

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of

Assessment and Collection of Regulatory Fees
for Fiscal Year 2020

MD Docket No. 20-105

Assessment and Collection of Regulatory Fees
for Fiscal Year 2019

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

The North American Submarine Cable Association (“NASCA”)¹ submit these comments in response to the Commission’s Report and Order and Notice of Proposed Rulemaking issued in connection with the assessment and collection of fiscal year (“FY”) 2019 and 2020 regulatory fees.² At the outset, NASCA points out that the Report & Order and NPRM contains numerous calculation errors that would inflate submarine cable system fees and result in a significant over-collection of regulatory fees from submarine cable system payors for FY 2020. Irrespective of any other actions, the Commission should address these critical errors.

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, OPT French Polynesia, PC Landing Corp., Rogers Communications, Southern Caribbean Fiber, Southern Cross Cable Network, Sprint Communications Corporation, Tata Communications (America), TE SubCom, and Verizon.

² See *Assessment and Collection of Regulatory Fees for Fiscal Year 2020*, MD Docket No. 20-105, Report and Order and Notice of Proposed Rulemaking, FCC 20-64 (rel. May 13, 2020) (“Report & Order and NPRM” or “NPRM”).

In addition to these shortcomings, the NPRM’s proposed regulatory fee methodology for FY 2020 both fails to redress the inequitable allocations adopted in prior years and exacerbates prior inequities by (a) unjustifiably shifting a greater percentage—95 percent—of the regulatory fee burden for international bearer circuits onto submarine cable licensees based on the conclusion that submarine cables represents 95 percent of active capacity; and (b) retaining a lit capacity-based tiered payment structure for submarine cable operators. Neither of these proposals comply with Section 9 of the Communications Act, which requires that regulatory fees be “reasonably related to the benefits provided to the payor of the fee by the Commission’s activities.”³ Nothing in the record indicates that submarine cables (or other circuits) with higher capacity receive any more benefits from the Commission’s activities than any others. Moreover, the NPRM’s failure to define and distinguish between “active” (revenue-generating) and “lit” (electronically-enabled) capacity gives rise to even further inequities, as it opens the door for licensees to interpret the terms strategically to reduce their fees.

Further, the NPRM’s recitation of activities that it performs on behalf of submarine cable owners (along with other International Bureau licensees) is not only inaccurate, but also fails to meet the fundamental requirement that the Commission directly correlate regulatory fees with the number of full-time equivalent employees performing work on behalf of the payors. Accordingly, NASCA again urges the Commission to discard its flawed methodology and adopt one that more accurately reflects Section 9’s directive to ensure that revenue requirements are aligned with updated FTE data.

³ 47 U.S.C. § 159(d).

I. The NPRM Reflects Numerous Calculation Errors that Would Inflate Submarine Cable System Fees and Result in an Over-Collection of Fees

The NPRM reflects numerous calculation errors that would inflate Submarine Cable System fees and result in a significant over-collection of regulatory fees from submarine cable system payors for FY 2020. These errors magnify the financial impact of the proposed seven-tier fee structure:⁴

Table 1: NPRM’s Proposed Submarine Cable System Fees for Submarine Cable in Service on December 31, 2019

Fee Tier	Proposed FY 2020 Regulatory Fee
Less than 30 Gbps	\$1,000
30 Gbps or greater, but less than 250 Gbps	\$18,450
250 Gbps or greater, but less than 1,000 Gbps	\$36,875
1,000 Gbps or greater, but less than 2,000 Gbps	\$73,750
2,000 Gbps or greater, but less than 3,500 Gbps	\$147,500
3,500 Gbps or greater, but less than 6,500 Gbps	\$295,000
6,500 Gbps or greater	\$590,000

First, the NPRM’s proposed Submarine Cable System fee of \$266,575 is incorrect, as the NPRM uses the wrong denominator for the calculation.⁵ The NPRM’s Appendix B provides in relevant part:

⁴ NPRM at ¶ 63.

⁵ *Id.*, at Appendix B.

Fee Category	FY 2020 Payment Units	Yrs	FY 2019 Revenue Estimate	Pro-Rated FY 2020 Revenue Requirement	Computed FY 2020 Regulatory Fee	Rounded FY 2020 Reg. Fee	Expected FY 2020 Revenue
Submarine Cable Providers (See chart at bottom of Appendix C) ⁴	31.063	1	6,363,741	8,280,414	266,573	266,575	8,280,486

The NRPM further states that “the Submarine Cable fee in Appendix B is a weighted average of the various fee payers in the chart at the end of Appendix C.”⁶ For that calculation, the NPRM should use as the denominator the number of Commission-licensed submarine cables in service as of December 31, 2019. The Commission’s licensing records in the International Bureau Filing System indicate that there were 53 such submarine cables as of December 31, 2019. With a revenue requirement of \$8,280,486, the Submarine Cable System fee should therefore be \$156,236, not \$266,575, as $\$8,280,486 / 53 = \$156,236$. The NPRM, however, mistakenly uses the number of payment units as the denominator, for which low-capacity systems pay a fractional unit.

Second, the erroneous calculation of an average Submarine Cable System fee of \$266,575 would lead to a collection of \$14,128,475, far beyond the estimated recovery of \$8,280,486 for Submarine Cable System fee payors. Such an over-collection would violate Section 9, which requires the Commission to calibrate its fees based on regulatory effort as reflected in the revenue requirement. The likely recovery under the proposed Submarine Cable System fee, however, would exceed the revenue requirement by more than 70 percent.

Third, assuming that the NPRM correctly estimates the number of payment units at 31.063, and using the NPRM’s methodology of adjusting the top-tier fee upward, the correct top-

⁶ *Id.* at n.4.

tier fee would be \$266,575, not \$590,000. Given the NPRM's numerous calculation errors, however, NASCA, has no faith that the NPRM has correctly estimated 31.063 payment units. NASCA asks that the Commission place on the record in advance of the reply comment deadline its calculations for its estimate of 31.036 payment units, including the number of systems expected to pay in each fee tier.

Fourth, the NPRM has failed to explain why the proposed 2020 Fee Schedule does not use the Submarine Cable System fee associated with the payment unit (\$266,575), assuming 31.036 payment units) as the top-tier fee. Starting in 2009, the Commission consistently equated the Submarine Cable System fee associated with the payment unit as the top-tier fee in every subsequent year except 2018.⁷ For 2020, however, the NPRM has failed to state any basis for setting the top-tier fee at \$590,000, a multiple of the fee for the payment unit. NASCA believes that the fee tiers are therefore arbitrary and capricious and lacking any basis in Section 9 or the Commission's past fee practices.

Finally, the NPRM fails to explain how the Commission's regulatory efforts have changed so significantly over the past 12 months so as to justify a fee increase of more than 50 percent for the top tier of submarine cable systems. NASCA believes that this outsized fee increase is arbitrary and capricious and lacking any basis in Section 9 or the Commission's past fee practices.

⁷ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2009*, Report and Order, 24 FCC Rcd. 10301 (2009).

II. The Commission Should Not Use Capacity as a Proxy for FTE Data

Rather than undertaking a complete reassessment of FTE activity to accurately correlate Commission work efforts with licensee benefits, as NASCA has urged and the statute dictates,⁸ the NPRM inappropriately relies entirely upon capacity as a proxy to allocate regulatory fees, both between submarine cable operators and terrestrial and satellite circuit operators and among submarine cable operators.

The NPRM proposes to revise the regulatory fee split between submarine operators (currently 87.6 percent) and terrestrial and satellite circuits (currently 12.4 percent) to 95 percent and 5 percent, respectively.⁹ This proposal is wholly based on estimated active capacity and has no bearing on the actual FTE work and associated benefits received by the submarine cable operators, on the one hand, and terrestrial and satellite circuit operators, on the other hand.¹⁰ Put another way, the Commission provides no explanation as to how an increase in active capacity equates with an increase in Commission work efforts on behalf of submarine cable operators compared to terrestrial and satellite circuit operators—an analysis that Section 9 requires.

The Commission's proposed tiered fee structure for submarine cable systems remains inappropriate because the capacity for such systems bears no rational relationship to the regulatory effort expended by the Commission to benefit such systems.¹¹ The industry

⁸ See generally, Comments of the North American Submarine Cable Association at 4, MD Docket No. 19-105 (filed Dec. 6, 2019) (“NASCA Comments”).

⁹ NPRM at ¶ 62.

¹⁰ See *id.* at ¶¶ 62-63.

¹¹ See NASCA Comments at 14-15.

consensus proposal¹² presented to—and later adopted by¹³—the Commission in 2009 sought to replace capacity-based fees with system-based fees, with a flat fee per license. To avoid sticker shock for older, lower-capacity systems, it grandfathered those systems with fractional fees and a tiered structure that was meant to fade away with the retirement of those systems. Ultimately, all new systems were to pay the same fee, based on the view that they would all receive essentially the same level of Commission benefits. In adopting this methodology, the Commission found that it will “increase compliance with our regulatory fee requirements, is competitively neutral, is easy to administer, and is supported by a majority of the submarine cable community.”¹⁴

The NPRM’s current proposal moves even further away from the statutory mandate of ensuring that licensees’ regulatory fee burden directly relates to the benefits they receive from the Commission’s work efforts, and that like-situated licensees pay the same fees. As NASCA demonstrated above, the fee tiers are arbitrary and capricious and lacking any basis in Section 9 or the Commission’s past fee practices. The Commission should return to the concept of a flat-fee-per-system structure, with the fee set to correlate as closely as possible with the underlying benefits submarine cable operators receive from Commission work efforts.

III. The Commission Should Return to an FTE-Based Methodology That Reflects Benefits Received by Submarine Cable Operators and Other Licensees from Commission Work Efforts

The Commission should adopt a methodology that hews to Section 9’s mandate to align regulatory fees with the benefits received by licensees from the Commission’s work efforts. As

¹² Letter from Kent D. Bressie, Harris, Wiltshire, and Grannis, to FCC Secretary Marlene H. Dortch, MD Docket No. 08-65 (Sept. 23, 2008) (the “Consensus Proposal”).

¹³ *Assessment and Collection of Regulatory Fees for FY 2008*, Second Report and Order, 24 FCC Rcd. 4208 (2009).

¹⁴ *Id.* at 4212 ¶ 7.

NASCA has previously demonstrated,¹⁵ and the Commission has repeatedly acknowledged, the Commission performs very few regulatory activities for the benefit of submarine cable operators.¹⁶ Indeed, the most recent comprehensive FTE data indicates that the number of FTEs whose work benefits submarine cable operators is approximately two.¹⁷ This reality should be reflected in reduced Submarine Cable System fees. The NPRM dismisses this argument, stating that “[w]e are not persuaded that we should artificially reduce rates paid by submarine cable operators compared to terrestrial and satellite IBC operators because of ‘limited oversight’ of submarine cable beyond the license process.”¹⁸ There is nothing “artificial” about ensuring that the Commission directly tie regulatory fees imposed on submarine cable operators with the benefits they receive from Commission work efforts.

The NPRM points out that in addition to licensing matters, the International Bureau performs many services that benefit all international telecommunications service providers no matter whether they use terrestrial, satellite, or submarine cable facilities.¹⁹ Such activities include maintaining the licensing database, enforcing benchmarks, coordinating with other U.S. government agencies, protecting U.S. customers and consumers from anticompetitive actions by

¹⁵ NASCA Comments at 6-8.

¹⁶ See e.g., *Assessment and Collection of Regulatory Fees for Fiscal Year 2015*, Report and Order and Further Notice of Proposed Rulemaking, 30 FCC Rcd. 10,268, 10,272 ¶ 10 (2015). (“FY 2015 Reg Fees R&O”).

¹⁷ *Assessment and Collection of Regulatory Fees for Fiscal Year 2013*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 28 FCC Rcd. 7790, 7802 ¶ 27. See also *Assessment and Collection of Regulatory Fees for Fiscal Year 2014*, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd. 10,767, 10,772 ¶ 11 (stating that “only two FTEs in the International Bureau work on submarine cable issues”).

¹⁸ *Report & Order and NPRM* at ¶ 64 (citing to Comments of the Submarine Cable Coalition at 4, MD Docket No. 19-105 (filed Dec. 6, 2019)).

¹⁹ *Report & Order and NPRM* at ¶ 61.

foreign carriers, licensing international section 214 authorizations, and representing U.S. interests at bilateral and multilateral negotiations and before international organizations.²⁰ The Commission fails to explain, however, how all of these activities benefit submarine cable systems—most of which are licensed on a private carriage basis and thus do not benefit from the Commission’s activities on behalf of common carriers. Indeed, the Commission has issued thousands of international Section 214 authorizations and performs specific services on behalf of those authorization holders pursuant to elaborate rules, yet international Section 214 holders pay no regulatory fees at all.

Contrary to the Commission’s proposed capacity-based methodology, NASCA believes that a full FTE reassessment—and one that includes all licensees—is the best approach for ensuring an equitable allocation of regulatory fees across all payors. Rather than lumping all International Bureau activities (and licensees) together, such an FTE reassessment should more carefully examine the Commission’s activities and correlate those activities with the licensees that benefit from them.

²⁰ *Id.*

CONCLUSION

For the foregoing reasons, NASCA urges the Commission to correct and revise its proposed regulatory fees for submarine cables.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kent Bressie".

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