

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

In the Matter of)	
)	
Assessment and Collection of Regulatory)	MD Docket No. 08-65
Fees for Fiscal Year 2008)	
)	
To: The Commission)	

REPLY COMMENTS



I. Introduction

The American Cable Association (“ACA”) submits these Reply Comments in support of the Comments filed in this Docket by the National Cable & Telecommunications Association (“NCTA”). The Commission should impose a uniform subscriber-based regulatory fee on all MVPDs, including DBS providers.

American Cable Association. ACA represents nearly 1,100 independent cable companies that serve more than 7 million cable subscribers, primarily in smaller markets and rural areas. ACA member systems are located in all 50 states and in virtually every congressional district. The companies range from family-run cable businesses serving a single town to multiple system operators that focus on serving small markets and rural areas. More than half of ACA’s members serve fewer than 1,000 subscribers.

The main issue in this proceeding is the overwhelming disparity in regulatory fees imposed on small and medium-sized cable companies compared to DBS. Small and medium-sized companies face substantially higher cost structures than major MSOs serving urban areas and DBS.¹ Moreover, the disparity in regulatory obligations between ACA's members and DBS compounds this disadvantage.² Therefore, ACA supports NCTA's recommendation that the Commission impose a uniform subscriber-based regulatory fee on all MVPDs, including DBS.

II. All providers of multichannel video programming providers should pay a subscriber-based regulatory fee.

The Commission must ensure that its regulatory fees do not unfairly burden any one set of competitors.³ Therefore, ACA strongly agrees with NCTA that no basis exists to permit DBS and other MVPDs, such as ILECs who provide video service, to benefit from lower regulatory fees (or no regulatory fees for ILECs) than those paid by cable providers. In a highly competitive video marketplace, the Commission should require all MVPDs to pay regulatory fees on a per-subscriber basis. The failure to do so provides DBS and those MVPDs not classified as cable providers with a competitive advantage over cable operators.

¹ See, e.g., *In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans*, Notice of Inquiry, GN Docket No. 07-45, Comments of the American Cable Association (filed May 31, 2007). ACA's members focus on smaller and rural markets. This means that the cost per subscriber for any upgrade or any enhancement to existing systems is much greater in smaller-market and rural areas.

² In addition to the disparity in regulatory fees, small and independent cable operators are, unlike DBS, required to carry broadcast channels on a basic tier.

³ *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, MD Docket No. 08-65, Comments of NCTA, at 2 (filed Sept. 25, 2008) ("*NCTA Comments*").

ACA has consistently documented at the Commission the threat DBS poses to small and medium-sized cable operators.⁴ This is because the DBS providers' market share continues to grow rapidly,⁵ especially in the smaller markets served by ACA members.⁶ At the same time, ACA members face inherent difficulties bringing affordable advanced services to rural America. As ACA has repeatedly noted, regulatory barriers already artificially impede competition and slow infrastructure development and the deployment of advanced services in ACA members' service areas.⁷ Sharply rising operational costs further raise the expense of doing business in smaller markets.

Moreover, ACA strongly agrees with NCTA that there have been fundamental changes in the video marketplace that warrant a fresh approach of the assessment of

⁴ See, e.g., *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2006*, MD Docket No. 06-68, Reply Comments of American Cable Association, at 3 (filed Apr. 21, 2006).

⁵ DirecTV had 17.16 million subscribers as of June 30, 2008, an increase of 5% over the 16.32 million subscribers reported on June 30, 2007. See Press Release, The DirecTV Group Announces Second quarter 2008 Results, available at <http://investor.directv.com/releasedetail.cfm?ReleaseID=326924> (last viewed Oct. 27, 2008); see also *NCTA Comments* at 3 (“[T]he two leading DBS providers now serve one out of every three multichannel video service subscribers.”); see also *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 05-255, ¶¶ 6, 72 (rel. Mar. 3, 2006).

⁶ See *United States General Accounting Office Report to the Chairman, Committee on Commerce, Science and Transportation, U.S. Senate, Issues related to Competition and Subscriber Rates in the Cable Television Industry*, GAO-04-08, at 62 (2004) (DBS penetration is greater in non-metropolitan areas and tends to increase as the size of the market decreases); *In the Matter of the Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 05-255, ACA Comments (filed September 19, 2005) at 3-4 (DBS has become the dominant provider in many rural and small communities).

⁷ *In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans*, Notice of Inquiry, GN Docket No. 07-45, Comments of the American Cable Association (filed May 31, 2007); *In the Matter of the Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Notice of Inquiry, MB Docket No. 06-189, Comments of the American Cable Association (filed Nov. 29, 2006).

regulatory fees.⁸ Because of these changes, the Commission must extend the principle of competitive and technological neutrality to the regulatory fees paid by providers of video services. This would ensure that no MVPD receives a competitive advantage over other MVPDs based solely on the technology by which it distributes its video services.

Independent cable operators have shouldered an unfair regulatory burden for too long. There is no rational policy or any other justification for imposing regulatory fees on cable operators that are more than 11 times greater⁹ than those paid by the two national DBS providers. The Commission should impose per-subscriber regulatory fees on all MVPDs, including DBS.

III. Conclusion.


ACA fully supports NCTA's call for reforming the Commission's regulatory fee structure to provide a uniform, per-subscriber fee on all MVPDs. To foster a competitive video services marketplace and to maintain consumer choice in video programming services, the Commission should act on NCTA's recommendations and assess regulatory fees on a per-subscriber basis on all entities providing video services, including DBS.

⁸ *NCTA Comments* at 2.

⁹ See *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2006*, MD Docket No. 06-68, Comments of NCTA (filed Apr. 14, 2006) (noting that DBS providers pay 6.7 cents per subscriber as compared to 77 cents per subscriber for cable providers).

Respectfully submitted,

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