

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

In the Matter of)	
)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2015)	MD Docket No. 15-121
)	
Amendment of Part 1 of the Commission’s Rules)	MD Docket No. 15-121
)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2014)	MD Docket No. 14-92
)	

REPLY COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®

CTIA – The Wireless Association® (“CTIA”) 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”) 2015.¹

I. INTRODUCTION AND SUMMARY.

CTIA generally supports the *Notice* and its proposed collection of regulatory fees for FY 2015, as well as the Commission’s continued efforts to improve the regulatory fee framework. Once again, however, a handful of commenters put forward proposals that target regulatees of the Wireless Telecommunications Bureau (“WTB”) for a disproportionate share of regulatory fees. CTIA urges the Commission to reject these proposals and to adopt a regulatory fee framework for 2015 consistent with the Commission’s proposals. In particular, CTIA asks the Commission to:

- Continue to take into account that the wireless sector contributes more to the Commission’s budget than any other industry segment;

¹ *Assessment and Collection of Regulatory Fees for Fiscal Year 2015*, Notice of Proposed Rulemaking, Report and Order, and Order, 30 FCC Rcd 5354 (2015) (“*Notice*”).

- Reject commenter proposals to reallocate the distribution of full-time equivalent (“FTE”) employees between bureaus that the Commission has previously declined, including:
 - (1) Efforts to reallocate *direct* FTEs on a selective basis, including those of the Wireline Competition Bureau (“WCB”); and efforts to reallocate *indirect* FTEs from the Enforcement Bureau (“EB”), Consumer & Governmental Affairs Bureau (“CGB”), and Office of Engineering & Technology (“OET”);
 - (2) Efforts to add auction-related FTEs when calculating the percentage used for assigning indirect FTE costs to core bureaus; and
 - (3) Efforts to combine the wireless and Interstate Telecommunications Service Providers (“ITSP”) fee categories.
- Reject the proposal to reallocate Media Bureau (“MB”) FTEs handling incentive auction matters to the regulatory fees of wireless carriers; and
- Encourage Congress to authorize the Commission to use excess regulatory fees collected in past years in order to reduce future collection requirements.

CTIA continues to support the Commission’s efforts to ensure that regulatory fees appropriately reflect the work conducted by agency staff and asks the Commission to ensure that any reforms to the regulatory fee framework are measured, rational, and do not unreasonably affect a particular industry. CTIA therefore urges the Commission to adopt its proposed 2015 regulatory fee framework, consistent with CTIA’s comments and recommendations herein.

II. THE WIRELESS INDUSTRY CONTRIBUTES MORE TO THE COMMISSION’S BUDGET THAN ANY OTHER INDUSTRY SEGMENT.

Some commenters erroneously suggest that wireless regulatees (and thus their customers) should bear a larger – and disproportionate – share of the Commission’s budget.² As CTIA has explained for several years now, these types of claims fail to take into account that the wireless sector already contributes more to the Commission’s budget than any other industry sector.

² See, e.g., Comments of ITTA – The Voice of Mid-Size Communications Companies, MD Docket Nos. 15-121, 14-92, at 3 (filed June 22, 2015) (“ITTA Comments”); Comments of the National Association of Broadcasters, MD Docket Nos. 15-121, 14-92, at 4 (filed June 22, 2015) (“NAB Comments”); Comments of the Satellite Industry Association, MD Docket Nos. 15-121, 14-92, at 7-13 (filed June 22, 2015) (“SIA Comments”); Comments of EchoStar Satellite Operating Corp. and Hughes Network Systems, MD Docket Nos. 15-121, 14-92, at 3-4 (filed June 22, 2015) (“EchoStar/Hughes Comments”).

The Commission’s overall budget for FY 2015 is \$456,474,000.³ Congress directed the Commission to recover approximately \$339.8 million through regulatory fees, and \$106 million through revenues retained from spectrum auctions.⁴ These auction revenues cover the following:

“[T]he personnel and administrative costs required to plan and execute spectrum auctions; operational costs to manage installment payments and collections activities; development, implementation, and maintenance of all information technology systems necessary for Auctions operations, including development of a combinatorial bidding system; and a proportional share of the general administrative costs of the Commission based on the split of direct FTE hours.”⁵

Spectrum auction proceeds – paid largely by commercial mobile radio service (“CMRS”) licensees – cover *more than half* of WTB FTEs.⁶ Unlike any other Commission regulatees, wireless regulatees that are spectrum auction winners already pay the federal government for the right to serve their customers through auction payments for spectrum license rights – with those auction payments alone accounting for *more than 20 percent* of the Commission’s overall budget.

³ Federal Communications Commission, Fiscal Year 2016 Budget Estimates Submitted to Congress, at 9 (Feb. 2015) (“FY 2016 Budget”).

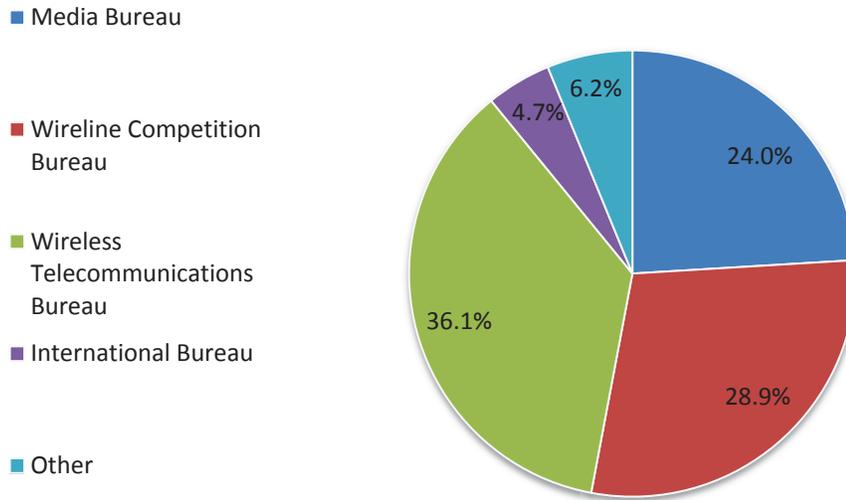
⁴ Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. 113-235 (2014) at Division E, Title V (authorizing the Commission to collect \$339,844,000 in regulatory fees and capping fees from spectrum auctions at \$106,000,000).

⁵ FY 2016 Budget at 30.

⁶ The Commission reported to Congress that its FY 2015 appropriations would cover a total of 215 WTB FTEs. *See* FY 2016 Budget at 12. The *Notice* reported that there are 91 WTB FTEs, which excludes auction FTEs, which are separately funded through auction proceeds from CMRS licensees. *Notice* ¶ 4 n.16. Accordingly, it appears that the work of as many as 124 FTEs in WTB is covered by spectrum auction proceeds.

The following chart,⁷ which generally reflects the regulatory fees the Commission proposes to collect in FY 2015 and spectrum auction proceeds, better portrays each sector's contribution to this year's budget:

Industry Segments' Overall Share of Contributions to FY 2015 FCC Budget, as Listed by FCC Bureau



Despite the wireless sector contributing more to the Commission's overall budget than any other regulated sector, some still seek to impose a further burden on wireless regulatees. The FCC should reject calls by the Satellite Industry Association ("SIA")⁸ to impose additional indirect costs on WTB regulatees because of FTEs funded by auction, as the budget (as it has in years

⁷ The chart reflects the \$106 million recovered through spectrum auctions and the regulatory fees the FCC proposes to collect as set forth in Appendix B of the *Notice*, except the total WTB percentage is conservatively composed of only CMRS mobile fees and spectrum auction revenues but does not include revenues from other wireless regulatees. The "Other" category includes CMRS messaging, BRS, LMDS, and those fees that the FCC collects in advance to cover the term of the license, as well as any other source of funding (*e.g.*, USF) for the FCC's annual budget.

⁸ SIA Comments at 11-13.

past) dictates that auction revenues already cover “a proportional share of the general administrative costs of the Commission based on the split of direct FTE hours.”⁹

III. THE COMMISSION SHOULD DECLINE PROPOSALS TO RECLASSIFY OR REALLOCATE FTES.

Reallocating FTEs of one bureau or office on an ad hoc basis can create significant uncertainty as regulatory fee obligations are shifted among the core bureaus. In this year’s comments, ITTA invites the FCC to explore FTEs in the WCB context,¹⁰ but the Commission should not simply take up proposals which would have it cherry-pick particular bureaus, offices, divisions, or other select groups of FTEs for reallocation. As the Commission acknowledged just two years ago, its examination and reallocation of certain IB FTEs was an “exceptional” case and “a similar examination of possible FTE reallocations among other licensing bureaus [is] a much more difficult and lengthy task.”¹¹ There is no basis to entertain ITTA’s proposals here.

Similarly, the Commission should reject the proposal to selectively reallocate indirect FTEs from EB, CGB, and OET put forth by satellite industry interests.¹² Excluding one type of regulatee – in this case satellite providers – from contributing to their share of the indirect costs associated with EB, CGB, and OET FTEs would threaten the administrability of the regulatory fee program. Moreover, the Commission explicitly rejected this proposal just last year because

⁹ FY 2016 Budget at 30; *see id.* at 26 (explaining that auction expenditures incorporate an “FTE Employee rate [that] is applied to costs that benefit the Commission as a whole. These items that are allocated by the FTE rate include Commission-wide Information Systems, guard service, administrative facility services, supplies, furniture, equipment, and human resources training activities”).

¹⁰ *See, e.g.*, ITTA Comments at 3-5 (proposing that the Commission undertake an analysis of Wireline Competition Bureau FTEs for reallocation); NAB Comments at 4 (suggesting that the Commission reallocate Media Bureau FTEs working on the broadcast incentive auction to the Wireless Telecommunications Bureau).

¹¹ *Assessment and Collection of Regulatory Fees for Fiscal Year 2013*, Report and Order, 28 FCC Rcd 12351, ¶19 (2013).

¹² SIA Comments at 7-11; EchoStar/Hughes Comments at 3-4.

the record did not support the reallocation,¹³ and its proponents provide no new information this year that merits reconsideration of the Commission's conclusion.

ITTA also continues to suggest that the Commission combine wireless providers into the ITSP fee, despite the fact that the Commission has declined to do so since ITTA first raised the issue in 2008, and the Commission did not even raise the issue in the *Notice*.¹⁴ ITTA fails to provide any new information that would warrant the Commission to adopt this misguided proposal now, thus it should again decline to do so in this proceeding.¹⁵

In addition, MB FTEs handling broadcast television spectrum incentive auction matters should not be reallocated and included in the regulatory fees of wireless carriers, as the National Association of Broadcasters ("NAB") suggests.¹⁶ NAB is wrong to assert that only wireless carriers benefit from the incentive auction. Many broadcasters have a significant interest in the auction and intend to directly benefit through their voluntary participation. As the Commission has stated, "[b]roadcasters will have the unique financial opportunity in the 'reverse auction' phase of the incentive auction to return some or all of their broadcast spectrum usage rights in exchange for incentive payments" which "can strengthen broadcasting by funding new content, services, and delivery mechanisms."¹⁷ Moreover, the Incentive Auctions Team draws on resources from multiple bureaus and offices (WTB, MB, IB, OET, OMD, and OET), and MB

¹³ *Assessment and Collection of Regulatory Fees for Fiscal Year 2014*, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 10767, ¶¶ 31-33 (2014).

¹⁴ *Id.* ¶ 34.

¹⁵ See Comments of CTIA – The Wireless Association[®], MD Docket Nos. 14-92, 13-140, 12-201, at 7-9 (filed July 7, 2014) (urging the Commission to decline to combine the wireless and ITSP regulatory fee categories because, among other things, doing so would be inconsistent with Section 9(b)(3) of the Communications Act and would conflict with the statutory purpose of Section 9).

¹⁶ NAB Comments at 4.

¹⁷ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, 6569, ¶ 1 (2014).

FTEs are just a part of the team.¹⁸ Further, FTE allocations should not be based upon individual proceedings, particularly when they involve the interests of regulatees from multiple bureaus. Such ad hoc parsing of FTE responsibilities is administratively unworkable and will result in unpredictable and rapid shifts in regulatory fee rates.¹⁹

Finally, there is insufficient data to consider and act on any of these reallocation proposals raised by commenters. It would be arbitrary and capricious for the Commission to adopt them based on the *Notice* and the record.

IV. THE COMMISSION SHOULD ENCOURAGE CONGRESS TO AUTHORIZE THE USE OF EXCESS REGULATORY FEES COLLECTED IN PAST YEARS IN ORDER TO REDUCE FUTURE COLLECTION REQUIREMENTS.

As CTIA and others have noted for several years, the Commission routinely over-collects regulatory fees each year, including an additional \$668,000 this year.²⁰ These substantial fees simply sit in a separate account within the U.S. Department of Treasury and cannot be used without Congressional action. The Commission therefore should continue to encourage Congress to address the disposition of those excess regulatory fees by authorizing the Commission to use the excess fees in the next funding year to reduce the collection requirement. This is common practice in other similarly-situated regulatory agencies.²¹

¹⁸ See FY 2016 Budget at 26.

¹⁹ *Procedures for Assessment and Collection of Regulatory Fees*, Notice of Proposed Rulemaking, 27 FCC Rcd 8458, 8464-65, ¶ 15 (2012).

²⁰ See *Notice*, Appendix B.

²¹ See Government Accountability Office, *Regulatory Fee Process Needs to be Updated*, GAO-12-686, at 34 (Aug. 2012).

V. CONCLUSION.

The Commission should adopt final regulatory fees consistent with the *Notice* and the recommendations in these comments.

Respectfully submitted,

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