



10 July 2015

BY ELECTRONIC FILING

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

*Re: MD Docket Nos. 15-121 and 14-92
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 July 8, 2015, Susannah Norvell and I, as counsel for NASCA, met with Roland Helvajian and Thomas Buckley of the Office of Managing Director, Mika Savir of the Enforcement Bureau, and Howard Griboff and Cathy Hsu of the International Bureau to discuss NASCA’s positions in these proceedings.

In our meeting, I discussed the attached talking points in relation to the above-referenced proceedings. I also noted the following points.

First, potential changes to the revenue requirement allocation between submarine cable and terrestrial and satellite circuits and potential reallocation of other International Bureau direct FTEs as indirect FTEs, raise separate and distinct issues from the need to realign the revenue requirement for submarine cable operators with the Commission’s FTE data. Such changes would not remedy the improper subsidy paid by submarine cable operators for the benefit of satellite-related payors. The Commission should therefore decline to delay reallocating the revenue requirement for submarine cable operators.

Second, Section 9 of the Communications Act contains no fairness or administrative exceptions permitting delay where the revenue requirement and fees are misaligned with the FTE data—as they obviously are here. To the contrary, the Commission must make a mandatory annual adjustment to fees “to reflect, in accordance with [47 U.S.C. § 159(b)(1)(B)], changes in the amount appropriated for the performance of the activities described in [47 U.S.C. § 159(a)] for such fiscal year.” 47 U.S.C. § 159(b)(2).

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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@hwglaw.com

Respectfully submitted,



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North American Submarine Cable Association*

cc: Roland Helvajian
Thomas Buckley
Mika Savir
Howard Griboff
Cathy Hsu



NORTH AMERICAN SUBMARINE CABLE ASSOCIATION VIEWS RE FY 2015 REGULATORY FEES

1. The proposed FY 2015 revenue requirement for submarine cable operators does not comply with the requirements of Section 9 of the Communications Act.

- Section 9 requires that regulatory fees be “reasonably related to”, *i.e.*, correlate with, the regulatory benefits provided to particular categories of payors, as represented by FTEs performing assessable activities (enforcement activities, policy and rulemaking activities, user information services, and international activities).
- The Commission previously concluded that its regulatory benefits for submarine cable operators equate to two (2) full time employee equivalents (“FTEs”) out of a total of 28 direct FTEs in the International Bureau (“IB”), and the Commission’s regulation of submarine cables has not materially in the past year.
- Submarine cable operators represent 7.14 percent of IB FTEs, but the Commission collected FY 2014 regulatory fees as if submarine cable operators represented 31.6 percent of IB direct FTEs, and it proposes to collect FY 2015 fees as if submarine cable operators represented 27.6 percent of IB FTEs.
- Based on the FTE data, the FY 2015 regulatory requirement for submarine cable operators should be \$1,534,134, rather than \$5,933,967.
- The over-recovery from submarine cable operators results from a long-running error in the existing revenue requirement and its inconsistency with the FTE data, which the Commission has recognized, dating from the establishment of the new Submarine Cable System category in 2009.

2. Incremental five-percent annual decreases in regulatory fees for submarine cable operators are insufficient and not compliant with Section 9.

- At the Commission’s current pace of incremental reductions, the Commission would force submarine cable operators to wait at least five years for realignment of the revenue requirement with the FTE data.
- The Commission has created considerable uncertainty regarding such a realignment. Rather than state that it intends to complete the realignment over a period of years, it has only stated that it would revisit the issue in the future.



3. Fairness concerns weigh strongly in favor of reallocating the revenue requirement to eliminate the subsidy of satellite-related payors.

- Realignment of the revenue requirement would not produce “rate shock,” as satellite-related payors have been on notice for years that they are subsidized by submarine cable operators, based on FTE data and even a casual review of IB regulatory activities.
- Although NASCA has previously supported a cap on annual regulatory-fee increases, it cannot support a cap that would perpetuate a subsidy which has no basis in fact or law.

4. The Commission should recalculate the payment units to accurately reflect the number of active submarine cable systems.

- The *FY 2015 Reg. Fees NPRM* understates the number of payment units at 39.19 units
- There were 42 international submarine cable systems in service as of December 31, 2014, with 40 having capacities of 20 Gbps or greater, one having capacity of 2.5 Gbps or greater but less than 5 Gbps, and one having capacity of less than 2.5 Gbps.
- Recalculating the units results in 40.18 payment units, which would result in a submarine cable system fee of \$147,696 under the proposed FY 2015 revenue requirement (to which NASCA objects).