

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

APR 22 2010

OFFICE OF
MANAGING DIRECTOR

John Spronk, CFO
GMPCS Personal Communications, Inc.
1501 Green Road, Suite A-B
Pompano Beach, FL 33064

Re: GMPCS Personal Communications, Inc.
Fiscal Year 2009 Regulatory Fee
Fee Control No. 0911109084828001

Dear Mr. Spronk:

This is in response to your request dated November 25, 2009 (*Request*), on behalf of GMPCS Personal Communications, Inc. (GMPCS) for waiver of the penalty for late payment of the fiscal year (FY) 2009 regulatory fee. Our records reflect that you paid the \$11,923.00 regulatory fee, but not the \$2,980.00 late payment penalty. For the reasons set forth below, we deny your request.

You state that in prior years, the Commission mailed regulatory fee bills to licensees such as GMPCS, which you always paid in a timely fashion.¹ You assert that GMPCS was not "directly advised" of the Commission's new requirement announced in a September 2, 2009, Public Notice that licensees and regulatees begin the process of filing their annual regulatory fee obligation by entering the Commission's Fee Filer system (*see infra* note 5 *September Public Notice*).² You also allege that the *September Public Notice* was not "distributed to us in any way."³

The Communications Act of 1934, as amended, requires the Commission to assess a penalty of 25 percent on any regulatory fee not paid in a timely manner.⁴ It is the obligation of the licensees responsible for regulatory fee payments to ensure that the Commission receives the fee payment no later than the final date on which regulatory fees are due for the year.⁵ You paid the regulatory fee for GMPCS on November 9, 2009,

¹ *Request* at 1.

² *Id.*

³ *Id.*

⁴ 47 U.S.C. §159(c)(1).

⁵ See 47 C.F.R. §1.1164; and see Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Report and Order, 24 FCC Rcd 10301, 10311 (2009); Public Notice, Payment Methods and Procedures for FY 2009, 24 FCC Rcd 11513, 11513 (Sept. 2, 2009) (September Public Notice); Public Notice, FY 2009 Regulatory Fees Due No Later Than September 22, 2009, Eastern Time (ET), 24 FCC Rcd 10890, 10890 (Aug. 21, 2009); and Public Notice, Fee Filer Mandatory for FY 2009 Regulatory Fees, 24 FCC Rcd 10893, 10893 (Aug. 21, 2009) (stating that FY 2009 regulatory fees must be received by the Commission no later than September 22, 2009, and that payments received after that date will be charged a 25 percent late payment penalty).

after the September 22, 2009, deadline for filing regulatory fees, and therefore failed to meet this obligation. The Commission informs its licensees of the due dates, amounts of the fees, and payment methods in public notices and fact sheets, which information it also posts on its web site, www.fcc.gov. For the FY 2009 regulatory fees, the Commission timely released several public notices (including the *September Public Notice*) and news releases informing licensees of the new filing requirement and the September 22, 2009, deadline for filing regulatory fees and posted these items on its web site.⁶

The Commission has repeatedly held that “[l]icensees are expected to know and comply with the Commission’s rules and regulations and will not be excused for violations thereof, absent clear mitigating circumstances.”⁷ You have not presented any circumstances sufficient to mitigate your responsibility as a licensee to apprise yourself of your obligation to pay the FY 2009 regulatory fee by the announced deadline of September 22, 2009. We therefore deny your request for waiver of the penalty for late payment of the FY 2009 regulatory fees for GMPCS.

If you have any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark Stephens
Chief Financial Officer

⁶ See *supra* note 5.

⁷ See *Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979), citing *Lowndes County Broadcasting Co.*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, 23 FCC 2d 868 (1970).



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November 25, 2009

Federal Communications Commission
Office of the Managing Director
445-12th Street, S.W., Room 1-A625
Washington, D.C. 20554

Attn: Regulatory Fee Wavier/Reduction Request

Re: Bill number: 1020000062
Applicant FRN# 005097308
Current Bill Date: 11/13/09
Amount: \$2,980.75

We have been assessed a penalty of \$2,980.75 for the late regulatory fee payment not received by 09/22/09.

We respectfully request that the penalty be waived as it is in the public interest for the following reasons:

1. In prior years, the FCC mailed the regulatory fee bills to licensees which we historically paid in a timely fashion.
2. According to Public Notice DA 09-1841, released September 2, 2009, licensees and regulates were advised of the new requirement that they must now process the filing of the annual regulatory fee obligation by entering the Commission's Fee Filer system on the Internet.
3. We were not directly advised of this change, nor was the Notice distributed to us in any way. We did not become aware of the new requirement until early November 2009 whereupon we immediately filed the annual regulatory and paid the required regulatory fees due.

We request your favorable consideration for this one-time request for the waiver of the above penalty.

Thank you for your attention to this matter. If you require additional information please contact me.

Yours truly,
GMPCS Personal Communications Inc.



John Spronk
Chief Financial Officer

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

May 6, 2010

Teresa D. Baer, Esq.
Brian W. Murray, Esq.
Latham & Watkins LLP
555 Eleventh Street, N.W., Suite 1000
Washington, D.C. 20004-1304

Paul Kouroupas
Security Officer & Vice President
Regulatory Affairs
Global Crossing Limited
200 Park Avenue, Suite 300
Florham Park, New Jersey 07932

Re: Global Crossing Limited
Fiscal Year 2009 Regulatory Fees
Fee Control No. RROG-09-00012077

Dear Ms. Baer, Mr. Murray, and Mr. Kouroupas:

This is in response to your request filed September 21, 2009 (*Request*) and supplemented on December 18, 2009, and January 22, 2010,¹ on behalf of Global Crossing Limited (GCL) for a waiver or reduction of the fiscal year (FY) 2009 regulatory fees associated with Atlantic Crossing Cable (AC-1), Pan American Crossing Cable (PAC), and South American Crossing Cable (SAC). You request that the FY 2009 regulatory fees (*i.e.*, \$241,025.00 for each of the three cable landing licenses, for a total of \$723,075.00), be reduced by \$482,050.00 to \$241,025.00 by treating these separately licensed international submarine cables as if they had been licensed as a single cable for regulatory fee purposes.² Our records reflect that you have paid a \$241,025.00 regulatory fee for each of the three cable landing licenses.³ For the reasons set forth below, we deny your request.

¹ See letters from Teresa D. Baer, Esq. and Brian W. Murray, Esq. to Steven VanRoekel, Managing Director, FCC (Dec. 18, 2009) (*December 2009 Letter*) and (Jan. 22, 2010) (*January 2010 Letter*). GCL filed the *Request* on behalf of its subsidiaries who hold the international submarine cable licenses at issue here.

² *Request* at 1 and 14.

³ You state that GCL does not request regulatory fee relief with respect to the license for international submarine cable Atlantic Crossing 2 (AC-2), which GCL owns with Level 3 Landing Station, Inc. (Level 3) and for which GCL paid Level 3 \$120,512.50 towards GCL's share of the \$241,025.00 FY 2009 regulatory fee for the license. GCL also owns Mid-Atlantic Crossing Cable (MAC), which is a domestic cable and thus not subject to a regulatory fee. GCL states that the AC-1, AC-2, MAC, PAC, and SAC comprise its "integrated" submarine cable network/system. *Id.* at 5, 8, and 9; *see also id.* at 7 (stating

You state that as a result of the Commission's new regulatory fee methodology,⁴ GCL's total FY 2009 regulatory fee (*i.e.*, \$843,587.50, as it includes GCL's share of the fee for AC-2 (*see supra* footnote 3)) represents nearly 11 percent of the revenue requirement attributable to the submarine cable fee category despite GCL's relatively small market share.⁵ You claim that GCL's FY 2009 regulatory fees were more than those owed by all operators of nongeostationary space stations and almost as much as those owed by all operators of earth stations.⁶

You state that although the new methodology is based upon a proposal by a large group of submarine cable operators (referred to as the "Consensus Proposal" in the *Submarine Cable Fee Order*), GCL was not a signatory to the proposal.⁷ You claim that the Commission's allocation of the revenue requirement between submarine cable operators and terrestrial and satellite facilities in the *Submarine Cable Fee Order* "was not based on the level of regulatory activity or costs associated with each [prior IBC fee] category."⁸ You assert that the allocation bears no correlation to the Commission's actual costs of regulating submarine cable operators in apparent contravention of the statutory

that it is also one of several consortium members holding a cable landing license to operate AMERICAS II).

⁴ *See Assessment and Collection of Regulatory Fees for Fiscal Year 2008, Second Report and Order*, 24 FCC Rcd 4208 (2009) (*Submarine Cable Fee Order*). In the *Submarine Cable Fee Order*, the Commission divided the then-existing International Bearer Circuit (IBC) regulatory fee category into two new categories, one for terrestrial and satellite facilities and a second for international submarine cable operators, and adopted a new methodology for calculating regulatory fees for international submarine cable operators. Prior to FY 2009, international submarine cable operators paid regulatory fees based on the total number of active IBCs they had on December 31 of the previous year. Beginning with FY 2009, international submarine cable operators pay regulatory fees on a per cable landing license basis, with higher fees for larger submarine cable systems and lower fees for smaller systems; the Commission retained the per circuit regulatory fee for terrestrial and satellite facilities. To calculate the specific cable landing license fee, the Commission divided 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. *Id.* at 4208, 4210, 4212, and 4217.

⁵ *Request* at 1 and 4; *id.* at 10 (averring that GCL represents less than five percent of international submarine cable circuits, while its share of the revenue requirement is more than twice that amount).

⁶ *December 2009 Letter* at 3 (averring that it is unlikely that GCL alone "could have imposed equivalent costs on the Commission as these entire categories of licensees").

⁷ *Request* at 3; *see also Submarine Cable Fee Order* at 4208.

⁸ *Request* at 4 (citing *Submarine Cable Fee Order* at 4212, noting that this allocation was based on the "FY 2008 regulatory fees owed," used here for "illustrative purposes").

requirement that regulatory fees be “reasonably related to the benefits provided to the payor of the fee by the Commission’s activities.”⁹

You contend that the “highly disproportionate burden” that GCL bears under the new methodology uniquely harms GCL and its ability to compete and upgrade its facilities and “results solely from the particular manner in which GCL constructed [and licensed] its integrated undersea cable system a decade ago[.]”¹⁰ You state that through its subsidiaries, GCL is the sole owner and operator of a private (*i.e.*, non-common carrier) submarine cable network and, as such, differs significantly from and faces greater burdens than many of its competitors who operate on a consortium basis where multiple parties share an interest in the same system and divide responsibilities, including the payment of regulatory fees.¹¹ You maintain that because of the significant start-up costs, GCL’s lenders required GCL to separately finance and license each of its cables, but that the cables are managed and operated as a “single, seamless, integrated whole” and that services on the network “are sold point-to-point without regard for the intermediate segments that establish the through route.”¹²

You assert that a single fee of \$241,025.00 fee for AC-1, PAC, and SAC is “consistent with their physical interconnection and their unified operation and management” and would represent about 4.6 percent of the submarine cable category revenue requirement, an amount roughly equivalent to GCL’s share of submarine cable capacity.¹³ You contend that the Commission has granted comparable relief in analogous circumstances.¹⁴ You allege that although GCL did not formally object to or seek reconsideration of the new fee methodology or the specific regulatory fees proposed, there is no requirement

⁹ *Id.* (citing 47 U.S.C. §159(b)(1)(A)).

¹⁰ *Id.* at 1-2, 9-10, and 12.

¹¹ *Id.* at 5, 6, and 11 (asserting that GCL deployed its submarine cable system outside of the traditional consortium model in response to the serious competitive concerns prevailing at the time); see also *December 2009 Letter* at 3 and *January 2010 Letter* at 2.

¹² *Request* at 6-8.

¹³ *Request* at 11-12.

¹⁴ *December 2009 Letter* at 4 (citing *Public Notice, Filing Fee Waiver Established for Applications Proposing Geosynchronous Space Stations in Response To Report Nos. SPB-88 and SPB-89 – Cut-Offs Established in the 2 GHz and 36-51.4 GHz Frequency Bands*, 1997 WL 525444 (rel. Aug. 26, 1997) (*1997 Public Notice*) (in light of the partial waiver granted in the letter from Andrew S. Fishel, Office of Managing Director (OMD), FCC, to John P. Janka, Esq., (Aug. 26, 1997) (*August 1997 Letter*), OMD grants similar waiver of the application fee rules to all applicants meeting the criteria for waiver in the *August 1997 Letter*; specifically, to allow certain geosynchronous space station applicants proposing more than one technically identical space station to be located at a single orbital location to file their fees based upon the number of orbital locations they propose to occupy rather than the number of space stations they propose to launch and operate, provided all satellites at each orbital location are technically identical).

that GCL do so in order to seek a reduction and refund of the fees generated by that methodology.¹⁵ You also assert that the equitable considerations at issue here warrant a refund for GCL.¹⁶

The Commission may waive, reduce, or defer regulatory fees only upon a showing of good cause and a finding that the public interest will be served thereby.¹⁷ Section 1.1156(c) of the Commission's rules, 47 C.F.R. §1.1156(c), provides that "[r]egulatory fees for submarine cable systems will be paid annually, per [international] cable landing license, for all submarine cable systems operating as of December 31 of the prior year." Section 1.1156(c) also provides that the per cable landing license fee for submarine cable systems with a capacity of 20 Gbps or greater as of December 31, 2008 (such as AC-1, PAC, and SAC) is \$241,025.00. GCL held international cable landing licenses for AC-1, PAC, and SAC on December 31, 2008, and therefore is subject to a FY 2009 regulatory fee of \$241,025.00 for each of the three licenses.

We find that GCL's decision to be the sole owner and operator of the cables (through its subsidiaries) at issue here was a strategic business decision to ensure the financing and construction of its cable system and, as such, was a voluntary act entirely within GCL's discretion and under its control.¹⁸ Moreover, the Commission's rules require that each international submarine cable be licensed.¹⁹ The fact that the licenses at issue here are held by individual licensees, as opposed to a group of applicants comprising a consortium, does not make a difference in the licensing of the cables. Further, contrary to

¹⁵ *December 2009 Letter* at 4.

¹⁶ *January 2010 Letter* at 2 (citing *Lockheed Martin Corporation Application for Review, Memorandum Opinion and Order*, 2010 WL 25777 (rel. Jan. 6, 2010) (*Lockheed Decision*) (finding that although it had the legal authority to deny Lockheed Martin Corporation's (Lockheed's) request for a partial refund of application fees, the equities supported a partial refund because Lockheed was similarly situated to other V-band applicants that exceeded the five-application limit in every meaningful respect, except that it withdrew its applications before the Commission limited the number of orbital location slots an applicant could pursue).

¹⁷ See 47 U.S.C. §159(d); 47 C.F.R. §1.1166; see also *Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, Report and Order*, 9 FCC Rcd 5333, 5344 (1994), *on recon.*, *Memorandum Opinion and Order*, 10 FCC Rcd 12759, 12761 (1995) (regulatory fees may be waived, deferred, or reduced on a case-by-case basis in extraordinary and compelling circumstances upon a clear showing that a waiver would override the public interest in reimbursing the Commission for its regulatory costs).

¹⁸ With respect to your contention that GCL has greater burdens than cable operators who are part of consortiums, we note that GCL as a sole owner and operator has opportunities for greater gains.

¹⁹ 47 C.F.R. §1.767; see *Cable Landing License Act of 1921*, 47 U.S.C. §§34-39; *Review of Commission Consideration of Applications under the Cable Landing License Act*, IB Docket 00-106, *Report and Order*, 16 FCC Rcd 22167 (2001).

your assertion, GCL is not unique in its being a sole licensee for international cables: fifteen other international submarine cables only have one licensee responsible for paying the FY 2009 regulatory fee. GCL is also not unique in its having separately licensed multiple submarine cables: Tata Communications (U.S.) Inc. is the sole licensee for three separately licensed international submarine cables. Your assertion that GCL's three cables are part of an integrated cable network system is no different from the claims of other major U.S. international service providers who offer global services using worldwide networks composed of submarine cables and other facilities that they own and operate or lease from other providers. These submarine cable operators similarly describe their global networks as integrated systems providing worldwide, seamless service to customers from one platform through one provider.²⁰

Regarding your contention that GCL bears a disproportionate regulatory fee burden with respect to operators of nongeostationary space stations, earth stations, and terrestrial and satellite facilities, the Commission has consistently "reject[ed] arguments that regulatory fees must be precisely calibrated, on a service-by-service basis, to the actual costs of the Commission's regulatory activities for that service."²¹ Further, although you allege that the fee might hinder GCL's ability to compete and upgrade its facilities and poses a disproportionate burden on GCL's subsidiaries in relation to other cable operators, you provide no documentation to support a finding of financial hardship.²² We therefore find that the circumstances you recite do not constitute extraordinary and compelling circumstances that would warrant a waiver. Therefore, your request for waiver of the FY 2009 regulatory fees is denied.

With respect to your allegation that equitable considerations under the *Lockheed Decision* support a refund of the regulatory fees, we find for the same reasons discussed above that GCL is not unique with respect to other cable licensees and, to the extent that it has

²⁰ See, e.g., <http://www.verizonbusiness.com/solutions/network/> (Verizon Business Solutions); http://www.corp.att.com/globalnetworking/our_global_story.html (AT&T Global Network).

²¹ *Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, 19 FCC Rcd 11662, 11665 (2004); see also *Assessment and Collection of Regulatory Fees for Fiscal Year 1997*, 12 FCC Rcd 17161, 17171-2 (1997); *Assessment and Collection of Regulatory Fees for Fiscal Year 1995*, 10 FCC Rcd. 13512, 13524 (1995); *Assessment and Collection of Regulatory Fees for Fiscal Year 1998, Report and Order*, MD Docket No. 98-36, FCC 98-115, 1998 WL 320272, para. 15 (1998)..

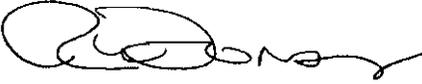
²² In establishing a regulatory fee program, the Commission recognized that in certain instances payment of a regulatory fee may impose an undue financial hardship upon a licensee. The Commission therefore decided to grant waivers or reductions of its regulatory fees in those instances where a "petitioner presents a compelling case of financial hardship." See *Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, 5346 (1994), *recon. granted*, 10 FCC Rcd 12759 (1995). In reviewing a showing of financial hardship, the Commission relies upon a licensee's cash flow, as opposed to the entity's profits, and considers whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.

greater burdens than other licensees, those burdens are the result of its own business decisions. In particular, all submarine cable owners and operators, whether they own cables on an individual basis (similarly to GCL's subsidiaries) or as part of a group, are required to obtain licenses for each cable and are assessed a regulatory fee for each such licensed cable. GCL's decision to be the sole owner and operator of the cables, and thus to be solely responsible for the associated regulatory fees, was a discretionary business decision within its control. Because GCL is thus similarly situated to other submarine cable licensees, the equities do not support a refund of the regulatory fees but, instead, support the conclusion that GCL pay regulatory fees on the same terms as other international submarine cable licensees.²³

We also find that OMD's decisions in the 1997 *Public Notice* and the underlying *August 1997 Letter* to waive the per space station application fees (see *supra* footnote 14) do not provide grounds for a waiver here. OMD waived the Commission's application fee rules in the *August 1997 Letter* (which provided the basis for the decision in the 1997 *Public Notice*) after concluding that "[s]ince notification and coordination [of geostationary orbit satellite systems] occurs on a per location basis, each location would require the same resources that an individual geostationary satellite application requires."²⁴ Because OMD's decisions to waive the Commission's application fee rules were based on the amount of work involved in reviewing specific applications, those decisions have no bearing on whether to grant a waiver of the regulatory fees at issue here, given that the regulatory fees at issue are assessed on a per license basis. We therefore deny your request on this basis.

We therefore find that you have failed to provide sufficient grounds for a waiver or refund of the FY 2009 regulatory fees. Accordingly, your request for waiver or refund of the FY 2009 regulatory fees is denied. If you have any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,


f Mark Stephens
Chief Financial Officer

²³ We note that the *Lockheed Decision* involves application fees under section 8 of the Communications Act of 1934, as amended (the Act), 47 U.S.C. §158, as opposed to regulatory fees under section 9 of the Act, 47 U.S.C. §159.

²⁴ *August 26, 1997 Decision* at 2.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
Fiscal Year 2009 Regulatory Fees)
Global Crossing Limited)

RR06-09-00012077

Attn: Office of the Managing Director
Regulatory Fee Waiver/Reduction Request

**PETITION FOR REDUCTION OR WAIVER OF FY 2009 INTERNATIONAL
SUBMARINE CABLE LANDING LICENSE REGULATORY FEES**

Global Crossing Limited ("GCL") hereby requests a reduction, or in the alternative, a waiver of regulatory fees paid on behalf of its international submarine cable operator subsidiaries, in the amount of \$482,050.¹ Pursuant to a new methodology for assessing regulatory fees on submarine cable operators that was just applied for the first time, these GCL subsidiaries collectively were obligated to pay fees totaling \$843,587.50—nearly 11 percent of the revenue requirement attributable to this fee category. GCL must incur these extraordinary costs even though its network constitutes only a small portion of the overall submarine cable capacity in the United States. This highly disproportionate burden, which results solely from the particular manner in which GCL constructed its integrated undersea cable system a decade ago,

¹ The calculation of this amount is set forth *infra* at 10. This request is submitted on behalf of the following entities, which are or were indirect subsidiaries of GCL and which held cable landing licenses as of December 31, 2008: GT Landing Corp., GT Landing II Corp., PAC Landing Corp., and Global Crossing Latin America & Caribbean Co. As discussed below, GT Landing Corp., PAC Landing Corp., and Global Crossing Latin America & Caribbean Co. were dissolved in connection with a corporate restructuring effective December 31, 2008, and their cable landing licenses were simultaneously assigned to other indirect subsidiaries of GCL. *See infra* at 9.

uniquely harms GCL and skews competition to the ultimate detriment of consumers. The requested reduction will mitigate these inequities and competitive harms, and thus promote the public interest. Accordingly, GCL respectfully asks that the Commission partially reduce or waive the fee obligation for its international submarine cable operator subsidiaries and issue a corresponding refund, pursuant to Sections 1.1166 and 1.1160(a)(3) of its rules.²

BACKGROUND

1. New Regulatory Fee Methodology for Submarine Cable Operators

Earlier this year, the Commission adopted a new methodology for assessing regulatory fees on international submarine cable operators.³ Previously, such entities paid regulatory fees based on the total number of active international bearer circuits (“IBCs”)—defined as 64 kbps voice-grade circuits or equivalents⁴—they had in any transmission facility used to provide certain types of services.⁵ That per-circuit approach, however, eventually led to widely acknowledged problems, as the industry’s shift toward high-capacity, unchannelized transmission facilities made it increasingly difficult and cumbersome to translate capacity accurately into circuit equivalents for regulatory fee purposes. That exercise created unnecessary complexity for submarine cable operators as a compliance matter and risked producing

² 47 C.F.R. §§ 1.1166 (outlining procedures for filing requests for reduction or waiver of regulatory fees), 1.1160(a)(3) (permitting a refund of regulatory fees “[w]hen a waiver is granted in accordance with § 1.1166”). The total amount of regulatory fees owed was paid by the September 22, 2009 deadline, as required by 47 C.F.R. §§ 1.1166(c), (d). Copies of the required FCC Form 159’s and checks remitting payment are attached hereto.

³ See generally *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Second Report and Order, 24 FCC Rcd 4208 (2009) (“*Submarine Cable Fee Order*”).

⁴ 47 U.S.C. § 159(g).

⁵ *Submarine Cable Fee Order* ¶ 4.

substantial increases in regulatory fees—in real terms and as a percentage of revenue—that would reduce incentives for enhancing transmission facilities while failing to reflect what many parties observed to be the relatively light amount of Commission regulatory activity in this area.⁶

Thus, many companies, including GCL, urged the Commission to reform its fee methodology.⁷

On March 24, 2009, the Commission adopted a new methodology based on a proposal submitted by a group of submarine cable operators.⁸ Though represented as the “Consensus Proposal,” GCL was not a signatory to it. While GCL supported the simplified rate structure set forth in that proposal, it was unable to endorse the Consensus Proposal due to its exceptionally high rate levels. In fact, as discussed further below, elements of the Consensus Proposal posed unique harms to GCL as compared to other submarine cable operators.⁹

The new methodology replaced the historic circuit-based calculations with a “per-system” approach.¹⁰ As a practical matter, this means imposing a flat fee for each cable landing

⁶ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, Joint Comments, MD Docket No. 07-81, at 7-8 (filed May 3, 2007); *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”).

⁷ See, e.g., *Assessment and Collection of Regulatory Fees for Fiscal Year 2006*, VSNL Telecommunications (US) Inc. Petition for Rulemaking, RM-11312 (filed Feb. 6, 2006).

⁸ *Submarine Cable Fee Order* ¶ 1.

⁹ See *infra* at 9-11, 15. While the Commission noted that the Consensus Proposal had not been opposed in the record of the proceeding, *Submarine Cable Fee Order* ¶ 11, it acknowledged that this proposal did not necessarily enjoy unanimous support from within the submarine cable industry. *Id.* ¶ 7 (stating that the proposal “is supported by a majority of the submarine cable community”); see also *id.* ¶ 1 n.3 (listing the parties to the Consensus Proposal, which did not include GCL).

¹⁰ *Id.* ¶ 16; see also 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 Sept. 23, 2008) (“Consensus Proposal”) (stating that the per-circuit approach “would be replaced entirely with new per-system fees”).

license connecting U.S. and international points.¹¹ In order to calculate the specific fee, the Commission divided 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.¹² This allocation (originally set forth in the Consensus Proposal) was not based on the level of regulatory activity or costs associated with each category.¹³ Indeed, these figures bear no correlation to the Commission's actual costs of regulating submarine cable operators, in apparent 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."¹⁴ The Commission expected that this new methodology would cure the defects of the prior circuit-based approach and, in particular, "allocate[] IBC costs among service providers in an equitable and competitively neutral manner." These rules became effective on July 15, 2009.¹⁵

The regulatory fees due on September 22, 2009 represented the first application of this new methodology. Using that framework, the Commission determined that submarine cable operators should be responsible for a total revenue requirement of \$7,818,040 (compared to \$1,111,779 for terrestrial and satellite providers with IBCs).¹⁶ For larger cables such as those

¹¹ *Submarine Cable Fee Order* ¶ 1.

¹² *Id.* ¶ 6.

¹³ *Id.* (noting that this allocation was based on the "FY 2008 regulatory fees owed," used here "for illustrative purposes").

¹⁴ 47 U.S.C. § 159(b)(1)(A).

¹⁵ *Assessment and Collection of Regulatory Fees for Fiscal Year 2009*, Report and Order, MD Docket No. 09-65, at ¶ 9 (rel. July 31, 2009) ("*FY2009 Fee Order*").

¹⁶ *Id.*, App. B at 18.

operated by GCL (e.g., cables with capacity of 20 gigabits or more), the Commission determined that the fee would be \$241,025 per submarine cable landing license.¹⁷

2. GCL's Submarine Cable System

Through its subsidiaries, GCL operates an integrated submarine cable network comprised of private (*i.e.*, non-common carrier) cables that connect various U.S. and international points. The Commission has described GCL's privately owned facilities as a single "global fiber optic network" used "to provide integrated telecommunications services."¹⁸ As an operator of a private submarine cable network, GCL differs significantly from many of its competitors. Historically, submarine cables were—and many still are—operated on a consortium basis under which multiple parties share an interest in the same system and divide responsibilities (including the payment of regulatory fees) accordingly.¹⁹

¹⁷ *Id.*, App. B at 23. The Commission had originally proposed a per-system fee of \$227,029. *See Assessment and Collection of Regulatory Fees for Fiscal Year 2009*, Notice of Proposed Rulemaking and Order, MD Docket No. 09-65, App. at 17 (rel. May 14, 2009). The so-called Consensus Proposal that the Commission adopted had contemplated a lower per-system fee of \$212,315. *See Consensus Proposal* at 3.

¹⁸ *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).

¹⁹ For example, AT&T Corp. does not operate any cables by itself, but is a party to a number of separate consortium systems. *See FY 2009 Regulatory Fees: Submarine Cable Systems*, Public Notice, DA 09-1853, Attach. (rel. Sept. 2, 2009) ("*Submarine Cable Notice*") (listing submarine cable systems and licensees). The Commission has stated that each consortium will be considered to have one license for regulatory fee purposes. *Submarine Cable Fee Order* ¶ 17. While each licensee is considered jointly and severally liable for the entire fee, *id.* ¶ 6, as a practical matter the fee is likely to be divided among the consortium members according to the size of their respective interests.

GCL, however, is one of only a few industry participants to own and operate multiple cables by itself. GCL deployed its network outside of the traditional consortium model in response to the serious competitive concerns that arose in connection with the consortium arrangements that prevailed at the time. As GCL explained to the Commission a decade ago, consortium cables were planned, deployed, and operated in accordance with the retail traffic requirements of the then-dominant international carriers, allowing those carriers to entrench and build upon their market power.²⁰ Private cables, in contrast, were deployed not to carry the retail traffic of the licensee but that of other carriers already in the retail market to support a “carrier’s carrier” business, leading to increased facilities-based competition and the development of a robust infrastructure with increased capacity and the ability to employ and support the most innovative technologies. In fact, the Commission has sought to promote private cables precisely because of their competitive benefits.²¹

Although GCL theoretically could have chosen to construct this network all at once pursuant to a single license, in light of the significant up-front costs associated with submarine cable deployment, the subsea portions of GCL’s network were separately and independently project financed. As a result, GCL was required to obtain separate licenses for each portion of

²⁰ See, e.g., Comments of Global Crossing Ltd., *Review of Commission Consideration of Applications under the Cable Landing License Act*, IB Docket No. 00-106, at 3-5 (filed Aug. 21, 2000) (reiterating earlier comments to this effect).

²¹ See, e.g., *Review of Commission Consideration of Applications under the Cable Landing License Act*, Notice of Proposed Rulemaking, IB Docket No. 00-106, at ¶ 10 (rel. June 22, 2000).

its global network as it was built, instead of obtaining a single license. Specifically, GCL's submarine cable network is comprised of the following cables²²:

- Atlantic Crossing Cable or "AC-1" (GT Landing Corp., SCL-LIC-19970506-00003)
- Atlantic Crossing 2 Cable or "AC-2" (GT Landing II Corp., SLC-MOD-20000511-00018)²³
- Mid-Atlantic Crossing Cable or "MAC" (MAC Landing Corp., SCL-LIC-19981030-00023)
- Pan American Crossing Cable or "PAC" (PAC Landing Corp., SCL-LIC-19981103-00022)
- South American Crossing Cable or "SAC" (Global Crossing Latin America & Caribbean Co., SCL-LIC-19990823-00015)

Notwithstanding the incremental development of this global network, the intention throughout was that these cables would be operated as a single, seamless, integrated whole. For example, in the SAC license—the last of these licenses issued by the Commission—the Commission states that "SAC is one of a series of undersea cables being developed by Global Crossing, including the Pan American Crossing (PAC) undersea cable system."²⁴ The license further explains that the PAC cable "will interconnect with the SAC system in Panama and the U.S. Virgin Islands," and that the SAC cable "will also connect, directly or indirectly," with

²² In addition, GCL's subsidiary Global Crossing Americas Solutions, Inc., which GCL acquired in 2007, is one of several consortium members that hold a cable landing license to operate the submarine cable system called AMERICAS-II.

²³ GT Landing II Corp. owns this cable with Level 3 Landing Station, Inc.

²⁴ *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).

other cables “being developed by” GCL, including the AC-I and MAC cables.²⁵ As a result, these cables, together with certain terrestrial systems, “form a high capacity, fiber optical global cable network.”²⁶

Today, these separately licensed cables continue to be operated as a single, seamless global network. All of the subsea network components are managed out of a Global Network Operations Center in the United Kingdom, and are managed, maintained, and operated by common personnel in accordance with common practices and procedures. Further, services on GCL’s network are sold point-to-point without regard for the intermediate segments that establish the through route. For instance, if GCL sells an international circuit from London to Sao Paulo, the circuit is billed as a London-Sao Paulo circuit, and not as separate circuits for each individual segment. In contrast, a competitor of GCL would price out the subsea portions of the circuit, because they are operated and billed separately. Similarly, GCL customers take service across all segments pursuant to a single Operation, Administration and Maintenance (“OA&M”) Agreement, whereas a patchwork of cables connecting London to Sao Paulo would be subject to multiple such agreements.

The unified, integrated nature of GCL’s submarine cable network is also reflected in GCL’s corporate structure. Following an internal corporate restructuring intended to more accurately reflect the manner in which the company operates and to eliminate legacy companies formed when GCL was financing network construction but that were no longer necessary, GT Landing Corp., MAC Landing Corp., and PAC Landing Corp. were all merged with and into GT

²⁵ *Id.*

²⁶ *Id.*

Landing II Corp. (“GT Landing II”), and their respective cable landing licenses were assigned to GT Landing II. Similarly, SAC Landing Corp. was merged with and into another GCL subsidiary, Global Crossing Telecommunications, Inc.; GCL intends to assign that cable landing license to GT Landing II as well.²⁷ Thus, four of the cable landing licenses listed above are now held by one licensee, with the fifth license to follow imminently.

3. Application of New Fee Methodology to GCL

The fact that GCL’s single submarine cable system is comprised of separately licensed segments places it in an unusual position vis-à-vis the new regulatory fee methodology. In short, rather than being subject to a single fee for its single system (as is the case with some other submarine cable operators), GCL must pay multiple such fees simply because, more than a decade before the Commission decided to impose a per-license fee, it was the only submarine cable operator that chose to separately finance and construct—and thus obtain separate licenses for—the component parts of its network. The result subjects GCL to a far greater fee burden than many (if not most) of its competitors face, an ironic outcome given that GCL deployed its private cables in response to the anti-competitive consequences of the earlier consortium model. Specifically, GCL’s total regulatory fee obligation is as follows:

²⁷ These transfers of control and assignments are considered *pro forma* under the Commission’s rules. See 47 C.F.R. § 63.24(d) (“Transfers of control or assignments that do not result in a change in the actual controlling party are considered non-substantial or *pro forma*.”); *id.*, Note 2 (stating that a “[c]orporate reorganization that involves no substantial change in the beneficial ownership of the corporation” is presumptively *pro forma*). GCL recently submitted notifications of these *pro forma* transfers of control and assignments, and is awaiting Commission action on them.

- AC-1 – \$241,025
- AC-2 – \$120,512.50²⁸
- MAC – \$0²⁹
- PAC – \$241,025
- SAC – \$241,025
- **TOTAL – \$843,587.50**

This fee represents nearly 11 percent of the \$7,818,040 revenue requirement attributable to the submarine cable fee category. To GCL's knowledge, and based on rough calculations using publicly available information, this total fee burden is the highest imposed on any participant in the submarine cable industry. That is so notwithstanding the fact that GCL has a relatively small market share. Indeed, in its order adopting the new fee methodology, the Commission observed that the parties to the Consensus Proposal—which, again, did not include GCL—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.”³⁰ Thus, GCL represents *less than 5 percent* of international submarine cable circuits, yet its share of the revenue requirement is more than twice that amount.

²⁸ This amount reflects one-half of the total fee applicable to this cable, which GCL owns with Level 3 Landing Station, Inc. (“Level 3”). Per an agreement between the parties, Level 3 will pay that entire fee, and GCL will then reimburse it for one-half of the total amount.

²⁹ The MAC cable is a domestic cable, and thus is not subject to a regulatory fee under the Commission's new methodology. Although the Commission recently suggested that the MAC cable is subject to such a fee, it subsequently clarified with the undersigned counsel that this was an error. *Submarine Cable Notice*, Attach. at 4 (incorrectly stating that the MAC cable is subject to a regulatory fee of \$241,025).

³⁰ *Submarine Cable Fee Order* ¶ 11.

The impact on GCL is exacerbated by other circumstances unique to GCL's business model. While a carrier such as AT&T may be party to as many as fourteen cable landing licenses (for cables of all sizes), AT&T is only liable for a portion of the entire fee for each cable. In contrast, as the sole owner and operator of its cables, GCL is responsible for the full fee. Moreover, GCL has limited means of flowing through the fees to its submarine cable customers because many of those customers purchased Indefeasible Rights of Use ("IRUs") that were pre-paid.

As discussed below, this highly disproportionate fee burden unfairly penalizes GCL, to the detriment of competition and consumers—all because GCL followed a multi-cable model specifically intended to *enhance* competition. Indeed, it may well be that the per-license fee structure now in place must be modified or clarified to avoid this outcome in the future—whether for GCL or any other entity. Rather than seek such relief in advance of the fee deadline or oppose the adoption of the Consensus Proposal when reform finally appeared to be near, GCL felt the better course was to pay the full amount to avoid being found delinquent and then to seek individual relief.

Accordingly, GCL now seeks a reduction of its total submarine cable fee obligation or, in the alternative, a waiver of the Commission's rules to the extent necessary to effectuate that reduction, in the amount of \$482,050, resulting in a net fee obligation of \$361,537.50. This is the fee that would result if the AC-1, PAC, and SAC cables had been licensed together, consistent with their physical interconnection and their unified operation and management. A fee of this amount would represent about 4.6 percent of the submarine cable category revenue

requirement, which would be roughly equivalent to GCL's share of submarine cable capacity according to the Commission's own findings.³¹

DISCUSSION

Under the circumstances presented here, a reduction or waiver of a portion of GCL's submarine cable regulatory fees is warranted. The Commission's rules provide that regulatory fees may be reduced or waived in specific instances, on a case-by-case basis, "where good cause is shown" and where doing so "would promote the public interest."³² As explained below, GCL's request satisfies this standard.

I. GOOD CAUSE EXISTS TO REDUCE OR WAIVE A PORTION OF GCL'S REGULATORY FEES.

As discussed above, the new fee methodology imposes a disproportionately high burden on GCL relative to other participants in the submarine cable industry. As a result, GCL must bear uniquely high costs that disadvantage it from a competitive perspective in several respects, thereby harming the public interest.

First, the need to incur these costs could affect GCL's ability to improve and upgrade its facilities in a manner that otherwise would benefit its customers. The Commission previously has noted its own concern that the financial burdens associated with high IBC fees "may provide

³¹ For purposes of administrative ease, GCL is not seeking relief in connection with any portion of the regulatory fee owed in connection with the AC-2 cable shared with Level 3 Landing Station, Inc., even though that cable is also part of the same integrated network. Similarly, GCL is not seeking relief with respect to the portion of the fee due for the AMERICAS-II cable.

³² 47 C.F.R. § 1.1166.

disincentives to carriers to initiate new services and to use new facilities efficiently.”³³ But strict application of the revised fee methodology to GCL could produce that very sort of disincentive. This outcome would be particularly troublesome in light of the Commission’s current focus on promoting more innovative and efficient broadband services.³⁴ While these potential consequences of GCL’s fee obligation would skew competition, the ultimate harm would be to consumers, who would be denied the benefits of these network enhancements. GCL’s customers could suffer further due to the potential impact of GCL’s extraordinary regulatory fee burden on their rates on a going-forward-basis.

These burdens—which alone should provide good cause justifying a reduction or waiver—are compounded by the fact that they are uniquely imposed on GCL. There is no basis for subjecting GCL to higher fees than its competitors, who would not be so limited in their investment decisions. As noted, GCL’s global network constitutes a small portion of overall capacity to the United States. The only difference between GCL and other submarine cable operators is that GCL constructed and separately licensed components of its network at a time when having multiple licenses had no impact on regulatory fees, while the rest of the industry tended to rely more heavily on consortia. In fact, these competitors can now take the per-license fee structure into account and facilitate their own expansion by simply modifying existing licenses to encompass additional facilities as necessary, rather than accruing additional licenses as GCL did, and thus avoid the resulting fee increases. Absent a reasoned explanation for this

³³ *Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, Report and Order, 19 FCC Rcd 11662 ¶ 29 (2004).

³⁴ *See generally A National Broadband Plan for Our Future*, Notice of Inquiry, GN Docket No. 09-51 (rel. Apr. 8, 2009).

disparate treatment with respect to regulatory fees, GCL's current obligation cannot be sustained.³⁵

II. A FEE REDUCTION OR WAIVER WOULD EFFECTUATE THE RATIONALE UNDERLYING THE REVISED FEE METHODOLOGY.

Reducing GCL's regulatory fee burden by effectively treating three of its separately licensed cables as a single submarine cable system for regulatory fee purposes also would be consistent with the goals of the revised methodology. In contrast, denying GCL such relief would disserve those goals and result in the type of inequities that motivated reform in the first place.

As noted above, the Commission adopted the new fee methodology for submarine cable operators in order to "allocate[] IBC costs among service providers in an equitable and competitively neutral manner."³⁶ The application of this methodology to GCL, however, does not achieve that goal. Indeed, as discussed, it shifts a disproportionate share of the overall fee burden from other operators to GCL, causing GCL to bear nearly 11 percent of the overall revenue requirement and to incur regulatory fees that far exceed those paid by its competitors—simply because GCL happens to possess more licenses.

To be sure, any per-license approach would have the effect of shifting the fee burden toward those entities that happen to have more licenses—notwithstanding the fact that the mere possession of those licenses does not necessarily result in an increased level of regulatory activity. In fact, GCL had supported earlier reform proposals that included a flat per-license

³⁵ See, e.g., *Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027, 1047 (D.C. Cir. 2002) (agency action arbitrary and capricious where it lacks reasoned explanation).

³⁶ *Submarine Cable Fee Order* ¶ 1.

fee.³⁷ While those proposals would have had a disparate impact on GCL by virtue of its having multiple cable landing licenses, GCL supported them in the broader interest of achieving reform expeditiously. Aspects of the so-called Consensus Proposal, however, magnified that disproportionate burden considerably. In particular, the Consensus Proposal dramatically increased the revenue requirement attributable to submarine cable operators—and thus the per-system fee—as compared to that contemplated by prior proposals. More specifically, a proposal advanced in July 2008 (which GCL had supported) 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 \$121,636.³⁸ In other words, the Commission’s current methodology effectively doubles the fee burden on GCL compared to the last industry proposal that GCL endorsed, to a point that ultimately is anti-competitive.

³⁷ *Id.* ¶ 2 & n.10.

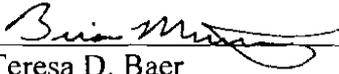
³⁸ See Letter from Kent D. Bressie, Harris, Wiltshire, and Grannis, to Marlene H. Dortch, Office of the Secretary, FCC, MD Docket No. 08-65, Attach. at 1 (filed July 14, 2008). The Commission referred to this proposal as the Revised Joint Proposal. See *Submarine Cable Fee Order* ¶ 2.

CONCLUSION

In light of these consequences of the new per-license fee methodology, further clarification or modification of that methodology may be warranted. In the interim, however, the Commission should alleviate the harms imposed by that structure on GCL by reducing or waiving the regulatory fees owed for FY 2009 by its international submarine cable operator subsidiaries.

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