

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

The Commission has ample authority to take this action, which would merely reflect the equal treatment already provided by the existing IBC fees on non-common carrier satellite circuits and the cable landing license fees on non-common carrier submarine cable systems.³ In contrast, the flat fees proposed by Level 3 and the Submarine Cable Coalition, the only other commenters to address possible improvements in the IBC regulatory fee structure, would not achieve the Commission's objectives and should not be adopted.

As AT&T described (p. 5), unlike the readily available approach of extending the existing IBC per circuit fees to include non-common carrier terrestrial circuits, adopting a flat per provider fee for terrestrial and satellite circuits, as Level 3 has proposed,⁴ would not make the fee assessment more efficient, equitable and less burdensome. In particular, such a fee may be difficult to structure without disadvantaging some existing payors in light of the wide disparities that may exist in operators' terrestrial circuit volumes, as highlighted by recent significant increases in reported circuits.⁵

³ *Id.*

⁴ *See*, Notice, ¶ 25 & Comments of Level 3 Communications ("Level 3"), at 1.

⁵ The number of IBC per circuit payment units increased from 4,484,000 in fiscal year 2014 to 21,900,000 in fiscal year 2015. *See*, AT&T at 2, n.2; *Assessment and Collection of Regulatory Fees for Fiscal Year 2014*, 29 FCC Rcd. 10767, Appendix B (2014) (listing 4,484,000 IBC payment units); *Assessment and Collection of Regulatory Fees for Fiscal Year 2015*, 30 FCC Rcd. 10268, Appendix B (2015) (listing 21,900,000 IBC payment units). The Notice of Proposed Rulemaking for the fiscal year 2015 proceeding (released on May 21, 2015) lists 3,800,000 IBC per circuit payment units, which shows that more than 18 million additional payment units were included after that date. *See*, *Assessment and Collection of Regulatory Fees for Fiscal Year 2015*, 30 FCC Rcd. 5354, Appendix B (2015) (listing 3,800,000 IBC payment units). *See also*, Comments of Level 3 Communications, MD Docket No. 16-166, at 2 (stating that in response to rule changes that "became effective in February 2015" and the new filing manual (dated February 2015), "Level 3 reassessed the number of terrestrial international bearer circuits (IBCs) it was required to report under section 43.62 of the Commission's rules," discussed its revised figures with Commission staff, and "[u]ltimately, as a result of that

Even with the more recent reduction in payment units shown by the Notice,⁶ the disparities between the volumes of circuits held by different operators may be so large that it may not be possible to structure a flat provider fee, even with different levels, that does not unreasonably benefit the operators with the largest volumes of these circuits by shifting a significant share of the fees they would otherwise pay to other operators with smaller circuit volumes. The Commission should not adopt any change to the terrestrial fee structure that has this result. In contrast, the higher total fees that a provider of both common carrier and non-common carrier terrestrial circuits may pay as the result of extending the existing terrestrial per circuit fees to include the latter circuits would be similar to those resulting from other Commission fee structures, which “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.”⁷

Level 3, the lone supporter of this flawed flat fee approach in the initial round of comments in this proceeding, does not show how this fee, or any fee tiers, would be calculated or

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reassessment, Level 3 paid a huge, and hugely disproportionate given its relative industry position, share of the IBC terrestrial fee category for FY 2014”) & Level 3 at 1 (incorporating the latter comments by reference). Another substantial increase (to 31,900,000 payment units) occurred in fiscal year 2016, most of which also comprised additional units listed in the final Order but not the earlier Notice of Proposed Rulemaking. *See, Assessment and Collection of Regulatory Fees for Fiscal Year 2016*, 31 FCC Rcd. 5757, Appendix A (2016) (listing 22,500,000 IBC payment units); *Assessment and Collection of Regulatory Fees for Fiscal Year 2016*, 31 FCC Rcd. 10339, Appendix B (2016) (listing 31,900,000 IBC payment units).

⁶ The Notice lists 26,500,000 IBC per circuit payment units for fiscal year 2017. *See*, Notice, Appendix A.

⁷ *Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, 19 FCC Rcd. 11662, ¶ 8 (2004).

otherwise demonstrate how its proposal could be fairly applied.⁸ Instead, Level 3 (p. 1) leaves it to the Commission “to calculate . . . the appropriate level of regulatory fees.” Level 3 does propose however that to the extent a provider is willing to “voluntarily pay the top tier fee,” it should not be required to report its total terrestrial IBCs. Under this approach, unless the latter information is otherwise made available, the Commission would have no ability to assess the ongoing fairness of the fee structure based on providers’ circuit volumes.

The Submarine Cable Coalition (“Coalition”), a group of international carriers who operate non-common carrier submarine cables, contends (pp. 8, 10) that the Commission “should further reassess its methodology for apportioning regulatory fees to submarine cable providers” by adopting “a flat fee to be imposed on each holder of an international Section 214 license” that would apply to each licensee “regardless of whether they operate cross border circuits or not.” Since submarine cable providers are already subject to a flat fee on each cable system landing license that operates in an equitable and competitively neutral manner, it is unclear why a different or additional flat fee should now be applied to such providers, and the Coalition offers no justification for this proposed change.

But regardless of which existing IBC fees it would replace, a fee imposed on each Section 214 license holder would plainly fall far short of meeting the Commission’s stated objective of making the fee assessment “more efficient, equitable, and less burdensome,” because, by definition, it would not apply to non-common carrier operators.⁹ Indeed, by excluding the many

⁸ Level 3 also made no such showing in its comments filed in the 2016 Regulatory Fees proceeding that it incorporates by reference. *See*, Comments of Level 3 Communications, MD Docket No. 16-166.

⁹ Thus, contrary to the claim by the Coalition (p. 9), such a fee would *not* be “competitively

non-common carrier submarine cable operators and non-common carrier providers of satellite circuits that currently pay cable landing license or IBC fees, the Coalition's proposal would make the fee assessment *less* efficient and equitable, and *more* burdensome, than it is today.

Accordingly, the Commission should avoid the flaws inherent in the proposed flat fee approaches, and should make the fee assessment more efficient, equitable, and less burdensome, by adopting the simple remedy of extending the existing per circuit IBC fees to include non-common carrier terrestrial circuits.

Additionally, the Commission should maintain the IBC per circuit fees for common carrier and non-common carrier satellite circuits.¹⁰ Contrary to the claim by the Satellite Industry Association (p. 5) that satellite IBC fees should not be imposed because such fees “have no basis in Commission costs or benefits,” the Commission has properly noted that “all entities that engage in international telecommunications benefit from the Commission's rulemaking, public information and international representation activities.”¹¹

Lastly, the Commission should continue to assess the IBC per circuit fees based on circuits that are active as of December 31 of the prior year. As noted by other commenters, the assessment of these fees based on circuits active at any time in the prior year would impose additional compliance burdens on providers and would provide little benefit given, based on

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neutral.”

¹⁰ See, AT&T at 6.

¹¹ See, *Assessment and Collection of Regulatory Fees for Fiscal Year 1998*, 12 FCC Rcd. 17161, ¶ 69 (1997).

AT&T's experience, the 12 months or longer durations of the large majority of terrestrial IBC arrangements.¹²

Direct Broadcast Satellite. Predictably, the two cable associations trot out the same tired argument in their comments: the Commission should assess the same per subscriber regulatory fee on cable and DBS providers.¹³ The Commission should reject cable's simplistic argument and, instead, base its regulatory fees on the facts. Congress granted the Commission the limited authority to "assess and collect regulatory fees to *recover the costs* of the following regulatory activities of the Commission: enforcement activities, policy and rulemaking activities, user information services, and international activities." 47 U.S.C. § 159(a) (emphasis added). NCTA and ACA would have the Commission read the term "recover the costs" right out of the statute with their demand that the Commission levy the same per subscriber charge on both cable operators and DBS providers. A fair reading of the statute and review of the relative burdens that hundreds of cable operators impose on Commission staff will show that they simply are not comparable to the burdens that two DBS providers, subject to markedly different statutory requirements, impose on staff.

AT&T and DISH Network L.L.C. filed joint comments detailing how the Commission's proposed regulatory fee rate hike cannot be supported by the few proceedings cited in the Notice, the dramatic disparity in the costs of regulating 750+ cable providers with several thousands of cable systems versus two DBS providers, or the different, statutory-based regulatory regimes that

¹² See, Level 3 at 2; Comments of the Satellite Industry Association ("SIA"), at 5.

¹³ See generally, Comments of NCTA; Comments of ACA.

apply to cable and DBS providers, and we do not repeat those points here.¹⁴ Nothing in NCTA's or ACA's comments refutes those facts.

Moreover, while the cable associations demand 1:1 parity in regulatory fees, they expressly ignore the fact that DBS providers are subject to other regulatory fees for their provision of video service. No other category of multichannel video programming distributor must pay a second set of regulatory fees for providing video service. The cable associations are keen to overlook the other regulatory fees that AT&T and DISH must pay to provide video service but the Commission cannot. Factoring in these other regulatory fees and for the reasons provided in its joint comments, AT&T respectfully requests that the Commission retain the existing per subscriber regulatory fee of \$0.24 for AT&T and DISH.

Respectfully submitted,

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¹⁴ See, Joint Comments of DISH Network L.L.C. and AT&T Services, Inc.