

**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
)	

**REPLY COMMENTS OF
CTIA – THE WIRELESS ASSOCIATION®**

CTIA – The Wireless Association® (“CTIA”) submits these Reply Comments in response to the Federal Communications Commission’s (“Commission” or “FCC”) *Notice* seeking comment on proposals to reform the Commission’s assessment and collection of regulatory fees, pursuant to Section 9 of the Communications Act of 1934, as amended (the “Act”).¹ As discussed below, CTIA joins commenters in support of Commission reform of its regulatory fee program. In particular, CTIA urges the Commission to:

- Apportion regulatory fees based on a current accounting of full-time equivalent employees (“FTEs”) within each of the Media, International, Wireless Telecommunications, and Wireline Competition Bureaus (collectively, the “Core Bureaus”);
- Update its FTE data on a regular basis, preferably annually;
- Continue to refrain, for regulatory fee purposes, from counting FTEs funded by other revenues, for example, by auction proceeds; indeed, today, spectrum auction proceeds fund roughly 20 percent of the Commission’s annual budget, and it would be a mistake to double count auction-related FTEs by including them in the regulatory fee program;

¹ *Procedures for Assessment and Collection of Regulatory Fees*, Notice of Proposed Rulemaking, FCC 12-77, MD Docket Nos. 12-201, 08-65 (rel. July 17, 2012) (“*Notice*”).

- Reject suggestions to impose a higher percentage of regulatory fees on wireless licensees because of growth in the wireless marketplace or consideration of a new “broadband” category for regulatory fees; and
- Decline proposals to add broadband as a regulatory fee category.

CTIA’s members, who currently bear a sizable portion of the FCC’s administrative costs, have long supported a fair regulatory fees framework that meets the requirements of the Act.

Accordingly, CTIA commends the FCC for undertaking this rulemaking and urges the Commission to adopt rules in accordance with these comments.

I. CTIA COMMENDS THE FCC FOR ITS REVIEW OF REGULATORY FEES AND THE PROPOSAL TO USE A CURRENT ACCOUNTING OF FTES TO APPORTION REGULATORY FEES

CTIA joins commenters in support of the Commission’s comprehensive review of its regulatory fee mechanism, a review that CTIA has long called for.² The *Notice* is the first significant assessment of the program since its adoption nearly 20 years ago.³ The record developed in this proceeding demonstrates that all sectors of the communications industry, as well as the General Accountability Office, overwhelmingly support reform of the Commission’s regulatory fee program.⁴

² See, e.g., Comments of the Cellular Telecommunications Industry Association, MD Docket No. 00-58 (Apr. 24, 2000); Reply Comments of CTIA – The Wireless Association, MD Docket No. 08-65, RM-11312 (Oct. 27, 2008); Comments of CTIA – The Wireless Association, MD Docket No. 11-76 (June 2, 2011).

³ See *Notice* at ¶ 2.

⁴ See, e.g., Comments of United States Telecom Association (“USTelecom Comments”) at 2; Comments of National Association of Broadcasters Comments at 2; Comments of Satellite Industry Association at i; Comments of AT&T Inc. (“AT&T Comments”) at 1; Comments of Verizon and Verizon Wireless (“Verizon Comments”) at 1; Government Accountability Office, *Regulatory Fee Process Needs to be Updated*, GAO-12-686, at 36 (Aug. 2012) (“GAO Report”).

CTIA supports the Commission’s proposal to apportion regulatory fees based upon a *current* accounting of the number of FTEs in each of the Core Bureaus.⁵ For nearly 15 years, the Commission has divided regulatory fees among industry sectors based on its fiscal year 1998 calculation of FTEs.⁶ The Commission should update its FTE data at regular intervals.⁷ As CTIA noted back in 2008, an annual reassessment of FTEs would help ensure that the regulatory fee mechanism more accurately reflects the work conducted by Commission staff.

It is important to note, as the *Notice* recognizes, that the number of FTEs in each Core Bureau to be funded by regulatory fees does not – and should not – include FTEs funded by other revenues, for example, by auction proceeds.⁸ Section 309(j)(8)(B) of the Act directs the Commission to retain a portion of the revenues from spectrum auctions to cover the salaries and expenses associated with auctions.⁹ As the Commission has observed, “[t]hese funds cover the personnel and administrative costs required to plan and execute spectrum auctions; operational costs to manage installment payments and collections activities; development, implementation, and maintenance of all information technology systems necessary for Auctions operations...; and a proportional share of the general administrative costs of the Commission.”¹⁰ The Commission must continue to exclude FTEs funded by other revenues – whether by auction or Universal

⁵ See *Notice* at ¶ 19.

⁶ See *id.*; see also *GAO Report* at 7.

⁷ See, e.g., AT&T Comments at 4; Verizon Comments at 5; USTelecom Comments at 3-5; Comments of North American Submarine Cable Association (“NASCA Comments”) at 28-29; *GAO Report* at 36.

⁸ See *Notice* at ¶ 24 n.19.

⁹ 47 U.S.C. § 309(j)(8)(B).

¹⁰ Federal Communications Commission Fiscal Year 2013 Budget Estimates Submitted to Congress at 35 (Feb. 2012), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-312417A1.pdf.

Service Fund proceeds – from FTEs to be funded by regulatory fees or it will undermine the integrity of its budgeting and accounting process.

The Commission should retain its policy of allocating FTEs by Core Bureau and should not adopt its proposal to allocate 50 percent of the FTEs in the International Bureau proportionally to other Core Bureaus because certain work in the Strategic Analysis and Negotiations Division (“SAND”) involves services other than international services.¹¹ As the Commission noted, “[w]e believe that the regulatory fee system should be administrable, both for the Commission and for payors.”¹² Within any given bureau, functions can benefit a broad array of regulatees, and allocating International Bureau FTEs across other bureaus threatens the administrability of the regulatory fee program. As the Commission observes, “if in one year the Public Safety and Homeland Security Bureau handles rulemakings related to broadcasting, but in the following year focuses on wireless services, the resulting shift in FTE allocations could have a substantial impact on the size of regulatory fees, which could then shift significantly again the very next year.”¹³ The framework in which the FTEs of each Core Bureau are considered direct FTEs without exception serves as a reasonable and administratively practical approach to comply with Section 9 of the Act.

II. THE SUCCESS OF THE WIRELESS MARKETPLACE CANNOT JUSTIFY HIGHER REGULATORY FEES ON WIRELESS LICENSEES

Section 9(b) of the Act dictates that regulatory fees must be derived by determining the number of FTEs performing the activities enumerated in Section 9(a)(1) within the Core

¹¹ See Notice at ¶¶ 26-27.

¹² *Id.* at ¶ 15.

¹³ *Id.*

Bureaus.¹⁴ Thus, to calculate the amount of regulatory fees to be recovered from wireless regulatees, the only the relevant inquiry is how many FTEs work in the Wireless Telecommunications Bureau (excluding those FTEs covered by other revenues, *e.g.*, auction revenues).¹⁵ Any other factor, such as the growth of wireless subscribers and the success of the wireless industry, are irrelevant. Thus, the limited comments that seek to leverage the growth in the wireless sector to higher regulatory fees are misplaced.¹⁶

Moreover, the wireless industry contributes far in excess of regulatory fees to the Commission's annual budget. As noted above, Section 309(j)(8)(B) directs the Commission to retain auction revenues to support the administrative costs of the auction program – and auction revenues are used to cover roughly *20 percent* of the Commission's budget. Over the last several years, the Commission's appropriations language has capped the auction cost recovery program at \$85 million for use in an annual budget ranging between \$420-\$440 million.

Further, commercial wireless carriers already pay for the right to serve their customers – *i.e.*, through auction payments to acquire spectrum rights necessary to provide service to customers. No other group of Commission regulatees similarly pays for the right to provide service to customers.

¹⁴ 47 U.S.C. §§ 9(a)(1), 9(b).

¹⁵ Notably, the data set forth in the *Notice* reflects that the number of non-auction related FTEs working in the Wireless Telecommunications Bureau is lower than all of the other Core Bureaus. Specifically, according to the Commission, each of the Core Bureaus has the following number of direct FTEs, which excludes the direct FTEs that are funded by other revenues (*e.g.*, auction and universal service proceeds): International Bureau - 122 FTEs; Media Bureau - 183 FTEs; Wireline Competition Bureau - 154 FTEs; and Wireless Telecommunications Bureau - 97 FTEs. *See Notice* at ¶ 24.

¹⁶ *See* Joint Comments of International Carrier Coalition at 4; NASCA Comments at 2.

III. BROADBAND SERVICES SHOULD NOT BE ADDED TO THE COMMISSION'S REGULATORY FEE SCHEDULES

The record in this proceeding does not support the addition of broadband to the Commission's regulatory fee schedule – and for good reason.¹⁷ Assessing regulatory fees on broadband services would effectively double-tax and unduly burden wireless regulatees that provide broadband services. CMRS providers currently pay regulatory fees based upon the number of units/subscribers they have,¹⁸ which includes millions of subscribers that already receive wireless broadband services.¹⁹ If regulatory fees are assessed on broadband services, wireless operators and their customers would effectively be required to contribute twice for the same service. In contrast, regulatees that contribute based upon end user revenues contribute only once for broadband services. Such a result would be unfair, inequitable and discriminatory, and inconsistent with Section 9 of the Act. Moreover, whether the Commission has authority under Section 9 of the Act to include broadband as a fee category is questionable.²⁰

It also would be administratively challenging, if not impossible, to accurately assess regulatory fees on broadband services. The *Notice* acknowledges that the “practical difficulties” in “parsing out an employee’s time among all of the industry groups affected by his or her work would produce unpredictable annual changes in regulatory fees.”²¹ Broadband is a prime example of a service that cuts across multiple Core Bureaus and employees, and it would be

¹⁷ See *Notice* at ¶ 29; see also AT&T Comments at 4 (opposing adoption of a broadband category); Verizon Comments at 5 (same).

¹⁸ Similarly, providers using Broadband Radio Service (“BRS”) licenses pay regulatory fees on a per-license basis.

¹⁹ See Verizon Comments at 5 (noting that the FTEs “that would be involved in any permissible regulation of broadband services – which is quite limited – are already covered” by the Core Bureaus).

²⁰ See AT&T Comments at 4 (arguing that Commission lacks such authority).

²¹ *Notice* at ¶ 12.

extremely difficult to accurately determine which employees and actions relate to the regulation and oversight of broadband service.

IV. CONGRESS SHOULD ADDRESS THE DISPOSITION OF EXCESS REGULATORY FEES COLLECTED BY THE COMMISSION

According to the *GAO Report*, over the past ten years the Commission has over-collected on average two percent in regulatory fees, totaling approximately \$66 million in excess fees.²² The Commission cannot use those excess fees, however, without express appropriation by Congress. Accordingly, these funds currently sit in a separate account with the U.S. Department of Treasury. The *GAO Report* found that several other regulatory-fee funded agencies provide for a “true-up” mechanism under which “any excess fees collected are either applied as an adjustment to the next year’s fees or are refunded.”²³ CTIA agrees with the *GAO Report* that Congress should consider whether these excess fees should be appropriated for Commission use or otherwise address the disposition of these funds,²⁴ and urges the Commission to encourage Congressional action on this matter.

²² See *GAO Report* at 25.

²³ See *id.* at 34.

²⁴ See *id.* at 36.

V. CONCLUSION

The Commission should reform its policies and procedures for assessing and collecting regulatory fees consistent with the comments and recommendations herein.

Respectfully submitted,

CTIA – THE WIRELESS ASSOCIATION®

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October 23, 2012