

**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

REPLY COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®

CTIA – The Wireless Association® (“CTIA”)¹ respectfully submits these reply comments in response to the Federal Communications Commission’s (“Commission’s”) Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking² regarding changes to the existing regulatory fee mechanism.³ The record demonstrates that the NPRM’s proposals to subject wireless regulatees and their customers to the regulatory fee for interstate telecommunications service providers (“ITSPs”) and to reallocate certain full time equivalent employees (“FTEs”) are ill-advised and, if not rejected outright, at the very least should be subject to further scrutiny and greater transparency. As CTIA has shown, these proposals are

¹ CTIA – The Wireless Association® is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization covers Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, Advanced Wireless Service, 700 MHz, broadband PCS, and ESMR, as well as providers and manufacturers of wireless data services and products.

² *Assessment and Collection of Regulatory Fees for Fiscal Year 2013*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 13-74, MD Docket Nos. 13-140, 12-201, 08-65 (rel. May 23, 2013) (“NPRM”).

³ CTIA had prepared these reply comments in a timely fashion but inadvertently failed to file them by the reply comment date of June 26. CTIA requests that the following be accepted as late-filed reply comments.

inconsistent with Section 9 of the Communications Act, do not further the Commission’s purported policy objectives, and would subject wireless regulatees and their customers to significant increases – of 24 percent or more – in their annual regulatory fee burden. Moreover, the Commission should reject the Satellite Industry Association’s (“SIA”) suggestion to modify the methodology for allocating indirect FTE costs among regulatees.

I. THE RECORD REFLECTS SIGNIFICANT CONCERN OVER THE PROPOSAL TO IMPOSE THE ITSP REGULATORY FEE ON WIRELESS REGULATEES

Commenters have expressed grave concerns and have identified significant flaws in the proposal to include wireless regulatees in the ITSP regulatory fee category.⁴ As the Competitive Carriers Association (“CCA”) observed, the assumptions underlying this proposal are “inappropriate considerations for determining regulatory fee allocations.”⁵ In particular, industry growth is not a basis for setting regulatory fees under Section 9 of the Communications Act.⁶ Moreover, as CTIA demonstrated in its initial comments, claims that wireline regulatees are paying more than their fair share of regulatory fees fail to account for the fact that wireless regulatees contribute more to the Commission’s overall budget than ITSPs or any other group of regulatees.⁷ CCA correctly notes that wireless carriers are unique in that they must “purchase space from the federal government on which to deploy the infrastructure necessary to provide service,” and that spectrum auction revenues cover roughly 20 percent of the Commission’s budget.⁸

⁴ *See, e.g.*, AT&T Comments at 3.

⁵ CCA Comments at 4; *see also* CTIA Comments at 2-8.

⁶ CCA Comments at 5; CTIA Comments at 5-6; *see also* Critical Messaging Association Comments at 4. For the same reason, industry performance and the competitive nature of wireless sector is irrelevant to whether wireless regulatees would be adversely affected by a large shift in regulatory fees. *See* ITTA Comments at 6.

⁷ CTIA Comments at 3-5.

⁸ CCA Comments at 4.

AT&T observes that while wireless and ITSP categories “share some similarities and issues, it is equally true that they each have unique regulatory concerns, as well.”⁹ Among other things, wireline and wireless services are provided in very different ways, which translates into diverse regulatory policies and procedures that are overseen and addressed by two separate core bureaus.¹⁰ For example, whereas the Wireline Competition Bureau deals with matters like tariffing, pricing, accounting, and Section 251(b) obligations, the Wireless Telecommunications Bureau handles radio frequency and licensing regulations, hearing aid compatibility, tower siting and antenna regulations, and the like.¹¹

The concerns expressed by CTIA and others demonstrate that the proposal to subject wireless regulatees to ITSP fees is premature at best, especially for FY 2014.¹² There are a number of unanswered questions – among other things, the validity of the factual underpinnings of the proposal, the impact on regulatees, how the proposal would be implemented, and whether revenues would be the best method for calculating fees – all of which must first be fully vetted.

II. SIA’S SUGGESTION REGARDING SPECTRUM AUCTION REVENUES AND INDIRECT FTEs SHOULD BE REJECTED

SIA’s proposal that the Commission include the FTEs who are funded by spectrum auctions when calculating the percentage used for assigning indirect FTE costs to core bureaus is based upon the erroneous assumption that spectrum auction revenues do not cover general administrative costs such as support personnel.¹³ In fact, the Commission’s spectrum auction program has been designed to recoup from auction revenues all funds necessary to cover the

⁹ AT&T Comments at 3.

¹⁰ *See, e.g.*, AT&T Comments at 3; CTIA Comments at 8.

¹¹ *See, e.g.*, AT&T Comments at 3; CTIA Comments at 8.

¹² *See, e.g.*, AT&T Comments at 3; CCA Comments at 3-6; CTIA Comments at 6-10.

¹³ SIA Comments at 13-14.

costs to develop, implement and maintain the program and to cover a fair share of general administrative costs. Specifically, the auction revenues retained by the Commission 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, including development of a combinatorial bidding system; and a proportional share of the general administrative costs of the Commission based on the split of direct FTE hours charged to auctions in the previous year.*¹⁴

The existing methodology for calculating each core bureau's portion of general administrative costs already is administrable and fair. Therefore, SIA's proposal should be dismissed as it misreads the Commission's current and correct approach.

III. THE RECORD REFLECTS THAT THE COMMISSION'S PROPOSALS TO REALLOCATE FTES UNNECESSARILY CREATES COMPLEX ISSUES ACROSS BUREAUS

The record shows that the NPRM's proposal to reallocate the FTEs in certain core bureaus creates a tremendous amount of complexity and uncertainty regarding the calculation of regulatory fees across all bureaus.¹⁵ As USTelecom notes, for example, the Commission is "cherry-picking certain divisions from within the International Bureau and totally excluding them for regulatory fee purposes,"¹⁶ without identifying or applying a specific, uniform, and administrable standard.¹⁷ AT&T also highlights the difficulty in determining whether the Commission's proposal to reallocate the FTEs in the International Bureau actually results in a

¹⁴ See *Federal Communications Commission, Fiscal Year 2014 Budget Estimates Submitted to Congress*, 41 (Apr. 2013) (emphasis added).

¹⁵ See, e.g., CTIA Comments at 10-12; CCA Comments at 7; USTelecom Comments at 6-7; AT&T Comments at 2-3; NAB Comments at 3-5.

¹⁶ USTelecom Comments at 7.

¹⁷ CTIA Comments at 10-11.

more equitable distribution among regulatees.¹⁸ Moreover, the Commission seeks comment on reallocating FTEs in the Wireline Competition Bureau, but fails to provide data on why or how it would do so, or the impact of the reallocation on regulatees.¹⁹

Commenters agree that attempting to allocate FTEs of one core bureau across other bureaus threatens the administrability of the regulatory fee program. Indeed, to do so “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.”²⁰ As the Commission has previously acknowledged, subtle parsing of each employee within a bureau is unworkable, and any benefits of such a system are outweighed by the costs and complexity.²¹ Accordingly, the Commission should not reallocate the FTEs in the International or Wireline Competition Bureaus.

¹⁸ AT&T Comments at 2; *see also* CTIA Comments at 11.

¹⁹ CITA Comments at 12.

²⁰ USTelecom Comments at 7.

²¹ *Assessment and Collection of Regulatory Fees*, Notice of Proposed Rulemaking, 27 FCC Rcd 8458, 8465 (2012). *See also* USTelecom Comments at 7. For the same reason, the Commission should not give credence to the suggestion of Fireweed Communications that the regulatory fee mechanism should be modified because Media Bureau regulatees are somehow subsidizing wireless regulatees. Fireweed Communications Comments at 4.

IV. CONCLUSION

The Commission should ensure that any measures to reform the regulatory fee mechanism are consistent with comments and recommendations herein.

Respectfully submitted,

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