

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

In the Matter of	)	
	)	MD Docket No. 14-92
Assessment and Collection of Regulatory Fees for Fiscal Year 2014	)	
	)	MD Docket No. 13-140
Assessment and Collection of Regulatory Fees for Fiscal Year 2013	)	
	)	MD Docket No. 12-201
Procedures for Assessment and Collection of Regulatory Fees	)	

**COMMENTS**



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## I. INTRODUCTION AND BACKGROUND

The American Cable Association (“ACA”) submits these comments in response to the Second Further Notice of Proposed Rulemaking (“Second FNPRM”) in the above-captioned dockets.<sup>1</sup> In the Second FNPRM, the Commission continues its efforts, begun two years ago, to improve its regulatory fee process and ensure a more equitable distribution of regulatory fee burdens among categories of Commission licensees and fee payors under the statutory framework in Section 9 of the Communications Act.

ACA commends the Commission on taking the first step, in last year’s Order, toward a more equitable distribution of the burden of supporting Media Bureau full time equivalent (“FTE”) employees. Specifically, ACA applauds the Commission’s decision to create a new regulatory fee category, beginning this fiscal year, that includes both cable television systems and Internet Protocol television (“IPTV”) providers.<sup>2</sup> Recognizing that cable television and IPTV providers both benefit from Media Bureau regulation as multichannel video programming distributors (“MVPDs”) is a significant first step to a more equitable and fair regulatory fee system. This step has resulted in a proposed decrease in per-subscriber regulatory fees for cable television providers, from \$1.02 to \$1.00.<sup>3</sup>

At the same time, more steps are needed to reach the goal of a more equitable and fair regulatory fee system. The current fee system requires small and medium-sized cable operators – most of whom serve rural and sparsely populated areas – and IPTV providers to

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<sup>1</sup> *Assessment and Collection of Regulatory Fees, Assessment and Collection of Regulatory Fees for the Fiscal Year 2014, Assessment and Collection of Regulatory Fees for the Fiscal Year 2013, Procedures for Assessment and Collection of Regulatory Fees*, MD Docket Nos. 14-92, 13-140, 12-201, Notice of Proposed Rulemaking, Second Further Notice of Proposed Rulemaking, and Order (rel. June 13, 2014) (“NPRM or Second FNPRM”).

<sup>2</sup> *Assessment and Collection of Regulatory Fees for the Fiscal Year 2013, Procedures for Assessment and Collection of Regulatory Fees; Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Report and Order, 28 FCC Rcd 12351, ¶ 4 (2013) (“2013 Order”) (“We will assess regulatory fees on Internet Protocol TV (IPTV) licensees and we will create a new fee category that will include both cable television and IPTV.”).

<sup>3</sup> NPRM, ¶ 44; Attachment A.

pay fees supporting Media Bureau MVPD-related regulation, while their direct and primary MVPD competitors (the two direct broadcast satellite (“DBS”) providers DIRECTV and DISH Network) pay nothing. To address this unfair disparity, the Commission must now act on its proposal to add DBS providers providing MVPD services to the cable television and IPTV category, or, in the alternative, to create a new MVPD fee category that includes all MVPDs, regardless of the technology used to deliver the video programming.

In addition, to ensure that the Commission’s regulatory fees do not unduly burden small cable operators and IPTV providers with less ability to pay, ACA supports raising the Commission’s *de minimis* threshold to \$1,000, and exempting cable operators and IPTV providers serving fewer than 1,000 subscribers from paying regulatory fees. ACA urges the Commission to make these two important adjustments in its next Order.

## **II. THE COMMISSION SHOULD REVISE ITS FEE ASSESSMENT PROCESS TO ENSURE THAT ALL MVPDS PAY FEES TO COVER THE WORK OF THE MEDIA BUREAU**

The Second FNPRM seeks comment on whether regulatory fees paid by DBS providers should be included in the cable television and IPTV category and assessed in the same manner as cable television system operators and IPTV providers.<sup>4</sup> As discussed in ACA’s earlier filings in these dockets, ACA fully supports this much-needed regulatory reform to ensure regulatory parity between DBS and both cable television and IPTV providers.<sup>5</sup> Moreover, the Commission has the authority to take this action.

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<sup>4</sup> Second FNPRM, ¶ 42. The Commission also seeks comment on a new name for this category.

<sup>5</sup> See *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, Comments of the American Cable Association (filed June 19, 2013) (“ACA 2013 Comments”); Reply Comments of the American Cable Association (filed June 26, 2013) (“ACA 2013 Reply Comments”); Letter from Barbara Esbin, Counsel to the American Cable Association, to Marlene Dortch, Secretary, FCC, MD Docket Nos. 13-140, 12-201, 08-65 (filed Nov. 22, 2013) (“ACA Nov. 2013 Ex Parte”); Letter from Barbara Esbin, Counsel to the American Cable Association, to Marlene Dortch, Secretary, FCC, MD Docket Nos. 12-201, 08-65 (filed Feb. 22, 2013); *In the Matter of Procedures for Assessment and Collection of Regulatory Fees, Assessment and Collection of Regulatory Fees for the Year 2008*, MD Docket Nos. 12-201, 08-65, Reply Comments of the American Cable Association (filed

**A. DBS Providers Should be Assessed Regulatory Fees Based on the Benefits They Receive from the Media Bureau.**

In the 2013 Order, the Commission recognized that because IPTV providers and cable operators benefit from Media Bureau regulation as MVPDs, IPTV providers should be subject to the same regulatory fees as cable providers.<sup>6</sup> Precisely the same analysis supports the creation of a new regulatory fee category for all MVPDs, including DBS providers.

As the Second FNPRM correctly observes, “DBS services are similar to cable services because both services offer multi-channel video programming to end-users.”<sup>7</sup> DIRECTV itself has stated that “DBS providers offer a single service – video.”<sup>8</sup> Like cable operators, IPTV providers, and other MVPDs, DBS providers receive numerous direct regulatory benefits from the activities of the Media Bureau governing the provision of MVPD services:

DBS providers are permitted to file program access complaints and complaints seeking relief under the retransmission consent good faith rules; and DBS providers are required to comply with Media Bureau oversight and regulation such as the Commercial Advertisement Loudness Mitigation Act (CALM Act), the Twenty-First Century Video Accessibility Act (CVAA), and the closed captioning and video description rules.<sup>9</sup>

These benefits and attributes of Media Bureau regulation support the DBS providers’ main source of revenue through the provision of MVPD service in the United States. Without

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Oct 23, 2012) (“ACA 2012 Reply Comments”); *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, MD Docket No. 08-65, Reply Comments of the American Cable Association (filed Oct. 27, 2008).

<sup>6</sup> 2013 Order, ¶¶ 32-33 (“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.”)

<sup>7</sup> Second FNPRM, ¶ 41.

<sup>8</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, Comments of DIRECTV LLC, at 18 (filed June 19, 2013).

<sup>9</sup> Second FNPRM, ¶ 42.

access to programming guaranteed by the program access and retransmission consent rules, DBS would not be the strong alternative to cable and IPTV providers that it is today.<sup>10</sup>

As ACA has previously argued, in order for the Commission's fee assessment process to be rational, let alone fair, it must ensure that all industry participants that receive direct benefits from the activities of a core bureau are assessed fees that reflect those benefits from that bureau.<sup>11</sup> Under the current system, DBS providers receive numerous direct regulatory benefits from the activities of the Media Bureau due to their status as MVPDs.<sup>12</sup> Despite these extensive regulatory, policy, rulemaking and enforcement activities that Media Bureau FTEs engage in that concern and benefit all MVPDs, including DBS providers, DBS MVPDs pay no (zero) fees to cover these costs. In contrast, cable operators and IPTV providers will pay a fee of \$1.00 per subscriber in 2014.<sup>13</sup> Yet, the two DBS providers are the second and third largest MVPDs in the country, with DIRECTV serving over 20 million subscribers and DISH Network serving over 14 million, in no small part due to the regulatory benefits they receive as MVPDs.<sup>14</sup>

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<sup>10</sup> *Before the House Committee on Energy and Commerce, Subcommittee on Communications, Technology, and the Internet*, 110<sup>th</sup> Congress (2008) (Written Testimony of Bob Gabrielli, Senior Vice President, Broadcasting Operations and Distribution, DIRECTV, Inc.) ("While DIRECTV can take some of the credit, much of the credit goes to Congress. In 1988, you passed the Satellite Home Viewer Act ("SHVA"), allowing satellite carriers to retransmit broadcast signals for the first time. In 1992, you passed the program access provisions of the Cable Act, giving satellite subscribers access to key cable-owned programming. And in 1999, you passed the Satellite Home Viewer Improvement Act ("SHVIA"), allowing satellite carriers to retransmit local broadcast signals for the first time. The result is today's vibrant competitive video marketplace, which provides consumers more choice and better service than ever before.").

<sup>11</sup> ACA 2012 Reply Comments at 4; 47 U.S.C. § 159(b)(1)(A) (in setting regulatory fees, the Commission must take into account "the benefits provided to the payor of the fee by the Commission's activities . . .").

<sup>12</sup> 47 U.S.C. § 522(13) (defining MVPD as an entity "such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming").

<sup>13</sup> NPRM, ¶ 44; Attachment A.

<sup>14</sup> Press Release, DIRECTV, *DIRECTV Announces First Quarter 2014 Results*, at 4 (rel. May 6, 2014), available at [http://investor.directv.com/files/doc\\_news/earnings\\_releases/2014/DTV%20Q114%20Earnings%20Press%20Release.pdf](http://investor.directv.com/files/doc_news/earnings_releases/2014/DTV%20Q114%20Earnings%20Press%20Release.pdf) (stating that DIRECTV has 20,265,000 subscribers as of March 31, 2014); Press Release, DISH Network, *Dish Network Reports First Quarter 2014 Results* (rel. May 8 2014), available at

The fact that DBS providers pay no regulatory fees to cover Media Bureau activities governing their provision of MVPD services, their primary economic activity, is contrary to Section 9 of the Act, which requires that the benefits provided by the bureaus' activities be taken into account in the Commission's fee assessments.<sup>15</sup> The Commission's fee reforms should recognize and correct this fundamental problem.

Several MVPDs that previously were not contributing toward Media Bureau costs through the regulatory fee system either agreed with or conceded to the proposition that the Commission enlarge the class of payors supporting Media Bureau MVPD regulation in response to the 2013 NPRM.<sup>16</sup> Assessing Media Bureau fees on DBS MVPDs will create a more equitable system for the many cable operators and IPTV providers that compete head-to-head against them.

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<http://dish.client.shareholder.com/releasedetail.cfm?ReleaseID=846394> (stating that DISH has 14,097,000 million subscribers as of March 31, 2014).

<sup>15</sup> ACA acknowledges that DBS providers pay regulatory fees covering the activities of the International Bureau associated with the licensing of geostationary satellites. See, e.g., *What You Owe – International and Satellite Services Licensees, Regulatory Fact Sheet* (July 2003) (describing the entities that must pay Geostationary Orbit Space Station fees as including DBS providers operating under Pat 100 of the Commission's rules). Depending on other licenses held, they may also pay regulatory fees supporting Wireless Telecommunications Bureau FTE activities. However, none of these fees support Media Bureau MVPD regulation.

<sup>16</sup> AT&T acknowledged that in its provision of the U-Verse video service, it should pay regulatory fees to support Media Bureau FTEs. *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, Comments of AT&T Services, Inc., 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."). AT&T's primary objection to the inclusion of IPTV in the cable fee category for 2014 was that the Commission should not do so until all MVPDs, including DBS providers, are assessed such fees. See Letter from Myra Creeks, Manager-Regulatory Relations, AT&T, to Marlene Dortch, Secretary, FCC, MD Docket Nos. 13-140, 12-201, 08-65, at 2-3 (filed July 29, 2013). Similarly, new entrant Google, addressing the issue of including IPTV in the class of payors, also suggested extending this treatment to all MVPDs. See *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, Reply Comments of Google Fiber Inc., 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.").

This regulatory fee assessment disparity can have market-distorting effects, underscoring ACA's point that the fact that DBS providers do not shoulder their fair share of the Media Bureau fee burden is more than simply a matter of equity. Because DBS providers do not pay fees to cover any of the Media Bureau FTE expenses, these costs are shifted entirely onto the entities that do pay Media Bureau fees. As recognized in the Government Accountability Office ("GAO") Report, this has the effect of forcing cable operators (and now IPTV providers) to cross-subsidize their DBS competitors.<sup>17</sup> Further, because cable operators and IPTV providers typically pass on regulatory fees to customers, it also raises the costs of service that cable and IPTV customers must shoulder. As the GAO report states, one effect of fee 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."<sup>18</sup> This is exactly the case in the market for MVPD services, where DBS providers directly compete with cable operators and IPTV providers. This is especially unfair to smaller operators serving smaller and rural markets, who are the least able to shoulder regulatory fee burdens and for whom the two DBS providers are the primary competition.<sup>19</sup> The current fee assessment system is irrational and unfair in this way, and the FCC needs to amend its fee assessment process to correct this anomaly.

The Commission has examined the question of including DBS in a fee category supporting Media Bureau MVPD regulation over the span of several regulatory fee reform proceedings.<sup>20</sup> It has been clear for years that the current system is inequitable, and the time has come to finally remedy this problem.

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<sup>17</sup> Government Accountability Office, *Regulatory Fee Process Needs to be Updated*, GAO 12-686, at 17 (Aug. 2012), available at <http://www.gao.gov/products/GAO-12-686>.

<sup>18</sup> *Id.* at 18.

<sup>19</sup> See *discussion infra* at 17-18 on regulatory burdens for small entities.

<sup>20</sup> See, e.g., Second FNPRM, ¶¶ 41-46; *Assessment and Collection of Regulatory Fees, Assessment and Collection of Regulatory Fees for the Fiscal Year 2013, Assessment and Collection of Regulatory Fees*

**B. The Commission Should Create a New Fee Category for MVPD Services.**

As a method for ensuring that DBS providers pay their fair share of Media Bureau costs, ACA continues to support the assessment of per-subscriber regulatory fees on satellite operators providing MVPD services through the creation of a new regulatory fee category for MVPD services, applicable to *all* entities that meet the statutory definition of an MVPD.<sup>21</sup> This remains the most straightforward way to ensure that activities of the Media Bureau FTEs are covered by entities directly benefitted as required by Section 9 of the Act. It will also advance the goal of fairness and reduce the market-distorting effects of the current fee disparity between cable operators and IPTV providers and DBS providers, and address the current inequity of cable operators and IPTV providers continuing to cross-subsidize these direct competitors in the video distribution market.

The fact, noted in the Second FNPRM, that DBS providers differ because they transmit video programming to end users via satellite and not by terrestrial cable should not and cannot provide a basis for their continuing failure to support the post-licensing regulatory benefits they receive from the Media Bureau's administration of regulations pertaining to all MVPDs. ACA acknowledges that technologies used to distribute the multichannel video programming services delivered by terrestrial vs. satellite MVPDs are different. However, they do not provide a reason to exempt satellite-based MVPDs altogether from supporting the MVPD regulation of the Media Bureau. It is appropriate for the Commission to consider the differences between the services in assessing how fees are administered to DBS providers, but ACA believes the similarities are

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*for the Fiscal Year 2008*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 28 FCC Rcd 7790, ¶¶ 50-52 (2013); *Assessment and Collection of Regulatory Fees for Fiscal Year 2005*; *Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, Report and Order and Order on Reconsideration, 20 FCC Rcd 12259, ¶¶ 10-11 (2005).

<sup>21</sup> See ACA 2012 Reply Comments at 7-8. As part of this reform of the regulatory fee categories, the Second FNPRM notes that one-way satellite television subscription service is provided by a variety of satellites in the United States, and seeks comment on how to define DBS satellite television service providers for regulatory fee purposes (noting varying definitions contained in its rules today). Second FNPRM, ¶ 45. The key definition, in ACA's view, remains that of an MVPD – there is little doubt today which satellite-based providers fall into this category.

significant enough to justify DBS providers paying regulatory fees at the same level as cable operators and IPTV providers. Such an approach would be the simplest to implement, and the most administratively efficient.

The Second FNPRM proposes to avoid subjecting DBS providers to overpayment of regulatory fees by reducing the amount of their support of International Bureau activities. Specifically, the Second FNPRM excludes from the geosynchronous space station category the 18 satellites used to provide MVPD services by the two DBS providers, Dish and DIRECTV, removing the \$2.5 million of projected revenue represented by the 18 satellites from revenues going to support International Bureau satellite licensing activities. The Second NPRM then proposes adding that \$2.5 million to the new MVPD category's projected revenue, ensuring that this cost is borne by all MVPDs, not just the DBS providers.<sup>22</sup> ACA does not believe cable operators and IPTV providers should be required to cover these costs as a condition of requiring DBS providers to help support Media Bureau MVPD regulation. The Space Stations (Geostationary) fees are calculated based on work performed by the International Bureau; work that provides no benefit to cable operators and IPTV providers. Nonetheless, if the Commission moves forward with this proposal, then the Commission should also at a minimum add the \$200,000 of projected CARS license regulatory fee revenue to the new MVPD category's projected revenue as well, ensuring that this cost is also covered by all MVPDs.

**C. The Commission has Ample Authority to Assess Regulatory Fees on DBS Providers as MVPDs.**

In previous filings, ACA demonstrated at length that the Commission has ample authority to assess regulatory fees on DBS providers in their capacity as MVPDs.<sup>23</sup> Despite DIRECTV's assiduous efforts to the contrary, it remains clear that the record before the Commission

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<sup>22</sup> Second FNPRM, ¶ 44.

<sup>23</sup> See ACA 2012 Reply Comments at 7-11; ACA 2013 Comments at 13-16; ACA 2013 Reply Comments at 2-6.

provides ample evidence that amendments to its regulatory fee schedules are permitted by Section 9 given regulatory and marketplace changes that have altered “the relationship between the regulatory fees paid by the regulated entity, the cost it generates, and the benefits it receives.”<sup>24</sup> Significant changes in the law in the past decade include, as the Second FNPRM notes, adoption of the CALM Act and the CVAA, each of which spawned multiple rulemakings in which the DBS providers participated.<sup>25</sup> Together, the two DBS providers today are the second and third largest MVPDs in the country, in no small part due to the regulatory benefits they receive as MVPDs. The primary revenue-generating service they provide to consumers is an MVPD service regulated by the Media Bureau. In their retail businesses, DBS providers rely on the regulations applicable to MVPD and broadcast television services and regularly seek to protect their rights as MVPDs in proceedings before the Media Bureau. It appears that the Commission believes it has the requisite authority to move ahead given the lack of questions concerning its authority in the Second FNPRM, and ACA urges it to do so without further delay.

### **III. THE COMMISSION SHOULD PROVIDE RELIEF FROM REGULATORY FEES FOR SMALL CABLE OPERATORS**

The Second FNPRM solicits comment on ways to provide more relief to smaller entities. ACA strongly supports targeted relief for small cable operators that would reduce the Commission’s administrative costs related to collecting regulatory fees, and offer fair relief for those operators who use the fewest administrative resources among cable operators, and are often disproportionately burdened by regulations and regulatory fees. Providing relief for small cable operators and IPTV providers could be accomplished without material impact on the

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<sup>24</sup> *In the Matter of Procedures for Assessment and Collection of Regulatory Fees, Assessment and Collection of Regulatory Fees for the Year 2008*, MD Docket Nos. 12-201, 08-65, Ex Parte Response of DIRECTV, LLC, at 3 (filed Nov. 9, 2012), *citing* 47 U.S.C. § 159(b)(3).

<sup>25</sup> Second FNPRM, ¶ 42.

revenue generated by the Commission through the regulatory fee program, and is well within the Commission's authority.

In previous filings, ACA suggested the Commission exempt smaller cable operators from paying any cable TV system-based regulatory fees.<sup>26</sup> In determining the appropriate cut-off level for providing relief, ACA balanced the following factors: reducing the Commission's administrative costs, ensuring the Commission meets its revenue requirements, and providing relief for small cable operators that need it most. After conducting this analysis using internal data and information, ACA concluded that providing relief to operators serving fewer than 1,000 MVPD subscribers is appropriate and would have a *de minimis* impact on the Commission's ability to meet its funding needs.

ACA and the National Cable Television Cooperative ("NCTC") together have 413 members that serve 1,000 or fewer subscribers among all their systems.<sup>27</sup> These members cumulatively serve approximately 186,000 MVPD subscribers. At the current regulatory fee of \$1.00 per subscriber, exempting small 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 \$339,844,000 million that the Commission will collect for FY 2014.<sup>28</sup> Should the Commission move forward with the creation of an MVPD fee category, exemption of very small operators serving fewer than 1,000 subscribers at the regulatory fee of \$.68 would account for less than \$126,500 of the fees collected by the Commission, or less than 0.037% of FY 2014 collections.

While there are numerous ways for the Commission to recoup this sum, the overall amount needed would be offset in part by administrative cost savings. By not subjecting these

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<sup>26</sup> See, e.g., ACA Nov. 2013 Ex Parte at 2.

<sup>27</sup> 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.

<sup>28</sup> NPRM, ¶ 18.

very small operators to fees, the Commission would reduce its expenditures associated with fee collection, particularly costs attributed to collecting late payments.

Exempting operators serving fewer than 1,000 MVPD 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. The Commission has previously recognized this fact, and has created several exemptions that apply to only these operators.<sup>29</sup>

Small operators operate under perpetually constrained financial conditions. ACA recently provided the Commission with evidence that the number of smaller cable systems in the market is trending downward.<sup>30</sup> For example, since 2011, ACA has reported that 129 cable systems closed in 2012 and 133 systems closed in 2013.<sup>31</sup> It is well established that small

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<sup>29</sup> 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. § 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 fewer than 1,000 subscribers are exempt from so many cable regulatory requirements is directly relevant to the decreased burdens they impose on Media Bureau staff and resources.

<sup>30</sup> *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 14-16, Comments of the American Cable Association, at 7 (filed Mar. 21, 2014) ("1,078 small and rural cable systems, serving approximately 50,000 subscribers, have ceased providing video service in their communities since 2008.") ACA reported the following system closures by year: 133 closed in 2013 (8,061 subscribers); 129 closed in 2012 (4,050 subscribers); 179 closed in 2011 (7,684 subscribers); 148 closed in 2010 (6,389 subscribers); 282 closed in 2009 (9,309 subscribers); and 207 closed in 2008 (14,503 subscribers). See *id.* at 7, n. 18.

<sup>31</sup> *Id.* at 7, n.18.

businesses are less able to bear the costs of regulation than larger businesses,<sup>32</sup> and the Commission should take into account the impact of compliance with all its regulations, including the payment of regulatory fees, has on a smaller cable operator's decision to stay open or shut down for good. Extending relief from payment of regulatory fees to very small operators would have a truly *de minimis* impact on collections for the Commission, but may contribute to the difference between staying in business or shuttering the system for the affected operators and the small and rural communities they serve.

The Second FNPRM explores several ways to provide relief to more smaller entities. It proposes to increase the *de minimis* payment exemption, currently available only to those regulatees whose sum total of regulatory fee liabilities is less than \$10, and seeks comment on whether to establish a higher *de minimis* amount, such as \$100, \$500, \$750, or \$1,000.<sup>33</sup> It also proposes whether to include certain fee categories in a new *de minimis* threshold, and whether to include certain fee categories in a new *de minimis* threshold.<sup>34</sup>

ACA supports raising the *de minimis* payment exemption to \$1,000. However, because the Commission's *de minimis* exemption applies only if the sum total of the regulatee's regulatory fee liability falls below the fee cap, setting the exemption at \$1,000 would not provide the same level of relief as ACA's initial proposal, as some cable operators and IPTV providers fall subject to other regulatory fee categories, such as those with CARS licenses – whose fees

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<sup>32</sup> Small Business Administration studies show that regulatory compliance costs per employee are 42 percent higher in small companies (defined as those with fewer than 20 employees) compared with mid-sized firms (defined as those with between 20 and 499 employees), and 36 percent higher in small firms than in large firms (defined as those with 500 or more employees). See Nicole V. Crain, W. Mark Crain, Lafayette College, *The Impact of Regulatory Costs on Small Firms*, Small Business Administration, Office of Advocacy, pp. 54-55 (rel. Sept. 2010); see also ACA 2012 Comments at 13-15.

<sup>33</sup> *Id.*, ¶ 31 (“We propose increasing the *de minimis* threshold to provide more relief to smaller entities. We seek comment whether we should establish a higher *de minimis* amount, such as \$100, \$500, \$750, or \$1,000.”).

<sup>34</sup> *Id.*, ¶ 32 (“[W]e seek comment on whether to include certain fee categories (e.g., broadcast and multi-year licenses) in a new *de minimis* threshold.”).

are set at more than \$600 per license and would put those operators over a *de minimis* threshold level set at \$500 and take up more than half of a threshold set at \$1,000 – or those who provide interconnected VoIP service.<sup>35</sup>

The Commission could implement ACA's proposed exemption in one of several ways. For example, the Commission could include a new *de minimis* exemption for small operators. Under this new *de minimis* exemption, small operators that serve fewer than 1,000 MVPD subscribers would be exempt from the cable TV system-based (including IPTV) per-subscriber regulatory fee category. Alternatively, the Commission could create a new fee category that applies to cable operators and IPTV providers with fewer than 1,000 subscribers, and include this fee category in a new *de minimis* threshold.

#### **IV. CONCLUSION**

ACA commends the Commission for continuing to reform its regulatory fee process, especially its decision to establish a new regulatory fee category that includes both cable television systems and IPTV providers. The Commission should now take the next step toward ensuring greater fairness in fee assessments by adding DBS providers providing MVPD services to the cable television and IPTV category, or, in the alternative, to create a new MVPD fee category that includes all MVPDs. In addition, ACA supports increasing the *de minimis* threshold to \$1,000 and urges adoption of an exemption from payment of cable television system and IPTV regulatory fees for operators that serve fewer than 1,000 MVPD subscribers. By taking these actions, the Commission will make its regulatory fee process more fair, sustainable, and administrable.

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<sup>35</sup> At \$1.00 per-subscriber, a cable operator with 999 subscribers that only provides cable service in FY 2014 would owe \$999. If the cable operator also offers any voice service or uses a CARS license, these services would put the small operator's sum total over the *de minimis* threshold.

Respectfully submitted,

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