

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

In the Matter of	)	
	)	
Brasil Telecom of America Inc.	)	
<i>Licensee,</i>	)	File No. SCL-T/C-20081212-00021
	)	
Brasil Telecom S.A.	)	
<i>Transferor,</i>	)	
	)	
and	)	
	)	
Telemar Norte Leste S.A.	)	
<i>Transferee</i>	)	
	)	
Application for Transfer of Control of Cable	)	
Landing Licenses	)	

**PETITION TO ADOPT CONDITIONS TO  
AUTHORIZATIONS AND LICENSES**

The Department of Homeland Security (“DHS”) and the Department of Justice (“DOJ”) (collectively, the “Agencies”), submit this Petition to Adopt Conditions to Authorizations and Licenses (“Petition”), pursuant to Section 1.41 of the Federal Communications Commission (“Commission”) rules.<sup>1</sup> Through this Petition, the Agencies advise the Commission that they have no objection to the Commission approving the authority sought in the above-referenced proceeding, provided that the Commission conditions its approval on the agreement of Brasil Telecom of America Inc. to abide by the commitments and undertakings set forth in its letter of February 11, 2009 to Mr. Stephen R. Heifetz, Deputy Assistant Secretary for Policy Development, DHS (the “Letter”) which is attached hereto.

In the above-referenced proceeding, the applicants petitioned the Commission for authority under the Cable Landing License Act of 1921<sup>2</sup> and Executive Order 10530<sup>3</sup> to transfer

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<sup>1</sup> 47 C.F.R. § 1.41.

<sup>2</sup> Pub. Law No. 8, 67th Congress, 42 Stat. 8 (1921); 47 U.S.C. §§ 34-39.

control of a fiber-optic submarine cable system linking the United States, Bermuda, Venezuela and Brazil, known as the "GlobeNet Cable System."

The Commission has long recognized that law enforcement, national security, and public safety concerns are part of its public interest analysis, and has accorded deference to the views of other U.S. government agencies with expertise in those areas. *See In the Matter of Comsat Corporation d/b/a Comsat Mobile Communications, etc.*, 16 FCC Rcd. 21,661, 21707 ¶ 94 (2001).

After discussions with representatives of the applicants in connection with the above-referenced proceeding, the Agencies have concluded that the additional commitments set forth in the Letter will help ensure that the Agencies and other entities with responsibility for enforcing the law, protecting the national security, and preserving public safety can proceed appropriately to satisfy those responsibilities. Accordingly, the Agencies advise the Commission that they have no objection to the Commission granting the application in the above-referenced proceeding, provided that the Commission conditions its consent on compliance by Brasil Telecom of America Inc. with the commitments set forth in the Letter.

The Agencies are authorized to state that the Applicants do not object to the grant of this Petition.

Respectfully submitted,

/s/ Charlie M. Steele for

Matthew G. Olsen  
Acting Assistant Attorney General  
for National Security  
United States Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530  
February 18, 2009

/s/ Stephen R. Heifetz

Stephen R. Heifetz  
Deputy Assistant Secretary for Policy Development  
U.S. Department of Homeland Security  
3801 Nebraska Avenue, N.W.  
Washington, DC 20528

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<sup>3</sup> Exec. Ord. No. 10530 § 5(a) (May 10, 1954), reprinted as amended in 3 U.S.C. § 301.

February 11, 2009

Mr. Stephen R. Heifetz  
Deputy Assistant Secretary for Policy Development  
U.S. Department of Homeland Security  
3801 Nebraska Avenue, N.W.  
Washington, D.C. 20528

Re: Pending application to transfer control of Brasil Telecom of America, Inc., holder of cable landing licenses under the Submarine Cable Act, from Brasil Telecom S.A. to Telemar Norte Leste S.A., SCL-T/C-20081212-00021

Dear Mr. Heifetz:

This letter outlines the commitments by Brasil Telecom of America, Inc. ("GlobeNet") to the U.S. Department of Homeland Security ("DHS"), in order to address national security, law enforcement and public safety concerns raised with regard to GlobeNet's application to the Federal Communications Commission ("FCC") for consent to the above-referenced transaction.

GlobeNet owns the GlobeNet Cable System which, pursuant to FCC authority,<sup>1</sup> links landing stations in Tuckertown, New Jersey, and Boca Raton, Florida, with landing stations in Bermuda, Venezuela and Brazil. GlobeNet and its ultimate parent company, Brasil Telecom S.A. ("Brasil Telecom"), have jointly applied with Telemar Norte Leste S.A. ("Telemar") to the FCC for authority to transfer control of GlobeNet and the GlobeNet Cable System from Brasil Telecom to Telemar in a transaction that will be seamless to GlobeNet's customers. Once this transaction is completed, GlobeNet will become a wholly-owned subsidiary of Telemar.

GlobeNet agrees that, for all customer billing records, subscriber information, or any other related information used, processed, or maintained in the ordinary course of business relating to communications services offered to U.S. persons ("U.S. Records"), GlobeNet will make such U.S. Records available in the United States in response to lawful U.S. process. For these purposes, U.S. Records shall include information subject to disclosure to a U.S. Federal or state governmental entity under the procedures specified in Sections 2703(c) and (d) and Section 2709 of Title 18 of the United States Code.

GlobeNet agrees to take all practicable measures to prevent unauthorized access to, or disclosure of the content of, communications or U.S. Records in violation of any U.S. Federal, state, or local laws or of the commitments set forth in this letter. If GlobeNet learns of any unauthorized disclosure with respect to U.S. Records, it will deliver a written notification containing all the known details concerning each such incident to DHS within five (5) business days.

GlobeNet agrees that it will not, directly or indirectly, disclose or permit disclosure of or access to U.S. Records, Domestic Communications (as defined below), or any information (including the content of communications) pertaining to a wiretap order, pen/trap order, subpoena or other lawful demand by a U.S. law enforcement agency for U.S. Records, to any person if the purpose of such disclosure or access is to respond to the legal process or request on behalf of a non-U.S. government without first satisfying all pertinent requirements of U.S. law and obtaining the express written consent of DHS or the authorization of

<sup>1</sup> See FCC File Nos. SCL-LIC-19961026-00001 and SCL-LIC-19990602-00010.

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a court of competent jurisdiction in the United States. The term "non-U.S. government" means any government, including an identified representative, agent, component or subdivision thereof, that is not a local, state or federal government in the United States. Any such requests or legal process submitted by a non-U.S. government to the Companies shall be referred to DHS as soon as possible, and in no event later than five (5) business days after such request or legal process is received by or known to GlobeNet, unless the disclosure of the request or legal process would be in violation of U.S. law or an order of a court in the United States. For the purposes of this letter, "Domestic Communications" means: (a) Wire Communications or Electronic Communications (whether stored or not) from one U.S. location to another U.S. location; and (b) the U.S. portion of a Wire Communication or Electronic Communication (whether stored or not) that originates or terminates in the United States. "Electronic Communication" has the meaning given it in 18 U.S.C. § 2510(12). "Wire Communication" has the meaning given it in 18 U.S.C. § 2510(1).

GlobeNet has designated and agrees to maintain a point of contact within the United States with the authority and responsibility for accepting and overseeing compliance with a wiretap order, pen/trap order, subpoena or other lawful demand by U.S. law enforcement authorities for the content of communications or U.S. Records. GlobeNet will notify DHS of any change in the point of contact within five (5) days of such change. Any new point of contact shall be a resident U.S. citizen, and GlobeNet shall cooperate with any request by a U.S. government authority that a background check or security clearance process be completed for a designated point of contact.

GlobeNet agrees to take reasonable measures to prevent the unauthorized use of or access to the domestic GlobeNet Cable System infrastructure. These measures shall include maintaining and/or creating and complying with written GlobeNet policies and procedures related to a comprehensive security strategy for activities at the U.S. cable landings and network operations center(s). GlobeNet agrees to screen personnel prior to permitting unescorted access to the domestic GlobeNet Cable System infrastructure through a background check and financial investigation, as well as a public criminal records check. GlobeNet also agrees to cooperate with reasonable lawful requests by DHS or any U.S. Government authority desiring to conduct any further background checks.

In a letter to DHS dated September 26, 2008, GlobeNet voluntarily provided a confidential description of the principal equipment and maintenance contracts for the GlobeNet Cable System. GlobeNet agrees to provide at least fifteen (15) business days' advance written notice to DHS prior to performing any non-emergent maintenance, repair, or replacement that would result in any modification to the description of the GlobeNet Cable System's principal equipment. In the event of any modification that is the result of any maintenance, repair or replacement that is undertaken pursuant to a bona fide emergency and is necessary to ensure the continued operability of the GlobeNet Cable System, GlobeNet agrees to provide advance notice of the modification to DHS if practicable, and in any case, no later than five (5) business days after the modification. GlobeNet agrees to provide at least thirty (30) business days' advance written notice to DHS prior to making any modifications to its description of contracts for the GlobeNet Cable System's maintenance and support. GlobeNet agrees that upon reasonable notice, DHS or other agencies or personnel assigned to assist DHS may visit GlobeNet's landing stations, domestic operations centers, and security offices to conduct on-site reviews concerning the implementation of the terms of this letter and may require unimpeded access to information concerning technical, physical, management, or other security measures needed by DHS to verify compliance with the terms of this letter. Upon written request of DHS, GlobeNet agrees to make available its current physical and personnel security policies and procedures as they pertain to the domestic GlobeNet Cable System infrastructure. GlobeNet agrees to negotiate in good faith to resolve any national security, law enforcement or public safety concerns DHS may raise with respect to the GlobeNet Cable System's equipment, contracts or security practices. All notices to be provided to DHS shall be directed to IP-FCC@dhs.gov.



GlobeNet agrees that, in the event the commitments set forth in this letter are breached, in addition to any other remedy available at law or equity, DHS may request that the FCC modify, condition, revoke, cancel, or render null and void any relevant license, permit, or other authorization granted by the FCC to GlobeNet or any successor-in-interest. GlobeNet acknowledges and agrees that the obligations in this letter apply not only to the signatories hereto, but also to any subsidiary or affiliate of GlobeNet that provides Domestic Communications.

Nothing in this letter is intended to excuse the GlobeNet from any obligation it may have to comply with U.S. legal requirements for the retention, preservation, or production of information, records or data, or from any applicable requirements of the Communications Assistance for Law Enforcement Act, 47 U.S.C. 1001, et seq., nor shall it constitute a waiver of: (a) any obligation imposed by any U.S. Federal, state or local laws on GlobeNet; (b) any enforcement authority available under any U.S. or state laws; (c) the sovereign immunity of the United States; or (d) any authority the U.S. government may possess (including without limitation authority pursuant to International Emergency Economic Powers Act) over the activities of GlobeNet located within or outside the United States. Nothing in this letter is intended to or is to be interpreted to require the parties to violate any applicable U.S. law. Likewise, nothing in this letter limits the right of the United States Government to pursue criminal sanctions or charges against GlobeNet, and nothing in this letter provides GlobeNet with any relief from civil liability.

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GlobeNet understands that, upon execution of this letter by authorized representatives or attorneys for GlobeNet, DHS shall promptly notify the FCC that it has no objection to the FCC's grant of the above-referenced application.

Sincerely,

Brasil Telecom of America, Inc.

By:



Erick W. Contag  
Chief Operating Officer  
Date: February 11, 2009

By:



Luiz Mario Alonso  
Director, Engineering and Operations  
Date: February 11, 2009

