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

In the Matter of	)	
	)	
Procedures for Assessment and Collection of Regulatory Fees for Fiscal Year 2015	))	MD Docket No. 15-121

COMMENTS OF THE NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION AND THE AMERICAN CABLE ASSOCIATION

The National Cable & Telecommunications Association ("NCTA") and the American Cable Association ("ACA") submit these comments in response to the Commission's Notice of Proposed Rulemaking ("NRPM") in the above-captioned proceeding, specifically addressing the assessment and collection of regulatory fees for Direct Broadcast Satellite ("DBS") services.[1/]

The Commission's action in the *Order* accompanying the *NPRM* appropriately recognizes that DBS providers "are subject to regulation and oversight of the Media Bureau and should share in the Media Bureau FTE burden attributed to MVPDs."[2/] However, despite the Commission's recognition that there are a "host of requirements that apply to all MVPDs and thus equally apply to DBS providers," as well as its conclusion that "DBS providers actively participate in Media Bureau proceedings involving MVPD oversight and regulation,"[3/] the Commission proposes to set the initial rate for DBS providers at the disproportionately low rate of 12 cents per year per subscriber or one cent per month per subscriber.[4/] There is no

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1/ *Assessment and Collection of Regulatory Fees for Fiscal Year 2015*, Notice of Proposed Rulemaking, Report and Order, and Order, FCC 15-59, ¶¶ 7-9 (rel. May 21, 2015) ("*NPRM*" or "*Order*," as appropriate).

2/ *Order* ¶ 28.

3/ *Order* ¶ 31.

4/ *NPRM* ¶ 9.

justification for allowing DBS operators to avoid paying their fair share of Media Bureau regulatory fees, and this rate should be substantially increased.

To the extent the Commission believes it must account for the DBS operators' concerns about "rate shock" by phasing in DBS regulatory fees over time, then the Commission should make that phase-in period explicit and limited in duration. NCTA and ACA have suggested previously that the Commission address any concerns about rate shock by phasing the DBS fee in over three years, such that DBS operators' fees do not approximate the fee paid by cable operators and IPTV providers until FY 2017.[5/] While there is no way of knowing exactly what the Commission's overall fee requirements will be in future years, a reasonable phase-in schedule would be to assess DBS FY 2015 fees at 24 cents per subscriber (two cents per subscriber per month), with projected DBS FY 2016 fees at 48 cents per subscriber (four cents per subscriber per month) and DBS FY 2017 fees at 72 cents (6 cents per subscriber per month). At that time, DBS fees should reasonably approximate those paid by cable operators and IPTV providers. The fee levels could be subject to additional adjustments in future years as the Commission sets the actual amounts it proposes to collect in regulatory fees each year.

I. REGULATORY FEES PAID BY DBS OPERATORS TO SUPPORT THE MEDIA BUREAU SHOULD BE SIMILAR TO THOSE PAID BY CABLE OPERATORS AND IPTV PROVIDERS IN THE SAME FEE CATEGORY

A foundational principle of the Commission's regulatory fee assessment system is fairness – the principle that those entities that share in causing regulatory costs and receiving regulatory benefits from a Commission subdivision like the Media Bureau should share equitably in paying the fees that support the Bureau.[6/] The Commission has underscored its commitment

[5/] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2014,* MD Docket No. 14-92, Comments of NCTA and ACA, at 13-15 (Nov. 26, 2014).

[6/] *Procedures for Collection and Assessment of Regulatory Fees*, Notice of Proposed Rulemaking, to this principle of fairness in regulatory fee assessments repeatedly over the years, including when the Commission recently began assessing IPTV providers the same per-subscriber regulatory fee as cable operators for support of the Media Bureau's regulation of MVPD operations, explaining that "IPTV and cable service providers [both] benefit from Media Bureau regulation as MVPDs," and that they should both pay for that regulation at the same rate because there is a "relatively small difference from a regulatory perspective" between the two types of MVPDs.[7/]

This same principle should apply to the level of regulatory fees assessed of DBS operators. The Commission already has concluded that the Media Bureau increasingly devotes its time to issues involving the entire MVPD industry, and that "although DBS is not identical to cable television and IPTV, the services all receive oversight and regulation as a result of the work of the Media Bureau FTEs on MVPD issues"[8/] – in other words, that there is a "relatively small difference from a regulatory perspective" between DBS and Cable/IPTV. Having reached this conclusion, under the Commission's own reasoning and precedent, the Commission should require DBS operators to pay the same rate.

Instead, while including DBS in the new regulatory fee category "Cable TV System, Including IPTV and DBS," the Commission determined that the category should have two rates – one for DBS and a second for cable television and IPTV[9/] – and proposed to set the FY 2015 rate for DBS at 12 cents per subscriber while setting the rate for Cable and IPTV at 95 cents per

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27 FCC Rcd 8458, ¶ 3 (2012); *see NPRM* ¶ 6 (noting the Commission's intent to "continue[] to improve the regulatory fee process by ensuring a more equitable distribution of the regulatory fee burden").

7/ *Assessment and Collection of Regulatory Fees for Fiscal Year 2013*, Report and Order, 28 FCC Rcd. 12351, ¶ 32 & n.81 (2013) ("*2013 Fee Order*").

8/ *Order* ¶¶ 33-34.

9/ *Id*.

subscriber – nearly eight times as much.[10/] The proposed rate for DBS is inexplicably and unreasonably low, leaving an unfair share of Media Bureau regulatory fees to be borne by cable operators and IPTV providers.

While DBS operators may argue that their burden on the Media Bureau is much less than that of cable operators and IPTV providers, warranting a lower rate, the established record in this proceeding shows otherwise. In response to the Commission's 2014 further notice of proposed rulemaking,[11/] NCTA and ACA presented data and analysis showing that DBS operators participate in proceedings of the Media Bureau regarding MVPD regulation as much as, and often more than, other MVPDs in the fee category.[12/] In the *Order* accompanying the *NPRM*, the Commission also reported substantial evidence of extensive DBS involvement in Media Bureau proceedings.[13/] There is, on the other hand, no evidence in the record showing that DBS operators' burden on the Media Bureau is substantially less than that of cable and IPTV operators – and certainly no evidence of any difference that would justify the wide disparity in rates proposed in the *NPRM*.

Similarly, while DBS operators have suggested that they should pay fees at a lesser rate because they also pay substantial fees to support the International Bureau's regulation of their satellite operations,[14/] the regulatory fees paid to the International Bureau relate only to satellite

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10/ *NPRM* ¶ 9.

11/ *See generally, Assessment and Collection of Regulatory Fees for Fiscal Year 2014*, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 10767 (2014) ("*2014 FNRPM*").

12/ *See Assessment and Collection of Regulatory Fees for Fiscal Year 2014*, MD Docket No. 14-92, Comments of NCTA and ACA, at 7 (Nov. 26, 2014); *Assessment and Collection of Regulatory Fees for Fiscal Year 2014*, MD Docket No. 14-92, Reply Comments of NCTA and ACA, at 6-7, 11-12 (Dec. 26, 2014).

13/ *See Order* ¶ 31 n.111.

14/ *See, e.g.*, *Assessment and Collection of Regulatory Fees for Fiscal Year 2014*, MB Docket No. 14-92, Further Reply Comments of DIRECTV, LLC and DISH Network L.L.C., at 4-6 (Dec. 26, 2014).

operations and support International Bureau FTEs. DBS operators receive substantial direct regulatory support from both the International Bureau and the Media Bureau, and there is no reason they should not participate fully in paying the costs of operation of both bureaus. MVPDs routinely pay a range of regulatory fees based on the nature and extent of their operations, and those fees are not offset against each other. There is no offset given to cable operators, for example, for regulatory fees paid for CARS licenses they may use in delivering their video services.

In fact, what the *NPRM* suggests is that the proposed 12 cent rate for DBS – "one cent per customer per month" – is set at such a low level in an effort to address DBS operators' concerns about "rate shock" for their customers.[15/] This argument cannot withstand scrutiny. Even if the Commission were to assess DBS fees at exactly the same level as Cable and IPTV, it would amount to less than eight cents per month per DBS subscriber, or less than a four-tenths of one percent (0.4%) increase on the lowest-priced DBS introductory package, even if the DBS operators decided to pass through the full amount. This amount cannot be considered substantial enough to warrant reduced fees, particularly when the burden of the reduction in DBS fees is borne by the direct competitors of the DBS operators. Indeed, when IPTV was added to the same regulatory fee category as cable and required to pay the same $1.00 per subscriber rate beginning in 2014, no consideration was given to phasing in the fee to avoid "rate shock."[16/] Similarly, no phase in or consideration of "rate shock" was considered in 2007 when the Commission included VoIP service providers in the same rate category as interstate

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15/ *NPRM ¶ 9.*

16/ *2013 Fee Order* ¶ 33; *Assessment and Collection of Regulatory Fees for Fiscal Year 2014*, Notice of Proposed Rulemaking, Second Further Notice of Proposed Rulemaking, and Order, 29 FCC Rcd 6417, ¶ 12, Att. B (2014).

telecommunications service providers ("ITSPs").[17/] There is nothing unique about DBS operators to justify any deviation from the Commission's past approach. Similarly, there is nothing about the level of the fee that would be imposed that calls for special consideration. The Commission should apply the same principle of fairness that has always governed regulatory fee assessments and assess DBS a regulatory fee rate comparable to that paid by others in the same regulatory fee category.

II. THE COMMISSION SHOULD MAKE THE DBS PHASE-IN PERIOD EXPLICIT AND LIMITED

In the *Order* accompanying the *NPRM*, the Commission stated that due to DBS operators' concern that requiring them to pay fees to support the Media Bureau would "cause rate shock" for their customers, the Commission had "decided to phase in the DBS fee and introduce it initially as a subcategory of the cable television and IPTV category."[18/] In announcing this phase-in decision, the Commission noted the proposal made by NCTA and ACA for a three-year phase in to address the DBS operators' "rate shock" concerns.[19/] However, while the Commission proposes a 12 cents per subscriber rate for DBS in the *NPRM* and describes that proposal as "address[ing] DIRECTV and DISH's contention that a 'fee increase will cause rate shock,'" the Commission fails to address how this proposed rate fit into a phase-in proposal.

NCTA and ACA question whether a phase-in is actually needed by companies as large and financially successful as the DBS operators. DIRECTV and DISH Network are the second and third largest MVPDs, respectively[20/] – each with annual operating profits in the billions of

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17/ *Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd. 15712, ¶ 20 (2007).

18/ *Order* ¶ 38.

19/ *Id.*

20/ SNL Kagan, Global Multichannel Top Operators 2014H1, *at* https://www.snl.com/interactivex/GlobalMultichannelTopOperators.aspx.

dollars.[21/] Moreover, should the DBS providers believe that any rate increase would be too great for their customers, they can easily choose to absorb the fee increase and not pass it through to their customers. However, if the Commission believes that a phase-in period is needed, the three-year phase-in period initially proposed by NCTA and ACA is more than sufficient. If, based on the initial proposed DBS fee, the unstated intent of the Commission is to phase-in DBS regulatory fees in increments of 12 cents per year, it would take 6 or 7 years for DBS rates to approximate the rates currently paid by cable operators and IPTV providers. There is no reason that one subset of the regulatory fee category should enjoy such a competitive advantage over other providers in that category.

While the Commission has not calculated its regulatory fee requirements over the next three years yet, and so it is impossible to compute exact figures for accomplishing a three-year phase in, the Commission should put in place a reasonable phase-in schedule that can be adjusted in future years to match more precisely the Commission's regulatory fee requirements. A reasonable initial fee for DBS for FY 2015 would be a 24-cents per subscriber fee. Even if this fee assessment were to be fully passed through to subscribers by DBS operators, the amount – two cents per subscriber per month – would be far too small to cause "rate shock" for any DBS subscriber. Even for a DBS subscriber at the lowest-cost $19.99 per month introductory rate, a fully-passed-through fee of that size would cause a rate increase of only one-tenth of one percent (0.1%). At the higher rates paid by DIRECTV and DISH Network average subscribers,[22/] the

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[21/] *See* DIRECTV Annual Report 2014, at 41 (reporting 2014 revenues of $33.3 billion and operating profit of $5.1 billion); DISH Network Annual Report 2014, at 55 (reporting 2014 revenues of $14.6 billion and operating profit of $1.8 billion).

[22/] DIRECTV's average revenue per unit (ARPU) customer in the third quarter of 2014 was $107.27 per month (http://variety.com/2014/biz/news/directv-loses-28000-u-s-subscribers-in-q3-as-revenue-rises-1201349475/), and DISH's ARPU over the same period was $84.39 (http://variety.com/2014/biz/news/dish-drops-12000-tv-subscribers-in-q3-misses-earnings-expectations-1201347160/).

two cents per month regulatory fee – if fully passed through – would represent an increase of only two hundredths of a percent (0.02%).

To accomplish a reasonable three-year phase-in, the Commission could increase the DBS fee by another 24 cents per subscriber (or two cents per month per subscriber) the following fiscal year, making the DBS fee 48 cents per subscriber (four cents per month) in FY2016. A third increase of 24 cents in the following year would bring the DBS fee to 72 cents per subscriber in FY2017 – 6 cents per subscriber per month – and barring any radical shift in overall fees paid for the Media Bureau, reasonably close to the fees paid by cable and IPTV. In year four, the Commission should adjust the DBS fee to exactly match the cable and IPTV fee, and maintain such a match in future years. Such a schedule would be fair, and would allow the DBS operators to plan ahead for these cost increases, so that they can implement any adjustments in rates they believe necessary to prevent against "rate shock" for their subscribers.

CONCLUSION

In adopting its FY 2015 regulatory fee schedule, the Commission should set the initial fees for DBS operators at a more reasonable level, and make explicit that it intends to phase in fees for DBS operators as part of the "Cable TV System, Including IPTV and DBS" fee category over a period of three years to reach a level reasonably comparable to the regulatory fees assessed to cable and IPTV operators.

Respectfully submitted,

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