

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

Accepted/Files

DEC 31 2014

Federal Communications Commission
Office of the Secretary

In the Matter of)
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ARCOS-I USA, Inc.)
A.SurNet, Inc.)
Columbus Networks USA, Inc.)
 Licensees,)
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Columbus Networks, Limited)
 Transferor,)
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and)
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Cable & Wireless Communications Plc)
 Transferee)
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Application for Transfer of Control of)
Cable Landing Licenses)
)
Applications for)
)
Columbus Networks)
Telecommunications Services USA, Inc.)
and Columbus Networks Puerto Rico, Inc.)
Applications for Transfer of Control from)
Columbus Networks, Limited to)
Cable & Wireless Communications Plc)
_____)

File No. SCL-T/C-20141121-00013

File No. ITC-T/C-20141121-00304

File No. ITC-T/C-20141121-00307

Petition to Impose Protective Conditions

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SUMMARY

The proposed merger of Cable & Wireless Communications and Columbus Networks will have a substantial adverse impact on competition for telecommunications services between the United States and other foreign points. While the Applicants state that they will comply with dominant carrier safeguards with respect to all routes where they are affiliated with a dominant foreign carrier, this condition does not adequately address the adverse public interest impact which the proposed merger will generate. Digicel accordingly urges the Commission to impose additional protective conditions appropriate to the risks which the proposed merger presents, and consistent with the Commission's rules and policies.

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Petition to Impose Protective Conditions

In the above-captioned applications, Columbus Networks, Limited (“CNL” or “Columbus”) and Cable & Wireless Communications Plc (“C&W”) jointly seek authority for the transfer of control of ARCOS-I, USA, Inc. (“ARCOS”), A.Surnet, Inc. (“ASN”) and Columbus Networks USA, Inc. (“CNUSA”) (collectively “Applicants”), which hold submarine cable landing licenses for the ARCOS-1 and CFX-1 Networks

from CNL to C&W,¹ and Columbus Networks Telecommunications Services USA, Inc. (“CNTS”) and Columbus Networks Puerto Rico, Inc. (“CNPR”) request Commission consent for the transfer of control of their respective Section 214 authorizations from CNL to C&W (collectively, the “Applications”). By its attorney and pursuant to Public Notice Report Nos. SCL-00158S and TEL-01716S, both released December 19, 2014, and Sections 1.767 and 63.12 of the Commission’s rules, 47 C.F.R. §§ 1.767 and 63.12, Digicel International, Inc. and its subsidiaries (collectively, “Digicel”)² respectfully submit that the proposed merger will have a substantial adverse impact on competition for telecommunications services between the United States and other foreign points. Digicel urges the Commission to condition any grant of the Applications on the imposition of protective obligations on the Applicants to address these adverse consequences, as set forth herein.

I. Background

By the above-captioned applications, C&W and Columbus propose to merge their companies, with C&W acquiring complete control of Columbus and its affiliates. In the Caribbean region, where Columbus operates its core businesses, the acquisition will enable C&W to eliminate its primary competitor, and to consolidate and extend its market dominance. The public interest mandates that the

¹ ARCOS and ASN are jointly authorized by the Commission to operate the ARCOS-I fiber optic submarine cable system (the “ARCOS-I Cable”) under FCC File No. SCL-LIC-19981222-00032. CNUSA is authorized by the Commission to operate the CFX-1 fiber submarine cable system (the “CFX-1 Cable”) under FCC File No. SCL-LIC-20070516-00008.

² Digicel is an international mobile telecommunications carrier, with operations in 33 markets in the Caribbean, South America and Central America. Earlier this year, through its subsidiary Fiber Investment Holdings Investments Limited, IBC, it acquired control of Antilles Crossing – St. Croix, Inc., pursuant to Commission authority. See Public Notice DA 14-1311, released September 10, 2014. Its subsidiary Digicel USA, Inc., holds Section 214 international operating authority. File No. ITC-214-20031031-00520.

Commission address the adverse competitive impact which such a consolidation will harm the market for U.S. international telecommunications services through the imposition of protective conditions.

A. The Proposed Merger Will Consolidate and Expand C&W's Market Dominance in the Caribbean Region

In the Caribbean region, C&W has long been a dominant force in the provisioning of both intra-island and international telecommunications services. According to its 2014 Annual Report, C&W is “a partner in the largest undersea cable network in the Caribbean and Latin America,” with “key operations...in Panama and 14 Caribbean markets, including Jamaica, The Bahamas, Barbados and the Cayman Islands.”³ In fact, the company’s dominance is more pervasive and deeply embedded. In the Applications, C&W reports that it is affiliated with 17 foreign carriers in the region certified by the Commission as having market power serving Anguilla; Antigua and Barbuda; the Bahamas; Barbados; British Virgin Islands; Cayman Islands; Dominica; Grenada; Jamaica; Montserrat; St. Kitts and Nevis; Panama; St. Lucia; St. Vincent and Grenadines; Trinidad and Tobago; and Turks and Caicos.

In many of these islands, C&W operates under its LIME (Landline/Internet/Mobile/Entertainment) subsidiary, through which it has integrated its Caribbean business, often operating as the incumbent native carrier. Throughout the territory, the company serves 5.7 million residential customers with a comprehensive suite of fixed telephony, high-speed broadband, television and mobile services.

³ <http://www.cwc.com/live/annual-report/downloads/CWC%20AR%202014%20Web.pdf>.

To serve the Caribbean region, C&W operates and owns, in whole or in part, several submarine fiber optic cable systems, including the Eastern Caribbean Fiber Network (connecting Anguilla, Antigua and Barbuda, Barbados, Dominica, Grenada, Guadeloupe, Martinique, Montserrat, St. Kitts and Nevis, Saint Lucia, St. Maarten); the East-West Cable (connecting Jamaica, the British Virgin Islands, and the Dominican Republic); the Gemini Bermuda Cable (Bermuda; US); the Caribbean-Bermuda US Network (Bermuda; BVI); Americas II (Brazil; Curacao; French Guiana; Martinique; Trinidad and Tobago; USVI; US; Venezuela); and the Pacific Caribbean Cable System (Panama; Colombia; Aruba; Ecuador; Puerto Rico; BVI; mainland US); the Pan-Am Network (connecting the US, Chile, Aruba, Colombia, Panama, Peru, Ecuador and Venezuela); the Maya-1 Cable System (connecting the US, Cayman Islands, Mexico, Colombia, Panama, Honduras and Costa Rica); and BDSNi (connecting The Bahamas and Haiti).

C&W's leading competitor in the Caribbean region is Columbus, a diversified telecommunications and technology services company which provides digital cable television, high-speed internet access and IP telephony services in Trinidad, Jamaica, Barbados, Grenada, Curacao, St. Lucia and St. Vincent and the Grenadines under the brand name "Flow" and in Antigua under the brand name "Karib Cable." Through the deployment of its vast submarine and terrestrial fiber optic networks, Columbus also provides telecommunications capacity and IP services to large international telecommunications carriers, internet service providers and wholesale value-added services providers, for service to 42 countries in the Caribbean, Central America and Andean regions.

Like C&W, Columbus operates and owns, in whole or in part, several submarine fiber optic cable systems serving the Caribbean region. These include, in addition to ARCOS (connecting the US, Belize, Nicaragua, Mexico, Bahamas, Panama, Guatemala, Honduras, Costa Rica, Dominican Republic, Colombia, Curacao, and Venezuela) and CFX-1 (connecting the US, Jamaica and Colombia), Fibralink (connecting Haiti, Jamaica and the Dominican Republic), the Americas-II Network; the Maya-1 Cable System; ECLink (connecting Trinidad and Tobago and Curacao); the Pan-Am Network; Antillas-1 (connecting the US and the Dominican Republic); and Taino Carib (connecting Puerto Rico and the US Virgin Islands).

In May 2013, C&W and Columbus took the first step toward consolidating their businesses, and ceasing competition among themselves, by forming CNL-CWC Networks Ltd., a joint venture “to provide expanded wholesale bandwidth to global, regional and local communications in the Caribbean and Americas Region.”⁴ In a press release announcing their coalition, the companies referenced their “complementary networks,” and stated that “after completing multiple network interconnections, the joint venture will offer wholesale customers an expanded network platform that spans more than 42,000 kilometres and reaches 42 countries in the region.” Paul Scott, the President of Columbus, boasted that “wholesale customers will be able to take advantage of expanded network reach and service benefits by doing business with a company that can provide more bandwidth and

⁴ <http://www.columbuscommunications.com/index.php/company-profile-3/our-news/108-columbus-networks-and-cwc-form-jv-to-expand-subsea-network>.

broader reach, faster and better. With this joint venture, one plus one equals three.”⁵

Neither Columbus nor CWC sought US regulatory approval for their joint venture.

Today, C&W and Columbus operate entrenched duopolies for fixed telephone, residential internet, and cable television services in no less than six Caribbean nations: Jamaica; Barbados; Trinidad and Tobago; Grenada; St. Lucia; and St. Vincent and Grenadines. Together (and in some cases alone), C&W and Columbus also control the sole international submarine cable connections for many of these nations: Jamaica (through the C&W East-West and Cayman-Jamaica Fiber System and the Columbus Fibralink and CFX systems); Cayman Islands (through the C&W Cayman-Jamaica Fiber System and the Maya-1 System in which both C&W and Columbus hold ownership interests); the British Virgin Islands (C&W East West Cable, Pacific Caribbean Cable System, and Caribbean Bermuda US Cable); Anguilla (C&W ECFS cable); and Turks and Caicos (Columbus ARCOS cable).

Regulators in the Caribbean region have already expressed “deep concern” regarding the potential negative impact of the proposed merger on competition and customer choice, and actively reviewing the transaction.⁶

⁵ *Id.*

⁶ See November 2014 Communique of Eastern Telecommunications Regulatory Authority, [http://www.ectel.int/images/ECTEL-NOTICES/ECTEL Communique.pdf](http://www.ectel.int/images/ECTEL-NOTICES/ECTEL%20Communique.pdf). See also December 4, 2014 Closing Statement of ECTEL, [http://www.ectel.int/images/ECTEL-NOTICES/ECTEL Council of Ministers meeting Closing Statement.pdf](http://www.ectel.int/images/ECTEL-NOTICES/ECTEL%20Council%20of%20Ministers%20meeting%20Closing%20Statement.pdf).

II. Standard for Review

Pursuant to Section 214(a) of the Communications Act of 1934, as amended, 47 U.S.C § 214(a), and Sections 34 through 39 of the Cable Landing License Act, 47 U.S.C. §§ 34-39, the Commission must determine whether the proposed transfer of control to C&W will serve the public interest, convenience and necessity.⁷ In making this determination, the Commission must first assess whether the proposed transaction complies with the specific provisions of the Act, other applicable statutes, and the Commission's rules. If the proposed transaction would not violate a statute or rule, the Commission considers whether it could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes. The Commission then employs a balancing test weighing any potential public interest harms of the proposed transaction against the proposed public interest benefits. The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest. If the Commission is unable to find that the proposed transaction serves the public interest, or if the record presents a substantial and material question of fact, it must designate the applications for hearing.⁸

As the Commission has stated, its competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to,

⁷ *In the Matter of Applications filed by Global Crossing Limited and Level 3 Communications Inc. for Consent to Transfer of Control*, DA 11-1643, released September 29, 2011, ¶ 10 (“*Global Crossing*”).

⁸ *Id.*

traditional antitrust principles. The Department of Justice (DOJ) reviews telecommunications mergers pursuant to section 7 of the Clayton Act, and if it wishes to block a merger, it must demonstrate to a court that the merger may substantially lessen competition or tend to create a monopoly. Under the Commission's review, the applicants must show that the transaction will serve the public interest; otherwise the application is set for hearing. DOJ's review is also limited solely to an examination of the competitive effects of the acquisition, without reference to other public interest considerations. The Commission's competitive analysis under the public interest standard is somewhat broader—for example, it considers whether a transaction will enhance, rather than merely preserve, existing competition, and takes a more extensive view of potential and future competition and its impact on the relevant market.⁹

The Commission's analysis recognizes that a proposed transaction may lead to both beneficial and harmful consequences. Its public interest authority enables us, where appropriate, to impose and enforce narrowly tailored, transaction-specific conditions to ensure that the public interest is served. Section 214(c) of the Act authorizes the Commission to impose "such terms and conditions as in its judgment the public convenience and necessity may require." Indeed, unlike the role of antitrust enforcement agencies, the Commission's public interest authority enables it to rely upon its extensive regulatory and enforcement experience to impose and enforce conditions to ensure that the transaction will yield overall public interest benefits. In using this broad authority, the Commission has generally imposed

⁹ *Id.* at ¶ 12.

conditions to remedy specific harms likely to arise from transactions and that are related to the Commission's responsibilities under the Act and related statutes.¹⁰

III. The Applications Should Be Granted Subject to Protective Conditions

Digicel does not oppose the grant of the above-captioned applications. For the reasons set forth herein, however, the grant of these applications would pose a substantial threat to competition in the U.S. international telecommunications service market, unless certain protective conditions are imposed to prevent market abuse.

A. The Proposed Merger Poses Substantial Anticompetitive Threats to the International Transport Market Along Caribbean-US Routes

In their applications, C&W and Columbus assert that the market for international transport in Latin America and the Caribbean is "very competitive," with the combined market share of the Applicants at less than 20%, and that carriers "will continue to have a range of capacity options across the highly competitive Americas market." ARCOS Application, page 7. In fact, however, the proposed merger will have a substantial adverse impact on competition in several markets within the region, drastically reducing carrier options.

The Commission employs a regional approach in analyzing the international transport market, although at times it also has examined international transport capacity on particular routes. Typically, it evaluates submarine cable capacity in the Atlantic, Pacific, and the Americas regions. Its concern is whether the proposed merger could increase ownership concentration to such an extent that the combined

¹⁰ *Id.* at ¶ 13.

entity would have the ability to exercise market power through unilateral or coordinated action. It examines existing submarine cable capacity and takes into account future capacity that may be achieved through the use of new technology and upgrades to the submarine cables within the next two years.¹¹

In the instant case, as noted above, both C&W and Columbus have substantial ownership interests in submarine fiber optic cable systems serving the Caribbean region. In addition to their own separate networks, they each hold ownership interests in other systems serving the region, including the Maya-1 network, Americas-II, and Pan-Am Network. In many cases, their systems overlap and compete; in others, one or the other controls the sole international submarine cable connections for many of these nations.

The markets which will experience the greatest adverse impact from the proposed transaction, where carrier choices and competition will be most narrowly constrained, are: Jamaica, the Cayman Islands, the Dominican Republic, Haiti, the British Virgin Islands, Anguilla, and Turks and Caicos. In Jamaica, there are currently five cables, four of which (CFX, Fibralink, East-West, and CJFS) are owned by C&W and/or Columbus. Post-transaction, these four cables will be under C&W's monopoly control, including the one system (CFX) that has a direct link to the United States. The fifth cable, ALBA-1, connects Jamaica only to Cuba and Venezuela.

Equally affected would be the Cayman Islands, which currently have only two fiber optic submarine systems, CJFS, owned by C&W, and Maya-1, in which both

¹¹ *Id.* at ¶ 31.

C&W and Columbus hold ownership interests. Following the transfer of control, both of these connections will be under C&W's monopoly control. This adverse impact is compounded by the fact that the Caymans' only connectivity in the Caribbean region is to Jamaica, which, as noted above, will also be under C&W's sole control.

The Dominican Republic will experience a comparable adverse impact. At present, the Dominican Republic is served by five cables, four of which (ARCOS, Antillas-1, Fibralink and East-West) are owned in whole or in part by C&W and Columbus. Following the transfer of control, ownership in all four will be held by C&W, with a direct connection to the US.

Similarly affected will be Haiti, which is currently served by only two submarine fiber systems: the Columbus Fibralink network, which connects to the Dominican Republic and Jamaica, and BDSNi, in which C&W holds a major ownership interest through its subsidiary Bahamas Telecommunications Company.

The proposed merger will also consolidate and expand C&W's market dominance in the British Virgin Islands, in which C&W currently holds ownership interests in all three of the submarine fiber optic cables providing connectivity to the United States and within the region (East-West Cable, Pacific Caribbean Cable Systems, and the Caribbean Bermuda US cable); Anguilla, whose sole connectivity is through the C&W ECFS cable; and Turks and Caicos, whose sole connectivity is through the ARCOS cable.

B. The Proposed Merger will Consolidate and Entrench C&W's Market Dominance

In their Application, C&W and Columbus also assert that their proposed merger will “not result in any anticompetitive effects,” and “will enhance competition in an already competitive market.” ARCOS Application, pp. 6, 7. In fact, however, the Commission itself has recognized, and Applicants concede, that C&W foreign affiliates are dominant in no less than 17 Caribbean nations (see p. 3 above).¹² In six of these markets, C&W and Columbus affiliates currently enjoy entrenched duopolies for fixed telephone, residential internet and cable television service (Jamaica; Barbados; Trinidad and Tobago; Grenada; St. Lucia; and St. Vincent and Grenadines). The merger will eliminate retail competition between the two firms and create a pure monopoly provider. In each of these nations, the proposed merger will also create new foreign carrier affiliations for C&W through entities currently affiliated with Columbus. See ARCOS Application, pp. 15-16. The parties' bold assertion that their proposed merger will enhance competition in the face of these certain consequences strains credulity.

IV. Prayer for Relief

Both the ARCOS-1 and CFX submarine fiber optic cable systems are currently licensed as non-common, private carrier entities, and the Section 214 authorizations currently held by Columbus enjoy blanket non-dominant status. Digicel respectfully submits, however, that the proposed merger will radically transform Columbus and its networks, warranting reclassification of its regulatory status. The substantial

¹² https://apps.fcc.gov/edocs_public/attachmatch/DA-07-233A1.pdf.

market dominance which C&W currently wields in the Caribbean region further makes plain that standard terms and conditions governing carriers with market dominance would not be sufficient in this case to detect and deter anticompetitive conduct in certain markets where C&W's stranglehold on competition is especially evident. Digicel therefore urges the Commission, if it decides to grant the above-captioned applications, to impose the following protective conditions:

A. The Merged Entity Should be Regulated as Dominant on All Routes Where It Will Possess Market Power Through a Foreign Affiliate

As part of its public interest analysis under Section 214 of the Act, the Commission must consider whether the transaction will lead the international Section 214 authorization holders to have foreign carrier affiliations that cause it to be dominant on any international route. Under the rules adopted in the Commission's Foreign Participation Order, the Commission classifies a U.S. carrier as "dominant" on a particular international route if it is, or is affiliated with, a foreign carrier that has market power on the foreign end of that route. A dominant carrier is subject to specific international dominant carrier safeguards set forth in Section 63.10 of the rules. These safeguards are designed to address the possibility that a foreign carrier with control over facilities or services that are essential inputs for the provision of U.S. international services could discriminate against rivals of its U.S. affiliates.¹³

Similarly, under Section 1.767(a)(8) and (a)(11) and Section 1.768 of the Commission's rules, a submarine cable licensee that proposes to transfer control of

¹³ *Global Crossing* at ¶ 34.

an interest in a submarine cable landing license pursuant to the Cable Landing License Act is required to disclose if it will become affiliated with a foreign carrier as a result of the transfer of control. For purposes of this rule, a “foreign carrier” includes any entity that owns or controls a cable landing station in a foreign market. The Commission applies competitive safeguards to a cable landing license held by a licensee that is, or is affiliated with, a carrier with market power in relevant input markets on the foreign end of the cable that could result in harm to competition in the U.S. market. Relevant foreign carrier input markets include those facilities or services for the landing, connection, or operation of submarine cables.¹⁴

In the instant case, as C&W and Columbus state in their applications, the Commission has certified that C&W is affiliated with 17 foreign carriers possessing market power in the following Caribbean markets: Anguilla; Antigua and Barbuda; the Bahamas; Barbados; British Virgin Islands; Cayman Islands; Dominica; Grenada; Jamaica; Montserrat; St. Kitts and Nevis; Panama; St. Lucia; St. Vincent and Grenadines; Trinidad and Tobago; and Turks and Caicos. In each of these markets, C&W and/or Columbus own and control not only local facilities, but cable landing stations connecting their submarine fiber optic systems. In their filings, the Applicants have conceded their foreign affiliations, and certified that they will comply with dominant carrier regulation along each of these affected routes. Accordingly, pursuant to its long-standing rules and policies, the Commission should classify the merged entity as dominant on each of the U.S. routes to these

¹⁴ *Id.* at ¶ 35.

destinations, and impose the full panoply of standard protective safeguards under its rules applicable to U.S. carriers with such foreign affiliations.¹⁵

B. The ARCOS and CFX Networks Should be Reclassified as Common Carrier Systems

At present, both the ARCOS and CFX submarine fiber optic networks are classified as private carrier systems under the Commission's private submarine cable policy.¹⁶ In light of the monopoly control which the merged entity will have on critical cable landing and transport facilities in the region, Digicel respectfully submits that the systems should be reclassified as common carrier entities, subject to the full panoply of common carrier regulation.

¹⁵ The Foreign Carrier List currently applies for purposes of implementing the following Commission rules: section 1.767(g)(5) (involving the prohibition on authorized U.S. cable landing licensees agreeing to accept special concessions), 47 C.F.R. § 1.767(g)(5); section 63.14 (involving the prohibition on authorized U.S.-international common carriers agreeing to accept special concessions), 47 C.F.R. § 63.14; and section 63.22(f) (involving the terms and conditions of certain agreements entered into by U.S.-international common carriers authorized to provide facilities-based switched voice service on the U.S.-Cuba route), 47 C.F.R. § 63.22(f). See 2012 ISP Reform Order, FCC 12-145. In addition, pursuant to Section 1.767(l) of the Commission's rules, 47 C.F.R. § 1.767(l), carriers like C&W affiliated with a foreign carrier with market power in a WTO destination market are required to: (1) File quarterly reports summarizing the provisioning and maintenance of all network facilities and services procured from the licensee's affiliate in that destination market, within ninety (90) days from the end of each calendar quarter. These reports shall contain the following: (i) The types of facilities and services provided (for example, a lease of wet link capacity in the cable, collocation of licensee's equipment in the cable station with the ability to provide backhaul, or cable station and backhaul services provided to the licensee); (ii) For provisioned facilities and services, the volume or quantity provisioned, and the time interval between order and delivery; and (iii) The number of outages and intervals between fault report and facility or service restoration. Rule Section 1.767(l) also requires such licensees to file quarterly, within 90 days from the end of each calendar quarter, a report of its active and idle 64 kbps or equivalent circuits by facility (terrestrial, satellite and submarine cable).

¹⁶ See, e.g., *Tel-Optik Limited, Application for a License to Land and Operate in the United States a Submarine Cable Extending Between the United States and the United Kingdom*, File Nos. I-SCL-84-002, I-SCL-84-003, *Submarine Lightwave Cable Company, Application for a License to Land and Operate in the United States a High Capacity Fiber Optic Digital Submarine Cable Extending between the United States and other North American Countries, on the one hand, and European Countries, on the Other Hand*, Memorandum Opinion and Order, 100 FCC 2d 1033, 1040-42, paras. 18-20, 1046-48, paras. 27-31 (1985) (*Tel-Optik Order*); *Cable & Wireless, PLC, Application for a License to Land and Operate in the United States a Private Submarine Fiber Optic Cable Extending Between the United States and the United Kingdom*, File No. SCL-96-005, Cable Landing License, 12 FCC Rcd 8516 (1997) (*Cable and Wireless Order*).

Pursuant to its private submarine cable policy, the Commission has authorized non-common carrier cables where: (1) there is no legal compulsion to serve the public indifferently; and (2) there are no reasons implicit in the nature of the operations to expect that the applicant would make capacity available to the public indifferently and indiscriminately. *See, e.g., Cable & Wireless, USA, Inc.*, DA 01-1395, released June 8, 2001, ¶ 6. While this relaxed regulatory classification may have been appropriate for the ARCOS and CFX networks when they were initially licensed, they are clearly inappropriate where, as here, the merged entity will not only be affiliated with a foreign carrier with market control, but, through its affiliates, will have absolute monopoly control over landing facilities in Jamaica, the Cayman Islands, the Dominican Republic, Haiti, the British Virgin Islands, Anguilla, and Turks and Caicos, as well as monopoly control of fixed telephone, residential internet, and cable television services in Jamaica, Barbados, Trinidad and Tobago, Grenada, St. Lucia, and St. Vincent and Grenadines.

In this regard, C&W's certification that "it is not a foreign carrier, and does not directly own a cable landing station in any foreign country," ARCOS Application, p. 14, is self-serving and ingenuous at best. As noted above, and as C&W concedes elsewhere in its filings, it has many affiliations with foreign carriers in the region, many of which carry the C&W name. It is perhaps through one of these "unaffiliated", "indirect" entities that the landing stations for C&W's various submarine cables in the region, such as the Cayman-Jamaica Fiber System, are owned. In any event, through its merger with Columbus, C&W will own landing

stations presently owned by Columbus in Jamaica, the Bahamas, Turks & Caicos and the Dominican Republic.

Under the Commission's rules and policies, common carrier entities, particularly those that are classified as dominant, are subject to the full panoply of Commission regulations governing common carriers. Such regulation should apply in this case to the submarine fiber optic cable networks Cable & Wireless is acquiring.

C. Rate Cap Regime for International Circuits

In light of the monopoly control that the merged entity will have on critical cable landing and transport facilities in the region, Digicel respectfully submits that the Commission's standard protective conditions for dominant common carriers do not adequately protect against anti-competitive abuses in this instance. This is particularly the case with respect to Jamaica, the Cayman Islands, the Dominican Republic, Haiti, the British Virgin Islands, Anguilla, and Turks and Caicos, where the monopoly control of the merged entity over international cable access and transport facilities presents an extraordinary, unprecedented threat to competition for other US carriers seeking entry into those markets, which the Commission's standard protective conditions do not adequately address.

Digicel respectfully submits that more stringent conditions are in order. Specifically, to detect and prevent competitive abuses in those markets, Digicel respectfully urges the Commission to condition the grant of the above-captioned applications on C&W's duty to cap its rates for access and capacity to and from the aforementioned markets at the same level as it will charge its own affiliates and

subsidiaries, and to file these charges, and the methodology and calculations for developing them, with the Commission. The process for calculating these rates should be completely transparent, so as to prevent further market abuses.

D. Unauthorized Transfer of Control Inquiry

In their joint applications, C&W and Columbus fail to disclose to the Commission their 2013 joint venture which, according to press reports, appears to have effectuated a *de facto* transfer of control of the Columbus networks, and creation of an integrated C&W-Columbus network. Since the details of this arrangement are somewhat murky, and wholly within the parties' purview, Digicel respectfully urges the Commission to direct the parties to submit the formative documents of their joint venture to the Commission, with an explanation of why their existing partnership did not require prior Commission approval, and to request comments from Digicel and other interested parties.

E. Conclusion

For the reasons set forth above, Digicel respectfully submits that will have a substantial adverse impact on competition for telecommunications services between the United States and other foreign points. Digicel urges the Commission to condition any grant of the Applications on the imposition of protective obligations on the Applicants to address these adverse consequences, as set forth above.

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December 31, 2014

CERTIFICATE OF SERVICE

I, Eric Fishman, do hereby certify that on this 31st day of December 2014, a copy of the foregoing Petition to Impose Protective Conditions was served via electronic mail to the persons listed below:

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