



**WILTSHIRE
& GRANNIS** LLP

1200 18TH STREET, N.W., STE. 1200
WASHINGTON, D.C. 20036-2516
U.S.A.

TEL +1 202 730 1337
FAX +1 202 730 1301
WWW.WILTSHIREGRANNIS.COM
ATTORNEYS AT LAW

27 March 2013

BY ELECTRONIC FILING

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

Re: MD Docket Nos. 12-201 and 08-65, Notice of Ex Parte Presentation

Dear Ms. Dortch:

Pursuant to 47 C.F.R § 1.1206(b), the North American Submarine Cable Association (“NASCA”) submits this *ex parte* presentation in the above-referenced proceeding, following up on NASCA’s February 13, 2013, meeting with Commission staff and a March 21, 2013 request from Commission staff to provide additional information about submarine-cable regulatory fees imposed by foreign jurisdictions.

1. Influence of Regulatory Fees and Charges on Landing and Investment Decisions

In the February 13, 2013, meeting, NASCA had noted that submarine cable operators—whether they are entirely new entrants on a particular route or seeking to replace an existing cable that has outlived its commercial or technical usefulness—are acutely sensitive to fees associated with various landing options and routinely factor such costs into their decisions to land in particular states and countries. In this letter, NASCA provides some specific examples of such sensitivity:

- Cable operators increasingly avoid California due to significant regulatory and permitting costs and permitting delays.¹ Those that have recently landed in California—such as the Unity system—have used previously-built and –permitted infrastructure to reduce such

¹ See, e.g., Joint Comments of AT&T Corp., Level 3 Communications LLC, Southern Cross Cable Network, Tyco Networks (US) Inc., and WorldCom, Inc., Recommended Changes to Hawaii Guidelines for Submarine Fiber Optic Cables, at 2 (Oct. 11, 2002) (stating that “in California, regulatory costs and permitting time requirements have risen to the point that cable owners predictably will land cables elsewhere”), available at <http://www.n-a-s-c-a.org/library/u-s-state-issues/hawaii/>.

costs and delays.² Such previously-built and -permitted facilities are scarce, if any remain at all.

- Cable operators now generally avoid Puget Sound in Washington State, as landing there requires the cable system to traverse the Olympic Coast National Marine Sanctuary, for which the National Oceanic and Atmospheric Administration imposes very high per-mile right-of-way fees as a condition of its special use permit regime.³ The State of Washington also imposes very high permitting fees.⁴ No new system has been installed into Washington State since 2000.
- Cable operators increasingly choose Oregon for its regulatory cost and timing advantages, even if the choice requires reconfiguring a system already under construction. The Southern Cross Cable Network—which connects the United States to Australia, Fiji, and New Zealand—effectively abandoned a newly-constructed cable station in Monterey Bay due to high regulatory costs and delays, choosing instead to secure new permits (and an amended cable landing license from the Commission) to land at Nedonna Beach, Oregon.⁵

² See Bharti Airtel Limited, Global Transit Limited, GU Holdings Inc., KDDI Corporation, Pacnet Services (USA) Inc., and Singapore Telecommunications Limited, Application for a Cable Landing License, FCC File No. SCL-LIC-20080516-00010, at 5 n.1 (filed Dec. 16, 2008) (noting that “the California landing would use, in part, existing cable facilities owned by Tyco and authorized by the Commission pursuant to File No. SCL-LIC-20050304-00011. Construction of the cable authorized by that license was never completed with the exception of certain terrestrial facilities and a 6.2 kilometer stub extending seaward from Hermosa Beach.”).

³ See National Oceanic and Atmospheric Administration, Office of National Marine Sanctuaries, Final Policy and Permit Guidance for Submarine Cable Projects (Sept. 2011), available at http://sanctuaries.noaa.gov/library/national/cable_guidelines.pdf; Comments of Global Crossing Ltd., CC Docket No. 98-146, at 8 (filed Sept. 24, 2001) (describing regulatory costs imposed for the PC-1 submarine cable system by NOAA, which “proposed to charge \$120,000 per-mile for existing and future installations, which would impose an additional ‘fair market value fee’ of \$7.2 million on the Pacific Crossing cable. In light of these proposed fees and other actions by NOAA, Global Crossing understands that two cable operators have already abandoned their proposed sanctuary routes.”).

⁴ *Id.* at 7.

⁵ Reuters, *Two-part Trans-Pacific route soon to be complete: Southern Cross cable sidesteps US landing problem* (Mar. 29, 2000) (noting that “Southern Cross took an initiative last year to seek authorisation to land in Oregon, having originally intended to make two landings in California—at San Luis Obispo north of Los Angeles and nearby Monterey Bay, closer to San Francisco. After hitting permit difficulties, Monterey Bay will no longer happen and the landing in Oregon in mid-April will mark the start of cable-laying between there and

- In Asia, Hong Kong, Singapore, and Malaysia compete fiercely for submarine cable landings to maintain and improve their connectivity and support their services industries and recognize that regulatory costs could drive cable landings elsewhere. As the Hong Kong Government has noted:

Southeast Asian economies such as Malaysia and Singapore have been aggressively developing their telecommunications infrastructure to support the growth of their service industries. In view of the developments in the industry and in the region, there is a pressing need for Hong Kong to uplift its competitiveness in attracting the landing of new submarine cables. To maintain Hong Kong as the telecommunications hub in the Asia-Pacific region, the Administration has been striving to create a regulatory environment that is conducive to further investments.⁶

In fact, the Hong Kong Government has expressly recognized that the regulatory costs of landings greatly influence where cables land and can support or undermine national economic and security interests. In the wake of the Hengchun earthquake in the Luzon Strait on December 26, 2006, which damaged most East Asia's submarine cable systems (including six of the seven systems landing in Hong Kong)⁷ and greatly affected connectivity and, indirectly, financial markets and other economic activity,⁸ the Hong Kong Government undertook reviews and policy

Hawaii.”), available at www.siliconinvestor.com/readmsg.aspx?msgid=13310717; *Southern Cross Cables, Our Company* www.southerncrosscables.com/home/company/company (last visited March 22, 2013), (noting among project milestones that for March 2000, “Southern Cross takes decisive action to keep the project on track and decides to land at Nedonna Beach, Oregon, rather than Monterey, California.”); *MFS Globenet, Inc. and Pacific Carriage Limited*, Modification of Cable Landing License, FCC File No. SCL-MOD-20000201-00002, 15 FCC Rcd. 10,145 (Int’l Bur. Apr. 3, 2000).

⁶ Legislative Council, Panel on Information Technology and Broadcasting, Meeting on 8 March 2010, Background brief on issues relating to the landing of submarine cables, at 2 ¶ 7, LC Paper No. CB(1)1289/09-10(05), available at www.legco.gov.hk/yr09-10/english/.../itb0308cb1-1289-5-e.pdf.

⁷ Legislative Council, Panel on Information Technology and Broadcasting Meeting on 14 April 2008 Background brief on issues relating to Internet disruptions caused by earthquake damage to undersea cables, LC Paper No. CB(1)1200/07-08(04), at 1 ¶ 2, available at www.legco.gov.hk/yr07-08/english/panels/itb/papers/itb0414cb1-1200-4-e.pdf.

⁸ Karl Frederick Rauscher, *Reliability of Global Undersea Cable Communications Infrastructure (ROGUCCI), The Report*, at 155 (2010) (finding that “the affected services include substantially reduced international connectivity for telephone voice traffic, Internet access including email and search capabilities, financial sector and other commerce traffic, and other critical services.”), available at www.ieee-rogucci.org/files/The%20ROGUCCI%20Report.pdf.

changes to ensure speedier restoration of communications, speedier repair of damaged systems, and the greater network resilience resulting from new cables on diverse routes. Consultants to the Hong Kong regulator, now known as the Office of the Communications Authority (“OFCA”), later concluded that that when choosing where to land a cable submarine cable owners’ key considerations include government policies, ease of administrative processes, and investment environment.⁹

By contrast, the U.S. Government has generally taken for granted that new cables will land in the United States and that the United States will remain a hub even for traffic that does not require a landing for origination or termination of traffic in the United States. State and local governments—which conduct environmental and land-use reviews for each and every submarine cable system—have generally paid even less attention to the investment- or innovation-related impacts that their regulatory costs and delays they impose on submarine cable operators, much less the broader economic or national security implications of their regulations.

In reforming its regulatory fees for submarine cable operators in 2009, the Commission did recognize that the old capacity-based fee methodology was rendering certain services uneconomic.¹⁰ Unfortunately, the current proposal to increase by 233 percent the regulatory fees paid by submarine cable operators would undermine much of that prior reform—even more so if the fee-shifting were accompanied by elimination of long-standing universal service contribution exemptions on which many submarine cable operators rely.¹¹

NASCA continues to believe that the Commission’s straightforward compliance with Section 9 of the Communications Act, as amended, would lead the Commission to abandon the NPRM’s fee-shifting proposal. Section 9 requires the Commission to conduct a fact-based

⁹ Frost & Sullivan, *Report on Consultancy Study on Issues Relating to the Landing of Submarine Cables in Hong Kong*, at 6 (April 2010), available at tel_archives.ofca.gov.hk/en/report-paper-guide/rp20100526.pdf

¹⁰ *See Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Second Report and Order, 24 FCC Rcd. 4208, 4215 ¶ 17 (2009) (stating that “[t]he new regulatory fee methodology will effectively eliminate concerns that the regulatory fees discouraged submarine cable operators from increasing capacity on their systems. On the contrary, the regulatory fee would become smaller on a per circuit basis as a cable’s capacity is increased.”); *Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, Report and Order, 19 FCC Rcd. 11,662, 11,672 ¶ 29 (2004) (noting that “[w]e are also concerned that basing the fees on the active circuits may provide disincentives to carriers to initiate new services and to use new facilities efficiently”);

¹¹ *See Universal Service Contribution Methodology & A National Broadband Plan for Our Future*, Further Notice of Proposed Rulemaking, 27 FCC Rcd. 5357, 5428-33 ¶¶ 193-208 (2012).

examination of the work its personnel actually perform.¹² NASCA believes that such an examination would result in a lower Submarine Cable System fee, given the minimal Commission activity conducted for the benefit of submarine cable operators, given the minimal submarine cable-related regulatory activity, as outlined in great detail in the attachment to NASCA's February 15, 2013, *ex parte* notice in these proceedings.¹³

2. Submarine-Cable Regulatory Fees in Foreign Jurisdictions

In response to the Commission staff's question about the extent to which foreign government assess regulatory fees specifically on submarine cables, NASCA confirms that to the knowledge of its members, no governments—other than those of the United States and Canada—assess regulatory fees specifically on submarine cable infrastructure. In Canada, that annual fee is *de minimis*, currently C\$100, or US\$97 at current exchange rates.¹⁴

NASCA understands that fees cited in the comments of the International Carrier Coalition ("ICC") with respect to Argentina, Australia, the Netherlands, Spain, and the United Kingdom refer to regulatory fees assessed on "eligible," relevant," or otherwise subject telecommunications revenues.¹⁵ None of those fees is specific to submarine cables or submarine cable operators, though they may apply to revenues of certain services provided over submarine cable systems, whether by the cable operators or their third-party customers. As the ICC rightly notes, even these revenue-based fees on services are "modest."¹⁶ Moreover, some of them are actually declining.¹⁷

¹² See Comments of the North American Submarine Cable Association, MD Docket Nos. 12-201 and 08-65, at 10-14 (filed Sept. 17, 2012).

¹³ See Letter from Kent D. Bressie, Counsel for the North American Submarine Cable Association, to FCC Secretary Marlene H. Dortch, MD Docket Nos. 12-201 and 08-65 (filed Feb. 15, 2013).

¹⁴ International Submarine Cable Licences Regulations (Canada), SOR/98-488, <http://laws-lois.justice.gc.ca/eng/regulations/SOR-98-488/page-1.html>.

¹⁵ Comments of the International Carrier Coalition, MD Docket Nos. 12-201 and 08-65, at 14 (filed Sept. 17, 2012).

¹⁶ *Id.*

¹⁷ The current rate assessed by the Dutch regulator OPTA dropped to 0.059 percent in December 2012. See *Regeling vergoedingen Telecommunicatiewet en Postwet 2013* (in English, "The 2013 Fee Regulations Telecommunication and Post"), <https://www.opta.nl/nl/actueel/alle-publicaties/publicatie/?id=3693>. That rate also applies only to public electronic communications networks with annual turnover from the Netherlands greater than €20 million. Networks with annual turnover from the Netherlands less than €20 million but greater than €2 million pay a fixed fee of €6,540. *Id.*

Ms. Marlene H. Dortch
Federal Communications Commission
27 March 2013
Page 6

* * * * *

Should you have any questions, please contact me by telephone at +1 202 730 1337 or by e-mail at kbressie@wiltshiregrannis.com.

Respectfully submitted,



Kent Bressie

*Counsel for the
North American Submarine Cable Association*

Attachment

cc: Thomas Buckley
Roland Helvajian
David Krech
Mika Savir
Dana Shaffer