

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

In the Matter of)	
)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2009)	MD Docket No. 09-65
)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2008)	MD Docket No. 08-65
)	

REPLY COMMENTS OF VERIZON AND VERIZON WIRELESS¹

Verizon and Verizon Wireless continue to support the Commission’s initiative to explore “more equitable and reasonable approaches to assessing regulatory fees.”² But two proposals that are addressed in the most recent round of comments fail to further that goal. First, the Commission’s May 14 Notice of Proposed Rulemaking³ seeks comments on a proposal to assess fees on terrestrial non-common carrier International Bearer Circuits (IBCs) beginning in FY 2010, which it suggests would be consistent with the methodology adopted in its March 24, 2009, order assessing fees on international submarine cables.⁴ The majority of commenters

¹ In addition to Verizon Wireless, the Verizon companies participating in this filing (“Verizon”) are the companies affiliated with Verizon Communications Inc. that hold interests in terrestrial international bearer circuits.

² *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Report and Order and Further Notice of Proposed Rulemaking, MD Docket No. 08-65, RM-11312, FCC 08-182, ¶ 30 (Aug. 8, 2008) (“*2008 FNPRM*”).

³ *Assessment and Collection of Regulatory Fees for Fiscal Year 2009; Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Notice of Proposed Rulemaking and Order, MD Docket Nos. 09-65 and 08-65, FCC 09-38 (May 14, 2009) (“*NPRM*”).

⁴ *See Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Second Report and Order, MD Docket No. 08-65, RM-11312 (Mar. 24, 2009) (“*Submarine Cable Order*”).

addressing this issue oppose the proposal. Verizon agrees with Sprint, Bestel et al., and the Coalition of Canadian-Based Service Providers that regulatory fees should not be assessed on non-common carrier terrestrial IBCs.⁵ Second, the Commission should reject ITTA's proposal to aggregate wireline and wireless revenues for fee assessment purposes because it would introduce needless complexity to wireless providers' fee assessments when wireless providers are paying their fair share of the Commission's expenses.⁶

A. Regulatory Fees Should Not Be Assessed on Non-Common Carrier Terrestrial IBCs

First, the provision of non-common carrier services over terrestrial international circuits is inherently different from the provision of such services over satellite circuits and submarine cable systems, and thus should not be subject to the same fee requirements. Unlike in satellite and submarine systems, what is regulated in a terrestrial international transmission is the common-carrier traffic sent over the international fiber, not the stand-alone transmission component itself.⁷ In contrast, submarine cables themselves – regardless of the type of traffic carried – are all subject to the requirement to obtain cable landing licenses and thus the Commission has a record of each cable via its cable landing license.⁸ Similarly, providers of both common carrier and non-common carrier satellite IBCs must obtain licenses in connection

⁵ See Comments of Sprint Nextel, MD Docket Nos. 09-65 and 08-65 (June 4, 2009) (“Sprint Comments”); Comments of Bestel USA, Inc. et al, MD Docket Nos. 09-65 and 08-65 (June 4, 2009) (“Joint Comments”); Comments of Coalition of Canadian-Based Service Providers, MD Docket Nos. 09-65 and 08-65 (June 4, 2009) (“Canadian-Based Service Providers Comments”).

⁶ See Comments of ITTA, MD Docket Nos. 09-65 and 08-65, at 3-4 (June 4, 2009) (“ITTA Comments”).

⁷ See Joint Comments at 3-4.

⁸ See *Submarine Cable Order*, ¶ 8.

with the use of satellite transmissions.⁹ Moreover, non-common carrier satellite providers, like their common carrier counterparts, have engaged in “extensive participation in services once reserved to the common carriers and private undersea cable operators.”¹⁰ In contrast, absent regulation of common-carrier IBCs transmitted on them, non-common carrier terrestrial fiber links are not regulated by the Commission: private carriers providing cross-border non-common carrier services are not required to obtain a license from the Commission to provide those services, and the Commission does not regulate non-common carrier terrestrial fiber facilities.¹¹ Because the Commission does not regulate these terrestrial non-common carrier IBCs or fiber facilities nor provide services on their behalf, the Commission should not assess fees on them.¹²

Second, far from providing “equitable treatment,”¹³ the proposed assessment of regulatory fees over non-regulated IBCs would generate substantial administrative hurdles for the Commission and impose competitive hardships on those entities that provide both common carrier and non-common carrier services over terrestrial IBCs. For those IBCs providing only non-common carrier terrestrial IBC services, the lack of regulation of those services handicaps the Commission’s ability to identify, catalogue, and assess the appropriate fees. Because terrestrial facilities are not individually licensed on a per-cable or per-facility basis (unlike satellite or submarine facilities), the Commission does not have a ready “record” of the facilities

⁹ *Assessment and Collection of Regulatory Fees for Fiscal Year 1997*, Report and Order, 12 FCC Rcd 17161, ¶ 70 (1997) (“*Satellite Order*”).

¹⁰ *Satellite Order*, ¶ 71.

¹¹ See Sprint Comments at 2; Joint Comments at 3-4; Canadian-Based Service Providers Comments at 3.

¹² See e.g. 47 U.S.C. § 159(a)(1), (b)(1)(A) (permitting recovery of fees only for activities “that are reasonably related to the benefits provided to the payor of the fee”).

¹³ Comments of AT&T, MD Docket Nos. 09-65 and 08-65, at 1 (June 4, 2009).

potentially at issue here.¹⁴ Thus, unlike in the case of submarine cables, here the Commission has no existing listing, database, or record of the number, type, or capacity of terrestrial facilities used solely for non-common carrier IBCs. Absent the ability to identify such non-common carrier IBC providers, the Commission would “not have an independent check on whether non-common carriers are paying their share of regulatory fees.”¹⁵ In contrast, entities that currently provide both common carrier and non-common carrier terrestrial IBCs are already subject to regulation of their common carrier terrestrial IBCs, and are readily identifiable by the Commission. As such, entities that provide common carrier terrestrial IBCs would bear a disproportionate fee burden to compensate for non-compliant (or not-identified) non-common carrier IBC providers and as a result of the resulting increase in enforcement costs associated with identifying and assessing fees on those providers. As the Commission previously acknowledged:

If our rules permit certain entities to avoid complying with our regulatory fee requirements because we do not have sufficient reporting requirements for part of the industry, the remaining carriers must pay a higher amount to compensate for those who avoid payment.¹⁶

Such an inequity, far from resolving a competitive disadvantage, imposes one on entities who provide common carrier terrestrial IBCs. Thus, rather than increasing compliance with regulatory fee requirements, the suggested imposition of fees over non-common carrier terrestrial IBCs would decrease compliance, increase administrative costs, and introduce competitive disadvantages.

¹⁴ See *Submarine Cable Order* ¶ 8.

¹⁵ *Id.*

¹⁶ *Id.*

The Canadian-Based Service Providers also argue that the Commission should restructure the entire IBC system.¹⁷ But industry and the Commission have not yet evaluated the effects of the recent changes to the Commission's system of assessing regulatory fees. Prior to further restructuring, therefore, carriers and the Commission should have the opportunity to review and implement the current, recently revised system. Should future issues emerge, an appropriate factual record can be compiled at that time to assist in the determination if further reform is appropriate.

B. The Commission Should Retain the Current Per-Subscriber Methodology for Assessing Fees on Wireless Providers

As the Commission reforms the regulatory fee process, the Commission should avoid modifications that would impose burdensome administrative costs on fee payors, such as ITTA's proposal to aggregate wireline and wireless revenues for fee assessment purposes.¹⁸ Currently, wireless providers are assessed per-subscriber fees based on a carrier's Numbering Resource Utilization Forecast (NRUF) adjusted for ports.¹⁹ In 2005, the Commission examined the wireless providers' regulatory fee reporting process and concluded that it was "reliable and accurate" while not being overly burdensome.²⁰ Nonetheless, ITTA asks the Commission to ignore that finding and require wireless providers to report revenues. As proceedings before the Commission relating to the Universal Service Fund (USF) make clear, determining the appropriate revenues to report is a complex and burdensome process. If the basis for USF

¹⁷ Canadian-Based Service Providers Comments at 5-8.

¹⁸ See ITTA Comments at 4.

¹⁹ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, Report and Order, 19 FCC Rcd 11662, ¶¶ 45-51 (2004).

²⁰ *Assessment and Collection of Regulatory Fees for Fiscal Year 2005; Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, Report and Order and Order on Reconsideration, 20 FCC Rcd 12259, ¶¶ 40, 42 (2005); see also *2008 FNPRM*, ¶ 41 (describing "significant success and accuracy" with wireless per subscriber reporting).

contributions shifts from revenues to numbers, as proposed by AT&T and Verizon, the Commission should not be doing the reverse in the regulatory fee context.

Moreover, such a change is unnecessary as there is no support for ITTA's claims that the wireless industry is not paying its fair share of fees.²¹ That per-subscriber fees may have decreased significantly over the past ten years²² is meaningless in light of the concurrent increase in the number of wireless subscribers, which has caused wireless fees to grow at a rate of around 9% annually. ITTA also ignores the substantial auction fees paid by winning wireless providers. While these fees are not accounted for in the regulatory fee data the Commission has released, the multi-million dollar auction revenue fund is an important source of funding for the Wireless Bureau's operating expenses. Finally, Wireline Bureau proceedings that affect wireline and wireless providers are not funded exclusively by wireline providers,²³ because Wireless Bureau employees actively participate in those proceedings. As a result, there may be little or no change in fee assessments resulting from ITTA's proposal, but a substantial administrative burden placed on wireless providers to change their reporting method.

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The Commission should not impose new requirements for the collection of IBC regulatory fees on carriers providing international service over terrestrial circuits on non-common carrier circuits and should continue to assess wireless fees on a per-subscriber basis.

²¹ See ITTA Comments at 3-4.

²² *Id.* at 3.

²³ *Id.* at 4.

Respectfully submitted,

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