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

REPLY COMMENTS OF INCOMPAS

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REPLY COMMENTS OF INCOMPAS

INCOMPAS respectfully submits these reply 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, appreciates the opportunity to respond to the Commission's efforts to reform its submarine cable landing license rules and procedures. 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

[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")*.

also includes data centers that house submarine cable hardware—infrastructure that is vital for today's digital communications demands.

In the record, there is broad recognition amongst stakeholders that ensuring the security of submarine cable infrastructure is of paramount importance. INCOMPAS members remain committed to strengthening national security through extensive and thorough security practices as well as working with government to protect American citizens' data. The comments raise questions, though, about the Commission's delegated authority, given Team Telecom's more central role following the publication of Executive Order 13913 in 2020.[2] Furthermore, there is consensus in the record that regulatory requirements that have unintended national security threats as a consequence should be implemented with abundant care or abandoned. In this case, certain information regarding submarine cable systems, like precise landing locations, is highly sensitive and, if collected and shared within the Federal government, should be treated confidentially. Finally, the record supports the need for increasing resiliency through redundancy. This requires increased investment, streamlined processing, and reducing burdensome regulations and filings. Commission action in this proceeding should be consistent with its recent deregulatory proceedings and not create a new and unnecessary layer of bureaucracy and red tape.[3]

[2] Exec. Order No. 13913, 85 Fed. Reg. 19643, 19643 (Apr. 8, 2020) ("EO 13913").

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

II. THE RECORD OVERWHELMINGLY SUPPORTS THAT THE COMMISSION MUST OPERATE WITHIN THE DELEGATED AUTHORITY PROVIDED BY THE PRESIDENT IN THE CABLE LANDING LICENSING ACT

As INCOMPAS explained in its comments, the *NPRM's* proposal 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 would exceed the Commission's delegated authority.[4] USTelecom argues that extending the licensing regime would be "contrary to the plain meaning of the Cable Landing License Act" while noting that the current requirements "adequately capture the information needed to assess national security and law enforcement concerns."[5] The Submarine Cable Coalition in its reply comments insists expansion of the licensing requirements is "unnecessary and duplicative" and that requiring additional parties to become FCC licensees "only serves to increase the burdens on the industry with little benefit to national security, as these concerns are already addressed through the oversight powers held by Team Telecom."[6] This position is reflected by most of the major stakeholders participating in this proceeding, including Alaska Power & Telephone Company,[7]

[4] *See* Comments of INCOMPAS Comments, OI Docket No. 24-523, MD Docket No. 24-524 at 8 (filed April 14, 2025) ("INCOMPAS Comments") (arguing that extending these licensing requirements would require congressional authorization or an express delegation of executive authority in accordance).

[5] Comments of USTelecom – The Broadband Association, OI Docket No. 24-523, MD Docket No. 24-524, at 5 (filed April 14, 2025) ("USTelecom Comments").

[6] Reply Comments of the Submarine Cable Coalition, OI Docket No. 24-523, MD Docket No. 24-524, at 4 (filed May 19, 2025); *see also* Comments of The Submarine Cable Coalition, OI Docket No. 24-523, MD Docket No. 24-524, at 10 (filed April 14, 2025) ("SCC Comments").

[7] *See* Comments of Alaska Power & Telephone, OI Docket No. 24-523, MD Docket No. 24-524, at 4-5 (filed April 11, 2025) ("Alaska Power Comments").

AWS,[8] CTIA,[9] ICC,[10] ITI,[11] Microsoft,[12] NASCA,[13] Southern Cross.[14] Given the broad opposition to the NPRM's proposals on extending submarine cable licensing requirements, INCOMPAS urges the Commission to retain the current licensing structure and abandon this proposal.

III. THE COMMISSION SHOULD CONTINUE TO GRANT WAIVERS TO DATA CENTER OWNERS THAT LACK OPERATIONAL CONTROL OVER THE SUBMARINE CABLE SYSTEMS HOUSED IN THEIR FACILITIES

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.[15] INCOMPAS posits that extending this licensing regime would exceed the scope of the Commission's authority. Microsoft urges the Commission to reject the NPRM's proposals license cable landing station and data center owners based on the role such owners play in

[8] *See* Comments of Amazon Web Services, Inc., OI Docket No. 24-523, MD Docket No. 24-524, at 7-8 (filed April 14, 2025) ("AWS Comments").

[9] *See* Comments of CTIA, OI Docket No. 24-523, MD Docket No. 24-524, at 13-14 (filed April 14, 2025) ("CTIA Comments").

[10] *See* Comments of the International Connectivity Coalition, OI Docket No. 24-523, MD Docket No. 24-524, at 27 (filed April 14, 2025) ("ICC Comments").

[11] *See* Comments of the Information Technology Industry Council, OI Docket No. 24-523, MD Docket No. 24-524, at 3 (filed April 14, 2025) ("ITI Comments").

[12] *See* Comments of Microsoft, OI Docket No. 24-523, MD Docket No. 24-524, at 10-11 (filed April 14, 2025) ("Microsoft Comments").

[13] *See* Comments of The North American Submarine Cable Association, OI Docket No. 24-523, MD Docket No. 24-524, at 13-14 (filed April 14, 2025) ("NASCA Comments").

[14] *See* Comments of Southern Cross Cables Limited & Pacific Carriage Limited Inc, OI Docket No. 24-523, MD Docket No. 24-524, at 2-3 (filed April 12, 2025) ("Southern Cross Comments").

[15] *See* INCOMPAS Comments at 22.

providing space, power, physical security, and HVAC support to submarine cable systems. [16] Additionally, NASCA recommends that the Commission exclude cable landing stations and other colocation providers from the scope of licensing arguing that the provision of facility services "does not give a colocation provider an operational role with respect to a system."[17] Also, the Submarine Cable Coalition suggests that data center owner should not be subject to submarine cable licensing "[u]nless a data center owner is directly involved in cable operations or is providing services beyond simply selling the colocation space in its facility to a licensee."[18]

IV. REVOCATION PROCEEDINGS MUST AFFORD ALL AFFECTED PARTIES DUE PROCESS

As INCOMPAS has argued in this proceeding, revocation proceedings must afford all affected parties adequate due process. That includes working with licensees to address specific national security concerns through alternative mitigation measures.[19] ICI agrees and adds that "[i]n exceptional circumstances with national security threats based on defined criteria, additional mitigations may be proposed by Team Telecom."[20] INCOMPAS suggests any new revocation procedures should not apply retroactively and all cases should flow only from a history of noncompliance.

[16] *See* Microsoft Comments at 12-13.

[17] *See* NASCA Comments 13-14.

[18] *See* SCC Comments at 8.

[19] *See* INCOMPAS Comments at 11-13.

[20] *See* ICI Comments at 27 ("Instead of relying on license revocation to address concerns of subsea cable systems, the Commission should leverage the standard mitigation conditions… .").

V. THE RECORD OVERWHELMINGLY SUPPORTS THE NEED TO COORDINATE WITH TEAM TELECOM TO ENSURE REPORTING REQUIREMENTS ARE NOT DUPLICATIVE BUT STANDARDIZED

Should the Commission seek to install periodic reporting requirements, subsea cable licensees should be able to satisfy any new reporting requirements by submitting to the Commission any annual reports they have already submitted to Team Telecom, subject to FOIA-exempt confidential treatment.[21] The record overwhelmingly supports ensuring that any new requirements are not duplicative of Team Telecom obligations. For example:

- CTIA suggests that "[m]oving forward with duplicative and conflicting cybersecurity risk management requirements from two sources would impose unnecessary and excessive costs on applicants and licensees and could lead to reluctance to further invest in these critical capabilities. In light of the existing Team Telecom process, the Commission's requirement for a cybersecurity risk management plan should either replace the Team Telecom process or only apply if the applicant is not already subject to a Team Telecom NSA or LOA"[22]

- International Connectivity Coalition argues that it is "imperative that the Commission, in whatever rules it adopts, ensure coordination between its requirements and those that the Team Telecom agencies may seek to impose as part of their review. This single, coordinated process should avoid duplicative and overly burdensome requirements imposed as part of mitigation agreements in connection with action on a submarine cable application and separately required under Commission rules applicable to submarine cable operators generally."[23]

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[21] *See* INCOMPAS Comments at 18.

[22] *See* CTIA Comments at 5-6.

[23] *See* ICC Comments at 16. *See also* NASCA Comments at 2 (asking the Commission to "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."); Comments of NCTA – The Internet & Television Association, OI Docket No. 24-523, MD Docket No. 24-524, at 13-14 (filed April 14, 2025) ("NCTA Comments") (noting that Team Telecom collects network capacity information and that the FCC should coordinate with Team Telecom to avoid duplication); SCC Comments at 16 (finding that the proposed "cybersecurity certifications are duplicative to the requirements of the Mitigation Agreements implemented by Team Telecom.").

- Microsoft urges the Commission to "align its requirements [with Team Telecom] to ensure that licensees are not unnecessarily burdened with duplicative or overlapping reporting requirements."[24] The company also notes that "[a]t a minimum, in addition to aligning the information required and in lieu of a three-year periodic report, the Commission should allow a licensee to submit to the Commission a copy of its annual report to Team Telecom, subject to the same confidentiality protections afforded when submitted to Team Telecom."[25]

- U.S. Telecom encourages the Commission to limit periodic reporting requirements to "confirming or updating the information provided in the initial license application."[26]

INCOMPAS has suggested that the Commission use this proceeding as an opportunity to increase communications and information sharing between the agency and Team Telecom. Other stakeholders agree, including AWS which "urges the Commission and the Executive Branch to collaborate on an information sharing mechanism that would permit annual reporting information submitted to the Executive Branch to be shared as needed with the Commission while protecting the confidentiality of the information provided."[27] Also, INCOMPAS agrees with Microsoft, "that the Commission should be facilitating the sharing of risk information and threat alerts with trusted providers on a regular basis, consistent with NSM 22."[28]

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[24] *See* Microsoft Comments at 28.

[25] *Id*. at 19.

[26] *See* USTelecom Comments at 7.

[27] *See* AWS Comments at 15.

[28] *See* Microsoft Comments at 24 ("NSM 22 expressly calls on the federal government to "support a robust information sharing environment and public-private cooperation that enables actions and outcomes that reduce risk," at the same time that it recognizes 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.").

VI. THE COMMISSION'S DELEGATED AUTHORITY DOES NOT EXTEND BEYOND U.S. TERRITORIAL WATERS

As the Commission considers the proposals in the *NPRM*, INCOMPAS submits that the Commission's jurisdiction cannot be expanded to entities beyond U.S. land and territorial waters. The proposals in the *NPRM* seemingly include those who have no interest in any portion of the submarine cable system and therefore may be overbroad. As the Coalition states when discussing the disclosure of geographic coordinates, "the provision of these coordinates should only be for that portion of the wet segment that is in U.S. territorial waters, as the Commission's jurisdiction does not extend beyond the territory of the United States."[29]

Similarly, NASCA claims "[t]he 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 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."[30] INCOMPAS concurs with this assessment and urges the Commission to reconsider proposals that would exceed the scope of its authority.

VII. THE COMMISSION SHOULD NOT REQUIRE THE DISCLOSURE OF THE PRECISE LOCATIONS OF SUBMARINE CABLE LANDINGS

In its comments, INCOMPAS urged the Commission to reject the proposal to require disclosure of detailed information of cable landing locations in applications, modifications, assignments, transfer of control, and renewal or extension of a license.[31] These disclosures could

[29] *See* SCC Comments at 14.

[30] *See* NASCA Comments at 14-15.

[31] *See* INCOMPAS Comments at 18.

lead to national security concerns and place domestic providers in direct conflict with existing international agreements and private contractual obligations.[32] An additional point, discussed by ICC is that disclosure of detailed infrastructure data is "largely speculative at the licensing phase of a subsea cable project."[33] If the Commission does require disclosure in applications/licenses, being unable to provide the details of specific landing locations should not preclude the grant of the license, and the Commission should allow the applicant/licensee to supplement the information at a future date once the specifics are known.[34] Microsoft offers further specificity by asking the Commission to "reconsider this proposal to ensure that the information is likely to be available at the time an application is filed and would serve an articulated regulatory purpose."[35] INCOMPAS supports this request.

[32] *Id*.

[33] *See* ICC Comments at 25 ("Uses may need to change quickly, and, given the centrality of subsea cables to U.S. economic and national security interests, such a review could undermine new services. The need to reveal such detailed information could slow project planning and potentially expose critical infrastructure information that, if compromised, could be leveraged by adversaries to physically access facilities or target and disrupt subsea infrastructure.)*; see also* Microsoft Comments at 17 ("Much of the information that the *NPRM* proposes to require is highly sensitive, either from a commercial or security perspective, in particular, details with respect to technology, deployment (precise geolocation information), and operational control of a system. Project owners routinely treat such information as confidential, as disclosure could give competitors insight into proprietary information and potential bad actors insight into physical and operational deployment, rendering the infrastructure more vulnerable to sabotage.").

[34] *See* SCC Comments at 14.

[35] *See* Microsoft Comments at 16.

VIII. REQUIRING LICENSEES TO DISCLOSE CURRENT AND FUTURE SERVICES AND OFFERINGS IS IMPRACTICAL

Requiring the disclosure of current and expected future service offerings as part of any application is impractical and likely outside the scope of the Commission's delegated authority.[36] ICI supports the argument that such a requirement is impractical by noting service offering decision may not be finalized until the cable system is operational.[37] With respect to the agency's statutory authority, the Commission indicates that collecting this information would align with the proposed regulatory regime under Section 214,[38] however, as Microsoft explains, "Section 214 governs provision of common carrier international service, whereas the Cable Landing License Act governs the landing and operation of a submarine cable."[39] In its comments, NASCA offers a compromise with which INCOMPAS agrees: "[c]onsistent 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."[40] Providing these general statements may be a way to alleviate the Commission's concerns, without creating burdensome application requirements.

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[36] *See* INCOMPAS Comments 19-20. *See* SCC Comments at 14-15. *See* CTIA Comments at 13.

[37] *See* ICI Comments at 25*; see also* Microsoft Comments at 18 ("Commercial plans evolve and change, sometimes rapidly, and it would be unduly intrusive and burdensome for the Commission to demand definitive commercial plans at the time an application is filed or thereafter."); NASCA Comments at 21 ("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.")

[38] *See* Microsoft Comments at 18 (citing to *NPRM* ¶ 104).

[39] *Id*. *See also* NASCA Comments at 21 ("Section 214 governs provision of common carrier international services, which raises entirely different regulatory concern.")

[40] NASCA Comments at 22.

IX. THE RECORD OVERWHELMINGLY SUPPORTS MAINTAINING THE 25-YEAR LICENSE TERM

In its comments, INCOMPAS urged the Commission to reject its proposal to shorten the current submarine cable licensing term 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.[41] This position is shared by Alaska Power & Telephone Company, AWS, CTIA, ICC, ITIF, ITIC, Microsoft, NASCA, NCTA, Southern Cross, The Submarine Cable Coalition, TIA, and USTelecom.[42] As these stakeholders suggest, maintaining the current licensing term is in the best interest of industry and aligning the license duration with the functional lifespan of the infrastructure is the most practical path forward.

X. MODERN OPERATIONAL ARRANGEMENTS FOR SUBMARINE CABLE CONSORTIUM DO NOT RECOGNIZE A "LEAD LICENSEE FOR FCC REGULATORY PURPOSES

Only one commentor, SentinelOne, supported the Commission's proposal to designate a lead licensee within submarine cable consortium arrangements.[43] SentinelOne argues that the lead licensee "should bear responsibility for implementing and maintaining the required risk management plan [ ] and cybersecurity measures across the scope of undersea cable operations—including the cable landing stations [ ], submarine line terminal equipment (SLTE), and

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[41] *See* INCOMPAS Comments at 21.

[42] *See* Alaska Power Comments at 2-3, AWS Comments at 3-6, CTIA Comments at 12-13, ICC Comments at 25, ITIF Comments at 3, ITIC Comments at 4, Microsoft Comments at 7-10, NASCA Comments at 35, NCTA Comments at 6, Southern Cross Comments at 2, SCC Comments at 21, TIA Comments at 10, and USTelecom Comments at 7.

[43] *See* Comments of SentinelOne, OI Docket No. 24-523, MD Docket No. 24-524 at 2 (filed April 14, 2025).

supporting infrastructure"[44] and further, that the lead licensee should "be accountable for: (a) vetting customers and sub-leasers, IRU holders; (b) coordinating with third-party service providers that have physical or logical access to the cable systems; (c) maintaining accurate records of all entities involved in the management of cable segments, including operators of SLTE, hosting facilities, and downstream subcontractors; and (d) overseeing and managing all third-party relationships."[45]

While there may be some common elements with respect to infrastructure and operations, consortia members operate separate, proprietary businesses. Members of a submarine cable consortium are often competitors. It is inappropriate to require a single party to be accountable for its consortium partner's customers and separate operations. Also, requiring consortium members providing the lead licensee with competitively sensitive information about its IRU and other capacity holders is not realistic. In fact, it is self-defeating by making it harder to assemble consortium willing to fund submarine cables to improve resiliency through greater redundancy.

While most consortia designate a lead licensee for licensing purposes, whether they do so or not should be up to the applicants based on their underlying commercial arrangements. Whether or not a lead licensee is designated, that licensee should not be responsible for all cable infrastructure, operations, and all third party-relationships. Consortia frequently and necessarily allocate responsibilities for system segments and landings among parties who are best situated to serve in that role in a given jurisdiction. It is simply not practical, nor in some instances legally possible, for a single party to serve as a "lead" with respect to the entirety of the infrastructure.

[44] *Id*.

[45] *Id*. at 2-3, 4.

SentinelOne argues that risk management and cybersecurity requirements must be appropriately scoped "to reflect the operational realities of undersea cable systems" and that it is not always feasible or effective for each entity to maintain a separate plan.[46] Contrary to SentinelOne's position, it is usually feasible and effective and often necessary for each entity to maintain separate security plans. With respect to cybersecurity, any additional reporting would be more appropriately and naturally accomplished at the individual licensee level. Of note, SentinelOne's comments do not include any reference to the Team Telecom review, typical mitigations that include a risk management plan, or the annual report licensees need to provide Team Telecom.

XI. THE COMMISSION SHOULD NOT REQUIRE THE DISCLOSURE OF THIRD-PARTY SERVICE PROVIDERS AND CUSTOMERS

SentinelOne asserts that "submarine cable ecosystem" is operationally complex and often built on a "dense network of subcontractors, Indefeasible Right of Use (IRU) holders, lessors, integration firms, and platform providers" and that, "[f]or adversaries seeking persistent access or disruption capabilities, that complexity is opportunity."[47] Accordingly, SentinelOne urges the Commission to require disclosure of any individual or entity that has physical or logical access to any party of a system to include (a) "any third-party that is foreign-operated, foreign-managed, or subject to foreign legal frameworks"; (b) providers of "interconnects, landing stations, SLTE, NOCs, and facilities with administrative, physical, or remote control functions"; and (c) "[e]ven facility vendors and non-technical contractors such as janitorial or maintenance personnel."[48]

[46] *Id*. at 3.

[47] *Id*. at 6.

[48] *Id*. at 6-7.

The complexity of the submarine cable ecosystem in part reflects the distinction between the operation of a submarine cable's common infrastructure and the operation of each owner's separate networks. The Commission should focus on the submarine cable system itself rather than the users of the system or the providers of interconnections or other ancillary, supporting services that exceed the scope of the Cable Landing License Act. It is the licensees that are best situated to ensure the security of their infrastructure. Commission micromanagement through extensive reporting requirements would do little to enhance security and would detract from the licensees' own efforts. Moreover, customer operations are often separate from the operation of the cable system itself; IRU holders, for example, do not operate a submarine cable but rather their own capacity, with no ability to adversely affect the submarine cable itself.

Complexity is best addressed by ensuring that each licensee's operations—and the infrastructure under that licensee's control—is subject to that licensee's security policies and that licensee's oversight. It is important that cable owners exercise oversight over their third-party service providers, but this is not a reason for the Commission to demand disclosure of any individual or entity with any level of access to any part of a system. Third party service provider risks are appropriately addressed by cable owners through due diligence, rigorous security policies, and contractual safeguards.

XII. CONCLUSION

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

Respectfully submitted,

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