James J.R. Talbot
Assistant Vice President-
Senior Legal Counsel

AT&T Services, Inc.
1120 20th Street NW Ste. 1000
Washington, D.C. 20036

Phone: 202.457.3048
Fax: 202.463.8066
E-mail: jjtalbot@att.com

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Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Assessment and Collection of Regulatory Fees for Fiscal Year 2019, MD Dkt. No. 19-105

Dear Ms. Dortch:

AT&T comments as follows on issues raised in the above proceeding regarding regulatory fees relating to the International Bureau (Bureau) and the Media Bureau.

1. *The Tiered Cable System Fee is Required to Provide Fair Treatment for Smaller Cable Systems*

The Commission should reject the requests by some commenters[1] to replace the recently updated tiered submarine cable system fee with a "flat" system fee that would require smaller cable systems to subsidize their larger competitors. The Commission established the cable system fee structure in 2009 as comprising a flat fee for all cable systems above a certain capacity threshold with proportionately lower fees for smaller cable systems to avoid creating "a barrier to entry for new entrants."[2] The Commission also made clear that the system fee structure should continue to protect smaller cable systems as the capacities of both larger and smaller cable systems increased in the future. It explained that "over time the categories of small and large systems will change as the smaller systems grow in capacity and new larger systems are built and licensed."[3] Consistent with these expectations, the Commission revised the submarine cable system fee structure in 2018 to reflect the large increases in submarine cable capacity since 2009 and retained the tiered fee structure.

Notwithstanding those capacity increases, significant disparities in capacity continue to exist, as shown by recent Commission reports. Cable capacity now ranges from 12,250 Gbps (for the South America-1 cable) to 10 Gbps (for the Saint Maarten Puerto Rico Network One cable) in the Americas region, and from 8100 Gbps (for the Asia America Gateway cable) to 10

[1] *See, e,g,*, Comments of INCOMPAS at 5-9 and Reply Comments of NASCA at 4-6.

[2] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, 24 FCC Rcd. 4208, ¶ 18 (2009).

[3] *Id. See also, id*. n.39 ("the subcategories of small systems and the definitions of large and small systems may change as the submarine cable industry changes").

Gbps (for the GOKI cable) in the Pacific region.[4] The flat system fee advocated here would reduce the fees paid by large cable systems and raise those paid by small cable systems, thus shifting these costs from the large systems to their smaller competitors. The Commission should retain the tiered fee to prevent this unfair result.

2. The Per Gbps Fee for Satellite and Terrestrial IBCs Should Continue

For similar reasons, CenturyLink's continued request for a two-tier system fee for satellite and terrestrial International Bearer Circuits (IBCs) is also unfounded.[5] The Notice finds that such a rate structure would "require a substantial fee increase" for smaller providers of IBCs based on FY 2019 fee requirements, and CenturyLink provides no evidence to the contrary.[6] The Notice also reasonably concludes that the seven-tier system fee that would be required to avoid large fee increases for smaller operators would be unduly complex and that the per Gbps fee for IBCs therefore should continue.

3. The Revised Definition of "Available Capacity" Will Significantly Increase Fees for Many New and Upgraded Lower-Tier Submarine Cable Systems

A further concern is that the fees paid by a number of submarine cable systems in lower fee tiers will significantly increase as a result of the revised definition of "available" capacity to be used for payment of the submarine cable system fee in 2019.[7] This revision expands the capacity used to determine the submarine cable system fee beyond the "lit" capacity used to provide or protect service that was covered by the former definition. The new definition also includes all "unlit" design capacity, which is capacity that *could* be used on the cable by installing additional equipment on the cable, but which does not exist without adding that equipment and therefore cannot be used either to produce revenue or for protection. Under this revised definition, cable systems that currently pay lower-tier cable system fees but have large amounts of "unlit" design capacity, such as newly constructed or upgraded cables that have "lit" only a small proportion of their design capacity to provide or protect service, may be subject to significant fee increases. For example, the recently-upgraded Taino-Carib Cable System, which now has 120 Gbps of "lit" capacity but 40400 Gbps of total design capacity, must pay a *seven times* larger regulatory fee ($201,225 rather than $25,150) for this reason. To avoid burdening

[4] *See* Public Notice, *FCC Releases Circuit Capacity Data For U.S.-International Submarine Cables as of December 31, 2017,* DA 19-93, Feb. 15, 2019, Table 3. *See also*, Public Notice, *FY 2018 Regulatory Fees, Listing of Submarine Cable Owners*, Sept. 4, 2018 (listing four cables with less than 50 Gbps, seven cables with 50-250 Gbps, three cables with 250-1000 Gbps, 12 cables with 1000-4000 Gbps, and 19 cables with greater than 4000 Gbps.) Although the revised capacity definition used in 2019 will move a number of smaller systems into higher fee tiers, large disparities in the capacities of smaller and larger cables will remain.

[5] *See* Comments of CenturyLink at 6-9.

[6] *See* Notice, ¶ 23.

[7] *See Filing Manual For Section 43.82 Circuit Capacity Reports*, International Bureau, December 2018, ¶ 26 (redefining "available" capacity as "design" capacity, which includes "both lit and unlit capacity"). In contrast, large cable systems that already pay the full system fee suffer no adverse impact as the result of this change.

the affected lower-tier cable systems in this way, the Commission should reconsider the use of this revised definition for fee payment purposes.

4. Any Reallocation of Fees Among International Bureau Services Should Require a Comprehensive Review

Due to the zero-sum nature of the regulatory fee process, under which any changes in the fees for one Bureau service automatically affect the fees to be recovered from other Bureau services, any consideration of proposals to reallocate the Bureau fees relating to submarine cables and international bearer circuits[8] should require a comprehensive review of all potentially affected Bureau services and the associated Full-Time Equivalents (FTEs). In light of the lack of current information on the FTEs allocated to the Bureau and associated with each Bureau service, as noted by many commenters, the existing record is clearly inadequate for such analysis.

Any such review is required by Section 9 of the Communications Act also to take account of "the benefits provided to the payor of the fee by the Commission's activities."[9] This includes Commission activities benefiting international carrier services and increasing international traffic volumes, which also benefit providers of the international submarine cable and terrestrial facilities that transport this traffic to foreign countries. In addition, the Commission's international representational activities, work with foreign regulators and other activities to encourage effective competition and open market access in foreign countries benefit all international facility providers, regardless of the types of services transmitted over their facilities, because all such providers are critically dependent on continued market access in foreign countries to construct and operate their facilities.[10]

5. The Record Supports Maintaining the Current Direct Broadcast System (DBS) Per Subscriber Rate.

NCTA and ACA were the only parties to address the Commission's proposal to increase by 25 percent the per subscriber fee paid by DBS providers.[11] Rather than squarely addressing the substance of AT&T and DISH's joint comments,[12] these trade associations merely rehash arguments they have made in prior years. For example, the associations claim that the Commission is required by statute to assess DBS providers the same per subscriber rate as cable operators. Of course that is incorrect and fails to acknowledge the plain language of the statute, which commands the Commission to "adjust[]" fees to "take into account factors that are

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[8] *See, e.g.*, Comments of NASCA at 5 and Comments of CenturyLink at 3-5.

[9] 47 U.S.C. § 159(d).

[10] *See, e.g., Assessment and Collection of Regulatory Fees for Fiscal Year 1998*, 12 FCC Rcd. 17161, ¶ 69 (1997) ("all entities that engage in international telecommunications benefit from the Commission's rulemaking, public information and international representation activities").

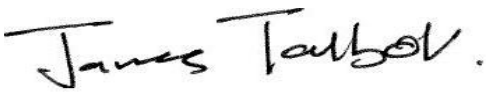
[11] Reply Comments of NCTA and ACA; Comments of NCTA and ACA.

[12] Comments of AT&T Services, Inc. and DISH Network L.L.C, MD Docket No. 19-105 (filed June 7, 2019) (Joint Comments).

reasonably related to the benefits provided to the payor of the fee by the Commission's activities."[13] AT&T and DISH demonstrated in their joint comments that the Commission's proposal to hike the DBS per subscriber rate by 25 percent fails to take into account the benefits provided to DBS providers in the past year. Specifically, AT&T and DISH documented all of proceedings affecting multichannel video programming distributors (MVPDs), as catalogued on the Commission's own website. From that list, AT&T and DISH identified which proceedings affected cable operators, DBS providers, other types of MVPDs, or all MVPDs. That analysis unquestionably showed that the overwhelming majority of Media Bureau MVPD-related activity in the past year exclusively benefited cable operators.[14] NCTA and ACA assert that relying on the Commission's MVPD-related releases is inadequate yet they fail to supply their own data to supplement the data AT&T and DISH provided. Moreover, the few proceedings that they do mention – relating to television broadcaster merger proceedings – should not be funded by *any* MVPD per subscriber fees. Instead, Media Bureau FTEs reviewing television broadcaster transactions should be funded via broadcaster regulatory fees.

Finally, NCTA and ACA repeat their opposition to the Commission factoring in other regulatory fees paid by AT&T and DISH when setting the DBS per subscriber fee, arguing simply that the Media and International Bureaus perform different work.[15] The pertinent fact that these trade associations are glossing over is that AT&T and DISH alone are required to pay another bureau regulatory fees associated with their provision of video service, which is the same service subject to Media Bureau regulatory fees. If the Commission fails to account for those other fees, it will unfairly place AT&T and DISH at a competitive disadvantage. For the reasons set forth in the Joint Comments, AT&T urges the Commission to reject its proposed increase to the DBS per subscriber regulatory fee.

Respectfully submitted,



James Talbot
Assistant Vice President - Senior Legal Counsel

cc: Thomas Buckley
Roland Helvajian
Mika Savir
Sarah Stone
David Krech
Kim Cook

[13] 47 U.S.C. § 159(d).

[14] Joint Comments at 5-7.

[15] Reply Comments of NCTA and ACA at 5-6.