Before the
Federal Communications Commission
Washington, D.C. 20554

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 INCOMPAS

Christopher L. Shipley
Taylor Abshire
1100 G Street, N.W.
Suite 800
Washington, DC 20005
(202) 872-5746
cshipley@incompas.org

April 14, 2025

TABLE OF CONTENTS

Before the
Federal Communications Commission
Washington, D.C. 20554

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 INCOMPAS

INCOMPAS respectfully submits these comments in response to the Federal Communications Commission's ("Commission" or "FCC") *Notice of Proposed Rulemaking* seeking input on "how best to improve and streamline the submarine cable rules to facilitate efficient deployment of submarine cables while at the same time ensuring the security, resilience, and protection of this critical infrastructure."[1]

I. INTRODUCTION AND SUMMARY

INCOMPAS, the leading internet and competitive networks association advocating for competition policy across all networks, appreciates the opportunity to respond to the Commission's review of submarine cable landing license rules and procedures. Our members are catalysts for creating economic growth and improving the quality of life for all Americans

[1] *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*, *Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1109 of the Commission's Rules*, OI Docket No. 24-523, MD Docket No. 24-524, Notice of Proposed Rulemaking, FCC 24-119 (rel. Nov. 22, 2024) *("NPRM")*.

through technological innovation, new services, and greater choice for consumers and businesses. INCOMPAS' membership includes a number of domestically-based submarine cable owners and operators that have made significant, long-term investments in deploying, operating, and securing this infrastructure. Our membership also includes data centers that house submarine cable hardware, infrastructure which is vital for today's digital communications demands.

INCOMPAS members remain committed to strengthening national security through extensive and thorough security practices and assisting the goals of protecting American citizens' data. The Commission's national security objectives can be achieved by focusing on both data and economic security. However, regulatory requirements that have unintended national security threats as a consequence must not be implemented. For example, requiring applicants to disclose precise cable landing locations could increase risks of sabotage and could lead other countries to create reciprocal requirements. U.S. leadership and innovation in submarine cable deployment will result in significant economic benefits for domestic providers as well as these companies' foreign partners if data and economic security are protected, rather than threatened, through regulations.

While a review of the Commission's submarine cable licensing rules is warranted after nearly a quarter of a century, the agency's proposals—though intended to offer pragmatic reforms—will most likely create a new and unnecessary layer of bureaucracy and red tape, inconsistent with the Commission's public deregulatory efforts. The Commission is actively engaged in an effort to reduce unnecessary administrative rules.[2] This proceeding, which

[2] *See In Re: Delete, Delete, Delete,* GN Docket No. 25-133, Public Notice, DA 25-219 (rel. Mar. 12, 2025).

proposes intricate new application requirements, periodic reporting obligations, and new rules for capturing circuit capacity data, will have the opposite result.

For example, in the Commission's proposals for adopting its own periodic reporting requirements, the Commission does not seek to avoid duplication of the current Team Telecom process, which advises the agency on national security and law enforcement concerns related to foreign participation in the U.S. telecommunications sector. Additionally, expanding the Commission's authority to require all submarine cable capacity holders—including data centers—to obtain a submarine cable landing license would create unnecessary duplicative licensure requirements.

INCOMPAS members welcome the national security focus of this *NPRM*. However, as an alternative, the most efficient way to address its national security concerns would be for the Commission to provide a list of adversary countries with a rebuttable presumption that new submarine cables landing in the United States cannot directly connect with those countries nor can companies directly or indirectly owned by those adversary companies own or control new submarine cables that land in the United States. This would streamline efforts to achieve national security objectives, while limiting the regulatory burden on industry.

As the Commission considers action in this proceeding, it should only consider proposals that enhance subsea cable resilience and will create additional transparency and certainty for submarine cable operators and owners, and it should reject efforts to create new layers of administrative red tape that will require industry to redirect resources for additional compliance measures.

II. CERTAIN PROPOSED CHANGES TO THE COMMISSION'S REVOCATION AND LICENSING POLICIES ARE FORECLOSED BY LIMITATIONS ON AGENCY AUTHORITY

The Commission's authority over submarine cable landing licenses is derived from delegation of Presidential authority under the Cable Landing License Act. The nature of the delegation constrains the Commission from making certain changes to its policies and rules, particularly in the revocation and licensing contexts.

A. All Revocation Actions Must Involve the Executive Branch

The Cable Landing License Act (the "Act") authorizes the President to "withhold or revoke" a submarine cable landing license,[3] and the Executive Order delegates this authority to the Commission with the express limitation that "[n]o such license shall be granted or revoked… *except after obtaining approval of the Secretary of State* and such advice from any executive department or establishment of the Government as the Commission may deem necessary."[4] The implications of this language are clear: the Commission lacks the authority to act unilaterally in the revocation context. Instead, the Commission must take steps to coordinate with the Executive Branch, including the Team Telecom agencies and the State Department, to ensure that its actions are informed by and reflect the work of these government stakeholders to identify and mitigate national security risks.[5]

---

[3] Cable Landing License Act of 1921, Pub. L. No. 8, 67th Cong., ch. 12, § 1, 42 Stat. 8 (1921) (codified as amended at 47 U.S.C. §§ 34–39)).

[4] Exec. Order 10530 (1954) ("*Executive Order*" or "EO")*.*

[5] Note that this obligation is distinguishable from what applies in the Section 214 revocation context, in which the Commission need not necessarily coordinate with the Executive Branch. *See Pac. Nets. Corp. v. FCC*, 77 F.4th 1160, 1166 (D.C. Cir. 2023) ("Nothing in the Due Process Clause, the APA, or the Communications Act requires the Commission to consult with other agencies . . . .") ("*Pacific Networks*"). The authority delegated to the Commission for the revocation of submarine cable landing licenses expressly requires "approval of the Secretary of

The Commission cannot, as a matter law, engage in revocation actions without prior coordination and approval from the State Department. This limitation flows from the plain text of the *Executive Order*, and it is a foundational principle that an agency may not ignore express checks on its authority, whether those be granted via statute or by delegation from the President.[6] The Commission itself has recognized its obligation to coordinate with the Executive Branch on numerous occasions.[7] The Commission therefore should ensure that any changes to its submarine cable licensing regime and revocation procedures are not in tension with this fundamental limitation on the agency's authority.

Even if the Commission were not legally obligated to coordinate with the Executive Branch, which it is, it would be unreasonable for the Commission to deviate from this long-standing practice. As a practical matter, coordination with Executive Branch agencies is necessary to avoid undermining the national security efforts taken by those agencies in other contexts. For example, it is possible that the Commission may have a different perspective than, say, Team Telecom or other key government stakeholders with expertise in matters of national

---

State and such advice from any executive department or establishment of the Government as the Commission may deem necessary." *Executive Order*.

[6] *See, e.g.*, *Util. Air Regul. Grp. v. E.P.A.*, 573 U.S. 302, 328 (2014) (explaining that "an agency may not rewrite clear statutory terms to suit its own sense of how the statute should operate.").

[7] *See, e.g.*, *In re WorldCom, Inc.*, 13 FCC Rcd 18025, 18054 ¶ 106 n.305 (1998) ("The Commission acts on cable landing license applications *only after* we receive notification whether the Department of State, on behalf of the Executive Branch, has any objection to the issuance of the cable landing license.") (emphasis added). *See, e.g.*, *In re Streamlining the International Section 214 Authorization Process and Tariff Requirements*, Notice of Proposed Rulemaking, 10 FCC Rcd 13477, 13491 ¶ 39 (1995) (explaining that knowledge of the "precise landing points" of a submarine cable is "needed so that the Secretary of the Army could move the submarine cable for purposes of national defense or for the maintenance or improvement of harbors for navigational purposes.") (citing 47 C.F.R. § 1.767(b)).

security and foreign policy, on how best to address particular national security concerns. In such contexts, it would not serve the public interest to have any mitigation actions from the Commission at odds with Team Telecom's efforts. There may even be circumstances in which the Commission, in the absence of coordinating with Team Telecom and the Executive Branch more broadly, could conclude that certain concerns warrant a license revocation despite prior (or ongoing) work by Team Telecom to mitigate those concerns through other means (*e.g.*, Letters of Agreement ("LOAs") and/or other national security agreements). A unilateral revocation right by the Commission could undermine these efforts. This sort of dysfunction would not serve the public interest and can be avoided by making sure that any revocation procedures the Commission ultimately adopts expressly recognize that all such proceedings will, by default, involve coordination with the Executive Branch.

B. Licensing Requirements May Not Extend Beyond Parties that Control a Cable Without Congressional Authorization or an Express Delegation of Executive Authority

The *NPRM* proposes to extend the submarine cable licensing requirement beyond the parties that control the cable's operation and/or own the cable to owners and operators of Submarine Line Terminal Equipment ("SLTE") or equivalent equipment, as well as Indefeasible Right of Use ("IRU") holders or grantees.[8] Although the Commission's desire for more information regarding the entities that hold capacity on cables that connect to and from the United States is understandable, any such requirement for this information would exceed the Commission's delegated authority.

[8] *See NPRM* at 45–47 ¶¶ 74–77.

The EO's delegation of authority to the Commission limits the Commission's authority to "person[s] . . . land[ing] or operat[ing] in the United States any submarine cable . . . ."[9] Entities that merely hold capacity do neither. And, contrary to the Commission's claim in the *NPRM*, it is inaccurate to state that "any entity that holds capacity on [a] submarine cable system, such as an entity that leases capacity and may not own the terminal system or SLTE, *may still have an ability to operate* a portion of the cable system."[10] Holders of submarine cable capacity such as IRUs certainly have rights to use that capacity, but they do not have the right or ability to operate the cable itself, or any portion thereof. Similarly, their capacity rights confer no ownership interest in the cable itself, which the *NPRM* recognizes.[11] These limited rights cannot be construed to align with the Commission's delegated authority over entities that "land or operate" submarine cables.[12]

Similarly, owners and operators of SLTE equipment cannot be said to "land" submarine cables given that, as the *NPRM* acknowledges, in many cases the SLTE may not be deployed in a landing station at all.[13] No logical interpretation of the rights conferred by IRUs fits the "land"

---

[9] *Executive Order*.

[10] *NPRM* at 49 ¶ 84 (emphasis added).

[11] *See id.* at 46 ¶ 76 ("[IRUs] provide holders or grantees with the rights to use the capacity, which includes equipment, fibers, or capacity, and may constitute assets as well, *even though legal title is held by the grantor*."). Tellingly, the source the *NPRM* cites in support of its description of an IRU itself clarifies that IRUs grant access rights "without the transfer of legal title." *See id.* at 46 ¶ 76 n.248 (citing Fernando Margarit *et al., IRUs and Fiber Optic Cables: An Overview and Examination of Associated Risks*, Submarine Telecoms Forum, available at https://subtelforum.com/telecom-indefeasible-rights-of-use/).

[12] *Id.* at 49 ¶ 84.

[13] *See id.* at 45 ¶ 74 ("A proposed cable system could also have multiple locations where SLTE is deployed.").

concept, either, given that IRUs, by definition, grant no rights to control the cables. In addition, neither SLTE equipment owners nor IRU holders can be said to "operate" submarine cables given that these entities do not have the ability to "affect the operation of the cable system," which the Commission historically has recognized as falling within the scope of the authority delegated under the Cable Landing License Act's reference to parties that "operate" a submarine cable.[14] The Commission is right to question its authority in this space[15] because it does not have such authority.

Even if the Commission had the authority to require licensing for these entities, which it does not, there are practical reasons to not do so. For one, the Commission's concerns about the burdens such a requirement would impose and the chilling effects this would have on "investment incentives" are well founded.[16] If such licensing were required, these entities would be subject to burdensome disclosure and filing obligations, including in contexts involving the sale or transfer of their equipment and/or interests. It also would frustrate the well-settled expectations of capacity holders, who, after having made significant long-term investments in cable capacity, would suddenly be faced with burdensome disclosure and compliance burdens.

---

[14] *See In re Review of Commission Consideration of Applications under the Cable Landing License Act*, Report and Order, 16 FCC Rcd 22167, 22197 ¶ 57 (2001) ("[A]s the *NPRM* noted, consideration of a firm's influence on operations falls squarely within the ambit of the Cable Landing License Act, which requires a license to 'land or operate' a submarine cable."); *id.* at 22196 ¶ 57 n.131 ("[E]ntities 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, and there is not the same need, therefore, to subject these entities to the conditions and responsibilities that come with a cable landing license.").

[15] *See NPRM* at 46 ¶ 77 ("Does the Commission's legal authority to withhold or grant a cable landing license extend to authorizing such purchases or sales of capacity?") (citing 47 U.S.C. § 35).

[16] *Id.* at 49 ¶ 83.

Finally, requiring licensing for capacity leases or IRUs would significantly increase the burdens of, and time involved in, securing redundant pathways for subsea transmission, ultimately to the detriment of U.S. networks' resilience.

III. REVOCATION PROCEEDINGS MUST AFFORD ALL AFFECTED PARTIES DUE PROCESS, INCLUDING A MEANINGFUL OPPORTUNITY TO ADDRESS BONA FIDE CONCERNS THROUGH PROPOSED MITIGATION MEASURES

For any future revocation actions, the *NPRM* proposes implementing the approach followed by the Commission in its "most recent section 214 revocation proceedings"—the proceedings that resulted in the revocation of the Section 214 authority held by China Telecom Americas and Pacific Networks.[17] Although these proceedings may provide reference points for the development of revocation procedures, the Commission should not ignore the important—and mandatory—procedural protections afforded to licensees and regulatees when adopting final rules. These are critical to ensuring the due process rights of these parties are protected, which is fundamental requirement of the APA.

A. Prior to Revocation, the Commission Should Work with Licensees to Address Specific National Security Concerns Through Alternative Mitigation Measures

Before the Commission resorts to revocation, it first should engage with licensees (and other affected parties, when relevant) to provide them with the opportunity to work collaboratively with the Commission and Executive Branch agencies to identify specific national security concerns and develop appropriate, targeted mitigation measures. This approach, which would minimize the need for revocation and the disruptive effects of such action on a wide range

[17] *See id.* at 31 ¶ 39 (citing *In re China Telecom (Americas) Corporation*, Order on Revocation and Termination, 36 FCC Rcd 15966 (2021), *aff'd*, *China Telecom (Americas) Corp. v. FCC*, 57 F.4th 256 (D.C. Cir. 2022) ("*China Telecom*"), *and In re Pacific Networks Corp. & ComNet (USA) LLC*, Order on Revocation and Termination, 37 FCC Rcd 4220 (2022), *aff'd*, *Pacific Networks*, 77 F.4th 1160.

of affected parties, except where absolutely necessary to protect national security, will in all cases ensure national security interests are adequately protected.

The *NPRM* proposes in relevant part to delegate to OIA the authority to determine the procedures by which it would initiate revocation proceedings and revoke a submarine cable landing license, as required by due process, "including providing a licensee with notice and opportunity to respond and, *where appropriate*, to achieve compliance with all lawful requirements."[18] Any procedures ultimately adopted should clarify explicitly that it is appropriate in all cases for licensees to be provided with notice and the opportunity to respond. That is, any procedures adopted by the Commission for when it "initiate[s] revocation and/or termination proceedings and revoke[s] and/or terminate[s] a cable landing license," should acknowledge that, by default, it is "appropriate" that all licensees be afforded notice and the opportunity to respond "to achieve compliance with all lawful requirements" before revocation proceedings advance. The due process protections of the APA demand no less.[19] The *NPRM* appears to recognize that any reservation of authority to modify its approach to revocation as circumstances warrant is limited by the requirements of due process,[20] but this should be expressly stated in any codification of the Commission's revocation procedures.

---

[18] *Id.* at 32 ¶ 41 (emphasis added).

[19] *See* 5 U.S.C. § 558(c)(1)–(2).

[20] *See NPRM* at 32 ¶ 39 ("We also seek comment on whether the Commission should retain authority to modify these procedures on a case-by-case basis as circumstances warrant, *as long as any alternative procedures provide adequate due process*.") (emphasis added). To be clear, any procedures that would not provide a licensee with notice and the opportunity to resolve the Commission's concerns through collaboration with the Commission and the Executive Branch agencies would not "provide adequate due process."

This default to a collaborative, mitigation-focused approach has practical appeal as well, both in terms of avoiding the collateral harms that would result from revocation and ensuring an efficient use of Commission resources. The consequences of revocation of a license are significant and affect interests beyond those of the licensee, as the *NPRM* itself acknowledges.[21] These include capacity holders, their customers, and end users, all of which could experience significant disruptions to their service (and business) in the event of license revocation. This approach also would be a far more efficient use of agency resources given the Commission's ultimate goal of protecting national security.[22] As such, the focus should be on finding national security solutions. This would facilitate coordination with the Executive Branch agencies, too, which would follow long-standing Commission practice and, as discussed above,[23] is statutorily required.

B. Procedural Protections for All Affected Parties are Critical

Consistent with the *NPRM's* recognition that parties with interests in submarine cables extend beyond those that own and control such cables, any revocation and termination procedures adopted by the Commission should extend procedural protections to all affected parties, not just licensees.

---

[21] *See id.* at 32 ¶ 41 ("We seek comment on whether this procedural framework would provide cable landing licensees *and any other affected parties* with sufficient notice of the basis for any denial, revocation, or termination action, an opportunity to present evidence and arguments that support their respective positions, and an opportunity to respond to opposing evidence and arguments.") (emphasis added).

[22] *See id.* at 35 ¶ 46 (describing the Commission's authority to "conduct an *ad hoc* assessment of whether a licensee's cable landing license presents national security, law enforcement, foreign policy, and/or trade policy risks that warrant revocation").

[23] *See* Section II.A, *supra*.

For example, paragraph 35 of the *NPRM* and its analysis of the second *Mathews* factor contemplates that the Commission's proposed procedural protections would "provide cable landing licensees with sufficient due process," but it is silent on whether other affected parties would be provided the same. To avoid due process harms and the unwarranted deprivation of rights without notice to all, these parties must be given the opportunity to participate. The *NPRM* suggests that the proposed process "would provide any other interested parties" with notice and the opportunity to be heard in response to any denial and revocation action, but the list of such "other interested parties" identifies only "joint applicants or licensees or other proposed or existing owners of a submarine cable."[24] To protect the due process rights of all parties that would be affected by revocation, any procedural rules should confirm that this list is not exhaustive and that all affected parties, including but not limited to capacity holders, their customers, and end users, have the same opportunity to be heard.

This is doubly important given the *NPRM's* implication that the Commission's past revocation actions, both for submarine cable landing licenses and Section 214 authorizations, will be precedent for future revocations.[25] If this is to be the Commission's standard practice, the parties whose rights will be affected by policy-shaping revocation actions cannot be denied the opportunity to participate in those actions.

C. Any New Revocation Procedures Should Not Apply Retroactively and in All Cases Should Flow Only from a History of Noncompliance

It is a fundamental principle of administrative law that an agency may not simultaneously create and retroactively apply a new interpretation of its rules. This requirement exists to ensure

[24] *NPRM* at 28 ¶ 35.

[25] *See, e.g.*, *id.* at 52 ¶ 88.

regulatees have "fair warning" of an agency's position on what its rules mean so that these parties do not face liability for engaging in what they could not have known was violative conduct.[26] For this reason, it is a "well-established rule in administrative law that the application of a rule may be successfully challenged if it does not give fair warning that the allegedly violative conduct was prohibited."[27] Similar protections exist in circumstances in which a new rule, not a reinterpreted one, purportedly would have retroactive effect.[28]

Whatever procedures and standards the Commission ultimately adopts for revocation and termination of submarine licenses, these should not be applied in a manner that would be vulnerable to fair notice and retroactivity concerns. Specifically, any use of newly adopted rules to invalidate licenses currently in effect, or force modifications of these licenses consistent with any newly adopted requirements, would be open to legal challenge as an impermissible retroactive application of new rules. The *NPRM* rightly raises these sorts of concerns in the license term context,[29] but they apply equally to any potential retroactive application of the Commission's new interpretation of its revocation and withdrawal authority.

To be clear, the Commission can—and should—apply its new revocation and withdrawal procedures on a licensee-specific, going-forward basis when it identifies, in collaboration with

---

[26] *See Trinity Broad. of Fla., Inc. v. FCC*, 211 F.3d 618, 628 (D.C. Cir. 2000) ("Because '[d]ue process requires that parties receive fair notice before being deprived of property,' we have repeatedly held that '[i]n the absence of notice – for example, where the regulation is not sufficiently clear to warn a party about what is expected of it – an agency may not deprive a party of property by imposing civil or criminal liability.") (quoting *Gen. Elec. Co. v. EPA*, 53 F.3d 1324, 1328–29 (D.C. Cir. 1995).

[27] *U.S. v. Chrysler Corp.*, 158 F.3d 1350, 1354–55 (D.C. Cir. 1998).

[28] *See, e.g.*, *NPRM* at 43 ¶ 68 (discussing due process and retroactivity).

[29] *See id.*

the Executive Branch agencies, demonstrable national security threats that did not exist at the time of licensing. Equally permissible would be a revocation or termination action based on a licensee's failure to adhere to the conditions of its license, LOA, or rules applicable at the time the Commission granted the license. But any Commission action to apply new, generally applicable revocation and termination rules retroactively based solely on facts or issues that existed (and, in some cases, were addressed) at the time the existing license was granted cannot comport with the APA protections that bar the imposition of violations without fair notice and the retroactive application of new rules. Such actions would be vulnerable to legal challenge, both on APA grounds and as a retroactive application of rules for which the Commission has no authority.[30]

Finally, the Commission should be mindful that revocation and termination actions may, depending on the circumstances, be open to challenge as improper regulatory takings. The statutory protections afforded under the Fifth Amendment's Takings Clause are clear: "private property" shall not "be taken for public use, without just compensation."[31] This property interest extends to Commission licenses,[32] and the Supreme Court has confirmed that the "total

[30] *See, e.g.*, *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988) ("[A] statutory grant of legislative rulemaking authority will not, as a general matter, be understood to encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in express terms.").

[31] U.S. Const. amend. V.

[32] *See e.g.*, *Alpine PCS, Inc. v. United States*, 128 Fed. Cl. 303, 309 (2016) (explaining that an FCC license confers a property interest that would be recognized under the Takings Clause); *In re Atlantic Bus. and Cmty. Dev. Corp.*, 994 F.2d 1069, 1074 (3d Cir. 1993) (finding that the Communications Act "implies the creation of rights akin to those created by a property interest limited only by the 'terms, conditions and periods of the license.'").

deprivation of beneficial use" of protected property constitutes a taking.[33] In certain revocation and termination contexts, the loss of a submarine cable landing license would leave the cable unusable and render valueless the significant investments of operators and capacity holders. Any such action therefore would be an unconstitutional taking absent "just compensation." The Commission should be mindful of this legal risk as it works to refine and implement new revocation and termination procedures.

IV. THE COMMISSION SHOULD WORK IN CONJUNCTION WITH TEAM TELECOM TO ENSURE REPORTING REQUIREMENTS ARE NOT DUPLICATIVE OR ONEROUS

As a backdrop to the Commission's proposals, submarine cable landing license applicants already undergo a complex, thorough review from Team Telecom, which is often a lengthy process. INCOMPAS members understand the goals of this initial review process and encourages the Commission and Team Telecom to regularly communicate during this vital time of the application process.

In the *NPRM*, the Commission is proposing to require licensees to provide information to the Commission every three-years.[34] In explanation, the Commission states it does not receive updated information from submarine cable licensees during the 25-year licensing term necessary to assess national security or other risks.[35] However, Team Telecom performs regular monitoring of cables through regular reporting and ad hoc reviews and requires licensees to continue to provide information, with the goal of ensuring national security.

---

[33] *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1017 (1992). The Supreme Court also has held that a partial deprivation of beneficial use is recoverable. *See Penn Cent. Transp. Co. v. N.Y.C.*, 438 U.S. 104, 124 (1978).

[34] *NPRM*, at 36 ¶ 49.

[35] *Id.*, at 34 ¶ 44.

Should the Commission require its own periodic reporting, it should not be duplicative of Team Telecom's requirements. Regular monitoring requires considerable resources and time, and producing duplicative information for a different agency is burdensome, especially when Team Telecom already has the information the Commission would require. This should be an opportunity to increase communications and information sharing between the Commission and Team Telecom, not to impose more regulatory burdens on industry. At a minimum, subsea cable licensees should be able to satisfy any new FCC periodic reporting requirements by submitting to the Commission any annual reports they already submit to Team Telecom, subject to confidential treatment.

V. REQUIRING APPLICANTS TO DISCLOSE THE PRECISE LOCATION OF SUBMARINE CABLE SYSTEMS LANDINGS MAY INADVERTENTLY OPEN THE U.S. TO NATIONAL SECURITY RISKS.

The Commission proposes to require disclosure of detailed information—including the address and county or county equivalent of each U.S. and non-U.S. cable landing station—in applications, modifications, assignments, transfer of control, and renewal or extension of a license.[36] INCOMPAS urges the Commission to reject this proposal, as it poses significant national security risks and could jeopardize domestic providers' contractual and legal obligations with foreign entities.

Mandating the disclosure of foreign cable landing locations would set a dangerous precedent. Not only would this expose sensitive infrastructure information abroad, but it could also encourage reciprocal demands from other countries. Foreign governments might require U.S. entities to reveal the precise landing locations of submarine cables entering the United States, effectively putting U.S. critical infrastructure at risk. These disclosures would provide

[36] *Id.*, at 56 ¶ 99.

malicious actors—state-sponsored or otherwise—with a roadmap to target submarine cables, which are vital to global communications and commerce. The increased visibility of these assets heightens the potential for physical sabotage.

In addition to national security concerns, the proposal could place domestic providers in direct conflict with existing international agreements and private contractual obligations. Disclosure requirements may violate nondisclosure clauses in contracts with foreign partners or breach the terms of licensing arrangements negotiated with sovereign nations. Many of these agreements are built on mutual expectations of confidentiality and trust. Requiring companies to publicize such information could undermine those relationships, expose them to legal liability, and chill future international collaboration on new cable projects.

Further, the proposed rules may deter investment in U.S.-connected cable systems by introducing regulatory uncertainty and raising the costs of compliance. Companies may be less inclined to land cables in the United States if doing so means exposing sensitive operational details that are not similarly required elsewhere. In a competitive and geopolitically sensitive market, the United States should be encouraging innovation and infrastructure development—not creating barriers that could drive projects to other, more predictable jurisdictions.

VI. REQUIRING DISCLOSURES REGARDING CURRENT AND FUTURE BUSINESS PLANS IS IMPRACTICAL AND OUTSIDE THE AUTHORITY DELEGATED TO THE COMMISSION

Paragraph 183 of the *NPRM* proposes that submarine cable licensees, as part of new periodic reporting requirements, provide "information about the capacity services they currently offer or plan to offer through the [system]," including the capacity current owned and intended for sale.[37] The *NPRM* also proposes to require the disclosure of "current and expected future

[37] *Id.* at 92 ¶ 183.

service offerings" as part of any applications for modification, assignment, transfer of control, and renewal or extension of submarine cable licenses.[38] These sorts of reporting and disclosure requirements are impractical and likely are outside the scope of the Commission's delegated authority.

It is reasonable and understandable for the Commission to seek information about a submarine cable licensees' current business plans, but the Commission should moderate its reporting approach vis-à-vis future plans, which by nature cannot be articulated with certainty and, in nearly all cases, would require speculation. Such disclosures would be subject to change, in any event, and would not provide the Commission with reliable information upon which the Commission could rely to inform any national security review. Submarine cable operators cannot forecast with certainty what capacity needs will be, both in terms of their own business and their customers, or even whether current business partners and co-licensees will remain the same. In an industry driven by advances in technology, the potential for change is even more acute. Given this, as a practical matter, the Commission should avoid any reporting requirements that would necessitate the provision of forward-looking information – *i.e.*, information on "the capacity services . . . [a licensee] plan[s] to offer . . . . includ[ing] the amount of capacity it intends to sell" in periodic reports or disclosures on "expected future service offerings" in submarine cable license applications.[39]

---

[38] *Id.*

[39] *Id.* at 92 ¶ 183.

VII. THE COMMISSION SHOULD NOT SHORTEN THE 25-YEAR LICENSE TERM AS IT COVERS THE LIFE SPAN OF THE SUBMARINE CABLE

In the *NPRM*, the Commission proposes shortening the current 25-year licensing term as an alternative to the proposed periodic reporting requirement.[40] INCOMPAS urges to Commission to reject this proposal because maintaining the 25-year license term is the most efficient and rational method for administering submarine cable authorizations due to it being the lifespan of the cable. In this proceeding, the Commission acknowledges that the current 25-year license term "appears to relate to operational aspects of submarine cable systems," specifically the planned commercial lifespan of the cables.[41] This recognition reflects a long-standing and practical approach: aligning the license duration with the functional lifespan of the infrastructure it governs. Requiring licensees to refile applications multiple times—potentially two or three times—during the lifespan of a single cable system would impose unnecessary administrative burdens, increase regulatory uncertainty, and divert resources from more productive uses such as network maintenance, upgrades, or innovation. Maintaining the current license term allows licensees to plan and operate their systems without unnecessary regulatory interruptions or repetitive filings.

Should the Commission move forward with any proposal to shorten the license term, it is essential that the FCC grandfather existing licenses issued under the 25-year term. These licenses were granted under a clearly understood regulatory framework and any attempt to retroactively apply new timelines would disrupt expectations and potentially destabilize business planning and financing arrangements made in reliance on the current rule. Any revisions to the Commission's

[40] *Id.* at 39 ¶ 56.

[41] *Id.* at 40 ¶ 60.

rules should be applied on a prospective basis and be limited to new submarine cable license applications. This would preserve regulatory certainty for existing operators while giving future applicants clear expectations about the rules under which they will be evaluated.

VIII. THE COMMISSION SHOULD CONTINUE GRANTING WAIVERS TO DATA CENTER OWNERS THAT LACK OPERATIONAL CONTROL OVER THE SUBMARINE CABLE SYSTEM HOUSED IN ITS FACILITY.

In the *NPRM*, the Commission seeks comment on the applicability of its rules to data center owners.[42] Under existing law, licensing is required only for owners and operators of submarine cable systems—not for entities which merely provide access or infrastructure support.[43] In order to avoid duplicative licensure requirements, the FCC has in the past limited licensure to actual operators of subsea cables.[44] This is a practice consistent with the Commission's statutory authority under the Cable Landing License Act and should continue without change.

Expanding the Commission's authority to include all capacity holders—such as data center owners—would represent a significant policy shift that would require explicit Congressional authorization or delegated authority from the Executive Branch. Absent such

[42] *Id.*, at 47 ¶ 78.

[43] 47 USC §34. ("No person shall land or operate in the United States any submarine cable directly or indirectly connecting the United States with any foreign country, or connecting one portion of the United States with any other portion thereof, unless a written license to land or operate such cable has been issued by the President of the United States.)

[44] *See NPRM*, at 47 ¶ 78. ("We note that with respect to the entities that own or control the cable landing stations, the Commission frequently receives waiver requests from entities, such as data center owners, that do not seek to become an applicant or licensee. These entities state that they own the real property/facility in which the cable landing station is located but do not have any ability to significantly affect the cable system's operation.")

authority, the Commission should refrain from extending licensing obligations to entities beyond those directly responsible for operating subsea cables.

INCOMPAS members fully support the Commission's national security goals, including its interest in understanding which entities have capacity into and out of the United States. The current regulatory framework already enables the Commission to obtain this information from licensed cable operators, who are far better positioned to provide accurate and comprehensive data. When the actual cable operator undergoes the licensing process, no additional licenses should be required from other entities, such as data center owners. The licensed cable operator has full visibility into the technical, operational, and ownership information that the Commission needs to assess national security, law enforcement, and other public interest concerns. These operators have direct access to technical specifications and operational controls related to the cables. In contrast, data center owners often lack visibility into or control over cable operations and should not be held to the same regulatory standard. Requiring duplicative licensing from property owners or passive infrastructure providers would not yield additional useful information but would instead create administrative burdens and confusion over compliance responsibilities.

Subjecting data center operators to licensure would decrease competition and be inconsistent with the Commission's deregulatory goals. Smaller data center operators face significant market and cost pressure that continually increases with no end in sight. Costs of power, long lead equipment, and labor threaten to stratify the market at the cost of innovation and consumer choice. Adding unnecessary, duplicative, and burdensome regulation to the market will further this negative trend. This may ultimately leave small data center operators unable to compete effectively in the market with larger operators, further decreasing competition and consumer choice. The Commission should codify the waivers, consistent with its statutory

authority in the Cable Landing License Act, to increase regulatory certainty and market competition.

If the Commission were to stop granting waivers, data center owners should only be subject to licensure if they are the primary entity responsible for bringing an international submarine cable into the United States or operating that cable. The FCC should carefully consider the limits of its statutory authority, which extends only to entities that "land or operate" such cables. The inclusion of data centers should be based solely on this statutory framework—not on their incidental involvement in the broader ecosystem of international data transmission.

To provide clarity and consistency, the Commission should establish clear definitions and guidelines for determining when a data center owner is considered to "land or operate" a cable. Under both the statutory text and established principles of interpretation, a data center should only fall within the licensing requirement if it is the primary entity responsible for landing or operating the cable. Where another party—such as the actual cable operator—bears that responsibility, it should be the sole licensee. The Commission should make clear that data center owners acting merely as contractors or providing facilities under agreement with a licensed operator do not trigger licensing obligations.

IX. CONCLUSION

For the reasons stated herein, INCOMPAS urges the Commission to consider and adopt the recommendations in the above comments as it considers how best to improve and streamline the submarine cable rules to facilitate efficient deployment of submarine cables.

Respectfully submitted,

INCOMPAS

/s/ Christopher L. Shipley

Christopher L. Shipley
Taylor Abshire
1100 G Street, N.W.
Suite 800
Washington, DC 20005
(202) 872-5746
cshipley@incompas.org

April 14, 2025