

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Assessment and Collection of Regulatory Fees) MD Docket No. 07-81
for Fiscal Year 2007)

**REPLY COMMENTS OF THE WIRELESS COMMUNICATIONS
ASSOCIATION INTERNATIONAL, INC.**

The Wireless Communications Association International, Inc. (“WCA”) hereby submits its reply comments on the Commission’s *Notice of Proposed Rulemaking* (“NPRM”) in the above-captioned proceeding.¹

In its initial comments, WCA did not object to the Commission’s proposal to use its historic approach of charging a separate fee for each call sign when calculating the regulatory fees payable by Broadband Radio Service (“BRS”) licensees for FY2007.² As to future fiscal years, WCA stated that if the Commission is committed to reexamining the new BRS regulatory fee it approved in WT Docket No. 03-66, it should adopt WCA’s prior recommendation that the Commission utilize a per-MHz/pops approach when calculating regulatory fees for BRS licensees.³ No other commenting party in the instant proceeding has addressed the issue of BRS regulatory fees or otherwise taken issue with WCA’s proposal. This is not surprising since, as

¹ *Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, Notice of Proposed Rulemaking, MD Docket No. 07-81, FCC 07-55 (rel. Apr. 18, 2007) [“NPRM”].

² See Comments of Wireless Communications Ass’n Int’l, MD Docket No. 07-81, at 1 (filed May 3, 2007) [“WCA Comments”].

³ *Id.* at 2. Under the rule adopted in WT Docket No. 03-66, a BRS licensee’s annual regulatory fee was to be calculated on a per-MHz basis and then tiered according to market size, *i.e.*, BRS licensees in Basic Trading Areas (“BTAs”) 1-60 would pay the highest fee, those in BTAs 61-200 would pay a lesser fee, and those in BTAs 201-493 would pay the lowest fee. See NPRM at ¶ I.L.A.3 and n. 8, citing *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order, 21 FCC Rcd 5606, 5756-9 (2006) [“BRS Reconsideration Order and Second R&O”].

the Commission itself noted in WT Docket No. 03-66, support for WCA's approach was "nearly unanimous."⁴ WCA again submits that its proposal is the fairest approach to calculating BRS regulatory fees (particularly for those BRS licensees with thinly-populated service areas) and can be introduced with less complexity than any other alternative.⁵

WCA also raised substantial questions as to whether the Commission has the requisite statutory authority to adopt its proposal to impose regulatory fees on providers of interconnected Voice over Internet Protocol ("VoIP") service.⁶ WCA's concerns are amplified in the comments filed by the Voice on the Net ("VON") Coalition.⁷ In particular, the VON Coalition has demonstrated in some detail why neither Section 9 nor Title I of the Communications Act of 1934, as amended, provide the Commission with the necessary authority. Further, even if such authority were found to exist here, VON correctly notes that the Commission's lightly documented proposal fails to satisfy Section 9's substantive and procedural requirements.⁸ Conversely, those parties who support the Commission's proposal either gloss over or completely fail to discuss the significant legal questions highlighted by WCA and VON

⁴ *BRS Reconsideration Order and Second R&O*, 21 FCC Rcd at 5758.

⁵ See WCA Comments at 2-3; WCA Comments on Further Notice of Proposed Rulemaking, WT Docket No. 03-66, at 32-33 (filed Jan. 10, 2005); WCA Reply Comments on Further Notice of Proposed Rulemaking, WT Docket No. 03-66, at 36-37 (filed Feb. 8, 2005) ["WCA Further Notice Reply Comments"].

⁶ See WCA Comments at 3-5.

⁷ See Comments of the VON Coalition, MD Docket No. 07-81 (filed May 3, 2007).

⁸ *Id.* at 3-8. The VON Coalition also observes that the Commission's proposal fails to provide commenting parties with proper notice of the rule under consideration and thus violates the notice requirements of the Administrative Procedure Act ("APA"). *Id.* at 12; see also *id.* at 13-14 (noting that the Commission has not proposed a specific fee amount for interconnected VoIP providers nor offered sufficient factual support for the methodologies it proposes to use when calculating the fee); WCA Comments at 5 ("Unfortunately, WCA cannot comment on whether the Commission's proposal satisfies [the requirements of Section 9], since the *NPRM* neither proposes a specific regulatory fee for interconnected VoIP providers nor provides any clue as to how the Commission intends to apply the cost factors specified in Section 9 to the interconnected VoIP regulatory fee.").

Coalition.⁹ The Commission cannot impose regulatory fees on interconnected VoIP providers unless and until it resolves those questions with the level of analysis and factual support required by judicial precedent and the APA.¹⁰

Assuming, however, for purposes of argument only that the Commission were to nonetheless conclude that it has the requisite legal authority to impose regulatory fees on interconnected VoIP providers, WCA concurs with Comcast's recommendation that any such fee be assessed as a flat, per-subscriber fee rather than as a revenue-based fee. As Comcast points out, there is growing consumer demand for "bundles" of services under which a subscriber pays its broadband provider a single fee for a combination of voice, data and/or video services.¹¹ For broadband providers that offer bundled services, "[u]se of a subscriber-based approach would eliminate the need to apportion telecommunications revenues based on whether they are interstate or intrastate, and to distinguish between telecommunications and non-telecommunications services."¹² This, obviously, is equally true of wireless broadband providers – indeed, many of those providers will pay per-subscriber regulatory fees when they offer Wireless Communications Service or Advanced Wireless Service, and there does not appear to be any logical reason for the Commission to depart from the per-subscriber approach when those providers offer another "strand" of their service bundle to their customers (the "strand" in this case being interconnected VoIP service). WCA reiterates, however, that any regulatory fee imposed on interconnected VoIP providers must comply with Section 9's mandate that those fees

⁹ See, e.g., Comments of National Telecommunications Cooperative Ass'n, MD Docket No. 07-81, at 2-3 (filed May 3, 2007); Comments of The Iowa Utilities Board, MD Docket No. 07-81 (filed May 3, 2007).

¹⁰ See, e.g., *Schurz Communications, Inc. v. FCC*, 982 F.2d 1043, 1049 (7th Cir. 1992) ("It is not enough that a rule might be rational; the statement accompanying its promulgation must show that it is rational — must demonstrate that a reasonable person upon consideration of all the point urged pro and con the rule would conclude that it was a reasonable response to a problem that the agency was charged with solving.") (citations omitted).

¹¹ See Comments of Comcast Corporation, MD Docket No. 07-81, at 1 (filed May 3, 2007).

¹² *Id.* at 1-2.

only “recover the costs” of the regulatory activities specified in the statute, and that the fees must be “adjusted to take into account factors that are *reasonably related to the benefits provided to the payor of the fee by the Commission’s activities . . .*.”¹³

WHEREFORE, WCA requests that the Commission issue a *Report and Order* in this proceeding in accordance with WCA’s recommendations in its initial comments and in these reply comments.

Respectfully submitted,

**THE WIRELESS COMMUNICATIONS
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¹³ 47 U.S.C. § 159(a)(1), (b)(1)(A) (emphasis added). The Commission must avoid any double recovery of regulatory fees from Commission spectrum licensees that provide interconnected VoIP service. WCA Comments at 6-7. If the Commission imposes regulatory fees on interconnected VoIP providers, it may only recover from those providers the costs associated with regulating interconnected VoIP providers, and those must be separate and distinct from fees charged to recover costs associated with regulating Commission spectrum licensees. *See id.* at 6 (“No matter which avenue the Commission takes, . . . , the costs and benefits associated with the Commission’s regulation of interconnected VoIP providers clearly are not commensurate with those associated with the Commission’s regulation of interstate telecommunications or CMRS providers, and the regulatory fees imposed on interconnected VoIP providers therefore must be substantially less. For example, since the Commission has not extended all of its Title II regulations to non-Title II interconnected VoIP providers, the Commission cannot assume that the costs of regulating those providers are comparable to those associated with regulating interstate telecommunications and CMRS providers.”).