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## **PERSPECTIVE: WHY CABLE COULD BE THE NEXT WTO BATTLEGROUND**

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I have seen the coming of the next WTO battle for basic telecoms services, and it will be in the form of rights proceedings for undersea cable landings.

The incident that is prompting this whole mess came last month when the FCC - after eight long months - granted the cable landing petition filed by the Japan-U.S. Cable Network (JUS) consortium. What makes this case so remarkable, however, is that it represents a textbook example of regulatory cynicism.

Specifically, in what should have been a routine proceeding, subsea cable builder Global Crossing Ltd. asked the Federal Communications Commission to “defer” consideration of the JUS petition in order to consider whether undersea cable consortia still served the “public interest” in a post-WTO world.

Rather than set forth anything substantive, however, Global Crossing hired a bevy of high-priced lobbyists - including Anne Bingaman, the former Assistant Attorney General for Antitrust, Peter Cowhey, the former Chief of the FCC’s International Bureau, and Greg Simon, former domestic policy adviser to Vice President Gore - to argue that the U.S. government should just nakedly divide up the market (that is, assign customers to specific competitors) for trans-Pacific communications, and abrogate both private contracts and ignore international agreements - including the WTO

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and a subsequent bilateral agreement reached between Japan and the U.S. Trade Representative.

As if this was not bad enough, Global Crossing also argued that the FCC should ignore its residual unilateral “regulatory safeguards” (such as benchmarks, for example) - unilateral safeguards that were promulgated under the watch of the very high-powered Washington DC lobbyists that Global Crossing hired to argue hypocritically the exact opposite view.

Thus, while the FCC - to its credit - did eventually grant the JUS petition, the outstanding question that remains is at exactly what cost?

On one hand, the FCC required JUS to amend “voluntarily” its private organizational contracts as a pre-condition of approval. As FCC Commissioner Harold Furchtgott-Roth - who did not take part in the FCC’s decision - wrote disdainfully: “(T)he applicants were ‘persuaded’ (under threat of application denial or further delay) in order to satisfy the desires of regulators (and the applicants’ competitors) ... The lesson appears to be that if the Commission can’t get what it wants directly, it’s easy to employ an unlawful delegation of power to achieve the same result.”

More importantly, however, this case shows that the growing “telecoms trade war” between the U.S. and the world is dangerously close to getting out of hand.

So much so that U.S. Federal Reserve chairman Alan Greenspan recently took the unusual step of expressing publicly deep personal “regret” that the U.S. “trade laws and negotiating practices are essentially adversarial” and, as such, that the United States should be extremely “concerned about the recent evident weakening of support for free trade in this country.”

Accordingly, the FCC must take care to ensure that its efforts do not turn out to be a self-defeating exercise. Regulators should do everything in their power to lawfully promote, and not hinder, construction of new cable capacity.

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To the extent that there are legitimate competitive issues concerning the international undersea cable industry, however, exacerbating tensions with America's trading partners does absolutely nothing to resolve them.