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May 10, 2012

VIA HAND DELIVERY

FILED/ACCEPTED

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

MAY 10 2012

Federal Communications Commission  
Office of the Secretary

Attn: Chief, International Bureau

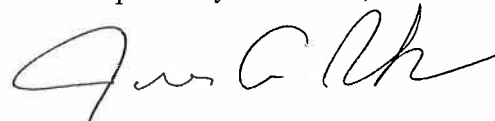
**Re: File No. SCL-LIC-20120330-00002, Latam Application for a License to Construct, Land and Operate an Undersea Cable System on a Private Carrier Basis**

Dear Ms. Dortch:

San Juan Cable, LLC d/b/a OneLink ("OneLink"), through counsel hereby submits its *Comments of San Juan Cable LLC* with regard to the above-referenced application.

Should additional information be necessary in connection with this matter, please communicate directly with the undersigned.

Respectfully submitted,



James A. Stenger

Enclosures

cc: (via first class mail):  
Nancy J. Victory, Esq., Counsel for Applicant

CPAM: 4297986v1



**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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

To: The Chief, FCC International Bureau

**COMMENTS OF SAN JUAN CABLE LLC**

San Juan Cable LLC, d/b/a OneLink (“OneLink”), through its undersigned counsel and pursuant to Section 1.767 of the Commission’s Rules<sup>1</sup> respectfully comments on the above-referenced application in accordance with the Commission's Public Notice of April 26, 2012. OneLink believes that a new submarine cable will provide additional broadband capacity to the Caribbean region. However, the request of Latam, owned as it is by America Movil, to operate the cable on a private carrier basis, free of the Commission's common carrier regulations, raises serious issues that are not adequately addressed in the application. Accordingly, OneLink respectfully requests that the Commission remove the application from streamlined processing and direct the applicant to file additional information in support of its request to operate this cable as a private carrier, or deny the request to operate the cable as a private carrier.

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<sup>1</sup> 47 C.F.R. § 1.767.

**OneLink.** OneLink is a cable television operator serving parts of Puerto Rico. OneLink also provides cable modem service and IP telephony. OneLink's customers utilize OneLink services that involve telecommunications and broadband traffic throughout that Caribbean region, including the countries be served by the proposed cable.

**Latam.** Latam is owned by America Movil: "The AMXI System will be owned by eight subsidiaries of America Movil...." Application at 2. America Movil owns Telmex, the dominant wireline carrier in Mexico, as well as Telcel, the dominant wireless carrier. America Movil recently reported to the U.S. Securities and Exchange Commission its efforts to attempt to settle the approximately billion dollar fine imposed by the Mexican government in an effort to encourage America Movil subsidiaries to cease engaging in various anti-competitive practices in Mexico.<sup>2</sup> As the Commission knows, America Movil also owns Puerto Rico Telephone Company ("PRTC") (indirectly through a series of intervening corporations). See Application, Appendix. A. PRTC is the dominant telephone company in Puerto Rico and is specifically defined as such under Puerto Rico Law 213. America Movil has additional affiliates in Argentina, Brazil, Chile, Columbia, Costa Rica, the Dominican Republic and Ecuador. See Application, Appendix A at 3. Latam claims that it lacks market power in Columbia but it admits that "Latam is considered dominant with respect to the U.S.-Mexico, U.S.-Brazil, U.S.-Guatemala and U.S.-Dominican Republic routes." Application, Appendix B at 5.

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<sup>2</sup> "In April 2011, for example, following a regulatory inquiry initiated in 2006, the Federal Antitrust Commission (Commission Federal de Competencia, or "Cofeco") notified our subsidiary Radiomóvil Dipsa, S.A. de C.V. ("Telcel") of a resolution imposing a fine of Ps.11,989 million for alleged "relative monopolistic pricing practices" (prácticas monopólicas relativas) that also constituted a repeat offense (reincidencia). Under applicable Mexican law, Cofeco can impose a penalty for a repeat offense equivalent to the highest of twice the fine applicable to a first-time offense, 10% of the offender's total assets, and 10% of the offender's total sales for its previous fiscal year." America Movil Form 20-F, April 30, <http://www.sec.gov/Archives/edgar/data/1129137/000119312512196609/d341769d20f.htm>.

**Request for Private Carrier Status.** The application does not meet the standard for approval of the proposed operation of the cable on a private carrier basis. Latam principally relies upon *Cable & Wireless*, 12 FCC Rcd 8516 (1997). Application at 4, note 1. That reliance is misplaced. Latam fails to meet the two prong test for private carriage that Latam admits is applicable to its request.

The first prong of the test is whether the public interest will be served by private carrier operation and this in turn depends upon "whether an applicant will be able to exercise market power because of the lack of alternative facilities." Application at 4. To attempt to meet this test, Latam argues there is plenty of alternative capacity. Application at 4-5. This claim is directly contradicted by Latam's preceding public interest statement wherein Latam points to the dire need for the new cable due to the exploding growth in broadband communications in the Caribbean region. Application at 2-3. Latam can't have it both ways. Latam needs to reconcile its claim that there is a dire need for this cable with its claim that it will not wield market power when it puts the cable into service.

Vague statements that "the region" is served by "other submarine cables" require detailed scrutiny. While Latam lists various other cables in the region, Latam provides no analysis of market power based on the existence of these cables. The Commission needs to be informed of the degree of market power that America Movil will wield after it puts its cable into service. In order to enable the Commission to make this assessment, Latam needs to provide the Bureau with the 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. The reference to satellite facilities is simply a red-herring. Satellite facilities carry only a small fraction of the traffic carried on submarine cables, as the Bureau is well aware.

Merely paying lip service to the first prong of the test without providing any actual data

cannot be the basis for public policy. *Cable & Wireless* provides no excuse for less than rigorous scrutiny of the market power issue because that case was expressly based on a finding that Cable & Wireless lacked market power in the destination markets. *Id.* at para. 1. The opposite is true here, America Movil, the owner of the proposed cable wields tremendous market power in the region and in several of the countries this cable will serve. Thus, the Bureau needs to remove the application from streamlined processing and require Latam to submit of detailed information to assess the degree of market power that this cable will confer on America Movil.

Latam's response to the second prong of the private carrier test is even less coherent. According to Latam, "the Commission considers whether there is any reason implicit in the nature of the operation that the Applicants would make capacity available to the public indifferently." Application at 5. Latam's answer to this prong of the test is an empty promise that Latam "will allow other carriers to purchase capacity", without specifying how much. Application at 5. Nor does Latam give any notion of the terms on which any such capacity would be offered, stating only a vague commitment that capacity will be sold "on terms tailored to their particular needs." Application at 5. This statement is disturbing, not comforting, where America Movil is holding the scissors and serving as the tailor. This case is completely unlike *Cable & Wireless* because *Cable & Wireless* had no market power and no history of abuse of market power, while America Movil acknowledges its dominant carrier status on most of the proposed routes and has been found in its home country to be abusing its market power.

According to Latam, the Bureau was willing to allow private carrier operation of a cable that would be owned by a monopolist in the case of *Optel Communications*, 8 FCC Rcd 2267 (1993). However, Optel, the Canadian international telecommunications monopoly, is a far cry from America Movil. America Movil's market power in Mexico, Puerto Rico and other countries in this region encompasses domestic telecommunications markets and includes both

traditional wireline service and rapidly growing wireless services. Under these circumstances, Latam's reliance upon *Optel* is misplaced.

Given the ownership of Latam by America Movil, the application for approval of private carrier status should be removed from streamlined processing. The requirement to meet the standard for approval of private carriage must be read together with the requirements of Section 1.767(k). Otherwise a mere certification under Section 1.767(k)(3) would render meaningless the private carriage two prong test.

The scant information provided in the application makes it impossible for the Bureau to determine whether private carrier operation will harm competition. Given the insufficient information, the Bureau should presume that common carrier operation is required, unless and until Latam fully justifies private carrier status.

## CONCLUSION

For the foregoing reasons, OneLink requests that the Latam application be removed from streamlined processing and the applicant be ordered to provide additional information in support of the request to operate as a private carrier, or the request should be denied.

Respectfully submitted,

SAN JUAN CABLE d/b/a ONELINK

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May 10, 2012

Its Counsel

CERTIFICATE OF SERVICE

I, Lisa Colletti, a secretary in the law office of Chadbourne & Parke, LLP, hereby certify that I served a copy of the foregoing Comments of San Juan Cable LLC by first class mail this 10th day of May, 2012 to:

Nancy J. Victory  
Wiley Rein LLP  
1776 K Street, NW  
Washington, DC 20006

Handwritten signature of Lisa Colletti in cursive script.