

**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
THE UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTelecom)¹ respectfully submits these reply comments in response to comments filed pursuant to the Notice of Proposed Rulemaking (Notice) “In the Matter of Procedures for Assessment and Collection of Regulatory Fees and Assessment and Collection of Regulatory Fees for Fiscal Year 2008.”² Although some commenters take issue with the Commission’s particular proposals for reforming regulatory fees, and a few object to expediting such reform, none object to the premise that the current system is inadequate and outdated and needs to be overhauled.

On September 10, 2012, the United States Government Accountability Office (“GAO”) released a report entitled “Federal Communications Commission, Regulatory Fee Process Needs to Be Updated” (“GAO report”) making several recommendations consistent with those of

¹ USTelecom is the premier trade association representing service providers and suppliers for the telecommunications industry. USTelecom members provide a full array of services, including broadband, voice, data and video over wireline and wireless networks.

² See Notice of Proposed Rulemaking, In the Matter of Procedures for Assessment and Collection of Regulatory Fees (MD Docket No. 12-201) and Assessment and Collection of Regulatory Fees for Fiscal Year 2008 (MD Docket No. 08-65), released July 17, 2012.

USTelecom in the initial round of comments.³ The Commission should heed the calls of those entities that pay the fees and GAO and promptly reform its fee structure.

I. The Commission Should Strive to Reduce the Magnitude of its Fees

USTelecom supports the proposition advanced by Verizon and Verizon Wireless (Verizon), that a threshold issue is how to stem the continual rise in regulatory fees.⁴ Verizon properly exhorts the Commission to “focus on operating as efficiently as possible and work toward reducing the magnitude of the fees that are ultimately borne by consumers.”⁵ Verizon points out that “As more and more legacy regulations become unnecessary due to systemic changes in the marketplace, the Commission’s workload should be significantly reduced, particularly in oversight and enforcement functions.”⁶ The Commission should strive to end the consistent increases in regulatory fees and work to bring down the burden on consumers.

II. A Separate Fee Should Not be Assessed on Broadband Providers

USTelecom agrees with AT&T and Verizon that the Commission should refrain from assessing a separate fee on broadband providers.⁷ It is unnecessary, would add needless complexity, and is at odds with the stated policy of Congress that it wants the market to govern the Internet and that the Commission should not extend its regulatory activities to it.⁸

³ See “Federal Communications Commission, Regulatory Fee Process Needs to Be Updated” (GAO report) (GAO-12-686), (rel. September 10, 2012).

⁴ See comments of Verizon and Verizon Wireless at 1.

⁵ *Id.*

⁶ *Id.* at 3.

⁷ See Comments of AT&T at 4 and Verizon at 5.

⁸ 47 U.S.C. Sec. 230(b)(2) (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 regulations.”).

III. Regulatory Fee Reform Should be Promptly Completed and Implemented

A new fee structure should be fully implemented as soon as possible. ITSP fee payers have been over-assessed for more than a decade, and thus other categories of fee payers have been under-assessed for that same period. Several commenters pointed out the unfairness of the Commission's basing its regulatory fees are based on an FTE calculation last updated in 1998.⁹

The GAO report encourages the FCC to promptly address the age of the data used in assessing regulatory fees and observes that the "FCC's inaction in updating its FTE analysis is inconsistent with federal guidance on user fees."¹⁰ Verizon states that "A span of fifteen years is far too long to refresh this data. The Commission's inaction has likely caused numerous entities to overpay fees, while granting other entities a free (or reduced) ride."¹¹ AT&T states that "Regardless of the methodology ultimately 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."¹² The GAO report concludes that the Commission's decision not to update its data since fiscal year 1998 "has resulted in FCC not having FTE information that is timely, reliable, or comparable from year to year to guide its decisions on how to divide regulatory fees."¹³

⁹ *See Notice* at para. 8.

¹⁰ *See GAO Report* at page 16.

¹¹ *See comments of Verizon* at 5.

¹² *See comments of AT&T* at 3-4.

¹³ *Id* at page 17.

IV. Regulatory Fees Should be Adjusted Annually

Verizon and AT&T agree that regulatory fees should be adjusted periodically.¹⁴ Both the potential for significant changes in the FTEs assigned to core bureaus and the possibility of organizational changes that move functions out of the core bureaus militate for frequent updating of the regulatory fee allocation. As AT&T points out “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.”¹⁵

Regulatory fee adjustments should be no less frequent than annual to reflect changes in FTE counts and any changes to the Commission’s organizational structure. The Commission already has an annual proceeding in which it calculates and assesses regulatory fees, so all that would be required would be to include an allocation based on updated FTEs to that process. The dynamic nature of the communications industry and Commission organizational changes may be reflected in frequent reallocations of FTEs among the bureaus, necessitating an annual recalculation to ensure fairness among payer categories. The greater the frequency of Commission updates to reflect actual FTE reallocations, the less the chance of having large swings among categories, which could create hardships for payers seeing significant increases.

V. FTEs in the Core Bureaus Should be Allocated Directly to its Regulatees, and FTEs in the Non-Core Bureaus Should be Allocated Indirectly in the Same Percentage as a Core Bureau’s Direct FTE Percentage is to the Total Direct FTEs of All the Core Bureaus

USTelecom agrees with Verizon that the current cost-assignment methodology, based on the presumption that work of FTEs in the four core bureaus should not be treated differently depending on whether an employee is “directly” involved in a feeable activity or “indirectly”

¹⁴ See comments of AT&T at 4 and Verizon at 5.

¹⁵ See comments of AT&T at 2.

involved, as in a support capacity, should be continued.¹⁶ Such an approach is easy to administer and avoids the subjectivity inherent in evaluating the activities of a particular bureau to decide how the resources and associated costs related to a particular proceeding should be allocated among regulatees of that bureau and other bureaus. From the point of view of administrative simplicity and sustainability, this approach should prove to be fairest in the long run, contributing to the sustainability of the principles adopted pursuant to this *Notice*.

This approach should be applied to all bureaus. Several commenters express concern about the increase in the allocation of fees to International Bureau licensees¹⁷ but the existence of an increase does not necessarily mean that it is inappropriate. A material increase may simply reflect that the allocation of regulatory fees to such licensees was too low in prior years. The proposal in the Notice to reallocate 50 percent of the FTEs in the International Bureau to the other three core bureaus as “indirect” costs is arbitrary, unsupported by data or evidence.¹⁸ As noted by National Association of Broadcasters (“NAB”), the fact that the activities of the International Bureau may not be completely directed at the regulatees of the Bureau is not unique to the International Bureau; rather, it puts that Bureau and those regulatees in no different position than other bureaus and their regulatees.

VI. The FCC Should Ask Congress for Authority to Refund Past Excess Fees

USTelecom agrees with Verizon that the Commission should ask Congress for the authority to refund past excess fees.¹⁹ Congress should mandate that the FCC conform its

¹⁶ See comments of Verizon at 1.

¹⁷ See comments of Global VSAT Forum, International Carrier Coalition, North American Submarine Cable Association, American Movil, S.A.B. DE C.V., Telstra Incorporated and Australia-Japan Cable (Guam) Limited.

¹⁸ See comments of NAB at 3.

¹⁹ See comments of Verizon at 3.

processes to those of the other fee-collecting agencies examined by GAO and refund the over-collected fees.

As of fiscal year 2011, the FCC had deposited excess fee collections in the amount of approximately \$66 million into an account with the Dept. of Treasury.²⁰ According to the GAO report, officials at all five agencies it had examined with respect to their fee collection processes had adopted a form of annual adjustment or “true-up” mechanism, such that any excess fees collected are either applied as an adjustment to the next year’s fees or are refunded.²¹ The current account holding excess fees should be refunded to fee payers in proportion to their past payments – not any new allocation – since the lack of FTE updates has distorted the fee payments for the last decade.

VI. Conclusion

The payers of the ITSP fee have been shouldering a disproportionately large portion of FCC regulatory costs for more than a decade.²² The vast majority of commenters agree that should be no further delays in the Commission’s reform of its regulatory fee calculation process. A new process should be implemented for FY 2013 fee collections.

There should be no separate assessment on broadband providers. It would be unnecessary, add needless complexity, and be at odds with the stated policy of Congress that it wants the market to govern the Internet and that the Commission should not extend its regulatory activities to it.

²⁰ See Federal Communications Commission Fiscal Year 2013 Budget Estimates at page 32.

²¹ *Id* at page 34.

²² ITSP revenues peaked in 2000 at \$74.1 billion, are estimated by the Commission to be only \$39.5 billion in 2011, and presumably will be even less in 2012. But during those years, the ITSP customer’s share of the FCC’s costs has gone up, not down.

The fee calculation should be based on the current cost-assignment methodology, thereby avoiding the subjectivity inherent in evaluating the activities of a particular bureau to decide how the resources and associated costs related to a particular proceeding should be allocated among regulatees of that bureau and other bureaus. Further, it is not unreasonable to treat the FTE costs of the non-core bureaus as indirect costs of the core bureaus in the same percentage as that bureau's direct FTE percentage is to the total direct FTE costs of all the core bureaus.

Finally, the Commission should request authority from Congress to rebate and/or true-up collection of any excess fees. The current account holding excess fees should be refunded to fee payers in proportion to their past payments.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION



By: _____

David Cohen
Jonathan Banks

Its Attorneys

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

October 23, 2012