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COMPLIANCE WITH REGULATORY FEE REQUIREMENTS BY CABLE LANDING LICENSEES OPERATING ON A NON-COMMON CARRIER BASIS

To sell capacity on U.S. international routes, the operator of a non-common (i.e., private) carrier submarine cable landing in the United States must obtain a cable landing license from the Commission prior to landing and operating such a submarine cable.¹ As a provider of active capacity on U.S.-international routes and as an operator regulated by the Commission, such a non-common carrier submarine cable operator is subject to the statutory regulatory fee requirements administered by the Commission. Since 1995, the Commission has stated in its fee guidance that all cable landing licensees operating on a non-common carrier basis must pay regulatory fees for all international bearer circuits sold on an indefeasible right of use ("IRU") basis or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services.²

Regulatory Fee Requirements

The Commission's most recent fact sheet specifies who must pay regulatory fees for international bearer circuits:³

Who Must Pay: Facilities-based common carriers with active international bearer circuits as of *December 31, 2002* in any transmission facility for the provision of service to an end user or resale carrier . . . [Non-common carrier] submarine cable operators are also to pay fees for any and all international bearer circuits sold on an indefeasible right of use (IRU) basis or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services.

¹ The Commission's authority to grant cable landing licenses derives from the Cable Landing License Act of 1921, Public Law No. 8, 67th Congress, 42 Stat. 8 (1921), 47 U.S.C. §§ 34-39, and Executive Order No. 10530, Executive Order No. 10530 § 5(a) (May 10, 1954), reprinted as amended in 3 U.S.C. § 301.

² See Implementation of Section 9 of the Communications Act; Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, MD Docket 94-19, Memorandum Opinion and Order, 10 FCC Rcd. 12759, 12761 para. 11 (1995).

³ Regulatory Fees Fact Sheet: What You Owe—International and Satellite Services Licensees (July 2003).

The Commission adopted the exemption for capacity sales to carriers holding international section 214 authorizations in order to avoid double-charging carriers (once for the capacity sale from the submarine cable operator to the U.S. international carrier, and once for the capacity sale from the U.S. international carrier to its customers).⁴ Nevertheless, the Commission's longstanding guidance on the subject of regulatory fees for international bearer circuits makes clear that regulatory fees will be paid once for all active international bearer circuits connecting the United States with foreign points.

By holding a cable landing license from the Commission, a submarine cable operator is subject to the Commission's jurisdiction and is obligated to pay regulatory fees. In particular:

- The obligation of a non-common carrier submarine cable operator to pay regulatory fees for active capacity on U.S. international routes applies regardless of the country of incorporation or organization of either the entity holding a cable landing license issued by the Commission, or of that licensee entity's ultimate corporate parent.
- The obligation of a non-common carrier submarine cable operator to pay regulatory fees for active capacity on U.S. international routes applies regardless of whether the carrier or operator sells capacity through the entity holding the cable landing license, or through an affiliated sales or marketing subsidiary. Moreover, this obligation applies even if the operator sells such capacity through a sales or marketing subsidiary organized under the laws of a foreign country, and regardless of whether or not that sales or marketing subsidiary has any commercial presence in the United States.
- The obligation of a non-common carrier submarine cable operator to pay regulatory fees for active capacity on U.S. international routes applies notwithstanding the Commission's regulation of that system as a non-common carrier system. The Commission's fee guidance explicitly requires such an operator to pay regulatory fees, except for capacity sold to customers holding international Section 214 authorizations granted by the Commission
- The obligation of a non-common carrier submarine cable operator to pay regulatory fees for active capacity on U.S. international routes applies regardless of whether the operator sells the capacity on a lease or IRU basis.
- The obligation of a non-common carrier submarine cable operator to pay regulatory fees for active capacity on U.S. international routes applies regardless of the nature of the services its customers provide using such capacity.

For further information about the payment of regulatory fees, please contact the Office of Managing Director, Roland Helvajian at (202) 418-0444 or Rob Fream at (202) 418-0408.

⁴ See id. paras 10-11.