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

In the Matter of	)	
	)	
Assessment and Collection of	)	MD Docket No. 12-116
Regulatory Fees for Fiscal Year 2012	)	

COMMENTS OF
THE UNITED STATES TELECOM ASSOCIATION

The Commission has recognized the need to reform its regulatory fee structure for several years, and in its most recent Notice of Proposed Rulemaking ("Notice"),[1] the agency goes a step further by committing to accomplish this goal via a two-phase proceeding that will be concluded in time for implementation of a reformed fee structure in FY 2013. USTelecom strongly supports the prompt initiation of these proceedings and their timely completion. The Commission should adopt a comprehensive approach toward reforming its regulatory fee structure, with reforms encompassing updates to the calculation of full-time employees ("FTEs") and proper allocation of the costs of the support bureaus.

I. THE ITSP INDUSTRY HAS UNDERGONE MASSIVE CHANGES SINCE THE COMMISSION ESTABLISHED ITS CURRENT REGULATORY FEE STRUCTURE

As recognized by Commission leaders and many commenters in prior years, and reiterated in the Notice with respect to the FY 2012 fee for Interstate Telecommunications Service Providers (ITSPs)[2], the 1994 system is no longer appropriate to assess regulatory fees on

[1] *Assessment and Collection of Regulatory Fees for 2012*, MD Docket No. 12-116, released May 4, 2012.
[2] *See* Notice at para. 11 (According to the Notice, the proposed 2012 fee for ITSPs "reflects the Commission's decision to limit the increase in ITSP regulatory fees given the continuing decrease in the revenue base upon which ITSP regulatory fees are calculated. In FY 2011, we stated that we would rebalance ITSP regulatory fees in the context of more fundamental regulatory fee reform, which we will address in the forthcoming Reform Proceedings. Because we limit the increase in ITSP regulatory fees in FY 2011, **and we expect that rebalancing ITSP fees will**

this industry segment. In 1994, separate platforms, such as wireless, cable and wireline, were associated with discrete services distinguishable in the minds of consumers. Today, all three platforms are capable of providing similar communications services and providers using those platforms are engaged in vigorous competition for customers for similar individual services as well as service bundles. The proceedings addressing universal service, low-income programs and intercarrier compensation are just the most recent examples of major issues that have drawn interest from all of these industry segments. It is critical that the Commission, in these proceedings and others, establish regulatory parity among the providers utilizing these platforms 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.

Marketplace developments are not reflected in assignment of regulatory fees. Noting one indicator of the need to update the fee regime, the Commission again acknowledged that the revenue base upon which the ITSP fee is calculated has been decreasing for several years.[3] In response, the Notice proposes to continue the limitation on the ITSP fee increase to 3.75% and assess a slightly higher fee across all other regulatory fee categories.[4] USTelecom supports the limitations in the ITSP fee increase to amounts less than those which the formula would otherwise impose and looks forward to the more substantial revision in the fee formula contemplated by the upcoming two-phase rulemaking.

Prompt Commission action to comprehensively reform the regulatory fee structure will restore a measure of parity to the system that has become increasingly disconnected from the

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reduce the regulatory fee allocation for the ITSP industry, we propose, as an interim measure, to assess FY 2012 ITSP regulatory fees at the same fee rate as in FY 2011 (.00375)." [emphasis added].

[3] *Id*.

[4] *Id*.

realities of the regulatory burdens borne by each segment of the communications industry since the inception of the regulatory fee system in 1994.

II. THE COMMISSION'S CALCULATION OF FTES SHOULD BE UPDATED AND USED TO ALLOCATE REGULATORY FEES

As a part of comprehensive reform, the Commission should make progress towards greater parity in the context of regulatory fees by updating its calculation of full-time employee equivalents (FTEs) and using these updated FTE counts to determine the appropriate amount of fees allocated to each regulatory fee category. Currently costs are allocated to regulatory fee categories on the basis of FTEs assigned to various fee categories in 1994. Proper compliance with the Act authorizing regulatory fees requires that these FTE counts be updated and used to reallocate regulatory fees among fee categories.

Section 9 of the Communications Act, which authorizes the collection of regulatory fees, requires that fees "be derived by determining the full-time equivalent number of employees" performing regulatory activities, "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…."[5] While the correlation between the regulatory activities being performed by 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. In other words, regulatory fees should have a rational relationship to FTEs' activities that respond to and reflect issues arising in *today's* telecommunications market place, not the marketplace of 16 years ago.

This rational relationship, however, does not exist under the current regulatory fee scheme. According to the latest numbers available (information released by the Commission in 2008), the Wireline Competition Bureau's FTEs comprise 21.35 percent of the total FTEs of the

[5] 47 U.S.C. 159(b)(1)(A).

four core bureaus.[6] These FTEs represent 23 percent of the Commission's fiscal year 2008 costs,[7] including a portion of the indirect costs incurred by the Commission's support offices and support bureaus. Yet the fiscal year 2008 regulatory fee schedule would allocate 46.82% of the Commission's fees to the wireline services (ITSP) category.[8] That is, payers of the wireline fees assume a percentage of the Commission's costs that is *more than twice* the WCB's actual proportion of the Commission's costs. Although the numbers forming the basis for this analysis are not the most recent, it is doubtful that their rough proportions have dramatically changed in the last three years. Since FTEs account for more than 92 percent of the costs in the core bureaus, it is not unreasonable, at a minimum, to update the FTEs as a part of reforming the fee allocation methodology to ensure equitable fee assessment among the various service providers regulated by each bureau.

Moreover, the Commission itself has reorganized several times since 1994 to reflect industry changes. Creation of the Enforcement Bureau and the Public Safety and Homeland Security Bureau, for example, has properly moved FTEs and enforcement and public safety costs out of the core Wireline Competition Bureau into the support bureaus for providers regulated by all four core bureaus. Use of outdated FTE numbers predating those organizational and resource shifts ignores these significant changes.

The support bureau costs instead should be allocated to core bureaus based on each core bureau's proportion of total core bureau FTEs. It is accurate to characterize each respective

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[6] 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")

[7] 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"). *See also* Attachment C (observing the close correlation between FTEs and the total cost of a bureau's operations).

[8] 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.

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.

III. CONCLUSION

The structure and methodology for determining regulatory fees should reflect the Commission's goal of ensuring regulatory parity and competitive neutrality among providers of similar services. Use of updated FTEs along with allocating the costs of the support bureaus based on the proportion of FTEs assigned to each core bureau accomplishes that goal. USTelecom looks forward to the Commission's prompt reform the schedule of regulatory fees to correct the current inequities so that going forward the level of Commission oversight of a regulatee is reasonably equivalent to its regulatory fee obligation.

Respectfully submitted,

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May 31, 2012