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5 December 2013

BY ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: MD Docket Nos. 13-140, 12-201 and 08-65,
Notice of Ex Parte *Presentation*

Dear Ms. Dortch:

Pursuant to 47 C.F.R § 1.1206(b), the North American Submarine Cable Association ("NASCA") notifies the Commission of an *ex parte* presentation in the above-referenced proceedings. On December 4, 2013, I, as NASCA counsel, met with Mika Savir of the Enforcement Bureau, Thomas Buckley of the Office of Managing Director, and Thomas Sullivan of the International Bureau to discuss NASCA's positions regarding the Commission's ongoing regulatory-fee reform initiatives.

In our meeting, I reviewed the talking points attached to this notice. These talking points are consistent with NASCA's arguments on the record in these proceedings.[1] NASCA presented two additional points in the meeting.

First, NASCA reiterated that in assessing regulatory fees on submarine cable operators, the Commission should take care to protect U.S. economic and national-security interests. Submarine cable operators—whether they are entirely new entrants on a particular route or seeking to replace an existing cable that has outlived its commercial or technical usefulness—are acutely sensitive to fees associated with various landing options and routinely factor such costs into their decisions to land in particular countries. Unlike traditional retail services with monthly customer bills, long-term submarine cable capacity sales offer few opportunities for cost recovery or pass throughs. Fee assessments that deprive submarine cable operators of the ability to recover the cost of such fees, and fee assessments that far exceed those of other countries (particularly Canada and Mexico) could encourage diversion of infrastructure investment outside

[1] Comments of the North American Submarine Cable Association, MD Docket Nos. 13-140, 12-201, and 08-65 (filed June 19, 2013); Notice of *Ex Parte* Presentation of the North American Submarine Cable Association, MD Docket Nos. 12-201 and 08-65 (filed Apr. 5, 2013); Comments of the North American Submarine Cable Association, MD Docket Nos. 12-201 and 08-65 (filed Sept. 17, 2012).

the United States. With fewer submarine cable connections and a less resilient network, a country is more vulnerable to terrorism and natural disasters. If submarine cable operators were increasingly to choose to land cables in Canada (which is ever-more-attractive given recent relaxation of foreign-ownership restrictions affecting cable station backhaul) or Mexico (which is considering relaxation of its foreign-ownership restrictions on domestic facilities) in order to avoid increased U.S. regulatory costs, the result would adversely impact national-security interests as articulated by various U.S. Government agencies. As NASCA has noted previously Canada imposes a *de minimis* annual fee, currently C$100, or US$93 at current exchange rates.[2] Mexico does not impose any such fees. By contrast, the FY 2013 regulatory fee for a >20 Gbps submarine cable system licensed by the FCC was $217,675.

Second, NASCA noted that in addition to the Enforcement Bureau, there are other support bureaus and offices—particularly the Consumer and Governmental Affairs Bureau ("CGB")—that provide specific regulatory benefits to narrow classes of Commission licensees. As submarine cable operators do not provide consumer submarine cable services, the Commission does not regulate them for matters such as slamming, truth-in-billing, or telemarketing. Unsurprisingly, there is no mention of, much less a fact sheet on, submarine cables on the CGB web site. NASCA agrees with the Satellite Industry Association that the Commission should consider reallocation of FTEs from such bureaus and offices as direct FTEs for the regulatees that those FTEs specifically benefit.[3]

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Should you have any questions, please contact me by telephone at +1 202 730 1337 or by e-mail at kbressie@wiltshiregrannis.com.

Respectfully submitted,

Kent Bressie
Counsel for
the North American Submarine Cable Association

Attachment

cc: Thomas Buckley
Mika Savir
Thomas Sullivan

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[2] International Submarine Cable Licences Regulations (Canada), SOR/98-488 ¶¶ 5-6 (Nov. 13, 2013), http://laws-lois.justice.gc.ca/PDF/SOR-98-488.pdf.

[3] *See* Satellite Industry Association, Notice of *Ex Parte* Presentation at 1, MD Docket Nos. 13-140, 12-201, and 08-65 at 1 (filed Nov. 22, 2013).

NORTH AMERICAN SUBMARINE CABLE ASSOCIATION

VIEWS RE REGULATORY FEE REFORM IN MD DOCKET NOS. 13-140, 12-201, AND 08-65

4 DECEMBER 2013

1. **The Commission has acknowledged that it performs very few assessable regulatory activities (as enumerated in 47 U.S.C. § 159(a)(1)) for the benefit of submarine cable operators.**

   - In the FY 2013 NPRM (the relevant proposals of which were adopted in the FY 2013 R&O), the Commission acknowledged that the "fees submarine cable service providers now pay is the sixth highest regulatory fee percentage among all fee categories, notwithstanding the fact that the provision of international submarine cable service involves little regulation and oversight from the Commission after the initial licensing process."
   - The Commission also noted that "substantially increasing the regulatory fees paid by submarine cable service providers would serve as a disincentive for carriers to land new cables in the U.S. and an incentive to land new cables in Mexico and Canada instead. Over time, this would result in increased costs to American consumers as well as potential national security issues."
   - The Commission concluded that "the Policy Division employees whose work involves the regulation of submarine cable systems and bearer circuits, equates to only two FTEs."

2. **Nevertheless, the Commission continues to over-recover regulatory fees from submarine cable operators for IB full-time employee equivalents ("FTEs").**

   - In FY 2013, submarine cable operators were expected to pay 2.5 percent of all Commission regulatory fees, even though they accounted for only 0.44 percent (two out of 458) of direct FTEs
   - In FY 2013, submarine cable operators were expected to pay aggregate regulatory fees of approximately $8.53 million, representing approximately 36.3 percent of IB-related regulatory fees.
   - In FY 2013, GSO and NGSO satellite operators and earth station operators were expected to pay aggregate regulatory fees of approximately $13.94 million, out of a total of $23.5 million in regulatory fees expected for recovery from International Bureau ("IB") regulatees. Satellite licensees therefore pay approximately 59.3 percent of IB-related regulatory fees.
   - The expected recoveries imply that satellite operators account for 16.6 direct FTEs and that submarine cable operators account for 10.2 direct FTEs, out of a total of 28 direct FTEs in IB's Satellite and Policy Divisions.

- Yet based on an extensive examination of FTE data in its FY 2013 NPRM and R&O, the Commission allocated 25 direct FTEs from the Satellite Division to satellite regulatees, two direct FTEs from the Policy Division to submarine cable regulatees, and one direct FTE from the IB front office (without allocation to specific regulatees).
- The direct FTEs for satellite regulatees account for 89.3 percent of a total IB direct FTEs.

3. **The over-recovery of regulatory fees from submarine cable operators results from the Commission's failure to adjust downward the combined revenue requirement previously assigned for international bearer circuits and now split between submarine cable operators and common-carrier terrestrial and satellite circuits.**

- The problem is not with the split between submarine cable operators (87.6 percent) and common-carrier terrestrial and satellite circuits (12.6 percent).
- Instead, the problem is that the combined revenue requirement for submarine cable operators and common-carrier terrestrial and satellite circuits is set too high as compared with other satellite-related revenue requirements (GSO, NGSO, and earth station) and bears no relation to the underlying direct FTEs attributable to those services.

4. **To comport with Section 9, which requires that regulatory fees be reasonably related to the Commission's regulatory benefits for a particular service, the Commission should align its IB-related fees with the FTE data and reduce the Submarine Cable System fee.**

- The Commission should specify what percentage of the one IB front office FTE is attributed to submarine cable operators.
- The Commission should then adopt a revenue requirement for submarine cable operators to reflect that FTE calculation, rather than a relying on a legacy revenue requirement from the old international bearer circuits category, which lacks any factual basis in FTE allocations.
- Had the Commission applied such an approach for FY 2013, the revenue requirement for submarine cable operators would not have exceeded $2.23 million, and the post-cap expected recovery would not have exceeded $2.51 million, based on an assumption that submarine cable operators account for no more than three FTEs and likely fewer.

5. The Commission should reallocate other indirect FTEs as service- or bureau-specific direct FTEs if the data clearly supports such reallocations.

- Any such reallocations should be based on solid data showing that the FTEs consistently benefit specific and clearly-identifiable Commission regulatees.
- NASCA's enforcement-related data shows that the Enforcement Bureau almost never engages in enforcement-related activities against submarine cable operators.
    - To NASCA's knowledge, the FCC has never pursued a case of an unauthorized landing in the United States.
    - In the past 10 years, the FCC has issued a mere 3 notices of apparent liability ("NAL") for unauthorized transfers and assignments of cable landing licenses, and two of those NALs involved mostly licenses other than cable landing licenses.
    - Two of the Enforcement Bureau's four divisions—the Telecommunications Consumer Division and the Spectrum Enforcement Division—are expressly established to handle issues matters that never arise with submarine cable operators.
    - A substantial percentage of the FTEs of a third Enforcement Bureau division—the Investigations and Hearings Division—handle mostly broadcast, Title III, and auction-related enforcement matters, which by definition do not involve submarine cable operators.

6. The Commission should decline to adopt a broad revenue-based fee methodology.

- The Commission would have to adopt such changes via "permitted amendments" under Section 9, but neither the NPRM nor the proceeding record demonstrates that a revenue-based methodology is necessary to effect the requirements of Section 9(b)(1)(A) or that Commission rulemakings or changes in law have changed the Commission's services so as to necessitate changes in the regulatory-fee methodology.
- Revenues are a poor proxy for the regulatory benefits (enforcement, policy and rulemaking, user-information services, and international activities) enumerated by Section 9 as a basis for regulatory fees.
- For submarine cable operators, most of whom earn significant revenues from activities that are outside of U.S. territory, serving foreign customers, and lacking in a U.S. regulatory nexus, a revenue-based methodology is inherently problematic.