Before the
Federal Communications Commission
Washington, D.C. 20554

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

REPLY COMMENTS OF LEVEL 3 COMMUNICATIONS

The record in this proceeding demonstrates support for assessing regulatory fees on both common carrier and non-common carrier terrestrial international bearer circuits (IBC) and for adoption of a flat fee assessment methodology. In these reply comments, we address additional issues raised by commenters in connection with these elements of Level 3's proposal.

Level 3 agrees with AT&T that the Commission can and should assess regulatory fees on both common carrier and non-common carrier terrestrial IBCs.[1] As Level 3 noted in its *ex parte* presentation of June 29, 2017, assessing regulatory fees on both common carrier and non-common carrier circuits is a necessary step in reforming the terrestrial IBC regulatory fee regime, as it will eliminate a major incentive and opportunity providers currently have to underreport the number of IBCs they have in service.[2] That step alone, however, will not provide the full set of benefits the Commission recognized a flat fee assessment system brings in the *2009 Submarine Cable Order*.[3] Those benefits include not only competitive neutrality, but also increased compliance by regulated entities, ease of administration, and the elimination of a key disincentive to deploy additional capacity.[4]

AT&T also urges the Commission to "decline to adopt any change to the terrestrial IBC fee structure that results in increased terrestrial IBC fees for any provider."[5] Such a limitation, however, would rule out even AT&T's own proposal to assesses regulatory fees on both common carrier and non-common carrier terrestrial IBCs. Because the total amount to be collected in the fee category is determined without regard to the number of

---

[1] *See* Comments of AT&T Services, Inc. at 2-3.

[2] *See* Letter from Nicholas G. Alexander, Associate General Counsel, Level 3 Communications, LLC, to Marlene H. Dortch, Secretary, FCC, MD Docket No. 17-134 (filed June 29, 2017) (Level 3 June 29 *Ex Parte*).

[3] *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Second Report and Order, 24 FCC Rcd 4208, 4212-13, para. 7-11 (2009) (*2009 Submarine Cable Order*).

[4] *See id.*; Level 3 June 29 *Ex Parte*, attach. at 3. *See also* Comments of the Submarine Cable Coalition at 8-10 (suggesting a "flat fee per International Section 214 license-holder").

[5] Comments of AT&T Services, Inc. at 6.

payment units among which the fee will be divided, AT&T's proposal will necessarily mean that some providers will pay more, while other providers will pay less, than they do today. Specifically, under an assessment regime based on capacity of both common-carrier and non-common-carrier circuits like AT&T proposes, a given company's share of the fee category will either be greater or less than its current share depending on the company's ratio of common carrier to non-common carrier circuits.[6] Companies that have a higher proportion of non-common carrier circuits in service, compared to other providers, will pay a greater share of the fee category than they do currently.[7]

The fact that under any reformed assessment regime some providers will pay more than they would pay absent reform is neither surprising nor problematic. The Commission's stated goal is to ensure that terrestrial IBCs are assessed in an "efficient, equitable, and less burdensome" manner, not to prevent any given provider from paying its fair share of the fee category.[8] A flat fee system like Level 3 has proposed best meets this goal, and, given that the number of terrestrial IBCs a provider has in service has no particular impact on the benefits they receive from the Commission's activities or on the Commission's costs, is a necessary and appropriate adjustment to the Commission's assessment mechanism.[9]

Finally, as discussed above, Level 3 agrees with the Submarine Cable Coalition that the Commission should adopt a flat fee mechanism. Level 3 does not, however, support the Coalition's proposal to assess that flat fee on international 214 authorizations. An entity that holds an international 214 authorization but does not have active IBCs is not receiving "the benefits provided to the payor of the fee by the Commission's activities," and therefore should not be subject to assessment for IBCs.[10] To the extent the Submarine Cable Coalition is proposing to eliminate the IBC fee category in favor of an assessment on each international 214 authorization, or each holder of an international 214 authorization, the Commission should seek further comment on that proposal for a future assessment. In all events, however, the Commission should not delay making the necessary reforms recommended by Level 3.

---

[6] *See* Level 3 June 29 *Ex Parte*, attach. at 2.

[7] This example assumes that the total number of reporting entities remains the same. Of course, the number of contributing providers may well increase if there are providers that have only non-common carrier terrestrial IBCs in service, which would result in a relative fee reduction for providers that currently contribute.

[8] *2017 Regulatory Fees NPRM* at para. 24. As the Commission observed in the *2009 Submarine Cable Order*, "[i]f our rules permit certain entities to avoid complying with our regulatory fee requirements because we do not have sufficient reporting requirements for part of the industry, the remaining carriers must pay a higher amount to compensate for those who avoid payment." *2009 Submarine Cable Order*, 24 FCC Rcd at 4212, para. 8.

[9] Regulatory fees are to be "adjusted to take into account factors that are reasonably related to the benefits provided to the payer of the fee by the Commission's activities…." 47 U.S.C. § 159(b)(1)(A).

[10] *Id.*

Respectfully submitted,

/s/ Nicholas G. Alexander_____

Nicholas G. Alexander
Associate General Counsel, Federal Affairs
Level 3 Communications, LLC
1220 L Street, NW, Suite 660
Washington, DC 20005
(571) 730-6473
Nick.Alexander@Level3.com

July 7, 2017