

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

In the Matter of)
)
Application for a License to Land and)
Operate a Fiber Optic Submarine Cable)
System Linking the United States, Iceland) File No. SCL-LIC-2014_____)
and Ireland, and Request for Streamlined)
Treatment)
)
Emerald Express Cable Network)

**APPLICATION FOR CABLE LANDING LICENSE AND
REQUEST FOR STREAMLINED TREATMENT**

Emerald Networks Holdings Limited (“Emerald”), pursuant to the Act Relating to the Landing and Operation of Submarine Cables in the United States, 47 U.S.C. §§ 34-39 (the “Cable Landing License Act”), Executive Order 10,530, and Section 1.767 of the Commission’s rules, 47 C.F.R. § 1.767, hereby applies for a license to construct, land, and operate a fiber-optic submarine cable system directly linking (1) Shirley, New York, United States; (2) Mölvík, Iceland; and (3) Killala Bay, Ireland. Emerald seeks streamlined review of this Application consistent with Section 1.767(k) of the Commission’s rules, 47 C.F.R. § 1.767(k).

I. BACKGROUND

The Emerald Express Cable Network will be a private, non-common carrier fiber optic cable directly linking the United States and Ireland. In the future, the cable may be extended to France.¹ The system will span 5,200 km (3,231 miles), linking an existing cable station in

¹ Any such extension will be addressed in an appropriate application to the Commission as required in each case.

Shirley, New York, which is owned by AT&T and contracted by Emerald Networks, to new cable stations being constructed in Mölvík, Iceland and Killala, Ireland. The cable system will provide transmission capacity of up to 40 terabits per second between Ireland and the United States. The cable will be owned and operated by Emerald, an independent company formed solely to construct and operate the Emerald Express cable network.

Grant of this application will advance the public interest. The Emerald Express Cable Network will improve international connectivity and reliability on the United States-Ireland route. This new cable system will provide extra capacity for the increasing amount of international traffic required by the growing number of home and business broadband users and provide further redundancy to telecommunications networks linking the United States and Ireland. In support of this Application, Emerald submits the following information:

I. INFORMATION REQUIRED BY SECTION 1.767

A. The name, address and telephone number of the Applicant:

Emerald Networks Holdings Limited
26, Upper Fitzwilliam Street
Dublin 2
Ireland
508 254 2929

1. The Government, State or Territory under the laws of which each corporate or partnership applicant is organized:

Emerald is an Irish corporation.

2. **The name, title, post office address, and telephone number of the officer and any other contact point, such as legal counsel, to whom correspondence concerning the application is to be addressed:**

Robert E. Stup, Jr.
Squire Sanders (US) LLP
1200 19th Street NW
Washington, DC 20036
(202) 626-6721
Robert.stup@squiresanders.com

3. **A description of the submarine cable, including the type and number of channels and the capacity thereof:**

The Emerald Express cable system will be comprised of four fiber pairs, designed to carry 100 wavelengths of light on each fiber pair, with each wavelength operating at an initial speed of 100 Gbps, equivalent to 10 Tbps per fiber pair, resulting in 40 Tbps cross-sectional capacity.

The United States landing point will be AT&T's existing cable landing station at Shirley, NY. In Ireland, the landing points will be a newly-constructed cable station in Kilalla Bay, to be owned and operated by Emerald. As noted above, Emerald may in the future extend the cable system to other points in Europe and/or Africa.

4. **A specific description of the cable landing stations on the shore of the United States and in foreign countries where the cable will land:**

- a. **United States: Shirley, New York Cable Landing Station**

The Shirley, New York Cable Station is located on the south coast of Long Island. The address is 1 Coraci, Shirley, Long Island, NY. The coordinates of the station are N40°46'18" / W72°52'12".

The map attached as Exhibit A shows the location of the cable station.

b. Iceland: Grindavik, Iceland cable Landing Station

The Grindavik Cable Station is located on the southwest coast of Iceland at Mölvík, approximately 10 km west of Grindavik. The coordinates of the station are N63°49.2730 / W22°36.8680 (WGS84).

The map attached as Exhibit B shows the location of the cable station.

c. Ireland: Kilalla Bay, Ireland cable Landing Station

The Kilalla Cable Station is located on the northwest coast of Ireland. The address and coordinates of the cable station are: Killala Industrial Complex, Route 314, Killala, Ireland - N54°11'42" / W09°12'54".

The map attached as Exhibit C shows the location of the cable station.

5. A statement as to whether the cable will be operated on a common carrier or non-common carrier basis:

The Emerald Express Cable Network will be operated as a private, non-common carrier cable. Private carriage is fully consistent with established Commission policy and will advance the public interest. In determining whether a submarine cable qualifies to be operated on a non-common carrier basis, the Commission follows the two-part test established in *NARUC*.² Under this test, a submarine cable may be operated on a non-common carrier basis if: (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.³

² *Nat'l Ass'n of Regulatory Util. Comm'ners v. FCC*, 525 F.2d 630, 642 (D.C. Cir. 1976) ("*NARUC*"), *cert. denied*, 425 U.S. 992 (1976).

³ *See Cable & Wireless Order*, 12 FCC Rcd. 8516, 8520-23,919111-17 (1997); *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).

The Emerald Express Cable Network satisfies both prongs of this two-part test. First, the Commission has previously held that there is 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,⁴ and the Commission has focused this public interest analysis on whether an applicant will be able to exercise market power because of the lack of alternative facilities.⁵ Because the North Atlantic region is served by many other cable systems, there is no lack of alternative facilities under the first factor. The existing cables that extend to the countries, other than the United States, in which Emerald Express will land, include the following:

1. Serving Iceland:

- a. Greenland Connect (2009) Iceland to Greenland/Canada;
- b. Danice (2008) Iceland to Denmark;
- c. Farice (2004) Iceland to Faroes/Scotland.

2. Serving Ireland:

- a. CeltixConnect (2012) Dublin, Ireland to Holyhead, Wales;
- b. Emerald Bridge (2012) Dublin, Ireland to Parc Cybi, Wales;
- c. East/West Interconnector (2011), Rush, Ireland to Deeside, Scotland;
- d. Sirius South (1998) Dublin, Ireland to Preston, England;
- e. Hibernia 'C' (2001) Dublin, Ireland to Halifax / Southport,UK;
- f. ESAT 2 (1999) Dublin, Ireland to Lytham, England;
- g. ESAT 1 (1999) Kilmore Quay, Ireland, to Whitesands, Wales
- h. Celtic (1994) Kilmore Quay, Ireland to Sennen, England;

⁴ See, e.g., Cable & Wireless Order, 12 FCC Rcd. at 8522, 919114-15.

⁵ *Id.*

- i. PAN European 2 Crossing (2000) Ballinsker, Ireland to Crooklets Bay, England;
- j. PAN European 1 Crossing (2000) Ballygran, Ireland to Whitesands, Wales;
- k. SOLAS (1999) Kilmore Quay, Ireland to Oxwich, Wales.

The Commission has noted that both direct and indirect connections can serve to constrain the ability of a licensee to engage in anti-competitive practices and thus support authorization to operate on a non-common carrier basis.⁶ Moreover, Emerald is not affiliated with any foreign carriers and therefore does not control any bottleneck facilities in the markets the cable proposes to serve. Accordingly, there is no reason to compel the Emerald Express Cable Network to offer service on a common carrier basis.

Second, the Emerald Express Cable Network does not hold itself out as a common carrier, and it will not offer capacity to the public indifferently. Rather, as with other private, non-common carrier cable systems, the available capacity will be used by Emerald and offered to other carriers on terms tailored to their particular needs. Accordingly, the Emerald Express Cable Network will not be operated on a common carrier basis.

⁶ Review of Commission Consideration of Applications under the Cable Landing License Act, *Notice of Proposed Rulemaking*, FCC 00-210 ¶ 65 n.133 (2000) (noting that a US-UK-Japan link provided alternative facilities relevant to the non-common carrier status of a proposed US-Japan link).

6. Cable Ownership Information

The Emerald Express will be 100% owned by Emerald. The cable landings in the United States, Iceland, and Ireland are or will be owned or obtained by long-term contract by Emerald.

7. Corporate Control and Affiliate Information

Emerald submits the following information specified in Sections 63.18(h) through (k) and Section 63.18(o) of the Commission's rules:

a. Certification Regarding Ownership, Citizenship, Principal Businesses, and Interlocking Directorates

Emerald is wholly-owned subsidiary by Aqua Ventures International FZE ("Aqua Ventures"). The address of Aqua Ventures is PO Box 50073, Fujairah, United Arab Emirates. The principal business of Aqua Ventures is investments. The sole, indirect owner of Aqua Ventures is Christopher Paul Bake, a Dutch citizen, as settlor of The Bake Family Trust, which directly owns 100% of Aqua Ventures. No other person or entity holds a ten percent or greater ownership interest in Aqua Ventures Inc. Aqua Ventures has no has interlocking directorates with other entities.

b. Certification Regarding Foreign Carrier Status and Foreign Affiliation

Emerald is a foreign carrier. Emerald has no affiliated carriers.

c. Telecommunications Services to Destination Countries

Emerald does not hold a 214 and does not operate as a telecommunications carrier.

d. Certification Regarding WTO Status, Market Power, and the Effective Competitive Opportunities Test

Both Ireland and Iceland are WTO members.

e. Certification Regarding the Anti-Drug Abuse Act of 1988

Emerald certifies that pursuant to sections 1.2001 through 1.2003 of the Commission's rules it is not subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.

f. Certification Regarding Routine Conditions Set Forth in Section 1.767(g) of the Commission's rules

Emerald certifies that it accepts and will abide by the routine conditions specified in Section 1.767(g) of the Commission's rules.

g. Certification Regarding Service to U.S. Coordinator, Department of State; NTIA, and Defense Information Systems Agency

Pursuant to Section 1.767(j) of the Commission's rules, a complete copy of this Application has been sent to the United States Department of State, the United States Department of Commerce, and the Defense Information Systems Agency.

II. REQUEST FOR STREAMLINED TREATMENT

Emerald requests streamlined processing of the Application under Sections 1.767(j) and (k) of the Commission's rules, 47 C.F.R. §§ 1.767(j)-(k). Pursuant to Section 1.767 (k)(3), 47 C.F.R. § 1.767 (k)(3), Emerald certifies that Ireland is a Member of the WTO.

Pursuant to Section 1.767 (k)(2) of the Commission's rules, 47 C.F.R. § 1.767 (k)(2), Emerald certifies pursuant to Sections 63.10 and 63.12 of the Commission's rules, 47 C.F.R. Sections 63.10 & 63.12, that it is not affiliated with any foreign carrier and therefore its application does not raise any market power issues that would preclude streamlined processing.

III. CONCLUSION

As demonstrated above, the public interest, convenience and necessity will be served by a grant of this application to construct, land, and operate a fiber-optic submarine cable system directly linking Ireland with the United States. Emerald respectfully requests that the Commission grant this application.

Respectfully submitted,

Emerald Networks Holdings Limited

/s/ Greg Varisco

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Counsel to Emerald Network Holdings Limited


Dated: February 5, 2014

Certification

I am authorized to enter this Certification on behalf of Emerald.

All of the information contained in the foregoing Application is true and correct to the best of my knowledge and belief.

I hereby certify for Emerald that Emerald is aware of the requirements of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. Sect. 1456 ("CZMA"), and will abide by the CZMA and the National Oceanic and Atmospheric Administration (NOAA) rules implementing the CZMA, 15 C.F.R. Part 930.

By: 

Greg Varisco
President,
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Dublin 2, Ireland
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For and on behalf of Emerald.

Dated: February 5, 2014

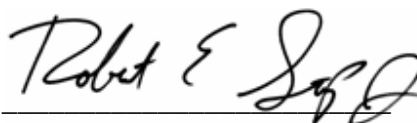
CERTIFICATE OF SERVICE

I hereby certify that the foregoing application was served on the following by first-class mail on February 5, 2014:

U.S. Coordinator, EB/CIP
U.S. Department of State
2201 C Street, NW
Washington, DC 20520-5818

Office of Chief Counsel/NTIA
U.S. Department of Commerce
14th St., NW and Constitution Ave., NW
Washington, DC 20230

Defense Information Systems Agency
Code RCG
701 S. Courthouse Road
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EXHIBIT A

United States Cable Station - 1 Coraci Blvd, Shirley, NY



EXHIBIT B

Iceland Landing Cable Station - Mölvík Site



| | | | |
|-------------------------------|-----|-------------------|-----|
| Afmörkun deiliskipulags | --- | Slóð | --- |
| Ljósleiðari í sjó | --- | Bygging, afmörkun | --- |
| Ljósleiðari á landi | --- | Lóð | --- |
| Rör | --- | | --- |
| Athafnasvæði á framkvæmdatíma | ● | | |

Dags: 02.09.2011



EXHIBIT C

Ireland Landing Cable Station –Killalala Bay Site

