



INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE

June 4, 2009

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, NW  
Washington, DC 20554

**Re: Assessment and Collection of Regulatory Fees  
for Fiscal Year 2009  
MD Docket 09-65**

**Assessment and Collection of Regulatory Fees  
for Fiscal Year 2008  
MD Docket 08-65**

Dear Ms. Dortch:

ITTA hereby submits these comments in the above-captioned proceedings. 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 approximately 30 million customers in 44 states. ITTA members are affected by inequities in the current regulatory fees process, as wireline customers bear a disproportionately large share of Commission costs.<sup>1</sup>

The latest *Notice of Proposed Rulemaking* proposal “to retain the established methods and policies that the Commission has used to collect regulatory fees in the past . . .”<sup>2</sup> is contrary to sitting Commissioners’ support for reform. Indeed, every sitting Commissioner during the past year has voiced support for an overhaul of the regulatory fees process.

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<sup>1</sup> The disparities in fees paid by wireline customers is evident even when a single past year is considered. By way of example, the Commission budget increased 7.6% from 2006-2007, but the average regulatory fee attributable to a wireline customer increased by 18%. *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>2</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Assessment and Collection of Regulatory Fees for Fiscal Year 2008: Notice of Proposed Rulemaking*, MD Docket Nos. 09-65, 08-65, FCC 09-38, para. 6 (rel. May 14, 2009) (NPRM). Changes to the 2009 assessment and collections process include elimination of the regulatory fee categories for International Public Fixed Radio and International High Frequency Broadcast Stations (*Id.* at paras. 3-5) but not the broader reforms upon which the Commission sought comment last year (See, generally, *Assessment and Collection of Regulatory Fees for Fiscal Year 2008: Report and Order and Further Notice of Proposed Rulemaking*, MD Docket No. 08-65, RM-11312, FCC 08-182 (rel. Aug. 8, 2008) (2008 FNPRM)).

In a separate statement to the NPRM, Acting Chairman Michael J. Copps describes the need for a “long overdue, comprehensive review of the Commission’s regulatory fee framework . . . .”<sup>3</sup> This statement echoes one released last year, wherein then-Commissioner Copps announced

I am pleased that at long last we are initiating a broad-based review of our regulatory fee rules under Section 9 of the Communications Act. This is something I have called for repeatedly over the years. It is hard to believe that we are still assessing fees based on the communications marketplace as it existed in 1994. . . The world – and the way we regulate – has changed dramatically. It’s time for our regulatory fees to change as well.<sup>4</sup>

A year has passed, but without resolution; the need for change remains. The Commission has noted that the current allocation of regulatory fees into different categories, on the basis of associated technology, “is based on the Commission’s 1994 calculation of full time employees” (FTEs) assigned to each category, while “the communications industry has changed considerably” in the past 14 years.<sup>5</sup> Then-Commissioner Copps expressed incredulity, explaining, “It’s as if we regulated the record industry and still assessed fees based on the number of CDs sold in retail stores in 1994, before the advent of digital downloads.”<sup>6</sup>

Commissioner Robert M. McDowell has also called for reform. In a speech earlier this year, Commissioner McDowell predicted, “[o]ur recent notice of proposed rulemaking could lead to a day when we can be sure that we have a methodology that lowers regulatory fees and levies them in a more nondiscriminatory and competitively neutral manner.”<sup>7</sup> And, Commissioner Jonathan Adelstein last year stated that he has “issued a yearly call for the Commission to conduct a thorough review of our regulatory fees policies.”<sup>8</sup> This bi-partisan support is reinforced by industry interest in regulatory fee reform.<sup>9</sup>

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<sup>3</sup> NPRM, *supra* n.1, Statement of Acting Chairman Michael J. Copps.

<sup>4</sup> 2008 FNRPM, *supra* n.1, Statement of Commissioner Michael J. Copps.

<sup>5</sup> 2008 FNPRM at para. 27.

<sup>6</sup> 2008 FNPRM, Separate Statement of Commissioner Michael J. Copps.

<sup>7</sup> Remarks of Robert M. McDowell, Commissioner, Federal Communications Commission, before the Federal Communications Bar Association, Washington, DC (Feb. 2, 2009),

<sup>8</sup> 2008 FNRPM, Statement of Commissioner Jonathan Adelstein. Moreover, former Commissioner Deborah Taylor Tate, in a separate statement to the 2008 FNPRM, stated, “[a]s technologies changes and consumer move across services and platforms, the Commission should review how its regulatory fees have difference impacts on service providers and their consumers.” 2008 FNPRM, Statement of Commissioner Deborah Taylor Tate. And, former Chairman Kevin Martin stated, “[a]lthough the Commission has reorganized itself to keep pace with these technological and marketplace changes, our regulatory fee structure has remained static. We have not made any significant changes to the regulatory fee methodology in a decade. During that time, certain communications industries have been burdened with a greater share of the Commission’s regulatory fees while others have seen their share decrease. I question whether these relative burdens remain reasonable and equitable in light of the significant market changes since then.” 2008 FNRPM, Statement of Chairman Kevin J. Martin.

In the years since the regulatory fee regime was adopted, the Commission has modified its organizational structure to meet the changing marketplace: in 2002, the Commission retired the Common Carrier Bureau and replaced it with the Wireline Competition Bureau;<sup>10</sup> this followed a 1999 reorganization that created the Enforcement Bureau and the since-retired Consumer Information Bureau. But, while the Commission's internal organizational structure has evolved to conform to market developments, the regulatory fee structure, and its consequent impact on consumers, has not.

As described in ITTA's June 6, 2008, filing in Docket No. 08-65, while the Commission's overall budget increased by 81 percent from 1999 to 2008, the percentage of interstate telecommunications service provider (ITSP)<sup>11</sup> revenues used to support Commission activities nearly tripled.<sup>12</sup> The fee amount attributable to a wireless customer, meanwhile, decreased by 47 percent from 1999 to 2008.<sup>13</sup> In comments on the 2008 FNPRM, filed September 26, 2008, and attached hereto as Exhibit A, ITTA proposed a three-step process that would effectively and efficiently provide proper allocation of regulatory fee responsibility among industry participants:

**Step one:** Annually update FTE data used to assign fees.

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<sup>9</sup> In comments filed in Docket No. 08-65, numerous parties, including ITTA, supported fundamental revisions to the regulatory fees process. See, e.g., comments filed by: United States Telecom Association (citing over-assessment of carriers in the ITSP category (p.1)); Enterprise Wireless Alliance (seeking reform of PLMR fees structure); National Cable & Telecommunications Association (seeking reform of fees assessed on MVPD and voice providers); Verizon (seeking reform of fees imposed on video providers); AT&T (calling for, at minimum, an update of FTE data); and, American Association of Paging Carriers (seeking changes applicable to paging carriers) (all comments filed Sep. 26, 2008).

<sup>10</sup> "Federal Communications Commission's Common Carrier Bureau Reorganized Along Functional Lines," FCC News (Mar. 8, 2002).

<sup>11</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>12</sup> The Commission requires different categories of service providers to pay fees based on different types of "payment units." Customers of some industries are required to pay fees on a license basis, while others pay per subscriber (e.g., cable and CMRS). By contrast, ITSP customers pay fees based on their providers' specified revenues. The ITSP fee was \$0.00121 per applicable revenue dollar 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 fee for 2008 was \$0.00314. 2008 FNPRM, Attachment C.

<sup>13</sup> 1999 Fee Order; FNPRM. The wireless fee per subscriber decreased from \$0.32 to \$0.17 over this period.

**Step two:** Add wireless voice services to the revenue-based Interstate Telecommunications Service Provider fee category and assign both wireline and wireless costs to this category.

**Step three:** Enable adjustments for cross-over issues in which parties subject to one type of fee category participate in proceedings docketed beneath a Bureau that their fees do not support.

The proposal set forth by ITTA would be consistent with principles of regulatory parity, recognize the broad distribution of benefits arising out of Commission activity, and would be consistent with Section 159(b)(1)(A) of the Communications Act of 1934, as amended. Accordingly, ITTA urges the Commission to craft its regulatory fee policies in a manner consistent with ITTA's previously-filed comments.

Respectfully submitted,

s/ Joshua Seidemann  
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Attachment