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

In the Matter of	)	
Application for a License to Construct, Land and Operate an Undersea Cable System Linking the Continental United States, the Dominican Republic, Puerto Rico, Brazil, Colombia, Guatemala, and Mexico	)	File No. SCL-LIC-20120330-00002
América Móvil Submarine Cable System	)	

OPPOSITION OF APPLICANTS TO COMMENTS OF SAN JUAN CABLE LLC

Latam Telecommunications, LLC ("Latam"), Puerto Rico Telephone Company, Inc. ("PRTC"), and Claro Chile, S.A. ("Claro Chile") (together, the "Applicants"), by counsel, respond to and oppose the comments filed by San Juan Cable LLC, d/b/a OneLink ("OneLink")[1] seeking to unnecessarily delay grant of the Applicants' pending application (the "Application") to construct, land, and operate a fiber-optic submarine cable system, to be known as the América Móvil Submarine Cable System ("AMX1 System"). Once completed, the AMX1 System will directly link the continental United States, the Dominican Republic, Puerto Rico, Brazil, Colombia, Guatemala, and Mexico.

OneLink's assertion that the Applicants have alleged market power in the United States is unfounded, and its request that the Commission remove the pending cable landing license application from streamlined processing or regulate the proposed submarine cable as a common

[1] Comments of San Juan Cable LLC, d/b/a OneLink, File No. SCL-LIC-20120303-00002 (filed May 10, 2012) ("OneLink Comments").

carrier cable is wholly unsupported by the FCC's regulations or precedent. Applicants have provided all information necessary to demonstrate that the AMX1 System cable may be operated on a non-common carrier basis. The meritless arguments made in OneLink's filing do not provide any basis for removing the application from streamlined processing or delaying authorization of a submarine cable that will help meet growing traffic demands between and among the United States, Mexico, the Caribbean, and Central and South America.[2]

The Commission should see OneLink's filing for what it is – a transparent attempt to use the regulatory process to competitively disadvantage a competitor, PRTC. OneLink has opposed nearly every regulatory request by PRTC over the last several years without regard to the facts or the law, and OneLink's latest filing is part of this same strategy.[3] The Commission should not condone OneLink's blatant misuse of the regulatory process in this manner.

---

[2] Significantly, OneLink fails to provide any basis for standing to oppose this application. Under Section 309(d)(1) of the Communications Act, 47 U.S.C. § 309(d)(1), only a "party in interest" may file a petition to deny. To qualify as a "party in interest," the petitioner must satisfy the familiar, three-part standing test. Specifically, the petitioner must: (1) establish that the "grant of the subject application would cause it to suffer a direct injury"; (2) "demonstrate a causal link 'between the claimed injury and the challenged action'"; and (3) show that the injury "can be traced to the challenged action" and "would be prevented or redressed by the relief requested." *Wireless Co., L.P.*, Order, 10 FCC Rcd 13233, 13235 ¶ 7 (WTB 1995) (citing *Sierra Club v. Morton*, 405 U.S. 727, 733 (1972); *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 74, 81 (1978)). OneLink has not attempted to provide this required showing nor can it.

[3] *See, e.g.*, Comments of San Juan Cable LLC, WC Docket No. 10-52 (filed May 6, 2011) (arguing that PRT's long distance operations should be subject to dominant carrier regulation); Comments of San Juan Cable LLC, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, and WC Docket No. 03-109 (filed Apr. 18, 2011) (arguing that the Commission should not set aside Phase I CAF funds for PRTC in Puerto Rico); Comments of San Juan Cable LLC in Opposition to the Petition for Reconsideration of Puerto Rico Telephone Company, Inc., WC Docket No. 05-337, CC Docket No. 96-45, WC Docket No. 03-109 (filed Jun. 14, 2010) (urging the Commission to reject PRTC's request for universal service program support).

I. THE APPLICATION PLAINLY MEETS THE STANDARD FOR OPERATION ON A PRIVATE CARRIER BASIS.

Contrary to OneLink's assertions, Applicants provided all of the necessary information to demonstrate that the proposed operation of the AMX1 System cable on a non-common carrier basis satisfies the two-part test of *NARUC I*.[4] The first prong of the test asks whether "the public interest requires common carrier operation," an inquiry that focuses on the availability of alternative facilities, including non-common carrier or common carrier, terrestrial, microwave, or satellite, or existing or planned.[5] The second prong of the test requires a determination of whether an entity holds itself out to serve the public indifferently.[6]

Applicants satisfied the first prong of the test by demonstrating that a variety of alternative facilities are available for routing telecommunications traffic in the region.[7] The

---

[4] *See Nat'l Ass'n of Regulatory Util. Comm'rs v. FCC*, 525 F.2d 630, 641-42 (D.C. Cir) (*NARUC I*), *cert. denied*, 425 U.S. 992 (1976).

[5] *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*, 12 FCC Rcd 8516 at ¶¶ 14-17 (1997) (*"Cable & Wireless Order*").

[6] *Cable & Wireless Order* at ¶ 14. *See also Telefonica SAM USA, Inc. and Telefonica SAM de Puerto Rico, Inc., Application for a License to Land and Operate in the United States a Private Submarine Fiber Optic Cable Network Extending Between Florida, Puerto Rico, Brazil, Argentina, Chile, Peru, and Guatemala*, Cable Landing License, 15 FCC Rcd 14915 at ¶ 15 (2000) ("If the Commission finds that an applicant has shown that it will make individualized decisions whether and on what terms to provide service and will not undertake to serve all customers indifferently, the Commission as held that the second prong of the test has been met.").

[7] Contrary to OneLink's assertion, the growing demand for capacity in the region that the proposed cable could help address does not undercut the Applicants' showing that many other alternatives are available for routing telecommunications traffic there. Rather, the additional capacity will help ensure growing needs are met while the abundance of alternatives will ensure full and fair competition for carrying traffic. Indeed, the Commission has previously found as much. *Cable & Wireless Order* at ¶ 16 ("Although there is an increasing need for circuits on this route due to escalating Internet usage and other data traffic, we believe that there is sufficient existing and planned capacity available that C&W's proposed cable system will not become a bottleneck facility or the sole available means for a carrier or user to obtain new capacity on the U.S-U.K. route.").

Application provides examples of other cables, including the Americas II, Antillas I, ARCOS-1, and MAYA-1 submarine cable systems, which provide service in this area.[8] There are also many other cables that provide alternative facilities for routing communications traffic, including the South America-1 Cable Network, the South American Crossing cable system, and the CFX-1 Cable System. In addition, several satellites, including those licensed by Intelsat, SES, and Telesat, provide service in this area.[9]

OneLink's demand that Applicants provide "details of the submarine cable markets on the various routes and route combinations by route, capacity, utilization, landing locations, technology, age and pricing, among other information" is entirely inconsistent with the FCC's *NARUC I* analysis in other cable landing license applications.[10] Such detailed information greatly exceeds the scope of information provided by and required of other cable landing license applicants, and OneLink's attempt to hold the Applicants to a different standard than other parties seeking cable landing licenses must be rejected. The showing made in the Application is consistent with many other recently granted applications for non-common carrier submarine cable authorizations,[11] and OneLink does not and cannot argue otherwise.

---

8 Application at 4.

9 Application at 5. Although OneLink argues that the "reference to satellite facilities is simply a red-herring," OneLink Comments at 3, the Commission has repeatedly considered satellite facilities as alternatives. *Cable & Wireless* at ¶¶ 15-16; *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 at ¶ 11 (1993).

10 *See Cable & Wireless Order* at ¶¶ 15-16.

11 *See, e.g., Actions Taken Under Cable Landing License Act*, Public Notice, Report No. SCL-00118, DA 11-931, File No. SCL-LIC-20110329-00009 (May 20, 2011) (authorizing operation of the GOKI cable network, linking Guam and Japan, on a non-common carrier basis); *Actions Taken Under Cable Landing License Act*, Public Notice, Report No. SCL-00094, DA 09-2188, File No. SCL-LIC-20080516-00010 (Oct. 8, 2009) (authorizing the Unity Cable System on a non-common carrier basis between the United States and Japan, where one of the applicants,

The pending application also demonstrates compliance with the second prong of the *NARUC I* test. Applicants make clear that capacity will not be made available to the public indifferently, but rather to the extent capacity is available it "will be made available to users on terms tailored to their particular needs."[12] OneLink asserts that Applicants need to provide the terms on which other carriers would be allowed to purchase capacity on the cable.[13] But, by definition, a non-common carrier individually negotiates private contracts with carriers and would not publicly disclose contract terms.[14] Moreover, Applicants' showing under this part of the *NARUC I* test is consistent with that included in recently granted cable landing license applications for non-common carrier cables.[15]

OneLink's claims regarding market power are irrelevant to the Application's eligibility for streamlined processing or the authority to operate a non-common carrier cable.[16] As required by the Commission's rules and precedent, Applicants have certified that they will accept and

---

(Continued . . .)
KDDI, holds market power); *Actions Taken Under Cable Landing License Act*, Public Notice, Report No. SCL-00068, DA 08-1580, File No. SCL-LIC-20070824-00015 (Jul. 3, 2008) (authorizing operation of the Asia America Gateway Cable Network on a non-common carrier basis by applicants with market power in various destination markets).

12 Application at 5.

13 OneLink Comments at 4.

14 *See NARUC I*, 525 F.2d at 641 ("a carrier will not be a common carrier where its practice is to make individualized decisions, in particular cases, whether and on what terms to deal").

15 *See, e.g.*, *Actions Taken Under Cable Landing License Act*, Public Notice, Report No. SCL-00118, DA 11-931, File No. SCL-LIC-20110329-00009 (May 20, 2011); *Actions Taken Under Cable Landing License Act*, Public Notice, Report No. SCL-00068, DA 08-1580, File No. SCL-LIC-20070824-00015 (Jul. 3, 2008); *Actions Taken Under Cable Landing License Act*, Public Notice, Report No. SCL-00058, DA 08-532, File No. SCL-LIC-20070925-00017 (Mar. 7, 2008).

16 In this regard, OneLink's arguments that the Applicants cannot rely on precedent like the *Cable & Wireless Order*, because of their alleged greater market power, is misplaced. The cases cited by Applicants provide legal authority for the Commission's use of the *NARUC I* test to evaluate operation of a submarine cable on a non-common carrier basis. As discussed in this section, market power is not part of that analysis.

abide by reporting conditions on all routes in which they are considered dominant.[17] The Commission has explicitly rejected OneLink's position that the Commission must require any applicant with market power to operate a submarine cable on a common carrier basis or deny streamlined processing to any dominant applicant seeking to operate a non-common carrier submarine cable. Rather, the FCC has routinely authorized dominant carriers to operate non-common carrier submarine cables[18] and processed applications for carriers including Verizon and AT&T on a streamlined basis.[19]

---

[17] Application at Appendix A, 6; Appendix B, 5, and Appendix C, 6.

[18] *Actions Taken Under Cable Landing License Act*, Public Notice, Report No. SCL-00094, DA 09-2188, File No. SCL-LIC-20080516-00010 (Oct. 8, 2009) (authorizing the Unity Cable System on a non-common carrier basis between the United States and Japan, where one of the applicants, KDDI, holds market power); *Actions Taken Under Cable Landing License Act*, Public Notice, Report No. SCL-00068, DA 08-1580, File No. SCL-LIC-20070824-00015 (Jul. 3, 2008) (authorizing operation of the Asia America Gateway Cable Network on a non-common carrier basis by applicants with market power in various destination markets); *Telefonica SAM USA, Inc. and Telefonica SAM de Puerto Rico, Inc., Application for a License to Land and Operate in the United States a Private Submarine Fiber Optic Cable Network Extending Between Florida, Puerto Rico, Brazil, Argentina, Chile, Peru, and Guatemala*, Cable Landing License, 15 FCC Rcd 14915 (2000) (authorizing applicants, who were classified as dominant in Argentina, Chile, and Peru, to operate a non-common carrier cable); *Australia-Japan Cable (Guam) Limited, Application for License to Land and Operate in the United States a Private Submarine Fiber Optic Cable Extending Between Australia, Guam, and Japan*, SCL-LIC-20000629-00025, Cable Landing License, 15 FCC Rcd 24057, 204065 at paras. 19-20 (2000) (authorizing operation of a non-common carrier submarine cable by applicant affiliated with a carrier that possesses market power in cable landing station access and local access facilities and services in WTO Member destination market of Australia).

[19] *See, e.g., Actions Taken Under Cable Landing License Act*, Public Notice, Report No. SCL-00118, DA 11-931, File No. SCL-LIC-20110329-00009 (May 20, 2011) (granting a cable landing license authorization to AT&T to operate the GOKI Cable Network in Japan); *Actions Taken Under Cable Landing License Act*, Public Notice, Report No. SCL-00058, DA 08-532, File No. SCL-LIC-20070925-00017 (Mar. 7, 2008) (granting a cable landing license application on a streamlined basis to MFS CableCo U.S., Inc. ("Verizon") and Cable & Wireless Network Services Limited ("Cable & Wireless") where Cable & Wireless was dominant on the U.S.-Bermuda route).

II. PROMPT GRANT OF THE PENDING APPLICATION IS IN THE PUBLIC INTEREST.

As described in the Application, the AMX1 System will benefit the public interest by providing additional capacity to meet increasing demands for international telecommunications traffic. In particular, the cable will provide improved telecommunications bandwidth for convergent telecommunications services.[20] OneLink's meritless claims should not be permitted to derail these public interest benefits.[21] Delay in granting this application will stall the construction process and could postpone the commencement of operation of the submarine cable.

In fact, the FCC specifically instituted streamlined processing for submarine cable landing license applications in order to "enable submarine cable applicants to respond to the demands of the market with minimal oversight and delay."[22] To most effectively implement this policy goal, the Commission expressly determined that "the new streamlining procedures will be available to all submarine cables to WTO Member destination countries, including those cables with affiliations with carriers that possess market power in a destination market."[23] In making

---

[20] Application at 2-3.

[21] The lack of merit in OneLink's pleading is highlighted by the allegations of anticompetitive behavior against the Applicants' affiliate. *See* OneLink Comments at 2, note 2 (describing a fine imposed by the Mexican government). These allegations are not only irrelevant to eligibility for non-common carrier status and streamlined treatment, but also inaccurate. As OneLink should have known from public reports, the fine proposed by the Mexican government on the Applicants' affiliate, Telcel, has been revoked. *See* América Móvil, S.A.B. de C.V. Form 6-K, May 3, 2012, http://www.sec.gov/Archives/edgar/data/1129137/000129281412001222/amx20120512_6k.htm.

[22] *Review of Commission Consideration of Applications Under the Cable Landing License Act*, Report and Order, 16 FCC Rcd 22167 at ¶ 1 (2001) ("*Submarine Cable Streamlining Order*").

[23] *Id*. at ¶ 20. A foreign carrier applicant qualifies for streamlining by either demonstrating a lack of market power for it or its affiliates in the cable's destination markets or certifying that where it or its affiliates does have market power in a WTO Member destination market that it will agree to the reporting requirements in Section 1.767(l) of the FCC's rules. 47 C.F.R. § 1.767(k)(2)-(3).

the streamlined process potentially available to all carriers, the Commission carefully considered what safeguards might be necessary to protect against anticompetitive behavior and found that carriers with market power in WTO Member destination markets seeking to use the streamlining process would be required to agree to a "no special concessions" rule and additional reporting requirements,[24] as the Applicants have done in the Application.[25] The FCC did not find that dominant carriers should be denied the efficiency of streamlined processing or that these carriers would be required to operate only common carrier submarine cables.

Indeed, the International Bureau has used the streamlined process to grant authority for dominant carriers to operate submarine cables, including on a non-common carrier basis.[26] Removal of the instant application from streamlined processing would be contrary to this established practice and deny consumers the public interest benefits intended by the *Submarine Cable Streamlining Order*. OneLink's transparent attempt to delay grant of the Application through unfounded allegations does not warrant the extraordinary measure of changing the processing designation and requiring non-streamlined review.[27]

III. CONCLUSION.

As demonstrated above, OneLink's Comments provide no basis for the Commission to

---

[24] *Submarine Cable Streamlining Order* at ¶¶ 30, 44 ("We agree that safeguards and regulations will be sufficient in most circumstances to prevent anti-competitive effects in the U.S. market.").

[25] Application at Appendix A, 6; Appendix B, 5, and Appendix C, 6.

[26] *See, e.g., Actions Taken Under Cable Landing License Act,* Public Notice, Report No. SCL-00058, DA 08-532, File No. SCL-LIC-20070925-00017 (Mar. 7, 2008) (granting a cable landing license application on a streamlined basis to MFS CableCo U.S., Inc. ("Verizon") and Cable & Wireless Network Services Limited ("Cable & Wireless") where Cable & Wireless was dominant on the U.S.-Bermuda route).

[27] *Submarine Cable Streamlining Order* at ¶ 47 ("We anticipate that situations would be rare in which the International Bureau would find a cable landing license application ineligible for streamlined processing after initially determining it eligible for streamlining.").

remove the Application from streamlined processing or require operation of the cable on a common carrier basis. The Applicants respectfully request that the Commission expeditiously grant the pending Application.

Respectfully submitted,

LATAM TELECOMMUNICATIONS, LLC, PUERTO RICO TELEPHONE COMPANY, INC., AND CLARO CHILE, S.A.

By: */s/ Nancy J. Victory*

Nancy J. Victory
Colleen A. King
WILEY REIN LLP
1776 K Street, N.W.
Washington, DC 20006
(202) 719-7344

Their Attorneys

May 22, 2012

CERTIFICATE OF SERVICE

I, Colleen A. King, do hereby certify that on this 22nd of May, 2012, I caused a true copy of the foregoing "Opposition of Applicants to Comments of San Juan Cable LLC" to be sent by electronic mail (*) or U.S. mail (^) to:

^Dana Frix
James A. Stenger
Aaron Bartell
Chadbourne & Parke LLP
1200 New Hampshire Ave., N.W.
Washington, DC 20036
Counsel for San Juan Cable LLC

*Best Copy and Printing, Inc.
445 Twelfth Street, S.W.
Room CY-B402
Washington, DC 20554
FCC@BCPIWEB.COM

*David Krech
Policy Division
International Bureau
Federal Communications Commission
david.krech@fcc.gov

/s/ Colleen A. King