

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

*In the Matter of*

SEABRAS 1 USA, LLC,

Application for a License to Land and Operate  
a Private Fiber-Optic Submarine Cable System  
Connecting Brazil and New Jersey,

THE SEABRAS-1 CABLE SYSTEM

File No. SCL-LIC-2016-\_\_\_\_\_

**JOINT APPLICATION FOR CABLE LANDING LICENSE—  
STREAMLINED PROCESSING REQUESTED**

Pursuant to 47 U.S.C. § 34, Executive Order No. 10,530, and 47 C.F.R. § 1.767, Seabras 1 USA, LLC (“Seabras 1 USA,” FRN 0025202300) hereby applies for a license to land and operate within the United States a private fiber-optic submarine cable network connecting Praia Grande, Brazil, with Avon-by-the-Sea, New Jersey, to be known as the Seabras-1 cable system. Seabras 1 USA will operate the Seabras-1 cable system on a non-common-carrier basis by providing bulk capacity to customers on particularized terms and conditions pursuant to individualized negotiations. The existence of robust competition and ample competing facilities on the U.S.-Brazil route obviate any need for common-carrier regulation on public-interest grounds.

Seabras 1 USA intends to commence commercial operation of the Seabras-1 cable system in the second calendar quarter of 2017. Seabras 1 USA therefore views timely grant of a cable landing license by the Commission no later than September 2016 of paramount importance. An expeditious grant of this application will significantly advance the public interest.

*First*, Seabras-1 will offer significant new capacity on a route where capacity demand is currently doubling every two years.<sup>1</sup> Seabras-1 will consist of six fiber pairs with an initial capacity of 24 terabits per second (“Tbps”) and a design capacity of 72 Tbps. Seabras-1 will offer capacity in large increments until the year 2042, far beyond the useful life of most existing systems serving the U.S.-Brazil route.

*Second*, as a carrier-neutral operator, Seabras-1 will enhance competition on U.S.-Brazil and U.S.-Latin America routes by offering capacity to existing operators and new entrants. Unlike many existing operators on the route, Seabras 1 USA is a carrier-neutral operator, and it does not seek to favor its own terrestrial telecommunications business in Latin America (of which it has none).

*Third*, Seabras-1 will increase route diversity, strengthening the resilience of U.S.-Latin America communications. Most of the systems currently connecting the United States to Brazil land in Florida, meaning that continuity of communications on the route could be greatly affected by a single event, such as a hurricane. Seabras-1 will instead land in New Jersey, which—while not immune from hurricanes—is not typically affected in the same manner as the more frequent storms making landfall in Florida.

*Fourth*, Seabras-1 will provide the lowest-latency connection between the leading financial and commercial centers of both the United States (metro New York) and Brazil (metro São Paulo). The New Jersey landing will also provide optimal onward connectivity for Latin America-Europe traffic, most of which transits the United States.<sup>2</sup>

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<sup>1</sup> Continuity and Changes in Latin America Connectivity, TeleGeography-Ciena Webinar (Dec. 2015), *available with registration at* <https://www.telegeography.com/press/announcements/2015/12/14/telegeographyciena-latin-america-webinar-available-on-demand/index.html>.

<sup>2</sup> *Id.*

This application raises no competition or other public-interest concerns. Seabras 1 USA requests streamlined processing pursuant to 47 C.F.R. § 1.767(k)(2), as it is affiliated with a new, non-dominant carrier subsidiary in Brazil created specifically for the Brazil landing of Seabras-1

**I. COMPLIANCE WITH 47 C.F.R. § 1.767**

**A. Applicant's Name, Address, and Telephone Number<sup>3</sup>**

Seabras 1 USA, LLC  
100 Cummings Center  
Suite 435-P  
Beverly, Massachusetts 01915  
+1 978 377 8366 tel

**B. Applicant's Place of Incorporation<sup>4</sup>**

Seabras 1 USA is a Delaware limited-liability company.

**C. Contact Information<sup>5</sup>**

Andy Bax  
Chief Operating Officer  
Seabras 1 USA, LLC  
100 Cummings Center  
Suite 435-P  
Beverly, Massachusetts 01915  
+1 978 377 8366 tel  
*andy@seabornnetworks.com*

*with a copy to:*

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*Counsel for Seabras 1 USA, LLC*

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<sup>3</sup> See 47 C.F.R. § 1.767(a)(1).

<sup>4</sup> See *id.* § 1.767(a)(2).

<sup>5</sup> See *id.* § 1.767(a)(3).

**D. System Description<sup>6</sup>**

Seabras-1 is a point-to-point system connecting Avon-by-the-Sea, New Jersey, with Praia Grande, Brazil. Seabras-1 will consist of six optical fiber pairs, with an initial capacity of 4 Tbps per fiber pair and a total design capacity of 12 Tbps per fiber pair. Seabras 1 USA expects the Seabras-1 cable system to enter into commercial service in the second calendar quarter of 2017.

In Appendix A, Seabras 1 USA provides a route map for the system.

**E. Landing Points<sup>7</sup>**

Seabras 1 USA provides specific landing point information (including geographic coordinates and street addresses, where available, for beach manholes and cable landing stations) in the following appendices:

- Appendix B: Avon-by-the-Sea, New Jersey
- Appendix C: Praia Grande, Brazil

**F. Regulatory Classification<sup>8</sup>**

Seabras 1 USA will operate the Seabras-1 cable system on a non-common-carrier basis. Non-common-carrier classification of the proposed system is consistent with established Commission policy and precedent and with judicial precedent, and it will advance the public interest.

*First*, the Commission should not subject the Seabras-1 cable system to common-carrier regulation because Seabras-1 will not operate on a common-carrier basis as defined in

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<sup>6</sup> See *id.* § 1.767(a)(4).

<sup>7</sup> See *id.* § 1.767(a)(5).

<sup>8</sup> See *id.* § 1.767(a)(6).

*NARUC I*.<sup>9</sup> 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.’”<sup>10</sup> On Seabras-1, however, Seabras 1 USA will not sell capacity indifferently to the user public. Instead, Seabras 1 USA will sell bulk capacity to particular users—including carriers, Internet service providers, enterprises, and government customers—pursuant to individually-negotiated indefeasible rights of use (“IRUs”) and capacity leases, the terms of which will vary depending on the characteristics and needs of the particular capacity purchaser. The Commission has consistently found that such offerings do not make an applicant a common carrier.<sup>11</sup>

*Second*, the Commission should not subject the Seabras-1 cable system to common-carrier regulation because there is no legal compulsion or other public-interest reason for the Applicants to operate Seabras-1 in such a manner. Under the *NARUC I* test, the Commission must determine whether the public interest requires common-carrier operation of the cable

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<sup>9</sup> See *Nat’l Ass’n of Regulatory Utility Comm’rs v. FCC*, 525 F.2d 630, 642 (D.C. Cir. 1976) (“*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 Tel. 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 enactment of the Telecommunications Act of 1996).

<sup>10</sup> *Nat’l Ass’n of Regulatory Utility Comm’rs v. FCC*, 533 F.2d 601, 608 (D.C. Cir. 1976) (quoting *Semon v. Royal Indemnity Co.*, 279 F.2d 737, 739 (5th Cir. 1960)).

<sup>11</sup> See *AT&T Corp. et al., Cable Landing License*, 13 FCC Rcd. 16,232, 16,238 (Int’l Bur. 1998) (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., Cable Landing License*, 11 FCC Rcd. 14,885, 14,904 ¶ 64 (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 AT&T Submarine Systems, Inc., Memorandum Opinion and Order*, 13 FCC Rcd. 21,585 (1998), *aff’d sub nom. Virgin Islands Telephone Corp. v. FCC*, 198 F.3d 921 (D.C. Cir. 1999).

system.<sup>12</sup> Traditionally, the Commission has focused on whether the applicant has sufficient market power to warrant common carrier regulation,<sup>13</sup> although the Commission “is not limited to that reasoning” and has looked more broadly to determine whether common-carrier licensing is in the public interest.<sup>14</sup> The Seabras-1 cable system poses no such competitive or other public-interest concerns.

The Seabras-1 cable system will enhance competition by competing vigorously with other submarine cable systems on all of the international routes it will serve. Specifically, the Seabras-1 cable system will compete directly with the existing Americas-II, AMX-1, GlobeNet, Pan American, SAM-1, and South American Crossing/Latin American Nautilus systems, which—on the U.S. end—land either in Florida, Puerto Rico, or the U.S. Virgin Islands. It will also compete directly with the planned Monet system, which will land—on the U.S. end—in Florida.

The Commission has previously found that it “can rely upon both existing and planned facilities/services in making competitive assessments”<sup>15</sup> and that facilities need not be identical

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<sup>12</sup> *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”).

<sup>13</sup> See *St. Thomas-St. Croix Cable Order*, 11 FCC Rcd. at 14,893 ¶ 30.

<sup>14</sup> See *AT&T Corp. et al.*, Cable Landing License, 14 FCC Rcd. 13,066, 13,080 ¶ 39 (1999) (stating that “[a]lthough this public interest analysis has generally focused on the availability of alternative facilities, we are not limited to that reasoning”); *Australia-Japan Cable (Guam) Limited*, Cable Landing License, 15 FCC Rcd. 24,057, 24,062 ¶ 13 (Int’l Bur. 2000) (stating that “[t]his public interest analysis generally has focused on whether an applicant will be able to exercise market power because of the lack of alternative facilities, although the Commission has not limited itself to that reasoning”); *Telefonica SAM USA, Inc. et al.*, Cable Landing License, 15 FCC Rcd. 14,915, 14,920 ¶ 11 (Int’l Bur. 2000) (stating that “[t]his public interest analysis has focused on the availability of alternative facilities, although the Commission has stated it is not limited to that reasoning”).

<sup>15</sup> *General Communication, Inc.*, Order on Review, 16 FCC Rcd. 4314, 4315 ¶ 4 (2001).

in order to offer pro-competitive benefits.<sup>16</sup> The existence of ample competing submarine cable facilities providing U.S.-Brazil connectivity ensures that Seabras-1 would not function as a bottleneck facility on those routes. Seabras 1 USA's intended operation of the Seabras-1 cable system is therefore consistent with the Commission's long-standing policy to encourage competition through private submarine cable transmissions, pursuant to which the Commission has granted numerous cable landing licenses.<sup>17</sup>

In addition to offering additional capacity and competition on the U.S.-Brazil and U.S.-Latin America routes, the Seabras-1 cable system will further benefit the public interest for the reasons noted in the introductory section above. It will provide route diversity, landing in New Jersey rather than Florida, and provide the lowest-latency connections between the principal financial and commercial centers of both the United States and Brazil.

#### **G. Cable Ownership Information**<sup>18</sup>

Seabras 1 USA will own the portions of Seabras-1's wet segment in U.S. territory and in international waters, representing 96 percent of Seabras-1's wet segment. Seabras 1 Brasil Ltda. will own the portion of Seabras-1's wet segment in Brazilian territory.

In New Jersey, Seabras-1 will land at an existing cable landing station owned and controlled by Tata Communications (America) Inc. ("Tata"). As stated in part II below, Seabras 1 USA seeks a waiver of 47 C.F.R. § 1.767(h)(1), as Tata will have no ability to affect significantly the operation of Seabras-1. In Brazil, Seabras-1 will land at a new cable landing

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<sup>16</sup> *St. Thomas-St. Croix Cable Order*, 11 FCC Rcd. at 14,898 ¶ 44 (stating that "requiring current identical substitute common carrier facilities before non-common carrier facilities will be authorized would serve as a disincentive for entities to take risks and expend capital to expand and upgrade facilities").

<sup>17</sup> *See Tel-Optik Ltd.*, Memorandum Opinion and Order, 100 FCC.2d 1033, 1041 (1985).

<sup>18</sup> *See* 47 C.F.R. § 1.767(a)(7).

station, currently under construction, that is owned and will be operated by Seabras 1 Brasil Ltda.

**H. Certification Regarding Ownership, Citizenship, Principal Business, and Interlocking Directorates<sup>19</sup>**

As detailed further below and illustrated graphically in Appendix D, Seabras 1 USA is a wholly-owned, indirect subsidiary of Seabras Group, LLC (“Seabras Group”), the operating company that will ultimately direct the day-to-day operations of Seabras-1. Seabras Group will be owned indirectly by two principal sets of investors. *First*, funds controlled by the Swiss private investment firm Partners Group Holding AG (“PG Holding”) own in aggregate an approximate 51.17-percent indirect economic interest in Seabras 1 USA. Only one of the funds (Partners Group Direct Investments 2012 (EUR) L.P., Inc.) holds a 10-percent-or-greater indirect economic interest in Seabras 1 USA. Although the equity of those funds is held by third parties—none of which holds a 10-percent-or-greater direct or indirect interest in Seabras 1 USA—PG Holding holds voting control for any shares or member interests held by each the funds, including the aggregate 51.17-percent indirect voting interest in Seabras Group.

*Second*, Seaborn Network Holdings, LLC (“Seaborn Networks”), will hold a 42-percent indirect economic and voting interest in Seabras 1 USA. Seaborn Networks’ wholly-owned, direct subsidiary, Seaborn Management, Inc. (“Seaborn Management”), will exercise day-to-day control over Seabras Group via a management agreement with Seabras Group. Consequently, the officers of Seaborn Networks will also serve as the officers of Seabras Group and Seabras 1 USA. Seaborn Networks will hold three of Seabras Group’s seven board seats, including the board chairmanship. These arrangements are illustrated graphically in Appendix D.

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<sup>19</sup> See *id.* §§ 1.767(a)(8)(i), 63.18(h).



By the signature below, Seabras 1 USA certifies that it has nine 10-percent-or-greater direct or indirect interest holders:

- (1) Seabras 1 Bermuda Ltd. (“Seabras 1 Bermuda”)**  
*Address:* Cannon’s Court, 22 Victoria Street, Hamilton, HM 12 Bermuda  
*Citizenship:* Bermuda  
*Principal Business:* holding company  
*Relationship:* Seabras 1 Bermuda owns 100 percent of Seabras 1 USA’s member interests.
- (2) Seabras Group, LLC (“Seabras Group”)**  
*Address:* 100 Cummings Center, Suite 435-P, Beverly, Massachusetts 01915  
*Citizenship:* Delaware  
*Principal Business:* telecommunications  
*Relationship:* Seabras Group owns 100 percent of Seabras 1 Bermuda’s shares.
- (3) Seabras Project Holdings, Inc. (“Seabras Project Holdings”)**  
*Address:* 100 Cummings Center, Suite 435-P, Beverly, Massachusetts 01915  
*Citizenship:* Delaware  
*Principal Business:* telecommunications  
*Relationship:* Seabras Project Holdings owns 42 percent of Seabras Group’s member interests.
- (4) Seaborn Networks Holdings, LLC (“Seaborn Networks”)**  
*Address:* 100 Cummings Center, Suite 435-P, Beverly, Massachusetts 01915  
*Citizenship:* Delaware  
*Principal Business:* telecommunications  
*Relationship:* Seaborn Networks owns 100 percent of Seabras Project Holdings’ shares, giving it a 42-percent indirect economic and voting interest in Seabras Group and Seabras 1 USA.
- (5) Mr. Larry Schwartz**  
*Address:* 100 Cummings Center, Suite 435-P, Beverly, Massachusetts 01915  
*Citizenship:* Delaware  
*Principal Business:* telecommunications; CEO of Seaborn Networks, Seabras project Holdings, Seabras Group, Seabras 1 Bermuda, and Seabras 1 USA  
*Relationship:* Mr. Schwartz owns 24.27 percent of Seaborn Networks, giving him a 10.19-percent indirect economic and voting interest in Seabras Group and Seabras 1 USA.
- (6) Partners Group Seabras, LLC (“PG Seabras”)**  
*Address:* 1114 Avenue of the Americas, 37th Floor, New York, NY 10036  
*Citizenship:* Delaware  
*Principal Business:* investments  
*Relationship:* PG Seabras owns 58 percent of Seabras Group’s member interests.

- (7) **Partners Group Direct Investments 2012 (EUR) L.P., Inc. (“PGDI 2012”)**  
*Address:* Tudor House, Le Bordage, St Peter Port, Guernsey, GY1 6BD  
*Citizenship:* Guernsey  
*Principal Business:* investments  
*Relationship:* PGDI 2012 owns 23 percent of PG Seabras’s member interests, giving it a 13.34-percent indirect economic and voting interest in Seabras Group and Seabras 1 USA.
- (8) **Partners Group Management VIII Limited (“PG Management VIII”)**  
*Address:* P.O. Box 477, Tudor House, Le Bordage, St Peter Port, Guernsey GY1 6BD  
*Citizenship:* Guernsey  
*Principal Business:* investments  
*Relationship:* PG Management VIII is the general partner of PGDI 2012, giving it a 13.34-percent indirect voting interest in Seabras Group and Seabras 1 USA.
- (9) **Partners Group Holding AG (“PG Holding”)**  
*Address:* Zugerstrasse 57, 6341 Baar, Switzerland  
*Citizenship:* Switzerland  
*Principal Business:* investments  
*Relationship:* PG Holding owns 99 percent of PG Management VIII’s shares, giving it a 13.21-percent indirect voting interest in Seabras Group and Seabras 1 USA.

PG Holding’s shares trade publicly on the SIX Swiss Exchange. As there is an active market in PG Holding’s shares, PG Holding’s share ownership is always fluid. Moreover, PG Holding can ascertain its significant shareholders only on the basis of its records and may not know of possibly related or affiliated shareholders that are not disclosed to it. Recognizing these limitations, as of December 31, 2015, PG Holding has no owners that would hold a 10-percent-or-greater direct or indirect interest in Seabras 1 USA. Approximately 45 percent of PG Holding’s shares are owned by its employees and partners.

In addition to the 13.21-percent indirect voting interest that it holds in Seabras Group and Seabras 1 USA via PGDI 2012, PG Holding holds an additional aggregate 37.96-percent indirect voting interest in Seabras Group and Seabras 1 USA through the following 10 funds, none of

which itself own holds a 10-percent-or-greater direct or indirect economic or voting interest in Seabras Group or Seabras 1 USA:

- (1) **BVK Infrastructure III, L.P. (“BVK”)**, the general partner of which is Partners Group Management XII Limited (“PGM XII”), holds 13.5 percent of PG Seabras’s shares. PG Holding owns 100 percent of PGM XII’s shares and therefore controls a 7.83-percent voting interest in Seabras Group through BVK.
- (2) **Partners Group Emerging Markets 2015, L.P. (“PGEM 2015”)**, the general partner of which is Partners Group Management V Limited (“PGM V”), holds 1.5 percent of PG Seabras’s shares. PG Holding owns 99 percent of PGM V’s shares and therefore controls an approximate 0.86-percent voting interest in Seabras Group through PGEM 2015.
- (3) **Infidem Partners Group Infrastructure, L.P. Inc. (“Infidem”)**, the general partner of which is Partners Group Management II Limited (“PGM II”), holds 2.5 percent of PG Seabras’s shares. PG Holding owns 99 percent of PGM II’s shares and therefore controls an approximate 1.44-percent voting interest in Seabras Group through Infidem.
- (4) **Partners Group Global Value 2014, L.P. Inc. (“PGGV 2014”)**, the general partner of which is Partners Group Management II Limited (“PGM II”), holds 2.5 percent of PG Seabras’s shares. PG Holding owns 99 percent of PGM II’s shares and therefore controls an approximate 1.44-percent voting interest in Seabras Group through PGGV 2014.
- (5) **Partners Group Infrastructure Universal L.P. Inc. (“PGIU”)**, the general partner of which is Partners Group Management Limited (“PGM”), holds 3.5 percent of PG Seabras’s shares. PG Holding owns 99 percent of PGM’s shares and therefore controls an approximate 2.01-percent voting interest in Seabras Group through PGIU.
- (6) **Partners Group Direct Infrastructure 2011 L.P. Inc. (“PGDI 2011”)**, the general partner of which is Partners Group Management IX Limited (“PGM IX”), holds 11.5 percent of PG Seabras’s shares. PG Holding owns 99 percent of PGM IX’s shares and therefore controls an approximate 6.60-percent voting interest in Seabras Group through PGDI 2011.
- (7) **Partners Group Global Infrastructure 2012, L.P. Inc. (“PGGI 2012”)**, the general partner of which is Partners Group Management IX Limited (“PGM IX”), holds 14.5 percent of PG Seabras’s shares. PG Holding owns 99 percent of PGM IX’s shares and therefore controls an approximate 8.33-percent voting interest in Seabras Group through PGGI 2012.

- (8) **Partners Group Global Infrastructure SICAV (“PGGI”)**, the general partner of which is Partners Group (Guernsey) Limited (“PG Guernsey”), holds 0.5 percent of PG Seabras’s shares. PG Holding owns 99 percent of PGM Guernsey and therefore controls an approximate 0.29-percent voting interest in Seabras Group through PGGI.
- (9) **Partners Group Global Value SICAV (“PGGV”)**, the general partner of which is Partners Group (UK) Limited (“PG UK”), holds 3.5 percent of PG Seabras’s shares. PG Holding owns 100 percent of PG UK’s shares and therefore controls a 3.5-percent voting interest in Seabras Group through PGGV.
- (10) **Partners Group Global Value 2014 SICAR (“PGGV 2014”)**, the general partner of which is Partners Group (UK) Limited (“PG UK”), holds 3.0 percent of PG Seabras’s shares. PG Holding owns 100 percent of PG UK’s shares and therefore controls a 3.0-percent voting interest in Seabras Group through PGGV 2014.

Seabras 1 USA provides this information to show how PG Holding holds its 51.17-percent indirect voting interest in Seabras Group and Seabras 1 USA and has therefore not supplied for these 10 funds the full set of data required for entities holding 10-percent-or-greater direct or indirect interests in the applicant, as none exceeds that threshold.

No corporate officer or director of Seabras 1 USA is also an officer or director of a foreign carrier.

**I. Certification Regarding the Anti-Drug Abuse Act of 1988<sup>20</sup>**

By its signature below, Seabras 1 USA certifies that no party to this application is subject to a denial of federal benefits under Section 5301 of the Anti-Drug Abuse Act of 1988, as amended.<sup>21</sup>

**J. Certification Regarding Foreign Carrier Status and Foreign Affiliations<sup>22</sup>**

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<sup>20</sup> See *id.* §§ 1.767(a)(8)(i), 63.18(o).

<sup>21</sup> 21 U.S.C. § 862(a); Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, title V, Section 5301, 102 Stat. 4310 (1988), which related to denial of Federal benefits to drug traffickers and possessors—previously codified at 21 U.S.C. § 853(a)—was renumbered section 421 of the Controlled Substances Act by Public Law, Pub. L. No. 101-647, title X, Section 1002(d)(1), 104 Stat. 4827 (1990), and has been recodified as 21 U.S.C. § 862(a). 47 C.F.R. § 63.18(o) does not reflect this recodification.

<sup>22</sup> See 47 C.F.R. § 1.767(a)(8)(ii).

By the signature below, Seabras 1 USA certifies that it:

(A) is not a foreign carrier in any foreign country;

(B) does not own or control a cable station in any foreign country;

(C) is affiliated with a foreign carrier in Brazil that also owns and controls a cable station currently under construction in Brazil.

**K. Certification Regarding Destination Countries<sup>23</sup>**

By the signature below, Seabras 1 certifies to the following: (A) it is not a foreign carrier in Brazil, the sole destination markets in which the Seabras-1 cable system will land; (B) it controls a foreign carrier in Brazil; (C) no entity owning more than 25 percent of it or controlling it controls a foreign carrier in Brazil; and (D) no grouping of two or more foreign carriers in Brazil (or parties that control foreign carriers in Brazil) own, in aggregate, more than 25 percent of it and are parties to, or beneficiaries of, a contractual relation affecting the provision or marketing of arrangements for the terms of acquisition, sale, lease, transfer and use of capacity on the Seabras-1 cable system in the United States.

**L. Certification Regarding WTO Status and Affiliations with Foreign Carriers Having Market Power in Foreign Destination Markets<sup>24</sup>**

No response is required, as Seabras 1 USA did not identify any non-WTO markets in response to 47 C.F.R. § 1.767(a)(8)(iii).

**M. Certification Regarding Routine Conditions<sup>25</sup>**

By the signature below, Seabras 1 USA certifies that it accepts and will abide by the routine conditions specified in 47 C.F.R. § 1.767(g).

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<sup>23</sup> See *id.* § 1.767(a)(8)(iii).

<sup>24</sup> See *id.* § 1.767(a)(8)(iv).

<sup>25</sup> See *id.* § 1.767(a)(9).

**N. Streamlining—Market Power<sup>26</sup>**

Seabras 1 USA requests streamlined processing pursuant to 47 C.F.R. § 1.767(k)(2).

Seabras 1 USA certifies that it is affiliated with a new foreign carrier in Brazil: its indirect subsidiary Seabras 1 Brasil Ltda, which was created specifically for the purpose of constructing, owning, and operating Seabras-1 in Brazilian territory. As a newly-established carrier, Seabras 1 Brasil Ltda. currently has zero percent market share in Brazil.

**O. Streamlining—CZMA<sup>27</sup>**

By the signature below, Seabras 1 USA certifies that it is not required to submit a consistency certification to any state or territory pursuant to Section 1456(c)(3)(A) of the Coastal Zone Management Act, codified at 16 U.S.C. § 1456(c)(3)(A). New Jersey, the only U.S. state in which Seabras-1 will land, does not list, and has never proposed to list, a cable landing license as a federal activity requiring a consistency certification.<sup>28</sup>

**P. Certification Regarding Service to Executive Branch Agencies<sup>29</sup>**

Seabras 1 USA has sent a complete copy of this application to the U.S. Departments of State, Commerce, and Defense. Seabras 1 USA's counsel has certified such service in the certificate of service attached to this application.

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<sup>26</sup> See *id.* § 1.767(j), (k).

<sup>27</sup> See *id.*

<sup>28</sup> See National Oceanic and Atmospheric Administration, Coastal Zone Management Program, *New Jersey Coast Management Program Federal Consistency Listings* (2008) <https://coast.noaa.gov/czm/consistency/media/nj.pdf> (last accessed Jan. 15, 2016); New Jersey Coastal Management Program, *Federal Consistency Listings* (2008), [www.nj.gov/dep/cmp/2008\\_fc\\_listing.pdf](http://www.nj.gov/dep/cmp/2008_fc_listing.pdf) (last accessed Jan. 15, 2016).

<sup>29</sup> See 47 C.F.R. § 1.767(j).

## II. REQUEST FOR WAIVER OF 47 C.F.R. § 1.767(h)(1)

Seabras 1 USA hereby requests a waiver of 47 C.F.R. §1.767(h)(1) rules so that Tata need not be a joint applicant for the Seabras-1 cable landing license. “The purpose of [Section 1.767(h)(1)] is to ensure that entities having a significant ability to affect the operation of the cable system become licensees so that they are subject to the conditions and responsibilities associated with the license.”<sup>30</sup> Tata, however, will not have the ability to affect significantly Seabras-1’s operation. Inclusion of Tata as a joint applicant is also not necessary to ensure compliance by Seabras 1 USA with the Cable Landing License Act, the Commission’s cable landing license rules, or the terms of any cable landing license. Grant of the waiver is therefore consistent with Commission precedent.<sup>31</sup>

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<sup>30</sup> See *Actions Taken Under Cable Landing License Act*, Public Notice, 23 FCC Rcd. 227, 229 (Int’l Bur. 2008) (“*TPE Cable Landing License*”) (citing *Review of Commission Consideration of Applications under the Cable Landing License Act*, Report and Order, 16 FCC Rcd. 22,167, 22,194-95 ¶¶ 53-54 (2001)).

<sup>31</sup> See, e.g., *Actions Taken Under the Cable Landing License Act*, Public Notice, 24 FCC Rcd. 7828, 7829-30 (Int’l Bur. 2009) (accepting the applicants representations that “Tata will not be able to affect significant the operation of HANTRU-1” and declining to require Tata be a joint applicant for the cable landing license); *Actions Taken Under the Cable Landing License Act*, Public Notice, 24 FCC Rcd. 226, 227-28 (Int’l Bur. 2009) (noting that “Applicants will retain operational authority over their ASHC System facilities and provide direction to AT&T in all matters relating to the ASHC System”); *Actions Taken Under the Cable Landing License Act*, Public Notice, 23 FCC Rcd. 13,419, 13,420 (Int’l Bur. 2008) (declining to require that Tata Communications (US) Inc.—which owns the existing cable station at Piti, Guam, where the PPC 1 System will land—be a joint applicant or licensee for the PPC 1 System, noting that “Applicants will retain operational authority over PPC 1 System facilities and provide direction to [Tata] in all matters relating to the PPC 1 System.”); *TPE Cable Landing License*, 23 FCC Rcd. at 229 (declining to require that WCI Cable, Inc. (“WCIC”)—which owns an existing cable station at Nedonna Beach, Oregon—be a joint applicant or licensee for the Trans-Pacific Express Network (“TPE”), which will land at WCIC’s Nedonna Beach cable station, finding that “WCIC will not have the ability to affect the operation of the TPE Network. Verizon will retain effective operational authority and provide direction to WCIC in all matters relating to the TPE Network”).

For Seabras-1's New Jersey landing, Tata will provide certain limited services that would not provide it with any ability to affect significantly Seabras-1 operation. Seabras 1 USA has entered into an agreement with Tata granting Seabras 1 USA an IRU for Tata's beach manhole and one of its bore pipes at Avon-by-the-Sea and for conduit connecting the beach manhole with Tata's cable station. Under that agreement, Tata has also granted to Seabras 1 USA a long-term lease for collocation space in Tata's cable landing station—space for which Seabras 1 USA will have exclusive access and control. Both the IRU and lease agreements have initial 15-year terms, with the option of two five-year extensions that may be exercised at Seabras 1 USA's sole discretion, for a maximum of 25 years each.

Seabras 1 USA will have exclusive control over and access to Seabras-1 terminal equipment, which it will collocate in Tata's cable landing station. Equipment for Seabras-1 will be separately caged and controlled exclusively by Seabras 1 USA from its network operations center located in Secaucus, New Jersey. Seabras 1 USA will retain operational authority over their Seabras-1 facilities and provide direction to Tata in all matters relating to Seabras-1. Pursuant to the agreement between Seabras 1 USA and Tata, Tata will perform certain limited “remote hands” monitoring, testing, and maintenance services on Seabras-1's equipment, which would be performed in accordance with Seabras 1 USA's directions.



## CONCLUSION

For the foregoing reasons, the Commission should expeditiously grant this cable landing license application for Seabras-1 pursuant to streamlined processing.

Respectfully submitted,



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15 January 2016

Attachments

## **LIST OF APPENDICES**

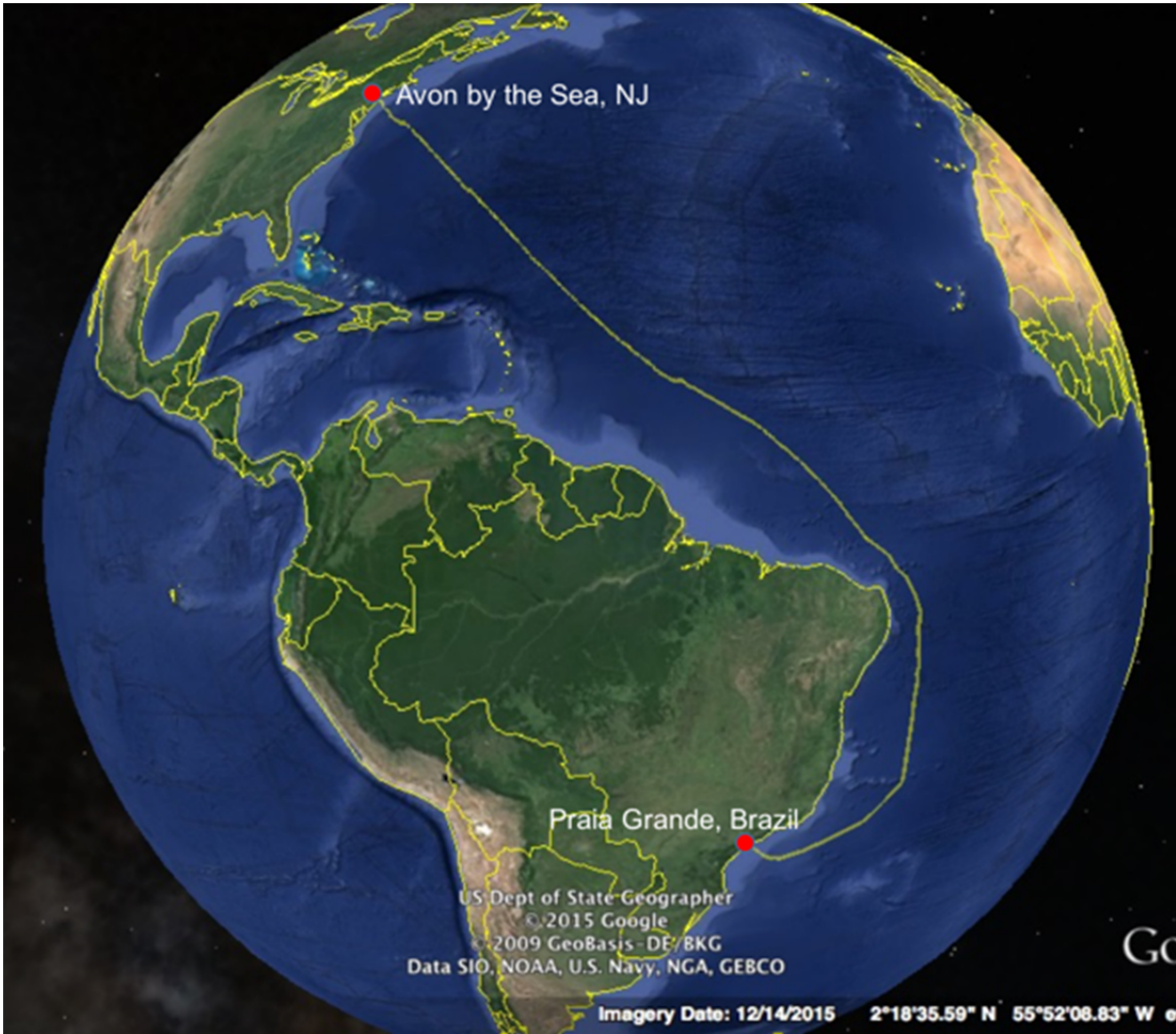
**Appendix A: Seabras-1 Route Map**

**Appendix B: New Jersey Landing Point Information**

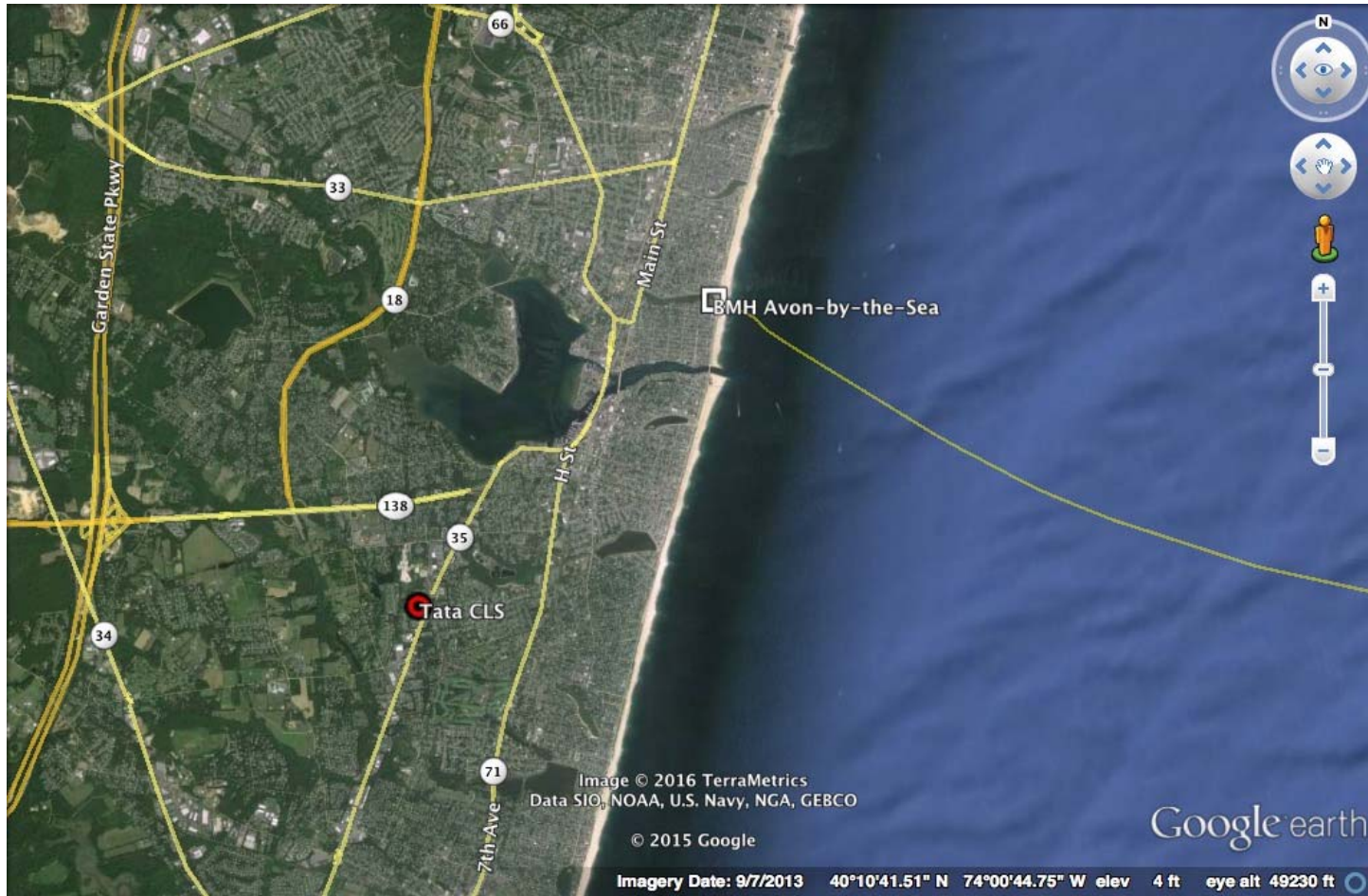
**Appendix C: Brazil Landing Point Information**

**Appendix D: Ownership and Control of Seabras 1 USA, LLC**

**APPENDIX A:  
SEABRAS-1 ROUTE MAP**



**APPENDIX B:**  
**NEW JERSEY LANDING POINT INFORMATION**



Beach manhole: Latitude 40°11'43.08"N, Longitude 74° 0'34.20"W  
Cable station geographic coordinates: Latitude 40° 9'39.20"N, Longitude 74° 3'10.70"W  
Cable landing station street address: 1400 Wall Church Rd, Wall Township, New Jersey

**APPENDIX C:**  
**BRAZIL LANDING POINT INFORMATION**

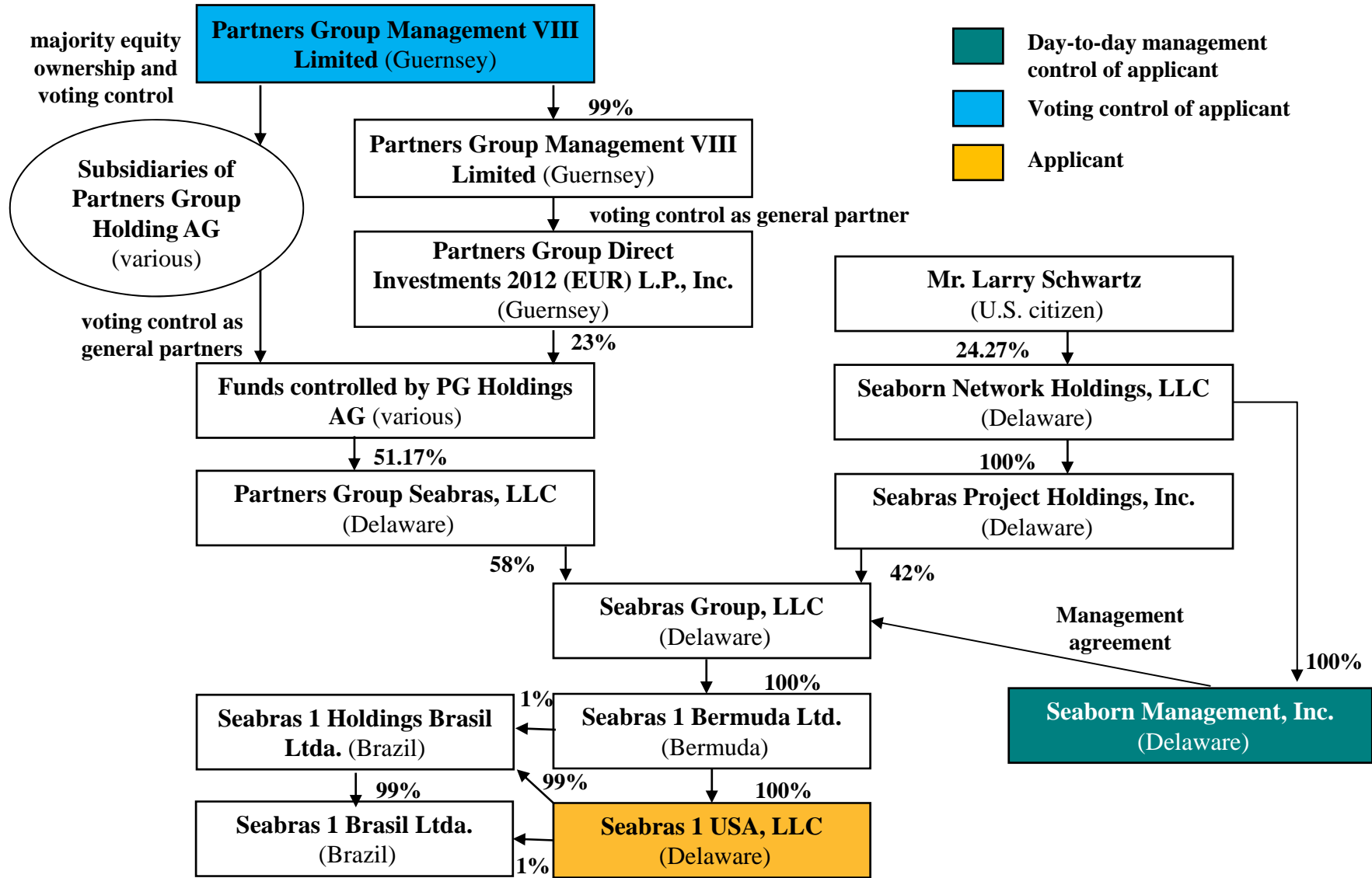


Beach manhole geographic coordinates: Latitude 24° 2'16.38"S, Longitude 46°29'43.80"W

Cable station geographic coordinates: Latitude 24° 2'4.23"S, Longitude 46°29'34.04"W

Cable landing station street address: Crossing of Av. President Castelo Branco and R. Alberto Figueiredo, Praia Grande, Sao Paulo, Brazil

## APPENDIX D: OWNERSHIP AND CONTROL OF SEABRAS 1 USA, LLC



## CERTIFICATE OF SERVICE

I, Kent Bressie, hereby certify that consistent with 47 C.F.R. § 1.767(j), I have served copies of the foregoing application for a cable landing license for the Seabras-1 submarine cable system, by hand delivery or electronic mail this 15th day of January, 2016, to the following:

Ambassador Daniel Sepulveda  
U.S. Coordinator and Deputy Assistant Secretary of State  
Int'l Communications & Information Policy  
Bureau of Economic and Business Affairs  
U.S. DEPARTMENT OF STATE  
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