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Federal Communications Commission
Office of the Secretary

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Re: Cable Landing Application File No. SCL-LIC-20070516-00008
Submarine Cable System CFX-1
Applicant: Columbus Networks USA, Inc.
Re-filing of Brief in Support of Operation as Non-Common Carrier

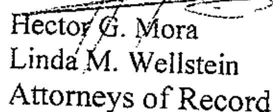
Dear Ms. Dortch,

On August 31, 2007 we submitted by certified mail a brief in support of an Application for Cable Landing License filed Columbus Networks USA, Inc. ("Applicant") seeking to operate the Submarine Cable System CFX-1 as a non common carrier. Said brief has not been received by Policy Division of the International Bureau and for that reason we hereby are resubmitting the document. The enclosed brief supplements the Application for Cable Landing License filed by Columbus Networks USA on May 15, 2007, File No. SCL-LIC-20070516-00008.

The purpose of the enclosed brief is to further support the importance of permitting the Applicant to offer and negotiate flexible arrangements with each future user of the CFX-1 to accommodate their particular needs. The public will be better served if the Applicant is not subject to common carrier regulations. There is no reason to impose common carrier regulations in the present case. In the attached brief, the Applicant explains how the CFX-1 meets both prongs of the *NARUC I test.* The Applicant sustains that operating the CFX-1 on a non common carrier basis advances the policies and interests long promoted by the Commission.

We appreciate the prompt distribution of the brief enclosed (original and four copies) and its consideration by the Policy Division, International Bureau as part of the Columbus Networks USA's application for cable landing license.

Sincerely,
Columbus Networks USA, Inc.
By Counsel



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Linda M. Wellstein
Attorneys of Record

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SEP 2 6 2007
Federal Communications Commission
Office of the Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of **Columbus Networks USA, Inc.** **Application for a License to Land and Operate a Private Fiber-Optic Cable System between the U.S., Jamaica, and Colombia.** **The CFX-1 System**	)	**File No. SCL-LIC-20070516-00008**

Brief in Support of Operation as Non-Common Carrier
Supplement to Pending Application

Columbus Networks USA, Inc. (hereinafter referred to as the "Applicant") will operate the proposed submarine cable system, referred to in the above-referenced Application as the CFX-1 System ("CFX-1"), on a non-common carrier basis. Consequently, transmission capacity will be sold or leased on the CFX-1 submarine cable system on a private carriage basis. Non-common carrier status of the proposed system is necessary to afford Applicant the opportunity to accommodate the unique and dissimilar service needs of the potential users of the CFX-1. Non-common carrier operation of the CFX-1 is consistent with established United States Federal Communications Commission ("Commission") policy, and will advance the public interest.

To determine whether or not a submarine cable system may operate as a non-common carrier and in principle, not be subjected to common carrier regulation, the Commission uses the two prong test set forth in *NARUC I.*[1] The first prong of the test examines whether or not there is any legal compulsion on Applicant to serve the public indifferently, and if none exist, the second prong reviews the nature of the operation to determine whether or not there will be an indifferent holding-out to the public.

I. No legal compulsion or public interest necessity to subject Applicant to common carrier regulation:

[1] *National Association of Regulatory Utility Commissions v. FCC,* 525 F2d 630, 642 (D.C. Cir. 1976) ("NARUC I"), cert. denied, 425 U.S. 992 (1976).

The Commission should not subject CFX-1 to common carrier regulation because there is no legal compulsion or other public interest reason for Applicant to operate the CFX-1 on a common carrier basis.

Under the *NARUC I* test, the Commission must determine whether the public interest requires common carrier operation of the cable system.[2] Traditionally, the Commission has focused on whether an applicant has sufficient market power to warrant common carrier regulation.[3] In this case, sufficient competition and alternative facilities exist as to conclude that the public can obtain carrier services or bulk capacity from other service providers, including other submarine cable operators and satellite service providers. As explained in detail in Attachment 1 of the referenced Cable Landing License Application, Applicant lacks sufficient market power to pose competitive concerns.

Applicant will operate the CFX-1 to provide additional capacity and advanced transmission services in competition with existing submarine cable systems such as the MAYA 1, Pan American, Cayman-Jamaica Fibre System, Transcaribbean Cable System ("TCS-1"), ARCOS-1 and the FibraLink Jamaica system along with the new SAM-1 extension that is being commissioned by early 2008 connecting Colombia to the SAM-1 network in Puerto Rico. The business case supporting the economic sustainability of the CFX-1 is based on projections of a higher demand for transmission capacity and the necessity of some carriers to secure redundant, back-up and alternative facilities that would increase the level of reliability for their services. The CFX-1 was specifically designed to meet certain regional operational and technical requirements as an additional fiber optic submarine cable system connecting the United States with Jamaica and/or Colombia.

In the Caribbean, there are multiple submarine cable systems that directly or indirectly connect the United States with Colombia and Jamaica. The CFX-1 has been designed to interconnect Colombia, Jamaica and the United States without landing in other countries in the Caribbean or neighboring the Caribbean precisely because many competing facilities on these routes already exist. Users of these competing systems, according to Applicant's technical and business analyses, supported the concept of an alternative route that would increase network diversity and hence reliability of the existing communications it facilitates for its customers. Whether the CFX-1 would be a redundant back-up option or the primary transmission facility used by a capacity purchaser, has been an important factor, among many others, prompting Applicant to customize service agreements with particular customers. For instance, Applicant's technical solutions are sufficiently flexible by design to support customers' individual applications or interface specification needs. Such individually tailored technical solutions will require matching commercial terms and pricing flexibility. Based on the Applicant's experience in the

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[2] NARUC I. 525 F.2d at 642 (stating that the court must inquire "whether there will be any legal compulsion . . . to serve [the public] indifferently").

[3] *See St. Thomas-St. Croix Cable Order*, 11 FCC Rcd. at 14, 893.

past, no two service arrangements are alike as each customer has distinctly different requirements and priorities.

Colombia is served by other submarine fiber optic cable systems in addition to ARCOS-1, which is operated by the Columbus Group. See referenced Application for Cable Landing License. Besides ARCOS-1, the MAYA 1 and Pan American submarine cable systems land in Colombian territory. In addition, the construction of other systems has been authorized, such as the South American Crossing SAC-1 System (owned by Global Crossings with ALCATEL-RACAL as landing parties) and as mentioned above the SAM-1 extension by OCEANIC LTDA.[4] Besides Applicant's participation in ARCOS-1, earlier referenced in the Application for Landing License, it is not affiliated with any of these other referenced fiber optic cable systems and intends to offer customized alternative transmission capacity that differentiates it from these other systems and provide very individualized, customer specific solutions.

The Pan American cable system is a consortium cable owned by various telecommunications companies and connects the United States Virgin Islands to Aruba, Venezuela, Colombia, Panama, Ecuador, Peru, and Chile. MAYA 1, another consortium cable system, has nodes located in Florida, Mexico, Grand Cayman, Honduras, Costa Rica, Panama, and Colombia. These systems, and the aforementioned ARCOS-1 and SAM-1 extension, serve the northern coast of South America and specifically the Colombia-USA route.

Jamaica is currently served by the Cayman-Jamaica Fibre System ("CJFS") installed in 1997 and the TCS-1, one of the first submarine fiber optic cables in the region, which has been under plans of decommissioning for several years yet continues to operate today. The CJFS lands in Grand Cayman, Cayman Brac, and Jamaica. FibraLink Jamaica and its affiliates, companies also under control of the Columbus Group and an affiliate of the Applicant, recently built and currently operates the third submarine cable system in Jamaica which interconnects Jamaica with the Dominican Republic. This third system started operations in 2006 and links Jamaica with the United States and the Latin American and Pan-Caribbean regions through the ARCOS-1 submarine cable system, which ARCOS-1 system also lands in the northern part of the Dominican Republic. The Jamaica Office of Utilities Regulations ("OUR") also granted a cable-landing license to Trans-Caribbean Cable Company to land the proposed Trans-Caribbean Cable Network ("TCCN") in Jamaica. The license for that system was issued by the OUR on December 20, 2004 as part of an initiative to attract investment in international transmission facilities. This TCCN system is intended to connect the United States, Mexico, Jamaica (among other Caribbean Islands) and South America.

Since telecommunications services competition commenced in Jamaica in 2000, the OUR has worked actively to facilitate the entrance of new competitors in the different telecommunications services sub-markets. For instance, an Irish investment group,

[4] See list of submarine fiber optic cables authorized by the "Direccion General Maritima" of Colombia at: http://www.dimar.mil.co/vbecontent/newsdetail.asp?id=1304&idcompany=37

DIGICEL, was awarded the first competitive mobile license in 2003 (the year Cable &Wireless Jamaica Limited's ("C&WJ") monopoly ended). Since DIGICEL entered the Jamaican market, it has sent clear signals of its intention to compete head to head with C&WJ in all segments including the international transmission capacity sub-segment.[5] DIGICEL applied for a submarine cable landing license, which although initially denied, might be ultimately granted in the near future as part of the OUR's plan to develop alternative and competing international transmission facilities.

Although currently there are no submarine cable systems that land both in Jamaica and the United States, alternative infrastructure offers transmission capacity that indirectly connects Jamaica and the United States. The Cayman-Jamaica Fibre System interconnects with the MAYA 1 fiber system in Grand Cayman. The MAYA 1 has landing points in Florida, Mexico, Grand Cayman, Honduras, Costa Rica, Panama, and Colombia. As previously mentioned, the US-Jamaica route is also served by the FibraLink Jamaica system in conjunction with ARCOS-1.

In the past, Jamaica was directly linked by a fiber optic system called the Florida-Jamaica Analogue cable system which was 1,545 km in length and had a total capacity of 384 + 384 KHz. This submarine system went out of service in 1992 after 29 years of operations. This former Florida-Jamaica system linked Florida and Kingston, Jamaica and was maintained by AT&T and Jamaican International Telecommunications Ltd. In 1998, the Canal Zone-Jamaica system went out of service. The Canal Zone-Jamaica system, maintained by AT&T and ITT Central American Cables & Radio, was in operation for 34 years serving Jamaica and Panama.

Jamaica's former monopoly incumbent, C&WJ, is a subsidiary of Cable & Wireless, which is, in turn, the owner and operator of several submarine cable systems around the globe, including the APOLLO landing in Long Island, New York.[6] Although, Cable & Wireless has not invested in additional submarine cable facilities to serve Jamaica, aside from the Cayman-Jamaica Fibre System, which system it recently upgraded, the conglomerate has the financial capacity, technical ability, and potential interest in competing with new entrants in the Jamaican transmission capacity market.

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[5] In the context of the cable landing license submitted by DIGICEL in 2004, its former CEO, Mr. Raoul Fontanez stated: "This initiative is part of our continued long-term commitment to create a seamless network across the Caribbean with enormous benefits for the region. Our goal is to build a state-of-the-art Pan-Caribbean fiber optic network ensuring affordable and innovative mobile communications that fosters personal and professional connections between Caribbean nations and people." For additional information see the full article "Digicel applies for submarine fiber network license in Jamaica" at http://www.caribbeannetnews.com/2004/11/04/applies.htm

[6] See CABLE & WIRELESS USA, Application for a License to Land and Operate, File No. SCL-LIC-20010122-00002.

Based on the foregoing, the CFX-1 will be a competitive alternative and in most cases will not substitute or cause the migration of traffic from other existing submarine cable systems to it, but rather has been contemplated and designed to be primarily used as a back-up system to offer redundancy and reliability to existing services offered by its users. The intended operation of the CFX-1 as a non-common carrier will only increase competition in the US-Jamaica and US-Colombia routes consistent with the Commission's longstanding policy to encourage competition through private submarine cable systems, pursuant to which the Commission has granted numerous cable landing licenses.[7]

II. Distinctive and customized service requirements for each customer:

The Commission should not subject Applicant to common carrier regulation because the CFX-1 will not be operated on a common carrier basis as defined in *NARUC I*.[8] The Applicant will not hold itself out to the public indifferently. Capacity will not be the subject of a public offer under standardized and undifferentiated business and technical terms. Conversely, capacity will be uniquely offered to potential customers identified, grouped and differentiated by the Applicant based on multiple factors and on a case-by case basis.

Given that Applicant is selling to the carrier community, virtually every sales opportunity is different as each carrier is in a different phase of development and corresponding need. Applicant's customers require solutions that are tailor made for their particular needs. The success of Applicant is wholly based on crafting customized solutions that meet such needs. This customized solution requires very specific terms, conditions and above all overall flexibility to ensure the customer's specific needs are addressed.

In support of Applicant's necessity to operate the CFX-1 as a private system are the following examples of common situations faced by Applicant in its dealings with customers:

1. A large customer based in Colombia requires a very customized solution that includes a combination of unique factors such as both lease and Indefeasible Rights of Use ("IRU") contracted capacity, while also providing special protected redundant capacity on CFX-1 for its legacy traffic, which legacy traffic is currently unprotected.

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[7] *See Tel-Optik Ltd.*, 100 FCC 2d 1033, 1040-42, 1046-48 (1985) (establishing Commission's private cable policy). *See also Cable & Wireless USA, Inc., Cable Landing License*, DA 01-1615 (Int'l Bur., rel. July 9, 2001) (Apollo cable system); *Level 3 International, Inc., Cable Landing License*, 15 FCC Rcd. 842 (Int'l Bur. 2000) (Yellow cable system); *Worldwide Telecom (USA) Inc., Cable Landing License*, 15 FCC Rcd. 765 (Int'l Bur. 2000) (Hibernia cable system); *Atlantica USA LLC, Cable Landing License*, 14 FCC Rcd. 20,787 (Int'l Bur. 1999) (Atlantica-1 cable system); *FLAG Atlantic Ltd., Cable Landing License*, 15 FCC Rcd.21,359 (Int'l Bur. 1999) (FLAG Atlantic-1 cable system); *AT&T Corp. et al., Cable Landing License*, DA 99-2042 (Int'l Bur., rel. Oct. 1. 1999) (TAT-14 cable system).

[8] *See National Ass'n of Regulatory Utility Commissioners v. FCC*, 525 F.2d 630, 642 (D.C. Cir.) ("*NARUC I*") (stating that the court must inquire "whether there are reasons implicit in the nature of . . . [the] operations to expect an indifferent holding out to the eligible user public"), *cert. denied*, 425 U.S. 992 (1976). *See also Virgin Islands Telephone Corp. v. FCC*, 198 F.3d 921 (D.C. Cir. 1999) (affirming FCC's use of *NARUC I* test for distinguishing common carrier and private carrier services following adoption of the Telecommunications Act of 1996).

Furthermore, said customer requires prepaid IP services for some of the capacity. This very customized solution would not be possible in a tariffed common carrier environment. This particular customer's unique needs demanded a creative, highly customized solution.

2. Recent proposals have considered certain sub-sea bandwidth capacity be contracted and provisioned in a variety of ways, such as the later conversion into IRU capacity of some of the capacity initially provided in clear channel leases.

3. A large incumbent Colombian telecom company has proposed a mutual services exchange as being part of the overall service arrangement. Accordingly, the two involved entities purchased some capacity, but also required that certain levels of services be structured as a like kind non-cash exchange, which exchange was fully compliant with all applicable regulations and GAAP international accounting standards.

4. Another example of the inherent uniqueness of customer requirements is when a specific user required Applicant to exchange long term capacity in return for the extinguishment of a prior capital expenditure that this particular customer made on behalf of the Applicant since this particular customer did not have the budgetary allocation to outright purchase said capacity in an IRU cash basis. This mutually beneficial solution enabled the customer to continue with broadband growth plans while positioning Applicant as a supplier that offers flexible, custom tailored solutions that addresses each customer's unique requirements.

In all cases above, the terms, conditions, terminating locations, interfaces, etc., are routinely and entirely customized to meet specific needs. Additional flexibility is demanded because those needs are constantly evolving in parallel with the overall business operations and financial situation of each customer. Under no circumstances could the aforementioned solutions be offered in a common carrier rigid structure. Furthermore, given that customers have various vendors to choose from, Applicant must demonstrate its sales creativity in packaging solutions that would work for particular clients.

The courts have stated that "[t]he primary *sine qua non* of common carrier status is a quasi public character, which arises out of the undertaking 'to carry for all people indifferently."[9] On the CFX-1, however, Applicant will not sell capacity indifferently to the user public. Instead, Applicant will provide bulk capacity to particular users - - including common carriers, carrier consortia, carriers with an existing business relationship with the Columbus Group, and large end users - - who will be able to obtain capacity on the system through IRU, capacity leases, and other specific service arrangements that may be appropriately tailored for their distinctive and particular business and technical needs.

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[9] National Ass'n of Regulatory Utility Commissioners v. FCC, 533 F.2d 601, 608 (D.C. Cir. 1976) ("NARUC II").

Capacity on the CFX-1 will be assigned pursuant to individualized decisions, depending on the characteristics and unique business and customer needs of the capacity purchaser. There is no established rate table as every service arrangement is uniquely configured to meet the specific needs of the client, which needs are constantly changing as clients develop their businesses. For example, certain clients have had year-end surplus expansion capital available that enabled them the option to purchase IRU capacity with defined future delivery timelines. No tariffed system could accommodate such unique parameters. During ensuing years, such surplus expansion capital may not have existed for certain clients so they reverted to leased capacity but desired to keep an option in place to purchase IRU capacity under a flexible purchase plan.

Another dominant factor in Applicant's system design and intended operations is the role that prospective capacity purchasers had in motivating the design and construction of the system. Applicant capacity requirements as well as various carriers in the region approached Applicant earlier regarding back up capacity options to existing facilities on the proposed route and expressed their willingness to purchase certain capacity to serve special business needs if the CFX-1 system route and design were built.

Specifically, for example, there is a case where a customer that had previously purchased unprotected capacity on various undersea systems, desires to both purchase capacity on CFX-1 to enable continued growth, but moreover, have Applicant provide new protection schemes to improve the overall reliability of its traffic. That customer has very specific needs that have been addressed by Applicant by offering a combination of new capacity and blending in solutions to improve the reliability of legacy capacity services.

If Applicant would operate as a common carrier, it could not give priority capacity allocation and highly differentiated services options to existing customers, whose particular needs and patronage justified the business case in support of construction of this tailored capacity services solution system design of the CFX-1. These customers need highly flexible sub-sea network platforms that can provide a very tailored capacity services solution. The construction of the CFX-1 would be delayed or potentially abandoned if the business case supporting the project is altered, which result is an important factor previously weighed by the Commission in deciding about the operating model of a cable system.[10]

It is very possible, if not inevitable, although not planned at this moment, that the CFX-1 could be expanded and further augmented in light of specific and ever evolving needs of capacity users detected in the market. However, operating as a common carrier or having to operate any future expansion as a common carrier would deter or even stop the Applicant from considering and carrying out any expansion plan that would not allow it to attend to particular customer needs requiring highly customized and tailored solutions. The CFX-1 has been designed to operate as a private carrier and any expansion thereof will be possible only if the system is operated on a non-common carrier basis.

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[10] See AT&T et. al, Joint Cable Landing License, FCC 99-167 File No. SCL-LIC-19981117-00025 (Int'l Bur. 1998) ("Japan-U.S. Cable Order") p.15.

Furthermore, the Applicant is affiliated with other non-dominant carriers operating in the Caribbean basin, and one of its affiliated companies, Columbus Networks Services, Inc., was recently granted International 214 Authority. See Attachment 2 of the Cable Landing License Application. Those entities, which encompass affiliate companies in Bahamas, Jamaica, Trinidad and other Caribbean markets, are companies that are integrated into the business plan for securing financial resources (expansion capital) for the execution of this project and have made anchor tenant commitments to utilize this new CFX-1 system when it is completed. Accordingly, they will be assigned capacity on a pre-contracted and pre-reserved basis as anchor tenants as would be expected from a private submarine cable system. Here again, a common carrier tariffed model would greatly impair any ability of Applicant to address these affiliate companies needs, nor secure their anchor tenant commitments, all of which is integral to securing the financial capacity to proceed. Finally, Applicant is a member of the consortium that facilitated the construction of the ARCOS-1 system, whose members have capacity originally assigned in the system and could fairly expect a pre-reserved offer to purchase transmission capacity before other third party entities receive the opportunity to purchase transmission capacity in the CFX-1. Applicant contemplates that ARCOS-1 system owners will reasonably seek to exchange some existing ARCOS-1 capacity with CFX-1 capacity to increase network diversity and service reliability, while enabling ARCOS-1 to rebalance and redistribute the network to enable additional traffic growth to the region served by ARCOS-1.

The CFX-1 system was conceived and designed to meet particular requirements for more reliability and diverse undersea cable routes by serving as a back-up option for existing customers both from the Columbus Group and other third parties as well as other consortia members of undersea systems such as ARCOS-1. Applicant's business analysis considered the market assessments indicating requirements and demand for a partial exchange of existing customer capacity on ARCOS-1 to be migrated over to CFX-1 capacity, to provide customers increased network diversity and service reliability. This provides the opportunity to offer customers very specific overall solutions to best position their businesses going forward by providing them highly reliable alternative subsea routes.

III. Conclusion

In summary, Applicant is not planning to and will not offer, transmission capacity to the general public. Capacity will be assigned pursuant to individualized decisions and not in equal or undifferentiated terms to the public at large. Although the Applicant will not appear to the public as a common carrier, the Applicant and the Columbus Group in general are committed to adhering to principles of fair dealing and transparency that to the extent possible, will guide its capacity allocation and negotiation of capacity purchase agreements. In other words, the Applicant must operate the CFX-1 as a private submarine cable system, but under no circumstances will it engage in any practice that would result in, or have an adverse impact on, competition.

Applicant needs the discretion to weigh its interests as an investor with capacity needs of its own; the express and implied commitment with affiliates, business partners, and long time customers; and the compelling commitment of upholding those principles stated above by affording some other members of the public the opportunity to purchase customized capacity usage.

The Commission has previously found that such offerings do not make an applicant a common carrier.[11] A common carrier offers undifferentiated services to the public under rigid services or business models pre-established by the services provider. In the present case, Applicant will offer capacity to specifically targeted clients with very different services requirements, specifications and needs. These customers' requirements beg the opportunity to negotiate a customized arrangement along with particular attendant technical specifications of the capacity required thus ensuring their specific business needs are met.

Operating the CFX-1 as a non-common carrier would afford its users precisely those benefits highlighted by the Commission in its analogy between its private cable policy and its policy of allowing the private sale of domestic satellite transponders. The Commission intelligently sustained that the operation and sale of capacity on a non-common-carrier cable would: (1) permit the providers of capacity to make tailored and flexible arrangements with customers that are not possible under the regimen of a tariffed service offering, (2) enable customers to make long-term plans for the use of facilities with assurance as to facility availability and price, (3) permit systems to be specifically designed to customer needs, and (4) result in positive market development for new and innovative service offerings.[12]

Therefore, the intended operation of the CFX-1 as a non-common carrier not only is needed to better serve its potential users and accommodate their different needs, but also has been a decisive factor in the decision making process for Applicant's investment and requirement to design, build and finance the proposed CFX-1 system. The Columbus Group lacks the market power to distort or threaten the emerging competition in the referenced sub-sea cable routes. Existing and competing submarine cable systems interconnecting or serving the three countries involved (USA, Jamaica and Colombia) operate as non-common carriers and routinely offer clients unique proposals to address their needs. Today, there are a significant number of carriers competing in these routes, innovative and better services are now offered to final users in each country, and more telecommunications facilities have been built or are underway to support the increasing demand for transmission capacity and need for unique tailored solutions.

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[11] See AT&T Corp. et. al. Cable Landing License, 13 FCC Rcd. 16,232, 16,238 (Int'l Bur. 1998) ("China-U.S. Cable Order") (finding that individualized decisions concerning the sale or lease of capacity on the China-U.S. Cable Network would not constitute the effective provision of a service to the public so as to make the applicant a common carrier); AT&T Submarine Systems, Inc., 11 FCC Rcd. 14,885, 14,904 (Int'l Bur. 1996) ("St. Thomas-St. Croix Cable Order") (finding that an "offer of access, nondiscriminatory terms and conditions and market pricing of IRUs does not rise to the level of an 'indiscriminate' offering" so as to constitute common carriage), aff'd 13 FCC Rcd. 21,585 (1998), aff'd sub. nom Virgin Islands Telephone Corp. v. FCC, 198 F.3d 921 (D.C. Cir. 1999).

[12] *Tel-Optik*, 100 FCC 2d at 1041.

It is important to highlight that the Columbus Group has never held a dominant or monopoly position in any of the three countries involved. On the contrary, the Columbus Group is a new entrant in each of the three countries competing with well-established incumbents who until recently held monopoly positions in their markets (The monopoly position of these established incumbents was primarily telephony services.) These incumbents controlled access to the then scarce international transmission facilities, such incumbents as C&WJ and TELECOM in Colombia (today *"Telefonica-Telecom")*, alluded to earlier.

For all of the above noted reasons, Applicant requires and respectfully requests to operate the CFX-1 System on a non-common carrier basis. Applicant also respectfully requests that its Application for Cable Landing License be accepted for streamline processing and ultimately granted without being subjected to common carrier regulation.

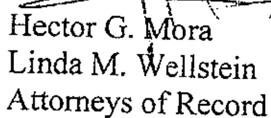
Notwithstanding Applicant's request to operate the CFX-1 on a non-common carrier basis, Applicant acknowledges the Commission's authority to impose common carrier or common carrier-like obligations on the operations of this or any other submarine cable system, at any point in time, if the public interest so requires.[13] If an unlikely change of circumstances advises or prompts the Commission to impose such obligations on the Applicant, the Applicant is committed to abide by those obligations.

We would be pleased to provide any additional information needed to reassure the Commission of Applicant's consistency of operation as a non-common carrier with the policies and interests promoted by the Federal Communications Commission.

Sincerely,

Columbus Networks USA, Inc.

By Counsel,



Hector G. Mora
Linda M. Wellstein
Attorneys of Record

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[13] *See Section 2 of the Cable Landing License Act, 47 U.S.C. § 35; Executive Order No 10,530, as amended; and Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214.*
See also, e.g., Foreign Participation Order, 12 FCC Rcd at 23,934 ¶ 95; *Cable & Wireless*, 12 FCC Rcd at 8530 ¶ 39; AT&T Corp. et al., *Cable Landing License*, 13 FCC Rcd 16,232, 16,237 ¶ 15 (Int'l Bur. 1998) (*China-US Cable Landing License*).