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By E-mail and First-Class Mail
David W. Blane
Director, Office of Planning
Department of Business, Economic Development & Tourism
P.O. Box 2359
Honolulu, HI 96804

Re: Guidelines for Submarine Fiber Optic Cable Projects

Dear Mr. Blane:

Below and attached please find comments on the above draft guidelines, submitted on behalf of AT&T Corp. and other companies listed below. We appreciate the opportunity provided to review the draft guidelines, to discuss them with you at the meeting on October 2, and to submit written comments for consideration.

As you know, several representatives of AT&T attended the October 2 meeting. A number of other companies that install, maintain, and/or own such cables and that are interested in these guidelines were unable to attend the meeting due to notice problems. AT&T prepared draft comments and discussed them this week with other interested companies, who provided additional input reflected in the attached. These comments therefore are submitted on behalf of AT&T Corp., Level 3 Communications LLC, Southern Cross Cable Network, Tyco Networks (US) Inc., and WorldCom, Inc. We anticipate that other companies may also indicate their support for these comments.

The first attachment to this letter is the draft guidelines as we received them from your office, redlined to show text changes that we suggest. That attachment also includes some comments, set off with bold type and in parentheses, to explain some of the suggested changes. Some of our major comments we set out below, rather than in the attached redlined documents.

The second attachment is a set of comments filed with NOAA on July 19, 2002 related to submarine FOC. It provides more detailed information supporting many of the

points made here and in the attached redline.

I. Need for such guidelines

We understand that the Office of Planning was responding to an outside request in drafting these guidelines. Nevertheless, we must point out first that submarine cable installation at the Hawaiian Islands does not present an environmental problem that needs to be solved; the existing permitting process already amply protects environmental values. Second, aside from the possibility that the proposed Sandwich Island project will be partly or fully implemented, there will be no influx of additional cables. Instead, for the foreseeable future, we expect trans-Pacific cables will be installed at a stately pace (i.e., averaging no more than one per year), and that many of them will skip Hawaii. Third, although the idea of mandating cable corridors may have to be further studied before Hawaii feels ready to reject it, Hawaii should reject it, for the above reasons and others. So the goal of establishing mandatory corridors should not be what drives this policy development effort.

What are left to be "solved", as we see it, are two things. One is how the State wants to handle the proposed Sandwich Island project. We are not sure a single project requires documenting a new statewide policy. We will not try to address that project further here.

The other is the problem of multiple approving agencies and potentially changing approval processes and criteria, which may impede timely permitting of future time-sensitive projects. That is a serious problem, in which we are very interested. We applaud your Office's beginning efforts here to lay out all the potentially relevant authorities, and your draft's references to seeking ways to streamline approval processes. If this drafting effort can lead to streamlined processes, and/or produce an interagency consensus on approval criteria for submarine cables, that would be of great value.

II. Scope of the guidelines

Submarine fiber optic, coaxial, and power cables all have similar routing, installation and maintenance requirements. Such cables are already or will be installed in Hawaiian waters by the telecommunications industry, electric power utilities, scientific community and U.S. government. There is no rational basis for establishing a policy that addresses commercial FOC cables but not other types of submarine cables. Therefore, if these guidelines are to become final, they should apply to submarine cables of all types. Similarly, although undersea pipelines are quite different from undersea cables in their potential for environmental impact, they should be subject to any fee-setting scheme that cables are.

III. Environmental impacts of submarine cables

Environmental assessments for past telecommunications cable installations have repeatedly concluded that no negative long-term impacts should be anticipated. The FCC has found that submarine cables as a class are so predictably benign that the FCC has

categorically excluded all submarine cable landing license applications from its environmental processing rules that implement NEPA. Specifically, in implementing NEPA, the FCC found:

> Although laying transoceanic cable obviously involves considerable activity over vast distances, the environmental consequences for the ocean, the ocean floor, and the land are negligible. In shallow water, the cable is trenched and immediately covered; in deep water, it is simply laid on the ocean floor. In the landing area, it is trenched for short distance between the water's edge and a modest building housing facilities.[1]

Similarly, in implementing Section 404 of the Clean Water Act, the ACOE has issued Nationwide Permit 12, which authorizes submarine cables to be permitted without further NEPA review.

In some cases, cable routing may have to be adjusted in some cases in order to minimize environmental impacts. However, the guidelines as drafted could give the misleading impression that areas where cables may safely be landed are small, relative to the areas where cables need to be prohibited. That is not true in Hawaii or elsewhere. We have suggested specific edits on the attached.

The draft should not imply that there might be as-yet-unknown adverse long-term effects of submarine cables. Ample evidence already exists to the contrary. Submarine telecommunications cables have been installed in Hawaii since 1903 without long-term negative impacts. Old cables and recent cables have been studied, and no long-term or other significant adverse effects have been found. Again, we have suggested specific edits on the attached.

IV. Fees for submarine cable easements

The fee issue was not discussed at the October 2 meeting. But as a preliminary comment, the state should be aware that basing state fees on a percent of revenue is almost certainly prohibited by the 1996 Telecommunications Act. Instead, the Act authorizes local governments to set fees calculated to reimburse their costs resulting from the installation. If the Department would like more information about the impact of the Act, please let us know.

The information about fees charged by other states that is included in our redlined changes on the attached was last updated early this year. We can provide details if desired. Note that Oregon and Florida have each tried to summarize the various states' coastal fees.

V. State-designated cable corridors

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[1] *Id.*; *1998 Biennial Regulatory Review—Review of International Common Carrier Regulations, Report & Order*, 14 FCC Rcd. 4909, 4938 (1999).

We understand that the idea of cable corridors has an initial appeal to many government planners and administrators. We have worked with several jurisdictions that have explored the idea of establishing such corridors (none of whom have ultimately adopted them). Based our experience, we feel strongly that trying to establish corridors where submarine cables would be limited to landing on Hawaii will be a fool's errand, for the reasons outlined below.

First, there is no environmental resource justification for mandatory cable corridors. There is no trawling, other bottom fishing, or other human use of the seabed off Hawaii that potentially conflicts with cables, so corridors are not needed to solve any seabed use conflicts. There also would be no benefit to the marine environment from mandated cable corridors, since the slight environmental impacts associated with submarine cables are not reduced by clustering them more closely. Instead, environmental values are better protected through appropriate permit conditions governing the installation process, such as a requirement to avoid or minimize crossing of coral reefs. The state may also want to designate selected areas where cables should not be placed or landed, if there is a sound scientific basis for such exclusion zones.

Second, mandatory cable corridors would create two kinds of major problems for telecommunications. One is reduction in security and reliability. The concentration of cables in corridors increases the risk of catastrophic loss of closely spaced cables and complicates the repair of cables where other cables cross or are in close parallel. On more than one occasion, anchor-dragging incidents have caused multiple concurrent failures in the English Channel and on the continental shelf of New Jersey. Multiple failures have also been documented where earthquake or storm-generated seabed landslides have damaged closely spaced cables.

The other major problem for telecommunications is that a mandatory submarine cable corridor also controls where the cable will land and travel across the island. The cable industry generally looks at the land side and landing destination requirements first, and then seeks a viable, acceptable marine route to bring the cable as closely as possible to that location. Without sufficient study, there is a potential for an unworkable disconnect between a state-mandated seabed corridor and appropriate terrestrial landing points and backhaul routes. The cable industry also does not want to be so limited in its options that only a few landowners control potential landing points and can impose unreasonable conditions, rents or delays.

This necessary connection between the undersea and terrestrial network components increases the political as well as the technical complexity for any agency trying to designate cable corridors. Some landowners and other residents located near a proposed corridor will complain about feared concentration of impacts. Others not near a proposed corridor may complain that they will miss out on the benefits that local development can bring. We saw

Florida DEP's corridor proposal get bogged down in opposition from many quarters, including from coastal communities for these reasons. Therefore, based on experience we predict that trying to establish mandatory corridors will be fraught with difficulty for the agency that attempts it. New Jersey's pending proposed rule shows that it has dropped its initial interest in corridors; Florida DEP seems to have dropped the corridor idea it proposed over a year ago; no coastal state has yet adopted a mandatory corridor policy, for good reason.

The policy goal that the mandatory corridor idea seems to aim at can be better met through other means. Specifically, environmental protection can be assured through permit conditions that minimize impacts. It may even be appropriate to designate certain exclusion areas. However, we believe the areas where cable exclusion could be scientifically justified are few and far between. Again, we have suggested specific edits on the attached.

We understand from the October 2 meeting that you might consider pre-permitting one or more cable corridors whose use would be optional rather than mandatory. A possible benefit of doing so would be to speed subsequent approval of new projects. If such a corridor was sited so as to be useable (including reasonable availability of shoreline property and other terrestrial routing considerations), it might attract future cables. This could provide benefits for all parties, so long as the creation of an "optional" pre-permitted corridor did not mean that appropriate proposals to land elsewhere would be disfavored.

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If you have any questions about these comments, please feel free to contact Jeff Ewald or Bob Erkman, who attended the meeting and helped draft these comments, or me. Thank you again for your consideration.

Sincerely yours,

Paul Shorb

Enclosure