

**Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| |) | File No. SCL-T/C-20141121-00013 |
| Applications of Cable & Wireless Communications Plc and Columbus New Cayman Limited for |) | File No. SCL-T/C-20141121-00014 |
| |) | File No. SCL-T/C-20150421-00010 |
| |) | File No. SCL-T/C-20150421-00011 |
| Transfer of Control of Cable Landing Licenses and Section 214 Authorizations |) | File No. ITC-T/C-20141121-00304 |
| |) | File No. ITC-T/C-20141121-00307 |
| |) | File No. ITC-T/C-20150421-00097 |
| |) | File No. ITC-T/C-20150421-00098 |

MEMORANDUM OPINION AND ORDER

Adopted: November 13, 2015

Released: November 13, 2015

By the Chief, International Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we grant the applications¹ filed by Cable & Wireless Communications Plc (C&W) and Columbus New Cayman Limited (Columbus and, together with C&W, the “Applicants”) pursuant to section 214 of the Communications Act of 1934, as amended (the “Communications Act”), the Cable Landing License Act of 1921, and the Commission’s rules, seeking consent for the transfer of control of licenses and authorizations to C&W from Columbus (the “Applications”).² For the reasons discussed below, we deny the Petition filed by Digicel International, Inc. (Digicel) to impose conditions on grant of the Applications.³ Based on our analysis of the record, we find that, on balance, approval of the Applications will result in public interest benefits that outweigh any

¹ *Columbus Networks, Limited, Transferor, and Cable & Wireless Communications Plc, Transferee, Applications for Transfer of Control of Cable Landing Licenses*, File Nos. SCL-T/C-20141121-00013 (ARCOS-1 USA, Inc. (ARCOS)) and SCL-T/C-20141121-00014 (Columbus Networks USA, Inc. (CNUSA)) (filed Nov. 21, 2014) (Cable T/C Applications); *Columbus Networks, Limited, Transferor, and Cable & Wireless Communications Plc, Transferee, Applications for Transfer of Control of International Section 214 Authority*, File Nos. ITC-T/C-20141121-00304 (Columbus Networks Telecommunications Services USA, Inc. (CNTS)) and ITC-T/C-20141121-00307 (Columbus Networks Puerto Rico, Inc. (CNPR)) (filed Nov. 21, 2014) (Section 214 T/C Applications); *Columbus Networks, Limited, Transferor, and Cable & Wireless Communications Plc, Transferee, Notifications of Pro Forma Transfer of Control of Cable Landing Licenses*, File Nos. SCL-T/C-20150421-00010 (CNUSA) and SCL-T/C-20150421-00011 (ARCOS) (filed Apr. 21, 2015) (Cable Pro Forma Notifications); *Notifications of Pro Forma Transfer of Control of International Section 214 Authority*, File Nos. ITC-T/C-20150421-00097 (CNPR) and ITC-T/C-20150421-00098 (CNTS) (filed Apr. 21, 2015) (Section 214 Pro Forma Notifications) (collectively, File Nos. SCL-T/C-20141121-00013 et al.).

² 47 U.S.C. § 214; An Act Related 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 No. 10530, § 5(a) (May 10, 1954), reprinted and amended in 3 U.S.C. § 301; 47 C.F.R. §§ 1.767 and 63.24.

³ Petition to Impose Protective Conditions of Digicel International, Inc., File Nos. SCL-T/C-20141121-00013 et al. (filed Dec. 31, 2014) (Digicel Petition).

potential harm, and the grant of the Applications will serve the public interest, convenience, and necessity.

II. BACKGROUND

A. The Applicants

1. Cable & Wireless

2. C&W is a publicly listed company organized under the laws of England and Wales.⁴ C&W has operations in Panama and 14 Caribbean countries, including the Bahamas, Barbados, the Cayman Islands, and Jamaica.⁵ Currently, Orbis Investment Management Limited (Orbis), a Bermuda limited liability company, is the only 10% or greater owner, with a 14.9% direct interest in C&W.⁶

2. Columbus New Cayman

3. Columbus is a holding company formed under the laws of the Cayman Islands.⁷ It is indirectly owned by two Barbados companies, CVBI Holdings (Barbados), Inc. (CHBI) and Clearwater Holdings (Barbados) Limited (CHBL), and by Mr. Brendan Paddick, a Canadian citizen.⁸ CHBI and CHBL together own 86% of Columbus, and Mr. Paddick holds the remaining 14% ownership interests.⁹ CHBI and CHBL are ultimately controlled by Mr. John Risley, a Canadian citizen.¹⁰ Columbus wholly owns and controls the CFX-1 and ARCOS-1 cable systems through its direct ownership interests in ARCOS and its indirect ownership interests in CNUSA and A.Sur Net, Inc. (ASN), the cable landing licensees.¹¹ Columbus also wholly owns CNPR directly and CNTS indirectly. CNPR and CNTS hold the international section 214 authorizations.¹² ARCOS, ASN, CNTS, and CNUSA are all incorporated in Delaware, and CNPR is a Puerto Rico-based company.¹³

⁴ Cable T/C Applications at 4; Section 214 T/C Applications, Attach.1 at 2. C&W provides a range of telecommunications services primarily in the Caribbean and Latin America region. These services include mobile and fixed-line voice telephony, data services, and television to consumers, and connectivity and managed services to businesses and governments. See Cable T/C Applications at 1.

⁵ Cable T/C Applications at 1, n.2; Section 214 T/C Applications, Attach. 1 at 1, n.2.

⁶ Cable T/C Applications at 12; Section 214 T/C Applications, Attach. 1 at 5-6.

⁷ Cable Pro Forma Notifications at 2, 4; Section 214 Pro Forma Notifications at 2, 4. On March 31, 2015, Columbus, a newly formed company, acquired, on a *pro forma* basis, its interests in the submarine cable licensees and international 214 authority holders from the original transferor, Columbus Networks Limited (CNL), a privately owned Barbados company, itself a wholly-owned, indirect subsidiary of Columbus International, Inc. (CII), also a privately-owned Barbados telecommunications company, which, in turn, is owned and controlled by CHBI and CHBL, with no change in the ultimate control of the licensees. Cable T/C Applications at 2-3, Exh. A; Section 214 T/C Applications, Attach. 1 at 2-3, Exh. A. Applicants amended the Applications to reflect Columbus as the new transferor. Cable Pro Forma Notifications at 2-3, Exh. A; Section 214 Pro Forma Notifications at 2-3, Exh. A.

⁸ Cable Pro Forma Notifications at 3; Section 214 Pro Forma Notifications at 3. CHBI, CHBL, and Mr. Paddick hold their ownership interests in Columbus through two Cayman Island companies – CP New Cayman Holdco I Limited and CP New Cayman Holdco II Limited – each of which holds a 50% direct ownership interest in Columbus. Cable Pro Forma Notifications at Exh. A; Section 214 Pro Forma Notifications at Exh. A.

⁹ Cable Pro Forma Notifications at 3, Exh. A; Section 214 Pro Forma Notifications at 3, Exh. A.

¹⁰ Cable T/C Applications at 13; Section 214 T/C Applications, Attach. 1 at 6; Cable Pro Forma Notifications at 3, n.3; Section 214 Pro Forma Notifications at 3, n.3.

¹¹ Cable T/C Applications at 2-4, Exh. A; Cable Pro Forma Notifications at 3, Exh. A.

¹² Section 214 T/C Applications, Attach. 1 at 1.

¹³ Cable T/C Applications at 3; Section T/C 214 Applications, Attach. 1 at 2.

B. The Transaction

4. In its Applications, C&W proposes to acquire 100% of the stock of CII, its wholly-owned subsidiary, CNL, and Columbus, the 100% parent of the ARCOS-1 and CFX-1 cable system licensees and section 214 authorized holders.¹⁴ The first step of the transaction occurred on March 31, 2015, whereby the shares held by CNL in the entities holding the cable landing licenses and section 214 authorizations were transferred, on a *pro forma* basis, to Columbus.¹⁵ In this second step, Columbus, including the cable landing licensees and section 214 authorized holders, will be transferred to C&W, and Columbus will be inserted into the corporate ownership structure as a direct, wholly-owned subsidiary of CNL and an indirect, wholly-owned subsidiary of CII which, in turn, will be wholly owned, on an indirect basis, by C&W.¹⁶ Post-consummation, the following persons and entities will have a 10% or greater direct or indirect ownership interest in C&W: (1) CHBI and CHBL,¹⁷ ultimately controlled by Mr. John Risley, a Canadian citizen, will hold directly a 19.5% interest in C&W, and (2) Columbus LLC, a U.S. company ultimately controlled by Mr. John Malone, a U.S. citizen, will hold directly a 13.3% interest in C&W.¹⁸

C. Application and Review Process

5. On December 19, 2014, the International Bureau gave public notice of, and sought comment on the Applications.¹⁹ In response, Digicel filed a petition to impose conditions on the grant of the proposed transaction.²⁰ Digicel claims that the transaction “will have a substantial adverse impact on competition for telecommunications services between the United States and other foreign points.”²¹ Digicel asks the Commission to: (1) regulate C&W as dominant on all routes where it will possess market power through a foreign affiliate; (2) reclassify the ARCOS-1 and CFX-1 cable systems as common carrier cables; (3) apply a rate cap regime on international circuits to Anguilla, the British Virgin Islands (BVI), the Cayman Islands, the Dominican Republic, Haiti, Jamaica, and Turks & Caicos; and (4) designate the Applications for hearing, on the grounds that a 2013 joint venture between CNL and C&W was an unauthorized *de facto* transfer of control.²² The Applicants filed a response, and Digicel filed a

¹⁴ Cable T/C Applications at 2-5; Section 214 T/C Applications, Attach.1 at 7-8; Cable Pro Forma Notifications at 2; Section 214 Pro Forma Notifications at 2.

¹⁵ Cable T/C Applications at 4-5; Section 214 T/C Applications, Attach. 1 at 7-8; Cable Pro Forma Notifications at 2-4, Exh. A; Section 214 Pro Forma Notifications at 2-4, Exh. A. The unregulated assets of CII were transferred to Sable Holding Limited, an indirect, wholly-owned subsidiary of C&W. *Id.* CII’s formerly controlling shareholders continue to have *de facto* control of the licensees. That is, “CII and two indirect subsidiaries of CII acquired by C&W in the [pro forma] [t]ransfer have entered into intercompany management agreements with certain of the licensees to provide management services for the benefit of the Licensees.” Cable Pro Forma Notifications at 3, n.4; Section 214 Pro Forma Notifications at 3, n.4. Mr. Brendan Paddick continues to be the Chief Executive Officer of the licensees.

¹⁶ Cable T/C Applications at 5, Exh. A; Section 214 T/C Applications, Attach. 1 at 8, Exh. A; Cable Pro Forma Notifications at 3, Exh. A; Section 214 Pro Forma Notifications at 3, Exh. A.

¹⁷ Cable T/C Applications at 13; Section 214 T/C Applications, Attach. 1 at 6.

¹⁸ *Id.*

¹⁹ *Streamlined International Authorizations Accepted for Filing*, Report No. TEL-01706S, Public Notice (IB Dec. 19, 2014); *Streamlined International Authorizations Accepted for Filing*, Report No. TEL-01706S, Public Notice (IB Jan. 2, 2015) (removing Section 214 T/C Applications from streamlined processing); *Streamlined Submarine Cable Landing License Applications*, Report No. SCL-00158S, Public Notice (IB Dec. 19, 2014).

²⁰ Digicel Petition.

²¹ *Id.* at 2.

²² *Id.* at 12-18.

reply.²³ Applicants, Digicel, and AT&T Services, Inc. filed *ex parte* presentations.²⁴ The Applicants submitted additional information in response to the Bureau's request.²⁵ On June 2 and July 31, 2015, the Applicants responded to the Bureau's request for supplemental information.²⁶ No party filed any response to the supplemental information provided by the Applicants or disputed the additional information filed in the record.

6. The International Bureau sought comment on the Applications from the U.S. Department of State and other Executive Branch agencies.²⁷ On September 18, 2015, the U.S. Department of Homeland Security (DHS) filed a Petition to Adopt Conditions to Authorizations and Licenses (DHS Petition) stating it has no objection to the Commission granting the Applications, provided that the Commission conditions grant on the Applicants' compliance with the undertakings set forth in their September 11, 2015 Letter of Assurance (2015 LOA).²⁸

²³ Cable & Wireless Communications Plc and Columbus Networks, Limited Response to Petition, File Nos. SCL-T/C-20141121-00013 et al. (filed Jan. 14, 2015) (Response to Digicel Petition); Digicel International, Inc. Reply to Response to Digicel Petition, File Nos. SCL-T/C-20141121-00013 et al. (filed Jan. 21, 2015) (Reply).

²⁴ See Letter from Eric Fishman, Counsel to Digicel International, Inc. and its Subsidiaries, Fishman Advisors PLLC, to Marlene H. Dortch, Secretary, FCC, File Nos. SCL-T/C-20141121-00013 et al. (filed Feb. 2, 2015) (Digicel *Ex Parte*); Letter from Patrick Campbell, Counsel to Cable & Wireless Communications Plc, Paul, Weiss, Rifkind, Wharton & Garrison LLP, and Ulises R. Pin, Counsel to Columbus Networks, Limited, Morgan, Lewis & Bockius LLP, to Marlene H. Dortch, Secretary, FCC, File Nos. SCL-T/C-20141121-00013 et al. (filed Mar. 30, 2015) (Applicant *Ex Parte*); Letter from Amy Alvarez, Executive Director, International External Affairs, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, File Nos. SCL-T/C-20141121-00013 et al. (filed Oct. 21, 2015).

²⁵ Supplemental Information Response to Request by International Bureau Staff, File Nos. SCL-T/C-20141121-00013 et al. (filed Apr. 24, 2015) (Applicant April 24, 2015 Supplemental Information Response).

²⁶ See Letters from Denise Coca, Chief, Policy Division, International Bureau, FCC, to Patrick S. Campbell, Counsel to Cable & Wireless Plc, Paul, Weiss, Rifkind, Wharton & Garrison LLP, and Ulises R. Pin, Counsel to Columbus Networks, Limited, Morgan, Lewis & Bockius LLP (May 19, 2015); Response from Cable & Wireless Communications Plc, File Nos. SCL-T/C-20141121-00013 et al. (filed June 2, 2015) (Cable & Wireless June 2, 2015 Supplemental Filing); Response from Columbus USA, File Nos. SCL-T/C-20141121-00013 et al., (filed June 2, 2015) (Columbus June 2, 2015 Supplemental Filing); Response from Cable & Wireless Communications Plc and Columbus USA, File Nos. SCL-T/C-20141121-00013 et al. (filed July 31, 2015) (Cable & Wireless July 31, 2015 Second Supplemental Filing).

²⁷ 47 C.F.R. § 1.767(b); see *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket Nos. 97-142 and 95-22, Order and Order on Reconsideration, 12 FCC Rcd 23891, 23919-21, ¶¶ 61-66 (1997) (*Foreign Participation Order*); *Review of Commission Consideration of Applications under the Cable Landing License Act*, IB Docket No. 00-106, Report and Order, 16 FCC Rcd 22167, 22192-93, ¶¶ 51-52 (2001) (*Submarine Cable Landing License Report and Order*); see also *Streamlined Procedures for Executive Branch Review of Submarine Cable Landing License Requests*, State Department Media Note (Revised) (Dec. 20, 2001), available at <http://2001-2009.state.gov/r/pa/prs/ps/2001/6951.htm> (last visited Oct. 6, 2015).

²⁸ Copies of the DHS Petition and 2015 LOA are publicly available and may be viewed on the FCC website through the International Bureau Filing System (IBFS) by searching for SCL-T/C-20141121-00013 and accessing "Other filings related to this application" from the Document Viewing area; see also http://licensing.fcc.gov/cgi-bin/ws.exe/prod/ib/forms/reports/related_filing.htm?f_key=1069055&f_number=SCLT/C2014112100013.

III. DISCUSSION

7. In this section, we (1) discuss the legal standard that governs our analysis of the record; (2) analyze the potential horizontal competitive effects of the proposed transaction on the provision of international services on U.S.-Caribbean routes;²⁹ (3) consider Digicel's request to impose conditions; (4) and assess whether there are concerns related to national security, law enforcement, foreign policy, and trade policy.

A. Legal Framework

8. Pursuant to Section 214(a) of the Communications Act and Section 2 of the Cable Landing License Act, we must determine whether the Applicants have demonstrated that the proposed transfer of control of licenses and authorizations will serve the public interest, convenience, and necessity.³⁰ In making this determination, we assess whether the proposed transaction complies with the specific provisions of the Communications Act, other applicable statutes, and the Commission's rules.³¹ If the transaction does not violate a statute or rule, we consider whether the transaction could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or other relevant statutes.³² We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.³³ The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.³⁴ If we are unable to find that the proposed transaction serves the public interest for any reason, or if the record presents a substantial and material question of fact, we must designate the Application for hearing.³⁵

²⁹ A transaction is said to be horizontal when the merging firm sells products that are in the same relevant markets and are therefore viewed as reasonable substitutes by purchasers of the products. *See AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, 22 FCC Rcd 5662, 5675, ¶¶ 23-24, nn.82, 84 (2007) (*AT&T/BellSouth Order*) (citing, e.g., *General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee*, MB Docket No. 03-124, Memorandum Opinion and Order, 19 FCC Rcd 473, 507, ¶ 69 (2004)).

³⁰ 47 U.S.C. §§ 34-39, 214(a). The Cable Landing License Act provides that approval of a license application may be granted "upon such terms as shall be necessary to assure just and reasonable rates and service." 47 U.S.C. § 35. The Commission does not conduct a separate public interest analysis under this statute. *See, e.g., Applications filed by Global Crossing Limited and Level 3 Communications, Inc. for Consent to Transfer Control*, IB Docket No. 11-78, Memorandum Opinion and Order and Declaratory Ruling, 26 FCC Rcd 14056, 14060-61, ¶ 10, n.32 (2011); *SBC Communications, Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-65, Memorandum Opinion and Order, 20 FCC Rcd 18290, 18300, ¶ 16, n.59 (2005) (*SBC/AT&T Order*); *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, WC Docket No. 05-75, Memorandum Opinion and Order, 20 FCC Rcd 18433, 18442, ¶ 16, n.58 (2005) (*Verizon/MCI Order*); *see also Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, CC Docket No. 97-211, Memorandum Opinion and Order, 13 FCC Rcd 18025 (1998) (*WorldCom/MCI Order*).

³¹ *See, e.g., Applications of AT&T Inc. and DIRECTV For Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 14-90, Memorandum Opinion and Order, 30 FCC Rcd 9131, 9139, ¶ 18 (2015) (*AT&T/DIRECTV Order*); *Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licensees*, MB Docket No. 10-56, Memorandum Opinion and Order, 26 FCC Rcd 4238, 4247, ¶ 22 (2011) (*Comcast/NBCU Order*).

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

9. Our public interest evaluation necessarily encompasses the “broad aims of the Communications Act,” which include, among other things, a deeply rooted preference for preserving and enhancing competition, accelerating private sector deployment of advanced services, and promoting a diversity of information sources and services to the public.³⁶ Our public interest analysis also entails assessing whether the proposed transaction would affect the quality of communications services or result in the provision of new or additional services to consumers.³⁷ In conducting this analysis, we may consider technological and market changes, and the nature, complexity, and speed of change of, as well as trends within, the communications industry.³⁸

10. Our competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.³⁹ The Commission’s competitive analysis under the public interest standard is broader. For example, the Commission considers whether a transaction would enhance, rather than merely preserve, existing competition, and often takes a more expansive view of potential and future competition in analyzing that issue.⁴⁰ Finally, our public interest authority enables us, where appropriate, to impose and enforce transaction-related conditions that ensure that the public interest is served by the transaction.⁴¹

B. Competitive Effects on International Transport Capacity in the Caribbean Region

11. In this section, we consider the competitive effects of the proposed transaction on U.S. international services.⁴² C&W and Columbus currently compete in the provision of international services over submarine cables on a number of Caribbean routes. Based on the record and our analysis below, we conclude that the transaction is not likely to result in competitive harms.

1. Access to International Transport

12. International transport refers to the international physical transmission paths carriers use to offer services between the United States and other countries.⁴³ Although international services can be provided using submarine cable, satellite, or terrestrial links, most U.S. carriers seeking to terminate international traffic rely primarily on submarine cable systems.⁴⁴ Accordingly, access to submarine cables and cable landing stations is important in providing international services. C&W and Columbus

³⁶ *AT&T/DIRECTV Order*, 30 FCC Rcd at 9140, ¶ 19; *Comcast/NBCU Order*, 26 FCC Rcd at 4248, ¶ 23.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *AT&T/DIRECTV Order*, 30 FCC Rcd at 9140, ¶ 20; *Comcast/NBCU Order*, 26 FCC Rcd at 4248, ¶ 24.

⁴⁰ *AT&T/DIRECTV Order*, 30 FCC Rcd at 9141, ¶ 21; *Comcast/NBCU Order*, 26 FCC Rcd at 4248, ¶ 24.

⁴¹ *See, e.g.*, the Cable Landing License Act provides that approval of a license application may be granted “upon such terms as shall be necessary to assure just and reasonable rates and service.” 47 U.S.C. § 35. *See also* 47 U.S.C. § 214(a); *AT&T/DIRECTV Order*, 30 FCC Rcd at 9141, ¶ 22; *Comcast/NBCU Order*, 26 FCC Rcd at 4249, ¶ 25; *see also WorldCom/MCI Order*, 13 FCC Rcd at 18032, ¶ 10 (stating that the Commission may attach conditions to the transfers).

⁴² U.S. international service refers to telecommunications service between the United States and a foreign point. *See Filing Manual for Section 43.62 Annual Reports*, DA 15-206 at 27, Appendix B: Definitions (IB 2015) (Section 43.62 Filing Manual). Section 43.62 of the Commission’s rules requires common carriers, non-common carrier satellite licensees, and submarine cable landing licensees to file information about international circuits that they own or lease. 47 C.F.R. § 43.62(a).

⁴³ *SBC/AT&T Order*, 20 FCC Rcd at 18773, ¶ 158; *AT&T/BellSouth Order*, 22 FCC Rcd at 5741, ¶ 158.

⁴⁴ In 2013, submarine cables accounted for 86.09% of overall transmission capacity globally. Terrestrial and satellite links accounted for 13.90% and 0.02%, respectively. *See International Bureau Report, FCC, 2013 Section 43.82 Circuit Status Data* at 12 (Table 2), 18 (Table 3), and 24 (Table 5) (July 2015) (based on data as of Dec. 31, 2013), available at <http://transition.fcc.gov/ib/pd/pf/csmanual.html>.

own or hold capacity interests in Caribbean submarine cables, control access to cable landing stations, and currently compete in the provision of international services over submarine cables on a number of Caribbean routes. Both the Applicants and Digicel also own international satellite capacity serving the Caribbean region, but no party claims that satellite capacity is a viable substitute for submarine cable service on these routes. Consistent with Commission precedent, we focus on whether approval of the proposed transaction would be likely to harm competition with respect to access to international transport in the Caribbean region where submarine cable capacity and cable landing station access are important inputs.⁴⁵

13. Our analysis below focuses on access to international transport in the Caribbean on an island-by-island basis.⁴⁶ The Applicants argue that we should apply a broader, regional analysis for evaluating international transport.⁴⁷ Digicel contends that the more appropriate geographic market is not the whole of the Americas region, but rather the Caribbean, and particular islands within the Caribbean.⁴⁸ We find that a regional approach works well in a transaction analysis where there is terrestrial access and connectivity between countries. The Caribbean consists primarily of islands with limited submarine cable access, and U.S. carriers do not have the option, in most cases, of using terrestrial capacity to provide international services on these routes. To ensure that we evaluate competitive effects of this proposed transaction adequately, we find that it would serve the public interest to focus on the smaller market segments within the Caribbean region and analyze the effects of this proposed transaction on an island-by-island basis.

14. We analyze seven markets in the Caribbean region where, according to Digicel, the “carrier choices and competition will be most narrowly constrained.”⁴⁹ These markets are routes between the United States and Anguilla, the BVI, the Cayman Islands, the Dominican Republic, Haiti, Jamaica, and Turks & Caicos.⁵⁰ For each market, we first analyze the impact of combining the Applicants’ net submarine capacity to determine whether, post-transaction, the combined capacity share indicates the potential for an adverse competitive effect. If this analysis suggests that the transaction may have anticompetitive effects, we then examine in more detail whether and how the transaction might affect competitive behavior, considering both the possibility of unilateral harms and coordinated interaction.⁵¹

⁴⁵ See *AT&T/BellSouth Order*, 22 FCC Rcd at 5741-42, ¶¶ 159, 161; see also *Verizon/MCI Order*, 20 FCC Rcd at 18514-15, ¶ 158 (finding international transport, particularly submarine cable capacity and cable landing station access, as a relevant market for transaction analysis).

⁴⁶ The Commission generally employs a regional approach in analyzing the international transport market because U.S.-licensed submarine cable systems tend to serve entire regions and carriers deliver traffic indirectly, via third countries, if that permits them to reduce their transport costs. However, where appropriate, as here, the Commission has examined international transport capacity on particular routes. See *Wavecom Solutions Corporation, Transferor, and Hawaiian Telcom, Inc., Transferee Applications for Consent to Transfer Control*, WC Docket No. 12-206, Memorandum Opinion and Order and Declaratory Ruling, 27 FCC Rcd 16081, 16093, ¶ 23 (2012).

⁴⁷ Response to Digicel Petition at 5.

⁴⁸ Reply at 2-3.

⁴⁹ Digicel Petition at 10.

⁵⁰ *Id.*

⁵¹ See *AT&T/BellSouth Order*, 22 FCC Rcd at 5676, ¶ 26.

In particular, we calculate submarine capacity shares held by the Applicants, pre- and post-transaction,⁵² as well as a measure of the increase in concentration of capacity holdings, the “delta HHI.”⁵³

15. *Anguilla*: We find that there is no transaction specific harm on the U.S.-Anguilla route. There is nothing in the record suggesting any likely harm that may arise out of approval of this transaction. C&W, but not Columbus, holds capacity on the ECFS cable system, which is the only cable system that lands in Anguilla. Post-transaction, there will be no change in the number of market participants on the U.S.-Anguilla route.

16. *British Virgin Islands (BVI)*: We find that there is no transaction specific harm on the U.S.-BVI route. There is nothing in the record suggesting any likely harm that may arise out of approval of this transaction. C&W, but not Columbus, holds capacity on the cable systems that land in BVI: CBUS, Taino-Carib, ECFS, East-West, and PCCS. Post-transaction, there will be no change in the number of market participants on the U.S.-BVI route.

17. *Cayman Islands*: We find that the proposed transaction is unlikely to result in competitive harm on the U.S.-Cayman Islands route. Two cable systems, the MAYA-1, a consortium owned cable system, and the CJFS, owned by C&W, land in the Cayman Islands.⁵⁴ The total cable capacity of the CJFS cable is 256 STM-1s,⁵⁵ which is relatively small when compared to the total cable capacity of the MAYA-1 system (6,272 STM-1s), which is equivalent to 96% of the total cable capacity for the Cayman Islands. Digicel asserts that both cable systems on the Cayman Islands, post-transaction, will be under C&W’s monopoly control, creating an adverse impact on competition.⁵⁶ We disagree. We calculate that the Applicants together will hold 23.9% of capacity in the Cayman Islands market post-

⁵² We requested supplemental data from the Applicants on their submarine cable capacity and cable landing stations, because some of the cables landing in the Caribbean do not land in the United States, and therefore are not subject to Commission reporting requirements. *See* Cable & Wireless June 2, 2015 Supplemental Filing; Cable & Wireless July 31, 2015 Second Supplemental Filing. These non-U.S. cable systems are: Eastern Caribbean Fiber System (ECFS), Cayman-Jamaica Fiber System (CJFS), East-West cable, Fibralink, BDSNi, Caribbean Bermuda U.S. Network (CBUS), and ALBA-1. The Commission requires cable landing licensees and common carriers that hold capacity on the U.S. end of a submarine cable extending between the United States and a foreign point to report available capacity on the U.S. end of each submarine cable on which they hold capacity and which we also relied upon in our analysis. 47 C.F.R. § 43.62. Each capacity holder is required to calculate its available capacity as the sum of (1) cable ownership, (2) the net of indefeasible right of use (IRUs) leased from other capacity holders less IRUs leased to other capacity holders, and (3) the net of inter-carrier lease (ICLs) leased from other capacity holders less ICLs leased to other capacity holders. All capacity data is reported in STM-1 (Synchronous Transport Module level-1) units, the standard commercial unit for the sale and leasing of capacity, rounded to one decimal place. The STM-1 is the Synchronous Digital Hierarchy (SDH) ITU Telecommunication Standardization Sector (ITU-T) fiber optic network transmission standard, which has a bit rate of 155.52 Mbps. *See* Section 43.62 Filing Manual at ¶ 138, n.65.

⁵³ The U.S. Department of Justice and the Federal Trade Commission use the Herfindahl-Hirschman Index (HHI) as a measure of market concentration. When using the HHI, the agencies consider both the post-transaction level of the HHI and the increase in the HHI resulting from the transaction (“delta HHI”). *See* Horizontal Merger Guidelines, U.S. Department of Justice and Federal Trade Commission (Aug. 19, 2010) (DOJ/FTC Transaction Guidelines). Here, we focus on delta HHI calculations to measure changes in concentration, because computing HHI levels would require information on full submarine cable capacity usage by all service providers on a particular route. Some of the cables in this analysis are non-U.S. cables, and information on capacity held by other U.S. carriers and foreign carriers on these cables is not readily available to perform a full market analysis. In computing HHI changes, we consider all of the cables landing on an island as the sum total of the competitive alternatives for the route between that island and the United States.

⁵⁴ The MAYA-1 cable system extends between the United States and Colombia with a landing station in the Cayman Islands. The CJFS connects the Cayman Islands and Jamaica.

⁵⁵ An STM-1 is the standard commercial unit for the sale and leasing of capacity. *See supra* note 52.

⁵⁶ Digicel Petition at 10-11, 16.

transaction.⁵⁷ Further, the change in market concentration, or delta HHI, is calculated to be 100.⁵⁸ The merged market share and relatively low delta HHI make Digicel's arguments unpersuasive.

18. *Turks & Caicos*: We find that the proposed transaction is unlikely to result in competitive harm on the U.S.-Turks & Caicos route. Although each of Columbus and C&W holds capacity on the Columbus-owned ARCOS-1 cable system, the only cable system that lands in Turks & Caicos, C&W holds less than 1% of net capacity. Post-transaction, the Applicants' combined capacity share will be 40.4%, and we calculate the delta HHI to be 69. While Digicel claims that the transaction will consolidate and expand C&W's market dominance in this market, we disagree based on the small increase in market concentration.

19. *Jamaica*: We find that the proposed transaction is unlikely to result in competitive harm on the U.S.-Jamaica route. Five submarine cable systems land in Jamaica: ALBA-1, CFX-1, CJFS, East-West, and Fibralink.⁵⁹ Post-transaction, C&W will control 50.7% of the cable capacity, and we calculate the delta HHI to be 373. The increase in concentration on this route is of concern.⁶⁰ However, several factors suggest that competitive harm is unlikely. First, there have been no objections from U.S. carriers or any other prospective customers beyond Digicel. Second, the Jamaican authorities have reviewed the transaction and approved it after obtaining certain concessions.⁶¹ Third, our measure of concentration change may be overstated if some of the cables on which the Applicants hold significant capacity are not in fact used for moving traffic to and from the United States, and thus should not be included in our delta HHI calculation. Fourth, the ALBA-1 cable, which is not controlled by the Applicants, has a very large design capacity, suggesting that very significant expansion is possible.

20. We also note that, on the U.S.-Jamaica route, unilateral harm does not appear likely because this transaction does not constitute a combination of the most closely substitutable cable capacity. The most closely substitutable capacity for Columbus's capacity on the large CFX-1 cable connecting directly to the United States would be other capacity on that same cable. However, C&W holds less than 1% of the capacity on CFX-1 cable. In addition, these submarine cable markets do not appear to be susceptible to coordinated interaction, and we do not believe the transaction will facilitate such behavior.

⁵⁷ The 23.9% does not demonstrate market power.

⁵⁸ On the MAYA-1 cable, C&W holds, on a net capacity basis, 1,165 STM-1s, or 18.6%, and Columbus holds, on a net capacity basis, 152 STM-1s, or 2.3% of the cable. Moreover, the Applicants note the MAYA-1 cable was upgraded in 2014 and that there is significant capacity available for purchase from other U.S. carriers. Response to Digicel Petition at 8-9. The Applicants state that, in 2014, Digicel acquired significant amounts of capacity, in the form of an IRU, from a third-party MAYA-1 cable consortium member. *Id.* at 9.

⁵⁹ Of these cables, the CFX-1 and ALBA-1 cables together comprise 93.67% of the total capacity to Jamaica (15,168 STM-1s), with less than 7% of the total capacity to Jamaica divided among the other three cable systems. See Submarine Cable ALMANAC, Issue 14 at 38 (May 2015) (reporting the initial capacity of the ALBA-1 cable system is 640 Gbps, equivalent to 4,096 STM-1s). See also Cable & Wireless July 31, 2015 Second Supplemental Filing, Attach. A (reporting cable capacity of the CFX-1 system is 10,112 STM-1s). The CFX-1 cable system and cable landing station are owned and operated by Columbus, and both Applicants hold capacity on this cable. Neither Applicant holds capacity on the ALBA-1 cable. Of the remaining three cables, C&W owns the East-West and CJFS cable systems. Columbus holds no capacity on the East-West and CJFS, but owns the Fibralink cable system.

⁶⁰ This judgment is consistent with the Horizontal Merger Guidelines, which state that only transactions resulting in an HHI increase of less than 100 points are "unlikely to have adverse competitive effects and ordinarily require no further analysis." See DOJ/FTC Transaction Guidelines at 19.

⁶¹ See Cable & Wireless July 31, 2015 Second Supplemental Filing at 4, Response to Question 6.

In particular, competitive initiatives by transport providers are not easily observable by rivals, and thus we would expect weak or slow responses from such rival firms.

21. Digicel claims that four of the five cables that land in Jamaica will be “under Cable & Wireless’s monopoly control.”⁶² We agree with the Applicants that this statement is misleading in that, although C&W will have interests in a majority of cable systems landing in Jamaica, this does not demonstrate that there is a competition problem for Digicel.⁶³ The Applicants state that Digicel has already secured significant amounts of long-term capacity on the CFX-1 cable system at advantageous volume discounts and that third parties hold significant capacity and have available many more times spare design capacity than the total international wholesale activated capacity on the Applicants’ cable systems landing in Jamaica.⁶⁴ Moreover, as noted above, the ALBA-1 cable has a huge expansion capability due to a design capacity of 5.12 Tbps, equivalent to 32,768 STM-1s.⁶⁵

22. In addition, we find that there is a low barrier to entry into the international transport market on the U.S.-Jamaica route, as the Jamaican government and its regulatory body have demonstrated a willingness to support market openness in Jamaica through the licensing of facilities; they also have approved the C&W/Columbus transaction.⁶⁶ Therefore, we find that the transaction is unlikely to result in competitive harm on the U.S.-Jamaica route.⁶⁷

23. *Dominican Republic/Haiti*: Digicel asserts that because C&W owns, in whole or in part, four of the five cables that land in the Dominican Republic and holds an ownership interest in one of the cables landing in Haiti, the transaction will expand and consolidate C&W’s market dominance and have an adverse impact on these markets.⁶⁸ The Applicants argue that Digicel’s statements are misleading, as “unaffiliated third parties own a substantial majority of the activated and design capacity across all cables landing in the Dominican Republic”⁶⁹ and “unaffiliated third parties control (i) the new AMX-1 system, (ii) all land routes to Haiti, and (iii) more than 90% of the Antillas-1 cable.”⁷⁰ They also assert that Digicel has long-term rights to use the Fibralink spur, as it helped finance the project.⁷¹ We find that the

⁶² Digicel Petition at 10.

⁶³ Response to Digicel Petition at 7. *See also* Applicant *Ex Parte* at 6 (stating that Digicel’s capacity purchase for long term IRUs to Jamaica was formalized on December 31, 2014).

⁶⁴ Response to Digicel Petition at 7; Applicant *Ex Parte* at 6.

⁶⁵ *See* Winston Qiu, *Cuba Trials Internet Traffic Via Its First Undersea Cable—ALBA-1* (Jan. 29, 2013), <http://www.submarinenetworks.com/news/cuba-trials-internet-traffic-via-alba-1> (last visited Nov. 12, 2015). Because ALBA-1 is a non-U.S. system, and the Applicants do not own capacity on the system, we do not have precise data on how much submarine cable capacity is available for use by U.S. and other carriers. The Applicants assert that C&W currently cross-connects with the ALBA-1 cable in Jamaica and that Columbus provides onward connectivity to the United States from Jamaica. C&W claims that spare design capacity can be quickly and easily brought online by third parties in response to customer demand. *See* Applicant *Ex Parte* at 5-6.

⁶⁶ *See* Digicel *Ex Parte*, Attach. 4.

⁶⁷ *See AT&T/BellSouth Order*, 22 FCC Rcd at 5742, ¶ 160; *Verizon/MCI Order*, 20 FCC Rcd at 18515, ¶ 159 (finding transaction will not increase concentration significantly or give rise to anticompetitive effects due to low barriers to entry and substantial amount of transport capacity).

⁶⁸ Digicel Petition at 11.

⁶⁹ Response to Digicel Petition at 9. The Applicants claim that Digicel has secured dark fiber IRU with BW Telcom S.R.L. to connect its Haiti backhaul with BW Telcom’s land route to the Dominican Republic. *See* Applicant *Ex Parte* at 8.

⁷⁰ *Id.* at 8.

⁷¹ *Id.*

proposed transaction is unlikely to result in competitive harm on the U.S.-Dominican Republic and U.S.-Haiti routes.

24. We analyze Haiti and the Dominican Republic together given the close connections between the two countries that significantly impact the competitive environment.⁷² First, Haiti and the Dominican Republic are located on the same island. Second, there is terrestrial telecommunications interconnectivity between the two markets. Third, there is also a submarine cable spur between the two countries. We find no evidence that U.S. carriers have experienced problems connecting terrestrially between Haiti and the Dominican Republic, or that U.S. carriers are experiencing difficulties purchasing capacity on the Fibralink cable spur that connects Haiti and the Dominican Republic.⁷³ In analyzing a single, combined Dominican Republic/Haiti market, we find that the capacity share of the Applicants is 21.5% and the delta HHI is 111. In addition, the Commission has previously recognized that low barriers to entry are associated with the international transport market, particularly submarine cables, and we expect the relative ease of entry to make competitive harm unlikely in this instance.⁷⁴

25. On the U.S-Haiti route, the ability to route traffic through the Dominican Republic provides an effective competitive alternative for international transport traffic between the United States and Haiti. Five cable systems land in the Dominican Republic, and two cable systems land in Haiti, for a total Dominican Republic/Haiti submarine cable capacity of 21,365 STM-1s.⁷⁵ Based on the record and our analysis, we agree that the transaction is not likely to result in competitive harm on the U.S.-Dominican Republic and U.S.-Haiti routes.

2. Digicel's Requests

26. *Applying Dominant Carrier Obligations.* Digicel requests that the Commission classify the licensees and authorization holders as dominant on all U.S. routes to countries where C&W is affiliated with foreign carriers with market power in the destination market.⁷⁶ As part of our public interest analysis, we consider whether the proposed transaction will result in the Applicants becoming affiliated with any foreign carriers, and whether these affiliations might raise competitive concerns on any particular route.⁷⁷ The Applicants have certified in their section 214 transfer applications that C&W "is and will continue to be affiliated" with foreign carriers presumed to have market power on 17 routes and have agreed to comply with dominant carrier and other applicable Commission rules on those routes.⁷⁸ C&W has certified that it will comply with the Commission's dominant carrier safeguards under Sections 63.10(c) and (e) of the Commission's rules in the provision of international services to the following destination markets where C&W's affiliated carrier has market power: Anguilla, Antigua and Barbuda, Bahamas, Barbados, BVI, Cayman Islands, Dominica, Grenada, Jamaica, Montserrat, Panama, St. Kitts

⁷² If we look at the routes separately, the delta HHI for the U.S.-Dominican Republic route is 69 and the delta HHI for the U.S.-Haiti route is 2988.

⁷³ See Cable & Wireless June 2, 2015 Supplemental Filing; Cable & Wireless July 31, 2015 Second Supplemental Filing.

⁷⁴ See *AT&T/BellSouth Order*, 22 FCC Rcd at 5742, ¶ 160; *Verizon/MCI Order*, 20 FCC Rcd at 18515, ¶ 159.

⁷⁵ Three of the cables, AMX-1, Antillas-1 and ARCOS-1, connect the Dominican Republic with the United States, and the other two cables, East-West and Fibralink, connect with Jamaica, BVI, and Haiti. BDSNi connects the Bahamas and Haiti, and Fibralink has a spur between the Dominican Republic and Haiti.

⁷⁶ Digicel Petition at 13-15.

⁷⁷ See 47 C.F.R. §§ 1.768, 63.10, 63.11(c), (e). The terms "affiliated" and "foreign carrier" are defined in section 63.09 of the Commission's rules. 47 C.F.R. § 63.09.

⁷⁸ Response to Petition at 15, citing 47 C.F.R. §§ 1.768, 63.10(c); see also Section 214 T/C Applications, Attach. 1 at 8-11.

and Nevis, St. Lucia, St. Vincent/Grenadines, Seychelles, Trinidad and Tobago, and Turks & Caicos.⁷⁹ Post-transaction, C&W will become affiliated with 34 additional foreign carriers currently affiliated with Columbus, but Applicants state that none of the 34 carriers listed in the Applications has market power in its home market.⁸⁰ We will continue to classify C&W as dominant on the 17 routes, and require C&W to comply with dominant carrier regulations and other rules and policies that apply on those routes. For the 34 additional routes, we will not impose dominant carrier requirements because the foreign affiliate on these routes has not been found to have market power.⁸¹

27. We also consider whether the proposed transaction will increase C&W's ability to use the market position of its affiliates in providing foreign cable landing station access, so as to result in anticompetitive effects. Digicel alleges that the merged entity will, through its foreign affiliates, have "absolute monopoly control over landing facilities" in Anguilla, the BVI, the Cayman Islands, the Dominican Republic, Haiti, Jamaica, and Turks & Caicos.⁸² Our review of the record, however, finds that Jamaica is the only market where there is an increase in concentration of cable landing station ownership as a result of the proposed transaction.⁸³ C&W has agreed to comply with dominant carrier safeguards on this route, which requires C&W to file quarterly traffic and revenue reports that include services, cable station collocation space, and backhaul facilities procured by C&W from its foreign affiliate.⁸⁴ We find that these safeguards, and C&W's statement that it sells cable station collocation space and backhaul facilities at market rates,⁸⁵ will serve to protect against anti-competitive conduct by C&W and its affiliates in Jamaica.⁸⁶

28. *Classifying the ARCOS-1 and CFX-1 Cables as Common Carrier Systems.* We also deny Digicel's request to reclassify the ARCOS-1 and CFX-1 cables as common carrier systems, as unnecessary.⁸⁷ The Applicants state that both cables are properly classified as private carrier systems and satisfy customers' demands for individually tailored offerings of bulk private-line capacity, noting that

⁷⁹ Section 214 T/C Applications, Attach. 1 at 11; 47 C.F.R. §§ 63.10(c), (e). We analyzed seven routes in the Caribbean region and the Applicants are affiliated with foreign carriers presumed to have market power in their home markets on five of these seven routes – the U.S.-Anguilla, U.S.-BVI, U.S.-Cayman Islands, U.S.-Jamaica, and U.S.-Turks & Caicos routes as discussed elsewhere.

⁸⁰ Cable T/C Applications at 14-16, n.18. Applicants note that none of these carriers is on the Commission's list of foreign telecommunications carriers presumed to possess market power in foreign telecommunications markets, referencing the FCC's *List of Foreign Carriers that are Presumed to Possess Market Power in Foreign Telecommunications Markets*, Public Notice, 22 FCC Rcd 945 (IB 2007).

⁸¹ See 47 C.F.R. §§ 1.768, 63.10(c).

⁸² Digicel Petition at 16.

⁸³ See Applicant April 24, 2015 Supplemental Information Response, Attach. B. C&W owns and operates the cable landing stations associated with the CJFS and East-West cables through its foreign affiliate, Cable & Wireless Jamaica. Post-transaction, C&W will become affiliated with Columbus Networks Jamaica, the owner and operator of the CFX-1 and Fibralink cable stations. Applicants advise that they own the cable landing facilities on four of the five cables that land in Jamaica, but assert the Commission has determined that the dominant carrier safeguards are the appropriate means for addressing the ownership of foreign cable landing stations. See Applicant *Ex Parte* at 10, n.15.

⁸⁴ See 47 C.F.R. §§ 1.767(l), 1.768(f).

⁸⁵ See Cable & Wireless July 31, 2015 Second Supplemental Filings, Response to Question 4. C&W states that it is affiliated with foreign carriers, including entities that own and control a cable landing station, in foreign countries. See Cable T/C Application at 14-15.

⁸⁶ See, e.g., *Verizon/MCI Order*, 20 FCC Rcd at 18517, ¶ 162 (standard foreign affiliation safeguards serve to protect against anticompetitive conduct by affiliated carriers with market power at foreign end of U.S.-licensed cable).

⁸⁷ Response to Digicel Petition at iii.

Digicel has purchased capacity from the Applicants' strategic alliance, CNL-CWC Networks, Inc. (CNL-CWC Co.).⁸⁸ We find nothing in the record to support a finding that there are insufficient alternative cable facilities in the region, or that the Applicants are not providing capacity on these two cables on terms tailored to meet particular customer needs.⁸⁹

29. *Imposing Rate Regulation.* Additionally, we deny Digicel's request to impose rate regulation to protect against the possibility of anti-competitive abuses on certain Caribbean routes.⁹⁰ Applicants state that the Commission has detariffed international services and removed the International Settlements Policy in response to the development of competition for international services in the United States, in foreign countries, and on U.S.-international routes.⁹¹ We agree. Digicel has not presented evidence supporting the imposition of rate regulation. In the absence of such support, granting Digicel's request would be inconsistent with the reforms taken by the Commission.⁹²

30. *2013 Joint Venture between CNL and C&W.* Finally, we reject Digicel's request that the Commission designate the Applications for hearing, based on Digicel's claim that a 2013 joint venture between CNL and C&W was an unauthorized *de facto* transfer of control.⁹³ The Applicants assert that the alliance did not constitute a transfer of control, but is an agency arrangement allowing the parties to work together for operational purposes to serve their customers.⁹⁴ Digicel relies on press reports almost three years after the alliance was announced. We find Applicants' arguments regarding the separation of operations during the joint venture to be persuasive and find that there is nothing in the record to support Digicel's allegation that this arrangement may have been a transfer of control. Further, this issue is unrelated and existed prior to the filing of the Applications.⁹⁵ Accordingly, we deny Digicel's request that we designate the Applications for hearing.

⁸⁸ *Id.* at 17.

⁸⁹ In determining whether a cable system qualifies to be operated on a non-common carrier basis, the Commission follows the two-part test set forth in *National Association of Regulatory Utility Commissioners v. FCC*, 525 F.2d 630, 642 (D.C. Cir. 1976) (*NARUC I*), cert. denied, 425 U.S. 992 (1976). See also *Submarine Cable Landing License Report and Order*, 16 FCC Rcd at 22202-03, ¶¶ 69-70; *Review of Commission Consideration of Applications under the Cable Landing License Act*, IB Docket No. 00-106, Notice of Proposed Rulemaking, 15 FCC Rcd 20789, 20815-18, ¶¶ 62-67 (IB 2000).

⁹⁰ Digicel Petition at 17-18.

⁹¹ Response to Digicel Petition at 17.

⁹² See, e.g., *Reform of Rules and Policies on Foreign Carrier Entry Into the U.S. Telecommunications Market*, IB Docket No. 12-299, Report and Order, 29 FCC Rcd 4256 (2014); *International Settlements Policy Reform*, IB Docket Nos. 11-80, 05-254, 09-10, Report and Order, 27 FCC Rcd 15521 (2012); *2000 Biennial Regulatory Review; Policy and Rules Concerning the International, Interexchange Marketplace*, IB Docket No. 00-202, Report and Order, 16 FCC Rcd 10647 (2001).

⁹³ Digicel Petition at 18 (claiming that the Applicants failed to disclose to the Commission their 2013 joint venture which "according to press reports, appears to have effectuated a *de facto* transfer of control").

⁹⁴ Response to Digicel Petition at 19-21. The Applicants assert that each party retained legal title and control to its respective networks and licenses, and no assets were transferred to CNL-CWC Co. *Id.* at 20-21.

⁹⁵ See *Applications of Cellco Partnership d/b/a Verizon Wireless & Atlantis Holdings LLC*, WT Docket No. 08-95, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444, 17463, ¶ 30 (2008); see also *AT&T/DIRECTV Order*, 30 FCC Rcd at 9233, ¶ 264; *Domestic Section 214 Application Filed for the Transfer of Control of Hawaiian Telcom, Inc. & Hawaiian Telcom Servs. Co., Inc., Debtors-in-Possession*, WC Docket No. 10-41, Public Notice, 25 FCC Rcd 13149, 13151 (WCB 2010) ("The Commission generally will not impose conditions to remedy preexisting harms or harms that are unrelated to the transaction at issue."); *Applications for Consent to the Assignment &/or Transfer of Control of Licenses of Time Warner Inc., & Its Subsidiaries*, MB Docket No. 08-120, WC Docket No. 08-157, Memorandum Opinion and Order, 24 FCC Rcd 879, 887, ¶ 13 (MB, WCB, WTB, IB 2009)

C. Potential Public Interest Benefits

31. In determining whether approval of a transaction is in the public interest, the Commission evaluates whether the transaction is likely to produce public interest benefits. The Commission applies several criteria in deciding whether a claimed benefit is cognizable. First, the claimed benefit must be transaction specific. That is, the claimed benefit must be likely to occur as a result of the transaction but unlikely to be realized by other practical means having less anticompetitive effect.⁹⁶ Second, the claimed benefit must be verifiable.⁹⁷ Because much of the information relating to the potential benefits of a transaction is in the sole possession of the Applicants, they have the burden of providing sufficient evidence to support each claimed benefit to enable the Commission to verify its likelihood and magnitude.⁹⁸ The Commission will discount or dismiss speculative benefits that it cannot verify.⁹⁹ Third, the Commission calculates the magnitude of benefits net of the cost of achieving them.¹⁰⁰ Fourth, benefits must flow through to consumers, and not inure solely to the benefit of the company.¹⁰¹

32. The Commission applies a “sliding scale approach” to evaluating benefit claims.¹⁰² Under this sliding scale approach, where potential harms appear both substantial and likely, the Applicants’ demonstration of claimed benefits must reveal a higher degree of magnitude and likelihood than the Commission would otherwise demand.¹⁰³ On the other hand, where potential harms appear less likely and less substantial, the Commission will accept a lesser showing.¹⁰⁴

33. We find that the proposed transaction is likely to generate public interest benefits. The Applicants assert that the acquisition will lead to the emergence of a more capable and better-resourced supplier in the submarine cable market for wholesale capacity in the Caribbean region.¹⁰⁵ In addition, the Applicants state that the addition of CII’s senior management team will reinforce C&W’s knowledge and expertise of the region and relevant markets, while the wider C&W team has extensive operating and management expertise in the communications industry.¹⁰⁶ They also state that combining the submarine cable networks under C&W’s ownership will allow the parties to operate in a more efficient and economical manner, to have greater access to capital markets, and to expand their customer base.¹⁰⁷ They

(“[T]he Commission has held that it will impose conditions only to remedy harms that arise from the transaction (i.e., transaction-specific harms) and that are reasonably related to the Commission’s responsibilities under the Communications Act and related statutes.”).

⁹⁶ See *AT&T/DIRECTV Order*, 30 FCC Rcd at 9237, ¶ 273; *Comcast/NBCU Order*, 26 FCC Rcd at 4330-31, ¶ 226.

⁹⁷ See *AT&T/DIRECTV Order*, 30 FCC Rcd at 9237, ¶ 274; *Comcast/NBCU Order*, 26 FCC Rcd at 4331, ¶ 226.

⁹⁸ See *id.*

⁹⁹ See *AT&T/DIRECTV Order*, 30 FCC Rcd at 9237, ¶ 274. As the Commission explained in the *EchoStar/DIRECTV HDO*, “benefits that are to occur only in the distant future may be discounted or dismissed because, among other things, predictions about the more distant future are inherently more speculative than predictions about events that are expected to occur closer to the present.” *Application of EchoStar Communications Corp., General Motors Corp., and Hughes Electronics Corp., Transferors, and Echostar Communications Corp., Transferee*, CS Docket No. 01-348, Hearing Designation Order, 17 FCC Rcd 20559, 20630-31, ¶ 190 (2002).

¹⁰⁰ See *AT&T/DIRECTV Order*, 30 FCC Rcd at 9237, ¶ 275; *Comcast/NBCU Order*, 26 FCC Rcd at 4331, ¶ 226.

¹⁰¹ See *id.*

¹⁰² See *AT&T/DIRECTV Order*, 30 FCC Rcd at 9238, ¶ 276; *Comcast/NBCU Order*, 26 FCC Rcd at 4331, ¶ 227.

¹⁰³ See *id.*

¹⁰⁴ See *id.*

¹⁰⁵ Cable T/C Applications at 5; Section 214 T/C Applications, Attach. 1 at 2.

¹⁰⁶ Cable T/C Applications at 6.

¹⁰⁷ *Id.* at 5-6; Section 214 T/C Applications, Attach. 1 at 2.

further state that the transaction will allow them to invest in upgrading the overall network infrastructure that will result in additional services and benefits to their customers including higher Internet speeds and greater reliability.¹⁰⁸ Digicel does not challenge these claims.

34. Based on our careful review of the record, we find the transaction is unlikely to result in any public interest harms. We find that the small potential for any public interest harm is outweighed by the public interest benefits described by the Applicants. Additionally, the transaction may benefit service on U.S.-Caribbean routes by fostering the seamless transfer of traffic from one submarine cable system to another in the event of a cable outage emergency in which there is submarine cable damage in the region. Accordingly, we conclude that granting the Applications serves the public interest.

D. National Security, Law Enforcement, Foreign Policy, and Trade Concerns

35. When analyzing a transfer of control or assignment application, we also consider any national security, law enforcement, foreign policy, or trade policy concerns raised by the relevant Executive Branch agencies.¹⁰⁹ On September 18, 2015, the DHS advised that it has no objection to the Commission granting the Applications, provided that the Commission conditions grant on the Applicants' compliance with the undertakings set forth in the 2015 LOA.¹¹⁰ We condition grant of the Applications on such compliance.

IV. CONCLUSION

36. We conclude that approval of the transaction is in the public interest. We deny Digicel's request to impose protective obligations and conditions. We conclude that the Applicants have met their burden of demonstrating that the proposed transaction will serve the public interest, convenience, and necessity.

¹⁰⁸ Cable T/C Applications at 6.

¹⁰⁹ *Foreign Participation Order*, 12 FCC Rcd 23918, ¶ 58.

¹¹⁰ 2015 LOA. The 2015 LOA supersedes and replaces the February 1, 2008 Letter of Assurance provided by Columbus to DHS, which was adopted by the Commission as a condition to the cable landing license for the CFX-1 cable system (SCL-LIC-20070516-00008). The 2015 LOA is applicable to both the CFX-1 and the ARCOS-1 systems (SCL-LIC-19981222-00032).

V. ORDERING CLAUSES

37. ACCORDINGLY, IT IS ORDERED that, pursuant to sections 4(i)-(j) and 214 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i)-(j), 214, and section 2 of the Cable Landing License Act, 47 U.S.C. §§ 34-39 and 3 U.S.C. § 301, the Applications for transfer of control of section 214 authorizations and cable landing licenses from Columbus New Cayman Limited to Cable & Wireless Communications Plc ARE GRANTED, to the extent specified and as conditioned in this Memorandum Opinion and Order.

38. IT IS FURTHER ORDERED that, pursuant to sections 4(i)-(j) and 214 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i)-(j), 214, and section 2 of the Cable Landing License Act, 47 U.S.C. §§ 34-39 and 3 U.S.C. § 301, the notifications of *pro forma* transfer of control of section 214 authorizations and cable landing licenses from Columbus Networks, Limited to Columbus New Cayman Limited ARE GRANTED, to the extent specified and as conditioned in this Memorandum Opinion and Order.

39. IT IS FURTHER ORDERED that Cable & Wireless and its U.S. authorization holders and licenses ARE CLASSIFIED AS DOMINANT and ARE REQUIRED to comply with the dominant carrier safeguards set out in section 63.10(c) of the Commission's rules, 47 C.F.R. § 63.10(c), on the seventeen routes discussed in paragraph 26 of this Memorandum Opinion and Order, including the U.S.-Anguilla, U.S.-British Virgin Islands, U.S.-Cayman Islands, U.S.-Jamaica, and U.S.-Turks & Caicos routes.

40. IT IS FURTHER ORDERED that, pursuant to sections 4(i)-(j) and 214 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i)-(j), 214, and section 2 of the Cable Landing License Act, 47 U.S.C. §§ 34-39 and 3 U.S.C. § 301, the Petition to Adopt Condition to Authorizations and Licenses filed by the U.S. Department of Homeland Security IS GRANTED. Grant of the Applications IS CONDITIONED UPON the cable landing licensees' and section 214 authorization holders' compliance with the commitments set forth in the September 18, 2015 Letter of Assurance. A failure to comply and/or remain in compliance with any of these commitments and undertakings shall constitute a failure to meet a condition of the underlying authorizations and licenses and thus grounds for declaring the authorizations and licenses terminated without further action on the part of the Commission. Failure to meet a condition of the license may also result in monetary sanctions or other enforcement action by the Commission.

41. IT IS FURTHER ORDERED that, pursuant to sections 4(i)-(j) and 214 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i)-(j), 214, and section 2 of the Cable Landing License Act, 47 U.S.C. §§ 34-39 and 3 U.S.C. § 301, the Petition to Impose Protective Conditions on the transfer of control of section 214 authorizations and cable landing licenses filed by Digicel International, Inc. IS DENIED, to the extent specified in this Memorandum Opinion and Order.

42. This Memorandum Opinion and Order is issued on delegated authority under 47 C.F.R. §§ 0.51, 0.261, and is effective upon release. Petitions for reconsideration under section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, or applications for review under section 1.115 of the Commission's rules, 47 C.F.R. § 1.115, may be filed within 30 days of the date of the release of this Memorandum Opinion and Order.

FEDERAL COMMUNICATIONS COMMISSION

Mindel De La Torre
Chief, International Bureau