

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of

Improving Outage Reporting for Submarine
Cables and Enhancing Submarine Cable Outage
Data

OMB Control No. 3060-XXXX

GN Docket No. 15-206

To: Nicole Ongele, Federal Communications Commission
via Nicole.Ongele@fcc.gov and PRA@fcc.gov

**COMMENTS OF
THE NORTH AMERICAN SUBMARINE CABLE ASSOCIATION
ON PROPOSED INFORMATION COLLECTION (FCC FORM 5623)**

The North American Submarine Cable Association (“NASCA”) submits these comments to oppose the information collection mandated by the Federal Communications Commission’s new submarine cable outage reporting rules.¹ Despite significant feedback from the submarine cable industry, the Commission has failed to reconsider excessively burdensome and often arbitrary portions of the reporting requirements. As a result, the proposed collection is not “necessary for the proper performance of [its] functions” and does not have any “practical utility.”² NASCA accordingly urges the Commission to revise elements of its new reporting rules to meet the requirements of the Paperwork Reduction Act (“PRA”). In its current form, the proposed information collection should not be approved by the Office of Management and Budget (“OMB”).

¹ *Improving Outage Reporting for Submarine Cables and Enhanced Submarine Cable Outage Data*, Report and Order, 31 FCC Rcd. 7947 (2016) (“Report and Order”); 81 Fed. Reg. 80,054 (15 Nov. 2016).

² 44 U.S.C. § 3508.

INTRODUCTION AND SUMMARY

On June 24, 2016, the Commission adopted a Report and Order establishing submarine cable outage reporting requirements under Part 4. While the new rules reflect positive changes from the Notice of Proposed Rulemaking (“NPRM”) in response to comments from NASCA and other industry stakeholders, they fail to address fully the commenters’ concerns.

To meet the requirements of the PRA, the Commission’s proposed rules must be “necessary for the proper performance of the functions of the agency” and “have practical utility.”³ Under OMB implementing regulations, a proposed rule satisfies the PRA only if the agency demonstrates that it satisfies three criteria. *First*, the proposed rule must be “the least burdensome” way to obtain information “necessary for performance of the agency’s functions.”⁴ *Second*, the proposed rule must not duplicate other recordkeeping obligations.⁵ *Third*, the proposed rule must have “practical utility.”⁶

The Commission’s new reporting rules do not satisfy the PRA or its implementing regulations. *First*, the Commission’s threshold for a reportable outage is overly broad and will lead to the collection of information that has no practical utility. *Second*, the Commission’s burden estimate is far too low. *Third*, the Commission has imposed arbitrary and overly burdensome timing requirements without considering ways to minimize that burden.

³ *Id.*

⁴ 5 C.F.R. § 1320.5(d)(1)(i).

⁵ *Id.* § 1320.5(d)(1)(i).

⁶ *Id.* § 1320.5(d)(1)(iii).

I. The Commission’s Overly Broad Threshold for a Reportable Outage Will Force Parties to Report Data with No Practical Utility

Because the Commission’s reporting rules provide an overly broad threshold for a reportable outage, the reporting requirement will capture a wide range of events that do not adversely affect traffic, much less the “reliability” of critical communications.⁷ Because much of this data will have no impact on connectivity or communications, the Commission has no “actual timely use for the information.”⁸ To meet the PRA’s requirements, the Commission must revise the threshold for a reportable outage to reflect the realities of submarine cable systems.

The new reporting rules include “reportable outage metrics” that will capture mundane events. Under the new rules, licensees must report:

- (i) An outage, including those caused by planned maintenance, of a portion of submarine cable system between submarine line terminal equipment (SLTE) at one end of the system and SLTE at another end of the system for more than 30 minutes; or
- (ii) The loss of any fiber pair, including losses due to terminal equipment, on a cable segment for four hours or more, regardless of the number of fiber pairs that comprise the total capacity of the cable segment.⁹

Applying these thresholds, parties will be required to report everyday incidents such as power feed equipment failures and shunt faults. Neither poses a serious problem for the transmission of communications. Power feed equipment failures, to take one example, generally last only as long as it takes for the diesel generators or battery back up to supply power for the system. Collecting information on such mundane, unavoidable, and planned-for events will flood the Commission with useless data for which it has no “actual timely use.”

⁷ See Report and Order ¶ 1.

⁸ 5 C.F.R. § 1320.3(l).

⁹ Report and Order at Appendix B § 4.15(a)(2).

II. The Commission’s Burden Estimate is Deeply Flawed

The Commission’s burden estimate needs substantial revision to account accurately for licensees’ costs under the new reporting rules. The Commission’s analysis failed to address the PRA’s full definition of burden, leaving out substantial costs imposed by the reporting requirements. In addition, the Commission used flawed and irrelevant data to calculate the burden.

A. The Commission Failed to Account for the Paperwork Reduction Act’s Full Definition of Burden

Because the Report and Order fails to address the full definition of burden under the PRA, substantial costs to licensees are missing from the estimate. The PRA’s definition of “burden” includes

time, effort, or financial resources expended by persons to generate, maintain, or provide information to or for a Federal agency, including the resources expended for—

- (A) reviewing instructions;
- (B) acquiring, installing, and utilizing technology and systems;
- (C) adjusting the existing ways to comply with any previously applicable instructions and requirements;
- (D) searching data sources;
- (E) completing and reviewing the collection of information; and
- (F) transmitting, or otherwise disclosing the information.¹⁰

Despite NASCA’s comments, the Report and Order’s analysis still fails to account for several of these factors. The Commission fails to account for the substantial upfront costs that licensees will incur to implement the new reporting rules and skips over the recurring costs that will arise from the overly burdensome threshold for a reportable outage.¹¹

NASCA’s comments to the NPRM addressed potential upfront and recurring costs for

¹⁰ 44 U.S.C. § 3502(2).

¹¹ Report and Order ¶¶ 81-88.

each of the PRA factors in substantial detail,¹² and—as the Report and Order acknowledges—“attempted to provide concrete cost estimates.”¹³ As NASCA explained, these factors would lead to substantial costs for licensees.

But the Report and Order ignored many of these factors—and NASCA’s details for each—in its analysis.¹⁴ As the Submarine Cable Coalition notes, the Report and Order “simply assigns a value of \$0 to these upfront costs.”¹⁵ Even where the Report and Order accounted for costs associated with the new reporting requirements, as described below, the cost estimates were unrealistically low.¹⁶ Indeed, the Commission disregards its initial low estimates and suggests in its OMB submission that there will be no annual cost for reporting.¹⁷

B. The Commission’s Burden Estimate Uses Irrelevant and Incorrect Data

Although the Report and Order’s cost-benefit analysis increased the NPRM’s initial cost estimate (of a mere \$8,000), it still drastically underestimated the burden on licensees because it used irrelevant and faulty data for its calculation.

Without justification, the Report and Order used the OMB-approved \$305,000 for the 2014 Undersea Cable Information System (“UCIS”) collection—which was the former “voluntary” reporting system—as its starting place for the cost estimate. It then decided that only one category of that estimate—the cost for system restoration messages—was analogous to

¹² Comments of the North American Submarine Cable Association at 23-28, GN Docket No. 15-206 (filed 3 Dec. 2015) (“NASCA Comments”).

¹³ Report and Order ¶ 84.

¹⁴ *Id.*

¹⁵ Petition for Reconsideration of the Submarine Cable Coalition at 13, GN Docket No. 15-206 (filed 11 Aug. 2016).

¹⁶ *See, e.g.*, Report and Order ¶ 87.

¹⁷ 81 Fed. Reg. at 80,055 (15 Nov. 2016).

the outage reporting requirements.¹⁸ The Report and Order then increased the \$122,000 estimate for the category by an arbitrary 25 percent to arrive at an annual reporting requirement cost of \$152,500, which it found to be a credible annual burden.¹⁹ The Report and Order then added the three “static categories” of the 2014 UCIS estimation (totaling \$183,000) to that new calculation, noting that a total cost of \$335,500 would be “minimal” in comparison to potential benefits from the ability to monitor outages.²⁰

The Report and Order multiplies what it estimates to be the annual burden—\$2,500—by 61 licensees to arrive at the \$152,500 estimate.²¹ As Commissioner Pai points out, however, there are up to 161 undersea cable licensees,²² as many systems have multiple licensees. And to reach its 50-hour per licensee estimate, the Report and Order takes the 40 hours associated with UCIS reporting in 2008 and multiplies it by 25 percent.²³ But the UCIS voluntary reporting regime was substantially different from the new reporting rules, so the hours and estimated numbers cannot be compared. The UCIS voluntary reporting regime did not encompass such a broad threshold for reportable outages, nor did it have such stringent timing demands, so the cost to comply would not be nearly as high as the new reporting rules. Finally, to estimate the cost, the Report and Order initially proposes an \$80 per hour estimate, but then calculates using an even lower \$50 per hour.²⁴ Even setting the inconsistency aside, neither of these numbers has

¹⁸ Report and Order ¶ 86.

¹⁹ *Id.* ¶ 87.

²⁰ *Id.*

²¹ *Id.*

²² Dissenting Statement of Commissioner Ajit Pai, Report and Order, at 8000.

²³ Report and Order ¶ 87.

²⁴ *Id.* at n. 276.

any basis in the record.

The Commission's use of arbitrary and inaccurate data leads to a burden estimate that drastically underestimates the cost of the new reporting rules. This erroneous calculation—coupled with the fact that the Commission ignores the substantial upfront costs of implementing these rules—means the Commission's estimate is insufficient for PRA approval.

III. The Commission Can Minimize the Collection Burden By Applying More Reasonable Timing Requirements for Reporting and Implementation

NASCA and other commenters urged the Commission to adopt reasonable timeframes for (i) the notification requirements themselves and (ii) the implementation period. While the Commission made some improvement from the NPRM to the Report and Order on these fronts, the Commission's selected timeframes are still arbitrary and overly burdensome. The Commission has failed to explain why it refused to apply more reasonable timeframes to minimize the burden on licensees.

A. The Timeframe for Providing Initial Notification is Unnecessarily Burdensome

The new rules require submarine cable operators to notify the Commission of an outage extremely quickly: within eight hours initially and in as little as four hours after a three-year phase-in period.²⁵ These timeframes, which ignore realities of submarine cable operation, will be burdensome to meet and detract resources from restoring service. Submarine cable operators need substantially more time than four or eight hours to report an outage, given the global nature of cable systems (including time zone challenges), the low number of employees operating some systems, and the possibility that licensees will choose to undertake a legal review of the

²⁵ *Id.* ¶ 50.

notification prior to filing.²⁶

There is no record evidence—and the Commission did not cite any—for the Commission’s belief that “many of the submarine cable operators have the technical capabilities to near-instantly detect outages.”²⁷ Such a quick turnaround for notification will divert submarine cable operators’ attention from the need to focus on re-routing traffic and restoring a fault. Cable operators need at least 48 hours to avoid having reporting obligations interfere with traffic restoration and repair coordination. That period would also permit intra- and inter-company coordination to gather and transmit data for submission, particularly where such information originates outside the United States. With a four- or eight-hour requirement, licensees will have to grapple with beating the clock to meet a paperwork requirement—even during times when the NORS system is not monitored.

Phasing in the shorter timeframes does not alleviate the burden of this information collection. The reasons that reporting can take many hours—the global reach of submarine cables, limited staffing, etc.—will not change with the passage of time. Nor does waiting to start the clock until the licensee “determines the event is reportable.” This provides little comfort to licensees operating worldwide systems, particularly in an enforcement-heavy environment.

B. The Commission’s Arbitrary Six Month Implementation Period Imposes an Unnecessary Burden on Operators to Implement a New Reporting System

The new rules become effective a mere six months after approval by OMB.²⁸ While the Commission’s inclusion of a transition period at all is an improvement from the Commission’s

²⁶ See, e.g., NASCA Comments at 19-20, 34; Comments of the Submarine Cable Coalition at 8, GN Docket No. 15-206 (filed 3 Dec. 2015).

²⁷ Report and Order ¶ 49.

²⁸ *Id.* ¶ 77.

initial proposal, which did not offer any transition period, the six-month transition is insufficient for licensees to implement an entirely new reporting system. Such an implementation period will impose burdens on licensees that the Commission fails to consider in its PRA analysis.

The Report and Order ignored the industry consensus that licensees would need a minimum of twelve months to implement the reporting system, and instead imposed a six-month transition without any justification. This short transition requires licensees to adopt complicated and costly reporting systems in *half* the time of the shortest transition proposal from commenters. NASCA sought from 12 to 18 months for the transition,²⁹ AT&T sought 15 to 18 months,³⁰ and the Submarine Cable Coalition sought 12 to 15 months.³¹

Commenters explained the elaborate processes submarine cable licensees will have to go through to implement the new reporting framework. In some cases, consortium-owned submarine cable systems will need to renegotiate contracts and reallocate costs among multiple owners to implement the rules. Many consortium owners participate in multiple consortia, and will have to participate in multiple negotiations at a time. Many of these consortia will require international negotiations to reach an agreement. In other cases, older systems without the ability to detect outages on every part of a cable will need to incorporate new technology. As industry commenters unanimously noted, these challenges require more than six months. But instead of addressing these concerns, the Report and Order chose an arbitrary implementation timeframe.³²

²⁹ NASCA Comments at 35-36.

³⁰ Comments of AT&T Services Inc. at 12, GN Docket No. 15-206 (filed 3 Dec. 2015).

³¹ Joint Reply Comments of Submarine Cable Coalition Comments at 6, MD Docket No. 15-206 (filed 18 Dec. 2015).

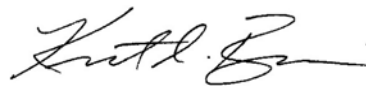
³² Report and Order ¶ 77.

The arbitrary timeframe will require licensees to expend substantial resources to meet the requirements in such a short period. Because the six-month timeframe is unworkable, many licensees will likely need to seek extensions or waivers of the reporting requirements while they work to implement new technology or contractual arrangements—another piece of the reporting requirement that the Commission has failed to take into consideration. The Commission should revise the arbitrary transition period to allow for the longer amount of time requested by the industry. Such an extension will provide more certainty for submarine cable licensees, and will minimize the paperwork burden on licensees and the Commission.

CONCLUSION

The Commission has not met the requirements of the PRA for the submarine cable outage reporting rules. The Commission's overly broad threshold for a reportable outage will result in information collection with no practical utility. In addition, the Commission underestimated the burden on licensees, while failing to implement ways to minimize that burden. Accordingly, the Commission must revise its requirements prior to submission of the rule to OMB.

Respectfully submitted,



Kent D. Bressie
Susannah J. Larson
Austin Bonner
HARRIS, WILTSHIRE & GRANNIS LLP
1919 M Street, N.W., Suite 800
Washington, D.C. 20036-3537
+1 202 730 1337

*Counsel for the North American
Submarine Cable Association*

17 January 2017