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

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

REPLY COMMENTS

Pursuant to Section 1.415 of the rules of the Federal Communications Commission ("Commission"),[1] Reliance Globalcom Limited ("Reliance"), by its attorneys, respectfully submits the instant reply comments in the above-captioned proceeding. Reliance, which was formerly known as FLAG Telecom Group Limited, is the licensee of a submarine cable landing station license for a transatlantic, non-common carrier submarine cable.[2] Reliance also indirectly wholly owns and controls FLAG Telecom Network USA Limited, which has applied for a submarine cable landing license for a transpacific, non-common carrier submarine cable.[3]

Reliance commends the Commission for continuing to consider modifications to its current regulatory fee regime as applied to non-common carrier submarine cable landing licensees ("Non-Common Carrier Licensees"). As thoroughly demonstrated by the many

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[1] 47 C.F.R. § 1.415; *Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Notice of Proposed Rulemaking, MD Docket No. 08-65, RM-11312, FCC 08-126 (rel. May 8, 2008).

[2] *See* FCC File No. SCL-LIC-19990301-0005.

[3] *See* FCC File No. SCL-LIC-20070329-00006.

commenters that have participated in the Commission's proceedings regarding this issue over the past four years, the current capacity-based 64 kilobit per second ("Kbps") international bearer circuit ("Circuit") annual regulatory fee ("IBC Fee") regime has critical shortcomings as applied to Non-Common Carrier Licensees.[4] The adverse impact on Non-Common Carrier Licensees only has compounded while the Commission continues to evaluate reforming the IBC Fee regulatory structure. Accordingly, Reliance strongly urges the Commission to take expeditious action to reform the IBC Fee methodology. Reliance believes that the Joint Proposal provides a reasonable means to resolve the shortcomings of the current IBC Fee regime.[5] Therefore, to provide relief with respect to 2008 IBC Fee collections, Reliance urges the Commission promptly to adopt the Joint Proposal.

I. THERE IS BROAD CONSENSUS AMONG COMMENTERS THAT THE CURRENT REGULATORY FEE REGIME AS APPLIED TO NON-COMMON CARRIER SUBMARINE CABLE LANDING LICENSEES HAS SEVERAL CRITICAL FLAWS

A. Non-Common Carrier Licensees are Responsible for an Increasingly Inequitable Portion of the Total IBC Fees Collected by the Commission Each Year

Comments filed in the instant proceeding unequivocally demonstrate that the Commission's current capacity-based system for assessing IBC Fees has substantial

[4] Reliance has described the shortcomings of the existing IBC Fee regime in detail in its filings in earlier, related Commission proceedings. *See* Comments of FLAG Telecom Group Limited in Support of Petition for Rulemaking, RM No. 11312 (filed Mar. 17, 2006); Reply Comments of FLAG Telecom Group Limited, MD Docket No. 04-73 (filed Apr. 30, 2004) (collectively, "Reliance Comments"). The Reliance Comments are hereby incorporated by reference and supplement the instant reply comments.

[5] *See* Joint Proposal of Level 3 Communications, LLC, Brasil Telecom of America, Inc., Columbus Networks USA, Inc., ARCOS-1 USA, Inc., A.SUR Net, Inc., Hibernia America US LLC, Pacific Crossing Limited and PC Landing Corp., MD Docket No. 08-65 (filed May 30, 2008) ("Joint Proposal").

shortcomings and disproportionately harms Non-Common Carrier Licensees.[6] Accordingly, the current IBC Fee regulatory regime must be replaced expeditiously.

Under the current IBC Fee system, the Commission charges IBC Fees on a per-Circuit basis and imposes such IBC Fees indiscriminately on all companies that provide Circuits, regardless of the relative costs of regulating the various types of Circuit providers. Accordingly, the same per-Circuit IBC Fee currently is paid by heavily regulated entities, such as common carrier submarine cable landing licensees subject to Title II of the Communications Act of 1934, as amended, and international satellite licensees subject to complex licensing and spectrum regulation and international coordination procedures, as well as Circuit providers that are only lightly regulated, such as Non-Common Carrier Licensees. This inequity is further compounded by the fact that Non-Common Carrier Licensees operate the overwhelming majority of all active Circuits.[7] As a result, Non-Common Carrier Licensees, which are the least regulated type of Circuit providers by a significant margin, are responsible for the substantial majority of the total IBC Fees collected by the Commission each year.[8]

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[6] *See*, *e.g.*, Comments of Level 3 Communications, LLC, MD Docket No. 08-65 (filed May 30, 2008) ("Level 3 Comments"); Comments of Tata Communications (US) Inc., MD Docket No. 08-65 (filed May 30, 2008); Comments of Global Crossing North America, Inc., MD Docket No. 08-65 (filed May 30, 2008) ("Global Crossing Comments"), Comments of Pacific Crossing Limited and PC Landing Corp., MD Docket No. 08-65 (filed May 30, 2008) ("PCL Comments").

[7] *See*, 2006 Section 43.82 Circuit Status Data, issued by the International Bureau, Federal Communications Commission, February 2008 (finding that submarine cables accounted for 85.6 percent of the overall active transmission capacity in 2006 and Non-Common Carrier Licensees operated 95.2% of this capacity).

[8] *See*, *e.g.*, Global Crossing Comments at 4-5 ("There is no conceivable basis on which to justify the disproportionately high burden that submarine cable licensees incur with respect to regulatory fees, relative to other Commission-licensed entities."); Level 3 Comments 22-23 (explaining that the regulatory fees paid by Non-Common Carrier Licensees bears no relation to the cost of regulating such entities).

Moreover, due to advances in the technology used to light optical fiber, the capacity offered by undersea cables is increasing much faster than the capacity of other types of Circuit providers. Accordingly, the Commission's current IBC Fee assessment methodology will continue to shift an ever increasing percentage of the total IBC Fees collected by the Commission to Non-Common Carrier Licensees over time, thereby further disproportionately burdening Non-Common Carrier Licensees.[9] There is, however, no corresponding increase in the cost of regulating Non-Common Carrier Licensees. To the contrary, the cost of regulation of Non-Common Carrier Licensees has decreased over time due to the deregulation by the Commission of Non-Common Carrier Licensees in 2002.

B. The Current IBC Fee Regime Disrupts and Distorts the Market for Non-Common Carrier Undersea Cable Capacity

The Commission's current IBC Fee assessment methodology disrupts the commercial model used by Non-Common Carrier Licensees to lease undersea cable capacity.[10] Specifically, the Commission's existing IBC Fee assessment methodology prevents Non-Common Carrier Licensees from determining in advance with any certainty the amount of IBC Fees that will be imposed on Circuits leased under individual capacity contracts. As a result, it is very difficult for Non-Common Carrier Licensees to price Circuits so as to recapture from their customers the IBC Fees that will accrue to leased Circuits over the term of a capacity contract. Similarly, it is challenging for Non-Common Carrier Licensees to pass the IBC Fees through to their customers

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[9] Although the Commission currently does not have a reliable method for determining the number of activated Circuits on which IBC Fees are assessed, even if such a method existed it would not resolve this inequitable distribution of IBC Fee obligation on Non-Common Carrier Licensees. Indeed, as Level 3 points out, "even the most intrusive reporting requirements would not remedy the structural problems with the existing fee regime." Level 3 Comments at 16-18.

[10] *See, e.g.*, PCL Comments at 9-11.

on an annual basis both because of the yearly administrative burden entailed in doing so and because customers demand a level of predictability with respect to their annual costs that is not possible under the current IBC Fee regime. This inability to predict IBC Fee liability on a prospective basis is a recurring source of friction between Non-Common Carrier Licensees and their customers and has become a substantial obstacle when negotiating submarine cable lease transactions. Nevertheless, failure to account for IBC Fees in customer leases exposes a Non-Common Carrier Licensee to significant risk that a capacity lease transaction will result in a substantial loss to the Non-Common Carrier Licensee. In short, the tension between Non-Common Carrier Licensees and their customers associated with IBC Fees imposes substantial transaction costs that disrupt the smooth operation of the undersea capacity markets.

In addition, the Commission's current IBC Fee methodology serves as a disincentive to technology upgrades and new cable deployment by Non-Common Carrier Licensees.[11] IBC Fees regularly amount to a substantial portion of total lease costs under the existing IBC Fee regime, and in many instances constitute a multiple of the commercial value of leased Circuits.[12] This is especially true with respect to high-capacity leases, such as a 10 Gigabits per second ("Gbps") wavelength, where the IBC Fee is calculated based on the number of individual 64 Kbps Circuits comprising the 10 Gbps wavelength without any diminution for scale. This distorts the market for undersea capacity and thereby prevents cable deployment and maintenance costs from

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[11] *See*, *e.g.*, Level 3 Comments at 14-16.

[12] *See*, *e.g.*, PCL Comments at 9-10 (explaining that, in 2007, the cost to purchase a ten gigabit wave was less than $180,000 but that the regulatory fees on such ten gigabit wave were $127,008); Level 3 Comments at 9 (providing examples of circumstances where regulatory fees account for up to 88% of the price of capacity); Global Crossing Comments at 3 (discussing lack of rationale relationship between costs of capacity and regulatory fees).

dictating capacity prices and new capital expenditures as would be the case in a competitive market not burdened by such regulatory distortions.

For example, because Non-Common Carrier Licensees operating high-capacity cable systems shoulder a disproportionate share of the financial burden imposed by IBC Fees, the current IBC methodology discourages new investment to increase the capacity of existing undersea cables.[13] Similarly, a new, high-capacity submarine cable will immediately suffer from a commercial disadvantage in relation to older, lower capacity submarine cables that incur much lower IBC Fees even though the new cable costs no more to regulate. This creates a strong disincentive to the deployment of additional undersea cables that would otherwise be justified based on market forces and therefore is adverse to the public interest in increased international communications capacity.

This problem is further exacerbated by the dramatic increase that has occurred over time in the typical amount of bandwidth purchased by a customer over a submarine cable. Like other Non-Common Carrier Licensees, Reliance regularly sells to its customers capacity for data services involving wavelengths of 10 Gbps. By contrast, IBC Fees are still based on very low-capacity Circuits defined by reference to the capacity of a traditional, but increasingly anachronistic, voice channel—*i.e.*, 64 Kbps. There are 163,840 Circuits in a wavelength of 10 Gbps, which means that, based on the proposed IBC Fee for 2008, the total annual IBC Fees due on a wavelength of 10 Gbps amounts to nearly $180,000, which can exceed the cost of the underlying 10 Gbps Circuit.[14] As noted above, the Commission's cost of regulating submarine

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[13] *See*, *e.g.*, Level 3 Comments at 14-16.

[14] Even a relatively low-capacity STM1 circuit (*i.e.*, 155 Mbps) is the equivalent of 2,460 Circuits of 64 Kbps each, which results in a total IBC Fee of over $2,700 per year at the proposed rate for 2008 IBC Fees.

cables is not related to their capacity and therefore there is no rational basis for IBC Fees to increase linearly with the increase in the capacity of a Circuit, which results in absurdly high IBC Fees for very high-capacity Circuits.[15] Moreover, this problem only will worsen in the future as the customers of Non-Common Carrier Licensees seek to purchase Circuits with yet higher capacity.

II. THE COMMISSION SHOULD ACT PROMPTLY TO ADOPT THE JOINT PROPOSAL

The record in the instant proceeding and other related proceedings clearly demonstrate that the current IBC Fee regime must be reformed to remedy these significant issues. As Level 3 explains in its comments, the Commission not only has the authority to reform the existing IBC Fee regime but, in fact, is required under Section 9 of the Act to do so.[16] The Joint Proposal provides a fair and reasonable means of reform. The Joint Proposal takes into account in a manageable manner the Commission's lower overall cost of regulating Non-Common Carrier Licensees compared to other types of Circuit providers. In addition, it replaces the current unworkable capacity-based IBC Fee structure with a per-system fee that does not discourage submarine cable capacity expansion or discriminate against high-capacity cable systems. Accordingly, Reliance respectfully requests the Commission to adopt the Joint Proposal in its entirety and thereby replace for 2008 the existing IBC Fee methodology as applied to Non-

[15] If the Commission was to retain a capacity-based IBC Fee (which Reliance opposes), the Commission must institute a mechanism to scale down the IBC Fee as the capacity of submarine cables increase, much like the underlying cost to customers of high-capacity circuits scale down as the capacity of the circuits increase.

[16] *See* Level 3 Comments at 22-35.

Common Carrier Licensees with the Submarine Cable System Fee regime set forth in the Joint Proposal.

Respectfully submitted,

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