

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Assessment and Collection of Regulatory Fees)	MD Docket No. 16-166
for Fiscal Year 2016)	

COMMENTS OF THE SUBMARINE CABLE COALITION

The Submarine Cable Coalition (“Coalition”), composed of Cedar Cable Ltd., Columbus Networks USA, Inc., GlobeNet Cabos Submarinos America, Inc., GU Holdings Inc. and Servizio di Telecomunicazione di Aruba N.V. (“SETAR”), respectfully submits these comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Notice of Proposed Rulemaking (“NPRM”) addressing assessment and collection of regulatory fees for fiscal year 2016, released May 19, 2016, in the above-captioned docket.¹

I. INTRODUCTION AND SUMMARY

The Coalition members are a diverse group of submarine cable operators. In addition to meeting their own internal communications capacity needs, these companies may provide dark and lit fiber services, international traffic services, private line services, and enterprise services including MPLS and VPN.

- Cedar Cable, Ltd. is an affiliate of KeyTech Limited and is the facilities-based operator of the CB-1 cable system connecting the United States and Bermuda. The CB-1 cable system is used by Bermuda-based carriers and enterprise customers.
- Columbus Networks USA, Inc. operates the ARCOS-1 and CFX-1 submarine cable systems linking the United States and multiple countries in the Caribbean, and Central and South America. Columbus Networks USA, Inc. offers broadband

¹ *Assessment and Collection of Regulatory Fees for Fiscal Year 2016*, Notice of Proposed Rulemaking, MD Docket No. 16-166 (rel. May 19, 2016) (“*FY 2016 NPRM*”).

and IP services to carriers, Internet service providers, cable operators, network integrators and others.

- GlobeNet Cabos Submarinos America, Inc. operates a high capacity submarine cable system between the United States, Bermuda, Brazil, Colombia, and Venezuela. GlobeNet Cabos Submarinos America, Inc. also provides capacity for other carrier and enterprise customers.
- GU Holdings Inc. is a subsidiary of Alphabet Inc. Currently, GU Holdings is: (1) the United States landing party for the Unity Cable System, the 9,620 km submarine cable system connecting Japan and the United States that was developed by an international consortium to address increased data demands between Asia and the United States; (2) the United States landing party for the FASTER Cable System, a state-of-the-art cable connecting Japan, Taiwan, and the United States. In addition, GU Holdings has applied for authority to land the Monet Cable System, a high-capacity submarine system connecting Brazil and the United States.²
- SETAR is the incumbent telecommunications provider of Aruba and a member of the consortium operating the Pacific Caribbean Cable System connecting the United States with several destinations in the Americas. SETAR also holds minority interests in other cables in the United States.

The Coalition believes that the Commission’s proposed regulatory fees for fiscal year (“FY”) 2016 for submarine cable operators are too high in proportion to the regulatory oversight provided by the Commission and the benefits received by the regulatees. The Coalition urges the Commission to reduce the regulatory fee assessment for submarine cable operators for FY 2016, and to re-evaluate its methodology for assessing fees so that it is consistent with the Act going forward.

II. THE COMMISSION SHOULD NOT INCREASE SUBMARINE CABLE REGULATORY FEES

1. The Proposed Regulatory Fees are Unjustified and Bear No Relationship to the Benefits Received by Regulatees.

In recent years, the Commission has recognized that regulatory fee assessments for submarine cables do not “fairly take into account the Commission’s minimal oversight and

² GU Holding’s application for a submarine cable landing license for the Monet Cable System is currently pending with the Commission. See File No. SCL-LIC-20150408-00008 (April 6, 2015).

regulation of the industry.”³ In fact, in the Commission’s *FY 2015 Report and Order and FNPRM*, the Commission continued a trend of decreasing fees for submarine cable/terrestrial and satellite bearer circuits: from 2013 to 2014, the Commission decreased the fee apportionment by five percent.⁴ In 2015, the Commission reviewed the 2014 fees, concluding that “the fee remained excessive relative to the minimal Commission oversight and regulation of this industry,” and accordingly reduced the fee by another seven and a half percent.⁵ In the FY 2016 NPRM, however, the Commission proposes a regulatory fee of \$138,925 for operators of the highest-capacity submarine cable systems, which is an increase of 21 percent over the FY 2015 fee of \$114,700 paid by those operators.⁶ The Commission has provided no justification for any increase, much less for an increase of 21 percent.

Section 9 of the Communications Act (the “Act”) governs the Commission’s assessment of regulatory fees and requires that such fees reflect benefits provided to the regulatees by the Commission’s activities.⁷ In connection with the assessment of regulatory fees for each of the past three years, the Commission has acknowledged the limited regulatory oversight required for submarine cable providers.⁸ More specifically, the Commission has observed that, after the initial licensing process, “the regulatory activity concerning submarine cable/terrestrial and satellite bearer circuit systems is primarily limited to reviewing the Circuit Capacity Reports and

³ *Assessment and Collection of Regulatory Fees for Fiscal Year 2015*, Notice of Proposed Rulemaking, MD Docket No. 15-121 (rel. May 21, 2015) (“*FY 2015 NPRM*”).

⁴ *Assessment and Collection of Regulatory Fees for Fiscal Year 2015*, Report and Order and Further Notice of Proposed Rulemaking, MD Docket No. 15-121 (rel. Sep. 2, 2015) (“*FY 2015 R&O*”).

⁵ *FY 2015 R&O* at ¶12.

⁶ *FY 2016 NPRM* at Appendix A; *FY 2015 R&O* at Appendix B.

⁷ 47 U.S.C. § 159(a)(1).

⁸ *Assessment and Collection of Regulatory Fees for Fiscal Year 2013*, Notice of Proposed Rulemaking at ¶27, MD Docket No. 13-140 (rel. May 23, 2013) (“*FY 2013 NPRM*”); *Assessment and Collection of Regulatory Fees for Fiscal Year 2014*, Notice of Proposed Rulemaking at ¶28, MD Docket No. 14-92 (rel. Jun. 13, 2014) (“*FY 2014 NPRM*”); *FY 2015 R&O* at ¶10-12.

quarterly reports filed by licensees.”⁹ Therefore, to increase already disproportionate fees without a corresponding increase in services directly contradicts the terms of the Act and continues erroneous Commission decisions to charge regulatory fees that are excessive and unnecessary for the corresponding regulatory oversight.

2. The Proposed Fee is Contrary to the Public Interest.

Section 1 of the Act requires the Commission to “make available, so far as possible, to all the people of the United States...a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges.”¹⁰ The high regulatory costs of submarine cables, as well as the unjustified increase of these costs, are inconsistent with the intent to the Act, contrary to the public interest and pose harm both to the United States economy.

Imposing regulatory fees out of proportion with benefits received by regulatees may dissuade submarine cable operators from landing future cables in the United States. Submarine cables are an indisputably global industry – submarine cable systems transport a wealth of U.S. international traffic, including Internet, video, voice services, and non-public, private traffic for various international telecommunications providers, corporations, and governments. Although Commission involvement in overseeing submarine cable providers has not changed significantly in the past few years, the demand for submarine cables has grown at an exceptional rate.

Yet this proposed increase in regulatory fees puts the U.S. at a significant competitive disadvantage, and may encourage submarine cable developers to design cables avoiding U.S. landings. The Coalition has previously submitted to the Commission its concerns regarding potential national security risks if submarine cable operators divert their landings to Canada or

⁹ *FY 2015 R&O* at ¶10.

¹⁰ 47 U.S.C. § 151.

Mexico.¹¹ In the 2015 R&O, the Commission summarily rejected these concerns without addressing their basis, or providing reasoning to the contrary.¹² The Coalition urges the Commission to reconsider the significant economic benefits and security risks of ensuring domestic cable landings and, moreover, to act in the public interest and decrease these fees.

III. THE COMMISSION IS IMPROPERLY ASSESSING REGULATORY FEES FOR SUBMARINE CABLE LICENSEES

1. Regulatory Fees Must be Commensurate with Regulatory Oversight Provided

Under Section 9(b)(1)(A) of the Act,¹³ regulatory fees are to be commensurate to the benefits received, and derived by determining “the full-time equivalent number of employees performing” the regulatory activities of “enforcement activities, policy and rulemaking activities, user information services, and international activities” within the various offices of the Commission.¹⁴

The Commission itself has repeatedly acknowledged that submarine cable operators do not require significant oversight after the initial licensing process.¹⁵ In a previous NPRM, the Commission held that the work involved in regulating submarine operators equates to only two full-time employees (“FTEs”), which is in stark contrast to the significant fees that such operators pay to the Commission.¹⁶ To date, this remains to be the only quantification of FTEs offered by the Commission. The Coalition acknowledges that the Commission recently revised its assessment of two FTEs in 2015 by stating that its previous estimate of two FTEs working on IBC issues did not take certain issues into account. These issues were solely related to

¹¹ See, e.g., Comments of the Submarine Cable Coalition at 8, MD Docket No. 15-121 (filed July 6, 2015).

¹² *FY 2015 R&O* at ¶11.

¹³ 47 U.S.C. § 159(a)(1).

¹⁴ 47 U.S.C. § 159(b)(1)(A).

¹⁵ *FY 2013 NPRM* at ¶27, *supra* n.8.

¹⁶ *Id.*

regulatory activity associated with common carriers using the submarine cable circuits. Resultantly, the regulatory fees that are now paid by the submarine cable operators cover the services provided to common carriers using the submarine cable circuits *in addition* to the services that the International Bureau provides to submarine cable operators.¹⁷

The Coalition respectfully submits that the fees levied on submarine cable operators (almost \$5.5 million) are calculated contrary to statutorily required methodology, and remain grossly disproportionate to the oversight provided to non-common carrier submarine cable operators. To begin with, although the Commission stated that it had previously underestimated the number of FTEs working on submarine cable matters, it did not provide an updated estimate. This is inconsistent with the provisions of Section 9 of the Act.¹⁸ Furthermore, the “issues” that the Commission references in rationalizing its underestimation are general International Bureau services provided to *all* U.S. common carriers, including common carriers regulated by other Bureaus, such as wireless carriers, DBS providers or television operators along border areas. It is unfair to penalize non-common carrier submarine cable providers – many of whom are not even carrying traffic from common carriers – because of regulatory activities associated with other common carriers.

2. The Act Forbids Subsidizing High Cost Regulatees by Overcharging Low Cost Regulatees

Under the Act, the Commission cannot subsidize high-cost regulatees by overcharging low-cost regulatees. This principle is consistent with the requirement that fees must reflect the

¹⁷ *Id.* The Commission noted that “[a]ll International Bureau services provided to common carriers using the submarine cable circuits, such as benchmarks enforcement, protection from anticompetitive actions by foreign carriers, foreign ownership rulings (Petitions for Declaratory Rulings, or PDRs), section 214 authorizations, and bilateral and multilateral negotiations and representation of U.S. interests at international organizations, are all provided by the International Bureau on behalf of the common carriers using submarine cable circuits.”

¹⁸ 47 U.S.C. § 159(a)(1).

benefits received by regulatees. However, under the NPRM, submarine cable licensees are subjected to disproportionate fees with respect to the actual benefits received. Submarine cable licensees already cover a substantial amount of regulatory costs through initial licensure fees: currently, this fee is nearly \$19,000 for non-common carrier systems.¹⁹ Undoubtedly, the present regulatory fee system operates to subsidize the Commission's activities in areas entirely unrelated to submarine cables at all, to the detriment of submarine cable operators. This is in clear violation of the Act.

The Commission has long recognized that the fees apportioned to submarine cable providers are also disproportionate in relation to fees levied on other classes of service providers.²⁰ Yet the Commission has continued to charge excessive fees to submarine cable providers. The Coalition urges the Commission to reduce submarine cable regulatory fees such that the fees are commensurate with the amount of regulatory activity undertaken with respect to submarine cable operation. Until the Commission does so, it is unlawfully subsidizing high-cost regulatees at the expense of low-cost regulatees.

¹⁹ See International and Satellite Services Fee Filing Guide (July 3, 3014), available at: https://apps.fcc.gov/edocs_public/attachmatch/DOC-328190A1.pdf

²⁰ *FY 2013 NPRM* at ¶27 (noting that the submarine cable providers pay the “sixth highest regulatory fee percentage among all fee categories, notwithstanding the fact that the provision of international submarine cable service involves little regulation and oversight from the Commission after the initial licensing process.”).

IV. CONCLUSION

The Coalition strongly opposes the Commission's proposed increase in submarine cable regulatory fees. This increase is both baseless and contradictory to the Commission's own statements about that submarine cable regulatory fees are excessive in proportion to the amount of regulatory oversight required. Disproportionately high regulatory fees may dissuade cable operators from landing their cables in the United States. The Commission must reassess its methodology for assessing regulatory fees of submarine cable to ensure proportionality with benefits received and Commission oversight provided, as required under the Act.

Respectfully Submitted,

/s/ Ulises R. Pin

Andrew D. Lipman
Ulises R. Pin
Morgan, Lewis & Bockius LLP
2020 K Street, N.W.
Washington, DC 20006
(202) 373-6000

Counsel to the Submarine Cable Coalition

Dated: June 20, 2016