

In the Matter of)
)
Assessment and Collection of Regulatory Fees for) MD Docket No. 17-134
Fiscal Year 2017)

AT&T Services, Inc., on behalf of its affiliates, (“AT&T”) submits these comments on the Commission’s proposed regulatory fees for fiscal year 2017.¹ AT&T limits these comments to the issues on which the Commission requests comment regarding the regulatory fees for International Bearer Circuits (“IBCs”). Separately, AT&T is filing joint comments with DISH Network L.L.C. on the Commission’s proposed regulatory fee rate increase for Direct Broadcast Satellite providers.

¹ *Notice of Proposed Rulemaking*, MD Docket No. 17-134, FCC 17-62, May 23, 2017 (“*Notice*”).

common carrier facilities should be provided by extending the existing fees rather than by adopting a flat, per provider fee, which may be difficult to structure without disadvantaging any existing payor of these fees given the wide disparities that may exist in individual carriers' circuit volumes. A flat fee also appears unnecessary to avoid disincentives to the expansion of capacity in view of the current low level of the IBC per circuit fees, which would be further reduced by their application to non-common carrier circuits. At a minimum, the Commission should decline to adopt any change to the terrestrial IBC fee structure that results in increased terrestrial IBC fees for any provider.

I. THE EXISTING IBC PER CIRCUIT FEES SHOULD APPLY TO ALL TERRESTRIAL CIRCUITS

AT&T believes that the Commission would obtain a more efficient, equitable and less burdensome fee assessment by extending the existing terrestrial IBC per circuit fees, which currently apply only to common carrier terrestrial IBCs, so that these per circuit fees also apply to non-common carrier terrestrial IBCs. This approach would treat all terrestrial IBC providers on an equitable basis regardless of regulatory classification, just as the IBC per circuit fees already provide equal treatment of common carrier and non-common carrier satellite providers. It also would remove the cost disadvantage to common carriers resulting from the present inequitable treatment of these circuits and thereby increase competition. Additionally, applying the terrestrial IBC per circuit fees to non-common carrier circuits automatically would reduce the level of these fees by increasing the number of payment units available to meet the relevant revenue requirement, thus further reducing the burdens on payors of these fees.²

² Recent history demonstrates how IBC terrestrial per circuit fee reductions result from increasing the number of payment units. In fiscal year 2014, the Commission levied a per circuit IBC fee of

The Commission has ample authority to take this action. The assessment of fees under Section 9 of the Communications Act is not limited to facilities and services subject to Title II regulation, as evidenced by the longstanding IBC fees levied on non-common carrier satellite facilities and submarine cable systems.³ Section 9 specifically requires that the regulatory fees “take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission’s activities.”⁴ As the Commission has emphasized, “all entities that engage in international telecommunications benefit from the Commission’s rulemaking, public information and international representation activities.”⁵ Thus, the Commission may amend the fee schedule pursuant to Section 9(b)(3) to recognize such benefits to providers of non-common carrier terrestrial IBCs and advance the public interest in a more efficient, equitable and less burdensome fee assessment.⁶

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\$0.21 calculated by dividing the relevant revenue requirement of \$932,351 by 4,484,000 payment units. *See, Assessment and Collection of Regulatory Fees for Fiscal Year 2014*, 29 FCC Rcd. 10767, Appendix B (2014). In fiscal year 2015, the Commission levied a per circuit IBC fee of \$0.03 calculated by dividing the relevant revenue requirement of \$658,593 by 21,900,000 payment units. *See, Assessment and Collection of Regulatory Fees for Fiscal Year 2015*, 30 FCC Rcd. 10268, Appendix B (2015). But for the increase of more than 17 million in the number of payment units available to calculate the 2015 per circuit IBC fee, the fee for that year would have been \$0.15 rather than \$0.03.

³ *See, PanAmSat Corp. v. FCC*, 198 F.3d 890, 898 (D.C. Cir. 1999) (upholding assessment of regulatory fees on non-common carrier satellite circuits).

⁴ 47 U.S.C. § 159(b)(1)(A).

⁵ *Assessment and Collection of Regulatory Fees for Fiscal Year 1998*, 12 FCC Rcd. 17161, ¶ 69 (1997).

⁶ *See, Notice*, ¶ 28.

II. THE COMMISSION SHOULD DECLINE TO ADOPT A FLAT, PER PROVIDER FEE FOR TERRESTRIAL IBCS

The Notice also asks for comment on the adoption of a “flat, per provider” fee structure for satellite and terrestrial IBCs, and notes that “under this proposal, terrestrial and satellite IBCs would be treated the same, regardless of whether they are offered on a common carrier or non-common carrier basis.”⁷ However, as the Commission readily may obtain a more efficient, equitable and less burdensome fee assessment simply by extending the existing IBC per circuit fees to apply to both common carrier and non-common carrier terrestrial IBCs, there is no need to make such a major change in the terrestrial IBC fee structure to achieve this objective.⁸ Instead, the Commission should adopt the straightforward remedy of applying the existing fee structure to all IBCs regardless of regulatory classification.

The IBC per circuit fees that are paid on terrestrial IBCs are similar in effect to the regulatory fees based on the number of subscribers or units that are paid by cable TV and wireless providers. Such fee structures “generally reflect[] higher fees for types of regulatees that are authorized to use larger amounts of, or more desirable, spectrum, or that are larger and have more customers.”⁹ It is not necessary to change this well-established assessment methodology to provide equal treatment of common carrier and non-common carrier circuits, as noted above, and

⁷ *Id.*, ¶ 24.

⁸ All satellite IBCs already are treated the same, regardless of whether they are provided as common carrier or non-common carrier circuits, since both common carrier and non-common carrier satellite circuits are subject to per circuit IBC fees.

⁹ *Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, 19 FCC Rcd. 11662, ¶ 8 (2004).

the cable system fee for submarine cable IBCs, which is suggested as the model to be followed, was not adopted for this purpose.¹⁰

Instead, the broad industry support for the adoption of the cable system fee in 2009 reflected concerns that the per circuit IBC fees (which were over \$1.00 per circuit at that time) discouraged capacity expansion on existing submarine cable systems and encouraged the underreporting of circuits subject to these fees.¹¹ Such concerns appear less relevant in the present circumstances in light of the low level of the current terrestrial IBC fee (proposed to be \$0.03 per circuit for fiscal year 2017)¹² as well as the availability of a more straightforward remedy – the application of the current IBC terrestrial fee to non-common carrier circuits – to prevent fee avoidance based on regulatory classification.

A further relevant consideration is the potential difficulty of identifying any flat fee methodology that does not disadvantage any fee payor in view of the wide disparities that may exist between the circuit volumes of different carriers given the significant increase in the number of reported circuits in 2015 and thereafter.¹³ Under the “zero-sum” regulatory fee process, reductions in the terrestrial IBC fees formerly paid by some providers potentially may require an increase in the terrestrial IBC fees paid by other providers in order to meet the relevant

¹⁰ The Commission’s order adopting the cable system fee emphasized the competitive neutrality of this fee in treating common carriers and non-common carriers identically because several previous proposals did not provide such equal treatment. *See, Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, 24 FCC Rcd. 42082, ¶ 9 (2009). The per circuit IBC fees previously levied on submarine cable circuits applied to both common carrier and non-common carrier circuits and thus already were competitively neutral.

¹¹ *See, Id.*, ¶¶ 8, 10-11, 17.

¹² *See*, Notice, Appendix A.

¹³ *See*, n.2, *supra*. *See also*, Notice, Appendix A (listing 26,500,000 IBC payment units for fiscal

revenue requirement. To avoid any such result, the Commission should decline to adopt any change to the terrestrial IBC fee structure that results in increased terrestrial IBC fees for any provider.

Lastly, there is no reason for any change in the per circuit IBC fees for satellite circuits, which already apply to both common carrier and non-common carrier circuits.

Respectfully submitted,

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