OBAMA-BIDEN TRANSITION PROJECT

THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

at&t

U.S. ACCESSION TO THE LAW OF THE SEA CONVENTION IS NECESSARY TO STRENGTHEN CRITICAL PROTECTIONS FOR U.S. UNDERSEA COMMUNICATIONS INFRASTRUCTURE

As a major U.S. user of the international seabed, AT&T strongly supports U.S. ratification of the Law of the Sea Convention. International submarine cables are the critical backbone transmission facilities for the global Internet, electronic commerce and other international voice and data communications services that together are major drivers of the 21st Century global information-based economy. These submarine cables carry virtually all U.S. Internet and voice and data telecommunications traffic outside North America.[1] Commercial undersea cables also carry government and military communications.

- AT&T and other U.S. telecom operators carry international traffic over vast undersea cable networks providing many alternative routes to virtually every country in the world. Thirty-eight U.S. international submarine cables connect the U.S. with the rest of the world. AT&T and other U.S. telecommunications carriers also own interests in many more non-U.S.-landed undersea cables connecting foreign countries.
- As the result of massive, fast-increasing Internet usage and the rapid globalization of business, total submarine cable circuit capacity landing in the U.S. increased by *29,000 percent* from 1995 through 2006.[2]

AT&T has interests in 78 international submarine cable systems covering more than 460,000 fiber route miles. These cables are the underlying facilities for AT&T's advanced global backbone network serving customers around the world and carrying 9.668 terabytes of data per average business day. These cables include the Asia America Gateway cable, a new 12,000-mile submarine cable system providing high bandwidth transmission capacity between the U.S. and Southeast Asia, which will commence service in mid-2009.

Critically, submarine cables are vulnerable to damage by commercial fishing activities, natural events such as earthquakes, and other causes, resulting in 80 or 90 outages each year on submarine cables throughout the world. In February 2008, breaks in four cables in the Mediterranean and Persian Gulf caused Internet outages across the Middle East, cut bandwidth capacity to India by half and seriously affected India's outsourcing business.[3] A similar event impacting the Middle East and India occurred once again in December 2009. In December 2006, an earthquake damaged nine submarine cables in the Strait of Luzon between Taiwan and the Philippines, disrupting Internet traffic and financial markets in South East Asia.[4] As these

---

[1] Satellite circuits now comprise under one percent of active US international circuits. *See FCC 2006 Section 43.82 Circuit Status Data*, Feb. 2008, Tables 3 & 5.

[2] *See FCC 2006 Section 43.82 Circuit Status Data*, Feb. 2008, Table 7 (total available US undersea fiber-optic capacity increased from 315,630 circuits in 1995 to 91,060,699 circuits in 2006).

[3] *See, e.g., Internet Disruptions Continue*, Chicago Tribune, February 2, 2008; *Fears Grow With Harm to Undersea Cables*, New York Times, February 5, 2008.

[4] *See Asia Scrambles to Fix Quake Damage to Data Cables*, New York Times, December 29, 2006; *Crews Scramble to Reconnect Asia to Rest of World; Quake Snapped Underwater Cables For Phones, Internet*, USA Today, December 29, 2006.

THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

incidents demonstrate, in the age of globalization, the reliability of submarine cables is more important than ever before.

The ability to lay, maintain and repair submarine cables outside territorial seas, and particularly the ability to carry out these activities in a timely manner, depends on the effectiveness of international legal protections. Otherwise, for example, restrictions by coastal states may impede the timely repair and maintenance of undersea cables and also may delay the construction of new cables. The United States is one of a handful of countries that have signed, but not ratified, the Law of the Sea Convention, which entered into force in 1994 and currently has 153 nations as parties.

The Convention expands the right to lay and maintain submarine cables in the oceans of the world and provides stronger protections for cables against damage by other parties. In the negotiation of the Convention in the early 1980's, the U.S. was a major proponent of the expanded protections for submarine cables because of the concerns of the U.S. telecom industry. Importantly, these expanded rights apply to cables regardless of whether they are used in communications, science, power, or military applications.

The following provisions of the Convention have particular relevance to undersea cables:

- Articles 58, 79 and 112 guarantee the rights of nations and private parties to lay and maintain submarine cables on the continental shelf, in the EEZ and on the bed of the high seas. Under these provisions, submarine cables have protections equal to the freedom of navigation and superior to other laws which coastal states may seek to impose within their EEZ or upon their Continental Shelf. Importantly, coastal States may not require permits, payments or taxes for submarine cables exercising these rights.
- Articles 58, 100 & 101 require states to cooperate to the fullest extent possible in the repression of piracy (including acts of depredation for private ends against property such as submarine cables) in the EEZ and on the high seas.
- Article 113 requires states to adopt laws to make damage to a submarine cable, done willfully or through culpable negligence, and conduct likely to cause such harm, a punishable offense.
- Article 114 requires submarine cable owners that damage other cables in laying or repairing their cables to bear the cost of repairs.
- Article 115 provides that vessel owners, who can prove they sacrificed an anchor or fishing gear to avoid damaging a cable, can recover their loss against the cable owner, provided the vessel took reasonable precautionary measures beforehand.
- Article 297 provides parties to the Convention with compulsory dispute resolution procedures for the provisions concerning submarine cables, a key feature lacking in prior international treaties. Having rights to this dispute resolution process is a major potential benefit of U.S. accession to the Convention for U.S. cable owners.

Ratification of the Convention would enable the U.S. government to use remedies under the Convention to enforce these obligations. The U.S. would be able to raise claims under the Convention in response to actions like the March 2007 destruction of major segments of two submarine cables by fishermen off the coast of Vietnam, restrictions by coastal states impeding the timely maintenance and repair of undersea cables, and current efforts by one country to impose taxes on submarine cables transiting its claimed continental shelf. However, the U.S. has

THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

less ability to enforce its rights when it seeks to address an issue governed by the Convention, without being a party to this treaty.

Because of the central role of telecommunications and the global Internet in today's economy, it has never been more important to strengthen the protection and reliability of international submarine cables. The Law of the Sea Convention is a critical element of this protection. AT&T therefore supports U.S. Senate ratification of the Law of the Sea Convention at the earliest opportunity.