

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

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

REPLY COMMENTS OF VERIZON¹

Verizon agrees with AT&T that efforts to reduce the Commission’s regulatory fees paid by submarine cable licensees are appropriate, provided that 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.² In addition, as AT&T points out, any changes to the international bearer circuit fees should not result in increased fees for other services or service providers.³ Neither the Joint Proposal filed in this proceeding by a group of submarine cable operators nor the earlier proposal made by VSNL Telecommunications (US) Inc. (“VSNL”) is consistent with these goals.⁴ Instead, both would have the effect of shifting the responsibility for paying a large portion of the regulatory fees imposed on submarine cables from private cables to common carrier cables. The Commission should, therefore, reject these proposals.

¹ The Verizon companies participating in this filing (“Verizon”) are the companies affiliated with Verizon Communications Inc. that hold interests in submarine cables.

² Comments of AT&T Inc. at 1.

³ *Id.*

⁴ Joint Proposal, attached as Exhibit A to Comments of Level 3 Communications, LLC, also filed with explanatory narrative by the Joint Submarine Cable Operators (May 30, 2008) (the “Joint Proposal”); VSNL Petition for Rulemaking, *Assessment and Collection of Regulatory Fees for Fiscal Year 2006*, RM-11312 (Feb. 3, 2006) (the “2006 proposal”). VSNL is now Tata Communications (US) Inc.

Today, the Commission imposes a fee on each 64 Kbps-equivalent circuit for all active circuits connecting the United States with foreign points, regardless of the type of operator or the regulatory classification of the submarine cable.⁵ VSNL's 2006 proposal asked the Commission to create a new fee category for non-common carrier submarine cables, allocate 10 percent of the international bearer circuit fees ("IBCF") revenue requirement to the new category, and recover this portion of the IBCF revenue requirement through a flat annual fee on each non-common carrier submarine cable system.⁶ Because the fee process mandated by Section 9 of the Act is a "zero-sum" process, the establishment of a separate fee category for non-common carrier operators with reduced regulatory fees would leave 90 percent of the fees to be recovered from other licensees, and would necessarily increase their fees.⁷

Although the Joint Proposal is less blatant about shifting fees to common carriers and common carrier cables, it appears to have the same effect.⁸ Under the Joint Proposal, the Commission would create a new regulatory fee category for submarine cable systems (the "SCS fee"), and then split the existing IBCF "revenue requirement" between the SCS fee and the "new" international bearer circuits fee. Joint Proposal at 4. The Joint Proposal suggests that the

⁵ Public Notice, *Compliance with Regulatory Fee Requirements by Cable Landing Licensees Operating on a Non-Common Carrier Basis*, 19 FCC Rcd 12318, at 2 (2004).

⁶ 2006 Proposal at 5-7.

⁷ See Order, *Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, 19 FCC Rcd 11662, ¶ 10 (2004) ("The fee process specified by section 9 is by necessity a 'zero-sum' proposition, since the reduction of fees in one category must be counterbalanced by increases in other categories to ensure that the total amount specified by Congress is collected."); see also Report and Order and Order on Reconsideration, *Assessment and Collection of Regulatory Fees for Fiscal Year 2005, Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, 20 FCC Rcd 12249, ¶ 9 (2005) ("*2005 Regulatory Fee Order*") (noting that "creating a new section 9 regulatory fee category would impact other international carriers").

⁸ Exactly how the Joint Proposal would operate is not entirely clear, and apparently is not clear even to the cable operators who proposed it. The Joint Proposal, on its face, notes that "individual signatories have their own views on how these principles might be implemented, interpreted, or even extended." Joint Proposal at 1.

Commission start with a 50-50 split of the revenue requirement, but then revise the submarine cable system category's share downward. *Id.* The SCS fee portion of the revenue requirement would be recovered through a flat per-system fee paid by each cable system connecting the United States and international points and for which the FCC has issued a license. *Id.* The new IBCF would be recovered by a per-circuit charge on active common carrier circuits, much like today's IBCF. Under the Joint Proposal, every submarine cable system would pay the same per-system SCS fee. This means that common carrier cables, which tend to be older, smaller-capacity cables, would pay the same per-system fee as non-common carrier cables which generally have much higher capacity and, therefore, more opportunity to generate revenues to cover costs, including regulatory fees. And on top of the per-system fee, common carriers would also pay the new IBCF for each active common carrier circuit they own or lease.⁹ The end result, therefore, appears to be a shift of the responsibility for paying regulatory fees from non-common carrier cables to common carriers and common carrier cables. The Commission has declined to adopt such a proposal in the past, and should do so again.¹⁰

Commenters make several arguments in support of their claims for changes to the IBCF, but none justifies the changes they propose. *First*, Level 3 argues, as VSNL did two years earlier, that “recent” changes in law and regulations – including the effectiveness of the U.S. commitments in basic telecommunications under the World Trade Organization General Agreement on Trade in Services and the Commission’s implementation of those commitments in the *Foreign Participation Order*¹¹; the 1996 Act and the Commission’s related streamlining of

⁹ Level 3 Comments at 18.

¹⁰ See 2005 Regulatory Fee Order ¶¶ 8-9.

¹¹ Report and Order and Order on Reconsideration, *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-*

its international Section 214 rules; and the Commission's submarine cable streamlining rulemaking – have changed the level of services the Commission provides to non-common carrier cable licensees, and therefore justify a reduction in the fees charged to submarine cables and particularly non-common carrier submarine cable operators.¹²

As Verizon and AT&T explained before, however, many of the changes in law and regulation, as they relate to international services and cables – and other changes not mentioned by the commenters – have reduced the regulatory requirements imposed on both non-common carrier and common carrier cables and on U.S. international carriers. In addition, the changes in Commission regulation have been broad based, and have benefited all U.S. carriers and submarine cable operators, both common carrier and non-common carrier. For example, in its submarine cable streamlining proceeding, the Commission decided to adopt streamlined entry rules that did not favor any particular type of cable structure over another, and determined that it would treat similarly situated applicants on an equal footing, regardless of the ways a company might choose, for business or other reasons, to structure its cable.¹³ As a result, there is *less* disparity in the treatment of non-common carrier and common carrier providers now than before these changes, and such changes do not justify reducing the fees paid by non-common carrier cables or increasing the fees paid by common carriers or common carrier cables.¹⁴

Affiliated Entities, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891 (1997) (“*Foreign Participation Order*”).

¹² Level 3 Comments at 27-35; VSNL 2006 Proposal at 15-16.

¹³ See AT&T Comments, RM-11312 (March 17, 2006) at 6-7 (citing *Submarine Cable Streamlining Order*).

¹⁴ See AT&T Comments, RM-11312 (March 17, 2006) at 7-8 (citing international 214 and submarine cable streamlining proceedings, elimination of tariffing requirements for U.S. international carriers and removal of International Settlements Policy from most U.S. international routes); Verizon Reply Comments, RM-11312 (April 3, 2006).

Further, as AT&T points out, Commission activities such as work with foreign regulators and international representational activities to encourage competition and market access in foreign countries provide substantial benefits to all U.S. submarine cable operators.¹⁵ There is, therefore, no reason to reduce the regulatory fees of non-common carrier cable operators at the expense of common carrier cables.

Second, commenters claim that the current fee structure is distorting the marketplace.¹⁶ For example, Global Crossing claims that regulatory fees are discouraging providers from “improving and upgrading their facilities,”¹⁷ while Level 3 argues that regulatory fees are discouraging submarine cable operators from offering “new, more innovative, and more efficient services.”¹⁸ But Level 3 notes that there has been both “[b]ooming demand for capacity” and “exponential increases in capacity and plunging capacity prices” as a result of “fundamental changes in technology.”¹⁹ And as demand and capacity have increased, the IBCF has declined from \$7.00 per circuit in 2000 to \$1.09 per circuit in 2008. These changes have occurred under the current regulatory fee structure and do not provide a reason to alter it.

Third, commenters argue that the regulatory fee requirements are vague or unclear, and that some cable operators may “stretch the boundaries of the law” in interpreting them. As a result, such cable operators may not be paying their fair share of international bearer circuit fees.²⁰ Verizon shares the concern that nonpayment by some cable operators raises the costs for

¹⁵ See Comments of AT&T Inc. at 4-5; see also AT&T Comments, RM-11312 (March 17, 2006) at 9-10.

¹⁶ See, e.g., Level 3 Comments at 20-21; Tata Comments at 2-5.

¹⁷ Global Crossing Comments at 4.

¹⁸ Level 3 Comments at 14.

¹⁹ Level 3 Comments at 8.

²⁰ Level 3 Comments at 16-17.

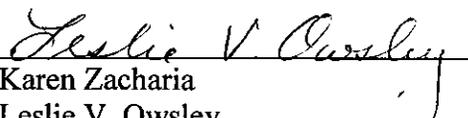
others, and as noted earlier, would like to see the level of international circuit bearer fees reduced further.²¹ But varying interpretations by some non-common carrier or private cable operators of the current fee requirements is not a circumstance that justifies shifting a significant portion of the regulatory revenue requirement to common carriers, common carrier cables or operators of small cables.

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For the foregoing reasons, the Commission should not adopt the Joint Proposal or VSNL's 2006 proposal to restructure the current international bearer circuit fee structure.

Respectfully submitted,

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²¹ Verizon agrees with Level 3 that new, more intrusive reporting requirements are not the answer to this concern. See Level 3 Comments at 17.