

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of )  
 )  
Assessment and Collection of Regulatory Fees ) MD Docket No. 16-166  
for Fiscal Year 2016 )  
 )

**REPLY COMMENTS OF CTIA**

CTIA<sup>1</sup> submits these Reply Comments in response to the Commission’s Notice of Proposed Rulemaking (“*Notice*”) seeking input on its collection of regulatory fees for Fiscal Year (“FY”) 2016.<sup>2</sup>

**INTRODUCTION**

In this proceeding, the Commission tentatively concludes that it should reject proposals to shift Wireline Competition Bureau (“WCB”) regulatory fees onto regulatees of other bureaus, particularly the Wireless Telecommunications Bureau (“WTB”). CTIA supports this tentative conclusion and nothing in the record sustains a contrary finding. The record demonstrates that:

- The Commission should adopt its tentative conclusion to reject the proposals of ITTA – The Voice of Mid-Size Communications Companies (“ITTA”) that would place a disproportionate share of regulatory fees on WTB regulatees.
- Further analysis is required before the Commission could reclassify any full-time employees (“FTEs”) from direct to indirect.

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<sup>1</sup> CTIA® represents the U.S. wireless communications industry. With members from wireless carriers and their suppliers to providers and manufacturers of wireless data services and products, the association brings together a dynamic group of companies that enable consumers to lead a 21st century connected life. CTIA members benefit from its vigorous advocacy at all levels of government for policies that foster the continued innovation, investment and economic impact of America’s competitive and world-leading mobile ecosystem. The association also coordinates the industry’s voluntary best practices and initiatives and convenes the industry’s leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

<sup>2</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2016*, Notice of Proposed Rulemaking, FCC 16-61, MD Docket No. 16-166 (rel. May 19, 2016) (“*Notice*”).

- The Commission cannot revisit here its *Open Internet* decision to forbear from subjecting broadband Internet access service (“BIAS”) to regulatory fees.
- The Commission should encourage Congress to authorize it to use excess regulatory fees collected in past years to reduce future collection requirements.

With these recommendations, CTIA commends the Commission for its *Notice* and urges swift action in the proceeding.

## DISCUSSION

### **A. The Record Confirms That No Basis Exists for the Commission to Continue to Entertain ITTA’s Proposals.**

The Commission has fully considered and analyzed ITTA’s proposals to reassign WCB FTEs to WTB, assess both wireline and wireless regulatory fees on CMRS providers, and combine the CMRS and ITSP fee categories, and tentatively concludes that they have no merit.<sup>3</sup> Wireline commenters merely restate the arguments that ITTA previously raised, and fail to provide any new information or reasoning in support of these proposals.<sup>4</sup>

CTIA has repeatedly shown these arguments to be ill-conceived and inappropriate. For example, ITTA’s proposals are without merit given that WCB and WTB have very different regulatory regimes that impose diverse burdens on staff, and WTB staff already participates significantly in “wireline” proceedings.<sup>5</sup> The fact that both wireline and wireless providers offer

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<sup>3</sup> *Id.* ¶ 18.

<sup>4</sup> Comments of ITTA, MD Docket No. 16-166, at 1-8 (filed June 20, 2016) (“ITTA Comments”); CenturyLink, Inc. Comments, MD Docket No. 16-166, at 3-6 (filed June 20, 2016) (“CenturyLink Comments”); Comments of Frontier Communications Corporation, MD Docket No. 16-166, at 2-9 (filed June 20, 2016) (“Frontier Comments”); American Cable Association Comments, MD Docket No. 16-166, at 11-14 (filed June 20, 2016); Comments of NTCA—The Rural Broadband Association, MD Docket No. 16-166, at 2-4 (filed June 20, 2016) (“NTCA Comments”).

<sup>5</sup> *See, e.g.*, CTIA Reply Comments, MD Docket No. 15-121, at 2-10 (filed Dec. 7, 2015) (“2015 CTIA Further NPRM Reply Comments”); CTIA Comments, MD Docket No. 15-121, at 3-6 (filed Nov. 9, 2015) (“2015 CTIA Further NPRM Comments”); CTIA Reply Comments, MD Docket No. 15-121 et al., at 2-7 (filed July 6, 2015); CTIA Comments, MD Docket No. 14-92 et al., at 3-9 (filed July 7, 2014); CTIA Comments, MD Docket No. 13-140 et al., at 2-10 (filed June 19, 2013).

voice services is not a basis to subject CMRS providers to ITSP fees, and the proposals to join CMRS providers with ITSPs would effectively result in those providers paying duplicative regulatory fees. Moreover, the FCC's treatment of VoIP and Direct Broadcast Satellite ("DBS") are not examples that support changing the regulatory fees of wireless providers. Neither VoIP nor the subscription video service provided via DBS were part of the regulatory fee schedule established by Congress, in contrast to wireless voice service, and after the Commission's permitted amendments, each is now subject only to one regulatory fee. Wireline commenters, however, would have wireless providers pay duplicative regulatory fees for the same voice service, contrary to the FCC's longstanding approach to assessing regulatory fees. Accordingly, there is no reason for the Commission to revisit its analyses or its tentative conclusion to reject ITTA's proposals.

**B. The Record Shows the Need for Further Analysis Before Reclassifying Any FTEs.**

The record demonstrates that reassigning FTEs based upon particular subject matter issues would be very complex, and that an "examination of possible FTE reallocations among other licensing bureaus [is] a much more difficult and lengthy task."<sup>6</sup> As CTIA noted in its comments, more review is necessary here. For example, the number of FTEs working on any given issue can and does change significantly year-to-year depending on the individual proceedings the Commission undertakes in any given year, and any assessment would have to include a multi-year analysis.<sup>7</sup> Moreover, any such approach requires a holistic approach analyzing the work of all bureaus, not simply WCB.

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<sup>6</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2013*, Report and Order, 28 FCC Rcd 12351, 12357-58 ¶ 19 (2013) (explaining why a prior examination and reallocation of International Bureau FTEs was an "exceptional" case).

<sup>7</sup> Comments of CTIA, MD Docket No. 16-166, at 4-5 (filed June 20, 2016) ("CTIA Comments").

No commenter proposes a reasonable and administrable way to identify and quantify which direct FTEs that work on universal service and numbering issues should be reassigned as indirect. While NTCA appears to suggest some sort of “billable hour” methodology,<sup>8</sup> the Commission previously attempted and rejected such an approach as complex and unworkable, noting that it could result in rapid shifts in fee rates year over year.<sup>9</sup> Moreover, the Commission should reject any suggestions by wireline commenters that the reclassification of FTEs should be based upon the market success of wireless carriers, like how much Lifeline support they receive, how much they contribute to the Universal Service Fund (“USF”), or the amount of wireless numbers in the marketplace.<sup>10</sup> As CTIA has noted time and again, the Commission has acknowledged that Section 9 of the Communications Act requires the basis for any reassignment to reflect the work conducted by Commission staff, not the benefits realized by regulatees.<sup>11</sup>

Furthermore, wireline commenters’ call to reassign as indirect the WCB FTEs that work on 9-1-1, net neutrality, privacy, intercarrier compensation, rural call completion, special access, and pole attachments fails on multiple fronts.<sup>12</sup> The *Notice* did not seek comment on these matters, and there is insufficient data to consider or act on any of them. Commenters provide no meaningful or accurate basis to expand the scope of potential FTE reallocations. For example,

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<sup>8</sup> NTCA Comments at 3-4.

<sup>9</sup> See *Procedures for Assessment and Collection of Regulatory Fees*, Notice of Proposed Rulemaking, 27 FCC Rcd 8458, 8464 ¶ 15 (2012).

<sup>10</sup> As CTIA noted in its comments, Lifeline and the other USF support programs are transitioning to broadband, making wireless carriers’ success in signing up Lifeline consumers even more irrelevant. Similarly, recent FCC work on numbering issues has focused on allowing VoIP providers to obtain numbers directly from the numbering administrator, which are WCB regulatees.

<sup>11</sup> See, e.g., 2015 CTIA Further NPRM Reply Comments at 4; 2015 CTIA Further NPRM Comments at 6; *Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15712, 15719-20 ¶ 19 (2007) (“Section 9 is clear... that regulatory fee assessments are based on the burden imposed on the Commission, not benefits realized by regulatees.”).

<sup>12</sup> ITTA Comments at 9-10; CenturyLink Comments at 8; Frontier Comments at 10.

the Commission itself has explained that the WTB assigns its own FTEs to work with WCB FTEs on relevant wireless issues,<sup>13</sup> and the Public Safety and Homeland Security Bureau (“PSHSB”) handles 9-1-1 matters, meaning that 9-1-1 FTEs are treated as indirect already.<sup>14</sup> It would be arbitrary and capricious for the Commission to act on this proposal based on the current record. Indeed, the Commission should see it for what it is – a further attempt of wireline regulatees to avoid their fair share of regulatory fees.

The record thus does not establish a clear case for the reassignment of any FTEs as indirect at this time. In any event, if the Commission were to reassign any FTEs as indirect, it must include relevant FTEs from all bureaus, not just WCB. For example, as CTIA explained, in the universal service context the Commission must consider factors like WTB’s auction experts leading the reverse auction component of Connect America Fund Phase II.<sup>15</sup>

**C. This is Not the Proper Proceeding to Consider Frontier’s Proposal to Subject Broadband Internet Access Service to Regulatory Fees.**

Frontier’s suggestion that the Commission subject BIAS providers to regulatory fees ignores that the Commission forbore from applying regulatory fees to BIAS last year in its *Open Internet* decision.<sup>16</sup> The *Notice* did not seek comment on this issue, and no commenter other than Frontier discusses whether BIAS providers should be subject to regulatory fees.<sup>17</sup> As a

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<sup>13</sup> *Notice* ¶ 18.

<sup>14</sup> To the extent necessary, PSHSB would coordinate with WCB on 9-1-1 issues that relate to wireline carriers and with WTB on 911 issues that relate to wireless carriers.

<sup>15</sup> CTIA Comments at 5.

<sup>16</sup> *Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601, 5860 ¶ 528 n.1633 (2015), *aff’d sub nom USTA v. FCC*, No. 15-1063 (D.C. Cir. June 14, 2016).

<sup>17</sup> Frontier Comments at 9.

threshold legal matter, the Commission cannot revisit its forbearance decision here, absent notice and comment, as required under the Administrative Procedure Act.<sup>18</sup>

**D. The Commission Should Encourage Congress to Allow It to Use Over-Collected Regulatory Fees.**

As AT&T observes, more than \$98 million in over-collected FCC regulatory fees have been deposited with the U.S. Department of Treasury.<sup>19</sup> CTIA in its initial comments called for the Commission to ask Congress to authorize it to use those excess regulatory fees in the next funding year to reduce the collection requirement, consistent with the practice of other similarly situated regulatory agencies.<sup>20</sup> These over-collected funds should be spent consistent with Section 9 of the Communications Act and the purpose for which they are collected, rather than simply sitting unused within the Department of Treasury.

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<sup>18</sup> 5 U.S.C. § 553.

<sup>19</sup> Comments of AT&T, MD Docket No. 16-166, at 3 (filed June 20, 2016).

<sup>20</sup> CTIA Comments at 6.

## CONCLUSION

The Commission should adopt final regulatory fees for FY2016 consistent with CTIA's recommendations.

Respectfully submitted,

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