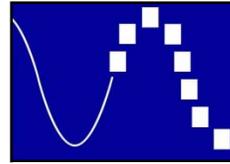


VIA ECFS

July 25, 2007



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

Re: VON Coalition *Ex Parte* Presentation
*In the Matter of Assessment and Collection of Regulatory Fees for
Fiscal Year 2007*
MD Docket No. 07-81

Dear Ms. Dortch:

The Commission's recent COMSAT regulatory fee decision demonstrates the need for the FCC to change course in its proposal to impose regulatory fees on providers of interconnected Voice over Internet Protocol ("VoIP") services.¹ In its comments on the *Notice of Proposed Rulemaking* in the above-referenced proceeding, the VON Coalition demonstrated that Section 9 of the Communications Act of 1934, as amended (the "Act"), does not authorize the Commission to impose annual regulatory fees on interconnected VoIP providers.² The VON Coalition also emphasized that Section 9 of the Act requires that any such fee must reflect the disparate regulatory regimes for interconnected VoIP providers vis-à-vis other Commission regulatees – both in terms of the costs and burdens imposed on the Commission, and the benefits interconnected VoIP providers derive from regulation.³

The Commission's July 10, 2007 *Order* granting COMSAT Corporation a reduction in its annual regulatory fees underscores the obligation of the Commission to undertake a far more rigorous assessment of its procedures to ensure that fees imposed on a class of service providers bear a sufficient relationship to the cost of regulating them consistent with the statute.⁴ The COMSAT decision adopts the proper legal standard for regulatory fees: they must be based on the costs to the agency and the benefits to the licensee. The *Order* acknowledged the statutory obligation to ensure that fees reflect "the number of personnel that worked on" relevant regulatory matters "and the associated indirect costs."⁵ Indeed, COMSAT engaged in years of legal challenges and multiple Freedom of Information Act requests in order to reach this result and ensure Commission compliance with the statute. Yet the Commission's most recent Regulatory Fee NPRM does not even purport to engage in the precise analysis it now grants to COMSAT. As Commissioner Adelstein pointed out, the Commission has not generally done so, "instead relying on repeated proportionate increases of the regulatory fee schedule

¹ *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, Notice of Proposed Rulemaking, MD Docket No. 07-81, FCC 07-55, ¶ 10 (rel. Apr. 18, 2007) ("NPRM").

² See Comments of the VON Coalition at 3-11.

³ See *id.* at 14-17.

⁴ See *In the Matter of COMSAT Corporation Request for Reduction of Regulatory Fees for Fiscal Years 1998, 2000, and 2001*, Order, FCC 07-121 (rel. July 10, 2007) ("COMSAT Refund Order").

⁵ *Id.* at ¶ 6.

form the previous year, adjusted to reflect increases or decreases in payment units.”⁶ The cursory analysis of VOIP providers fee obligations in the NPRM is woefully inadequate to satisfy the statutory mandate and is flatly inconsistent with the COMSAT order.

Recognizing the inconsistency between the approach taken to COMSAT and that taken with every other regulatory fee payor, the Commission in a lengthy footnote attempts to distinguish COMSAT. Yet that distinction does not withstand scrutiny. The commission said the *COMSAT Refund Order* “should not be considered precedent for the proposition that fees generally must be apportioned according to cost”⁷ because the Commission was responding to a Court of Appeals remand and there are no other licensees similarly situated to COMSAT. Yet the Court was interpreting statutory provisions that apply to *all* regulatees subject to regulatory fees.⁸ COMSAT’s unique business operations or “special nature” of its circumstances do not uniquely qualify it for regulatory fee obligations consistent with the statute or otherwise obviate the Commission’s obligations to treat licensees consistent with the statute.

The *COMSAT Refund Order* therefore fundamentally affirms what the VON Coalition has demonstrated in its comments – that to the extent the Commission has authority to impose regulatory fees on interconnected VoIP providers in the first place, the Commission may not simply incorporate them whole cloth into the regulatory fee methodology employed for other service providers given the disparate regulatory regimes imposed.⁹ Accordingly, if the Commission were to adopt a revenue-based approach for interconnected VoIP, it must engage in the analysis granted to COMSAT. At the very least, the Commission must impose a lower contribution factor for interconnected VoIP providers than for full-fledged Title II wireline carriers.

The *COMSAT Refund Order* demonstrates the need for the Commission to ensure that the annual regulatory fees imposed on services newly added to the Fee Schedule comply with Section 9’s requirements. Congress could not have intended that every regulatee endure what COMSAT did in order to ensure that fee obligations are lawfully imposed in the first instance. The VON Coalition simply requests that the Commission ensure that Section 9 is complied with at the outset as the agency contemplates whether and to what extent such obligations should apply to interconnected VoIP providers.

Respectfully submitted,

/s/

Staci L. Pies
President
The VON Coalition

⁶ *Id.*, Concurring Statement of Commissioner Jonathan Adelstein. See also Concurring Statement of Commissioner Michael Copps (urging a “general overhaul” of the regulatory fee methodology).

⁷ *Id.* at ¶ 6 n.19.

⁸ See *COMSAT v. FCC*, 114 F.3d 223, 227 (D.C. Cir. 1997) (interpreting scope of Commission’s authority under 47 U.S.C. § 159(b)(3)).

⁹ See Comments of the VON Coalition at 14-17.