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Federal Communications Commission (F.C.C.)

Cable Landing License

***1** IN THE MATTER OF PAC LANDING CORP.

Application for a license to land and operate in the United States a private fiber optic submarine cable system extending among the United States mainland, Mexico, Panama, Venezuela and the U.S. Virgin Islands.

File Nos. **SCL-LIC-19981103-00022** SCL-LPN-19990129-00001

DA 99-510

Adopted: March 15, 1999

Released: March 18, 1999

****3989** By the Chief, Telecommunications Division:

I. Introduction

1. In this Order, we grant the application of PAC Landing Corp. under the Cable Landing License Act [FN1] for authority to land and operate a private fiber optic submarine cable system to be called "Pan American Crossing" or "PAC," extending among the U.S. mainland, Mexico, Panama, Venezuela and the U.S. Virgin Islands. This system will be operated on a non-common carrier basis. We find that PAC Landing Corp. has provided sufficient information under our rules to comply with the Cable Landing License Act and that it would serve the public interest to grant the cable landing license subject to the conditions listed below.

II. Application

2. PAC Landing Corp., a Delaware corporation, is an indirect wholly owned subsidiary of Pan American Crossing Ltd., a Bermuda company, which, through a series of intermediate holding companies, is an indirect wholly-owned subsidiary of Global Crossing Ltd., a Bermuda company which is majority owned by U.S. interests. PAC Landing Corp. will own the Grover Beach and St. Croix cable station terminal equipment, and the U.S. territory portions of PAC from the landing stations to one-half mile beyond the U.S. territorial limit.

3. The proposed PAC system will connect: (1) Grover Beach, California; (2) Tijuana, Mexico; (3) Mazatlan, Mexico; (4) Fort Amador, Panama; (5) Ambush Range, Panama; (6) Puerto Viejo, Venezuela; and (7) St. Croix, U.S. Virgin Islands. PAC will be a state-of-the-art, optically amplified fiber system, initially consisting of two operational optical fiber pairs in each of the undersea segments and a

single operational fiber pair in each of the two diverse terrestrial segments between **3990 Fort Amador and Ambush Range. [FN2] The system will employ a self-healing, collapsed ring architecture, with wavelength division multiplexing. The wet plant design will initially support 10 gigabits per second (Gbps) of capacity on each fiber pair between terminal stations for service. Given the system's collapsed ring configuration, transmission capacity will be 20 Gbps, upgradable to a minimum of 40 Gbps using dense wavelength division multiplexing. The Minimum Capacity Unit (MCU) will be an STM-1 (155 Mbps). Additionally, capacity may be made available for sale at the DS-3 level (45 Mbps). The system will be capable of supporting 128 STM-1 MCUs.

4. As shown in Exhibit A of the application that is attached to this order, PAC will consist of nine segments: Segment 1 will include the whole of the submarine cable system between and including System Interface at the cable station at Grover Beach, California and Branching Unit 1. Segment 2 will include the whole of the submarine cable system between and including the Branching Unit 1 and the System Interface at the cable station in Tijuana, Mexico. Segment 3 will include the whole of the submarine cable system between and including Branching Unit 1 and Branching Unit 2. Segment 4 will include the whole of the submarine cable system between and including Branching Unit 2 and the System Interface at the cable station in Mazatlan, Mexico. Segment 5 will include the whole of the submarine cable system provided between and including Branching Unit 2 and the System Interface at the cable station in Fort Amador, Panama, as well as Branching Unit 3, which will allow for a potential additional landing or interconnection. Segments 6A and 6B will include the whole of the submarine cable system between and including the System Interface at the cable station in Fort Amador, Panama and the cable station in Ambush Range, Panama. Segment 7 will include the whole of the submarine cable system provided between and including the cable station in Ambush Ridge, Panama and Branching Unit 4. Segment 8 will include the whole of the submarine cable system between and including Branching Unit 4 and the System Interface at the cable station in Puerto Viejo, Venezuela. Segment 9 will include the whole of the submarine cable system provided between and including Branching Unit 4 and the System Interface at the cable station in St. Croix, U.S. Virgin Islands. [FN3] Operation of the PAC system is anticipated to begin in February, 2000.

III. Comments

*2 5. The application was placed on public notice on November 13, 1998. Tyco Submarine Systems Ltd. (Tyco) filed comments in support of the application. We received no other comments. Pursuant to Section 1.767(b) of the Commission's rules, [FN4] the Cable Landing License Act, and [Executive Order No. 10530](#), we informed the Department of State of the application. [FN5] The Department **3991 of State, after coordinating with the National Telecommunications and Information Administration and the Department of Defense, stated that it has no objection to issuance of the cable landing license. [FN6]

IV. Discussion

A. Private Submarine Cable Policy

6. PAC Landing Corp. proposes to operate PAC as a non-common carrier system in which capacity will not be offered indifferently to the user public. PAC Landing Corp. requests a license under the Commission's private submarine cable policy, which is intended to promote competition in the provision of international transmission facilities. [FN7] Pursuant to this 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. [FN8]

7. In applying the first prong of the test to submarine cable authorizations, the Commission has stated that there will be no legal compulsion to serve the public indifferently where there is no public interest reason to require facilities to be offered on a common carrier basis. This public interest analysis has generally focused on whether an applicant will be able to exercise market power because of the lack of alternative facilities. Where there are sufficient alternatives, the Commission has found that the licensee will lack market power and will not be able to charge monopoly rates for cable capacity. The Commission has found that, in those circumstances, the public interest would be served by allowing a submarine cable to be offered on a non-common carrier basis. [FN9]

8. No one has suggested that the public interest requires PAC to be operated on a common carrier basis. PAC is not affiliated with any foreign carriers on the foreign ends of the cable system and therefore does not control any bottleneck facilities in the markets PAC proposes to serve. No commenter has disputed this fact, and we find that, in light of all the circumstances, it would not serve the public interest to impose common carrier regulation on the operations of PAC at this time. We note, however, that we retain the authority to impose common carrier or common-carrier-like obligations on the operations of this or any other submarine cable system if the public interest so ****3992** requires. [FN10] Furthermore, we have always maintained the authority to classify facilities as common carrier facilities subject to Title II of the Communications Act if the public interest requires that the facilities be offered to the public indifferently. [FN11]

***3** 9. Regarding the second prong of the test, we conclude that there is no reason to expect that capacity in the proposed cable system would be held out to the public indifferently. PAC Landing Corp. states that capacity will not be sold indifferently to the user public. Instead, capacity will be assigned pursuant to individualized decisions, and bulk capacity will be offered to a specific class of eligible users. Users of bulk capacity will be able to obtain capacity on the system on the basis of indefeasible rights of user (IRUs). We therefore conclude that PAC Landing Corp. will operate PAC on a non-common carrier basis.

10. We conclude that PAC Landing Corp. will not offer capacity in PAC to the public on a common carrier basis and that the public interest does not require that they do so. Accordingly, we conclude that it is appropriate to license PAC on a non-common carrier basis. We also find that the applicant will not provide a telecommunications service for a fee to such class of users as to be "effectively available directly to the public" and thus will not be "telecommunications carriers" under the 1996 Act. [FN12]

B. Ownership and Landing Points

11. PAC Landing Corp. has provided the ownership information required by Section 63.18(e)(6), 1.767(a)(6), and Section 63.18(h) of the Commission's rules. PAC Landing Corp. is ultimately controlled by Global Crossing Ltd.. PAC Landing Corp. will lease space in the building that houses the Grover Beach cable station, and will lease or own the building that houses the St. Croix cable station. PAC Landing Corp. will own the Grover Beach and St. Croix cable station terminal equipment, and the U.S. territory portions of PAC from the landing stations to the points that are one-half mile beyond the U.S. territorial limit. Wholly owned subsidiaries of Pan American Crossing Ltd. will own or lease space in the Panama and Venezuela landing stations and will own the Panama and Venezuela cable station terminal equipment, and the Panama and Venezuela territory portions of PAC from the landing stations to the points that are one-half mile beyond the Panama and Venezuela territorial limits. A Mexican entity, owned 49 percent by Pan American Crossing Ltd., will lease space in the Mexican landing stations and will own all Mexican territory PAC assets that it is required to own under the terms of its license. The buildings which will house the Mexican landing stations and the remaining Mexican-territory portions of PAC not owned by the Mexican licensee will be owned by a wholly owned subsidiary of Pan American Crossing Ltd. Pan American Crossing Ltd. will own, directly or indirectly, the remaining portions of PAC.

****3993** 12. The applicant states that during the pendency of the application, it will become affiliated within the meaning of Section 63.18(h) (1)(A) of the Commission's rules with a Japanese foreign carrier, Global Access Ltd., through Global Crossing Ltd.'s proposed minority investment in Global Access Ltd. Global Access Ltd. is a start-up venture that was recently granted a Japanese Type-1 Telecommunications License. Because the proposed cable does not land in Japan we find that this affiliation does not affect grant of the Cable Landing License.

***4** 13. PAC Landing Corp. has complied with Section 1.767(a)(5) of the Commission's rules by providing specific information on the cable landing locations: Grover Beach, California; Tijuana, Mexico; Mazatlan, Mexico; Fort Amador, Panama; Ambush Range, Panama; Puerto Viejo, Venezuela; and St. Croix, U.S. Virgin Islands. [FN13] This license is therefore not subject to any further public notice or Commission approval of the cable system's landing points pursuant to the procedure in Section 1.767(a)(5) of the Commission's rules.

C. Environmental Impact

14. Based on the information provided by the applicant and pursuant to the Commission's procedures implementing the National Environmental Policy Act of 1969, [FN14] we find that action on the present application would not significantly affect the environment according to Section 1.1307(a) or (b) of the Commission's rules. Therefore, pursuant to Section 1.1306 of the Commission's rules, we conclude that grant of the requested license would not significantly affect the environment. Consequently, PAC Landing Corp. is not required to submit an environmental assessment, and this application is categorically excluded from environmental processing.

V. Conclusion

15. We grant PAC Landing Corp.'s application for authority to land and operate a non-common carrier fiber optic submarine cable extending among the United States mainland, Mexico, Panama, Venezuela and the U.S. Virgin Islands, subject to the conditions listed below.

VI. Ordering Clauses

16. Consistent with the foregoing and pursuant to the Cable Landing License Act and [Executive Order 10530](#), we hereby GRANT AND ISSUE PAC Landing Corp. a license to land and operate a non-common carrier fiber optic cable system (consisting of two optical fiber pairs, with 20 Gbps capacity upon completion, and upgradeable to 40 Gbps) extending among the United States mainland, Mexico, Panama, Venezuela and the U.S. Virgin Islands. This grant is subject to all rules and regulations of the Federal Communications Commission (Commission); any treaties or conventions relating to communications to which the United States is or may hereafter become a party; any action by the Commission or the Congress of the United States rescinding, changing, modifying, or amending any rights accruing to any person hereunder; and the following conditions:

****3994** (1) The location of the cable system within the territorial waters of the United States, its territories and possessions, and upon its shore shall be in conformity with plans approved by the Secretary of the Army, and the cable shall be moved or shifted by the Licensee at its expense upon the request of the Secretary of the Army whenever he or she considers such course necessary in the public interest, for reasons of national defense, or for the maintenance or improvement of harbors for navigational purposes;

(2) The Licensee shall at all times comply with any requirements of U.S. government authorities regarding the location and concealment of the cable facilities, buildings, and apparatus for the purpose of protecting and safeguarding the cable from injury or destruction by enemies of the United States;

***5** (3) The Licensee or any persons or companies controlling it, controlled by it, or under direct or indirect common control with it do not enjoy and shall not acquire any right to handle traffic on a common carrier basis to or from the

United States, its territories, or its possessions unless such service be authorized by the Commission pursuant to Section 214 of the Communications Act, as amended;

(4) The Licensee or any persons or companies controlling it, controlled by it, or under direct or indirect common control with it shall not acquire or enjoy any right for the purpose of handling or interchanging traffic to or from the United States, its territories, or its possessions to land, connect, or operate cables or land lines, to construct or operate radio stations, or to interchange traffic, that is denied to any other United States company by reason of any concession, contract, understanding, or working arrangement to which the Licensee or any persons controlling it, controlled by it, or under direct or indirect common control with it are parties;

(5) Neither this license nor the rights granted herein shall be transferred, assigned, or in any manner either voluntarily or involuntarily disposed of or disposed of indirectly by transfer of control of the Licensee to any persons, unless the Commission shall give prior consent in writing;

(6) Pursuant to Section 2 of the Cable Landing License Act, 47 U.S.C. § 35; Executive Order No. 10530, as amended; and Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, the Commission reserves the right to impose additional common carrier or common-carrier-like regulation on the operations of the cable system if it finds that the public interest so requires;

(7) The Commission reserves the right to require the Licensee to file an environmental assessment or environmental impact statement should it determine that the landing of the cable at those locations and construction of necessary cable landing stations would significantly affect the environment within the meaning of Section 1.1307 of the Commission's procedures implementing the National Environmental Policy Act of 1969; this license is subject to modification by the Commission upon its review of any environmental assessment or environmental impact statement that it may require pursuant to its rules;

****3995** (8) The Licensees shall maintain de jure and de facto control of the U.S. portion of the cable system, including the cable landing stations in the United States, sufficient to comply with the requirements of this license;

(9) This license is revocable by the Commission after due notice and opportunity for hearing pursuant to Section 2 of the Cable Landing License Act, 47 U.S.C. § 35, or for failure to comply with the terms of the authorizations;

***6** (10) The Licensee shall notify the Commission in writing of the date on which the cable is placed in service, and this license shall expire 25 years from such date, unless renewed or extended upon proper application, and, upon expiration of this license, all rights granted under it shall be terminated; and

(11) The terms and conditions upon which this license is given shall be accepted by the Licensee by filing a letter with the Secretary, Federal Communications Commission, Washington, D.C. 20554, within 30 days of the release of the cable landing license.

17. This Order is issued under Section 0.261 of the Commission's rules, 47

C.F.R. § 0.261, and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.115, may be filed within 30 days of the date of public notice of this order (see 47 C.F.R. § 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Rebecca Arbogast

Chief

Telecommunications Division

International Bureau

FN1. An Act Relating to the Landing and Operation of Submarine Cables in the United States, 47 U.S.C. §§ 34-39 (1994) (Cable Landing License Act).

FN2. Certain undersea segments, and the terrestrial segments between Fort Amador and Ambush Range, will also contain an additional fiber pair, which initially will be dark.

FN3. The System Interface is defined as a multiple of a Synchronous Transport Module 1 (STM-1) digital input/output port on the digital distribution frame (excluding the digital distribution frame itself).

FN4. 47 C.F.R. § 1.767(b) (1997).

FN5. Letter from Diane J. Cornell, Chief, Telecommunications Division, International Bureau, Federal Communications Commission, to Steven W. Lett, Deputy U.S. Coordinator, Office of International Communications and Information Policy, U.S. Department of State (Nov. 20, 1998).

FN6. Letter from Amb. Vonya B. McCann, United States Coordinator, International Communications and Information Policy, U.S. Department of State, to Regina M. Keeney, Chief, International Bureau, FCC (Feb. 5, 1999).

FN7. See Tel-Optik, Ltd., Memorandum Opinion and Order, 100 F.C.C.2d 1033, 1040-42, 1046-48 (1985); see also Cable & Wireless, plc, Cable Landing License, 12 FCC Rcd 8516 (1997).

FN8. See Cable & Wireless, 12 FCC Rcd at 8522; see also Optel Communications, Inc., Conditional Cable Landing License, 8 FCC Rcd 2267 (1993); National Association of Regulatory Utility Commissioners v. FCC, 525 F.2d 630, 642 (D.C. Cir.) (NARUC I), cert. denied, 425 U.S. 992 (1976).

FN9. See, e.g., Cable & Wireless, 12 FCC Rcd at 8523.

FN10. See 47 U.S.C. § 35 (providing that a license may be granted "upon such terms

as shall be necessary to assure just and reasonable rates and service in the operation and use of cables so licensed").

FN11. See, e.g., [Cable & Wireless, 12 FCC Rcd at 8531](#); AT&T Corp. et al., Cable Landing License, DA 98-1711, File No. SCL-AMD-19980902-00018, ¶ 15 (rel. Dec. 15, 1998).

FN12. See [47 U.S.C. § 153\(44\)](#) (defining "telecommunications carrier"); [Cable & Wireless, 12 FCC Rcd at 8523](#).

FN13. Letter from Sherri L. Cook, Vice President, PAC Landing Corp. to Magalie Roman Salas, Secretary, FCC (Jan. 29, 1999).

FN14. [47 C.F.R. §§ 1.1301-.1319 \(1997\)](#).

****3996 Exhibit A**

Pan American Crossing - PAC

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1999 WL 144097 (F.C.C.), 14 F.C.C.R. 3989, 14 FCC Rcd. 3989

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