

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

In the Matter of	)	
	)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2015	)	MD Docket No. 15-121
	)	
Amendment of Part 1 of the Commission’s Rules	)	MD Docket No. 15-121
	)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2014	)	MD Docket No. 14-92
	)	

**JOINT COMMENTS OF SUBMARINE CABLE COALITION**

The Submarine Cable Coalition (“Coalition”), composed of, Cedar Cable Ltd., Columbus Networks USA, Inc., GlobeNet Cabos Submarinos America, Inc., and GU Holdings Inc., submits the following Joint Comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Notice of Proposed Rulemaking (“NPRM”), Report and Order and Order (“RO&O”), addressing procedures for assessment and collection of regulatory fees for Fiscal Year 2015, released May 21, 2015, in the above-captioned dockets.

The Coalition members are a diverse group of submarine cable operators. In addition to meeting their own internal needs for communications capacity, these companies provide dark and lit fiber services, international traffic services, private line services, and enterprise services including MPLS and VPN.

- Cedar Cable Ltd., is the facilities-based operator of the CB-1 cable system connecting the United States and Bermuda and used by other Bermuda-based carriers and enterprise customers;
- Columbus Networks USA, Inc., operates the ARCOS-1 and CFX-1 submarine cable systems linking the United States and multiple countries in the Caribbean, and Central

and South America; offering broadband and IP services to carriers, Internet service providers, cable operators, network integrators and others;

- GlobeNet Cabos Submarinos America, Inc. operates a high capacity submarine cable system between the United States, Bermuda, Brazil, Colombia and Venezuela and provides capacity for other carrier and enterprise customers; and
- GU Holdings, Inc. is a subsidiary of Google, Inc., and is the United States landing party for the Unity Cable System, an international consortium that developed the 9,620 km undersea cable system connecting Japan and the United States. The Unity system provides capacity to sustain the increased growth in data and Internet traffic between Asia and the United States. In addition, GU Holdings will be the landing party for the Monet Cable System, a high-capacity submarine system connecting Brazil and the United States.<sup>1</sup>

## **I. THE COMMISSION MUST DRASTICALLY REDUCE SUBMARINE CABLE REGULATORY FEES**

### **A. The Proposed Regulatory Fees are Unjustified and Bear No Relationship to the Benefits Received by Regulatees.**

The Coalition supports the Commission’s proposal to decrease the fee allocation for submarine cable operators, but believes that the Commission’s proposed reductions for FY 2015 rates do not go far enough. Section 9(b)(1)(A) of the Communications Act (the “Act”)<sup>2</sup> provides that the methodology to be used by the Commission to assess regulatory fees on regulated service providers must begin with a Bureau headcount, since the first step is “determining the full-time equivalent number of employees performing the activities described in subsection (a) of this section<sup>3</sup> within the Private Radio Bureau, Mass Media Bureau, Common Carrier Bureau, and

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<sup>1</sup> An application for a submarine cable landing license for the Monet Cable System is currently pending with the Commission. *See* File No. SCL-LIC-20150408-00008.

<sup>2</sup> *See* 47 U.S.C. § 159(b).

<sup>3</sup> Subsection (a)(1) provides that the Commission, in accordance with this section, “shall 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)(1).

other offices of the Commission.”<sup>4</sup> But headcount alone is not a sufficient basis for setting regulatory fees. Thus, Section 9(b)(1)(A) further provides that this preliminary allocation must 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, including such factors as service area coverage, shared use versus exclusive use, and other factors that the Commission determines are necessary in the public interest.”<sup>5</sup>

In the NPRM, the Commission sought comment on a plan to revise the apportionment among International Bureau licensees to reduce the proportion paid by the submarine cable/terrestrial and satellite bearer circuits fee categories by approximately five percent.<sup>6</sup> As noted in the Commission’s *FY 2014 Report and Order*,<sup>7</sup> and reiterated in the NPRM, the Commission has already concluded that the regulatory fee assessment for the submarine cable/terrestrial and satellite bearer circuits fee categories do “*not fairly take into account the Commission’s minimal oversight and regulation of the industry.*”<sup>8</sup>

In the *FY 2014 Report and Order*, the Commission proposed a reduction of the regulatory fee apportionment by five percent and stated that it would revisit the issue to determine if additional adjustment is warranted.<sup>9</sup> As noted in the NPRM, the submarine cable and bearer

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<sup>4</sup> 47 U.S.C. §159(b)(1).

<sup>5</sup> *Id.* (emphasis added).

<sup>6</sup> *See* NPRM, ¶12.

<sup>7</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2014*, Report and Order and Further Notice of Proposed Rulemaking, MD Docket No. 14-92, 29 FCC Rcd 10767 (2014) (“*FY 2014 Report and Order*”).

<sup>8</sup> NPRM, ¶12 (emphasis added).

<sup>9</sup> *Id.*

circuit category is currently allocated 31.36 percent of the International Bureau regulatory fees.<sup>10</sup> Now the Commission proposes a five percent decrease based on its tentative conclusion that the fee remains excessive relative to the minimal Commission oversight and regulation of this industry.<sup>11</sup>

While the Coalition appreciates the Commission's recognition of the significant overpayment of fees by regulatees in this category and its willingness to reduce that burden by five percent, the proposed reduction is inadequate. Under the clear terms of the Act, regulatory fees should be assessed in a manner that is proportional to the benefits rendered to the regulatees by the Commission through its regulatory activities. In the NPRM's revised allocation for FY 2015, the Commission is proposing to charge submarine cable operators very high regulatory fees (*i.e.*, up to \$ 151,425 per submarine cable system with 20 Gbps or more capacity) which, while reduced from assessment levels in prior years, still remain vastly disproportionate to the services actually rendered to such operators by the Commission given the limited regulatory oversight of such operators.

There is no justification as to why such low-cost licensees are subject to assessments of over \$150,000 per year, given the comparative lack of benefits they receive from the Commission's regulatory activities when compared to other licensees. Beyond the significant annual assessments levied on submarine cable operators and other International Bureau licensees, the initial licensure fees imposed on new cable applicants already cover a significant portion of the regulatory costs associated with providing Commission services to these international service providers. For example, the application fee for a new cable landing licenses for a non-common

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

carrier system is nearly \$19,000.<sup>12</sup>

Given the high initial cost to obtain a license for submarine cable operations, and the low ongoing regulatory costs associated with submarine cable operations, there is little justification to charge such operators up to an additional \$150,000 per year. After the initial licensing process, “the provision of international submarine cable service involves little regulation and oversight from the Commission.”<sup>13</sup> As such, there is little basis to additionally require very high ongoing annual fees after the initial licensure process is completed.

If Commission staff review of new cable systems composes the majority of work undertaken by the Commission in this area, then the regulatory fee structure should reflect that fact. The Commission’s regulatory fee system should not subsidize new submarine cable operators on the backs of existing submarine cable operators. And, in both cases, submarine cable operators should not subsidize the Commission’s activities in other areas.

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<sup>12</sup> See International and Satellite Services Fee Filing Guide (July 3, 2014), available at: [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-328190A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-328190A1.pdf).

<sup>13</sup> *FY 2013 NPRM*, ¶ 27.

**B. The Commission's FTE Allotment for Submarine Cable Matters Does Not Justify the Fees Expected to Be Collected from that Category of Regulatees.**

The International Bureau's Policy Division employees whose work involves the regulation of submarine cable operators and bearer circuits are only *two* FTEs,<sup>14</sup> which is in stark contrast to the significant fees that such operators pay to the Commission. Submarine cable operators generally do not offer consumer services and do not use radio spectrum, which vastly reduces the oversight needed for this industry. In fact, when compared to the expected FY2015 revenue to be collected by submarine cable providers of \$5,933,967, the Commission's FY 2015 proposal implies that the two FTEs associated with this category each cost the Commission \$2,966,983. The Commission simply cannot justify an expense of nearly \$3 million per FTE associated with the activities in the submarine cable regulatory field.

In order to be justified and consistent with the Act, the regulatory fees payable by submarine cable operators need be orders of magnitude lower than the level proposed by the Commission in the NPRM.

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<sup>14</sup> See Assessment and Collection of Regulatory Fees for Fiscal Year 2013, Procedures for Assessment and Collection of Regulatory Fees, Assessment and Collection of Regulatory Fees for Fiscal Year 2008, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, MD Docket Nos. 13-140, 12-201 and 08-65, ¶27 (rel. May. 23, 2013) (“*FY 2013 NPRM*”) (“The Policy Division employees whose work involves the regulation of submarine cable systems and bearer circuits, equates to only *two FTEs*. The remaining Policy Division FTEs handle other matters involving international issues and, like the SAND FTEs, should more accurately be considered indirect FTEs, together with the remaining bureau level employees.”) (emphasis added).

**C. The Act Forbids Subsidizing High Cost Regulatees by Overcharging Low Cost Regulatees**

The Act forbids the Commission from subsidizing high-cost regulatees on the backs of low-cost licensees. Instead, assessments must be made in proportion to the benefits received. For years the Commission has recognized that submarine cable regulatees have been overpaying their share of the Commission's regulatory fees, and for years the Commission has continued to charge inordinate fees on these regulatees. The Commission is without any justification to continue this practice in light of its own acknowledgment that the fees paid by this category of providers goes beyond what is reasonable. It is unlawful for the Commission to continue this practice, as doing so subsidizes high-cost regulatees at the expense of a low cost category of service providers.

The Coalition urges the Commission to drastically reduce the regulatory fees payable by submarine cable operators to a level actually commensurate with the regulatory activity of the Policy Division of the International Bureau associated with these activities. Two FTEs simply cannot justify nearly \$6 million in fees. Anything short of significant action to redress the years of overpayments made by this category of providers will continue the violation of the clear statutory requirements under Section 9 of the Act.

**II. THE COMMISSION'S HIGH SUBMARINE CABLE REGULATORY FEES DAMAGE THE SUBMARINE CABLE INDUSTRY AND THE COMPETITIVENESS OF THE UNITED STATES IN THE INTERNATIONAL MARKET**

The significant fees imposed on submarine cable operators by the Commission place the United States at a competitive disadvantage in the international submarine cable market. Submarine cable systems transport most of the U.S. international traffic, including Internet

broadband, video, other high bandwidth applications, voice services (public switched and interconnected VoIP), and non-public, private traffic for various international carriers, content and Internet providers, corporations, wholesale operators, and governments. Large corporate customers include financial and news companies and other content providers.

Regulatory fee charges in the United States are much higher than those charged by other countries, particularly its neighbors. Canada, for example, only charges \$100 (Canadian) per year to submarine cable operators.<sup>15</sup> Mexican operators do not pay annual regulatory fees at all, but rather pay a one-time licensing fee. This significant regulatory fee disparity between the United States and its neighbors places a significant disincentive for operators to land new cables in the United States when they have the business option of instead landing new cables in nearby countries. This, in turn, leads to increased costs to American consumers. If new submarine cable systems choose to land in Canada or Mexico to avoid the high regulatory fees in the United States, eventually most international traffic will leave from (or arrive into) Canada or Mexico rather than the United States.

In addition to harming U.S. businesses and the U.S. economy, and diminishing this country's leadership in communications technology, driving international cable traffic to Canada and Mexico harms national security. As the Commission is aware, communications facilities outside of the United States are not subject to CALEA, and may be much more difficult for United States law enforcement to access when investigating criminal activities. The Commission should encourage U.S. landings, which is consistent with Section 1 of the Act, under which the Commission is charged with "mak[ing] available, so far as possible, to all the

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<sup>15</sup> See Industry Canada, FAQ, International Submarine cable Licences Regulations, available at: <https://www.ic.gc.ca/eic/site/020.nsf/eng/00619.html>.

people of the United States ... a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges.” However, the unreasonably high fees paid by these regulatees, have the opposite effect, and in the long run will harm the United States national security interests by removing cable landing stations from U.S. territory.

### **III. CONCLUSION**

For the reasons set forth herein, the Coalition respectfully urges the Commission to sharply reduce the proposed regulatory fees for the submarine cable industry for FY 2015 and beyond to ensure that such funding levels are commensurate with the services received by this industry from the Commission, and ensure that the funding levels comply with Section 9 of the Act. It is unfair for the Commission to subsidize one category of regulatees on the backs of other categories, especially given the fact that the Commission has been aware of this situation for years. Now is the time to redress this matter.

Respectively submitted,

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