

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

CenturyLink, Inc., on behalf of itself and its regulated affiliates,¹ commends the Commission for its decision to include both common carrier and non-common carrier terrestrial international bearer circuits (IBCs) in the IBC fee assessment methodology in the *2017 Regulatory Fees Order*,² and submits these Comments in response to the associated Notice of Proposed Rulemaking.³

I. UPDATING THE FEE TIERS FOR SUBMARINE CABLE SYSTEMS

The Commission seeks comment on updating the fee tiers for submarine cable systems to reflect the increased capacity of active submarine cable systems.⁴ CenturyLink is the successor in interest to two of the submarine cable operators that supported the Consensus Proposal that served as the basis for the fee methodology adopted in the *2009 Submarine Cable Order*.⁵

¹ CenturyLink, Inc. completed its acquisition of Level 3 Communications, Inc. and its subsidiaries on November 1, 2017. *See* Letter from Yaron Dori, counsel to CenturyLink, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-403 (filed Nov. 7, 2017).

² *Assessment and Collection of Regulatory Fees for Fiscal Year 2017*, MD Docket No. 17-134, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 7057, 7071-72, para. 34 (2017) (*2017 Regulatory Fees Order*).

³ *Id.*, 32 FCC Rcd at 7074, para. 43 (2017 *Regulatory Fees FNPRM*).

⁴ *Id.*, 32 FCC Rcd at 7074, para. 46.

⁵ *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, MD Docket No. 08-65, Second Report and Order, 24 FCC Rcd 4208, 4210, n. 10 (2009) (*2009 Submarine Cable Order*). CenturyLink, Inc. is successor in interest to Level 3 Communications, LLC and Global Crossing Ltd.

CenturyLink is thus fully cognizant of the balancing of interests among operators that allowed the Consensus Proposal to obtain “broad agreement among the submarine cable operators[,]”⁶ and that the Commission contemplated making such revisions to the fee tiers adopted in 2009.⁷ Given that background, CenturyLink believes that the revised fee tiers proposed by the Commission represent a reasonable update to the submarine cable fee assessment methodology. The proposed tiers maintain the balance of interests struck in 2009, while reflecting the upgrades that have been made to many of the cables that were in service in 2009 and the increased capacity of new and proposed cables.

In connection with this update, CenturyLink asks that the Commission remind all submarine cable licensees that the “capacity” upon which the regulatory fee is to be assessed is the capacity active as of December 31 of the prior year, not the capacity identified in the cable landing license. The Commission clearly stated in the *2009 Submarine Cable Order* that it expected submarine cable operators to update the Commission as to the appropriate fee tier for their cables on an ongoing basis.⁸ CenturyLink has been given reason to believe, however, that some submarine cable licensees may believe it appropriate to pay regulatory fees on the basis of a cable’s capacity *at the time of licensing*. The issuance of a reminder, or clarification, on this point in connection with the adoption of revised tiers will eliminate any possibility of confusion in the industry.

⁶ *Id.*, 24 FCC Rcd at 4213, para. 11.

⁷ *See id.*, 24 FCC Rcd at 4214, n. 39.

⁸ *See id.*, 24 FCC Rcd at 4214, para. 15 (“A ‘small’ system may, however, move into a different category as it gets larger. Carriers will be required to advise the Commission of a change in category or subcategory for regulatory fee purposes.”) (notes omitted).

II. REVISING THE FEE METHODOLOGY FOR SATELLITE AND TERRESTRIAL IBCS

The Commission seeks comment on whether it should adopt the updated tiers it has proposed for submarine cable fees for the assessment of fees on common carrier and non-common carrier terrestrial and satellite IBCs, and whether to adopt a regulatory fee for all holders of section 214 international authorizations.⁹ The Commission should not adopt either of these proposals.

A. Fee Tiers for Satellite and Terrestrial IBCs

It is not appropriate to adopt the proposed submarine cable regulatory fee tiers for satellite and terrestrial IBCs. As discussed above, the fee methodology adopted for submarine cables in the *2009 Submarine Cable Order* was the result of negotiations that achieved “broad agreement among the submarine cable operators[,]”¹⁰ and revisions to the tiers, such as those proposed in the *2017 Regulatory Fees FNPRM*, were an integral part of that agreement.¹¹ There is no such agreement in the context of satellite and terrestrial IBCs, nor is there need for one. The Commission should simply adopt the two-fee tier methodology proposed by Level 3,¹² which best achieves the goal of being “efficient, equitable, and less burdensome.”¹³

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,”¹⁴ and providers

⁹ *2017 Regulatory Fees FNPRM*, 32 FCC Rcd at 7075, paras. 47-48.

¹⁰ *2009 Submarine Cable Order*, 24 FCC Rcd at 4213, para. 11.

¹¹ *Id.*, 24 FCC Rcd at 4214, n. 39.

¹² See Level 3 Comments in MD Docket No. 16-166 (filed June 23, 2016).

¹³ See *2017 Regulatory Fees NPRM*, 32 FCC Rcd 4526, 4537, para. 24 (2017).

¹⁴ Regulatory fees are to be “adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission’s activities[.]...” 47 U.S.C. § 159(b)(1)(A).

enjoy the same benefits of the Commission's "enforcement activities, policy and rulemaking activities, user information services, and international activities[]" regardless of the number and capacity of IBCs they have in service.¹⁵ The number of satellite or terrestrial IBCs a provider has in service has no particular impact on the benefits that provider receives from the Commission's activities or on the Commission's costs. A two-tier system is therefore sufficient to ensure that the satellite and terrestrial IBC regulatory fees do not serve as a barrier to entry for smaller providers while ensuring that larger providers pay a fair and equitable portion of the fee category.

A two-tier system will also help to ensure that the IBC fee is paid in an equitable manner by greatly reducing any incentive a provider might have to underreport the number or capacity of IBCs it has in service in order to qualify for a lower fee tier. 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."¹⁶

A two-tiered methodology also is more efficient than a multi-tier methodology because the Commission need identify only one break point, and is less burdensome for providers because, once they pass the "small provider" threshold, they will simply pay the "large" fee category each year. Given that the Commission eliminated the requirement to report terrestrial and satellite circuits in the *Section 43.62 Streamlining Order*, there is no other reason for

¹⁵ 47 U.S.C. § 159(a)(1).

¹⁶ *2009 Submarine Cable Order*, 24 FCC Rcd at 4212, para. 8 (footnote omitted).

providers to incur the burden of collecting data sufficient to identify the appropriate fee tier.¹⁷

Indeed, allowing providers to voluntarily pay the top tier fee would guarantee that those providers are carrying their share of the fee category, while at the same time driving the administrative burden of calculating and paying the fee to *de minimis* levels.

B. Fees Assessed on International Section 214 Authorizations

It would not be appropriate to adopt at this time a fee methodology assessing a flat fee on every holder of an international section 214 authorization in lieu of an assessment on IBCs.¹⁸

There are significant legal and operational issues that must be addressed before the costs and benefits of such a change can be assessed. For example, an entity that holds an international 214 authorization but does not have active terrestrial or satellite 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.¹⁹ Further, an assessment based on international 214 authorizations would not capture non-common carriage circuits, reversing the key reform the Commission just adopted in the *2017 Regulatory Fees Order*.²⁰ These legal questions, along with questions about how such a methodology would work in practice, are non-trivial. While it may be possible to develop an efficient, equitable, and minimally burdensome fee methodology

¹⁷ *Section 43.62 Reporting Requirements for U.S. Providers of International Services*, IB Docket No. 17-55, Report and Order, FCC 17-136, para. 27 (rel. Oct. 24, 2017).

¹⁸ *2017 Regulatory Fee FNPRM*, 32 FCC Rcd at 7075, para. 48.

¹⁹ *Id.* See also 47 U.S.C. § 159(b)(1)(A).

²⁰ *2017 Regulatory Fees Order*, 32 FCC Rcd at 7071-72, paras. 32-35.

based on international 214s, such an effort should not delay implementation of the improvements to the existing IBC-based methodologies discussed above.

Respectfully submitted,

CENTURYLINK

By: /s/ Nicholas G. Alexander
Nicholas G. Alexander
1220 L St. NW, Suite 660
Washington, DC 20005
571.730.6473
Nick.Alexander@centurylink.com

Its Attorney

December 1, 2017