

NORTH AMERICAN SUBMARINE CABLE ASSOCIATION

NASCA Members:

360networks inc.
Alcatel Submarine Networks
Concert Global Networks
USA LLC
FLAG Telecom Holdings
Limited
Gemini Submarine Cable
System, Inc.
Global Crossing Ltd.
Global Marine Systems
Global Photon Systems, Inc.
Level 3 Communications,
LLC
New World Network USA,
Inc.
Southern Cross Cable
Network
Sprint Communications
Corporation
Teleglobe Communications
Corporation
TyCom Networks (US) Inc.
WCI Cable, Inc.
Williams Communications,
LLC
WorldCom, Inc.

October 9, 2001

VIA E-Mail, Fax and Regular Mail

Eric Bush, Bureau Chief
Program Development & Support Section
Bureau of Submerged Lands & Environmental Resources
Department of Environmental Protection
2600 Blair Stone Road, MS 2500
Tallahassee, FL 32399-2400

Re: Offshore Fiber Optic Cables

Dear Eric:

The enclosed comments are submitted on behalf of the North American Submarine Cable Association ("NASCA") and Telefonica/Emergia, regarding the materials your Bureau made available at and just prior to the September 28, 2001 public workshop. In support of those comments, also enclosed is a letter from the independent consulting firm Post, Buckley, Schuh & Jernigan, Inc. ("PBS&J"). Because PBS&J has amassed two years of data from monitoring the five cables landed at Hollywood, Florida, and we understand is a firm apparently well-respected by Florida DEP and by County agencies protecting coastal reefs, we asked them to comment on the technical issues raised at the public hearing regarding the impacts of cables on Florida's hard-bottom reefs.

In short, the DEP should keep it simple and better track the direction it has received from the Governor and Cabinet to make Florida cable-friendly while protecting the environment. It should propose at most a one-time fee of \$5 per linear foot, to be imposed on construction of future systems not already permitted. The authority to issue easements of this type should be delegated to District staff, with Board review available as under existing rules for other sovereign lands. No demonstration of "need" for a cable or conduit should be required. The GP based on use of designated reef gaps should be eliminated. Individual permits should be issued instead, relying on the best management practices and impact-compensation provisions that have become standard through the 1999 and subsequent projects.

If you have any questions or comments on the enclosed, please feel free to contact me (at 908-221-5397 or pshorb@att.com) or any other representative of a NASCA member.

Sincerely,

Paul Shorb
Vice-President, NASCA

cc: Cabinet Members
Cabinet Aides
Bob Ballard
David Struhs

Comments of the
North American Submarine Cable Association
Regarding Offshore Fiber Optic Cables
Oct. 9, 2001

These comments are submitted on behalf of the North American Submarine Cable Association (“NASCA”). They are directed in particular at the materials released by the Florida Department of Environmental Protection (“DEP”), Bureau of Submerged Lands and Environmental Resources, in connection with the September 28, 2001 public workshop, regarding reef-gap corridors, fees for easements, and a proposed Noticed General Permit for installation of fiber optic cables and conduits.

NASCA was formed to help those who own, install and maintain submarine cables that land in North America better address issues of common concern. Some NASCA members may also be submitting their own separate comments.

I. Easement Issues (draft rule for chapter 18-21)

A. A single per-foot fee should be set.

The draft rule would set a one-time fee of \$5 per linear foot, but also impose an additional fee based on “appraised value”. If a fee is to be set, a single one-time fee should be set instead.¹ Fees to date based on appraised value of the seabed occupied by the cable have been relatively small, even while they have been based on an unjustified assumption about the width of the area occupied. The single fee should simply be set at \$5 per foot. NASCA particularly wants to avoid the possibility that a separate “appraised value” fee could later be re-interpreted so as to impose large additional fees.

B. Existing cables and conduits should be grandfathered.

DEP’s prior proposal would have grandfathered for fee purposes cables and conduits already permitted. Since then, economic hard times have hurt the telecommunications industry across the board, and have even driven into bankruptcy two NASCA members that have been active in Florida and delayed other projects. It therefore especially appropriate now that the grandfathering concept be preserved and applied to the new proposal. Specifically, cables and conduits already permitted by DEP should be exempt from the fees otherwise set for private easements.

C. Fees should be triggered by the original installation only.

¹ Neither NASCA nor any of its members waive through these comments any rights to challenge any aspect of the final rule that may be adopted, including the legality under state law of charging such a fee for the placement of an international telecommunications cable across state-owned seabed.

The rule when formally proposed should clarify that it is the installation of a new cable that triggers the one-time private easement fee. In other words, the subsequent transfer or re-issuance of an easement should not trigger the fee. We understand this to be DEP's present intent, but would like to make that clear for posterity.

D. The "need" policy should be eliminated.

Neither the Board nor DEP staff should put itself in the position of trying to second-guess whether a proposed cable or conduit is "needed". Government planning of market activities does not have a happy history, either in the U.S. or abroad. Actors in the free market may not always calculate just right how much demand will arise by then, but there is no reason to think that government employees, especially those not immersed in that industry, will do any better, and they generally can be expected to do worse.

Perhaps the real issue of interest is not justifying the "need" for a proposed cable, but rather justifying the need for extra cable conduits proposed to be drilled but not yet designated for any planned cable project. First we note that it has been common industry practice, when installing conduits for a planned project, to install several extra to accommodate future projects. In general this probably is a good thing, since it reduces the moderate local neighborhood impacts of setting up and operating the horizontal drill rig (one mobilization rather than two or more), as well as reducing cost to the developer. A more legitimate concern by DEP might be that it is not yet prepared to agree that certain landing point can accommodate say eight rather than four cables. In that case, DEP can simply permit the extra conduit installation without permitting the future unidentified cables, and consider such future cable projects on their merits if and when they come along.

E. Easements should not routinely have to go before the Board of Trustees.

The draft rule says that any project not qualifying for the proposed general permit must go before the Board of Trustees for approval of the private easement. Instead, staff should be authorized to issue private easements for fiber optic cables, whether or not using the general permit. We explain below why the proposed general permit based on certain corridors will be essentially unusable; its defects may be reduced by naming different corridors, but even then probably will remain of highly limited usefulness. Therefore the present proposal would delay virtually all projects to the additional months necessary for Board consideration. If the State wants to encourage such projects, it should instead expedite them by not routinely requiring action by the Board.

II. Corridors and Other Permitting Issues (draft rule for chapter 62-341)

A. The proposed Noticed General Permit should be eliminated.

DEP has at times characterized the proposed general permit based on use of reef gaps as something to help industry. To the extent that was indeed the motivation, we are grateful. However, on balance we fear the proposed "GP" would do more harm than good at least so far as we are concerned, so we request that it be eliminated. Doing so would also seem to please the many other sectors of the public, ranging from municipalities to fishermen to environmentalists, which expressed their opposition at the latest public workshop.

That public workshop made clear part of the reason we expect little benefit from the GP as proposed: the specific reef gaps proposed generally appear to be unusable. The main problems seem to be existing use for fish havens (Struh's Gap and McAllister's Gap), planned use for sand extraction (Bull Net Gap), potential use for sand extraction creating opposition from Palm Beach County officials (McAllister's, Briny Pete's and Murphy's Gaps), unfeasibly long directional bore length required (Struh's and perhaps others), and unsuitable upland (Struh's, Briny Pete's and Murphy's Gaps).

This problem might be corrected or at least reduced by choosing different reef gaps. But even then, DEP probably will be faced again with the political difficulty of new particular parties who will fear many cables being herded their way. Even if DEP is ultimately able to overcome such concerns and finalize specific gaps to support its proposed GP, we are not optimistic that the GP will be available in reality. In some cases the length of the directional drill required will be infeasible (e.g. Struh's gap); in some cases the nearby upland will be unsuitable (note e.g. resistance to such projects from the town of Palm Beach). Finally one must contend with the many problems in the prescriptive detail of the proposed GP, which these comments do not attempt to catalogue. In short, we expect few if any projects to actually benefit from the proposed GP, even if a few better reef gaps are identified.

On the other side of the balance are the new problems that we fear may result from adopting the proposed GP. Nominally, adoption of the proposed GP would not preclude obtaining an individual permit for a project outside one of the reef gaps designated for the GP. However, we are concerned that such projects may be perceived as suspect for not being located in one of the designated gaps; we are concerned that they therefore will be disfavored (i.e., delayed or perhaps even denied) by DEP and County staff and more likely to attract an administrative challenge.

B. The GP proposal seems based on overestimates of individual and cumulative cable impacts.

At bottom, the core problem we have with the corridor proposal is that it still seems to rest on unscientific, unjustified assumptions about cable impact and/or future cable numbers. The extent to which the environmental impacts have been exaggerated, in some cases by DEP, is breathtaking. We were especially concerned to see DEP's own contractor, Dr. Ray McAllister, show at the public workshop a video filled with emotional appeals based on gross misstatements and factual errors. We therefore include

with these comments a review of that video by Don Deis of the independent consulting firm PBS&J, which points out the most misleading aspects of that video and briefly puts the measured impact of these cables in perspective. For example, he notes that the installation of a fiber-optic cable does less damage to hard corals than is done by the anchors of Broward County recreational fishers and divers on a single calm weekend day.

We were also surprised to hear Mr. Ballard's reference at the public meeting to the state's "land management objectives" to justify designated reef gaps, which by implication seems to rely on the concern about a great number of future cables. (After all, each one occupies a strip only a few inches wide.) A Palm Beach County representative stated they've "been told 33 cables are expected to come into our area in the next 10 years"; this was not corrected by DEP. As you know, we submitted a report in February of this year showing that the most likely number of additional cable landings in Florida through 2009 is eight. These estimates, which were intentionally conservative at the time they were made, appear even more conservative in light of the slump that has since hit the telecommunications sector.

In short, what we are talking about are relatively small impacts from a relatively small number of future cables. Therefore the elaborate construct of the GP is overkill, and worse than being merely useless, may tend to foster exaggerated concerns among some members of the public.

III. General Comments on the DEP's Process to Date

The DEP's process to date in developing this proposal seems gravely flawed. At the June 12 Cabinet meeting, Secretary Struhs referred to "working closely with the industry" and through the new reef-gap idea to be developed, "actually better protect the environment and at the same time, provide them [industry] even more flexibility and predictability in getting these things sited at a low cost."

Unfortunately, the process did not turn out that way. The reef gaps picked by DEP as of September 28 were apparently hastily selected, without any prior consultation with our industry. (Nor with other foreseeable stakeholders, who proceeded to shoot down the proposal.) Specific information about the designated reef gaps was not fully available until the day of the public workshop, the background document supporting the reef gap designations will not be available from DEP until after the October 9 comment deadline, if at all, and in any case we seem to have a moving target with new reef gaps to be proposed. And for the reasons cited above, we do not believe the present approach (even with a handful of new reef gaps designated) will do anything but making permitting harder.

IV. Conclusion

The DEP should keep it simple and better track the direction it has received from the Governor and Cabinet to make Florida cable-friendly while protecting the

environment. It should propose at most a one-time fee of \$5 per linear foot, to be imposed on construction of future systems not already permitted. The authority to issue easements of this type should be delegated to District staff, with Board review available as under existing rules for other sovereign lands. No demonstration of “need” for a cable or conduit should be required. The GP based on use of designated reef gaps should be eliminated. Individual permits should be issued instead, relying on the best management practices and impact-compensation provisions that have become standard through the 1999 and subsequent projects.