

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2014)	MD Docket No. 14-92
)	
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
)	

**COMMENTS OF
ITTA – THE VOICE OF MIDSIZE COMMUNICATIONS COMPANIES,
THE EASTERN RURAL TELECOM ASSOCIATION, AND
WINDSTREAM CORPORATION**

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ITTA – The Voice of Midsize Communications Companies, the Eastern Rural Telecom Association, and Windstream Corporation (collectively, the “parties”) hereby submit joint comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) June 13, 2014 Notice of Proposed Rulemaking (“*NPRM*”) and Second Further Notice of Proposed Rulemaking (“*FNPRM*”) in the above-captioned proceedings.¹ The *NPRM* seeks comment on the collection of regulatory fees in Fiscal Year (“FY”) 2014, while the *FNPRM* seeks comment on additional reforms to improve the regulatory fee process, including the

¹ *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2014; Assessment and Collection of Regulatory Fees for Fiscal Year 2013; Procedures for Assessment and Collection of Regulatory Fees; MD Docket Nos. 14-92, 13-140, 12-201, Notice of Proposed Rulemaking and Second Further Notice of Proposed Rulemaking, FCC 14-88 (rel. June 13, 2014) (“*NPRM*” or “*FNPRM*,” as appropriate).*

adoption of methodologies tailored to ensure a more equitable distribution of the regulatory fee burden among categories of Commission licensees.²

I. INTRODUCTION AND SUMMARY

Given that the wireline industry has borne a disproportionate burden of regulatory fee payments relative to other industry sectors for more than a decade, the parties appreciate the Commission's efforts to reform the regulatory fee process to more accurately reflect the regulatory activities of current Commission FTEs. The Commission began this process in FY 2013 by looking to current (2012) data to determine the number of FTEs working on regulation and oversight of Interstate Telecommunications Service Providers ("ITSPs") and other fee categories.³ Previously, wireline providers had been paying nearly 47% of the total annual regulatory fee collection based on 1998 FTE data, even though the Wireline Competition Bureau only employs about 29% of the Commission's direct FTEs (according to the 2012 data).⁴ As a result of the changes the Commission adopted in FY 2013, including imposition of an interim 7.5% cap on fee increases, the regulatory fee burden for wireline providers was reduced to about 40%.⁵

² These proposals include combining certain regulatory fee categories; creating new fee categories; adopting a cap on regulatory fee increases; and reexamining allocation of Commission full time employees ("FTEs") on a periodic basis.

³ See *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, 08-65, Report and Order, FCC 13-110 (rel. Aug. 12, 2013) ("*FY 2013 R&O*").

⁴ See *id.* at ¶ 10.

⁵ See *id.* at ¶ 27.

The parties repeatedly have urged the Commission to complete the transition to updated regulatory fees based on current FTE data in FY 2014 and continue to do so.⁶ However, it is clear from the *NPRM* that this step alone is insufficient to address the disproportionate regulatory fee burden that providers of wireline voice services face in comparison to other entities providing comparable services. The Commission's reliance on obsolete FTE data was only one aspect of the problem. The fact that the Commission continues to use inconsistent methods for calculating payments among regulated entities has led to a situation in which providers of similar services pay dramatically different fees simply because they are in different fee categories.

For example, the Commission assesses regulatory fees on wireline voice providers based on revenues, while regulatory fees for wireless voice providers are based on handsets. Similarly, the Commission assesses regulatory fees on cable and IPTV providers based on subscribers, while regulatory fees for DBS providers are based on equipment. This approach places wireline providers of voice and video services at a competitive disadvantage because they must pay a disproportionate amount in comparison to competitors who offer similar services via wireless and satellite technologies.

The Commission must ensure that regulatory fees are applied in a competitively neutral manner that correlates to changes in the industry and the Commission's current workload. The parties therefore urge the Commission to move forward with the proposals in the *FNPRM* to combine wireline and wireless voice providers into the ITSP fee category and to combine DBS

⁶ See, e.g., Letter from Micah M. Caldwell, ITTA, to Marlene H. Dortch, FCC, MD Docket Nos. 13-140, 12-201, 08-65 (filed Mar. 10, 2014), at 2.

providers into the same fee category as cable and IPTV providers so that entities offering similar services are assessed regulatory fees in the same manner.⁷

In addition, the Commission should make other changes to promote fairness and administrative ease with respect to the regulatory fee process. First, the Commission should commit to updating its FTE data on a regular basis – preferably annually, but 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. Second, the Commission should account for crossover issues when staff works on items affecting multiple industry sectors. For example, the Commission could rely on bureau estimates of the industry impact of cross-industry proceedings to which staff has been assigned to ensure that regulatory fees more closely align with the industry sectors being regulated. Third, the Commission should assess regulatory fees on toll-free numbers managed by Responsible Organizations (“RespOrgs”) that do not currently have regulatory fee obligations to ensure that such entities share in the Commission’s costs of regulating them. Finally, the Commission should adjust its timeline for its annual regulatory fees proceeding so that it issues its annual order establishing regulatory fees no later than June 1 prior to the upcoming fiscal year. This would permit wireline carriers and similar providers to account for such costs in their annual regulatory filings that are due by July 1 each year.

Each of these proposals is discussed in turn below.

⁷ See *FNPRM* at ¶¶ 37, 43.

II. THE COMMISSION SHOULD COMBINE CERTAIN REGULATORY FEE CATEGORIES TO PROMOTE REGULATORY PARITY

A. The Commission Should Combine Wireless and Wireline Voice Providers Into the ITSP Fee Category.

Despite the Commission's efforts to update its fee assessment methodology to more accurately reflect the work of Commission FTEs, wireline providers and their customers continue to face a disproportionate regulatory fee burden in comparison to other entities regulated by the Commission. In FY 2014, the FCC proposes to allocate nearly 40% of the total regulatory fee burden to wireline providers.⁸ This figure is virtually unchanged from last year, and demonstrates that the Commission's efforts to assess regulatory fees based on current FTE data do not go far enough to address the flaws in its regulatory fee regime.⁹

One of the most glaring disparities in the Commission's treatment of regulatory fees is between wireline and wireless voice providers. While wireline carriers have experienced an ever-increasing fee burden as voice subscribership and revenues have declined, wireless voice providers have experienced a reduction in regulatory fees as subscriptions to mobile voice services have increased.¹⁰ The Commission's reliance on inconsistent methods for calculating

⁸ See *NPRM* at Table 1.

⁹ The Commission also asks whether it should apply a cap on increases to FY 2014 regulatory fees. *FNPRM* at ¶ 34. The FCC should not apply a cap with respect to regulatory fees proposed in the *NPRM*. As the Commission observes, it is unlikely that regulatees will experience substantial increases in their regulatory fees as a result of the fee schedule proposed for FY 2014. Therefore, a cap on regulatory fee increases is not necessary to prevent a severe impact on the economic wellbeing of licensees.

¹⁰ 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, the wireline industry paid about 47 percent of the total fees while the Wireline Competition Bureau incurred about 23 percent of the FCC's total costs." Government Accountability Office, "Regulatory Fee Process Needs to be Updated," GAO 12-686 (Aug. 2012) ("GAO Report"), at 14. Indeed, wireline carriers have been over-assessed regulatory fees for more than a decade. Between 1998 and 2011, the percentage of total regulatory fees the

regulatory fee payments among different types of voice providers effectively places upon providers of wireline voice services a proportionally greater regulatory fee burden relative to providers of wireless voice services. There are no public interest benefits that justify a disproportionate regulatory fee burden for wireline carriers. In fact, the costs associated with regulatory fees for wireline voice customers continue to grow inequitably higher in comparison to those for wireless voice subscribers because the Commission’s regulatory fee methodology has not kept pace with changes in the communications industry.

To promote regulatory parity and reflect current marketplace realities, the FCC should adopt the proposal in the *FNPRM* to combine wireless cellular services into the ITSP category and assess all voice providers on the same basis.¹¹ As the Commission has acknowledged, wireline and wireless voice services are comparable in many ways and are subject to many of the same regulatory policies, programs, and obligations, such as universal service, intercarrier compensation, number portability, 911 emergency access, special access, rate integration, customer proprietary network information, pole attachments, and CALEA.¹²

Such similarities are what led the Commission to include interconnected VoIP services in the ITSP fee category. Many of the same considerations the Commission took into account in reaching that decision apply equally with respect to wireless voice services. For example, both interconnected VoIP and wireless voice services are “increasingly used to replace traditional

(footnote cont’d.)

wireline industry was expected to pay declined by only 4 percent (from 48 to 44 percent), despite a significant decline (44 percent) in wireline voice revenues. *Id.* at 12. 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. *Id.* at 13.

¹¹ See *FNPRM* at ¶ 37.

¹² See *id.* at ¶ 36.

telephone service,” and both types of services “continue[] to grow and to attract customers who previously relied on traditional voice service.”¹³ As with interconnected VoIP services, wireless services are “almost indistinguishable, from the consumers’ point of view, from the service offered by interstate telecommunications service providers.”¹⁴

Although the Commission recognized “that the costs and benefits associated with [its] regulation of interconnected VoIP providers are not identical as those associated with regulating interstate telecommunications service,”¹⁵ it noted that “regulatory fee assessments are based on the burden imposed on the Commission, not benefits realized by regulatees.”¹⁶ Given that interconnected VoIP providers create costs for the Commission by participating in rulemaking proceedings, waiver petitions, and other matters based on Commission rules requiring such providers to contribute to the Universal Service Fund, provide 911 emergency access, and comply with CPNI and other requirements applicable to voice services, the Commission concluded that “this category of service providers should share in the costs of the Commission’s regulatory activities in the same manner as ITSPs.”¹⁷ The same logic should compel the Commission to combine wireless voice providers with other voice services in the ITSP category.

Assessing all voice providers on the same basis would promote the Commission’s goals of “ensuring regulatory parity among providers of similar services” in a manner that “will

¹³ *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, Report and Order and Further Notice of Proposed Rulemaking, MD Docket No. 07-81, FCC 07-140, ¶ 12 (rel. Aug. 6, 2007).

¹⁴ *Id.* at ¶ 18.

¹⁵ *Id.* at ¶ 19.

¹⁶ *Id.*

¹⁷ *Id.*

minimize marketplace distortions arising from regulatory advantage.”¹⁸ Nowhere is it more evident that wireless carriers have received a windfall as a result of their differential treatment for regulatory fee purposes than in a side-by-side comparison of the regulatory fees paid by the wireline and wireless industries. Wireless voice providers pay only \$0.18 per handset in regulatory fees. In contrast, the regulatory fees per subscriber paid by wireline voice providers are as much as *six times* as high, and that anti-competitive disparity continues to grow with ongoing access line loss and wireless substitution.¹⁹

To ensure that regulatory fees for voice providers are assessed on a competitively neutral basis, the Commission should combine all voice services providers into the ITSP fee category and apply a uniform method for calculating such fees. Currently, the Commission assesses fees on ITSPs based on revenues for voice services, while wireless voice providers pay regulatory fees on a per handset basis.²⁰ Both approaches have limitations. As the Commission observed, it

¹⁸ *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, ¶ 1 (2007).

¹⁹ Indeed, notwithstanding the Commission’s actions in recent years to lower the rate paid by ITSPs, wireline carriers and their customers have continued to experience increases in regulatory fee assessments each year. *See* Comments of the Independent Telephone & Telecommunications Alliance, MD Docket Nos. 13-140, 12-201, 08-65 (filed June 19, 2013), at 8 (providing examples of the excessive and ever-increasing regulatory fees paid by ITTA member companies, as follows. CenturyLink: \$0.41/access line in 2011-12; \$0.43 in 2012-13; and \$0.45 in 2013-14. Frontier: \$0.35/access line in 2011-12; \$0.37 in 2012-13; and \$0.41 in 2013-14. Enventis (formerly HickoryTech): \$0.75/access line in 2009-10; \$0.83 in 2010-11; \$0.92 in 2011-12; and \$1.01 in 2012-13).

²⁰ The per-handset method is essentially a numbers-based approach. For purposes of determining a wireless provider’s fee per handset, the Commission determines the quantity of assigned telephone numbers from the provider’s Numbering Resource Utilization Forecast (“NRUF”) report and adjusts for porting to account for numbers that have been marked or

has become commonplace for wireless carriers to provide voice service without charge for customers with data plans.²¹ Wireline carriers frequently do not have this ability. Thus, to the extent that the Commission is considering assessing ITSP fees based on revenues, it must keep in mind that doing so would not adequately take into account wireless voice revenues that are being subsidized by broadband service offerings. Indeed, the flexibility wireless voice providers enjoy to manipulate how they charge for services could create opportunities for such providers to engage in arbitrage in reporting revenue information used to calculate regulatory fee obligations.

Similarly, the per-handset method that draws data from NRUF reports could be problematic. Wireline carriers file NRUF reports just as wireless carriers do; however, there are shortcomings with respect to this data that may make it inappropriate for use in assessing wireline regulatory fees. For instance, wireline carriers typically have numerous assigned numbers that are utilized for administrative or test purposes or are used strictly to access DSL service. In addition, the wireline industry has significantly more multi-line business customers than the wireless industry. Without appropriate adjustments to account for these facts, wireline voice providers would continue to bear a disproportionate regulatory fee burden in comparison to wireless carriers. In adopting a uniform method to assess ITSP fees, the Commission should take into account these and other considerations to select an approach that best promotes fairness, administrative ease, and sustainability.

(footnote cont'd.)

assigned in their numbering systems but that reflect telephone numbers being service by another carrier. *See NPRM* at ¶ 17.

²¹ *FNPRM* at n. 69.

The Commission also seeks input on whether to transition to a combined ITSP category or establish an interim cap on any regulatory fee increases for wireless providers.²² The parties believe the changes resulting from adoption of this proposal should be implemented as quickly as possible, consistent with the Commission's commitment to complete a comprehensive overhaul of its regulatory fee regime within a short timeframe.²³ Keeping wireless and wireline voice providers in separate categories and phasing in regulatory fee increases/decreases over an extended period of time before combining them into one category only further delays much-needed reform. There is no reasonable basis for wireline voice providers to continue to operate at a competitive disadvantage vis-à-vis their competitors.

Any concerns that overhauling a system that has been in place for many years might create substantial shifts in regulatory fee burdens must be balanced against the need to discontinue an antiquated approach that does not reflect the realities of today's communications industry and the changes in Commission priorities as a result. To the extent the Commission decides to adopt a cap on regulatory fee increases, however, it should set the cap at no lower than 10% to achieve meaningful relief for wireline voice providers that have been disproportionately burdened for many years.

The parties agree with the Commission's tentative conclusion that combining two fee categories into one new fee category constitutes a reclassification of services in the regulatory fee schedule, and thus a permitted amendment as defined in Section 9 of the Communications Act.²⁴ We urge the Commission to move forward with this change as soon as possible "to

²² *Id.* at ¶ 38.

²³ *See FY 2013 R&O* at ¶ 5 (noting that the Commission "intend[s] to conclusively readjust regulatory fees within three years").

²⁴ *See FNPRM* at ¶ 40.

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.²⁵

B. The Commission Should Combine DBS Providers Into the Fee Category for Cable and IPTV Providers.

For the same reasons articulated above, the Commission should adopt the proposal in the *FNPRM* to combine DBS providers into the regulatory fee category applicable to cable and IPTV providers so that all video service providers are assessed on the same basis.²⁶ As the Commission notes, DBS services are similar to cable and IPTV services because such services provide multichannel video programming to subscribers.²⁷ Therefore, DBS providers should pay regulatory fees based on Media Bureau FTEs due to the similar regulatory work devoted to such providers. For instance, DBS providers, as with other multichannel video programming providers (“MVPDs”), can avail themselves of the program access and retransmission consent complaint process.²⁸ They also are required to comply with other Commission regulations the Media Bureau oversees, such as the closed captioning and video description rules and regulations adopted pursuant to the Commercial Advertisement Loudness Mitigation Act.²⁹

Thus, the regulatory fees paid by DBS providers should be included in the cable television and IPTV category and assessed in the same manner as other MVPDs. Furthermore, the Commission should move forward with this permitted amendment as quickly as possible to

²⁵ *FY 2012 NPRM* at ¶ 14.

²⁶ *See FNPRM* at ¶ 43.

²⁷ *See id.* at ¶ 41.

²⁸ *See id.* at ¶ 42.

²⁹ *See id.*

ensure that regulatory fees for MVPDs are assessed on an equitable and competitively neutral basis.

III. THE COMMISSION SHOULD IMPLEMENT OTHER CHANGES TO ITS REGULATORY FEE PROCESS THAT WOULD FURTHER PROMOTE FAIRNESS AND ADMINISTRATIVE EASE

A. The Commission's FTE Data Should Be Current and Reflect Proper Allocation of Staff Resources.

The Commission seeks comment on how often it should update its FTE data for purposes of calculating regulatory fees.³⁰ To ensure that the regulatory fee process continues to reflect the Commission's actual costs by industry sector as the marketplace changes and evolves, the FCC should update its FTE data on a regular basis, preferably annually. Should the Commission determine that a longer period of time is appropriate to balance the need for stability for industry sectors to budget for regulatory fees against the need to reflect the changing work of Commission FTEs, the Commission should revisit its methodology for allocation of FTEs on a biennial basis.

The Commission also should account for crossover 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 voice providers must bear all (or a substantial portion of) the costs associated with these efforts. The Commission should conduct a closer examination of its workload to ensure that work on cross-industry issues is allocated appropriately. For instance, the Commission could rely on bureau estimates of the industry

³⁰ *Id.* at ¶ 30.

impact of cross-industry proceedings to which staff has been assigned to calibrate regulatory fees so that they better reflect the Commission's work as it relates to particular industry segments.

B. The Commission Should Ensure the Entities It Regulates Share in the Cost of Such Oversight.

The Commission seeks comment on whether it should assess regulatory fees on RespOrgs for the toll-free numbers they manage.³¹ As the Commission observes, FCC resources are used in enforcement activities, rulemakings, and other proceedings pertaining to the use of these numbers.³² However, the Commission has not assessed regulatory fees on toll-free numbers based on its assumption that the entities controlling such numbers, wireline and wireless carriers, were paying regulatory fees based on either revenues or subscribers. Today, this assessment may no longer be realistic, as there appear to be many toll-free numbers controlled or managed by entities that are not carriers.

It is incumbent upon the Commission to ensure that all of the entities it regulates share in the costs associated with such oversight. Thus, the parties support assessment of regulatory fees on toll-free numbers managed by RespOrgs insofar as they are not carriers already subject to regulatory fees under the Commission's rules.

C. The Commission Should Adjust the Timeline for Its Regulatory Fees Proceeding to Coincide with Other Regulatory Obligations.

The FCC should adjust its timeline for its annual regulatory fees proceeding so that it issues its annual regulatory fee schedule no later than June 1 prior to the upcoming fiscal year.³³

³¹ *Id.* at ¶ 51.

³² *Id.*

³³ An earlier timeframe may be appropriate to accommodate rate-of-return cost companies in the NECA pool, which must file information regarding their annual regulatory fee costs with NECA prior to June 1.

Doing so would allow wireline carriers and other entities to account for regulatory fees when making other annual regulatory filings, such as annual tariff filings, that are due July 1 each year.

Under the Commission's current schedule for adopting its annual regulatory fees, FCC regulatees do not know their annual regulatory fee obligation until August of each year. As a result, wireline carriers and similar providers must go through the hassle of filing mid-course corrections to previously submitted forms to reflect their annual regulatory fee assessment.

Adjusting the timeframe for the Commission's annual regulatory fee proceeding slightly so that the regulatory fees order is issued two to three months earlier would ease administrative burdens on numerous regulatees without creating additional work for the Commission.

IV. CONCLUSION

In sum, the Commission should update its fee assessment methodology to correct the long-standing disparity in regulatory fee obligations between different providers of similar services. Specifically, the Commission should combine wireline and wireless voice providers into the ITSP category and combine DBS providers into the fee category for cable and IPTV providers so that providers of similar services are assessed regulatory fees on the same basis.

In addition, the Commission should commit to updating its FTE data on a regular basis, and adjust its timeline for the annual regulatory fees proceeding to ease administrative burdens on certain providers. The FCC also should impose regulatory fees on toll-free numbers managed by non-carrier RespOrgs so that such entities share in the cost of regulating them. By adopting these reforms, the Commission can meet its statutory mandate to ensure that regulatory fees are applied in an equitable manner that correlates to changes in the industry and the Commission's current workload.

Respectfully submitted,

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