



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL OCEAN SERVICE  
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT  
Silver Spring, Maryland 20910

**MAR 17 2008**

Arthur Lechtman  
International Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554  
202-418-1465  
Arthur.Lechtman@fcc.gov

*Re: Federal Communications Commission 07-118, IB Docket No. 04-47 and Petition  
for Reconsideration by the North American Submarine Cable Association  
(October 25, 2007)*

Dear Mr. Lechtman:

This letter provides the Office of Ocean and Coastal Resource Management's (OCRM's) brief response to the Petition for Reconsideration by the North American Submarine Cable Association (NASCA), dated October 25, 2007 (Petition). The National Oceanic and Atmospheric Administration (NOAA) previously filed comments with the Federal Communications Commission (FCC) on its rulemaking related to the application of the Coastal Zone Management Act (CZMA) (filed June 3, 2004). OCRM/NOAA is the federal agency charged with implementing the CZMA.

Upon reviewing NASCA's Petition, OCRM finds that NASCA has misapplied portions of NOAA's June 3, 2004 comments to the FCC and inaccurately applied CZMA statutory and regulatory requirements. First, despite NASCA assertions that FCC licenses are not potentially subject to state CZMA, an FCC license is a federal license or permit that could be reviewed by coastal states, pursuant to the "listing" and "unlisted activity" provisions in NOAA's regulations at 15 C.F.R. §§ 930.53 and 930.54. Even if other federal permits are needed for a project and are reviewed by coastal states under the CZMA review, additional federal authorizations are also subject to state CZMA review pursuant to NOAA's regulations.

Second, OCRM notes that FCC's rulemaking would not, contrary to NASCA's assertions, require applicants to obtain consistency review by coastal states. FCC's regulation merely requires that applicants provide the FCC with notice determining whether the cable project is subject to review by a coastal state by determining whether the state has "listed" the FCC license in its federally approved Coastal Management Program. If a state has not listed the FCC license, and currently no state has listed the FCC license at issue, then FCC would have in its administrative record evidence that the applicant and FCC need not address CZMA consistency requirements.

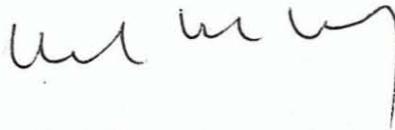


Third, unless and until a state amends its federally approved CZMA program to list FCC licenses, the only manner in which a coastal state may review the FCC license application through the CZMA is if a state notifies the applicant and FCC and requests OCRM permission to review, on case-by-case basis, an FCC cable landing license application as an "unlisted activity." This would require that the state take action to initiate CZMA review; if a state does not seek unlisted activity review approval, then neither an applicant nor the FCC need take any action related to the CZMA, other than the applicant's notification to the FCC described above and in FCC's rulemaking. While no state has ever requested to review an FCC license as an unlisted activity, if a state did make such a request, OCRM's decision would be based on whether the state reasonably demonstrated that the cable project would have reasonably foreseeable effects on any land or water use or natural resource of the state's coastal zone.

Therefore, OCRM believes that FCC's regulatory process for cable landings and CZMA notification (as modified pursuant to NOAA's June 3, 2004, comments) accurately applies NOAA's comments and is fully consistent with the CZMA and NOAA's CZMA regulations. FCC's regulation should provide the FCC with a reasonable record for determining CZMA compliance.

Please contact David Kaiser, Senior Policy Analyst, OCRM at 603-862-2719 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "David M. Kennedy", with a long, sweeping tail on the final letter.

David M. Kennedy  
Director