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July 3, 2013

**VIA ECFS**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

**Re: *Ex Parte* Letter Concerning Regulatory Fee Reform  
MD Docket No. 13-140 (Assessment and Collection of Regulatory  
Fees for Fiscal Year 2013); MD Docket No. 12-201 (Procedures for  
Assessment and Collection of Regulatory Fees); and MD Docket No.  
08-65 (Assessment and Collection of Regulatory Fees for Fiscal Year  
2008)**

Dear Ms. Dortch:

The International Carrier Coalition (“Coalition”), composed of Bestel USA, Inc., Brasil Telecom of America, Inc. (d/b/a GlobeNet), Cedar Cable Ltd., Columbus Networks USA, Inc., Iusatel USA, Inc., Primus Telecommunications, Inc., T.A. Resources N.V., and Unity Cable System, submits the following ex parte letter to further supplement the record in the Federal Communications Commission’s (“FCC” or “Commission”) above referenced dockets addressing the Notice of Proposed Rulemaking (“NPRM”) and Further Notice of proposed rulemaking (“FNPRM”) released May 23, 2013, concerning procedures for assessment and collection of regulatory fees. The record in this proceeding clearly reflects a need for the Commission to re-allocate full time employees (“FTEs”) in a manner that more closely aligns the FCC regulatory fees international carriers are assessed to the regulatory benefits they receive or even the ongoing regulatory oversight costs they impose on the Commission.

**Background on the Coalition**

The Coalition is a collection of providers of international telecommunications services with their own international capacity including submarine cable

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operations. These carriers provide dark and lit fiber services, international traffic services, private line services, enterprise services including MPLS and VPN and prepaid calling cards. The Coalition includes the following members:

- Bestel USA, Inc. is a facilities-based competitive carrier affiliated with a Mexican non-dominant telecommunications carrier which provides interstate and international services for U.S. carriers;
- Brasil Telecom of America, Inc. (d/b/a GlobeNet) operates a high capacity submarine cable system between the U.S., Brazil, Venezuela and Bermuda and provides capacity for other carrier and enterprise customers;
- Cedar Cable Ltd., an affiliate of The Bermuda Telephone Company Limited, is the facilities-based operator of the CB-1 cable system connecting the U.S. and Bermuda and used by other Bermuda based carriers and enterprise customers;
- Columbus Networks USA, Inc., a subsidiary of Columbus Communications, operates the ARCOS-1 and CFX-1 submarine cable systems linking the U.S. and multiple countries in the Caribbean, and Central and South America; offering broadband and IP services to carriers, Internet Service Providers, cable operators, network integrators and others;
- Iusatel USA, Inc. is a non-dominant international telecommunications providers that provides competitive telecommunications services between the U.S. and Mexico;
- Primus Telecommunications, Inc. is a U.S.-based carrier that provides interstate and international telecommunications services between the U.S. and other countries;
- T.A. Resources N.V., is the non-dominant facilities-based telecommunications provider in the U.S.-Aruba route and is an affiliate of Setar N.V., the incumbent telecommunications provider in Aruba; and

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- Unity Cable System is an international consortium that developed the 9,620 km undersea cable system connecting Japan and the United States. The system provides much needed capacity to sustain the increased growth in data and Internet traffic between Asia and the United States.

The Coalition filed comments in the above-referenced proceeding on June 19, 2013 (“Initial Comments”), and Reply Comments on June 26, 2013 (“Reply Comments”). This letter supplements those Initial Comments and Reply Comments.

### **Regulatory Fees Must Be Commensurate With Services Provided**

Section 9(b)(1) of the Communications Act (the “Act”) provides that the methodology to be used by the Commission to assess regulatory fees on regulated service providers must begin with a Bureau headcount, since the first step is “determining the full-time equivalent number of employees performing the activities described in subsection (a) of this section within the Private Radio Bureau, Mass Media Bureau, Common Carrier Bureau, and other offices of the Commission....”<sup>1</sup> But headcount alone is not a sufficient basis when assessing regulatory fees as it may not be directly related to the Commission’s task of regulating the “traditional” regulatees of such Bureaus. Thus, Section 9(b)(1) of the Act further provides that this preliminary allocation should be “adjusted to take into account factors that are reasonably related to the *benefits provided to the payor* of the fee by the Commission’s activities, including such factors as service area coverage, shared use versus exclusive use, and other factors that the Commission determines are necessary in the public interest....”<sup>2</sup>

By this filing, and pursuant to conversations with Commission staff, the Coalition is addressing what the correct amount of fees should be for certain International Bureau regulatees. While the Coalition did not press the point in its Initial Comments or Reply Comments, the fair amount allocated to international facilities-based telecommunications providers should be lower than the NPRM proposal. Even though the NPRM’s proposal goes in the right

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<sup>1</sup> 47 U.S.C. §159(b)(1).

<sup>2</sup> *Id.* (emphasis added).

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direction and should be adopted, under the clear terms of the Act regulatory fees should be assessed in a manner that is proportional to benefits rendered to the regulatees by the FCC through its regulatory activities. In the NPRM's revised allocation for FY 2013, the Commission is proposing to charge certain international regulates, such as submarine cable operators, significant regulatory fees (up to \$ 191,475 per submarine cable system under the proposal set forth at Attachment B2 of the NPRM) which, while reduced from previous assessment levels, still remain vastly disproportionate to the services actually rendered to such operators by the FCC given the limited regulatory oversight of such operators. There is no justification as to why such low-cost licensees are subject to assessments of nearly \$200,000 per year, given the comparative lack of benefits they receive from the Commission's regulatory activities when compared to other licensees.

For example, the International Bureau's Policy Division employees whose work involves the regulation of submarine cable operators and bearer circuits is only *two* FTEs.<sup>3</sup> This stands in stark contrast to the significant fees that such operators pay to the FCC (an allocation up to six times higher than warranted under the FTE allocation for such licensees).<sup>4</sup> Further, there are no new regulations or additional FCC staff administrative activities expected in this area in the near future that would justify such high regulatory fees for such low-cost regulates.

Under the plain text of the statute, the Commission cannot subsidize high-cost regulates on the backs of low-cost licensees--rather, assessments must be made in proportion to the benefits received. The Coalition urges the Commission to

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<sup>3</sup> See NPRM, ¶ 27 (“The Policy Division employees whose work involves the regulation of submarine cable systems and bearer circuits, equates to only two FTEs. The remaining Policy Division FTEs handle other matters involving international issues and, like the SAND FTEs, should more accurately be considered indirect FTEs, together with the remaining bureau level employees.”).

<sup>4</sup> See NPRM, ¶ 27 (“The 2.28 percent of all regulatory fees submarine cable service providers now pay is the sixth highest regulatory fee percentage among all fee categories, notwithstanding the fact that the provision of international submarine cable service involves little regulation and oversight from the Commission after the initial licensing process.”).

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further reduce the regulatory fees payable by facilities-based international carriers, including cross-border bearer circuit operators and submarine cable operators, to a level commensurate with the regulatory activity of the Policy Division of the International Bureau.

**The Commission Already Disproportionately Recovers  
Fees From Certain International Regulatees**

Beyond the significant annual assessments levied on submarine cable operators and other International Bureau licensees, the initial licensure fees imposed on new applicants in this space already cover a significant portion of the regulatory costs associated with such service providers. For example, common carrier submarine cable license applicants are subject to a filing fee of nearly \$16,000. Non-common carrier cable landing license applicants are subject to an application fee of over \$17,000. The fees imposed by the Commission in the initial licensure process for submarine cable systems are only surpassed by the licensure fees associated with space station operations. Thus, given the high initial cost to obtain a license for submarine cable operations, there is little justification to charge such operators an additional \$191,475 per year given the low ongoing regulatory costs associated with submarine cable operations. The NPRM recognizes that after the initial licensing process, “the provision of international submarine cable service involves little regulation and oversight from the Commission.”<sup>5</sup> As such, there is little basis to additionally require significant ongoing annual fees after the initial licensure process is completed.

**The Commission Should Not Implement Revenue-Based  
Fee Assessments for International Regulatees**

The NPRM requests comment on whether revenues would be a more appropriate measure for other industries (in addition to the wireless industry) in FY 2014 or future years.<sup>6</sup> The Coalition submits that there is no justification to impose a revenue-based fee structure on international licensees. In 2008-2009 the Commission undertook a lengthy and complex proceeding aimed at reviewing the regulatory fee structure for submarine cable operators. In the 2009 *Submarine Cable Order*, it ultimately adopted a new submarine cable

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<sup>5</sup> NPRM, ¶ 27.

<sup>6</sup> See NPRM, ¶ 33.

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bearer circuit methodology to assess regulatory fees on a cable landing license basis, based on the proposal of a large group of submarine cable operators representing both common carriers and non-common carriers with both large and small submarine cable systems.<sup>7</sup> This methodology allocates international bearer circuit (“IBC”) costs among service providers without distinguishing between common carriers and non-common carriers, by assessing a flat per cable landing license fee for all submarine cable systems, with higher fees for larger submarine cable systems and lower fees for smaller systems.<sup>8</sup> The Commission ultimately decided to adopt a neutral regulatory fee system for submarine cable operators based on a per-system basis, rather than on a revenue-based framework. Submarine cable operators are assessed based on the systems and circuits put into service rather than on how their operations are managed. This creates an assessment system that is administratively easier to manage and fairer to the regulated operators. There is no basis to disrupt this system by reversing course and imposing a revenue-based regulatory fee structure on such operators.

Likewise, with respect to international carriers with cross-border circuits, assessing fees based on systems or circuits is far easier and fairer than to charge those carriers based on revenues. Assessments based on systems or circuits are more predictable and easier to administer than a revenue-based system. As such, the Coalition submits that there is no basis to introduce needless complication into the fee assessment process by charging fees based on revenues rather than on a per system or circuit basis.

The regulatory fee schedule adopted by Congress relies on a framework that is designed to make assessments based on the relationship to regulatory services required by the licensed entity and the benefit an entity receives from the regulatory process. Assessments based on revenue would turn this framework on its head by charging fees based on what a licensee is able to pay. This would be especially complicated in the submarine cable and international

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<sup>7</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Second Report and Order, 24 FCC Rcd 4208 (2009).

<sup>8</sup> “This recent in-depth review and revision of the regulatory fee methodology for submarine cable serves as another important factor to consider in determining the appropriate allocation of regulatory fees in this proceeding.” NPRM, ¶ 26.

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circuits markets where revenues are significantly derived from foreign operations, which can needlessly complicate any framework that requires a clear and specific revenue base by which to establish such assessments.

**Regulatory Fees for Fiscal Year 2014 Must Continue to Recognize  
Declining Allocation for International Regulatees**

The Coalition again notes that the proposed 7.5% cap in increases/decreases of regulatory fees should be an interim measure only.<sup>9</sup> The regulatory fee framework adopted by the Commission for FY 2014 and beyond must recognize the ongoing decline in allocations for international regulatees, and continue to recognize the limited oversight required of such regulatees as well as the high initial licensure costs charged to such licensees. Reassessments in future years, therefore, must continue to result in significant reductions in regulatory fees on such operators. The limited oversight of Commission regulation over such operations does not justify the fees currently imposed on facilities-based international operators, and the Commission must therefore continue to work in the future to reduce those assessments.

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<sup>9</sup> As noted in the NPRM, “Limiting increases will, necessarily, limit the decrease in fees for other regulatory fee categories, since the overall fee collection amount does not change.” NPRM, ¶ 30.

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### **Conclusion**

For the reasons set forth in the Coalition's Comments, Reply Comments, and herein, the Coalition respectfully urges the Commission to move forward with its proposed regulatory fee reallocations as set forth in Attachment B2 of the NPRM for Fiscal year 2013.

With respect to FY 2014 and beyond, the Commission must continue to reduce regulatory fee assessments on international service providers given the disproportionate amounts that those providers currently and historically have been subject to. The 7.5% cap proposed in the NPRM should be a temporary measure only, as the Commission cannot subsidize one category of regulatees on the backs of other categories. Finally, there is no basis for imposing a revenue-based assessment on international service providers.

Please do not hesitate to contact the undersigned should you have any questions concerning this filing.

Respectfully submitted,

*/s/ Ulises R. Pin*

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