial portion of the regulatory fees allocated to IB licensees.<sup>10</sup> While the Commission is correct that the work of regulating submarine cables may be less onerous than satellite, any such determination must be based on facts and current data. Even if only a small handful of IB staff work directly on submarine cable issues, these licensees benefit from the work of many other staff, including those in the Front Office and those in the Policy Division. More data is needed to evaluate the appropriate fee structure for submarine cables.

EchoStar and DISH also support the conclusions that: (1) it is likely that the regulatory fees for earth station licensing do not accurately reflect the cost of licensing these systems; and (2) that this imbalance has led to space station licensing bearing an unfairly high portion of the costs. As the *NPRM* notes, certain types of earth stations, namely larger transmit/receive earth stations, may require a greater amount of staff resources because of the technical and spectrum coordination issues associated with the examination of such applications.<sup>11</sup> As an initial step, the Commission should consider a dual fee structure for earth stations: one for receive-only and consumer transmit/receive earth stations, and the other for larger transmit/receive stations. But this alone will not address the fact that space stations bear an unfair load of the overall fees. The Commission has not yet provided sufficient data to enable industry commenters to offer input on how these costs should be reallocated.

Accordingly, in order to determine the proper reallocation of FTEs for the IB for regulatory fee purposes, it would be helpful for the Commission to release the number of FTEs in the IB currently focused on space station and earth station licensing, as well as submarine cables. Once this information is released, industry can provide fact-based input on the proper

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<sup>10</sup> See *NPRM* ¶ 28 (“[S]atellite operators and earth stations pay 59 percent of regulatory fees allocated to International Bureau licensees”).

<sup>11</sup> *Id.* ¶ 29.

reallocation of fees.

**C. The Commission Should Limit Increases in Regulatory Fees for FY 2014**

EchoStar and DISH support the proposal to set a ceiling on the amount by which a category of fee payors may have their annual fee burden increased in FY 2014. However, the Commission’s proposal to cap 2014 fee increases at 7.5 percent is not grounded in any empirical data that could justify such an increase.<sup>12</sup> If the Commission believes that regulatory fees need to rise at all in a given year (and there may be years when no such increase is warranted), then at least the fees should be capped based on the rate of inflation. Such an increase would be consistent with the types of increases that licensees plan to incur as a cost of doing business. In terms of any more substantial fee increases implemented based on the determination in this proceeding of the reallocation of FTEs, these increases should be phased in over a reasonable period of time to enable licensees to plan and adjust for them.

**D. The Commission Should Not Impose Regulatory Fees on Non-U.S.-Licensed Satellite Networks**

EchoStar and DISH urge the Commission to reject imposing additional fees for non-U.S.-licensed providers of satellite services.<sup>13</sup> As the Commission has found previously, it lacks the authority to impose regulatory fees on satellite operators that are not U.S. Title III license holders.<sup>14</sup> When this issue was first raised over a decade ago, the Commission stated unequivocally that the legislative history of Section 9 of the Act “provides that only space stations licensed under Title III may be subject to regulatory fees” and therefore the Commission is barred from including “operators of non-U.S.-licensed satellite space stations among

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<sup>12</sup> *Id.* ¶ 34.

<sup>13</sup> *Id.* ¶ 48.

<sup>14</sup> *See* Procedures for Assessment and Collection of Regulatory Fees for Fiscal Year 2013, *Notice of Proposed Rulemaking*, MD Docket Nos. 12-201, 13-58 and 08-65, 28 FCC Rcd. 7790, 7809-7810 ¶ 49, FN 84 (2013) (“2013 *Regulatory Fees NPRM*”)

regulatory fee payers.”<sup>15</sup> There has been no change in the law that would justify any deviation from this conclusion.<sup>16</sup> Accordingly, absent an act of Congress, the Commission is without authority to impose regulatory fees on non-U.S. licensed satellites.

Of similar importance, imposition of new regulatory fees on entities not directly regulated by the Commission would be inconsistent with established multilateral trade agreements. From the outset of liberalized telecommunications market-entry policies designed to foster greater competition and increase access by U.S. companies to overseas markets, the Commission has appropriately avoided inserting itself as a dual regulator of foreign operators in order to maintain and encourage similar open market access treatment by other administrations. For example, the Commission has carefully limited the quantity of information that must be submitted with a letter of intent filing, and required no application fee for such submissions, in order to avoid the appearance that the Commission was engaging in “re-licensing” of non-U.S. systems.<sup>17</sup> This approach is consistent with U.S. obligations under the World Trade Organization (“WTO”) Agreement on Basic Telecommunications Services, which requires the United States to adhere to most-favored nation and national treatment principles in authorizing non-U.S. satellites to serve

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<sup>15</sup> See Assessment and Collection of Regulatory Fees for Fiscal Year 1999, *Report and Order*, MD Docket No. 98-200, 14 FCC Rcd. 9868, 9883 ¶ 39 (1999).

<sup>16</sup> The Commission has observed that post-grant activities are in part monitored to ensure that “operators satisfy [] all conditions placed on their grant of U.S. market access, including space station implementation milestones . . . .” *2013 Regulatory Fees NPRM* ¶ 48. However, milestone compliance is an application processing matter that occurs before a U.S. Title III licensee is subject to regulatory fees. See, e.g. Regulatory Fees Fact Sheet, *What You Owe – International and Satellite Services Licensees for FY 2013*, at 2 (2013), available at [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-323146A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-323146A1.pdf) (“A fee payment is required ‘upon the commencement of operation of a system’s first satellite as reported annually pursuant to sections 25.142(c), 25.143(e), 25.145(g), or upon certification of operation of a single satellite pursuant to section 25.121(d)’”).

<sup>17</sup> See Amendment of the Commission’s Regulatory Policies to Allow Non-U.S. Licensed Satellites Providing Domestic and International Service in the United States, *Report and Order*, IB Docket No. 96-111, CC Docket No. 93-23, RM-7931, 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”).

the U.S. market.<sup>18</sup> It is also consistent with the fact that each administration that authorizes a satellite network assumes responsibility for that network's compliance with the International Telecommunication Union ("ITU") Radio Regulations, and facilitates its coordination with affected satellite networks authorized by other administrations. An administration cannot reasonably claim an operator as a regulatee benefitting from the administration's international activities before the ITU when that administration does not act on that operator's behalf either before the ITU, or in the context of inter-governmental or inter-system coordination.

Adherence to the WTO principles is legally required by the Commission and important to encourage comity and reciprocal treatment of U.S. satellite service providers in foreign countries. Because most satellite services are international in nature and offer the opportunity to serve customers across national boundaries, ease of access to foreign markets is important to maximizing efficiency and competition. Currently, most other foreign administrations that license satellite networks impose regulatory or licensing fees only on the entities to which they have issued space station licenses.<sup>19</sup> However, if one administration were to impose new requirements or costs on service providers primarily regulated by other administrations, then others would likely follow suit, leading to substantial new financial burdens for U.S. companies seeking access to non-U.S. markets.<sup>20</sup> Service providers would be required to navigate additional

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<sup>18</sup> See Agreement on Basic Telecommunications Services, April 30, 1996, Annexed to Fourth Protocol to the General Agreement on Trade in Services, WTO Doc. S/L/20, 36 I.L.M. 354 (1997).

<sup>19</sup> See, e.g., Letter from Karis A. Hastings, Counsel, SES, to Marlene H. Dortch, Secretary, FCC, MD Docket Nos. 12-201 and 08-65, at 3 (March 8, 2013).

<sup>20</sup> For similar reasons, the Open-Market Reorganization for the Betterment of International Telecommunications Act ("ORBIT Act") provides, "Notwithstanding any other provision of law, the Commission shall not have the authority to assign by competitive bidding orbital locations or spectrum used for the provision of international or global satellite communications services. The President shall oppose in the International Telecommunication Union and in other bilateral and multilateral for any assignment by competitive bidding of orbital locations or spectrum used for the provision of such services." Pub. L. No. 106-180, § 647, 114 Stat. 48 (2000) (codified at 47 U.S.C. § 765f). The House Report discussing an identical provision contained in a bill introduced in the immediately preceding Congress made plain the House Commerce Committee's belief "that auctions of spectrum or orbital

