

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

**Assessment and Collection of                    )       MD Docket No. 08-65  
Regulatory Fees for Fiscal Year 2008        )       RM-11312**

**REPLY COMMENTS OF THE**

**INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE**

To the Commission:

The Independent Telephone & Telecommunications Alliance (ITTA) hereby files these reply comments in the above-captioned proceeding. ITTA members are mid-size local exchange carriers that collectively provide a broad range of high-quality wireline and wireless voice, data, Internet, and video services to 31 million customers in 45 states.

ITTA takes this opportunity to build upon comments filed in this proceeding that urge the Commission to ensure that regulatory fee assessments are structured in a competitively neutral manner.<sup>1</sup> The Commission's overall budget has increased by 81 percent from 1999 to 2008, yet the percentage of interstate telecommunications service

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<sup>1</sup> See, generally, Comments of AT&T (discussing submarine cabling licenses).

provider (ITSP)<sup>2</sup> revenues used to support Commission activities has nearly tripled.<sup>3</sup> The fee paid by a wireless customer, meanwhile, has decreased by 47 percent from 1999 to 2008.<sup>4</sup> The disparity in treatment of wireless and wireline customers will continue to widen each year unless the Commission takes action to install parity into how it applies regulatory fees across providers of like services.

Section 159 of the Communications Act of 1934, as amended,<sup>5</sup> affords the Commission flexibility to collect regulatory fees in a manner that furthers the public interest.<sup>6</sup> Although fees should reflect generally the number of employees that perform regulatory activities in each Bureau, Section 159 states that fees levied on regulated entities shall be adjusted to account for “factors that are reasonably related to the benefits provided to the payor of the fee . . . and other factors that the Commission determines are

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<sup>2</sup> The Commission’s ITSP fee category applies to, among others, incumbent local exchange carriers (ILECs), interexchange carriers (IXCs), competitive local exchange carriers (CLECs), and interconnected Voice over Internet Protocol (VoIP) providers.

<sup>3</sup> The Commission requires different categories of service providers to pay fees based on different types of “payment units.” Some industries are required to pay fees per each license, while others pay per subscriber (e.g., cable and CMRS). ITSPs, however, pay fee payment unit per revenue dollar. The fee payment unit for ITSPs was \$0.00121 in 1999. *Assessment and Collection of Regulatory Fees for Fiscal Year 1999*, MD Docket No. 98-200, 14 FCC Rcd 9868, Attachment C (1999) (1999 Fee Order). The proposed payment unit for 2008 is \$0.00317. *Assessment and Collection of Regulatory Fees for Fiscal Year 2008; 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, Notice of Proposed Rulemaking and Order*, MD Docket No. 08-65, RM No.-11314, WT Docket No. 03-66, Attachment C (2008) (2008 Fee NPRM). This increase in the ITSP payment unit is significant even when just the past year is considered: the Commission budget only increased 7.4% since last year, but the ITSP payment unit increased by 19.2%. *Assessment and Collection of Regulatory Fees for Fiscal Year 2007: Report and Order and Further Notice of Proposed Rulemaking*, MD Docket No. 07-81, 22 FCC Rcd 15712, FCC 07-140, at Attachment C (2007) (2007 Fee Order).

<sup>4</sup> 1999 Fee Order; 2008 Fee NPRM.

<sup>5</sup> The Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996) (1996 Act) amended the Communications Act of 1934. Hereinafter, the Communications Act of 1934, as amended by the 1996 Act, will be referred to as “the Act,” and citations to the Act will be to the Act as it is codified in the U.S. Code.

<sup>6</sup> 47 USC § 159(b)(1)(A).

necessary in the public interest.”<sup>7</sup> Section 159 allows the Commission to make changes to the fee schedule to “add, delete, or reclassify services” to account for “additions, deletions, or changes in the nature of its services as a consequence of Commission rulemaking proceedings or changes in law.”<sup>8</sup> Congress recognized presciently that convergence among technologies and consumer expectations result in effectively shared expenses as varied entities participate increasingly in matters once reserved for others. The benefits of regulatory activities extend beyond traditional Bureau boundaries, and the statute sets a course for the Commission to reflect this trend appropriately in its regulatory fee process.

The convergence of technology and consumer expectations has compelled disparate entities to participate in common Commission proceedings. For example, representatives of the wireless industry have participated and will continue to participate extensively in wireline dockets addressing universal service (05-337), pole attachments (07-245), special access (05-25), rate integration (RM 11415), intercarrier compensation (01-92), and customer proprietary network information (CPNI) (96-115, 04-36). Indeed, it is only reasonable to conclude that wireless interests as well as wireline interests benefit from Commission expenditures as those dockets are developed and adjudicated. Therefore, it is clear that Commission allocations can no longer be parsed solely along historic industry (and Bureaucratic) lines.

The convergence of consumer expectations and technological applications has been already recognized, for example, in the Commission’s approach to IP-enabled

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<sup>7</sup> 47 USC § 159(a)(1), (b)(1)(A).

<sup>8</sup> 47 USC § 159(b)(3).

services. By imposing enhanced-911 (E911) and Universal Service Fund (USF) requirements on interconnected VoIP providers, the Commission has indicated that it will consider more than solely the technological basis upon which a service is delivered. When applying E911 requirements to interconnected VoIP providers, the Commission based its decision on the fact that “consumers expect that VoIP services that are interconnected with the PSTN will function in some ways like a ‘regular telephone’ service.”<sup>9</sup> In similar vein, the Commission has considered fiscal impacts when reacting flexibly to changing market conditions. When adding interconnected VoIP providers to the group of providers required to contribute to the USF, the Commission stated:

As described above, the number of VoIP subscribers in the United States has grown significantly in recent years, and we expect that trend to continue. At the same time, the USF contribution base has been shrinking, and the contribution factor has risen considerably as a result. We therefore find that extending USF contribution obligations to providers of interconnected VoIP services is necessary at this time in order to respond to those growing pressures on the stability and sustainability of the Fund.<sup>10</sup>

Within the realm of regulatory fees, the Commission has also added VoIP providers to the group that is responsible to provide cost recovery for Commission functions related to interstate telecommunications services, specifically, interstate telecommunications

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<sup>9</sup> See *IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers: First Report and Order and Notice of Proposed Rulemaking*, WC Docket Nos. 04-36, 05-196, FCC 05-116, at para. 23 (2005) (VoIP E911 Order).

<sup>10</sup> *Universal Service Contribution Methodology* (WC Docket No. 06-122); *Federal-State Joint Board on Universal Service* (CC Docket No. 96-45); *1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms* (CC Docket No. 98-171); *Telecommunications Services for Individual with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990* (CC Docket No. 90-571); *Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size; Number Resource Optimization* (CC Docket No. 99-200); *Telephone Number Portability* (CC Docket No. 95-116); *Truth-in-Billing and Billing Format* (CC Docket No. 98-170); *IP-Enabled Services* (WC Docket No. 04-36); *Report and Order and Further Notice of Proposed Rulemaking*, FCC 06-94, at para. 34 (2006) (VoIP USF Order) (internal citations omitted).

service providers (ITSP).<sup>11</sup> In doing so, the Commission focused wisely on the essence of the service provided, and gathered providers of comparable services into one group.

ITTA recommends that the Commission extend this rational process by including wireless providers within the ITSP base.<sup>12</sup> Including wireless providers in the ITSP base is consistent with the Commission's goal of "ensur[ing] regulatory parity among providers of similar services" in a manner that "will minimize marketplace distortions arising from regulatory advantage."<sup>13</sup> The issue of regulatory fees should not be left outside that effort.

In 1995, ITSPs were assigned 40 percent of the total Commission revenue requirement. Cable television was charged with 25 percent of the budget, wireless with three percent, and other regulated industries, including broadcast radio and television, carried 32 percent of the \$116.4 million budget. In ensuing years, some revisions to the general allocations have been implemented: for 2008, it is proposed that ILECs and most other voice providers bear 47 percent of the budget, while 14 percent is ascribed to wireless.<sup>14</sup> While fee allocations between services have shifted slightly, costs borne by customers of these carriers have not changed in a directly proportional manner.

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<sup>11</sup> 2007 Fee Order at para. 11.

<sup>12</sup> Some combination of wireless and ITSP costs would necessarily be warranted. The Commission may also want to consider consolidating regulatory fees with multichannel video providers as well at some point in the future because of the growing competition and inter-relationship of regulatory activity between telecommunications and wireline video providers.

<sup>13</sup> *Telephone Number Requirements for IP-Enabled Service Providers; Local Number Portability Porting Interval and Validation Requirements; IP-Enabled Services; Telephone Number Portability; CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues; Final Regulatory Flexibility Analysis; Numbering Resource Optimization: Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking*, WC Docket Nos. 07-243, 07-244, 04-36, CC Docket Nos. 96-115, 99-200, FCC 07-188, 22 FCC Rcd 19531, at para. 1 (2007).

<sup>14</sup> Cable is assigned 17 percent, and other industries combined are charged with 23 percent of the proposed \$312.6 million in fee revenue collections. See *2008 Fee NPRM* at Attachment C.

The ITSP regulatory fee burden has increased from \$81,741,773 (1999) to \$146,771,000 (2008) (proposed); during the same period, interstate wireline revenue has fallen from approximately \$67.8 billion in 1999 to \$46.3 billion in 2008 (projected).<sup>15</sup> The result is that a declining revenue base is charged with shouldering a greater portion of the Commission's budget, resulting in a disproportionately increased burden on consumers of voice communications who fall within the category of ITSPs (ILECs, IXC, CLECs, VoIP, etc).

Over the same period, the wireless budget allocation grew from \$17,670,931 (1999) to \$43,350,000 (2008) (proposed), while CMRS subscribership grew from approximately 55.5 million in 1999 to approximately 255 million in 2008 (projected).<sup>16</sup> Accordingly, the relationship between wireless subscribers and the size of the Commission's regulatory fee imposed on them has been *inversely* proportional, with per-subscriber wireless charges decreasing from \$0.32 per unit in 1999 to \$0.17 for 2008 (proposed). Meanwhile, the revenues-based payment unit applied to ITSPs has nearly tripled as their declining revenue base is charged with shouldering an increased amount of Commission budget. The net effect is increasing regulatory disparity as providers of similar voice services (and their customers) assume dissimilar responsibility in bearing the Commission's regulatory costs.

Revision of the allocations would be consistent with principles of regulatory parity, and would recognize the broad distribution of benefits arising out of Commission

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<sup>15</sup> See 1999 Fee Order, Attachment C; 2008 Fee NPRM at Attachment C.

<sup>16</sup> See 2008 Fee NPRM at Attachment C.

activity; revision would be consistent with Section 159(b)(1)(A) of the statute,<sup>17</sup> and in concert with the spirit of the Act. Proportional benefits can no longer be parsed strictly along bureaucratic lines. The encompassing view of the statute accommodates the convergence of technology and regulatory actions intended to meet the demands of a dynamic marketplace. ITTA urges the Commission to craft its regulatory fee policies in a manner consistent with the holistic view expressed by the statute, and to join wireless providers with ITSPs for purposes of allocating responsibility for the Commission's budget.

Respectfully submitted,  
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<sup>17</sup> Specifically, charging the Commission to adjust the per-Bureau amounts by "tak[ing] into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities . . . and other factors that the Commission determines are necessary in the public interest."