

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of
Procedures for Assessment and Collection of
Regulatory Fees;

MD Docket No. 12-201

Assessment and Collection of Regulatory Fees
for Fiscal Year 2008

MD Docket No. 08-65

COMMENTS OF AT&T INC.

AT&T Inc. (AT&T), on its own behalf and on behalf of its subsidiaries, files these comments in response to the Commission's Notice of Proposed Rulemaking issued in this docket.¹

AT&T applauds and supports the Commission's efforts to update its assessment of regulatory fees. As the *Notice* makes clear, the Commission is fully cognizant of the need to update the mechanism for assessing these fees and, in turn, for making the resulting assessment reasonably fair. Given the legal realities imposed on the Commission by Section 9 of the Act and the rapidly morphing landscape of the marketplace, the Commission's task will not be an easy one.

A. The Commission's Overarching Goals of Fairness, Administrability, and Sustainability are Appropriate and Should be Taken into Account When Assessing Regulatory Fees

In the *Notice*, the Commission has proposed adopting three overarching goals for its regulatory fee program: fairness, administrability, and sustainability.² AT&T generally supports the use of these goals in the Commission's consideration of its regulatory fee program. As is

¹ *Procedures for assessment and Collection of Regulatory Fees; Assessment and Collection of Regulatory Fees for Fiscal Year 2008, Notice of Proposed Rulemaking*, FCC 12-77 (rel. July 17, 2012) (*Notice*).

² *Id.* at ¶¶ 13-17.

usually the case, however, the problem lies with the real-world application of these goals to the facts.

Fairness is always the primary touchstone. Yet making a system fair for all is easier said than done, especially within the limitations imposed by Section 9 of the Act. Nevertheless, AT&T supports the Commission's stated goal that "the burdens of regulatory fees are [to be] borne in an equitable manner that does not distort the marketplace."³ The degree to which the Commission can within the constraints of Section 9 have regulatees who provide similar services over different technologies pay similar fees and, thereby, approach the goal articulated by Commissioner McDowell—a fee structure that levies fees in a nondiscriminatory and competitively neutral way—would be more fair than the existing system.⁴ AT&T urges the Commission to move in this direction.

The goal of having a fee structure that is *administrable* for both the Commission and for payors is less obvious than fairness but is an acceptable goal; however, the Commission should not sacrifice fairness in support of a marginally more administrable system. Having a degree of predictability and avoiding rapid shifts in fee rates, while a practical good, should not keep the Commission from updating the rates periodically and thereby ensuring fairness. Whereas frequent changes may be hard to manage, the failure to keep rates current with substantive changes in Commission operations due to changes in the regulatees' operations and services would undermine the primary goal of fairness.⁵

³ Notice ¶ 14.

⁴ Notice, Statement of Commissioner Robert M. McDowell.

⁵ Regulatory fees may not need adjustment because of a bureau's temporary focus on certain topics in the course of a year or so. But operational changes imposed on bureaus to address significant developments in the marketplace or in technologies could justify reassessment of the fees. At the same time, significant fee increases that are not justified by changes in the Commission's operations may also be inconsistent with considerations of fairness and equity. In this regard, the proposed significant increase in the percentage of fees allocated to the International Bureau would not appear to reflect any increase in the Commission's international activities since 1998, as there has been a substantial reduction in the International Bureau's regulation of the U.S. international market in this period.

Making regulatory fees *sustainable* might go a long way to address this tension between fairness and administrability. If in fact the Commission can fashion a methodology for regulatory fees that is “flexible enough to adapt to changes in technology and marketing that affect how [the Commission’s] regulatees do business,”⁶ then the goal of making them administrable would be doable. Without it, however, one goal might force the loss of the other. In the long run the Commission should err on the side of fairness.

B. The Commission Should Update its Allocation of Percentages Using Up-to-Date Full-Time Equivalent Number of Employees

The foundation of the Commission’s regulatory fee regime is the full-time equivalent number of employees (FTEs). FTEs are divided between direct and indirect. Direct FTEs are those Commission employees assigned to the four core bureaus—International, Media, Wireless, and Wireline. Commission employees whose work cannot be assigned to one of these bureaus’ designated fee categories are deemed indirect FTEs. The distribution of direct and indirect FTEs among the four core bureaus is the basis for divvying up the aggregate amount of regulatory fees to be collected; that is, based on the FTEs, each of the four core bureaus would have allocated to it a percentage of the regulatory fees to be collected to satisfy the amount appropriated by Congress for the applicable fiscal year, which in turn is divvied up by fee category to arrive at an expected revenue amount.⁷

Today, the allocation of FTEs is based on the Commission’s fiscal year 1998 data. AT&T has been urging the Commission to update its data to more accurately reflect the work being done by the four core bureaus today. In the *Notice*, the Commission shared its tentative recalculation of current FTE staffing levels.⁸ This tentative recalculation forms the basis for the Commission’s discussion of ways in which the regulatory fees might be reallocated among the four core bureaus and the various fee categories. Regardless of the methodology ultimately

⁶ *Notice* ¶ 16.

⁷ *Notice* ¶¶ 8 – 11.

⁸ *Id.* ¶

adopted by the Commission in an effort to meet its three overarching goals (*i.e.*, fairness, administrability, and sustainability), the starting point must be good, current data. AT&T supports the use of up-to-date fiscal year 2012 FTE data.⁹ Moreover, AT&T recommends that the Commission keep its fiscal year FTE data reasonably current. It may not be necessary to update the FTE data each fiscal year, but, given changes in the marketplace and in technology, it must be updated no less frequently than once every five years.¹⁰

C. The Commission Lacks Authority Under Section 9 to Include Broadband as a Fee Category.

Section 9 of the Act makes it clear that the aim of the regulatory fees scheme is to recover the costs of the “regulatory activities” of the Commission.¹¹ And Congress has repeatedly made clear that it wants the market to govern the Internet and that the Commission is not to extend its regulatory activities to it.¹² Yet, in the *Notice*, the Commission proposes to include “broadband” as a new regulatory fee category.¹³ Consequently, this proposal is very much at odds with the stated policy of the Congress and stands alone without any legal justification. Whether adjustments to existing regulatory fee categories could in fact make the assessment of these fees any more just remains to be seen—the proof of the pudding is in the tasting. But there is no justification in the Act for creating a broadband category in the schedule of regulatory fees.

⁹ See *Notice* ¶ 23.

¹⁰ Reasonable people may disagree about the frequency at which FTE data ought to be updated, but the 14 years since the last update is clearly unconscionable.

¹¹ 47 U.S.C. § 159(a)(1).

¹² 47 U.S.C. § 230(b)(2) (emphasis added) (It is the official policy of the United States “to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, *unfettered by Federal or State regulation.*”).

¹³ *Notice* ¶ 29.

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