

January 28, 2021

VIA ELECTRONIC SUBMISSION

Federal Communications Commission
45 L Street, N.E.
Washington, D.C. 20554
Attention: Nicole Ongele
PRA@fcc.gov

Re: Federal Communications Commission, Information Collections Being Submitted for Review and Approval to Office of Management and Budget, Notice and request for comments, OMB 3060–0120, OMB 3060–XXXX; FRS 17334

To the Commission:

The North American Submarine Cable Association (“NASCA”) urges the Office of Management and Budget (“OMB”) to reject the submarine cable outage reporting requirements of the Federal Communications Commission (“Commission”) as currently proposed, as they would interfere with the critical business of repairing damaged submarine cables while imposing needless paperwork burdens and failing to provide demonstrable regulatory benefits that would outweigh the costs of such information collection.¹ The Proposed Collection would also needlessly burden small businesses that operate submarine cables. The Proposed Collection fails to satisfy the relevant requirements of the Paperwork Reduction Act, as amended,² and Commission should therefore further review and modify the Proposed Collection.

Despite significant practical feedback and input from the submarine cable industry in (a) the rulemaking resulting in initial reporting requirements in 2016,³ (b) comments on the

¹ Federal Communications Commission, Information Collections Being Submitted for Review and Approval to Office of Management and Budget, Notice and Request for Comments, OMB 3060–0120, OMB 3060–XXXX; FRS 17334, 85 Fed. Reg. 85,633, 85,635 (Dec. 29, 2020) (the “Proposed Collection”); Federal Communications Commission, New Information Collection, Improving Outage Reporting for Submarine Cables and Enhancing Submarine Cable Outage Data, Supporting Statement (Dec. 2020) (“Supporting Statement”).

² 44 U.S.C. § 3501 *et seq.* (“PRA”).

³ *Improving Outage Reporting for Submarine Cables and Enhanced Submarine Cable Outage Data, Report and Order*, 31 FCC Rcd. 7947 (2016) (“Report and Order”).

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Commission’s 2016 PRA notice (wherein NASCA raised many of the issues discussed below),⁴ and (c) the reconsideration proceeding resulting in slightly modified reporting requirements in 2019,⁵ the Commission has consistently declined to make meaningful modifications to the excessively burdensome and often arbitrary portions of the Proposed Collection, the core of which it proposed in 2015.⁶ The 2019 *Order on Reconsideration* reduced reporting requirements for planned maintenance activities but otherwise left the reporting requirements adopted in the 2016 *Report and Order* unchanged. As a result, the Proposed Collection is not “necessary for the proper performance of [the Commission’s] functions” and lacks “practical utility” as required by the PRA.⁷ Moreover, the Proposed Collection would place an untenable burden on the small businesses that operate submarine cables. Although submarine cables often involve transoceanic infrastructure costing hundreds of millions of dollars to install, many of the businesses that own and operate such cables are small businesses with fewer than 25 employees.

NASCA is the principal non-profit trade association for submarine-cable owners, submarine-cable maintenance authorities, and prime contractors for submarine-cable systems operating in North America.⁸ NASCA participated actively in the underlying proceedings and met repeatedly with Commission staff to express its concerns about the purpose, implementation, and impact of the Proposed Collection.

To satisfy the PRA’s requirements, the Commission’s Proposed Collection must be “necessary for the proper performance of the functions of the agency” and “have practical utility.”⁹ Under OMB implementing regulations, a proposed rule satisfies the PRA only if the

⁴ Federal Communications Commission, Information Collection Being Reviewed by the Federal Communications Commission, Notice and Request for Comments, OMB 3060–XXXX, 81 Fed. Reg. 80,054 (Nov. 15, 2016) (“2016 PRA Notice”); NASCA Comments on 2016 PRA Notice (filed Jan. 17, 2017).

⁵ *Improving Outage Reporting for Submarine Cables and Enhanced Submarine Cable Outage Data, Order on Reconsideration*, 34 FCC Rcd. 13,054 (2019) (“Order on Reconsideration”).

⁶ *Improving Outage Reporting for Submarine Cables and Enhancing Submarine Cable Outage Data, Notice of Proposed Rulemaking*, 30 FCC Rcd. 10,492 (2015) (“NPRM”).

⁷ 44 U.S.C. § 3508.

⁸ NASCA’s members include: Alaska Communications System, Alaska United Fiber System Partnership, Alcatel Submarine Networks, Apollo Submarine Cable System Limited, AT&T Corp., C&W Networks, CenturyLink, Edge Network Services Ltd., Global Cloud Xchange, Global Marine Systems Ltd., GlobeNet, OPT French Polynesia, PC Landing Corp., Rogers Communications, Southern Caribbean Fiber, Southern Cross Cable Network, Sprint Communications Corporation, Tata Communications (America), SubCom, Verizon, Vodafone, and Zayo Group.

⁹ 44 U.S.C. § 3506(c)(2)(A)(i).

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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.”¹⁰ *Second*, the proposed rule must not duplicate other recordkeeping obligations.¹¹ *Third*, the proposed rule must have “practical utility.”¹²

The Commission’s Proposed Collection does not satisfy the PRA or the implementing regulations. *First*, the Commission’s threshold for a reportable outage is overly broad and will lead to 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.

I. The Commission’s Overly Broad Threshold for a Reportable Outage Will Force Submarine Cable Operators 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.¹³ It would also fail to serve the Commission’s revised objective of using reported data to “aid government-wide incident response, public safety and national security efforts, and the analysis of network reliability trends.”¹⁴

Because much of this data will have no impact on connectivity or communications, the Commission has no “actual timely use [for] the information.”¹⁵ 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 Proposed Collection includes “reportable outage metrics” that will capture mundane events. Under the reporting requirements, submarine cable operators must report:

¹⁰ 5 C.F.R. § 1320.5(d)(1)(i).

¹¹ *Id.* § 1320.5(d)(1)(ii).

¹² *Id.* § 1320.5(d)(1)(iii).

¹³ *Report and Order*, 31 FCC Rcd. at 7947 ¶ 1.

¹⁴ *Order on Reconsideration*, 34 FCC Rcd. at 13,054 ¶ 1.

¹⁵ 5 C.F.R. § 1320.3(l).

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- (i) An outage 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 occurs for 30 minutes or more; or
- (ii) an outage of any fiber pair, including due to terminal equipment, on a cable segment occurs for four hours or more, regardless of the number of fiber pairs that comprise the total capacity of the cable segment.¹⁶

Applying these thresholds, submarine cable operators 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” while burdening operators with paperwork and distracting them from repairs.

II. The Commission’s Burden Estimate is Flawed

The Commission’s burden estimate fails to account accurately for submarine cable operator 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 PRA’s Full Definition of Burden

Because the Proposed Collection 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 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

¹⁶ *Order on Reconsideration*, Appendix A § 4.15.

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(F) transmitting, or otherwise disclosing the information.¹⁷

Despite NASCA’s comments, the Proposed Collection (including the Commission’s Supporting Statement to OMB) still fails to account for several of these factors. The Commission failed 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.¹⁸ The Commission wrongly asserts that submarine cable operators already “have existing network monitoring capabilities that ensure its situational awareness of outages. Submarine cable licenses may use this information provided by these monitoring capabilities to complete the responses required in this new collection.”¹⁹ The administrative record shows, however, that submarine cable operators will need to deploy new information technology, policies, and procedures to collect data to put into a form, and within the timeframes required by the Proposed Collection.²⁰

Instead, the Commission focuses only on the time to complete each of the three phases of reporting and estimates two hours each.²¹

NASCA addressed potential upfront and recurring costs for each of the PRA factors in substantial detail,²² and—as the *Report and Order* acknowledged—“attempted to provide concrete cost estimates.” As NASCA explained, these factors would lead to substantial costs for licensees. These data, however, are nowhere reflected in the cost estimates, as the *Report and Order* and *Order on Reconsideration* ignored many of PRA’s burden factors—and NASCA’s details for each—in its analysis.²³ As another commenting party, the Submarine Cable Coalition noted, the *Report and Order* “simply assigns a value of \$0 to these upfront costs.”²⁴

¹⁷ 44 U.S.C. § 3502(2).

¹⁸ *Report and Order*, 31 FCC Rcd. at 7976-79 ¶¶ 81-88; *Order on Reconsideration*, 34 FCC Rcd. at 54057-58 ¶¶ 6-7; Supporting Statement at § 13.

¹⁹ Supporting Statement § 13.

²⁰ *See, e.g.*, Comments of the North American Submarine Cable Association at 24-28, GN Docket No. 15-206 (filed Dec. 3, 2015) (“NASCA NPRM Comments”); Petition for Reconsideration of the North American Submarine Cable Association at 15-16, GN Docket No. 15-206 (filed Sept. 7, 2016) (“NASCA Recon Petition”).

²¹ Supporting Statement § 12.

²² NASCA NPRM Comments at 23-28.

²³ *Report and Order*, 31 FCC Rcd. at 7978 ¶ 84.

²⁴ Submarine Cable Coalition Petition for Reconsideration at 13, GN Docket No. 15-206, (filed Aug. 11, 2016).

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

The Proposed Collection drastically underestimates the burden on licensees because it uses unsubstantiated and faulty data for its calculation. *First*, the Proposed Collection estimates there will be 336 responses per year, without any factual basis for that statement.²⁵ *Second*, it assumes without any factual basis that the burden for a system with multiple licensees will be borne by a single designated licensee,²⁶ when in fact the burdens will be share by multiple licensees, if not all, as they confer and coordinate on reports.²⁷ Consequently, the number of reporting entities and responses should be a multiple of the respective 74 and 336 estimated by the Commission. *Third*, the Commission grossly underestimates the time and cost of preparing and submitting reports, with two hours of computer and information systems manager time for each report.²⁸ As the Commission's reporting requirements are legal requirements, any reporting will require review by internal (and potentially external) lawyers and regulatory specialists, entailing additional time at a higher hourly rate.

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 improvements 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 Proposed Collection requires submarine cable operators to notify the Commission of an outage extremely quickly: within eight hours initially and within as little as four hours after a

²⁵ Supporting Statement § 12.

²⁶ *Id.* § 12.

²⁷ NASCA NPRM Comments at 35.

²⁸ Supporting Statement § 12.

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three-year phase-in period.²⁹ These timeframes, which ignore realities of submarine cable operations, 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 notification prior to filing.³⁰

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.”³¹ 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 Commission’s 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.³² While the Commission’s inclusion of a transition period at all is an improvement from the Commission’s 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.

²⁹ *Report and Order*, 31 FCC Rcd. at 7966 ¶ 50; *Order on Reconsideration*, 34 FCC Rcd. at 34,063 ¶ 26.

³⁰ *See, e.g.*, NASCA NPRM Comments at 19-20, 34; Comments of the Submarine Cable Coalition at 8, GN Docket No. 15-206 (Dec. 3, 2015).

³¹ *Report and Order*, 31 FCC Rcd. at 7966 ¶ 49

³² *Order on Reconsideration*, 34 FCC Rcd. at 34,068 ¶ 42.

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Both the *Report and Order* and *Order on Reconsideration* 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 12 to 18 months for the transition,³³ AT&T sought 15 to 18 months,³⁴ and the Submarine Cable Coalition sought 12 to 15 months.³⁵

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* and *Order on Reconsideration* chose an arbitrary implementation timeframe.³⁶

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 failed to take into consideration.

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³³ NASCA NPRM Comments at 35-36.

³⁴ Comments of AT&T Services Inc. at 7, GN Docket No. 15-206 (filed Dec. 3, 2015).

³⁵ Joint Reply Comments of Submarine Cable Coalition at 6, GN Docket No. 15-206 (filed Dec. 18, 2016).

³⁶ *Report and Order*, 31 FCC Rcd. at 7974 ¶ 77; *Order on Reconsideration*, 34 FCC Rcd. at 34,068 ¶ 42.

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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 address ways to minimize that burden. Accordingly, the Commission should therefore further review and modify the Proposed Collection.

Respectfully submitted,



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cc: Austin Turner (OMB)