

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

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

REPLY COMMENTS OF GLOBAL CROSSING NORTH AMERICA, INC.

Global Crossing North America, Inc. (“Global Crossing”) respectfully submits its reply comments in the above-captioned docket. The opening round of comments in this proceeding demonstrates widespread agreement within the submarine cable industry that the methodology currently used to assess regulatory fees for providers of international bearer circuits (“IBCs”) is seriously flawed and in need of reform. In fact, those comments generally corroborate the core problems of that methodology as described by Global Crossing—namely, that it fails to account for recent marketplace and technological developments that have led to increases in capacity and decreases in price (and thus revenue); undermines the public interest by discouraging facilities upgrades that would support even more efficient and affordable service; and results in disproportionately high regulatory fees for cable landing licensees that are not commensurate with the industry’s revenues or the level of regulatory activity in this area.¹

¹ See generally Global Crossing Comments at 2-5. AT&T’s observation that the submarine cable industry has experienced growth, see AT&T Comments at 2-3, does not disprove that the current fee structure creates disincentives to investment and innovation. As several parties note, the current methodology can affect directly a provider’s decisions concerning the type of services it will offer—meaning that even if investment and innovation are not stopped entirely, they are at least delayed. See, e.g., Level 3 Comments at 14-16; PCL Comments at 10. And contrary to AT&T’s claim, see AT&T Comments at 4, past reductions in the per-circuit fee do not provide sufficient relief to the industry. Indeed, bandwidth prices have fallen far faster than regulatory fees, such that regulatory fees consume a disproportionate amount of a carrier’s revenue. Moreover,

While the Joint Proposal made by a group of submarine cable operators needs additional refinement, it contains elements that are worthy of consideration.² Before it can be adopted, however, the Joint Proposal should be modified in two important respects.

First, the Joint Proposal is premised on the use of two separate fees—one that is intended to recover the costs of regulating *services* provided by facilities-based common carriers (the “New IBC Fee”) and another that is intended to recover the costs of regulating submarine cable *systems* (the “SCS Fee”).³ However, that dual fee structure could result in double counting where, as in Global Crossing’s case, a common carrier submarine cable operator has capacity from an affiliated private submarine cable operator. To avoid that result, the Joint Proposal should be modified to reflect that such a common carrier affiliate would receive a credit on the New IBC Fee it owes in the amount of the SCS Fee paid by its private affiliate.⁴ In addition, Level 3’s comments suggest that a private operator would be required to pay one SCS Fee while

apart from the fact that total fees remain irrationally high notwithstanding those adjustments over time, the fee is still subject to increases, as the Commission has proposed for this year. *Compare Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Notice of Proposed Rulemaking and Order, MD Docket No. 08-65, RM No. 11312, at 48 (rel. May 8, 2008) (proposing fee of \$1.09/circuit), *with Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15712, 15765 (2007) (assessing fee of \$1.05/circuit).

² See generally Joint Proposal, MD Docket No. 08-65, RM No. 11312 (filed May 30, 2008) (proposal by Level 3 Communications, LLC; Brasil Telecom of America, Inc.; Columbus Networks USA, Inc., ARCOS-1 USA, Inc., and A.SUR Net, Inc.; Hibernia Atlantic US LLC; and Pacific Crossing Limited and PC Landing Corp.).

³ *Id.* at 2; see also Level 3 Comments at 18.

⁴ For example, if the private affiliate paid an SCS Fee of \$100,000 and the common carrier affiliate owed a New IBC Fee of \$175,000, the common carrier affiliate would receive a \$100,000 credit and thus pay a New IBC Fee of \$75,000.

its common carrier affiliate could be required to pay both the SCS Fee and a New IBC Fee.⁵ The separate statement of the Joint Proposal does not mention the possibility of such duplicative SCS Fees, but in any event, Global Crossing presumes that Level 3 is mistaken. Indeed, were Level 3 correct, then an entity such as Global Crossing would be required to pay three separate rate elements (*i.e.*, two SCS Fees for a single cable system, in addition to a New IBC Fee) compared to an entity such as Level 3 only paying one (*i.e.*, a single SCS Fee). In order to maintain parity between private and common carriers, the Joint Proposal should be modified or clarified to avoid placing these increased financial burdens on common carriers.

Second, the proposed 50-50 split of the current revenue requirement between the SCS Fee and the New IBC Fee should be adjusted from the outset to more closely reflect the lower regulatory costs imposed on the Commission by private operators as opposed to common carriers. The logic of this proposed split has not been explained. To the contrary, Level 3 notes that “private operators impose nominal regulatory costs on the Commission, as they are not regulated under the Act or the Commission’s panoply of Part 63 rules governing international common carriers.”⁶ A fee structure that assigns one-half of the revenue requirement to private carriers—even as a “starting point” subject to further decreases⁷—places a disproportionate burden on the category of entities that consume the least amount of regulatory attention and resources. Accordingly, the Joint Proposal should be modified to rely on an initial division between private entities and common carriers that more closely approximates the regulatory costs associated with each.

⁵ See Level 3 Comments at 18 (“Common-carrier submarine cable operators would pay both fees—one reflecting regulation of their facilities, the other reflecting common-carrier regulation of their services.”).

⁶ *Id.* at 7.

CONCLUSION

Global Crossing is committed to working with the Commission and the industry to develop a rational method of assessing IBC fees. The Joint Proposal would only provide an acceptable solution if: (i) it is modified to provide that the common carrier affiliate of a licensed private submarine cable system operator that is subject to and pays the SCS Fee may claim a credit for the amount of that SCS Fee and thereby reduce its New IBC Fee to avoid double counting, and (ii) the proposed 50-50 split of the current revenue requirement between the SCS Fee and the New IBC Fee is adjusted from the outset to more closely reflect the lower regulatory costs that private operators impose on the Commission.

Respectfully submitted,

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⁷ Joint Proposal at 2; *see also* PCL Comments at 14.