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

In the Matter of
Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1109 of the Commission’s Rules

MD Docket No. 20-270

COMMENTS OF USTELECOM –
THE BROADBAND ASSOCIATION

USTelecom – The Broadband Association (“USTelecom”) submits these comments in response to the Federal Communications Commission’s (“Commission”) Notice of Proposed Rulemaking proposing to modernize the application fee schedule pursuant to the RAY BAUM’s Act of 2018 (“Application Fee NPRM”). USTelecom appreciates the Commission’s continued efforts to modernize its processes and streamline procedures to make more efficient use of resources, which in turn promotes competition and the public interest. USTelecom supports these efforts, including the Commission’s most recent initiative to “simplify and streamline an overly complex schedule of fees” to reflect the dynamic changes in the communications industry.

1 USTelecom is the premier trade association representing service providers and suppliers for the telecom industry. USTelecom members provide a full array of services, including broadband, voice, data, and video over wireline and wireless networks. Its diverse member base ranges from large publicly traded communications corporations to small companies and cooperatives – all providing advanced communications service to both urban and rural markets.


4 Application Fee NPRM at 2, para. 2.
marketplace over the past thirty years since the original fee schedule was adopted as authorized by Congress.

Modernizing the fee schedule should have an overall positive impact, and USTelecom appreciates the Commission’s efforts here. But, before the Commission can “bring this set of fees into the 21st century,” it must provide greater clarity surrounding its proposals to ensure that carriers can readily comply with the new fee structure and plan for the future, and to make certain that the new proposals do not have the result of dramatically increasing fees to the point of unsustainability. Additionally, the Commission should provide additional transparency into its estimated costs to make sure that any new or updated fees reflect the actual processing costs experienced by the Commission and ensure the proposed fees actually reflect costs and do not create windfalls.

I. Additional Clarity On The Proposed Application Fee Structure Is Needed

While the Commission’s legal authority to revise its application fee schedule is clear, the Application Fee NPRM itself is not. In fact, it contains several ambiguities about which filings the new proposed fee structure will apply to and under what circumstances. Additional clarity for the filings subject to the new fee schedule would meaningfully reduce confusion for all Commission licensees—large and small, communications and even non-communications providers—thereby facilitating compliance and long-term planning for these entities.

For example, the Application Fee NPRM lacks specificity regarding several terms relating to the proposed changes for “complex tariff filings.” Though the Application Fee NPRM provides some guidance as to what constitutes a “complex” tariff filing—such as annual access charge tariffs by incumbent local exchange carriers (“LEC”) and new or restructured rate

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5 Id. at 5, para. 7.
plans—these terms alone require further clarification. Additional explanation on what constitutes an “annual” filing would be helpful. For example, is it only the annual access charge tariff that is due by July 1 each year? Or, does it also extend to the subsequent exogenous cost filing typically required in September as well as to any mid-year filings that the Commission may consider as part of the overall access charge tariff? Similarly, the Commission should further elaborate on what constitutes a “restructured rate plan.” As currently drafted, it is unclear whether a filing changing rates under a price cap is considered “restructured” under the proposal.

Further, the distinction between large and small complex tariff filings themselves is unclear. Specifically, the current language proposes creating “two categories of complex tariff filers: one composed of price cap LECs and complex tariff filings by entities involving more than 100 LECs (Complex Large) and a second category for other entities filing a complex tariff (Complex Small).”7 Taken literally, this language makes it unclear whether the Commission intends that any filing by a price cap LEC qualifies as a complex large filing, or instead if that category applies to specific types filings by a price cap LEC.

The semantics are important as this ambiguity could have a meaningful impact on providers’ business plans due to the increases proposed on complex filings. For example, assuming a carrier makes four access tariff filings per year, with two of those considered “complex large” under the new framework, the carrier would undergo a 289% yearly increase in filing fees. This estimate is derived by taking the current cost of access tariff filings ($960), which results in an annual application fee total of $3,840 for four filings. Even factoring in the minor price decrease for a non-complex tariff filing of $930 for two filings, and adding the

6 Id. at 32, para. 115.
7 Id.
complex large fee of $6,540 for the other two filings results in an annual application fee charge of $14,940. While the dollar amount per filing might not overwhelm a carrier when examining the application fee in an individual capacity, when combined with other required filings, this significant increase may present a substantial hurdle. Depending on how many of a carrier’s filings are designated as “complex large” or even “complex small” can significantly affect carriers’ business plans. The Commission could consider easing this burden by clarifying that certain routine tariff filings or modifications, such as those submitted annually and/or mid-year, are not “complex” under the new framework. Additionally, to enable compliance with the new fee structure, the Commission should also consider producing an explicit, exhaustive list of complex large and complex small filings for carriers to reference.

In addition to providing further clarity regarding the proposed changes for tariff filings, the Commission should provide additional details regarding the proposed changes applicable to discontinuances. The Application Fee NPRM does not elaborate whether the new proposed $1,230 fee for section 214 discontinuance applications applies to any dominant carrier filing or just certain types of filings made by dominant carriers.\(^8\) If the intent is to apply the full fee to any dominant carrier section 214 discontinuance filing, it would be inconsistent with other parts of the Application Fee NPRM. This is because the Application Fee NPRM’s proposed $335 fee for filings pursuant to section 63.71(k) and (l) applies to both dominant and non-dominant carriers.\(^9\) Clarifying the types of section 214 discontinuance filings subject to the new discontinuance fee would not only ensure overall consistency within the Application Fee NPRM,

\(^8\) Id. at 30, para. 108.

\(^9\) Id. at 30-31, para. 109.
but would also not act as a disincentive to progress towards the Commission’s priority of modernizing communications networks.

II. Additional Transparency Will Ensure that Application Fees Reflect Actual Application Costs

Where the Commission’s costs related to processing applications have increased or new applications have been added since the original fee schedule was set, RAY BAUM’s Act requires the Commission to impose new or increased application fees to recover these expenses. However, where minimal Commission review is required to process an application, and particularly where the costs for such processing have not increased, the Commission should not impose additional fees. It is therefore incumbent upon the Commission to provide additional transparency into how the any new fees it proposes will help “recover the costs to process applications.”

To adhere to the Congressional directive that any application fees imposed by the Commission relate to the costs to process them, the Commission should provide additional transparency to distinguish between application filings requiring substantive review and those that do not. For notification filings, which do not require any substantive review from Commission staff, there is no justification under the law for the Commission to impose a new fee – especially one that is more than nominal. This is consistent with the treatment the Commission applies to existing wireless license assignments and transfers, known as the “Immediate Approval Processes” (“IAP”) and the “General Approval Processes” (“GAP”). In that context, applications that contain a request for waiver of the Commission’s rules or otherwise do not meet

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10 47 U.S.C. § 158(a) (“The Commission shall assess and collect application fees at such rates as the Commission shall establish in a schedule of application fees to recover the costs of the Commission to process applications.”).

11 Application Fee NPRM at 5, para. 7 (citing 47 U.S.C. § 158(a), (c)).

12 47 CFR § 1.948(j).
specific criteria—therefore requiring additional substantive review—are processed pursuant to the GAP. Otherwise, if the application does not request a waiver or present other impacts to competition, it will be processed pursuant to the more expedient IAP.13

While the GAP and IAP exist only for wireless licenses, this demonstrates that the Commission is well versed in distinguishing between simple and more complex transactions and could easily apply that framework to all Commission licenses. Applications that do not request a waiver of the rules or otherwise act as a form of notification could be assessed under a simple framework for a nominal fee since they require no substantive staff review. But, if the application presents competitive concerns or other substantial issues, applicants can self-identify that it will require more substantive review—thus triggering additional cost-based fees and the “complex” label. This distinction allows the Commission to separate the difficult approvals from the easier ones, thereby freeing up Commission resources to focus on the applications that warrant more detailed review and be able to recoup the corresponding costs for those reviews.

Applying this framework to the applications discussed in the Application Fee NPRM, the Commission should consider revising its proposed fees for International Section 214 pro forma notifications.14 Rather than creating a new fee, the Commission should instead consider a nominal fee that better aligns with the actual operational costs of its work. The Commission already applies streamlined procedures to various types of pro forma transactions, including International Section 214 pro forma transfers because it has consistently found that pro forma transactions are presumptively in the public interest, as they do not have competitive, foreign

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13 Generally, applications processed under the IAP receive the Commission’s consent in one business day. See Wireless Telecommunications Bureau Announces Changes to the Universal Licensing System to Implement the Commission’s Immediate Approval Procedures for Wireless License Assignments and Transfers, Public Notice, DA-05-52226 (WTB 2005).

14 Application Fee NPRM at 40-41, para. 150.
ownership, or consumer-facing implications. Rather, they simply act as a notification in the Commission’s systems to clarify current license holder information. This should not require substantive review by Commission staff and therefore the proposed fee does not seemingly align with the Commission’s actual operational costs. Further, the Commission should also require limiting the expense for multiple pro forma transfer notifications filed for the same pro forma transaction. The Application Fee NPRM lacks cost-based justification as to why, for example, the multipliers to review 10 essentially identical applications based on a separate license are 10 times the cost. This is inconsistent with the Commission’s past precedent, where the Commission itself has long recognized that pro forma assignments and transfers of control serve the public interest, as does reducing the administrative burdens associated with such transactions.\textsuperscript{15} If these transactions are presumptively in the public interest, then it seems reasonable that they should not be subject to additional fees. And at the very least, if the Commission does not have sufficient cost-based justifications underlying the proposed expense for multiple transfers, it should limit the cost for multipliers.

Imposing new application fees or raising existing fees where costs to the Commission have not increased contravenes Congressional intent, which only authorized the Commission to recover its operational costs.\textsuperscript{16} By providing additional transparency into the types of fees applicable to the new structure, as well as ensuring they are truly cost based, the Commission can meaningfully modernize this aspect of its processes.


\textsuperscript{16} 47 U.S.C. § 158(a), (c)).
Respectfully submitted,

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