

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Assessment and Collection of Regulatory Fees) MD Docket No. 17-134
for Fiscal Year 2017)

**COMMENTS OF NCTA- THE INTERNET & TELEVISION ASSOCIATION AND THE
AMERICAN CABLE ASSOCIATION**

NCTA- The Internet & Television Association (“NCTA”) and the American Cable Association (“ACA”) submit these comments in response to the Commission’s Further Notice of Proposed Rulemaking (“*FNPRM*”) in the above-captioned proceeding,^{1/} to address the question raised by the Commission regarding whether it should retain the voluntary cable subscriber bulk rate calculation used for determining the number of subscribers in a multiple dwelling unit (“MDU”), modify the methodology to more accurately calculate the number of subscribers in an MDU, or eliminate it.^{2/}

The Commission’s suggested methodology for calculating the number of subscribers in an MDU – the total annual bulk-rate charge divided by basic annual subscription rate for individual households^{3/} – is contained in the instructions provided to operators for calculating their per-subscriber cable regulatory fees.^{4/} As the Commission describes, cable operators might

^{1/} *Assessment and Collection of Regulatory Fees for Fiscal Year 2017*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd. 7057 (2017) (“*FNPRM*”).

^{2/} *See id.* ¶ 51.

^{3/} *See id.* ¶¶ 49-51.

^{4/} *See Regulatory Fees Fact Sheet, What You Owe – Cable Television Systems for FY 2017*, FEDERAL COMMUNICATIONS COMMISSION (rel. Sept. 6, 2017), available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-346557A1.pdf. The Commission first explained how cable providers should calculate the number of subscribers in 1995. *Assessment and Collection of Regulatory Fees for Fiscal Year 1995*, Report and Order, 10 FCC Rcd. 13512, Appendix H, ¶ 28 (1995).

use an alternative approach, such as “separately count[ing] each subscriber, even those living in MDUs.”^{5/} However, the voluntary methodology remains a reasonable and feasible approach to determining the number of MDU subscribers for regulatory fee purposes, and should be retained as a permissible means of doing so. The Commission correctly notes that “the cable television industry has evolved significantly,” and that cable operators today offer many different services,^{6/} but these changes have not impacted cable operators’ ability to use the current formula.

One main advantage of the current bulk rate formula is that cable operators frequently use this bulk rate calculation methodology to determine subscriber counts in contexts outside of annual regulatory fees. For instance, programming and retransmission consent agreements often determine MDU subscriber counts using this methodology. Mandating use of a different methodology for counting subscribers for determination of regulatory fees could therefore unnecessarily increase burdens on providers by requiring them to calculate MDU subscribers in multiple and distinct ways, depending on context. As such, the Commission should not modify the availability of the current methodology.

In affirming the current formula, however, the Commission should in no way suggest that cable operators cannot use an alternative method to calculate their number of MDU subscribers.

The Commission has since reevaluated the methodology, but it has largely remained unchanged. *See Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd. 6388, ¶¶ 51-52 (2008) (proposing modification to the methodology for calculating cable subscribers and seeking comment as to whether the proposed methodology provides “a more accurate way to calculate the number of subscribers in an MDU”); *Assessment and Collection of Regulatory Fees for Fiscal Year 2009*; *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Notice of Proposed Rulemaking and Order, 24 FCC Rcd. 5966, ¶ 35, n.44 (2009) (stating the methodology for calculating bulk rate customers in FY 2009).

^{5/} *FNPRM* ¶ 50.

^{6/} *Id.*

For some cable operators, harmonizing the current formula with their existing billing systems can be difficult to implement. In such cases, cable operators might wish to use a comparable formula, such as counting each unit in the building with service. While this approach could result in the operator paying higher regulatory fees than would be due under the Commission's voluntary formula, for some operators, the burden of higher fees is outweighed by the benefits of administrative simplicity. Such an approach should be permissible as long as the cable operator keeps records about the fee calculation used. Preserving flexibility would streamline the regulatory fee process and reduce burdens on providers.

CONCLUSION

NCTA and ACA appreciate the Commission's efforts in this proceeding to ensure that the bulk rate calculation remains practicable in today's cable market. For the reasons discussed above, the Commission should retain the current voluntary methodology for determining the number of subscribers in an MDU, but not restrict operators from using an alternate method of calculation.

Respectfully submitted,

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