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

In the Matter of	)	
	)	
Assessment and Collection of Regulatory	)	MD Docket No. 08-65
Fees for Fiscal Year 2008	)	RM No. 11312

COMMENTS OF AT&T INC.

AT&T Inc., on behalf of its affiliates, ("AT&T") hereby submits the following Comments on the methodology used to calculate regulatory fees for international bearer circuits.[1]

AT&T supports efforts to reduce the Commission's regulatory fees paid by submarine cable licensees, provided these fees continue to apply to all licensees on a non-discriminatory and competitively-neutral basis without advantaging or disadvantaging any type of cable system or service provider. AT&T is also concerned that any changes to international bearer circuit fees should not result in increased fees for other services or service providers. As the Commission has described, under the "zero-sum" fee process mandated by Section 9 of the Communications Act of 1934 (the "Act"), any reduction in the revenue requirement and resulting fees for one category of licensees automatically increases the revenue requirement and resulting fees for other categories.[2] Thus far, the private non-common carrier cable operators who seek to change the current methodology for calculating international bearer circuit fees have failed to offer any

[1] *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, MD Docket No. 08-65, Notice of Proposed Rulemaking and Order, FCC 08-126, rel. May 8, 2008, ¶ 8 ("Notice").

[2] *Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, 19 FCC Rcd.11662, ¶ 10 (2004).

alternative approach to the current methodology that would levy fees on a non-discriminatory and competitively-neutral basis.

There is also no apparent adverse impact on industry growth from the existing fees, with Commission data showing a massive on-going expansion of U.S. submarine cable international circuit capacity, including substantial capacity increases by many private cable operators. Usage of this expanded capacity will automatically reduce international bearer circuit fees under the current fee methodology, just as these fees have been substantially reduced as the result of other substantial capacity increases in recent years. The Commission, therefore, should carefully evaluate any proposed changes in the present fee methodology to ensure that all cable operators – regardless of regulatory classification or cable size – continue to be treated on a non-discriminatory and competitively-neutral basis.

The proposals to change the present fee system put forward in February 2006 by VSNL Telecommunications (US) Inc. ("VSNL") certainly offer no basis for progress on this issue since they would merely benefit operators of non-common carrier cables or larger capacity cables at the expense of other cable operators.[3] VSNL would allocate only 10 percent of the bearer circuit fee revenue requirement to non-common carrier cables, which account for over 90 percent of U.S. international submarine cable circuits, and impose the remaining 90 percent of the revenue requirement on common carrier cables, which account for less than 10 percent of international submarine cable circuits. Equally flawed is VSNL's further proposal for a flat per-system fee, which would result in smaller capacity cables (including most common carrier cables) paying

[3] *See* Petition for Rulemaking, VSNL Telecommunications (USA) Inc., RM-11312 (filed Feb. 6, 2006). *See also*, Comments of AT&T Inc., RM-11312, filed Mar. 17, 2006; Reply Comments of AT&T, RM-11312, filed Apr. 3, 2006; Reply Comments of Qwest Communications International Inc., RM-11312, filed Apr. 3, 2006; Reply Comments of Verizon, RM-11312, filed Apr. 3, 2006.

much higher fees on a per-circuit basis than larger capacity cables (including most non-common carrier cables).[4] Both of VSNL's proposals would provide distinctly less rational and equitable fee methodologies than the current fee structure, which applies the same per-circuit fees to all cables regardless of cable size or regulatory classification.

Recent Commission data documenting the continuing very rapid growth of the submarine cable industry fail to support claims that the current international bearer circuit fees are impeding industry growth. As shown by the Commission's most recent Section 43.82 Circuit Status report, U.S.-landed submarine cable capacity grew from 38.5 million total 64 kbps circuits in 2002 to 91 million total 64 kbps circuits in 2005 – a 136 percent increase in total capacity in four years.[5] The Commission report also estimates further growth in U.S. cable capacity to 175 million total circuits in 2009, which will more than quadruple total industry capacity over seven years from 2002-2009, and expand total capacity by a factor of 45 for the ten-year period 1999-2009, notwithstanding the current fee structure.[6] The section 43.82 report also lists significant capacity expansions by a number of the private cable operators that have argued that the existing fee regime is a disincentive for such investment.[7]

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[4] *See* VSNL Petition at 8-9; Comments of AT&T at 10-11. The difference in size between common carrier and non-common carrier cable systems is even more pronounced today than in 2006. The average capacity of the 13 U.S.-licensed common carrier cable systems is approximately 375,000 circuits, with more than half these systems having less than 100,000 circuits. FCC International Bureau, *2006 Section 43.82 Circuit Status Data*, Feb. 2008, Table 7. In contrast, the average capacity of the 27 U.S.-licensed non-common carrier systems is approximately 3.2 million circuits – almost ten times larger than the average capacity of U.S. common carrier cable systems. *Id*.

[5] *Id*.

[6] *Id*. (showing total U.S. available capacity in 1999 of 3,868,830 circuits and estimated total available capacity in 2009 of 175,422,739 circuits).

[7] FLAG has increased capacity on its Atlantic-1 cable more than five-fold from 1.9 million circuits in 2003 to 10.6 million circuits in 2006, is expected to increase capacity on this cable by another 2 million circuits for 2007, and has a pending application to build its new NGN Pacific

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Additionally, there have been significant reductions in the level of the international bearer circuit fee in recent years as the direct result of the increased total of active circuits on U.S. cable systems, and usage of the increased capacity described above will result in further fee reductions. Because fees are determined by dividing the international bearer circuit revenue requirement by the total number of payment units (*i.e.*, active circuits), an increased number of payment units automatically results in a reduced per circuit fee.[8] Under this existing methodology, international bearer circuit fees have been substantially reduced in recent years from $5.00 per circuit in 2001 to $1.09 per circuit in 2008 as the result of the substantial increase in active circuits during this period. This existing methodology will also bring further reductions in the level of the international bearer circuit fee when the huge continuing expansion in U.S. landed submarine capacity results in further increases in active circuits.

Lastly, Commission activities benefiting all U.S. cable operators, including both common carrier operators and non-common carrier operators regardless of the capacities of their cables, provide no basis for different treatment of operators under the fee structure according to their regulatory classification or cable size. Those benefits include not only Commission regulation of submarine cables but also the Commission's international representational activities, work with

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cable with a capacity of over 30 million circuits. *Id*. Similarly, Apollo increased the capacity of its Atlantic cable by four-fold from 3.8 million to 15.5 million circuits in 2005, while Hibernia more than doubled the capacity of its Atlantic cable from 1.9 million to 4.3 million circuits in 2006. VSNL increased capacity from 5.6 million to 7.5 million circuits in 2006 on the TGN-Pacific cable and is expected to increase capacity on this cable to 22.7 million circuits in 2007. Global Crossing increased capacity by more than two million circuits on the AC-1 cable in 2006 and by almost one million circuits on the AC-2 cable in 2005. Additionally, the ARCOS-1 cable more than doubled capacity in 2006 and has a further capacity increase of more than 40 percent expected for 2007.

[8] *Compare* Notice, Attachment C (fee calculation for 2007), *with Assessment and Collection of Regulatory Fees for Fiscal Year 2006*, 21 FCC Rcd. 3708 (2006), Attachment C (fee calculation

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foreign regulators and other activities to further its international regulatory goals to encourage effective competition and market access in foreign countries. Those activities provide substantial benefits to all U.S. submarine cable operators, which are critically dependent on effective market access and competition in foreign markets to land their cables in foreign countries and to ensure adequate usage of these facilities. The Commission has emphasized that U.S. submarine cable operators require a variety of "essential inputs" in foreign markets, including "cable landing stations, backhaul facilities that connect the landing station with international or 'gateway' switching centers, transmission facilities from the gateway switch to the local telephone exchange and access to the local telephone exchange."[9] These Commission activities benefiting all U.S. cable operators are properly taken into account in the establishment and adjustment of regulatory fees under Section 9(b)(1)(A) of the Act.

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for 2006).

[9] *Review of Commission Consideration of Applications under the Cable Landing License Act*, 16 FCC Rcd. 22167, ¶ 26 (2001).

For these reasons, the Commission should carefully evaluate any proposed change in methodology to ensure that fees continue to apply to all licensees on a non-discriminatory and competitively-neutral basis and to continue to recognize the significant benefits to all U.S. submarine cable operators of the Commission's international activities.

Respectfully submitted,

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