

**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 AT&T INC.

AT&T Inc., on behalf of its affiliates, (“AT&T”) hereby submits these reply comments in response to the objections raised by some commenters to the Commission’s proposal to levy International Bearer Circuit (“IBC”) per circuit fees on non-common carrier international terrestrial circuits.¹ Currently, these fees apply only to common carrier international terrestrial circuits. The Commission’s proposal would treat all international terrestrial circuits on an equitable basis regardless of regulatory classification and would remove the cost disadvantage to common carriers resulting from the present fee structure. This even-handed approach mirrors

¹ AT&T also briefly address address ITTA’s reiteration, in these proceedings, of its proposal in the *2008 Regulatory Fee FNPRM* proceedings that the Commission combine wireline and wireless voice services into a single, revenue-based ITSP category for assessment purposes. See ITTA’s Comments at 2-4. As AT&T observed in its October 27, 2008 Reply Comments in the *2008 Regulatory Fee FNPRM* proceedings, such a plan is inconsistent with Section 9’s express requirements because it would prevent the Commission from assessing fees based on the FTEs of its core bureaus (in this case, the WTB and the WCB) in a manner that accounts for the “benefits” conferred upon the entities regulated by those bureaus. See AT&T’s Reply Comments, *2008 Regulatory Fee FNPRM*, at 4 (filed October 27, 2008). Accordingly, the Commission should reject ITTA’s proposal, as AT&T argued in the *2008 Regulatory Fee FNPRM* proceedings.

the equal treatment of common carrier and non-common carrier satellite providers and common carrier and non-common submarine cable providers under the IBC fee structure.

The disproportionate burden placed on common carrier terrestrial circuits by the current fee is highlighted by private operators opposing the Commission's proposal, which complain that the proposed \$0.75 per 64 kbps per circuit fee results in a regulatory fee for a 10 Gbps wavelength of \$90,720.² In contrast, non-common carrier terrestrial circuits currently are subject to no regulatory fees at all, and these commenters unsurprisingly seek to continue this exemption. While AT&T agrees with these commenters that the fees for large capacity terrestrial circuits are too high, AT&T has proposed that the fees levied on large unit sales of terrestrial capacity should be substantially reduced by introducing fee discounts for such sales.³ The same discounts should apply to large capacity sales of non-common carrier terrestrial circuits. AT&T's proposal would thus reduce the high fees currently paid on large capacity sales and would also provide competitively equitable treatment for common carrier and non-common carrier circuits.

If the Commission continues to apply these fees only to common carrier circuits, it is likely that common carrier providers will increasingly market capacity on a non-common carrier basis in order to avoid these fees and to remove the cost advantage otherwise enjoyed by non-common carrier operators. The effect of such actions, however, would be to raise fees for the smaller pool of remaining common carrier circuits, thus compounding the disproportionate

² Bestel USA, Hibernia Atlantic & Level 3 Comments, at 7. *See also*, Comments of the Coalition of Canadian-Based Service Providers ("Canadian Coalition") (also opposing the proposal).

³ AT&T Comments, at 5.

impact of the fee on those circuits.⁴ As a result, the present international terrestrial fee structure is not only at variance with the competitively neutral fee structure the Commission recently adopted for international submarine cable providers, but also is likely to cause increasing market distortion. For these reasons, the Commission should adopt a more equitable approach.

There also is no basis to the claims by private operators opposing the proposal that the Commission lacks statutory authority to levy fees on these non-common carrier facilities because they are not regulated by the Commission.⁵ Title I, Section 9, gives the Commission express authority to recover regulatory fees for “international activities” related to its oversight of “foreign communication by wire,” which includes non-common carrier terrestrial circuits.⁶ Thus, the Commission’s assessment of fees under Section 9 is not limited to facilities and services that are subject to Title II regulation, as evidenced by the longstanding IBC fees levied on both non-common carrier satellite facilities and non-common carrier submarine cable systems.⁷

Section 9 specifically requires that the regulatory fees “take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission’s activities.”⁸ As the Commission has emphasized, “all entities that engage in international telecommunications benefit from the Commission’s rulemaking, public information and

⁴ Because per circuit fees are calculated by dividing the fee requirement by the total number of circuits subject to per circuit fees, a reduction in the number of circuits subject to the regulatory fee would increase the level of the per circuit fee.

⁵ Bestel USA, Hibernia Atlantic & Level 3 Comments, at 3-4.

⁶ 47 U.S.C. Sects. 152, 159.

⁷ See also, *PanAmSat Corp. v. FCC*, 198 F.3d 890, 898 (D.C. Cir. 1999) (upholding assessment of regulatory fees on non-common carrier satellite circuits).

⁸ 47 U.S.C. Sect. 159(b)(1)(A).

international representation activities.”⁹ For example, the Commission’s activities undertaken in support of its international regulatory goals “to promote effective competition in the global market for communications services” and “to encourage foreign governments to open their communications markets,” such as those focused on obtaining, maintaining and improving foreign market access for U.S. facilities providers, benefit both common carrier and non-common carrier international terrestrial circuit providers alike.¹⁰

Contrary to the claims by the Canadian Coalition (p. 11), the benefits of the Commission’s international activities are likely to be relatively evenly divided between common carrier and non-common carrier operators, following the substantial reduction in Commission international common carrier regulation that has occurred since regulatory fees were first imposed in the mid-1990’s.¹¹ Those regulatory changes, and the resulting increase in market entry and competition in the U.S. international market, have encouraged a significant expansion of U.S. international terrestrial capacity that provides further support for changing the fee

⁹ *Assessment and Collection of Regulatory Fees for Fiscal Year 1998*, 12 FCC Rcd. 17161, ¶ 69 (1997).

¹⁰ *Reporting Requirements for U.S. Providers of International Telecommunications Services*, IB Dkt. No. 04-112, Notice of Proposed Rulemaking, rel. Apr. 12, 2004, ¶17. As an example of such continuing market access concerns for U.S. non-common carrier terrestrial providers, foreign ownership restrictions in Canada prevent any U.S. terrestrial operator from owning more than a minority interest in Canadian network facilities. Further, as a result of those Canadian restrictions, the “effective integration of U.S. and Canadian networks” referenced by the Canadian Coalition (p. 7) is of primary benefit to Canadian operators, which, unlike U.S. operators, may own 100 percent interests in network facilities on both sides of the U.S.-Canadian border.

¹¹ See, e.g., *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, 12 FCC Rcd. 23891 (1997) (removing former restrictions on U.S. market entry); *1998 Biennial Regulatory Review – Review of International Carrier Regulations*, 14 FCC Rcd. 4909 (1998) (streamlining international 214 authorization process); *2000 Biennial Regulatory Review*, 16 FCC Rcd. 10647 (2001) (eliminating tariff filing requirements); *International Settlements Policy Reform*, 19 FCC Rcd. 5709 (2004) (removing international settlements regulation from most U.S. international routes).

schedule to recover these Commission costs on a more equitable basis from all providers benefiting from these international activities.¹²

Sprint's contention that international non-common carrier terrestrial circuits used to provide Internet or IP services should be exempt from IBC per circuit fees is likewise incorrect. Sprint fails to recognize that regulatory fees are required to recover the costs of Commission activities in light of the resulting benefits to fee payors.¹³ Consequently, whether the Commission regulates some *services* to a lesser degree than others, or does not actively regulate some *services* at all, does not address the question of whether the Commission has expended resources to engage in "international activities" that enable the deployment and use of the *circuits* over which these services are provided. The answer to that question is yes: the Commission's international representational activities, work with foreign regulators, and other international activities benefit providers of non-common carrier terrestrial circuits and apply without regard to the nature of the services provided over those circuits. Accordingly, IBC

¹² See *FCC Section 43.82 Circuit Status Data* for 1995 & 2007 (showing approximate 2500 percent increase in total U.S. international terrestrial common carrier capacity between 1995 and 2007). Although there are no similar reports concerning U.S. international terrestrial non-common carrier capacity, based on the massive growth of non-common carrier submarine capacity in this period, it is reasonable to assume that U.S. international terrestrial non-common carrier capacity has also experienced significant growth, particularly as all or virtually all this capacity is used for services to Canada and Mexico, which are "among the largest" U.S. international routes. See *FCC 2007 Section Circuit Status Data, Table 7* (showing over 100,000 percent growth in total U.S. international non-common carrier submarine capacity between 1995 and 2007). See also, *Assessment and Collection of Regulatory Fees for Fiscal Year 2009*, MD Docket No. 09-65, Notice of Proposed Rulemaking and Order, FCC 09-138, rel. May 14, 2009 ("Notice"), ¶ 14.

¹³ Contrary to Sprint's analysis, the decision to impose regulatory fees on interconnected VoIP providers was made "[i]n light of the many and increasing resources the Commission now devotes to VoIP," rather than, as Sprint contends (p. 5), in reliance on its decision to impose universal service obligations on these services. *Assessment and Collection of Regulatory Fees For Fiscal Year 2007*, 22 FCC Rcd. 15712, ¶ 13 (2007).

circuit fees are appropriately based on the number of active circuits regardless of the type of service provided over those circuits.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of June 2009, I caused true and correct copies of the foregoing Reply Comments of AT&T Inc. to be served on all parties listed below.

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