

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

In the Matter of)	
)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2015)	MD Docket No. 15-121
)	
Amendment of Part 1 of the Commission’s Rules)	MD Docket No. 15-121
)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2014)	MD Docket No. 14-92
)	
)	

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

ITTA – The Voice of Mid-Size Communications Companies (“ITTA”) hereby submits its comments in response to the May 21, 2015 Notice of Proposed Rulemaking (“*NPRM*”) issued by the Federal Communications Commission (“FCC” or “Commission”) in the above-captioned proceedings.¹ The *NPRM* seeks comment on the FCC’s proposed regulatory fees for fiscal year (“FY”) 2015, including implementation of new regulatory fees for direct broadcast satellite (“DBS”) providers and responsible organizations (“RespOrgs”) that manage toll free numbers.² The *NPRM* also seeks comment on other regulatory fee reform measures the Commission should adopt, and raises questions as to whether certain staff within specific bureaus or offices should be allocated differently.³

¹ *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2015; Amendment of Part 1 of the Commission’s Rules; Assessment and Collection of Regulatory Fees for Fiscal Year 2014*, Notice of Proposed Rulemaking, Report and Order, and Order, MD Docket Nos. 15-121, 14-92, FCC 15-59 (rel. May 21, 2015) (“*FY 2015 NPRM*”).

² *Id.* at ¶¶ 9-10.

³ *Id.* at ¶ 14.

As explained below, the FCC should phase in the new regulatory fee applicable to DBS providers as quickly as possible to achieve full parity in regulatory fees for providers of video service. The Commission also should reverse its determination to apply the new toll free regulatory fee to RespOrgs that also pay regulatory fees as interstate telecommunications service providers (“ITSPs”) to avoid unjustified fee increases for such entities. In addition, the FCC must move forward with necessary reforms to its regulatory fee structure to remedy the inequitable disparity in regulatory fees paid by providers and consumers of wireline voice service. This disparity harms some of the consumers least able to afford additional fees by increasing the cost of their home phone service, and the time is ripe for the FCC to address this issue in a meaningful way.

I. THE COMMISSION MUST ADDRESS THE DISPARITY IN REGULATORY FEES FOR ITSPs

The *NPRM* seeks comment generally on additional regulatory fee reforms that the Commission should adopt,⁴ but unlike in previous years, neglects to include any specific proposals to correct the disparity in regulatory fees paid by ITSPs. Providers and consumers of wireline voice service have borne a disproportionate regulatory fee burden relative to other industry sectors for more than a decade and ITTA has made repeated calls in the past several years for the FCC to address this disparity and to better align ITSP regulatory fees with the actual work of the Commission.⁵ In the *FY 2014 Report and Order and Further Notice of*

⁴ *See id.*

⁵ *See, e.g.,* Comments of ITTA – The Voice of Mid-Size Communications Companies, MD Docket Nos. 14-92, 13-140, 12-201 (filed Nov. 26, 2014) (“ITTA Comments”); 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, 12-201 (filed July 7, 2014); Comments of the Independent Telephone & Telecommunications Alliance, MD Docket Nos. 13-140, 12-201, 08-65 (filed June 19, 2013); Reply Comments of the Independent Telephone & Telecommunications Alliance, MD Docket No. 08-65 (filed June 6, 2008);

Proposed Rulemaking, the Commission “recognize[d] that there may be merit to more fundamental reform in the regulatory fee process as outlined in [ITTA’s] proposals.”⁶ In light of this conclusion and the Commission’s affirmative commitment in 2013 to comprehensively overhaul its regulatory fee regime within three years, the FCC can no longer delay action to address this problem in a meaningful way.⁷

ITTA has in the past advocated that the Commission address this issue by, among other things, combining wireless providers into the ITSP fee category so that all voice providers are assessed regulatory fees on the same basis. While we continue to believe this approach makes sense, we recognize that there may be other solutions that also merit the Commission’s consideration.

A fundamental problem with the existing regulatory fee structure is that as a result of changes in the communications industry and the convergence of technologies, the work of Wireline Competition Bureau FTEs is no longer focused exclusively on ITSPs.⁸ Resources

Comments of the Independent Telephone & Telecommunications Alliance, MD Docket No. 08-65 (filed Sept. 25, 2008).

⁶ *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, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 14-129, ¶ 34 (rel. Aug. 29, 2014).

⁷ 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, ¶ 5 (rel. Aug. 12, 2013) (“*FY 2013 R&O*”) (noting that the Commission “intend[s] to conclusively readjust regulatory fees within three years”).

⁸ As Commissioner Pai noted, the Commission’s fee system doesn’t “reflect the advent of cross-platform convergence in the communications marketplace – that is, companies from formerly distinct niches competing to offer the same services – or the accompanying change to [the Commission’s] substantive regulatory framework. Intermodal competitors face[] radically different fee requirements based on little more than historical accident,” which “violates the bedrock principle that similar services should be regulated similarly.” *FY 2015 NPRM*, Statement of Commissioner Ajit Pai.

expended by Wireline Competition Bureau FTEs increasingly benefit other industry sectors, such that ITSPs should no longer bear the entire burden of regulatory fees attributed to the Wireline Competition Bureau. Given the Commission’s statutory mandate to update its schedule of regulatory fees to “reflect . . . changes in the nature of its services”⁹ so that regulatory fees reflect the Commission’s current activities and the benefits regulated entities receive from those activities,¹⁰ it is incumbent upon the Commission to make adjustments to ensure that its regulatory fees reflect the Commission’s actual costs by industry sector as the marketplace changes and evolves.

There are 172 FTEs in the Wireline Competition Bureau, and even a cursory evaluation of the activities of those employees raises serious questions as to whether the work performed by certain staff is properly allocated under the current fee structure.¹¹ For instance, the Commission currently is expending substantial resources in an effort to modernize the Lifeline program.¹² It also is expending significant resources to conduct a comprehensive analysis of the marketplace

⁹ See Communications Act § 9(b)(3). (“[T]he Commission shall, by regulation, amend the Schedule of Regulatory Fees if the Commission determines that the Schedule requires amendment to comply with the requirements of paragraph (1)(A). In making such amendments, the Commission shall add, delete, or reclassify services in the Schedule to reflect additions, deletions, or changes in the nature of its services as a consequence of Commission rulemaking proceedings or changes in law.”).

¹⁰ See Communications Act § 9(b)(1)(A) (“The fees assessed . . . shall . . . be derived by determining the full-time equivalent number of employees . . . within the . . . offices of the Commission, 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 . . .”).

¹¹ See *FY 2015 NPRM* at n. 16.

¹² See, e.g., *Lifeline and Link Up Reform and Modernization; Telecommunications Carriers Eligible for Universal Service Support; Connect America Fund*, Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order, WC Docket Nos. 11-42, 09-197, 10-90, FCC 15-71 (rel. Jun 22, 2015).

for special access services.¹³ Given that these and other programs and proceedings within the purview of the Wireline Competition Bureau generate significant benefits for entities that do not pay regulatory fees as ITSPs, the Commission should adjust its fee structure to properly account for this industry cross-over.¹⁴

We urge the Commission to move forward with necessary reforms to its regulatory fee structure to remedy the inequitable disparity in regulatory fees paid by providers and consumers of wireline voice service. Specifically, the Commission should analyze Wireline Bureau FTEs, as it has done for the Media and International Bureau, and determine whether some Wireline Bureau FTEs should be excluded from the ITSP fee category or treated as indirect FTEs.¹⁵ We hope to work closely with the Commission in the coming months on proposals that would help bring the FCC's assessment of regulatory fees in line with the current communications marketplace.

II. THE COMMISSION SHOULD PHASE IN THE NEW REGULATORY FEE FOR DBS PROVIDERS AS QUICKLY AS POSSIBLE

The proposed FY 2015 regulatory fee schedule includes a new regulatory fee for DBS providers as a subcategory in the existing cable television and Internet Protocol TV ("IPTV") regulatory fee category.¹⁶ The Commission adopted this proposal to correct a long-term

¹³ See *In the Matter of Special Access for Price Cap Local Exchange Carriers, AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 16318 (2012).

¹⁴ These other programs and proceedings include E-rate, rural healthcare, and Open Internet, to name a few.

¹⁵ In 2012, the GAO concluded that the Commission should conduct an overall analysis of the regulatory fee categories and perform an updated FTE analysis by fee category. GAO, "Federal Communications Commission Regulatory Fee Process Needs to be Updated," GAO-12-686 (Aug. 2012), at 36, available at: <http://www.gao.gov/products/GAO-12-686>.

¹⁶ See *FY 2015 NPRM*, Appendix C.

imbalance in its assessment of regulatory fees for multichannel video programming distributors (“MVPDs”) that exempted two of the nation’s largest MVPDs from paying regulatory fees for Media Bureau FTEs because they are satellite providers. The Commission estimates the number of payment units in the DBS subcategory to be 34 million and proposes phasing in this regulatory fee starting at an initial rate at 12 cents per year, or one cent per month.¹⁷ Because DBS regulatory fees offset cable television and IPTV fees, the cable television and IPTV rate would be reduced from \$1.01 to \$0.95 per subscriber.¹⁸

ITTA disagrees with the Commission’s proposal to phase in the new regulatory fee for DBS providers starting at such a low rate. Given the Commission’s estimate that the regulatory fee for MVPDs would be \$0.68 per subscriber once DBS providers are fully incorporated, it would take years to phase in DBS providers so they are paying their full share of regulatory fees for Media Bureau FTEs.¹⁹ Rather, ITTA believes the changes resulting from establishing this new fee category 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. Phasing in the resulting regulatory fee increases and decreases over an extended period of time 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, which are the second and third largest MVPDs in the nation.

¹⁷ *See id.* at ¶ 9.

¹⁸ *Id.*

¹⁹ *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, Table 4 (rel. June 13, 2014).

Indeed, precedent suggests that the Commission should phase in the DBS fee immediately. When the Commission added IPTV to the cable television category, it set the initial rate for IPTV equal to the cable television rate.²⁰ However, other commenters have suggested that three years would be an appropriate timeframe for phasing in the new fee, and ITTA has no objections to this approach.²¹

III. THE COMMISSION SHOULD REVERSE ITS DETERMINATION TO APPLY THE NEW TOLL FREE REGULATORY FEE TO ITSPs

The proposed fee schedule also includes fees for toll free numbers as a subcategory in the ITSP regulatory fee category.²² This regulatory fee, assessed on RespOrgs for toll free numbers managed by a RespOrg, is payable for all toll free numbers unless calls from only other countries can be completed using those toll free numbers.²³ This regulatory fee applies to each working, assigned, reserved, in transit, or any other status of toll free number as defined in section 52.103 of the Commission's rules.²⁴ Both ITSPs that are RespOrgs and RespOrgs that are not ITSPs are responsible for this regulatory fee.²⁵

The Commission should reverse its determination to apply the new toll fee regulatory fee to RespOrgs that also pay regulatory fees as ITSPs.²⁶ If the Commission's purpose in adopting this new fee category is to reduce the fee burden for ITSPs,²⁷ it makes no sense to collect this fee

²⁰ See *FY 2013 R&O* at ¶¶ 32-33.

²¹ See Comments of the National Cable & Telecommunications Association and the American Cable Association, MD Docket Nos. 14-92, 13-140, 12-201 (filed Nov. 26, 2014), at 14-15.

²² See *FY 2015 NPRM*, Appendix C.

²³ *Id.* at ¶ 10.

²⁴ *Id.*

²⁵ *Id.*

²⁶ See *id.* at ¶ 23.

²⁷ See *id.* at ¶ 10 (“Because toll-free number regulatory fees offset ITSP fees, the ITSP rate would be reduced...”).

from entities that already pay regulatory fees as ITSPs.²⁸ Indeed, ITSPs that are RespOrgs will have to pay fees on both their toll free revenues and the toll free numbers they manage leading, in many cases, to an increase in fees.

IV. CONCLUSION

The FCC must move forward with necessary reforms to its regulatory fee structure to remedy the inequitable disparity in regulatory fees paid by providers and consumers of wireline voice service. In addition, the FCC should phase in the new regulatory fee applicable to DBS providers as quickly as possible to achieve full parity in regulatory fees for providers of video service. The Commission also should reverse its determination to apply the new toll free regulatory fee to RespOrgs that also pay regulatory fees as ITSPs so that this requirement does not entail duplicative fees for entities that already pay regulatory fees based on revenues for toll free services.

Respectfully submitted,

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²⁸ It also makes little sense to collect regulatory fees for toll free numbers that do not generate revenue. *See* ITTA Comments at 9.