HWG | HARRIS, WILTSHIRE & GRANNIS LLP

1919 M STREET NW
SUITE 800
WASHINGTON DC 20036

TEL +1 202 730 1300
FAX +1 202 730 1301
HWGLAW.COM

ATTORNEYS AT LAW

22 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 22, 2015, Susannah Norvell and I, as counsel for NASCA, met with Maria Kirby, Legal Advisor to Chairman Wheeler.

During the meeting, we discussed the first three items of the attached talking points in relation to the above-referenced proceedings.

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,

Kent Bressie
Susannah Norvell

Counsel for the
North American Submarine Cable Association

Attachment

cc: Maria Kirby

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 derived from the full-time equivalent employees ("FTEs") performing assessable activities (enforcement activities, policy and rulemaking activities, user information services, and international activities), adjusted to take into account factors that are "reasonably related to", *i.e.*, correlate with, the regulatory benefits provided to particular categories of payors.

    - The Commission previously concluded that its regulatory benefits for submarine cable operators equate to two (2) 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 changed 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.

    - Based on the FTE data, the over-collection of regulatory fees from submarine cable operators in 2013, 2014, and 2015 (if the Commission were to adopt its current proposal) would total $16,351,367. In those three years combined, submarine cable operators would have paid $21,050,837, even though they should only have paid $4,699,470 (based on the IB revenue requirements for each year). The over-collection pre-dates 2013, but the Commission has not released earlier FTE data that would allow NASCA to calculate the precise extent of over-collection before 2013.

    - 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, on 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).