

THE GLOBAL SUBMARINE CABLE REVIEW 2019

Worldwide Projects and Challenges

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Global Regulatory Update

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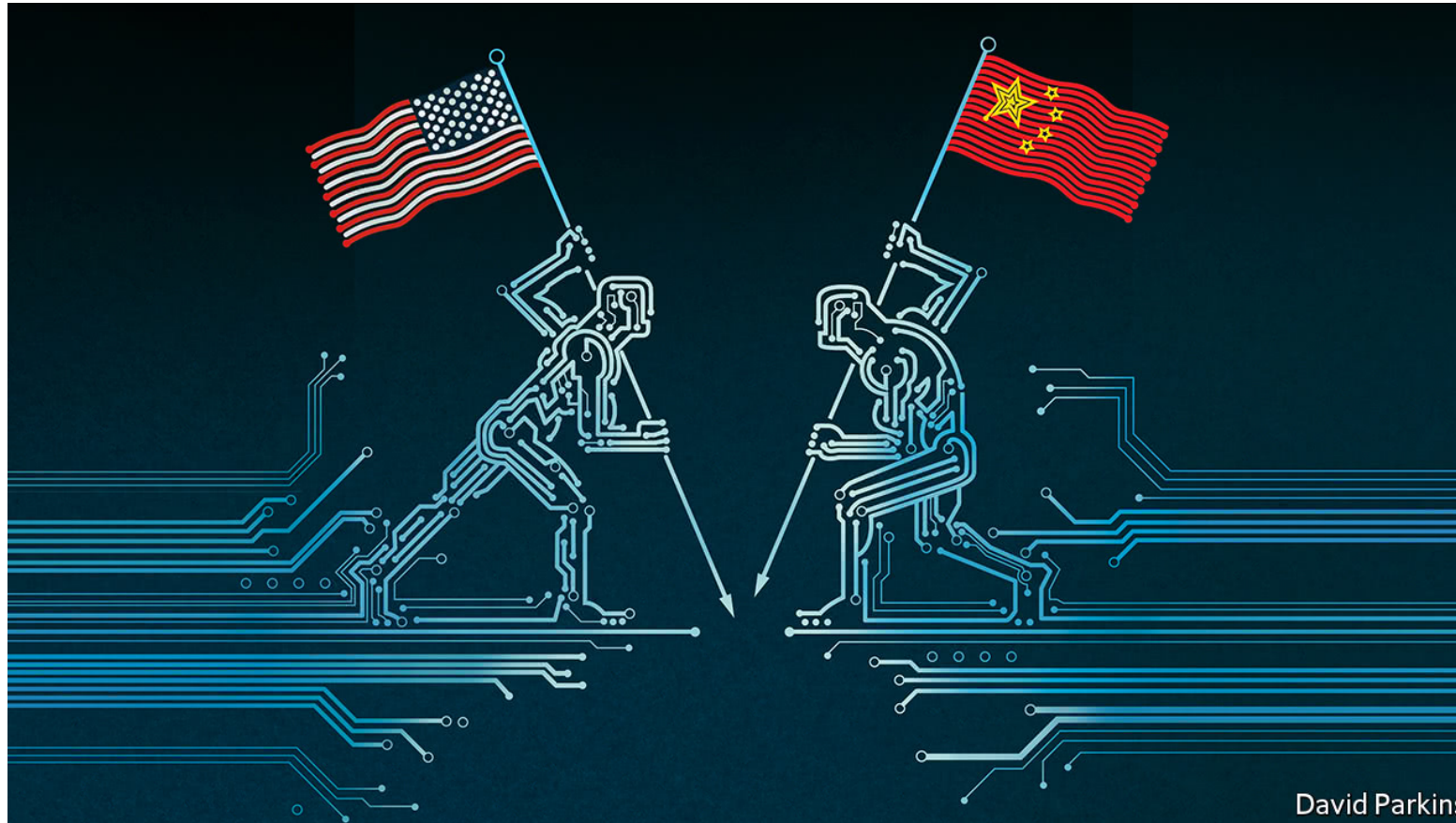
International Cable Protection Committee

January 20, 2019

Overview

- National security
- U.S. regulation
- Deep seabed mining and the ISA
- BBNJ
- ASEAN cable protection initiative

Tensions in U.S.-China relationship stoke much of the concern about submarine cable security



David Parkins

Source: The Economist

Manifestations of heightened national security concerns

- U.S. efforts to block use of Chinese equipment vendors by U.S. allies
- U.S. concerns about China's Belt and Road Initiative and Made in China 2025 plan
- Chinese concerns about access by western carriers and content companies to the Chinese market
- Australian interventions against China and Chinese vendors in Solomons and Papua New Guinea procurements
- U.S. and European concerns about Russian reconnaissance of wet plant
- New security reviews conducted by Japanese Government
- Uproar over cable station intrusions in the U.K.

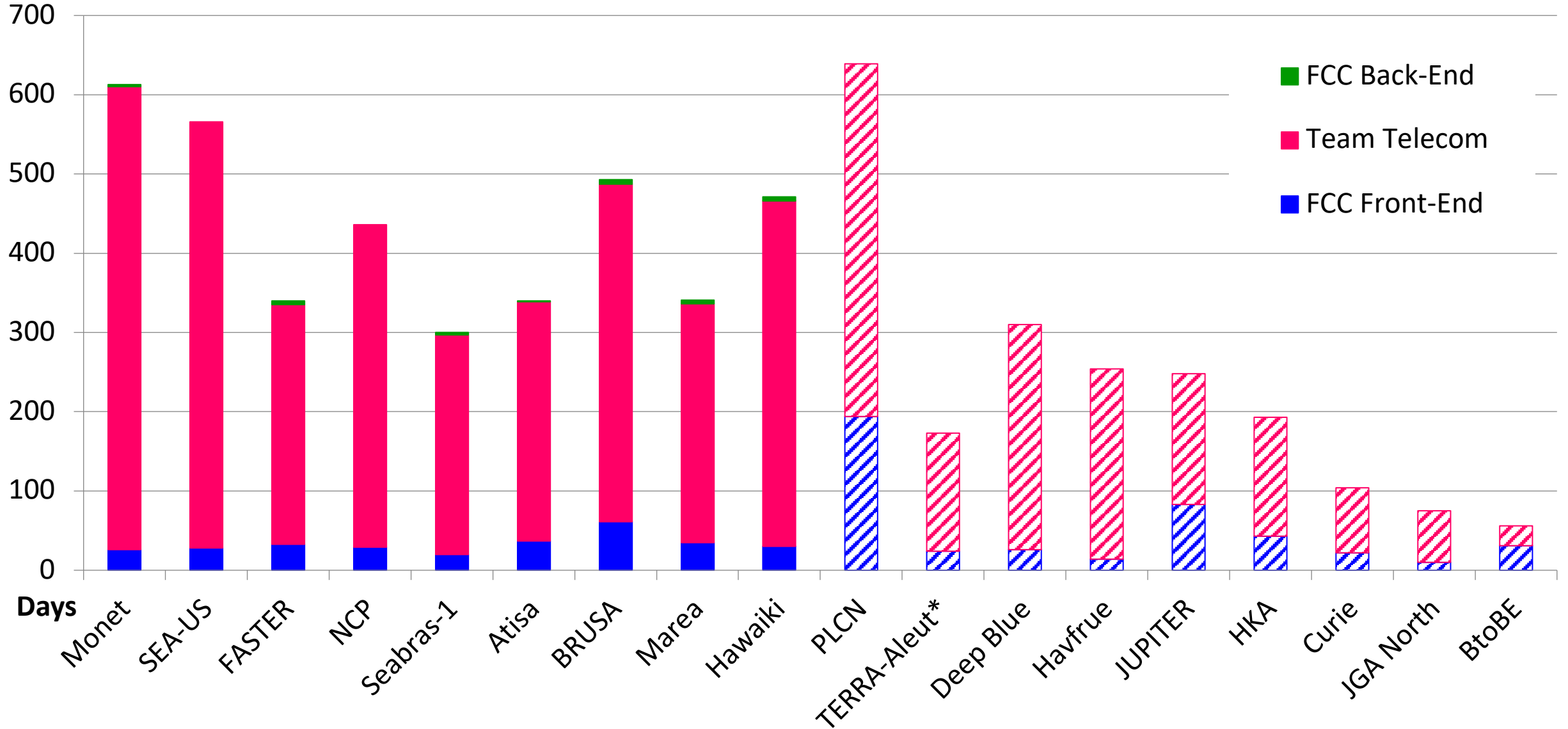
Prospects for new national security regulation

- Governments are considering or have imposed:
 - Restrictions on vendors for new builds and upgrades;
 - Pressure to “rip and replace” equipment and software in existing systems;
 - Physical and logical access restrictions;
 - Cybersecurity standards, such as NIST and ISO; and
 - Enhanced outage and incident reporting.
- Will submarine cable industry self-regulate or wait for governments to impose new requirements?
- The International Cable Protection Committee (“ICPC”) created a Cable Security Working Group to promote security and minimize regulation.

United States: the agonies of Team Telecom

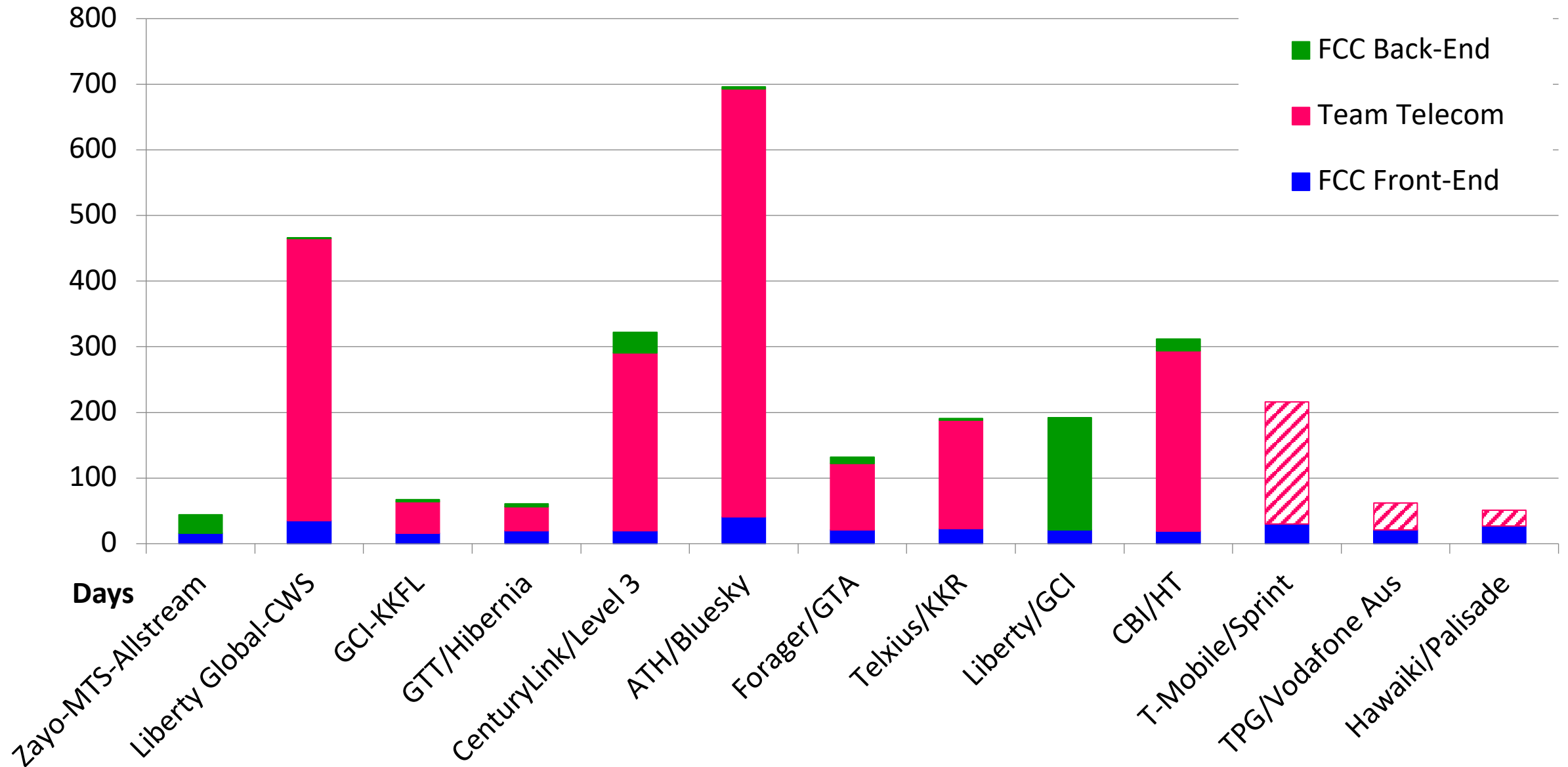
- DOJ and DHS are currently fighting with each other about how best to regulate submarine cable security, resulting in longer reviews and in some cases additional mitigation conditions.
- DHS continues to reorganize itself, particularly with the new Cybersecurity and Infrastructure Agency.
- Both DHS and DOJ have suffered from significant staff turnover.
- Team Telecom continues to review and replace older mitigation instruments and to use transaction reviews to impose mitigation on older systems.
- Team Telecom continues to conduct a significant number of site inspections of cable landing stations.
- Team Telecom's work is mostly suspended due to the current U.S. Government shutdown.

U.S. licensing times: new systems



* Based on amendment with new route and landings

U.S. approval times: transactions



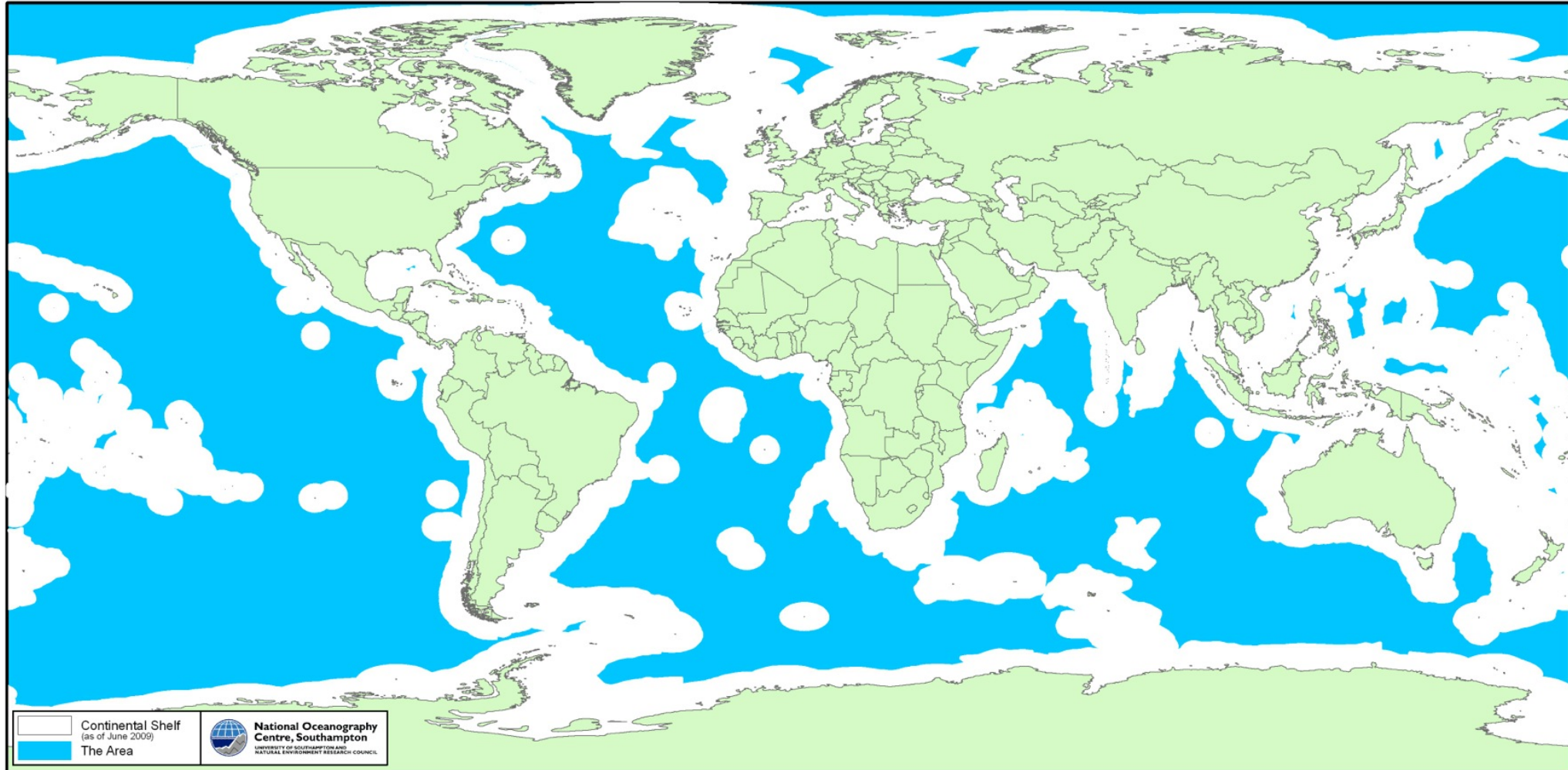
United States: what to expect with regulation in 2019

- ***Revised outage reporting rules.*** In 2019, the FCC will likely adopt revised and more limited reporting requirements.
- ***Continuing confusion re capacity reporting.*** The FCC has made a mess out of its new capacity reporting requirements.
- ***Undermining of FCC reform of regulatory fees.***
- ***Absence of Team Telecom reform.*** Rumors continue to circulate that the President will adopt an Executive Order formalizing the Team Telcom process, with timeframes and authority to collect data and enforce conditions. Meanwhile, the FCC's reform rulemaking remains stalled.
- ***FCC reform of its licensing rules.*** The FCC is likely to start a rulemaking to revise its submarine cable licensing rules for the first time in 20 years.

International Seabed Authority and deep seabed mining

- Uncoordinated exploration and exploitation of deep seabed minerals threaten damage to existing submarine cables (with invasive activities and equipment on the seafloor) and foreclose routes for future ones.
- The International Seabed Authority (“ISA”), created by UNCLOS, has a conflicted role as both the developer and regulator of deep seabed mining in areas beyond national jurisdiction.
- The ISA’s jurisdiction is global in “the Area,” meaning the seabed and subsoil beyond the territorial sea, continental shelf, or EEZ of any coastal state.
- Mining contract interest in deep seabed mining continues to grow, with a Chinese contractor having applied in December 2018 for new exploration in a large area of the western Pacific Ocean.

The Area (in blue), where ISA has jurisdiction



ICPC and ISA

- ICPC works closely with governments, the ISA Secretariat, and mining contractors to promote cable protection ***but needs cable operators to educate their governments on cable issues.***
 - ICPC held a joint workshop with the ISA in Bangkok on October 29-30, 2018.
 - ICPC participates in ISA biannual sessions in Jamaica and consults with governments.
- ICPC made a significant breakthrough in September 2018, making a joint proposal with France for a new exploitation regulation that would greatly enhance protection of existing submarine cables and avoid massive route foreclosure.

Biodiversity beyond national jurisdiction (“BBNJ”)

- Proposed regulation to further conservation and sustainable use of biodiversity beyond national jurisdiction (“BBNJ”) through a new international legally binding instrument, i.e., a treaty, poses a significant threat to the high-seas freedoms to install and maintain submarine cables.
- In Resolution 72/249 of December 24, 2017, the U.N. General Assembly decided to convene a treaty conference, known as the Intergovernmental Conference (“IGC”), to develop the treaty.
- The IGC held its first session from September 4-17, 2018, at U.N. Headquarters in New York and will hold its second session there from March 25-April 5, 2019.
- There remains a significant risk that a BBNJ instrument could require environmental impact assessments (“EIAs”) for cables on the high seas and bar them from transiting new marine protected areas on the high seas.

ICPC and BBNJ

- ICPC works closely with governments, NGOs, and other sectoral bodies to promote and protect submarine cable freedoms ***but needs cable operators to educate their governments on cable issues.***
- ICPC participates in IGC sessions to brief delegations, make oral and written statements in IGC proceedings, and host side events to address:
 - Importance of cables;
 - Scientific research regarding the benign environmental nature of cables;
 - Practical problems with and consequences of trying to impose an EIA regime on cables; and
 - Coexistence of cables and marine protected areas.

ASEAN cable protection initiative

- On September 24, 2018, the Singaporean regulator IMDA convened a workshop to develop ASEAN regional guideline for strengthening resilience and repair of submarine cables.
- I presented at the workshop on (1) the jurisdictional and cable-protection components of UNCLOS and (2) best practices for promoting submarine cable resilience and timely repair.
- IMDA is now drafting guidelines for circulation to an experts group.

Continuing need for traditional cable protection measures

- The ASEAN workshop serves as a reminder of the need for continuing engagement with governments to:
 - Highlight the criticality of submarine cables, including their status as critical infrastructure;
 - Reduce risks from fishing and anchoring;
 - Improve permit timeframes for new builds and repairs;
 - Minimize cabotage and crew restrictions;
 - Reduce or eliminate customs duties and fees on cable ships and materials;
 - Enhance route diversity; and
 - Create a single point of contact within each government.

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