

substantive reform. With a fee increase of \$0.00009 per dollar of interstate and international revenue over the previous year - from \$0.00342 in 2009⁵ to \$0.00351 in 2010⁶ - further delay of regulatory reform is no longer tenable, in light of the ponderous burden borne by carriers for whom international revenues comprise a significant proportion of total revenues. STi Prepaid urges the Commission to comprehensively reevaluate the disparate impact of its methodology on such carriers, towards a more equitable regulatory fee division amongst all carriers.

Deregulation, via the Communications Act of 1934, as amended (the “Act”),⁷ opened the interstate interexchange marketplace to a variety of entrants, increasing choice and driving down the price of communication.⁸ As the Commission’s long-standing mandate to promote competition has expanded, new entrants “follow[ed] multiple paths of entry as market conditions and access to capital permit[ted].”⁹ Many thrived by focusing on a particular type of

⁵ *Assessment and Collection of Regulatory Fees for Fiscal Year 2009*, Report and Order, 24 FCC Rcd 10301, 10322 (2009).

⁶ *NPRM* at Appendix A.

⁷ 47 U.S.C. § 151 *et seq.*

⁸ *Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, 11 FCC Rcd 3271, ¶ 3 (1995) (“Between 1979 and 1985, the Commission conducted the Competitive Carrier proceeding, in which it examined how its regulations should be adapted to reflect and promote the increasing competition in telecommunications markets. A major purpose of the Competitive Carrier rulemaking was to reduce or eliminate the application of economic regulation to new competitive entrants, since such entrants would improve market performance as rivals to AT & T and other incumbent, monopoly providers of telecommunications services and should not be viewed as potential monopolists requiring the same degree of economic regulation”); *Competition in the Interstate Interexchange Marketplace*, Report and Order, 6 FCC Rcd 5880, ¶ 8 (1991) (subsequent history omitted) (“In this decision, we affirm our tentative conclusion that the growth of competition in the business services segment of the long-distance marketplace warrants regulatory changes”); *Fiberline Network Communications, Limited Partnership; U.S. Fiberline Communications*, 6 FCC Rcd 1887, ¶ 2 (1991) (“In authorizations of new entrants over the past decade, the Commission has recognized that increased competition in international markets is beneficial. We find that the market will support additional carriers and that the added competition will be in the public interest”).

⁹ *Developing a Unified Inter-carrier Compensation Regime*, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685, ¶ 31 (2005) (“An approach that encourages the development of efficient competition is consistent with the goals of the 1996 Act, which was intended to both open markets to competitive entry and promote increased competition in telecommunications markets”); *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd 15499, ¶¶ 1, 12 (1996) (“*Local Competition Order*”) (“In the new regulatory regime, we and the states remove the outdated barriers that protect monopolies from competition and affirmatively promote efficient competition using tools forged by Congress”), *aff’d by AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999).

telecommunications offering or servicing a unique, unmet need. The prepaid calling industry, for example, experienced a 25.4 percent compounded annual growth rate from 1995 to 2002, chiefly through the provision of discrete, highly-discounted quantities of talk time to overseas destinations.¹⁰ Identifying and supplying classes of consumers with a strong need for affordable and consistent international communication begat success - prepaid calling sales of \$1.1 billion in 1996 grew to an estimated \$6.4 billion in 2008.¹¹

Despite the evident success of the Commission's pro-competitive philosophy in this regard,¹² the Commission's regulatory fee methodology retains its pre-1996 structure. As Commissioner Copps observed in 2008:

It is hard to believe that we are still assessing fees based on the communications marketplace as it existed in 1994. 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. The world--and the way we regulate-- has changed dramatically. It's time for our regulatory fees to change as well.¹³

Last year, Commissioner McDowell "recommend[ed] . . . a thorough operational, financial, and ethics audit of the Commission and its related entities."¹⁴ Per this proposed review,

it is crucially important that we examine the Commission's contracting process, as well as the processes relating to the collection and distribution of administrative and regulatory fees currently conducted exclusively by the Office of Managing

¹⁰ Earl Juanico, *Prepaid Calling Card Market: Future Outlook*, Ezine Articles, <http://ezinearticles.com/?Prepaid-Calling-Card-Market:-Future-Outlook&id=305241>; U.S. prepaid calling card industry to reach \$6.4 billion by 2008, ATLANTIC-ACM study reveals, 2.5G-3G (Feb. 2003), *available at* http://findarticles.com/p/articles/mi_hb6578/is_200302/ai_n25962894/.

¹¹ U.S. prepaid calling card industry to reach \$6.4 billion by 2008, ATLANTIC-ACM study reveals, 2.5G-3G (Feb. 2003), http://findarticles.com/p/articles/mi_hb6578/is_200302/ai_n25962894/.

¹² See, e.g., *Trends in Telephone Service*, Industry Analysis and Technology Division Wireline Competition Bureau, 2007 WL 439063, *8 (2007) ("International telecommunications has become an increasingly important segment of the telecommunications market. International telephone calling -- propelled by technological innovation, and increased international trade and travel -- has skyrocketed"); *2000 Biennial Regulatory Review – Policies and Procedures Concerning the International, Interexchange Marketplace, Report and Order*, 16 FCC Rcd 10647, ¶ 6 (2001) ("the Commission has worked diligently to further competition in the international exchange marketplace").

¹³ *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6388, 6471 (2008) (Statement of Commissioner Copps)

¹⁴ *Remarks of the Honorable Robert M. McDowell, Commissioner, Federal Communications Commission Before the Federal Communications Bar Association*, 2009 WL 248110, *2 (Feb. 2, 2009).

Director. . . . In the same vein, it is time to examine the Commission's assessment of fees. Regulatory fees are the primary means by which the Commission funds its operations. . . . Our methodology for collecting these fees may be imperfect, however. . . . Some have raised questions regarding how the fee burden is allocated. Our recent further 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.***¹⁵

STi Prepaid agrees with both of these statements. In light of “a rapidly-evolving communications marketplace,” it is incumbent upon the Commission “to look for ways to ensure that [its] regulatory fee methodologies continue to reflect the industries [it] regulate[s].”¹⁶

Regulatory fees are, at present, assessed in a fundamentally inequitable fashion. Microwave, General Mobile Radio Service, and Broadband Radio Service providers, for example, pay a fixed fee per license.¹⁷ Other regulatees, such as radio and television stations, are liable according to the size of the markets they serve and their prospective expansion plans, in the form of construction permits.¹⁸ Whilst the base fee multiplier may change from year to year, “regulatory fees . . . based on the size of a regulatee's communications operation as determined by its number of stations, subscribers, access lines, or antennas” are essentially “fixed” within a predictable range.¹⁹ Such assessments are also logical, in that larger license portfolios or increased market share necessarily beget increased monitoring and compliance efforts on the part of the Commission. In contrast, Interstate Telecommunications Service Providers (“ITSPs”) pay a fee according to each dollar of revenue generated, which is a far less constant metric. No definitive proof has been offered for the proposition that an increase in

¹⁵ *Id.* at *3 (emphasis added).

¹⁶ *Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15712, 15785 (2007) (Statement of Commissioner Copps).

¹⁷ *NPRM* at Appendix B.

¹⁸ *Id.*

¹⁹ *1994 Regulatory Fee Report and Order* ¶ 86.

revenue - a highly-variable, company-specific economic indicator - necessarily begets a concomitant need for enhanced regulation.²⁰

This regulatory fee classification disparity has engendered severe consequences amongst certain ITSPs. Competitive neutrality would suggest that internationally-focused carriers like STi Prepaid should be amenable to regulatory fees based on discrete possession of a Section 214 authorization.²¹ Instead, the present regulatory fee methodology makes such carriers amenable to regulatory fees based on their interstate revenues. In practice, carriers like STi Prepaid pay the fees themselves according to *both their interstate and international revenues*. Consequently, regulatory fees end up totaling a significant proportion of interstate revenues, placing these carriers at a competitive disadvantage.²² For carriers like STi Prepaid - whose revenues are derived almost entirely (97.4 percent) from international sources - this outcome is neither fair nor reasonable.

Indeed, international matters, according to the Commission's historic regulatory fee collection record²³ and its FY 2011 strategic goals,²⁴ warrant a comparatively minor emphasis.

²⁰ Basic economic theory suggests that number of customers, transaction value per customers, and number of transactions per customers can, collectively or independently, engender a compound effect on total revenue. While the "license" or "stations, subscribers, access lines, or antennas" method of allocating regulatory fees tracks total number of customers, the relationship between a higher-priced or frequently-used telecommunications product and the intensity of Commission regulatory efforts is opaque.

²¹ See 47 U.S.C. § 214.

²² See, e.g., *AT&T Corp. v. Pub. Util. Comm'n. of Texas*, 373 F.3d 641 (5th Cir. 2004) (Texas Public Utility Commission's practice of taxing revenues from both interstate and intrastate calls for the state universal service fund was inequitable and discriminatory because it placed multijurisdictional carriers at a competitive disadvantage within the state; fact that carrier could not show that the amount of the fee outweighed the revenues held not to defeat its claim of discrimination).

²³ See Federal Communications Commission, Fiscal Year 2010 Budget Estimates Submitted to Congress, 43 (May 2009) ("*FY 2010 Budget Estimate*"), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-290641A1.pdf (International Services constitute 7% of FY 2008 Regulatory Fees Actually Collected and 20% of FY 2008 Bureaus Total Cost, the smallest category in both analyses).

²⁴ See Federal Communications Commission, Fiscal Year 2010 Budget Estimates Submitted to Congress, 15 (Feb. 2010), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296111A1.pdf (International category constitutes 6% of FY 2011 Budget Request by Strategic Goals, the smallest category in this analysis).

They should not be permitted to take on a untoward significance in regulatory fee collection simply because a provider garners a substantial portion of its earnings from overseas calling destinations. Permitting such a result will unduly penalize such carriers and imperil one of the Commission's core FY 2010 goals - that of "promot[ing] competitive choices through compliance with existing rules for wireless, satellite, wireline voice, and data service providers, for domestic *and international services*."²⁵

Last year, the Commission revised its international submarine cable regulatory fee methodology "to calculate these regulatory fees on a per cable landing license basis -- with higher fees for larger international submarine cable systems and lower fees for smaller systems."²⁶ Borne of a "thoughtful, equitable proposal,"²⁷ this "new methodology allocates regulatory fees among service providers in an equitable and competitively neutral manner, without distinguishing between common carriers and non-common carriers and by assessing a flat per cable landing license fee for all international submarine cable systems based on size of the system."²⁸ As "[s]ubmarine cable revenue and capacity have grown significantly in recent years and are expected to expand dramatically in the near future," the Commission "agree[d] that revisions to the old regulatory fee rule [were] overdue."²⁹ It thus pursued the revisions based in part on a finding that they would be in the public interest - a key factor for regulatory fee amendments pursuant to Section 159 of the Act.³⁰

²⁵ *FY 2010 Budget Estimate* at 19 (emphasis added).

²⁶ MD Docket No. 08-65, *Commission Adopts Improved Regulatory Fee Methodology for International Submarine Cable Operators*, Public Notice (Mar. 24, 2009) ("*Submarine Cable Public Notice*").

²⁷ *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Second Report and Order, 24 FCC Rcd 4208, 4226 (2008) ("*Submarine Cable Report and Order*") (Statement of Commissioner McDowell).

²⁸ *Submarine Cable Public Notice*.

²⁹ *Submarine Cable Report and Order* ¶ 5.

³⁰ *See id.* at ¶¶ 3, 7-8; 47 U.S.C. § 159(b)(1)(A), (b)(3) (instructing Commission to "add, delete, or reclassify services in the Schedule to reflect additions, deletions, or changes in the nature of its services as a consequence of

The public interest, and the rapid growth of small, internationally-focused carriers like STi Prepaid, compels a similar treatment of the existing ITSP regulatory methodology. Under the Commission's regulatory fee requirements, automatic relief is available to a regulatee only in the form of a *de minimis* clause, by which a regulatee "whose total FY 2010 regulatory fee liability, including all categories of fees for which payment is due, is less than \$10 [is] exempted from payment of FY 2010 regulatory fees."³¹ This affords protection only to those telecommunications providers in the most perilous of positions - those that have experienced disastrous losses over the past year, for example, or are preparing to wind down business.³² In light of its long-standing interest in preserving and promoting a vibrant competitive telecommunications marketplace, and its encouragement of highly-specialized concerns like STi Prepaid through deregulatory efforts in the interstate and international interexchange marketplaces, the Commission must take immediate action to correct fundamental regulatory fee discrepancies affecting ITSPs.³³

Commission rulemaking proceedings or changes in law" per "factors that the Commission determines are necessary in the public interest").

³¹ *NPRM* ¶ 26. Regulatees may also apply for relief in instances "where imposition of the regulatory fee would be inequitable or would impinge on a regulatee's ability to serve the public," but cannot be assured of obtaining it. *Commission Addresses Issues Raised on Reconsideration of the FY 1994 Report and Order (MD Docket No. 94-19)*, Report No. DC 95-91 (1995).

³² A regulatee can, however, make a form request for waiver or reduction in regulatory fees "where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest." 47 C.F.R. § 1.1166. Generally, "the Commission "will grant a waiver only when the impact of the regulatory fee will affect a regulatee's ability to serve the public." *Implementation of Section 9 of the Communications Act*, Memorandum Opinion and Order, 10 FCC Rcd 12759, ¶ 13 (1995). Regulatees must accordingly "provide information such as a balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information." *Id.* This process is an arduous one, spanning many months and imposing significant costs upon the regulatee.

³³ *See, e.g., Low-Volume, Long Distance Users*, Notice of Inquiry, 15 FCC Rcd 6298, ¶ 11 (1999) ("The Commission's goal . . . is to bring all Americans the benefit of a robust and competitive communications marketplace" because "competition has created greater choice and value for many consumers"); *Federal-State Joint Board on Universal Service*, Recommended Decision, 12 FCC Rcd 87, ¶ 2 (1996) (noting goal of establishing rules that will enhance rather than distort competition consistent with the procompetitive goals of the Telecommunications Act of 1996, Pub. L. 104-104 (1996)).

STi Prepaid urges the Commission to expand the grounds for regulatory fee relief.

While fee burdens cannot be tied precisely to the level of burden a carrier or type of entity places on the Commission's resources,³⁴ the size and scope of a carrier's resources ought to be relevant in establishing the permissible scope of a regulatory fee assessment. Equitable considerations should be invoked in establishing a proportional regulatory fee division amongst entities that generate numerous, high-volume revenue streams and entities like prepaid calling providers that service a select customer base at low margins. The principle of competitive neutrality demands no less.³⁵

^{34/} *Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, Report and Order, MD Docket No. 04-73, FCC 04-146, ¶¶ 5-12 (rel. Jun. 24, 2004) (rejecting arguments that regulatory fees should be based on the costs for the level of Commission regulatory activity attributable to that service).

³⁵ *See, e.g., High-Cost Universal Service Support*, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6475, ¶ 126 (2008) (“As more service providers migrate to alternative networks that partially access the PSTN, continuing to assess universal service contributions based only on traffic that exclusively traverses the PSTN will not account for this migration; nor will it allow us to meet our principle of competitive neutrality”); *Federal-State Joint Board on Universal Service*, Further Notice of Proposed Rulemaking and Report and Order, 17 FCC Rcd 3752, ¶ 43 (2002) (“Even if private service providers are not connected to the PSTN, the Commission reasoned, these entities compete with common carriers to the extent that they provide telecommunications, and therefore should contribute based on the principle of competitive neutrality”); *Federal-State Joint Board on Universal Service*, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, ¶ 1 (2002) (“In addition, we seek to improve competitive neutrality among contributors by modifying the existing revenue-based methodology to require universal service contributions based on contributor-provided projections of collected end-user interstate and international telecommunications revenues, instead of historical gross-billed revenues”).

STi Prepaid is mindful of the need to recoup the “regulatory costs associated with the Commission’s enforcement, policy and rulemaking, user information, and international activities.”³⁶ The Commission’s collection policies, however, must be applied in an equitable fashion.

Respectfully submitted,

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³⁶ *NPRM* ¶ 1 (citing 47 U.S.C. § 159(a)).