

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Assessment and Collection of)	MD Docket No. 14-92
Regulatory Fees for Fiscal Year 2014)	
)	
Assessment and Collection of)	MD Docket No. 13-140
Regulatory Fees for Fiscal Year 2013)	
)	
Procedures for Assessment and)	MD Docket No. 12-201
Collection of Regulatory Fees)	

**COMMENTS OF
ITTA – THE VOICE OF MID-SIZE COMMUNICATIONS COMPANIES**

ITTA – The Voice of Mid-size Communications Companies hereby submits its comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) August 29, 2014 Second Further Notice of Proposed Rulemaking (“*FNPRM*”) in the above-captioned proceedings.¹ The *FNPRM* seeks additional comment on implementation of new regulatory fee categories for direct broadcast satellite (DBS) providers and toll free numbers.

ITTA appreciates all efforts to reform the regulatory fee process to more accurately reflect the regulatory activities of current Commission FTEs. As explained below, the Commission should move forward with its proposal to adopt a new fee category for DBS providers to ensure they share in the Media Bureau’s costs to regulate them in the same manner as other multichannel video programming distributors (“MVPDs”). Excluding DBS providers

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, and 12-201, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 14-129 (rel. Aug. 29, 2014) (“*R&O*” or “*FNPRM*,” as appropriate).

from per-subscriber regulatory fees associated with the Media Bureau's oversight of video services places cable and IPTV providers at a competitive disadvantage because they must pay a disproportionate amount of regulatory fees in comparison to their satellite competitors. The Commission must ensure that regulatory fees are applied in a competitively neutral manner that correlates to the FCC's actual workload.

However, the Commission must address several outstanding issues before implementing the new regulatory fee category for toll free numbers. In particular, the Commission must clarify that this requirement will not entail duplicative fees for entities that already pay regulatory fees based on revenues for toll free services.

I. THE COMMISSION SHOULD INCLUDE DBS PROVIDERS IN THE FEE CATEGORY FOR CABLE AND IPTV PROVIDERS

To promote regulatory parity and reflect current marketplace realities, the Commission should move forward with its proposal to assess regulatory fees on DBS providers based on the work performed by Media Bureau staff in regulating such entities.² Currently, DBS providers only pay regulatory fees in connection with regulatory matters overseen by International Bureau staff and do not pay any Media Bureau regulatory fees. Because the Media Bureau devotes substantial resources to video issues affecting the satellite industry, DBS providers should be included in the fee category applicable to cable and IPTV providers so that all MVPDs are assessed regulatory fees on the same basis.

As the Commission notes, DBS services are similar to cable and IPTV services because such services provide multichannel video programming to subscribers.³ As a result, DBS providers are subject to many of the same rules as cable and IPTV providers and are regulated by

² See *FNPRM* at ¶ 38.

³ *Id.*

Media Bureau FTEs in much the same manner as other MVPDs.⁴ For instance, DBS providers, as with other MVPDs, can avail themselves of the program access and retransmission consent rules.⁵ 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.⁶

Although DBS providers are not subject to all of the regulations and requirements imposed on the cable industry, there is significant overlap in the regulatory policies, programs, and obligations that apply to DBS providers and other MVPDs. As indicated above, the Media Bureau oversees and regulates the DBS industry in areas such as retransmission consent, program access, and video programming accessibility, among others. Given that DBS providers create costs for Media Bureau staff by routinely participating in rulemaking and other proceedings relating to such matters, DBS providers should share in the costs of the Media Bureau's regulatory activities in the same manner as cable and IPTV providers.

It does not make sense for providers of similar services to pay dramatically different regulatory fees simply because they have been placed in different fee categories. Cable and IPTV providers should not be saddled with the entire cost associated with the Media Bureau's regulation of MVPDs when the Media Bureau resources devoted to and the benefits received by DBS providers support the inclusion of such providers in the per-subscriber fee category applicable to cable and IPTV providers. According to the Commission, "DBS providers currently pay less than nine percent of the regulatory fees they would be assessed if the

⁴ *Id.* at ¶ 40.

⁵ *Id.* at ¶ 39.

⁶ *Id.*

Commission were to combine MVPDs into one category and require DBS to pay the same rate as cable television and IPTV.”⁷ DBS providers should no longer receive a huge financial advantage relative to their competitors simply by virtue of the fact that the Commission employs inconsistent methods for calculating regulatory fees for providers of similar services.

As the Commission observes, it recently decided to include IPTV providers in the regulatory fee category for cable television operators because “assessing regulatory fees on cable television systems, but not on IPTV... may place cable providers at a competitive disadvantage.”⁸ The Commission also noted that there is a “relatively small difference from a regulatory perspective” between IPTV providers and cable operators, even though the regulatory obligations pertaining to cable and IPTV providers are not identical.⁹ The same logic should compel the Commission to combine DBS providers with other MVPDs in the cable television and IPTV regulatory fee category.

Moreover, DBS providers should not pay significantly lower regulatory fees than other MVPDs simply because they also pay regulatory fees based on International Bureau FTEs.¹⁰ Taking such an approach would be inconsistent with the Commission’s goal of “ensuring regulatory parity among providers of similar services” in a manner that “will minimize marketplace distortions arising from regulatory advantage.”¹¹ The whole point of undertaking

⁷ *See id.*

⁸ *Assessment and Collection of Regulatory Fees for Fiscal Year 2013*, Report and Order, MD Docket Nos. 13-140, 12-201, and 08-65, 28 FCC Rcd 7790, ¶ 32 (2013) (“*FY 2013 R&O*”).

⁹ *Id.* at n. 81.

¹⁰ *See FNPRM* at ¶¶ 41-43.

¹¹ *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,

comprehensive regulatory fee reform was to ensure that the Commission’s fee assessment methodology more accurately reflects the work of Commission FTEs. Therefore, entities regulated by the Commission may pay multiple regulatory fees to the extent they provide multiple services and/or create work for multiple bureaus within the Commission.

Indeed, cable and IPTV providers that provide voice services pay regulatory fees for work performed by Wireline Competition Bureau FTEs in connection with regulating such services. That is, in addition to the per-subscriber fee paid to cover regulatory costs for Media Bureau FTEs, cable and IPTV providers that offer voice service also pay the revenues-based fee applicable to Interstate Telecommunications Service Providers (“ITSPs”) to cover regulatory costs for Wireline Competition Bureau FTEs. They do not receive a reduction in one type of fee or the other as a result of having to contribute to both categories. Rather, they share proportionally in the costs with other entities that fall within the same category so that all affected entities are contributing fairly to cost recovery for regulatory work performed by Commission staff in the relevant bureaus.¹² Based on this reasoning, DBS providers that create costs for both Media Bureau and International Bureau FTEs should pay regulatory fees for both

(footnote cont’d.)

Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, WC Docket Nos. 07-243, 07-244, and 04-36, CC Docket Nos. 96-115 and 99-200, FCC 07-188, 22 FCC Rcd 19531, ¶ 1 (2007).

¹² Unfortunately, wireline voice providers continue to bear a disproportionate amount of the regulatory fee burden in connection with the Commission’s regulation of voice services because, much like the Commission’s differential regulatory fee treatment of video providers in the MVPD context, the ITSP category excludes providers of wireless voice service. ITTA has repeatedly urged the Commission to address this long-standing regulatory and competitive disparity by including wireless voice providers in the ITSP fee category so that all providers of voice services are assessed regulatory fees on the same basis. *See, e.g.*, Comments of ITTA – The Voice of Mid-size Communications Companies, the Eastern Rural Telecom Association, and Windstream Corporation, MD Docket Nos. 14-92, 13-140, and 12-201 (filed July 7, 2014) (“ITTA Comments”), at 5-11 (emphasis added).

categories and not receive special treatment in comparison to other entities subject to the same fees.

Nor should the Commission slowly phase in any adjustments to its rate structure for DBS providers by increasing the percentage such providers contribute to Media Bureau FTEs over time.¹³ ITTA believes 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.¹⁴ Keeping wireline and satellite MVPDs in separate categories and phasing in regulatory fee increases/decreases over an extended period before combining them into one category only further delays much-needed reform. There is no reasonable basis for wireline video providers to continue to operate at a competitive disadvantage vis-à-vis their satellite 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 the Commission's priorities and workload. We urge the Commission to move forward with this change as soon as possible to achieve fair, sustainable, and predictable results with respect to the Commission's regulatory fee obligations for wireline and satellite video providers within its regulatory purview.

II. THE COMMISSION MUST ADDRESS SEVERAL OUTSTANDING ISSUES BEFORE IMPOSING REGULATORY FEES ON TOLL FREE NUMBERS

In the *FNPRM*, the Commission seeks to further develop the record regarding implementation of a new regulatory fee category for Responsible Organizations ("RespOrgs")

¹³ *FNPRM* at ¶ 42.

¹⁴ See *FY 2013 R&O* at ¶ 5 (noting that the Commission "intend[s] to conclusively readjust regulatory fees within three years").

that manage toll free numbers.¹⁵ Although the *FNPRM* focuses on developing enforcement procedures in the event a RespOrg fails to pay regulatory fees, there are a number of other questions regarding how this new fee will be assessed that must be addressed before the FCC can implement this requirement. For instance, it is unclear which RespOrgs are affected by the new regulatory fee, which toll free numbers would be included in such an assessment, what the amount of the fee would be, or at what point the fee would be determined during the course of a fiscal year.¹⁶

The *R&O* states that the FCC “will assess regulatory fees on RespOrgs, for each toll free number managed by a RespOrg.”¹⁷ This language suggests that the requirement will apply to all RespOrgs, including carrier RespOrgs that already pay regulatory fees on toll free revenues as ITSPs. There is no support in the record for such an expansive approach. Although the Commission cites ITTA’s comments for the proposition that “[o]ther commenters support this new category,” the Commission appears to ignore that ITTA’s endorsement of the Commission’s proposal was qualified. ITTA made it clear in its advocacy that any obligation to pay regulatory fees for toll free numbers should be limited to non-carrier RespOrgs that do not already pay regulatory fees to account for the expenditure of Commission resources on toll free numbering issues.

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*.¹⁸

¹⁵ *FNPRM* at ¶¶ 36-37.

¹⁶ *See* Petition for Reconsideration of CenturyLink, MD Docket Nos. 14-92, 13-140, and 12-201 (filed Oct.15, 2014), at 2.

¹⁷ *R&O* at n. 89.

¹⁸ ITTA Comments at 13 (emphasis added).

Several other commenters raised concerns with broad application of a toll free regulatory fee category to RespOrgs. AT&T pointed out the ambiguity in how the Commission’s proposal would impact carrier RespOrgs that already pay regulatory fees based on their toll free revenues and asked the Commission to provide additional detail to help affected parties determine the real-world impact of the proposal.¹⁹ Bandwidth.com endorsed AT&T’s comments, arguing that the lack of clarity as to the scope of the requirement and whether it includes RespOrgs that already comply with regulatory fee obligations make it impossible for the Commission to move forward at this time.²⁰ USTelecom agreed, urging the Commission to exclude carrier RespOrgs that pay regulatory fees based on toll free revenues because “[i]t is fundamental to the regulatory fee system that the Commission should avoid assessing providers twice for the same service.”²¹

The *R&O* does not address these calls for additional clarity and detail. Arguably, certain statements in the *R&O* might be interpreted to suggest that the Commission intends to exclude carrier RespOrgs from the fee category for toll free numbers. The Commission indicates that “a regulatory fee assessed on toll free numbers [would] reduce[] the ITSP regulatory fee total; for example, if the total revenue requirement for toll free numbers had been four million dollars [in FY 2014], expected ITSP revenues would need only be \$127,369,000 instead of \$131,369,000 and the ITSP rate would need only be 0.00333 instead of 0.00343.”²² The Commission also acknowledges that it may be necessary to conduct “outreach to promote awareness of this new [fee] category” for RespOrgs that “are not generally accustomed to being regulated or paying

¹⁹ Comments of AT&T, MD Docket Nos. 14-92, 13-140, and 12-201 (filed July 7, 2014), at 5.

²⁰ Reply Comments of Bandwidth.com, Inc., MD Docket Nos. 14-92, 13-140, and 12-201 (filed July 21, 2014), at 1-2.

²¹ Reply Comments of the United States Telecom Association, MD Docket Nos. 14-92, 13-140, and 12-201 (filed July 21, 2014), at 5.

²² *R&O* at ¶ 27.

regulatory fees.”²³ These statements could be construed to mean that ITSPs will not experience duplicate fee assessments as carrier RespOrgs because the new fee category for toll free numbers will only apply to entities that do not currently contribute funds to offset the Commission’s regulatory costs.

While ITTA believes that narrow application the new fee category to non-carrier RespOrgs is the correct approach, the Commission must clarify that carrier RespOrgs are, in fact, excluded from this obligation. The Commission also should address other areas of confusion with regard to its implementation of the new fee category, such as which toll free numbers will be subject to the fee, the amount of the fee, and at what point during the fiscal year the fee will be determined. The *R&O* suggests that the fee will be assessed on revenues for working, assigned, and reserved toll free numbers, as well as toll free numbers that are in “transit” status.²⁴ However, it does not make sense as a practical matter to assess regulatory fees on toll free numbers that do not generate revenue. As CenturyLink pointed out, “[f]airness requires that numbers in a RespOrg’s inventory that produce no revenue on the reporting date should not be included in a “fee on revenues.”²⁵ Likewise, before the Commission can fairly implement this new fee category, it must provide adequate notice and reasoning regarding the amount of the fee and establish at what point during the fiscal year the fee should be determined.²⁶

²³ *Id.* at ¶ 28.

²⁴ *Id.* at n. 88. What is meant by numbers in “transit” status is unclear, as there is no reference to such numbers in the Commission’s rules. *See* 47 C.F.R. § 52.103.

²⁵ CenturyLink Petition at 4-5.

²⁶ *Id.* at 5-6.

III. CONCLUSION

In sum, the Commission should move forward with its proposal to combine DBS providers into the fee category for cable and IPTV providers so that providers of video services are assessed regulatory fees on the same basis. The FCC also must address several issues before assessing regulatory fees on toll free numbers, including clarification that such fees apply only to RespOrgs that do not currently have regulatory fee obligations to ensure that such entities share in the Commission's costs 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 the Commission's current workload.

Respectfully submitted,

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