

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Assessment and Collection of)
Regulatory Fees for Fiscal Year 2010) MD Docket No. 10-87
)

**COMMENTS OF
THE UNITED STATES TELECOM ASSOCIATION**

USTelecom submits these comments in response to the Commission’s Notice of Proposed Rulemaking with respect to the Assessment and Collection for Regulatory Fees for Fiscal Year 2010.¹ The Notice states that the Commission is assessing fees by the same methodology “adopted by the Commission in prior years.”² What the Notice does not say is that the Commission has been using this methodology since it first began to collect regulatory fees in 1994 and that the methodology fails to take account of the changes in the communications industry that have occurred in the intervening 16 years.

DISCUSSION

Currently, there are inequities in the proportion of fees paid by various segments of the industry. This distorts competition. More importantly, it harms consumers who ultimately bear the cost of an inequitable system that penalizes those who choose a communications platform from a provider which bears a disproportionate share of the regulatory fee burden.

¹ *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Notice of Proposed Rulemaking, MD Docket No. 10-87 (2010).

² *Id.* at ¶ 1.

Section 159 of the Communications Act authorizes the Commission to collect regulatory fees “to recover the costs of the following regulatory activities of the Commission: enforcement activities, policy and rulemaking activities, user information services, and international activities.”³ The statute mandates that the assessment of fees “be derived by determining the full-time equivalent number of employees performing [the regulatory activities enumerated above] 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....*”⁴ While the correlation between the regulatory activities being performed by full-time employees (FTEs) and the fees assessed need not be exact, the statute requires that the Commission ensure that they are “reasonable related” to the FCC’s current regulatory activities. FTEs’ activities respond to and reflect issues arising in *today’s* telecommunications market place, not the marketplace of 16 years ago.

In 2008, acknowledging that its regulatory fee methodology fails to take account of the changes in the market that had occurred in the (then) 14 years since the fee methodology was established, the Commission asked for comment on how to change it.⁵ More than 20 commenters responded to the NPRM, including USTelecom. The vast majority of commenters agreed that the Commission needs to reexamine and update its methodology to better align it with the Commission’s present-day regulatory activities.

Almost two years has passed since the FNPRM and the Commission has failed to reform its system. Instead, the Commission once again has put out a notice setting forth its proposed regulatory fees for the upcoming fiscal year, knowing that its methodology is outdated and inequitable. As Commissioner Copps said in 2008: It is hard to believe that we are still

³ 47 U.S.C. § 159(a)(1).

⁴ *Id.* at § 159(b)(1)(A) (emphasis added).

⁵ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Notice of Proposed Rulemaking and Order, 23 FCC Rcd 7987 (2008) (FY 2008 NPRM); see also *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*: Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd. 6388 (2008)(FNPRM).

assessing fees based on the communications marketplace as it existed in 1994.”⁶ USTelecom summarizes below its previous proposal to make the regulatory fee assessment process more equitable.

I. THE FEE SCHEDULE MUST BE REVISED TO REFLECT THE CURRENT COMMUNICATIONS MARKETPLACE

The Commission has acknowledged that its methodology is not based on regulatory activities in the current market place: “We recognize that the communications industry has changed considerably since we adopted our regulatory fee schedule in 1994. Services such as wireless, broadband, and voice over Internet protocol (VoIP) have exploded in growth in recent years.”⁷ As one result of these changes, the current fee calculation substantially over-assesses carriers in the Interstate Telecommunications Service Providers (ITSP) category. In 1994 wireless, cable and wireline platforms offered discrete services distinguishable in the minds of consumers. Today, providers using these different platforms are engaged in vigorous competition for customers for similar individual services as well as service bundles of voice, video and broadband. The Commission has been working to establish regulatory parity in order to ensure competitive neutrality and send the correct pricing signals to consumers choosing among the competing platforms. The same discipline should be applied to the regulatory fee process.

In light of the competition among platforms, Commission staff is now working on many more proceedings that affect all platform providers. For example, staff work on the general reforms proposed in the National Broadband Plan and the specific proceedings that the

⁶ FNPRM, Separate Statement of Commissioner Michael J. Copps. In the 2009 Fees Assessment Order, Acting Chairman Copps again emphasized that such reform was “long overdue” and committed to “press the Commission for action on this before we issue next year’s Notice of Proposed Rulemaking for FY 2010.” *See Assessment and Collection of Regulatory Fees for Fiscal Year 2009*, MD Docket No. 09-65, *Assessment and Collection of Regulatory Fees for Fiscal Year 2008* (2009), Statement of Acting Chairman Michael J. Copps.

⁷ *Id.* ¶ 3.

Commission is undertaking to implement these reforms, such as universal service and intercarrier compensation, affect all segments of the industry, and consequently involve staff of most bureaus and offices. The Commission must find a way to reflect the realities of its current regulatory activity in its regulatory fee assessments.

II. THE COMMISSION'S CALCULATION OF HOW FTES' TIME IS ALLOCATED SHOULD BE UPDATED TO REFLECT CURRENT FCC REGULATORY WORK

The Commission can begin to make progress towards greater equity by updating its calculation of full time employees (FTEs). Right now, as the Commission explained in the FNPRM, "The first step, allocating fees to fee categories, is based on the Commission's 1994 calculation of FTEs devoted to each regulatory fee category."⁸ Further, the Commission acknowledges: "The Commission itself has reorganized several time since 1994 to reflect industry changes."⁹ Creation of the Enforcement Bureau and the Public Safety and Homeland Security Bureau, for example, have moved FTEs and costs out of the core Wireline Competition Bureau into support bureaus that serve the providers regulated by all four core bureaus. Use of outdated FTE numbers predating those organizational and resource shifts ignores those significant changes.

III. UPDATED FTES ARE THE PROPER TOOL FOR ALLOCATION OF REGULATORY FEES

There is a close correlation between FTEs and the total cost of a bureau's operations.¹⁰ In 2008, the Wireline Competition Bureau had 21.35 percent of the FTEs in the four core bureaus¹¹ and 23 percent of the Commission's fiscal year 2008 costs,¹² including a portion of the

⁸ FNPRM ¶ 27.

⁹ *Id.*

¹⁰ See Attachment C to Public Notice released September 3, 2008, by the Office of the Managing Director, *Office of Managing Director Releases Data to Assist Commenters on Issues Presented in Further Notice of Proposed Rulemaking Adopted on August 1, 2008* (Attachment C)

¹¹ See Attachment C

indirect costs incurred by the Commission's support offices and support bureaus. At this same time, the fiscal year 2008 regulatory fee schedule allocated 46.82%, more than double the proportion of costs, to the wireline services (ITSP) category.¹³ Since FTEs account for more than 92 percent of the costs in the core bureaus, it is not unreasonable to, at a minimum, reform the fee allocation methodology so that FTEs are used as a basis for allocating regulatory fees among the various service providers regulated by each bureau.

IV. IT IS REASONABLE TO ALLOCATE SUPPORT-BUREAU COSTS TO CORE BUREAUS BASED ON EACH CORE BUREAU'S PROPORTION OF TOTAL CORE BUREAU FTEs

It is accurate to characterize each respective Commissioner's office, the Enforcement Bureau, the Consumer & Governmental Affairs Bureau, the Public Safety & Homeland Security Bureau, the Office of General Counsel, and similar Commission offices as "support bureaus." The support bureaus provide services to providers regulated by all four of the core bureaus. It is certainly reasonable to allocate support bureau costs to core bureaus based on each core bureau's proportion of total core bureau FTEs.

V. CONCLUSION

The methodology for determining regulatory fees must be data-driven. The statute requires that the fee each regulated entity pays bears a reasonable relationship to the level of Commission activity relating to the regulation of that particular industry segment. Use of updated FTEs along with allocating the costs of the support bureaus based on the proportion of FTEs assigned to each core bureau is a simple way of beginning to rectify this situation and bring the Commission's regulatory fee system closer to the mandates of the statute.

¹² See Attachment A to Public Notice released September 3, 2008, by the Office of the Managing Director, *Office of Managing Director Releases Data to Assist Commenters on Issues Presented in Further Notice of Proposed Rulemaking Adopted on August 1, 2008* (Attachment A)

¹³ The difference in the percentage of FTEs in Attachment C and the proportions shown in Attachment A are attributable to non-personnel expenses, which are approximately 7.25 percent of total expenses of the core bureaus.

The Commission began a process of regulatory fee reform in 2008. . In fairness to the regulated community and to the consumer who ultimately pays the fees assessed by the Commission, the Commission should tackle regulatory fee reform now. It is time for the FCC to “reboot” its regulatory fee assessment methodology.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION



By: _____

Jonathan Banks
Genie Barton
Its Attorneys

607 14th Street, NW, Suite 400
Washington, D.C. 20005
202-326-7300

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