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

In the Matter of	)	
	)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2021	)	MD Docket No. 21-190
	)	
	)	

REPLY COMMENTS OF ACA CONNECTS – AMERICA'S COMMUNICATIONS ASSOCIATION AND NCTA – THE INTERNET & TELEVISION ASSOCIATION

By these reply comments, ACA Connects – America's Communications Association (ACA Connects) and NCTA – The Internet & Television Association (NCTA) respond to the comments on the *NPRM* in the above-captioned proceeding[1] filed by AT&T and DISH, the nation's Direct Broadcast Satellite MVPDs (DBS Providers), opposing the Commission's proposal to conclude the multi-year phase-in of the DBS regulatory fee.

INTRODUCTION

The DBS Providers' arguments reflect the same recycled points that they have raised in previous years. The Commission must retain its historical stance of rejecting these groundless arguments.

In their initial comments, ACA Connects and NCTA commended the Commission for proposing to culminate its six-year phase-in of the DBS regulatory fee by making Media Bureau regulatory fees for cable, Internet Protocol television (IPTV), and DBS providers equal for Fiscal Year 2021 and going forward. The Commission should reject

---

[1] *Assessment and Collection of Regulatory Fees for Fiscal Year 2021*, Report and Order and Notice of Proposed Rulemaking, FCC 20-64 (May 4, 2021) (*NPRM*).

the DBS Providers' claim that the increased level of regulatory fees for DBS providers is too high, "dramatic," and "unjustified."[2] The Commission should also again reject the DBS Providers' claim that Media Bureau issues are primarily cable-specific and have significantly less applicability to DBS providers.[3] Finally, the Commission should reject the DBS Providers' claim that paying equal fees would cause DBS subscribers rate shock.[4]

DISCUSSION

The DBS Providers raise no argument that should cause the Commission to deviate from its proposed course of action.

The DBS Providers' argument that the Commission's proposal to increase their regulatory fees by 24 cents in FY 2021 would result in too high an increase should be rejected.[5] While the DBS Providers assert that this increase would "be the single largest yearly rate increase" imposed by the Commission on DBS providers,[6] the relatively larger amount of this final increase is due primarily to the unusually long phase-in period the DBS Providers enjoyed.[7] Further, while these observations are

[2] Comments of DBS Providers, MD Docket No. 21-190, at 1, 4 (filed June 4, 2021) (DBS Providers FY 2021 Comments).

[3] *Id.* at 3.

[4] *See id.* at 4.

[5] *See id.* at 1.

[6] *Id.*

[7] The Commission also proposes a seven-cent per subscriber increase in the cable/IPTV provider regulatory fee for FY 2021. *Compare NPRM* at 27, Appx. B, FY 2021 Schedule of Regulatory Fees ($.96 per subscriber) *with id*. at 97, Appx. G, FY 2020 Schedule of Regulatory Fees ($.89 per subscriber). Given this context, it is more apt to characterize the proposed FY 2021 DBS regulatory fee increase as a 17-cent increase, a mere five cents more than in previous years).

mathematically and empirically accurate, contrary to the DBS Providers' assertions, they are of no significance: the increase is neither "dramatic," nor "unjustified."[8]

In 2015, the Commission announced a DBS regulatory fee phase-in process with the objective of DBS providers coming into parity with the fees that cable/IPTV providers incur.[9] Although, as it turned out, the Commission increased the DBS regulatory fee by 12 cents per year in the course of its phase-in to parity, the Commission never specified that it was limited to that amount, nor claimed that its 12 cent increases year-over-year had any direct relevance to the true value of DBS participation in Media Bureau activities. Thus, the DBS Providers' sense that they should not be subject to more than a 12-cent regulatory fee increase per year, if any, is unfounded. The 24-cent fee increase for DBS Providers in FY 2021 would realize the parity goal actually specified by the Commission by finally equalizing the fee for DBS providers and cable/IPTV providers.

The DBS Providers argue that parity as the rationale for increasing their fees is insufficient as the fee increases bear no "rational relation to the costs that regulatees impose on the Commission."[10] The DBS Providers also argue that the "appropriate level of regulatory parity" was achieved "several years ago," and that any further increase is "unfairly shifting cable-caused FTE costs."[11] These arguments cannot stand

---

[8] DBS Providers FY 2021 Comments at 1, 4.

[9] *See NPRM* at 13, para. 31; *Report and Order and Further Notice of Proposed Rulemaking*, 30 FCC Rcd 10268, 10294-95, Appx. C, FY 2015 Schedule of Regulatory Fees (2015) (12 cents per subscriber per year for DBS providers, 96 cents per subscriber per year for other MVPDs).

[10] DBS Providers FY 2021 Comments, at 2.

[11] *Id.*

for two reasons. First, the stated purpose of the increased regulatory fee for DBS providers in the 2021 *NPRM* is to align the fees with "the significant number of Media Bureau FTEs that work on MVPD issues that include DBS, 'not a particular number of FTEs focused solely on DBS' or 'specific recent proceedings.'"[12] Second, as the Commission has repeatedly held, DBS providers receive the same oversight as other MVPDs, and share a common pool of Media Bureau FTEs with other MVPDs.[13] For years, ACA Connects and NCTA have proven, and the Commission has rightfully agreed, that DBS providers, like cable and IPTV providers, participate in numerous Media Bureau proceedings, are affected by these proceedings, and impose similar burdens on the Media Bureau as do cable and IPTV providers.[14] The Commission has established that Media Bureau FTEs expend considerable resources to carry out its oversight of DBS providers, including "market modifications, local-into-local, must-carry and retransmission consent disputes, program carriage and program access complaints, over-the-air reception device declaratory rulings and waivers, rulemakings, and proposed transactions."[15] Thus, the proposed fee alignment between cable/IPTV

---

[12] *NPRM* at 13, para. 31.

[13] *See, e.g., Assessment and Collection of Regulatory Fees for Fiscal Year 2018*, Report and Order, 33 FCC Rcd 8497, 8499, para. 8 (2018) (*FY 2018 Report and Order*) (stating that "the Media Bureau relies on a common pool of FTEs to carry out its oversight of MVPDs and other video distribution providers").

[14] *See, e.g., Assessment and Collection of Regulatory Fees for Fiscal Year 2017*, Report and Order, 32 FCC Rcd 7057, 7067-68, paras. 22-23 (2017); *Assessment and Collection of Regulatory Fees for Fiscal Year 2015*, Notice of Proposed Rulemaking, 30 FCC Rcd 5354, 5369, para. 33 (2015).

[15] *FY 2018 Report and* Order, 33 FCC Rcd at 8499, para. 8; *See* Comments of NCTA and ACA Connects, MD Docket No. 21-190, at 3 n.8 (filed June 4, 2021) (observing that in the last year, as in previous years, DBS providers have been active in numerous

providers and DBS providers in the *NPRM* equitably connects to the direct and substantial resources devoted to DBS provider issues by the Commission. Indeed, as the Commission consistently has found, "Media Bureau employees dedicate substantially similar amounts of time and resources to the regulation of DBS as they do to cable television and IPTV."[16]

Moreover, even if the DBS Providers were correct that Media Bureau employees spend more time on cable issues (which they are not), the statute does not require that the fees be set according to a precise level of regulatory activity or identical regulatory burdens. The Commission consistently has agreed that "even differently regulated services can warrant placement in the same payor category if they are overseen by a common pool of FTEs," that "[c]able television, IPTV, and DBS all receive oversight and regulation by Media Bureau FTEs working on MVPD issues," and that therefore, "the continued participation of DBS operators in Commission proceedings, along with the

---

Media Bureau rulemaking and complaint proceedings, including program carriage, must-carry, and market modification proceedings).

[16] *Assessment and Collection of Regulatory Fees for Fiscal Year 2019*, Report and Order and Further Notice of Proposed Rulemaking, 34 FCC Rcd 8189, 8199, para. 26 (2019) (*FY 2019 Report and Order*). Moreover, the DBS Providers' argument that bringing their regulatory fee to parity with that incurred by other MVPDs somehow would impose a "competitive disadvantage with respect to other categories of MVPDs," DBS Providers FY 2021 Comments at 3, is absurd and turns logic on its head. As the DBS Providers themselves concede, the Commission repeatedly has rejected factoring in the other regulatory fees DBS providers pay, noting that Commission personnel in the International Bureau provide different oversight than Media Bureau personnel. *See id.; see also, e.g., FY 2019 Report and Order*, 34 FCC Rcd at 8200, para. 28 (no justification to offset an entity's regulatory contribution based on the fact of it using additional Commission resources and therefore being assessed regulatory fees by more than one bureau). Similarly, cable operators may pay, for example, CARS or ITSP regulatory fees, as applicable, for other services they provide, in addition to their MVPD regulatory fees.

use of a common pool of FTEs to oversee MVPD matters (including matters related to DBS operators in particular), justifies an increase in the DBS regulatory fee rate."[17]

Finally, the DBS Providers once again contend that the proposed increased regulatory fees, if adopted, will constitute a rate shock to their subscribers. This year, they have repackaged their argument, stating that the 24 cent increase would inflict a substantial burden on consumers who are already "suffering under the economic pressures imposed by the COVID-19 pandemic."[18] This 24 cent increase amounts to *two cents* per subscriber per month at the same time the DBS Providers have increased costs for their subscribers by *dollars* per month in 2021.[19] Thus, while ACA Connects and NCTA do not diminish the seriousness of the economic impact of the pandemic on consumers, it is not the two-cents-per-month regulatory fee increase that will induce severe "economic pressures" on the DBS Providers' subscribers.

CONCLUSION

For six years, the Commission applied a "phase-in" approach to aligning the fees that Media Bureau MVPD regulatees pay. This year's *NPRM* finally and properly proposes to culminate the phase-in by equalizing the amount of regulatory fees paid by cable/IPTV providers and DBS providers going forward. The DBS Providers have not advanced any compelling reason to alter course. The Commission should adopt its proposal to end the regulatory fee disparities among MVPDs and treat cable, IPTV and DBS providers as a single MVPD category in the future.

---

[17] *FY 2019 Report and Order*, 34 FCC Rcd at 8199, para. 26; *See also, e.g.*, *FY 2018 Report and Order*, 33 FCC Rcd at 8500, para. 10.

[18] DBS Providers FY 2021 Comments, at 4.

[19] *See, e.g.,* AT&T, *TV Price Changes for 2021* (last visited June 11, 2021), https://www.att.com/support/article/directv/KM1314015/.

Respectfully submitted,

/s/ Rick Chessen

Rick Chessen
Neal M. Goldberg
NCTA – The Internet & Television Association
25 Massachusetts Avenue, NW
Suite 100
Washington, DC 20001-1431
(202) 222-2445

/s/ Nicole A. Powell

Nicole A. Powell
Ross J. Lieberman
Michael J. Jacobs
ACA Connects – America's Communications Association
2415 39th Place, NW
Washington, DC 20007
(202) 494-5661

June 21, 2021