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April 12, 2024

The Honorable Gina Raimondo
Secretary
U.S. Department of Commerce
1401 Constitution Ave., NW
Washington, D.C. 20230

Dear Secretary Raimondo:

The Committee on Oversight and Accountability is investigating examples of harmful overregulation, including the imposition of costly, outdated, and unnecessary obstacles to the deployment and maintenance of critical internet infrastructure. We seek your assistance in examining actions and consideration of impact by component agencies within your department.

The National Oceanic and Atmospheric Administration (NOAA) is currently pursuing an effort to impose costly and bureaucratic regulation of undersea fiber-optic cables traversing the area proposed for designation as the Chumash Heritage National Marine Sanctuary (NMS) off California's central coast.[1] The Committee seeks to understand how NOAA and others within the Department of Commerce (DOC), most specifically the National Telecommunications and Information Administration (NTIA), have examined and considered the need and impact of adding new red tape on new and existing internet infrastructure projects. Further, the Committee seeks to understand NOAA's consideration of these concerns, the intention of the agency in creating new regulatory impediments, input provided by expert agencies, and whether the Department's current actions are hampering efforts to modernize federal goals for internet connectivity across America.

Your department is currently managing $48.2 billion[2] provided by Congress as part of the Broadband Equity, Access, and Deployment (BEAD) and other programs, "to expand high-speed Internet access by funding planning, infrastructure deployment and adoption programs in all 50 states, Washington D.C., Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands."[3] In furtherance of broadband deployment

[1] Nat'l Oceanic and Atmospheric Admin., *Proposed Chumash Heritage National Marine Sanctuary*, *available at* https://sanctuaries.noaa.gov/chumash-heritage/ (last visited Apr. 5, 2024).
[2] Infrastructure and Investment and Jobs Act, Pub. L. 117-58, *available at* https://www.govinfo.gov/content/pkg/PLAW-117publ58/pdf/PLAW-117publ58.pdf.
[3] Dep't of Commerce, *Broadband Equity, Access, and Deployment (BEAD) Program*, *available at* https://www.internetforall.gov/program/broadband-equity-access-and-deployment-bead-program (last visited Apr. 5, 2024).

goals, just this month NTIA announced new measures to streamline environmental impact permitting noting, "Broadband deployment projects generally have limited potential for significant environmental impacts, and NTIA's substantial record of related NEPA [National Environmental Policy Act] reviews supports expanding the list of actions categorically excluded from detailed environmental review."[4]

But as NTIA acts to lessen some regulatory obstacles to broadband deployment, NOAA's current Chumash Heritage NMS designation proposal[5] envisions adding additional layers of dated bureaucratic red tape to the existing permitting process. This comes even as the agency acknowledges "several U.S. agencies have legal authority to regulate the laying and maintenance of cables off our nation's shores,"[6] in addition to state regulatory requirements. NOAA also admits that undersea fiber-optic cables, once in place, "have generally not been shown to have a significant adverse effect on the surrounding marine environment as they are generally immobile once placed and coated with a layer of polyethylene, which is inert in seawater."[7]

Despite NOAA's admission, the regulatory tool that NOAA proposes to use for the permitting of undersea internet cables in the Chumash Heritage NMS—the 2011 Policy and Permitting Guidance for Submarine Cables (2011 permitting guidance)[8]—has been so onerous that the Committee could not identify a single example of a new undersea communications cable deployed in an NMS governed under the policy. While some of the designated NMS sites across the U.S. protect areas that undersea cables might seek to simply avoid, the proposed designation of the Chumash Heritage NMS would fill the last gap off the California coast already utilized by numerous cables for trans-Pacific connectivity.[9] Flanked by the Channel Islands NMS to the south and Monterey Bay, Greater Farallones, and Cordell Bank, NMS sites to the north, the proposed designation of the Chumash NMS would effectively create a near-contiguous, mega-marine sanctuary area covering approximately 500 miles of coast stretching from the suburbs of Los Angeles to Point Arena (more than 100 miles north of San Francisco).

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[4] Nat'l Telecommunications and Info. Admin., Press Release, *NTIA Adopts New Measures to Streamline Environmental Impact Permitting Review for "Internet for All" Projects* (Apr. 1, 2024), *available at* https://www.ntia.gov/press-release/2024/ntia-adopts-new-measures-streamline-environmental-impact-permitting-review.

[5] *Proposed Chumash Heritage National Marine Sanctuary*, 88 Fed. Reg. 58123 (Aug. 25, 2023) (codified at 15 C.F.R. pt. 922), *available at* https://www.federalregister.gov/documents/2023/08/25/2023-18271/proposed-chumash-heritage-national-marine-sanctuary.

[6] Nat'l Oceanic and Atmospheric Admin., *Submarine Cables - Domestic Regulation*, *available at* https://www.noaa.gov/general-counsel/gc-international-section/submarine-cables-domestic-regulation (last visited Apr. 5, 2024).

[7] *Supra* note 6.

[8] *Office of Nat'l Marine Sanctuaries Final Policy and Permit Guidance for Submarine Cable Projects*, 76 Fed. Reg. 56973 (Sept. 15, 2011) (codified at 15 C.F.R. pt. 922), *available at* https://sanctuaries.noaa.gov/library/pdfs/subcable_final_guidance_2011.pdf.

[9] Office of Nat'l Marine Sanctuaries, *Maps*, *available at* https://sanctuaries.noaa.gov/about/maps.html (last visited Apr. 5, 2024).

Undersea fiber-optic cables are essential to connecting more U.S. households to high-speed internet service. As more communities are connected and internet traffic grows, greater burden will fall on the global network of approximately 550 undersea cables, which forms a large part of the internet's backbone and carries a majority of data to and from points including cell towers and home Wi-Fi connections.[10] Accommodating these essential lines of communication through geographically diverse ocean routes is necessary to ensure that disruption caused by an earthquake, maritime accident, or other incident does not create widespread loss of connectivity for U.S. commerce, safety, and security interests.

Substantial cost increases for internet infrastructure connecting the U.S. West Coast to Asia and U.S. Pacific territories, delays, and new maintenance restrictions created by imposition of the 2011 permitting guidance under the Chumash Heritage NMS designation, if left unaddressed, will seemingly occur if NOAA moves forward without mitigating onerous requirements that empower bureaucrats but offer little benefit to marine environments.

Indeed, some provisions of the 2011 permitting guidance appear outdated and impractical—offering little benefit for a marine environment. For example, the Chumash Heritage NMS designation proposal anticipates requirements to issue five-year Special Use Permits (SUP). Among other requirements, these permits require ongoing seabed surveys for even maintaining existing undersea cables, adding new multi-million-dollar upkeep costs to each undersea cable. The five-year period of an SUP also fails to consider the multi-decade expected lifespan of modern fiber-optic undersea cables. Limiting SUP terms to five-year increments, where future renewals are not guaranteed or automatically renewed, creates uncertainty around cost recoupment of infrastructure deployments if permits are not renewed.

Finally, the Committee notes that NOAA has proposed substantial revisions to its Chumash Heritage NMS designation as a concession to facilitate undersea electrical cables for offshore wind energy projects.[11] This includes a revision of the Chumash Heritage NMS boundary and dozens of pages devoted to the impact of the designation for offshore energy in the draft environmental impact statement (DEIS). In contrast, NOAA appears to have invested little time or effort into analyzing the impact of the designation on existing and potential future use of areas for undersea fiber-optic cables. This raises concern that NOAA employees are fixated on making a NMS designation and unwilling or unable to thoughtfully process issues deserving their attention absent factors forcing them to do so.

In fact, NOAA's DEIS devotes more time to describing how its experience permitting undersea telecommunications cables should ease concerns about its ability to regulate electrical

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[10] Matt Burgess, *The Most Vulnerable Place on the Internet*, WIRED (Nov. 2, 2022), *available at* https://www.wired.com/story/submarine-internet-cables-egypt/.
[11] Lauren Sloss, *Clean Energy, Cherished Waters and a Sacred California Rock Caught in the Middle*, N.Y. TIMES (Oct. 24, 2023), *available at* https://www.nytimes.com/2023/10/24/travel/chumash-marine-sanctuary-morro-bay-california.html.

cables than it does actually addressing the concerns about its ability to follow NTIA's lead in reducing impediments to increasing internet connectivity. Underscoring that NOAA's proposed imposition of regulations serves no clear purpose, the Santa Ynez Ban of Chumash Indians, which NOAA has identified as a management partner in designating the Chumash Heritage NMS, has voiced support for the need to reconsider a misguided imposition of red tape on undersea fiber-optic cables.[12]

To assist the Committee's oversight of efforts by NOAA, NTIA, and the Department on coordinating new regulations for the Chumash Heritage NMS designation, we ask for your assistance in facilitating a briefing that includes the perspective of both agencies and any other of relevance. This briefing should address the following topics:

1) Beginning in January 2021, please provide a timeline on efforts by NOAA and NTIA in communicating about the imposition, cost, and benefits of imposing new regulations on undersea fiber-optic cables off California's coast.

2) What actions did NTIA take to engage with NOAA in the development of its recent effort to streamline permitting review for internet projects? How did NOAA respond?

3) A summary of all efforts within the Department to review NOAA's 2011 Policy and Permitting Guidance for Submarine Cables since its enactment.

4) NOAA's analysis of all existing regulatory requirements for undersea fiber-optic cables currently traversing the proposed Chumash Heritage NMS and why NOAA believes these regulations offer inadequate protection for the marine environment.

5) A description of why a five-year period is or is not the most suitable term for Special Use Permits and why NOAA views them as necessary for inclusion in the proposed Chumash Heritage NMS.

6) Please clarify what existing undersea cables in NMS areas operate under automatically renewing Special Use Permits. Have any been put in place since issuance of the 2011 permitting guidance? What factors determine a project's eligibility for automatic renewal?

Please contact Committee staff at (202) 225-5074 to schedule the staff briefing. The Committee on Oversight and Accountability is the principal oversight committee of the U.S. House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X. Thank you for your prompt attention to this important investigation.

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[12] *Comments from the SYBCI on the Public Released Draft EIS for the Designation of the Chumash Heritage National Marine Sanctuary* (Oct. 19, 2023) (NOAA-NOS-2021-0080-2402), *available at* https://www.regulations.gov/comment/NOAA-NOS-2021-0080-2402.

Sincerely,

James Comer
Chairman
Committee on Oversight and Accountability

cc: The Honorable Jamie B. Raskin, Ranking Member
Committee on Oversight and Accountability