

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2014)	MD Docket No. 14-92
)	
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
)	

**REPLY COMMENTS OF THE
UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTelecom)¹ respectfully submits these reply comments in the above-captioned matter.² USTelecom endorses the suggestion included in the comments of Independent Telephone and Telecommunications Alliance (ITTA), Eastern Rural Telecom Association (ERTA) and Windstream that the Commission adjust its timeline for its annual regulatory fees proceeding to allow wireline carriers and other entities to account for regulatory fees when making annual tariff filings and other annual regulatory filing that are due July 1 each year.³ USTelecom continues to support the annual updating of the Commission’s Full Time Equivalent (FTE) data along with the annual updating of the regulatory fee schedule.

¹ USTelecom is the premier trade association representing service providers and suppliers for the telecom industry. Its diverse member base ranges from large publicly traded communications corporations to small companies and cooperatives – all providing advanced communications service to both urban and rural markets.

² *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2014; Assessment and Collection of Regulatory Fees for Fiscal Year 2013; Procedures for Assessment and Collection of Regulatory Fees*; MD Docket Nos. 14-92, 13-140, 12-201, Notice of Proposed Rulemaking and Second Further Notice of Proposed Rulemaking, FCC 14-88 (rel. June 13, 2014) (“*NPRM*” or “*FNPRM*,” as appropriate).

³ See Comments of ITTA – The Voice of Midsize Communications Companies, the Eastern Rural Telecom Association and the Windstream Corporation, pp. 13-14 (*Joint Comments*).

USTelecom also agrees with commenters that the proposal to reallocate Enforcement Bureau and Consumer and Governmental Affairs Bureau FTEs is insufficient supported, and that there needs to be additional clarity on the proposal to assess RespOrgs by impacting carriers that are already paying on toll-free revenues, most of whom are also RespOrgs.⁴ Finally, USTelecom renews its request, raised again by other commenters this year, that the Commission ask Congress for the authority to refund past excess fees and reduce the fee requirement in the amount of future excess fees in the fiscal year in which the excess fee collection is recognized.⁵

I. The Commission Should Adjust the Timeline for Its Regulatory Fees Proceeding to Coincide with Other Regulatory Obligations

The annual regulatory fee schedule should be issued no later than June 1 prior to the upcoming fiscal year beginning on October 1, but potentially even earlier to allow rate-of-return companies participating in the National Exchange Carrier Association, Inc. (NECA) pools to file information regarding their annual regulatory fee costs with NECA for inclusion in NECA tariffs. This change from the current August determination of the regulatory fee obligation would eliminate the need for providers to file mid-course corrections to previous submissions to reflect their annual regulatory fee assessment. The Commission would be spared the work of processing and reviewing such corrections. It would also provide the Commission additional time to engage in collection of regulatory fees prior to the beginning of the new fiscal year on October 1.

The minor acceleration in the schedule for determination of regulatory fees would place no additional burdens on the Commission. All of the information needed by the Commission to propose regulatory fees for the current fiscal year is available to it earlier in the calendar year. In

⁴ See Comments of AT&T at p. 1 and p. 5.

⁵ See Comments of CTIA at p. 13.

fact, the Commission would reduce its own regulatory burdens by not having to process mid-course corrections and by having additional time to collect fees. The Commission should adopt this schedule change for collection of the fiscal year 2015 regulatory fees.

II. FTE Data Should be Updated Annually

FTE counts should be adjusted annually to ensure that fair and appropriate regulatory fees are established with the most up to date information. This proposal received support from other commenters in the proceeding,⁶ and is consistent with recommendations from the Government Accountability Office (GAO).

The GAO encouraged the FCC to promptly address the age of the data used in assessing regulatory fees and explicitly stated that the “FCC’s inaction in updating its FTE analysis is inconsistent with federal guidance on user fees.”⁷ It noted that OMB Circular A-25 “directs agencies that have user fees to review the user fees biennially in order to assure, among other things, that existing charges are adjusted to reflect unanticipated changes in costs or market values.” The GAO report went on to say that “The fact that the Communications Act directs FCC to base its fees on FTEs does not negate the applicability of the guidance regarding the regularity with which the basis of the fees (*i.e.*, FTEs) should be reviewed.”⁸ The GAO report also noted that “according to federal financial-accounting standards, cost information should be reported in a timely manner and on a regular basis and should be reliable and useful in making decisions.”⁹ The GAO report concluded that the Commission’s decision not to update its data

⁶ *Joint Comments*, pp. 12 – 13.

⁷ United States Government Accountability Office Report, *Federal Communications Commission, Regulatory Fee Process Needs to Be Updated*, GAO 12-686, p. 16 (August, 2012).

⁸ *Id.*

⁹ *Id.*

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.”¹⁰

III. Regulatory Fees Should be Adjusted Annually

Regulatory fees should be adjusted annually to reflect changes in FTE counts and any changes to the Commission’s organizational structure. Such changes can be substantial and so they should be reflected in an updated fee factor as soon as practicable. While the GAO report notes that OMB Circular A-25 recommends biennial fee updates, the report also provides the example of another fee-funded federal agency, the Nuclear Regulatory Commission, which updates its cost analysis for its larger fee categories annually and its smaller fee categories biennially. However, the particularly dynamic nature of the communications industry may be reflected in more frequent reallocations of FTEs among the bureaus, necessitating an annual recalculation to ensure fairness among payer categories. It is not unreasonable to assume that as the USF/ICC Transformation Order is implemented, and legacy regulation of wireline telephony diminishes to reflect changes in technology and in the market for telecommunications, the proportion of FTEs allocated to the WCB will be reduced as well. ITSP payers should not be locked into what may be an unusually high level of Wireline Competition Bureau (WCB) employees, and thus a higher regulatory fee allocation, due to the current anomalous situation. 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.

¹⁰ *Id.*, p. 17.

IV. The Commission Should Not Reallocate Enforcement Bureau and Consumer & Governmental Affairs Bureau FTEs as Direct FTEs to the Wireline Competition Bureau, Wireless Telecommunications Bureau, and the Media Bureau

USTelecom agrees with AT&T and CTIA that the Commission has not justified reallocation of Enforcement Bureau (EB) and Consumer and Governmental Affairs Bureau (CGB) FTEs as direct FTEs to the WCB, the Wireless Telecommunications Bureau (WTC), and the Media Bureau (MB).¹¹ AT&T is correct that the role of the EB and CGB is to address *and* deter behavior that could result in violations or complaints. The Notice of Proposed Rulemaking (NPRM) provides no information that supports the assumption that the effort of these bureaus to deter problematic behavior is directly proportional to the number of complaints or violations addressed for each core bureau. One could actually speculate that the numbers work in reverse – the greater the efforts to deter bad behavior the less then number of violations or complaints. Regardless of which, if either, proposition is correct, AT&T draws the proper conclusion, that the work of these two bureaus is common to all of the core bureaus and that the proposed reallocation from the International Bureau to the other core bureaus is not sufficiently supported.¹²

V. It is Premature to Assess Regulatory Fees on RespOrgs for Each Managed Toll Free Number

AT&T argues that until the Commission can provide clarify the operation of its proposal to assess a fee on RespOrgs, it should not implement this policy.¹³ USTelecom agrees. It is fundamental to the regulatory fee system that the Commission should avoid assessing providers twice for the same service. This proposal runs the risk doing so by impacting carriers that are already paying on toll-free revenues, most of whom are also RespOrgs.

¹¹ See Comments of AT&T at pp. 1-2 and Comments of CTIA at pp. 10-12.

¹² *Id* at p. 2.

¹³ See Comments of AT&T at p. 5.

VI. The FCC Should Ask Congress for Authority to Refund Past Excess Fees and Reduce the Fee Requirement in the Amount of Future Excess Fees in the Year Following Their Collection

The Commission should ask Congress for the authority to refund past excess fees and reduce the fee requirement in the amount of future excess fees in the fiscal year in which the excess fee collection is recognized, which presumably would be the following fiscal year. As of fiscal year 2013, the FCC had deposited excess fee collections in the amount of approximately \$81.9 million into an account with the Department of Treasury.¹⁴ Those excess fee collections should be rebated to the payers in proportion to their payment. Given the overpayment of the ITSP category for the last decade due to the lack of use of updated FTEs, those same payers should be refunded the excess fee collections based on the same formula used for those years to ensure that the payments are properly and fairly allocated. However, in the future, with a reformed system that updates FTEs relatively frequently, it may be simpler for the agency to just reduce its revenue requirement in the year following any excess collection of fees. Such a process is necessary and equitable given the “FCC’s tendency to over collect rather than under collect regulatory fees over the past 10 years.”¹⁵ According to GAO, 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.¹⁶

VII. Conclusion

The Commission could achieve important administrative efficiencies by slightly adjusting the timeline for its annual regulatory fees proceeding to allow wireline carriers and

¹⁴ See *Notice*, ¶ 18, n. 35.

¹⁵ *Id.*

¹⁶ See “Federal Communications Commission, Regulatory Fee Process Needs to Be Updated” (GAO report) (GAO-12-686), (rel. September 10, 2012) at p. 34.

other entities to account for regulatory fees when making annual tariff filings and other annual regulatory filings. The Commission should also annually update both its FTE data along with its regulatory fee schedule. The proposal to reallocate EB and CGB FTEs is insufficiently supported, and there needs to be additional clarify on the proposal to assess RespOrgs which may impact carriers that are already paying on toll-free revenues, most of whom are also RespOrgs. Finally, USTelecom renews its request that the Commission ask Congress for the authority to refund past excess fees and reduce the fee requirement in the amount of future excess fees in the fiscal year in which the excess fee collection is recognized. Collectively, these changes would improve administrative efficiency for the Commission and carriers, while ensuring timely and fair application of regulatory fees.

Respectfully submitted,

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