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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

ENRON BROADBAND SERVICES, INC.

Application for Modification of the Cable
Landing License and Section 214
Authorization for

THE PAN AMERICAN CABLE SYSTEM

Non-Streamlined ITC-MOD-20010305-00112
AMERICATEL CORPORATION/AT&T CORP ET AL

ITC-MOD-2001

APPLICATION FOR MODIFICATION
OF CABLE LANDING LICENSE AND
RELATED SECTION 214 AUTHORIZATION

Enron Broadband Services, Inc. (“Applicant”) hereby applies to modify the cable landing license and Section 214 authorization for the Pan American cable system—a common-carrier fiber-optic submarine cable network between the U.S. Virgin Islands, Aruba, Chile, Colombia, Ecuador, Panama, Peru, and Venezuela—in order to become a joint licensee and authorization holder.¹ The Applicant only recently confirmed that in fact it holds a tiny equity stake in the Pan American cable system. The Applicant therefore respectfully requests that the Commission grant this modification application

¹ This application is made pursuant to “An act relating to the Landing and Operation of Submarine Cables in the United States,” *codified at* 47 U.S.C. §§ 34-39 (“Cable Landing License Act”); Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214; Executive Order No. 10,530, *codified at* 3 C.F.R. 189 (1954-1958), *reprinted in* 3 U.S.C. § 301 app. (1988); and to Sections 1.767 and 63.18 of the Commission’s rules, 47 C.F.R. §§ 1.767, 63.18.

pursuant to the enforcement amnesty recently announced by the Commission's International and Enforcement Bureaus.²

Part I of this application provides background regarding the Applicant and the Pan American cable system. Part II provides the information required of the Applicant by Sections 1.767 and 63.18 of the Commission's rules. Part III describes how a grant of this application would serve the public interest.

I. BACKGROUND

The Applicant is a leading provider of next-generation broadband products and services in the United States and abroad, and a pioneer in the development of bandwidth markets and bandwidth trading. Domestically, the Applicant operates the exclusively IP-based Enron Intelligent Network™, which provides high-quality data and video streaming to other carriers and business customers across the United States using the Enron Broadband Operating System, a distributed server architecture. The Applicant also provides bandwidth trading and intermediation services in the United States and abroad.

To serve its international strategy, the Applicant purchased a tiny equity stake in the Pan American cable system. The owners of this system—not including the Applicant—were authorized by the Commission on January 15, 1998, under the Cable Landing License Act, as amended to land, own, and operate the Pan American cable system in the United States; under Section 214 of the Communications Act of 1934, as

² See *Public Notice, International Bureau and Enforcement Bureau Announce Program to Increase Compliance with Licensing Requirements for Carriers that Provide International Telecommunications Services and Operators of International Telecommunications Facilities Pursuant to Section 214 of the Communications Act and Sections 34-39 of the Submarine Cable Landing License Act*, DA 01-188 (Int'l and Enf. Bureaus, rel. Jan. 30, 2001).

amended, they were also authorized to do so on a common carrier basis.³ Since then, a number of the joint licensees have obtained Commission consent to assign or transfer their interests in the Pan American cable system,⁴ and at least one substantial equity holder—Telefónica Larga Distancia de Puerto Rico, Inc.—was added as a new joint licensee.⁵

In the course of recent due diligence, the Applicant determined that it holds a 0.02 percent equity stake, and proportionate voting rights, in the Pan American cable system and associated rights to use capacity on that system.⁶ (Originally, 0.01 percent of this equity stake was held by Enron South America, Inc. That equity interest has since been assigned to the Applicant.) But the Applicant also determined that it has never used the capacity to provide any international services between the United States and foreign points. The Applicant understands that while the Commission is currently considering a rule change that require only those equity holders above a certain threshold to become cable landing licensees,⁷ the Commission's current rules require a holder of *any* equity

³ See *Americatel Corp. et al., Cable Landing License*, 13 FCC Rcd. 850 (Int'l Bur. 1998) (“*Pan American Cable Landing License*”); *Americatel Corp. et al., Section 214 Authorization*, 13 FCC Rcd. 857 (Int'l Bur. 1998) (“*Pan American Section 214 Authorization*”).

⁴ See FCC File Nos. SCL-LIC-19970421-00002 (previously File No. SCL 97-001) and ITC-LIC-19970421-00220 (previously File No. ITC 97-221).

⁵ See *Telefónica Larga Distancia de Puerto Rico, Inc., Cable Landing License*, 13 FCC Rcd. 9553 (Int'l Bur. 1998); *Telefónica Larga Distancia de Puerto Rico, Inc., Section 214 Authorization*, 13 FCC Rcd. 9483 (Int'l Bur. 1998).

⁶ The Applicant also holds a global Section 214 authorization to provide facilities-based and resold international services. See *Public Notice: Overseas Common Carrier Section 214 Applications Actions Taken*, 12 FCC Rcd. 8254 (1997) (previously File No. ITC-97-247).

⁷ See *Review of Commission Consideration of Applications under the Cable Landing License Act, Notice of Proposed Rulemaking*, IB Docket No. 00-106, FCC 00-210, ¶¶ 78-83 (rel. June 22, 2000)

interest to be a licensee.⁸ The Applicant takes very seriously its obligations under the Commission's rules, and has adopted systems to ensure full compliance going forward.

II. COMPLIANCE WITH SECTIONS 1.767 AND 63.18 OF THE COMMISSION'S RULES

In accordance with Sections 1.767 and 63.18 of the Commission's rules and Executive Order No. 10,530, the Applicant submits the following information:

(1) Applicant's Name and Address⁹

The name, address, and telephone number of the Applicant are:

ENRON BROADBAND SERVICES, INC.
Enron Building
1400 Smith Street
Houston, Texas 77002--7369
Tel: (713) 345-4196

(2) Applicant's Incorporation¹⁰

The Applicant is a corporation organized under the laws of the State of Oregon.

(3) Contact Information¹¹

Correspondence regarding this application should be addressed to:

Scott D. Bolton
Director
ENRON BROADBAND SERVICES, INC.
Riverplace Building
2100 SW River Parkway
Portland, OR 97201
Phone: (503) 886-0360
Fax: (503) 886-0438

⁸ See 47 C.F.R. § 1.767(a)(7).

⁹ See 47 C.F.R. §§ 1.767(a)(1), 63.18(a).

¹⁰ See 47 C.F.R. §§ 1.767(a)(2), 63.18(b).

¹¹ See 47 C.F.R. §§ 1.767(a)(3), 63.18(c).

with a copy to:

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(4) **Other Commission Authorizations**¹²

The Commission has granted a Section 214 authorization to the Applicant to provide global facilities-based and global resale services.¹³

(5) **Descriptions of the System and Services to Be Provided**¹⁴

The descriptions of the system and services to be provided, as contained in the original application and approved by the Commission, have not changed materially since the original application was filed and granted, and are incorporated by reference.¹⁵ By the signature below, the Applicant certifies that it will comply with the terms and conditions contained in Sections 63.21, 63.22, and 63.23 of the Commission's rules, to the extent applicable.¹⁶

¹² See 47 C.F.R. § 63.18(d).

¹³ See *Public Notice: Overseas Common Carrier Section 214 Applications Actions Taken*, 12 FCC Rcd. 8254 (1997); FCC File Nos. ITC-T/C-19990803-00515, ITC-97-247.

¹⁴ See 47 C.F.R. §§ 1.767(a)(4), 63.18(e)(4).

¹⁵ See Pan American SCL Application, File No. SCL-LIC-19970421-00002, at 5-6 (filed Apr. 21, 1997); *Pan American Cable Landing License*, 13 FCC Rcd. at 851-52.

¹⁶ See 47 C.F.R. §§ 63.21, 63.22, & 63.23.

(6) **Landing Points**¹⁷

The landing points for the Pan American cable system, as contained in the original application and approved by the Commission, have not changed materially since the original application was filed and granted, and are incorporated by reference.¹⁸

(7) **Regulatory Status of Facilities**¹⁹

As stated in the original application and approved by the Commission, the Pan American cable system operates on a common carrier basis.²⁰ The facts supporting the Pan American cable system's operation and the Commission's regulatory classification thereof have not changed materially since the original application was filed, and are incorporated by reference.

(8) **Cable Ownership Information**²¹

To the best of the Applicant's knowledge, the parties described in FCC File Nos. SCL-LIC-19970421-00002 and 214-LIC-19970421-00220 will remain the licensees, will maintain ownership and control over the cable landing license and Section 214 authorization for this system, and will directly own and control the U.S. landing stations,

¹⁷ See 47 C.F.R. § 1.767(a)(5).

¹⁸ See Pan American Cable Landing License Application, File No. SCL-LIC-19970421-00002, at 5-6 (filed Apr. 21, 1997); *Pan American Cable Landing License*, 13 FCC Rcd. at 851-52.

¹⁹ See 47 C.F.R. § 1.767(a)(6).

²⁰ See Pan American 214 Application, File No. ITC-LIC-19970421-00220, at 2 (filed Apr. 21, 1997); *Pan American Section 214 Authorization*, 13 FCC Rcd. at 858-59.

²¹ See 47 C.F.R. § 1.767(a)(7).

the U.S. terrestrial portion of the cable from the landing stations to the U.S. beach joints of the submarine portion of the cable, and the U.S. cable landing stations' assets.²²

(9) **Scope of Authorization**²³

For purposes of this application, the Applicant seeks authority under the Cable Landing License Act, as amended, and Section 214 of the Communications Act of 1934, as amended, to hold a small equity stake, and associated voting rights, in the common-carrier Pan American cable system, which connects the U.S. Virgin Islands, Aruba, Chile, Colombia, Ecuador, Panama, Peru, and Venezuela.

(10) **Exclusion from Environmental Processing**²⁴

As a fiber-optic submarine cable, the Pan American cable system is categorically excluded from environmental processing under Section 1.1306 of the Commission's rules.²⁵

(11) **Corporate Control**²⁶

By the signature below, the Applicant certifies to the following. The Applicant is a wholly-owned subsidiary of Enron Corp., an Oregon corporation engaged in the business of providing wholesale and retail energy services, pipeline transportation services, and communications services in the United States and abroad. Enron Corp.'s address is as follows:

²² See Pan American SCL Application, at 2-4; *Pan American Cable Landing License*, 13 FCC Rcd. at 851-52; FCC File No. SCL-LIC-19970421-00002.

²³ See 47 C.F.R. § 63.18(f).

²⁴ See 47 C.F.R. § 63.18(g).

²⁵ See 47 C.F.R. § 1.1306 n.1.

²⁶ See 47 C.F.R. §§ 1.767(a)(8), 63.18(h).

ENRON CORP.
Enron Building
1400 Smith Street
Houston, Texas 77002-7369

Enron Corp. is publicly traded on the New York Stock Exchange, and its shares are widely held. Enron Corp. has no ten-percent-or-greater shareholders. The Applicant has no interlocking directorates with any foreign carrier.

(12) **Certification Regarding Foreign Carrier Status and Foreign Affiliation**²⁷

By the signature below, the Applicant certifies that it is not a foreign carrier and is not affiliated with any foreign carrier.

(13) **Certification Regarding Destination Markets**²⁸

The Applicant holds an equity interest in a common-carrier submarine cable system between the U.S. Virgin Islands, Aruba, Chile, Colombia, Ecuador, Panama, Peru, and Venezuela. By the signature below, the Applicant certifies that (1) it is not a foreign carrier in Aruba, Chile, Colombia, Ecuador, Panama, Peru, or Venezuela, where it seeks to provide international telecommunications services; (2) it does not control a foreign carrier in Aruba, Chile, Colombia, Ecuador, Panama, Peru, or Venezuela; (3) no entity controlling a foreign carrier in Aruba, Chile, Colombia, Ecuador, Panama, Peru, or Venezuela owns more than twenty-five percent (25%) of the Applicant; and (4) no foreign carriers in Aruba, Chile, Colombia, Ecuador, Panama, Peru, or Venezuela (or parties that control foreign carriers in Aruba, Chile, Colombia, Ecuador, Panama, Peru, or

²⁷ See 47 C.F.R. §§ 1.767(a)(8), 63.18(i).

²⁸ See 47 C.F.R. §§ 1.767(a)(8), 63.18(j).

Venezuela) own, in the aggregate, more than twenty-five percent (25%) of the Applicant or are parties to, or the beneficiaries of, a contractual relation affecting the provision or marketing of international basic telecommunications services in the United States.

(14) **Certification Regarding WTO Status, Market Power, and the Effective Competitive Opportunities Test**²⁹

As the Applicant has not made any affirmative certifications in response to Section 63.18(j) of the Commission's rules, the Applicant need not make a showing under Section 63.18(k) of the Commission's rules.

(15) **Resale of International Switched Services**³⁰

As the Applicant has certified above that it is not a foreign carrier and is not affiliated with a foreign carrier, it need not make a showing that it would satisfy Section 63.10(a)(3) or otherwise comply with the reporting requirements of Section 43.61(c) of the Commission's rules.³¹

(16) **Regulatory Classification of Applicant**³²

As the Applicant has certified above that it is not a foreign carrier and is not affiliated with a foreign carrier, the Applicant requests that the Commission treat it as non-dominant for purposes of this application. The Commission has otherwise granted the Applicant global facilities-based and global resale authority on a non-dominant basis.³³

²⁹ See 47 C.F.R. §§ 1.767(a)(8), 63.18(k).

³⁰ See 47 C.F.R. § 63.18(l).

³¹ See 47 C.F.R. §§ 63.10(a)(3), 43.61(c).

³² See 47 C.F.R. § 63.18(m).

³³ See *Public Notice: Overseas Common Carrier Section 214 Applications Actions Taken*, 12 FCC Rcd. 8254 (1997); FCC File Nos. ITC-T/C-19990803-00515, ITC-97-247.

(17) **Certification Regarding Special Concessions**³⁴

By the signature below, the Applicant certifies that it has not agreed, and will not agree in future, to accept any direct or indirect special concessions from a foreign carrier with respect to any U.S. international route where the foreign carrier possesses market power on the foreign end of the route.

(18) **Certification Regarding the Anti-Drug Abuse Act of 1988**³⁵

By the signature below, the Applicant certifies that it is not subject to a denial of federal benefits that includes FCC benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.³⁶

(19) **Streamlining**³⁷

This application does not qualify for streamlined processing under the Commission's rules.³⁸ The Applicant therefore does not request such processing.

III. PUBLIC INTEREST CONSIDERATIONS

A grant of this application would serve the public interest. By allowing the Applicant to compete in the market for international services, the Commission would ensure that other carriers and business customers would have greater access to, and choice among, innovative services and applications offered at lower prices on U.S.-Caribbean and U.S.-Latin America routes. The Commission would also provide

³⁴ See 47 C.F.R. § 63.18(n).

³⁵ See 47 C.F.R. §§ 1.2001-1.2003, 63.18(o).

³⁶ See 21 U.S.C. § 853(a).

³⁷ See 47 C.F.R. § 63.18(p).

³⁸ See 47 C.F.R. § 63.12.

international connectivity for the Applicant's domestic terrestrial network, the Enron Intelligent Network™. The Applicant's modification application raises no foreign affiliation or competition issues that would warrant Commission scrutiny on public interest grounds.

The Applicant takes very seriously its obligations under the Commission's rules. To that end, it has adopted systems to ensure full compliance going forward. In the present case, the Applicant does note that its failure to seek Commission approval prior to acquiring its very small equity stake in the Pan American cable system is mitigated by the fact that it has never used capacity on the Pan American cable system to provide services between the United States and foreign points. The Applicant respectfully requests that the Commission grant this application consistent with the enforcement amnesty recently announced by the Commission's International and Enforcement Bureaus.

CONCLUSION

For the foregoing reasons, the Commission should expeditiously grant this application to modify the cable landing license and related Section 214 authorization for the Pan American cable system, and to add Enron Broadband Services, Inc., as a licensee and authorization holder.

Respectfully submitted,

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5 March 2001