

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

In the Matter of)
)
Assessment and Collection of Regulatory Fees for) MD Docket No. 10-87
Fiscal Year 2010)

COMMENTS OF GLOBAL CROSSING NORTH AMERICA, INC.

Global Crossing North America, Inc. (“GCNA”) respectfully submits its comments in response to the Commission’s notice of proposed rulemaking in the above-captioned proceeding.¹ These comments focus on the Commission’s assessment of regulatory fees on international submarine cable operators that have more than one cable landing license. Specifically, GCNA urges the Commission to place a reasonable limit on the aggregate fee that any such submarine cable operator (or group of affiliated operators) can be required to pay in a given fiscal year, in order to prevent the total regulatory fee from escalating to an inequitable level that undermines investment incentives.

DISCUSSION

I. THE CURRENT APPLICATION OF THE PER-LICENSE APPROACH CAN PRODUCE ENORMOUS FEE BURDENS THAT DISCOURAGE NETWORK BUILD-OUT.

As summarized in the NPRM, last year the Commission adopted a new methodology for assessing regulatory fees on international submarine cable operators, replacing the much-maligned historic approach (under which fees were calculated based on the total number of active international bearer circuits (or “IBCs”) that such entities had in certain transmission

¹ *Assessment and Collection of Regulatory Fees for Fiscal Year 2010*, Notice of Proposed Rulemaking, MD Docket No. 10-87 (rel. Apr. 13, 2010) (“NPRM”).

facilities) with a “per-system” methodology.² The Commission premised this reform on its recognition that the prior per-circuit approach suffered from well-documented problems.³ In particular, many parties explained that the difficulties associated with translating capacity accurately into circuits (or their equivalents) created unnecessary complexity as a compliance matter and, worse, risked producing substantial increases in fees that would reduce incentives for enhancing transmission facilities—all without reflecting the relatively light amount of regulatory activity in this area. Indeed, the Commission itself had previously noted its own concern that the financial burdens associated with high regulatory fees in this area “may provide disincentives to carriers to initiate new services and to use new facilities efficiently.”⁴

To remedy these problems and “allocate[] IBC costs among service providers in an equitable and competitively neutral manner,” the Commission adopted what it described as a “per-system” approach.⁵ As a practical matter, this means that a flat regulatory fee is imposed on each of an operator’s U.S.-international cable landing licenses. The regulatory fees imposed for fiscal year 2009 represented the first application of this new methodology. That experience has shown that the new approach is, on balance, more workable than the per-circuit approach that preceded it, and GCNA applauds the Commission for pursuing much-needed reform in this area.

However, last year’s experience also revealed a critical shortcoming of the revised approach which, if left unaddressed, would undermine the goals underlying that reform effort.

² *Id.* ¶ 5 (citing *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Second Report and Order, 24 FCC Rcd 4208 ¶ 1 (2009) (“*Submarine Cable Fee Order*”).

³ *See, e.g., Submarine Cable Fee Order* ¶ 10 (noting that under the prior methodology, some entities “chose to underreport the number of active circuits and thus underpay regulatory fees”).

⁴ *Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, Report and Order, 19 FCC Rcd 11662 ¶ 29 (2004).

⁵ *Submarine Cable Fee Order* ¶ 1.

Specifically, the “per-system” methodology, as currently applied, risks penalizing international submarine cable operators that happen to have more licenses than their competitors by subjecting them to significantly higher regulatory fees—regardless of how much capacity they have and regardless of whether the different licenses in fact pertain to separate cable “systems.” While this would be true of any methodology that subjects each license to a separate regulatory fee, the results are magnified considerably in the submarine cable context given the large amount of the fees that the Commission has proposed: The proposed per-license fee applicable to the highest-capacity undersea cables for fiscal year 2010 is \$218,600, compared to \$241,025 in the last fiscal year.⁶

Assessing multiple such fees on a submarine cable operator can dramatically reduce its incentive and ability to build out its network, to the extent such build-out requires it to obtain additional licenses. For example, an operator with a single licensed cable that seeks to extend its system by constructing a new cable—for which it presumably would be required to obtain a new license—would have its regulatory fees immediately doubled, simply because of the additional license. The fee burden could increase even more if the operator builds out its network incrementally in a manner that requires it to obtain several additional licenses. The result is, in effect, an unjustifiable annual tax on new construction that could cause an operator to think twice before undertaking any investment that may require it to obtain a new license.⁷ That outcome is

⁶ NPRM, App. B at 20.

⁷ The need to obtain a new license does not in and of itself justify increased regulatory fees, as any costs associated with that activity are covered by the fee paid in connection with the application—\$16,820 for a non-common carrier cable, and \$1,700 for a common carrier cable. 47 C.F.R. § 1.1107. Nor would any increase in capacity resulting from the construction of a new cable justify the increased fees. Indeed, any submarine cable operator can expand its capacity through network upgrades without obtaining a new license and thus without affecting its regulatory fees—which is a sensible result. There is

directly contrary to the Commission’s goal of limiting submarine cable regulatory fees in order to facilitate investment, as noted above. Maintaining such barriers now would be particularly troublesome in light of the Commission’s current focus on promoting more innovative and efficient broadband services.⁸

GCNA’s subsidiary GT Landing II Corp. (“GT Landing II”) provides a vivid illustration of the harm that can follow from the current application of the per-license approach to an entity with multiple cable landing licenses. GT Landing II is a licensee for five submarine cables, four of which are subject to regulatory fees.⁹ Those cables comprise a single, integrated, undersea cable system, as the Commission itself has recognized.¹⁰ When those cables were first being built in the late 1990s, it would have been possible to obtain a single license to govern the entire

no basis for imposing higher regulatory fees on operators that expand their capacity through new construction but not on those that do so through other means.

⁸ See generally Federal Communications Commission, *Connecting America: The National Broadband Plan* (Mar. 16, 2010).

⁹ GT Landing II is the sole licensee for the Atlantic Crossing Cable (“AC-1”), Mid-Atlantic Crossing Cable (“MAC”), Pan American Crossing Cable (“PAC”), and South American Crossing Cable (“SAC”). GT Landing II shares the Atlantic Crossing 2 Cable (“AC-2”) with Level 3 Communications and thus is responsible for one-half of that fee. Of these cables, only the MAC cable, as a domestic cable, is not subject to a regulatory fee. As part of an internal reorganization and simplification of the relevant corporate structure, in December 2008 the licenses for the AC-1, MAC, and PAC cables were all assigned to GT Landing II, which was already the licensee for the AC-2 cable; the license for the SAC cable subsequently was assigned to GT Landing II as well.

¹⁰ *Global Crossing Ltd. (Debtor-in-Possession), Transferor, and GC Acquisition Limited, Transferee, Applications for Consent to Transfer Control of Submarine Cable Landing Licenses, International and Domestic Section 214 Authorizations, and Common Carrier and Non-Common Carrier Radio Licenses, and Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act*, Order and Authorization, 18 FCC Rcd 20301 ¶ 2 (2003) (describing these facilities as a single “global fiber optic network” used “to provide integrated telecommunications services”); *SAC Landing Corp.; Application for a License to Land and Operate in the United States a Digital Submarine Cable System between the U.S. Virgin Islands, Brazil, Argentina, Chile, Peru, Colombia and Panama*, Cable Landing License, 15 FCC Rcd 3039 ¶ 4 (2000) (stating that these undersea cables “form a high capacity, fiber optical global cable network”).

system¹¹—such that the system would now be subject to a single regulatory fee. But because of the significant up-front costs of that construction, the lenders required that each cable be separately project financed, and also, separately licensed to ensure that the funding associated with each phase of the project was not commingled. As a result, GT Landing II now must pay separate regulatory fees on each subject cable. With the proposed per-license fee of \$218,600, GT Landing II would owe a staggering \$765,100 in submarine cable regulatory fees for fiscal year 2010—nearly 10 percent of the revenue requirement attributable to this fee category—simply because it has more licenses than its competitors.¹² GT Landing II’s prospective fee burden is twice the amount of its share of international capacity,¹³ and, to GCNA’s knowledge, is among the highest (if not the highest) fee obligations in the industry.¹⁴

¹¹ See, e.g., *Project Oxygen (USA) LLC; Application for a license to land and operate in the United States a private fiber optic submarine cable system extending between the United States and various overseas points*, Cable Landing License, 14 FCC Rcd 3924 ¶ 3 (1999) (licensing a proposed global submarine cable system linking 99 landing points around the world, including 10 in the U.S.).

¹² If history is any indication, that burden will increase once the Commission adopts a final fee schedule: Last year, the Commission originally proposed a fee of \$227,029, which it later increased to \$241,025. *Compare Assessment and Collection of Regulatory Fees for Fiscal Year 2009*, Notice of Proposed Rulemaking and Order, MD Docket No. 09-65, App. A at 17 (rel. May 14, 2009), with *Assessment and Collection of Regulatory Fees for Fiscal Year 2009*, Report and Order, MD Docket No. 09-65, App. C at 23 (rel. July 31, 2009).

¹³ According to the Commission’s public calculations, GT Landing II has less than 5 percent of undersea cable capacity. Specifically, in its order adopting the new fee methodology, the Commission observed that the parties that had proposed the new methodology (which did not include GT Landing II or its affiliates) represented 35 of the 42 international submarine cables now in operation and “accounted for over 95 percent of the international circuits carried on submarine cables.” *Submarine Cable Fee Order* ¶ 11. Thus, GT Landing II necessarily would account for some amount less than the remaining 5 percent.

¹⁴ For fiscal year 2009, this fee burden was even higher, at \$843,587.50. The indirect parent company of GT Landing II and GCNA, Global Crossing Limited (“GCL”), has filed a petition with the Commission seeking a reduction and corresponding refund of a portion of that amount. As of this submission, that petition remains pending.

Unless the Commission takes some remedial action, a similar burden awaits any submarine cable operator that likewise is required to obtain multiple cable landing licenses. The result could well be that, solely because of a licensing and related regulatory fee issue, submarine cable operators will opt not to build cables that would benefit consumers by spurring competition and facilitating more enhanced, high-capacity services.

II. THE COMMISSION SHOULD ADOPT A NARROW MEANS OF ENSURING THAT SUBMARINE CABLE FEE BURDENS DO NOT ESCALATE TO INEQUITABLE LEVELS.

To achieve the goals underlying the reform of regulatory fees in this area, GCNA recommends that the Commission take the additional step of ensuring that submarine cable operators are not penalized simply because they have multiple cable landing licenses. The Commission can complete this aspect of its reform without changing its basic methodology for assessing submarine cable regulatory fees, through one of several possibilities that could be efficiently and readily implemented.

Perhaps the most straightforward option would be to limit the number of cable landing licenses on which regulatory fees can be assessed. For example, the Commission could impose a fee on no more than two licenses held by a single licensee (or group of affiliated licensees). Alternatively, the Commission could adopt a monetary limit on the aggregate regulatory fee that any licensee (or group of affiliated licensees) must pay. Either of these options would ensure that a licensee's regulatory fee does not escalate to an inequitable level, thus preserving its incentive to build out its network.¹⁵

¹⁵ In the interest of ensuring that regulatory fees are equitable for all submarine cable operators, the Commission may also want to consider applying such limits to entities that own shares of multiple consortium cables. Here, however, GCNA focuses on the fees assessed on submarine cable operators that have sole responsibility for, and are sole licensees of, their cables.

Another option would be to define the “system” subject to a regulatory fee as an integrated network of cables, rather than presuming that each license represents a separate system. Again, the experience of GCNA’s subsidiary GT Landing II demonstrates the wisdom of such an approach. While GT Landing II owns and operates five separately licensed cables, those cables do not operate independently; rather, they comprise a single integrated system that seamlessly supports end-to-end services. Thus, logically, the entire system should be subject to a single regulatory fee, rather than multiple fees for its separately licensed components.

Yet another option would be to adjust the revenue allocation to produce a smaller fee. Presently, the Commission has calculated its proposed submarine cable regulatory fees by dividing the prior IBC fee category into two components, allocating 87.6 percent of the revenue requirement to submarine cable operators and 12.4 percent to terrestrial and satellite facilities.¹⁶ That approach yields a proposed fee of \$218,600—by far the highest per-unit fee assessed on any entity.¹⁷ Although the Commission originally stated its intent to revisit this revenue allocation, it has not proposed to do so in calculating regulatory fees for fiscal year 2010, stating that it lacks “additional information” that would lead it to make such a change.¹⁸ GCNA submits that the disproportionate impact of the current fee methodology on entities with multiple licenses is sufficient justification to adjust this revenue allocation. Indeed, this allocation was not based on the level of regulatory activity or costs associated with each category.¹⁹ These figures bear no correlation to the Commission’s actual costs of regulating submarine cable operators, in apparent

¹⁶ NPRM ¶ 6.

¹⁷ The next highest per-unit fees, which are assessed on geostationary and non-geostationary space stations, are \$124,825 and \$134,700, respectively. *Id.*, App. B at 19.

¹⁸ *Id.* ¶ 6.

¹⁹ *Submarine Cable Fee Order* ¶ 6 (noting that this allocation was based on the “FY 2008 regulatory fees owed,” used “for illustrative purposes”).

contravention of the statutory requirement that regulatory fees be “reasonably related to the benefits provided by the payor of the fee by the Commission’s activities.”²⁰ Thus, as an alternative, the Commission could consider adopting a different allocation of the revenue requirement—such as a fifty-fifty allocation between submarine cable operators and terrestrial or satellite facilities—to ensure that submarine cable operators are not subjected to such a high regulatory fee.²¹

To be clear, GCNA is not asking the Commission to reconsider the per-system approach to assessing submarine cable regulatory fees.²² And critically, the Commission need not change that methodology. The changes GCNA recommends above offer a discrete means of remedying a narrow yet important set of cases in which the assessment of regulatory fees could have unintended harmful consequences. The Commission can adopt a reasonable limit on the aggregate fees owed by entities with multiple licenses without causing prejudice to any party and without unduly impacting the revenue requirement associated with this category. Indeed, there

²⁰ 47 U.S.C. § 159(b)(1)(A).

²¹ To illustrate the effect of such a change, a proposal advanced in July 2008 would have allocated a much smaller percentage of the overall revenue requirement to submarine cable operators (starting at 50 percent, rather than 87 percent) and contemplated future downward adjustments based on evidence that the Commission expends less effort and thus less cost regulating submarine cable operators—resulting in a per-system fee of \$121,636, or nearly one-half of the fees that the Commission proposed last year and this year. *See* Letter from Kent D. Bressie, Harris, Wiltshire, and Grannis, to Marlene H. Dortch, Office of the Secretary, FCC, MD Docket No. 08-65, Attach. at 1 (filed July 14, 2008).

²² Nevertheless, it bears emphasizing that neither GCNA nor any of its affiliates, subsidiaries, or parent companies were signatories to the so-called “Consensus Proposal” that the Commission adopted to reform the submarine cable regulatory fee methodology. *Submarine Cable Fee Order* ¶ 1. While GCNA’s parent company GCL had supported earlier proposals that would have assessed fees on a per-license basis, it ultimately could not support the Consensus Proposal because of the extraordinary fee levels it produced—fee levels that, as discussed above, disproportionately and unjustifiably harm entities with multiple licenses.

do not appear to be a large number of submarine cable operators that would have multiple licenses for which they have sole responsibility. Thus, to the extent any small subset of operators is relieved of a portion of their fee burdens, those amounts could be evenly divided among an ever-growing range of other licensees without causing a substantial increase to their fees. Meanwhile, the relief for the individual operator would be significant, and could prove to be the decisive factor in whether it decides to expand its network in a manner that would increase competition and benefit consumers.

CONCLUSION

For these reasons, GCNA urges the Commission to consider the impact of its current fee methodology on international submarine cable operators with multiple cable landing licenses and to adopt a reasonable limit to ensure that no such entity is disproportionately affected by high regulatory fees.

Respectfully submitted,

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