

ACA’s argument is straightforward: if WCB employees are performing work for wireless service providers, then the Commission, consistent with the statute, should assess regulatory fees on these providers to reflect this work. This is a fact-based inquiry, and even if it may entail rigorous investigation and complex analysis and require the Commission to adopt a new method of assessment, the Commission must act as directed by the statute.

The Commission has already concluded that “there are certain rules (e.g. universal service), that wireless and wireline services benefit from and the Wireline Competition Bureau FTEs provide the oversight and regulation of the industry in these areas.”⁴ Therefore, the only matters at issue are accurately identifying the work these FTEs undertake for wireless providers and determining the proper methodology for the assessment. ACA believes there are multiple acceptable methodologies and urges the Commission to undertake its analysis and make a decision expeditiously. As ITTA states in its comments, because the Commission has refrained from acting, “providers and consumers of wireline voice service have borne a disproportionate regulatory fee burden relative to other industry sectors.”⁵

CTIA filed the only comments in opposition to the ITTA proposals.⁶ However, nowhere in its comments does CTIA argue that WCB FTEs are not performing work for wireless providers. Instead, CTIA engages in misdirection, avoiding the fundamental inquiry about whether WCB FTEs are actually performing in work for wireless providers and instead asking

⁴ See *FNPRM*, ¶ 33.

⁵ See Comments of ITTA – The Voice of Mid-Size Communications Companies, MD Docket No. 15-121 at 1 (Nov. 9, 2015).

⁶ See Comments of CTIA – The Wireless Association, MD Docket No. 15-121 (Nov. 9, 2015) (“CTIA Comments”).

the Commission to reject the ITTA proposals for specious reasons. ACA addresses CTIA's arguments below.

CTIA Argument: “The responsibilities and day-to-day work of FTEs in the WTB and WCB vary to a great degree and it would be nonsensical to combine them in one fee category.”⁷

ACA Response: As discussed above, the critical issue is whether WCB FTEs are performing work involving wireless providers – and not whether FTEs in some other bureau, including the Wireless Telecommunications Bureau (“WTB”), are engaged in activities involving wireless providers. It also does not matter if wireless providers are subject to additional regulatory oversight by the WTB or some other bureau. The Commission can (and does) assess multiple regulatory fees on providers of a single service.⁸ As for combining the wireless providers with wireline providers in one fee category to cover the work of the WCB FTEs that benefits wireless providers, that decision should be based on the extent to which WCB FTEs are performing work for both. After conducting such an evaluation, the Commission may adopt a single fee category, create a new subcategory of the ITSP fee category, or assign certain WCB FTEs to other fee categories as appropriate.

⁷ *Id.* at 3.

⁸ For instance, cable operators for the provision of cable service may pay both cable and IPTV provider regulatory fees per subscriber and CARS license fees.

CTIA Argument: “The fact that both wireline and wireless providers offer voice services is not a basis to subject CMRS providers to ITSP regulatory fees.”⁹

ACA Response: ACA agrees. The basis for assessing fees is whether WCB FTEs are engaged in activities that benefit wireless providers, not merely on whether they are providing voice service. Since they are, wireless providers should be assessed corresponding fees, either as part of the ITSP category or by some other methodology.

CTIA Argument: “Changes to the regulatory fee framework – through FTE reallocations or the modification or creation of fee categories – should not be based on individual Commission proceedings, such as those on Lifeline program reform or the special access marketplace.”¹⁰

ACA Response: The statute directs that the Commission should reflect “changes in the nature of services as a consequence of Commission rulemaking proceedings or changes in law.”¹¹ As set forth in ACA’s initial comments, WCB FTEs have more than met that standard regarding wireless providers, including for work undertaken benefitting them in regard to the Lifeline program, high-cost support, and pole attachments regulation.¹² While CTIA attempts, for instance, to diminish WCB oversight of wireless providers engaged with the Lifeline program, calling it an “individual proceeding,” WCB involvement is far more sweeping and systematic,

⁹ *Id.*

¹⁰ *Id.* at 4.

¹¹ 47 U.S.C. §159(b)(3).

¹² *See ACA Comments* at 5-7.

involving the adoption, implementation, and enforcement of Lifeline rules for a program where most of the support goes to wireless providers. This type of “non-individual proceeding” activity by the WCB occurs with respect to other laws and regulations, including pole attachments, intercarrier compensation, number portability, 911 access, and customer proprietary network information.

CTIA Argument: “WTB FTEs already participate significantly in ‘wireline’ proceedings, and the cost of these FTEs is appropriately covered by the regulatory fees paid by WTB regulates.”¹³

ACA Response: WTB FTEs may participate in wireline proceedings, but CTIA provides scant evidence to support the degree to which they are involved, *e.g.* do they play a major role versus just a supporting one. In contrast, ACA in its comments demonstrated, for instance in Lifeline activities, that WCB FTEs and not WTB FTEs dominated the Commission’s work.¹⁴ At the end of the day, this is the type of factual inquiry the Commission should undertake.

CTIA Argument: “The proposal to combine the wireless and wireline regulatory fee categories does not satisfy the statutory requirements set forth in Section 9 of the Act and cannot be adopted.”¹⁵

ACA Response: ACA disagrees. As ACA set forth in its initial comments, over the past 20 years, there are been a series of changes in law and regulation that have increased the level of

¹³ *CTIA Comments at 4.*

¹⁴ *See ACA Comments at 5-6.*

¹⁵ *CTIA Comments at 5.*

activity WCB FTEs are performing for wireless providers. While the exact degree of these activities may be unknown at the moment, the Commission can address that issue by analyzing these activities and assessing wireless providers for the work of these FTEs, including by combining or otherwise using existing fee categories or developing a new fee category or subcategory.

In closing, the Commission has more than sufficient evidence to act now to assess wireless providers for the work of WCB FTEs. Another notice or inquiry is not necessary and would only prolong the inequity that exists between fees paid by ITFS providers and wireless providers.

Respectfully submitted,



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