



November 14, 2012

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Procedures for Assessment and Collection of Regulatory Fees; Assessment and Collection of Regulatory Fees for Fiscal Year 2008, MD Docket Nos. 12-201, 08-65: Ex Parte Communication*

Dear Ms. Dortch:

The Independent Telephone & Telecommunications Alliance (“ITTA”) supports the Commission’s efforts to ensure that the regulatory fee process is guided by fairness, administrative ease, and sustainability.¹ Unfortunately, the Commission’s regulatory fee assessment system, which relies on obsolete fee categories and inconsistent methods for calculating payments among service providers, bears no relationship to today’s marketplace realities and has created a regulatory environment in which certain classes of service providers are placed at a competitive disadvantage because the fees they are assessed are not aligned with the costs of the Commission activities for which they are collected.

While some have expressed concern that overhauling a system that has been in place for more than a decade might create substantial shifts in regulatory fee burdens,² this does not provide a valid basis to continue with an antiquated approach that does not reflect the realities of a rapidly changing industry and the shift in Commission priorities over the past 13 years. Only when the Commission overhauls its regulatory fee process to ensure that fee collections from each category are more closely aligned to the actual costs to regulate the entities or services that

¹ *In the Matter of Procedures for Assessment and Collection of Regulatory Fees; Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Notice of Proposed Rulemaking, MD Docket Nos. 12-201, 08-65, (rel. July 17, 2012) (“*NPRM*”), at ¶¶ 14-16.

² See *NPRM* at ¶ 15; Government Accountability Office, “Regulatory Fee Process Needs to be Updated,” GAO 12-686 (Aug. 2012) (“*GAO Report*”), at 21-22.

fall within such categories will “the burdens of regulatory fees [be] borne in an equitable manner that does not distort the marketplace.”³

As ITTA has previously advocated, the FCC must ensure that its fees are applied in a competitively neutral manner that correlates to industry trends and the Commission’s workload.⁴ Wireline companies continue to bear the most significant burden in regulatory fees among industry sectors, yet they no longer require the same expenditure of Commission resources as they did in 1998 when the fee calculation rules were established. There is a huge disparity between fees paid by wireline and wireless carriers, in particular. For instance, “in fiscal year 2008, the wireless industry paid about 17 percent of the regulatory fees while the Wireless Telecommunications Bureau incurred about 27 percent of the FCC’s total costs. In contrast, the wireline industry paid about 47 percent of the total fees while the Wireline Competition Bureau incurred about 23 percent of the FCC’s total costs.”⁵

Indeed, wireline carriers have been over-assessed regulatory fees for more than a decade in comparison to the wireless sector.⁶ Between 1998 and 2011, the percentage of total regulatory fees the wireline industry was expected to pay declined by only 4 percent, from 48 to 44 percent of total fees, despite a significant decline in voice market share.⁷ In contrast, wireless industry subscribership grew 437 percent during this time period, yet the percentage of the total regulatory fees the wireless industry was expected to pay grew by only 5 percent – from 10 to 15 percent.⁸ This data underscores that the FCC’s division of fees among fee categories “do not correlate with industry trends and the FCC’s current workload.”⁹

The convergence of technology and consumer expectations, which has compelled different industry sectors to participate in and benefit from the adjudication of common

³ *NPRM* at ¶ 14. Moreover, the Commission should update its data on an annual basis to ensure that the fee process continues to reflect the Commission’s actual costs by industry sector as the industry continues to grow and evolve.

⁴ See Reply Comments of the Independent Telephone & Telecommunications Alliance, MD Docket No. 08-65 (filed June 6, 2008); Comments of the Independent Telephone & Telecommunications Alliance, MD Docket No. 08-65 (filed Sept. 25, 2008); Letter from Joshua Seidemann, ITTA, to Marlene H. Dortch, FCC, MD Docket No. 08-65 (filed July 17, 2008).

⁵ GAO Report at 14.

⁶ See Comments of the United States Telecom Association, MD Docket No. 12-201 (filed Sept. 17, 2012).

⁷ GAO Report at 12.

⁸ *Id.* at 13.

⁹ *Id.* at 14.

Commission proceedings, compounds these inequities. For example, the Commission's comprehensive reform of the Universal Service Fund and intercarrier compensation regimes, which occupied a significant portion of the Wireline Competition Bureau's workload in 2011, "affected virtually the entire communications and broadband industry, including wireless, cable, satellite and other regulated service providers."¹⁰ Yet, under the Commission's current regulatory fee structure, wireline providers must bear 100 percent of the costs associated with this tremendous effort.

The Commission's reliance on multiple methods for assessment of fees – based on revenues for wireline providers, subscribers for wireless providers, equipment for satellite providers, and so on – further undermines the transparency, efficiency, and fairness of the regulatory fee process. ITTA has proposed that the Commission assess all voice service providers on the basis of revenues to ensure that like services are treated in a similar, straightforward manner.¹¹ Because wireless carriers report their revenues to the Commission just like wireline carriers do, this approach would create no meaningful administrative burden. Rather, it would be an appropriate step toward recognizing the significant industry changes that have occurred over the past 13 years and simplify the system that is long overdue for reform.

Although fees generally should reflect the number of employees that perform regulatory activities in each Bureau, the Communications Act states that fees levied on regulated entities shall be adjusted to account for "factors that are reasonably related to the benefits provided to the payor of the fee... and other factors that the Commission determines are necessary to the public interest."¹² The Act further provides that the Commission can make changes to the fee schedule to "add, delete, or reclassify services" to account for "additions, deletions, or changes in the

¹⁰ Reply Comments of Frontier Communications, MD Docket Nos. 12-201, 08-65 (filed Oct. 23, 2012), at 4.

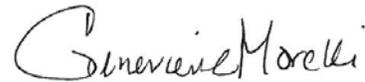
¹¹ See n. 5, *supra*.

¹² 47 U.S.C. § 159(a)(1), (b)(1)(A).

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nature of its services as a consequence of Commission rulemaking proceedings or changes in law.”¹³ Making the changes ITTA has proposed would be consistent with this statutory approach.

Sincerely,



Genevieve Morelli
President



Micah M. Caldwell
Vice President, Regulatory Affairs

¹³ 47 U.S.C. § 159(b)(3).