

United States Senate
WASHINGTON, DC 20510

November 15, 2001

Mr. John D. Graham
Administrator
Office of Information and Regulatory Affairs
White House Office of Management and Budget
Eisenhower Executive Office Building
Washington, D.C. 20503

Dear Administrator Graham:

We are writing to request your review of the National Oceanic and Atmospheric Administration's (NOAA) process regarding the imposition of "fair market value" fees and special use permit requirements for fiber-optic submarine cables in National Marine Sanctuaries prior to the adoption of an official policy on these matters.

On August 17, 2001, the National Oceanic and Atmospheric Administration (NOAA) reissued its notice for comment on the establishment of a fair market value fee for fiber-optic submarine cables in National Marine Sanctuaries authorized under special use permits. The notice indicated that the agency intends to proceed with imposing its fair market value fee upon existing special use permit holders, and only through a separate process would later decide whether "the issuance of special use permits are even necessary or appropriate." This could mean that existing permittees would be charged with significant fees whereas future submarine cable providers may be charged no fee at all.

NOAA intends to impose fair market value fees in addition to other costs it has required of the current permit holders, including significant fees in direct sanctuary support for a comprehensive monitoring program, as well costs associated with construction mitigations required under the permits. Also, it is our understanding that NOAA previously authorized a cable through the same sanctuary as one of these projects, without requiring a special use permit or any of the fees required of the existing permittees. As a matter of consistent public policy, we are concerned and question the agency's action of applying any fair market value rule prior to adopting an overall national policy.

To that end, we are requesting that the consideration and determination of fair market value fees be postponed until a policy on the requirement of special use permits for transit in

marine sanctuaries is established. We invite your leadership and oversight to ensure that NOAA's actions consider adequate cost-benefit analysis and also take into account the current state of the industry. In developing such a policy, we hope that you will encourage the agency to consider the public benefit of national telecommunications infrastructure and the potential harm in establishing a precedent for rights-of-way fees assessed on federal, state, and local public lands. In addition, NOAA should recognize the expressed interest by Congress and the Administration to encourage private investment, build-out and deployment of broadband infrastructure, not to create barriers on the industry.

We believe these issues are important to consider in reviewing whether NOAA's actions are appropriate for the health and growth of the telecommunications sector and the economy. We appreciate your looking into this matter and look forward to hearing from you.

Sincerely,



JOHN BREAUX
United States Senator



TRENT LOTT
United States Senator

cc: Secretary Donald Evans
Mr. Andrew Card

United States Senate
WASHINGTON, DC 20510

November 15, 2001

Ms. Nancy J. Victory
Administrator
National Telecommunications and Information Administration
U.S. Department of Commerce
1401 Constitution Ave, N.W., Room 4898
Washington, D.C. 20230

Dear Administrator Victory:

First of all, we congratulate you on your recent appointment as Administrator of the National Telecommunications and Information Administration. Your agency plays an increasingly important public policy role on behalf of the telecommunications industry, a sector vital to the growth, strength, and security of our nation's economy. We have enjoyed a good relationship with NTIA in the past, and look forward to continuing that relationship and dialogue under your tenure and leadership.

We would like to bring to your attention our concern regarding a regulatory action that will negatively impact an already unstable telecommunications industry. On August 17, 2001, the National Oceanic and Atmospheric Administration (NOAA) reissued its notice for comment on the establishment of a fair market value fee for fiber-optic submarine cables in National Marine Sanctuaries authorized under special use permits. The notice indicated that the agency intends to proceed with imposing its fair market value fee upon existing special use permit holders, and only through a separate process would later decide whether "the issuance of special use permits are even necessary or appropriate." This could mean that existing permittees would be charged with significant fees whereas future submarine cable providers may be charged no fees at all.

NOAA intends to impose fair market value fees in addition to other costs it has required of the current permit holders, including significant fees in direct sanctuary support for a comprehensive monitoring program, as well costs associated with construction mitigations required under the permits. It is our understanding that NOAA previously authorized a cable through the same sanctuary as one of these projects, without requiring a special use permit or any of the fees required of the existing permittees.

As a matter of consistent policy, we have serious concerns, not only with NOAA's process of imposing fees on permits before determining what the policy for permits should be, but also with the broad implications such action could have on the weakened telecommunications industry. At a time when Congress and the Administration are seeking ways to provide incentives for private investment, build-out and deployment of broadband infrastructure, NOAA's actions would seem to do just the opposite and provide a disincentive, as well as set a precedent for rights-of-way fees assessed on federal, state, and local public lands.

As a key administration official charged with helping to shape our nation's telecommunications policy, we are requesting your leadership and review of the appropriateness of such action at a time when we should be supporting and encouraging the growth of the industry. We appreciate your looking into this matter and look forward to hearing from you on this issue.

Sincerely,



JOHN BREAU
United States Senator



TRENT LOTT
United States Senator

cc: Secretary Donald Evans
Mr. Andrew Card