

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of

CROSSLAKE FIBER USA LP,

Application for a License to Land and Operate
a Private Fiber-Optic Submarine Cable System
Connecting Burt, New York, and Toronto,
Ontario,

THE CROSSLAKE FIBRE CABLE SYSTEM

File No. SCL-LIC-2018-_____

**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, Crosslake Fiber USA LP (“CF USA LP,” FRN 0027136142), hereby applies for a license to land and operate within the United States a private fiber-optic submarine cable network connecting Toronto, Ontario, with Lockport, New York. The system will be known as the Crosslake Fibre cable system.

CF USA LP will operate Crosslake Fibre on a non-common-carrier basis, by providing primarily dark fiber to wholesale and enterprise customers on particularized terms and conditions pursuant to individualized negotiations. CF USA LP intends to commence commercial operation of Crosslake Fibre in the third calendar quarter of 2018. CF USA LP therefore seeks timely grant of a cable landing license by the Commission no later than July 1, 2018 in order to permit construction activities to proceed on schedule. The project development and construction schedule for a short-haul, unrepeatereed system such as Crosslake Fibre is much shorter than for

transoceanic systems, and CF USA LP asks that the Commission consider this fact during application processing.

A grant of this application will advance the public interest. It will provide much-needed capacity on the U.S.-Canada route. It will also provide diverse and highly-secure capacity on that route, thereby enhancing the continuity of communications on that route.

A. Applicant Name, Address, and Telephone Number¹

Crosslake Fiber USA LP
235 Allan Street
Oakville, Ontario L6J 3P2
Canada
+1 416 575 6453

B. Applicant Place of Incorporation²

CF USA LP is a Delaware limited partnership.

C. Applicant Contact Information³

Michael Cunningham
President
Crosslake Fiber USA LLC,
as General Partner of Crosslake Fibre USA LP
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Oakville, Ontario L6J 3P2
Canada
+1 416 575 6453
mike@crosslakefibre.ca

with a copy to:

¹ See 47 C.F.R. § 1.767(a)(1).

² See *id.* § 1.767(a)(2).

³ See *id.* § 1.767(a)(3).

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Counsel for Crosslake Fiber USA LP

D. System Description⁴

Crosslake Fibre will consist of a single, unrepeated segment across Lake Ontario, with a total length of 58 kilometers and landings in Burt, New York, and Toronto, Ontario. The system will consist of 96 fiber pairs. It will have an initial design capacity of 25 Tbps per fiber pair, for a total of 2,400 Tbps, based on current technology. In Appendix 1, CF USA LP provides a route map for the system. CF USA LP expects that Crosslake Fibre will enter into commercial service in the third calendar quarter of 2018.

E. Landing Points⁵

CF USA LP provides specific landing point information (including geographic coordinates for beach manholes and other landing facilities) in the following appendices:

- Appendix 2: Burt, New York
- Appendix 3: Toronto, Ontario

As an unrepeated system that lacks the power feed equipment typically housed in a cable landing station, Crosslake Fibre will not have cable landing stations as such. In Burt, New York, CF USA LP will construct, own, and operate an equipment hut near the lakeshore. In Toronto,

⁴ See *id.* § 1.767(a)(4).

⁵ See *id.* § 1.767(a)(5).

the fiber pairs will terminate directly at 151 Front Street, a carrier hotel, and Equinix's TR2 data center.

F. Regulatory Classification⁶

CF USA LP will operate Crosslake Fibre 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 Crosslake Fibre to common-carrier regulation because the system will not operate on a common-carrier basis as defined in *NARUC I*.⁷ 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.’”⁸ On Crosslake Fibre, however, CF USA LP will not sell capacity indifferently to the user public. Instead, CF USA LP will sell bulk capacity to particular carrier, enterprise, 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.⁹

⁶ *See id.* § 1.767(a)(6).

⁷ *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).

⁸ *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)).

⁹ *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

Second, the Commission should not subject Crosslake Fibre to common-carrier regulation because there is no legal compulsion or other public-interest reason for CF USA LP to operate Crosslake Fibre in such a manner. Under the *NARUC I* test, the Commission must determine whether the public interest requires common-carrier operation of the cable system.¹⁰ Traditionally, the Commission has focused on whether the applicant has sufficient market power to warrant common carrier regulation,¹¹ 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.¹² Crosslake Fibre poses no such competitive or other public-interest concerns.

On the U.S. Canada route—including the more specific New York-Ontario route—Crosslake Fibre will compete vigorously with existing providers’ facilities, including Zayo, CenturyLink, Hydro One, Bell Canada, GTT, XO Communications, Rogers and Cogeco. 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* 13 FCC Rcd. 21,585 (1998), *aff’d sub nom. Virgin Islands Telephone Corp. v. FCC*, 198 F.3d 921 (D.C. Cir. 1999).

¹⁰ *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”).

¹¹ See *St. Thomas-St. Croix Cable Order*, 11 FCC Rcd. at 14,893 ¶ 30.

¹² See *AT&T Corp. et al.*, Cable Landing License, 14 FCC Rcd. 13,066, 13,080 ¶ 39 (2000) (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”).

Commission has previously found that facilities need not be identical in order to offer pro-competitive benefits.¹³

G. Cable Ownership Information¹⁴

CF USA LP will own and operate the U.S.-territory portion of Crosslake Fibre , including that portion of the wet link in the U.S.-territory portion of Lake Ontario and cable landing facilities in New York. CF USA LP will construct, own, and operate a new cable landing station in Burt, New York. CF USA LP’s commonly-controlled Canadian affiliate, Crosslake Fibre ULC will own and operate that portion of the wet link beyond U.S. territory.

H. Certifications Regarding Ownership, Citizenship, Principal Business, and Interlocking Directorates¹⁵

CF USA LP certifies that CF USA LP has the following 10-percent-or-greater direct or indirect shareholders:

Crosslake Fiber USA LLC (“CF USA LLC”)

Address: 235 Allan Street, Oakville, Ontario L6J 3P2, Canada

Place of Organization: Delaware

Principal Business: telecommunications

Relationship: CF USA LLC is the general partner of CF USA LP, with a 100-percent voting interest and no economic interest in CF USA LP.

¹³ *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”).

¹⁴ *See* 47 C.F.R. § 1.767(a)(7).

¹⁵ *See id.* §§ 1.767(a)(8)(i), 63.18(h).

Crosslake Fibre LP

Address: 235 Allan Street, Oakville, Ontario L6J 3P2, Canada

Place of Organization: Ontario, Canada

Principal Business: telecommunications

Relationship: Crosslake Fibre LP is the sole limited partner of CF USA LP and holds a 100-percent economic interest and no voting interest in CF USA LP. Crosslake Fibre LP is also the sole member of, and holds a 100-percent economic and voting interest in, CF USA LLC.

2608254 Ontario Inc.

Address: 235 Allan Street, Oakville, Ontario L6J 3P2, Canada

Place of Organization: Ontario, Canada

Principal Business: telecommunications

Relationship: 2608254 Ontario Inc. serves as the general partner of Crosslake Fibre LP, and holds 100-percent voting interest and a 0.01-percent economic interest in Crosslake Fibre LP.

Connect Investments LP (“Connect Investments”)

Address: c/o Tiger Infrastructure Partners LP, 717 Fifth Avenue, Floor 12A, New York, New York 10022

Place of Organization: Delaware

Principal Business: investments

Relationship: Connect Investments is a limited partner of Crosslake Fibre LP and will hold no voting interest and a 93.26-percent economic interest in Crosslake Fibre LP. Connect Investments will also hold no voting interest and a 93.26-percent economic interest in 2608254 Ontario Inc.

Tiger Infrastructure Associates GP II LP (“Tiger Infra”)

Address: 717 Fifth Avenue, Floor 12A, New York, New York 10022

Place of Organization: Delaware

Principal Business: investments

Relationship: Tiger Infra is the general partner of Connect Investments and holds a 100-percent voting interest and no economic interest in Connect Investments.

Tiger Infrastructure Partners Fund II Crosslake AIV LP (“Tiger”)

Address: c/o Tiger Infrastructure Partners LP, 717 Fifth Avenue, Floor 12A, New York, New York 10022

Place of Organization: Delaware

Principal Business: investments

Relationship: Tiger is a limited partner of Connect Investments and holds a 100-percent economic interest and no voting interest in Connect Investments.

Tiger Infrastructure Associates GP II LP (“Tiger Infra”)

Address: 717 Fifth Avenue, Floor 12A, New York, New York 10022

Place of Organization: Delaware

Principal Business: investments

Relationship: Tiger Infra is the general partner of Tiger and holds a 100-percent voting interest and a 1.5-percent economic interest in Tiger.

Emil Henry VI LLC (“Tiger LLC”)

Address: c/o Tiger Infrastructure Partners LP, 717 Fifth Avenue, Floor 12A, New York, New York 10022

Place of Organization: Delaware

Principal Business: investments

Relationship: Tiger LLC is the general partner of Tiger Infra and holds a 100-percent voting interest and a 100-percent economic interest in Tiger Infra.

Emil W. Henry, Jr. (“Emil Henry”)

Address: c/o Tiger Infrastructure Partners LP, 717 Fifth Avenue, Floor 12A, New York, New York 10022

Citizenship: United States

Principal Business: investments

Relationship: Emil Henry is the sole member and manager of Tiger LLC and holds a 100-percent voting and economic interest in Tiger LLC.

District of Columbia Retirement Board (“DCRB”)

Address: 900 7th Street NW, 2nd Floor, Washington, D.C. 20001

Place of Organization: District of Columbia

Principal Business: benefits administration and investments

Relationship: DCRB is a limited partner of Tiger and holds an 18.31-percent economic and no voting interest in Tiger. No investor in DCRB has a 10-percent-or-greater indirect voting or economic interest in CF USA.

CAT Holding, LLC (“CAT”)

Address: 285 Madison Avenue, 20th Floor, New York, New York 10017

Place of Organization: Delaware

Principal Business: investments

Relationship: CAT is a limited partner of Tiger and holds a 12.85-percent economic interest and no voting interest in Tiger.

Trust u/a/d December 24, 1985 f/b/o the Issue of Dirk Ziff (“CAT Trust”)

Address: 350 Park Avenue, 4th Floor, New York, New York 10022

Place of Organization: Florida

Principal Business: trust administration and investments

Relationship: CAT Trust owns a 99-percent voting and economic interest in CAT. No beneficiary under the CAT Trust holds a 10-percent-or-greater indirect voting or economic interest in CF USA.

Kiewit Infrastructure Co. (“Kiewit”)

Address: 3555 Farnam Street, Omaha, Nebraska 68131

Place of Organization: Delaware

Principal Business: infrastructure

Relationship: Kiewit is a limited partner of Tiger and holds a 10.46-percent economic interest and no voting interest in Tiger.

Kiewit Infrastructure Group, Inc. (“Kiewit Group”)

Address: 3555 Farnam Street, Omaha, Nebraska 68131

Place of Organization: Delaware

Principal Business: infrastructure

Relationship: Kiewit Group holds a 100-percent voting and economic interest in Kiewit.

Kiewit Corporation (“Kiewit Corp.”)

Address: 3555 Farnam Street, Omaha, Nebraska 68131

Place of Organization: Delaware

Principal Business: infrastructure

Relationship: Kiewit Corp. holds a 100-percent voting and economic interest in Kiewit Group.

Peter Kiewit Sons’, Inc. (“Kiewit Sons”)

Address: 3555 Farnam Street, Omaha, Nebraska 68131

Place of Organization: Delaware

Principal Business: infrastructure

Relationship: Kiewit Sons holds a 100-percent voting and economic interest in Kiewit. Kiewit Sons is employee-owned, with no controlling shareholder and no shareholder holding a 10-percent or greater indirect voting or economic interest in CF USA LP.

BAE Systems Pension Scheme (“BAE Scheme”)

Address: Warwick House, P.O. Box 87, Farnborough Aerospace Centre, Farnborough, GU14 6YU, United Kingdom

Place of Organization: England

Principal Business: pension administration and investments

Relationship: BAE Scheme is a limited partner of Tiger and holds a 31.38-percent economic interest and no voting interest in Tiger. No investor in BAE Scheme has a 10-percent or greater indirect voting or economic interest in CF USA LP.

No other entity or individual will hold a ten-percent-or-greater direct or indirect voting or economic interest in CF USA LP. The remaining 6.74-percent economic interest in each of Crosslake Fibre LP and 2608254 Ontario Inc. is held by a mix of Canadian and U.S. investors, including Canadian-citizen management of CF USA LLC.

CF USA LP will have one interlocking directorate with a foreign carrier. Michael Cunningham, who serves as President of CF USA LLC, the General Partner of CF USA LP, will also serve as the President of Crosslake Fibre ULC.

I. Certification Regarding the Anti-Drug Abuse Act of 1988¹⁶

CF USA LP 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.¹⁷

J. Certification Regarding Foreign Carrier Status and Foreign Affiliations¹⁸

CF USA LP certifies that it is not a foreign carrier, does not own or control a cable landing station in any foreign country, and will be affiliated with a newly-established foreign carrier, Crosslake Fibre ULC, but that carrier will not own or control a cable landing station in Canada.

K. Certification Regarding Destination Countries¹⁹

CF USA LP certifies to the following: (1) it is not a foreign carrier in any foreign country, much less in Canada (where Crosslake Fibre will land); (2) it does not control a foreign carrier in any foreign country, much less in Canada; (3) an entity that controls CF USA LP also controls Crosslake Fibre ULC, a foreign carrier in Canada, which is a member country of the World Trade Organization (“WTO”); and (4) no grouping of two or more foreign carriers (or parties that control foreign carriers) owns, in aggregate, more than 25 percent of CF USA LP and

¹⁶ See *id.* §§ 1.767(a)(8)(i), 63.18(o).

¹⁷ 21 U.S.C. § 862(a). Pub. L.100-690, title V, § 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 101-647, title X, § 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.

¹⁸ See 47 C.F.R. § 1.767(a)(8)(ii).

¹⁹ See *id.* § 1.767(a)(8)(iii).

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 the Crosslake Fibre cable system in the United States.

L. Certification Regarding WTO Status and Affiliations with Foreign Carriers Having Market Power in Foreign Destination Markets²⁰

No response is required, as no non-WTO-member country was identified in response to 47 C.F.R. § 1.767(a)(8)(iii).

M. Certifications Regarding Routine Conditions²¹

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

N. Streamlining—Market Power²²

CF USA LP requests streamlined processing pursuant to 47 C.F.R. § 1.767(k)(2). CF USA LP is affiliated with Crosslake Fibre ULC, a newly established foreign carrier in Canada, the sole foreign landing country for the Crosslake Fibre cable system. Crosslake Fibre ULC has zero percent market share in each of the international-transport and local access-markets of Canada. Crosslake Fibre ULC does not appear on the Commission's list of foreign carriers presumed to have market power in foreign destination markets.²³ CF USA's affiliation with Canadian carrier therefore poses no risk to competition on the U.S.-Canada route and CF USA LP therefore qualifies for presumptive non-dominant treatment pursuant to 47 C.F.R.

²⁰ See *id.* § 1.767(a)(8)(iv).

²¹ See *id.* § 1.767(a)(9).

²² See *id.* § 1.767(j), (k).

²³ See *International Bureau Revises and Reissues the Commission's List of Foreign Telecommunications Carriers that Are Presumed to Possess Market Power in Foreign Telecommunications Markets*, Public Notice, 22 FCC Rcd. 945 (Int'l Bur. 2007).

§§ 63.10(a)(3) and 63.12(c)(1)(ii). This application raises no other foreign ownership, competition, or public interest concerns that would merit consideration outside the Commission's streamlined review process.

O. Streamlining—CZMA²⁴

By its signature below, CF USA LP 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 York does not list, and has never proposed to list, a cable landing license as a federal activity requiring a consistency certification.²⁵

P. Certification Regarding Service to Executive Branch Agencies²⁶

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

²⁴ *See id.*

²⁵ *See* National Oceanic and Atmospheric Administration, Coastal Zone Management Program, *New York's Listed Federal Actions*, <https://coast.noaa.gov/czm/consistency/media/ny.pdf>.

²⁶ *See* 47 C.F.R. § 1.767(j).

CONCLUSION

For the foregoing reasons, the Commission should expeditiously grant this cable landing license application for the Crosslake Fibre cable system pursuant to streamlined processing.

Respectfully submitted,



Michael Cunningham
President

Crosslake Fiber USA LLC, as General Partner for
Crosslake Fiber USA LP
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Counsel for Crosslake Fiber USA LP

February 16, 2018

Attachments

LIST OF APPENDICES

Appendix 1: Crosslake Fibre Route Map

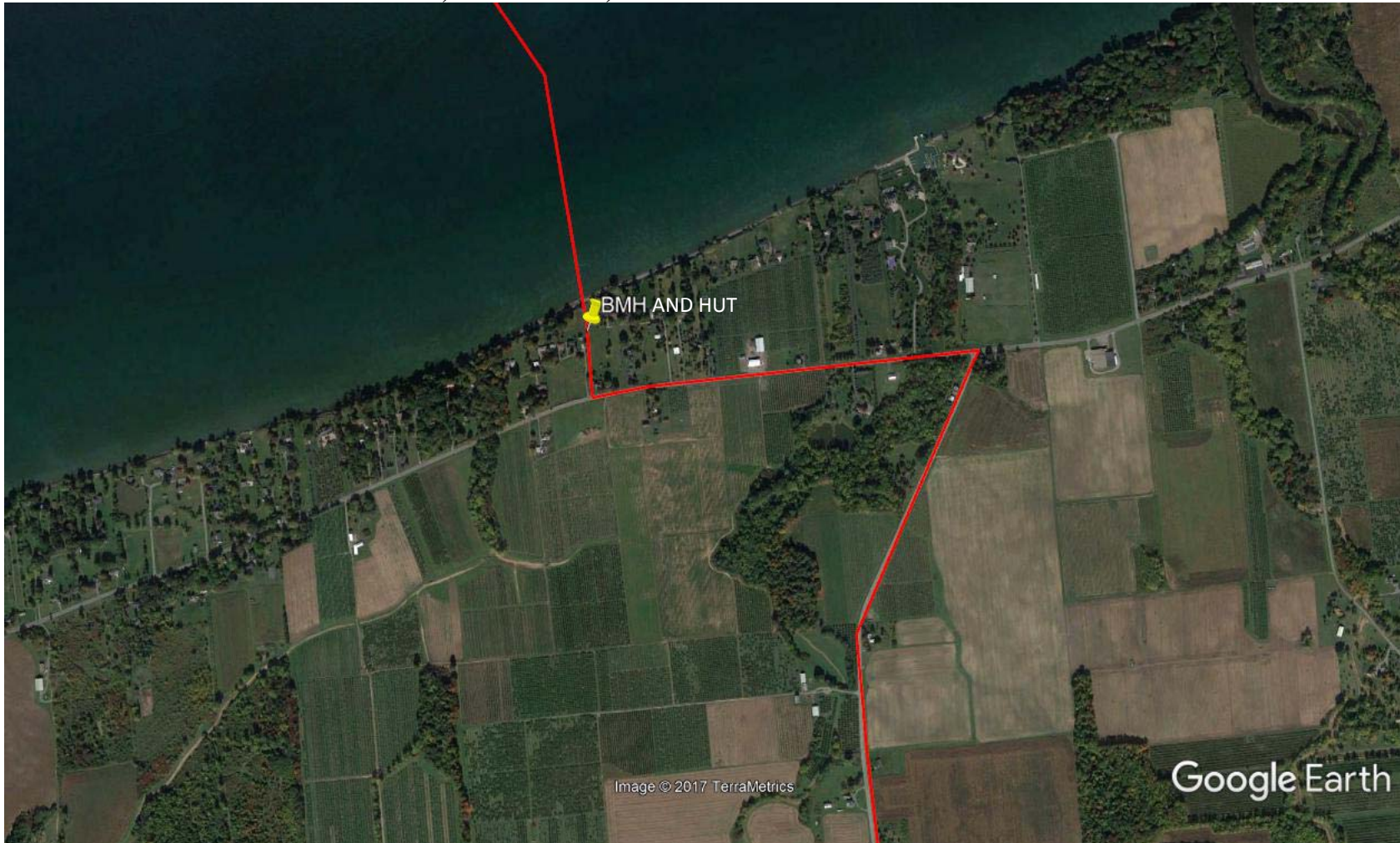
Appendix 2: Burt, New York, Landing Point Information

Appendix 3: Toronto, Ontario, Landing Point Information

**APPENDIX 1:
CROSSLAKE FIBRE ROUTE MAP**

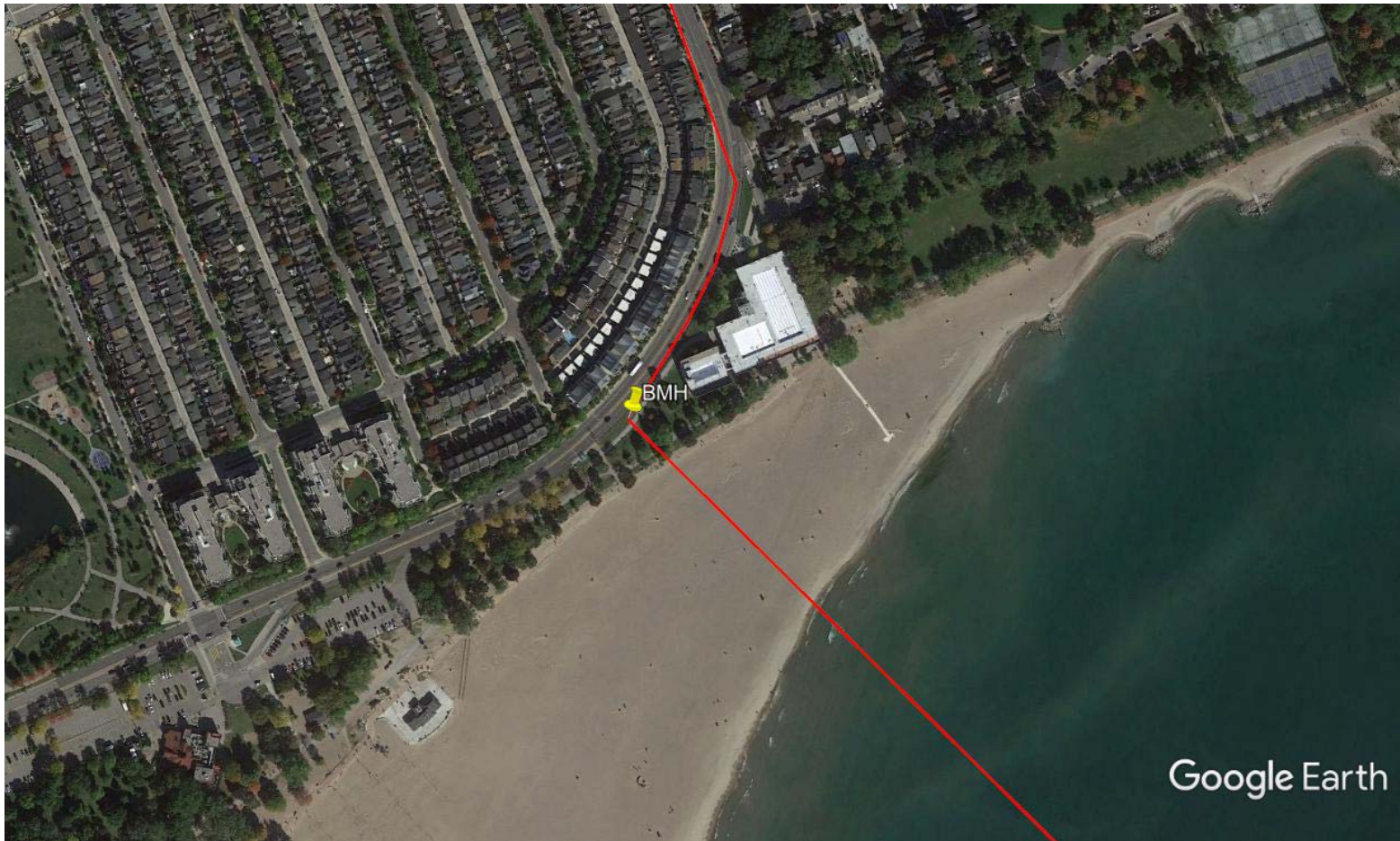


**APPENDIX 2:
BURT, NEW YORK, LANDING POINT INFORMATION**



Beach manhole geographic coordinates: 43° 19.6840' N, 78° 46.1280' W
Equipment hut geographic coordinates: 43° 19.6840' N, 78° 46.1280' W
Equipment hut street address: not available

**APPENDIX 3:
TORONTO, ONTARIO, LANDING POINT INFORMATION**



Beach manhole geographic coordinates: 43° 39.8670' N, 79° 18.3530' W
151 Front Street geographic coordinates: 43°38'40.78"N, 79°23'2.79"W
Equinix TR2 geographic coordinates: 43° 39.8670' N, 79° 18.3530' W
Equinix TR2 street address: 45 Parliament, Toronto, Ontario

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 Crosslake Fibre, by hand delivery or electronic mail this 16th day of February, 2018, to the following:

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