

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

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

COMMENTS OF CTIA

CTIA¹ submits these comments in response to the Commission’s Further Notice of Proposed Rulemaking (“*Further Notice*”) seeking input on a proposal to replace the International Bearer Circuit (“IBC”) regulatory fees with a fee on all holders of international Section 214 authorizations (“Section 214s”).² CTIA urges the Commission to refrain from taking such action.

I. INTRODUCTION.

CTIA supports the Commission’s continued efforts to improve its regulatory fee mechanism and better ensure that regulatory fees appropriately reflect work conducted by agency staff. Any reforms to the regulatory fee framework should be fair, rational, and administrable.³

¹ CTIA® (www.ctia.org) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st century connected life. The association’s members include wireless carriers, device manufacturers, suppliers as well as apps and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry’s voluntary best practices, hosts educational events that promote the wireless industry and co-produces the industry’s leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

² *Assessment and Collection of Regulatory Fees for Fiscal Year 2017*, Report and Order and Further Notice of Proposed Rulemaking, FCC 17-111, MD Docket No. 17-134 (rel. Sept. 5, 2017) (“*2017 Regulatory Fees Order*” and “*Further Notice*”).

³ See, e.g., *Assessment and Collection of Regulatory Fees for Fiscal Year 20013*, Report and Order, 27 FCC Rcd 12351, 12354 ¶ 9 (2013).

The proposal raised by the Submarine Cable Coalition (“Coalition”) and included in the *Further Notice* to replace the IBC regulatory fees with a new fee based on Section 214s does not advance those Commission goals but rather would be inequitable, inefficient, and burdensome. The proposal would exempt non-common carrier submarine cable licensees and non-common carrier operators that own international circuits – a category of operators the Commission included earlier this year -- while imposing new fees on resellers of international services who own no facilities but hold Section 214s, creating additional unnecessary administrative burdens and failing to reflect the work of Commission staff. The Commission should therefore reject the Coalition’s proposal.

II. INTERNATIONAL SECTION 214 AUTHORIZATIONS SHOULD NOT BE SUBJECT TO A NEW REGULATORY FEE.

As an initial matter, as CTIA previously explained in this proceeding, the proposal to replace the IBC regulatory fees with one based on Section 214s is not a permitted amendment under Section 9(b)(3) of the Communications Act. Section 9(b)(3) allows for amendments to the regulatory fee schedule that Congress set forth in Section 9(g) – which explicitly lists IBCs – only in response to changes in law and regulation that, in turn, change the relationship between a particular category of regulatees and the staff-hours spent regulating them.⁴ As the D.C. Circuit has noted, Section 9(b)(3) “clearly limits the Commission’s authority to promulgate amendments” to the regulatory fee schedule to those “imposed in response to ‘rulemaking proceeding[] or change[] in law.’”⁵ No such rulemaking or change in law has been identified that would warrant a fundamental change in the regulatory fee structure here. Thus, the

⁴ 47 U.S.C. § 159(b)(3).

⁵ *COMSAT Corp. v. FCC*, 114 F.3d 223, 225 (D.C. Cir. 1997).

Commission should reject the Coalition's proposal, as it does not satisfy the statutory requirements set forth in Section 9.

Even if the Commission concludes the new Section 214 fee is permitted under Section 9, it should reject the Coalition's proposals which would not accurately reflect the work done by International Bureau staff. Section 214s are not an appropriate substitute for IBCs. Today, IBC regulatory fees are paid by common and non-common facilities-based carriers with active U.S.-international circuits, and common and non-common carrier submarine cable licensees. In contrast, Section 214s are issued for both resold and facilities-based common carrier international telecommunications services, but not non-common carrier services. Further, many Section 214s may not be currently in use because companies often hold Section 214s but do not actually provide international common carrier telecommunications services. It also is not unusual for companies and their affiliates to hold multiple, often duplicative, Section 214s. For example, companies routinely acquire additional Section 214s through acquisitions, and some obtained Section 214s on a route- or service-specific basis before the Commission streamlined its Section 214 licensing process.

Although the vast majority of CMRS providers hold Section 214 authorizations, they typically offer U.S.-international telecommunications services on a resold basis only and do not hold U.S.-international circuits or submarine cables. Thus, these CMRS providers – as well as any other Section 214 licensee that does not have active IBCs or submarine cables – do not currently pay IBC regulatory fees. The Coalition's proposal would subject these providers to an entirely new regulatory fee charge.

A new regulatory fee based on Section 214s would not accurately reflect the work of Commission staff. For example, as the Commission recently confirmed, most IBC holders must

continue to file international circuit capacity reports. The International Bureau staff maintains the data from those reports and aggregates it for public release.⁶ In contrast, no commenters have identified significant, ongoing costs associated with Section 214s in the record. In fact, the international traffic and revenue reports that previously applied to Section 214 holders have been eliminated.⁷ In addition, Section 214 applicants already pay a large (\$1,155) filing fee with each application. Finally, as noted above, many Section 214s are effectively dormant, making them an inappropriate target for regulatory fees. By contrast, maintaining the current fees on IBC holders, who can build those fees into the rates they charge active Section 214s, is a much more rational approach.

In any event, imposing regulatory fees on Section 214 holders as the Coalition suggests would undermine the Commission's prior actions and create new inefficiencies and inequities in the regulatory fee process. The FCC currently assesses submarine cable IBC fees on all submarine cable systems, regardless of whether they have common or non-common carrier status.⁸ In addition, just months ago the Commission concluded that providers of non-common carrier terrestrial IBCs should also pay IBC regulatory fees, just like common carrier terrestrial

⁶ See *Section 43.62 Reporting Requirements for U.S. Providers of International Services, 2016 Biennial Review of Telecommunications Regulations*, Report and Order, FCC 17-136, IB Docket Nos. 17-55, 16-131 ¶¶ 27, 29 (rel. Oct. 24, 2017).

⁷ *Id.* ¶ 16. Although the Commission now requires service providers to submit and maintain a list of U.S.-international routes on which they have direct termination arrangements with a foreign carrier, that requirement is limited to facilities-based operators. *Id.* ¶ 21.

⁸ In 2009, the Commission adopted a new methodology for calculating IBC regulatory fees for international submarine cable operators, applying flat fees to all common and non-common carrier submarine cable licenses. The Commission concluded that the new methodology, which was supported by a majority of the submarine cable community, was competitively neutral, easier to administer, and would increase compliance with regulatory fee requirements. *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Second Report and Order, 24 FCC Rcd 4208, 4212-14 ¶¶ 7-12 (2009).

IBCs and common and non-common carrier satellite IBCs.⁹ However, shifting these fees to Section 214s would now exclude *all* non-common carriers and non-common carrier submarine cable operators from the fees and reverse the Commission’s decision to treat IBC providers equitably. Indeed, as AT&T previously explained in this proceeding, “the Coalition’s proposal would make the fee assessment *less* efficient and equitable, and *more* burdensome, than it is today” by excluding the many non-common carrier operators from paying IBC regulatory fees.¹⁰

The *Further Notice* also seeks comment on a variety of ways the Coalition’s proposal might be implemented, including assessing different flat fees on resale and facilities-based Section 214s, calibrating the fees based on size or number of circuits held by the Section 214 holder, or imposing one fee on an entity regardless of the number of Section 214s held.¹¹ These suggestions, however, would merely increase the complexity and administrative burden of the regulatory fee mechanism for service providers and Commission staff alike. These options would require an accurate assessment of the number and type of Section 214s held by service providers, which could be difficult given that some Section 214s are route- and service-specific authorizations and may be held by affiliates.¹² Furthermore, it is unclear how establishing different fees based on the type of Section 214s and size or number of circuits held by Section 214 holders is less burdensome or more equitable than the Commission’s current methodology.¹³

⁹ 2017 *Regulatory Fees Order* ¶ 34.

¹⁰ Reply Comments of AT&T Services, Inc., MD Docket No. 17-134, at 4-5 (filed July 7, 2017) (emphasis original).

¹¹ *Further Notice* ¶ 48.

¹² The Commission also should consider that some service providers may operate under the Section 214 of a parent company as permitted under Section 63.21(h) of the Commission’s rules rather than hold Section 214s themselves, and that there may be inaccuracies in the records of the International Bureau Filing System.

¹³ *Further Notice* ¶ 47. (The FCC currently bases submarine cable IBC fees on the size of the system and terrestrial and satellite IBC fees on the number of active 64 Kbps equivalent circuits). In addition, the

The proposal to replace IBC regulatory fees with a fee on Section 214s thus would be contrary to the Commission's efforts to make the regulatory fee mechanism fair, rational, and administrable. Attempts to reform the IBC regulatory fee methodology should not result in placing additional, unnecessary burdens on operators that have no U.S.-international circuits or submarine cables. Moreover, as noted above, the record contains no evidence of Section 214 regulatory burden to justify a regulatory fee.

III. CONCLUSION.

CTIA urges the Commission to reject the Coalition's proposal to replace IBC regulatory fees with a new regulatory fee based on Section 214s.

Respectfully submitted,

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FCC has proposed an alternative proposal in the *Further Notice* to base the terrestrial and satellite IBC fees on tiers of capacity).