

Details of Mandatory Network Outage Obligations for Submarine Cable Operators Released

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As we noted in a [prior post](#), on June 24, 2016, the Federal Communications Commission (Commission) adopted new mandatory network outage reporting requirements for submarine cable licensees. The Commission's [Submarine Cable Network Outage Reporting Order](#) (Order), released Tuesday, identifies Commission expectations and provides exact rule language for the reporting requirements which had been described at only a high-level during the Commission's June Open Meeting. The reporting requirements apply to all submarine cable licensees and will become effective six months after Office of Management and Budget (OMB) approval. While the OMB approval process could extend for several months or more, affected submarine cable licensees should familiarize themselves with the reporting rules and begin developing internal mechanisms and procedures to ensure compliance once the rules become effective.

The common theme expressed throughout the Order and informing the final rules is enhanced Commission visibility into the overall status and reliability of the submarine cable infrastructure which transmits critical national security and economic communications.

Some of the key reporting provisions are summarized below:

Rerouting Does Not Obviate the Need to Report an Outage - The rules define an "outage" as a "failure or 'significant' degradation" in a cable's performance, regardless of whether traffic can be rerouted. Noting a need to "assess outages across the total undersea cable environment serving the United States," the Commission explicitly declined to exempt outage reporting where traffic was rerouted. The Commission explained that exempting outage reporting where rerouting occurs could mask the overutilization of redundant routes which, in turn, could signal an emerging expansive outage event impacting other cable systems. Significantly, neither the Commission's rules nor the Order define the terms "degradation" or "failure" and licensees must look to the rules for reportable event triggers.

Outage Reporting Triggers - The Commission established two reporting triggers designed to capture outages impacting connectivity (the ability to transmit a signal) or capacity (the amount of bandwidth a cable can transmit at any one time). Accordingly, licensees must report:

(i) Outages, "including those caused by planned maintenance, of a portion of submarine cable system between submarine line terminal equipment (SLTE) at one end of the system and SLTE at another end of the system for more than 30 minutes"; as well as

(ii) The loss of any fiber pair on a cable segment for any reason, including but not limited to, outages due to SLTE failures, lasting for four (4) or more hours, regardless of the number of fiber pairs on the system.

Responsible Licensees and Compliance Liability - As noted above, all submarine cable licensees on a cable system are subject to the new outage reporting requirements. The Order explained that exempting any licensees from the reporting requirements would prevent the Commission from meeting its goal of “acquiring a comprehensive viewpoint of the operational status of all submarine cables.” However, the Commission acknowledged the unique aspects of submarine cable systems operated by consortium members or multiple licensees, such as size, domestic/foreign composition, time zone differences and possible language barriers. Accordingly, the rules permit cable system licensees to designate to the Commission a single Responsible Licensee, for systems with multiple licensees, to manage reporting compliance. Once registered with the Commission, a Responsible Licensee alone will be held responsible by the Commission for compliance. In a departure from the Commission’s original proposal that licensees be held jointly and severally liable for cable outages, the Order notes that, if a Responsible Licensee has not been registered with the Commission or is not in effect at the time of a reportable outage, only the cable licensee experiencing an outage can be held responsible for reporting and liable in an enforcement action.

Six Month Transition Period - Although the Commission did not propose or seek comment on an implementation timeframe, several commenters proposed extended implementation periods as long as fifteen months. The Commission settled on a transition period of six (6) months from receipt of OMB approval of the new rules’ data collection requirements, citing its goal of balancing industry need to prepare for regulatory compliance with the Commission’s need for “timely situational awareness” of submarine cable infrastructure. Since OMB approval can take several months or longer, the rules potentially may not take effect until mid-2017 or later.

Three-Part Reporting Regime Retained - The Commission retained the proposed three-part reporting regime requiring initial Notification, Interim and Final reports within specified timeframes and the Order details the numerous data points to be included in those reports. Notably, the Commission responded to industry concern that certain information – particularly, the root cause of an outage – may not be known at the time of initial reporting. Consequently, the Commission will require that licensees provide only a brief description of the outage and include outage root cause information only if known at the time of the initial Notice and Interim Reports. While licensees are required to include, in the Final Report, the root cause information only if known at the time of the report, the Order states licensees are expected to continue conducting “reasonable due diligence to ascertain the root cause of an event” and the rules require licensees to supplement the Final Report if additional information becomes available.

Once the rules take effect, the Commission may be quick to enforce violations to make clear it means business and to underscore the importance it places on the new reporting requirements. The Commission's Order highlights the significance of submarine cable systems to national security and commercial communications and the Commission has also been focused on gaining greater insight into the reliability and operational status of cable system infrastructure. Accordingly, licensee will want to ensure to ensure they are ready and able to comply with these new regulatory reporting obligations in a timely fashion.