

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Assessment and Collection of Regulatory)	MD Docket No. 19-105
Fees for Fiscal Year 2019)	

COMMENTS OF CENTURYLINK¹

As the Commission observes in the Notice of Proposed Rulemaking, RAY BAUM’s Act directs the Commission to complete a regulatory fee rulemaking under revised section 9 of the Communications Act this year.² When it does, the Commission should adjust the fees applicable to international bearer circuits (IBCs) to better align the fees imposed with the statutory requirement that such fees be “related to the benefits provided to the payor of the fee by the Commission’s activities.”³ Specifically, for this year, the Commission should re-allocate the distribution of fees between submarine cables and other (i.e., terrestrial and satellite) IBCs, which has been set at 87.6% for submarine cables and 12.4% for terrestrial and satellite IBCs every year since 2009, a division that cannot be justified. Using the same methodology the Commission used to establish that division initially, the proper allocation to terrestrial and satellite IBCs would be 1.7%, with the remainder allocated to submarine cables. Adopting that revised allocation would still leave providers of terrestrial IBCs bearing an unjustifiably high proportion of the fees, but it would be a reasonable first step that the Commission can take this

¹ This filing is made on behalf of CenturyLink, Inc.’s regulated affiliates that pay regulatory fees.

² *Assessment and Collection of Regulatory Fees for Fiscal Year 2019*, MD Docket No. 19-105, Notice of Proposed Rulemaking, FCC 19-37, ¶ 2 (rel. May 8, 2019) (NPRM).

³ 47 U.S.C. § 159(d).

year. In future years, the Commission should consider additional reforms that will reduce the burden on terrestrial IBCs further, such as separating the fee for satellite IBCs from terrestrial IBCs, and dividing the fee burden on a basis that better reflects the benefits each type of provider receives from the Commission's activities.

Second, the Commission should adopt a tiered fee structure with two tiers for the terrestrial and satellite IBC fee category.

I. Each Year, the Commission Must Ensure that Fees Are Related to the Benefits Provided to the Payor of the Fee by the Commission's Activities.

In the Notice, the Commission observes that the framework set forth in revised section 9(d) "is closely aligned" to how the Commission set fees under the old framework.⁴ Accordingly, the Commission proposes to "hew closely to [its] prior annual process for adjusting and amending fee categories and the fee schedule," but it seeks comment on how the changes to the statute should impact how the Commission undertakes its task.⁵

Although many of the changes to section 9, such as eliminating references to bureaus that no longer exist, are not material to how the Commission sets fees, at least one change deserves attention, because it provides additional clarity regarding how the Commission should set fees. Prior section 9(b)(3) provided that

the Commission shall, by regulation, amend the Schedule of Regulatory Fees if the Commission determines that the Schedule requires amendment to comply with the requirements of paragraph (1)(A). In making such amendments, the Commission shall add, delete, or reclassify services in the Schedule to reflect additions, deletions, or changes in the nature of its services as a consequence of Commission rulemaking proceedings or changes in law.⁶

⁴ NPRM ¶ 8.

⁵ *Id.* ¶¶ 8-9.

⁶ *Id.* App. H (reproducing the prior version of the statute).

New section 9(d) provides that

the Commission shall by rule amend the schedule of regulatory fees established under this section if the Commission determines that the schedule requires amendment so that such fees reflect the full-time equivalent number of employees within the bureaus and offices of the Commission, adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities.⁷

Arguably, the old version of the statute could be read to suggest that the Commission should only "add, delete, or reclassify services" listed in the schedule if a rulemaking proceeding or other change in law occurred, and, conversely, if there were no rulemaking or other change in law, the Commission could not add or eliminate a fee. Regardless of the best reading of the prior statute, however, the revision clarifies that the Commission must always ensure that fees are reasonably related to the benefits provided to the payor of the fee by the Commission's activities; the Commission cannot decline to amend the schedule simply because there has been no change of law. The Commission should say so this year to provide clarity on this important point.

II. For 2019, the Commission Should Adjust the Allocation of Fees between Submarine Cable IBCs and Other IBCs Using Updated Data.

The Commission proposes that 12.4% of all fees for bearer circuits should be imposed on terrestrial and satellite IBCs, with the remaining 87.6% imposed on holders of submarine cable landing licenses.⁸ Such an allocation, which is little more than an accident of history, cannot be justified. Using more recent data and the same approach the Commission used to establish the 87.6%-12.4% split, the correct allocation for 2019 would be 98.3% for submarine cables and 1.7% for satellite and terrestrial IBCs, and the Commission should use that allocation for this year.

⁷ 47 U.S.C. § 159(d).

⁸ NPRM ¶ 44. The Commission proposes to collect 3.76% of International Bureau fees from providers of IBCs. *Id.* ¶ 14.

In advance of collecting fees for 2009, after years of requests for reform, the Commission revised its fee structure for IBCs. The Commission separated what had been a single fee category for all IBCs into two categories, one for submarine cables and one for satellite and terrestrial IBCs.⁹ The Commission divided the total fee amount that was to be collected from IBCs between those two categories in the now-familiar 87.6%-12.4% split, consistent with a proposal from submarine cable operators.¹⁰ As the Commission explained, this allocation was based on calculations of how much the various types of services would have paid in a single unified fee category, based on publicly available information about capacity.¹¹ In other words, the 87.6%-12.4% split was a best guess of how fees were being distributed as between the two categories, submarine and non-submarine bearer circuits, in 2008. In adopting that split for 2009, the Commission declared, “we will reexamine the allocation percentages described above on an annual basis.”¹²

The Commission has never adjusted the allocation percentages. Now, for the fees to be collected a decade after that allocation was first established, it is long past time for the Commission to make good on its promise to reexamine and re-allocate the fee burden.

⁹ See generally *Assessment and Collection of Regulatory Fees for Fiscal 2008*, MD Docket No. 08-65, et al., Second Report and Order, 24 FCC Rcd 4208 (2009) (*Submarine Cable Fee Order*).

¹⁰ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2009*, MD Docket No. 09-65, et al., Report and Order, 24 FCC Rcd 10301, 10304 ¶ 8 (2009) (*2009 Fee Order*).

¹¹ See *id.*; *Submarine Cable Fee Order*, 24 FCC Rcd at 4212 ¶ 6; Letter from Kent D. Bressie, Harris, Wiltshire & Grannis, to Marlene H. Dortch, Office of the Secretary, FCC, MD Docket No. 08-65, Attachment at 1 (filed Sept. 23, 2008).

¹² See *2009 Fee Order*, 24 FCC Rcd at 10304 ¶ 8.

The most recent publicly available information from the Commission indicates that available submarine cable capacity was 435,679.5 Gbps as of December 31, 2017.¹³ In contrast, the Commission anticipates that it will collect fees on 7,440 Gbps of capacity for satellite and terrestrial IBCs combined for 2019.¹⁴ In other words, using the same methodology that justified the 87.6%-12.4% split in 2008, the correct split for 2019 would be approximately 1.7% for satellite and terrestrial IBCs, and 98.3% for submarine cables.¹⁵ The Commission's proposed allocation of 12.4% thus over-assesses terrestrial and satellite IBCs by more than a multiple of seven based on the Commission's own reasoning. The Commission should adjust its fee allocation between submarine cables and non-submarine IBCs accordingly, to be 98.3%-1.7%, for this year.

For future years, the Commission should consider additional reforms to better ensure that the fees paid by providers of various IBCs are "related to the benefits provided to the payor of the fee by the Commission's activities."¹⁶ Specifically, the Commission should consider reforms that take into account that satellite providers of IBCs benefit from the Commission's activities to a much greater extent than suggested by a capacity-based division of the fee burden. For 2020, the Commission should consider splitting the satellite and terrestrial IBC fee category into two separate categories, and dividing fees among the various IBC fee categories in a manner better

¹³ See Federal Communications Commission, 2017 Circuit Capacity Data for U.S.-International Submarine Cables, Table 3, *available at* <https://www.fcc.gov/circuit-capacity-data-us-international-submarine-cables>.

¹⁴ NPRM App. A.

¹⁵ Because the submarine capacity data used in this calculation is from 2017, while the terrestrial and satellite capacity data is current, more recent data on submarine cable capacity would likely show, if anything, that satellite and terrestrial IBCs should bear a smaller portion of the total fee burden.

¹⁶ 47 U.S.C. § 159(d).

designed to reflect satellite's disproportionately greater benefits from the Commission's activities.

III. The Commission Should Adopt CenturyLink's Proposed Two-Tier System.

For terrestrial and satellite IBCs—and particularly for terrestrial IBCs, if the Commission were to separate them from satellite IBCs—a two-tiered structure such as CenturyLink has previously proposed is preferable to the current per-Gbps fee.¹⁷ Such an approach would provide better incentives to deploy services and would be competitively neutral not just as between providers of terrestrial IBCs, but also as between providers of terrestrial IBCs and those selling capacity to the same destinations on submarine cables. Additionally, a tiered approach, no matter how many tiers the Commission adopts, would dramatically reduce the likelihood that the Commission would over-collect fees if providers increase capacity more than the Commission anticipates in any given year.

Because providers with more IBC capacity neither impose substantially greater burdens on the Commission's International Bureau staff nor receive greater benefits from the Commission, a flat-fee approach is competitively neutral, while the use of two tiers would ensure that regulatory fees do not serve as a barrier to entry for smaller providers.¹⁸

Moreover, a flat-fee approach would promote competitive neutrality between submarine cable operators and providers of terrestrial IBCs. Submarine cable operators pay fees based on the capacity of the cable system whether that capacity is in use or not, and so there is no additional regulatory fee cost associated with the sale of a new service over a submarine cable. In

¹⁷ See Comments of CenturyLink, MD Docket No. 18-175, at 2-4 (filed June 21, 2018).

¹⁸ See *Submarine Cable Order*, 24 FCC Rcd at 4215 ¶ 18 (“We also agree that a lower fee for the smaller cable landing licensees would mitigate concerns that a flat fee may create a barrier to entry for new entrants.”).

contrast, under the Commission’s per-Gbps fee approach for terrestrial IBCs, there is an additional fee imposed by the Commission for each additional sale. In this way, the fee structure distorts the operation of the market for capacity between places that can potentially be served by either submarine cables or terrestrial IBCs, but there is no public policy purpose served by such competitive distortion.

Relatedly, because of the additional regulatory fee imposed on all new terrestrial IBC capacity, moving away from a capacity-based approach to a tier-based approach eliminates the disincentive to increase capacity and thereby improve service.¹⁹

In addition, the use of a tiered structure would minimize the risk that the Commission would over-collect regulatory fees for terrestrial IBCs. Under the current scheme, the Commission must set the per-Gbps fee before it knows how much capacity will actually be subject to fees—in other words, it must guess at how much in-service capacity changed over the course of the year. Using tiers would dramatically simplify the Commission’s task, as it would only need to predict how many providers would be in each tier.

In the Notice, the Commission expressed concern that a two-tiered system would result in substantially higher fees for smaller carriers that “do not appear to be reasonably related to the benefits provided to the payor of the fee[] by the Commission’s activities.”²⁰ That concern is unfounded.

Most fundamentally, for a category that includes both satellite and terrestrial transmission, capacity is a relatively poor proxy for the benefits a provider receives from the Commission’s activities, as satellite providers impose relatively greater burdens on, and receive

¹⁹ See *id.* at 4215 ¶ 17.

²⁰ NPRM ¶ 23 (citing 47 U.S.C. § 159(d) (alteration in original)).

relatively greater benefits from, the Commission's activities than the amount of IBC capacity they make available. For this reason, the appropriate reform, for future years, would be to separate the fees for those two services.

Setting aside that satellite providers have no justification for complaining about a two-tier fee structure that would put them in the lower tier, there is also no substantial basis for providers of terrestrial IBCs to object. For one thing, if the Commission were to update the allocation of fees between submarine cables and satellite and terrestrial IBCs, the total amount of fees collected from the latter category would be less than \$125,000 for the entire combined category. An analysis of the seven-tiered fee structure the Commission considers indicates that the Commission expects there are either 5 or 6 providers that will report total capacity in excess of 250 Gbps, and thus be placed in the top 4 tiers. If just those providers paid the entire \$125,000 fee, divided equally, while the remaining providers—including *all* satellite providers—paid nothing at all, then each provider would still pay less than the amount the Commission anticipates they would pay under its seven-tier structure.²¹

Moreover, because the amount providers of terrestrial IBCs benefit bears little relationship to the amount of capacity each sells, a two-tier structure in which the largest providers share the bulk of the fees while the smaller providers pay a nominal amount is also the most equitable way to collect fees. In addition, such a structure would also enable the Commission to reduce the burden on providers of terrestrial IBCs, who could simply pay the large-category fee without having to file a detailed report, and reduce the burden on Commission personnel of managing a fee-collection process that is more cumbersome than it is valuable.

²¹ Even if there were only 5 providers covering \$125,000, each provider's share would be \$25,000. Under the Commission's proposed seven-tier structure, providers in the top 4 tiers would pay at least \$45,000.

While CenturyLink believes a two-tier approach would be preferable, the most important change the Commission should make this year is to finally make good on its promise to update the allocation of fees as between the submarine cable and combined satellite and terrestrial IBC fee categories. Not only has the Commission committed to doing so, the statute requires it.

Respectfully submitted,

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