

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

In the Matter of)
)
Assessment and Collection of Regulatory) **MD Docket No. 15-121**
Fees for Fiscal Year 2015)

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

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ITTA – The Voice of Mid-Size Communications Companies (“ITTA”) hereby submits its comments in response to the September 2, 2015 Further Notice of Proposed Rulemaking (“*FNPRM*”) issued by the Federal Communications Commission (“FCC” or “Commission”) in the above-captioned proceeding.¹ The *FNPRM* seeks comment on ITTA’s proposals to reallocate Wireline Competition Bureau full-time equivalents (“FTEs”) to reflect that the work conducted by Wireline Competition Bureau employees does not focus exclusively on interstate telecommunications service providers (“ITSPs”), but rather impacts multiple segments of the communications industry.²

I. INTRODUCTION AND SUMMARY

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 repeatedly called on the FCC to address this disparity and to better align ITSP regulatory fees with the actual work of the Commission.³ This disparity harms some of the consumers least able

¹ *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2015*, MD Docket No. 15-121, Report and Order and Further Notice of Proposed Rulemaking, FCC 15-108 (rel. Sept. 2, 2015) (“*FNPRM*”).

² *See id.* at ¶¶ 31-34.

³ *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); Comments of ITTA – The Voice of

to afford additional fees by increasing the cost of their home phone service. ITSP regulatory fees account for nearly \$128 million, or almost 40%, of the FCC's approximately \$340 million total annual regulatory fee revenue requirement, which continues to be more than any other industry sector regulated by the Commission.⁴

The Commission recognizes in the *FNPRM* that “there is substantial convergence in the telecommunications industry and organizational changes in the Commission that may support additional FTE reallocations as ITTA contends.”⁵ For instance, there are a number of areas the Wireline Competition Bureau oversees, such as universal service, that affect numerous types of communications providers, including wireless carriers.⁶

To account for this crossover work, the Commission seeks comment on whether to (i) combine wireless and wireline voice services into the ITSP regulatory fee category or, alternatively, to (ii) reassign or create a new fee category for certain Wireline Competition Bureau FTEs for regulatory fee purposes.⁷ More specifically, with respect to the latter proposal, the Commission seeks comment on whether it should reassign certain Wireline Competition Bureau FTEs to the Wireless Telecommunications Bureau for regulatory fee purposes, or

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

⁴ See *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*, MD Docket Nos. 15-121, 14-92, Notice of Proposed Rulemaking, Report and Order, and Order, FCC 15-59, Appendix B (rel. May 21, 2015) (“*FY 2015 NPRM*”).

⁵ *FNPRM* at ¶ 33.

⁶ See *id.*

⁷ See *id.*

whether it should adopt a new fee category for wireless providers as a subcategory of the ITSP regulatory fee category based on the percentage of Wireline Competition Bureau FTE work related to wireless carriers.⁸

As explained below, ITTA continues to believe there is clear precedent for the Commission to combine wireless providers into the ITSP regulatory fee category, similar to how the Commission combined interconnected VoIP providers, and more recently, DBS providers, into existing fee categories in recognition of the work performed by the relevant core bureaus overseeing such entities.

That said, ITTA recognizes that there may be other solutions to address the disproportionate regulatory fee burden borne by wireline ITSPs. Given that the industry and the work conducted by Wireline Competition Bureau employees continues to evolve, we find reasonable the Commission's alternative proposal to analyze Wireline Bureau FTEs, as it has done for other bureaus, and reassign or create a new fee category for certain Wireline Competition Bureau FTEs to reflect that the work of those employees is not narrowly limited to the regulation and oversight of ITSPs.

The Commission has a statutory mandate to update its schedule of regulatory fees to ensure they reflect the Commission's current activities and the benefits regulated entities receive from those activities. Therefore, 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. In light of the Commission's affirmative commitment in 2013 to comprehensively overhaul its regulatory fee regime within three years, it is beyond time for the FCC to address the disproportionate regulatory fee burden experienced by ITSPs and their

⁸ *See id.* at ¶ 34.

customers in a meaningful way.⁹

II. THERE IS CLEAR PRECEDENT FOR THE COMMISSION TO TREAT WIRELESS CARRIERS AS ITSPs SO THAT ALL VOICE PROVIDERS PAY REGULATORY FEES FOR WIRELINE BUREAU FTEs ON THE SAME BASIS

ITTA has in the past advocated that the Commission combine wireless providers into the ITSP fee category so that all voice providers pay regulatory fees for the work of the Wireline Competition Bureau on the same basis. We continue to endorse this approach. Such action would be consistent with the Commission's decision to incorporate interconnected VoIP providers into the ITSP fee category to ensure that such providers are paying their share of regulatory fees in connection with the Wireline Competition Bureau's oversight of voice services.¹⁰ It also would be consistent with the Commission's decision to incorporate DBS providers into the regulatory fee category for cable providers so that all pay-TV providers are paying their share of regulatory fees in connection with the Media Bureau's oversight of video services.¹¹

When the Commission determined to treat interconnected VoIP providers as ITSPs, it 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."¹² However, the Commission noted that "regulatory fee assessments are based on the

⁹ 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").

¹⁰ See *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, MD Docket No. 07-81, Report and Order and Further Notice of Proposed Rulemaking, FCC 07-140, ¶¶ 11-20 (rel. Aug. 6, 2007) ("*FY 2007 R&O*").

¹¹ See *FY 2015 NPRM* at ¶¶ 28-41.

¹² *FY 2007 R&O* at ¶ 19.

burden imposed on the Commission, not benefits realized by regulatees.”¹³ 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.”¹⁴ Thus, interconnected VoIP providers were added to the ITSP regulatory fee category as a permitted amendment pursuant to Section 9 of the Communications Act.¹⁵

The Commission relied on similar reasoning and authority when it determined to incorporate DBS providers into the regulatory fee category for cable and IPTV providers. As the Commission noted, DBS providers are subject to many of the same rules as cable and IPTV providers and are regulated by Media Bureau FTEs in much the same manner as other MVPDs.¹⁶ For instance, DBS providers, as with other MVPDs, can avail themselves of the program access, program carriage, and retransmission consent rules.¹⁷ They also are required to comply with other Commission regulations the Media Bureau oversees, such as rules implemented pursuant to the Commercial Advertisement Loudness Mitigation Act, the Twenty-First Century

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *See* 47 U.S.C. § 159(b)(3).

¹⁶ *See FY 2015 NPRM* at ¶ 31.

¹⁷ *See id.*

Communications and Video Accessibility Act of 2010, and the Satellite Television Extension and Localism Reauthorization Act of 2014.¹⁸

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.¹⁹ Because DBS providers create costs for Media Bureau staff by routinely participating in rulemaking and other proceedings relating to such matters, the Commission adopted a permitted amendment to ensure that DBS providers share in the costs of the Media Bureau’s regulatory activities in the same manner as cable and IPTV providers.²⁰

Thus, there is clear precedent and authority for the Commission to adopt its proposal to treat wireless voice providers as ITSPs. 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.²¹

¹⁸ *See id.*

¹⁹ *See id.* at ¶ 33.

²⁰ *See id.* at ¶ 34. Similarly, the Commission adopted a permitted amendment 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.” *FY 2013 R&O* at ¶ 32. The Commission 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. *Id.* at n. 81.

²¹ *See 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, ¶ 36 (rel. June 13, 2014) (“*FY 2014 NPRM*”).

Many of the same considerations the Commission took into account in reaching the decision to include interconnected VoIP services in the ITSP fee category apply equally with respect to wireless voice services. For example, both interconnected VoIP and wireless voice services are “increasingly used to replace traditional telephone service,” and both types of services “continue[] to grow and to attract customers who previously relied on traditional voice service.”²² 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.”²³ This same logic should compel the Commission to combine wireless voice providers with other voice services in the ITSP category for purposes of assessing regulatory fees for Wireline Competition Bureau FTEs.²⁴

Of course, adopting this proposal would require the Commission to apply a uniform method for calculating fees for the combined fee category. Currently, the Commission assesses fees on ITSPs based on revenues for voice services, while wireless voice providers pay

²² *FY 2007 R&O* at ¶ 12.

²³ *Id.* at ¶ 18.

²⁴ It is immaterial that wireless carriers already pay regulatory fees associated with Wireless Telecommunications Bureau FTEs. It is common for entities regulated by the Commission to 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 in addition to video services pay regulatory fees for the work performed by both the Wireline competition Bureau and the Media Bureau. Likewise, DBS providers, which operate satellites in connection with providing video services, pay regulatory fees for work performed by both the International Bureau and the Media Bureau. It also is irrelevant that wireless carriers contribute to the Commission’s budget through the purchase of wireless spectrum. Acquiring spectrum license rights through the auction process is part of the cost of developing a wireless network and does not justify differential treatment of wireless carriers for regulatory fee purposes. As with all other industry sectors, the regulatory fees paid by wireless providers should reflect the costs the Commission incurs in regulating such entities.

regulatory fees on a per handset basis.²⁵ Both approaches have limitations. As the Commission has observed, it has become commonplace for wireless carriers to provide voice service without charge for customers with data plans.²⁶ 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 services 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

²⁵ 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 assigned in their numbering systems but that reflect telephone numbers being service by another carrier. *See FY 2014 NPRM* at ¶ 17.

²⁶ *See id.* at n. 69.

take into account these and other considerations to select an approach that best promotes fairness, administrative ease, and sustainability.

III. ALTERNATIVELY, THE COMMISSION SHOULD CONDUCT AN EXAMINATION OF THE WORK OF THE WIRELINE COMPETITION BUREAU AND REASSIGN OR CREATE A NEW CATEGORY OF WIRELINE BUREAU FTEs AS APPROPRIATE

As indicated above, 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.²⁷ Resources expended by Wireline Competition Bureau FTEs increasingly benefit other industry sectors, such that it is inequitable for ITSPs to continue to 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"²⁸ so that regulatory fees reflect the Commission's current activities and the benefits regulated entities receive from those activities,²⁹ the Commission must make adjustments to ensure that its

²⁷ 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.

²⁸ *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.").

²⁹ *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 . . .").

regulatory fees reflect its actual costs by industry sector as the marketplace evolves. Thus, ITTA supports the Commission's proposal to reassign FTEs or create a new regulatory fee category (or categories) within the ITSP category based on a close examination of the regulatory activities of Wireline Competition Bureau employees.³⁰

There are 172 FTEs in the Wireline Competition Bureau,³¹ and even a cursory evaluation of the activities of those employees raises legitimate questions as to whether the work performed by certain staff is properly allocated under the current fee structure.³² For instance, the Bureau currently is expending substantial resources in an effort to modernize the Lifeline program.³³ The Bureau has and continues to devote an enormous amount of effort to reforming the Commission's high-cost universal service mechanisms. The Bureau also works on issues relating to its E-rate and rural healthcare programs on a consistent basis. These and other issues overseen by the Wireline Competition Bureau impact various types of communications providers, not just ITSPs.

There are numerous other regulatory policies, programs, and obligations administered by the Wireline Competition Bureau that affect non-ITSPs, particularly wireless carriers, including number portability, 911 emergency access, special access, rate integration, customer proprietary

³⁰ 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>.

³¹ *See FY 2015 NPRM* at n. 16.

³² For example, approximately 10 FTEs work on high-cost issues, 4 FTEs work on Lifeline issues, 9 FTEs work on E-rate issues, and 4 FTEs work on Rural Health Care issues. *See FNPRM* at n. 116. In addition, approximately 14 FTEs work on numbering issues and/or special access. *See id.* The Commission's regulatory activities in each of these areas affect other types of communications providers in addition to ITSPs.

³³ As the Commission points out, wireless providers received an estimated \$1.4 billion in Lifeline disbursements (nearly the entire amount of Lifeline funding) in 2014. *See FNPRM* at n. 117.

network information, pole attachments, and CALEA. Given that these and other programs and proceedings within the purview of the Wireline Competition Bureau generate significant benefits and obligations for entities that do not pay regulatory fees as ITSPs, the Commission should adjust its fee structure to properly account for this industry crossover.

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 by reassigning or adopting a new category within the ITSP regulatory fee category for Wireline Competition Bureau FTEs to properly account for the numerous regulatory activities of the Bureau that impact other industry sectors. The record is clear that the Commission should reallocate Wireline Competition Bureau FTEs to help bring the FCC's assessment of regulatory fees in line with the current communications marketplace. By updating its methodology to reflect the actual costs of 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."³⁴

³⁴ 47 U.S.C. §§ 159(a)(1).

IV. CONCLUSION

For the reasons provided above, ITTA respectfully requests that the Commission 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. While we continue to believe there is ample authority and precedent for the Commission to combine wireless carriers into the ITSP regulatory fee category for purposes of assessing regulatory fees for Wireline Competition Bureau FTEs, we also support the Commission's alternative proposal to reassign Wireline Competition Bureau FTEs or create a new fee category (or categories) within the ITSP fee category to ensure that non-ITSPs pay their fair share of regulatory fees for the work of the Wireline Competition Bureau.

Respectfully submitted,

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