



# PUBLIC NOTICE

**Federal Communications Commission**  
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October 17, 2023

## **NOTICE OF INTENT TO SHARE SUBMARINE CABLE OUTAGE REPORTING DATA WITH THE COMMITTEE FOR THE ASSESSMENT OF FOREIGN PARTICIPATION IN THE UNITED STATES TELECOMMUNICATIONS SERVICES SECTOR**

**GN Docket No. 15-206, PS Docket No. 15-80**

**Comment Date: October 27, 2023**

The Commission collects outage reporting data for U.S.-international submarine cable systems pursuant to section 4.15 of the Commission's rules.<sup>1</sup> On August 4, 2023, the Department of Justice (DOJ), in its capacity as Chair of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee),<sup>2</sup> filed a letter requesting "access to submarine cable outage Notifications, Interim Reports and Final Outage Reports submitted to the FCC through the Network Outage Reporting System (NORS)," from October 28, 2021 until June 30, 2023. By this public notice, the Public Safety and Homeland Security Bureau (PSHSB) announces our intent to share with the Committee the outage reporting data for the reporting period specified above, including data that the Commission presumes to be confidential,<sup>3</sup> based on the procedures set out below.<sup>4</sup> This notice initiates a pleading cycle that allows any entity that provided confidential submarine cable outage reporting data between October 28, 2021 to June 30, 2023 to oppose such disclosure of its data to the Committee.

DOJ states that, under Executive Order 13913, the Committee's primary objective is "to assist the FCC in its public interest review of national security and law enforcement concerns that may be raised by foreign participation in the United States telecommunications services sector."<sup>5</sup> DOJ indicates that "the

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<sup>1</sup> 47 CFR § 4.15.

<sup>2</sup> The members of the Committee specifically designated by the Executive Order are the Secretary of Defense, the Secretary of Homeland Security, and the Attorney General, who serves as the Chair. *See* Executive Order No. 13913 of April 4, 2020, Establishing the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector, 85 Fed. Reg. 19643, 19643-44 § 3(b), (c) (Apr. 8, 2020) (Executive Order 13913). The advisors to the Committee specifically designated by the Executive Order are the Secretary of State, the Secretary of the Treasury, the Secretary of Commerce, the Director of the Office of Management and Budget, the United States Trade Representative, the Director of National Intelligence, the Administrator of General Services, the Assistant to the President for National Security Affairs, the Assistant to the President for Economic Policy, the Director of the Office of Science and Technology Policy, and the Chair of the Council of Economic Advisers. *See id.*, 85 Fed. Reg. at 19644 § 3(d).

<sup>3</sup> 47 CFR § 4.2.

<sup>4</sup> *See* 47 CFR § 4.15 (requiring mandatory submarine cable outage reporting). This requirement first became effective on October 28, 2021. *See* 86 FR 22360.

<sup>5</sup> Letter from Lee Licata, Deputy Chief, Foreign Investment Review Section, National Security Division, U.S. Department of Justice, to Austin Randazzo, Associate Chief, Public Safety and Homeland Security Bureau, FCC at

(continued....)

Committee regularly collects and analyzes relevant unclassified and classified information to gain a holistic understanding of the national security and law enforcement risks associated with granting such applications.”<sup>6</sup> DOJ also states that “[a]mong the matters referred to it by the FCC, the Committee frequently reviews submarine cable landing license applications for national security and law enforcement concerns.”<sup>7</sup> Finally, DOJ states that the submarine cable outage reports filed in NORS are “highly relevant to the Committee’s national security and law enforcement reviews and will provide additional context to its risk based analyses.”<sup>8</sup> DOJ acknowledges that this information is treated as “presumptively confidential” but states that its review of this information “will enhance and improve the Committee’s ability to execute its national security and law enforcement missions.”<sup>9</sup>

The Commission receives three types of outage reports regarding U.S.-international submarine cables. First, a Notification which is filed within eight hours of determining a submarine cable outage is reportable.<sup>10</sup> Second, within 24 hours of receiving the Plan of Work to repair the cable outage, an Interim Report must be filed.<sup>11</sup> Third, a Final Outage Report is due seven days after the submarine cable repair is completed.<sup>12</sup>

The Commission’s regulations provide that confidential proprietary and commercially sensitive information will be withheld from public disclosure, subject to the public’s right to seek disclosure under the Freedom of Information Act and implementing regulations.<sup>13</sup> The Commission may disclose to other Federal agencies records that have been submitted to the Commission in confidence upon another agency’s request or upon the Commission’s own motion.<sup>14</sup> In general, under federal law, 44 U.S.C. § 3510, the Commission may share information it has collected with other Federal government agencies and, if it does, all provisions of law that relate to the unlawful disclosure of information apply to the employees of the agency to which the information is released “to the same extent and in the same manner” as they do to employees of the collecting agency.<sup>15</sup>

DOJ states that the submarine cable outage reporting data will be treated in accordance with the Commission’s rules regarding confidentiality protections, including sections 0.442, 0.457, 0.459, and 0.461, as well as the confidentiality provisions contained in Section 8 of Executive Order 13913.<sup>16</sup> DOJ also states that “[s]hould a third party request such information pursuant to the Freedom of Information

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1 (dated August 4, 2023) (DOJ Letter). The DOJ Letter adds that “[u]nder Section 8 of [Executive Order] 13913, the Committee may seek information from any entity as needed in furtherance of its reviews of applications and licenses.” (quoting Executive Order 13913, 85 Fed. Reg. at 19643 § 3(a)).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> See 47 CFR § 4.15(b)(2)(ii).

<sup>11</sup> See 47 CFR § 4.15(b)(2)(iii).

<sup>12</sup> See 47 CFR § 4.15(b)(2)(iv).

<sup>13</sup> 5 U.S.C. § 552; 47 CFR §§ 0.457(d), 0.459(d).

<sup>14</sup> 47 CFR §§ 0.442(b), (d).

<sup>15</sup> 44 U.S.C. § 3510(b)(1).

<sup>16</sup> DOJ Letter at 2.

Act, absent court order or other applicable overriding legal authority to the contrary, [DOJ] will withhold the information pursuant to the procedures promulgated in 28 C.F.R. §§ 16.1 *et seq.*<sup>17</sup>

Any entity that provided submarine cable outage reporting data for the referenced reporting period will have ten (10) days from the date of this public notice to oppose disclosure to the Committee, by October 27, 2023.<sup>18</sup> If disclosure is opposed and the Commission decides to make the outage reporting data available, the procedures in section 0.442(d)(4) will apply.<sup>19</sup> If it receives no opposition, PSHSB will disclose this information to the Committee. The Committee will be subject to the requirements of 44 U.S.C. § 3510 and the confidentiality protections contained in the Commission's regulations and section 8 of Executive Order 13913.<sup>20</sup> For purposes of this Public Notice, the Committee includes the members and advisors specifically identified in Executive Order 13913.<sup>21</sup> If the Committee seeks to share the outage reporting data with a newly identified executive department or agency, or Assistant to the President, the Committee must file a separate request for access to outage reporting data.<sup>22</sup>

Pursuant to sections 1.415 and 1.419 of the Commission's rules, entities that submitted submarine cable outage reports between October 28, 2021, and June 30, 2023, may file objections to this planned disclosure of such outage reporting data by filing in GN Docket No. 15-206 and PS Docket 15-80 on or before October 27, 2023.<sup>23</sup> Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing.
  - Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
    - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
    - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
  - Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-*

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<sup>17</sup> *Id.*

<sup>18</sup> 47 CFR § 0.442(d)(1).

<sup>19</sup> 47 CFR § 0.442(d)(4) ("If disclosure is opposed and the Commission decides to make the records available to the other agency, the party who furnished the records to the Commission will be afforded ten calendar days from the date of the ruling to move for a judicial stay of the Commission's action. If the party does not move for stay within this period, the records will be disclosed.").

<sup>20</sup> 44 U.S.C. § 3510; 47 CFR § 0.441 *et seq.*; Executive Order 13913, 85 Fed. Reg. at 19646 § 8.

<sup>21</sup> *See supra* note 2.

<sup>22</sup> Executive Order 13913, 85 Fed. Reg. at 19643-44 § 3(b), (d).

<sup>23</sup> 47 CFR §§ 1.415, 1.419.

*Delivery Policy*, Public Notice, DA 20-304 (March 19, 2020);  
<https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

**People with Disabilities:** To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

Parties should also send a courtesy copy of their filing to Scott Cinnamon, Attorney Advisor, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau at [Scott.Cinnamon@fcc.gov](mailto:Scott.Cinnamon@fcc.gov).

The proceeding this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>24</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

For further information, please contact Scott Cinnamon, Attorney Advisor, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau at [Scott.Cinnamon@fcc.gov](mailto:Scott.Cinnamon@fcc.gov) or at (202) 418-2319.

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<sup>24</sup> 47 CFR §§ 1.1200 *et seq.*