



March 4, 2016

**Via ECFS**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Re: Assessment and Collection of Regulatory Fees for Fiscal Year 2015  
MD Docket No. 15-121

Dear Ms. Dortch:

CTIA® Assistant Vice President Krista Witanowski and outside counsel Adam Krinsky met with Thomas Buckley of the Office of the Managing Director and Mika Savir of the Enforcement Bureau on March 2, and with Nicholas Degani, Legal Advisor to Commissioner Pai, on March 3, to discuss issues raised by ITTA and the American Cable Association ("ACA") in the above-captioned proceeding.

ITTA and ACA have once again proposed to shift a disproportionate share of regulatory fees onto wireless regulatees and away from wireline interests.<sup>1</sup> They present no new basis to counter CTIA's showing why such an approach is inconsistent with the law and Commission policy. CTIA provides the following response and asks the Commission to once and for all reject their proposals to upend the regulatory fee framework.

***Contrary to ITTA's claims, no precedent supports incorporating wireless voice providers into the ITSP regulatory fee category.***<sup>2</sup>

- The fact that both wireline and wireless providers offer voice services is not a basis to include commercial mobile radio service ("CMRS") providers in the wireline Interstate Telecommunications Service Provider ("ITSP")

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<sup>1</sup> See Letter from Micah M. Caldwell, ITTA, to Marlene H. Dortch, Secretary, FCC, MD Docket No. 15-121 (filed Jan. 27, 2016) ("ITTA Ex Parte"); Reply Comments of the American Cable Association, MD Docket No. 15-121 (filed Dec. 7, 2015) ("ACA Reply Comments").

<sup>2</sup> ITTA Ex Parte at 1-2.



regulatory fee. Even ITTA's cohort ACA agrees with CTIA that whether wireless carriers provide voice service is not a basis for assessing fees.<sup>3</sup>

- ITTA's claim that the wireless and wireline industries encompass similar regulatory policies ignores CTIA's previous demonstrations that wireless and wireline services are subject to distinct regulatory regimes that impose diverse burdens on FCC staff.<sup>4</sup> ITTA and ACA members, for example, are not subject to the Title III licensing framework that Wireless Telecommunications Bureau ("WTB") staff are responsible for, and CMRS providers are not subject to Wireline Competition Bureau ("WCB") pricing (e.g., price cap, guaranteed rate-of-return), accounting, Section 251(b) interconnection, or other responsibilities.
- Suggesting that CMRS providers must pay ITSP fees because they create costs by participating in "wireline" rulemaking proceedings and other matters fails to recognize the fact that cross-bureau work is routine and widespread within the FCC. 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.<sup>5</sup>

***FCC regulatees do not pay regulatory fees to different bureaus for the same service, despite ITTA and ACA claims.<sup>6</sup>***

- Interconnected VoIP, IPTV and DBS are examples where the FCC applied a regulatory fee to a provider that either did not previously pay any fee (e.g., applying ITSP fees to interconnected VoIP) or paid fees but not for the services at issue (e.g., applying Media Bureau fees to IPTV and DBS for the provision of video programming). In contrast, ITTA and ACA want CMRS providers to pay WCB regulatory fees for the same voice service that CMRS providers already pay a regulatory fee for today. Congress

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<sup>3</sup> ACA Reply Comments at 4 ("ACA agrees" with "'[t]he fact that both wireline and wireless providers offer voice services is not a basis to subject CMRS providers to ITSP regulatory fees.'" (quoting CTIA Comments at 3)).

<sup>4</sup> See, e.g., CTIA Comments at 3; CTIA Reply Comments at 4-5.

<sup>5</sup> See, e.g., CTIA Comments at 4-6; CTIA Reply Comments at 3-5.

<sup>6</sup> ITTA Ex Parte at 2; ACA Reply Comments at 3.



was well aware that CMRS providers' offering was voice service when it chose to impose a separate regulatory fee on CMRS providers in 1994 and not incorporate them into the wireline provider regulatory fee.<sup>7</sup>

- ITTA notes that ITSPs that provide video services in addition to voice services pay regulatory fees for the work performed by both the WCB and the Media Bureau – but this is exactly CTIA's point. Those companies are paying two separate regulatory fees, one for video services, the other for wireline services. ITTA and ACA, in contrast, are proposing to subject one service – wireless voice – to two separate regulatory fees. CTIA has previously explained that this is inappropriate and unlawful.<sup>8</sup>
- Further, it is imprudent to assert that revamping the regulatory fee mechanism is "straightforward," as ACA claims.<sup>9</sup> As a practical matter, neither ITTA nor ACA explain how their proposed reform would be accomplished. They offer no proposal for how the Commission could apply ITSP fees to wireless providers fairly when they already pay fees based upon their voice services.

***Any ad hoc FTE reallocation to benefit ITSP regulatees would be arbitrary and capricious.***

- When the FCC reallocated a handful of International Bureau FTEs in 2013, the Commission made clear that the action was an "exceptional" case and that questions of reallocations in other bureaus involve situations "less clear and more factually complex," resulting in "a much more difficult and lengthy task."<sup>10</sup> ACA's own acknowledgement that reviewing the work of WCB FTEs "may entail rigorous investigation and complex analysis" is a gross understatement.<sup>11</sup>

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<sup>7</sup> See, e.g., CTIA Comments at 3-4; CTIA Reply Comments at 6-8.

<sup>8</sup> See, e.g., CTIA Comments at 3-4; CTIA Reply Comments at 8-9.

<sup>9</sup> ACA Reply Comments at 2.

<sup>10</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2013*, Report and Order, 28 FCC Rcd 12351, 12357-58 ¶ 19 (2013) (emphasis added).

<sup>11</sup> ACA Reply Comments at 2.



- Moreover, ACA and ITTA are misguided in suggesting that only WCB FTEs work on proceedings that impact other bureaus' regulatees – in fact, many WTB FTEs are involved in WCB matters *to the benefit of WCB regulatees*. As but one example, WTB FTEs will be taking the lead on administering the CAF Phase II reverse auction in which many wireline providers will participate. And WTB FTEs are deeply involved in other aspects of Universal Service, including the Mobility Fund.
- As CTIA has noted previously, any “fairness” discussion limited to regulatory fees only is artificial, as the wireless sector contributes more to the Commission’s overall budget than any other regulated sector.<sup>12</sup> Taking into account Commission costs that are covered by spectrum auction revenues, wireless regulatees covered 36.4% of the FY2015 budget, compared to WCB regulatees’ 29.1%.<sup>13</sup> Ultimately, any review of FTEs must also take into account the substantial work done by FTE’s supported by the wireless industry through spectrum auction revenues.

Today’s regulatory fee methodology for assessing fees on WTB and WCB regulatees is fair, administrable, and consistent with Section 9. The Commission should therefore reject ITTA’s and ACA’s continued attempts to shift a disproportionate share of wireline regulatory fees onto wireless providers.

Sincerely,

/s/ Krista Witanowski

Krista Witanowski  
AVP, Regulatory Affairs

cc: Mika Savir  
Thomas Buckley  
Nick Degani

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<sup>12</sup> See, e.g., CTIA Reply Comments at 9-10.

<sup>13</sup> *Id.* at 10.