

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

In the Matter of)
)
Assessment and Collection of Regulatory) MD Docket No. 09-65
Fees for Fiscal Year 2009)
)
To: The Commission)

COMMENTS



I. Introduction and Summary.

In response to the Commission's proposed changes to its regulatory fee amounts and process, ACA submits these Comments to suggest the regulatory fee process accommodate the unique needs of small cable companies. For many ACA members, increasing regulatory fees and keeping pace with the deadlines for the many filings and fees imposed under the Commission's regulations results in substantial administrative burdens and costs. Accordingly, ACA recommends that the Commission:

- Maintain FY 2008's regulatory fees for cable operators with 5,000 or fewer subscribers;
- Provide notice via email to CARS and Earth Station licensees when pre-bills are loaded into Fee Filer for viewing; and
- Provide cable operators with 5,000 or fewer subscribers a 180-day grace period for FY 2009 CARS and Earth Station regulatory fee payments.

The American Cable Association. Small markets and rural areas across the country receive video, high-speed broadband, and phone services from more than 900 small and medium-sized independent operators represented by ACA.

ACA member operators range from family run businesses serving a single town, to multiple system operators with small systems in small markets. ACA member systems are located in all 50 states and in virtually every congressional district. More than half of ACA's members serve fewer than 1,000 subscribers.

ACA's membership is comprised of cable, phone, and fiber-to-the-home operators and municipalities, who deliver affordable basic and advanced services, such as high-definition television, next generation Internet access, and digital phone services to more than 7 million households and businesses, some of whom have no other means of receiving these vital services.

These independent cable operators face unique challenges providing competitive video, broadband, and telephony services to smaller and rural markets. Providing advanced services in smaller and rural markets is a costly and difficult undertaking in low-density markets, as the cost of system builds and upgrades cannot be spread among a large subscriber base. Moreover, for many of ACA's members, keeping up with the numerous filings and fees imposed under the Commission's regulations results in substantial administrative burdens and costs. By adopting the above proposals, the Commission can ease some of the administrative burdens on small cable operators.

I. The Commission should maintain FY 2008's regulatory fees for cable operators with 5,000 or fewer subscribers.

Broadly based regulations often disproportionately burden smaller entities. Here, the Commission proposes a 10% increase in cable regulatory fees and over a 25% increase in CARS regulatory fees for all cable operators.¹ For small cable operators, who already bear a heavier regulatory burden than competing DBS providers,² this increase, when added to all the other mandated fees and burdens, limits the resources available to provide more advanced services to their rural customers, including high speed Internet access. While ACA members are active in rolling out broadband in underserved and unserved areas, the job is not complete. Therefore, to provide maximum relief to small companies that need it most and to do so at a minimum cost, ACA requests that the Commission maintain FY 2008's regulatory fees for cable operators with 5,000 or fewer subscribers.

Congress and the Commission have consistently expressed special concern for the ability of small cable companies to bear the costs and burdens of administrative obligations.³ Implementing this proposal will: (i) provide the smallest cable operators with much-needed

¹ *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2009*, Notice of Proposed Rulemaking, MD Docket No. 09-65, Appendix I (rel. May 14, 2009) (“*NPRM*”). The proposed regulatory per subscriber fee for cable operators is \$0.88, an increase of \$0.08. The proposed regulatory fee for CARS licenses is \$260, an increase of \$55.

² ACA has addressed in numerous proceedings the threat that DBS poses to small and medium-sized cable operators and their lighter regulatory burden. See, e.g., *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Report and Order and Further Notice of Proposed Rulemaking, MD Docket No. 08-65, Comments of the American Cable Association (filed Oct. 27, 2008).

³ For example, the Commission's regulations recognize this public interest through inclusion of specific small cable provisions in the provisions governing network nonduplication, syndicated exclusivity, sports blackouts, proof of performance tests, EAS test record retention, EAS handbook maintenance, and public inspection files.

regulatory and administrative relief; and (ii) not dramatically hinder the Commission's efforts to recover costs associated with the Commission's important activities.

II. The Commission should provide notice via email to CARS and Earth Station licensees when pre-bills are loaded into Fee Filer for viewing.

In its *NPRM*, the Commission proposes to discontinue mailing pre-bills to CARS and Earth Station licensees and, instead, upload this information to Fee Filer.⁴ If the Commission adopts this change, ACA recommends that the Commission also provide notice by email to each licensee that the pre-bill information is available for viewing.

These mailed pre-bills serve a useful purpose for small cable operators who are licensees. For ACA members with small staffs and limited resources, the pre-bills ensure simple tracking of their regulatory obligations. These providers can focus on serving their customers in small markets and rural areas, instead of actively monitoring regulatory fee due dates and other associated changes that the Commission may implement. Without pre-bills, the burden on these operators increases.

ACA understands the Commission's interest in reducing its own financial and administrative burdens by eliminating mailed pre-bills. Therefore, we suggest the Commission follow its current practice of emailing notifications to cable television operators of the amount and due date of regulatory fees for basic cable television subscribers⁵ by also emailing CARS and Earth Station licensees when pre-bills are loaded into Fee Filer for viewing.

⁴ *NPRM*, ¶ 20.

⁵ See *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Report and Order and Further Notice of Proposed Rulemaking, MD Docket No. 08-65, ¶ 72 (rel. Aug. 8, 2008) ("We also sought comment on whether we should continue to send email messages to the addresses in the
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By setting up Fee Filer to automatically email these licensees when pre-bills are available online, the Commission can achieve its goal of significantly lowering its costs without at the same time increasing the burden on small providers. This will also serve the public interest by further promoting timely filings and payments.

III. The Commission should provide cable operators with 5,000 or fewer subscribers a 180-day grace period for FY 2009 CARS and Earth Station regulatory fee payments.

Small cable operators who are CARS and Earth Station licensees have come to rely on receiving the pre-bill notice in the mail to ensure an on-time payment of their regulatory fees. As already discussed, it can be burdensome for small operators to keep pace with all the Commission's deadlines for fees and filings, and receiving notice in the mail has efficiently provided them some relief from that burden.

If the Commission decides to cease mailing pre-bill notices, it is likely that many small operators will be unaware of this change. As a result, some may inadvertently miss the filing deadline while waiting for receipt of the pre-bill. For this reason, cable operators with 5,000 or fewer subscribers should receive a 180-day grace period for FY 2009 CARS and Earth Station regulatory fee payments.⁶ During this period, CARS and Earth Station regulatory fee payments should not be deemed late and subject to the 25% penalty to account for the fact that the agency is changing its processes and no longer sending pre-bill notices via mail.

Media Bureau's Cable Operations and Licensing System ("COALS") to notify cable television operators of the amount and due date of regulatory fees for basic cable television subscribers. . . .We therefore adopt these proposals. These practices have worked well for the Commission in the past and eased administrative burdens for the cable television industry.").

⁶ If the Commission is unable to implement this change until FY 2010, the grace period should apply then.

IV. Conclusion.

ACA and its members understand the Commission's efforts and needs to reduce its financial and administrative burdens. At the same time, ACA recognizes the importance to the public interest in maintaining viable small cable companies and the need to provide regulatory relief in appropriate circumstances to further this public interest, especially the deployment of broadband to underserved and unserved areas. Providing the reasonable relief requested in these Comments will further this goal.

Respectfully submitted,

AMERICAN CABLE ASSOCIATION



By: _____

Matthew M. Polka
President and CEO
American Cable Association
One Parkway Center
Suite 212
Pittsburgh, Pennsylvania 15220
(412) 922-8300

Scott C. Friedman
Heidi I. Schmid
Cinnamon Mueller
307 North Michigan Avenue
Suite 1020
Chicago, Illinois 60601
(312) 372-3930

Ross J. Lieberman
Vice President of Government Affairs
American Cable Association
4103 W Street, N.W., Suite 202
Washington, DC 20007
(202) 494-5661

Attorneys for American Cable
Association

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