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23 May 2007

VIA ELECTRONIC FILING

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

*Re: Notice of Ex Parte Presentation: Petition for Rulemaking of VSNL
Telecommunications (US) Inc., RM-11312; Assessment and Collection of
Regulatory Fees for Fiscal Year 2007, MD Docket No. 07-81*

Dear Ms. Dortch:

On May 22, 2007, a group representing several submarine cable operators met with Commissioner Jonathan Adelstein and Barry Ohlson, Commissioner Adelstein's Senior Legal Advisor and Legal Advisor for Spectrum and International Issues, to discuss annual regulatory fee issues pending in the above-referenced proceedings. The meeting focused in particular on the points presented in the attached briefing paper, which was distributed at the meeting.

Attendees included: Mike Saunders (Level 3 Communications, LLC); Kent Bressie and Chad Breckinridge (Harris, Wiltshire & Grannis LLP, representing Level 3 Communications, LLC); Roderick Boss (Pacific Crossing Limited); Martin Stern (K&L Gates, representing Pacific Crossing Limited); Paul Scott (Columbus Networks, owner of ARCOS-1 USA); Fiona McKenna (Hibernia Atlantic); Ulises Pin and Troy Tanner (Bingham McCutchen, representing ARCOS-1 USA, Brasil Telecom of America, Inc., and Hibernia Atlantic); Rogena Harris (VSNL International (US) Inc.); and Robert Aamoth (Kelley, Drye & Warren, LLP, representing VSNL International (US) Inc.).

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If you have any questions, please do not hesitate to contact me by telephone at (202) 730-1349 or by email at cbreckinridge@harriswiltshire.com.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Chad Breckinridge". The signature is fluid and cursive, with the first name "Chad" being particularly prominent.

Chad Breckinridge

Counsel for Level 3 Communications, LLC

Attachment

cc: Commissioner Jonathan Adelstein
Barry Ohlson
Roderick Boss
Martin Stern
Paul Scott
Fiona McKenna
Ulises Pin
Troy Tanner
Rogena Harris
Robert Aamoth
Mike Saunders
Kent Bressie

FCC Annual Regulatory Fees Create Severe Economic Distortions in Undersea Capacity Markets

ISSUE: The FCC requires submarine cable operators to pay annual regulatory fees—known as International Bearer Circuit (“IBC”) fees—that can approach the wholesale prices they receive from their customers. This erodes the competitiveness of U.S.-licensed cable operators and raises telecom and data-service rates for U.S. companies and consumers.

BACKGROUND: The current IBC fee requires a submarine cable operator to submit a payment based on its total number of active 64-kilobit-per-second (kbps) circuits (or equivalents) connecting the United States with foreign points. Congress designed this regime for the voice-centric telecommunications era in which active 64 kbps voice channel equivalent circuits were the currency of the day, and a submarine cable operator’s size, revenue and customer base all related to a system’s active circuits.

Technological advances and new applications have resulted in a shift away from the voice-centric small-capacity business model, towards an application-neutral larger-capacity broadband model. A cable operator’s total number of 64 kbps circuit equivalents no longer has a direct relationship to the size of the company, its customer base, its ability to pay, or the regulatory costs it creates for the Commission.

Since 1998, capacity has increased by more than 2000 percent, and prices have dropped by more than 90 percent. As a result of these changes, submarine cable capacity has become the primary means for U.S. consumers, businesses, government, and military to communicate with overseas points. Non-common-carrier undersea cables now carry more than 94 percent of telephone, data, and Internet traffic between the United States and trans-oceanic points.

PROBLEM: The FCC’s fee regime distorts the market for high-capacity services profoundly, resulting in higher prices for U.S. end users and uncomfortably tight (and often negative) margins for U.S.-licensed cable operators.

The current fee regime discriminates against high-capacity cable systems, even though higher capacity systems do not result in higher regulatory costs for the FCC. If a cable operator triples capacity on a system (which it can now do without laying new cable or filing a notice or application with the FCC), its regulatory fees will triple even though the cost of FCC oversight has not changed.

In addition, market forces push prices down when available capacity increases. Yet, the FCC’s fee methodology provides for an increase in regulatory fee payments that is proportional to increases in capacity. Thus, even as prices drop, U.S.-licensed cable operators pay proportionally higher fees whenever their capacity increases.

IMPACT: Standard prices for several trans-Atlantic submarine cable services (all based on publicly available information) illustrate the impact of the fee on high capacity systems. (The FCC has tentatively set the 2007 fee at \$1.16 per 64 kbps circuit or circuit equivalent for FY 2006 traffic.)

- Leasing an OC3 Protected Private Line—suitable for a small ISP or a mid-sized U.S. corporation—costs approximately \$36,000 per year, exclusive of regulatory fees. With a capacity equivalent of 1,890 64 kbps circuits, the IBC fee on an OC3 would total \$2,192, or **6 percent** of the annual price.
- Leasing a 2.5g Linear Wave—suitable for a voice reseller, a large ISP, or a multinational corporation—costs approximately \$102,000 per year, exclusive of regulatory fees. With a capacity equivalent of 30,240 64 kbps circuits, the IBC fee on a 2.5g Linear Wave would total \$35,078, or **35 percent** of the annual price.
- Leasing a 10g Linear Wave—suitable for a major facilities-based telecom carrier, a major ISP, or a major multinational bank—costs approximately \$180,000 per year, exclusive of regulatory fees. With a capacity equivalent of 120,960 64 kbps circuits, the IBC fee on a 10g Linear Wave would total \$140,314, or **78 percent** of the annual price.

These samples illustrate a market distortion that will only become more pronounced as future technical advances lead to even higher capacity services.

Contrasting the IBC fees to the FCC fees imposed on other services highlights the disproportionate impact of the IBC fees. The 2006 regulatory fees imposed on Interstate Telecommunications Service Providers, for instance, totaled approximately **one quarter of one percent (0.25%)** of the price of interstate service. Similarly, the 2006 interstate wireless regulatory fee totaled roughly **one tenth of one percent (0.1%)** of the price of wireless service, and the 2006 fee for cable television operators equaled approximately **one tenth of one percent (0.1%)** of the price of basic cable television service.

SOLUTION: When Congress originally established the current IBC fee structure, it directed the FCC to reform the fee regime when necessary to ensure that the FCC's cost of regulating a service corresponds to the fees it levies.

The FCC should initiate such a reform by issuing a Notice of Proposed Rulemaking, proposing changes to the IBC fee methodology as suggested in the Petition for Rulemaking filed by VSNL Telecommunications US Inc. (filed on February 3, 2006, in Docket RM-11312). The FCC should also provide immediate interim relief in the form of a reduction in the 2007 IBC regulatory fees or in the alternative provide that payment of 2007 IBC regulatory fees by submarine cable operators will be subject to refund pending resolution of such rulemaking proceeding.

Reform will allow U.S.-licensed operators to compete on a level playing field; protect U.S. businesses and consumers from higher prices for telecommunications and data services; and safeguard U.S. government and military communications with installations overseas.