Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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

REPLY COMMENTS OF
CTIA – THE WIRELESS ASSOCIATION®

CTIA – The Wireless Association® ("CTIA")[1] respectfully submits these reply comments in the above-captioned proceeding regarding the assessment and collection of regulatory fees.[2] CTIA has long advocated for a more equitable process by which the Commission could allocate regulatory fees.[3] In order to achieve this goal, the Commission should annually reassess the full-time employee equivalents ("FTEs") by core bureau to ensure that regulatory fees are representative of the work done by each core bureau on behalf of each communications sector. Additionally, the Commission should maintain its current, successful per-subscriber fee collection methodology for CMRS.

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[1] CTIA – The Wireless Association® is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization covers Commercial Mobile Radio Services ("CMRS") providers and manufacturers, including cellular, broadband PCS, ESMR, Advanced Wireless Service, as well as providers and manufacturers of wireless data services and products.

[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) ("Further Notice").

[3] Assessment and Collection of Regulatory Fees for Fiscal Year 2000, MD Docket No. 00-58, *Notice of Proposed Rulemaking*, 15 FCC Rcd 6533 (2000) ("Notice").

I. REASSESSING THE COMMISSION'S FTEs BY CORE BUREAU WILL EQUITABLY BALANCE THE REGULATORY BURDEN.

Section Nine of the Communications Act of 1934, as amended (the "Act"), expressly authorizes the Commission to annually "assess and collect regulatory fees to recover the costs of … enforcement activities, policy and rulemaking activities, user information services, and international activities."[4] The Commission may collect regulatory fees only in the amount expressly authorized by Congress[5] and must assess regulatory fees equitably to ensure regulatory parity for all communications providers.

In its Further Notice, the Commission "recognize[s] that the communications industry has changed considerably since we adopted our regulatory fee schedule in 1994."[6] In the wireless industry alone, subscribership has increased more than 1,250% since 1994. Recognizing changes to the market for communications, the Commission restructured its core bureaus in 2002 to better reflect market realities.[7] Reassessing the Commission's FTEs to better comport with Commission activity is similarly warranted.

The Commission's Office of the Managing Director ("OMD") already has rebalanced the core bureaus' FTEs by updating the data used to calculate the FTEs.[8] This new data accounts for the current number of FTEs and updates the Commission's

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[4] 47 U.S.C. § 159(a)(1).

[5] *See generally* 47 U.S.C. § 159.

[6] Further Notice at ¶ 27.

[7] In the Matter of Establishment of the Media Bureau, the Wireline Competition Bureau and the Consumer and Governmental Affairs Bureau Reorganization of the International Bureau And Other Organizational Changes, *Order*, 17 FCC Rcd 4672 (2002).

[8] *The Office of Managing Director Releases Data to Assist the Commenters on Issues Presented in the Further Notice of Proposed Rule Making Adopted on August 1, 2008*, MD Docket No. 08-65, Public Notice, DA 08-2033 (rel. Sept. 3, 2008) ("OMD Report").

total estimated costs associated with each of the core bureaus.[9] CTIA agrees with other commenters that the Commission should replace the FTE data derived in 1994 with those from the OMD Report, regardless of any changes the Commission may decide to implement in this proceeding.[10]

As the Commission has noted, "[r]egulatory fees cannot … be precisely recalibrated, on a service-by-service basis, to the actual costs of the Commission's regulatory activities for that service."[11] Apportioning regulatory fees based on a current accounting of FTEs by bureau will comport with the Act and ensure that the regulatory fee burden is borne by those for whom the work is done. The OMD Report provides calculations of the total costs borne by the core bureaus and estimated costs by bureaus and offices based on those FTE figures. These numbers better reflect the current regulatory fee landscape and will align those costs associated with each core bureau's work.

CTIA believes that bringing the Commission's FTE estimates in line with the current core bureau mission will appropriately apportion the regulatory burden in accord with the intent of Section Nine. CTIA disagrees with commenters, such as The Independent Telephone & Telecommunications Alliance ("ITTA"), who urge the Commission to adopt additional, complicated measures for determining regulatory fees. ITTA argues that the Commission should permit adjustments to regulatory fee categories

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[9] *Id*. at Attachments A, C.

[10] Comments of AT&T, MD Docket. No. 08-65 (filed Sept. 24, 2008), at 3; Comments of USTA, MD Docket. No 08-65, at 2-3.

[11] Further Notice at ¶ 29.

to accommodate issues that span multiple market segments.[12] ITTA erroneously suggests that both wireless and wireline contributors should shoulder the burden of portions of the Media Bureau's dockets. If the Commission finds any merit to this proposal, it will render the current system obsolete and FCC staff will have to calculate contributions on a subjective and issue-specific basis, which will frustrate an equitable solution. To the extent a bureau's mission changes, the Commission has the ability to restructure the core bureaus – as it did in 2002 – to address these changes in the market.[13] Proposals for adjusting costs between core bureaus based upon the purported effect of proposed and promulgated rules, however, will replace regulatory certainty with *ad hoc* budgeting.[14]

II. THE COMMISSION SHOULD NOT CHANGE ITS COLLECTION METHODOLOGY.

The Commission need not address collection methodology proposals now that OMD has reassessed the Commission's FTEs. The Commission should reject ITTA's proposal for wireless and wireline collections in the revenues-based Interstate Telecommunications Service Providers ("ITSP") category.[15] Any perceived inequities will be resolved by recalculating FTEs.

First, combining ITSP and CMRS collection would unduly burden wireless carriers with the costs of FTEs who regulate landline telephony. ITSP is a rate-regulated, legacy service that encompasses interexchange carriers, incumbent local exchange

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[12] Comments of The Independent Telephone & Telecommunications Alliance, MD Docket No. 08-65, at 10 (filed Sept. 25, 2008).

[13] *See supra* note 7.

[14] Over the course of a year, many of these cross-bureau issues can be expected to balance one another and thus minimize any lack of alignment.

[15] Comments of The Independent Telephone & Telecommunications Alliance at 6.

carriers and toll resellers. CMRS, by contrast, is a market-based service subject to competition. If the Commission consolidates these two services into one, it will negatively impact and disrupt the current classification system for wireless and wireline services to the detriment of wireless consumers. For example, in a combined ITSP/CMRS collection, CMRS subscribers would be paying regulatory fees to support FTEs who regulate wireline rates. Conversely, ITSPs would receive the benefit of the growing wireless sector without paying for one of the largest parts of the Wireless Telecommunications Bureau ("WTB"): auctions.[16]

Second, the Commission's numbers-based collection of regulatory fees remains the appropriate method of collection for CMRS. As the Commission observed in its Further Notice, the numbers-based collections approach used in the wireless industry has been a success.[17] This approach provides lower per-subscriber fees as subscribership grows and continues to support innovation in the wireless marketplace. A numbers-based approach is also simpler to administer than a revenues-based system. Were the Commission to adopt a revenues-based methodology, it would have to develop a complex set of administrative rules for disaggregating the "bundles" of wireless, wireline and cable service selected by many consumers, as well as accommodating prepaid and other innovative wireless rate plans. The Commission should continue to assess regulatory fees for CMRS using the more appropriate numbers-based approach.

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[16] The Commission should keep in mind that FTEs who work on auctions are paid for by auction revenue. Under 47 U.S.C. §309(j)(8)(b), "the salaries and expenses account of the Commission shall retain as an offsetting collection such sums as may be necessary from such proceeds for the costs of developing and implementing the program…."

[17] Further Notice at ¶ 41.

III. CONCLUSION

Since 1994, the Commission has continued to use the same FTE data to assess regulatory fees. OMD's supplemental report updates these figures and the Commission should incorporate this new data on FTEs in future regulatory fee assessments to ensure regulatory parity among all communications providers.[18] Reassessing FTE data satisfies Section Nine of the Act and eliminates the need for the Commission to adopt additional and complex mechanisms. The Commission should maintain its current collection methodology, including a numbers-based collection approach for CMRS. This approach will continue to protect consumers while providing an equitable regulatory fee collections system for all communications providers.

Respectfully submitted,

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[18] *See generally* OMD Report.