

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

In the Matter of)
)
Assessment and Collection of Regulatory) **MD Docket No. 17-134**
Fees for Fiscal Year 2017)
)

**COMMENTS OF
ITTA – THE VOICE OF AMERICA’S BROADBAND PROVIDERS**

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June 22, 2017

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ITTA – The Voice of America’s Broadband Providers (ITTA) hereby submits its comments in response to the Notice of Proposed Rulemaking in the above-captioned proceeding, seeking comment on the Commission’s proposed regulatory fees for fiscal year 2017.¹

I. INTRODUCTION AND SUMMARY

Year-after-year, for the better part of a decade, ITTA has shown that providers of wireline voice services and their customers have borne a disproportionate regulatory fee burden relative to other industry sectors. ITTA has repeatedly called on the FCC to address this disparity and to better align Interstate Telecommunications Service Provider (ITSP) regulatory fees with the actual work of the Commission,² as required by Section 9 of the Communications

¹*Assessment and Collection of Regulatory Fees for Fiscal Year 2017*, Notice of Proposed Rulemaking, FCC 17-62 (May 23, 2017) (*NPRM*).

² *See, e.g.*, Comments of ITTA, MD Docket No. 16-166 (filed June 20, 2016) (2016 Regulatory Fee Comments); 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 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).

Act of 1934, as amended (Act).³ This disparity harms some of the consumers least able to afford additional fees by increasing the cost of their home phone service. For instance, in FY2016, the regulatory fees paid for by Wireline Competition Bureau (WCB) regulatees (i.e., the ITSP and toll-free number categories) accounted for nearly \$147 million of the FCC’s \$384 million total regulatory fee revenue requirement.⁴ That means ITSPs and toll-free numbers were responsible for nearly 40% of the total FCC regulatory fee burden, which has been (and continues to be) more than any other industry sector regulated by the Commission. On a per-subscriber basis, wireline providers paid regulatory fees amounting to more than five times wireless providers and four times satellite providers.

A fundamental problem with the existing regulatory fee structure is that the work of WCB Full Time Equivalents (FTEs) is no longer focused exclusively on ITSPs. Resources expended by WCB FTEs increasingly benefit other industry sectors, such that ITSPs should no longer bear the entire burden of work done by WCB. Given the Commission’s statutory mandate to update its schedule of regulatory fees to “reflect . . . changes in the nature of its services”⁵ so that regulatory fees reflect the Commission’s current activities and the benefits regulated entities

³ 47 U.S.C. § 159.

⁴ *See Assessment and Collection of Regulatory Fees for Fiscal Year 2016, Report and Order*, 31 FCC Rcd 10339, 10341, para. 6 (2016) (*2016 Regulatory Fees Order*). The fees for ITSPs were approximately \$142 million and the fees for toll-free numbers slightly exceeded \$4.7 million. *See id.* at 10362, Appx. B, Calculation of FY 2016 Revenue Requirements and Pro-Rata Fees.

⁵ 47 U.S.C. § 159(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.”).

receive from those activities,⁶ the Commission must make adjustments to ensure that its regulatory fees reflect its actual costs by industry sector as the marketplace evolves.

There are 167 direct WCB FTEs,⁷ and an 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. For instance, in the universal service area WCB continues to expend substantial resources in an effort to modernize the Lifeline program. It has devoted and continues to devote an enormous amount of effort to reforming the Commission's high-cost mechanisms. WCB also handles issues relating to E-rate, contributions to the universal service fund (USF), and rural healthcare programs. These and other programs overseen by WCB impact various types of communications providers, not just ITSPs.

Moreover, although universal service is a significant focus of WCB, it is not the only area of oversight that affects multiple types of communications providers. There are numerous regulatory policies, programs, and obligations that affect non-ITSPs, particularly wireless carriers, including, but not limited to, numbering, Restoring Internet Freedom/Open Internet, business data services, rate integration, customer proprietary network information and privacy, and pole attachments. Given that these and other programs and proceedings within the purview of WCB generate significant benefits and obligations for entities that do not pay regulatory fees as ITSPs, and given the costs incurred by WCB in its policy and rulemaking activities that directly affect wireless carriers (and other non-ITSPs), the Commission should adjust its fee structure to properly account for this industry crossover.

⁶ *Id.* § 159(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 . . .”).

⁷ *See NPRM* at 4, para. 8.

At long last, the *NPRM* proposes to move WCB direct FTEs who devote time to numbering issues to the Wireless Telecommunications Bureau, as well as to reallocate several direct FTEs who devote time to universal service as additional indirect FTEs. While not the preferred solution to the strongly imbalanced regulatory fees burden shouldered by wireline providers relative especially to their wireless counterparts, it would be meaningful steps in the right direction if adopted, and ITTA supports the Commission doing so.

II. AT A MINIMUM, THE COMMISSION SHOULD ADOPT THE *NPRM*'S PROPOSALS FOR REALLOCATING SEVERAL WIRELINE COMPETITION BUREAU FTEs TO ANOTHER BUREAU OR AS INDIRECT FTEs

The inequitable disparity in regulatory fees paid by providers and consumers of wireline voice services could be addressed by reassigning WCB FTEs to properly account for the numerous regulatory activities of WCB that impact other industry sectors. Section 9 of the Communications Act requires that fees levied on regulated entities be derived based on the number of FTEs engaged in regulatory activities within the named bureaus “and other offices of the Commission” adjusted to account for “factors that are reasonably related to the benefits provided to the payor of the fee by the Commission’s activities.”⁸ “[T]he plain wording of the statute requires the Commission to calculate fees based on what FTEs are doing, not on where they are located.”⁹ In addition, the Commission has cited “an appropriate level of regulatory parity” as a precept underlying its regulatory fee analysis.¹⁰ Accordingly, the Commission

⁸ 47 U.S.C. §159(b)(1)(A).

⁹ *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*, Report and Order, 28 FCC Rcd 12351, 12357, para. 18 (2013) (*2013 Regulatory Fees Order*).

¹⁰ *Assessment and Collection of Regulatory Fees for Fiscal Year 2015*, Report and Order and Further Notice of Proposed Rulemaking, 30 FCC Rcd 10268, 10277, para. 20 (2015) (*2015 Regulatory Fees Order*).

should reassign WCB FTEs that benefit wireless providers to the Wireless Telecommunications Bureau, or at a minimum reassign them as indirect FTEs, so that the industry sectors that benefit from these FTEs will bear their fair share of the associated regulatory fees. In light of these equitable considerations, as well as the plain wording of Section 9, such action, bringing greater parity to regulatory fee payers,¹¹ is “clearly warranted.”¹² ITTA supports the *NPRM*’s proposals to reallocate 38 WCB FTEs associated with USF work as indirect and to reallocate four WCB FTEs that work on wireless numbering issues to the Wireless Telecommunications Bureau,¹³ and urges the Commission to go even further in reallocating WCB FTEs.

A. The Commission Should Adopt Its Proposal to Reallocate Wireline Competition Bureau FTEs as Indirect, if Not Also Transfer Some of Them to Other Bureaus as Direct FTEs

Specifically, for all of the reasons set forth by the Commission, ITTA supports its proposal to reallocate the 38 WCB FTEs associated with the non-high-cost programs of the USF as indirect.¹⁴ It is the Commission’s historical practice to allocate FTEs as indirect “where the FTEs work on a variety of issues that cannot be attributed to one particular type of industry or regulatee”¹⁵ In fact, to the extent the *NPRM* notes that “wireless carriers now serve a

¹¹ For example, in FY2016, WCB regulatees incurred 38 percent of the total fee allocation, while Wireless Telecommunications Bureau regulatees incurred 21.6 percent. *See 2016 Regulatory Fees Order*, 31 FCC Rcd at 10341, para. 6. Under the Commission’s proposals in the *NPRM*, WCB regulatees would incur 32.4 percent of the total fee allocation, while Wireless Telecommunications Bureau regulatees would incur 24.9 percent. *See NPRM* at 4, para. 8.

¹² *See NPRM* at 5, 6, paras. 12, 14.

¹³ *See id.* at 4, para. 8.

¹⁴ *See id.* at para. 10.

¹⁵ *2015 Regulatory Fees Order*, 30 FCC Rcd at 10275, para. 16. *See also Assessment and Collection of Regulatory Fees for Fiscal Year 2016*, Notice of Proposed Rulemaking, 31 FCC Rcd 5757, 5766, para. 19 n.69 (2016) (*2016 Regulatory Fees NPRM*) (“Currently, indirect FTEs in various bureaus and offices work on universal service issues.”); *2013 Regulatory Fees Order*, 28 FCC Rcd at 12357, para. 17 (“The high percentage of indirect FTEs is indicative of the fact

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substantial, if not majority, of Lifeline subscribers,”¹⁶ ITTA believes there are ample grounds for the Commission to shift to the Wireless Telecommunications Bureau at least four of the approximately nine FTEs directly attributable to the Lifeline program, rather than reallocating them as indirect.¹⁷

Similarly, there are strong justifications for reallocating to the Wireless Telecommunications Bureau and/or Media Bureau direct FTEs devoted to the high-cost program or, at a minimum, reallocating them as indirect FTEs. The *NPRM* estimates that there are 13 such FTEs in WCB compared to only three in the Wireless Telecommunications Bureau. However, a substantial portion of the work on the high-cost program relates to the Connect America Fund and involves the participation of wireline, wireless, and media regulatees. As the *NPRM* observes,¹⁸ although the high-cost program historically has been tied to WCB regulatees, recent actions such as adoption of the Connect America Phase II and Mobility Fund Phase II reverse auctions open eligibility to many other providers, such as wireless internet service providers (WISPs), satellite providers, and cable providers, along with CMRS providers.¹⁹ Such

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that many Commission activities and costs are not limited to a particular fee category and instead benefit the Commission as a whole.”); *Assessment and Collection of Regulatory Fees for Fiscal Year 2014 et al.*, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 10767, 10779, para. 30 (2014) (*2014 Regulatory Fees Order*) (“reallocating FTEs from a core bureau as indirect . . . could better align regulatory fees with the costs of regulation”).

¹⁶ *NPRM* at 5, para. 10.

¹⁷ See *2016 Regulatory Fees NPRM*, 31 FCC Rcd at 5766, para. 19.

¹⁸ See *NPRM* at 5, para. 11.

¹⁹ See *id.* (seeking comment on whether these recent actions justify reallocating the 13 WCB FTEs and three Wireless Telecommunications Bureau FTEs working on high-cost program matters as indirect). See also Testimony of Michael O’Rielly, Commissioner, Fed. Communications Comm’n, Before the Senate Committee on Appropriations Subcommittee on Financial Services and General Government, Review of the FY2018 Budget Request for the Federal Communications Commission 2 (June 20, 2017) (“Just consider that one of the

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reallocation of WCB FTEs need not await full implementation of the reverse auctions²⁰ as there has been, and will continue to be, much work involving potential wireless, satellite, and cable bidders leading up to the auctions.²¹

The *NPRM* also seeks comment on whether Section 9 requires the Commission to impose regulatory fees on the regulatees of a single bureau even though the benefits provided by those FTEs accrue to regulatees of other bureaus as well as non-regulatees.²² ITTA responds with a resounding “no.”. Not only is such a reading found nowhere in the statute, it contravenes the dictate of Section 9(b)(1)(A) that the FTEs shall be “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, including . . . shared use versus exclusive use”

ITTA agrees with the Commission’s view that continuing changes to the USF regulatory landscape “requires” the Commission to reexamine the appropriateness of treating USF FTEs as WCB direct FTEs.²³ The plain language of Section 9 compels this result. Section 9(b)(1) provides that regulatory fees “shall” be assessed in accordance with the guidance of the rest of

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Commission’s top priorities, broadband availability, is overseen by at least three different bureaus depending on the underlying technology used (e.g., fiber, mobile or satellite.”).

²⁰ See *NPRM* at 5, para. 11 (seeking comment on timing of a reallocation of WCB FTEs working on high-cost program).

²¹ See, e.g., Petition for Reconsideration of Hughes Network Systems, LLC, WC Docket Nos. 10-90, 14-58 (filed Apr. 20, 2017) (seeking reconsideration of Commission Report and Order assigning weights to the Connect America Fund Phase II auction); Wireless Internet Service Providers Association Opposition to and Comments on Petitions for Reconsideration, WC Docket Nos. 10-90, 14-58 (filed May 18, 2017) (addressing petitions for reconsideration of Commission Report and Order assigning weights to the Connect America Fund Phase II auction); Letter from Thomas Cohen, Counsel to the American Cable Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Feb. 17, 2017) (addressing Commission proposals for assigning weights to the Connect America Fund Phase II auction).

²² See *NPRM* at 5, paras. 10, 13.

²³ See *id.* at 4, para. 9.

that paragraph. Moreover, Section 9(b)(3) provides that the Commission “shall” amend its regulatory fees if necessary to comply with Section 9(b)(1)(A), and that such amendments “shall” reflect changes in the nature of its services as a consequence of Commission rulemaking proceedings; “changes in the USF regulatory landscape” precisely square with the requirements of Section 9(b)(3). Furthermore, Section 9(b)(2)(A) requires the Commission to adjust regulatory fees to reflect increases or decreases in the number of licensees or units subject to payment of such fees. In light of the 19 percent aggregate net decrease in retail switched access lines and VoIP subscriptions since 2010 compared with the 18 percent net increase in mobile voice subscriptions over that same period,²⁴ a reallocation of FTEs from WCB, especially to the Wireless Telecommunications Bureau, is indeed required by Section 9.²⁵ These trends also

²⁴ From June 2010 through June 2016 (the most recent data reported upon), mobile voice subscriptions increased by 58.9 million (337.8 million total), interconnected VoIP subscriptions increased by 31.5 million (60.3 million total), and retail switched access lines decreased by 60.3 million (62.3 million total). FCC, Local Telephone Competition: Status as of June 30, 2013 at 2, Fig. 1 (WCB 2014), https://apps.fcc.gov/edocs_public/attachmatch/DOC-327830A1.pdf; FCC, Voice Telephone Services: Status as of June 30, 2016 at 2, Fig. 1 (WCB 2017), https://apps.fcc.gov/edocs_public/attachmatch/DOC-344500A1.pdf. A strong argument can be made that, for regulatory fee calculation purposes, the increase in mobile voice subscriptions has been even greater. For regulatory fee purposes, wireless subscribers are calculated based on Wireless Telecommunications Bureau projection reports and payment data from the prior fiscal year. *See, e.g., NPRM* at Appx. C, Sources of Payment Unit Estimates for FY 2017 (CMRS Cellular/Mobile Services Fee Category). These calculations yielded a figure of 298 million wireless subscribers in 2011 compared with an estimated 385 million for FY2017, an increase of 26.6 percent. *See id.* at Appx. A, Calculation of FY 2017 Revenue Requirements and Pro-Rata Fees (CMRS Mobile Services (Cellular/Public Mobile) Fee Category); *2014 Regulatory Fees Order*, 29 FCC Rcd at 10780, para. 30.

²⁵ As the *NPRM* notes, the Commission has stated that it “would be inconsistent with section 9 to delay reallocating . . . FTEs, where the reallocation is clearly warranted” *NPRM* at 5, 6, paras. 12, 14 (quoting *2013 Regulatory Fees Order*, 28 FCC Rcd at 12357-58, paras. 19-20). Three years ago, the Commission cited these very trends in acknowledging that a reallocation may be appropriate. It observed that it had “seen an increase in the number of wireless subscribers and a decrease in wireline . . . subscribers. . . . Fewer wireline customers over time may result in disproportionately higher regulatory fees for the ITSP industry.” *2014 Regulatory Fees Order*, 29 FCC Rcd at 10780, para. 30. Indeed, that is precisely what has occurred. While

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illustrate further how bringing greater parity to regulatory fee payers is “clearly warranted” as an equitable matter.²⁶

B. The Commission Should Adopt Its Proposal to Reallocate Some Numbering FTEs to the Wireless Telecommunications Bureau

The *NPRM* proposes to reallocate four of the “7-8” WCB FTEs that work on numbering issues to the Wireless Telecommunications Bureau as direct FTEs for regulatory fee purposes.²⁷

ITTA unequivocally supports this proposal. In light of the Commission’s rationales, including its estimate that approximately half of the benefit of the work of these FTEs accrues to Wireless

Telecommunications Bureau regulatees,²⁸ ITTA believes that the Commission’s proposal is equitable and clearly warranted pursuant to Section 9.²⁹ In addition, as ITTA elaborates above,³⁰

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the Commission in 2014 pledged to have Commission staff continue to analyze the effects of these trends on regulatory fees, *see id.*, ITTA is pleased that the *NPRM* is now seeking to address this disproportionate regulatory fee burden for ITSPs. The time to do so has long since come and is clearly warranted.

²⁶ *See supra* Section II. These trends also buttress ITTA’s suggestions above, *see supra* p. 6, that there are abundant bases for the Commission to even go further than the *NPRM*’s proposals in reallocating direct WCB FTEs especially to the Wireless Telecommunications Bureau. The \$115.5 million regulatory fee burden that the *NPRM* projects for WCB regulatees is 21.2 percent less than the FY2016 regulatory fee burden for WCB regulatees, while the \$88.7 million regulatory fee burden that the *NPRM* projects for Wireless Telecommunications Bureau regulatees is merely 6.4 percent more than the FY2016 regulatory fee burden for Wireless Telecommunications Bureau regulatees. *Compare NPRM* at 4, para. 8 with *2016 Regulatory Fees Order*, 31 FCC Rcd at 10341, para. 6. While the 21.2 percent projected decrease in regulatory fee burdens for WCB regulatees largely tracks the 19 percent decrease in retail switched access lines and VoIP subscriptions, the 6.4 percent projected increase in regulatory fee burdens for Wireless Telecommunications Bureau regulatees barely represents one-third of the 18 percent net increase in mobile voice subscriptions.

²⁷ *NPRM* at 5, para. 13.

²⁸ *See id.*

²⁹ As discussed above, ITTA firmly believes that Section 9 does not require the Commission to impose regulatory fees on the regulatees of a single bureau even though the benefits provided by those FTEs accrue to regulatees of other bureaus as well as non-regulatees. *See supra* p. 7; *see also NPRM* at 5, para. 13.

the continuing disproportionate regulatory fee burden shouldered by WCB regulatees as compared to Wireless Telecommunications Bureau regulatees strongly militates towards a rebalancing of these burdens, of which the reallocation of these four WCB FTEs is a meaningful part.

III. ITTA’S LONG-ADVOCATED APPROACH TO ADDRESS THE DISPARITY IN REGULATORY FEES FOR ITSPs REMAINS THE BEST ONE

The *NPRM* also seeks comment on alternatives to its proposals for reallocating WCB FTEs.³¹ 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 into the ITSP fee category.³²

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”³³ However, 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 USF, 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.”³⁴ Thus, interconnected

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³⁰ See *supra* pp. 8-9.

³¹ See *NPRM* at 5, para. 11.

³² See, e.g., 2016 Regulatory Fee Comments at 3-5.

³³ *Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15712, 15719, para. 19 (2007).

³⁴ *Id.* at 15720, para. 19.

VoIP providers were added to the ITSP regulatory fee category as a permitted amendment pursuant to Section 9 of the Act.

Combining wireless providers into the ITSP regulatory fee category would square with this precedent. 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, business data services, rate integration, customer proprietary network information, pole attachments, and CALEA.³⁵ ITTA's proposal is consistent with the Commission's orders implementing Section 9 of the Act. Section 9(b)(1)(A) requires the Commission to update its schedule of regulatory fees each fiscal year to ensure that the fees collected are "reasonably related to the benefits provided to the payor of the fee by the Commission's activities." ITTA's proposal recognizes that wireline and wireless voice services are subject to many of the same regulatory policies, programs and obligations. Combining wireless voice and wireline services into the ITSP category is an appropriate step for the Commission to take to comply with its Section 9 mandate. Moreover, the costs incurred by WCB in its policy and rulemaking activity that directly affects wireless carriers³⁶ militate towards this solution. Finally, adopting ITTA's proposal will ensure that regulatory fees are administrable and sustainable.³⁷

³⁵ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2014 et al.*, Notice of Proposed Rulemaking, Second Further Notice of Proposed Rulemaking, and Order 29 FCC Rcd 6417, 6430, para. 36 (2014).

³⁶ See *supra* Sections I, II.A.

³⁷ See *NPRM* at 5, 6, paras. 12, 14.

IV. CONCLUSION

For the above reasons, it is long overdue for the Commission to tackle the regulatory disparity permeating its regulatory fee scheme. The Commission should adopt ITTA's proposal to combine wireless providers into the ITSP regulatory fee category. Should the Commission not choose this approach, it should adopt its proposals to move WCB direct FTEs who devote time to numbering issues to the Wireless Telecommunications Bureau, as well as to reallocate several direct FTEs who devote time to universal service as additional indirect FTEs, if not also transfer some of them to other bureaus as direct FTEs.

Respectfully submitted,

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June 22, 2017