BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

In the Matter of
Assessment and Collection of Regulatory Fees for Fiscal Year 2013 MD Docket No. 13-140
Procedures for Assessment and Collection of Regulatory Fees MD Docket No. 12-201
Assessment and Collection of Regulatory Fees for Fiscal Year 2008 MD Docket No. 08-65

To: Secretary, Federal Communications Commission
Attn: The Commission

COMMENTS OF ECHOSTAR CORPORATION AND DISH NETWORK L.L.C.

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SUMMARY

EchoStar Satellite Operating Company and Hughes Network Systems, LLC (“Hughes”) (together “EchoStar”) and DISH Network L.L.C. (“DISH”) support the Commission’s recent actions to address concerns raised earlier in this proceeding with respect to the allocation to the satellite industry activities of full-time equivalents (“FTEs”) in the International Bureau. The revised analytical framework outlined in the Notice of Proposed Rulemaking (“NPRM”) is an important refinement of the earlier proposals, reflecting more accurately the actual administrative costs that must be collected from satellite service providers pursuant to Section 9 of the Communications Act of 1934, as amended (the “Act”). The result is a fairer and more sustainable allocation of fees to satellite licensees that is consistent with the Commission’s statutory mandate.

EchoStar and DISH urge the Commission to adopt its modified FTE allocation with respect to the “four core bureaus” for FY 2013 and to extend its approach to other Commission offices that have been treated primarily as imposing indirect costs. This will refine the allocation of the FTEs employed in these sub-entities on a more granular and transparent basis. Consistent with the approach followed in refining the allocation of International Bureau FTEs, EchoStar and DISH urge the Commission to continue to identify the core responsibilities of individual agency units as a means of more accurately distributing the regulatory fee load amongst the various industries subject to FCC regulation. Similarly, the Commission should separate as non-allocable for regulatory fee purposes the FTEs within each of the core bureaus whose duties relate principally to application processing, as these activities are already covered by Section 8 of the Act and cannot properly be double-counted for calculation of regulatory fees under the language of Section 9. Adoption of both the Commission’s FTE reallocation and these additional steps to refine the fee allocation process will encourage robust growth and the development of new and
innovative service offerings and technologies, including the provision of vital and high-demand satellite services to U.S. consumers, resulting in increased competition and lower costs.

EchoStar and DISH also urge the Commission not to adopt a revenue based approach to determining fees. As discussed herein, such an approach is inconsistent with the Act. Further, since the FCC’s proposed annual increase is not based on any empirical or other data, EchoStar and DISH urge the FCC to limit any annual increases to the specified metric tied to the rate of inflation.

Finally, EchoStar and DISH urge the Commission not to adopt any new fees covering non-U.S.-licensed satellites or any new fee methodology covering Direct Broadcast Satellite (“DBS”) licensees. Because the Commission does not regulate non-U.S. satellite facilities, it lacks authority to impose regulatory fees on those providers under Section 9 of the Act. There is also no basis for the Commission to reclassify or alter the fee payment methodology applicable to DBS providers, as there has been no significant change in Commission regulation of these licensees and regulation of DBS continues to demand a far smaller share of FCC regulatory resources than do cable system operators.
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For Fiscal Year 2013 )

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COMMENTS OF ECHOSTAR CORPORATION AND DISH NETWORK L.L.C.  

EchoStar Satellite Operating Company and Hughes Network Systems, LLC ("Hughes") (together “EchoStar”) and DISH Network L.L.C. (“DISH”), pursuant to Section 1.415 of the Commission’s Rules (47 C.F.R. § 1.415), hereby submit comments in the Commission’s above-captioned proceedings on the collection of regulatory fees for Fiscal Year (FY) 2013 and on proposals to reform the Commission’s policies and procedures for assessing and collecting regulatory fees.1

EchoStar and DISH support the Commission’s recent actions to address the recommendations made in the 2012 Government Accountability Office (“GAO”) Report and to update the data upon which Commission FTEs are allocated to each category of regulatory fee payor. In particular, the Commission has carefully addressed concerns raised earlier in this

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proceeding with respect to the allocation to the satellite industry activities of full-time equivalents ("FTEs") in the International Bureau.\(^2\) The revised analytical framework outlined in the NPRM is an important refinement of the earlier proposals, reflecting more accurately the actual administrative costs that must be collected from satellite service providers pursuant to Section 9 of the Communications Act of 1934, as amended (the “Act”). The result is a fairer and more sustainable allocation of fees to satellite licensees that is consistent with the statutory mandate.

As further discussed herein, EchoStar and DISH urge the Commission to adopt its modified FTE allocation with respect to the “four core bureaus” for FY 2013 and to extend its approach for the International Bureau to other Commission offices that have been treated primarily as imposing indirect costs, refining the allocation of the FTEs employed in these sub-entities on a more granular and transparent basis. EchoStar and DISH also provide comments that will assist in fine tuning the Commission’s proposed approach for application in FY 2014 and beyond to achieve a regulatory fee approach that meets the requirements of Section 9 of the Act.

Consistent with the approach followed in refining the allocation of International Bureau FTEs, EchoStar and DISH also urge the Commission to continue to identify the core responsibilities of individual agency units as a means of more accurately distributing the regulatory fee load among the various industries subject to FCC regulation. Similarly, the Commission should separate as non-allocable for regulatory fee purposes the FTEs within each of the core bureaus whose duties relate principally to application processing, as these activities

are already covered by Section 8 of the Act and cannot properly be double-counted for
calculation of regulatory fees under the language of Section 9.

These additional steps will help to ensure that only the costs to be recovered through
regulatory fee payments are assessed and that these costs are fairly distributed among FCC
licensees and other regulatees in a manner that serves the public interest. Adoption of both the
Commission’s FTE reallocation and these additional steps to refine the fee allocation process
will encourage robust growth and the development of new and innovative service offerings and
 technologies, including particularly the provision of vital and high-demand satellite services to
consumers and businesses in the United States, resulting in increased competition and reduced
costs.

EchoStar and DISH also urge the Commission not to adopt a revenue-based approach
to determining fees. As discussed herein, such an approach is inconsistent with the Act.
Further, since the FCC’s proposed annual increase is not based on any empirical or other data,
EchoStar and DISH urge the FCC to limit any annual increases to the specified metric tied to
the rate of inflation.

Finally, EchoStar and DISH urge the Commission not to adopt any new fees covering
non-U.S.-licensed satellites or any new fee methodology covering Direct Broadcast Satellite
(“DBS”) licensees. Because the Commission does not regulate non-U.S. satellite facilities, it
lacks authority to impose regulatory fees on those providers under Section 9 of the Act. There
is also no basis for the Commission to reclassify or alter the fee payment methodology
applicable to DBS providers, as there has been no significant change in Commission regulation
of these licensees and regulation of DBS continues to demand a far smaller share of FCC
regulatory resources than do cable system operators.
I. BACKGROUND

EchoStar and DISH are homegrown U.S. satellite operators and service providers founded by Charlie Ergen in 1980 that today have grown to operate and provide service utilizing a fleet of 22 satellites in DBS service, the Fixed-Satellite Service and the Mobile-Satellite Service. These facilities provide innovative multi-channel video programming distribution, state-of-the-art broadband services, and innovative mobile broadband services.³ DISH serves over 14 million U.S. customers with its multi-channel video distribution business. EchoStar serves approximately 700,000 customers in the United States broadband market, while DISH serves another 250,000 customers.

In 2008, the satellite technology, operations, and non-DBS services aspects of EchoStar’s business were spun off into EchoStar Corporation, with the consumer DBS service remaining in the original EchoStar entity under a new name, DISH Network Corporation. Under contract to DISH, EchoStar operates all of the space station and earth station assets necessary for DISH’s consumer DBS business, as well as related consumer equipment.

EchoStar is also the parent company Hughes, which is the global leader in providing broadband satellite services. This high speed broadband service is especially important to EchoStar’s customers living in rural communities or markets with limited terrestrial broadband build-out. The Commission has recognized that satellite-delivered broadband service is a key component in achieving the goal of universal broadband capability due to the dearth of terrestrial broadband service providers in these areas.⁴

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³ EchoStar Technologies, a subsidiary of EchoStar, also has a successful set-top box business.
II. NOTICE OF PROPOSED RULEMAKING

Through the NPRM, the Commission seeks to carry out its statutory mandate to make adjustments to the schedule of fees on an annual basis through “proportionate increases or decreases to reflect … changes in the amount appropriated for the performance” of enumerated non-licensing, regulatory activities.\(^5\) The specific activities that the annual fees are intended to cover are enforcement, policy and rulemaking, user information services, and international activities.\(^6\) These fundamental principles and limitations should guide the Commission’s decisions in this docket.

A. The Commission Should Adopt the FTE Reallocation Proposed in the NPRM and Apply the Analysis Used to Allocate International Bureau FTEs to Other Commission Bureaus.

In its 2012 Notice of Proposed Rulemaking in MD Docket 12-201, the Commission stated that a simple reallocation of the direct FTEs in the so-called “four core licensing bureaus” would result in the International Bureau accounting for 122 FTEs, or 22% of the total FTEs in the core bureaus (rather than 6.7%).\(^7\) This allocation, if applied without modification, would have more than tripled the fees allocated to International Bureau.\(^8\) As a result, the Commission sought comment on whether this dramatic increase in fees would be consistent with the Commission’s goals of fairness and sustainability.\(^9\) As discussed below, the satellite

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\(^8\) Id. (¶ 25).
\(^9\) Id. at 8467-68 (¶ 26) (noting that “much of the work within the Strategic Analysis and Negotiations Division of the International Bureau covers services outside of the Bureau’s direct regulatory activities,” including “the responsibility for leading the Commission’s international representation in bilateral meetings, multilateral meetings, and cross-border
industry has demonstrated that satellite regulation actually requires a small and decreasing portion of Commission resources, and that the Commission should therefore reexamine the proportion of International Bureau FTEs that could legitimately be allocated as direct costs attributable to regulation of satellite licensees.¹⁰

The Commission states that “fairness warrants an allocation that more closely reflects the appropriate proportion of direct costs required for regulation and oversight off International Bureau regulates.”¹¹ Based on its analysis, the Commission correctly concludes that the International Bureau should not be classified in its entirety as a “core bureau” with all FTEs allocated to fee-paying entities under the Bureau’s jurisdiction. Instead, the Commission finds that its functions should be viewed on a more granular Division-by-Division basis, with only the 25 FTEs within the Satellite Division and two within the Policy Division allocated directly to International Bureau regulatees.¹² “All remaining International Bureau FTEs would be indirect because their activities benefit the Commission as a whole and are not focused on International Bureau regulatees.”¹³

EchoStar and DISH support the adoption of this proposal for the current fiscal year. Unlike the Wireline Competition Bureau or the Media Bureau, which are clearly intended to serve the defined regulatory needs of specific industry segments, the International Bureau was never intended to and does not regulate only a specified group of Commission licensees. The

¹⁰See SIA Comments at 7-12.
¹¹NPRM at 9 (¶ 18).
¹²NPRM at 13-14 (¶ 28).
¹³Id.
International Bureau is a functional designation consolidating the majority of Commission functions dealing with cross-border and international issues regardless of industry segment.\(^{14}\) For these reasons, the International Bureau was always miscast as purely an industry regulatory bureau, as its responsibilities extend broadly to areas of policy and international negotiation that impact all FCC-regulated entities. The Commission’s proposal in the NPRM corrects this anomaly.

EchoStar and DISH urge the Commission to adopt two further refinements that would lead to a more equitable and appropriate allocation of FTEs. First, the Commission should apply the same type of enhanced scrutiny applied to the International Bureau to bureaus and offices currently categorized solely as consisting of “indirect” FTEs that are allocated on a pro rata basis among the fee payors that are regulated by the core bureaus. These personnel should be attributed as direct costs when concentrations of FTEs can be identified as predominantly serving regulatory functions related to specific categories of fee payors. As the Satellite Industry Association (“SIA”) has demonstrated in prior comments, “there are significant numbers of employees outside the core licensing bureaus whose work does not in fact support the work of all the core bureaus but instead is focused on a specific subset of regulatory fee payors.”\(^{15}\)

Second, the Commission should separate as non-allocable for regulatory fee purposes the FTEs within each of the core bureaus whose duties relate principally to application processing. The costs of evaluating and acting upon facilities applications are separately

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\(^{14}\) See SIA Comments at 15, citing FY2012 Regulatory Fees NPRM, 27 FCC Rcd at 8460 (¶ 5) & n.5.

\(^{15}\) See SIA Comments at 16.
covered by application fees established under Section 8 of the Act, and are clearly excluded from the enumerated, non-licensing functions for which Section 9 of the Act empowers the Commission to assess and collect regulatory fees. In the case of satellite facilities applications, these transaction-based fees are quite substantial. Much of the work done by International Bureau FTEs with respect to both space and earth stations relates to the processing of applications. There typically is relatively little International Bureau staff activity required once the licensing and implementation process is complete. FTEs whose functions are covered by these fees should not be double-counted in the calculation of regulatory fees which are explicitly limited under Section 9 of the Act to recover the costs of enforcement, policy and rulemaking, user information services, and international activities.


17 See 47 U.S.C. § 159(a)(1) (“enforcement activities, policy and rulemaking activities, user information services, and international activities”).

18 Application fees of $413,295 and $120,005, respectively, are charged for new non-geostationary and geostationary satellite networks. See FCC International and Satellite Services Fee Filing Guide at 14 (effective June 21, 2011).

19 See SIA Comments at 7. In this regard, EchoStar and DISH note that milestone compliance activities are almost entirely application activities, as regulatory fees do not become payable until after operation commences, the point at which all milestones (for geostationary satellites) or almost all milestones (for non-GSO networks) have been satisfied. See, e.g., FCC Regulatory Fees Fact Sheet, “What You Owe – International and Satellite Services Licensees for FY 2012,” at 2 (August 2012) (“A fee payment is required ‘upon the commencement of operation of a system’s first satellite as reported annually pursuant to sections 25.142(c), 25.143(e), 25.145(g), or upon certification of operation of a single satellite pursuant to section 25.121(d)’”).

B. **The Commission Must Be Cognizant of the Sensitivity of Markets and Customers to Regulatory Fees that Do Not Accurately Reflect Identifiable and Quantifiable Administrative Burdens.**

In balancing all of the considerations underpinning the regulatory fee program and maintaining fidelity to the fundamental principles set forth in the statute, the Commission must also be cognizant of the real world impact that fees may have on the marketplace – particularly the negative impact that incorrectly calibrated fees may have on the operational decisions of service providers and, as a consequence, the services that are available to consumers.

Regulatory fees that are significantly out-of-line with regulatory benefits received by payors may result in some operators skewing their service offerings to avoid increasing burdensome fee liabilities. For example, an entity that has the capability of providing a modest level of additional service may avoid subjecting itself to costly regulation if the incremental value of providing service does not substantially outweigh the additional fee burden. This could result in U.S. consumers being denied the benefits of competitive service offerings, as well as new and innovative services.

C. **The Commission Should Not Adopt Revenue-Based Regulatory Fees.**

The 2012 GAO Report noted that other agencies and administrations that collect fees from regulated entities sometimes rely on a percentage of revenues as a basis for collecting such fees, charging each entity subject to the payment obligation a percentage of applicable revenues.\(^\text{21}\) Accordingly, the Commission seeks comment on using revenue-based mechanisms for allocating regulatory fees to those subject to these payments, including the

\(^{21}\) 2012 GAO Report at 32.
satellite industry. A revenue-based approach should not be adopted for the satellite industry, or for any other category of fee payors, for both legal and practical reasons.

1. **Revenue-Based Fees Are Inconsistent with the Statute.** Section 9 of the Act establishes that regulatory fees must be adjusted to the benefits that each payor derives from the Commission’s regulatory activities – not based simply on revenues earned. Indeed, the statute provides no authority at all for imposing fees based on revenues. Congress provided the Commission with a roadmap for fee collection by establishing a schedule of fees in various categories premised on input from FCC staff. None of the initial fees were based on annual revenues earned from regulated activities. Instead, the fees in the initial schedule were premised on the number of licenses held or the licensee’s footprint within the marketplace based on the reach of its licensed operations. Each of these metrics bears a close relationship to both the regulatory services required by the licensed entity and the benefit derived directly from the regulatory process.

   This is not the case with a revenue-based regime. For example, a company with a relatively light regulatory footprint may nonetheless have substantial revenues from its regulated business due to realization of marketplace or technological advantages. Imposing larger fees on such an entity based solely on revenue would be both unfair and economically inefficient, in effect penalizing a successful company by shifting regulatory costs to it from less efficient or less technologically-advanced competitors. Such an approach would provide a

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22 NPRM at 15 (¶ 33).

23 See 47 U.S.C. § 159(b)(1)(A) (agency costs allocated to these regulatory fee-related activities are to be derived by determining the number of FTEs employed to perform them “adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities”).

24 See 47 U.S.C. § 159(g). In the case if cable and wireline service providers, numbers of subscribers or subscriber lines were used.
disincentive to innovation and success in the marketplace – limiting competition and the range of services available to consumers, precisely the opposite outcome that the Commission strives to achieve.

Because there is no direct relationship between a company’s revenues attributable to regulated services and the burden imposed by that entity upon regulatory resources, a fee scheme premised solely on revenues is not functionally a regulatory fee, but a tax. As Section 9 gives the Commission authority only to collect fees based on the costs and benefits of administrative services, the imposition of a revenue-based tax lies beyond its authority.25

2. New Revenue-Bases Fees Would Impose Undue Burdens on Industry and FCC Staff. The establishment of new revenue accounting and reporting requirements would impose significant regulatory burdens, including additional costs and record-keeping requirements on satellite space and earth station licensees. First, because not all revenues earned by satellite operators can be attributed to regulated activities, operators would need to determine, based on whatever criteria the Commission adopts, which revenues must be included within the base for calculation of regulatory fee payments, and what revenues should be excluded (e.g., ancillary services, customer equipment, installation, leased v. licensed capacity, foreign sourced, etc.).26 Companies would not only need to devote substantial resources at the outset to rulemaking proceedings necessary to devise a new fee collection methodology, but thereafter would need to repurpose or hire accounting staff to adjust to the new, more complicated regulatory regime.

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25 Only Congress has the “power to lay and collect taxes.” U.S. Constitution, Art. I, § 8. Even if such power were delegable outside the legislative branch, it is clear from the limitations contained in Section 9 that Congress did not purport to give the Commission the power to tax regulated entities.

26 Presumably leased capacity would need to be excluded from revenues for fee purposes, as lessees are not directly regulated by the Commission under the subject space station license, even though the lessee would likely hold other FCC authorizations.
and prepare the necessary paperwork on an annual basis. This is exactly the type of regulatory burden that the Commission has sought to eliminate in recent decades.\textsuperscript{27} The existing fee burden would be increased by the need to defray the additional costs of the new compliance obligations – a consequence that Section 9 does not envision. Such an outcome is contrary to the market-based approach pursued by the FCC over the past two decades, and the specific guidance from the Executive Branch to independent agencies to reduce regulatory burdens when possible.\textsuperscript{28}

The establishment of a new “per revenue dollar” fee category would also place significant burdens on FCC staff because the agency does not currently collect any revenue data from satellite licensees.\textsuperscript{29} As noted above, the Commission would need to establish accounting ground rules for which revenues must be included and what revenues should be excluded for purposes of calculating regulatory fee payments, and to establish a format for reporting this data. Such an undertaking would be complex and time consuming, and

\textsuperscript{27} See, e.g., Petition of USTelecom for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations, FCC 13-69, slip op. (released May 17, 2013) (“we further our commitment to eliminate burdens on industry and promote innovation while ensuring our statutory objectives are met” by granting forbearance from numerous rules applicable to telecommunications carriers, including accounting and revenue reporting requirements).

\textsuperscript{28} See, e.g., Exec. Order No. 13,579, 76 Fed. Reg. 41,587 (July 14, 2011) (calling on executive agencies to review their regulations to determine “whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency’s regulatory program more effective or less burdensome in achieving the regulatory objectives”), and citing Executive Order 13,563 (January 18, 2011) with respect to the goals of promoting “economic growth, innovation, competitiveness, and job creation.”

\textsuperscript{29} Collection of revenue data is limited to wireline and wireless carriers that submit data on FCC Form 499, which is gathered primarily for the purpose of administering Universal Service Fund programs.
ultimately of little value to the agency, as the current approach to fee allocation meets the needs of both the Commission and fee payors.\textsuperscript{30}

Moreover, if revenues became the metric, the Commission would also need to establish a new process to review and verify the accuracy of licensee filings, to investigate non-compliant submissions, and to provide help-desk coverage for licensees endeavoring to comply with the new requirements. These burdens would create new costs and administrative burdens on the Commission at a time when budgetary considerations, including sequestration, strongly militate against assuming such additional costs. The current approach, on the other hand, is administratively efficient as the Commission has within its own databases ready access to all information upon which a proper fee calculation is based – the number of current facilities licenses issued to an entity.

Accordingly, the Commission should reject as cumbersome, counter-productive, contrary to law and ultimately unworkable the adoption of a revenue-based accounting system for collection of satellite or any other category of regulatory fee payments.

\textbf{D. The Commission Should Limit Year-Over-Year Increases in Regulatory Fees.}

EchoStar and DISH support the proposal to set a ceiling on the amount by which a category of fee payors may have their annual fee burden increased. Where an industry faces a significant increase in fee liability, the Commission should strive to ameliorate the impact by phasing in any significant increases in fee liability over time. As SIA stated in response to the

\textsuperscript{30} \textit{See, e.g.}, 2012 GAO Report at 13 (“According to FCC officials, there is not always a straightforward relationship between growth in the number of subscribers, revenues, or other basis used to determine the fee rate of a fee category and the amount of work FCC performs related to that fee category, and thus these shifting numbers do not offer a clear guide as to how or even the extent to which the division of FCC’s regulatory fees among industry sectors should be realigned.”)
FY2012 Regulatory Fee NPRM, “[a] system that allows extreme changes in fees from year to year makes planning for significant expenditures impossible and frustrates an operator’s ability to set service rates at a level that will cover the underlying costs.”

To this end, the Commission’s proposal simply to cap year-over-year fee increases at 7.5% is not grounded in any empirical data that justifies such an increase. EchoStar and DISH propose that the maximum annual increase be based on relevant economic and budgetary data, including the total amount by which the fees for a particular fee category would need to be increased under the Commission’s revised fee calculations. A reasonable approach would be for the Commission to establish a guideline providing for a multi-year phase in of any fee increase where the change would exceed the rate of inflation. Increases could then be implemented over the course of two or more years, as appropriate, in order to smooth the impact of the increased fees. The objective should be two-fold – to recover the necessary fees and to achieve this objective in a way that will neither deter new investment nor result in substantially increased costs for operators and ultimately, U.S. consumers.

III. FURTHER NOTICE OF PROPOSED RULEMAKING

The Commission also seeks input regarding two other preliminary proposals with an eye toward “the viability of these proposals and whether they should be implemented in future years.” EchoStar and DISH urge the Commission to reject both proposals. The Commission lacks the authority to impose satellite regulatory fees upon non-U.S.-licensed satellite networks, and should once again reject altering the methodology for collecting fees from DBS licensees as unwarranted under the clear criteria set forth in Section 9 of the Act.

31 SIA Comments at 23.
32 NPRM at 14-15 (¶ 30).
33 NPRM at 19 (¶ 46).

EchoStar and DISH urge the Commission to reject imposing additional fees from non-U.S.-licenses providers of satellite services.\(^{34}\) As the Commission itself notes, it lacks the authority to impose regulatory fees on satellite operators that are not U.S. Title III license holders.\(^{35}\) When this issue was first raised over a decade ago, the Commission stated unequivocally that the legislative history of the Section 9 “provides that only space stations licensed under Title III may be subject to regulatory fees” and therefore the Commission is barred from including “operators of non-U.S.-licensed satellite space stations among regulatory fee payers.”\(^{36}\) There has been no change in the law that would justify or allow any deviation from this conclusion.\(^{37}\) Accordingly, absent an act of Congress, the Commission is without authority to impose regulatory fees covering non-U.S. licensed satellites.

Imposition of new regulatory fees on entities not directly regulated by the Commission would be inconsistent with established multilateral trade agreements. From the outset of

\(^{34}\) NPRM at 20 (¶ 49) (The Commission queries “whether U.S. regulatory fees should be assessed on non-U.S.-licensed space station operators providing service to the United States”).

\(^{35}\) NPRM at 20 (¶ 49) & n.84.


\(^{37}\) Though the Commission observes in the NPRM that post-grant activities are monitored to ensure, i.e., that “operators satisfy all conditions placed on their grant of U.S. market access, including space station implementation milestones,” as noted above, milestone compliance is an application processing matter that occurs before a U.S. Title III licensee is subject to regulatory fees. See footnote 19, supra.
liberalized telecommunications market-entry policies designed to foster greater competition and increase access by U.S. companies to overseas markets, the Commission has appropriately avoided inserting itself as a dual-regulator of foreign operators in order to maintain and encourage similar open market access treatment by other administrations. For example, the Commission has carefully limited the quantity of information that must be submitted with a letter of intent filing, and required no application fee for such submissions, in order to avoid the appearance that the Commission was engaging in “re-licensing” of non-U.S. systems.\textsuperscript{38}

This approach is consistent with U.S. obligations under the World Trade Organization (“WTO) Agreement on Basic Telecommunications Services, which requires the United States to adhere to most-favored nation and national treatment principles in authorizing non-U.S. satellites to serve the U.S. market.\textsuperscript{39} It is also consistent with the fact that each administration that authorizes a satellite network assumes responsibility that network’s compliance with the International Telecommunication Union (“ITU”) Radio Regulations, and facilitates its coordination with adjacent satellite networks authorized by other administrations. An administration cannot reasonably claim an operator as a regulatee benefitting from the administration’s international activities before the ITU, when that administration does not act on that operator’s behalf either before the ITU or in the context of inter-governmental or inter-system coordination.

\textsuperscript{38} See, e.g., Amendment of the Commission’s Regulatory Policies to Allow Non-U.S. Licensed Satellites Providing Domestic and International Service in the United States et al., 12 FCC Rcd 24094, 24174 (¶ 188) (1997) (“We will not issue a separate, and duplicative, U.S. license for a non-U.S. space station. Issuing a U.S. license would raise issues of national comity, as well as issues regarding international coordination responsibilities for the space station”).

Adherence to the WTO principles is legally required, and critical in order to encourage comity and reciprocal treatment of U.S. satellite service providers in foreign countries. Because most satellite services are inherently international, offering the opportunity to serve customers across national boundaries, ease of access to foreign markets is critical to maximizing efficiency and competition. Currently, most other foreign administrations that license satellite networks impose regulatory or licensing fees only on the entities to which they have issued licenses. However, if one administration were to impose unilaterally new requirements or costs on service providers primarily regulated by other administrations, then others would likely follow suit, leading to substantial new financial burdens for U.S. companies seeking access to non-U.S. markets. Service providers would be required to navigate additional regulatory requirements and incur substantial additional costs to maintain market access.

Additional regulatory burdens are also likely to have adverse consequences on efficiency and competition. An entity that holds a non-U.S. license for a satellite that has the

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40 See, e.g., Ex Parte Notification Letter from Karis A. Hastings, Counsel to SES, to Marlene H. Dortch, Secretary, FCC, at 3 (dated March 8, 2013).

41 For similar reasons, Section 647 of the 2000 Open-Market Reorganization for the Betterment of International Telecommunications Act (“ORBIT Act”) provides, “Notwithstanding any other provision of law, the Commission shall not have the authority to assign by competitive bidding orbital locations or spectrum used for the provision of international or global satellite communications services. The President shall oppose in the International Telecommunication Union and in other bilateral and multilateral for any assignment by competitive bidding of orbital locations or spectrum used for the provision of such services.” 47 U.S.C. § 765f. The House Report discussing an identical provision contained in a bill introduced in the immediately preceding Congress made plain the House Commerce Committee’s belief “that auctions of spectrum or orbital locations could threaten the viability and availability of global and international satellite services because concurrent or successive spectrum auctions in the numerous countries in which U.S.-owned global satellite service providers seek downlink or service provision licenses could place significant financial burdens on providers of such services.” H.R. Rep. No. 105-494, at 64-65 (1998) (emphases added).
capability of providing additional service to a portion of the United States, for example, may avoid subjecting itself to costly regulation if the incremental value of providing the service does not substantially outweigh new regulatory and fee payment burdens. This would have an adverse impact on the users of satellite services by limiting service options, reducing innovation and competition, and potentially driving up costs.

For these reasons, the Commission should not impose regulatory fees on non-U.S. satellite service providers that are not licensed by the Commission.

B. The Commission Should Not Alter the Methodology for Collecting Fees from Direct Broadcast Satellite Licensees.

The Commission also asks whether it should calculate regulatory fees paid by DBS providers on the same basis as cable television system operators (currently a subscriber-based fee) and cable antenna relay system licensees, based at least in part on Media Bureau FTEs. The premise for revisiting this often suggested, but always rejected, modification to the fee collection regime is the observation, frequently advanced by cable operators, that “there are regulatory similarities between these providers.” However, the fundamental differences between the services with respect to the demands these services place on FCC regulatory resources far outweigh the superficial similarities.

At the most basic level, the regulatory regimes applicable to cable operators and DBS providers are markedly different. Cable services are comprehensively regulated under Title VI of the Act, which was adopted by the Cable Communications Policy Act of 1984, governing a range of issues from franchising to ownership to technical and operational matters.

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42 NPRM at 21 (¶ 50).
43 Id.
providers are a much smaller part of the statutory regime, and are regulated as Title III licensees. These basic regulatory classifications and obligations have gone largely unchanged throughout the period during which regulatory fees have been imposed.

The type of modification that would be necessary to combine cable and DBS into a single fee category is governed by Section 9(b)(3) of the Act, which provides that an amendment is permitted when there is a need “to add, delete, or reclassify services … to reflect additions, deletions, or changes in the nature of its services as a consequence of rulemaking proceedings or changes in the law.” Recent legal and regulatory changes do not suggest any need to “reclassify” DBS due to a change in the nature of the service that has resulted in an increase in the cost of regulating DBS providers. To the contrary, recent statutory and rule changes have had a greater impact in increasing the burden of regulating cable operators, in part because of the dramatically greater number of providers offering these services in relation to DBS licensees. The impact engendered from the two DBS licensees by these changes is minimal.

In order for there to be a basis for imposing “comparable” fees upon cable and DBS, it would be necessary for the nature of the services to have changed sufficiently that DBS now imposes a burden on FCC staff resources comparable to cable. The only relevant inquiry from the standpoint of fee setting is whether two services are in “regulatory parity” such that the same type and degree of regulation is imposed on each of them. But as the Commission outlines in the NPRM, this is simply not the case, as the total scope of regulatory requirements currently applicable to cable is far broader and more complex than are the requirements

46 See NPRM at 21 (¶ 51) (“There are only two DBS operators in the Nation, while there are 1,141 cable operators and 6,635 cable systems”).
applicable to DBS. Moreover, the cable industry continues to be the subject of some of the more significant and novel regulatory issues now facing the Commission.

With respect to the use of revenues as an alternative means of calculating DBS (and/or cable) regulatory fees, the deficiencies of this approach are fully addressed in Section III(C) above. A revenue-based model would bear no relationship to the clear statutory directive that fees must be based on regulatory costs imposed and benefits received, and would be difficult to establish in the first instance.

47 NPRM at 21-22 (¶ 51).


49 The Commission itself has commented on the burdensome nature of such an undertaking in connection with the 2012 GAO Report. 2012 GAO Report at 20 (“in order for the FCC to assess media companies on the basis of revenue, FCC would have to rely on the honor system in determining entities’ fee obligations, or establish new reporting requirements, which would be burdensome to FCC and industry”).
IV. CONCLUSION

EchoStar and DISH recognize the importance of correctly calculating licensee fee obligations for the purpose of supporting the Commission’s non-licensing regulatory activities as provided for under Section 9 of the Act. This is a complex undertaking, and both companies appreciate the Commission’s efforts to adjust the allocation of FTEs to satellite activities to provide a fairer and more accurate correlation between the regulatory benefits and burdens and the fees assessed. The Commission therefore should adopt the revised FTE allocation, while rejecting a revenue based fee model that would have negative effects on the communications industry as well as the imposition of fees on foreign licensed satellites and increasing fees on DBS service providers.

Respectfully submitted,

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