

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Universal Service Contribution Methodology)	WC Docket No. 06-122
)	
A National Broadband Plan For Our Future)	GN Docket No. 09-51
)	

To: The Commission

**REPLY COMMENTS OF RELIANCE GLOBALCOM
LIMITED**

Reliance Globalcom Limited (“Reliance”) submits these reply comments in response to the Commission’s Further Notice of Proposed Rulemaking (“FNPRM”) proposing reform of the Universal Service Fund (“USF”) contribution mechanisms.¹ Reliance wishes to add its support to the positions taken by a group of undersea cable operators² (the “Undersea Cable Operators”) in their joint comments filed in this proceeding.³ Specifically, Reliance joins the Undersea Cable Operators in urging the Commission to reject the FNPRM’s proposal to eliminate the international-only exemption and the limited interstate revenues exemption (“LIRE”).

I. BACKGROUND

Reliance is situated similarly to the Undersea Cable Operators. Reliance, which is a subsidiary of the Indian telecommunications conglomerate, Reliance Communications Ltd., is the

¹ See *Universal Service Contribution Methodology; A National Broadband Plan for Our Future*, WC Docket No. 06-122, GN Docket No. 09-51, Further Notice of Proposed Rulemaking, FCC 12-46 (rel. Apr. 30, 2012) (“FNPRM”).

² Level 3 Communications, LLC, GT Landing II Corp., Global Crossing Americas Solutions, Inc., Office des postes et télécommunications de Polynésie française, PPC-1 Limited, PPC-1 (US), Inc., Southern Cross Cables Limited, and Pacific Carriage Limited (collectively, the “Undersea Cable Operators”).

³ See Joint Comments of Undersea Cable Operators, WC Docket No. 06-122, GN Docket No. 09-51 (filed July 9, 2012) (“Joint Comments”).

licensee of a submarine cable landing station license for the FLAG Atlantic-1 (FA-1) transatlantic, non-common carrier submarine cable, which has end points in Cornwall, United Kingdom; New York, United States; and Brittany, France.⁴ Reliance provides global communication services to telecommunications and information service providers, enterprise-level customers, and other end-user consumers throughout much of the world. However, all but a *de minimis* portion of Reliance's overall telecom facilities and customers are outside the United States, and the vast majority of Reliance's submarine cable facilities are located outside of the United States' territory.

II. THE COMMISSION SHOULD RETAIN THE INTERNATIONAL-ONLY EXEMPTION AND THE LIRE

Reliance agrees with the Undersea Cable Operators that the FNPRM's proposals to eliminate the international-only exemption and the LIRE violate Congress' statutory instructions and intent, applicable judicial decisions, and the Commission's own precedent. Eliminating these exemptions is also bad policy that would harm the ability of holders of domestic cable landing licenses to effectively compete in the market for international undersea cable capacity. The Commission should therefore reject the FNPRM's proposal.

A. *ELIMINATING THE INTERNATIONAL-ONLY EXEMPTION AND THE LIRE WOULD BE CONTRARY TO LAW, COMMISSION PRECEDENT, AND TREATY*

The Undersea Cable Operators have thoroughly exposed the legal failings of the FNPRM's proposals to eliminate the international-only exemption and the LIRE.

Congress Limited the Commission's Jurisdiction to Interstate Providers. The Undersea Cable Operators have convincingly shown that the Congress clearly and unambiguously expressed its intent in Section 254(d) of the Communications Act of 1934, as amended, to limit the

⁴ See FCC File No. SCL-LIC-19990301-0005.

Commission’s jurisdiction to interstate providers only.⁵ Both the text and the legislative history of Section 254(d) show that Congress has never given the Commission authority to require USF contributions from providers of exclusively foreign communications, and the Commission’s ancillary jurisdiction and generally rulemaking powers cannot override the express limits imposed by Congress in Section 254(d).⁶ As the Undersea Cable Operators have shown, the Commission itself has repeatedly recognized that the clear language of Section 254(d) prevents imposing USF contributions on providers of international-only communications.⁷

Courts Require LIRE (or an Equivalent). The Fifth Circuit interpreted Section 254(d)’s “equitable and nondiscriminatory” language to prohibit discriminatory imposition of USF costs on providers of predominantly foreign communications.⁸ Consistent with the comments of the Undersea Cable Operators, the statute, as interpreted by the courts, therefore requires the retention of the LIRE or an equivalent.⁹

The Proposals Would Violate U.S. International Obligations. Further, as the Undersea Cable Operators show, the FNPRM’s proposals would impose “non-transparent, discriminatory, competition-distorting, and excessively burdensome” universal service obligations, in violation of U.S. commitments under the WTO General Agreement on Trade in Services.¹⁰

⁵ Joint Comments at 5-14.

⁶ *Id.*

⁷ *Id.* at 9-11. Recognizing its lack of authority, the Commission has even at times asked Congress to amend the law to allow such assessments of USF fees against international-only providers. *Id.* at 10.

⁸ *See Texas Office of Pub. Utils. Counsel v. FCC*, 183 F.3d 393, 434 (5th Cir. 1999).

⁹ Joint Comments at 14-17.

¹⁰ *Id.* at v, 25-28.

B. THE UNDERSEA CABLE OPERATORS HAVE CONVINCINGLY SHOWN THAT ADOPTING THE FNPRM'S PROPOSALS WOULD HAVE SEVERE NEGATIVE POLICY EFFECTS

Eliminating the international-only exemption and the LIRE would severely distort the market for international undersea cable capacity.¹¹ These proposed rule changes, which appear to be primarily targeted toward the growing international pre-paid calling card market, would harm other international service providers such as cable landing licensees.¹² If the Commission eliminates the international-only exemption and LIRE, it would recreate many of the same distortions in the market for international submarine cable transport services that were caused in the past by the Commission's previous method of assessing per-circuit annual regulatory fees on submarine cable landing licensees.¹³

As was demonstrated during the Commission's proceeding in which it reformed that per-circuit annual regulatory fee applicable to submarine cable operators, cable landing licensees have very limited ability to pass through regulatory fees to their customers. Submarine cable capacity generally is sold via long-term indefeasible rights of use ("IRUs") and capacity leases. When executed, often many years ago, many of these long-term IRUs and leases did not envision, and therefore do not expressly address, permissive regulatory fees that may, but are not required to, be passed through to customers. As a result, any newly imposed USF contribution obligations may be required to be absorbed by cable landing licensees rather than being passed through to their customers as has become standard practice within the domestic telecommunications industry. Consequently, the FNPRM's proposals would force Reliance, like the Undersea Cable Operators, to attempt to renegotiate many of its long-term IRUs and capacity leases, which may not be possible,

¹¹ *Id.* at 17-23.

¹² *Id.* at 28-29; FNPRM ¶¶ 181, 197-98.

¹³ Joint Comments at 17-18.

or to operate U.S.-foreign cable routes with much lower margins or at a loss for the foreseeable future.

As the Undersea Cable Operators also note, eliminating these exemptions would very likely deter new cable landings in the US. Operators would have additional incentives to instead land their cables in Canada or Mexico.¹⁴ Such a sweeping revision by the Commission to its regulatory fee regime applicable to cable landing licensees also would establish a poor precedent for other countries, which might try to impose similar fees on international traffic. If all countries embraced such an approach, it would be commercially infeasible to offer international undersea cable capacity, as the Undersea Cable Operators argue.¹⁵ The Commission itself established the principle that customers in one country should not subsidize the universal service funds of customers in another country, and the FNPRM's proposals appear to violate that principle.¹⁶ Other negative policy effects of the FNPRM's proposals include a likely increase in strategic non-compliance by certain submarine cable operators, which would competitively penalize compliant operators,¹⁷ and reduced competition in domestic interstate services if the LIRE is eliminated.¹⁸

Finally, Reliance agrees with the Undersea Cable Operators that there is “no meaningful way to fit foreign-originating or foreign-terminating services into a connections-based methodology.”¹⁹ If the Commission adopts such a methodology for USF contributions, it should exempt international-only services entirely.

¹⁴ *Id.* at 21-23.

¹⁵ *Id.* at 20-21.

¹⁶ *Id.* at 23-25.

¹⁷ *Id.* at 18-19.

¹⁸ *Id.* at 20.

¹⁹ *Id.* at 29-30.

III. CONCLUSION

Eliminating the international-only exemption and the LIRE is prohibited by the plain language and legislative history of Section 254(d), and is inconsistent with *TOPUC v. FCC* and U.S. WTO obligations. Most critically, eliminating those provisions will severely damage and distort the market for international undersea cable capacity. For these reasons, the Commission should heed the Undersea Cable Operators and retain the international-only exemption and the LIRE.

Respectfully submitted,

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