

**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

REPLY COMMENTS OF AT&T INC.

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SUMMARY

The Commission's regulatory fees on international bearer circuits should continue to apply on a non-discriminatory and competitively-neutral basis without advantaging or disadvantaging any type of cable system or service provider. However, some private operators propose a new fee structure that would exempt non-common carrier operators from payment of international bearer circuit fees, and establish a new submarine cable systems fee that would impose higher per circuit costs on smaller submarine cables (including most common carrier and other consortium cables) than on larger cables (including most private operator cables). Non-common carrier submarine cable operators would be subject only to a system-based fee under this proposal, while facilities-based common carriers would pay both per-circuit capacity-based fees and the new system-based fee.

The effect of these changes would be to impose a disproportionate fee burden on facilities-based common carriers, while decreasing the fees paid by non-common carrier cable operators. The resulting fee structure would be neither non-discriminatory nor competitively-neutral, would distort competition and would add new administrative burdens for the Commission because of the potential difficulty of applying the system-based fee to consortium-owned cables. These proposed changes also have no statutory basis, since such changes in the fee structure would not "reflect" any changes in Commission services as the result of rulemakings or changes in law, as required by Section 9 of the Communications Act.

Private operator claims that the present fee structure results in "distortions that disfavor high-capacity systems" also fail to withstand scrutiny. Unlike the private operator proposal, the current international bearer circuit fee system applies the same per circuit fee to all capacity on all cable systems without favoring or disfavoring any system type or capacity size. Increases in

reported active capacity automatically reduce the level of the per-circuit fee, and international bearer circuit fees have been substantially reduced from \$5.00 per circuit in 2001 to \$1.09 per circuit as proposed for 2008. At the same time, there is a massive ongoing expansion of U.S. submarine cable capacity, including significant capacity expansions by many private operators.

As stated in AT&T's initial comments (p. 1), AT&T supports efforts to reduce the Commission's regulatory fees paid by submarine cable licensees, provided these fees continue to apply on a non-discriminatory and competitively-neutral basis without advantaging or disadvantaging any type of cable system or service provider. Thus far, however, the proponents of changing the present fee structure have not met their burden of demonstrating that a new fee methodology will follow these principles.

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

AT&T believes that the Commission’s international bearer circuit fees should continue to treat all providers in a non-discriminatory, competitively-neutral manner. Contrary to these principles, some private operators propose a new fee structure that would increase the fee burden on facilities-based common carriers, while decreasing the fee burden on non-common carrier cable operators. As described below, these proposed changes would not only be discriminatory and distort competition but also have no statutory basis, since they would not “reflect” any changes in Commission services as the result of rulemakings or changes in law, as required by Section 9 of the Communications Act (the “Act”).

I. THE PRIVATE OPERATOR PROPOSAL UNREASONABLY BURDENS FACILITIES-BASED COMMON CARRIERS

VSNL has previously proposed to change the present fee system by allocating the large majority of the revenue requirement for international bearer circuit fee to common carrier cables

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”).

(which account for only 10 percent of U.S. international circuits) and allocating only 10 percent of the revenue requirement to non-common carrier cables (which account for 90 percent of the circuits).² VSNL also proposed a flat per-system fee that would effectively impose much higher per-circuit fees on smaller systems than larger systems. As AT&T and other carriers demonstrated in response to VSNL's petition, there are no statutory or public interest grounds for changing the present non-discriminatory and competitively neutral fee structure to benefit non-common carrier or larger system operators.³ In response to this Notice, some private operators now put forward a "Joint Proposal" that would similarly impose much greater fee burdens on facilities-based common carrier operators than on non-common carrier operators.

1. The Proposed New International Bearer Circuit Fee Is Neither Non-Discriminatory Nor Competitively-Neutral

Under the private operator proposal, the existing international bearer circuit fee revenue requirement would be divided equally between: (1) a new international bearer circuit fee to be paid by common carrier operators based on the active circuits reported in section 43.82 circuit status reports; and (2) a submarine cable systems fee to be paid by each licensed submarine cable system.⁴ The proportion of the revenue requirement paid by the submarine cable systems fee would in the future be reduced "based on . . . the regulatory effort to regulate submarine cable

² See Petition for Rulemaking, VSNL Telecommunications (USA) Inc., RM-11312 (filed Feb. 6, 2006).

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.

⁴ Level 3 at 18-19; Joint Proposal, Attachment at 1.

facilities.”⁵ As a result, because 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 under the “zero-sum” fee process mandated by Section 9 of the Act, the revenue requirement for the new international bearer circuit fee would automatically increase to compensate for that reduction.⁶

The new international bearer circuit fee would *only* be paid by facilities-based common carriers. “Common-carrier submarine cable operators would pay both fees,” as stated by Level 3 (p. 18), while non-common carrier submarine cable operators would only pay the submarine cable systems fee.⁷ Facilities-based carriers accordingly would continue to pay fees on active circuits, while non-common carrier operators would be exempt from this requirement.⁸ As a further result, the circuits sold by non-common carrier operators would not be included in the total circuits used to calculate the new international bearer circuit fee, thus raising the level of these fees for facilities-based carriers compared to the fees that would apply if non-common carrier operator sales were included.⁹

⁵ Level 3 at 19.

⁶ See also, *Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, 19 FCC Rcd.11662, ¶ 10 (2004) (“The fee process specified by section 9 is necessarily 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.”)

⁷ See also, Level 3 at 18 (“Facilities-based *common carriers* would remain in the IBC fee category.”) (Emphasis added.); Joint Proposal, Attachment at 1 (New IBC fee to be paid on “active *common carrier* circuits”) (Emphasis added.).

⁸ Facilities-based carriers also would continue to report circuits pursuant to the requirements of Section 43.82, while non-common carriers would be required to provide no information to the Commission on their capacity sales – unlike the situation today, where they pay regulatory fees based on those sales.

⁹ Facilities-based common carriers that own interests in non-common carrier cables would derive

Although Level 3 attempts to justify this discriminatory treatment by contending that the private operator proposal would “work for common-carrier submarine cable operators *just as it does for common carrier satellite operators today*,”¹⁰ this is not true. Common carrier satellite operators today are not subject to the discriminatory treatment that the private operator proposal would impose on common-carrier submarine cable operators and facilities-based carriers, since the Commission’s fee instructions require that “non-common carrier satellite operators must pay a fee for each individual circuit sold or leased to any customer.”¹¹ This non-discriminatory approach is consistent with the Commission’s application of the same universal service fees to both common carriers and non-common carrier operators.¹²

2. The Proposed Submarine Cable Systems Fee Would Impose Higher Per-Circuit Costs on Smaller Cable Systems and Create Administrative Burdens

(Footnote continued from previous page)

little benefit from this proposed approach, because the fees for facilities-based carriers apply to their circuits “in any transmission facility for the provision of service to an end user or resale carrier, which includes active circuits to themselves or their affiliates.” Regulatory Fees Fact Sheet, *What You Owe—International and Satellite Services Licensees For FY 2007*, Aug. 2007, at 3. Nor could facilities-based common carriers avoid the adverse impact of the proposed new international bearer circuit fee by marketing capacity on a non-common carrier basis, since any reduction in total circuits subject to the bearer circuit fee would simply raise the level of the fee for those carriers’ common carrier circuits. Moreover, the Commission has expressed concern in a similar context that “we do not want contribution obligations to shape business decisions, and do not want to discourage carriers from continuing to offer their common carrier services.” *Federal State Joint Board on Universal Service*, 12 FCC Rcd. 8776, ¶ 795 (1997).

¹⁰ Level 3 at 18 (emphasis added).

¹¹ Regulatory Fees Fact Sheet, Aug. 2007, *What You Owe—International and satellite services Licenses for FY 2007*, at 3.

¹² Even though the Communications Act does not specifically require private operators leasing capacity on a non-common carrier basis to contribute to the universal service fund, the Commission found that “the public interest requires them, as providers of interstate telecommunications, to contribute to universal service because they compete against telecommunications carriers in the provision of interstate telecommunications.” *Federal State Joint Board on Universal Service*, 12 FCC Rcd. 8776, ¶ 86 (1997).

The flat-fee structure of the proposed submarine cable systems fee would also disadvantage operators of smaller cable systems, including most common carrier and other consortium-owned systems. Because of the significant capacity differences between common carrier systems and non-common carrier cable systems, the \$100,000 per-system fee proposed by the private operator proposal would result in average per-circuit fees for the 13 U.S.-licensed common carrier cable systems of approximately \$0.26 based on their average per-system capacity of approximately 375,000 circuits.¹³ In contrast, the system fee would result in average per-circuit fees for the 27 U.S.-licensed non-common carrier systems of only approximately \$0.03 based on their average per-system capacity of approximately 3.2 million circuits.¹⁴ Similarly, consortium-owned cables would pay higher average per-circuit fees than private operator cables, which are, on average, approximately three times greater in capacity size.¹⁵

The net effect of both new fees proposed by the private operators would be to provide significant advantages to non-common carrier cable operators, which would be exempt from the new international bearer circuit fee and would have lower effective per circuit fees under the new system fee. The adoption of such a discriminatory fee structure would distort competition

¹³ See also, AT&T at. 3, n. 4.

¹⁴ See FCC International Bureau, *2006 Section 43.82 Circuit Status Data*, Feb. 2008, Table 7. On individual systems, the discrepancy would be far greater. Antillas-1, a common carrier system serving Caribbean routes with total capacity of 15,120 circuits would pay per circuit fees of \$6.61, while the Apollo cable, a transatlantic non-common carrier system with total capacity of 15,482,880 circuits, would pay per circuit fees of about one half cent.

¹⁵ Level 3 has previously suggested a “sliding scale” system fee under which higher capacity systems would pay higher fees than lower capacity systems but does not maintain that proposal here. See Reply Comments of Level 3, RM 11312, Filed Apr. 3, 2006, at 9.

and would not be consistent with the Commission's longstanding international regulatory goal "to promote effective competition in the global market for communications services."¹⁶

Contrary to Level 3's claim (p. 18) that the private operator proposal would be "easier to administer" than the existing fee system, the application of the proposed new submarine cable systems fee to the 18 U.S. consortium-owned submarine cable systems would likely be a complex and burdensome task.¹⁷ In particular, it is unclear how this proposed per-system fee would be apportioned among the multiple licensees and owners of each U.S. consortium system. The Commission would need to determine whether to undertake the task itself of apportioning the fee among the multiple owners of each consortium cable system or which of the multiple U.S. licensees on each system should perform this task. Further, Commission rules require only the owners of 5 percent or greater shares of U.S.-end capacity to hold submarine cable licenses, so any fair apportionment could not be limited to licensees of these cables and should include all U.S.-end owners, which include many foreign carriers.

In addition, the Commission would need to determine on what basis the fee should be apportioned – whether shares of total, lit or active capacity should be used for this purpose, and what information should be used to make this determination – and where the liability for uncollected fee portions should lie. Even if the Commission does not itself apply the fee to the owners of each cable system, it may be required to intervene in the event of disputes among co-owners concerning apportionment of the fee.

¹⁶ *Reporting Requirements for U.S. Providers of International Telecommunications Services*, IB Dkt. No. 04-112, Notice of Proposed Rulemaking, rel. Apr. 12, 2004, ¶17 (listing Commission goals in regulating the U.S. international marketplace).

¹⁷ *See also* Pacific Crossing at 14 (contending that the proposed submarine cable system fee would be "easily administrable").

II. PRIVATE OPERATOR CLAIMS CONCERNING PURPORTED DISTORTION CAUSED BY THE PRESENT FEE SYSTEM FAIL TO WITHSTAND SCRUTINY

Unlike the private operator proposal, the current international bearer circuit fee system applies the same per circuit fee to all capacity on all cable systems without favoring or disfavoring any system type or capacity size. The level of the current fee also changes each year as the direct result of changes in the total number of reported active circuits by which the revenue requirement is divided to determine the per-circuit fee. Thus, increases in reported active capacity automatically reduce the level of the fee. Under this methodology, as AT&T noted in its initial comments (p. 4), international bearer circuit fees have been substantially reduced from \$5.00 per circuit in 2001 to \$1.09 per circuit as proposed for 2008. These reductions have occurred notwithstanding the fee avoidance to which Level 3 repeatedly refers in its comments and the apparent confusion regarding the requirements of the Commission's reporting and fee payment rules that is reported by Tata.¹⁸ Pacific Crossing makes even more expansive claims that circuits are under-reported under the present system.¹⁹

As Level 3 therefore recognizes, “[m]ore stringent reporting could . . . increase the number of payment units in a given fiscal year, thereby lowering the regulatory fee itself.”²⁰ Nonetheless, the private operators firmly oppose any circuit reporting by non-common carrier

¹⁸ Level 3 at ii (“some operators that should be paying regulatory fees do not do so”); *id* at iii (existing fee system creates “incentives to abuse the regulatory process”); *id* at 16 (existing system “favor[s] submarine cable operators that stretch the boundaries of the law over those that do not”); *id* (“operators – whether intentionally or not – have not necessarily complied with [their] obligations”). *See also* Tata at 2 (suggesting that Commission instructions may be interpreted as requiring “that this fee only applies to voice circuits”).

¹⁹ Pacific Crossing at 8 (“the per circuit fee proposed by the Commission is over five times higher than what it actually should be”).

²⁰ Level 3 at 17.

operators that would directly address such fee avoidance and instead propose a new fee structure that would reduce the fees paid by non-common carrier cable operators and increase the fees paid by facilities-based common carriers.²¹

Level 3 also fails to demonstrate the existence of any “structural deficiencies” in the present fee system supporting the adoption of this discriminatory and competitively-biased fee proposal.²² Contrary to Level 3’s repeated claims (pp. ii, 10, 13, 20), the mere “addition of capacity,” such as “by changing the electronics” of a submarine cable system, has no effect on international bearer circuit fee requirements. As Level 3 elsewhere concedes (pp. 14-15 & n. 37), only *active* capacity is subject to fee requirements, “which Commission staff have interpreted informally to mean lit and sold.”²³ It is therefore the *sale*, not the mere addition, of additional capacity that incurs additional fees. Contrary to Level 3’s further claim (p. 14) that “if its system is of greater capacity, the private system operator must pay higher regulatory fees” than common carrier cables, a private cable system will only pay higher fees than a common carrier cable system under the present fee structure if it has sold a larger amount of capacity.

International bearer circuit fees are no different in this respect than the regulatory fees based on the number of subscribers, units or circuits that are paid by cable TV and wireless

²¹ See Level 3 at 11, n.23 (opposing increased reporting requirements for private operators); Pacific Crossing at 13 (opposing Commission efforts “to police the system”). Moreover, the fact that “certain parties are overpaying and others are underpaying” circuit fees as the result of the under-reporting of capacity permits no claim of “invidious discrimination,” as alleged by Pacific Crossing (p. 12, n.24) and certainly fails to raise equal protection claims as this private operator further contends (*id.*) The Commission’s fee payment rules apply the same per-circuit fees to all operators and all cable systems and therefore treat all affected parties alike.

²² *Id.*

²³ See also Level 3 at 5 (“private submarine cable operators . . . need only pay IBC fees for bearer circuits sold to entities other than common carriers”).

providers. As the Commission has previously explained, the fee schedule “generally reflects higher fees for types of regulatees that are authorized to use larger amounts of, or more desirable, spectrum, or that are larger and have more customers.”²⁴

While private operators also contend that regulatory fees for very high capacity offerings may comprise significant portions of revenues, or even exceed those revenues, any such situation can only be the result of decisions to sell capacity at price levels that fail to take sufficient account of these costs. If operators fail to include the fee requirement in setting capacity prices, and thus establish market rates that may not cover these costs, the resulting squeeze on revenues is hardly evidence of a “broken” fee regime, as Level 3 contends (p. 1).

There is also no basis to private operators’ arguments that the existing fees are difficult to apply to capacity sales. Some of these arguments are simply frivolous, such as Global Crossing’s claim (p. 3) that the straightforward arithmetic required to determine the number of 64 kbp payment units for higher capacity sales “creates unnecessary complexity,” and Tata’s claims (pp. 2, 5) that there can be legitimate doubt whether a 64 kbps per-circuit fee may be applied to capacity sold in increments larger than 64 kbps or whether a common carrier customer “will still have a section 214 authorization on December 31” of the relevant year. And to the extent the application of the payment requirements may be unclear, operators may seek further clarification from Commission staff – just as Level 3 has obtained clarification from the staff concerning the meaning of “active” capacity.²⁵

²⁴ *Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, 19 FCC Rcd.11662, ¶ 8 (2004).

²⁵ Level 3 at 15, n.37.

Private operators thus fail to show the existence of any “distortions that disfavor high-capacity systems,” as contended by Level 3 (p. 17) or any other disproportionate burden or discrimination under the current fee structure merely by virtue of the large capacity of many private systems. Equally misplaced is the claim by Global Crossing (p. 4) that purported “increased” fees applied to high-capacity cables are a disincentive to make improvements or upgrades to cables. Commission data show a massive continued expansion of U.S. submarine cable capacity, with total U.S. capacity expected to increase by a factor of 45 for the ten-year period 1999-2009, including significant capacity expansions by Global Crossing, Tata, and other private operators.²⁶ Private operators thus continue rapidly to expand their U.S. undersea cable capacity, regardless of any purported “deterrent” to such expansion created by the existing fee structure.

III. THERE IS NO STATUTORY BASIS FOR THE PROPOSED CHANGES

The private operators also show no legal basis for their proposal. As described below, Section 9 of the Communications Act does not require that regulatory fees closely reflect specific regulatory costs or even specific benefits received by fee payors. The Commission, therefore, has repeatedly rejected similar claims to those made by Level 3 that reduced regulation should require reductions in regulatory fees – in part because the “zero sum” nature of the regulatory fee process under Section 9 requires fee reductions to be matched by fee increases to collect the required revenue amount. There is also no showing that the proposed changes in the fee structure would “reflect” any changes in Commission services as the result of

²⁶ See AT&T at 3. *See also*, FCC International Bureau, *2006 Section 43.82 Circuit Status Data*, Feb. 2008, Table 7. (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).

rulemakings or changes in law, as required by Section 9 of the Act. The Commission's streamlining measures have not reduced regulation of non-common carrier submarine cable operators to any greater degree than those measures have reduced regulation of common carrier cable operators. Nor has Commission regulation of submarine cable systems in general been reduced to any greater degree than Commission regulation of the facilities-based carriers that would pay increased fees under the private operator proposal.

1. There is No Statutory Requirement That Regulatory Fees Closely Reflect Changes in Regulatory Costs

Subsection (b)(1)(A) of the Act requires regulatory fees to be derived “by determining the full-time equivalent number of employees performing the [regulatory activities], *adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities, including such factors as service area coverage, shared use versus exclusive use, and other factors that the Commission determines are necessary in the public interest.*”²⁷ The costs of regulatory activities are therefore to be adjusted to reflect benefits to the fee payor such as service area coverage – and the resulting revenue-making opportunities – and other public interest factors as determined by the Commission. In addition, the Commission has found “that Congress intended that the ‘benefits’ to be recovered through fees were not limited strictly to the Commission regulation of a specific service” or even to benefits actually received by the fee payor.²⁸

²⁷ 47 U.S.C. Sect 159 (b)(1)(A) (emphasis added).

²⁸ 2004 Regulatory Fee Order, ¶ 11; *Assessment and Collection of Regulatory Fees for Fiscal Year 1997*, 12 FCC Rcd.17161, ¶ 27 (1997) (“we again reject arguments that our proposed fees are inconsistent with the statute or otherwise unlawful because they are not completely cost-based or do not reflect the benefits received by entities subject to the fee payment. . . . [A]s we noted in our FY 1995 Report and Order, we can collect fees from regulatees for their use of

There is, therefore, no “statutory obligation” to amend the fee structure to ensure any “proportional” reflection of regulatory costs, contrary to the claim by Level 3 (p. 23). As the Commission has concluded, “there is no statutory requirement to tie each fee to the specific costs associated with each service.”²⁹ Indeed, the Commission has consistently rejected arguments that the statute requires reduced regulation of a particular service to result in reduced regulatory fees and emphasized that parties making such arguments – like the private cable operators here – “have misconstrued the requirements of section 9.”³⁰ The Commission has emphasized that Section 9 does not require regulatory fees to be “precisely calibrated” to reductions in regulatory costs for overseeing one service, because the increased fees on other services that would be required to collect the revenue amount specified by Congress would “not necessarily reflect any increase in the costs related to the other services.”³¹ That would also be the situation here, where the private operators’ proposed fee reductions for non-common carrier operators would result in increased fees for facilities-based common carriers unsupported, as shown below, by any showing of increased regulatory costs for those carriers.

Level 3 also erroneously contends (p. 25) that the Commission “must” amend the regulatory fee schedule under Section 9(b)(3) “when a rulemaking or change in law adds, deletes, or changes the Commission’s services to the fee payor.” Instead, this subsection

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frequencies and for the potential benefits of [our] regulatory activities, even if they do not utilize those activities. Moreover, no requirement exists that the fees we establish be designed to recover only the costs of the benefits directly received by an entity.”).

²⁹ *Id.*

³⁰ *Id.*, ¶ 5.

³¹ *Id.*, ¶¶ 6, 10.

provides for “Permitted Amendments,” not mandatory amendments, that are to be undertaken only “if the Commission determines that the Schedule requires amendment to comply with the requirements of paragraph (1)(A).”³² As described above, the Commission has specifically found that paragraph (1)(A) of subsection (b) does not require any precise calibration of fees to regulatory costs or even to benefits received by the fee payor.

Moreover, the necessary predicate to any such Commission action under Section 9 of the Act, as Level 3 correctly observes (pp. 26-27), is a change in Commission services to the fee payor resulting from a rulemaking or change in law. As described below, no such showing is made here.

2. The Private Operators Show No Change in Law or Regulation Supporting Their Requested Changes

None of the changes in law and regulation cited by Level 3 argued in support of these fee changes justify reducing fees for non-common carrier operators while increasing them for facilities-based common carriers. To be sure, the rules adopted by the Commission to implement the WTO Agreement on Basic Telecommunications, which Level 3 cites as its primary example in this regard, have little or no relevance. Those rules addressed the removal of restrictions on foreign carrier entry to the U.S. market – not, as Level 3 contends (p. 29), the removal of “restrictions on U.S. carriers’ entry into the foreign carrier’s market,” which the Commission has never restricted.³³ And the Commission’s adoption of open U.S. market entry standards for

³² 47 U.S.C. Sect 159 (b)(3).

³³ *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, 12 FCC Rcd, 23,891 (1997) (“*Foreign Participation Order*”).

foreign carriers and foreign submarine cable operators in 1997 certainly does not warrant any reduction in regulatory fees for non-common carrier submarine cable operators.

In any event, the rules adopted by the Commission to implement the WTO agreement changed entry requirements for all international services, not just for submarine cable licensing, and brought equal or greater changes in Section 214 authorization rules, the public interest analysis for indirect foreign ownership under Section 310(b)(4), and other Commission rules not affecting submarine cable operators. In sum, any “fewer [Commission] resources to submarine cable operators” resulting from the WTO Agreement (if any such reductions occurred) were more than matched by reductions in the Commission resources applied to regulation of facilities-based common carriers, and thus provide no basis for the reduced fees for non-common carrier operators requested here.

In similar fashion, the Commission’s rulemaking proceedings streamlining the international Section 214 process, which are cited by Level 3 (p. 30) as “altering the regulatory landscape . . . particularly for non-common carrier submarine cable operators” chiefly provided reduced regulation for facilities-based common carriers, not non-common carrier submarine cable operators. The 1996 proceeding, for example, introduced global section 214 authorizations available on a streamlined basis allowing facilities-based common carriers to provide service to any non-excluded country and to use circuits on all previously and subsequently authorized common carrier and non-common carrier submarine cables.³⁴ The Commission noted that “these broader authorizations will lessen burdens on applicants and Commission staff.”³⁵ This

³⁴ *Streamlining the International Section 214 Authorization Process and Tariff Requirements*, 11 FCC Rcd. 12,884, ¶¶ 2,3,9,16 (1996).

³⁵ *Id.*, ¶ 9.

streamlining, therefore, was focused on facilities-based common carriers rather than non-common carrier cable operators.

Likewise, the 1999 Section 214 streamlining proceeding largely concerned the streamlining of rules affecting international common carriers.³⁶ Specifically, the Commission further streamlined the international 214 application process and expanded the class of applications eligible for this treatment, established pro-forma assignment and transfer of control procedures for section 214 authorizations, and allowed authorized carriers to provide service through wholly-owned subsidiaries without prior approval.³⁷ While the Commission also allowed authorized facilities-based common carriers to use any non-U.S.-licensed undersea cable system without specific approval, as noted by Level 3 (p. 32), this deregulatory step benefited facilities-based carriers, not non-common carrier submarine cable operators. Even the amendment of environmental rules for new submarine cables in this proceeding, to which Level 3 also refers (p. 32), applied to all submarine cables, and thus fails to justify any different treatment of non-common carrier operators.³⁸

The *Submarine Cable Streamlining Order* also fails to establish any change in regulation supporting the private operator proposal since it provided no greater deregulatory benefits to submarine cable operators than those previously provided to facilities-based common carriers by the Section 214 streamlining orders. The Commission emphasized that these streamlining measures for submarine cable licensing were “modeled after our existing streamlining procedure

³⁶ *1998 Biennial Regulatory Review – Review of International Common Carrier Regulations*, 14 FCC Rcd. 4909 (1999).

³⁷ *Id.*, ¶ 6. the Commission also streamlined section 214 applications for services over private lines and simplified other Section 214 rules. *Id.*

for international section 214 authorizations” and “mirror[ed] the section 214 streamlining procedures.”³⁹ Similarly, the competitive safeguards for submarine cable licensing were “similar [to] section 214 dominant carrier safeguards adopted in the *Foreign Participation Order*.”⁴⁰

The *Submarine Cable Streamlining Order*, like the other Commission streamlining measures cited by Level 3, thus offers no support for preferred fee treatment for non-common carrier submarine cable operators and the more onerous treatment for facilities-based common carriers that is proposed here. Indeed, the order provided no special benefits to non-common carrier operators at all. The Commission instead emphasized that “maintaining both private and common carrier regulatory options for operating a submarine cable system provides licensees and the Commission, respectively, flexibility in seeking and determining how a cable system will be operated.”⁴¹

The private operator proposal also cannot be justified on grounds that regulation of submarine cable operators is “light” compared to the “pervasive” regulation of common carrier services or that facilities-based common carriers continue to be subject to a “panoply” of regulation compared to non-common carrier cable operators.⁴² In this regard, Level 3 wrongly claims that “all” intercarrier contracts must be filed by facilities-based common carriers, since that filing requirement now applies only to agreements with dominant foreign carriers on the

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³⁸ *Id.*, ¶¶ 67-69.

³⁹ *Review of Commission Consideration of Applications under the Cable Landing License Act*, 16 FCC Rcd. 22167, ¶ 12, 14 (2001) (“*Submarine Cable Streamlining Order*”).

⁴⁰ *Id.*, ¶ 18

⁴¹ *Id.*, ¶ 70.

⁴² Level 3 at iii & 11-12.

very small number of international routes still subject to the International Settlements Policy.⁴³ Similarly, requirements to comply with the International Settlements Policy are now limited to arrangements with foreign dominant carriers on that limited number of routes. These arguments by Level 3 fail to recognize that the Commission's substantial deregulation of the U.S. international market in recent years has reduced rather than increased any disparities in the treatment of common carrier and non-common carrier providers and supports the continued nondiscriminatory treatment of all operators under the international bearer circuit fee structure

3. The Private Operators Ignore the Substantial Benefits to Non-Common Carrier Cable Operators from the Commission's International Activities

Level 3 also takes an overly narrow view of the Commission's "enforcement activities, policy and rulemaking activities, user information services, and international activities" that are properly considered in establishing regulatory fees under Section 9(b)(1)(a).⁴⁴ Level 3 ignores the regulatory costs that are incurred in connection with the Commission's international representational activities, work with foreign regulators, and other activities undertaken in support of the Commission's international regulatory goals "to promote effective competition in the global market for communications services" and "to encourage foreign governments to open their communications markets."⁴⁵

⁴³ See *International Settlements Policy Reform*, 19 FCC Rcd. 5709, ¶ 59 (2004).

⁴⁴ 47 U.S.C. Sect. 159(a)(1).

⁴⁵ *Reporting Requirements for U.S. Providers of International Telecommunications Services*, IB Dkt. No. 04-112, Notice of Proposed Rulemaking, ¶17. The Commission has previously found that non-common carrier satellite operators should be subject to these fees for similar reasons. *Assessment and Collection of Regulatory Fees for Fiscal Year 1998*, MD Dkt. No. 98-36, rel. Jun. 16, 1998, ¶ 62 (non-common carrier satellite operator benefits from staff activities, including international representation activities, supported the extension of circuit fees to these operators).

All of these activities provide significant benefits to non-common carrier submarine cable operators. For example, the Commission has emphasized that U.S. submarine cable operators are critically dependent on 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.”⁴⁶ The benefits to non-common carrier submarine cable licensees from Commission activities helping them to obtain and maintain access to these essential foreign inputs are properly reflected in establishing the Commission’s regulatory fees. Non-common carrier submarine cable operators also derive other significant benefits from other Commission activities promoting effective competition in U.S. and global markets for telecommunications services, which stimulate market growth and encourage greater usage of their submarine cable facilities.

Contrary to the assertion by Level 3 (p. 17), there is therefore no “disconnect” between these fees and the Commission’s international activities. As noted above, Section 9 specifically requires that the regulatory fees also “take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission’s activities, including such factors as service area coverage, shared use versus exclusive use and other factors that the Commission determines are necessary in the public interest.”⁴⁷ Consistent with this requirement, the existing capacity-based international bearer circuit fees result in higher fees for all submarine cable operators and facilities-based carriers that sell or use larger amounts of international circuit

⁴⁶ *Submarine Cable Streamlining Order*, ¶ 26.

⁴⁷ 47 U.S.C. Sect. 159(b)(1)(A).

capacity and thus derive greater benefits from Commission activities.

CONCLUSION

For the reasons described above and in AT&T's comments, the Commission should continue to apply international bearer circuit fees on a non-discriminatory and competitively-neutral basis. The private operator proposal is not consistent with this approach and fails to meet the statutory requirement of reflecting changes in Commission services resulting from changes in law or regulation. Accordingly, the private operator proposal should not be adopted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Loretia Hill, do hereby certify that on this 6th Day of June, 2008 I caused copies of the foregoing "Reply Comments of AT&T Inc." to be delivered to the following via First Class U.S. mail and/or email.

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