

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

Assessment and Collection of ) MD Docket No. 08-65  
Regulatory Fees for Fiscal Year 2008 ) RM-11312

COMMENTS OF THE  
INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE

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September 25, 2008

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## SUMMARY

Section 159 of the Communications Act of 1934, as amended, directs the Commission to collect regulatory fees in a manner that furthers the public interest. Although fees should reflect generally the number of employees that perform regulatory activities in each Bureau, Section 159 enables the Commission to make changes to the fee schedule to account for additions, deletions, or changes in the nature of its services as a consequence of Commission rulemaking proceedings or changes in law. Despite this mandate, however, the current regulatory fee process continues to rely upon data that was calculated in 1994. The result is an ever-increasing disparity in the treatment of wireless and wireline providers and their customers. Revision of regulatory fee allocations is consistent with principles of regulatory parity, and would accommodate the convergence of technology and regulatory actions in a dynamic marketplace. ITTA proposes a solution that would bring parity to providers and incorporate more current data into the Commission's regulatory fee processes.

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To the Commission:

The Independent Telephone & Telecommunications Alliance (ITTA) hereby files these comments on the Further Notice of Proposed Rulemaking (FNPRM) in the above-captioned proceeding.<sup>1</sup> In the FNPRM, the Commission seeks comment on “more equitable and reasonable approaches to assessing regulatory fees.”<sup>2</sup> ITTA supports efforts to ensure that the regulatory fee process is equitable, reasonable, and consistent with today’s marketplace. Accordingly, ITTA proposes herein a new model for regulatory fee assessments.

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<sup>1</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2008: Report and Order and Further Notice of Proposed Rulemaking*, MD Docket No. 08-65, RM-11312, FCC 08-182 (rel. Aug. 8, 2008) (FNPRM).

<sup>2</sup> FNPRM at para. 30.

## I. THE REGULATORY FEES PROCESS MUST BE RECALIBRATED

ITTA members are mid-size local exchange carriers that collectively provide a broad range of high-quality wireline and wireless voice, data, Internet, and video services to 30 million customers in 45 states. ITTA members are affected by inequities in the current regulatory fees process as they and their customers are compelled to bear the burden of Commission costs that inure to the benefit of more than only wireline consumers. Accordingly, ITTA applauds the Commission's examination of the regulatory fees process, and proposes revisions to ensure equitable treatment that reflects current Commission activity and industry participation.

As described in ITTA's June 6, 2008, filing in this docket, while the Commission's overall budget increased by 81 percent from 1999 to 2008, the percentage of interstate telecommunications service provider (ITSP)<sup>3</sup> revenues used to support Commission activities nearly tripled.<sup>4</sup> The fee amount attributable to a wireless customer, meanwhile, decreased by 47 percent from 1999 to 2008.<sup>5</sup> The disparity in treatment of wireless and wireline will continue to widen each year unless the Commission takes action to install parity into how it applies regulatory fees across

<sup>3</sup> The Commission's ITSP fee category applies to, among others, incumbent local exchange carriers (ILECs), interexchange carriers (IXCs), competitive local exchange carriers (CLECs), and interconnected Voice over Internet Protocol (VoIP) providers.

<sup>4</sup> The Commission requires different categories of service providers to pay fees based on different types of "payment units." Some industries are required to pay fees on a license basis, while others pay per subscriber (e.g., cable and CMRS). By contrast, ITSPs pay fees based on specified revenues. The ITSP fee was \$0.00121 per applicable revenue dollar in 1999. *Assessment and Collection of Regulatory Fees for Fiscal Year 1999*, MD Docket No. 98-200, 14 FCC Rcd 9868, Attachment C (1999) (1999 Fee Order). The fee for 2008 is \$0.00314. FNPRM, Attachment C. This increase in the ITSP payment unit is significant even when just the past year is considered - the Commission budget only increased 7.6% since last year, but the ITSP fee increased by 18%. *Assessment and Collection of Regulatory Fees for Fiscal Year 2007: Report and Order and Further Notice of Proposed Rulemaking*, MD Docket No. 07-81, 22 FCC Rcd 15712, FCC 07-140, at Attachment C (2007) (2007 Fee Order).

providers of like services. The FNPRM is an important step in the Commission's ongoing efforts to ensure that regulatory processes are consistent with market characteristics.

The Commission recognized properly the lag between regulatory processes and the market, noting that while the current allocation of regulatory fees to fee categories "is based on the Commission's 1994 calculation of full time employees" (FTEs) assigned to each category, "the communications industry has changed considerably" in the past 14 years.<sup>6</sup> Chairman Martin echoed ITTA's prior filings when he questioned "whether these relative [industry] burdens remain reasonable and equitable in light of the significant market changes since then."<sup>7</sup> Commissioner Copps expressed incredulity, explaining, "This is something I have called for repeatedly over the years. It is hard to believe that we are still assessing fees based on the communications marketplace as it existed in 1994."<sup>8</sup> ITTA agrees - the market has changed markedly in the past 14 years, and the Commission must update its processes to reflect that change.

Section 159 of the Communications Act of 1934, as amended,<sup>9</sup> directs the Commission to collect regulatory fees in a manner that furthers the public interest.<sup>10</sup> Although fees should reflect generally the number of employees that perform regulatory

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<sup>5</sup> 1999 Fee Order; FNPRM. The wireless fee per subscriber decreased from \$0.32 to \$0.17 over this period.

<sup>6</sup> FNPRM at para. 27.

<sup>7</sup> FNPRM, Separate Statement of Chairman Kevin J. Martin.

<sup>8</sup> FNPRM, Separate Statement of Commissioner Michael J. Copps.

<sup>9</sup> The Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996) (1996 Act) amended the Communications Act of 1934. Hereinafter, the Communications Act of 1934, as amended by the 1996 Act, will be referred to as "the Act," and citations to the Act will be to the Act as it is codified in the U.S. Code.

<sup>10</sup> 47 USC § 159(b)(1)(A).

activities in each Bureau, Section 159 states that fees levied on regulated entities shall be adjusted to account for “factors that are reasonably related to the benefits provided to the payor of the fee . . . and other factors that the Commission determines are necessary in the public interest.”<sup>11</sup> Section 159 allows the Commission to make changes to the fee schedule to “add, delete, or reclassify services” to account for “additions, deletions, or changes in the nature of its services as a consequence of Commission rulemaking proceedings or changes in law.”<sup>12</sup> Despite this mandate, however, the current regulatory fee process continues to rely upon the Commission’s 1994 calculation of FTEs devoted to each regulatory fee category. As Commissioner Copps described, this is “as if we regulated the record industry and still assessed fees based on the number of CDs sold in retail stores in 1994, before the advent of digital downloads.”<sup>13</sup>

Indeed, the Commission itself has changed in the intervening years: in 2002, the Commission retired the Common Carrier Bureau and replaced it with the Wireline Competition Bureau;<sup>14</sup> this followed a 1999 reorganization that created the Enforcement Bureau and the since-retired Consumer Information Bureau. In brief, the Commission’s own organizational structure has evolved to conform to market developments, while the regulatory fee structure, and its consequent impact on consumers, has not. Accordingly, ITTA proposes herein an equitable and administratively efficient proposal for updating the regulatory fees process to meet today’s market.

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<sup>11</sup> 47 USC § 159(a)(1), (b)(1)(A).

<sup>12</sup> 47 USC § 159(b)(3).

<sup>13</sup> FNPRM, Separate Statement of Commissioner Michael J. Copps.

<sup>14</sup> “Federal Communications Commission’s Common Carrier Bureau Reorganized Along Functional Lines,” FCC News (Mar. 8, 2002).

**II. THE REGULATORY FEE PROCESS SHOULD REFLECT CURRENT MARKETS AND COMMISSION REGULATORY ACTIVITY**

**A. REGULATORY FEES SHOULD REFLECT SHARED BENEFITS OF COMMISSION RESOURCES.**

The Commission seeks comment on ways to improve its regulatory fee process, asking, “In light of the industry changes since 1994, how can we better determine the regulatory fees for services in a way that is aligned with the Commission’s regulatory activities?”<sup>15</sup> The Commission’s question is well-founded: convergence among technologies and consumer expectations result in effectively shared expenses as varied entities participate increasingly in matters once reserved for others. Whereas, for example, wireline and wireless providers may have operated historically within separate regulatory regimes, the convergence of technology and consumer expectations has compelled seemingly disparate entities to participate in common Commission proceedings. For example, representatives of the wireless industry have participated and will continue to participate extensively in wireline dockets addressing universal service (96-45, 05-337), pole attachments (07-245), special access (05-25), rate integration (RM 11415), intercarrier compensation (01-92), number portability (95-116), and customer proprietary network information (CPNI) (96-115, 04-36). It is only reasonable to conclude that wireless interests (as do wireline) benefit from Commission expenditures as those dockets are developed and adjudicated. Therefore, Commission allocations should no longer be parsed solely along historic industry (and Bureaucratic) lines.<sup>16</sup> The

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<sup>15</sup> FNPRM at para. 31.

<sup>16</sup> The Commission has recognized this trend in its approach to IP-enabled services. By imposing enhanced-911 (E911) and Universal Service Fund (USF) requirements on interconnected VoIP providers, the Commission has indicated that it will consider more than solely the technological basis upon which a service is delivered. When applying E911 requirements to interconnected VoIP providers, the Commission

Commission has already indicated that it will assess regulatory fees on bases wider than only the underlying technology: the Commission added VoIP providers to the group that is responsible to provide cost recovery for Commission functions related to interstate telecommunications services, specifically, ITSP.<sup>17</sup> In doing so, the Commission focused wisely on the essence of the service provided, and gathered providers of comparable services into one group.<sup>18</sup>

In prior filings in this docket, ITTA recommended that the Commission extend this rational process by including wireless providers within the ITSP base. Including wireless providers in the ITSP base is consistent with the Commission's goal of "ensur[ing] regulatory parity among providers of similar services" in a manner that "will minimize marketplace distortions arising from regulatory advantage."<sup>19</sup> The issue of regulatory fees should not be left outside that effort, and these comments propose solutions.

**B. REGULATORY FEE REVISIONS SHOULD RESOLVE DISPROPORTIONATE BURDENS.**

In 1995, ITSPs were assigned 40 percent of the total Commission revenue requirement. Cable television was charged with 25 percent of the budget, wireless with

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based its decision on the fact that "consumers expect that VoIP services that are interconnected with the PSTN will function in some ways like a 'regular telephone' service." *See IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers: First Report and Order and Notice of Proposed Rulemaking*, WC Docket Nos. 04-36, 05-196, FCC 05-116, at para. 23 (2005) (VoIP E911 Order).

<sup>17</sup> 2007 Fee Order at para. 11.

<sup>18</sup> 2007 Fee Order at para. 12.

<sup>19</sup> *Telephone Number Requirements for IP-Enabled Service Providers; Local Number Portability Porting Interval and Validation Requirements; IP-Enabled Services; Telephone Number Portability; CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues; Final Regulatory Flexibility Analysis; Numbering Resource Optimization: Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking*, WC Docket Nos. 07-243, 07-244, 04-36, CC Docket Nos. 96-115, 99-200, FCC 07-188, 22 FCC Rcd 19531, at para. 1 (2007).

three percent, and other regulated industries, including broadcast radio and television, shouldered 32 percent of the \$116.4 million budget. In ensuing years, some revisions to the general allocations have been implemented: for 2008, ILECs and most other voice providers bear 47 percent of the budget, while 14 percent is ascribed to wireless.<sup>20</sup> While fee allocations between services have shifted slightly, costs borne by customers of these carriers have not changed in a directly proportional manner, leaving wireline with a higher per-subscriber burden than shouldered by a wireless peer.

The ITSP regulatory fee burden increased from \$81,741,773 (1999) to \$146,638,000 (2008); during the same period, interstate wireline revenue has fallen from approximately \$67.8 billion in 1999 to \$46.7 billion in 2008 (projected).<sup>21</sup> The result is that a declining revenue base is charged with shouldering a greater portion of the Commission's budget, resulting in a disproportionately increased burden on providers and, ultimately, consumers of voice communications who fall within the category of ITSPs (ILECs, IXCs, CLECs, VoIP, etc).

Over the same period, the wireless budget allocation grew from \$17,670,931 (1999) to \$44,200,000 (2008) while CMRS subscribership grew from approximately 55.5 million in 1999 to approximately 260 million in 2008 (projected).<sup>22</sup> Accordingly, the relationship between wireless subscribers and the size of the Commission's regulatory fee imposed on them has been *inversely* proportional, with per-subscriber wireless charges decreasing from \$0.32 per unit in 1999 to \$0.17 for 2008. Meanwhile, the revenues-

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<sup>20</sup> Cable is assigned 17 percent, and other industries combined are charged with 23 percent of the proposed \$313.3 million in fee revenue collections. See *FNPRM* at Attachment C.

<sup>21</sup> See 1999 Fee Order, Attachment C; *FNPRM* at Attachment C.

<sup>22</sup> See *FNPRM* at Attachment C.

based payment unit applied to ITSPs has nearly tripled as their declining revenue base is charged with an increased amount of Commission budget. The net effect is increasing regulatory disparity as providers of similar voice services (and their customers) assume dissimilar responsibility in bearing the Commission's regulatory costs. As noted above, this outcome is particularly troubling in light of the common participation of both groups in many Commission proceedings.

To address these disparities, ITTA proposes a method by which the Commission can begin to resolve the disparities borne of ITSP assessment factors that have "not been revised significantly since 1997."<sup>23</sup> The following proposal would ensure that regulatory fee responsibilities correlate to existing market conditions as driven by technological development and consumer demand.

### **C. PROPOSAL FOR RECALIBRATION OF REGULATORY FEES.**

ITTA proposes that Commission implement a three-step process that would effectively and efficiently provide proper allocation of regulatory fee responsibility among industry participants:

*Step one* of this process would be an annual update of FTE data. This would align more accurately the Commission's identifiable resources with various expenditures, and would be a dramatic improvement over the current fee system, which is based upon a sampling of employee time in December 1994.<sup>24</sup>

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<sup>23</sup> FNPRM at para. 41.

<sup>24</sup> In the 1995 Fee Order, the Commission said that a cost accounting system would be in place for FY1996, which would allow for a comprehensive set of FTE data. *Assessment and Collection of Regulatory Fees for Fiscal Year 1995*, Final Rule, 10 FCC Rcd 13512 (June 29, 1995). It was assumed an FTE-based update of regulatory fees was imminent.

*Step two* of this process would be the inclusion of wireless voice services in the revenue-based Interstate Telecommunications Service Provider fee category.<sup>25</sup> With the exception of select wireless fees,<sup>26</sup> fees in the new combined fee category would be based on a total wireline and wireless revenues described in Form 499-A, the Telecommunications Reporting Worksheet. The Office of the Managing Director currently uses the 499-A data to calculate ITSP fees, as well as to determine universal service and TRS inputs. (To the extent there are changes in universal service contribution methodology, and Form 499-A, the fee methodology would also need to adjust accordingly.) Many different types of service providers submit revenue data to the FCC on Form 499-A.<sup>27</sup> Revenue is an appropriate basis for assessment, because it would rely on data sets already collected by the Commission. Accordingly, such “harmonization” of the assessment basis<sup>28</sup> would produce equitable and administratively manageable results.

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<sup>25</sup> While a subscriber-based fee could be implemented for some interstate service providers (*i.e.*, LECs, VoIP, and cable telephony), many other ITSP fee payers would still need to be assessed fees using a revenue model (*i.e.*, IXCs, resellers, OSPs, prepaid calling cars, and others). When the Commission previously weighed using the number of presubscribed line or minutes-of-use as the ITSP payment unit, it decided to use a revenue methodology instead, saying that the revenue method would “equitably distribute the fee requirement in a competitively neutral manner,” and would do so “without any need to rely upon assumptions and projections.” *See Assessment and Collection of Regulatory Fees for Fiscal Year 1995*, Final Rule, 10 FCC Rcd 13512 (1995) at para.134.

<sup>26</sup> Certain fees in the wireless category, *i.e.* licenses, would necessarily remain as per unit fees. There are 14 wireless regulatory fees. Of the \$52 million that the FCC allocates to the wireless portion of the budget, some 85% is made up of subscriber fees paid by CMRS cellular/public mobile services, 1% is paid by the pager industry for its subscribers, and 14% is paid by license-type fees paid for each license, station, or call sign. This proposal only suggests combining the main CMRS cellular revenue with other similar voice revenues in the ITSP category.

<sup>27</sup> ITSPs submitting the 499-A include flat rate “all distance” providers, CAP/CLEC, cable telephony, ILEC, interconnected VoIP, IXC, local reseller, operator service provider (OSP), payphone, prepaid calling card, private service provider, shared-tenant service provider, toll reseller, other local and toll service providers. Any carrier that contributes to universal service or TRS also files the Form 499 revenue data, including wireless providers and MVNOs.

<sup>28</sup> *See* FNPRM at para. 34.

Fees for this modified category would recover combined costs of the current Wireline Competition and Wireless Telecommunications Bureaus, other than those costs recovered through select wireless fees described above.<sup>29</sup> Consistent with Bureau costs identified in Attachment C of the Office of the Managing Director’s Public Notice in this proceeding, the Wireline Competition and Wireless Telecommunications Bureau costs would be based upon annually updated FTE data for direct and indirect Bureau costs, which are already collected by the Commission for budget purposes.<sup>30</sup>

*Step three* of this process would be to permit adjustments for additional cross-over issues. Although the Commission has noted that “regulatory fees cannot be precisely calibrated,”<sup>31</sup> the Commission could determine the proper allocation of cross-over issues by relying on the applicability and effect of adjudications or promulgated rules. For example, while USF issues reside in Common Carrier and Wireline Competition Bureau dockets, wireless and VoIP providers are affected by the outcomes of decisions and, in fact, have participated heavily in those proceedings. Although it can be expected that the bulk of inequities would be addressed by consolidating wireline and wireless voice services into a single revenues-based fee category, the possibility that wireline and wireless providers may be affected by non-ITSP-related matters, such as video-related dockets, would be absorbed by this step three. Therefore, in that instance, the Commission could allocate the costs of that docket to the industries affected by the

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<sup>29</sup> See *supra* note 28.

<sup>30</sup> Consistent with the Commission’s allocation in Attachment C of the Office of the Managing Director’s Public Notice in this proceeding, the non-core Bureau costs would be allocated in a manner directly proportionate to the FTEs assigned to core Bureaus. See, “The Office of Managing Director Releases Data to Assist Commenters on Issues Presented in Further Notice of Proposed Rulemaking Adopted on August 1, 2008,” Public Notice, DA 08-2333 (Sep. 3, 2008).

<sup>31</sup> FNRPM at para. 30.

outcomes. Adjunctively, Bureau Chiefs, based upon their management of staff assignments and dockets, could produce a departmental estimate of the industry impact of cross-industry proceedings to which their staff had been assigned. Although this, too, would likely not result in precise calibration,<sup>32</sup> it would draw upon reasonable estimates of each Bureau's activities and provide, at a minimum, a "rough justice" that would be better than no justice at all.

The steps outlined above would introduce rationality to the regulatory fees process by ensuring that parties benefiting from Commission expenditures contribute equitably to associated costs.

### **III. CONCLUSION**

Revision of regulatory fee allocations would be consistent with principles of regulatory parity, and would recognize the broad distribution of benefits arising out of Commission activity; revision would be consistent with Section 159(b)(1)(A) of the statute,<sup>33</sup> and in concert with the spirit of the Act. Proportional benefits can no longer be parsed in accordance with outdated data or historic practices. The encompassing view of the statute accommodates the convergence of technology and regulatory actions intended to meet the demands of a dynamic marketplace. ITTA urges the Commission to craft its regulatory fee policies in a manner consistent with the holistic view expressed by the

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<sup>32</sup> FNRPM at para. 30.

<sup>33</sup> Specifically, charging the Commission to adjust the per-Bureau amounts by "tak[ing] into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities . . . and other factors that the Commission determines are necessary in the public interest." 47 USC § 159(a)(1), (b)(1)(A).

statute, and to join wireless providers with ITSPs for purposes of allocating responsibility for the Commission's annually updated budget.

Respectfully submitted,

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DATED: September 25, 2008