

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2014)	MD Docket No. 14-92
)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2013)	MD Docket No. 13-140
)	
Procedures for Assessment and Collection of Regulatory Fees)	MD Docket No. 12-201
)	

REPLY COMMENTS¹ OF CENTURYLINK

CenturyLink supports ITTA’s opening comments that the Commission should clarify that its new regulatory fees rule for toll free services is not intended to duplicate regulatory fees for entities that already pay them – specifically carriers.² As ITTA observes:³

Although the *FNPRM* focuses on developing enforcement procedures in the event a RespOrg fails to pay regulatory fees, there are a number of other questions regarding how this new fee will be assessed that must be addressed before the FCC can implement this requirement. For instance, it is unclear which RespOrgs are affected by the new regulatory fee, which toll [free] numbers would be included in such an assessment, what the amount of the fee would be, or at what point the fee would be determined during the course of a fiscal year.

These are critical flaws in the promulgation of the current rule.⁴

¹ *Assessment and Collection of Regulatory Fees for Fiscal Year 2014, et al.*, MD Docket Nos. 14-92, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 10767 (2014); 79 Fed. Reg. 63883 (Oct. 27, 2014); these reply comments were due on Dec. 26, 2014, but because of the closure of federal executive departments and agencies on this date, they are being filed on Dec. 29, 2014; 79 Fed. Reg. 73459 (Dec. 10, 2014).

² ITTA at 2.

³ *Id.* at 7.

⁴ Indeed, CenturyLink filed a Petition for Reconsideration with the Commission on October 15, 2014 (a day’s delay due to our inability to process the filing through ECFS up until 10:00 pm MT on the 14th) in which we make the same arguments that ITTA does in its comments. *See* Petition for Reconsideration of CenturyLink, MD Docket Nos. 14-92, 13-140,

CenturyLink agrees with ITTA that “[t]here is no support in the record”⁵ to include carrier RespOrgs in the scope of the new rule. As ITTA notes, its support for the imposition of regulatory fees on RespOrgs was specifically qualified to include only those RespOrgs that were not carriers and were not otherwise already paying fees on their toll-free revenues.⁶ And no other filing party supported the Commission’s proposal; commentors arguing rather that the specifics of the proposal were indiscernable, precluding the taking of a firm position. As ITTA states:⁷

[O]ther commentors raised concerns with broad application of a toll free regulatory fee category to RespOrgs. AT&T pointed out the ambiguity in how the Commission’s proposal would impact carrier RespOrgs that already pay regulatory fees based on their toll free revenues and asked the Commission to provide additional detail to help affected parties determine the real-world impact of the proposal. Bandwidth.com endorsed AT&T’s comments, arguing that the lack of clarity as to the scope of the requirement and whether it includes RespOrgs that already comply with regulatory fee obligations make it impossible for the Commission to move forward at this time. USTelecom agreed, urging the Commission to exclude carrier RespOrgs that pay regulatory fees based on toll free revenues because “[i]t is fundamental to the regulatory fee system that the Commission should avoid assessing providers twice for the same service.

As CenturyLink made clear in its Petition and ITTA states in its comments, the *Report and Order* does not address these calls for additional clarity and detail. Without them, the existing rule lacks sound analysis and has the potential to be unfair and overreaching.

CenturyLink supports the imposition of a regulatory fee on toll-free resources for those RespOrgs that are not carriers. For those who are carriers, the Commission should confirm that the *status quo* will be maintained. This means that those toll-free numbers in a carrier RespOrg’s

and 12-201 (filed Oct. 15, 2014). A copy of the Petition is attached to these reply comments and incorporated by reference here.

⁵ ITTA at 7.

⁶ *Id.*

⁷ *Id.* at 8 (footnotes omitted).

inventory that produce revenue will have that revenue reported in the fee calculation that is done annually. This is the only approach that makes sense. (This would mean that the scope of the adopted rule, in order to provide parity among RespOrgs, would need to be modified to include in the fee assessment only those toll-free resources that generate revenue.)

Finally, CenturyLink agrees with ITTA's position that "before the Commission can fairly implement this new fee category, it must provide adequate notice and reasoning regarding the amount of the fee and establish at what point during the fiscal year the fee should be determined."⁸ The current record provides scant information on these critical matters.

For the foregoing reasons, CenturyLink supports ITTA's opening comments.

Respectfully submitted,

CENTURYLINK

By: /s/ Kathryn Marie Krause
Kathryn Marie Krause
1099 New York Avenue, N.W.
Suite 250
Washington, DC 20001
303-992-2502
kathryn.krause@CenturyLink.com

Its Attorney

December 29, 2014

⁸ ITTA at 9.



Kathryn Marie Krause

Suite 250
1099 New York Avenue, N.W.
Washington, DC 20001
Phone 303-992-2502
Facsimile 303-896-1107

Associate General Counsel - Regulatory

Via ECFS or Courier

October 15, 2014

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *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 and 12-201 – October 14, 2014 Petition for Reconsideration of CenturyLink

Dear Ms. Dortch:

On October 14, 2014, CenturyLink was not able to electronically file its Petition for Reconsideration in the above-referenced proceedings. CenturyLink requests that the Commission reconsider an aspect of its August 29, 2014 *Report and Order*, specifically that part of the *Order* that imposes a new regulatory fee on Responsible Organizations (RespOrgs) when those RespOrgs are carriers.¹

While attempting to upload the Petition numerous times between about 6:00 pm and 10:00 pm MT on October 14th, CenturyLink received a variety of error prompts, and thus was unable to complete the uploading process.

By this correspondence, CenturyLink is again attempting to file its Petition dated October 14, 2014 via ECFS.² CenturyLink requests that its Petition for Reconsideration to be filed on October 15, 2014 be accepted and treated as timely filed on October 14, 2014.

¹ *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 and 12-201, Report and Order and Further Notice of Proposed Rulemaking, FCC 14-129 (rel. Aug. 29, 2014).

² If CenturyLink is not successful in uploading its Petition today via ECFS, alternatively, it plans to file it in hard copy with the Secretary's office.

Ms. Marlene H. Dortch

October 15, 2014

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Questions regarding this submission can be directed to the undersigned via 303-992-2502.

Sincerely,

/s/ Kathryn Marie Krause

Enclosure

Before the
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In the Matter of)	
)	
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PETITION FOR RECONSIDERATION OF CENTURYLINK

CenturyLink hereby submits this Petition for Reconsideration of the Report and Order in the above-captioned proceedings.¹

I. THE COMMISSION SHOULD RECONSIDER ITS PROPOSED NEW REGULATORY FEE ON CARRIER RESPONSIBLE ORGANIZATIONS.

Pursuant to Section 1.429 of the Commission's rules,² CenturyLink requests that the Commission reconsider an aspect of its recent *Report and Order*, specifically that part of the *Order* that imposes a new regulatory fee on Responsible Organizations (RespOrgs) when those RespOrgs are carriers. Any new regulatory fee regarding toll free numbers should be imposed only on non-carrier RespOrgs -- entities who currently contribute nothing to the Commission's regulatory administrative framework, including Commission resources spent on toll-free number matters. Alternatively, the Commission should provide clear statements regarding how carrier RespOrgs would be held harmless with regard to multiple assessments on their toll-free

¹ *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 and 12-201, Report and Order and Further Notice of Proposed Rulemaking, FCC 14-129 (rel. Aug. 29, 2014).

² 47 C.F.R. § 1.429.

revenues, which revenues are currently included in the regulatory fees paid to the Commission.

The Commission should also reconsider the categories of toll-free numbers subject to any regulatory fee. Only those numbers that generate revenue should be included. These may be different for different carriers: some may charge for reserved, assigned, and working numbers; others may charge only for working numbers. But unless a RespOrg generates revenues from toll free numbers, there should not be a regulatory fee imposed.³ Finally, the Commission should provide guidance as to *just when* in the regulatory fee period a RespOrg should determine what toll-free numbers are to be included in the calculation of any regulatory fee assessment.

Reconsideration and clarification of the above matters is in the public interest since the *Report and Order* lacks meaningful analysis and articulation of just what RespOrgs are affected by the institution of its new regulatory fee, what toll free numbers would be included in such assessment, what the amount of the fee would be, or when it would be determined during the course of a fiscal year. These are all matters that should be known prior to the implementation of any new regulatory fee.

II. ONLY NON-CARRIER RESPORGS SHOULD BE SUBJECTED TO ANY NEW REGULATORY FEE ON TOLL-FREE NUMBERS.

The *Report and Order* appears to have created a new regulatory fee on toll free numbers that would be assessed against all RespOrgs,⁴ since it discusses no limitation on the group of

³ CenturyLink believes this is consistent with the current reporting of carriers' toll free revenues as part of the revenues reported in the Message Toll Service line item.

⁴ The original *Notice of Proposed Rulemaking* provided an example of a possible fee structure of 1 cent a month (or 12 cents per year) for each toll-free number, resulting in around \$4M in fees. 29 FCC Rcd 6417, 6434-35, ¶ 51 (2014) (*Notice of Proposed Rulemaking* or *Notice*). Based on CenturyLink's understanding of the total of toll free numbers managed by RespOrgs, this total revenue amount is only conceivable if it includes toll free numbers managed by both carrier and non-carrier RespOrgs. *But see* note 13 below for language that creates confusion as to the scope of the Commission's proposed assessment.

RespOrgs to be assessed. To the best of CenturyLink’s knowledge, no commenting party supported an assessment on all RespOrgs in response to the *Notice of Proposed Rulemaking*. Indeed, there was only one party that CenturyLink could identify that *supported* a new fee regarding RespOrgs at all and that was ITTA (filed jointly with the Eastern Rural Telecom Association and Windstream). Its advocacy, though, was clear that such fees should be imposed only on non-carrier RespOrgs.⁵

It is incumbent upon the Commission to ensure that all of the entities it regulates share in the costs associated with such oversight. Thus, the parties support assessment of regulatory fees on toll-free numbers managed by RespOrgs insofar as they are not carriers already subject to regulatory fees under the Commission’s rules.⁶

AT&T also addressed the topic in its opening comments to the *Notice*, stating that it was not clear how the Commission’s proposal would impact carrier RespOrgs who were already paying fees on their toll-free revenues. Accordingly, AT&T asked that the Commission “provide additional detail to help RespOrg carriers determine the real-world impact of this proposal.”⁷

Commentors in Reply endorsed the AT&T position, arguing that the proposal lacked definition and analysis.⁸ The *Report and Order* provided no such additional detail.

⁵ The *Report and Order* overstates ITTA’s support for a proposed new regulatory fee on RespOrgs. It references ITTA for the proposition that “[o]ther commenters support this new category[,]” citing to ITTA. See *Report and Order*, note 89. It fails to acknowledge that ITTA’s advocacy clearly limited its “support” regarding such a fee to non-carrier RespOrgs.

⁶ ITTA at 13.

⁷ AT&T Comments at 5.

⁸ For example, Bandwidth.com stated that it was not possible to determine the scope of the proposal outlined in the *Notice* given the different interpretations reflected by the comments of ITTA and AT&T. Bandwidth.com Reply Comments at 1-2. USTelecom agreed, stating that “[i]t is fundamental to the regulatory fee system that the Commission should avoid assessing providers twice for the same service. This proposal runs the risk [of] doing so by impacting carriers that are already paying on toll-free revenues, most of whom are also RespOrgs.” USTelecom Reply Comments at 5.

The *Report and Order* suggests, though, that the Commission does not intend to tax carrier RespOrgs twice on their toll free revenues.⁹ It is just not clear how the Commission intends to avoid that. Does it intend to have carrier RespOrgs continue to report their toll free revenues as part of the Message Toll Revenues (as they do currently) or will those revenues be extracted out of that category and input into a new category of “RespOrg Regulatory Fee Assessment”? The Commission should clearly state that a carrier RespOrg will not be assessed duplicate fees on its toll free revenues and provide the details of how such assessment will be implemented to avoid such duplication.

III. THE COMMISSION SHOULD RECONSIDER WHAT TOLL FREE NUMBERS WOULD BE SUBJECT TO A REGULATORY FEE ASSESSMENT.

The *Notice of Proposed Rulemaking* proposed a regulatory fee on working, assigned and reserved toll-free numbers, and asked if numbers that are “in the ‘transit’ status” should be included as well.¹⁰ The Commission should reconsider this decision. A regulatory fee should only be imposed on toll free numbers from which a RespOrg generates revenue. This may be different for different RespOrgs (for example, some may charge for reserved, assigned and working numbers, others for only working numbers). But only to the extent that the number creates revenue should it be taxed a regulatory fee. Fairness requires that numbers in a RespOrg’s inventory that produce no revenue on the reporting date should not be included in a

⁹ At paragraph 27, it states: “a regulatory fee assessed on toll free numbers reduces the [Interstate Telecommunications Service Providers] ITSP regulatory fee total; for example, if the total revenue requirement for toll free numbers had been four million dollars this year, expected ITSP revenues would need only be \$127,369,000 instead of \$131,369,000 and the ITSP rate would need only be 0.00333 instead of 0.00343 [footnote omitted].”

¹⁰ At note 88 of the *Report and Order*, it repeats the reference to working, assigned, reserved and “transit” toll-free number categories. CenturyLink is unable to find any “transit” status in the Commission’s toll free number rule Section 52.103.

“fee on revenues.”¹¹

IV. ANY NEW REGULATORY FEE ASSESSMENT ON TOLL FREE NUMBERS SHOULD CLEARLY STATE WHAT THE AMOUNT OF THE FEE IS AND WHEN IT IS TO BE DETERMINED.

The *Report and Order* fails to specify the amount to be assessed RespOrgs for the new regulatory fee category created by the Commission. The earlier *Notice* provided an “example” of a fee proposal, and that example was referenced and repeated in the *Report and Order* (“for example, if the total revenue requirement for toll free numbers had been four million dollars this year . . .”).¹² But the *Report and Order* does not prescribe that fee or any other. Indeed, it is not clear that the Commission has yet determined a fee amount.¹³ And commentary associated with the *Second Further Notice of Proposed Rulemaking*, suggests that a fee will not be determined until comments (in some ill defined venue) are received (despite the fact that the *Second Further Notice* is not addressing the issue of fee amount but enforcement of non payment of fees by non-

¹¹ To the extent the Commission were to reconsider the scope of any proposed fees (so that they were applied only to revenue producing toll free numbers), less than the Commission’s estimated \$4M would be collected in fees.

¹² *Report and Order* at ¶ 27.

¹³ The language in the *Report and Order* (at ¶ 28) about Commission Staff’s efforts “to seek and obtain greater input concerning regulatory fee reform[]” and potential “outreach to promote awareness of this new [fee] category” might be interpreted to suggest that the actual fee amount has not been determined. This would be consistent with the language in Appendix G, *Initial Regulatory Flexibility Analysis* (at ¶ 21), associated with the *Second Further Notice* that states: “The actual fee amount or financial burden, however, will be determined after comments are received and evaluated.” The paragraph goes on to state: “Our proposal exempts entities that are already paying regulatory fees, such as Interexchange Carriers, but would assess fees on other [RespOrgs] that do not currently pay any regulatory fees.” The language in Appendix G creates confusion because (a) it is not clear what issue associated with the *Second Further Notice* involves either the regulatory fee amount or its scope; and (b) Appendix G only applies to smaller IXC. And the reference there to an “exemption” for IXCs is never found in either the *Report and Order* or the *Second Further Notice*.

carrier RespOrgs).¹⁴

Moreover, there is no clear statement regarding at what point during a fiscal year a carrier RespOrg would have to determine (for the next reporting period) the volume of numbers regarding which it must report. Such information is material to the issue of fee assessments and fairly should be included in any regulatory prescription regarding such an assessment.

For the foregoing reasons, the Commission should grant CenturyLink's Petition for Reconsideration.

Respectfully submitted,

CENTURYLINK

By: /s/ Kathryn Marie Krause
Kathryn Marie Krause
1099 New York Avenue, N.W.
Suite 250
Washington, DC 20001
303-992-2502
kathryn.krause@CenturyLink.com

Its Attorney

October 14, 2014

¹⁴ *Second Further Notice* at ¶¶ 36, 37.

Your submission has been accepted

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Contact Info	
Name of Filer: CenturyLink	
Email Address: kathryn.krause@centurylink.com	
Attorney/Author Name: Kathryn Marie Krause	
Address	
Address For: Filer	
Address Line 1: 1099 New York Avenue, NW	
Address Line 2: Suite 250	
City: Washington	
State: DISTRICT OF COLUMBIA	
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