

International Circuit Regulatory Fees Should Remain Nondiscriminatory and Competitively-Neutral

- Proposed changes to the Commission’s international circuit regulatory fees put forward by private submarine cable operators would adversely affect U.S. facilities-based carriers. The private operators would replace the existing per-circuit regulatory fees for international circuits with a new fee structure comprising both a “per-system” fee and a new “per-circuit” fee:
 - Facilities-based carriers would pay *both* proposed fees; private operators would pay *only* the proposed per-system fee.
 - The proposed per-system fee would be reduced based on future reductions in the regulation of submarine cables – requiring future increases in the new per-circuit fee paid by facilities-based carriers.
 - The proposed per-system fee would impose unit cost disadvantages on smaller cables, including most common carrier cables. The lower per-system fee for smaller cables included in the revised private operator proposal would not remove those disadvantages.
 - It is unclear how the proposed per-system fee would be apportioned among the multiple owners of consortium cables (which include many foreign carriers with no U.S. regulated operations), which consortium party should conduct that allocation, on what basis that allocation should be conducted or what information should be used for this purpose. The consortium agreements do not address these issues.
- The existing per-circuit regulatory fee applies to all active circuits on all cable systems on a nondiscriminatory and competitively-neutral basis.
 - The existing per-circuit fee is based on active circuits – *not* size of cable – and increases in reported active circuits automatically reduce the level of the fee. The fee has been reduced from \$7.00 per circuit in 2000 to \$1.09 proposed for 2008.
 - Private operator claims that the existing per-circuit fee is a disincentive to submarine cable growth and investment are refuted by massive ongoing industry expansion. U.S. undersea capacity has grown from 3.9 million circuits in 1999 to 175.4 million circuits expected by 2009, including major new cables and significant upgrades in capacity by private operators.
 - Private operators concede that greater compliance with existing fee requirements would reduce fees – *e.g.*, Pacific Crossing: existing fee is “over five times higher than what it actually should be.” Private operators nonetheless oppose improving reporting procedures to address this issue.

- Improved circuit reporting procedures could reduce under-reporting and provide better information for calculation of existing fees – potentially leading to lower fees for all operators. Facilities-based carriers report active capacity on March 31 each year in Section 43.82 international circuit reports. Separately from the Section 43.82 reporting process, the Commission should require private operators also to file annual active capacity reports by March 31.
- The private operator proposal does not reflect the costs and benefits of the Commission’s international activities:
 - Section 9(b)(1(A) of the Communications Act requires fees to be based on regulatory costs “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.” The existing fee structure reflects this “costs adjusted by benefits” approach.
 - Private operators overlook the costs of FCC international representational activities, work with foreign regulators and other activities to encourage foreign governments to open foreign markets – all providing key benefits to private submarine cable operators, which are critically dependent on cable landing stations, backhaul facilities and other essential inputs in foreign markets.
 - Private submarine cable operators also obtain significant benefits from FCC activities promoting competition in U.S. and global markets, which stimulate market growth and greater usage of submarine cable facilities.
 - The private operator proposal is not supported by changes in Commission services to the fee payor resulting from rulemakings or changes in law as required by Section 9(b)(3) of the Communications Act. Since 1996, Commission regulation of international facilities-based carriers has been reduced to an equal or greater extent than regulation of submarine cable operators. Those changes fail to justify imposing a disproportionate fee burden on facilities-based carriers.
 - The Commission has repeatedly rejected arguments that reduced regulation of particular services should automatically result in reduced regulatory fees for those services. The Commission has found that the resulting fee increases for other services that would be required under the “zero-sum” fee process mandated by Section 9 would not necessarily reflect any increased regulation of those services. That would also be the situation here.