

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of )  
 )  
Assessment and Collection of Regulatory Fees ) MD Docket No. 19-105  
for Fiscal Year 2019 )

**COMMENTS OF NCTA – THE INTERNET & TELEVISION ASSOCIATION AND ACA  
CONNECTS – AMERICA’S COMMUNICATIONS ASSOCIATION**

NCTA – The Internet & Television Association (“NCTA”) and ACA Connects – America’s Communications Association (“ACA Connects”) submit these comments in response to the Commission’s Notice of Proposed Rulemaking (“NPRM”) in the above-captioned proceeding,<sup>1/</sup> specifically addressing the assessment and collection of regulatory fees for Direct Broadcast Satellite (“DBS”) services. The Commission must end its years-long phase-in approach for DBS regulatory fees and equalize the regulatory fee paid by cable operators, Internet Protocol (“IPTV”) providers, and DBS providers for Media Bureau activities for this year.

**INTRODUCTION AND SUMMARY**

NCTA and ACA Connects appreciate the Commission’s continued recognition that as multichannel video programming distributors (“MVPDs”), DBS operators should contribute greater amounts to Media Bureau regulatory fees. In response to the Commission’s question of whether it should continue to phase in the DBS regulatory fee rate to bring it closer to the cable television/IPTV rate or instead, include DBS fully in the cable television/IPTV category at an equal rate, NCTA and ACA Connects strongly believe that the law requires the latter result.

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<sup>1/</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2019*, Notice of Proposed Rulemaking, MD Docket No. 19-105, FCC 19-37 (rel. May 8, 2019) (“*FY 2019 NPRM*”).

Section 9 of the Communications Act requires the Commission to assess Media Bureau regulatory fees on Media Bureau regulatees.<sup>2/</sup> While the statute allows the Commission some discretion in adjusting those fees to take into account the “benefits provided to the payor of the fee by the Commission’s activities,”<sup>3/</sup> NCTA and ACA Connects have well documented in past years – and do so again below – that DBS and cable operators are impacted equally by Media Bureau activities and there is no legal, policy, or other justification for assessing DBS providers a lesser fee.

As they have in past years, DBS operators are actively participating in Media Bureau proceedings, utilizing Media Bureau resources, and receiving the benefits of Media Bureau regulation. In the past fiscal year, DBS providers met regularly with Media Bureau staff and frequently submitted filings in a wide range of Media Bureau dockets, just like other MVPDs. In fact, nearly half of all DISH’s filings with the Commission were with the Media Bureau. There can be no legal or factual argument that DBS operators should not share fully in Media Bureau regulatory fees.

Moreover, the continued phase-in is not good policy.<sup>4/</sup> There is no reason DBS operators should be granted preferential treatment over all other MVPDs. Their past “rate shock” argument has no validity – DBS operators have had many years of notice that they will be subject to Media Bureau regulatory fees – and the fact that they pay regulatory fees to other Bureaus is irrelevant; all Commission regulatees pay whatever fees are triggered by the facilities and services they offer.

Finally, the suggestion in the *FY 2019 NPRM* that the proposed rates represent a “phase

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<sup>2/</sup> 47 U.S.C. § 159.

<sup>3/</sup> *Id.*

<sup>4/</sup> *See id.*

in [of] the DBS regulatory fee rate to bring it closer to the cable television/IPTV rate”<sup>5/</sup> ignores the fact that due to the substantial increase proposed in the cable rate, any progress towards equalizing the rates is miniscule. While the Commission proposes to increase DBS providers’ fee to \$0.60/subscriber, it also proposes raising the cable rate substantially to \$0.86/subscriber. While last year, the DBS rate of \$0.48/subscriber and the cable/IPTV rate of \$0.77/subscriber were \$0.29 apart, this year the DBS rate of \$0.60/subscriber and the cable/IPTV rate of \$0.86/subscriber are \$0.26 apart.

To comply with the law and further its policy of promoting competitive neutrality, the Commission therefore should adopt a uniform cable/IPTV/DBS rate of \$0.77/subscriber.

**I. DBS PROVIDERS USE MEDIA BUREAU RESOURCES FULLY AND SHOULD BE ASSESSED THE SAME REGULATORY FEE AS CABLE AND IPTV**

The Commission proposes to continue a “phase-in” approach for DBS by setting a regulatory fee of \$0.60 per subscriber per year (far less than the proposed cable rate) or, in the alternative, proposes including DBS fully into the cable/IPTV rate, which would be \$0.77 per subscriber.<sup>6/</sup> The Commission should adopt the latter approach; the former approach is not legally valid and is not sound policy. As the Commission has previously recognized, Section 9 of the Communications Act requires that regulatory fees be assessed based on the burden that regulating a category of entity imposes on the Commission.<sup>7</sup> Because Media Bureau full time employees (“FTEs”) dedicate substantially similar amounts of time and resources to the regulation of DBS providers as they do to cable/IPTV providers, the statute obligates the Commission to assess their regulatory fees at the same rate. Moreover, as noted in the

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<sup>5/</sup> *FY 2019 NPRM* ¶ 18.

<sup>6/</sup> *Id.* ¶ 19.

<sup>7</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, Report and Order and Further Notice of Proposed Rulemaking, FCC 07-140, ¶ 19 (2007) (“Section 9 is clear ... that regulatory fee assessments are based on the burden imposed on the Commission.”) (“*FY 2007 Order*”).

Introduction, the Commission’s proposal cannot be seriously viewed as a continued “phase-in” when it would substantially raise the cable rate, such that the difference between the cable and DBS rates is reduced this year by only three cents, and as such, represents the least amount of progress towards parity in recent years.

NCTA and ACA Connects have demonstrated in the past – and the Commission has found repeatedly – that DBS providers are active participants in Media Bureau proceedings and subject to much of the same oversight and regulation by the Media Bureau as other MVPDs. In 2017, the Commission agreed with the cable television industry that “Media Bureau resources utilized by the DBS providers are similar to those used by the cable television and IPTV industry.”<sup>8/</sup> The Commission concluded that the burden that DBS imposes on the Media Bureau is “roughly the same” as the burden imposed by all other MVPDs.<sup>9/</sup> Similarly, last year, the Commission found that the Media Bureau relies on a “common pool of FTEs” in its oversight of MVPDs.<sup>10/</sup> And in the *FY 2019 NPRM*, the Commission noted that cable, IPTV, and DBS *all* receive “oversight and regulation by the Media Bureau FTEs working on MVPD issues.”<sup>11/</sup>

Given these repeated findings and the Commission’s statutory mandate to assess regulatory fees based on the resources expended on regulation and oversight, the Commission’s legal justification for increasing DBS fees incrementally has always been thin, and that continues to be the case this year. A review of the Commission’s dockets since FY 2018 indicates that the DBS providers impose regular burdens on the Media Bureau and seek to benefit from its

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<sup>8/</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2017*, Report and Order and Notice of Proposed Rulemaking, MD Docket No. 17-134, 32 FCC Rcd. 7057 ¶ 20 (“*FY 2017 Report and Order*”).

<sup>9/</sup> *Id.*

<sup>10/</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2018*, Report and Order, MD Docket No. 18-175, 33 FCC Rcd. 7057 ¶ 8 (“*FY 2018 Report and Order*”).

<sup>11/</sup> *FY 2019 NPRM* ¶ 18.

activities.

Since the beginning of FY 2018, AT&T and DISH have submitted 154 filings in 26 separate Media Bureau dockets. AT&T and DISH have met in person and by telephone with Media Bureau staff to discuss many different proceedings, including joint agreement attribution and ownership, quadrennial regulatory review, electronic delivery of consumer notices, and children's programming.<sup>12/</sup> Indeed, in FY 2018, nearly half of all of DISH's filings to the Commission were to the Media Bureau.

Looking at the DBS providers' filings on a granular level reveals that –

- **AT&T and DISH are participating in many of the most prominent Media Bureau dockets.**
  - For example, AT&T and DISH have filed comments and met with Media Bureau staff to discuss the media modernization proceedings.<sup>13/</sup> And in fact, during an April 1, 2019 meeting in particular, AT&T argued for parity in the administration of media rules by requesting that the Commission “ensure that changes made to the cable rules also be made in the DBS rules, as they are identical.”<sup>14/</sup>
  - DISH has filed repeatedly in broadcast ownership proceedings to oppose any modification to the national audience reach cap and associated UHF discount.<sup>15/</sup>
  
- **AT&T and DISH are involved in Media Bureau complaint and merger proceedings – some of the most time-consuming activities Media Bureau employees engage in.**
  - AT&T filed jointly with DISH to oppose a broadcaster carriage petition.<sup>16/</sup>
  - DISH has been an active participant in the merger dockets of Tribune and

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<sup>12/</sup> Letter from Alison Minea, Director and Senior Counsel, Regulatory Affairs DISH Network LLC, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 19-131 (May 28, 2019); Letter from Jeanine Poltronieri, Assistant VP, AT&T, to Marlene H. Dortch, Secretary, FCC, MB Docket Nos. 17-105, 17-317 (Apr. 3, 2019); Letter from Jeanine Poltronieri, Assistant VP, External Affairs AT&T, to Marlene H. Dortch, Secretary, FCC, MB Docket Nos. 17-105, 17-317 (May 7, 2019).

<sup>13/</sup> Comments of AT&T, MB Docket No. 17-105 (Feb. 15, 2018); Reply Comments of AT&T, MB Docket No. 17-105 (Mar. 5, 2018).

<sup>14/</sup> Letter from Glenis McKoy, Manager-Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, MB Dockets No. 18-202, 17-105 (April 3, 2019).

<sup>15/</sup> See, e.g., Comments of DISH Network, LLC, MB Docket No. 17-318 (Mar. 19, 2018); Reply Comments of DISH Network, LLC, MB Docket No. 17-318 (Apr. 18, 2018).

<sup>16/</sup> DIRECTV and DISH Network, LLC, Joint Opposition, MB Docket No. 18-274 (Oct. 9, 2018).

Sinclair, Raycom Media and Gray Television,<sup>17/</sup> and DISH filed a Petition to Deny Nexstar's proposed acquisition of Tribune.<sup>18/</sup>

- DISH has been embroiled in television market modification disputes with at least four separate broadcasters,<sup>19/</sup> and was the subject of a must-carry complaint.<sup>20/</sup>
- **DBS providers are also participating in day-to-day Media Bureau matters.**
  - DISH and AT&T are advocating that the proposal to update the procedure for carriage election between cable operators and broadcasters not extend to DBS providers.<sup>21/</sup>

The vast number of filings and meetings make clear that the DBS providers spend a significant amount of time interacting with the Media Bureau, advocating for their interests before the Media Bureau, and complying with routine requirements generally applicable to all MVPDs. The video marketplace has developed such that nearly every Media Bureau activity affects every media marketplace participant. Additionally, cable and DBS operators have begun participating in some Media Bureau proceedings jointly.<sup>22/</sup>

Because the Communications Act requires the Commission to impose regulatory fees on all Media Bureau regulatees on the same basis, unless there is a legally relevant reason for

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<sup>17/</sup> See, e.g., DISH Notice of Intent to Participate, MB Docket No. 17-179 (Aug. 8, 2018); Reply of DISH Network L.L.C., MB Docket No. 18-230 (Sept. 21, 2018).

<sup>18/</sup> Petition to Deny of DISH Network Corporation, MB Docket No. 19-30 (filed Mar. 18, 2019).

<sup>19/</sup> See, e.g., *Amendment to the Commission's Rules Concerning Market Modification; Implementation of Section 102 of the STELA Reauthorization Act of 2014*, MB Docket 15-71 (DISH filed numerous letters and comments in this docket); Partial Opposition of DISH Network LLC to Petitions for Special Relief, MB Docket No. 18-337 (Nov. 28, 2018); Partial Opposition of DISH Network LLC to Petitions for Special Relief, MB Docket No. 18-338 (Nov. 28, 2018).

<sup>20/</sup> *Minority Television Project, Inc. Licensee of Noncommercial Television Station KMTP, Channel \*32 v. DISH Network, L.L.C.*, MB Docket No. 17-313, Memorandum Opinion and Order, 33 FCC Rcd. 216 (MB 2018).

<sup>21/</sup> Joint Comments of DIRECTV, LLC and DISH Network L.L.C., MB Docket No. 17-317 (filed Mar. 18, 2019).

<sup>22/</sup> See, e.g., Letter from Michael Nilsson, Counsel, American Television Alliance to Marlene H. Dortch, Secretary, FCC, MB Docket Nos. 15-216, 10-71, 14-50, 09-182 et al. (Nov. 9, 2017) (discussing several meetings with the Commissioners and Media Bureau staff and Charter, DISH, Verizon, AT&T, and ACA Connects); Letter from Michael Nilsson, Counsel, American Television Alliance to Marlene H. Dortch, Secretary, FCC, MB Docket Nos. 15-216, 10-71, 14-50, 09-182 et al. (Nov. 9, 2017); Comments of the American Television Alliance, MB Docket No. 18-349 (filed Apr. 29, 2019).

distinguishing them, DBS providers should be subject to the same regulatory fees as cable operators and IPTV providers.

## **II. THE COMMISSION SHOULD CONTINUE TO REJECT DBS ARGUMENTS THAT PUBLIC POLICY SUPPORTS LOWER DBS FEES**

To the extent that DBS providers repeat their tired arguments against paying the same rate as cable operators and IPTV providers, the Commission should again reject such arguments.

*First*, the DBS providers have consistently made claims of “rate shock.” Each year, DISH and AT&T argue that regulatory fee increases will cause increases to their subscribers’ monthly bills.<sup>23/</sup> The Commission has rejected the DBS providers’ rate shock claims in the past, concluding that a regulatory fee increase is “a negligible fraction of a monthly bill.”<sup>24/</sup> It should reach the same conclusion this year,<sup>25/</sup> and it should not take these “rate shock” concerns into account in setting the appropriate regulatory fee rate.<sup>26/</sup>

*Second*, the DBS providers have claimed that any increase in the DBS regulatory fee

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<sup>23/</sup> See, e.g., Comments of DISH Network L.L.C. and AT&T Services, Inc., MD Docket No. 18-175, at 9 (filed June 21, 2018) (“The Commission’s current proposal generates significant concerns for DBS providers, on behalf of their subscribers, regarding what to expect in future years”); Comments of DISH Network L.L.C. and AT&T Services, Inc., MD Docket No. 17-134, at 3 (filed June 22, 2017) (“The Commission’s proposal to dramatically raise the per-subscriber regulatory fee imposed upon DBS providers for the third consecutive year will harm DBS customers, who will once again be forced to shoulder the burden of any fee increases. Any per-subscriber regulatory fee imposed will be passed on to DISH’s and AT&T’s DBS subscribers along with other fees and taxes they pay already, thus raising their monthly bills.”); Comments of DISH Network, MD Docket No. 16-166, at 6 (filed June 20, 2016) (“The Commission’s proposal subjects DBS Providers to “Rate Shock” and injects uncertainty into the regulatory fee process.”); Reply Comments of DISH Network, MD Docket No. 16-166, at 2 (filed July 5, 2016) (arguing that an increased DBS regulatory fee would subject DBS providers to “rate shock”).

<sup>24/</sup> *FY 2018 Report and Order* ¶11 n. 32.

<sup>25/</sup> Just this year, AT&T raised its rates for its DBS services by up to \$8 per month and DISH raised its rates by up to \$5 per month. G. Smith, *Comcast, Dish, AT&T to Raise TV Prices to Counter Cord-Cutting*, Bloomberg (Jan. 4, 2019). In 2018, DISH announced rate increases of \$5 per month and DIRECTV/AT&T announced increases of up to \$8 per month. T. Spangler, *Comcast, DirecTV, Dish, Charter Set Rate Hikes for 2018*, Variety (Dec. 22, 2017). In 2017, DISH and AT&T raised their monthly rates by up to \$5 and \$6 per month, respectively. M. Farrell, *Multichannel News* (Dec. 14, 2016).

<sup>26/</sup> Even if the Commission were to entertain DBS claims of rate shock, it would then also need to address its decision to raise the cable/IPTV per subscriber fee by nearly as much as the DBS fee.

from the prior year must be representative of a greater level of participation in Media Bureau proceedings from the prior year. This, too, is incorrect. The Commission has been clear that the initial rate it set for DBS was not meant to be representative of any conclusions about the extent to which DBS operators benefit from Media Bureau activities, and thus, DBS regulatory fee increases are not, and need not be, due to a direct correlation to DBS providers' participation in any particular proceeding or the number of proceedings in which they participated.<sup>27/</sup>

*Third*, the DBS providers have argued that they are not subject to all of the same set of regulations as cable providers and therefore should not pay the same regulatory fees.<sup>28/</sup> But, such differences in regulation do not warrant a different regulatory fee assessment. As the Commission observes,<sup>29/</sup> it has often grouped providers into broad categories paying the same regulatory fee when they are subject to similar – albeit not identical – regulatory burdens. For example, the Interstate Telecommunications Service Provider category includes a range of carriers (*e.g.*, Competitive Local Exchange Carriers, Incumbent Local Exchange Carriers, Interconnected VoIP providers, and Interexchange Carriers), that are not regulated identically.<sup>30/</sup> Similarly, when grouping cable and IPTV together in the same category, the Commission acknowledged that cable and IPTV were not identical, but the “relatively small difference from a

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<sup>27/</sup> *FY 2017 Report and Order* ¶ 22 (“The fee increase we adopt today is not based on particular Media Bureau proceedings, but is an effort to bring the regulatory fee closer to the cable television/IPTV per subscriber fee.”); *see also FY 2007 Order* ¶ 19.

<sup>28/</sup> Comments of DISH Network and AT&T Services, Inc., MD Docket No. 17-134, at 7 (filed June 22, 2017).

<sup>29/</sup> *FY 2019 NPRM* ¶ 18.

<sup>30/</sup> As the Commission explained in making 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.” *FY 2007 Order* ¶ 19 (2007).



regulatory perspective” between the two services did not justify a different regulatory fee rate.<sup>31/</sup> The same holds true with respect to cable, IPTV, and DBS services. While these services may be subject to somewhat different regulations, MVPDs have similar interests and impose similar regulatory burdens on the Media Bureau.

*Finally*, there is no merit to claims that, because DBS providers are assessed International Bureau regulatory fees in connection with their satellite delivery system, those fees should somehow offset their Media Bureau fee obligations.<sup>32/</sup> As discussed above, the Commission is statutorily obligated to assess regulatory fees according to the burden that a service places on the Commission. The Commission must, by law, assess regulatory fees sufficient to cover the entire cost of regulating DBS services, even if that regulation is undertaken by more than one Bureau. The resources expended by the International Bureau in its regulation of DBS providers are independent of the Media Bureau’s efforts, and vice versa, as each Bureau regulates a different aspect of DBS service. DBS is not alone in this regard as cable operators pay regulatory fees to support other bureaus in connection with their non-Media Bureau activities, to say nothing of the billions of dollars paid annually in cable franchise fees to state and local regulators. That different service offerings trigger different regulatory fees does not warrant any adjustment to those fees.

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<sup>31/</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2013, Procedures for Assessment and Collection of Regulatory Fees, Assessment and Collection of Regulatory Fees for Fiscal Year 2018*, MD Docket Nos. 13-140, et al., 28 FCC Rcd. 12351, ¶ 32 n.81 (2013).

<sup>32/</sup> *See, e.g.*, Reply Comments of AT&T Services, Inc., MD Docket No. 17-134, at 7 (filed July 7, 2017).

## CONCLUSION

NCTA and ACA Connects appreciate the Commission's continued efforts to bring the DBS regulatory fee into greater parity with the cable and IPTV fee and its yearly analysis of the appropriate assessment of regulatory fees. However, in adopting the FY 2019 regulatory fee schedule, the Commission must end its DBS phase-in approach and equalize the regulatory fees paid by DBS, cable, and IPTV providers. DBS providers occupy Media Bureau resources in the same way as other MVPDs, and must be assessed the same rate.

Respectfully submitted,

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