

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT
COASTAL DEVELOPMENT PERMIT AMENDMENT AND
MODIFIED CONSISTENCY CERTIFICATION

CDP Amendment Application No.: E-99-011-A2

Consistency Certification No.: CC-028-00

Applicant: MFS Globenet, Inc.

Project Location: State and federal waters offshore of Montana de Oro State Park, west-southwest of the City of Los Osos, San Luis Obispo County

Project Description: Amend **Special Condition 6** of the original permit (E-99-011) and modify consistency certification (CC-028-00), to require periodic surveys of undersea cables every five years, rather than every 18 to 24 months as originally approved

Substantive File Documents: [See Appendix A](#)

SUMMARY

In April 2000, the Commission approved for MFS Globenet Corporation/MCI WorldCom Network Services Inc.¹ coastal development permit E-99-011, and concurred with consistency certification CC-028-00 for the construction and operation of two transoceanic telecommunications fiber optic cables to land at Montana de Oro State Park, west-southwest of the City of Los Osos in the County of San Luis Obispo. MFS Globenet, Inc. (MFS) is currently a fully-owned subsidiary of Verizon Business Global, LLC. The two cables have the following name identifiers: Southern Cross Segment D (SC-D) and Japan-US Segment 1 (JUS-1). The SC-D cable system connected the United States with New Zealand and Australia with additional landing sites in Hawaii, Oregon, and Fiji. The JUS-1 cable system connected the United States with Japan.

A key Coastal Act issue addressed in the findings for the original permit and consistency certification was the potential adverse effects on coastal resources related to entanglement with the cables. Specifically, the findings addressed concerns that: 1) whales may become entangled with the cables, 2) trawlers may snag their gear on a cable and thus lose gear and fishing time, or 3) abandoned trawl nets may entangle and drown marine mammals or other marine wildlife. To prevent potential adverse effects associated with entanglement, the original permit required MFS to bury the cables to a depth of 1.0 meter if feasible. The permit also required that every 18 to 24 months for the life of project, MFS would survey the cable routes to verify that the cables remain buried. If the cable survey indicates that previously buried cable has become unburied, MFS is to re-bury the cable segments. In its consistency certification, MFS committed to implement these measures for cable located in federal waters.

The results of the 2001 post-lay inspection survey and two periodic surveys completed in 2003 and 2005 demonstrate that buried cable remains buried. MFS proposes to reduce the frequency of the periodic surveys for the cable segments in State and federal waters from once every 18 to 24 months to once every five years. Since buried cable has remained buried over time, changing the frequency of the burial surveys from every two years to every five years will not reduce protection of coastal resources. Furthermore, changing the frequency of the burial surveys will reduce the environmental effects associated with performing the surveys (e.g., air emissions from survey vessels and potential conflicts with commercial fishing along the cable survey routes). The Central California Joint Cable/Fisheries Liaison Committee supports the proposed five-year survey interval.

Commission staff recommends that the Commission approve the proposed permit amendment and concur with MFS's modified consistency certification.

¹ At the time of cable installation, MFS Globenet, Inc. was MFS Globenet, Inc./MCI WorldCom.

1 STAFF RECOMMENDATION

1.1 Coastal Development Permit Amendment: Approval

The staff recommends approval of coastal development permit amendment application number E-99-011-A2.

Motion

I move that the Commission approve the proposed amendment to coastal development permit E-99-011-A2.

Staff recommends a **YES** vote. Passage of this motion will result in approval of the amendment and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of Commissioners present.

Resolution

The Commission hereby approves coastal development permit amendment E-99-011-A2, and adopts the findings set forth below on grounds that the development, as amended, will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the amended permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

1.2 Modified Federal Consistency Certification: Concurrence

Staff recommends concurrence with the modification to consistency certification number CC-028-00.

Motion

I move that the Commission concur with MFS Globenet Inc.'s modification to consistency certification CC-028-00 for the proposed change in survey intervals, finding that, 1) the coastal zone effects are not substantially different than originally described, and 2) the project, as modified, continues to be consistent with the enforceable policies of the California Coastal Management Program.

The staff recommends a **YES** vote. A majority vote in the affirmative will result in the adoption of the following resolution:

Resolution

The Commission hereby concurs with the modified consistency certification made by MFS Globenet, Inc., finding that the project, as modified, does not have coastal zone effects that are substantially different than the project as originally reviewed, and that the project continues to be consistent with the California Coastal Management Program.

2 FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

2.1 Background

Between 2000 and 2002 the Commission approved the construction and installation of seven offshore fiber optic cable systems (see E-99-011/CC-028-00, E-98-029/CC-059-00, E-00-004/CC-078-00, E-00-008/CC-110-00, E-05-007/CC-076-05, E-98-027/CC-041-00, and E-01-029/CC-111-01). The Commission required each applicant to bury the cable in soft sediment, where feasible, to avoid interference with commercial fishing gear and prevent whale entanglements. Each permit also required that every cable be surveyed every 18 to 24 months to determine if the cable remains buried. If previously buried cable becomes unburied it is to be reburied. In each case, MFS, as part of its consistency certification, agreed to implement these same measures in federal waters.

To date, most of the fiber optic cable companies have completed two cable burial surveys. Generally, the results of the surveys show that buried cable remains buried and stable. On February 9, 2006 the Commission approved a permit amendment for Pacific Crossing E-98-027-A2/CC-041-00 to extend the required burial survey interval from once every 18 to 24 months to every five years. On June 15, 2007 the Commission approved a permit amendment for Pan American Crossing E-98-027-A3 to extend the required burial survey interval from once every 18 to 24 months to every five years.

In this permit amendment application, MFS also proposes to amend **Special Condition 6** to extend the required burial survey interval from once every 18 to 24 months to once every five years. The two cables of the MFS system have the following name identifiers: Southern Cross Segment D (SC-D) and Japan-US Segment 1 (JUS-1). The SC-D cable system connects the United States with New Zealand and Australia and the JUS-1 cable system connects the United States with Japan.

2.2 Proposed Amendment and Consistency Certification Modification

Special Condition 6 of the original coastal development permit (CDP) E-99-011-A2 required periodic cable inspection surveys in State waters every 18 to 24 months. In its consistency certification, CC-028-00, MFS committed to performing burial surveys every 18 to 24 months for the cable segments in federal waters. The purpose of the periodic surveys is to ensure that

previously buried cable remains buried. If a cable survey indicates that previously buried cable has become unburied, MFS is required to re-bury the cable segments.

The results of the 2001 post-lay inspection survey and two periodic surveys completed in 2003 and 2005 demonstrate that buried cable remains buried. MFS therefore proposes to reduce the frequency of the periodic surveys for the MFS cable segments in State and federal waters from once every 18 to 24 months to once every five years.

The proposed revised special condition set forth below would supersede and replace **Special Condition 6** approved by the Commission in CDP E-99-011. The revisions are illustrated by strikethroughs for deletions and underlining for additions. All other requirements of the Commission's approval of CDP E-99-011, including but not limited to the Standard Conditions set forth in Section 2.0 of the Commission's findings, remain in full force and effect with respect to the amended project.

***Special Condition 6. Cable Surveying.** Every ~~18 to 24 months~~ five (5) years for the life of project, the applicants shall survey those portions of the ~~SD-C~~ SC-D and JUS-1 cable routes from the mean high tide line to the seaward limit of the territorial waters of the State of California to verify that the cables have remained buried consistent with the as-built cable burial plan required by Special Condition 5. The survey shall be conducted with a remotely-operated vehicle (ROV) equipped with video and still cameras and by a third party approved by the Executive Director. Within 30 days of survey completion, the applicants shall submit to the Executive Director a report describing the results of the survey. If the survey shows that a segment(s) of a cable is no longer buried consistent with the as-built cable burial plan required by Special Condition 5, the applicants shall, within 30 days of survey completion, submit to the Executive Director for approval a plan to re-bury those cable segments.*

MFS also proposes to survey the cables located in federal waters every five years.

2.3 Permit and Federal Consistency Jurisdiction

This staff report is a combined analysis for the coastal development permit amendment and the modified consistency certification. The Coastal Commission has original coastal permit jurisdiction over project areas on public trust lands, tidelands, and submerged lands from the mean high tide line to three nautical miles offshore. The portion of the revised project that involves cables buried within State waters (i.e., seaward of the mean high tide line to three nautical miles offshore) required a CDP amendment from the Coastal Commission, and is the subject of this amendment application.

The project also required a federal permit from the United States Army Corps of Engineers, and therefore required a federal consistency certification pursuant to Section 307(c)(3)(A) of the Coastal Zone Management Act. For the portion of the project that lies outside the coastal zone in

federal waters, MFS submitted a modified consistency certification to the Coastal Commission on July 11, 2007. MFS has certified that the amended activity complies with California's approved coastal management program (CCMP) and will be conducted in a manner consistent with the CCMP.

2.4 Related Agency Approvals

State Lands Commission

In 2000 the California State Lands Commission (SLC) approved a Telephone Right of Way and four leases (PRC 8141.1, PRC 8142.1, PRC 8143.1, PRC 8144.1) for the portion of the cable project within State waters and submerged lands. These leases authorize the laying of the subject cable segments across State-owned submerged lands and tidelands and require periodic surveys once every 18 to 24 months. In addition, the SLC leases require a cable survey upon "any event that may cause the cable to daylight." In June 2007, MFS applied to the SLC to extend the survey requirements of its lease to every five years. That application is pending.

2.5 Coastal Act Issues

Marine Resources and Commercial Fishing

Coastal Act § 30230 states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Coastal Act § 30234.5 states:

The economic, commercial, and recreational importance of fishing activities shall be recognized and protected.

Key Coastal Act issues addressed in the findings for the original permit include potential adverse affects on coastal resources related to entanglement with the cables. Specifically, the findings addressed concerns that: 1) whales may become entangled with the cables; 2) trawlers may snag their gear on a cable and thus lose gear and fishing time; and/or 3) abandoned trawl nets may entangle and drown marine mammals or other marine wildlife. The Commission required **Special Condition 6** in order to help ensure that the cables remained buried, to reduce the possibility of adverse impacts to marine mammals and commercial fishing from entanglement with the cables.

The proposal to conduct regular burial surveys was first advanced in 1998 by affected commercial fishermen. In response to fishermen's concerns, the cable companies agreed to survey the cable routes at least every two years. The 18 to 24-month survey interval was incorporated into the lease granted by the State Lands Commission, and the Coastal Commission required **Special Condition 6** consistent with the agreement reached with the fishermen and the conditions of the State Lands lease.

MFS now has two survey data sets that indicate the cables have not become unburied since installation nearly five years ago. There is no indication that the cables will become unburied over the second five-year survey burial.

Each survey causes some impacts to coastal resources, including air quality impacts from survey vessel emissions, and space preclusion impacts to commercial fishermen. Reducing the survey interval will reduce these impacts to coastal resources. The Joint Fisheries Liaison Committee supports the proposed five-year survey interval.

The Commission therefore finds that reducing the survey interval from once every 18 to 24 months to once every five years is consistent with the marine resources and commercial fishing policies (Sections 30230 and 30234.5) of the Coastal Act.

3 CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096 of the Commission's administrative regulations requires Commission approval of coastal development permit applications to be supported by a finding showing the application, as modified by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits approval of a proposed development if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant impacts that the activity may have on the environment. Based on information derived from surveys that have been performed thus far, a reduction in the frequency of the burial surveys will not materially increase the likelihood of the environmental effect that the surveys are intended to avoid, namely, the uncovering of the cables. Furthermore, such a reduction will reduce the environmental effects associated with performing the surveys (e.g., air emissions from survey vessels and potential conflicts with commercial fishing along the cable survey routes). The project as amended by the conditions of approval described herein incorporates mitigation measures to avoid any significant environmental effects under the Coastal Act and the CEQA. There are no less environmentally damaging feasible alternatives or mitigation measures.

APPENDIX A
Substantive File Documents
[\(back to page one\)](#)

California Coastal Commission. "Final Adopted Findings for CDP Application Number E-99-011 and Consistency Certification CC-028-00." March 30, 2000 (Approved April 14, 2000).

CapRock Geology, Inc. "WorldCom 30 Day Post-Cable Installation Inspection Survey." Completed for Natural Resources Consultants, Inc. by CapRock Geology, Inc., Salinas, California. October 6, 2001.

Global Crossing. "Southern Cross segment D, Japan-US segment 1 2003 Burial Verification Survey." Prepared by Global Marine Systems Ltd., Essex, UK. July 29, 2005.

----- "Southern Cross segment D, Japan-US segment 1 2005 Burial Verification Survey." Prepared by Global Marine Systems Ltd., Essex, UK. July 29, 2005.

Letter from Christopher Kubiak, Secretary, Central California Joint Cable/Fisheries Liaison Committee to Alison Dettmer, CCC dated June 21, 2007.