

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

In the Matter of)	
)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2013)	MD Docket No. 13-140
)	
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
THE UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTelecom)¹ is pleased to submit its comments in response to the Federal Communications Commission’s (Commission) Notice of Proposed Rulemaking (Notice).² The Commission seeks comment on the collection of regulatory fees in Fiscal Year (FY) 2013 and on proposals to more generally reform its policies and procedures for assessing and collecting regulatory fees.

It is well past the time for the Commission to implement a revised and equitable regulatory fee structure and USTelecom strongly opposes any recommendations to further delay,

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 and Further Notice of Proposed Rulemaking, *Procedures for Assessment and Collection of Regulatory Fees/Assessment and Collection of Regulatory Fees for Fiscal Year 2013/Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, FCC 13-74 (May 31, 2013) (*Notice*).

or even transition into, such an updated fee structure.³ For at least the past decade, the Commission's regulatory fee structure has failed to acknowledge the transformative changes in the communications industry. Despite the fact that Interstate Telecommunications Service Providers (ITSPs) – interexchange carriers, incumbent local exchange carriers (ILECs), toll resellers, and IXC service providers – have seen a steep and widely acknowledged decline in their traditional telephone service revenues, their regulatory fee obligations have remained unchanged. Commission inaction on changing the regulatory fee structure has resulted in an egregiously unfair and lengthy subsidization for other service providers borne exclusively by traditional wireline providers. The Commission should therefore promptly revise its regulatory fee structure to ensure greater equity for all stakeholders.

I. THE COMMISSION SHOULD IMMEDIATELY IMPLEMENT A REVISED AND EQUITABLE REGULATORY FEE STRUCTURE.

The need for reform to the Commission's regulatory fee structure has been acknowledged for at least a decade. As early as 2003, former Commission Michael J. Copps, expressed his concern that “the Commission still does not address when or how it should adjust the regulatory fees to take into account changes to the cost of regulating various services.”⁴

Since that statement by Commissioner Copps, the misallocation of regulatory fees has exacerbated. Over the past decade, consumers have been engaged in an accelerating shift away from traditional ITSP voice services regulated by the Wireline Bureau, to voice services that are

³ See e.g., *Notice*, ¶ 6 (suggesting the adoption of certain proposals for implementation “in FY 2014 and beyond.”); *id.*, ¶ 32 (proposing to maintain the allocation percentages now used for all fee categories in FY 2013); see also, *Id.*, ¶¶ 30 – 31 (proposing a transitional 7.5 percent cap on regulatory fees).

⁴ See, Concurring Statement of Commissioner Michael Copps, Report and Order, *Assessment and Collection of Regulatory Fees for Fiscal Year 2003*, 18 FCC Rcd. 15985, FCC 03-184 (released July 25, 2003) (available at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-03-184A2.pdf) (visited June 11, 2013) (*Copps 2003 Statement*).

either regulated by other core bureaus (such as the Wireless Bureau), or services that are not regulated (such as voice over Internet protocol (VoIP)).⁵

Despite this reality, voice services offered over these legacy networks continue to be subject to an inequitable and unjustifiable regulatory fee structure. Not only can such an imbalanced regulatory scheme no longer be justified, its continued enforcement by the Commission has significant negative public policy consequences.

As the number of consumers choosing to retain PSTN connectivity continues to decline – by more than ten percent a year, according to the Commission – the costs of these regulatory fees are spread across fewer and fewer consumers, proportionately increasing the burden on those consumers that remain on the legacy network. Over the last decade, USTelecom and others have emphasized the critical – and urgent – need to reform the Commission’s regulatory fee structure.

The Commission should therefore promptly implement a revised and equitable regulatory fee structure for collection of fiscal year 2013 fees and going forward. While the Notice seeks to ensure the fairness of any future fee increases on *other* payors of regulatory fees through proposed transitional measures and/or delayed adoption,⁶ such measures perpetuate the past inequities borne by Interstate Telecommunications Service Providers (ITSPs) over the last decade. No equity can result from the Commission’s softening the impact of any future regulatory fee increases for one group of payors, after those same fees have been subsidized by ITSPs for the last ten-plus years. Indeed, under the Commission’s proposed approach, ITSPs

⁵ See, United States Telecom Petition for Declaratory Ruling, *Petition of USTelecom for Declaratory Ruling that Incumbent Local Exchange Carriers are Non-Dominant in the Provision of Switched Access Services*, pp. 24 – 42, WC Docket No. 13-3 (filed Dec. 19, 2012); see also, Public Notice, *Wireline Competition Bureau Seeks Comment on United States Telecom Association Petition for Declaratory Ruling that Incumbent Local Exchange Carriers are Non-Dominant in the Provision of Switched Access Services*, DA 13-21 (released January 9, 2013).

⁶ See e.g., Notice, ¶¶ 30 – 31. For example, the Commission asks whether, absent its proposed 7.5 percent cap, increases for certain regulatory fee categories would still be fair. Notice, ¶ 31.

would continue to shoulder a regulatory fee burden that is grossly disproportionate to the Commission's expenditures on regulating ITSP services. Prompt Commission action to comprehensively and equitably reform its regulatory fee structure will restore a measure of parity to the system that has become increasingly disconnected from the realities of the regulatory burdens borne by each segment of the communications industry since the inception of the fee structure in 1994.

II. THERE IS NO NEED FOR THE COMMISSION TO IMPLEMENT A TRANSITIONAL 7.5 PERCENT CAP ON FEE RATE INCREASES.

The Commission should reject its proposal to implement a 7.5 percent cap on rate increases for FY 2013.⁷ While the Commission justifies such transitional measures in terms of protecting regulatees from “unexpected substantial increases,”⁸ they are inherently unfair to ITSP rate payors who have been subject to an unfair regulatory fee structure for at least the last decade. The Commission's proposal of a 7.5 percent cap is completely arbitrary, and it offers no logical basis for settling on this figure.

The Commission asserts that its proposed funding cap is necessary in order to “provide a reasonable transition to our new allocations,” and to prevent “unexpected, substantial increases which could severely impact the economic wellbeing of these licensees [regulatees].”⁹ It has been a matter of public record for at least the last decade that the Commission's regulatory fee structure has been grossly imbalanced and inequitably subsidized by ITSPs. Since at least 2003, former Commissioner Michael Copps has repeatedly emphasized the need for the Commission to adjust its regulatory fees to address the changes in the rapidly-evolving communications

⁷ *Id.*, ¶ 30.

⁸ *Id.*

⁹ *Id.*

marketplace.¹⁰ It is therefore difficult to comprehend how the Commission and international regulatees could reasonably argue that any such adjustments are “unexpected.”

Moreover, the Commission’s premise ignores the undisputed fact that for some time, ITSPs have been paying an inordinate share of regulatory fees. As laudable as its concern for the future economic wellbeing of one group of licensees may be, the Commission needs to more forcefully address the economic imbalance that has been shouldered by ITSPs for the past ten years.

The Commission’s suggestion that similar caps could be considered for “FY 2014 and beyond,”¹¹ should similarly be rejected. The proposal to impose a cap for an unspecified period suggests that the Commission lacks any specific end-game for its stated desire of ensuring a “reasonable transition,” that avoids “substantial increases” from being imposed on other regulatory fee payors.¹² But it is simply impossible for the Commission to have it both ways: providing a reasonable – and potentially indefinite – transition for some rate payors means other rate payors will continue to bear the burden of an imbalance regulatory fee structure.

¹⁰ *Copps 2003 Statement*; see also, Statement of Commissioner Michael Copps, Concurring, Report and Order and Order on Reconsideration, *Assessment and Collection of Regulatory Fees for Fiscal Year 2005*, 20 FCC Rcd 12259, FCC 05-137 (released July 7, 2005) (*2005 Regulatory Fees Order*); Statement of Commissioner Jonathan Adelstein Approving in Part, Concurring in Part, *2005 Regulatory Fees Order*; Statement of Commissioner Michael Copps, Concurring, Report and Order, *Assessment and Collection of Regulatory Fees for Fiscal Year 2006*, 21 FCC Rcd 8092, FCC 06-102 (*2006 Regulatory Fees Order*); Statement of Commissioner Jonathan Adelstein Approving in Part, Concurring in Part, *2006 Regulatory Fees Order*; Statement of Commissioner Michael J. Copps Approving in Part, Concurring in Part, Report and Order and Further Notice of Proposed Rulemaking, *Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, 22 FCC Rcd 15712, FCC 07-140 (*2007 Regulatory Fees Order*); Concurring Statement of Commissioner Jonathan Adelstein, *2007 Regulatory Fees Order*; Statement of Commissioner Michael Copps, Report and Order and Order, *Assessment and Collection of Regulatory Fees for Fiscal Year 2011*, 26 FCC Rcd 10812, FCC 11-114 (released July 22, 2011).

¹¹ *Notice*, ¶ 31.

¹² *Id.*, ¶ 30.

The unjustifiable subsidization by ITSPs for other regulatory fee payors that would result from instituting such measures for the FY 2013 fee collection would simply be exacerbated by extending them for subsequent periods. It is well past the time for the Commission to have instituted a fair and equitable regulatory fee structure, and given the longstanding inequities in the current regulatory fee structure, any proposed transitional periods would be indefensible.

III. THE COMMISSION SHOULD INCREASE – NOT DECREASE – THE REGULATORY FEE ALLOCATION ASSOCIATED WITH THE INTERNATIONAL BUREAU AS ORIGINALLY PROPOSED.

The Commission should reject its proposal to decrease the current full time equivalent (FTE) allocation for the International Bureau from 6.3 percent to 5.99 percent.¹³ Instead, the allocation of regulatory fees should be increased to 10.97 percent to reasonably reflect the core functions of the Bureau that are provided to international regulatees, per the Commission’s 2012 regulatory fee notice, which proposed an equitable allocation for International Bureau FTEs based on exactly this standard.¹⁴ After acknowledging an estimate that as much as one half of the International Bureau’s FTEs “work on matters covering services other than international services,” the Commission expressed a desire to ensure consistency with its goals of “fairness and sustainability” and proposed an alternative share of 10.97 percent, half of the International Bureau’s employment of 22 percent of the Commission’s direct FTEs.¹⁵ This reasonably reflects a division of the functions of the International Bureau into core and non-core areas.

To achieve a further reduction in the allocation of International Bureau FTEs allocated to international regulatees from that reasonable 10.97 percent to 5.9 percent, even below today’s

¹³ *Id.*, ¶¶ 17 – 19.

¹⁴ See, Notice of Proposed Rulemaking, *Procedures for Assessment and Collection of Regulatory Fees*, 27 FCC Rcd. 8458, FCC 12-77, ¶ 25 (released July 17, 2012) (*2012 Regulatory Fees Notice*).

¹⁵ *Id.*, ¶ 27.

allocation of 6.3 percent, the Commission bends over backwards by cherry-picking certain divisions from within the International Bureau and totally excluding them for regulatory fee purposes.¹⁶ Use of this methodology could be the top of a slippery slope, leading to analyzing the functions of each employee within each division, or even by having each employee assign hours or increments of hours to core and non-core functions. Clearly the benefits of such a system are outweighed by the costs and complexity. The Commission should adopt the reasonable proposal it made in its 2012 Regulatory Fee Notice, and allocate half the International Bureau's FTEs to core functions, and half to non-core functions.

IV. BROADBAND SERVICES SHOULD NOT BE SUBJECT TO THE COMMISSION'S REGULATORY FEE STRUCTURE.

Given the unregulated treatment of broadband services, the Commission should not subject it to the regulatory fee structure.¹⁷ Section 9 of the Act limits the Commission's regulatory fee program to the recovery of costs associated with its "regulatory activities,"¹⁸ and Congress has repeatedly made clear that the Commission is not to extend its regulatory activities to Internet services.¹⁹ Yet, in the Notice, the Commission proposes to include "broadband" as a new regulatory fee category. Such a proposal contradicts the stated policy of the Congress and lacks the necessary legal authority.

Moreover, the question of whether the Commission *could* regulate broadband services is separate from the question of whether it *should* impose regulatory fees on such services. As Verizon noted in its comments last year, such a fee is unnecessary and would add needless

¹⁶ Notice., ¶¶ 20 – 28.

¹⁷ *Id.*, ¶ 4; see also, Notice, ¶ 53, n. 106.

¹⁸ 47 U.S.C. § 159(a)(1).

¹⁹ 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.*").

complexity to the process. Specifically, Verizon noted that “the FTE employees that would be involved in any permissible regulation of broadband services – which is quite limited – are already covered by one or more of the core bureaus. Given the highly popular bundles of services that include broadband along with other Commission-regulated services like voice and video, the core bureaus receive significant funding from those providers that also offer broadband.”²⁰

USTelecom maintains that the Commission should most definitely *not* increase the costs of broadband deployment by imposing costly regulatory fees on broadband services. Such a move will only increase the already substantial costs associated with broadband deployment and further hamper broadband deployment efforts, particularly in rural areas. Indeed, the Commission in its Universal Service Reform Order acknowledged that despite its numerous actions to lower barriers to investment nationwide for costly-to-serve communities “private sector economics still do not add up.”²¹

V. THE COMMISSION SHOULD SEEK CONGRESSIONAL AUTHORITY TO REFUND THE \$83 MILLION IN EXCESS REGULATORY FEE COLLECTIONS.

The Commission should immediately seek Congressional authority to refund its current excess of \$83 million in regulatory fees to the appropriate parties. Alternatively, it should seek Congressional approval to apply these excess fees to proposed FY 2014 collections.

²⁰ See, Comments of Verizon and Verizon Wireless, *2012 Regulatory Fees Notice*, p. 5 (submitted September 17, 2012).

²¹ Report and Order and Further Notice of Proposed Rulemaking, *Connect America Fund*, ¶ 5, WC Docket No. 10-90 et al., 26 FCC Rcd 17663 (2011).

The Notice acknowledges that the Commission's implementation of FY 2013 regulatory fee collections will result in an excess of \$17 million collected in regulatory fees.²² This is on top of the \$66 million in excess fees that have already been collected by the Commission.²³ Any regulatory fees collected above what Commission was directed to collect in its annual appropriations are considered excess fees, and, since 2008, the Commission's annual appropriations have prohibited the use of any excess fees from the current year or previous years without an appropriation by Congress.²⁴ Given that the current \$83 million in excess fees equates to approximately 25 percent of proposed collections for FY 2013, it makes little sense for the Commission to permit these funds to remain dormant.

VI. CONCLUSION.

It is well past the time for the Commission to implement a revised and equitable regulatory fee structure and USTelecom strongly opposes any recommendations to further delay, or even transition into, such an updated fee structure. Prompt Commission action to comprehensively and equitably reform its regulatory fee structure will restore a measure of fairness to the system. The Commission should reject its proposal to implement a 7.5 percent

²² *Notice*, ¶ 5 (stating that the sequester effectuated by the Budget Control Act of 2011 reduces the agency's permitted FY 2013 salary and expenses expenditures by \$17M to \$322,844,000 (*See*, Budget Control Act of 2011, Pub. L. No. 112-15, §101, 125 Stat. 241 (2011) (amending § 251 of the Balanced Budget and Emergency Deficit Control Act of 1985, Pub. L. No. 99-177, 99 Stat. 1037 (2005)). However, that Act does not alter the congressional directive set out in the FY 2012 appropriation (and continued in effect in FY 2013 by virtue of the Further Continuing Appropriations Act, 2013) to collect \$339,844,000 in regulatory fees. *See* Financial Services and General Government Appropriations Act, 2012, Division C of Pub. Law 112-74, 125 Stat. 108-9 (2011); *see also*, Further Continuing Appropriations Act, 2013, Pub. L. 113-6, xxx Stat. xxx (2013) at Division F, § 1101(c)).

²³ United States Government Accountability Office Report, *Federal Communications Commission, Regulatory Fee Process Needs to Be Updated*, GAO 12-686, pp. 25 – 29 (August, 2012).

²⁴ *Id.*, p. 25.

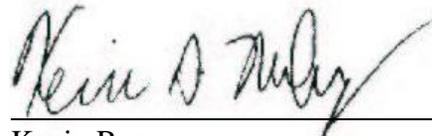
cap on rate increases for FY 2013, given that such transitional measures are inherently unfair to ITSP rate payors since they perpetuate the unfair regulatory fee structure that has been in place for at least the last decade.

The Commission can achieve a more equitable regulatory fee structure by allocating such fees to reflect the International Bureau's employment of 22 percent of the Commission's direct FTEs, and by immediately seeking Congressional authority to refund its current excess of \$83 million in regulatory fees to the appropriate parties. Finally, the Commission should not subject broadband services to the regulatory fee structure, given their unregulated nature.

Respectfully submitted,

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