

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

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In the Matter of)	
)	
Assessment and Collection of Regulatory Fees)	MD Docket No. 08-65
For Fiscal Year 2008)	RM-11312
)	

REPLY COMMENTS OF METROPCS COMMUNICATIONS, INC.

MetroPCS Communications, Inc. (“MetroPCS”),¹ by its attorneys, hereby respectfully submits its reply comments in the above-captioned proceeding concerning the assessment and collection of regulatory fees by the Commission.² MetroPCS supports fairness in the manner in which the Commission apportions regulatory fees among and between industry segments, supports a level playing field for all similarly situated carriers, and applauds the Commission for initiating a proceeding to assure that there is sufficient regulatory parity in light of industry changes. However, some of the alternatives the Commission is exploring, if adopted, would add needless complexity to the regulatory fee process, and also unfairly saddle one industry group with disproportionate fees, when a straightforward, easily implemented change will better accomplish the Commission’s goals. The Communications Act sets forth the core methodology to be used to set regulatory fees charged by the Commission: fees are to be derived “by determining the full-time equivalent number of employees [FTEs] performing” the activities

¹ For purposes of these Comments, the term “MetroPCS” refers to MetroPCS Communications, Inc. and all of its FCC-licensed subsidiaries.

² *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, MD Docket No. 08-65, Further Notice of Proposed Rulemaking, FCC 08-182 (rel. Aug. 8, 2008) (“*FNPRM*”).

whose costs are to be recovered “adjusted to take into account factors that are reasonably related to the benefits provided to the payer of the fee by the Commission’s activities.”³

Some parties, including the Independent Telephone & Telecommunications Alliance (“ITTA”) advocate a number of adjustments to the traditional FTE approach, claiming that the burden lately has not been properly shared. ITTA, however, is wrong on some issues and its proposals should not be adopted. The solution is not to abandon or radically revise the FTE approach, but rather to update the FTE estimates regularly so that they more accurately reflect regulatory costs imposed by different segments of the industry. Specifically, MetroPCS urges the Commission to reassess the FTEs on an annual basis to ensure that each fee-paying industry segment shoulders its fair share of the costs associated with the core bureau that regulates such entity. Having made that change, the Commission can then keep its current, per-subscriber regulatory fee collection methodology for wireless carriers. Since at this time the Commission has regulatory regimes for the wireline and wireless industries that are separate and distinct in many respects, there is no unfairness in maintaining differential intra-industry contribution methodologies. In support, the following is respectfully shown:

I. INTRODUCTION

MetroPCS is one of the fastest-growing facilities-based wireless telecommunications carriers in the United States and provides wireless broadband personal communications services (“PCS”) to approximately 4.8 million subscribers as of September 30, 2008 in a number of major metropolitan areas throughout the United States. MetroPCS targets a mass market that is largely underserved by traditional wireless carriers, with affordable, fixed-rate calling plans requiring no long-term contract, that are differentiated from the more expensive, complicated long-term plans

³ 47 U.S.C. § 159(b)(1)(A).

generally required by the large national wireless carriers. Many of MetroPCS' customers are completely new to wireless and many use their MetroPCS as their primary or sole telecommunications service meaning that MetroPCS is acting as a significant wireline substitute. In several recent Commission spectrum auctions, MetroPCS has acquired licenses in many geographic areas not previously served by the company. In these areas, MetroPCS is pursuing aggressive service implementation plans to put the new licenses to use promptly. In addition, MetroPCS is expanding its service in existing metropolitan areas, both by extending the geographic scope of coverage and by adding transmitting sites within currently served areas, thereby improving penetration and increasing system capacity. In all of the metropolitan areas it serves, MetroPCS is bringing robust competition to both wireless and wireline competitors.

Given its business plan which results in MetroPCS competing head-to-head with *both* wireless and wireline carriers, it is important to MetroPCS that regulatory fees be properly allocated between industry segments *and* within industry segments, and its comments in this proceeding are made with this goal in mind.

II. THE COMMISSION'S BASIC APPROACH TO ALLOCATING FEES REPRESENTS A FAIR AND REASONABLE ALLOCATION OF THE COSTS BUT THE FTE ESTIMATES NEED TO BE UPDATED REGULARLY

In the *FNPRM*, the Commission correctly notes that regulatory fee burdens have shifted over the years, and that there have been significant industry changes as well, and asks whether it should review and revise the entire regulatory fee process.⁴ While MetroPCS believes that the process can be improved, radical changes are unnecessary and unwise. There is a distinct regulatory benefit in maintaining consistency to the extent practicable in the fee process. Carriers have become used to the manner in which fees are calculated and paid and fundamental

⁴ *FNPRM* at ¶¶ 27-28.

changes in the approach will impose additional burdens on carriers who must then familiarize themselves with new processes. Unnecessary changes in regulatory processes which add complexity or change a familiar routine are particularly challenging for providers such as MetroPCS who provide lower cost services and must be vigilant in strictly controlling their costs and overhead. The familiar adage “if isn’t broken, don’t fix it” is aptly applied to Government regulations which, when changed, give rise to a whole host of compliance costs. Further, dramatic unexpected changes in the nature and extent of regulatory fees can interfere with rational business planning and interfere with a carrier’s effort to make prudent informed decisions when deciding whether to acquire additional licenses, expand into new geographic areas, or to change its rate plans.

There is though, one aspect of the fee assessment process that could be considered broken. At present the Commission is continuing to utilize FTE estimates based upon a 1994 assessment of full time employees devoted to each regulatory fee category.⁵ Given the significant number of regulatory and telecommunications market changes that have occurred since then, and the manners in which the FCC’s working units have been restructured,⁶ it is necessary and appropriate to revise and update the underlying FTE analysis upon which the allocations are based. Once this is done, the Commission should put in place a methodology for updating the FTE analysis regularly, ideally on an annual basis, so that fees remain apportioned according to a current breakdown of staff resources.

⁵ *Id.* at ¶ 27.

⁶ For example, in 1996, Congress enacted the Telecommunications Act of 1996, which completely upended existing regulatory roles and transformed the wireline and wireless industry. Further, since then, the Commission has removed some regulatory requirements, added new ones, and changed existing rules.

III. THE FURTHER CHANGES EXPLORED BY THE COMMISSION AND ADVOCATED BY ITTA ARE UNNECESSARY

The Commission seeks comment on whether it should harmonize the bases for allocating regulatory fees to wireless carriers and wireline carriers, since fees for the former are currently based on subscribers while fees for the latter are based on revenues.⁷ In addition, the Commission asks whether it would achieve better harmonization by including wireless providers in the category of Interstate Telecommunications Service Providers (“ITSPs”).⁸ The Commission also seeks comment on whether it should include interstate and international toll calls made from wireless handsets as international and interstate revenue for regulatory fee purposes.⁹

MetroPCS strongly supports the goal of a level playing field that causes every carrier to pay a fair share of regulatory fees regardless of the technology used. MetroPCS also supports imposing similar regulatory obligations on industries which operate under similar regulatory schemes.¹⁰ However, as noted above, the Commission’s current regulatory fee assessment mechanism using FTEs will meet that goal, particularly if the FTE baseline is reviewed and updated regularly. Once that goal is achieved, wireless and wireline carriers, for example, will pay an appropriate share of the total fees. At that point, the decision as to how fees will be apportioned within the industry segment should be decided principally based on comments from that segment, and not from outsiders. The wireless carriers, and their industry association, are best situated to determine whether wireless fees should be based on units in service or revenues.

⁷ *FNPRM* at ¶ 34.

⁸ *Id.* at ¶ 40.

⁹ *Id.* at ¶ 42-43.

¹⁰ *See, e.g., Ex parte* presentation of MetroPCS Communications, Inc. in CC Docket No. 01-92, WC Docket No. 99-68, and WC Docket No. 07-135 (filed Oct. 13, 2008).

And, as long as wireless carriers are paying their fair share *in toto*, it shouldn't matter to ITTA how the payments are apportioned among and between the wireless industry members.

The suggestion that the wireless and wireline apportionment mechanism need to be harmonized to create fairness is simply untrue. It is inappropriate to have industries that are subject to much different regulatory regimes pay equivalent fees when they use different amounts of Commission resources. For example, certain wireline companies continue to file tariffs and are subject to a whole host of regulatory requirements – *e.g.*, recordkeeping requirements (Part 42), reporting requirements (Part 43), extension and discontinuance of service requirements (Part 63) – that have no corollary in the wireless industry. It would be contrary to the statutory scheme governing fees to impose the same costs on wireless carriers when the cost of regulating the industry is different. If the industries have similar regulatory requirements, then presumably the burden would be similar and the regulatory fees would be similar, but that is not the case here.

The ITTA claim that wireless carriers are not paying their fair share of fees does not withstand scrutiny. For example, the Office of Managing Director recently estimated that the total annual cost of the Wireless Telecommunications Bureau (“WTB”), calculated on an FTE basis, is approximately \$12 million, exclusive of auction funding.¹¹ This amount represents approximately 14 percent of the cost of all bureaus, calculated on an FTE basis. Since wireless carriers, in the aggregate, paid nearly 17 percent of the regulatory fees collected by the Commission for FY 2008¹², “[a]ppportioning regulatory fees based on a current accounting of

¹¹ *The Office of Managing Director Releases Data to Assist Commenters on Issues Presented in Further Notice of Proposed Rulemaking Adopted on August 1, 2008*, MD Docket No. 08-65, Public Notice, DA 08-2033 (rel. Sept. 3, 2008) at 6.

¹² *Id.* at 7.

FTEs by Bureau”¹³ will ensure that wireless carriers continue to pay their fair share of regulatory fees.

MetroPCS vehemently disagrees with the assertion of ITTA that the Commission’s current mechanism for assessing regulatory fees on wireless carriers creates a “troubling” disparity between wireless carriers, on the one hand, and wireline carriers, on the other.¹⁴ At the outset, MetroPCS notes that wireline carriers have traditionally been subject to more intensive regulation while the wireless industry has been more lightly regulated based upon the fact that wireless was found to be highly competitive resulting in marketplace forces imposing a certain discipline on carriers. Even so, as noted above, the current share of regulatory fees paid by wireless carriers roughly corresponds to (and, in fact, slightly exceeds) the cost of the WTB as a percentage of the cost of all bureaus, calculated on an FTE basis. And, while the OMB attributes support costs to WTB that represent nearly \$73 million, these costs are exclusive of auction funding. Since \$85 million of the FCC’s budget comes from spectrum auction receipts and the bulk of such receipts relate to licenses acquired by wireless carriers, it is highly inaccurate to suggest that wireless carriers have not paid their fair share to support the activities of the Commission.¹⁵

ITTA also misses the mark when it suggests wireless interests benefit from Commission expenditures in so-called “wireline” dockets (*e.g.*, universal service, intercarrier compensation, CPNI, etc.) for which wireless carriers do not pay a portion of the regulatory costs. This is nonsense. MetroPCS has participated in these dockets and in doing so has met regularly with

¹³ Reply Comments of CTIA – The Wireless Association®, MD Docket No. 08-65, at 2.

¹⁴ Comments of ITTA at 8.

¹⁵ *See, e.g., Auction of Advanced Wireless Services Licenses Closes; Winning Bidders Announced for Auction No. 66*, Public Notice, DA 06-1882 (Sept. 20, 2006).

designated *wireless* bureau staff members who are taking an active role in the items. The simple fact is that the designation of a rulemaking as a wireless or non-wireless item by docket number does not dictate the staff that is actively involved in a matter. When wireless carriers have a significant stake in the outcome of an item, even an item without a WT Docket number, wireless bureau personnel are routinely involved. This means that a proper determination of FTEs will result in a fair apportionment of fees as between wireless and non-wireless industry segments, and the further step of including wireless carriers within the category of Interstate Telecommunications Service Providers (“ITSPs”) is not necessary.

It also is disingenuous for ITTA to push for a radical restructuring of the manner in which regulatory fees are assessed and paid by wireless carriers under the guise of “regulatory parity” when such parity has not yet been achieved in other important regulations. For example, ITTA members continue to benefit from an outdated and inequitable regime of intercarrier compensation under which wireless carriers frequently must pay access charges to wireline carriers that terminate their traffic, while wireless carriers generally are not able to collect access charges from the traffic they terminate.¹⁶ While the Commission has under consideration an order in the Unified Intercarrier Compensation proceeding¹⁷ that may address this inequity, MetroPCS understands that, even if a unified compensation scheme is adopted, there would be a significant transition period before historical differentials would be eliminated. ITTA appears to be in favor of a flash cut to parity only when the result would be to increase the fees paid by wireless carriers.

¹⁶ *Petitions of Sprint PCS and AT&T Corp for Declaratory Ruling Regarding CMRS Access Charges*, WTO Docket No. 01-316, Declaratory Ruling, 17 FCC Rcd. 13192 (2002), *aff’d sub nom AT&T Corp. v. FCC et al.*, 349 F.3d 692 (D.C. Cir. 2003).

¹⁷ *See Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685 (2005).

In sum, MetroPCS respectfully submits that the Commission’s current system of assessing and collecting regulatory fees does not require a major overhaul; simply apportioning the fees based on an up-to-date accounting of FTE costs by core bureau will suffice. The Commission itself has acknowledged that it has “experienced significant success and accuracy with a number-based approach for CMRS,” and CTIA correctly observes that this collection method is easier to administer, both for carriers and the Commission.¹⁸ For these reasons, MetroPCS opposes any changes to the current per-subscriber regulatory fee assessment methodology for wireless carriers, including any approach that would involve calculations of fees on certain categories of revenues or an *ad hoc* determination of FTE costs allocable to a particular docket. In the event that the Commission ultimately determines that wireless carriers should bear a higher relative share of regulatory fees in the interest of “harmonization,” MetroPCS respectfully requests that any such change be postponed until the Commission has placed wireless carriers on an equal regulatory footing with wireline carriers in all respects.

¹⁸ Reply Comments of CTIA at 4.

IV. CONCLUSION

The foregoing premises having been duly considered, MetroPCS respectfully requests that the Commission take actions in this proceeding consistent with these Comments.

Respectfully submitted,

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