

CALIFORNIA COASTAL COMMISSION

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Staff: KH-SF
Staff Report: 11-29-10
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STAFF REPORT
COASTAL DEVELOPMENT PERMIT AMENDMENT AND
MODIFIED CONSISTENCY CERTIFICATION

CDP Amendment Application No.: **E-01-029-A3**

Consistency Certification No.: **CC-111-01**

Applicant: **Tata Communications, Inc.**

Project Location: State and federal waters offshore of Hermosa Beach,
Los Angeles County

Project Description: Amend **Special Condition 18** of the original permit (E-01-029) and modify consistency certification (CC-111-01), 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 July 2002, the Commission approved for Tyco Networks (US), Inc. coastal development permit E-01-029, and concurred with consistency certification CC-111-01 for the construction and operation of two telecommunications fiber optic cables to land at the City of Hermosa Beach in Los Angeles County. One cable, segment 5, lands in Oregon and was built to completion in 2002. The second cable, segment 4, lands in Hawaii. This segment was constructed in two phases. The first phase was constructed in 2002 and included only the portion of the cable in State waters. The second phase, encompassing the remainder of the cable, was completed in 2009. In 2005, Tyco transferred ownership of the segment 5 cable to Tata Communications (US) Inc. (“Tata”), formerly known as VSNL Telecommunications (US), Inc. In 2008, Coastal Development Permit No. E-01-029 was officially assigned to Tata.

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 the permittee 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, the permittee would survey the cable routes to verify that the cables remain buried. If the cable survey indicates that previously buried cable has become unburied, the permittee is to re-bury the cable segments. In its consistency certification, Tyco (and then Tata) committed to implement these measures for cable located in federal waters.

The results of the 2002 post-lay inspection survey and three periodic surveys completed in 2004, 2007 and 2009 demonstrate that buried cable remains buried. Tata 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, with the next survey report due to the Commission by November 1, 2015. 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). For this reason, the South Bay Cable/Fisheries Liaison Committee supports the proposed five-year survey interval. Finally, extending the deadline of the next survey until 2015 will bring Tata onto the same compliance schedule as the other fiber optic cable projects, thus providing for coordination of survey vessels and equipment, and reducing the environmental impacts associated with the surveys.

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

Attachment 1: Letter from Peter Halmay, Chariman, South Bay Cable/Fisheries Liaison Committee to Peter Douglas, CCC dated October 8, 2010.

Attachment 2: Letter from Ken Hermann, Tata Communications to Peter Douglas, CCC dated November 21, 2010.

Attachment 3: Letter from Stephen R. Burrell, City Manager of the City of Hermosa Beach to Peter Douglas, CCC dated October 13, 2010.

1 STAFF RECOMMENDATION

1.1 Coastal Development Permit Amendment: Approval

The staff recommends approval of coastal development permit amendment application number E-01-029-A3.

Motion

I move that the Commission approve the proposed amendment to coastal development permit E-01-029-A3.

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-01-029-A3, 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-111-01.

Motion

I move that the Commission concur with Tata Communications, Inc.'s modification to consistency certification CC-111-10 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 Tata Communications, 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

In July 2002, the Commission granted approval to Tyco Networks, Inc. (“Tyco”) to build two fiber optic cables landing in the City of Hermosa Beach in Los Angeles County, with one cable (Segment 4) landing in Hawaii and one cable (Segment 5) landing in Oregon. Segment 4 was installed up to federal waters in 2002 and then abandoned until 2009 when installation was completed. Segment 5 was installed to completion in 2009. In 2005, Tyco transferred ownership of the Segment 5 cable to Tata Communications (US) Inc. (“Tata”), formerly known as VSNL Telecommunications (US), Inc. In 2008, Coastal Development Permit No. E-01-029 was officially assigned to Tata (see Appendix A)

In addition to the Tyco project, the Commission approved the installation and operation of seven offshore fiber optic cable systems between 2000 and 2009.¹ 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, the applicant, as part of its consistency certification, agreed to implement these same measures in federal waters.

¹ E-98-027/CC-041-00 - PC Landing Corporation and PAC Landing Corporation; E-98-029/CC-059-00, E-00-004/CC-078-00 and E-08-021/CC-005-09 – AT&T Corporation; E-99-011/CC-028-00 – MFS Globenet, Inc.; E-00-008/CC-110-00 – Global West Network, Inc.; and E-05-007/CC-076-05 – Monterey Bay Research Institute

By 2005, most of the fiber optic cable companies had completed two cable burial surveys. Generally, the results of these surveys showed that buried cable remains buried and stable. As a result, in 2006 and 2007, the Commission approved amendments to five of the permits to extend the required burial survey interval from once every 18 to 24 months to every five years.² To date, Tyco/Tata has completed three periodic surveys, in 2004, 2007 and 2009. Similar to surveys of the other cables, the results of Tyco/Tata's surveys indicate that there has not been a significant change in cable placement or exposure. Thus, in this permit amendment application, Tata also proposes to amend **Special Condition 18** to extend the required burial survey interval from once every 18 to 24 months to once every five years.

2.2 Proposed Amendment and Consistency Certification Modification

Special Condition 18 of the original coastal development permit (CDP) E-01-029 required periodic cable inspection surveys in State waters every 18 to 24 months. In its consistency certification, CC-028-00, Tyco/Tata 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, Tata is required to re-bury the cable segments.

The results of the 2002 post-lay inspection survey and three periodic surveys completed in 2004, 2007 and 2009 demonstrate that buried cable remains buried. Tata therefore proposes to reduce the frequency of the periodic surveys for the Tata segment 5 cable in State and federal waters from once every 18 to 24 months to once every five years, with the next survey report due to the Commission by November 1, 2015. Although this would actually result in a six year interval between the 3rd and 4th surveys, it would bring Tata onto the same schedule that is applied for the other fiber optic cable companies. This scheduling overlap allows the companies to coordinate survey vessels and equipment, thus reducing the cost and environmental impacts associated with the surveys.

The proposed revised special condition set forth below would supersede and replace **Special Condition 18** approved by the Commission in CDP E-01-029. The revisions are illustrated by strikethroughs for deletions and underlining for additions. All other requirements of the Commission's approval of CDP E-01-029, 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 18. Cable Surveying and Reburial.** Every ~~18 to 24 months~~ 5 years for the life of the project, the applicant shall survey the cable route to verify that the cables have remained buried consistent with the as-built cable burial plan required by Special*

² E-98-027-A2/CC-041-00 – PC Landing, approved 2/9/06; E-98-027-A3/ CC-041-00 – PAC Landing, approved 6/15/06; E-99-011-A2/CC-028-00 – MFS Globenet, Inc, approved 8/8/07; E-98-029-A2/CC-059-00 and E-00-004-A1/CC-078-00 – AT&T Corporation, approved 11/15/07

Condition 9. The survey shall be conducted with a remotely operated vehicle (“ROV”) equipped with video and by a party approved by the Executive Director. Within 30 days of survey completion, the applicant shall submit to the Executive Director a report describing the results of the survey (including example still images) and a copy of the videotape(s) recorded during the cable survey. The videotape(s) shall include a display that identifies the date, time, position, water depth, and heading of the ROV.

If the survey shows that a segment(s) of the cable is no longer buried consistent with the as-built cable burial plan required by Special Condition 9, the applicant shall, within 30 days of survey completion, submit to the Executive Director for approval a plan to re-bury those cable segments. Upon approval of the plan by the Executive Director, the applicant shall proceed to implement the plan in accordance with the time schedule specified therein.

Tata 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, Tata submitted a modified consistency certification to the Coastal Commission on November 22, 2010 (see Attachment 2). Tata 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

City of Hermosa Beach

The City of Hermosa Beach was legislatively granted the submerged lands offshore of Hermosa Beach pursuant to Chapter 479, Statutes of 1919. These lands were transferred in trust to the City by the Legislature to be used for certain limited purposes including navigation, commerce and fisheries. Additionally, because these lands were granted in trust, any revenues generated on or from these granted lands must be expended for the purpose of promoting or improving these lands. The City of Hermosa Beach therefore acted as lead agency under the California

Environmental Quality Act (“CEQA”) and as the lessor for the project both onshore and offshore for submerged lands to the limit of State waters.

In a letter sent on October 13, 2010, the City Manager of the City of Hermosa Beach indicated that the City had no objection to the proposed amendment to extend the interval between surveys to 5 years, with the next survey taking place in the summer of 2015. He noted that the City’s easement agreement contains a fifteen day notification requirement for significant activities undertaken in easement areas. As such, the City expects that Tata will provide adequate prior written notice of inspection activities (see Attachment 3).

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 18** 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 Coastal Commission required **Special Condition 18** to be consistent with the agreement reached with the fishermen.

Tata now has three 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 in the next 5 years.

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. Aligning Tata's survey schedule with the schedules of the other fiber optic cable companies will further reduce these impacts. The South Bay Fisheries Liaison Committee indicated its support for the proposed five-year survey interval, noting that (1) there has been little change in the cable exposure since it was installed and (2) it is not aware of any problems with fishing gear entanglement with this cable (see Attachment 1).

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
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California Coastal Commission. “Final Adopted Findings for CDP Application Number E-01-029 and Consistency Certification CC-111-01.” June 21, 2002 (Approved July 11, 2002).

Tyco Telecommunications, Inc. “Tyco Global Network (TGN) Pacific Segments G4 and G5 Post-Lay Inspection Report – 24 Month Inspection,” Morristown, NJ. December 16, 2004.

Tyco Telecommunications, Inc. “Tyco Global Network (TGN) Pacific Cable System Segment G5 Post-Lay Inspection Report – 24 Month Inspection - 2007,” Morristown, NJ. May 21, 2007.

Tyco Telecommunications, Inc. “Tyco Global Network (TGN) Pacific Cable System Segments G4 and G5 Post-Lay Inspection Report – 24 Month Inspection - 2009,” Morristown, NJ. August 2009.

SOUTH BAY CABLE/FISHERIES LIAISON COMMITTEE, INC.

11103 Hwy 67 Lakeside, CA 92040

October 8, 2010

Peter Douglas , Executive Director
California Coastal Commission
45 Fremont Street suite 2000
San Francisco, CA 94105-2219

Subject: CDP application No. E-01-029 and consistency Certification No. CC-111-01 as amended

It is our understanding that the cable company Tata wishes to increase the interval for their survey off the coast from Hermosa Beach to every 5 years with the next survey starting in the summer of 2015. On behalf of the Fishermen on the SOUTH BAY CABLE/FISHERIES LIAISON COMMITTEE, we have no objection to this extension.

Tata is currently on a 18-24 month cycle, with the last survey being completed in Aug. 2009. They have seen very little change to the cable occur over the last 4 surveys (since 2002), as exposure has actually reduced over time as the trench that the cable sits in becomes filled.

The Liaison Committee is not aware of any problems with fishing gear entanglement with this cable and therefore the survey extension is warranted.

It is our understanding that there are other cables in our region (Pt. Conception to the Mexican border) .Please send us the name and address of the companies responsible for these cables, so we may communicate with them.

Best regards,



Peter Halmay phalmay@earthlink.net
Chairman

Cc Howard Sacks
Kenneth Herrman

November 21, 2010

Peter Douglas, Executive Director
California Coastal Commission
45 Fremont Street suite 2000
San Francisco, CA 94105-2219

RE: Consistency Certification No. CC-111-01 and amend Our Coastal Development Permit No. E-01-029

Dear Mr. Douglas,

Tata's is proposing to amend our Coastal Development Permit No. E-01-029 and to modify the Consistency Certificate No. CC-111-01 to extend the burial survey schedule and interval.

Tata Communications plan to amend Special Condition #18 regarding the requirement to conduct a periodic post-installation cable burial survey of the TGN G-5 cable (owned by Tata Communications (US) Inc.), off the coast of Hermosa Beach, every 18 to 24 months with the next cable burial survey is due to be performed between March and August of 2011.. The proposed change would be to conduct the next periodic post installation cable burial survey in the summer of 2015, with new cycle being every five years.

The post-lay burial inspection conducted in 2002, and each of the following three surveys that have been conducted since, the first in 2004, reflect that the burial has remained substantially unchanged. Each time another cable burial survey is conducted, it involves mobilizing, deploying, and operating a large vessel in a sensitive environment amidst vital fishing areas around the South Bay for an extended period of time. Increasing the currently prescribed interval between cable burial surveys would reduce the environmental impact that is caused by the activity surrounding the surveys themselves. Additionally, it would reduce costs associated with the surveys. These factors, given the stability of the cable burial as evidenced in all prior surveys over a period of years, argue strongly in favor of adjusting the frequency of the surveys, and would not lessen or avoid the intent of a previously approved permit condition.

The plan would be to conduct the burial assessment survey sometime during the 2014 year on a schedule that will not interfere with traditional fishery runs such as the Swordfish/Shark driftnet fishing season, and/or allow for the flexibility to plan concurrent operations, which will allow efficiencies for many aspects of the project.

The cable does not appear to be affecting fishing or other activities. To date there have been no commercial fishing gear snagged to the cable, as observed by the surveys. But most of all, the survey data shows that the cable has never moved off

its as-laid position and the sections of exposure remains relatively unchanged. Sections of the cable that had good burial depths remained buried. The small sections where the cable had burial difficulties at installation are the areas surveyed as visible or suspended cable. In most cases, the cable, though visible, is below the Mean Surface Level (MSL).

Please consider this proposal for the change in our Coastal Development Permit No. E-01-029 and Consistency Certification No. CC-111-01. Tata Communications, for the reasons stated in this letter, certifies that the proposed new schedule remains consistent with California's Coastal Management Program.

Best regards,



Ken Herrmann

Cc Alison Dettmer

City of Hermosa Beach



Civic Center, 1315 Valley Drive, Hermosa Beach, CA 90254-3885

October 13, 2010

Peter Douglas , Executive Director
California Coastal Commission
45 Fremont Street suite 2000
San Francisco, CA 94105-2219

Subject: Coastal Development Permit No. E-01-029 and Consistency Certification No. CC-111-01 as amended.

Dear Mr. Douglas

It is our understanding that the cable company Tata wishes to increase the interval for their cable burial inspections of the submarine cable off the coast of Hermosa Beach to every 5 years, with the next survey starting in the summer of 2015. Tata is currently on an 18-24 month cycle, pursuant to the permit conditions, with the last survey being completed in Aug. 2009. Our understanding is that Tata has seen very little change to the cable occur over the last 4 surveys (since 2002), as exposure has actually reduced over time as the trench that the cable sits in becomes filled.

The City has no objection to this proposed amendment to change the frequency of these surveys. The City is not aware of any problems associated with this cable and finds that this amendment is consistent with City's easement agreement and development permits. However, the City's easement agreement does contain a fifteen day notification requirement for significant activities undertaken in the easement area. The City expects that Tata will provide appropriate prior written notice of burial inspection activities.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Burrell'.

Stephen R. Burrell
City Manager

cc: Kenneth Herrmann ✓