

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

In the Matter of)	
)	
Amendment of Parts 1 and 63 of the Commission's Rules)	IB Docket No. 04-47
)	

ORDER ON RECONSIDERATION

Adopted: October 29, 2010

Released: November 2, 2010

By the Commission:

I. INTRODUCTION

1. In this Order on Reconsideration, we grant in part the *Petition for Reconsideration* filed by the North American Submarine Cable Association (NASCA)¹ and otherwise affirm the Commission's *Report and Order*² establishing that the Coastal Zone Management Act of 1972 (CZMA) applies to cable landing licenses granted by the Commission. NASCA's *Petition for Reconsideration* argues that the Commission should rescind the rules adopted in that *Report and Order*.³ Although we decline to rescind the rules, we amend them to clarify the applicable licensing requirements and to ensure that the Commission's process for evaluating cable landing licenses complies with the CZMA review procedures established by the National Oceanic and Atmospheric Administration (NOAA).

II. BACKGROUND

2. On February 25, 2004, the Commission adopted a Notice of Proposed Rulemaking seeking comment on, among other things, whether the CZMA applies to cable landing license applications, and, if so, whether the Commission should modify section 1.767 of its rules to ensure compliance with the CZMA.⁴ Three parties, including NASCA, submitted comments regarding the CZMA issue.⁵ On June 20, 2007, the Commission adopted a *Report and Order* that found that the CZMA applied to cable landing license applications.⁶

3. In the *Report and Order*, the Commission amended its cable landing license rules and application procedures to ensure that its processing of such applications comports with the consistency

¹ See NASCA Petition for Reconsideration, IB Docket No. 04-47 (filed November 26, 2007) (*Petition for Reconsideration*).

² See *Amendment of Parts 1 and 63 of the Commission's Rules*, IB Docket No. 04-47, Report and Order, FCC 07-118, 22 FCC Rcd 11398, 11414, ¶ 45 (2007) (*Report and Order*).

³ *Id.*

⁴ See *Amendment of Parts 1 and 63 of the Commission's Rules*, IB Docket No. 04-47, Notice of Proposed Rulemaking, FCC 04-40, 19 FCC Rcd 4231 at 4244-6, ¶¶ 33-35 (2004) (*NPRM*).

⁵ See NASCA Comments and NASCA Reply Comments; International Cable Protection Committee (ICPC) Comments; National Oceanic and Atmospheric Administration (NOAA) Reply Comments.

⁶ See *Report and Order*, 22 FCC Rcd at 11414-15, ¶¶ 44-46.

review procedures specified in the CZMA.⁷ The CZMA states that no federal agency may grant a license to conduct an activity affecting a coastal area until a state concurs or is presumed to concur with the applicant's certification that a proposed activity is consistent with the state's coastal management plan.⁸ If the state includes FCC cable landing licensing in its coastal management plan, FCC licensing is considered a "listed activity."⁹ As such, the state has six months to review and either concur with or object to the certification that is required if CZMA state consistency review is triggered by the filing of a cable landing license with the Commission.¹⁰ The state's concurrence is conclusively presumed if it does not act within six months after receiving the applicant's certification.¹¹ At this time, no state has included FCC licensing in its coastal management plan. If the state does not include FCC licensing in its coastal management plan, such licensing is an "unlisted activity."¹² For unlisted activities, NOAA rules require that the state notify the relevant federal agencies, applicants, and the Director of the Office of Ocean and Coastal Resource Management (OCRM) (within NOAA) of the state's request to review the activity within thirty days of notice of the license or permit application, or otherwise be deemed to have waived the right to review the unlisted activity.¹³

4. As a threshold matter, the Commission agreed with NOAA, which is statutorily charged with implementing the CZMA, that cable landing licenses issued by the Commission may be subject to consistency review under section 1456(c)(3)(A).¹⁴ The Commission found that the statutory language is unambiguous that such review applies to any activity requiring a federal license or permit that will have coastal effects.¹⁵ The Commission further found that the legislative history confirms that Congress intended for the consistency requirements of section 1456(c) to apply broadly to *any* federal agency activities having coastal effects, regardless of their location, and that no activities having coastal effects will be categorically exempt.¹⁶

⁷ *Id.* at 11416-8, ¶¶ 47-54. The Commission noted in the *Report and Order* that the CZMA requirements only apply to applications for a license to construct and operate a submarine cable system or to modify the construction of a previously licensed system and not to applications for changes of ownership of the system or other modifications that do not affect the construction of the system. *Id.* at 11415, ¶ 47.

⁸ The CZMA provides that, absent a special determination by the Secretary of Commerce, "[n]o Federal license . . . may be granted by the Federal agency" until a state entitled to review the proposed activity for consistency with its approved management program under section 1456(c)(3)(A) concurs or is presumed to have concurred with the applicant's certification that "the proposed activity complies with the enforceable policies of the state's approved program and such activity will be conducted in a manner consistent with the program." *See* 16 U.S.C. § 1456(c)(3)(A). *See also Report and Order*, 22 FCC Rcd at 11414, ¶ 44 n.127.

⁹ *See* 15 C.F.R. § 930.53.

¹⁰ *See* 16 U.S.C. § 1456(c)(3)(A); *see also Report and Order*, 22 FCC Rcd at 11414, ¶ 44.

¹¹ *Id.*

¹² *See* 15 C.F.R. § 930.54.

¹³ *Id.*

¹⁴ *See Report and Order*, 22 FCC Rcd at 11414, ¶ 45.

¹⁵ *See id.*

¹⁶ *See Report and Order*, 22 FCC Rcd at 11414, ¶ 45 (citing H.R. Conf. Rep. No. 964, 101st Cong., 2d Sess. 968-975) ("The amended provision establishes a generally applicable rule of law that *any* federal agency activity (regardless of its location) is subject to the CZMA requirement for consistency if it will affect any natural resources, land uses, or water uses in the coastal zone. No federal agency activities are categorically exempt from this requirement."). *See generally* Coastal Zone Management Act Federal Consistency Regulations, 65 F.R. 77124, 77124-25 (2000) ("These changes reflect an unambiguous requirement; that there are no exceptions or exclusions from the requirement as a matter of law; and that the 'uniform threshold standard' requires a factual determination,

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5. On October 29, 2007, NASCA filed a consolidated petition for reconsideration and petition to defer the effective date.¹⁷ NASCA filed a reply on January 28, 2008. On March 17, 2008, OCRM/NOAA filed an *ex parte* letter regarding NASCA's *Petition for Reconsideration*.¹⁸

III. DISCUSSION

6. Pursuant to section 1.429 of our rules, parties may petition for reconsideration of final Commission actions.¹⁹ Reconsideration is generally appropriate only where the petitioner shows either a material error or omission in the original order or raises additional facts not known or not existing until after the petitioner's last opportunity to respond.²⁰

7. In its *Petition for Reconsideration*, NASCA makes several arguments that we address below. NASCA argues that: (1) the CZMA does not require the Commission to promulgate rules with respect to processing of cable landing license applications; (2) cable landing license applicants cannot comply with the rules as adopted; (3) the Commission erred in assessing the burdens and benefits of the CZMA rules; (4) the CZMA rules are unworkable; and (5) the CZMA rules are inconsistent with World Trade Organization (WTO) commitments. NASCA also petitioned the Commission to defer the effective date of the rules pending resolution of the *Petition for Reconsideration*.

8. *First*, we reject NASCA's argument that the CZMA does not require the Commission to promulgate rules with respect to processing of cable landing license applications.²¹ We find that the Commission correctly found in the *Report and Order* that the CZMA applies to cable landing license applications.²² Indeed, NOAA, the federal agency charged with implementation of CZMA, finds that an FCC license is a federal license or permit that could be reviewed by coastal states, pursuant to the CZMA.²³ Further, NOAA states that "NASCA has misapplied portions of NOAA's June 3, 2004

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based on the effects of such activities on the coastal zone, to be applied on a case-by-case basis."); *see also Proposed Rules*, 68 F.R. 34851, 34854 (June 11, 2003) (rejecting as not authorized by CZMA a suggestion that federal consistency regulations rely on agencies' categorical exclusion definitions under the National Environmental Protection Act).

¹⁷ *See Petition for Reconsideration*.

¹⁸ *See* Letter from David M. Kennedy, Director, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration, to Arthur Lechtman, International Bureau, Federal Communications Commission, at 1 (dated March 17, 2008) (*March 17, 2008 NOAA letter*).

¹⁹ Section 1.429 of the Commission's rules, 47 C.F.R. § 1.429, states in part that:

(b) A petition for reconsideration which relies on facts which previously have been presented to the Commission will be granted only under the following circumstances: (1) The facts relied on relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters; (2) The facts relied on were unknown to petitioner until after his last opportunity to present them to the Commission, and he could not, through the exercise of ordinary due diligence, have learned of the facts in question prior to such opportunity.

²⁰ *Petition for Reconsideration by Acadiana Cellular General Partnership*, WT Docket No. 04-323, Order on Reconsideration, FCC 05-88, 20 FCC Rcd 8660, 8663, ¶ 8 (2006).

²¹ *See Petition for Reconsideration* at 3-11.

²² *See Report and Order*, 22 FCC Rcd at 11414, ¶ 45.

²³ *See March 17, 2008 NOAA letter*; *see also Chevron, USA, Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984); *Petition for Reconsideration* at 8 ("Upon judicial review, therefore, NOAA . . . would be entitled to *Chevron* deference.").

comments to the FCC and inaccurately applied CZMA statutory and regulatory requirements.²⁴ Specifically, NOAA asserts that:

an FCC license is a federal license or permit that could be reviewed by coastal states, pursuant to the “listing” and “unlisted activity” provisions in NOAA’s regulations at 15 C.F.R. §§ 930.53 and 930.54. Even if other federal permits are needed for a project and are reviewed by coastal states under the CZMA review, additional federal authorizations are also subject to state CZMA review pursuant to NOAA’s regulations.²⁵

Thus, in deference to NOAA’s statutory and regulatory authority and in furtherance of the Commission’s cable landing licensing authority under the Cable Landing License Act,²⁶ as delegated to the Commission by Executive Order 10530,²⁷ the FCC must ensure that its cable landing license rules and application procedures comport with the consistency review procedures specified in the CZMA.²⁸

9. *Second*, in response to NASCA’s argument that cable landing license applicants cannot comply with the rules as adopted,²⁹ we believe that amendment and clarification of our certification requirement for cable landing licenses adequately address that concern. NASCA argues that the Commission failed to account for states’ authority to review unlisted license activities. As discussed above, section 1456(c)(3)(A) of CZMA affords a state six months to review an applicant’s consistency certification that is required for this type of federal license if it is a listed activity under the state’s federally approved coastal management program. In contrast, pursuant to section 930.54 of NOAA’s rules, a state must request approval from the Director of OCRM to review unlisted activities within thirty days from notice of the license or permit application or be deemed to have waived the right to review the unlisted activity.³⁰

10. As adopted in the *Report and Order*, Section 1.767 of the Commission’s rules currently requires an applicant to certify that the proposed submarine cable will not be located in or impact any states where the cable landing licenses *may be subject* to the consistency certification requirements of the CZMA.³¹ We agree with NASCA that where a cable landing license is not included in a state’s coastal management plan, and thus is an unlisted activity, the applicants cannot certify whether a state is entitled to a consistency review prior to filing the application with the Commission. We therefore amend the certification requirement of section 1.767 to clarify that the applicant need only certify that the proposed submarine cable will not be located in or impact any state that requires review of FCC cable landing applications as a “listed” activity in its coastal management plan. (We note that, to date, no state has placed the FCC’s cable landing license on its coastal management plan as a listed activity.) Thus if the proposed submarine cable will be located only in states where FCC cable licensing is an “unlisted

²⁴ See *March 17, 2008 NOAA Letter* at 1; see also *Chevron*, 467 U.S. 837.

²⁵ See *March 17, 2008 NOAA Letter* at 1.

²⁶ 47 U.S.C. §§ 34-39.

²⁷ Exec. Ord. No. 10530 §5(a) (May 21, 1954), reprinted as amended in 3 U.S.C. § 301.

²⁸ As the Commission noted in the *Report and Order*, the CZMA requirements only apply to applications for a license to construct and operate a submarine cable system or to modify the construction of a previously licensed system. We will not apply them to applications for changes of ownership of the system or other modifications that do not affect the construction of the system. *Id.* at 11415, ¶ 47.

²⁹ See *Petition for Reconsideration* at 12-13.

³⁰ See 15 C.F.R. § 930.54(a).

³¹ See 47 C.F.R. § 1.767(k)(4) (emphasis added).

activity,” the application may be eligible for streamlined processing if the applicant includes the certification set forth in section 1.767(k)(4).

11. Further, we clarify that the thirty-day time period for a state to request NOAA approval for consistency review of the application as an unlisted activity will commence with the issuance of the Public Notice that the submarine cable landing license application has been accepted for filing. NOAA rules allow for constructive notice to a state of submission of an application for licenses for unlisted activities.³² Issuance of the accepted-for-filing Public Notice provides constructive notice to a state of the submission of submarine cable landing license application and commences the thirty-day period specified in section 930.54(a)(1).³³ The accepted-for-filing Public Notice provides a description of the proposed submarine cable, including the location of the landing points. The Public Notice also provides the file number for the application so that interested parties can access the application itself through the FCC website.³⁴ The Public Notice thus contains sufficient information about the proposed activity requiring a cable landing license to permit potentially affected states to evaluate whether there will be an impact that, subject to NOAA’s agreement, warrants consistency review.

12. The accepted-for-filing Public Notices are available on the FCC website and are included in the FCC’s Daily Digest. The Daily Digest provides a brief synopsis of Commission documents, including Public Notices, released each business day. The Daily Digest is available on the FCC website,³⁵ and one can also subscribe to the Daily Digest and have a copy sent via email.³⁶

13. This process should allow the Commission to comply with its obligations under the CZMA while minimizing the effect on the streamlined processing of submarine cable landing license applications. Streamlined processing will be available for all applications where the states have waived, or are deemed to have waived, any section 1456(c)(3)(A) right to review the application as an unlisted activity.³⁷ Also, as the Commission found in the *Report and Order*, all applications for transfer of control

³² “Notice to the State agency may be constructive if notice is published in an official federal public notification document or through an official State clearinghouse” 15 C.F.R. § 930.54(a)(2).

³³ Publication of this Reconsideration Order in the Federal Register provides constructive notice to the states of this finding and of the utility of monitoring Public Notices for federal license activities that may be subject to consistency review. See 15 C.F.R. § 930.54(a)(1), providing that “[w]ith the assistance of Federal agencies, State agencies should monitor unlisted federal license or permit activities.”

³⁴ A cable landing license application is publicly available before an accepted-for-filing Public Notice is released. The application must be filed electronically via the International Bureau Filing System (IBFS), 1 C.F.R. § 1.767(n); see also 1 C.F.R. §§ 1.10000 *et seq.*, and is available for viewing through IBFS once it is filed. IBFS includes a Submarine Cable Landing Pending Application List as a pre-defined report, and also allows for searches for pending applications, as well as current cable landing licenses.

³⁵ The Daily Digest is available on the FCC website at www.fcc.gov/Daily_Releases/Daily_Digest.

³⁶ One can subscribe to the Daily Digest through the FCC website at www.fcc.gov/Daily_Releases/Daily_Digest/subscribe.html.

³⁷ NOAA rules require that the state notify Federal agencies, applicants and the Director of OCRM of unlisted activities affecting any coastal use or resource which require state review within thirty days from notice of the application. If the state does not provide notice within the thirty day period it waives the right to review the unlisted activity. See 15 C.F.R. § 930.54. Due to the fact that states will be considered to have received constructive notice of an application for a cable landing license upon the FCC’s issuance of a public notice, which can be found on the Commission’s website at www.fcc.gov, the thirty-day period for a state to assert CZMA rights would likely expire before the Commission would ordinarily act on a pending application, whether or not the application qualifies for streamlined processing. Section 1.767(i) of the Commission’s Rules, 47 C.F.R. § 1.767(i), specifies that the Commission will take action upon an application eligible for streamlined processing within 45 days after the release of the Public Notice announcing it has been accepted for filing and is eligible for streamlined processing, or within

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or assignment of a cable landing station license or modification that do not affect the construction of a submarine cable system or cable landing station are not subject to a consistency review and are eligible for the streamlined grant procedures.³⁸

14. *Third*, we reject NASCA's argument that the Commission erred in assessing the burdens and benefits of its CZMA rules. NASCA argues that the Commission underestimated the burdens imposed by the CZMA rules. While there may be some potential processing delay, in most instances the applicant may be able to minimize that delay by working with affected states on consistency review issues, as we pointed out in the *Report and Order*.³⁹ Further, NASCA argues that the Commission "needlessly gut[ted] the Commission's streamlined processing rules."⁴⁰ NASCA also argues that the Commission failed to reconcile its new rules with its policy of encouraging investment and infrastructure development. The Commission's obligation to comply with the CZMA precludes it from processing cable landing license applications without regard to whether an application is subject to state consistency review under section 1456(c)(3)(A). Furthermore, as NASCA itself repeatedly points out, no state to date has included the FCC's cable landing license as a listed activity.⁴¹ Thus, there has been no change in the availability of streamlined treatment for an application for a cable landing license.

15. With the above-discussed clarification of our rules, we anticipate that the CZMA requirements will rarely if ever disrupt the streamlined processing of cable landing license applications. Unless a state were to change its coastal management program to include FCC cable landing licenses as a listed activity, or were to timely request NOAA approval for consistency review of a particular cable landing application as an unlisted federal license activity, there would be no change to our streamlined process.⁴² We have minimized licensee burdens associated with compliance with the CZMA by removing any ambiguity about the consistency certification that section 1456(c)(3)(A) requires to be included in the application (with a copy to the state) if this is a listed activity,⁴³ and clarifying the requirements with respect to states that do not list this type of application in their federally approved state programs. As long as no state amends its coastal management program to designate this type of application as a listed activity, the Commission must remove from streamlined processing only those applications that a state, within thirty days of constructive notice of the application, has identified as involving an unlisted activity that it believes requires consistency review. In that case, the applicant would be required to amend its application to submit a consistency certification (with a copy to the state) only if OCRM ultimately approved state consistency review of the unlisted activity. In that event, a delay of up to six months from the original Federal agency notice to the state agency or three months after the state receives the

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90 days after the Public Notice if the application is ineligible for, or the applicant does not seek, streamlined processing. In the event that the Commission receives notification from a state that it has requested to review the application as an unlisted activity during the streamlining public notice period, then the Commission by Public Notice will withdraw the application from streamlined processing and process the application on a non-streamlined basis.

³⁸ See *Report and Order*, 22 FCC Rcd at 11416, ¶ 52.

³⁹ *Id.* at ¶ 52 & n.136.

⁴⁰ See *Petition for Reconsideration* at 16-17.

⁴¹ See, e.g., *id.* at 7, 8.

⁴² See note 37 *supra*.

⁴³ 16 U.S.C. § 1456(c)(3)(A) ("At the earliest practicable time, the state or its designated agency shall notify the Federal agency concerned that the state concurs with or objects to the applicant's certification. If the state or its designated agency fails to furnish the required notification within six months after receipt of its copy of the applicant's certification, the state's concurrence is conclusively presumed.").

applicant's required consistency certification, whichever period terminates last, is unavoidable under applicable statutory and regulatory provisions.⁴⁴

16. *Fourth*, NASCA argues that the Commission's CZMA rules are unworkable. NASCA argues that it can be difficult for an applicant to determine whether or not a state requires a consistency certification for a cable landing license.⁴⁵ In an *ex parte* presentation, NASCA also argues that, under the CZMA rules, applicants face a "Catch 22" in Florida.⁴⁶ NASCA states that to obtain approval for undersea cable installations, Florida requires applicants to first obtain and submit a copy of their cable landing license.⁴⁷ Thus, NASCA argues that under the CZMA rules, there is no way to obtain the federal and state approvals needed to land an undersea cable in Florida.⁴⁸ We disagree. We note that there is no current requirement that a cable landing license application must include a certification regarding the consistency of proposed activities with Florida's coastal management program, because Florida has not included FCC cable landing licenses as a listed activity in its coastal management plan. Consequently, with the clarification to our rules discussed above, there is no "Catch-22" situation in Florida, because the certification requirement only applies to listed activities and Applicants only need to comply with the procedures for unlisted activities discussed above.⁴⁹ We further note that any problem with Florida's specific situation that may arise in the future could be addressed in consultation among the affected parties, including the state licensing agency, the FCC, and the Director of OCRM, as would be required if Florida were to amend its coastal management program to designate this type of application as a listed activity or to receive approval to review a particular application as an unlisted activity.⁵⁰ Thus, if Florida amends its coastal management program to designate a cable landing license application as a listed activity, the FCC will take appropriate steps to address NASCA's concerns.

17. NASCA also argues that the rules are unworkable because cable landing license applications will not contain, and applicants may not possess, sufficient information for a state to make a consistency decision. We disagree. The new rules do not change what applicants for a cable landing license are required to provide the FCC other than the certification requirements necessary to alert the Commission of any outstanding state consistency review and to ensure Commission compliance with the CZMA. The new requirements relate to assuring compliance with the CZMA, and, as discussed above, we defer to NOAA's expertise in the applicability of the consistency review procedures specified in the CZMA.

18. *Fifth*, we reject NASCA's argument that the Commission's CZMA rules are inconsistent with WTO commitments regarding licensing criteria.⁵¹ In this regard, NASCA argues that the Commission must publicly disclose the period of time normally required to reach a decision concerning

⁴⁴ 15 C.F.R. § 930.54 ("For purposes of this section, concurrence by the State agency shall be conclusively presumed in the absence of a State agency objection within six months from the original Federal agency notice to the State agency [that the application was filed with the federal licensing agency] or within three months from receipt of the applicant's consistency certification and necessary data and information, whichever period terminates last.").

⁴⁵ See *Petition for Reconsideration* at 19-20.

⁴⁶ NASCA Reply Comments.

⁴⁷ *Id.* at 2.

⁴⁸ *Id.*

⁴⁹ See para. 11, *supra*.

⁵⁰ See 15 C.F.R. § 930.53(c).

⁵¹ See *Petition for Reconsideration* at 21-22.

an application for a license.⁵² Our CZMA procedures, as clarified herein, interject no ambiguity concerning the time normally required to reach a decision on a license application. Rather, as required by our WTO commitments, all license processing requirements, including any delays attributable to CZMA, are transparent and spelled out in the applicable statutes and rules.⁵³ Moreover, for the reasons set forth above, we anticipate minimal disruption to our streamlined processing of cable landing license applications as a result of these procedures. Where there would be an unavoidable processing delay related to NOAA authorization of state consistency review of an unlisted activity, the extent of the delay is limited by provisions that prescribe strict time periods for the state's response to the applicant's consistency certification.⁵⁴ Moreover, consistent with our WTO commitments and to rapid infrastructure deployment through expedited application processing, the Commission will process any such application as expeditiously as possible once state consistency review has been completed and any statutory impediment to grant of the federal license is removed.

19. In addition, NASCA also petitioned the Commission to defer the effective date of the certification requirement pending resolution of the *Petition for Reconsideration*. We find that NASCA's request to defer the effective date of the rules is moot since the Commission did not put the new rules into effect while NASCA's *Petition for Reconsideration* was pending.

IV. CONCLUSION

20. We grant, herein, NASCA's *Petition for Reconsideration* to the extent we modify our rules to clarify that in order to qualify for streamlined processing the applicant need only certify that the proposed submarine cable will not be located in or impact any state that requires review of FCC cable landing applications as a "listed" activity in its coastal management plan. We also clarify that for "unlisted" activities, the release of the accepted-for-filing Public Notice for the cable landing license application provides the states with constructive notice of the application. Thus the thirty-day period for a state to request a review of the application as an unlisted activity under NOAA rules will commence with the release of the accepted-for-filing Public Notice.⁵⁵ Also there is no requirement to include a consistency certification in a cable landing license application filed under section 1.767 of the Commission's Rules unless FCC licensing is a listed activity in a state's coastal management plan (though the application must be updated to include a consistency certification if NOAA subsequently authorizes state consistency review of the application as an unlisted activity). We otherwise deny NASCA's *Petition for Reconsideration*.

V. ADMINISTRATIVE MATTERS

A. Final Regulatory Flexibility Certification

21. The Regulatory Flexibility Act of 1980, as amended (RFA)⁵⁶ requires that a Regulatory Flexibility Act analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."⁵⁷ The RFA generally defines the term "small entity" as having the same

⁵² *Id.*

⁵³ *See* n.37, *supra*.

⁵⁴ *Id.*

⁵⁵ *See* 15 C.F.R. § 930.54.

⁵⁶ *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 – 602, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

⁵⁷ 5 U.S.C. § 605(b).

meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁵⁸ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁵⁹ A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁶⁰

22. In the NPRM, the Commission certified that the rules proposed in this proceeding would not have a significant economic impact on a substantial number of small entities.⁶¹ This Order on Reconsideration will amend the submarine cable landing rules to require applicants to include information regarding an applicant’s compliance with the Coastal Zone Management Act of 1972. Although the majority of submarine cable landing license applicants are not considered small entities, the rule changes affecting these applicants are nominal and will ensure that our rules are consistent with the Coastal Zone Management Act of 1972. Therefore, we find that the rules adopted in this Order on Reconsideration will not have a significant economic impact on a substantial number of small entities.

23. **Report to Congress.** The Commission will send a copy of the Order, including a copy of the Final Regulatory Flexibility Certification, in a report to Congress.⁶² In addition, the Commission will send a copy of the Order, including a copy of the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA. A copy of the Order and Final Regulatory Flexibility Certification will also be published in the Federal Register.⁶³

B. Final Paperwork Reduction Act of 1995 Analysis

24. This Report and Order contains either new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office Of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law No. 107-198, (*see* 44 U.S.C. § 3506 (c)(4)), the Commission previously sought specific comment on how the Commission might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

25. All comments regarding the requests for approval of the information collection should be submitted to Judith B. Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to Judith-B.Herman@fcc.gov; phone 202-418-0214.

VI. ORDERING CLAUSES

26. For the reasons discussed above, IT IS ORDERED, pursuant to Sections 1, 4(i), 4(j), and 5, of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 155, sections 34-39 of the Cable Landing License Act, 47 U.S.C. §§ 34-39, and Sections 1.3 and 1.115 of the Commission’s

⁵⁸ *Id.*

⁵⁹ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such terms which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

⁶⁰ 15 U.S.C. § 632.

⁶¹ *See* NPRM, 19 FCC Rcd at 4249, ¶ 43.

⁶² *See* 5 U.S.C. § 801(a)(1)(A).

⁶³ *See* 5 U.S.C. § 605(b).

rules, 47 C.F.R. §§ 1.3, 1.115, that the *Petition for Reconsideration* of the Commission's *Report and Order* filed by NASCA is GRANTED to the extent described in this Order and is otherwise DENIED.

27. IT IS FURTHER ORDERED that, pursuant to Sections 1, 4(i), 4(j), and 5 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 155, and sections 34-39 of the Cable Landing License Act, 47 U.S.C. §§ 34-39, Part 1 of the Commission's rules IS AMENDED as set forth in the APPENDIX.

28. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this REPORT AND ORDER, including the Final Regulatory Flexibility Act Certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. § 601 *et seq.*

29. IT IS FURTHER ORDERED that the Regulatory Flexibility Certification, as required by section 604 of the Regulatory Flexibility Act and as set forth above IS ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX**Final Rules**

Part 1 of the Commission's rules are amended as follows:

PART 1 – PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. §§ 151, 154(i), 154(j), 155, 225, 303(r), and 309.

2. Section 1.767 is amended by amending note to paragraph (a)(10).

(a) ****

Note to paragraph (a)(10) – Applicants for cable landing licenses may be subject to the consistency certification requirements of the Coastal Zone Management Act (CZMA), 16 U.S.C. § 1456, if they propose to conduct activities, in or outside of a coastal zone of a state with a federally-approved management plan, affecting any land or water use or natural resource of that state's coastal zone. Before filing their applications for a license to construct and operate a submarine cable system or to modify the construction of a previously approved submarine cable system, applicants must determine whether they are required to certify that their proposed activities will comply with the enforceable policies of a coastal state's approved management program. In order to make this determination, applicants should consult National Oceanic Atmospheric Administration (NOAA) regulations, 15 C.F.R. Part 930, Subpart D, and review the approved management programs of coastal states in the vicinity of the proposed landing station to verify that this type of application is not a listed federal license activity requiring review. After the application is filed, applicants should follow the procedures specified in 15 C.F.R. § 930.54 to determine whether any potentially affected state has sought or received NOAA approval to review the application as an unlisted activity. If it is determined that any certification is required, applicants shall consult the affected coastal state(s) (or designated state agency(ies)) in determining the contents of any required consistency certification(s). Applicants may also consult the Office of Ocean and Coastal Management (OCRM) within NOAA for guidance. The cable landing license application filed with the Commission shall include any consistency certification required by section 1456(c)(3)(A) for any affected coastal state(s) that lists this type of application in its NOAA-approved coastal management program and shall be updated pursuant to section 1.65 of the Commission's rules, 47 C.F.R. § 1.65, to include any subsequently required consistency certification with respect to any state that has received NOAA approval to review the application as an unlisted federal license activity. Upon documentation from the applicant—or notification from each coastal state entitled to review the license application for consistency with a federally approved coastal management program—that the state has either concurred, or by its inaction, is conclusively presumed to have concurred with the applicant's consistency certification, the Commission may take action on the application.

3. Section 1.767 is amended by amending (k)(4).

(k) ****

(4) Certifying that for applications for a license to construct and operate a submarine cable system or to modify the construction of a previously approved submarine cable system the applicant is not required to

submit a consistency certification to any state pursuant to section 1456(c)(3)(A) of the Coastal Zone Management Act (CZMA), 16 U.S.C. § 1456.

Note to paragraph (k)(4) –Streamlining of cable landing license applications will be limited to those applications where all potentially affected states, having constructive notice that the application was filed with the Commission, have waived, or are deemed to have waived, any section 1456(c)(3)(A) right to review the application within the thirty-day period prescribed by 15 C.F.R. § 930.54.