

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of

Assessment and Collection of Regulatory Fees
for Fiscal Year 2019

MD Docket No. 19-105

**REPLY COMMENTS OF
THE NORTH AMERICAN SUBMARINE CABLE ASSOCIATION**

The North American Submarine Cable Association (“NASCA”)¹ agrees with numerous commenters that the *FY 2019 Reg Fees NPRM*² did not provide sufficient full-time equivalents (“FTE”) data to allow meaningful comment or to justify the substantial fee increases—particularly for submarine cable licensees. NASCA echoes INCOMPAS’s concerns that the submarine cable system regulatory fees increased dramatically with no explanation. To remedy this, the Commission must align submarine cable fees with the benefits provided to submarine cable operators from the Commission’s activities. The record also supports moving away from

¹ Some of NASCA’s members include Alaska Communications System, Alaska United Fiber System Partnership, Alcatel Submarine Networks, Apollo Submarine Cable System Limited, C&W Networks, CenturyLink, Edge Network Services Ltd., Global Cloud Xchange, Global Marine Systems Ltd., GlobeNet, Hibernia Atlantic, OPT French Polynesia, PC Landing Corp., Rogers Communications, Southern Caribbean Fiber, Southern Cross Cable Network, Sprint Communications Corporation, Tata Communications (Americas), TE SubCom, and Verizon.

² See *Assessment and Collection of Regulatory Fees for Fiscal Year 2019*, Notice of Proposed Rulemaking, FCC 19-37, MD Docket No. 19-105 (rel. May 8, 2019) (“*FY 2019 Reg Fees NPRM*”).

the capacity-based fee tiers and toward a per-system flat fee. To the extent that terrestrial and satellite International Bearer Circuit (“IBC”) fees are too high, NASCA believes that the appropriate remedy is to adjust the revenue requirements for each service based on FTE data, rather than capacity, which has no relationship to Commission regulatory effort or benefits provided to payors, consistent with revised Section 9 of the Communications Act, as amended.³

I. The *FY 2019 Reg Fees NPRM* Does Not Provide Sufficient FTE Data or Justification to Support the Current Allocation of Regulatory Fees for Submarine Cable System Payors.

NASCA echoes commenters’ concerns that the *FY 2019 Reg Fees NPRM* does not provide sufficient FTE data⁴ or justify the increase in fees for payors in the International Bureau (“IB”),⁵ and, in particular, for submarine cable payors.⁶ Indeed, the *FY 2019 Reg Fees NPRM* did not provide FTE numbers for the core bureaus at all—only percentages.⁷ As commenters have made clear, this lack of data leaves commenters with “no ability to provide meaningful

³ See 47 U.S.C. § 159(d).

⁴ See, e.g., Joint Comments of the Named State Broadcasters Associations at 9, MD Docket No. 19-105 (filed June 7, 2019) (“Named State Broadcasters Associations Comments”) (“With the exception of this year, the Commission has followed up on its FTE commitment by publishing in each year’s regulatory fee NPRM the total FTEs assigned to each bureau . . . However, this information alone does not provide the level of detail necessary to fully assess the impact of FTE reassignments on individual fee categories.”)

⁵ See Comments of EchoStar Satellite Operating Corporation, Hughes Network Systems, LLC, Intelsat License LLC, Inmarsat Inc., SES Americom, Inc., Space Exploration Technologies Corp., and WorldVu Satellites Ltd. at 3, MD Docket No. 19-105 (filed June 7, 2019) (“Satellite Operators Comments”).

⁶ See Comments of INCOMPAS at 2-3, MD Docket No. 19-105 (filed June 7, 2019) (“INCOMPAS Comments”).

⁷ *FY 2019 Reg Fees NPRM* ¶ 13.

input in this proceeding because the Commission has withheld or obscured the basis for its proposals.”⁸

This concern is particularly true for the 19.98-percent increase in the International Bureau FTE allocation without “any justification for the substantial change,” as noted by the Satellite Operators,⁹ and the even more alarming 28-percent increase in the submarine cable fees across the five tiers, noted by INCOMPAS.¹⁰ INCOMPAS correctly explains that to “effectuate its proposed 28 percent fee increase,” the Commission “must demonstrate a concomitant increase in ‘the benefits provided’ to submarine cable licensees, as compared to other types of licensees, ‘by the Commission’s activities.’”¹¹ But the *FY 2019 Reg Fees NPRM* fails to identify “any change to the nature or extent of the Commission’s activities . . . that could justify the proposed increase for submarine cable licensees.”¹² Given that submarine cable payors were already paying disproportionately high fees and subsidizing the other IB payor categories, the unjustified 28-percent increase has moved submarine cable fees far beyond an amount that is “reasonably related to the benefits provided to the payor of the fee by the Commission’s activities.”¹³

The Commission must reassess the fee allocations to address the disproportionately high submarine cable system regulatory fees, as NASCA and the licensees of the Southeast Asia-US

⁸ Comments of the National Association of Broadcasters at 2, MD Docket No. 19-105 (filed June 7, 2019) (“NAB Comments”) (in the context of fees for radio stations); *see also* Named State Broadcasters Associations Comments at 7-18 (noting that fees should be sufficiently transparent to allow informed comment by the public).

⁹ Satellite Operators Comments at 3.

¹⁰ INCOMPAS Comments at 2-3.

¹¹ *Id.* at 3.

¹² *Id.*

¹³ 47 U.S.C. § 159(d).

(“SEA-US”) submarine cable system (the “SEA-US Licensees”) have proposed.¹⁴ INCOMPAS notes that “to the extent the Commission confirms that additional costs should still be recovered from IB, those costs would more rationally be recovered from other IB licensees for which the cost of Commission regulation, or benefits received thereby, have increased.”¹⁵ As NASCA and the SEA-US Licensees explained, the other IB payor categories account for a much higher proportion of the IB direct FTEs’ regulatory activities, and should therefore be paying in line with those benefits.¹⁶ Using the FTE data from the FY 2018 regulatory fee proceeding, NASCA and the SEA-US Licensees estimated that submarine cable licensees should be paying only 10.42 percent of IB fees, based on a conservative estimate of 2.5 direct FTEs for submarine cable payors.¹⁷ As noted above, because the *FY 2019 Reg Fees NPRM* does not include specific FTE data for the IB, much less across payor categories, NASCA and the SEA-US Licensees could not provide a precise calculation, but this proposed reallocation—10.42 percent rather than 24.8 percent—identifies the substantial problem with the current allocation of fees within the IB.

II. The Record Supports Moving Away from a Fee Methodology Based on Capacity.

The record clearly supports NASCA and the SEA-US Licensees’ proposal to phase out the capacity-based tiers for submarine cable fees and move toward a flat, per-system fee, as the industry’s proposal to reform the submarine cable fee methodology in 2008-2009 originally

¹⁴ Comments of the North American Submarine Cable Association and the SEA-US Licensees at 12-14, MD Docket No. 19-105 (filed June 7, 2019) (“NASCA and the SEA-US Licensees Comments”). The SEA-US Licensees include GTI Corporation, Hawaiian Telcom Services Company, Inc., RAM Telecom International, Inc., TeleGuam Holdings, LLC d/b/a GTA, PT Telekomunikasi Indonesia International, and Telin USA Inc.

¹⁵ INCOMPAS Comments at 2.

¹⁶ NASCA and the SEA-US Licensees Comments at 10-11.

¹⁷ *Id.* at 12-13.

intended.¹⁸ As a general matter, capacity-based fees do not align with revised Section 9 because capacity has nothing to do with regulatory effort.

The record supports NASCA and the SEA-US Licensees' proposal to phase out the fee tiers and return to a flat, per-system fee for submarine cable payors.¹⁹ INCOMPAS requests exactly that: a methodology that allocates fees on a *pro rata* basis per license, rather than based on capacity.²⁰ As NASCA and the SEA-US Licensees have explained, such a methodology would streamline the administrative burden of determining the amount of regulatory fees each submarine cable system owes and would remove the incentives for underreporting.²¹

NASCA acknowledges that IBC payors *as a category* are paying too much and are subsidizing the rest of the IB payors.²² But CenturyLink's proposal to reallocate and tier fees within the IBC payor category only—increasing the fee for submarine cable payors and decreasing the fee for terrestrial and satellite IBC payors based on capacity²³—would not address the core problem, and would ultimately harm submarine cable payors who already pay excessive fees to subsidize the *other* IB payor categories (i.e., GSO, NGSO, and earth station payors). As

¹⁸ *Id.* at 14.

¹⁹ NASCA and the SEA-US Licensees Comments at 14-15.

²⁰ INCOMPAS Comments at 10. Although INCOMPAS suggests that the original industry proposal is outdated, as NASCA and the SEA-US Licensees explained in their comments, the original industry proposal contemplated that as the smaller systems retired, the lower tiers would eventually phase out and all submarine cable systems would pay the same amount. Moving to a flat, per-system fee is in line with the original intention behind the 2008-2009 proposal.

²¹ NASCA and the SEA-US Licensees Comments at 14-15.

²² *See* NASCA and the SEA-US Licensees Comments at 12 (“the combined revenue requirement for submarine cable operators and terrestrial and satellite circuits is still set too high as compared with that for the other three categories of IB regulatees (GSO, NGSO, and earth station) that account for the bulk of IB’s regulatory activity and direct FTEs.”)

²³ Comments of CenturyLink at 3, MD Docket No. 19-105 (filed June 7, 2019).

CenturyLink correctly notes, the “Commission must always ensure that fees are reasonably related to the benefits provided to the payor of the fee by the Commission’s activities.”²⁴ To follow the mandate of Section 9, the Commission should realign fees based on the FTE data and the benefits provided to each payor category, rather than by capacity for only a fraction of IB payors.

CONCLUSION

For the reasons stated above, the Commission should adjust its FY 2019 fee proposal to conform submarine cable system fees to the requirements of Section 9.

Respectfully submitted,



Kent Bressie
Colleen Sechrest
HARRIS, WILTSHIRE & GRANNIS LLP
1919 M Street, N.W., Suite 800
Washington, D.C. 20036
+1 202 730 1337

*Counsel for the North American
Submarine Cable Association*

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²⁴ *Id.*