



# PUBLIC NOTICE

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## Actions Taken Under Cable Landing License Act

### Section 1.767(a) Cable Landing Licenses, Modifications, and Assignments or Transfers of Control of Interests in Cable Landing Licenses (47 C.F.R. § 1.767(a))

By the Chief, Policy Division, International Bureau:

Pursuant to An Act Relating to the Landing and Operation of Submarine Cables in the United States, 47 U.S.C. §§ 34-39 (Cable Landing License Act), Executive Order No. 10530, Exec. Ord. No. 10530 reprinted as amended in 3 U.S.C. § 301, and section 1.767 of the Commission's rules, 47 C.F.R. § 1.767, the following applications ARE GRANTED. These grants of authority are taken under section 0.261 of the Commission's rules, 47 C.F.R. § 0.261. Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.115, may be filed within 30 days of the date of this public notice.

These applications have been coordinated with the Department of State and other Executive Branch agencies pursuant to section 1.767(b) of the Commission's rules, 47 C.F.R. § 1.767(b), and consistent with procedures established with the Department of State. See Review of Commission Consideration of Applications under the Cable Landing License Act, IB Docket No. 00-106, Report and Order, 16 FCC Rcd 22167, 22192-93, paras. 51-52 (2001) (Submarine Cable Landing License Report and Order); Streamlined Procedures for Executive Branch Review of Submarine Cable Landing License Requests, State Department Media Note (Revised) (rel. Dec. 20, 2001) available at <http://2001-2009.state.gov/r/pa/prs/ps/2001/6951.htm>.

This public notice serves as each cable landing licensee's Cable Landing License, or modification thereto, pursuant to the Cable Landing License Act and sections 1.767 and 1.768 of the Commission's rules. Cable landing licensees should review carefully the terms and conditions of their licenses. Failure to comply with these terms and conditions or relevant Commission rules and policies could result in fines or forfeitures.

The Commission most recently amended its rules applicable to submarine cable landing licenses in Review of Commission Consideration of Applications under the Cable Landing License Act, IB Docket No. 00-106, FCC 01-332, 16 FCC Rcd 22167 (2001), 67 Fed. Reg. 1615 (Jan. 14, 2002). An updated version of sections 1.767 and 1.768 of the rules is available at <http://www.fcc.gov/ib/pd/pf/telecomrules.html>. See also [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DA-02-598A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-02-598A1.pdf) for a March 13, 2002 Public Notice; [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-01-332A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-01-332A1.pdf) for the December 14, 2001 Report and Order.

Submarine Cable Landing License  
Grant of Authority

Date of Action: 01/31/2013

Acceptability for Filing Public Notice: The Application was placed on public notice on April 26, 2012. See Latam Telecommunications, L.L.C., Application for a License to Construct, Land and Operate an Undersea Cable System Linking the Continental United States, the Dominican Republic, Puerto Rico, Brazil, Colombia, Guatemala, and Mexico (America Movil Submarine Cable System (AMXI System)), File No. SCL-LIC-20120330-00002, Public Notice, Streamlined Submarine Cable Landing License Applications Accepted for Filing, Report No. SCL-00129S (Int'l Bur., April 26, 2012). San Juan Cable LLC, d/b/a OneLink (OneLink) filed comments on May 10, 2012; Applicants filed an opposition on May 22, 2012; and, OneLink filed a reply on June 4, 2012.

The Application has been coordinated with the Department of State and other Executive Branch agencies pursuant to section 1.767(b) of the Commission's rules, 47 C.F.R. § 1.767(b), and consistent with procedures established with the Department of State. See Review of Commission Consideration of Applications under the Cable Landing License Act, IB Docket No. 00-106, Report and Order, 16 FCC Rcd 22167, 22192-93, paras. 51-52 (2001) (Submarine Cable Landing License Report and Order); Streamlined Procedures for Executive Branch Review of Submarine Cable Landing License Requests, State Department Media Note (Revised) (rel. Dec. 20, 2001) available at <http://2001-2009.state.gov/r/pa/prs/ps/2001/6951.htm>. The Department of Homeland Security and the Department of Justice filed a Petition to Adopt Conditions to Authorizations and Licenses on January 29, 2013.

Action Taken: (1) Grant of Cable Landing License to Latam Telecommunications, L.L.C., et al. for the purpose of landing a non-common carrier fiber-optic cable system, the AMXI System, linking the Continental United States, the Dominican Republic, Puerto Rico, Brazil, Colombia, Guatemala, and Mexico; (2) waiver of section 1.767(h)(1) of the Commission's rules, 47 C.F.R. § 1.767(h)(1), in connection with the license; and (3) grant of the Petition to Adopt Conditions to Authorizations and Licenses filed on January 29, 2013 by the Department of Justice and the Department of Homeland Security.

Licensee Information: The Applicants for the cable landing license for the AMXI System are Latam Telecommunications, LLC (Latam), Puerto Rico Telephone Company, Inc. (PRTC), and Claro Chile, S.A. (Claro Chile). Applicants are controlled by America Movil, S.A.B. de C.V. (America Movil), a Mexican company.

The AMXI System will be owned by eight subsidiaries of America Movil: (1) Latam will own and operate the cable landing station in Jacksonville, Florida and operate the landing station in Miami, Florida, and will have 100% ownership in the U.S. and U.S. waters and 4.251% overall ownership of the cable; (2) Radiomovil Dipsa, S.A. de C.V. (Telcel) will own and operate the landing station in Cancun, Mexico, and will have 100% ownership in Mexico and in Mexican waters and 1.085% overall ownership of the cable; (3) Telecomunicaciones de Guatemala, S.A. (Claro Guatemala) will own and operate the landing station in Puerto Barrios, Guatemala, and will have 100% ownership in Guatemala and Guatemalan waters and 1.059% overall ownership of the cable; (4) Comunicacion Celular, S.A. (Comcel) will own and operate the landing stations in Barranquilla and Cartagena in Colombia, and will have 100% ownership in Colombia and in Colombian waters and 2.850% overall ownership of the cable; (5) Compania Dominicana de Telefonos, S.A. (Codetel) will own and operate the landing station in Puerto Plata in the Dominican Republic, and will have 100% ownership in the Dominican Republic and in Dominican Republic waters and 2.309% overall ownership of the cable; (6) PRTC will own and operate the landing station in San Juan, Puerto Rico, and will have 100% ownership in Puerto Rico and in Puerto Rican waters and 2.253% overall ownership of the cable; (7) Clara S.A. (Claro Brasil) will own and operate the landing station in Fortaleza, Rio de Janeiro and Salvador de Bahia, Brazil, and will have 100% ownership in Brazil and in Brazilian waters and 3.776% overall ownership of the cable; and (8) Claro Chile will have 100% ownership of the cable in international waters and 82.417% overall ownership of the AMXI System. Of the eight subsidiaries, only Latam, PRTC, and Claro Chile will either own or control a landing station in the United States, or own or control a five percent or greater interest in the cable system and use the U.S. points of the cable system.

Latam, PRTC, and Claro Chile are controlled by America Movil. Collectively, members of the Slim family, the Slim family trust, and Inmobiliaria Carso hold 42.43% of the equity and 65.52% of the voting stock in America Movil. Other Mexican and foreign investors hold the remaining equity and voting stock of America Movil. No public investor holds more than 10% of America Movil's capital stock.

Latam is a corporation organized under the laws of the State of Delaware. Latam is a wholly-owned subsidiary of Sercotel, S.A. de C.V. (Sercotel), a Mexican holding company. America Movil owns directly 99.99% of Sercotel, with the remaining 0.01% held by Amov IV, S.A. de C.V., a wholly-owned subsidiary of America Movil.

PRTC is a corporation organized under the laws of the Commonwealth of Puerto Rico. PRTC is a wholly-owned subsidiary of Telecomunicaciones de Puerto Rico, Inc. (TELPRI), a Puerto Rican holding, which in turn is a wholly-owned subsidiary of Tenedora Telpri, S.A. de C.V. (Tenedora), a Mexican holding company. Radiomovil Dipsa, S.A. de C.V. (Telcel), a Mexican company, has a 99.99% direct interest in Tenedora and Sercotel has a 99.99% direct interest in Telcel. As described above, America Movil holds a 100% ownership interest in Sercotel.

Claro Chile is a corporation organized under the laws of Chile. Claro Chile is a wholly-owned subsidiary of Sercotel. America Movil holds a 100% ownership interest in Sercotel.

Cable Design and Capacity: The AMXI System will be a high capacity digital fiber-optic system initially deployed with 40 Gigabits per second wavelengths and a design to support a 100 Gigabits per second wavelength solution. It is based on repeatered technology using Wavelength Division Multiplexing. The system will extend more than 17,500 kilometers. Construction of the AMXI system began on February 23, 2011, with a completion target date of August 7, 2013.

The cable system will have landing stations in Jacksonville and Miami, Florida, United States; Cancun, Mexico; Puerto Barrios, Guatemala; Barranquilla and Cartagena, Colombia; Puerto Plata, Dominican Republic; San Juan, Puerto Rico; and Fortaleza, Rio de Janeiro and Salvador de Bahia, Brazil.

Cable Landing Point Arrangements: (1) Latam will own and operate the cable landing station in Jacksonville, Florida; (2) Telcel will own and operate the landing station in Cancun, Mexico; (3) Claro Guatemala will own and operate the landing station in Puerto Barrios, Guatemala; (4) Comcel will own and operate the landing stations in Barranquilla and Cartagena in Colombia; (5) Codetel will own and operate the landing station in Puerto Plata Dominican Republic; (6) PRTC will own and operate the landing station in San Juan Puerto Rico; (7) Claro Brasil will own and

in Puerto Plata, Dominican Republic, (5) AT&T will own and operate the landing station in San Juan, Puerto Rico, (7) Claro Brasil will own and operate the landing station in Fortaleza, Rio de Janeiro and Salvador de Bahia, Brazil, (8) AT&T, Inc. (AT&T) owns the cable landing station in Miami, Florida, and Latam will operate the station.

Applicants request a waiver of section 1.767(h)(1) of the Commission's rules, 47 C.F.R. § 1.767(h)(1), so that AT&T will not need to be a licensee. Section 1.767(h)(1) requires that "any entity that owns or controls a cable landing station in the United States" shall be applicants for, and licensees on, a cable landing license. Applicants state that AT&T will have no control over the cable and that requiring AT&T to be a licensee would not accomplish the Commission's intent "to ensure that entities having a significant ability to affect the operation of a cable system are applicants..." See Application at 6, n.5 (citing Review of Commission Consideration of Applications under the Cable Landing License Act, IB Docket No. 00-106, Report and Order, 16 FCC Rcd at 22194, 53 (2001)). According to the Applicants, although AT&T owns the landing station in Miami, Florida, Latam will own and have control of the U.S. end of the cable and all landing station equipment and functions relating to the AMXI System at the Miami, Florida landing station. See Application at 6, n.5. Accordingly, we grant Applicants a waiver of section 1.767(h)(1) and do not require AT&T to be on this Cable Landing License.

**Regulatory Status of the Cable:** The Applicants propose to operate the cable system on a non-common carrier basis. They state that there are a variety of alternative facilities serving the region including several other submarine cables, and thus Applicants will not be able to exercise market power. The Applicants further state that they will not offer capacity to the public indifferently, but rather the available capacity will be used by the Applicants and offered to other carriers on terms tailored to their particular needs. See Application at 4-5.

In its comments, OneLink, a telecommunications provider in the Caribbean region, objects to the Applicants' request to operate the AMXI system on a non-common carrier basis. OneLink claims that the Application does not meet the Commission's test for non-common carrier carriage. OneLink argues that the application contradicts itself as to whether there is sufficient alternative capacity to prevent the Applicants from exercising market power, arguing that there is plenty of alternative capacity but also stating that there is a dire need for the new cable system. OneLink comments at 3. OneLink further argues that Applicants' statement that they will allow other carriers to purchase capacity on the cable does not provide sufficient information about the amount of capacity or terms. *Id.* at 4. OneLink also notes that America Movil, the ultimate parent of the Applicants, is considered a dominant carrier in most of destination markets for the cable system. *Id.*

In their response, the Applicants claim that OneLink's allegations lack merit and that they have provided all information necessary to demonstrate that they have satisfied the Commission's test for non-common carrier status. Applicants maintain that there are sufficient alternative facilities and list other submarine cable systems in the region. Opposition at 3-4. Applicants argue that by definition a non-common carrier, which individually negotiates private contracts with carriers, would not publicly disclose contract terms. *Id.* at 5. Applicants note that they have certified that they will accept and abide by reporting conditions on all routes on which they are considered dominant. *Id.* at 5-6. In its reply, OneLink argues that the reporting requirements do not require Applicants to report any special concessions that they may give to or receive from their affiliates. OneLink reply at 3.

In determining whether a cable system qualifies to be operated on a non-common carrier basis, the Commission follows the two-part test set forth in *National Association of Regulatory Utility Commissioners v. FCC*, 525 F.2d 630, 642 (D.C. Cir. 1976)(NARUC I), cert. denied, 425 U.S. 992 (1976). The test first looks to whether there is a legal compulsion on the applicant to serve the public indifferently, and, if not, then to whether there are reasons implicit in the nature of the operations of the submarine cable system to expect an indifferent holding-out to the eligible user public. In applying the first prong of the NARUC I test to submarine cable authorizations, the Commission has stated that there will be no legal compulsion to serve the public indifferently where there is no public interest reason to require facilities to be offered on a common carrier basis. This public interest analysis has generally focused on the availability of alternative common carrier facilities. Where there are sufficient alternatives, the Commission has found that the public interest does not require the licensee to offer capacity on the proposed cable on a common carrier basis, but rather that, in those circumstances, the public interest would be served by allowing a submarine cable to be operated on a non-common carrier basis. If the Commission finds that there is no public interest reason to require the submarine cable facilities to be offered on a common carrier basis, then, under the second prong of the NARUC I test, the Commission considers whether there is reason to expect an indifferent "holding-out" to the eligible user public. In making this determination, the Commission generally relies on a statement of the applicant's intentions in this regard. If the Commission finds that an applicant has shown that it will make individualized decisions whether and on what terms to provide service and will not undertake to serve all people indifferently, the Commission has held that the second prong of the test has been met. See *Submarine Cable Landing License Report and Order*, 16 FCC Rcd at 22202-22203, paras. 69-70; *Review of Commission Consideration or Applications under the Cable Landing License Act*, IB Docket No. 00-106, Notice of Proposed Rulemaking, 15 FCC Rcd 20789, 20815-20818, paras. 62-67.

We find that there are sufficient alternative facilities in the region to be served by the cable, and that there is no public interest reason to require the licensee to offer capacity on the proposed cable on a common carrier basis. There are approximately 11 cable systems currently serving the region of the proposed AMXI System. Therefore, we find that the Applicants have met the first part of the non-common carrier test. We also find that the Applicants have met the second part of the Commission's non-common carrier test. The Applicants also state that they will allow other carriers to purchase capacity on the cable system and that capacity will be made available to users on terms tailored to particular needs. On those routes where the Applicants are dominant, they have certified that they will accept and abide by reporting conditions contained in Commission rules. Further, each of the Applicants have certified that they accept and will abide by the conditions set forth in section 1.767(g), 47 C.F.R. § 1.767(g), which includes a prohibition against accepting special concessions from any foreign carrier that possess market power on the foreign end of the route, 47 C.F.R. § 1.767(g)(5).

Accordingly, we conclude that the concerns raised by OneLink are not sufficient to persuade us to require the Applicants to operate the AMXI System on a common carrier basis. We find that the public interest will be served by allowing the AMXI System to be operated on a non-common carrier basis. We note that the Commission retains the right to impose common carrier regulation on the operations of the cable system if we find that the public interest so requires. See 47 C.F.R. § 1.767(g)(10).

**Conditions and Requirements:** Applicants shall comply with the routine conditions set out in 1.767(g)(1)-(14) of the Commission rules, 47 C.F.R. § 1.767 (g)(1)-(14), and with the requirements of section 1.768 of the Commission's rules, § 1.768 (Notification by and prior approval for submarine cable landing licensees that are or propose to become affiliated with a foreign carrier).

Applicants are affiliated with foreign carriers that are presumed to have market power in Brazil, the Dominican Republic, Guatemala, and Mexico. They each agree to accept and abide by the reporting requirements in section 1.767(l), 47 C.F.R. § 1.767(l), for each of the U.S.-Mexico, U.S.-Brazil, U.S.-Guatemala, and U.S.-Dominican routes.

—We grant the Petition to Adopt Conditions to Authorizations and Licenses (Petition) filed in this proceeding on January 29, 2013 by the Department of Justice and the Department of Homeland Security. Accordingly, we condition grant of the application on Latam and its affiliates abiding by the commitments and undertakings contained in the January 23, 2013 Letter of Assurance submitted to the Department of Justice and the Department of Homeland Security by Latam (January 23, 2013 Agreement). A copy of the Petition and the January 23, 2013 Agreement are publicly available and may be viewed on the FCC website through the International Bureau Filing System (IBFS) by searching for SCL-LIC-20120330-00002 and accessing "Other filings related to this application" from the Document Viewing area.

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