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

In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2018	)))))	MD Docket No. 18-175

COMMENTS

AMERICAN CABLE
ASSOCIATION

The American Cable Association ("ACA") submits these comments in response to the Federal Communications Commission's ("Commission") Notice of Proposed Rulemaking ("NPRM") on the Assessment and Collection of Regulatory Fees for Fiscal Year 2018.[1] This year the Commission proposes to raise the regulatory fee for DBS providers by 10 cents over the fiscal year ("FY") 2017 fee of 38 cents, and has also proposed a significant reduction to cable/IPTV fees – from 95 cents to 77 cents. ACA appreciates the Commission's continuing efforts to reduce the gap between the DBS and cable/IPTV rates, but urges the Commission to delay no longer in assessing an identical rate for DBS and cable television/IPTV providers. To that end, the

[1] *Assessment and Collection of Regulatory Fees for Fiscal Year 2018*, Report and Order and Notice of Proposed Rulemaking, MD Docket No. 18-175 (rel. May 22, 2018) ("NPRM").

Commission should dispose of its current two-tier system and establish a single rate of 67 cents per subscriber for DBS, cable, and IPTV operators.[2]

The Commission established the DBS subcategory in 2015 after finding that Media Bureau full-time equivalent employees ("FTEs") were working on issues and proceedings that affected all multichannel video programming distributors ("MVPDs"), including DBS providers, and that Media Bureau FTEs were increasingly exercising regulatory oversight over DBS's provision of MVPD services through rulemakings and adjudicatory proceedings.[3] Although the Commission at the time elected to create a separate subcategory for DBS providers with significantly lower fees, it made clear its intention to gradually phase in higher DBS fees each year, with an ultimate goal of parity between providers.[4] The Commission also made clear that its decision to adopt a lower fee for DBS providers was "to avoid sudden and large changes in the amount of fees,"[5] and not because of any substantive differences between the cable/IPTV and DBS subcategories. The Commission reiterated its commitment to parity in 2016, stating "we remain committed as a goal to regulatory fee parity for all MVPDs paying

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[2] At $0.67 per MVPD subscriber, the Commission's aggregate expected revenue of $62,330,000 for all MVPD services ($46,970,000 from 61,000,000 cable/IPTV subscribers plus $15,360,000 from 32,000,000 DBS subscribers) would remain the same as if the Commission were to adopt the fees proposed in the NPRM.

[3] *Assessment and Collection of Regulatory Fees for Fiscal Year 2015, Amendment of Part 1 of the Commission's Rules, Assessment and Collection of Regulatory Fees for Fiscal Year 2014*, Notice of Proposed Rulemaking, Notice of Proposed Rulemaking, Report and Order, and Order, 30 FCC Rcd 5354, ¶¶ 28-41 (2015) ("FY 2015 NPRM").

[4] *Assessment and Collection of Regulatory Fees for Fiscal Year 2015,* Report and Order and Further Notice of Proposed Rulemaking, 30 FCC Rcd 10268, ¶ 20 (2015) ("FY 2015 Order") ("In the FY 2016 regulatory fee proceeding, we will update this rate for future years, based on relevant information, as necessary for ensuring an appropriate level of regulatory parity and considering the resources dedicated to this new regulatory fee subcategory.").

[5] FY 2015 NPRM, ¶ 38.

into the cable television/IPTV fee category,"[6] and again in 2017, explaining that the decision to raise DBS fees was "not based on particular Media Bureau proceedings, but [was] an effort to bring the regulatory fee closer to the cable television/IPTV per subscriber fee."[7] This year, once again, the Commission acknowledges it has a "long-standing commitment to competitive neutrality."[8]

ACA has appreciated the Commission's steady march toward parity (or "competitive neutrality"), however, it is now time for the Commission to complete the journey and adopt an identical rate for DBS and cable television/IPTV providers. As the Commission has recognized again and again, the burden on Media Bureau FTEs of regulating and overseeing DBS and cable/IPTV providers is "roughly the same."[9] Although there may be slight differences from year to year in the specific number of proceedings initiated that relate to cable/IPTV and DBS, the Commission has consistently rejected arguments that its movement toward regulatory fee parity must be based "on specific recent proceedings"[10] or a showing that DBS providers have

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[6] *Assessment and Collection of Regulatory Fees for Fiscal Year 2016*, Report and Order, 31 FCC Rcd 10339, ¶ 30 (2016) ("FY 2016 Order").

[7] *Assessment and Collection of Regulatory Fees for Fiscal Year 2017*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 7057, ¶ 22 (2017) ("FY 2017 Order"); *see also Assessment and Collection of Regulatory Fees for Fiscal Year 2017*, Notice of Proposed Rulemaking, 32 FCC Rcd 4526, ¶ 15 (2017) ("FY 2017 NPRM") ("In 2015, the Commission adopted an initial regulatory fee for DBS, as a subcategory in the cable television and IPTV category, of 12 cents per year per subscriber, or one cent per month. At that time, the Commission committed to updating the regulatory fee rate for FY 2016, as necessary for ensuring an appropriate level of regulatory parity with cable television and IPTV and considering the Media Bureau resources dedicated to this subcategory.") (citations omitted).

[8] NPRM, ¶ 19.

[9] FY 2017 Order, ¶ 20; *see also* FY 2015 NPRM, ¶ 33 ("[A]lthough DBS is not identical to cable television and IPTV, the services all receive oversight and regulation as a result of the work of Media Bureau FTEs on MVPD issues. The burden imposed on the Commission is therefore similar."); FY 2016 Order, ¶ 30 ("We reiterate that the DBS and cable television/IPTV oversight and regulatory work of Media Bureau FTEs is similar."); FY 2017 Order, ¶ 20 ("Media Bureau resources utilized by the DBS providers are similar to those used by the cable television and IPTV industry.").

[10] FY 2017 Order, ¶ 22.

"usurped the work" of the Media Bureau staff.[11] Instead, the Commission has recognized that a significant number of Media Bureau FTEs have worked, and continue to work, on MVPD issues that include DBS,[12] and the regulatory fee assessed on DBS has never adequately reflected this work. Nothing about the Bureau's work in the last year upsets this general assessment, as the trend of a roughly equal burden of regulating and overseeing DBS and cable/IPTV providers continues this year.[13]

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[11] *Id.*, ¶ 23.

[12] In 2017, the Commission identified seventeen proceedings initiated by the Media Bureau, including seven that were specific to cable interest, six that were specific to DBS, and four that were relevant to all MVPDs. *Id.*, ¶ 20.

[13] Since October 1, 2017, the Media Bureau has initiated a few proceedings that are specific to cable/IPTV providers. *FCC Form 325 Data Collection; Modernization of Media Regulation Initiative,* Notice of Proposed Rulemaking, 32 FCC Rcd 9902 (2017); *Channel Lineup Requirements – Sections 76.1705 and 76.1700(a)(4); Modernization of Media Regulation Initiative*, MB Docket Nos. 18-92 and 17-105, Notice of Proposed Rulemaking (rel. Apr. 17, 2018); *Special Relief and Show Cause Petitions*, MB Docket No. 17-314, Public Notice, Report No: 0461 (rel. Nov. 21, 2017) (involving leased access); *Special Relief and Show Cause Petitions,* MB Docket No. 18-91, Public Notice, Report No: 0466 (rel. Mar. 27, 2018) (involving cable subscriber notice requirements). However, the majority of proceedings initiated in FY 2018 that involve MVPD issues are technology neutral, including MVPD related rulemakings (*Electronic Delivery of MVPD Communications; Modernization of Media Regulation Initiative*, Notice of Proposed Rulemaking, 32 FCC Rcd 10755 (2017)) Market Modification Petitions (*Special Relief and Show Cause Petitions*, MB Docket No. 17-274, Public Notice, Report No: 0458 (rel. Oct. 13, 2017); *Special Relief and Show Cause Petitions*, MB Docket No. 17-275, Public Notice, Report No: 0458 (rel. Oct. 13, 2017); *Special Relief and Show Cause Petitions*, MB Docket No. 17-306, Public Notice, Report No: 0460 (rel. Nov. 13, 2017); *Special Relief and Show Cause Petitions*, MB Docket No. 17-307, Public Notice, Report No: 0460 (rel. Nov. 13, 2017); *Special Relief and Show Cause Petitions*, MB Docket No. 18-8, Public Notice, Report No: 0463 (rel. Jan. 16, 2018); *Special Relief and Show Cause Petitions*, MB Docket No. 18-24, Public Notice, Report No: 0464 (rel. Feb. 2, 2018); *Special Relief and Show Cause Petitions*, MB Docket No. 18-25, Public Notice, Report No: 0464 (rel. Feb. 2, 2018); *Special Relief and Show Cause Petitions*, MB Docket No. 18-158, Public Notice, Report No: 0468 (rel. May 18, 2018); *Special Relief and Show Cause Petitions*, MB Docket No. 18-159, Public Notice, Report No: 0468 (rel. May 18, 2018); *Special Relief and Show Cause Petitions*, MB Docket No. 18-160, Public Notice, Report No: 0468 (rel. May 18, 2018); *Special Relief and Show Cause Petitions*, MB Docket No. 18-161, Public Notice, Report No: 0468 (rel. May 18, 2018); Good Faith and Must Carry Complaints (*Special Relief and Show Cause Petitions*, MB Docket No. 17-292, Public Notice, Report No: 0459 (rel. Oct. 27, 2017); *Special Relief and Show Cause Petitions*, MB Docket No. 17-313, Public Notice, Report No: 0461 (rel. Nov. 21, 2017); *Special Relief and Show Cause Petitions*, MB Docket No. 18-38, Public Notice, Report No: 0465 (rel. Feb. 12, 2018); and Program Carriage and Program Access Complaints (*Special Relief and Show Cause Petitions*, MB Docket No. 17-361, Public Notice, Report No: 0462 (rel. Dec. 22, 2017); *Special Relief and Show Cause Petitions*, MB Docket No. 18-9, Public Notice, Report No: 0463 (rel. Jan. 16, 2018); *Special Relief and Show Cause Petitions*, MB Docket No. 18-90, Public Notice, Report No: 0466 (rel. Mar. 27, 2018)). Moreover, the Media Bureau remains responsible for the oversight of compliance with numerous regulatory obligations that apply to both cable/IPTV providers and DBS providers, such as the requirements related to the Commercial Advertising Loudness Mitigation (CALM)

The Commission has also found that differences in technology and regulatory treatment do not justify a disparity in the assessment of regulatory fees for regulatees who provide similar services, as long as the work of the Commission staff is relevant to those regulatees. Specifically, the Commission has rejected arguments that regulatory fees should be based on the relative impact of regulation,[14] or on "the particular number of FTEs focused solely on" a particular type of regulatee.[15] Instead, the Commission has concluded that "Section 9 is clear … that regulatory fee assessments are based on the burden imposed on the Commission."[16]

The Commission has applied this principle to DBS and cable/IPTV providers, and concluded that annual increases in DBS fees were appropriate because "the services all receive oversight and regulation as a result of the work of Media Bureau FTEs on MVPD issues, and the burden imposed on the Commission is similar."[17] Accordingly, whatever differences there are in the regulatory treatment of DBS and cable/IPTV providers, they do not justify an assessment of cable/IPTV providers at a rate that is sixty percent higher than that assessed for DBS providers. Instead, Commission

Act, Act, Pub. L. No. 111-311, 124 Stat. 3294 (2010); 47 U.S.C. § 621; 47 C.F.R. § 76.607(a), the Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. 111–260, 124 Stat. 2775 (2010); 47 U.S.C. §§ 303, 613; 47 C.F.R. §§ 79.1-79.4, 79.100-79.110, and the online public file inspection rules, 47 C.F.R. §§ 76.1700-76.1717, among others.

[14] As the Commission explained in its decision to include interconnected VoIP providers in the category of interstate telecommunications providers despite differences in the regulatory treatment of provider types, "Section 9 does not require the Commission to engage in a company-by-company assessment of relative regulatory costs." *Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15712, ¶ 19 (2007) ("FY 2007 Order").

[15] FY 2017 Order, ¶ 23.

[16] FY 2007 Order, ¶ 19.

[17] FY 2017 Order, ¶ 24; *see also, supra,* n.9.

precedent regarding the basis for assessing regulatory fees supports a uniform rate for the DBS and cable/IPTV subcategories.

ACA recognizes that the Commission adopted a "phased in" approach DBS fees to "avoid sudden and large changes in the amount of fees,"[18] but achieving true parity between MVPD and DBS providers by setting both fees at 67 cents would raise DBS subscribers' monthly bills by less than 3 cents over 2017 rates. The Commission has previously explained that regulatory fee increases of several cents per subscriber per month is "a negligible fraction of a monthly bill" and as such does constitute harm to consumers.[19] DBS providers have had three years to prepare for parity, and given the negligible amounts involved, there is simply no justification for further delay in achieving parity for all payors to the Cable/IPTV fee category.

Because, on the whole, "Media Bureau resources utilized by the DBS providers are similar to those used by the cable television and IPTV industry,"[20] and because there is no justification for maintaining any disparity, the regulatory fees paid by each should be the same. For these reasons, ACA supports the Commission's movements toward parity, but urges the Commission to go beyond its current proposals by further reducing regulatory fees for cable/IPTV providers and increasing the fees for DBS providers to reach a uniform regulatory assessment of 67 cents per subscriber.

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[18] FY 2015 Order, ¶ 38.

[19] FY 2017 Order, ¶ 21.

[20] *Id.*, ¶ 20.

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