

1 May 2019

**BY ELECTRONIC FILING**

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

*Re: MD Docket No. 19-105*  
*Notice of Ex Parte Presentation*

Dear Ms. Dortch:

Pursuant to 47 C.F.R § 1.1206(b), the licensees of the Southeast Asia-US (“SEA-US”) submarine cable system<sup>1</sup> notify the Commission of *ex parte* presentations in the above-referenced proceeding. On April 29, 2019, Kent Bressie and I, as counsel for the SEA-US consortium members, met with Jamie Susskind, Chief of Staff to Commissioner Brendan Carr. On April 30, 2019, I met with William Davenport, Chief of Staff and Senior Legal Advisor to Commissioner Geoffrey Starks. On May 1, 2019, Kent Bressie and I met separately with Nirali Patel, Wireline Advisor to Chairman Ajit Pai; Kate Black, Policy Advisor to Commissioner Jessica Rosenworcel; and Joel Miller, Chief of Staff and Media Legal Advisor to Commissioner Michael O’Rielly. During the meetings, we discussed the need for the Commission to (1) ensure implementation of the system-based fee methodology adopted for submarine cables in 2009; (2) clarify what data the Commission uses to calculate submarine cable regulatory fees and ensure its accuracy consistent with current reporting rules; and (3) adjust the revenue requirement for submarine cable system regulatory fees to reflect more accurately the regulatory effort associated with full-time employee equivalents for submarine cables. Specifically, we discussed the attached talking points.

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<sup>1</sup> The licensees of the SEA-US submarine cable system include GTI Corporation d/b/a GTI Telecom, Hawaiian Telecom Services Company, Inc., RAM Telecom International, Inc., TeleGuam Holdings, LLC d/b/a GTA, PT Telekomunikasi Indonesia International, and Telekomunikasi Indonesia International (USA) Inc.

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Should you have any questions, please contact me by telephone at +1 202 730 1347 or by e-mail at [slarson@hwglaw.com](mailto:slarson@hwglaw.com), or my colleague Kent Bressie by telephone at +1 202 730 1337 or by e-mail at [kbressie@hwglaw.com](mailto:kbressie@hwglaw.com).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Susannah Larson", written in a cursive style.

Susannah Larson

*Counsel for the SEA-US Licensees*

Attachment

cc: Kate Black  
William Davenport  
Joel Miller  
Nirali Patel  
Jamie Susskind

## SEA-US: Views on Submarine Cable System Regulatory Fees

- **The Commission should reject the concept that the Submarine Cable System fee capacity brackets require updating.**
  - The 2009 methodology was designed to get the Commission out of the business of assessing capacity as a basis for regulatory fees.
  - Prior to 2009, the fee assessment process was rife with unfairness and strategic behavior that punished compliant companies while failing to take action against non-compliant companies.
  - In 2009, lower-capacity brackets were created to grandfather older, low-capacity systems mostly located in the Caribbean, with the idea that the brackets would disappear as those systems were retired.
  - Fundamentally, capacity has zero to do with regulatory effort or FTEs, and therefore nothing to do with the quantum of the regulatory fee. A cable's size does not make any difference in regulatory burden or the "benefits provided to" submarine cable licensees "by the Commission's activities." *See* 47 U.S.C. § 159(d).
- **The concept of capacity brackets is particularly inappropriate for certain submarine cable systems, such as SEA-US.**
  - Different segments have different numbers of fiber pairs with variable lit capacity and design capacity (using current technology).
  - Sometimes, capacity varies between the international and domestic segments of a submarine cable system.
- **The interplay of the December 2018 43.82 Circuit Capacity Manual and fee regime reflected in the Regulatory Fees NPRM would return the Commission and the industry to an era of unpredictability, strategic behavior, and unfairness.**
  - The 43.82 Circuit Capacity Manual substantially changed how cable operators report capacity without notice-and-comment rulemaking.
    - IB's Filing Manual now requires cable landing licensees to report design capacity rather than lit capacity because of its revised definition of "available" capacity. *See* 43.82 Circuit Capacity Manual ¶ 26.
    - The prior definition of "available capacity" was "all of the capacity currently available on the cable *using equipment currently used on the cable.*" 43.62 Filing Manual ¶ 136 (Feb. 2016) (emphasis added).

- Because a cable owner must install transmission equipment to light additional capacity, the industry generally understood the previous definition of available capacity to mean lit capacity only.
  - Design capacity is not static but based on current technology, which evolves over time, meaning that reliance on design capacity to assess regulatory fees would still require confirmation and updating, with attendant administrative burdens and potential for non-compliance.
- OMD stopped requiring separate reporting of capacity for regulatory fee purposes in 2009 and has since relied on IB circuit capacity data, meaning that submarine cable operators have paid based on active, *i.e.*, lit capacity.
- In discussions with IB in advance of the December 2018 change to the 43.82 Circuit Capacity Manual, IB stated that OMD did not use the 43.82 circuit capacity data for assessing fees, but OMD confirmed that it did—consistent with *Section 43.62 Reporting Requirements for U.S. Providers of International Services, 2016 Biennial Review of Telecommunications Regulations*, Report and Order, 32 FCC Rcd. 8115, 8118 ¶ 5 (stating that “the Commission also uses . . . the submarine cable capacity data to administer the annual regulatory fees established in Section 9 of the Communications Act of 1934, as amended.”).
- **Until older, lower-capacity systems are retired (thus eliminating the need for fee brackets), the Commission should clarify the data to be used in assigning submarine cable systems to particular fee brackets.**
- **The Commission should reallocate the apportionment of revenues requirements among the services regulated by IB, which bear little resemblance to FTE numbers.**
  - In 2014, the Commission began the process of reducing the proportional allocation for submarine cable operators/terrestrial/satellite circuits and increasing the allocation for satellite/earth station operators. The Commission made a 5 percent decrease in reductions in the percentage of fees allocated to submarine cable operators in 2014, and a further 7.5 percent reduction in 2015. The Commission stopped implementing reductions in FY 2015. The Commission’s reapportionment meant that submarine cable operators paid a disproportionate 24.85 percent of all International Bureau regulatory fees.
  - Further, within the category of submarine cable operators/terrestrial/satellite circuits, submarine cable operators pay a disproportionate 87.6 percent of fees in that category, whereas terrestrial/satellite circuits pay only 12.4 percent.