Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Telefonica International Wholesale Services USA, Inc. (Lead Applicant), *et al.*	)	File No. SCL-LIC-20130122-00001
	)	
Joint Application for a License to Construct, Land and Operate an Undersea Cable System Linking the British Virgin Islands, Puerto Rico, Aruba, Colombia, Panama, Ecuador and the continental United States, and Request for a Determination that Aruba Provides Effective Competitive Opportunities to U.S. Cable Landing Licensees	)	

ORDER AND AUTHORIZATION

Adopted: January 24, 2014 **Released:** January 24, 2014

By the Chief, International Bureau:

I. INTRODUCTION

1. In this Order and Authorization, we grant the application (Application) filed by Telefonica International Wholesale Services USA, Inc. (TIWS USA), as lead applicant on behalf of the Pacific Caribbean Cable System Consortium (PCCS Consortium), for a license to construct, land and operate a non-common carrier fiber-optic submarine cable system, the Pacific Caribbean Cable System (PCCS Cable), pursuant to the Cable Landing License Act[1] and section 1.767 of the Commission's rules.[2] We also find that Aruba provides effective competitive opportunities for U.S.-licensed companies to own and operate submarine cable facilities in Aruba under the standards established by the Commission for entry into the U.S. market by foreign carriers from non-World Trade Organization (WTO) countries.[3]

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[1] Act Related to the Landing and Operation of Submarine Cables in the United States, 47 U.S.C. §§ 34-39 (the Cable Landing License Act).

[2] 47 C.F.R. § 1.767.

[3] *See Telefonica Larga Distancia de Puerto Rico, Inc.*, Memorandum Opinion and Order, FCC 97-127, 12 FCC Rcd 5173 (1997) (*Telefonica Licensing Order*); *Review of Commission Consideration of Applications Under the Cable Landing License Act,* IB Docket No. 00-106, Report and Order, FCC 01-332, 16 FCC Rcd 22167 (2001) (*Submarine Cable Landing License Report and Order*); *see also Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Docket Nos. 97-142, 95-22, Report and Order and Order on Reconsideration, FCC 97-398, 12 FCC Rcd 23891 (1997) (*Foreign Participation Order*), Order on Reconsideration, FCC 00-339, 15 FCC Rcd 18158 (2000); *Reform of Rules and Policies on Foreign Carrier Entry Into the U.S. Telecommunications Market,* IB Docket No. 12-299, Notice of Proposed Rulemaking, FCC 12-125, 27 FCC Rcd 12765 (2012); *TA Resources N.V., Application for International Section 214 Authorization and Determination that Aruba Provides Effective Competitive Opportunities to U.S. Carriers,* IB Docket No. 10-228, Order and Authorization, DA 11-1907, (continued....)

II. BACKGROUND

A. The Applicants

2. The PCCS Consortium is comprised of 12 members, each of which is an applicant for the cable landing license: (1) Cable and Wireless (British Virgin Islands) Limited (Cable and Wireless BVI): (2) Cable & Wireless (EWC) Limited (Cable & Wireless EWC); (3) Cable & Wireless Panama S.A. (Cable & Wireless Panama); (4) Servicio Di Telecomunicacion Di Aruba N.V. (SETAR): (5) Cable Andino Inc. (Cable Andino); (6) Cable Andino USA, Inc. (Cable Andino USA); (7) Cable Andino S.A. Corpandino (Cable Andino Corpandino); (8) Telefonica International Wholesale Services America S.A. (TIWS America); (9) TIWS USA, the lead applicant; (10) TI Wholesale Services Puerto Rico, Inc. (TIWS Puerto Rico); (11) Telefonica International Wholesale Services Colombia S.A. (TIWS Colombia); and (12) Antelecom N.V. (UTS) (collectively, "Applicants" or "PCCS Consortium").[4] Appendix A provides ownership information for each of the Applicants.

B. The PCCS Cable

3. The PCCS Cable will be a high capacity digital fiber-optic system comprised of nine segments, with each segment designed to carry up to 100 wavelengths at 100 Gigabits per second per fiber pair using repeatered and unrepeatered technology. Each segment will initially be equipped with either one or two 100 Gigabits per second wavelengths. The PCCS Cable, which will extend approximately 6,000 kilometers, will have a design capacity of 80 Terrabits per second.[5]

4. The nine segments, two of which extend from branching units, and one of which is an existing terrestrial segment, are: (1) Jacksonville, Florida (USA) – Tortola (BVI); (2) Tortola (BVI) – Branching Unit (near Aruba); (3) Tortola (BVI) – San Juan, Puerto Rico (USA); (4) Branching Unit (near Aruba) - Hudishibana, Aruba; (5) Branching Unit (near Aruba) – Branching Unit (near Colombia); (6) Branching Unit (near Colombia) – Cartagena, Colombia; (7) Branching Unit (near Colombia) – Maria Chiquita, Panama; (8) Terrestrial segment between Maria Chiquita, Panama and Balboa, Panama; and (9) Balboa, Panama – Manta, Ecuador.[6]

5. Of the eight cable landing stations, (1) four (in Aruba, Colombia, Puerto Rico, and Panama) will use existing facilities; (2) two (in Florida and Ecuador) will be newly constructed at new sites in each of the countries; and (3) two (in the British Virgin Islands and in Balboa, Panama) will be expanded with new, nearby, interconnected construction to accommodate the PCCS Cable.[7] The target date for competition of construction of the PCCS Cable is September 2014.[8] All of the landing stations are located in countries that are World Trade Organization (WTO) Member countries, except for the station in Hudishibana, Aruba. Appendix B includes information on the ownership of the cable system and the landing stations.

6. The Applicants propose to operate the PCCS Cable on a non-common carrier basis. The Applicants further state that they will not offer capacity to the public indifferently, but rather will use the

(Continued from previous page)
26 FCC Rcd 15978 (Int'l Bur. 2011) (*TA Resources Order); Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket 95-22, Report and Order, FCC 95-475, 11 FCC Rcd 3873 (1995) (*Foreign Carrier Entry Order*).

[4] Application at 1-2.

[5] *Id.* at 2-4.

[6] *Id.* at 4.

[7] *Id.* at 6-7.

[8] *Id.* at 6.

available capacity themselves and offer it to other carriers on terms tailored to the carriers' particular needs.[9]

C. The Application

7. On January 22, 2013, TIWS USA, on behalf of the PCCS Consortium, filed an Application for a license to construct, land, and operate the PCCS Cable.[10] The Applicants also seek a determination that Aruba, which is not a WTO Member country, provides effective competitive opportunities for U.S. carriers to own and operate submarine cable facilities in Aruba. TIWS USA filed a supplement to its Application on May 24, 2013 (Supplement).[11]

8. The Applicants state that construction and operation of the PCCS Cable is in the public interest because the cable will help meet the growing demand for voice, data, and Internet traffic between the Caribbean, Central America, South America, and the United States.[12] Additionally, they state that the PCCS Cable will offer a facilities-based competitive alternative to existing cables, which will give customers additional choices and further increase competitive options for services on these routes.[13] The Applicants further state that the cable system will enhance service quality, increase resiliency, and decrease latency in the region by providing cable route diversity and alternative bandwidth access to existing cables in the region.[14]

9. The International Bureau released a Public Notice on June 17, 2013 seeking comment on the Application and the request for a determination that Aruba provides effective competitive opportunities to U.S.-licensed companies to own and operate submarine cable facilities.[15] No comments were filed. The Application and Supplement have been coordinated with the U.S. Department of State and other Executive Branch agencies pursuant to section 1.767(b) of the Commission's rules,[16] and consistent with procedures established with the U.S. Department of State.[17]

III. DISCUSSION

10. In reviewing the Application we focus on three issues. First, we determine whether Aruba affords effective competitive opportunities for U.S.-licensed companies to own and operate submarine cable facilities in Aruba. Second, we determine whether the PCCS Cable should be licensed as a non-common carrier or common carrier system. Third, we address any national security and law enforcement issues related to the Application. Before turning to these issues, we begin with a discussion of the Effective Competitive Opportunities test (ECO Test).

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[9] *Id.* at 16-18.

[10] *See* File No. SCL-LIC-20130122-00001.

[11] *See* Supplement to Application for Authority, File No. SCL-LIC-20130122-00001, filed May 24, 2013 (Supplement). The Supplement included additional information and additional support for their ECO ruling request.

[12] *See* Application at 8-10.

[13] *Id.*

[14] *Id.*

[15] *See* File No. SCL-LIC-20130122-00001, Public Notice, Report No. SCL-00141NS (Int'l Bur. rel. June 17, 2013) (non-streamlined public notice).

[16] 47 C.F.R. § 1.767(b)

[17] *See Submarine Cable Landing License Report and Order*, 16 FCC Rcd at 22192-93, ¶¶ 51-52; *see also 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 (last visited Dec. 19, 2013).

A. Effective Competitive Opportunities

11. The Commission adopted the ECO Test in the 1995 *Foreign Carrier Entry Order* in response to concerns that foreign carriers with market power would be able to enter the U.S. international services market while U.S. carriers would not have the same legal and/or practical ability to enter the markets of foreign carriers.[18] At that time, the Commission's ECO Test applied to all countries. In the 1997 *Foreign Participation Order*, the Commission eliminated the ECO Test for applications filed by foreign carriers or their affiliates with market power in WTO Member countries.[19] The Commission, however, retained the ECO Test for section 214 and cable landing license applications filed by foreign carriers or their affiliates with market power in a non-WTO destination market.[20] The Commission found that the circumstances that existed when it adopted the *Foreign Carrier Entry Order* had "not changed sufficiently with respect to countries that are not members of the WTO."[21] Of relevance here, the Commission concluded in the *Foreign Participation Order* that it would continue to apply an ECO Test as part of its analysis of cable landing license applications filed by foreign carriers or their affiliates with market power in a non-WTO destination market under the Cable Landing License Act.[22]

12. The Commission elaborated on the ECO Test that applies to submarine cable applications filed by foreign carriers or their affiliates in its 1997 *Telefonica Licensing Order*.[23] In that order, the Commission emphasized that the analysis it "applies to applications under the Cable Landing License Act is similar but not identical" to its analysis under section 214 of the Communications Act.[24] It stated that, in determining whether effective opportunities exist in a foreign destination market, the Commission examines (1) whether U.S. carriers have the legal, or *de jure,* ability to hold ownership interests in submarine cables landing in a market, and, if so, (2) whether other factors give U.S. carriers the practical, or *de facto,* ability to hold ownership interests in cable facilities in the destination market.[25]

13. In evaluating applications filed by applicants from non-WTO Member countries that require an ECO Test determination, the Commission continues to examine whether U.S. carriers have the legal and practical ability to hold ownership interests in a submarine cable in the non-WTO destination market where the submarine cable lands. If the Commission finds that U.S. carriers have the legal ability to hold ownership interests in submarine cables landing in the destination market, it then considers such practical factors as whether U.S. carriers have the right to operate cable facilities in the destination

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[18] *See Foreign Carrier Entry Order,* 11 FCC Rcd at 3884-88, ¶¶ 27-39.

[19] *See Foreign Participation Order,* 12 FCC Rcd at 23896, ¶ 9.

[20] The ECO Test that applies to section 214 applications is codified in section 63.18 of the Commission's rules, 47 C.F.R. §§ 63.18(k)(3)(i)-(vi). The ECO Tests that apply to foreign carrier affiliation notifications filed by authorized U.S.-international carriers and U.S. cable landing licenses are codified in section 63.11 and section 1.768 of the Commission's rules. *See* 47 C.F.R. § 63.11 and 47 C.F.R. § 1.768, respectively.

[21] *Foreign Participation Order*, 12 FCC Rcd at 23898, ¶ 15. The Commission stated that it had competitive concerns regarding carriers that continue to possess the ability to exercise market power in those countries and that it served the public interest to continue to apply the ECO Test in the context of non-WTO Member countries. *Id.* at 23494-97, ¶¶ 124-32.

[22] *See id.* at 23496, ¶ 130.

[23] *See Telefonica Licensing Order,* 12 FCC Rcd at 5181-85, ¶¶ 23-33. When the *Telefonica Licensing Order* was released on May 2, 1997, the Commission's ECO Test applied to all countries. As noted, the *Foreign Participation Order* eliminated application of the ECO Test to WTO Member countries. *See supra* ¶ **11**.

[24] *Telefonica Licensing Order*, 12 FCC Rcd at 5183, ¶ 27.

[25] *Id.* at ¶ 29.

market; *i.e.*, have the right to collocate facilities, provide or obtain backhaul capacity, access technical network information, and interconnect to the public switched telephone network.[26]

B. Analysis Under the ECO Test Criteria

1. Legal Ability of U.S. Submarine Cable Licensees to Enter Aruba Market

14. The Applicants contend that U.S.-licensed companies have the legal ability to hold ownership interests in submarine cables that land in Aruba.[27] In support of their showing, the Applicants submitted a certification from Mr. Z. Roland Croes, Director of SETAR, and a letter from Mr. J. L. Jansen, Director of the Regulatory Department of Aruba (Directie Telecommunicatie Zaken (DTZ)) that outlines the procedures a foreign telecommunications company would need to follow to obtain permission to land a submarine cable and operate a submarine cable landing station in Aruba.[28]

15. In the certification, Mr. Croes states that there are "no impediments in Aruba to the legal ability of U.S.-licensed companies to have ownership interests in submarine cables landing in Aruba."[29] According to Mr. Croes and Mr. Jansen, a U.S. company seeking to land and operate a submarine cable in Aruba would need to do so through a subsidiary organized under the laws of Aruba and obtain an international telecommunications license from DTZ.[30] Further, they state that there are no statutory limits on the number of licenses that may be issued, and that, to date, DTZ has issued several licenses, including licenses issued to entities owned by foreign investors.[31] Additionally, they state that an applicant to land and operate a submarine cable in Aruba is required to obtain approvals from other agencies of the Government of Aruba and that the process with these agencies would be the same whether the applicant is owned by Aruban investors or by foreign investors.[32] Mr. Croes certified that SETAR has requested authorization from the following agencies to land the PCCS cable in Aruba and operate a landing station in Aruba: (i) the Minister of Telecommunications, (ii) the Minister of Transport, (iii) DTZ, and (iv) the Directorate of Shipping Aruba. He further stated "any other international services licensee in Aruba, including any licensee owned or controlled by a U.S. carrier, would need to go through the exact same process" as SETAR.[33]

16. The Applicants observe that, in 2011, the Commission determined that Aruba had satisfied the ECO Test for section 214 authorizations, and they assert that U.S.-licensed companies have the legal, or *de jure,* ability as well as the practical, or *de facto,* ability to own and operate submarine

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[26] These factors are identified in the Commission's cable landing license rules, which provide, as a routine condition, that licensees shall not agree to accept special concessions. 47 C.F.R. § 1.767(g)(5)(ii). A special concession is defined as an exclusive arrangement involving services, facilities, or functions on the foreign end of a U.S. international route that are necessary to land, connect, or operate submarine cables, where the arrangement is not offered to similarly situated U.S. submarine cable owners. *Id.*

[27] *See* Supplement at 2-7.

[28] *Id.* at 2 and Exhibits 1 and 2.

[29] *Id.*, Exhibit 1 at 1.

[30] *Id.*, Exhibit 1 at 2 and Exhibit 2.

[31] *Id.* at Exhibit 2. In addition to SETAR, the following companies have obtained international telecommunications licenses from DTZ: (1) MIO Group, Ltd., a pan-Caribbean telecommunication operator that is majority owned and controlled by Cartesian Capital Group, LLC, a U.S. private equity firm based in New York, (2) Digicel, an international telecommunications provider owned and controlled by Mr. Denis O'Brien, a citizen of Ireland, and (3) Scarlet, a wholly-owned subsidiary of Belgacom, Belgium's national carrier. *Id.*, Exhibit 1 at 2-3.

[32] *See id.*, Exhibit 1 at 3 and Exhibit 2.

[33] *Id.*, Exhibit 1 at 3.

cable facilities in the Aruba market.[34] They state that the main submarine cable that lands in Aruba – the Pan-American cable system - has significant direct ownership by U.S.-licensed companies and that they are "not aware of any legal or practical impediments that existed or exist in Aruba to the landing of the Pan-American cable system or any other submarine cable."[35] Mr. Croes also certifies that the Pan-American cable system has a landing point in Baby Beach, Aruba, and that several U.S. companies hold ownership interests in this cable.[36] The Applicants state that AT&T, MCI International, Sprint Communications Company L.P., and Primus Telecommunications, Inc. hold interests in the Pan-American cable system.[37]

17. Based on the record before us, we find that Aruba's policy that allows U.S.-licensed companies to have ownership interests in submarine cables in Aruba satisfies the *de jure* criteria of the ECO Test. As noted above, the ECO Test that applies to cable landing licenses is different than the test for 214 authorizations.[38] Thus the Bureau's determination in the *TA Resources Order*,[39] while informative, is not determinative here. We base our conclusion on the supplemental information provided by the Applicants, and, in particular, on the certification of SETAR's Director, Mr. Croes, that (1) there are no legal impediments to the ability of U.S.-licensed companies to hold ownership interests in submarine cables landing in Aruba, and (2) to land a cable and operate a cable landing station in Aruba, U.S. cable licensees would follow the same process SETAR followed in obtaining authorization to land a cable in Aruba and operate a landing station in Aruba. We also note that a U.S.-licensed cable system – the Pan-American system – lands in Aruba and that several U.S companies hold ownership interests in that cable system.

2. Practical Ability of U.S. Submarine Cable Licensees to Enter Aruba Market

18. We next examine whether U.S.-licensed companies have the practical, or *de facto,* ability to own and operate cable facilities in the Aruba market. The Applicants contend that Aruba meets the ECO Test for submarine cable licenses, and state that they are not aware of any "practical impediments that existed or exist to the landing of the Pan-American cable system or any other submarine cable, access to a landing station, collocation within the station or connection to backhaul or other telecommunications service providers."[40] In support of their showing, the Applicants rely on the certification of Mr. Croes, Director of SETAR, and the letter of Mr. J. L. Jansen, Director of DTZ.

19. In the certification, Mr. Croes states that there are "no impediments in Aruba to the practical ability of U.S-licensed companies to have ownership interests in submarine cables landing in Aruba… and that there are multiple U.S.-licensed companies holding an ownership interest " in the Pan-American cable system.[41] Mr. Croes certified that "U.S. companies will have a right to use any capacity that they own in the PCCS cable or other cables landing in Aruba to provide services to Aruba and will be permitted interconnection, co-location and backhaul facilities by SETAR at reasonable market prices and

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[34] Supplement at 2-3 (citing *TA Resources Order,* 26 FCC Rcd 15978).

[35] *Id.* at 3-4.

[36] *Id.*, Exhibit 1 at 1. The FCC file number of the Pan-American cable system is SCL-LIC-19970421-00002 (old File No. SCL-97-001).

[37] *See* Supplement at 3.

[38] *See* ¶ 12, *supra.*

[39] *TA Resources Order,* 26 FCC Rcd 15978.

[40] Supplement at 3-4.

[41] *Id.*, Exhibit 1 at 1.

non-discriminatory terms and rates."[42] Moreover, the Applicants represent that "all of the foreign landing station owners have agreed to provide station access and collocation, as permitted by applicable laws, so that cable users can access multiple backhaul providers."[43]

20. In 2011, we released an order that granted T.A. Resources, a wholly-owned subsidiary of SETAR, section 214 authority to provide international telecommunications services, and we concluded that Aruba provides effective competitive opportunities for U.S. carriers under the standards established by the Commission for entry into the U.S. market by foreign carriers from non-WTO Member countries.[44] In our examination of the practical, or *de facto,* entry criteria, we found that Aruba satisfied the ECO Test articulated in section 63.18 of the Commission's rules.[45] We recognized that Aruba is a small country and that smaller countries may have relatively open markets even if their regulatory regimes do not fully meet all section 63.18 standards. One of our concerns was whether there existed reasonable and nondiscriminatory charges, terms and conditions for interconnection to a foreign carrier's domestic facilities.[46] Relying on the terms of the Aruba Interconnection Decree, we found that Aruba affords U.S. carriers sufficient opportunity to obtain interconnection on reasonable and nondiscriminatory terms for the provision of international facilities-based services.[47]

21. We reach a similar determination here under the ECO Test for submarine cable licenses. We find that Aruba affords U.S. submarine cable licensees the practical, or *de facto,* ability to enter the Aruba market and own and operate submarine cable facilities in Aruba. We base our conclusion on the supplemental information submitted by the Applicants, and, in particular, on the certification of Mr. Croes, Director of SETAR. U.S. cable licensees applying for an international telecommunications service license in Aruba are required to go through the same process as SETAR, including authorization from the Minister of Telecommunications, the Minister of Transport, DTZ, and the Directorate of Shipping Aruba.[48] We note that Applicants also state that all of the foreign landing station owners have agreed to provide station access and collocation and that there is nothing in the laws of Aruba that would make such access or collocation impermissible. Additionally, U.S. companies will have a right to use any capacity that they own in the PCCS Cable or other cables landing in Aruba to provide services to Aruba and will be permitted interconnection, collocation and backhaul facilities by SETAR at reasonable market prices and non-discriminatory terms and rates. We will, however, condition grant of the cable license on revisiting our findings here should telecommunications licensing and interconnection problems arise on the U.S.-Aruba route.

C. Regulatory Status of the Cable

22. The Applicants propose to operate the cable system on a non-common carrier basis. In determining whether a cable system qualifies to be operated on a non-common carrier basis, the Commission uses a two-part test set forth in *NARUC I.*[49] 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

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[42] *Id.* at 3-4.

[43] *See* Application at 6.

[44] *See TA Resources Order,* 26 FCC Rcd 15978.

[45] 47 C.F.R. §§ 63.18(k)(3)(i)-(vi).

[46] *See TA Resources Order,* 26 FCC Rcd at 15981-82, ¶¶ 10-13.

[47] *Id.*

[48] *See* Supplement, Exhibit 1 at 3.

[49] *See 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).

implicit in the nature of the operations of the submarine cable system to expect an indifferent holding-out to the eligible user public. In general, where there is sufficient availability of alternative facilities, 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 and that the public interest will be served by allowing a submarine cable to be operated on a non-common carrier basis.[50]

23. If the Commission finds 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.[51]

24. There are seven cable systems currently serving the region of the proposed PCCS cable.[52] Given the availability of these alternative facilities in the region to be served by the PCCS cable, we find that there is no public interest reason to require the licensee to offer capacity on the proposed cable on a common carrier basis. Therefore, we find that the Applicants have met the first part of the 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. We find that the Applicants have met the second part of the Commission's non-common carrier test. Further, on those routes where the Applicants are dominant, they have certified that they will accept and abide by reporting conditions contained in Commission rules.[53]

D. National Security Considerations

25. When analyzing an application in which there is foreign ownership, the Commission also considers other public interest factors consistent with its discretion under the Cable Landing License Act, including any national security, law enforcement, foreign policy, or trade concerns that may be raised by the Executive Branch.[54] We have coordinated the Application with the Executive Branch, and on January 15, 2014, the Department of Homeland Security (DHS) filed a Petition to Adopt Conditions to Authorizations and Licenses (Executive Branch Petition). DHS states that it has no objection to the Commission granting the application "provided that the Commission condition its approval on the assurance of Telefonica International Wholesale Services USA, Inc. to abide by the commitments and

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[50] *See, e.g,* viNGN, Inc. d/b/a Virgin Islands Next Generation Networks, Inc., File. No. SCL-LIC-20121221-00015, Actions Taken Under Cable Landing License Act, Public Notice, 28 FCC Rcd 1909 (Int'l Bur. 2013); Latam Telecommunications, L.L.C., File No. SCL-LIC-20120330-00002, Actions Taken Under Cable Landing License Act, Public Notice, 28 FCC Rcd 1323 (Int'l Bur. 2013); AT&T Corp., File No. SCL-LIC-20110329-00009, Actions Taken Under Cable Landing License Act, Public Notice, 26 FCC Rcd 7595 (Int'l Bur. 2011).

[51] *See Submarine Cable Landing License Report and Order*, 16 FCC Rcd at 22202-03, ¶¶ 69-70; *See also Review of Commission Consideration or Applications under the Cable Landing License Act*, Notice of Proposed Rulemaking, 15 FCC Rcd 20789, 20815-18, ¶¶ 62-67.

[52] The Taino-Carib (SCL-92-002), Pan-American (SCL-97-001), Maya-1 (SCL-LIC-19990325-00006), Globenet (SCL-LIC-19990602-00010), Arcos-1 (SCL-LIC-19981222-00032), SAM -1 (SCL-LIC-20000204-00003), and the Global Crossing cable systems PAC (SCL-LIC-19981103-00022) and SAC (SCL-LIC-19990823-00015) currently serve the region to be served by the PCCS Cable.

[53] 47 C.F.R § 1.767(l).

[54] *See Foreign Participation Order,* 12 FCC Rcd at 23919-21, ¶¶ 61-66. *See also* Cable Landing License Act, 47 U.S.C. § 35.

undertaking set forth in the January 14, 2014 Letter of Assurances (LOA)."[55] The Executive Branch Petition and the LOA are set out in Appendix C.

26. The Commission accords appropriate deference to the expertise of the Executive Branch agencies on issues related to national security, law enforcement, foreign policy, and trade policy relevant to an application pending before us.[56] The Executive Branch Petition states that "the Department has concluded that the additional commitments set forth in the LOA will help ensure that the Department can proceed appropriately to satisfy its responsibility for enforcing the law, protecting the national security, and preserving public safety.[57] We grant the Executive Branch Petition. Accordingly, we condition grant of the Application on TIWS USA abiding by the commitments and undertakings contained in the LOA.

IV. CONCLUSION

27. We find that Aruba offers effective competitive opportunities for U.S.-licensed companies to own and operate submarine cable facilities in Aruba. We conclude that grant of the Application filed by Telefonica International Wholesale Services USA, Inc. on behalf of the PCCS Consortium for a license to construct, land and operate a non-common carrier fiber-optic submarine cable system, the Pacific Caribbean Cable System, will serve the public interest, convenience, and necessity by providing alternative cable facilities and increased capacity in the region. We therefore grant this Application, pursuant to the Cable Landing License Act and section 1.767 of the Commission's rules, subject to the routine reporting and compliance requirements set out in the Commission's rules[58] and subject to revisitation should telecommunications licensing or interconnection problems arise on the U.S.-Aruba route. We also condition grant of the Application on licensees' compliance with the commitments set out in the Letter of Assurances attached to this Order and Authorization in Appendix C.

V. ORDERING CLAUSES

28. Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and (j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and (j), the Cable Landing License Act, 47 U.S.C. §§ 34-39, Executive Order No. 10530, reprinted as amended in 3 U.S.C. § 301, and sections 0.51, 0.261, 1.767, and 1.768 of the Commission's rules , 47 C.F.R. §§ 0.51, 0.261, 1.767, and 1.768, the Application filed by Telefonica International Wholesale Services USA, Inc. on behalf of the PCCS Consortium for a license to construct, land and operate the PCCS Cable IS GRANTED to the extent specified in this Order and Authorization.

29. IT IS FURTHER ORDERED that Telefonica International Wholesale Services USA, Inc.'s request for an affirmative finding that Aruba provides effective competitive opportunities for U.S. cable landing licensees on the U.S.-Aruba route, IS GRANTED, subject to a revisitation of this finding and the potential application of appropriate conditions on this authorization, following prior notice to Telefonica International Wholesale Services USA, Inc. and opportunity for comment, should telecommunications licensing, collocation, and/or interconnection problems arise on the U.S.-Aruba route.

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[55] Executive Branch Petition at 2.

[56] *See generally Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees Under Section 310(b)(4) of the Communications Act of 1934, As Amended*, IB Docket No. 11-133, Second Report and Order, FCC 13-50, 28 FCC Rcd 5741, 5751, ¶ 13, 5762, ¶ 34 (2013); *see also Foreign Participation Order*, 12 FCC Rcd at 23920, ¶ 63 ("We thus will continue to accord deference to the expertise of Executive Branch agencies in identifying and interpreting issues of concern related to national security, law enforcement, and foreign policy that are relevant to an application pending before us."); *see also Foreign Carrier Entry Order*, 11 FCC Rcd at 3955-56, ¶ 219.

[57] Executive Branch Petition at 2.

[58] 47 C.F.R. §§ 1.767(g), 1.767(l), 1.768.

30. IT IS FURTHER ORDERED that all licensees to the PCCS Cable shall comply with the routine conditions set out in section 1.767(g) of the Commission's rules, 47 C.F.R. § 1.767(g), and the requirements set out in section 1.768 of the Commission's rules, 47 C.F.R. § 1.768.

31. IT IS FURTHER ORDERED that Cable and Wireless BVI, Cable & Wireless EWC, and Cable & Wireless Panama shall each abide by the reporting requirements in section 1.767(l) of the Commission's rules, 47 C.F.R. § 1.767(l), for each of the U.S.-British Virgin Islands and U.S.-Panama routes.

32. IT IS FURTHER ORDERED that Telefonica International Wholesale Services America S.A., Telefonica International Wholesale Services USA, Inc., TI Wholesale Services Puerto Rico, Inc., and Telefonica International Wholesale Services Colombia S.A. shall each abide by the reporting requirements in section 1.767(l) of the Commission's rules, 47 C.F.R. § 1.767(l), for the U.S.-Colombia route.

33. IT IS FURTHER ORDERED that Servicio Di Telecomunicacion Di Aruba N.V. shall abide by the reporting requirements in section 1.767(l) of the Commission's rules, 47 C.F.R. § 1.767(l), for the U.S.-Aruba route.

34. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and 4(j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 309, 310(d), the Petition to Adopt Conditions to Licenses filed by the U.S. Department of Homeland Security on January 15, 2014 IS GRANTED. Grant of the Application IS CONDITIONED UPON licensees' compliance with the commitments set forth in the January 14, 2014 Letter of Assurances attached to this Order and Authorization as an Appendix.

35. IT IS FURTHER ORDERED that this Order and Authorization SHALL BE EFFECTIVE upon release. Petitions for reconsideration under section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, or applications for review under section 1.115 of the Commission's rules, 47 C.F.R. § 1.115, may be filed within thirty days of the date of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Mindel De La Torre
Chief, International Bureau

APPENDIX A

PCCS Applicant Ownership Information

1. Cable and Wireless BVI, Cable & Wireless EWC, a British Virgins Islands entity, and Cable & Wireless Panama, a Panamanian entity, are all indirect, wholly-owned subsidiaries of Cable & Wireless Communications plc., a publicly-held company registered in England and Wales. Orbis Holdings Limited, a Bermuda entity, owns more than 10% of Cable & Wireless plc and Newton Investment Management Limited, a United Kingdom entity, owns approximately 10% of Cable and Wireless plc. Cable and Wireless BVI and Cable & Wireless Panama are each the incumbent local exchange carrier in their respective countries, both of which are members of the WTO. Cable and Wireless EWC are thus affiliated with a foreign carrier with market power in the British Virgin Islands and Panama. Cable and Wireless BVI, Cable & Wireless EWC, and Cable & Wireless Panama 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.-British Virgin Islands and U.S.-Panama routes.

2. Cable Andino, Cable Andino USA, and Cable Andino Corpandino are all subsidiaries or affiliates of Telconet S.A., an Ecuadorian entity. Telconet S.A. is owned by two Ecuadorian citizens, Marion Tomislav Topic and Jan Tomislav Topic, 54% and 46%, respectively. Cable Andino, a Bahamas entity, is a direct, wholly-owned subsidiary of Telconet S.A., and Cable Andino USA is a direct, wholly-owned subsidiary of Cable Andino. Teleconet S.A. has a 47.5% ownership in Cable Andino Corpandino, with Gorgio Surian, an Italian citizen, holding the other 52.5% ownership. Cable Andino, Cable Andino USA, and Cable Andino Corpandino are not affiliated with any carriers that have market power in any destination PCCS landing country.

3. TIWS America, TIWS USA, TIWS Puerto Rico, and TIWS Colombia are all indirect subsidiaries of Telefonica S.A., a Spanish entity. TIWS America, a Uruguayan entity, is 74.36% owned by Telefonica S.A. and 25.64% owned by Telefonica International Wholesale Services, S.L. (TIWS S.L.). TIWS S.L., a Spanish entity, is 92.51% owned by Telefonica, S.A. and 7.49% owned by Telefonica DataCorp., a wholly-owned Spanish corporate subsidiary of Telefonica, S.A. TIWS USA, a Florida corporation, is wholly-owned by TIWS America. TIWS Puerto Rico, a Puerto Rican company, is wholly-owned by TIWS America. TIWS Colombia, a Colombian entity, is 94.98% owned by TIWS America, with the remaining ownership interests held by TIWS Chile S.A. (1.67%), TIWS Peru S.A.C. (1.67%), TIWS Guatemala S.A. (1.66%), and TIWS Argentina S.A. (0.01%). TIWS America, TIWS USA, TIWS Puerto Rico, and TIWS Colombia are each affiliated with a foreign carrier with market power in Colombia, a WTO Member country. TIWS America, TIWS USA, TIWS Puerto Rico, and TIWS Colombia each agree to accept and abide by the reporting requirements in section 1.767(l), 47 C.F.R. § 1.767(l), for the U.S.-Colombia route.

4. UTS is a direct, wholly-owned subsidiary of United Telecommunication Services N.V., a Curacao government owned company incorporated under the laws of the Netherlands Antilles. UTS is not affiliated with any foreign carrier in any destination PCCS landing country.

5. SETAR is the incumbent telecommunications provider in Aruba and is wholly-owned by the Government of Aruba.[59] SETAR agrees to accept and abide by the reporting requirements in section 1.767(l), 47 C.F.R. § 1.767(l), for the U.S.-Aruba route.

6. Aruba is not currently a full WTO Member country.[60] All of the other foreign

[59] *See* Application, Appendix D.

[60] Aruba is a member country of the Kingdom of the Netherlands and in 1995, the Kingdom of the Netherlands signed the WTO treaty on behalf of Aruba. At that time, the instrument of acceptance was not accepted by the WTO Members because the Aruba schedule of services, but not goods, was received and annexed to the General (continued....)

destinations of the PCCS Cable are WTO Member countries.

(Continued from previous page)
Agreement on Trade in Services, which made Aruba ineligible for full membership status as a WTO Member country. *See TA Resources Order*, 26 FCC Rcd at 15879, n.9.

APPENDIX B

PCCS Cable System and Landing Station Ownership Information

1. Each of the Applicants will own circuits throughout the PCCS network. The landing stations and segments will be owned as follows:[61]

(1) Cable and Wireless (BVI) will own and operate the cable landing station in Tortola, British Virgin Island. It will have 100% ownership in the British Virgin Islands and British Virgin Island waters and a 0.6% ownership and voting interest in PCCS.

(2) Cable & Wireless Panama will own and operate the cable landing stations in Maria Chiquita, Panama and Balboa, Panama, and has a 33.33% interest in the existing terrestrial segment between the cable landing stations. It will have 100% ownership in Panama and Panamanian waters and a 2.6% ownership and voting interest in PCCS.

(3) Cable & Wireless EWC will have a 14.8% ownership and voting interest in PCCS and no ownership interests in either a cable landing station or segment of PCCS.

(4) SETAR will own and operate the cable landing station in Hudishibana, Aruba. It will have 100% ownership in Aruba and Aruban waters and an 11.3% ownership and voting interest in PCCS.

(5) Cable Andino will have a 17.5% ownership and voting interest in PCCS and no ownership interests in either a cable landing station or a segment of PCCS.

(6) Cable Andino USA will have a 5.6% ownership and voting interest in PCCS and no ownership interests in either a cable landing station or a segment of PCCS.

(7) Cable Andino Corpandino will own 50% of the cable landing station in Manta, Ecuador, and will have a 20% interest in the segment between the Balboa, Panama and Manta, Ecuador cable landing stations. It will have a 4.5% ownership and voting interest in PCCS.

(8) TIWS America will have a 28.3% ownership and voting interest in PCCS and no ownership interests in either a cable landing station or a segment of PCCS.

(9) TIWS USA will own and operate the cable landing station in Jacksonville, Florida. It will have 100% ownership in the United States and U.S. waters and a 0.8% ownership and voting interest in PCCS.

(10) TIWS Puerto Rico will own and operate the cable landing station in San Juan, Puerto Rico, USA. It will have 100% ownership in the territorial United States and U.S. waters and no voting or ownership interest in PCCS.

(11) TIWS Colombia will have the rights to operate the Cartagena, Colombia cable landing station which is owned by its affiliate Colombia Telecomunicaciones, S.A. ESP. It will have a no voting or ownership interest in PCCS.

(12) UTS will have a 14.0% ownership and voting interest in PCCS and no ownership interests in either a cable landing station or a segment of the cable.

2. Each PCCS consortium member is a party to the PCCS Construction and Maintenance Agreement (C&MA). Under the C&MA, any member of the consortium may transfer its right to use its PCCS Cable circuits to any of its subsidiaries or affiliates. Consortium members may sell indefeasible rights of use (IRUs) to any properly licensed non-member and third parties will be able to obtain

[61] Application at 18-19.

transiting to, from, or through any country in which the PCCS Cable lands through the purchase of IRUs.[62]

[62] *Id.* at 7-8.

APPENDIX C

Executive Branch Petition and Letter of Assurances

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
TELEFONICA INTERNATIONAL WHOLESALE SERVICES USA, INC.	)	File No. SCL-LIC-20130122-00001
	)	
Application for a license to construct, land, and operate a non-common carrier fiber-optic submarine cable system linking the continental United States and the British Virgin Islands, Puerto Rico, Aruba, Colombia, Panama, and Ecuador	)	

PETITION TO ADOPT CONDITIONS TO AUTHORIZATIONS AND LICENSES

The Department of Homeland Security ("Department") submits this Petition to Adopt Conditions to Authorizations and Licenses ("Petition"), pursuant to Section 1.41 of the Federal Communications Commission ("Commission") rules.[1] Through this Petition, the Department advises the Commission that it has no objection to the Commission approving the authority sought in the above-referenced proceeding, provided that the Commission conditions its approval on the assurance of Telefonica International Wholesale Services USA, Inc. ("TIWS") to abide by the commitments and undertakings set forth in the January 14, 2014 Letter of Assurances ("LOA"), which is attached hereto.

In the above-referenced proceeding, TIWS filed for a license to construct, land, and operate a non-common carrier fiber-optic submarine cable system linking the continental United States and the British Virgin Islands, Puerto Rico, Aruba, Colombia, Panama, and Ecuador (the Pacific Caribbean Cable System).

The Commission has long recognized that law enforcement, national security, and public

safety concerns are part of its public interest analysis, and has accorded deference to the views of other U.S. government agencies with expertise in those areas. *See In the Matter of Comsat Corporation d/b/a Comsat Mobile Communications, etc.*, 16 FCC Rcd. 21,661, 21707 ¶ 94 (2001).

After discussions with representatives of TIWS in connection with the above-referenced proceeding, the Department has concluded that the additional commitments set forth in the LOA will help ensure that the Department can proceed appropriately to satisfy its responsibility for enforcing the law, protecting the national security, and preserving public safety. Accordingly, the Department advises the Commission that it has no objection to the Commission granting the application in the above-referenced proceeding, provided that the Commission conditions its consent on compliance by TIWS with the LOA.

Respectfully submitted,

/S/ Shawn Cooley
Shawn Cooley
U.S. Department of Homeland Security
Director – Foreign Investment Risk Managament
Office of Policy
3801 Nebraska Avenue
Washington, D.C. 20016

January 15, 2014

Telefónica

Telefónica International
Wholesale Services
USA, Inc.

January 14, 2014

Mr. David Heyman
Assistant Secretary
Office of Policy
U.S. Department of Homeland Security
245 Murray Lane, SW
Mail Stop: 0445
Washington, D.C. 20528

Telefonica International Wholesale Services USA, Inc. ("TIWS USA") is providing this Letter of Assurance (LOA) to the U.S. Department of Homeland Security (DHS) on the express understanding that, promptly upon execution of this LOA, DHS will notify the FCC that they have no objection to the FCC's grant of the pending application for consent Land and Operate an Submarine Cable System Connecting the British Virgin Islands, Puerto Rico, Aruba, Colombia, Panama, Ecuador and the continental United States, and will request that the FCC's grant of that application be made subject to this LOA and its resolution of issues relating to national security, law enforcement, and public safety. For purposes of this LOA, the Pacific Caribbean Cable System (PCCS) includes any associated cable landing sites, Points of Presence (PoPs), or interconnected gateways in the U.S. (whether leased or owned). The PCCS will be a private, non-common carrier submarine cable system that will, as proposed in the pending application, directly connect the United States to points in the Caribbean, Central America and the northern part of South America, spanning an approximate 6,000 kilometers on an end-to-end basis.

TIWS USA has agreed to provide this LOA to DHS to address issues raised by DHS, and to jointly petition the FCC to condition the requested authorization on compliance with this LOA. Upon grant of the license, TIWS USA undertakes to comply with the following commitments to DHS:

1. Principal Equipment List

Within 60 days of this LOA, and thereafter upon request from DHS, TIWS USA shall provide an updated Principal Equipment list. For purposes of this LOA, "Principal Equipment" means the primary components of the Domestic Communications Infrastructure (DCI) and the PCCS, including, but not limited to, should they exist, servers; routers; switches; signal modulators and amplifiers; repeaters; submarine line terminal equipment (SLTE), including signal information element (SIE), network management system (NMS), system supervisory equipment, wavelength

division multiplexing/submarine line terminal equipment (WDM/SLTE), and communications toolbox (CTB), power feed equipment (PFE), optical distribution frames (ODF), and synchronous optical network (SONET) equipment, as applicable, and any non-embedded software (such as NMS) necessary for the proper monitoring, administration and provisioning of the PCCS. This list should include all available information on each item's manufacturer and the model and/or version number of any hardware or software. In addition, the list should identify any vendors, contractors, or subcontractors for the Principal Equipment, including those performing functions that would otherwise be performed by TIWS USA personnel to install, operate, manage, or maintain the Principal Equipment.

Where a new vendor or contractor for Principal Equipment does not appear on any list of Principal Equipment previously disclosed by TIWS USA pursuant to this Agreement, TIWS USA shall provide at least 30 days' advance written notice to DHS of the installation of Principal Equipment made by the new vendor or the initiation of work by the new contractor. TIWS USA need not comply with the advance notice requirement for any action that is undertaken pursuant to a bona fide emergency and is necessary to ensure the continued operability of the network; however, in such circumstances, TIWS USA shall provide advance notice of a new vendor or contractor for Principal Equipment if practicable, and if impracticable, within five business days after the installation of Principal Equipment made by a new vendor or the initiation of work by a new contractor as applicable. TIWS USA shall negotiate in good faith to resolve any national security, law enforcement, or public safety concerns DHS may raise in response to any disclosure made by TIWS USA pursuant to this requirement.

For purposes of this LOA, "Domestic Communications" means: (a) Wire Communications or Electronic Communications (whether stored or not) from one U.S. location to another U.S. location; and (b) the U.S. portion of a Wire Communication or Electronic Communication (whether stored or not) that originates or terminates in the United States; and "Domestic Communications Infrastructure" (DCI) means: (a) transmission, switching, bridging, and routing equipment (including software and upgrades) used by or on behalf of TIWS USA to provide, process, direct, control, supervise, or manage Domestic Communications carried on the PCCS; or (b) facilities used by or on behalf of TIWS USA to control, provision, and activate the equipment described in (a) above. Domestic Communications Infrastructure does not include equipment or facilities used by service providers other than TIWS USA that are: (a) interconnecting communications providers; or (b) providers of services or content that are: (i) accessible using the communications services of TIWS USA and (ii) available in substantially similar form and on commercially reasonable terms through communications services of companies other than TIWS USA. The phrase "on behalf of" as used in this definition does not include entities with which TIWS USA has contracted for

peering, interconnection, roaming, long distance, or other similar arrangements. Domestic Communications Infrastructure also does not include equipment dedicated to the termination of international undersea cables outside the United States, provided that such equipment is utilized solely to effectuate the operation of such undersea transport network(s) and in no manner controls land-based transport network(s) or their associated systems in the United States. "Electronic Communication" has the meaning given it in 18 U.S.C. § 2510(12). "Wire Communication" has the meaning given it in 18 U.S.C. § 2510(1).

2. Information Available Upon Request

Upon request by DHS, TIWS USA agrees to make available updated information within 15 days relating to the development, operation and management of the PCCS, including, but not limited to, the following:

a. Network Management Information, including: network topology descriptions or maps; network and telecommunications architecture descriptions and associated descriptions of interconnection points and controlled gateways to the DCI; network operational plans, processes and procedures; locations and functions of any network operations centers (NOCs), data centers, and main distribution facilities; and descriptions of interfaces and connections to the PCCS for service offload, disaster recovery, or administrative functions;
b. Physical and logical security policies, procedures and hardware or software products or appliances maintained to protect the PCCS;
c. Architecture Interconnect Diagrams (AID) that shows major system/subsystem components, data flow/control, and actors outside the cable system that could interact with the PCCS; and
d. Any policies or procedures adopted to implement this LOA.

3. Point of Contact

TIWS USA hereby designates Mr. Guillermo Cañete, a resident U.S. citizen or permanent resident alien, as Point of Contact (POC) for DHS for purposes of this LOA. Mr. Gerardo Salgado also a resident U.S. citizen or permanent resident alien, will serve as an alternate point of contact in the event the primary Point of Contact cannot be reached. TIWS USA may also designate such additional alternate points of contact, also resident U.S. citizens or permanent

resident aliens. All such designated points of contact shall be subject to DHS's review and non-objection. The POC, or alternate, shall be available 24 hours per day, 7 days per week to address any national security, law enforcement or public safety concerns that may be raised by DHS with respect to the PCCS. The POC, and any alternates, shall be responsible for receiving service of process for assisting with lawfully authorized electronic surveillance, and shall comply with all statutes, regulations, and requirements regarding lawful electronic surveillance requests. In addition, the POC and alternates shall be responsible for receiving and promptly effectuating any requests for information from DHS pursuant to this LOA.

TIWS USA will notify DHS of any change to the POC or alternates within 10 business days of such change and such POC or alternates shall be subject to DHS's review and non-objection. TIWS USA will cooperate with any request by DHS that a background check be completed for a designated POC or alternate.

4. Operations and Security Policies

Within 60 days of this LOA, TIWS USA will propose for DHS's approval an internal compliance policy and/or procedure for purposes of implementing the requirements of this LOA. Such policy and/or procedure shall include, inter alia, training and annual certification procedures. TIWS USA will maintain or exceed security standards and best practices utilized within the U.S. telecommunications industry for maintenance of password systems and firewalls, non-destructive access logs, periodic internal network security and switch audits, and physical security for access to DCI.

5. USG Visitation

TIWS USA agrees that upon reasonable advance notice, DHS may visit its landing stations, NOCs, PoPs, or other facilities under its control to conduct on-site visits concerning the implementation of the terms of this LOA. During such visits, TIWS USA will cooperate fully with DHS in making available requested information, facilities and personnel.

6. Annual Report

On or before each anniversary of the effective date of this LOA, TIWS USA shall submit to DHS a report including the following information:

a. An updated list of Principal Equipment used within the PCCS and by related primary vendors, contractors or subcontractors, including but not limited to any material changes or upgrades to system components or applications since the list was most recently provided to DHS;
b. The names and contact information of the POC and alternates for the company for purposes of this LOA;
c. Operations and security policies or procedures adopted for purposes of implementation of the requirements of this LOA, or material updates to policies and procedures previously disclosed to DHS;
d. Architecture Interconnect Diagrams (AID) that show major system/subsystem components as defined above, data flow/control, and outside system components (people or machine) that could interact with the PCCS, or material updates to such documents that were previously disclosed to DHS.
e. Report all security violations and breaches (physical/logical) involving the PCCS and TIWS USA facilities/network used in connection with the PCCS.
f. Report any changes in current NOC locations.
g. Report any changes in the consortium ownership/members.
h. Report any changes in PCCS and TIWS USA services provided using the PCCS.

7. Services

TIWS USA agrees that it will notify DHS in writing at least 30 calendar days prior to implementing any significant changes to its provision of telecommunications services in the U.S. that are provided using the PCCS, including but not limited to the provision of services directly to end-user (i.e., non-carrier) customers, either residential, business, or enterprise.

8. Dispute Resolution

TIWS USA understands that DHS may request that the FCC modify, condition, revoke, cancel, or render null and void any relevant license, permit, or other authorization in the event the commitments set forth in this letter are breached by TIWS USA or in the event DHS determine that the terms of this LOA are inadequate to address national security, law enforcement or public

safety concerns. TIWS USA will promptly negotiate in good faith to address any such concerns. DHS will promptly negotiate in good faith with respect to any reasonable request by TIWS USA for relief from the application of specific provisions of this LOA if such provisions become unduly burdensome or adversely affect the competitive position of TIWS USA.

Notwithstanding the foregoing, TIWS USA understands that DHS reserves the right to object, formally or informally, to the grant of any other FCC application or petition of TIWS USA or an entity controlled by TIWS USA for a license, other authorization, or assignment or transfer of control of a license or other authorization under the Cable Landing License Act or Titles II and III of the Communications Act of 1934, as amended, and to seek additional or different terms that would, consistent with the public interest, address any threat to the ability of the United States to enforce the laws, preserve the national security, or protect the public safety raised by the services and transactions underlying any such application or petition.

9. Good Faith Negotiation; Request for Relief

This letter is based on TIWS USA's understanding that DHS will negotiate in good faith and promptly with respect to a request by TIWS USA for relief from application of a specific provision of this LOA or relief from a specific request of DHS made pursuant to this LOA where such a provision or request is unduly burdensome or adversely affects TIWS USA's competitive position.

10. Exempt from Disclosure

TIWS USA is providing this LOA on the express understanding that all notices, reports and information provided to DHS pursuant to this LOA shall be treated as confidential business information exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552(b)(4).

TIWS USA understands that DHS will take reasonable measures to protect from public disclosure all information submitted by Company to DHS in connection with this LOA and clearly marked with the legend "Confidential; Subject to Protection Under 5 U.S.C. section 552(b)" or similar designation. Such markings shall signify that it is TIWS USA's position that the information so marked constitutes "trade secrets" and/or "commercial or financial information obtained from person and privileged or confidential," or otherwise warrants protection within the meaning of 5 U.S.C. section 552(b). If a request is made under 5 U.S.C.

section 552(a)(3) for information so marked, and disclosure of any information (including disclosure in redacted form) is contemplated, TIWS USA understands that DHS will notify Company of the intended disclosure as provided by Executive Order 12600, 52 Fed. Reg. 23781 (June 25, 1987). If TIWS USA objects to the intended disclosure and its objections are not sustained, TIWS USA understands that DHS will notify TIWS USA of its intention to release not later than ten business days prior to disclosure of the challenged information.

11. Binding Upon Successors

The LOA shall inure to the benefit of, and shall be binding upon, TIWS USA and its respective successors, assigns, subsidiaries, and affiliates.

12. USG Contacts

All correspondence to DHS under the LOA will be directed to the addressees listed on the first page of this LOA. In addition, an electronic copy of all correspondence will be provided to DHS at IP-FCC@hq.dhs.gov.

Nothing in this Letter of Assurances is intended to excuse TIWS USA from any obligation it may have to comply with U.S. legal requirements for the retention, preservation, or production of information, records or data, nor shall it constitute a waiver of: (a) any obligation imposed by any U.S. federal, state or local laws on TIWS USA; (b) any enforcement authority available under any U.S. or state laws; (c) the sovereign immunity of the United States; or (d) any authority the U.S. Government may possess (including without limitation authority pursuant to International Emergency Economic Powers Act) over the activities of TIWS USA located within or outside the United States. Nothing in this Letter of Assurances is intended to or is to be interpreted to require the parties to violate any applicable U.S. law. Likewise, nothing in this Letter of Assurances limits the right of the United States Government to pursue criminal sanctions or charges against TIWS USA, and nothing in this Letter of Assurances provides TIWS USA with any relief from civil liability.

For and on behalf of Telefonica International Wholesale Services USA, Inc.

Telefónica

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USA, Inc.

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