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15 June 2005

VIA ELECTRONIC FILING

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20054

*Re: Assessment and Collection of Regulatory Fees for Fiscal Year 2005,
MD Docket No. 05-59*

Dear Ms. Dortch:

On June 14, 2005, Chad Breckinridge and I, both of Harris, Wiltshire & Grannis LLP and both representing Tyco Telecommunications (US) Inc. ("Tyco Telecom"), met with Barry Ohlson, Senior Legal Advisor to Commissioner Jonathan S. Adelstein, to discuss the above-referenced proceeding. In particular, we discussed the points raised in the attached presentation document, a copy of which we left with Mr. Ohlson.

If you have any questions, please do not hesitate to contact me by telephone at +1 202 730 1337 or by email at kbressie@harriswiltshire.com.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kent D. Bressie", is written over a horizontal line. The signature is fluid and cursive.

Kent D. Bressie

Counsel for Tyco Telecommunications (US) Inc.

cc: Barry Ohlson

Attachment

Tyco Telecom's Position re MD Docket 05-59 and Regulatory Fees Paid by Private Undersea Cable Operators

Current regulatory fee distorts the market for undersea cable capacity

- Technological change and liberalization have produced exponential capacity increases and plunging bandwidth prices, with trans-Atlantic and trans-Pacific capacity increasing close to 2000 percent between 1998 and 2003, and prices dropping more than 90 percent on those routes during the same period.
- Yet regulatory fees have dropped only 62 percent, meaning that regulatory fees now account for a substantial portion of capacity costs. Current trends with respect to capacity prices and regulatory fees may soon render uneconomic certain submarine cable capacity sales and cable investments.
- Current capacity-based regulatory fee regime discriminates against high-capacity undersea cable systems. Capacity-based fees presume that the Commission regulates undersea cable operators in relation to the amount of capacity they have, when in fact, the Commission does not track or require approval for changes in capacity.
- Current capacity-based regulatory fee regime requires private undersea cable operators to subsidize Commission activities undertaken on behalf of common carriers

Current regulatory fee regime does not comport with the Communications Act

- Regulatory fees paid by submarine cable operators are no longer “reasonably related to the benefits provided to the payor of the fee by the Commission’s activities,” as required by Section 9 of the Communications Act.
- Consistent with the “permitted amendment” provisions of Section 9, the Commission must amend the schedule of regulatory fees to reflect changes in Commission services provide to submarine cable operators resulting from Commission rulemakings and changes in law:
 - (1) Entry into force of U.S. WTO/GATS commitments in basic telecommunications and Commission’s *Foreign Participation Order*,
 - (2) Telecommunications Act of 1996 and Commission’s related international Section 214 streamlining rulemakings; and
 - (3) Commission’s submarine cable streamlining rulemaking.

Tyco Telecom’s proposal would eliminate the current regime’s economic distortions and comport with Section 9 of the Communications Act

- To address these legal and policy shortcomings, Tyco Telecom proposed that the Commission establish a new and separate fee category, assessing a flat fee per cable landing license, and reallocate the existing revenue requirement for international bearer circuit fees between the remaining payors in the old category and undersea cable operators in the new category.
- Tyco Telecom made a narrow proposal—based on economic data for the undersea cable capacity market and legal argumentation based on the regulation of undersea cables—in order to allow the Commission to act expeditiously.
- Tyco Telecom’s system-based fee would also eliminate the monitoring, enforcement, and fairness problems inherent in the existing capacity-based fee regime

In its 2004 order, the Commission endorsed the general concept behind Tyco Telecom’s proposal

- The Commission concluded that “a fee system based on licenses, rather than circuits, would be administratively simpler for both the Commission and carriers.”
- The Commission found that “basing the fees on the active circuits may provide disincentives to carriers to initiate new services and to use new facilities efficiently.”

The Commission should act expeditiously to grant relief to undersea cable operators, and should not delay such relief while attempting to make broader changes which no party has sought, much less justified as a legal or policy matter

- The Commission has been considering Tyco Telecom’s proposal for more than two years. In late 2002, Tyco Telecom first raised concerns about regulatory fees paid by undersea cable operators. Tyco Telecom has participated actively in both the FY 2004 and FY 2005 rulemakings.
- No party has questioned Tyco Telecom’s economic or legal analyses, or seriously opposed Tyco Telecom’s proposal. Tyco Telecom’s proposal was strongly supported by FLAG Telecom in 2004 and Level 3 Communications in 2005.