

**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
)	

**COMMENTS OF THE
INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE**

The Independent Telephone & Telecommunications Alliance (“ITTA”) hereby submits its comments in response to the Federal Communications Commission’s (“Commission”) May 23, 2013 Notice of Proposed Rulemaking (“*NPRM*”).¹ The *NPRM* seeks comment on the collection of regulatory fees in Fiscal Year (“FY”) 2013 and on proposals to more generally reform the Commission’s policies and procedures for assessing and collecting regulatory fees.

I. ITTA SUPPORTS REFORM IN THE ASSESSMENT OF REGULATORY FEES

ITTA supports the Commission’s efforts to ensure that the regulatory fee process is guided by fairness, administrative ease, and sustainability.² The Commission’s current regulatory fee assessment system, which relies on obsolete fee categories established in 1998 and inconsistent methods for calculating payments among service providers, lacks any relationship to current marketplace realities.

¹ *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2013; Procedures for Assessment and Collection of Regulatory Fees; Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, MD Docket Nos. 13-140, 12-201, and 08-65, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 13-74 (rel. May 23, 2013) (“*NPRM*”).

² *See In the Matter of Procedures for Assessment and Collection of Regulatory Fees; Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Notice of Proposed Rulemaking, 27 FCC Rcd 8458 (rel. July 17, 2012) (“*FY 2012 NPRM*”), at ¶¶ 14-16.

Thus, it creates a regulatory environment in which certain classes of service providers are placed at a competitive disadvantage because the fees they are assessed are not aligned with the costs of the Commission activities for which they are collected. The ultimate effect is to force certain classes of service providers to subsidize regulatory oversight costs for other service providers. However, there has been no analysis indicating that such subsidization furthers the public interest or provides benefits to consumers sufficient to justify a disproportionate regulatory fee burden for certain providers. In the words of the Commission, its “regulatory fee methodology has not kept pace with the changes in both the communications industry and within the Commission.”³

Accordingly, ITTA commends the Commission for moving forward with reforms to its regulatory fee process to correct for unduly long disparities in treatment among fee payors, particularly with respect to fees paid by wireline carriers in comparison to their wireless counterparts. Given that such inequities have persisted for more than a decade, ITTA urges the Commission to immediately move forward with its proposal to reallocate regulatory fees to more accurately reflect the subject areas worked on by current Commission FTEs.

Moreover, because such reform is so long overdue, the Commission should move forward immediately to apply any rate increases resulting from its updated reallocations in FY 2013. In the event the Commission feels compelled to stagger such reallocation (such as by applying a cap), a full transition to new regulatory fees should be achieved in FY 2014.⁴

The Commission also must proceed with adoption of ITTA’s proposal to combine wireline and wireless voice services into the ITSP category so that all voice providers are treated in a similar,

³ *NPRM* at ¶ 11.

⁴ *See id.* at ¶ 30.

straightforward manner.⁵ ITTA supports the Commission’s implementation of this proposal through adoption of a “permitted amendment” that would take effect in FY 2014.⁶

Together, such actions would be consistent with the Commission’s statutory mandate to better align its regulatory fees with the current costs of Commission oversight and regulation of each industry group.⁷ By updating its methodology to reflect the direct and indirect costs for regulating fee payors, the Commission can ensure compliance with the requirement in Section 9 of the Communications Act that fees levied on regulated entities are 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 to the public interest.”⁸

II. THE COMMISSION SHOULD UPDATE ITS FTE ANALYSIS TO ENSURE THAT IT ACCURATELY REFLECTS THE EXPENDITURE OF COMMISSION RESOURCES FOR EACH RELEVANT FEE CATEGORY

As discussed below, the Commission should update its fee assessment methodology to promote the goals of fairness, administrative ease, and sustainability and to correct the long-standing disparity in regulatory fee obligations between wireline and wireless voice providers.⁹ First, the Commission should update its fee assessment analysis to ensure that it accurately reflects the expenditure of Commission resources for each relevant fee category. Second, the Commission should adopt ITTA’s proposal to include providers of wireless voice services in the revenues-based ITSP category for assessment of regulatory fees so that all voice providers are treated in a similar, straightforward manner. Finally, the Commission should account for cross-over issues when staff works on items affecting multiple industry sectors.

⁵ *See id.* at ¶ 12.

⁶ *See id.* at ¶ 13.

⁷ *See* 47 U.S.C. § 159.

⁸ 47 U.S.C. §§ 159(a)(1), (b)(1)(A).

⁹ *See FY 2012 NPRM* at ¶¶ 14-16.

As the Commission notes, the FY 1998 FTE data on which it currently relies for fee assessment purposes “may no longer fairly and accurately reflect the time that Commission employees devote to [regulatory] activities.”¹⁰ Indeed, reliance on this obsolete data forces wireline carriers to subsidize regulatory oversight costs incurred by other regulated entities and places wireline providers at a competitive disadvantage because the fees they are assessed are not aligned with the costs of the Commission activities for which they are collected. Simply updating the Commission’s FY 1998 FTE data with more recent FTE data as of September 30, 2012 would reduce the percentage of regulatory fees allocated to Wireline Competition Bureau regulatees from 47 percent to 29.2 percent, providing necessary and long-overdue relief for wireline regulatees.¹¹

As ITTA has previously advocated, the FCC must ensure that its fees are applied in a competitively neutral manner that actually relates to industry trends and the Commission’s workload.¹² Wireline companies continue to bear the most significant burden in regulatory fees among industry sectors, yet they no longer require the same expenditure of Commission resources as when regulatory fees were first established. There is a huge disparity between fees paid by wireline and wireless carriers, in particular. For instance, “in fiscal year 2008, the wireless industry paid about 17 percent of the regulatory fees while the Wireless Telecommunications Bureau incurred about 27 percent of the FCC’s total costs. In contrast, based on FTE data compiled in FY 1998, the wireline industry paid about 47 percent of the total fees while the Wireline Competition Bureau incurred about 23 percent of the FCC’s

¹⁰ *NPRM* at ¶ 9.

¹¹ *See id.* at ¶ 11.

¹² *See* Letter from Micah Caldwell, ITTA, to Marlene H. Dortch, FCC, MD Docket Nos. 12-201, 08-65 (filed Apr. 26, 2013); Letter from Micah Caldwell, ITTA, to Marlene H. Dortch, FCC, MD Docket Nos. 12-201, 08-65 (filed Feb. 11, 2013); Letter from Genevieve Morelli and Micah Caldwell, ITTA, to Marlene H. Dortch, FCC, MD Docket Nos. 12-201, 08-65 (filed Nov. 14, 2012); Reply Comments of the Independent Telephone & Telecommunications Alliance, MD Docket No. 08-65 (filed June 6, 2008); Comments of the Independent Telephone & Telecommunications Alliance, MD Docket No. 08-65 (filed Sept. 25, 2008); Letter from Joshua Seidemann, ITTA, to Marlene H. Dortch, FCC, MD Docket No. 08-65 (filed July 17, 2008).

total costs.”¹³ And the disparity continues as, even today, the Wireline Competition Bureau employs only 29.2% of the Commission’s direct FTEs.¹⁴

Indeed, wireline carriers have been over-assessed regulatory fees for more than a decade in comparison to the wireless sector. Between 1998 and 2011, the percentage of total regulatory fees the wireline industry was expected to pay declined by only 4 percent, from 48 to 44 percent of total fees, despite a significant decline in voice market share.¹⁵ In contrast, wireless industry subscribership grew 437 percent during this time period, yet the percentage of the total regulatory fees the wireless industry was expected to pay grew by only 5 percent – from 10 to 15 percent – of the total regulatory fees.¹⁶ This data underscores that the FCC’s division of fees among fee categories “do not correlate with industry trends and the FCC’s current workload” and that wireline carriers have, for a number of years, paid a significant portion of the regulatory oversight costs incurred by the wireless sector.¹⁷

The convergence of technology and consumer expectations, which has compelled different industry sectors to participate in and benefit from the adjudication of common Commission proceedings, compounds these inequities. For example, the Commission’s comprehensive reform of the Universal Service Fund and intercarrier compensation regimes, which occupied a significant portion of the Wireline Competition Bureau’s workload in 2011, “affected virtually the entire communications and broadband industry, including wireless, cable, satellite and other regulated service providers.”¹⁸ Yet,

¹³ Government Accountability Office, “Regulatory Fee Process Needs to be Updated,” GAO 12-686 (Aug. 2012) (“GAO Report”), at 14. *See also NPRM* at ¶ 17 (indicating that wireline regulatory fees account for 46.7% of total regulatory fees).

¹⁴ *See NPRM* at ¶ 11.

¹⁵ *See GAO Report* at 12.

¹⁶ *See id.* at 13.

¹⁷ *Id.* at 14.

¹⁸ Reply Comments of Frontier Communications, MD Docket Nos. 12-201, 08-65 (filed Oct. 23, 2012), at 4.

under the Commission's current regulatory fee structure, wireline providers must bear 100 percent of the regulatory fees associated with this tremendous effort.

Reallocating direct FTEs for ITSPs in FY 2013 based on current FTEs in the core bureaus would significantly decrease the regulatory fee burden for ITSPs while furthering the Commission's obligation to ensure that regulatory fees reflect the Commission's actual costs in regulating different industry sectors. Such reallocation would reduce the proportion of the regulatory fee burden for wireline carriers from almost 47 percent to roughly 30 percent, in accordance with the amount of work the Wireline Competition Bureau devotes to regulation of such carriers.¹⁹ Likewise, the proportion of regulatory fees allocated to the wireless industry would increase from 16.8 percent to a more reasonable figure of 21.49 percent in recognition of the resources the Wireless Telecommunications Bureau devotes to working on wireless-related regulatory issues.²⁰

As this data reflects, it is an important and necessary step for the Commission to more closely align its regulatory fees to changes in the industry and the corresponding shift in the Commission's focus and staffing since 1998. Although there may be concerns that overhauling a system that has been in place for many years might create substantial shifts in regulatory fee burdens, this does not provide a valid basis to continue with an approach that does not reflect the changes in Commission priorities over the past 10-15 years.²¹ Any concern regarding the potential adverse impact on wireless providers that might be created by a shift in regulatory fee requirements is misplaced given the competitive nature of the wireless industry and the industry's ability to adjust rates and charges depending on market conditions.²²

¹⁹ See *NPRM* at ¶ 17.

²⁰ See *id.*

²¹ The Commission may be able to utilize the excess regulatory fees it has previously collected to help minimize the impact (if any) of such changes. See GAO Report at 28.

²² For example, consumer demand for wireless voice service enables wireless providers to recoup administrative costs directly from subscribers. See Phil Goldstein, "AT&T Set to Rake in Millions Via

In addition, failing to immediately update the regulatory fee rules to reflect actual marketplace realities would further entrench the inequitable practice of forcing wireline carriers and wireline customers to subsidize the regulatory oversight costs for wireless carriers and wireless customers. If there is to be a transition period with respect to implementation of an updated FTE analysis, however, it should be no longer than two years. Furthermore, if the Commission is going to adopt a 7.5% cap on the FY 2013 fee increase, it should provide for the remaining reallocation of regulatory fees in FY 2014.²³ Transitioning to current FTEs over a longer period of time would be unfair because it would perpetuate the inequitable allocation of regulatory fees that has existed for many years and is unnecessary given that the wireless industry has sufficient resources to cover the costs of regulatory oversight without subsidization by the wireline industry. To maintain continued equilibrium with regard to fees assessments on an ongoing basis, the FCC should continue to update its FTE data on a regular basis (at least biennially) to ensure that the regulatory fee process continues to reflect the Commission's actual costs by industry sector as the marketplace changes and evolves.

III. THE COMMISSION SHOULD ASSESS ALL VOICE SERVICE PROVIDERS ON THE BASIS OF REVENUES TO ESTABLISH REGULATORY PARITY AMONG SUCH PROVIDERS

The FCC should adopt ITTA's proposal to combine regulatory fees for ITSPs and wireless services into one category, as contemplated in the *NPRM*.²⁴ This step would serve to establish regulatory parity between wireline and wireless providers until such time as the Commission can determine whether a methodology reflecting the resources it devotes to consideration of broadband

(footnote cont'd.)

New 61-Cent Administrative Fee, May 24, 2013, available at: http://www.fiercewireless.com/story/att-set-rake-millions-new-61-cent-administrative-fee/2013-05-24?utm_medium=nl&utm_source=internal (last visited: June 17, 2013) (noting that AT&T Mobility has begun imposing a new monthly 61-cent "Mobility Administrative Fee" on top of "regulatory cost recovery charge," indicating that the new charge is "consistent with similar fees charged by other [wireless] carriers").

²³ See *NPRM* at ¶ 30.

²⁴ See *id.* at ¶¶ 11-12. Certain fee categories in the wireless sector, i.e., licenses, would necessarily remain as per unit fees.

issues would be appropriate; it also would prevent further wireline subsidization of wireless regulatory activities.

As ITTA has previously stated, and the Commission agrees, wireless services are comparable to wireline services in many ways and encompass similar regulatory policies and programs, such as universal service, intercarrier compensation, and number portability.²⁵ Thus, it makes sense for the Commission to address the glaring disparity between regulatory fees for wireline and wireless providers by combining them together in the revenues-based ITSP category.

Wireless carriers pay perhaps \$0.16 or \$0.17 per handset in regulatory fees. ITTA members and other mid-size carriers face astronomical regulatory fees by comparison. For example, CenturyLink pays an average of \$0.45 in regulatory fees per access line. Moreover, such fees have steadily increased over time, as wireline regulatory fees are allocated across a decreasing subscriber base. CenturyLink's regulatory fees were about \$0.43 per access line in 2012-13, and \$0.41 per access line the year before that. Frontier's regulatory fees have followed a similar trend. The company's regulatory fees were approximately \$0.35 per access line in 2011-12, \$0.37 per access line in 2012-13, and will be about \$0.41 per access line this year. One of the most significantly impacted mid-size carriers is also one of the smaller providers. HickoryTech's regulatory fees have jumped from about \$0.75 per access line in 2009-10, to \$0.83 per access line in 2010-11, to \$0.92 per access line in 2011-12, and to \$1.01 per access line last year.²⁶

²⁵ See *id.* at ¶ 12.

²⁶ These dramatic increases in wireline regulatory fees are a huge concern for ITTA members and other mid-size carriers, particularly in light of the fact that wireline fees for Telecommunications Relay Services recently increased and are projected to more than double this year. These rate hikes are harmful to consumers, as wireline subscribers ultimately must bear the burden for such increases. See Comments of the Independent Telephone & Telecommunications Alliance, CG Docket Nos. 10-51 and 03-123 (filed May 31, 2013) (urging the Commission to adopt a more reasonable and accurate contribution factor for TRS services in FY 2013 to take into account recent TRS reforms adopted by the Commission and to guard against significant and unnecessary cost increases for consumers).

In addition, assessing fees for both voice wireline and wireless voice services based on revenues would be administratively straightforward. Wireless carriers utilize FCC Form 499-A to report their revenues to the Commission just as wireline carriers do; therefore, this approach would not create a meaningful administrative burden for such providers. Relying on wireless voice services revenues reported in FCC Form 499 also is not likely to create arbitrage opportunities by giving carriers the incentive to allocate more of their revenues to data services in order to reduce their regulatory fees.²⁷ A number of items are driven by the figures reported in FCC Form 499, such that it is doubtful that payment of regulatory fees would create some independent motivation to shift revenue reporting for purposes of avoiding regulatory fee obligations. Moreover, those figures are framed -- to some extent -- by revenue and other data that many providers must report publicly in filings with the Securities and Exchange Commission.

Finally, the Commission should account for cross-over issues when staff works on items affecting multiple industry sectors. For example, the Commission's comprehensive reforms of the Universal Service Fund and intercarrier compensation regimes that have occupied a significant portion of the Wireline Competition Bureau's workload over the past few years affect virtually the entire communications industry, yet wireline providers must bear all of the costs associated with these efforts. The Commission could rely on Bureau estimates of the industry impact of cross-industry proceedings to which staff has been assigned to further calibrate regulatory fees after it has updated its FTE analysis and grouped wireless voice providers into the ITSP category.

As the Commission points out, Section 9 of the Communications Act requires the Commission to add, delete, or reclassify services in the fee schedule to reflect additions, deletions or changes in the nature of its services "as a consequence of Commission rulemaking proceedings or changes in law."²⁸

²⁷ See *NPRM* at ¶ 14.

²⁸ 47 U.S.C. § 159(b)(3).

Such changes are referred to as “permitted amendments,” which require the Commission to provide adequate notice to Congress.²⁹ Combining wireless and wireline FTEs in the ITSP category would be a “permitted amendment” as contemplated by the Act, and therefore would not take effect until FY 2014. ITTA urges the Commission to move forward with this change “to achieve fair, sustainable, and predictable results” with respect to the Commission’s regulatory fee obligations for wireline and wireless voice providers within its regulatory purview.³⁰

IV. CONCLUSION

In sum, the Commission should update its fee assessment methodology and correct the long-standing disparity in regulatory fee obligations between wireline and wireless voice providers by updating its fee assessment analysis to ensure that it accurately reflects the expenditure of Commission resources for each relevant fee category and by adopting ITTA’s proposal to combine providers of wireless voice services in the revenues-based ITSP category for assessment of regulatory fees. Making these changes would be consistent with the Commission’s statutory mandate to ensure that regulatory fees are applied in an equitable manner that correlates to industry trends and the Commission’s current workload.

Respectfully submitted,

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²⁹ 47 U.S.C. § 159(b)(4)(B).

³⁰ *NPRM* at ¶ 14.