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26 November 2007

BY HAND DELIVERY AND ELECTRONIC FILING

Ms. Judith B. Herman
Office of the Managing Director
Federal Communications Commission
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Re: Amendment of Parts 1 and 63 of the Commission's Rules, Report and Order, FCC 07-118, IB Docket No. 04-47, 22 FCC Rcd. 22,398 (2007)

Dear Ms. Herman:

The North American Submarine Cable Association ("NASCA") hereby urges the Commission to reconsider and rescind the new certification requirement set forth in 47 C.F.R. § 1.767(k)(4)[1] because it violates the Paperwork Reduction Act of 1995 ("PRA").[2] The Commission has failed to demonstrate that Section 1.767(k)(4) is the least burdensome way of obtaining the information, that it avoids duplicating other recordkeeping obligations, or that it has any demonstrable, practical utility. Accordingly, the Commission should withdraw Section 1.767(k)(4).

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[1] *Amendment of Parts 1 and 63 of the Commission's Rules, Report and Order*, FCC 07-118, IB Docket No. 04-47, 22 FCC Rcd. 11,398 (2007) ("*Order*"); *id.,* Appendix, Final Rules, § 1.767(k)(4); *see* 72 Fed. Reg. 54,363 (Sept. 25, 2007) (requesting comments on the *Order*'s modified information collection requirements).

[2] 44 U.S.C. §§ 3501–3520.

NASCA is a non-profit association of submarine cable owners, submarine cable maintenance authorities, and prime contractors for submarine cable systems.[3] For decades, NASCA's members have worked with government agencies and other concerned parties—such as commercial fishermen and private environmental organizations—to ensure that submarine cables do not harm the marine or coastal environment or unreasonably constrain the operations of others in that environment. NASCA has petitioned the Commission to reconsider the *Order* but writes separately here to address its concerns about the Commission's PRA compliance.[4]

The PRA, which Congress designed to eliminate costly recordkeeping and reporting obligations,[5] seeks to "minimize the paperwork burden . . . resulting from the collection of information by or for the Federal Government,"[6] while simultaneously "ensur[ing] the greatest possible public benefit from and maximiz[ing] the utility of information created."[7] OMB, which implements the PRA, has established a clear standard for determining whether a proposed recordkeeping or reporting rule violates the Act. According to OMB guidance, a proposed rule satisfies the PRA only if the sponsoring agency demonstrates that it possesses each of three characteristics. *First*, the proposed rule must be "the least burdensome way of obtaining information necessary for the proper performance of [the agency's] functions."[8] *Second*, the proposed rule must not duplicate other recordkeeping obligations.[9] *Third*, the proposed rule must have "practical utility."[10]

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[3] NASCA's current members include: Alaska United Fiber System Partnership; Alcatel-Lucent Submarine Networks; Apollo Submarine Cable System Ltd.; AT&T, Inc.; Brasil Telecom GlobeNet; Columbia Ventures - Hibernia Atlantic; Columbus Networks; Global Marine Systems Limited; Level 3 Communications, LLC; Southern Cross Cables Limited; Sprint Communications Corp.; Teleglobe-VSNL; Tyco Telecommunications (US) Inc.; and Verizon Business.

[4] *See* North American Submarine Cable Association Consolidated Petition for Reconsideration and Petition to Defer Effective Date, IB Docket No. 04-47 (filed Oct. 25, 2007), attached as Exhibit A to this letter and incorporated by reference.

[5] *See* 44 U.S.C. § 3501(3).

[6] *Id.* at § 3501(1).

[7] *Id.* at § 3501(2).

[8] Memo from John D. Graham, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, to Chief Information Officers, General Counsels and Solicitors, Attachment at 1 (Nov. 14, 2001) ("OMB PRA Memo").

[9] *Id.*

[10] *Id.*

The Commission runs afoul of the all three of these requirements with its new Section 1.767(k)(4), which requires that applicants seeking streamlined authority to construct, operate or modify a submarine cable system certify to the FCC that the "submarine cable system will not be located in any states where the cable landing licenses may be subject to the consistency certification requirements of the Coastal Zone Management Act [("CZMA")], 16 U.S.C. § 1456."[11]

***First*, the proposed rule imposes considerable burdens on cable landing applicants to obtain information that is simply unnecessary for the Commission to perform its functions.** The Commission seems to believe that the CZMA obligates it to prevent processing (much less processing under its undersea cable streamlining rules) of cable landing license applications unless an applicant certifies that the cable system will not be subject to any state consistency review procedures.[12] But the CZMA, as it has been interpreted and implemented by the National Oceanic and Atmospheric Administration, places no such obligation on the Commission.[13] Indeed, where, as here, no state has listed or sought unlisted activity review of a

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[11] *Order*, Appendix, Final Rules, 47 C.F.R. note to § 1.767(a)(10), § 1.767(k)(4).

[12] *See Order* at ¶¶ 44, 45.

[13] The CZMA provides:

> After final approval by the Secretary [of Commerce, as delegated to NOAA] of a state's management program, any applicant for a required Federal license or permit to conduct an activity, in or outside of the coastal zone, affecting any land or water use or natural resource of the coastal zone of that state shall provide in the application to the licensing or permitting agency a certification that the proposed activity complies with the enforceable policies of the state's approved program and that such activity will be conducted in a manner consistent with the program.

16 U.S.C. § 1456(c)(3)(A) (2007). Congress therefore delegated to NOAA regulatory authority over the state CZMA certification process and CZMA application requirements for federal license activities in or outside the coastal zones. Under NOAA's CZMA regulations, if a state wants to subject a type of federal license or permit to consistency review, the state must "list" the license or permit in its federally approved coastal management plan. 15 C.F.R. § 930.53(a). If a license is not listed, it is referred to as an "unlisted activity," and the state must seek NOAA approval to subject it to CZMA review. *Id.* § 930.54(a)(1). In either case, the state must obtain a determination from NOAA that the license or activity will have reasonably foreseeable effects on the uses or resources of the state's coastal zone. Thus, for consistency review to apply to a license, it must be expressly identified by the states and approved by NOAA as subject to CZMA review.

cable landing license, the Commission simply has *no* role in state CZMA consistency review processes.[14] Thus, the new information collection requirement in Section 1.767(k)(4) cannot be necessary for the proper performance of the Commission's functions—there is no Commission function to be performed.

That Section 1.767(k)(4) serves no Commission purpose starkly contrasts with the considerable burden it places on cable landing license applicants. In adopting its rules, the Commission seemed to assume that applicants could easily determine whether or not any state would require CZMA consistency certification and that making the certification would cause only a "minimal" six-month delay. That does not comport with reality.

In practice, it can be extremely difficult, if not impossible, for an applicant to definitively determine whether or not a state requires a consistency certification for a cable landing license. This problem is particularly acute with respect to states' authority to request CZMA consistency review of unlisted federal license activity. Under NOAA's regulations for unlisted activities, whether a state will seek such review will never be known before the cable landing license application is filed. And applicants cannot conclusively certify that a cable system will not be subject to any states consistency review because states retain the authority to seek CZMA review of a cable landing license as an unlisted activity. In short, the *Order* requires cable landing license applicants to certify the certainty of something that is difficult to verify and ultimately, on some level, inherently uncertain. Thus, even the most diligent applicant cannot eliminate the risk of false certification under the new rule.

And being forced to forgo streamlined—or even timely—processing of cable landing license applications will have large and costly consequences. The Commission mistakenly concluded that its rules, including the new Section 1.767(k)(4), would impose a maximum delay of six months and that such delay was "minimal."[15] But given the extreme time pressures involved with undersea cable projects, "time to market" is of utmost importance, as the Commission itself has recognized.[16] In downplaying the impact of its new CZMA rules, the Commission seems to have assumed that cable operators and suppliers have much greater

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[14] The only possible role for the federal agency arises from Section 930.54(b) of NOAA's rules, which requires either the federal agency or the applicant to provide constructive or actual notice of an unlisted federal license or permit application. 15 C.F.R. § 930.54(b).

[15] *Order* at ¶ 52.

[16] *Review of Commission Consideration of Applications under the Cable Landing License Act, Report and Order*, 16 FCC Rcd. 22,167, 22,168 ¶ 1 (2001) ("*Submarine Cable Streamlining Order*") (noting that "[t]he measures also are designed to enable submarine cable applicants and licensees to respond to the demands of the market with minimal regulatory oversight and delay, saving time and resources for both industry and government").

flexibility in addressing potential delays than they, in fact, have. To the contrary, even the slightest delay has the ability to affect the timing and cost of deploying manufacturing resources, cable storage facilities, personnel, and cable ships.[17] The current worldwide shortage of cable ships has made accurate ship scheduling all the more important.[18]

The Commission also ignored the possibility of compound delays by assuming that a cable operator would be able to begin construction immediately at the end of any delay period. To the contrary, even if adequate cable installation resources are available, and even if the information requirements for the state process do not create additional delay beyond the six-month deadline for state action on a consistency certification, a six-month delay could push installation activities outside of acceptable weather or fishing-season timeframes. The Commission failed to address anywhere the concerns that cable operators and their contractors could be held hostage by *any* particular state process, given that the new CZMA rules condition the availability of streamlined processing on the certification that no state will subject the application to CZMA review. Submarine cable operators typically apply for cable landing licenses toward the beginning of a cable project timeline, as a cable landing license allows a cable operator and its contractors to commence construction on particular segments and cable stations as soon as they receive the necessary state, local, and Army Corps permits. Under the FCC's new rules, however, if a particular state's consistency certification process delays issuance of the cable landing license, the cable operator and its contractors are barred from commencing construction with respect to the other segments in U.S. waters until the state concludes its process and the Commission issues that license.[19] Simultaneous construction of all segments following such licensing is not a feasible workaround, particularly given the other resource, weather, and fishing variables.

***Second,* the proposed rule duplicates existing record keeping requirements.** Although both a cable landing license and an Army Corps of Engineers permit are required to construct an undersea cable system, the CZMA should apply only to the Army Corps of Engineers permit—the federal permit that must always be obtained before installing infrastructure in navigable waters (under Section 10 of the Rivers and Harbors Act) and

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[17] *See* Comments of the North American Submarine Cable Association, IB Docket No. 04-47, at 11-12 (filed May 6, 2004) ("NASCA Comments").

[18] *See, e.g.*, *Close to Finalizing Bakun Cable Deal*, THE EDGE DAILY (July 23, 2007) (noting "global shortage of laying ships" and that the shortage of such ships can compound contracting delays), *available at* <http://www.theedgedaily.com/cms/content.jsp?id=com.tms.cms.article.Article_f6ffbfd8-cb73c03a-180a8b70-246884f0>.

[19] NASCA Comments at 11-12.

additionally for impacting a wetland (under Section 404 of the Clean Water Act). Indeed, states have been following this rule of their own accord for decades. In the 35 years since the CZMA was enacted, no state or other entity has ever requested CZMA modifications to the Commission's cable landing license procedures or argued that such changes were necessary. Instead, coastal states have chosen to review submarine cable projects through the associated Army Corps of Engineers permit process.

In its *Order*, the Commission objected to this interpretation of the CZMA, in part, on the grounds that the Army Corps permit process and associated CZMA review would not cover a scenario in which a cable operator lands or operates a new cable system without constructing it. But that scenario is expressly precluded by the Commission's own rules, which require that "each licensee of a cable landing license granted on or after March 15, 2002" comply with the routine condition that "the location of the cable system within the territorial waters of the United States of America, its territories and possessions, and upon its shores shall be in conformity with plans approved by the Secretary of the Army."

As to CZMA review of a license to "operate" a cable system, the only circumstance under which an applicant would seek a cable landing license for the operation of a cable separate from its landing and construction is when there has been a change of ownership in the cable system—a circumstance which the Commission expressly exempted from the its CZMA consistency rules. That exemption makes sense, since it is only the physical installation of a new cables system (not, for example, its mere change in ownership) that has any potential to "affect[]" the coastal zone.

The Commission's Section 1.767(k)(4), however, would require an applicant to obtain the information concerning the same state consistency reviews for the same activity twice, with no corresponding benefit to the state or the public interest. Such a duplicative and burdensome information collection effort violates the PRA.

***Third,* the proposed rule lacks any demonstrable, practical utility.** In short, requiring cable landing license applicants to certify that no state requires CZMA review of the application serves no purpose. There is no benefit to the Commission, which wrongly believed that it had to adopt this requirement to comport with the CZMA.[20] There is no benefit to the states, which have never sought to subject cable landing license applications to CZMA review and are in no way foreclosed from doing so under pre-existing regulations. The Commission has failed to articulate, let alone demonstrate, that the certification requirement has any practical utility.

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[20] *Order* at ¶ 49.

In sum, the Commission's new certification requirement in Section 1.767(k)(4) imposes unnecessary burdens on cable landing license applicants that duplicate existing regulatory requirements and serve no agency function or practical purpose. The Commission has not shown—and indeed, cannot show—otherwise. Accordingly, the Commission should withdraw Section 1.767(k)(4).

Respectfully submitted,

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EXHIBIT A:

North American Submarine Cable Association Consolidated Petition for Reconsideration and Petition to Defer Effective Date, IB Docket No. 04-47 (filed Oct. 25, 2007)

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of Amendment of Parts 1 and 63 of the Commission's Rules	IB Docket No. 04-47

CONSOLIDATED PETITION FOR RECONSIDERATION AND PETITION TO DEFER EFFECTIVE DATE

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25 October 2007

SUMMARY

The Commission's new cable landing license rules, which purport to implement the Coastal Zone Management Act ("CZMA"), are unnecessary and otherwise flawed as a matter of law, unworkable at a practical level, and effectively gut the Commission's submarine cable streamlining rules without any identifiable regulatory benefit. The North American Submarine Cable Association ("NASCA") therefore petitions the Commission to reconsider and rescind these rules as ill-conceived and sought by no one—not even by the National Oceanic and Atmospheric Administration ("NOAA"), which oversees CZMA implementation. NASCA further petitions the Commission to defer the effective date of the certification requirement in the new Section 1.767(k)(4)—the effective date of which has not yet been published in the Federal Register—pending resolution of any petitions for reconsideration, including this one.

NASCA's petition for reconsideration consists of five parts. *First*, NASCA explains that the CZMA does not require the FCC to promulgate any rules for the processing of cable landing licenses. *Second*, NASCA explains that because the Commission failed to account appropriately for states' authority to review "unlisted activities," cable landing license applicants cannot comply with the Commission's CZMA rules as adopted. *Third*, NASCA argues that the Commission erred in assessing the burdens and benefits of its new CZMA rules, mischaracterizing significant delays as "minimal," effectively gutting and trivializing its much-admired streamlined processing rules for submarine cables, and failing to reconcile its new rules with Commission policies encouraging investment and infrastructure development. *Fourth*, NASCA argues that the Commission's new CZMA rules are, as a practical matter, unworkable. *Fifth*, NASCA argues that the Commission's new CZMA rules violate U.S. WTO commitments regarding licensing criteria.

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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of Amendment of Parts 1 and 63 of the Commission's Rules	IB Docket No. 04-47

CONSOLIDATED PETITION FOR RECONSIDERATION AND PETITION TO DEFER EFFECTIVE DATE

The Commission's new cable landing license rules, which purport to implement the Coastal Zone Management Act ("CZMA"), are unnecessary and otherwise flawed as a matter of law, unworkable at a practical level, and effectively gut the Commission's submarine cable streamlining rules without any identifiable regulatory benefit.[1] The North American Submarine Cable Association ("NASCA") therefore petitions the Commission to reconsider and rescind these rules as ill-conceived and sought by no one—not even by the National Oceanic and Atmospheric Administration ("NOAA"), which oversees CZMA implementation. NASCA further petitions the Commission to defer the effective date of the certification requirement in the new Section 1.767(k)(4)— the effective date of which has not yet been published in the Federal Register—pending resolution of any petitions for reconsideration, including this one.

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[1] *Amendment of Parts 1 and 63 of the Commission's Rules, Report and Order*, FCC 07-118, IB Docket No. 04-47, 22 FCC Rcd. 22,398 (2007) ("Order"); *id.,* Appendix, Final Rules, 47 C.F.R. note to § 1.767(a)(10), § 1.767(k)(4).; Coastal Zone Management Act of 1972, 16 U.S.C. §§ 1451-64 ("CZMA").

In petitioning the Commission for reconsideration, NASCA must point out that neither it nor any of its members seeks in any way to evade state or local environmental or land-use regulations. To the contrary, NASCA's members regularly work with states, municipalities, the Army Corps, and in certain situations NOAA itself to ensure compliance with environmental and land-use laws, regulations, and ordinances, including state coastal zone management plans. What NASCA *does* object to is the Commission's needless disruption and inversion of the existing permitting processes for undersea cables and its imposition of burdensome and duplicative requirements that go far beyond the CZMA's requirements and evidence no demonstrable regulatory or environmental benefit.

NASCA is a non-profit association of submarine cable owners, submarine cable maintenance authorities, and prime contractors for submarine cable systems.[2] For decades, NASCA's members have worked with government agencies and other concerned parties—such as commercial fishermen and private environmental organizations—to ensure that submarine cables do not harm the marine or coastal environment or unreasonably constrain the operations of others in that environment.

NASCA's petition for reconsideration consists of five parts. *First*, NASCA explains that the CZMA does not require the Commission to promulgate any rules for the processing of cable landing licenses. *Second*, NASCA explains that because the Commission failed to account appropriately for states' authority to review "unlisted activities," cable landing license applicants cannot comply with the Commission's CZMA rules as adopted. *Third*, NASCA argues that the

[2] NASCA's current members include: Alaska United Fiber System Partnership; Alcatel-Lucent Submarine Networks; Apollo Submarine Cable System Ltd.; AT&T, Inc.; Brasil Telecom GlobeNet; Columbia Ventures - Hibernia Atlantic; Columbus Networks; Global Marine Systems Limited;; Level 3 Communications, LLC; Southern Cross Cables Limited; Sprint Communications Corp.; Teleglobe-VSNL; Tyco Telecommunications (US) Inc.; and Verizon Business.

Commission erred in assessing the burdens and benefits of its new CZMA rules, mischaracterizing significant delays as "minimal," effectively gutting and trivializing its much-admired streamlined processing rules for submarine cables, and failing to reconcile its new rules with Commission policies encouraging investment and infrastructure development. *Fourth*, NASCA argues that the Commission's new CZMA rules are, as a practical matter, unworkable. *Fifth*, NASCA argues that the Commission's new CZMA rules violate U.S. WTO commitments regarding licensing criteria.

I. THE CZMA DOES NOT REQUIRE THE FCC TO PROMULGATE RULES WITH RESPECT TO PROCESSING OF CABLE LANDING LICENSE APPLICATIONS

Nothing in the CZMA requires the Commission to amend its cable landing license rules to comport with the CZMA consistency review process. Even assuming that the CZMA applies to cable landing licenses—a conclusion that NASCA nevertheless disputes—NOAA, as the agency responsible for administering the CZMA, has promulgated rules interpreting the CMZA that fully address its application to cable landing licenses. The Commission's new CZMA rules are therefore inconsistent with the controlling NOAA regulations, duplicative, and unnecessary. As discussed in parts III and IV below, these rules consequently impose severe burdens on undersea cable operators and are otherwise unworkable.

In the 35 years since the CZMA was enacted, the Commission has considered and granted untold numbers of cable landing licenses without any CZMA-related objections or concerns. There is simply no legal or policy reason to impose burdensome CZMA requirements now.

A. The FCC's CZMA Rules Needlessly Duplicate NOAA's Existing Consistency-Certification Requirements

The Commission seemed to premise its new rules on the belief that the CZMA obligates it to require that a cable landing license application include all required CZMA consistency certifications and to prevent processing (much less streamlined processing) of cable landing license applications unless an applicant certifies that the cable system will not be subject to any state consistency review procedures.[3] But the CZMA, as it has been interpreted and implemented by NOAA, places no such obligation on the Commission. Because NOAA's implementing rules already fully account for state CMZA review for the Commission's cable landing license procedures, there is no legal basis for the Commission's decision.

The CZMA provides:

> After final approval by the Secretary [of Commerce, as delegated to NOAA] of a state's management program, any applicant for a required Federal license or permit to conduct an activity, in or outside of the coastal zone, affecting any land or water use or natural resource of the coastal zone of that state shall provide in the application to the licensing or permitting agency a certification that the proposed activity complies with the enforceable policies of the state's approved program and that such activity will be conducted in a manner consistent with the program.[4]

Congress therefore delegated to NOAA regulatory authority over the state CZMA certification process and CZMA application requirements for federal license activities in or outside the coastal zones. Under NOAA's CZMA regulations, if a state wants to subject a type of federal license or permit to consistency review, the state must "list" the license or permit in its federally approved coastal management plan.[5] If a license is not listed, it is referred to as an "unlisted

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[3] *See* Order ¶¶ 44, 45.

[4] 16 U.S.C. § 1456(c)(3)(A) (2007) (emphasis added).

[5] 15 C.F.R. § 930.53(a).

activity," and the state must seek NOAA approval to subject it to CZMA review.[6] In either case, the state must obtain a determination from NOAA that the license or activity "will have reasonably foreseeable effects on the uses or resources of the state's coastal zone."[7] Thus, for consistency review to apply to a license, it must be expressly identified by the states and approved by NOAA as subject to CZMA review.

For the past three decades, NOAA's existing regulatory scheme has proved more than adequate to provide states full CZMA review of proposed new undersea cable systems landing in the United States. No state or other entity has ever requested CZMA modifications to the Commission's cable landing license procedures or argued that such changes were necessary. Indeed, no state has listed cable licenses in their coastal plan and no state has sought NOAA approval to review a cable landing license as an unlisted activity.[8] Instead, coastal states have chosen to review submarine cable projects through the associated Army Corps of Engineers permit process under the Rivers and Harbors Act of 1899 and the Clean Water Act[9]—a permit

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6 *Id.* § 930.54(a)(1).

7 Reply Comments of the National Oceanic and Atmospheric Administration at 5, Amendment of Parts 1 and 63 of the Commission's Rules, IB Docket 04-47 (filed June 3, 2004) ("NOAA Reply Comments").

8 NOAA suggested in an *ex parte* filing that the State of New Jersey was considering listing a Commission-issued cable landing license. *See* NOAA *Ex Parte* Notice, IB Docket 04-47 (filed Oct. 4, 2004) ("NOAA Oct. 4, 2004, *Ex Parte*"). In fact, New Jersey has not pursued such a proposal and has not made such a listing. *See* New Jersey Coastal Management Program, Federal Consistency Listings: Federal Activities Licenses, Permits and Assistance Programs (Aug. 1980), *available at* <http://www.state.nj.us/dep/cmp/1980_fc_approvedlist.pdf>.

9 *See* Rivers and Harbors Act of 1899 § 10, 33 U.S.C. § 403; Clean Water Act § 404, 33 U.S.C. § 1344.

required under the Commission's existing rules before construction of an undersea cable can begin.[10]

The Commission's CZMA rules, however, would require an applicant to obtain the same state consistency review for the same activity twice, with no corresponding benefit to the state or the public interest. Such "duplicative effort and unnecessary delay" cannot be reconciled with the objectives of NOAA's implementing regulations.[11]

The Commission seemed to believe that it had to adopt its new rules to satisfy its "CZMA responsibility as the Federal licensing agency."[12] Not so. As interpreted by NOAA, the CZMA does not obligate federal licensing agencies to promulgate any rules for CZMA review. Indeed, where, as here, no state has listed or sought unlisted activity review of a license, the federal licensing agency simply has *no* role in state CZMA consistency review processes.[13]

B. The Commission's Existing Cable Landing License Rules Do Not Foreclose States From Seeking CZMA Consistency Review

The Order's concerns about foreclosing state's future CZMA rights are also unfounded.[14] The Commission's existing rules do nothing to foreclose the states from deciding in the future to list cable landing licenses in their coastal management plans or to seek certification review of a

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[10] 47 C.F.R. § 1.767(g)(2) (providing that "the location of the cable system within the territorial waters of the United States of America, its territories and possessions, and upon its shores shall be in conformity with plans approved by the Secretary of the Army.").

[11] 15 C.F.R. § 930.1(c) (stating that NOAA's federal consistency regulations seek "[t]o provide flexible procedures which foster intergovernmental cooperation and minimize duplicative effort and unnecessary delay, while making certain that the objectives of the federal consistency requirement of the Act are satisfied.")

[12] Order ¶ 49.

[13] The only possible role for the federal agency arises from Section 930.54(b) of NOAA's rules, which requires either the federal agency or the applicant to provide constructive or actual notice of an unlisted federal license or permit application. 15 C.F.R. § 930.54(b).

[14] *See* Order ¶ 49.

particular cable landing license application. As NOAA explained to the Commission, because NOAA's regulations already "address *potential* state CZMA review of commission licenses," there was no need to modify the cable landing license regulations.[15]

In any event, since no state has ever sought CZMA review of a cable landing license in the 35 years since the CZMA was enacted, the FCC's decision to modify its rules is wholly premature. If a state were to list the cable landing license in its coastal management plan or seek permission to review a particular application, NOAA would need to determine whether the license is subject to the CZMA, *i.e.*, a license that "affect[s] any land or water use or natural resource of the coastal zone" state. And, under NOAA regulations, a state can only amend its list of activities requiring CZMA review or obtain CZMA review of a particular unlisted activity after notice and consultation with the Federal licensing agency.[16] The Commission would have adequate opportunity at that time to make an informed decision about whether any changes to its cable landing procedures would be necessary. By choosing to amend its rules now, in the absence of any actual state request for review, the Commission has drafted rules that are not only unnecessary and duplicative, but also divorced from the current state of the law.

C. The Commission Should Have Deferred to NOAA's Interpretation that No New Rules Were Necessary

NOAA clearly and rightfully opposed the Commission's adoption of CZMA rules as unnecessary.[17] As interpreted by NOAA, the CZMA leaves it up to the states, subject to NOAA approval, whether to require an applicant for a federal license to obtain consistency review and certification. NOAA concluded that amending the "FCC's cable landing license regulations to

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[15] NOAA Oct. 4, 2004, *Ex Parte* at 1 (emphasis added).

[16] 15 C.F.R. § 930.53(2)(c); *id.* § 930.54(a) & (c).

[17] *See generally* NOAA Reply Comments.

ensure compliance . . . will only serve to complicate the [CZMA review] process and burden applicants and states with additional, unnecessary filing requirements."[18] Under NOAA's reading of the statute, the CZMA did not require the Commission to promulgate the rules adopted in the Order. To the contrary, NOAA advised the Commission "to modify its cable landing license rules *only* to include notification to an applicant that the Commission license may have to comply with the CZMA."[19]

As the Order itself recognizes, NOAA—and not the Commission—is the federal agency "statutorily charged with implementing the CZMA."[20] Upon judicial review, therefore, NOAA, not the Commission, would be entitled to *Chevron* deference.[21] The Commission should accord to NOAA the same level of deference that agency would receive from a reviewing court and reconsider its adoption of rules that rest on an interpretation of the CZMA that conflicts with how NOAA has read and implemented the statute.

D. Issuance of a Cable Landing License Cannot "Affect" a State's Coastal Zone.

Because no state has ever sought to subject a cable landing license application to CZMA review, NOAA has never been called upon to determine whether a cable landing license is a

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18 *Id.* at 8.

19 NOAA Oct. 4, 2004, *Ex Parte* at 1.

20 Order ¶ 45.

21 *See generally,* Melanie E. Walker, *Congressional Intent and Deference to Agency Interpretations of Regulations*, 66 U. Chi. L. Rev. 1341, 1361 (1999) ("*Chevron* deference only applies to the statute the agency is charged with implementing. Another agency may need to interpret the statute from time to time, but Congress did not delegate policymaking authority under the statute to the other agency. Therefore, the second agency's interpretation is not entitled to deference.") (footnotes omitted); *see, e.g., Pauley v. BethEnergy Mines,* 501 U.S. 680, 707 (U.S. 1991) (explaining that "[n]othing in . . .Chevron jurisprudence requires [a court] to defer to one agency's interpretation of another agency's ambiguous regulations"); *Division of Military and Naval Affairs, State of New York v Federal Labor Relations Authority,* 683 F.2d 45, 48 (2d Cir. 1982) (holding that "no great deference is due an agency interpretation of another agency's statute").

"Federal license or permit . . . affecting any land or water use or natural resource of the coastal zone" under the statute. While NASCA believes this is a question for NOAA rather than the FCC, NASCA submits that the CZMA would not apply to cable landing licenses because the issuance of a cable landing license, by itself, cannot "affect[]" the coastal zone.

A cable landing license cannot "affect[]" a land or water use or natural resource in the coastal zone, so as to trigger a consistency review, because it is a preliminary political and diplomatic permission, not a construction authority. As provided in the Cable Landing License Act, the license is issued by the president consistent with U.S. foreign policy, national security, telecommunications connectivity, and competition objectives.[22] The Commission—acting on delegated authority of the president[23]—has adopted rules to further these policies, seeking detailed information of cable landing license applicants with respect to nationality, ownership, markets to be served, affiliations with foreign carriers, and system capacity.[24] While necessary, a

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[22] *See* "An act relating to the Landing and Operation of Submarine Cables in the United States," *codified at* 47 U.S.C. §§ 34-39 ("Cable Landing License Act"); *Id.* § 35 (providing that "[t]he President may withhold or revoke such license when he shall be satisfied after due notice and hearing that such action will assist in securing rights for the landing or operation of cables in foreign countries, or in maintaining the rights or interests of the United States or of its citizens in foreign countries, or will promote the security of the United States, or may grant such license upon such terms as shall be necessary to assure just and reasonable rates and service in the operation and use of cables so licensed. The license shall not contain terms or conditions granting to the licensee exclusive rights of landing or of operation in the United States.").

[23] *See* Executive Order No. 10,530 § 5(a), *codified at* 3 C.F.R. 189 (1954-1958), *reprinted in* 3 U.S.C. § 301 app. (1988) (delegating to the Commission the authority to license submarine cables and receive applications therefor, but requiring State Department consent by a presidential appointee (who has been confirmed with the advice and consent of the Senate) following consultations with the Departments of Commerce and Defense—a consultation process that typically focuses on national security and law enforcement concerns).

[24] 47 C.F.R. § 1.767(a). Indeed, the Order did not apply its CZMA consistency rules for cable landing license applications involving changes of ownership because such applications would not have a coastal "affect." Order ¶ 47. But the same type of ownership considerations are the focus of the Commission's cable landing license review process for the initial application.

cable landing license does not provide sufficient authority to commence landing or operation of a submarine cable. Indeed, the preliminary nature of a cable landing license is clear from the Commission's own rules, which allow applicants to apply for and obtain a cable landing license by providing only a general geographic description of the landing points, such as the name of a town or city, subject to submission of a specific geographic description that can be filed up to 90 days before actual construction begins.[25] Moreover, the Commission explicitly requires all cable landing licensees to obtain prior approval for their construction plans from the Army Corps of Engineers, whose environmental permitting process the states have almost uniformly subjected to CZMA consistency reviews and which ensures full review of every submarine cable project in light of the states' coastal management programs.

At best, whether a license is one "affecting" a state's coastal zone is ambiguous and the statute is subject to reasonable agency interpretation. Where a planned project requires multiple federal licenses and permits, NASCA submits that the CZMA should apply to only one permit, and for that permit to be the one that is required to begin the activity "affecting" the state's coastal zone. For submarine cables, that activity is the physical work associated with cable installation. Therefore, although both a cable landing license and an Army Corps of Engineers permit are required to construct an undersea cable system, the CZMA should apply only to the Army Corps of Engineers permit—the federal permit that must always be obtained before installing infrastructure in navigable waters (under Section 10 of the Rivers and Harbors Act) and additionally for impacting a wetland (under Section 404 of the Clean Water Act). Indeed, as described above, states have been following this rule of their own accord for decades. This

[25] *See* 47 C.F.R. § 1.767(a)(5).

reasonable interpretation of the CZMA, which is consistent with longstanding practice, counsels against the FCC's adoption of any CZMA-related cable landing license regulations.

In its Order, the Commission objected to this interpretation of the CZMA, in part, on the grounds that the Army Corps permit process and associated CZMA review would not cover a scenario in which a cable operator lands or operates a new cable system without constructing it.[26] But that scenario is expressly precluded by the Commission's own rules, which require that "each licensee of a cable landing license granted on or after March 15, 2002" comply with the routine condition that "the location of the cable system within the territorial waters of the United States of America, its territories and possessions, and upon its shores shall be in conformity with plans approved by the Secretary of the Army."[27]

As to CZMA review of a license to "operate" a cable system, the only circumstance under which an applicant would seek a cable landing license for the operation of a cable separate from its landing and construction is when there has been a change of ownership in the cable system—a circumstance which the Commission expressly exempted from the its CZMA consistency rules.[28] That exemption makes sense, since it is only the physical installation of a new cables system (not, *e.g.,* its mere change in ownership) that has any potential to "affect[]" the coastal zone.

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[26] *See* Order ¶ 46.

[27] 47 C.F.R. § 1.767(g)(2). The Secretary of the Army has delegated that authority to the Army Corps of Engineers. *See* 33 C.F.R. § 322.5 (noting that "[t]he Secretary of the Army has delegated to the Chief of Engineers the authority to issue or deny section 10 permits" issued pursuant to the Rivers and Harbors Act of 1899).

[28] *See* Order ¶ 47.

II. BECAUSE THE COMMISSION FAILED TO ACCOUNT APPROPRIATELY FOR STATES' AUTHORITY TO REVIEW "UNLISTED ACTIVITIES," CABLE LANDING LICENSE APPLICANTS CANNOT COMPLY WITH THE RULES AS ADOPTED

The Commission's new rules require cable landing license applicants "before filing their applications . . . [to] determine whether they are required to certify" that their activities comply with the CZMA and to "include any consistency certification required by" the CZMA in their application.[29] In making that determination, applicants are instructed to "verify . . . that no state has sought or received NOAA approval to review the application as an unlisted activity."[30] The rules also require applicants seeking streamlined review to certify that "the submarine cable system will not be located in any states where the cable landing licenses may be subject to the consistency certification requirements" of the CZMA.[31] But full compliance with these rules is impossible because they are flatly inconsistent with NOAA's regulatory scheme for state review of unlisted license activities.

NOAA's regulations require the states to "monitor unlisted federal license or permit activities" such as applications for cable landing licenses.[32] For these unlisted activities, "State agencies shall notify Federal agencies, applicants, and the Director of unlisted activities affecting any coastal use or resource which require State agency review."[33] If notified of the federal license or permit application, the state agency must request any CZMA review within 30 days,

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[29] Order, Appendix: Final Rules, note to § 1.767(a)(10).

[30] *Id.*

[31] *Id.* § 1.767(k)(4).

[32] 15 C.F.R. § 930.54(a).

[33] *Id.*

after which it waives its right to review the unlisted activity.[34] If the state does not receive notice of the federal license, however, it can request consistency review at any time.[35]

Under NOAA's regulations, therefore, all states retain the authority, subject to NOAA approval, to review unlisted license activities. And a number of states have explicitly codified this authority in their regulations governing the CZMA consistency review process.[36] Yet, in adopting its new rules, the Commission failed to appropriately account for states' authority to review unlisted license activities.[37]

Because a state can choose to exercise its authority to review an application for a cable landing license as an unlisted authority, it is impossible for an applicant to comply with the Commission's new rules, which compel applicants to make definitive determinations about whether CZMA certifications are required "before filing their applications."[38] States would not even seek NOAA approval for CZMA review of an unlisted activity until *after an application is filed.* Nor can an applicant seeking streamlined review ever conclusively certify that the cable system "will not be located in any states where the cable landing licenses may be subject to" CZMA consistency review.[39] An applicant can never be sure when filing its application or certifying its request for streamlining, that a state will not subsequently request review of the application as an unlisted license activity subject to CZMA consistency certification. Thus, applicants will always run the risk of wrongly certifying that no CZMA certification is required.

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[34] *Id.*

[35] *Id.*

[36] *See, e.g.,* 70 Del. Code Regs. § 600-001 (2007); 20070214 Indiana Reg. 312070085 (2007); 301 Mass. Code Regs. § 21.08 (2007); Or. Admin. R. 660-035-0050 (2007).

[37] As discussed above, no state has yet sought review of a cable landing license application pursuant to this authority. But nothing would stop a state from doing so in the future.

[38] Order, Appendix, Final Rules: note to 47 C.F.R. § 1.767(a)(10).

[39] *Id.* § 1.767(k)(4).

III. THE COMMISSION ERRED IN ASSESSING THE BURDENS AND BENEFITS OF ITS NEW CZMA RULES

A. The Commission Mistakenly Concluded that Its Rules Would Impose a Maximum Delay of Six Months and that Such Delay Was "Minimal"

The Commission failed to consider evidence in the record that its new CZMA rules would delay cable construction and the activation of new capacity. Instead, the Commission concluded summarily that its new rules would "result in only minimal delays in the inauguration of new service."[40] The Commission also erroneously concluded that "the construction actual delay [sic] attributable to the certification process, will be less than six months, whether the licensing action takes place pursuant to a streamlined applications or non-streamlined application."[41]

First, the Commission erred in characterizing its estimate of a six-month delay as "minimal." Given the extreme time pressures involved with undersea cable projects, "time to market" is of utmost importance, as the Commission itself has recognized.[42] In downplaying the impact of its new CZMA rules, the Commission seems to have assumed that cable operators and suppliers have much greater flexibility in addressing potential delays than they, in fact, have. To the contrary, even the slightest delay has the ability to affect the timing and cost of deploying

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40 Order ¶ 52.

41 *Id.*

42 *Review of Commission Consideration of Applications under the Cable Landing License Act, Report and Order*, 16 FCC Rcd. 22,167, 22,168 ¶ 1 (2001) ("*Submarine Cable Streamlining Order*") (noting that "[t]he measures also are designed to enable submarine cable applicants and licensees to respond to the demands of the market with minimal regulatory oversight and delay, saving time and resources for both industry and government").

manufacturing resources, cable storage facilities, personnel, and cable ships.[43] The current worldwide shortage of cable ships has made accurate ship scheduling all the more important.[44]

Second, the Commission erred in estimating that the state process would take a maximum of six months. In particular, the Commission failed to account for the fact that compliance with the procedural and information requirements imposed by particular states could contribute to additional, and substantial, delay. The Commission calculated its six-month-delay estimate based on the deadline by which a state must respond to such a filing.[45] But as NOAA's federal consistency certification regulations and the coastal zone management plans of many states make clear, the states can impose, and have imposed, significant information requirements which a consistency certification must address, some of which may not be known until initial interactions with the state commence.[46] Thus, an already-disastrous six-month delay could become catastrophic.

Third, the Commission ignored the possibility of compound delays by assuming that a cable operator would be able to begin construction immediately at the end of any delay period. To the contrary, even if adequate cable installation resources are available, and even if the information requirements for the state process do not create additional delay beyond the six-month deadline for state action on a consistency certification, a six-month delay could push installation activities outside of acceptable weather or fishing-season timeframes. Thus, a six-

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[43] *See* Comments of the North American Submarine Cable Association, IB Docket 04-47, at 11-12 (filed May 6, 2004) ("NASCA Comments").

[44] *See, e.g.*, *Close to Finalizing Bakun Cable Deal*, THE EDGE DAILY (July 23, 2007) (noting "global shortage of laying ships" and that the shortage of such ships can compound contracting delays), *available at* <http://www.theedgedaily.com/cms/content.jsp?id=com.tms.cms.article.Article_f6ffbfd8-cb73c03a-180a8b70-246884f0>.

[45] Order ¶ 52 (citing 16 U.S.C. § 1456(c)(3)(A)).

[46] *See* 15 C.F.R. § 930.58(a).

month delay could easily turn into much longer delay if the delay period ended at the beginning of, or during, winter sea conditions (which last from October to March in the Northern Hemisphere), hurricane season in the Caribbean and mid-Atlantic (which lasts from June through November), or various fishing seasons (*e.g.*, Oregon Dungeness crab season, from December to August).

Fourth, the Commission failed to address anywhere the concerns that cable operators and their contractors could be held hostage by *any* particular state process, given that the new CZMA rules condition the availability of the cable landing license on the concurrence of *all* states. As NASCA explained in its comments, submarine cable operators typically apply for cable landing licenses toward the beginning of a cable project timeline, as a cable landing license allows a cable operator and its contractors to commence construction on particular segments and cable stations as soon as they receive the necessary state, local, and Army Corps permits.[47] Under the FCC's new rules, however, if a particular state's consistency certification process delays issuance of the cable landing license, the cable operator and its contractors are barred from commencing construction with respect to the other segments in U.S. waters until the state concludes its process and the Commission issues that license.[48] Simultaneous construction of all segments following such licensing is not a feasible workaround, particularly given the other resource, weather, and fishing variables.

B. The Commission Needlessly Gutted and Trivialized the Submarine Cable Streamlining Rules

The Commission's CZMA rules needlessly gut the Commission's streamlined processing rules—a particularly distressing outcome for NASCA's members given their efforts over many

[47] NASCA Comments at 11.

[48] *Id.*

years working in a multi-agency process with the Commission and the Departments of State, Commerce, and Defense to improve the cable landing license application and grant process.[49] After adoption in 2001, the submarine cable streamlining rules drastically reduced the duration of the Commission's licensing process, from a range of 137 to 451 days under the old rules to 45 days from the issuance of the initial public notice under the new rules.[50] As the Commission described, the streamlining rules:

> are designed to enable submarine cable applicants and licensees to respond to the demands of the market with minimal regulatory oversight and delay, saving time and resources for both industry and government, while preserving the Commission's ability to guard against anti-competitive behavior. As a result, the costs of deploying submarine cables should decrease to the ultimate benefit of U.S. consumers.[51]

The Commission's new CZMA rules undermine these objectives.

In adopting its new CZMA rules, the Commission also trivialized the streamlined processing rules by stating—erroneously—that the certification process in the new CZMA rules would contribute a maximum six-month delay for a cable landing license application, whether streamlined or non-streamlined.[52] The point of the streamlining rules was to ensure that FCC licensing could take little more than 45 days, not six months.

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[49] *See* U.S. Department of State Media Note, Streamlined Procedures for Executive Branch Review of Submarine Cable Landing License Requests (rel. Dec. 20, 2001) (noting that the streamlined procedures "are intended to accomplish several policy goals, among which are to help U.S. companies remain competitive in the important telecommunications market without jeopardizing national security, and to facilitate more efficient use of resources by the Executive Branch and the FCC"), *available at* <http://www.state.gov/r/pa/prs/ps/2001/6951.htm>

[50] *See Submarine Cable Streamlining Order*, 16 FCC Rcd. at 22,189-91 ¶ 45 & n.98.

[51] *Id.* at 22,168 ¶ 1.

[52] Order ¶ 52.

C. The Commission Failed to Reconcile Its New Rules with Its Policy of Encouraging Investment and Infrastructure Development

The Commission failed to reconcile its new CZMA rules with its longstanding policy of encouraging investment and infrastructure development in the undersea cable sector. As NASCA noted in its comments, cable operators have long relied on cable landing licenses to assist them in addressing investment risk, signaling to investors and lenders that a submarine cable project is consistent with U.S. foreign policy, national security, telecommunications connectivity, and competition objectives.[53] Consequently, they have sought cable landing licenses early in the permitting process for particular undersea cable projects. Recognizing this, the Commission has long sought to expedite the cable landing licensing process in order to avoid interfering with the investment and financing decisions of submarine cable operators.[54] In particular, the Commission has acknowledged industry concerns that an onerous and lengthy cable landing licensing process deters investors in submarine cable projects until they are licensed.[55]

Yet in adopting rules that delay the processing of a cable landing license application absent a consistency certification and that preclude the issuance of a cable landing license absence evidence of state concurrence thereto, the Commission failed to reconcile such rules

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[53] NASCA Comments at 12-13.

[54] *See, e.g., Submarine Cable Streamlining Order*, 16 FCC Rcd. at 22,234, app. C at ¶ 19 (noting that "[t]he procedures adopted in the Report and Order are designed to provide more certainty and flexibility for applicants, encourage investment and infrastructure development by multiple providers, expand available submarine cable capacity, and decrease application processing time.").

[55] *See 1998 Biennial Regulatory Review – Review of International Common Carrier Regulations, Report and Order*, 14 FCC Rcd. 4909, 4936 ¶ 65 (1999), *On Reconsideration*, 14 FCC Rcd. 7963 (1999); *Submarine Cable Streamlining Order*, 16 FCC Rcd. at 22,174-75, ¶¶ 11-12 and n.30, 22,177 ¶ 16 (noting that the Commission seeks to remain neutral as to the investment decisions of cable operators).

with its policy for encouraging investment and infrastructure deployment. Nowhere did it address concerns that its rules would needlessly interfere with in the financing decisions of operators, or contribute further to construction delays and activation of capacity on U.S. international routes.

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In adopting its new CZMA rules, the Commission has wholly failed to justify the imposition of new rules which no state action necessitated, which no party supported, and which the administrative record fails to support. The Commission has licensed undersea cables for the 35 years since the CZMA's effective date without such rules, and without a single state objection, so there is simply no justification for the Commission's decision to shift entirely to cable landing license applicants a burden that rests largely with the states, should they choose to bear it. The Commission's new rules will not subject any previously unreviewed undersea cable activities to new scrutiny by the states.

IV. AS A PRACTICAL MATTER, THE COMMISSION'S NEW CZMA RULES ARE UNWORKABLE

In addition to their legal infirmities, the Commission's new rules must be reconsidered because they are unworkable in practice. In several respects, the Commission failed to adequately consider the real-world consequences of its new cable landing license rules, making applicants' compliance difficult, if not impossible.

A. An Applicant Cannot Definitively Determine Whether or Not a State Requires a Consistency Certification for a Cable Landing License

In adopting its rules, the Commission seemed to assume that applicants could easily determine whether or not any state required CZMA consistency certification and include any required CZMA certification when filing an application. That does not comport with reality. In

practice, it can be extremely difficult, if not impossible, for an applicant to definitively determine whether or not a state requires a consistency certification for a cable landing license.[56]

As described in part II above, this problem is particularly acute with respect to states' authority to request CZMA consistency review of unlisted federal license activity. Under NOAA's regulations for unlisted activities, whether a state will seek such review will never be known before the cable landing license application is filed. And applicants cannot conclusively certify that a cable system will not be subject to any states consistency review because states retain the authority to seek CZMA review of a cable landing license as an unlisted activity.

In short, the Order requires cable landing license applicants to certify the certainty of something that is difficult to verify and ultimately, on some level, inherently uncertain. Thus, even the most diligent applicant cannot eliminate the risk of false certification under the new rules.

B. A Cable Landing License Is a Preliminary Permission the Application for Which Does Not Provide a State with Sufficient Information to Make a Consistency Determination

The Commission's new rules are also unworkable because cable landing license applications will not contain, and applicants may not yet possess, sufficient information for a state to make a consistency determination. NOAA's own regulations anticipate that federal

[56] Even setting aside all of the legal and practical problems with the new rules, the Commission must reconsider its new rules to specify precisely what is required for the filing, processing and grant of a cable landing license application. As adopted, the new rules are imprecise and confusing—which is not surprising given that they attempt to respond to speculative state authority that no state has ever exercised. In particular, the rules fail to clearly inform applicants exactly what they need to do to obtain a cable landing license where no state has listed cable landing license in its approved coastal management plan and no state has sought unlisted activity review of a cable landing license. Furthermore, the new rules are inconsistent with certain pre-existing cable landing license rules, such as, 47 C.F.R. § 1.767(a)(5), which allows operators to apply for cable licenses at a preliminary planning stage using only general landing points.

actions requiring consistency determinations will involve detailed site and impact information, including a detailed description of the proposed facility with maps, diagrams and technical data as needed, an evaluation of the proposal's coastal effects, and any other information specified in the state's coastal management plan.[57] As one state's consistency guidance document explains, in most cases the required information and date will already be included in the federal license or permit application.[58]

Under the Commission's rules, a cable license application does not require the submission of such detailed data and information. This is because, as described in part I.C. above, a cable landing licenses is a political and diplomatic permission that is, by its nature, preliminary. Consistent with this preliminary nature of the license, submarine cable operators typically apply for a cable landing license toward the beginning of a cable project timeline. Indeed, the Commission's rules specifically allow for an operator to apply for and obtain a cable landing license at the outset of a project using general landing points, subject to submission of detailed landing point information in advance of actual construction.[59] Thus, an applicant may not yet have the detailed information required by a state CZMA consistency review process at the time it files for its cable landing license.

V. THE COMMISSION'S NEW CZMA RULES ARE INCONSISTENT WITH U.S. WTO COMMITMENTS REGARDING LICENSING CRITERIA

The Commission's new CZMA rules fail to comport with the WTO Reference Paper requirements regarding licensing criteria, which the United States adopted as part of its schedule

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[57] 15 C.F.R. § 930.58(a).

[58] *See* New Jersey Department of Environmental Protection, Coastal Management Program, General Guidance for Federal Consistency (July 2004), *available at* <http://www.state.nj.us/dep/cmp/fc_guidance.pdf>.

[59] *See* 47 C.F.R. § 1.767(a)(5).

of commitments in basic telecommunications.[60] The Reference Paper requires the United States to make publicly available "all the licensing criteria and the period of time normally required to reach a decision concerning an application for a license."[61] As the new CZMA rules undermine the streamlining rules and fail to account for the other obvious sources of delay they impose, the Commission no longer makes publicly available "the period of time normally required" to license a submarine cable, as required by the Reference Paper.

To satisfy U.S. obligations under the Reference Paper, the Commission must establish a clear processing timeline for cable landing license applications. To achieve that end, the Commission should simply rescind its CZMA rules, consistent with the requirements of the CZMA and NOAA's implementing regulations, as no party has sought such rules from the Commission or even presented it with a real-world situation requiring such rules.

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[60] Reference Paper, Fourth Protocol to the General Agreement on Trade in Services 436 (WTO 1997) (emphasis added), *reprinted in* 36 I.L.M. 354, 367 (1997); WTO, Negotiating Group on Basic Telecommunications, Communication from the United States, Conditional Offer on Basic Telecommunications (Revision), S/GBT/W/1/Add.2/Rev.1 (Feb. 12, 1997).

[61] Reference Paper § 4.

CONCLUSION

For the reasons set forth above, NASCA respectfully requests that the Commission reconsider and rescind its new CMZA rules and defer the effective date of Section 1.767(k)(4) pending resolution of any petitions for reconsideration, including this one.

Respectfully submitted,

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25 October 2007