

Federal Communications Commission (F.C.C.)

Cable Landing License

\*1 IN THE MATTER OF CABLE & WIRELESS USA, INC.

Application for a License to Land and Operate a Private Fiber-Optic Cable  
System Between the United States, the United Kingdom, and France  
File No. SCL-LIC-20010122-00002

DA 01-1395

Adopted: June 7, 2001

Released: June 8, 2001

\*\*12023 By the Chief, Telecommunications Division, International Bureau:

#### I. Introduction

1. In this Order, we grant the application [FN1] of Cable & Wireless USA, Inc. (C&W USA) pursuant to the Cable Landing License Act [FN2] and [Executive Order No. 10530](#), [FN3] for authority to land and operate a private fiber-optic submarine cable system to be called the Apollo Submarine Cable System (**Apollo Cable**) between the United States, the United Kingdom, and France. C&W proposes to operate the **Apollo Cable** on a non-common carrier basis. We find that C&W USA 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. According to the Application, C&W USA will own and control the portion of the **Apollo Cable** located in the U.S. territorial waters including the cable landing stations in Shirley, Long Island, New York, and Manasquan, New Jersey. C&W USA is a U.S. corporation organized under the laws of the State of Delaware. [FN4] C&W USA is 100% owned by Cable & Wireless Holding, Inc., a Virginia \*\*12024 corporation, which in turn is wholly owned by Cable & Wireless plc, a publicly held corporation organized and existing under the laws of the United Kingdom. [FN5] Cable & Wireless Communications (Mercury), a United Kingdom company which is wholly owned by Cable & Wireless plc, will own the international waters portion of the cable between the United States and the United Kingdom, and between the United Kingdom and France. [FN6] Mercury will also own the terrestrial and subsea portions of the cable located within the United Kingdom, including the cable station in Bude, United Kingdom. [FN7] Cable & Wireless France S.A., a wholly owned subsidiary of Cable and Wireless plc, will own the terrestrial and subsea portions of

the cable located within France, including the cable station in Lannion, France. [FN8]

3. The proposed **Apollo Cable** system will connect the United States, the United Kingdom, and France, with two separate landing points in the United States at Shirley, Long Island, New York and Manasquan, New Jersey. [FN9] According to the Application, the **Apollo Cable** will be an advanced Internet Protocol transatlantic cable designed to meet the growing demand for Internet and data services. [FN10] Depending on the type of terrestrial transmission equipment used, the **Apollo Cable** can be configured as a ring-protected or a mesh-protected network. [FN11] The **Apollo Cable** will be a digital fiber-optic system that will consist of two transatlantic submarine cable segments. [FN12] Each of the transatlantic segments will contain four optical fiber pairs, and each of the fiber pairs will be capable of carrying a minimum of 80 wavelengths of traffic, with each wavelength operating at a nominal rate of 10 Gbps thus providing a nominal design capacity of 800 Gbps per fiber pair. [FN13]

\*2 \*\*12025 4. In addition, C&W USA will construct, lease, or otherwise obtain backhaul facilities to serve: London, England; Paris, France; and New York, New York, to provide alternative interconnection points to the Cable & Wireless Global Network for those customers requiring city-to-city transport. [FN14] According to the application, the System Interface is a Synchronous Transport Module Sixty-Four (STM-64) digital input/output port on the optical distribution frame (excluding the optical distribution frame itself). The capacity of each wavelength is comprised of one STM-64 (the nominal data rate of STM-64 is 9.953 gigabits per second). [FN15] C&W USA anticipates that the **Apollo Cable** will begin operation in August 2002. [FN16]

### III. Comments

5. We placed the Application on public notice on January 31, 2001. [FN17] We received no comments. Pursuant to Section 1.767(b) of the Commission's rules, [FN18] the Cable Landing License Act, and [Executive Order No. 10530](#), we informed the Department of State of the Application. [FN19] The Department 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. [FN20]

### IV. Discussion

#### A. Private Submarine Cable Policy

6. C&W USA proposes to operate the **Apollo Cable** as a non-common carrier submarine cable system. C&W USA requests a license under the Commission's private submarine cable policy, which is intended to promote competition in the provision of international transmission facilities. [FN21] Pursuant to \*\*12026 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. [FN22]

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. [FN23] 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. [FN24] Where there are sufficient alternatives, 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, but rather that, in those circumstances, the public interest would be served by allowing a submarine cable to be offered on a non-common carrier basis. [FN25]

8. C&W USA states that it is not affiliated with any foreign carrier with market power in the markets where the **Apollo Cable** will land. [FN26] In addition, in its application, C&W USA demonstrates that there are numerous alternative submarine cable facilities, as well as satellite facilities, on the U.S.-United Kingdom and U.S.-France routes served by the **Apollo Cable** system to prevent them from exercising market power in offering services to the public, [FN27] including the following common carrier facilities: Gemini, [FN28] TAT-8, [FN29] TAT-9, [FN30] TAT-11, [FN31] TAT-12/TAT-13. [FN32] The system's route is also served by the **\*\*12027** following non-common carrier facilities: TyCom Atlantic, [FN33] Atlantic Crossing 1, [FN34] and PTAT-1. [FN35] In addition, the FLAG Atlantic-1, [FN36] Hibernia, [FN37] and Level 3 [FN38] submarine cable systems have been **\*\*12028** authorized by the Commission to operate on the U.S.-United Kingdom and U.S.-France routes.

**\*3** 9. No one has advocated that the public interest requires the **Apollo Cable** to be operated on a common carrier basis. Given the unopposed evidence on the availability of alternative cables and C&W USA's representation that none of its affiliates has market power in any of the cable's landing countries, we find that it would not serve the public interest to impose common carrier regulation on the operations of the **Apollo Cable** system at this time. We note, however, that we retain the ability 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 requires. [FN39] 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. [FN40]

10. Regarding the second prong of the test, we conclude that there is no reason to expect that capacity on the proposed cable system would be held out to the public indifferently. C&W USA states that capacity will not be sold indifferently to the user public. Rather, capacity will be made available to users on terms

tailored to their particular needs. [FN41] C&W USA states that capacity will be assigned to users on a case-by-case basis, considering the individualized needs and requirements of each user. [FN42] Based on the information provided in the application, we conclude that C&W USA will not offer capacity on the **Apollo Cable** to the public on a common carrier basis and that the public interest does not require it to do so. We also find that C&W USA 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 a "telecommunication carrier" under the 1996 Act. [FN43]

#### B. Ownership and Landing Points

11. C&W USA, which is ultimately controlled by Cable and Wireless plc, has provided the ownership information required by Sections 1.767 (a)(6) and 63.18. [FN44] C&W USA will own and operate the New York and New Jersey landing stations and the U.S. territory portions of **Apollo Cable** between those landing stations to the points which are one-half mile beyond the U.S. territorial limit. Mercury will own the international waters portion of the cable between the United States and the United Kingdom **\*\*12029** and between the United Kingdom and France. Mercury will also own the terrestrial and subsea portions of the cable within the United Kingdom, including the cable landing stations located in Bude, United Kingdom. Cable & Wireless France S.A. will own the cable landing station in Lannion, France, and the terrestrial and subsea portions of the cable located within France. Both Mercury and Cable & Wireless France S.A. are wholly owned subsidiaries of Cable & Wireless plc. [FN45]

12. C&W USA states that the **Apollo Cable** landing stations in the United States will be located in New York and New Jersey. In New York, the cable landing station will be located in Tritec Park, Brookhaven Technology Center, Shirley, New York, at coordinates 40° 50 minutes 35.3 seconds north and 72° 52 minutes 56.9 seconds west. In New Jersey, the cable landing station will be located in an eleven acre site in Wall Township, Manasquan, New Jersey, at coordinates 40° 9 minutes 30.4 seconds north and 74° 6 minutes 5.8 seconds west. The **Apollo Cable** will land in Creathorne Farm, Bude, United Kingdom, at coordinates 50° 47.47 minutes north and 4° 32.17 minutes west. In France, the **Apollo Cable** will land in Keradrivin, Ville de Lannion, at coordinates 48° 45 minutes 4 seconds north and 3° 30 minutes 25 seconds west. C&W USA has complied with Section 1.767(a) of the Commission's rules, which requires applicants to file a specific description of any landing point, including a map. [FN46] The license therefore is 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).

#### C. Environmental Impact

**\*4** 13. The Commission has found that the construction of new submarine cable systems, individually and cumulatively, will not have a significant effect on the

environment and therefore should be expressly excluded from our procedures implementing the National Environmental Policy Act of 1969. [FN47] Therefore, C&W USA is not required to submit an environmental assessment, and this application is categorically excluded from environmental processing.

#### V. Conclusion

14. We grant the application of C&W USA for authority to land and operate a non-common carrier fiber optic submarine cable extending between New Jersey, New York, the United Kingdom, and France, subject to the conditions listed below.

#### VI. Ordering Clauses

15. Consistent with the foregoing and pursuant to the Cable Landing License Act and [Executive Order 10530](#), we hereby GRANT AND ISSUE C&W USA a license to land and operate a non-common carrier digital fiber-optic system with a minimum design capacity of 800 Gbps per fiber pair on all four **\*\*12030** fiber pairs in a ring-protected or mesh-protected configuration consisting of two submarine cable segments, extending between the United States, United Kingdom, and France. This grant is subject to all rules and regulations of the 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:

(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;

(3) The Licensee or any persons or companies controlling it, controlled by it, or under direct or indirect common control with it, does 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** (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) 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;

(7) 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 common carrier or common-carrier-like regulation on the operations of the cable system if it finds that the public interest so requires;

**\*\*12031** (8) The Licensee 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 license;

(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.

16. 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

**\*6** Rebecca Arbogast

Chief

Telecommunications Division

International Bureau

FN1. Cable & Wireless USA, Inc., Application for a License to Land and Operate a Private Fiber-Optic Cable System Between the United States, the United Kingdom, and France, filed Jan. 22, 2001 (Application).

FN2. An Act Relating to the Landing and Operation of Submarine Cables in the United States, [47 U.S.C. §§ 34-39](#) (Cable Landing License Act).

FN3. [Exec. Ord. No. 10530](#) reprinted as amended in [3 U.S.C. § 301](#).

FN4. On March 30, 2001, C&W USA, Inc. changed its state of incorporation from the District of Columbia to the State of Delaware. Letter from Joanna S. Lowry, Director, International Government Relations, Cable & Wireless USA, Inc., to Magalie Roman Salas, Secretary, Federal Communications Commission, April 26, 2001 (C&W April 26 Letter).

FN5. Application at 2, 8.

FN6. Id. at 5 and letter from Joanna S. Lowry, Director, International Government Relations, Cable & Wireless USA, Inc., to Magalie Roman Salas, Secretary, Federal Communications Commission, May 4, 2001 (C&W May 4 Letter).

FN7. Id. In its application, C&W USA proposed an optional interlink landing station in St. Buryan, United Kingdom, but C&W USA no longer intends to land the **Apollo Cable** system in St. Buryan. See C&W April 26 Letter.

FN8. Application at 5.

FN9. A map is attached as Exhibit A.

FN10. Id. at 1.

FN11. Id. at 3.

FN12. Initially, the proposed **Apollo Cable** was to consist of three segments: Northern Segment: the whole of the submarine cable system provided between and including the System Interface at the cable station in Bude, United Kingdom, and the System Interface at a cable station in Shirley, Long Island, New York, U.S.; Southern Segment: the whole of the submarine cable system provided between and including the System Interface at a cable station in Lannion, France, and the System Interface at a cable station in Manasquan, New Jersey, U.S.; and Interlink Segment (Optional): the whole of the submarine cable system provided between and including the System Interface at a cable station in Lannion, France, and the System Inter-

face at a cable station in St. Buryan, United Kingdom. C&W USA does not plan to build a cable station in St. Buryan, United Kingdom and it does not intend to use the optional interlink segment of the proposed cable system. Application at 3, C&W April 26 Letter, and C&W May 4 Letter.

FN13. Application at 3-4.

FN14. Id. at 4.

FN15. Id.

FN16. Id.

FN17. See Non Streamlined International Applications Accepted for Filing, Report No. TEL-00346NS, Public Notice (rel. Jan. 31, 2001).

FN18. [47 C.F.R. § 1.767\(b\)](#).

FN19. Letter from George S. Li, Deputy Chief, Telecommunications Division, International Bureau, Federal Communications Commission, to Steven Lett, Deputy U.S. Coordinator, Office of International Communications and Information Policy, U.S. Department of State (Jan. 24, 2001).

FN20. Letter from Richard C. Beard, Acting U.S. Coordinator, International Communications and Information Policy, U.S. Department of State, to Donald Abelson, Chief, International Bureau, FCC (June 5, 2001).

FN21. 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).

FN22. See [Cable & Wireless Order, 12 FCC Rcd at 8520-23](#), paras. 11-17; see also Optel Communications, Inc., Application for a license to land and operate in the United States a submarine cable extending between Canada and the United States, File No. SCL-92-004, 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 \(1976\)](#).

FN23. See, e.g., [Cable & Wireless Order, 12 FCC Rcd at 8522](#), paras. 14-15.



FN24. Id.

FN25. Id.

FN26. See Application at 8-9, Attachment A1. C&W USA's foreign affiliate is in the United Kingdom, which is a member of the World Trade Organization (WTO). C&W USA states that with the exception of the United Kingdom, the countries in which C&W USA's foreign carrier affiliates operate are not landing points for the **Apollo Cable**. See [47 C.F.R. § 63.09\(d\)](#).

FN27. Application at 8-9.

FN28. See MFS Globenet, Inc. 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-96-4, Cable Landing License, [11 FCC Rcd 12732 \(1996\)](#); MFS Globenet, Inc. and Cable & Wireless plc, Notification Pursuant to Submarine Cable Landing License Conditions, File No. SCL-96-004(M), Modification of [Cable Landing License, 12 FCC Rcd 8637 \(1996\)](#). The Gemini cable system is currently operational.

FN29. See [American Telephone and Telegraph et al., Joint Application for Authorization under Section 214 of the Communications Act of 1934, As Amended, To Construct And Acquire a High Capacity, Digital, Submarine Cable System Between the United States and Both the United Kingdom and France, File No. ITC-84-072, Memorandum Opinion, Order and Authorization, 98 FCC 2d 440 \(1984\)](#). TAT-8 is currently operational.

FN30. See [American Telephone and Telegraph et al., Joint Application for a License to Land and Operate a High Capacity Digital Submarine Cable System Extending from United States Mainland to Canada, the United Kingdom, France and Spain, File No. SCL-88-004, Cable Landing License, 3 FCC Rcd 7304 \(1988\)](#); [American Telephone and Telegraph et al., Joint Application for Authorization Under Section 214 of the Communications Act of 1934, as Amended, to Construct, Assign Capacity in and Operate a High Capacity, Digital Submarine Cable System Between and Among the United States, Canada, the United Kingdom, France and Spain, File No. ITC-88-181, Memorandum, Opinion, Order and Authorization, 4 FCC Rcd 1129 \(1988\)](#); [Errata, File No. ITC-88-181, 4 FCC Rcd 724 & 1136 \(1989\)](#). TAT-9 is currently operational.

FN31. See [American Telephone and Telegraph et al., Joint Application for a License to Land and Operate a High Capacity Digital Submarine Cable System Extending Between the United States, the United Kingdom, and France, File No. SCL-91-002, Cable Landing License, 7 FCC Rcd 134 \(1992\)](#). TAT-11 is currently operational.

FN32. See [American Telephone and Telegraph Company et al., Joint Application for a License to Land and Operate a High Capacity Digital Submarine Cable Network Between and Among the United States Mainland, the United Kingdom and France, File No. SCL-93-004, Cable Landing License, 8 FCC Rcd 4808 \(1993\)](#); [American Telephone](#)

and Telegraph Company et al., Joint Application for Authorization under [Section 214](#) of the Communications Act of 1934, as amended, to Construct, Operate and Acquire Capacity in and Operate a High Capacity Digital Submarine Cable Network Between and Among the United States Mainland, the United Kingdom and France, File No. ITC-93-062, Memorandum Opinion, Order and Authorization, [8 FCC Rcd 4810 \(1993\)](#). TAT-12/TAT-13 is currently operational.

FN33. See TyCom Atlantic (US) Inc. Application for a License to Land and Operate a Private Fiber-Optic Cable System Between the United States Mainland and the United Kingdom, File No. SCL-LIC-20000308-00007, [Cable Landing License, 15 FCC Rcd 14881 \(2000\)](#). The TyCom cable is scheduled to begin service in July 2001.

FN34. See SSI Atlantic Crossing LLC, Application for a License to Land and Operate in the United States a Digital Submarine Cable System Extending Between the United States and the United Kingdom and Germany, File No. SCL-97-002, [Cable Landing License, 13 FCC Rcd 5961 \(1997\)](#); Order on Reconsideration, [File No. SCL-97-002, 12 FCC Rcd 17435 \(1997\)](#); Modification of Cable Landing License, File No. SCL-97-002(M), [13 FCC Rcd 7171 \(1998\)](#); Application for authority to assign the Cable Landing License for the Atlantic Crossing Cable System, File No. SCL-ASG-19981207-00028, Order and Authorization, [14 FCC Rcd 10492 \(1999\)](#). The Atlantic Crossing-1 cable is currently operational.

FN35. See supra at n.21. PTAT-1 is currently operational.

FN36. See FLAG Atlantic Limited Application for a License to Land and Operate in the United States a Private Fiber Optic Submarine Cable System Extending Between the United States and the United Kingdom and France, File No. SCL-LIC-19990301-00005, [Cable Landing License, 15 FCC Rcd 21359 \(1999\)](#).

FN37. See Worldwide Telecom (USA) Inc., Application for a License to Land and Operate in the United States a Private Fiber Optic Submarine Cable System extending between the United States, Canada, Ireland, and the United Kingdom, File No. SCL-LIC-19990804-00012, [Cable Landing License, 15 FCC Rcd 765 \(2000\)](#); and Acquisition of Globenet Communications Group Limited by 360 Networks Inc., Application for Transfer of Control of Submarine Cable Landing Licenses and International [Section 214](#) Authority, File Nos. ITC-T/C-20000328-00186 and SCL-T/C-20000328-00010, [15 FCC Rcd 10814 \(2000\)](#).

FN38. See Level 3 Landing Station, Inc. Application For a License to Land and Operate in the United States a Private Fiber Optic Submarine Cable System Extending Between the United States and the United Kingdom, File No CL-LIC-19990913-00019, [Cable Landing License, 15 FCC Rcd 842 \(2000\)](#); and Level 3 Landing Station, Inc. and GT Landing II Corp., Application for Modification of Cable [Landing License, File No. SCL-MOD-20000511-00018, 15 FCC Rcd 21615 \(2000\)](#).

FN39. 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 oper-

ation and use of cables so licensed").

FN40. See Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, IB Docket Nos. 97-142 and 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23934, para. 95 (1997) (Foreign Participation Order), Order on Reconsideration, 15 FCC Rcd 18158 (2000); Cable & Wireless Order, 12 FCC Rcd at 8530, para. 39; China-US Order, 13 FCC Rcd at 16237, para. 15.

FN41. Application at 7.

FN42. Id.

FN43. See 47 U.S.C. § 153(44) (defining "telecommunications carrier"); Cable & Wireless Order, 12 FCC Rcd at 8523, para. 17.

FN44. Application at 3, 10-12.

FN45. C&W April 26 Letter and C&W May 4 Letter.

FN46. Application at Exhibits B, C, D, E, and F. Also C&W April 26 Letter.

FN47. See 47 C.F.R. § 1.1306 Note 1 (as amended 1999); 1998 Biennial Regulatory Review - Review of International Common Carrier Regulations, IB Docket No. 98-118, Report and Order, 14 FCC Rcd 4909 at paras. 67-69 (1999).

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