

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of

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

GN Docket No. 15-206

**PETITION FOR RECONSIDERATION OF
THE NORTH AMERICAN SUBMARINE CABLE ASSOCIATION**

Kent D. Bressie
Susannah J. Larson
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*

7 September 2016

TABLE OF CONTENTS

INTRODUCTION AND SUMMARY..... 1

I. The Commission’s Definition of “Outage” is Unworkable and Overly Broad 3

 A. The Outage Definition Unnecessarily Includes Events that Have No Impact on Connectivity without Justification 4

 B. The Threshold for a Reportable Outage is Too Broad..... 6

II. The Timeframe for Providing Initial Notification is Arbitrary and Overly Burdensome... 7

III. The Six-Month Implementation Period for the Reporting Requirements Fails to Provide Operators with Sufficient Time to Implement an Entirely New Reporting System 9

IV. The Report and Order’s Cost-Benefit Analysis is Deeply Flawed, Underestimates the Burden to Licensees, and Fails to Analyze Any Benefits..... 11

 A. The Report and Order’s Numbers Are Based on Irrelevant and Incorrect Data... 12

 B. The Report and Order Fails to Perform a Quantitative Analysis of the Underlying Benefits or Purpose of the Outage Reporting Requirements 13

 C. The Report and Order’s Flawed Analysis Fails to Meet the Requirements of the Paperwork Reduction Act and Executive Order 13563 15

CONCLUSION 17

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of

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

GN Docket No. 15-206

**PETITION FOR RECONSIDERATION OF
THE NORTH AMERICAN SUBMARINE CABLE ASSOCIATION**

The North American Submarine Cable Association (“NASCA”) petitions the Commission to reconsider and revise certain elements of its new submarine cable outage reporting rules that, while differing significantly from the proposed rules,¹ remain excessively burdensome and often arbitrary. NASCA accordingly urges the Commission to reconsider and revise elements of its new reporting rules to address the extensive record evidence regarding the practicalities and burdens of the Commission’s proposed rules and alternatives.²

INTRODUCTION AND SUMMARY

NASCA is the principal non-profit trade association for submarine-cable owners, submarine-cable maintenance authorities, and prime contractors for submarine-cable systems

¹ *Improving Outage Reporting for Submarine Cables and Enhancing Submarine Cable Outage Data*, Notice of Proposed Rulemaking, 30 FCC Rcd. 10,492 (2015) (“NPRM”).

² *Improving Outage Reporting for Submarine Cables and Enhancing Submarine Cable Outage Data*, Report and Order, GN Docket No. 15-206, (rel. 12 July 2016) (“Report and Order”).

operating in North America.³ NASCA filed comments and reply comments in the underlying proceeding and met repeatedly with Commission staff to express its concerns about the proposed outage reporting rules. Although the new reporting rules differ in important respects from the Commission’s original proposals, they nevertheless fail to address as an administrative-law matter or otherwise many of the key concerns raised by NASCA and other commenters regarding an appropriate outage reporting regime for submarine cables and a complete accounting of the benefits and burdens of such a regime.

First, the new reporting rules establish an unworkable and arbitrary definition of “outage” that differs from those applicable to other operators reporting through the Network Outage Reporting System (“NORS”) reporting framework. The Report and Order failed to address in any respect the commenters’ documented concerns that the 30-minute threshold in the outage definition will capture mundane events, rather than traffic- and consumer-affecting events, thereby burdening operators while rendering it more difficult to identify meaningful incident information. The capacity metric in the new rule is also inconsistent with the Report and Order’s explanation. The Report and Order justified this definition by simply asserting a need for situational awareness, although nowhere does the record demonstrate or explain such a need.

Second, the Report and Order failed to explain why it disregarded commenters’ well-documented concerns about the time needed to report an outage, and instead arbitrarily adopted

³ NASCA’s members include: Alaska Communications System; Alaska United Fiber System Partnership, a subsidiary of General Communication, Inc.; Alcatel-Lucent Submarine Networks; Apollo Submarine Cable Ltd.; AT&T Corp.; C&W Networks; Global Cloud Xchange (f/k/a Reliance GlobalCom); Global Marine Systems Ltd.; GlobeNet; Hibernia Atlantic; Level 3 Communications, LLC; PC Landing Corp.; Southern Cross Cable Network; Sprint Corporation; Tata Communications (America) Inc.; Tyco Electronics Subsea Communications LLC; and Verizon Business.

an eight-hour window for the first three years, and a four-hour window thereafter. The record made clear that the realities of submarine cable system are not conducive to such a quick turnaround for reporting; but the Report and Order simply asserts an unsubstantiated belief that submarine cable licensees could report more quickly—without any basis in the record. The Report and Order also fails to explain the basis for halving the reporting interval within three years.

Third, the Report and Order ignored the extensive record explaining the need for a 12- to 18-month implementation period for these rules. Instead, the Commission chooses a six month period without any basis in the record. This timeframe is unworkable in light of the many challenges submarine cable licensees will face to implement this new reporting regime.

Fourth, the Report and Order’s cost-benefit analysis is deeply flawed, resulting in a number that significantly underestimates the burden to the industry. At the same time, the Report and Order failed to analyze the underlying benefits of the burdensome reporting requirements. Accordingly, the Report and Order’s analysis fails to meet the requirements of the Paperwork Reduction Act and Executive Order 13563.

I. The Commission’s Definition of “Outage” is Unworkable and Overly Broad

The Report and Order adopts a definition of “outage” that is too broad and will capture mundane events, rather than focusing on outages that adversely affect traffic. This definition covers outages that will have no impact on connectivity or communications. Further, the threshold for reporting outages is too low, without any justification in the Report and Order or the record. Accordingly, NASCA urges the Commission to revise the outage definition to align more with other Part 4 reporting and to reflect the realities of submarine cable system operations.

A. The Outage Definition Unnecessarily Includes Events that Have No Impact on Connectivity without Justification

The new reporting rules define outage as a “failure or significant degradation in the performance of a licensee’s cable service regardless of whether the traffic can be re-routed to an alternate path,”⁴ a definition that closely resembles that in the notice of proposed rulemaking (“NPRM”).⁵

Despite record evidence showing that that this definition inexplicably subjects submarine cable operators to a different outage definition than that applicable to other providers reporting in NORS,⁶ the Commission declined to revise the definition to align with the rest of NORS. Indeed, the Report and Order (like the NPRM) nowhere addressed the arguments of NASCA and other commenters explaining why only net losses of connectivity, where traffic could not be re-routed, should be reported.⁷ The Report and Order also failed to address the substantial record that there is no need to define outage in such an overly broad manner, given that submarine cable systems in particular have multiple strategies in place to ensure continuity of traffic.⁸ As Commissioners Pai and O’Rielly both point out, this definition is problematic because it removes an incentive to plan redundancy.⁹

⁴ *Id.* ¶ 18 & Appendix B § 4.15.

⁵ *See* NPRM at Appendix A § 4.15(a) (defining outage as “a failure or degradation in the performance of that communications provider’s cable regardless of whether the traffic can be rerouted to an alternate cable.”).

⁶ Comments of the North American Submarine Cable Association at 13-16, GN Docket No. 15-206 (filed 3 Dec. 2015) (“NASCA Comments”).

⁷ *Id.* at 13-14; *see* NPRM ¶ 30.

⁸ NASCA Comments at 14-16.

⁹ *See* Dissenting Statement of Commissioner Michael O’Rielly, Report & Order, at 58 (“O’Rielly Statement”); Dissenting Statement of Commissioner Ajit Pai, Report & Order, at 56 (“Pai Statement”).

Instead, the Report and Order asserted that, although “some, but not all submarine cable infrastructure” has redundant configurations, a broader definition was necessary because, “[f]or example, in some situations the redundant paths could be over-utilized due to an emerging problem, such as an expansive coastline area disruption affecting several independent submarine cables.”¹⁰ The Report and Order suggested that a definition that disregards the ability to re-route traffic will help it to “understand operability of submarine cables holistically to better safeguard reliability of this important part of the nation’s communications system.”¹¹ As an initial matter, there is no basis in the record to support the Report and Order’s suggestion that redundant paths are over-utilized. Further, the Report and Order failed to explain why the Commission needs to better “understand operability” or how it could use the information to “better safeguard reliability” of cables.

Finally, the Report and Order failed to address in any way NASCA’s suggestion that the definition should focus on the end-user impact, consistent with the definitions applicable to other providers reporting in NORS. As NASCA explained in its comments, the Commission defines “outage” for all other providers reporting in NORS as “a significant degradation in the ability of an *end user* to establish and maintain a channel of communications as a result of failure or degradation in the performance of a communications provider’s network.”¹² The Report and Order’s purported justification—that cables generally have wholesale customers rather than retail customers¹³—makes little sense as a reason to ignore end user impact. If anything, wholesale customers are in a better position than retail customers to secure redundant paths for their traffic.

¹⁰ Report at Order ¶ 19.

¹¹ *Id.*

¹² NASCA Comments at 14 (citing 47 C.F.R. § 4.5(a)) (emphasis added).

¹³ Report and Order ¶ 20.

The Report and Order suffers from the same issues as the NPRM in this respect: it fails to explain why submarine cable operators should be singled out for reporting outages that do not degrade what an end user or customer experiences.

B. The Threshold for a Reportable Outage is Too Broad

The new reporting rules include “reportable outage metrics” that are too broad and 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.¹⁴

While these thresholds reflect an improvement as compared with those in the NPRM,¹⁵ they remain arbitrary.

Under the connectivity metric, the 30-minute threshold for outages is still too stringent and will capture mundane events. Industry commenters explained to the Commission the reason the threshold should be longer and suggested more workable thresholds. For instance, NASCA argued for reporting of outages (1) lasting four or more hours or (2) expressly exclude routine occurrences such as power feed equipment failures, shunt faults, and scheduled or routine maintenance.¹⁶ The Submarine Cable Coalition asked for a 3-hour threshold.¹⁷

¹⁴ *Id.* at Appendix B § 4.15.

¹⁵ *See* NPRM at Appendix A § 4.15(a)(2).

¹⁶ NASCA Comments at 10.

¹⁷ Joint Comments of Submarine Cable Coalition at 3-4, MD Docket No. 15-206 (filed 3 Dec. 2015) (“Submarine Cable Coalition Comments”).

The Report and Order concluded that a 30-minute threshold is appropriate because “damage or repair to facilities between the SLTE likely indicates a long-term problem that will not be cleared quickly, so there is no further benefit to further delaying reporting.”¹⁸ This conclusion lacks any basis whatsoever in the administrative record. As Commissioner O’Rielly points out, the “the Commission disregards industry comments in their entirety and chooses its own timeframe with little analysis for why it is more appropriate than what is in the record.”¹⁹

As for the capacity metric, the Report and Order and rule text are inconsistent and confusing. The Report and Order refers to “the failure or significant degradation of any fiber pair,”²⁰ whereas the new rule requires reporting “the loss of any fiber pair.”²¹ The disparity between the Report and Order and the rule is left unexplained. The Report and Order also cited incorrectly to NASCA’s position on a 4-hour threshold for the first element of a reportable outage (between the terminal equipment) as a basis for the timing threshold for the loss of a fiber pair.²² The Report and Order’s adoption of the 4-hour threshold in the capacity metric—but not the connectivity portion of the metric—makes no logical sense.

II. The Timeframe for Providing Initial Notification is Arbitrary and Overly Burdensome

The Report and Order’s conclusion to require notification of an outage within eight hours initially—phasing down to four hours after a three year period—lacks justification in the record. While the Report and Order’s conclusion to increase the notification timeframe from the

¹⁸ Report and Order ¶ 27.

¹⁹ O’Rielly Statement at 59.

²⁰ Report and Order ¶ 28.

²¹ *Id.* Appendix B § 4.15(a)(2).

²² *See id.* ¶ 28 (citing to NASCA Comments at 10).

originally-proposed 120 minutes may be a step in the right direction, the timeframe still does not account for the realities of submarine cables. As Commissioners Pai and O’Rielly note, the extended notification times do not go far enough.²³

The record is replete with evidence from commenters that the unique nature of submarine cables requires additional time for reporting. Commenters stated unanimously that 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 of the systems, and the possibility that licensees will choose to have legal review of the notification prior to filing.²⁴ The Report and Order noted that the Commission “continue[s] to believe that licensees can report within the proposed two-hour timeframe from determining that an event is reportable” and that “many of the submarine cable operators have the technical capabilities to near-instantly detect outages.”²⁵ Nowhere does the record support this belief.

Nor does the Report and Order cite any basis in the record for the decision to cut the time for reporting by half after a few years of reporting. The commenters’ basis for seeking a longer time for reporting—the global reach of submarine cables, the few employees, etc.—is not resolved with the passage of time. In fact, the Report and Order takes AT&T’s comments that it will need to “implement these requirements with its consortium partners”²⁶ out of context. Those comments were made in the context of explaining why the rules should have a longer

²³ Pai Statement at 53; O’Rielly Statement at 58-59.

²⁴ See, e.g., NASCA Comments at 19-20, 34; Submarine Cable Coalition Comments at 8.

²⁵ Report and Order ¶ 49.

²⁶ *Id.* ¶ 50 (citing Comments of AT&T Services Inc. at Attachment A at 6-7, GN Docket No. 15-206 (filed 3 Dec. 2015) (“AT&T Comments”)).

implementation period. They do not strictly apply in the context of how long it practically takes to report an outage.

The Report and Order also ignored commenters' concerns that such a quick turnaround for notification will divert submarine cable operators' attention from the need at hand: to focus on re-routing traffic and restoring a fault. With a four or eight hour requirement, licensees will now have to grapple with beating the clock to meet a paperwork requirement. The Commission also failed to explain the need for such a quick turnaround when the NORS system is not even monitored 24 hours a day, seven days a week.

While the Report and Order notes that the time for reporting only begins once the licensee "determines the event is reportable," this provides little comfort to licensees operating worldwide systems. The Report and Order suggests this language alleviates concerns that licensees will need to implement new network monitoring processes. But this limitation to the timing requirement provides little comfort to licensees operating global submarine cable systems, particularly in an enforcement-heavy environment. It is also not a solution to the challenges that commenters raised on the record about the realities of submarine cable systems.

III. The Six-Month Implementation Period for the Reporting Requirements Fails to Provide Operators with Sufficient Time to Implement an Entirely New Reporting System

The Report and Order's transition period is insufficient for licensees to implement the outage reporting requirements, and provides insufficient justification for ignoring commenters' requests. The fact that some operators previously reported in Undersea Cable Information System ("UCIS") and/or NORS does not mean that they are prepared in operational, contractual, and legal terms to comply in short order with the new reporting requirements.

The Report and Order's requirements will take effect six months after approval by the White House Office of Management and Budget ("OMB").²⁷ While this is an improvement from the NPRM, which did not offer any transition period at all, the six month transition period is yet another timeframe the Commission appears to have picked out of thin air. As Commissioner O'Rielly states in his dissent, the six month transition period arbitrarily ignores commenters' requests.²⁸

The record was clear on the need for a longer transition period, but no commenters proposed six months as a feasible amount of time. 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 When describing the need for a longer transition period, commenters provide thorough explanations of the elaborate processes submarine cable licensees will have to go through to implement this entirely 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 new rules. Many consortium owners participate in multiple consortia, and accordingly will have to participate in multiple negotiations in a short timeframe. In many of these consortia, international negotiations will be needed to reach an agreement. In other cases, older systems which do not currently have the ability to detect outages on every part of a cable will need to incorporate new technology. As industry commenters unanimously noted,

²⁷ *Id.* ¶ 77.

²⁸ O'Rielly Statement at 59.

²⁹ NASCA Comments at 35-36.

³⁰ AT&T Comments at 12.

³¹ Joint Reply Comments of Submarine Cable Coalition Comments at 6, MD Docket No. 15-206 (filed 18 Dec. 2016).

these challenges require more than a mere six months. But rather than taking these extensive concerns into account when determining the transition period, the Report and Order merely assumed that the other revisions to the rules will resolve commenters' concerns and chooses its own arbitrary timeframe.³²

Because the six-month timeframe is unworkable realistically, many licensees will likely need to seek extensions or waivers of the reporting requirements while they work to implement new technology or contractual arrangements.³³ The Commission should reconsider its arbitrary choice of six months to implement the reporting requirements and allow the longer amount of time requested by the industry. Such an extension will provide more certainty for submarine cable licensees, and will minimize the burden on the Commission.

IV. The Report and Order's Cost-Benefit Analysis is Deeply Flawed, Underestimates the Burden to Licensees, and Fails to Analyze Any Benefits

Although the Report and Order's cost-benefit analysis increased the NPRM's initial cost estimate (of a mere \$8,000), it still fails to account for the initial and recurring costs documented in the record, and it is otherwise confusing. But even more concerning is that the Report and Order fails to justify the underlying purpose of the report or perform a quantitative analysis of any benefits. It remains unclear whether this analysis will provide a sufficient basis for clearance by the OMB.³⁴

³² Report and Order ¶ 77.

³³ See also Petition for Reconsideration of the Submarine Cable Coalition at 17-18, GN Docket No. 15-206 (filed 11 Aug. 2016) ("Submarine Cable Coalition Petition").

³⁴ The Report and Order was published in the Federal Register on August 8, 2016. 81 Fed. Reg. 52,534 (8 Aug. 2016). It has yet to be submitted to the OMB.

A. The Report and Order’s Numbers Are Based on Irrelevant and Incorrect Data

The Report and Order accepted the OMB-approved \$305,000 for the 2014 UCIS collection (the former “voluntary” reporting system) and then determined that only one category of that 2014 estimate—the cost for system restoration messages—was analogous to the outage reporting requirements.³⁵ It therefore increased the \$122,000 estimate for the category by 25 percent to arrive at an annual reporting requirement cost of \$152,500.³⁶ The Report and Order found this to be a credible annual burden.³⁷ The Report and Order then stated the three “static categories” of the 2014 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.³⁸

This analysis is deeply flawed and fails to account for the significant time and costs that the new reporting rules will impose. As Commissioner Pai explains, the analysis uses the wrong number of licensees, arbitrarily assigns a 50-hour burden-per-licensee estimate, and arbitrarily assumes a labor cost of \$50 per hour.³⁹

The Report and Order multiplies \$2,500—which it estimates to be the annual burden—by 61 licensees to arrive at the \$152,500 estimate.⁴⁰ As Commissioner Pai points out, however, there are up to 161 undersea cable licensees,⁴¹ as many systems have multiple licensees. And to

³⁵ Report and Order ¶ 86.

³⁶ *Id.* ¶ 87.

³⁷ *Id.*

³⁸ *Id.*

³⁹ Pai Statement at 54-56.

⁴⁰ Report and Order ¶¶ 81-88.

⁴¹ Pai Statement at 54

reach its 50-hour per licensee estimate, the Report and Order simply takes the 40 hours associated with UCIS reporting in 2008 and multiples it by an arbitrarily chosen 25 percent.⁴² 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 definition of 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 asserts an \$80 per hour estimate, but then calculates using an even lower \$50 per hour.⁴³ Even setting the inconsistency aside, neither of these numbers has any basis in the record.

B. The Report and Order Fails to Perform a Quantitative Analysis of the Underlying Benefits or Purpose of the Outage Reporting Requirements

The Report and Order also lacks a quantitative analysis of the benefits of reporting.⁴⁴ The Report and Order's justification for imposing burdensome new reporting requirements remains thin. Both the Report and Order and Chairman Wheeler's statement cite to the outage in the Northern Mariana Islands as an example of an underlying outage reporting problem without addressing extensive argumentation in the record that this outage was an anomaly.⁴⁵ The Report and Order also cites to a Florida lightning strike and damage of an Australia-Guam cable,⁴⁶ neither episode of which is discussed in the record.

⁴² Report and Order ¶ 87.

⁴³ *Id.* at n. 276 (“We then used an estimated labor rate of \$50 rather than \$80 per hour, to be consistent with the 2014 OMB Supporting Statement’s UCIS cost estimate.”).

⁴⁴ O’Rielly Statement at 59-60.

⁴⁵ Report and Order ¶¶ 6, 75; Statement of Commissioner Tom Wheeler, Report and Order, at 49 (“Wheeler Statement”).

⁴⁶ *See* Report and Order ¶ 14 (citing to website articles regarding the Florida and Australia-Guam outages); *see also* Wheeler Statement at 49.

In its public interest analysis, the Commission simply cites to these instances and notes that, “on balance,” the record supports the Commission’s “conclusion,” though it does not clarify the conclusion to which it refers.⁴⁷ The Commission appears to justify the rules with the vague conclusion that “[s]imply put, there is too much riding on these cables for the Commission to be less than fully aware about the status of these crucial lines of communication.”⁴⁸

But as Commissioner O’Rielly notes in his dissent, the Commission does not explain the benefit of simply knowing about outage issues.⁴⁹ Commissioner O’Rielly gets to the heart of the industry’s concerns for these rules, which the Commission glosses over in its Report and Order:

Operators in an outage situation should be spending their time trying to fix the problem, not focusing on a report requirement, and I am sure they are not seeking help, advice or any response from the Commission.⁵⁰

Commissioner O’Rielly also correctly points out that “[t]here isn’t even evidence of a systemic problem of submarine cable outages that needs to be fixed.”⁵¹ Commissioner O’Rielly’s statements aptly summarize the commenters’ concerns with these rules: the Commission fails to explain why it needs “situational awareness” of cable outages, or what it intends to do with the information reported. In doing so, the Commission ignores commenters’ concerns that these burdensome reporting rules could divert attention from resolving faults and re-routing traffic.

Significantly, the Commission does not even attempt to justify why it demands reporting even where traffic can be re-routed due to redundancies, or where there is no impact on customers. As Commissioner Pai notes, the rules demand a “haystack of paperwork that will

⁴⁷ Report and Order ¶ 91.

⁴⁸ *Id.*

⁴⁹ O’Rielly Statement at 59-60.

⁵⁰ *Id.* at 60.

⁵¹ *Id.*

only make it more difficult for us to find any needles.”⁵² While the Report and Order suggests in an earlier section that “in some situations the redundant paths could be over-utilized due to an emerging problem,”⁵³ there is no support for this speculation in the record.

C. The Report and Order’s Flawed Analysis Fails to Meet the Requirements of the Paperwork Reduction Act and Executive Order 13563

The new reporting rules fail to satisfy the requirements of the Paperwork Reduction Act (“PRA”). At the outset of this proceeding, NASCA noted that the NPRM failed to account for four of the six factors of the PRA. The Report and Order still fails to address adequately the majority of these factors.

The PRA defines “burden” as:

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.⁵⁴

The Report and Order’s analysis fails to account for the recurring costs that will arise from the Report and Order’s overly burdensome definition of an outage and fails to account for the substantial upfront costs that licensees will incur to implement this new regime.⁵⁵ NASCA’s comments directly addressed the potential upfront and recurring

⁵² Pai Statement at 53.

⁵³ Report and Order ¶ 19.

⁵⁴ 44 U.S.C. § 3502(2).

⁵⁵ Report and Order ¶¶ 81-88.

costs for each of the PRA factors in substantial detail,⁵⁶ and—as the Report and Order acknowledges—“attempted to provide concrete cost estimates.” But the Report and Order’s cost analysis declines to incorporate those details in its analysis.⁵⁷ As the Submarine Cable Coalition notes, the Report and Order “simply assigns a value of \$0 to these upfront costs.”⁵⁸ Even where the Report and Order accounted for costs associated with the new reporting requirements, as described above, the cost estimates are unrealistically low.⁵⁹

The Report and Order’s failure to analyze the reporting rules’ benefits also mean that the cost-benefit analysis fails to satisfy Executive Order 13563. Executive Order 13563 requires agencies to determine that a regulation’s benefits justify the costs, and that regulations impose the least burden possible.⁶⁰ An agency also must specify performance objections and identify and assess available alternatives to direct regulation.⁶¹ The Report and Order fails to justify the significant burden, or explain any analysis it performed to determine that these rules are the least burdensome way to achieve the Commission’s goals.⁶² Accordingly, the Commission’s flawed cost-benefit analysis fails to satisfy the requirements of the PRA or Executive Order 13563.

⁵⁶ NASCA Comments at 23-28.

⁵⁷ Report and Order ¶ 84.

⁵⁸ Submarine Cable Coalition Petition at 13.

⁵⁹ *See, e.g.*, Report and Order at 33 ¶ 87.

⁶⁰ Exec. Order No. 13,563 at Section 1(b), 76 Fed. Reg. 3821 (18 Jan. 2011).

⁶¹ *Id.*

⁶² *See* Report and Order ¶¶ 89-92.

CONCLUSION

For the foregoing reasons, NASCA urges the Commission to reconsider certain elements of its submarine cable outage reporting rules and to revise them to create a more useful and effective reporting framework that could benefit the Commission without imposing unnecessary burdens on submarine cable operators.

Respectfully submitted,



Kent D. Bressie
Susannah J. Larson
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*

7 September 2016