

**DISSENTING STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: *Improving Outage Reporting for Submarine Cables and Enhanced Submarine Cable Outage Data*, GN Docket No. 15-206, Report and Order.

This item is basically a sequel to last month's meeting, so many of the concerns I raised then about the Commission's reporting requirements are equally applicable – if not more so – here. I was able to concur to the order portion of May's item because it provided some relief and clarity for the entities subject to the reporting regime and because edits were made to the final draft to reduce implementation burdens.¹ The same is not true today. Additionally, as I said when we considered the notice, if we were to move forward and implement rules, I would expect to see far more data demonstrating the need for regulation.² However, today's item provides little justification for these new burdens.

The primary incident generating this proceeding was an outage caused by a typhoon in the Commonwealth of the Northern Mariana Islands (CNMI). The CNMI situation is unique because there was only one submarine cable servicing this area. In fact, one article referred to Saipan as “one of the least connected places on Earth.”³ I thought it would be helpful to provide an update on the CNMI situation. As a result of this very outage, there are press reports that a cable operator, who saw a need and business opportunity, has agreed to lay a new undersea cable to connect the three islands of the CNMI to Guam.⁴ In fact, when deploying the cable, redundancy will be a focus and the entity will ensure diverse landing points, equipment and routes.⁵ In sum, the free market has resolved a problem by promoting redundancy and re-routing – which should be the ultimate goal – all without any Commission action.

Today's item, however, requires reporting in cases of outages or degradations in service *even if the traffic is re-routed*. I suggested an edit that would make reporting required only in those cases where there was an outage and re-routing was not available for the traffic. This common sense approach, which would draw industry's attention to where redundancy was a problem, was rejected. Limiting the reporting requirement in such a way would still have addressed the root issue while greatly minimizing burdens on affected industry.

Let's face reality: reporting requirements are a first step to imposing rules, such as reliability and resiliency requirements, on operators and inserting the Commission into industry network management

¹ *Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications; New Part 4 of the Commission's Rules Concerning Disruptions to Communications; The Proposed Extension of Part 4 of the Commission's Rules Regarding Outage Reporting to Interconnected Voice Over Internet Protocol Service Providers and Broadband Internet Service Providers*, PS Docket No. 15-80, ET Docket No. 04-35, PS Docket No. 11-82, Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, FCC 16-63, at 131-132 (rel. May 26, 2016).

² *Improving Outage Reporting for Submarine Cables and Enhancing Submarine Cable Outage Data*, GN Docket No. 15-206, Notice of Proposed Rulemaking, 30 FCC Rcd 10492, 10526 (2015).

³ Gaynor Dumat-ol Daleno, *DOCOMO will Lay Cable*, PACIFIC DAILY NEWS, Sept. 3, 2015, <http://www.guampdn.com/story/news/2015/09/03/docomo-lay-cable/71621434/>; *Docomo Plans Next Steps for Possible Undersea Fiber Build*, SAIPANTRIBUNE.COM, Sept. 3, 2015, <http://www.saipantribune.com/index.php/docomo-plans-next-steps-for-possible-undersea-fiber-build/>.

⁴ Dumat-ol Daleno, *supra* note 2.

⁵ Frauline S. Villanueva-Dizon, *Docomo to Lay Down New Undersea Fiber Optic Cable*, SAIPANTRIBUNE.COM, Mar. 11, 2016, <http://www.saipantribune.com/index.php/docomo-lay-new-undersea-fiber-optic-cable/>.

and operations. In fact, at last month's meeting, a couple of my colleagues went so far as to state that "we cannot manage problems that we do not measure." But, it is not the Commission's role to manage, fix, restore, operate, maintain or suggest improvements or repairs to any submarine cable network. Thankfully, this item does not attempt to do so, and I will vehemently oppose any efforts going forward to meddle in industry's network decisions. But it raises the question, if the only purpose is to know about a problem, what good does that do?

I also have serious concerns about the timeframes provided for triggering the reporting requirements and submitting the various required reports. In many instances, the Commission disregards industry comments in their entirety and chooses its own timeframe with little analysis for why it is more appropriate than what is in the record.⁶ Similarly, the Commission arbitrarily decides that this reporting requirement should be implemented in six months, when every commenter suggests 12 to 15 months. I also would have preferred for submarine cable to have a two-phase reporting requirement instead of three, because additional information is highly unlikely to be available when the interim report is filed. I recognize, however, that the Commission sought comment on reducing the number of outage reports from three to two in last month's Part 4 further notice. I want to ensure that submarine cable licensees are aware that a decision in the general Part 4 docket will apply to submarine cables and that all interested parties should participate in that proceeding.

Further, the discussion about streamlining the processes to lay submarine cables is more than disappointing. Here is one place the Commission actually could be helpful. Interestingly enough, press articles report that the new cable between Guam and the CNMI will not be operational until May 2017. Why? The reason for the delay is that, while it only takes two to three weeks to lay the cable, the permitting process takes *a long time*.⁷ The Commission should address this need, but instead the item directs staff to use its "existing delegated authority" to improve the permitting and coordination process with little discussion of what was suggested in the record and no guidance from the Commission, even though it appears that discussions are underway. Good luck with that.

Finally, the cost-benefit analysis in this order is awful. Once again, the Commission underestimates the burden of filing these reports and ignores the input of commenters. Instead of breaking down the various costs and doing a true analysis, the calculation is based on a portion of the cost analysis, provided to OMB as part of a Paperwork Reduction Act filing, for the old submarine cable voluntary reporting system. Why a voluntary system that did not have to take into account such things as the cost of coordination between consortia members, the possible appointment of responsible parties, potential liability issues, and multiple rounds of legal review is a good starting point for the cost-benefit analysis is beyond me. Moreover, starting off such an analysis by suggesting that, at least, the burdens are not as bad as those proposed in notice is insulting. The fact that it could have been worse does not excuse the Commission from doing a thoughtful review of the costs.

Additionally, the item states that the costs raised in the record may inform the Paperwork Reduction Act filing, but as I have said before, complete information about the costs should be provided in the item when Commissioners vote. Further, a thorough analysis should be done regarding what

⁶ For example, the item finds that the reporting requirement is triggered for any outage exceeding 30 minutes, whereas commenters requested three hours. Further, the timeframe for filing the initial notification is four hours from determining that an event is reportable even though the majority of commenters state that should have 48 hours. What is even more perplexing though is that for the first three years, entities will have eight hours to report.

⁷ Villanueva-Dizon, *supra* note 5 (quoting the Docomo Pacific President and CEO who stated that: "Permitting is the part of the process that takes the absolute longest," . . . adding that it takes about 12 months to do the permitting because they would have to coordinate with the CNMI, Guam, and federal governments. . . . He added that the actual laying of the cable will only take less than three weeks.")

information is reported to the Department of Homeland Security's National Coordinating Center for Communications. Industry should not bear the burden of filing duplicative information.

Even worse, there is no quantitative analysis of the benefits. The item just summarily concludes that that the potential benefits from improved monitoring outweigh the costs. There is no proof, however, that a reporting requirement or the Commission knowing of an outage leads to any benefit. There isn't even evidence of a systemic problem of submarine cable outages that needs to be fixed. Instead, once again, the Order returns to the CNMI outage, stating that the Commission was hampered in its ability to respond because of the delayed situational awareness. Operators in an outage situation should be spending their time trying to fix the problem, not focusing on a report requirement, and I am sure they are not seeking help, advice or any response from the Commission.

For these reasons, I am unable to support the reporting requirement detailed in today's item and, therefore, I must dissent.