Before
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	
Review of Submarine Cable Landing License Rules and Procedures to Assess Evolving National Security, Law Enforcement, Foreign Policy, and Trade Policy Risks	OI Docket No. 24-523
Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1109 of the Commission's Rules	MD Docket No. 24-524

COMMENTS OF

THE NORTH AMERICAN SUBMARINE CABLE ASSOCIATION

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TABLE OF CONTENTS

INTRODUCTION AND SUMMARY

The North American Submarine Cable Association ("NASCA")—the principal nonprofit trade association for submarine cable owners, submarine cable maintenance authorities, suppliers, and providers of marine services for installation and maintenance for submarine cable system operating in North America, who own and operate the vast majority of cables landing in the United States[1]—supports the Commission's efforts to streamline the regulation of submarine cable systems and promote the security and resilience of such systems. Nevertheless, in an era of government regulations focused on efficiency and streamlining, the NPRM[2] inexplicably proposes a vast new regulatory regime that would impair U.S. connectivity, diversity, and resilience by making the United States a far less attractive market in which to land and operate submarine cables. Rather than foster collaboration between industry and government to identify and mitigate national security and law enforcement risks, the NPRM would burden submarine cable operators with extensive and unnecessary paperwork and reporting requirements, many of

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1 NASCA members include: Alaska Communications System; Alaska United Fiber System Partnership; Alcatel Submarine Networks; Aqua Comms; AT&T Corp.; Colt Technology Services; C&W Networks; Edge Network Services; EXA Infrastructure; Global Cloud Xchange; Global Marine Systems Ltd.; GlobeNet/Vtal; Google; IT International Telecom; Mertech Marine; NEC Corporation of America; OPT French Polynesia/ONATi; PC Landing Corporation; Rogers Communications; Seaborn Networks; Southern Caribbean Fiber; Southern Cross Cable Network; SubCom; Tampnet Group; Tata Communications (America); Verizon; Vodafone; and Zayo Group Ltd. *See* Member Companies, North American Submarine Cable Association, https://www.n-a-s-c-a.org/member-companies/.

2 *Review of Submarine Cable Landing License Rules and Procedures to Assess Evolving National Security, Law Enforcement, Foreign Policy, and Trade Policy Risks; Amendment of the Schedule of Application Fees Set Forth in Section 1.1102 through 1.1109 of the Commission's Rules*, Notice of Proposed Rulemaking, FCC 24-119, OI Docket No. 24-523, MD Docket No. 24-524 (rel. Nov. 22, 2024) ("*NPRM*").

which (such as the proposal to regulate customers) lack a basis in the Cable Landing License Act.[3]

The NPRM wrongly assumes that there are significant unaddressed national security and law enforcement risks, in part because it fails to account for longstanding and continuous oversight of submarine cables by the Team Telecom agencies.[4] The NPRM also improperly conflates concerns about the 7,000+ international Section 214 authorization holders over which it had little oversight with cable landing licenses for fewer than 100 systems, over which the Team Telecom agencies have near daily oversight. Consequently, the NPRM proposes burdensome, duplicative, conflicting and ultimately unnecessary regulations.

While NASCA does not object to providing the Commission with additional information with respect to submarine cable systems and their operation, as a policy matter the NPRM's proposals are inconsistent with parallel Commission efforts in the "Delete, Delete, Delete" proceeding[5] to eliminate unnecessary and burdensome rules that hinder innovation and investment. The Commission should therefore revise the NPRM's proposals to tailor them to specific regulatory needs that are not already addressed—and to rationalize the Commission's regime with Team Telecom's parallel national security regulatory regime. These regimes should be complementary, not duplicative or conflicting.

The NPRM is also inconsistent with other key Administration directives and guidance to reduce uncertainty and administrative burdens (and increase government efficiency), including

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3 47 U.S.C. § 34.

4 Committee for the Assessment of Foreign Participation in the U.S. Telecommunications Services Sector ("Team Telecom"), established by Executive Order 13913.

5 *Delete, Delete, Delete*, Public Notice, DA 25-219, GN Docket No. 25-133 (rel. Mar. 12, 2025) ("*D3 Public Notice*").

the America First Investment Policy[6] and NSM 22, referenced through the NPRM,[7] which acknowledges that "[o]wners and operators are uniquely positioned to manage risks to their individual operations and assets, including their interdependencies with other entities and sectors."[8] Far from recognizing this reality, the NPRM's proposals, coupled with Team Telecom mitigation, would result in the micromanagement of an industry that has long recognized that submarine cables are critical infrastructure and is actively engaged in protecting that infrastructure. The Commission should be endeavoring to adopt a regulatory regime that bolsters, not detracts from such activity.

Rather than adopt expansive, heavy-handed new regulations, the Commission should adopt simplified, bright-line rules that will speed licensing, standardize security mitigation conditions, and free industry and agency resources to focus on building and securing infrastructure rather than completing a mountain of paperwork requirements, on repeat.

In part I of these comments, NASCA supports the NPRM proposal to clarify and codify its licenses rules. At the same time, NASCA objects to the NPRM's proposal to broaden the licensing base to include entities, such as customers, colocation owners, and entities with *de minimis* interests,[9] that have no operational control of a system. Including such entities as licensees would result in a cumbersome regulatory regime that will ultimately harm submarine cable diversity and resilience. Also, while NASCA understands that the Commission may want

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6 *America First Investment Policy*, The White House (Feb. 21, 2025), https://www.whitehouse.gov/presidential-actions/2025/02/america-first-investment-policy/.

7 *See, e.g.*, *NPRM* ¶¶ 21, 109, 136, 146.

8 *See National Security Memorandum on Critical Infrastructure Security and Resilience*, The White House (Apr. 30, 2024), https://irp.fas.org/offdocs/nsm/nsm-22.pdf (recognizing the role of infrastructure owners in ensuring security) ("NSM 22") at 3–4.

9 *See NPRM* ¶¶ 73–84.

information regarding the ownership and location of submarine line terminal equipment ("SLTE") and therefore defining a system with reference to such SLTE may be useful (and is consistent with licensees' Team Telecom commitments), the Commission should not require every SLTE owner or operator to be a licensee, as such licensing is not necessary to ensure compliance with Commission licensing conditions or the security of submarine cables landing in the United States.

In part II, NASCA supports NPRM proposals to articulate licensee qualification requirements[10] but believes that the Commission should clarify and simplify those requirements, which should be objective, specific, and tailored to address underlying concerns. NASCA also believes that the Commission should only adopt presumptions against licensing if accompanied by clear standards for rebutting such presumptions, to include the possibility of licensing conditions and safeguards.

In part III, NASCA explains why the NPRM's proposal to require substantially more information in licensing applications, including additional ownership information, detailed system information, third party service provider information, and customer and service offering information, is overbroad, overly burdensome, and in need of significant tailoring to serve identifiable regulatory objectives.[11] NASCA does not object in principle to providing the Commission with information, but it does object to complying with overbroad or unnecessary requests. The Commission should revisit these proposals to ensure that they are not duplicating existing Team Telecom requirements and that (a) the information requested is reasonably necessary to meet an articulated Commission goal; (b) the information requested is not

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[10] *Id.* ¶¶ 27–28.

[11] *Id.* ¶¶ 92–105.

unreasonably burdensome to provide; and (c) the information is likely to be available at the time an application is filed. Many of the NPRM's proposed information requests fail to meet these basic standards. Particularly troubling are the NPRM's proposals to require detailed information about third party service providers,[12] which Team Telecom already scrutinizes, and detailed customer and contract information, most of which will be subject to confidentiality commitments. And in both cases, the NPRM fails to adequately explain what security or competition concerns the proposals will address.

In part IV, NASCA supports the NPRM proposal to use certifications to verify applicants' and licensees' compliance posture and to impose certain baseline cybersecurity and supply chain requirements.[13] However, NASCA believes that any requirements must be appropriately tailored to meet reasonable Commission objectives and remain sufficiently flexible to allow applicants and licensees to comply in a manner appropriate to their respective organizations.

In part V, NASCA supports the NPRM's proposal to engage in information sharing with industry and other governmental entities to understand and mitigate risks to submarine cable infrastructure,[14] and NASCA welcomes the opportunity to collaborate with the Commission and other agencies in achieving that goal. The Commission should ensure that any new regulatory requirements to reduce the risk of damage or promote resilience bolster rather than undermine extensive industry efforts. The Commission should also be more active in inter-agency engagement, including at the state and local levels.

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12 *Id.* ¶¶ 98–100.

13 *Id.* ¶¶ 107–112.

14 *Id.* ¶ 141.

In part VI, NASCA addresses the NPRM's periodic three-year reporting requirement.[15] While NASCA believes that periodic reports may be helpful to address information gaps, as with other NPRM proposals, the requested content should be (a) limited to what is necessary to update the record; and (b) avoid duplication with other Commission or Team Telecom reporting requirements. Certifications should also be reasonably scoped.

In part VII, NASCA strongly opposes the NPRM proposal to shorten the submarine cable license term.[16] The license term is arbitrary and has no statutory basis. Additionally, a license term serves no regulatory purpose—the Commission does not need the term to assess compliance or address other concerns. Moreover, a shorter license term would adversely affect investment (harming resilience). Retroactive application would do even more harm, upsetting existing investment arrangements and a variety of other commercial agreements, including state and local easements and permits, that are tied to the life of the system.

In part VIII, NASCA strongly supports the NPRM's proposal to streamline submarine cable licensing.[17] In doing so, the Commission should recognize and address its own role in licensing delays. Between the Commission's delay in issuing public notices and Team Telecom's increasing reliance on its ability to "stop the clock" to address additional questions or account for other internal delays, processing times are increasing and unpredictable. Further, the Commission's Standard Questions are misaligned with Team Telecom's current questionnaires, contributing to further unnecessary delay. The Commission's streamlining efforts should focus on these basic issues, as well as adopting a streamlining program for low risk applications.

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15 *Id.* ¶¶ 44–58, 180–95.

16 *Id.* ¶¶ 59–63.

17 *Id.* ¶¶ 144–46.

While the Commission's "frequent filer" proposal is a start,[18] NASCA believes that bolder proposals with more industry-wide application are appropriate. NASCA would support an approach that treats a submarine cable landing license as an infrastructure license, with a licensee's ownership and basic qualifications vetted in an initial cable licensing proceeding and additional cable projects subject to a streamlined review that focus on any specific risks raised by those projects.

In part IX, NASCA argues that the Commission should also standardize mitigation conditions, imposing such conditions by rule. Standardization would eliminate the gross unfairness of variations in mitigation terms for similarly-situated applicants and competitors and the administrative burdens that licensees face in complying with multiple mitigation instruments, requiring multiple compliance programs. It would also stop the unsustainable additive approach to Team Telecom mitigation, with more and more terms and conditions added with each successive variation.

In part X, NASCA advocates for streamlined, tailored applications for modifications, renewals (which should not be necessary in the first place) and other notices and applications. Such submissions should require information rationally related to the purpose of the application. The Commission should also clarify and codify, as proposed, those changes that would require the filing of a license modification,[19] excluding *de minimis* changes, such as the relocation of a landing point within a locality. NASCA strongly opposes, however, the proposal to require a modification application for interconnections between systems at sea that do not result in any

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[18] *Id.* ¶ 146.

[19] *Id.* ¶ 153.

new ownership or a new foreign landing point used by the licensed system.[20] NASCA also opposes the NPRM's proposal to require licensees to submit yet another restatement of ownership interests with each Foreign Carrier Affiliate notification they submit,[21] and urges the Commission instead to reassess the need for the notification requirement in the first place.

In part XI, NASCA opposes the NPRM's proposals to subject licensees to additional unnecessary burdens in its dysfunctional circuit capacity reporting regime.[22] The existing regime is based on the false premise that the Commission can reconcile total design capacity on the Cable Operator Report with aggregate capacity on the Capacity Holder Reports. This is not a problem that the Commission can solve by requiring licensees to identify all of their capacity customers and requiring non-licensee capacity holders to file reports,[23] as the capacity market is robust and includes multiple tiers in the supply chain. The Commission should focus on updating and clarifying its Reporting Manual to address industry clarification requests. It should also eliminate the Cable Operator Report, which duplicates data in the Capacity Holder Report while creating confidentiality and competition concerns.

Finally, in part XII, NASCA objects to the imposition of further regulatory fees.[24] The proposed fees are not justified and reflect excessive Commission staffing proposals for paperwork processing. Moreover, the NPRM vastly underestimates the costs of compliance imposed on the industry, both in terms of time and personnel resources. To the extent that

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20 *Id.* ¶ 156.

21 *Id.* ¶¶ 174–75.

22 *Id.* ¶¶ 208–09.

23 *Id.* ¶¶ 156–57.

24 *Id.* ¶ 193.

compliance activity is unnecessary or repetitive, those resources would be better spent on building and securing the infrastructure at issue.

I. THE COMMISSION SHOULD NARROW NPRM PROPOSALS FOR WHO AND WHAT SHOULD BE LICENSED

The Commission should narrow the NPRM's proposals for who and what should be licensed, as they are overbroad. NASCA supports the NPRM's proposal to codify rules applicable to submarine cable landing applications, including defining the infrastructure to be licensed and identifying who must be a licensee, so long as the rules are clear and serve an identified regulatory purpose.[25] In particular, the NPRM's proposal to define a submarine cable system to include terrestrial components may be useful to provide the Commission with relevant information, but should not, if adopted, be used as a basis for identifying licensees.

Alternatively, the Commission should define a system in terms of the submarine cable components.[26] Additionally, the NPRM's proposals to include customers, cable landing station and other colocation providers, and entities with *de minimis* interests that do not use the U.S. end point as licensees[27] improperly treats these parties as co-equals with system owners and operators and would, if implemented, interfere with commercial arrangements for the development of submarine cables and adversely affect system resilience.

A. Codifying the Definition of a "Submarine Cable System" Will Add Clarity, but Should Not Be Conflated with the Commission's Licensee Requirements

The NPRM proposes to codify the definition of a submarine cable system, a proposal that NASCA supports as it will add much needed clarity to the Commission's licensing regime. The NPRM proposes to define a submarine cable as: "a cable(s) laid beneath the water that transmits

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[25] *Id.* ¶¶ 23–26, 73–84.

[26] *Id.* ¶ 26.

[27] *Id.* ¶¶ 73–84.

voice, data, and Internet between terminal cable landing stations that, among other functions, contain the SLTE located in the continental United States, Alaska, Hawaii, or the U.S. territories or possessions."[28] The NPRM states that this definition reflects that there may be multiple "terminal landing[s]" and accounts for routing traffic from a cable landing station to other locations.[29] NASCA believes that this definition is clear and is consistent with licensees' current reporting commitments to the Team Telecom agencies.[30] However, NASCA is concerned that this definition blurs the distinction between submarine cables and the terrestrial networks with which they interconnect by including SLTE and "other locations" within the definition.

The NPRM identifies SLTE as a "dry segment ancillary component" used "to convert submarine signals to terrestrial signals and interconnect with the U.S. terrestrial network."[31] Notably, the NPRM neglects to recognize that SLTE also converts terrestrial signals to submarine signal. It is just as much a terrestrial network element as a submarine network element, and can be configured in a variety of arrangements to integrate it with terrestrial network facilities of multiple customers or network operators.

Given the nature of SLTE, NASCA believes that the Commission should not require every SLTE owner or operator to be a licensee. Such licensing is not necessary to ensure compliance with Commission licensing conditions or the security of submarine cables landing in the United States. At most, the Commission should require disclosure of SLTE location and ownership information.

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28 *Id.* ¶ 26.

29 *See id.*

30 *Id.* at Technical Appendix B.

31 *Id.* ¶ 25, Technical Appendix B ¶ 6.

Alternatively, the Commission could define a submarine cable to include only the components up to and including the optical distribution frame ("ODF"), the demarcation point at which the submarine cable terminates and interconnects to terrestrial fiber or other equipment for onward connectivity.

B. The Commission's Proposal to Include IRU Holders and Capacity Holders as Licensees Is Unworkable and Would Create Significant New Harms

The NPRM's proposal to treat customers as system owners for licensing purposes is unworkable and would create significant new harms. In particular, inclusion of IRU and capacity holders, colocation providers, and entities with ownership interests that do not meet the current licensing criteria (*i.e.*, a 5-percent interest coupled with use of the U.S. end point) is inconsistent with the Cable Landing License Act and, if implemented, would harm the industry by reducing resilience and adding unnecessary licensing and compliance burdens.[32]

The NPRM's proposals to license entities that own or operate their own SLTE—and potentially all capacity holders[33]—is inconsistent with the Cable Landing License Act, as it conflates the ownership and operation of a cable system with use of a portion of that system by a customer. The Cable Landing License Act only governs the former.

The proposal also would, if implemented, harm competition and resilience. The NPRM proposes to incorporate entities with ownership and control of SLTE into the regulatory framework because "SLTE is among the most important equipment associated with the submarine cable system and this modification to our rule would enable the Commission to know and assess any national security and law enforcement concerns related to the entities that will

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[32] *Id.* ¶¶ 73–84.

[33] *Id.* ¶¶ 74–77, 84.

deploy SLTE and thus who can significantly affect the cable system's operations."[34] The Commission's proposal, however, improperly treats system owners and customers as co-equals with respect to system ownership and operation. SLTE may be "associated" with a submarine cable, but SLTE owners and controllers who do not otherwise have an ownership interest in the system have no responsibility for the system's design, financing, construction, operation or maintenance pursuant to a multiplicity of contracts to which only system owners are parties, including system supply contracts, joint build agreements and construction and maintenance agreements for consortium systems, landing party agreements, joint system maintenance documents, and wet maintenance agreements. To comply with the conditions of a cable landing license and associated Team Telecom mitigation, a customer would need to become involved in system owner activities that it has no business knowing, much less vouching for.

Ultimately, the NPRM's proposal would destabilize these longstanding commercial practices and existing agreements, on the one hand, and the provision of connectivity to customers, on the other hand. It would also require submarine cable owners and operators to share confidential information about the entire system with customers, potentially undermining security.

The NPRM also fails to recognize that customers come and go over the life of a system, raising the prospect of near constant license modifications to add and drop licensees, particularly with respect to short-term leases of a year or two. Such a licensing scheme is untenable. It is also unnecessary, as the NPRM's concerns with respect to physical and logical access are overstated.[35] Simply stating that "SLTE could be physically or logically accessed by IRU

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[34] *Id.* ¶ 74.

[35] *Id*. ¶ 77.

holders or grantees, thus potentially raising national security and law enforcement concerns arising from our lack of information about and regulatory oversight of these relationships and the ownership of the IRU holder or grantee"[36] does not identify a security risk beyond a risk present in any communications marketplace that has customers operating their own equipment. Notably, SLTE operations by one entity cannot adversely affect the operations of a cable system, nor can they adversely affect the operations of another SLTE operator. And pure capacity holders, of course, have no access to any equipment at all. Accordingly, the NPRM's proposal to license SLTE owners or controllers or capacity holders is not necessary to prevent unauthorized physical or logical access to a submarine cable system. Such access risks are best addressed through robust access control policies.

Rather than solving a security problem, the NPRM's proposals, if adopted would significantly and unnecessarily increase the regulatory burden on submarine cable owners and operators. They would also inflict real harm on the industry. Licensing IRU and capacity holders would depress demand and encourage customers to seek capacity on systems that do not land in the United States and would further discourage submarine cable operators and customers from seeking capacity for diversity, restoration, and resilience purposes. In any event, to the extent the Commission has concerns about customer activity, it should identify and address those concerns separately from licensing the landing and operation of submarine cable infrastructure.

C. The Commission Should Exclude Cable Landing Station and Other Collocation Providers from the Scope of Licensing

The Commission should similarly decline to adopt the NPRM proposal to require licensing for colocations providers, such as cable landing station owners.[37] The NPRM proposal

[36] *Id.*

[37] *Id.* ¶¶ 77–78.

is based, again, on concerns regarding physical and logical access, given the role such owners play in providing space, power, physical security, and HVAC support to submarine cable systems.[38] The provision of such facility services simply does not give a colocation provider an operational role with respect to a system.

Rather than requiring such service providers to be a licensee, the Commission should replace Section 1.767(h)(1) of its rules with a standard condition in Section 1.767(g) requiring the licensee(s) to retain control over submarine cable system equipment and operations and over the ability to direct cable landing station and other colocation providers for the full term of the cable landing license.[39] Such an approach is consistent with the Commission's current practice of waiving Section 1.767(h)(1) in such circumstances. By reversing this long-standing practice, the Commission would discourage third-party facility owners from providing colocation space to submarine cable systems unless they are involved in operating the system. And, as with SLTE owners/operators and capacity holders, third-party access risks are best addressed through rigorous access controls. In short, the Commission's proposal would increase regulatory burden while doing little to support security.

D. The Commission Should Require Licensing Only for Owners Using a U.S. Endpoint of the System

Cable owners who do not use the U.S. end point or whose interests fall below the 5-percent threshold should not be burdened with a licensing requirement.[40] The Commission does not have jurisdiction to license submarine cable owners that have no interest in the U.S. territory portion of a submarine cable system, and imposing licensing burdens on those owners would

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[38] *Id.* ¶ 78.

[39] 47 C.F.R. § 1.767.

[40] *NPRM* ¶¶ 79–83.

harm the market by making it less attractive for systems with multiple non-U.S. landing points to partner with investors who have no interest in the U.S. endpoint. There is also no need for licensing an owner whose interests in the U.S. territory portion is *de minimis.* As the Commission previously pointed out in 2001, "the greater a firm's investment in a cable system, the greater ability the firm has to influence the way in which a cable is operated . . . [and] . . . entities with minimal investment in a cable system, on the other hand, do not have the same ability to affect the operation of the cable system[.]"[41] Nothing in the intervening years has changed this assessment. A cable owner with an interest of 5 percent or less will have no ability to dictate cable operations. The NPRM points to no countervailing security concerns raised by such small investors that would support a different approach. Accordingly, instead of adopting the proposal to license such investors, the Commission should instead retain, and clarify, the existing 5-percent threshold in Section 1.767(h)(2) of the Commission's rules.

II. THE COMMISSION SHOULD CLARIFY AND SIMPLIFY LICENSEE QUALIFCATION REQUIREMENTS

Contrary to NPRM's expansive proposals, the Commission should clarify and simplify licensee qualification requirements. The NPRM proposes to codify its public interest standard and impose character qualifications for submarine cable license applicants.[42] Such proposals, reasonably tailored, would not be overly burdensome—applicants already routinely include information relevant to the public interest in their applications—however, the Commission must have an identifiable legal basis for imposing such requirements. The NPRM fails to articulate such a legal basis. In the event the Commission moves forward with these proposals, it should

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41 *Id.* ¶ 79 (citing *Review of Commission Consideration of Applications under the Cable Landing License Act*, Report and Order, 16 FCC Rcd. 22167 (2001) ("*2001 Cable Report and Order*")).

42 *Id.* ¶¶ 27–28.

clarify the requirements and ensure that they are targeted, objective, and express. In addition, any presumptions should be expressly tied to articulated, substantiated security risks.

NASCA is concerned that the character qualifications identified in the NPRM are overbroad. Certainly, requiring disclosure of any felony (without a materiality threshold) or anything that the Commission has otherwise "found to be relevant,"[43] is inappropriate. The Commission's standards should not be subjective or vague. Such standards should also be material to submarine cable ownership and operation.

The NPRM also contemplates adopting a rebuttable presumption against the licensing of entities directly and/or indirectly owned by or subject to the influence of a government organization of a foreign adversary or an entity whose licensee was previously revoked.[44] Certainly, such a rebuttable presumption is more consistent with due process that categorical exclusions.[45] As with character qualifications, the Commission should carefully articulate any presumptions to ensure that they reflect specific, substantiated concerns. The Commission should also articulate a clear standard for rebutting a presumption. And any such standard should include consideration of licensing conditions and other safeguards.

NASCA is also concerned that the NPRM's parallel proposal to ban certain commercial transactions is not supported by specific findings that the transactions pose a national security or law enforcement risk,[46] given that the customers in such transactions typically do not have the ability to exert influence or control over the cable. NASCA urges the Commission to apply any presumptions only to transactions that are specifically found to pose such risks.

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[43] *Id.*

[44] *Id.* ¶¶ 85–91.

[45] *Id.* ¶ 89.

[46] *Id.* ¶ 91.

III. THE COMMISSION SHOULD NARROW OWNERSHIP, SYSTEM, AND SERVICE PROVIDER DISCLOSURE REQUIREMENTS AND COORDINATE ANY AND ALL SUCH REQUIREMENTS WITH TEAM TELECOM

The Commission should narrow the NPRM's proposed disclosure requirements regarding applicant ownership, system, and service provider information, and coordinate any and all such requirements with Team Telecom to ensure consistency and non-duplication. The NPRM considers requiring applicants to submit significantly more information with their applications than the current rules require, including additional ownership details and extensive system technical, geographic, and commercial details of a submarine cable project.[47] Such informational requirements, however, must serve a particular regulatory purpose and should not duplicate or conflict with applicants' other obligations—such as those imposed by Team Telecom. The Commission therefore should explain the specific regulatory purposes of each disclosure requirement—simply referring to general national security or regulatory oversight concerns is insufficient. As it is, it appears that the Commission has simply dissected recent Team Telecom mitigation agreements and adopted the informational filing requirements from those agreements, without assessing whether such duplicative disclosure is necessary for Commission purposes. The Commission should also ensure that it is requesting information that will be available at the time an application is filed—in many cases, the Commission is proposing to require information that will not be available until much closer to a system's in-service date. And the Commission should carefully craft all information requirements to ensure that they do not impose unnecessary or duplicative burdens on applicants and licensees.

[47] *Id.* ¶¶ 92–99.

A. The Commission Should Clarify the Threshold for Reportable Ownership

The NPRM considers lowering the disclosable interest requirement from 10 percent to 5 percent,[48] asserting that "greater insight into the ownership of applicants and licensees who own, control, and operate submarine cable systems is crucial to responding to the evolving threat environment, and that the current reporting threshold of 10 percent may not capture all interests that may present national security and policy concerns."[49] However, other than pointing to potential undisclosed coordination between such minority interest holders that could result in control,[50] the Commission does not explain why such minimal interests pose national security or policy concerns. The Commission's disclosure requirements therefore should be targeted towards addressing undisclosed arrangements relevant to assessing control or undue influence. Accordingly, a Commission decision to seek information about shareholder agreements or other arrangements that might afford minority shareholders, including foreign governments, with additional rights may be reasonable.[51]

While it would be helpful to align the Commission's disclosure requirements with those of Team Telecom (*i.e.*, at a 5-percent level), the Commission should also consider the timely availability of information. For public companies in the United States, Sections 13(d) and 13(g) of the Securities and Exchange Act of 1934 require reporting of beneficial ownership of *more than* 5 percent of a class of securities.[52] Recognizing also that different classes of securities may have different voting rights, the Commission's rules should codify its longstanding but unwritten

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48 *Id.* ¶¶ 92–93.

49 *Id.* ¶ 93.

50 *Id.* ¶ 92.

51 *Id.* ¶ 95.

52 15 U.S.C. § 78m(d),(g).

practice of requiring separate disclosure of both voting and equity interests. And if the Commission lowers its disclosure requirement, it should consider exempting from disclosure wholly passive investments.

B. The Commission Should Narrow the NPRM's Proposed Cable System Disclosure Requirements

The NPRM proposes to require applicants to submit a much more expansive set of technical and geographic details with respect to each submarine cable project than the Commission currently requires,[53] but does not adequately explain the regulatory purposes for the requirement. Accordingly, while NASCA does not object to providing the Commission with additional information—particularly the system design and anticipated operational timeline information that applicants typically provide[54]—it does object to unreasonable or unnecessary reporting requirements that serve nor regulatory purpose or duplicate existing obligations.

By way of example, the NPRM contemplates requiring an applicant to identify SLTE locations and system NOCs and to provide detailed maps showing fronthaul and backhaul routes between cable landings stations, beach manholes, and other points-of-presence.[55] Much of this information will not be available at the time an application is filed: SLTE locations and NOCs frequently are selected much closer to the ready-for-service date, and terrestrial routes frequently shift during project implementation. Requiring applicants to provide such information in applications is unreasonable and will delay infrastructure deployment if applicants must wait until the information is available to begin the licensing process. Nor is it clear why the Commission needs this information or, for that matter, why the Commission needs GIS maps and

53 *NPRM* ¶¶ 98–100.

54 *Id.* ¶ 99.

55 *Id.*

route position lists ("RPLs") (which even Team Telecom does not require). The NPRM considers whether the Commission needs RPLs of wet segment and foreign end points to "identify, prevent, or mitigate spatial conflicts affecting submarine cables and further ensure the protection of this critical infrastructure."[56] Yet the NPRM does not explain how the Commission will use this information to address spatial conflicts, and the Commission is certainly not able to do so outside U.S. territory. Notably, the submarine cable industry can and does address spatial conflicts with other seafloor stakeholders in all jurisdictions in which a cable lands.

In sort, the Commission should revisit the NPRM's proposals, and limit required disclosures to information likely to be available at the time an application is filed and information that is targeted to meet a specific regulatory objective.

C. The Commission Should Also Narrow the NPRM's Proposed Disclosures for Planned Services and Customers

The NPRM proposes that applicants provide extensive information about business plans, including details about customers and contract terms, without explaining how this information serves a valid regulatory purpose. As proposed, the Commission would require applicants to:

> identify and describe the capacity services and capacity management services, including the amount of fiber, spectrum, or capacity by selling, leasing, or swapping; (2) identify the types of customers that currently are served and/or will be served, including those with whom the applicant leases, sells, shares, or swaps fiber, spectrum, or capacity and/or plans to lease, sell, share, or swap fiber, spectrum, or capacity; (3) identify whether the applicant currently owns or controls and/or will own or control the U.S. portion of the submarine cable system, including the submarine cable landing station(s), through an IRU or leasehold interest; (4) identify where the applicant currently markets, offers, and provides services and/or expects to market, offer, and provide services; and (5) identify the general terms and conditions that currently apply and/or will apply to the services, such as contract duration, minimum capacity/bandwidth requirements, IRU requirements, termination clauses,

[56] *Id.* ¶ 100.

> security requirements, delivery or Service Level Agreement (SLA) requirements, dispute resolution, and other applicable provisions.[57]

The NPRM states that collecting such information will help the Commission "properly evaluate national security and other risks and the robustness of the submarine cable infrastructure on an ongoing basis."[58] Nowhere, however, does the Commission explain how such information will assist it in achieving such objectives. The NPRM offers no reason other than that it would align with the proposed regulatory regime under Section 214.[59] Nevertheless, Section 214 governs provision of common carrier international services, which raises entirely different regulatory concerns. Nor is there a need for such alignment, as the NPRM has identified any competition concerns that would warrant such an overly burdensome and unrealistic requirement. Indeed, the market for submarine cable capacity, in which licensees primarily offer capacity on a private carriage basis, is robust and competitive, and there is no need for old-school, overbearing regulation.

Moreover, the NPRM's proposals do not reflect marketplace realities. Commercial plans change with some frequency, and it would be excessively burdensome for the Commission to demand that applicants and licensees submit definitive commercial plans, with such detail, at the time an application is filed. Because most cable operators offer service on a private carriage basis, requiring applicants and licensees to submit such information to the Commission likely would limit operators' ability to offer customized offerings to meet individual customer needs.

NASCA believes the NPRM's proposal is unreasonable and unrealistic. However, NASCA would support providing the Commission with more generalized information about an

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57 *Id.* ¶ 105.

58 *Id.* ¶ 104.

59 *Id.*

applicant's or licensee's business plans. Consistent with current practice, it would be reasonable for the Commission to require an applicant to provide information on the cable's intended operational purpose and the applicant's general commercial plans, such as selling wholesale capacity to enterprises companies or carriers or using capacity for internal business purposes.

D. The Commission Should Narrow Its Third-Party Service Provider Disclosure Requirements

The NPRM seeks to address the role of third parties with physical and logical access to submarine cable systems, such as colocation providers, NOC service providers, and so-called "Managed Network Services Providers" through further information collection[60]—information that applicants already provide to Team Telecom. NASCA reiterates that informational requirements must be appropriately tailored to meet an articulated Commission objective. The NPRM fails to meet that basic standard, as the NPRM fails to explain how the Commission will use the information to address risks.

NASCA does not disagree with the Commission that third-party access to submarine cable system equipment and management networks pose a risk, as third-party access to any system or network poses a risk.[61] But as with all such systems and networks, the most effective way to address those risks is to adopt and implement rigorous security policies and procedures with access controls to ensure that only authorized, trustworthy personnel and vendors have access. In contrast, paperwork production and reporting does little other than shift focus away from activities relating to building, deploying, and securing infrastructure.

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[60] *Id.* ¶¶ 124–35.

[61] *Id.* ¶ 124.

NASCA further notes that the Commission's proposal to vet foreign "Managed Network Service Providers"[62] is misplaced. The NPRM lifts the concept of Managed Network Service Provider ("MNSP") from Team Telecom mitigation agreements and is, in this context as in the original, frustratingly vague. In defining a MNSP, the NPRM refers to certain functional categories, such as "operations and management support," which can mean almost anything. Questions on what constitutes a MNSP (as compared to any other service provider) plague existing licensees with such terms in their mitigation agreements, leading to uncertainty and inconsistent interpretations. The Commission should not compound this problem by issuing a new questionnaire devoted to MNSPs and/or requiring a new set of standards to apply to such service arrangements, many of which will change during the life of the system.[63] Further, no matter how the Commission defines the term, any submarine cable landing in a foreign jurisdiction will have "foreign owned" service providers. Thus, the proposal likely will apply to every system except those based wholly within the United States.

NASCA is similarly concerned about the Commission's NOC proposals.[64] The Commission has failed to explain the need for disclosure of detailed NOC location information, to include GIS files. Team Telecom does not even require that level of detail. At most, the Commission should confirm that a NOC is not located in a high-risk jurisdiction, which can be addressed through a certification requirement.

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[62] *Id.* ¶¶ 128, 133.

[63] *Id.* ¶ 131.

[64] *Id.* ¶ 134.

In short, NASCA urges the Commission to revisit these NPRM's proposals regarding third-party access to ensure that the information requested genuinely is needed to address a security risk—and explain how the information addresses the risk.

NASCA further notes that, to the extent the Commission requires information to be submitted with applications, it should limit the requirement to information that will be available at the time an application is filed. As discussed above, such third-party arrangements are rarely in place at the time an application is filed. Requiring such information at the time an application is filed will lead to delayed deployment.

Equally important, the Commission should ensure that its information requirements align with those of Team Telecom. As noted repeatedly throughout these comments, the Commission should carefully review all of the proposed information requests to ensure not only that the information sought is not only reasonably necessary to address a particular risk, but does not unnecessarily duplicate, overlap with, or conflict with licensees' existing obligations to Team Telecom agencies.

E. The Commission Should Treat System and Commercial Information as Confidential, by Rule

Much of the information that the NPRM proposes to require is highly sensitive, either from a commercial or security perspective. The NPRM proposes to request details with respect to technology, deployment (such as precise geolocation information), operations, customers, and terms of service. Project owners and licensees routinely treat such information as confidential. Disclosure would give competitors insight into business and operational strategies, and potential bad actors insight into infrastructure locations, making it more vulnerable to sabotage. The Commission should therefore treat all such information as confidential, by rule.[65]

To the extent the Commission collects such information, NASCA would support Commission sharing such information with Team Telecom,[66] if the sharing of that information leads to a more efficient, less burdensome reporting regime. To this end, the Commission and Team Telecom should coordinate to enable a licensee to submit the same information through one process, with information treated as confidential, by rule.

IV. CERTIFICATIONS, WHILE HELPFUL, SHOULD BE CAREFULLY TAILORED TO MEET SPECIFIC OBJECTIVES

The NPRM proposes to impose various certification requirements, to evaluate applicants' qualifications and certain security risks,[67] including certifications addressing (a) cybersecurity risk management plans; (b) certain supply chain risks; and (c) compliance with FCC rules and other laws.[68] NASCA agrees that certifications, appropriately tailored, can help ensure security and compliance while reducing the need for exhaustive information requirements.

A. Cybersecurity Certifications Should Be Rigorous, but Flexible—and Must Be Coordinated with Team Telecom

NASCA supports the NPRM's proposal to require applicants to adopt and certify that they have implemented rigorous cybersecurity risk management plans, provided such requirements are appropriately tailored and coordinated with Team Telecom.[69] Indeed, most, if not all, licensees already have such plans in place. NASCA in particular appreciates the

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65 *Id.* ¶¶ 101, 105 (proposing to treat certain geolocation information and customer information as presumptively confidential).

66 *Id.* ¶ 103.

67 *Id.* ¶ 106–22.

68 *Id.* ¶¶ 107–08, 112.

69 *Id.* ¶ 108.

Commission's recognition that each entity has a unique organization structure and particular needs, proposing that "each applicant or licensee have flexibility to structure its cybersecurity risk management plan in a manner that is tailored to its organization, provided that the plan demonstrates that the applicant or licensee is taking affirmative steps to analyze security risks and improve its security posture."[70] Tailoring security policies to reflect the unique characteristics of a particular organization is essential to ensure the success of those policies. NASCA similarly supports the NPRM's proposal that an applicant or licensee may demonstrate compliance by following an established risk management framework, such as the National Institute of Standards and Technology (NIST) Cybersecurity Framework (CSF).[71] This is a reasonable approach, as it sets high standards while limiting regulatory burden.

NASCA is concerned, however, that a few of the NPRM's proposals also require tailoring. For example, the NPRM proposes to require applicants and licensees to describe in their security risk management plans the implementation of security controls "sufficient to ensure the confidentiality, integrity, and availability of all aspects of their communications systems and services."[72] A submarine cable system is infrastructure—it is unclear what the NPRM means by "all aspects of their communications systems and services," which appears to confuse the operation of a submarine cable with the provision of a communication service. The Commission should revise this requirement to refer to submarine cable network management systems.

[70] *Id.* ¶ 110.

[71] *Id.*

[72] *Id.* ¶ 113.

NASCA is also concerned with the NPRM's proposal to hold licensees responsible for a third-party service provider's acts, omissions, or failures that result in a "failure to protect the confidentiality, integrity, or availability of its systems and services."[73] Licensees take their obligations via third-party service providers very seriously, and such service providers are required to comply with licensee security policies while in licensee facilities, and (if applicable) to have comparable policies in place at their own. (Licensees cannot require a third party to adopt and comply with licensee's own security policies, which would create risks for both parties.) The Commission should only hold a licensee responsible for a third party's acts, omissions, and failures if the licensee fails to take reasonable steps to prevent the relevant conduct in the first place. The Commission should accordingly identify safe harbors, such as the thorough vetting of a service provider in advance of engagement and requiring the service provider by contract, as applicable, to comply with licensees' policies in place at licensees' facilities or adopt and implement (as appropriate) security policies consistent with nationally-recognized standards.

Further, NASCA urges the Commission to ensure that any risk management requirements are carefully coordinated with Team Telecom to ensure that licensees are not required to comply with overlapping and potentially conflicting regimes. Almost all licensees must submit their security policies to Team Telecom upon licensing and annually thereafter and are frequently fielding requests for policy changes that vary from the helpful to the absurd. Such requests are also, inexplicably, not uniform. This process should be rationalized and streamlined, and the Commission's proposals would be a great first step, provided that it results in a single, coherent set of requirements rather than two separate or overlapping regimes.

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73 *Id.* ¶ 118.

Finally, NASCA strongly urges the Commission to treat, by rule, an applicant's or licensee's security policies and any detailed information provided about those security policies, as confidential.[74] NASCA is not aware of any submarine cable operator that publishes its security policies, and with good reason. Such security policies, which frequently identify reporting lines, organizational structures, network demarcation points, and specific protocols for incident detection and remediation, are detailed road maps to how a licensee secures its infrastructure and systems. Making security policies publicly available would give bad actors vital information on how systems are protected. That information would give such bad actors a head start in trying to defeat those protections.

B. Supply Chain Certifications Linked to Risks to Submarine Cable Infrastructure Are Appropriate

NASCA further supports the NPRM's proposal to require applicants and licensees to certify whether or not they use equipment or services identified on the Commission's "Covered List,"[75] provided the Commission's rules limit application to the relevant submarine cable system. NASCA questions, however, the NPRM's suggestion that the Commission include within the scope of the certification entities designated on other federal agency lists, such as the Department of Commerce's "Entity List" and the Department of Defense's List of Chinese Military Companies.[76] Such lists serve other (although related) purposes. In any event, if an

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74 *Id.* ¶ 116.

75 *Id.* ¶¶ 119–20.

76 *Id.* ¶ 122 (referencing 15 C.F.R. § 744.16; Bureau of Industry and Security, U.S. Department of Commerce, Supplement No. 4 to Part 744 – Entity List (2023) https://www.bis.doc.gov/index.php/documents/regulations-docs/2326-supplement-no-4-topart-744-entity-list-4/file [https://perma.cc/STW5-B8GW]; DOD National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116–283, § 1260H, 134 Stat. 3388, 3965-66 (2021); Office of the Under Secretary of Defense (Acquisition and Sustainment), Department of Defense, Notice of Designation of Chinese Military Companies Under the

entity poses a national security threat to submarine cable security, it makes sense that the Commission would specifically identify that entity on its Covered List, which can serve as a single point of reference for licensees. Ultimately, the Commission should create a single list, with bright-line rules specifying whether or in what circumstances such equipment or services may be used. To the extent the Commission adopts a ban on the use of such equipment or services, that ban should only apply to the submarine cable systems.[77]

C. Legal Compliance Certifications Should Be Reasonably Scoped to Be Relevant to Submarine Cable Operations

The NPRM's proposal to require applicants to certify compliance with the Cable Landing License Act, the Communications Act, and the Commission's rules is overbroad.[78] The Commission should revisit the scope of the proposed certifications to ensure that they require material, relevant disclosures. In particular, it is NASCA's view that the proposal to require certification as to whether the applicant has been convicted of a felony, or "has engaged in other non-FCC misconduct the Commission has found to be relevant" [79] is problematic. These certifications should include relevance and materiality standards. A reportable "felony" should exclude those with fines below a certain threshold. And any conduct that the Commission has

William M. (Mac) Thornberry NDAA for FY21, 86 Fed. Reg. 33994 (June 28, 2021); Press Release, U.S. Department of Defense, DOD Releases List of People's Republic of China (PRC) Military Companies in Accordance With Section 1260H of the National Defense Authorization Act for Fiscal Year 2021 (Jan. 31, 2024), https://www.defense.gov/News/Releases/Release/article/3661985/dod-releases-list-of-peoples-republic-of-chinaprc-military-companies-in-accord/ (releasing an update to the names of "Chinese military companies" operating directly or indirectly in the United States in accordance with the statutory requirement of Section 1260H of the National Defense Authorization Act for Fiscal Year 2021 and providing the list at https://media.defense.gov/2024/Jan/31/2003384819/-1/-1/0/1260H-LIST.PDF).

77 *Id.* ¶ 121.

78 *Id.* ¶ 107.

79 *Id.*

"found to be relevant" is far too vague. The Commission should specify what it considers relevant misconduct. Equally important, any legal compliance certifications should require disclosure only of adjudicated violations, excluding pending investigations, some of which will not result in adjudicated violations and many of which, such as FCC letters of inquiry, are confidential.[80]

V. THE COMMISSION SHOULD ENGAGE WITH INDUSTRY AND OTHER GOVERNMENTAL ENTITIES TO UNDERSTAND AND FURTHER ADDRESS THE RISKS POSED TO SUBMARINE CABLE RESILIENCE

The Commissions should, as the NPRM proposes, engage with other governmental entities to better understand and address risks to submarine cable infrastructure.[81] The NPRM focuses on risks related to spatial conflicts and cites to the 2014 report produced by the Communications, Security, Reliability, and Interoperability Council ("CSRIC") examining such risks, including fishing, anchoring, sand and gravel dredging, beach replenishment, energy development, and deep seabed mining, among others.[82] It has been more than 10 years since that report was published, and NASCA strongly believes that the Commission should restart the CSRIC Submarine Cable Working Group. The Commission should further broaden its efforts to include state and local governmental agencies that play a role in regulating marine and coastal activities. NASCA believes that such inter-agency engagement would be helpful in raising awareness of submarine cables as critical infrastructure and addressing potentially conflicting agency-regulated activities that could, if not appropriately coordinated, result in damage to

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80 *Id.*

81 *Id.* ¶ 141.

82 *Id.* ¶ 138.

submarine cables, thus harming resilience. The Commission does not need additional statutory authority to engage in such inter-agency dialogues.

The NPRM seeks "updated information on any new facts or circumstances that can inform our evaluation of the equities, risks of damage, and mitigation measures associated with spatial relationships between submarine cables and other marine infrastructure"[83] and further seeks comments on "what measures the submarine cable industry has implemented/will implement to protect submarine cable infrastructure in the event of any spatial conflicts with wind farms, or electric or other infrastructure or activities that may affect submarine cables."[84] The Commission's Office of International Affairs ("OIA") is well aware of industry's advocacy efforts in connection with other federal programs, such as the leasing programs administered by the Bureau of Ocean Energy Management and the National Marine Sanctuary programs administered by the National Oceanic and Atmospheric Administration, to raise awareness of submarine cable infrastructure and ensure that their programs account for the existence of such infrastructure as early as possible in the program lifecycle.[85] Over the years, NASCA has reached out to OIA and its predecessor to enlist its support in these efforts, and would welcome a decision to do so.

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83 *Id.* ¶ 139.

84 *Id.* ¶ 140.

85 *See, e.g.*, Comments of NASCA, Docket No. NOAA-NOS-2021-0080 (filed Jan. 31, 2022); Comments of NASCA, Docket No. NOAA-NOS-2022-0053 (filed Aug. 8, 2022); Comments of NASCA, Docket No. BOEM-NOS-2022-0040 (filed Oct. 3, 2022); Comments of NASCA, Docket No. BOEM-2022-0072 (filed Dec. 16, 2022); Comments of NASCA, Docket No. FWS-R5-NWRS-2022-N062 (filed Jan. 27, 2023); Comments of NASCA, Docket No. NOAA-NOS-2023-0052 (filed Jun. 2, 2023); Comments of NASCA, Docket No. BOEM-2024-0001 (filed Feb. 26, 2024); Comments of NASCA, Docket No. NOAA-NOS-2024-0089 (filed Sept. 30, 2024).

OIA is also well aware of industry's extensive efforts globally to minimize risks of damage, promote resilience, and support restoration and continuity of communications throughout a system's design and operational phrases. Because of these efforts, there are well-developed mechanisms already in place for engaging with other marine industries (*e.g.*, the fishing industry) and addressing spatial conflicts through crossing agreements with other cable and pipeline owners and operators based on internationally recognized guidelines, such as those published by the International Cable Protection Committee.[86] And all submarine cable owners and operators monitor their systems on a 24/7 basis to protect against damage, whether accidental or intentional. Any new regulations or Commission activity to reduce risks of damage and promote resilience should bolster, not undermine, these existing industry efforts.

Finally, NASCA expresses its support for the two-way sharing of information and intelligence between industry and government,[87] for which industry has long advocated. It is frustrating to be told by a U.S. Government agency that there is a security risk without being told what that risk is, particularly when, as NSM 22 noted, "[o]wners and operators are uniquely positioned to manage risks to their individual operations and assets, including their interdependencies with other entities and sectors."[88] It is in part this recognition that motivates NSM 22's call on the federal government to "support a robust information sharing environment and public-private cooperation that enables actions and outcomes that reduce risk."[89] It seems irrational and self-defeating to withhold key risk information from those best placed to act on

86 *See*, *e.g.*, International Cable Protection Committee, *ICPC Recommendations*, available by request at www.iscpc.org or secretariat@iscpc.org.

87 *NPRM* ¶ 141.

88 NSM 22 at 3.

89 *Id.* at 5.

that information. For its part, NASCA and its members would be happy to share risk information and intelligence with the Commission and other agencies—as they do frequently with other governments. Such two-way information is the first step in building a robust government-industry partnership, to the overall benefit of submarine cable security.

VI. ANY PERIODIC REPORTING REQUIREMENT SHOULD BE NARROWLY TAILORED AND AVOID DUPLICATING TEAM TELECOM REPORTING REQUIREMENTS

One of the NPRM's key proposals would require licensees to submit three-year periodic reports to update the Commission's records.[90] Any such requirement must be appropriately scoped to address information gaps and coordinated with licensees' existing Team Telecom obligation to eliminate duplication. NASCA believes that the Commission's concerns that it has insufficient or outdated information about systems and licensees is overstated. Certainly, it is "critical that the Commission has a continuous and systematic understanding of who owns and controls submarine cables and how they are used."[91] However, the Commission will have that information upon the filing of an application, and any material changes to that information will be reflected in a licensee's subsequent filings. For example, new landing points will be identified in a modification application and material changes in ownership will be provided in a transfer-of-control application or *pro forma* notification. Thus, there is no need to require restatements of controlling interests and other detailed information that has not changed—and a licensee should be able to certify to the absence of change in order to satisfy the Commission's need for "continuous and systematic understanding" of the infrastructure and its ownership.[92]

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90 *E.g.*, *NPRM* ¶¶ 44–58, ¶¶ 180–95.

91 *Id.* ¶¶ 45–46.

92 *Id.* ¶ 45.

The Commission should scope its periodic reporting to confirm that the licensee's information on file is accurate and to identify changes that do not require prior Commission consent that are reasonably necessary for Commission oversight. NASCA objects to providing information beyond that which the Commission requires for licensing in the first place (other than potentially NOC or similar system information that would not be available when an application is filed). Certainly, the reports should not require full ownership disclosures for entities with interests that do not meet the licensing criteria, nor detailed information with respect to service offerings that the Commission should not require in any event.[93] As noted at part III.C, disclosing current and expected future service details is unnecessary to promote security and would adversely affect the commercial practices of an already competitive industry.

To the extent that the Commission is seeking information that licensees already provide to Team Telecom, such as detailed information on system architecture and service provider information,[94] the Commission should coordinate with Team Telecom to ensure that licensees are not burdened with overlapping or duplicative reporting requirements. The FCC and Team Telecom regimes are intended to be complementary, not separate, and imposing two separate compliance regimes covering the same materials is inefficient and unnecessarily burdensome. As stated in NSM 22, regulatory frameworks should be "informed by existing requirements, standards, and guidelines" and "aligned to reduce unnecessary duplication."[95] This is consistent with the Commission's efficiency goals in the recently initiated "Delete, Delete, Delete"

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[93] *Id.* ¶¶ 183 (proposing to require detailed information about service offerings), 190 (proposing to require detailed ownership information about non-licensee submarine cable owners).

[94] *Id.* ¶¶ 182 (proposing to require additional detailed information about submarine cable infrastructure), 187 (proposing to require information about foreign MNSPs).

[95] NSM 22 at 4 ¶ 3.

proceeding.[96] The Commission should carefully design its reporting regime consistent with these guidelines—to require information necessary to achieve a specific government objective without snarling licensees in parallel regimes that add burden without any corresponding benefit.

VII. THE COMMISSION SHOULD NOT SHORTEN THE 25-YEAR LICENSE TERM

Given extended design lives, the Commission should be lengthening the license term to cover the commercial life of the system, rather than shortening it. A shorter license term is not necessary to enhance compliance, competition, or national security and would interfere with financing and customer contracts, which depend on regulatory certainty of licensing.

The NPRM seeks comments on whether the current 25-year license term for submarine cable landing licenses should be shortened on the grounds that it would enable the Commission to identify compliance problems or other factors presenting security, law enforcement, foreign policy, and/or trade policy concerns.[97] The NPRM identifies no such concerns, and indeed there are none, as the Commission has just as much information regarding a system at the end of its 25-year term as a system just licensed. As discussed in section VI, the Commission and Team Telecom are regularly updated on material changes in cable landing licensee ownership and system details throughout the life of the infrastructure—unlike international Section 214 authorization holders. If the Commission imposes the NPRM's proposed periodic reporting requirement, it will have even more information. Moreover, if the Commission believes there is an unaddressed compliance issue, it can address such issue through its *ad hoc* authority or its revocation authority under the Cable Landing License Act.

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[96] *See D3 Public Notice*.

[97] *See NPRM* ¶¶ 59–63 (proposing to shorten the license term as an alternative to or in combination with periodic reporting).

Notably, the Cable Landing License Act does not mandate a license term. The Commission adopted the existing 25-year term based on the view that submarine cable systems have a design life 25 years. As recent license activity indicates, however, numerous systems operate beyond a period of 25 years. Moreover, the Commission itself has only recently paid attention to the license term, which is not readily identifiable in ICFS.[98]

The NPRM's comparison to the broadcast and Section 214 licensing regimes[99] is flawed, as a license to provide a service is not the same as a license to build and operate to large scale, multi-jurisdiction, infrastructure. The success of those infrastructure projects depends upon complex, long-term, financing and commercial agreements that are predicated on acquiring and maintaining a 25-year license. Reducing investment certainty around license tenure would introduce new and heightened risk for both investors and lenders, making it significantly harder and more expensive to attract investment and financing for infrastructure projects that cost hundreds of millions of dollars. It would also present new obstacles to upgrade and maintain existing submarine cable systems throughout the system's life.

Additionally, licensees must enter into a host of long-term public and private commercial agreements to ensure that they have the facilities and rights necessary to operate continuously throughout the system's life. These agreements—consortia agreements, landing party agreements, colocation agreements, easements, and state and local permits and licenses—are almost all based on a minimum 25-year operational horizon. Shortening the license term would introduce significant commercial uncertainty and would disadvantage licensees. For example, a licensee who enters into a colocation agreement for 10 years instead of 25 years would likely

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[98] International Communications Filing System ("ICFS").

[99] *NPRM* ¶ 62.

face less favorable terms when it seeks to renew (assuming the cable landing license is renewed) since any alternative would require relocating the cable itself. Shortening the license terms would also adversely affect the market for submarine cable capacity, as it will be much harder for licensees to enter into long-term IRUs or capacity leases.

The NPRM distinguishes between primary and secondary retroactivity in assessing the impact of a shorter license term,[100] but fails to recognize the primary retroactive effects of a shorter term on the industry. A reduction in term for existing licensees could trigger material adverse change clauses in financing agreements and introduce financial risk to otherwise stable financing/investment and other commercial arrangements. In short, licensees' existing commercial contracts depend upon operational continuity to enable performance. The NPRM's assertion to the contrary,[101] imposing a shortened license term would be primarily retroactive because it would impair significant financial and commercial rights that licensees possessed when the Commission first granted the license.

In short, there is no regulatory need or statutory requirement for a license term. Shortening the existing term would undermine the health of the industry in general and would impose significant harm on existing licensees, if such a shortened term were retroactively imposed. If one of the NPRM's goals truly is to "facilitate the deployment of submarine cables and capacity to the market"[102] the Commission should grant the license for a term coextensive with the life of the system, as identified in an application or subsequent periodic report. Or the

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[100] *See id.* ¶ 69.

[101] *See id.* ¶ 70.

[102] *See id.* ¶ 22.

Commission could simply require a licensee to notify the Commission when it decides to decommission a cable.

VIII. THE COMMISSION SHOULD RECOGNIZE AND ADDRESS ITS OWN ROLE IN LICENSING DELAYS AND ADOPT A BOLDER STREAMLINING PROPOSAL THAN THE ONE OUTLINED IN THE NPRM

The NPRM seeks comment on how it can streamline the licensing process to facilitate the deployment of submarine cable infrastructure in the United States.[103] NASCA appreciates the NPRM's recognition that submarine cable licensing is "lengthy and complex," [104] and its willingness to consider streamlining options that are "effective and beneficial to both industry and government."[105] The NPRM, however, fails to recognize and address the Commission's own role in licensing delays, and its streamlining proposals would not materially shift the licensing timeline absent clear criteria that reduce the scope of review for repeat applicants. NASCA believes that there are a number of steps the Commission could take that would do so.

A. The Commission Should Address Inefficiencies in the Application Process

The Commission cites significant progress in reducing the licensing timeline since 2016, with a 30-day decrease in the executive branch review timeline from 367 days (2016-2020) to 237 days (2020-2024).[106] It is unclear to NASCA how the Commission is calculating this statistic. From NASCA's own review of applications for new systems filed with the Commission during that timeframe (extending through January 2025), the average processing time from the date an application is filed to the date it is granted decreased only 25 days; however, the key point is that 237 days is still too long. Notably, the time it takes for the

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[103] *NPRM* ¶¶ 144–46.

[104] *Id.* ¶ 146.

[105] *Id.*

[106] *Id.* ¶ 145.

Commission to put an application on public notice has increased significantly by 46 days, to an average AFFPN[107] date of 81 days—almost three months. This is not immaterial, as Team Telecom will not certify that an applicant has submitted complete responses, thereby starting the 120-day review period under Executive Order 13913, until the Commission issues a Public Notice. Moreover, Team Telecom review times are starting to increase again, as the agencies are taking longer to start the 120-day review period, and the parties frequently need to "stop the clock" to allow sufficient time for applicants to review draft mitigation—which is presented to the applicants later and later in the review period and almost always includes new terms and condition. There are two key steps that the Commission can and should take to address these inefficiencies.

First, the Commission should promptly put an application on public notice. In many cases, its delay in doing so is due to staff asking for information beyond the scope of the codified rules or information that is, quite simply, pedantic. Assuming an application meets the codified application standards, the Commission should put it on public notice within two weeks of filing.

Second, the Commission can work with Team Telecom to update the Standard Questions to reflect the full set of questions that the agencies issue to applicants (preferably without adding to licensees' information filing burdens vis-à-vis the Commission). The current questionnaires were outdated before the Commission implemented them, and some applicants have started submitting supplements with their responses to the Standard Questions in order to avoid the inevitable delays caused by the need for "standard" follow-up questions.

[107] Accepted for Filing Public Notice ("AFFPN").

B. The Commission Should Establish a "Frequent Filer" or "Infrastructure License" Program

The Commission's current streamlining criteria are too narrow, applying only to those few projects without disclosable foreign ownership (*i.e.*, 10-percent-or-greater),[108] as very few submarine cable projects are built without any foreign interest holders. (Submarine cables are, after all, multi-jurisdiction infrastructure projects.) Moreover, even systems that qualify for streamlining are pulled from streamlined processing either because the Commission refers them to Team Telecom or Team Telecom automatically requests a referral. To foster rapid deployment and support resilience and diversity, the Commission should expand its streamlining criteria. The NPRM suggests establishing a "frequent filer" program for companies with multiple submarine cables.[109] Such a program would be beneficial, if structured so that a submarine cable license is treated as an infrastructure license: once licensed, an applicant would be qualified to land and operate submarine cables in the United States. Subsequent applications would be subject to streamlined review limited to the "specific risk factors" of the cable project, such as those involving "high risk" jurisdictions.[110] Or, more efficiently, the Commission could adopt a notification requirement for new systems of approved submarine cable operators. This would significantly reduce the time and costs associated with new infrastructure applications, thus supporting additional deployments.

C. The Commission Should Not Delay Application Reviews To Address Resilience, National Competitiveness, or Trusted Supply Chain Issues

The Commission should not delay application reviews to address resilience, national competitiveness, or trusted supply chain issues. As it is, the Commission has a significant

[108] 47 C.F.R. § 1.767(k)(5).

[109] *NPRM* ¶ 146.

[110] *Id.*

amount of time in which to assess these issues during the pendency of a Team Telecom review. Moreover, "trusted supply chain" concerns are readily addressed through security policy and certification requirements, and resilience and national competitiveness are strengthened through deployment of new infrastructure.[111] If the Commission's goal is to license such infrastructure as expeditiously as possible, the Commission should address specific concerns it may have on these matters through separate rules and/or conditions.

IX. THE COMMISSION SHOULD STANDARDIZE MITIGATION CONDITIONS BY RULE FOR ROUTINE REVIEWS

The Commission should not limit its streamlining efforts to the licensing regime. "Standard mitigation" is a misnomer, as very few mitigation instruments are the same, resulting in similarly-situated licensees bearing significantly different compliance burdens.[112] Even mitigation with substantively similar provisions (e.g., reporting new equipment in advance of deployment) includes variations that matter for a licensee implementing a compliance program for multiple systems. For example, one instrument may require reporting 45 days in advance, while another may require reporting 30 days in advance. More problematic is that new substantive provisions are added with regularity. The continual changes make establishing and implementing a compliance program unnecessarily challenging and potentially create competitive distortions. Moreover, many of the changes do not materially alter the security posture of a system.

To address these issues, the Commission should seek to adopt and publish (after notice and comment) standardized compliance conditions in lieu of individually-negotiated mitigation agreements. Such standard mitigation should be coordinated with the Commission's own

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[111] *Id.*

[112] *Id.* ¶ 8.

information filing requirements to ensure that licensees are not subject to duplicative or conflicting requirements. This should not be a heavy lift. Executive Order 13913 required the Committee to enter into a Memorandum of Understanding ("MOU") among themselves and with the Director of National Intelligence (or the Director's designee). Among other things, the MOU was to "define the standard mitigation measures."[113] The MOU is not exempt from the Freedom of Information Act ("FOIA")[114], and indeed is subject to pending FOIA requests. The MOU is also not exempt from review by the Office of Management and Budget. In short, Team Telecom has already developed standard mitigation terms—those terms simply need to be reviewed.

Standard mitigation would significantly improve both the licensing and compliance regimes in key respects.

First, standardization would eliminate the gross unfairness of variations in mitigation agreements. Licensees would be on a level playing field, both with respect to their compliance burdens and in the marketplace, where they will be "flowing down" the same obligations to their respective customers and service providers (as applicable).

Second, standardization would enhance the ability of licensees for multiple systems to create efficient compliance programs that focus on substantive compliance rather than immaterial variations in definitions and timeframes.

Third, standardization would expedite licensing by eliminating the time required to negotiate mitigation that is substantially similar to that imposed on other licensees.

Fourth, standardization would reduce the incentive to "kitchen sink" mitigation, adding new "standard" provisions every time a new potential "concern" arises. This problem becomes

[113] Exec. Order No. 13913, 85 Fed. Reg. 19643 § 11(c) (Apr. 8, 2020) (Executive Order 13913).

[114] 15 U.S.C. § 552.

more acute when an applicant agrees to a new term simply because the clock has run and it needs the license. When the next applicant is told that such term is now “standard” it has little or no ability to reach a different outcome. The result is bloated mitigation that does not substantially improve the security of a system.

Fifth, standardization would ensure appropriate review under the Paperwork Reduction Act[115] and similar authorities to ensure regulatory justification—which, as noted above, is lacking with many new “standard” terms. Such review already occurs with Defense Counterintelligence and Security Agency FOCI mitigation under the National Industrial Security Program Operating Manual.[116]

Of course, such standard mitigation may not be sufficient to address exceptional national security or law enforcement issues, such as those presented by an applicant seeking to overcome a presumption of license ineligibility. Such cases—which should be the exception rather than the rule—likely would require a lengthier review and potentially bespoke mitigation.

X. THE COMMISSION SHOULD ADOPT SIMPLIFIED RULES FOR RENEWALS, MODIFICATIONS, AND OTHER APPLICATIONS

NASCA supports the NPRM’s proposals to clarify the Commissions’ rules for renewals, modifications, or other applications.[117] However, the Commission should simplify its rules, with the required content of the applications rationally related to the purpose of the application, consistent with the NPRM’s streamlining goals. There is no need, for instance, for a licensee reporting a *pro forma* transaction to submit a notice that essentially mirrors a substantive transfer-of-control application. Nor is there a need for a licensee to provide detailed NOC

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[115] 44 U.S.C. §§ 3501-3521; 5 C.F.R. Part 1320.

[116] 32 C.F.R. Part 117.

[117] *NPRM* ¶¶ 149–66.

information and geolocation data (in GIS format) with every "initial application for a cable landing license and application for modification, assignment, transfer of control, and renewal or extension of a cable landing license, and in the periodic reports."[118] No licensee should be required to restate information that is on file with the Commission that has not changed.[119] With the significant reporting updates proposed by the NPRM, a licensee would be providing the same information repeatedly and unnecessarily. Surely, this is inconsistent with the Commission's efficiency goals.

As noted above, there is no rational purpose for a renewal application in the first instance. In the event that the Commission retains a license term, any renewal process should be streamlined[120]—without reference to the list of criteria the NPRM proposes (such as the absence of foreign ownership). Non-streamlined treatment should be the exception. NASCA fully supports the NPRM's proposal to grant a licensee with a pending renewal application continued authority to ensure that the operations of the cable system are not disrupted.[121]

The Commission should clearly enumerate major changes that would require the filing of a license modification application and should also clearly exclude certain minor or *de minimis* changes. A major change would include adding new landing points or a new consortium member (consistent with current practice). A minor or *de minimis* change would include relocation of a landing point within the same locality due to real estate acquisition or other commercial issues.

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[118] *Id.* ¶ 134.

[119] *See id.* ¶¶ 150, 154 (proposing certain restatement and recertifications).

[120] *Id.* ¶ 151.

[121] *Id.* ¶ 152.

NASCA objects to the NPRM's proposal to include certain interconnection arrangements within the scope of its modification requirements, in particular NPRM's proposal to require an application to modify a submarine cable landing license to interconnect with another system at sea.[122] Neither of the two scenarios described by the NPRM—one in which two licensed systems interconnect two branching units and the other in which a new, foreign cable interconnects to a licensed cable at a branching unit—should require a license modification. In both of these scenarios, the relevant systems are simply enabling interconnection. There is no new ownership of a licensed cable and no new foreign landing added to a licensed cable. The two scenarios are not substantively different than any two submarine cable systems interconnecting on land. The Commission does not have jurisdiction over such activity. If the Commission believes it needs information on such interconnections because they involve a branching unit, it can require a licensee to notify the Commission when it notifies Team Telecom.

The Commission should also decline to adopt the NPRM's proposal to require licensees to submit yet another ownership restatement with each Foreign Carrier Affiliate notification they file.[123] The Commission should only require ownership restatements with substantive applications involving a change in control or notification of *pro forma* ownership changes. To the extent the Commission requires updates on minority interest holders, it will receive those updates in periodic reports. Rather than expanding the requirements of Section 1.768, the Commission should reassess the rule's purpose. At a minimum, the rule should be narrowed to apply only to foreign carriers in the countries where the relevant cable lands. The Commission

[122] *Id.* ¶¶ 156–57.

[123] *Id.* ¶¶ 174–75.

has never provided a justification for the breadth of this rule, and the length of time it takes the Commission to process the notifications suggest that the rule is not a Commission priority: Foreign Carrier Affiliate Notifications filed in April 2024 were placed on AFFPN on December 27, 2024.[124]

XI. THE COMMISSION SHOULD RADICALLY SIMPLIFY CIRCUIT CAPACITY REPORTING

The Commission should reassess the NPRM's proposals to expand the circuit capacity filing requirements.[125] These requirements require radical simplification, not additional complexity. Existing circuit capacity reporting is based on the false premise that the Commission can reconcile total design capacity on the Cable Operator Report with aggregate capacity reported on the Capacity Holder Reports. Significant capacity is sold to non-common carriers and end users. Capacity is then disaggregated and resold, repeatedly, making double counting inevitable. The Commission proposes to address this flaw by imposing filing obligations on all capacity holders and requiring licensees to identify their capacity customers with each filing.[126] NASCA doubts that this proposal would succeed. It is far more likely to create more discrepancies. Notably, while some operators may only have a few or no capacity customers, many will have scores—and those customers will have customers of their own. The net result would be an utterly unwieldly reporting regime that fails at its purpose. Moreover, the Commission's authority to impose regulatory obligations on downstream customers and end

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124 *See Foreign Carrier Affiliation Notification*, Public Notice, DA 24-1294, FCC File No. FCN-NEW-20240404-00004 (Int'l Bur. rel. Dec. 27, 2024); *Foreign Carrier Affiliation Notification*, Public Notice, DA 24-1294, FCC File No. FCN-NEW-20240426-00005 (Int'l Bur. rel. Dec. 27, 2024); *Foreign Carrier Affiliation Notification*, Public Notice, DA 24-1294, FCC File No. FCN-NEW-20240426-00006 (Int'l Bur. rel. Dec. 27, 2024).

125 *Id.* ¶¶ 208–09.

126 *Id.* ¶ 209.

users is doubtful. To the extent the Commission has concerns about licensees' customers, it should assert direct regulatory oversight over them, rather than seeking indirect oversight through the imposition of additional burdens on licensees. In no other circumstances does the Commission require regulated entities to report the names of their customers.

The Commission should focus instead on clarifying and simplifying the current reporting regime. Existing requirements consistently cause confusion for licensees, often resulting in months-long follow-up inquiries with Commission staff, year after year. Moreover, the Commission has neglected to update its Filing Manual[127] for five years, in spite of repeated complaints from reporting entities regarding the need for clarity.

The Commission should also eliminate the Cable Operator Report. That report improperly requires joint licensees for a system to share competitively sensitive information with each other in order to satisfy the Commission's requirement that only one filing be made per system. At the same time, the relevant data is already captured on the Capacity Holder Report. This is the perfect example of a requirement that should be "deleted."

NASCA has no objection to the sharing of circuit capacity data,[128] provided that such information remains confidential.

XII. THE NPRM'S COST ESTIMATE ARE VASTLY UNDERSTATED AND EXCESSIVE AND ITS FEE PROPOSAL IS MISPLACED

The industry is drowning in compliance activities and costs, and the Commission is seeking to impose more. NASCA supports efficient, purpose-driven regulation. It objects to unnecessary, duplicative, and overly complex regulation, and it objects to paying an additional

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[127] Filing Manual For Section 43.82 Circuit Capacity Reports (Int'l Bur. Feb. 2020), https://docs.fcc.gov/public/attachments/DOC-362660A1.pdf ("Filing Manual").

[128] *NPRM* ¶¶ 223–27.

fee to facilitate the inefficient use of Commission resources in connection with such unnecessary regulation.

The Commission proposes a new fee to be paid with the submission of periodic reports to cover the costs of additional staff activity.[129] The NPRM estimates that reviewing a periodic compliance report would require staff resources, including analysts, attorneys, specialists, and a supervisory attorney, with total labor hours of 29 hours—17% more time than the 24 hours it estimates that a licensee must expend to prepare and submit the report.[130] There is an egregious efficiency problem within the Commission if that is indeed the case. And while the NPRM anticipates that licensees' burdens will decrease with later reports, "since much of the information will not have changed between reviews" (which of course raises the question of regulatory purpose), the NPRM does not similarly anticipate that the Commission's "significant investment of labor hours" will change.[131]

Equally problematic is that the Commission vastly understates the costs that licensees must bear in preparing applications and reports—costs that will increase dramatically if the Commission adopts even half of the NPRM's proposals. This includes both the total time expended in complying and the financial outlay in engaging outside counsel. On this latter point, the NPRM assumes a median hourly wage for attorneys of $300.[132] That hasn't been the median wage for outside counsel for more than 20 years. NASCA would estimate that the median hour wage for experienced counsel is closer to $1,000—and potentially much higher.[133]

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[129] *Id.* ¶ 194.

[130] *Id.* ¶¶ 194, 235.

[131] *Id.* ¶ 194.

[132] *Id.* ¶ 235 n.625.

[133] David Thomas & Mike Scarcella, *More lawyers join the $3,000-an-hour club, as other firms*

The Commission's proposals also fail to consider the countless hours that licensees spend drafting and submitting notices and reports to Team Telecom, preparing for and conducting site visits, addressing multiple follow-up requests for additional information, conducting audits and risk assessments, and similar activities. These activities are expensive in terms of time, money, and personnel productivity. The costs borne by licensees are important not just because they constitute a burden, but because resources are not unlimited, and the resources spent on compliance activities are resources diverted from operational and security activities.

The Commission has an obligation to ensure that the burdens it imposes on licensees are necessary to meet regulatory needs, "recognizing that in addition to imposing unnecessary burdens, unnecessary rules may stand in the way of deployment, expansion, competition, and technological innovation in communications that that the Commission is directed to advance."[134] This applies equally to regulatory obligations and regulatory fees. To the extent a regulation or a fee is unnecessary, it saps resources that are better spent by a licensee in securing its infrastructure or building new infrastructure. And those activities are, in NASCA's view, the key to bolstering national security and submarine cable resilience.

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close in, Reuters (Feb. 27, 2025), https://www.reuters.com/legal/legalindustry/3000-an-hour-lawyer-isnt-unicorn-anymore-2025-02-27/; *What are the current trends in law firm billing rates and their impact on clients and firms?*, Attorneys.Media, https://attorneys.media/law-firm-billing-trends/#google_vignette (last visited Apr. 10, 2025).

[134] *D3 Public Notice* at 1-2 (citations omitted).

CONCLUSION

For the foregoing reasons, NASCA urges the Commission to reconsider the proposals in the NPRM, with the goals of (a) adopting only those that are required to address specific, identified security or law enforcement risks; (b) avoiding unnecessary or duplicative requirements; (c) coordinating with Team Telecom to ensure consistency and standardization; (d) adopting genuinely streamlined application processes; and (e) working collaboratively with industry to share information on risks and resolutions to the overall benefit of both industry and government.

Respectfully submitted,

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