

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

In the Matter of)	
)	
Assessment and Collection of Regulatory Fees)	MD Docket No. 15-121
for Fiscal Year 2015)	
)	

COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®

CTIA – The Wireless Association® (“CTIA”) submits these Comments in response to the Commission’s Further Notice of Proposed Rulemaking (“*Notice*”) considering additional changes to its methodology for calculating regulatory fees.¹

I. INTRODUCTION.

CTIA continues to support the Commission’s efforts to improve the regulatory fee framework. The *Notice*, however, seeks comment on unsupported and unnecessary proposals put forward yet again by ITTA – the Voice of Mid-Size Communications Companies (“ITTA”) that would modify the regulatory fee obligations of Wireline Competition Bureau (“WCB”) and Wireless Telecommunications Bureau (“WTB”) regulatees. ITTA’s proposals repeatedly attempt to shift some of the regulatory fee burden away from WCB regulatees and place a disproportionate share of regulatory fees on the regulatees of other core bureaus. The Commission has previously declined to adopt ITTA’s proposals and should do so again here.

Regulatory fees reflect the work conducted by Commission staff. Any modifications to the fee framework – whether by reworking regulatory fee categories or reallocating certain full

¹ *Assessment and Collection of Regulatory Fees for Fiscal Year 2015*, Report and Order and Further Notice of Proposed Rulemaking, FCC 15-108, MD Docket No. 15-121 (rel. Sept. 2, 2015) (“*2015 Regulatory Fees Order*” and “*Notice*”).

time employees (“FTEs”) – should be measured and rational, and must not unreasonably affect a particular industry.² The *Notice* acknowledges, for example, that any reclassification of FTEs should occur “only after performing considerable analysis and finding the clearest case for reassignment.”³

Neither ITTA nor the *Notice* present any showing that the current regulatory fee structure fails to reflect the work that is conducted by Commission staff who handle wireline and wireless matters. Accordingly, CTIA urges the Commission to:

- Reject proposals to subject commercial mobile radio service (“CMRS”) providers to interstate telecommunications service provider (“ITSP”) fees, which would be arbitrary and capricious as well as a violation of Section 9 of the Communications Act (the “Act”),⁴ and
- Refrain from cherry-picking FTEs for reclassification simply to provide regulatory relief to WCB regulatees at the expense of others.

As CTIA has demonstrated previously, the wireless sector already contributes more to the Commission’s budget than any other industry segment given CMRS regulatory fees and spectrum license auction proceeds.⁵ The Commission must therefore deny any proposals that seek to increase the wireless industry’s share of regulatory fees without further analysis and transparency given the considerable impact those proposals could have on regulatees.

² See, e.g., *Assessment and Collection of Regulatory Fees for Fiscal Year 2013*, Report and Order, 28 FCC Rcd 12351, 12355 ¶¶ 10, 12 (2013) (“*2013 Regulatory Fees Order*”) (remarking on the Commission’s goal of ensuring fairness in the regulatory fee regime); *Procedures for Assessment and Collection of Regulatory Fees*, Notice of Proposed Rulemaking, 27 FCC Rcd 8458, 8464 ¶ 14 (2012) (“*2012 Regulatory Fees NPRM*”) (“We propose establishing fairness as a goal of our regulatory fee program, so that the burdens of regulatory fees are borne in an equitable manner that does not distort the marketplace.”).

³ *Notice* ¶ 15.

⁴ 47 U.S.C. § 159.

⁵ See, e.g., Reply Comments of CTIA, MD Docket Nos. 15-121, 14-92, at 2-5 (filed July 6, 2015); Comments of CTIA, MD Docket Nos. 14-92, 13-140, 12-201, at 3-6 (filed July 7, 2014); Comments of CTIA, MD Docket Nos. 13-140, 12-201, 08-65, at 2-6 (filed June 19, 2013).

II. NO REASONABLE BASIS EXISTS FOR SUBJECTING CMRS PROVIDERS TO ITSP REGULATORY FEES.

A. Imposing an ITSP Fee on CMRS Providers Would be Arbitrary and Capricious.

The Commission has repeatedly declined to act on ITTA's proposal to subject CMRS providers to ITSP fees, which it has been espousing since 2008. CTIA and others have explained numerous times that adopting ITTA's proposal would be ill-conceived and inappropriate. In that time, no one – including ITTA – has attempted to analyze or quantify the impact of combining CMRS providers and ITSPs into one regulatory fee category, or identified any viable reason that would warrant such action. The *Notice* raises ITTA's proposal yet again, and again there is no new information to justify shoehorning wireless voice into the wireline ITSP regulatory fee category, or any details on how this could be accomplished fairly.

WCB and WTB have very different regulatory regimes that impose diverse burdens on Commission staff. For example, wireline carriers are subject to a number of regulations and policies that do not apply to wireless carriers, including various tariffing and pricing requirements, rate regulation (*e.g.*, price cap, guaranteed rate-of-return), accounting, Section 251(b) interconnection obligations, and jurisdictional separations procedures. Conversely, the detailed Title III licensing framework for wireless regulatees contrasts with the simple blanket domestic 214 authorization framework for wireline carriers. Consequently, the responsibilities and day-to-day work of FTEs in the WTB and WCB vary to a great degree and it would be nonsensical to combine them in one fee category.

Second, the fact that both wireline and wireless providers offer voice services is not a basis to subject CMRS providers to ITSP regulatory fees. Congress was well aware that voice was provided over both types of facilities when it created separate wireline and wireless fee categories for purposes of the regulatory fee schedule in Section 9 of the Act. It still chose to

adopt distinct wireless and wireline fee categories, an indication that it recognized that the regulatory framework and responsibilities associated with regulating wireline and wireless services significantly differed. In addition, the creation of a voice-based regulatory fee would require more than simply adding CMRS to the ITSP fee category (either by creating a new fee category or making CMRS an ITSP subcategory). It would necessitate including a variety of different services into a new nonsensical “voice” fee category, including satellite providers that offer voice. This in turn would require a highly nuanced parsing of FTEs across the Commission to determine which FTEs handle voice and non-voice issues, as well as the modification of other fee categories to ensure other regulatees do not pay more than their fair share of regulatory fees. Such an approach would be illogical and unadministrable.

Third, changes to the regulatory fee framework – through FTE reallocations or the modification or creation of fee categories – should not be based on individual Commission proceedings, such as those on Lifeline program reform or the special access marketplace. This would be an insurmountably complex task when the individual proceedings involve the interests of regulatees from multiple bureaus. As the Commission has recognized, such ad hoc parsing of FTE responsibilities is administratively unworkable and will result in unpredictable and rapid shifts in regulatory fee rates year over year as different proceedings are initiated and closed.⁶

Moreover, WTB FTEs already participate significantly in “wireline” proceedings, and the cost of these FTEs is appropriately covered by the regulatory fees paid by WTB regulatees. To name a few examples, WTB helps develop and implement Universal Service Fund (“USF”) policy, playing a notable role in the Commission’s comprehensive USF reform efforts and administering the Mobility Fund. WTB similarly is very involved in the Commission’s efforts to

⁶ 2012 *Regulatory Fees NPRM* ¶ 15.

study the nation's transition to new technologies, including assisting with the rural broadband experiments, and in developing and implementing the Commission's Form 477 Report reforms.

In short, while certain proceedings may be classified as "wireline," in reality FTEs from other bureaus including WTB take part in those proceedings as appropriate, and their costs are covered by those bureaus' regulatees. Indeed, this is a far more reasonable and administrable approach than that advocated by ITTA. It is telling that ITTA does not propose that WCB regulatees pay a portion of WTB's costs associated with proceedings that involve regulatees of both bureaus. Rather, ITTA seeks to preserve the existing allocation structure when it benefits its wireline members, and to replace it with a more granular analysis when it perceives an advantage.

Neither the *Notice* nor ITTA explains how ITSP fees would be applied fairly to the new category of voice service providers – for example, whether the additional regulatory fees would be based upon revenues or some other metric, and how much of wireline-related costs would be shifted to CMRS providers. Indeed, subjecting wireless voice services to ITSP fees would effectively result in CMRS providers paying duplicative regulatory fees since they already pay fees as WTB regulatees based upon the number of units they have in the marketplace. CMRS providers and their customers effectively would be contributing twice for the same service, creating an unfair, inequitable, and discriminatory burden on CMRS. Thus, subjecting CMRS providers to ITSP fees would be implausible, as well as run counter to Congressional intent and the record before the Commission.

B. Subjecting CMRS Providers to ITSP Regulatory Fees Would Violate Section 9 of the Act.

The proposal to combine the wireless and wireline regulatory fee categories does not satisfy the statutory requirements set forth in Section 9 of the Act and cannot be adopted.

Section 9(b)(3) allows for amendments to the regulatory fee schedule that Congress set forth in Section 9(g) *only* in response to changes in law and regulation that, in turn, change the relationship between a particular category of regulatees and the staff-hours spent regulating them.⁷ As the D.C. Circuit has noted, Section 9(b)(3) “clearly limits the Commission’s authority to promulgate amendments” to the regulatory fee schedule to those “imposed in response to [a] ‘rulemaking proceeding[] or change[] in law.’”⁸ Neither ITTA nor the *Notice* has identified any rulemaking or change in law that would have caused the nature of the ITSP and wireless regulatory fee categories to warrant such fundamental changes in the regulatory fee structure for these industry segments.

Moreover, ITTA wrongly suggests that the amount of Lifeline support that is distributed to wireless providers may be a basis for changing the regulatory fee structure.⁹ The Commission has recognized that under Section 9, regulatory fees must be based upon burdens imposed on the Commission, not benefits realized by regulatees.¹⁰ Thus the market success wireless carriers have had in signing up Lifeline customers is irrelevant for regulatory fee calculations. Indeed, the legislative history of Section 9 makes clear that fees must be tied to the regulatory activities of the agency. An industry or class of users will not pay more than their fair share of costs because of industrial growth or success.¹¹

⁷ 47 U.S.C. § 159(b)(3).

⁸ *COMSAT Corp. v. FCC*, 114 F.3d 223, 225 (D.C. Cir. 1997).

⁹ *Notice* ¶ 34.

¹⁰ *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 (2007) (“Section 9 is clear... that regulatory fee assessments are based on the burden imposed on the Commission, not benefits realized by regulatees.”).

¹¹ H.R. Rep. No. 102-207, pt. 3 (1991). The provisions that became Section 9 of the Act were part of the Omnibus Budget Reconciliation Act of 1993. *See* Pub. L. No. 103-66, § 6003(a) (1993). The House Conference Report accompanying that legislation notes that the provisions regarding regulatory

III. THE FCC SHOULD NOT RECLASSIFY WCB FTEs ON AN AD HOC BASIS.

There is no basis for reclassifying any WCB FTEs, either as indirect FTEs or as WTB FTEs, for regulatory fee purposes.¹² It is inappropriate to cherry-pick FTEs in certain bureaus or divisions for reclassification in order to provide regulatory fee relief to regulatees of those bureaus at the expense of others. While the Commission previously chose to reclassify certain International Bureau (“IB”) FTEs, in the words of the Commission, that was an “exceptional” case and “a similar examination of possible FTE reallocations among other licensing bureaus [is] a much more difficult and lengthy task.”¹³ There is no such “exceptional” case here, and no substantive examination supporting reclassification.

The Commission recently acknowledged that outside IB, it “reasonably expect[ed] that the work of the FTEs in the core bureaus would remain focused on the industry segment regulated by each of those bureaus.”¹⁴ Moreover, as noted above, WTB FTEs already participate in proceedings about, and contribute to the management and regulation of, so-called “wireline” matters. WTB regulatees thus already share in the cost of those proceedings by paying WTB regulatory fees. Reclassifying WCB FTEs – particularly only on the basis of certain individual proceedings – also would create significant uncertainty by shifting fee obligations among the core bureaus and would threaten the administrability of the regulatory fee program. Each year the Commission would have to assess the work of each FTE and allocate all FTEs based on individual proceedings, while preventing wild shifts in the regulatory fees paid by regulatees. In

fees were “virtually identical” to those included in a previous bill, and incorporated by reference the analysis from the House Report, quoted here. H.R. Conf. Rep. No. 103-213, pt. 4 (1993).

¹² Notice ¶¶ 33-34.

¹³ 2013 Regulatory Fees Order ¶ 19.

¹⁴ 2015 Regulatory Fees Order ¶ 15.

addition, reclassifying them as indirect FTEs would inappropriately spread WCB-related costs across *all* regulatory fee payors and would not be fair and equitable to non-WCB regulatees.

IV. CONCLUSION.

The Commission should decline to modify the regulatory fee obligations of WCB and WTB regulatees as proposed in the *Notice*.

Respectfully submitted,

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