

September 21, 2009



Ms. Renee Orr
Chief, Leasing Division
Minerals Management Service, MS 4010
U.S. Department of the Interior
381 Elden Street
Herndon, VA 20170

*Re: Office of Minerals Management Service
Draft Proposed Outer Continental Shelf (OCS) Oil and Gas Leasing
Program 2010 2015
Docket I.D. MMS-2008-OMM-0045*

Dear Ms. Orr:

Enclosed please find the comments of the North American Submarine Cable Association (“NASCA”) on MMS’ Draft Proposed Outer Continental Shelf (OCS) Oil and Gas Leasing Program 2010 2015 in the above-referenced proceeding. NASCA respectfully requests that MMS accept these comments.

Should you require additional information, please contact me by telephone at +1 973 615 2430 or by email at gtourgee@davidrossgroup.com.

Sincerely,

Gerald Tourgee
*Secretariat
North American Submarine Cable
Association*

Enclosure

North American Submarine Cable Association
c/o David Ross Group 127 Main Street Chatham, New Jersey 07928

Alaska
Communications
System

Alaska United Fiber
System Partnership

Alcatel-Lucent
Submarine Networks

Apollo Submarine
Cable System Ltd

AT&T Corp.

Brazil Telecom of
America, Inc /
Globenet

Columbus Networks

Global Marine
Systems Limited

Hibernia Atlantic

Level (3)
Communications,
LLC

Reliance GlobalCom

Southern Cross
Cable Network

Sprint
Communications
Corporation

Teleglobe Canada
ULC

Tyco
Telecommunications
(US) Inc.

Verizon Business

Before the
MINERALS MANAGEMENT SERVICE
U.S. DEPARTMENT OF THE INTERIOR
Washington, D.C.

In the Matter of

Minerals Management Services
Draft Proposed Outer Continental Shelf (OCS)
Oil and Gas Leasing Program 2010 2015

Docket I.D. MMS-2008-OMM-0045

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

North American Submarine Cable Association
c/o David Ross Group
127 Main Street
Chatham, New Jersey 07928

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Before the
MINERALS MANAGEMENT SERVICE
U.S. DEPARTMENT OF THE INTERIOR
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In the Matter of

Minerals Management Services
Draft Proposed Outer Continental Shelf (OCS) Docket I.D. MMS-2008-OMM-0045
Oil and Gas Leasing Program 2010 2015

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

The North American Submarine Cable Association (“NASCA”) applauds the Minerals Management Services (MMS) for the development of the Draft Proposed Outer Continental Shelf (OCS) Oil and Gas Leasing Program 2010 through 2015¹, but respectfully submits these comments for consideration for the final Program document. NASCA has long supported the U.S. Governments efforts to adopt a reasoned and systematic approach to regulation of undersea resources.

NASCA is a non-profit association of submarine cable owners, submarine cable maintenance authorities, and prime contractors for submarine cable systems.² NASCA and its members have a strong interest in protecting the marine environment and regulating the exploitation of marine and subsurface resources without unduly limiting undersea cable infrastructure necessitated by consumer demand for bandwidth capacity, economic growth, and national security. For years, NASCA’s members have worked with federal, state, and local government agencies, as well as other concerned parties – such as commercial fishermen and private environmental organizations – to ensure that

¹ Draft Proposed Outer Continental Shelf (OCS) Oil and Gas Leasing Program 2010 and 2015, January 2009, Minerals Management Services, Request for Comments on the Draft Proposed 5-Year Outer Continental Shelf (OCS) Oil and Gas Leasing Program for 2010 – 2015, Docket ID MMS-2008-OMM-0045.

² NASCA’s members include: Alaska Communications System, Alaska United Fiber System Partnership, Alcatel-Lucent Submarine Networks, Apollo Submarine Cable System, Ltd, AT&T Corporation, Brazil Telecom of America, Inc / Globenet, Columbus Networks, Global Marine Systems Limited, Hibernia Atlantic, Level (3) Communications, LLS, Reliance GlobalCom, Southern Cross Cable Network, Sprint Communications Corporation, Teleglobe Canada ULC, Tyco Telecommunications (US) Inc., and Verizon Business.

cable do not harm the marine environment or unreasonably constrain the operations of others in that environment.

NASCA has the following specific concerns regarding the reference guidelines of the draft document:

1) No mention or reference to existing or future submarine telecommunications cables transiting the OCS Planning Areas.

NASCA is concerned that the subject program documentation and methodology goes to great lengths to consider the nations energy needs, to be “carried out in a manner that provides for –

- A) Safety
- B) Protection of the Environment
- C) Prevention of Waste,
- D) Conservation of the natural resources of the Outer Continental Shelf,
- E) Coordination with relevant Federal agencies,
- F) Protection of national security interests of the United States,
- G) Protection of correlative rights in the Outer Continental Shelf,
- H) Fair return to the U.S. for any lease, easement, or right-of-way for an area of the Outer Continental Shelf,
- I) Prevention of interference with reasonable uses (as determined by the Secretary) of the exclusive economic zone, the high seas, and the territorial seas,
- J) Consideration of –
- K) Public notice and comment on any proposal submitted for lease, easement, or right-of-way under this subsection, and
- L) Oversight, inspection, research, monitoring, and enforcement relating to a lease, easement, or right-of-way under this subsection”

but does not directly address existing or future submarine telecommunication cables which are vital to both the U.S. national economy and U.S. security.

NASCA encourages the MMS to give full and appropriate consideration to submarine telecommunications systems and their importance to the United States and its citizens and businesses.

2) Ensuring that adopted guidance, rules, and applicable requirements are consistent with U.S. treaty obligations and customary international law.

NASCA is concerned that the subject program documentation does not specifically address and protect the historic and existing treaty obligations and customary international law pertaining to submarine cable systems.

International law – as expressed through various treaties and customary international law – guarantees to all nations (and by extension, their citizens and companies) the unique freedom to lay, maintain, and repair submarine cables – freedoms not granted for any other activities. Various international treaties dating back to 1884 – to each of which the United States is a party – guarantee unique freedoms to lay, maintain, and repair submarine telecommunications cables, and restricts the ability of coastal nations to regulate them. On the high seas, various international treaties guarantee the freedom to lay submarine cables on the bed of high seas³ and to repair existing cables without prejudice⁴. In coastal areas, these treaties grant the freedom to lay submarine cables on continental shelves – notwithstanding any claim of a 200-nautical-mile Exclusive Economic Zone (“EEZ”) and to repair existing cable without prejudice.⁵ Within their territorial seas, coastal nations may impose reasonable conditions on submarine cables.⁶

Coastal nations also have obligations to prevent willful and negligent damage to cables.⁷ And all nations “shall have due regard [for] cables [and] pipelines already in position.”⁸ Submarine cables are thus afforded a great degree of protection from regulation or interferences by coastal nations, reflecting the vital role that submarine cables play in facilitating communications, commerce, and government.

NASCA urges the MMS to consider the historical and treaty precedence for submarine telecommunication cable systems and to respect these in the ensuing final guidance and regulations associated with the oil and gas lease program.

³ See International Convention for the Protection of Submarine Cables, March 14, 1884, 24 Stat. 989, 25 Stat. 1424, T.S. 380 (entered into force definitively for the United States on May 1, 1988) (“1884 Convention”); Geneva Convention on the High Seas, arts. 2 & 26.1, April 29, 1958, 13 U.S.T. 2312, T.I.A.S. 5200, 450 U.N.T.S. 82 (entered into force definitively for the United States on Sept. 30, 1962) (“High Seas Convention”); United Nations Law of the Sea Convention, arts., 79. 112, Dec. 10, 1982, 1833 U.N.T.S. 397 (entered into force on Nov. 16, 1994) (“UNCLOS”). See also 47 U.S.C. 21 *et seq.* (codifying the 1884 Convention). Although UNCLOS has not yet been ratified by the Senate, the United States has long taken the position that UNCLOS reflects the customary international law to which the United States adheres. See 19 Weekly Comp. Pres. Doc. 383 (March 10, 1983).

⁴ See High Seas Convention, art. 26.3; UNCLOS art. 79.2.

⁵ See Geneva Convention on the Continental Shelf, art. 4, April 29, 1958, 15 U.S.T. 471, T.I.A.S. 5578, 499 U.N.T.S. 311 (entered into force definitively for the United States on June 10, 1964) (“Continental Shelf Convention”), UNCLOS, arts. 58.1, 79.2, (providing that all nations may exercise high-seas freedoms in the EEZ, or on the continental shelf, of coastal nations – including the freedom to install, maintain, and repair submarine cables – provided they are exercised with due regard for the limited rights of a coastal nation to employ reasonable measures to explore and exploit its resources).

⁶ 1884 Convention, art. 1; UNCLOS art. 79.4 See also Comments of General Communication, Inc. NOAA Docket No. 000526157-0157-01, at 3-5 (filed Dec. 11, 2000).

⁷ UNCLOS, art. 113.

⁸ UNCLOS, art. 79.5

3) Ensuring that submarine cables are not implicitly delegated to “corridors” within the OCS Planning Areas as a result of exclusive leasing tracts.

NASCA is concerned that the subject program would either directly or indirectly relegate future submarine cable systems into corridors between leased tracts. Currently, there are relatively few landing locations on both the East and West Coast of the United States. This in itself results in degree of vulnerability to the international telecommunications infrastructure of the United States.

Vital telecommunications infrastructure are located in the coastal regions of the Northeast U.S., Florida, California, Oregon, and Alaska – the very regions (with the exception of the Gulf of Mexico) that are currently targeted for either oil and gas, or alternative energy tracts.

NASCA requests that MMS take all precautions to prevent the intentional or non-intentional formation of “cable corridors” which would constrain routing, impair maintenance efforts and the quality of services (by impeding access and increasing the risk of damage to neighboring cables), and could impair competition (by artificially inflating the value of rights of way held by private landowners at the shore end of such corridors).⁹

4) Ensuring that adopted guidance, rules, and applicable requirements do not result in extraordinary burdens on submarine telecommunications cable systems, owners, and operators.

The permitting, licensing, construction, and operation of a submarine telecommunications system involves an ever increasing burden of bureaucracy and paperwork which cable owners, operators, and maintenance authorities must contend with. NASCA is concerned that the proposed oil and gas lease program in the referenced document could result in additional burdens in this regard.

The PRA, which Congress designed to eliminate costly recordkeeping and reporting obligations,¹⁰ seeks to “minimize the paperwork burden ... resulting from the collection of information by or for the Federal Government,”¹¹ while simultaneously “ensur[ing] the greatest possible public benefit from and maximize[ing] the utility of information created.”¹² OMB, which implements the PRA, has established a clear standard for determining whether a proposed rule

⁹ ANPRM, 65 Fed.Reg, at 51,269, part IV.10,(proposing “fixed-location lanes”); id. App. A, & 2 (c) (proposing to “direct cable installations into and out of landing stations in such a way as to minimize individual and cumulative environmental effects”)

¹⁰ See id. 3501 (3)

¹¹ Id. 3501 (1)

¹² Id. 3501 (1)

satisfies the PRA only if the sponsoring agency demonstrates that it possess each of three characteristics. *First*, the proposed rule must be ‘the least burdensome way of obtaining information necessary for the proper performance of [the agency’s] functions.’¹³ *Second*, the proposed rule must not duplicate other recordkeeping obligations.¹⁴ *Third*, the proposed rule must have “practical utility”.¹⁵

It is NASCA’s sincere hope and wish that MMS will abide by the letter and spirit of the standards established by the PRA in the implementation of this 5-year lease program.

¹³ Memo from John D, Graham, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, to Chief Information Officers, General Counsels and Solicitors, Attachment at 1 (Nvo 14, 2001) (“OMB PRA Memo)

¹⁴ *Id.*

¹⁵ *Id.*

CONCLUSIONS

In summary, the North American Submarine Cable Association respectfully submits the above comments to the MMS in a spirit of cooperation.

Respectfully submitted,

The NORTH AMERICAN
SUBMARINE CABLE ASSOCIATION

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