The Pan-American Crossing submarine cable system ("PAC") has historically operated, and continues to operate, on a non-common-carrier basis. Maintaining PAC's non-common-carrier status is consistent with longstanding Commission policy and precedent and serves the public interest. Historically, capacity on the system has been made available through individually negotiated arrangements rather than through standardized offerings available to the public at large and does not possess market power in the region.

Under *National Association of Regulatory Utility Commissioners v. FCC* ("NARUC I"), a common-carrier status is to undertake to carry for all people indifferently, and an entity is not acting as a common carrier where it makes individualized decisions, in particular cases, whether and on what terms to deal.[1] PAC does not hold itself out as offering capacity indiscriminately to the public. Rather, capacity on the system is made available pursuant to individually negotiated commercial arrangements, and Cirion retains discretion regarding customer selection and service terms. Consistent with these characteristics, the FCC's original cable landing license order found that PAC would operate as a "private fiber optic submarine cable system" on a "non-common carrier basis." Accordingly, PAC continues to be appropriately classified as a non-common-carrier submarine cable system under the NARUC I analysis.

Moreover, there is no legal or public-interest basis for requiring PAC to transition from non-common-carrier operation to common-carrier operation. Under the NARUC I framework, the Commission considers whether the nature of the service offered and the public interest warrant common-carrier treatment.[2] PAC does not possess market power that

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[1] *National Ass'n of Regulatory Utility Com'rs v. FCC*, 525 F.2d 630, 173 U.S.App.D.C. 413 (D.C. Cir. 1976), 641

[2] *National Ass'n of Regulatory Utility Com'rs v. F. C. C.*, 525 F.2d 630, 173 U.S.App.D.C. 413 (D.C. Cir. 1976)

would justify reclassification, nor does its operation raise any competitive or public-interest concerns that would support imposing common-carrier obligations.

The PAC operates in a competitive marketplace with competition from other submarine cable systems on the route. Customers may obtain comparable services through alternative submarine cable systems serving the United States, Mexico, and Latin America, including ARCOS-1, AMX-1, Maya-1, Trans America Fiber System (TAM-1), and the Pacific Caribbean Cable System (PCCS), among others. These cable systems provide alternative routes and international transmission capacity for wholesale, enterprise, and carrier customers throughout the region.