



July 30, 2017

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Ladies and Gentlemen:

This Letter of Assurances (“LOA”) outlines the commitments made by Telxius Cable USA (“Telxius”, f/k/a Telefónica International Wholesale Services USA, Inc.) to the U.S. Department of Homeland Security (“DHS”), and the U.S. Department of Defense (“DOD”), together “the USG Parties,” in order to address national security, law enforcement, and public safety concerns raised with regard to an application filed by Telefónica International Wholesale Services USA, Inc. (“TIWS USA”), TI Wholesale Services Puerto Rico, Inc. (“TIWS Puerto Rico”), and Telefónica International Wholesale Services América S.A. (“TIWS América”) (“BRUSA Applicants”) with the Federal Communications Commission (“FCC”) requesting authority to land and operate a fiber optic submarine cable system linking the United States and Brazil (“BRUSA Cable System”).¹ The BRUSA Cable System will be a private, non-common carrier fiber optic cable.

¹ SCL-LIC- 20160330-00011, Application of Telefónica International Wholesale Services USA, Inc., TI Wholesale Services Puerto Rico, Inc., and Telefónica International Wholesale Services América S.A., for a License to Land and Operate a Private Fiber-Optic Submarine Cable System Connecting the United States and Brazil.

Telxius has agreed to provide this LOA to the USG Parties to address issues raised by the USG Parties, and Telxius understands that the USG Parties will petition the FCC to condition the requested authorization on compliance with this LOA.

For purposes of this LOA:

- A. “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.
- B. “Domestic Communications Infrastructure” or “DCI” means: (a) any portion of the BRUSA Cable System that physically is located in the United States, up to the submarine line terminating equipment, including (if any) transmission, switching, bridging, and routing equipment, and any associated software (with the exception of commercial-off-the-shelf (“COTS”) software used for common business functions, *e.g.*, MS Office) used by or on behalf of the BRUSA Applicants to provide, process, direct, control, supervise, or manage Domestic Communications; (b) Network Operations Center (“NOC”) facilities, as defined in Section D below.
- C. “Electronic Communication” has the meaning given it in 18 U.S.C. § 2510(12).
- D. “Network Operations Center” or “NOC” means the locations and facilities designated as such by Telxius for purposes of performing network management, monitoring, maintenance, or other operational functions for the BRUSA Cable System.
- E. “Principal Equipment” means the primary electronic components of the BRUSA Cable System, which includes the Domestic Communications Infrastructure and Wet Infrastructure. Principal Equipment includes: network element servers; routers; switches; repeaters; submarine line terminal equipment (“SLTE”); system supervisory equipment (“SSE”); signal modulators and amplifiers; power feed equipment (“PFE”); tilt and shape equalizer units (“TEQ/SEQ”); optical distribution frames (“ODF”); branching units (“BU”); synchronous optical network (“SONET”), synchronous digital hierarchy (“SDH”), wave division multiplexing (“WDM”), dense wave division multiplexing (“DWDM”), coarse wave division multiplexing (“CWDM”), or optical carrier network (“OCx”) equipment, as applicable; and any non-embedded software necessary for the proper monitoring, administration, and provisioning of the BRUSA Cable System (with the exception of COTS software used for common business functions, *e.g.*, MS Office).
- F. “Wet Infrastructure” means hardware components installed and residing on the undersea portion of the BRUSA Cable System, including fiber optic cables, repeaters, branching units, and routers (if any). Wet Infrastructure includes all the components used in order to define the topology of the undersea portion of the BRUSA Cable System.
- G. “Wire Communication” has the meaning given it in 18 U.S.C. § 2510(1).

Upon grant of the requested FCC authority, Telxius undertakes to comply with the following commitments:

1. Cable System Information

Within sixty (60) business days of the execution of this LOA, and within fifteen (15) business days upon request by the USG Parties, Telxius agrees to make available the following BRUSA Cable System Information:

- (a) Network management information, including: (1) a network map that includes physical and logical topology; (2) network and telecommunications architecture descriptions and associated descriptions of interconnection points and controlled gateways to the DCI and Wet Infrastructure; (3) network operational plans, processes, and procedures; (4) locations and functions of any NOCs, data centers, and main distribution facilities; and (5) descriptions of interfaces and connections to the BRUSA Cable System for service offload, disaster recovery, or administrative functions;
- (b) Complete and current list of all contracts held by Telxius or its designee(s) for the maintenance and security of the BRUSA Cable System; and
- (c) A restoration plan for the Principal Equipment and the Wet Infrastructure for the BRUSA Cable System.

2. Operational Requirements

With respect to the operation of the BRUSA Cable System, Telxius agrees as follows:

- (a) Telxius shall have the ability to promptly and effectively interrupt, in whole or in part, traffic to and from the United States on the BRUSA Cable System by disabling or disconnecting circuits at the U.S. cable landing station or at other locations within the United States;
- (b) Telxius shall configure all necessary systems so the NOC will be able to initiate a suspension or interruption of the optical carrier signal or all of the BRUSA Cable System within the DCI.

If Telxius is required to interrupt traffic to or from the United States as a result of lawful U.S. process, Telxius shall be permitted to disclose publicly that it was required to interrupt service in response to lawful U.S. process, without disclosing any of the content of such request.

3. Initial Principal Equipment List

Within sixty (60) business days of the execution of this LOA, Telxius shall provide the USG Parties with a list to include:

- (a) A complete and current list of all Principal Equipment, including: (1) a description of each item and the functions supported, (2) each item's manufacturer, and (3) the model and/or version number of any hardware or software; and
- (b) Any vendors, contractors, or subcontractors involved in providing, installing, operating, managing, or maintaining the Principal Equipment.

4. Material Modifications to Existing Principal Equipment

Telxius shall provide the USG Parties at least ten (10) business days' advance notice prior to performing any maintenance, repair, or replacement that would result in any material modification to existing Principal Equipment for the BRUSA Cable System. Telxius need not comply with the advance notice requirement for any maintenance, repair, or replacement that is undertaken in response to an unforeseen or uncontrollable event and that is necessary to ensure the continued operability of the BRUSA Cable System; however, in such circumstances, Telxius shall provide advance notice to the USG Parties of the material modification, if practicable, and, if impracticable, Telxius shall provide notice within ten (10) business days after the material modification of the Principal Equipment. Telxius agrees to meet and confer with the USG Parties and to consider any concerns the USG Parties may raise about materials submitted pursuant to this provision.

5. Change in Vendors, Contracts, or Subcontracts for Principal Equipment

Telxius shall provide at least thirty (30) business days' advance notice prior to making any modifications to the list of vendors, contractors, or subcontractors involved in providing, installing, operating, managing, or maintaining the Principal Equipment. In addition, Telxius shall provide at least thirty (30) business days' advance notice prior to changing the service offerings or support from a previously-listed vendor, contractor, subcontractor (*i.e.*, where a previously-listed provider will be offering support in a previously unidentified way). Telxius agrees to negotiate in good faith to resolve any national security, law enforcement, or public safety concerns the USG Parties may raise with respect to materials submitted pursuant to this provision.

6. Reporting Incidents and Breaches

Telxius agrees to report to the USG Parties promptly if it learns of information that reasonably indicates:

- (a) Unauthorized third-party access to, or disruption or corruption of, the BRUSA Cable System or any information being carried on the BRUSA Cable System;
- (b) Any other unauthorized access to or disclosure of Domestic Communications in violation of federal, state, or local law; or
- (c) Any material breach of the commitments made in this LOA.

Any reports required by this provision should be made in writing to the USG Parties within ten (10) business days of discovery of the relevant conduct. Telxius further agrees to cooperate with the USG Parties' recommendations with respect to the remediation of such events and, to the extent such recommendations are not adopted by Telxius, to provide an explanation as to why such measures are not adopted. Telxius will provide this explanation, as well as a description of any other actions taken in response to a remediation recommendation from the USG Parties, within ten (10) business days of receipt of such recommendation.

7. Change in Services or Cable Operations

Telxius agrees that it will notify the USG Parties in writing at least thirty (30) business days prior to implementing any significant changes to the communications services or operations of the BRUSA Cable System such that the material representations made in the pending FCC Application(s) and associated materials are no longer fully accurate, true, and complete.

8. Change in Control

If Telxius learns of any information that reasonably indicates that any single foreign entity or individual, other than those already identified in connection with the pending FCC application(s), has or likely will obtain an ownership interest, whether direct or indirect, in Telxius or the BRUSA Cable System above ten (10) percent, or if any foreign entity or individual, singly or in combination with other foreign entities or individuals, has or likely otherwise will gain either: (i) control, as determined in accordance with 47 C.F.R. § 63.09(b); or (ii) *de facto* or *de jure* control of Telxius, Telxius will provide notice in writing to the USG Parties within ten (10) business days. Notice under this Section shall, at a minimum:

- (a) Identify the entity or individual(s) acquiring control (specifying the name, addresses, and telephone numbers of the entity or individual(s));
- (b) Identify the beneficial owners of any such increased or prospective increased ownership interest in Telxius or the BRUSA Cable System by the entity or individual(s) (specifying the name, addresses, and telephone numbers of each beneficial owner); and

- (c) Quantify the amount of ownership interest that the entity or individual(s) has or likely will obtain in Telxius or the BRUSA Cable System and, if applicable, the basis for their prospective control of Telxius or the BRUSA Cable System.

9. Annual Report

On or before each anniversary of the date of execution of this LOA, Telxius will submit to the USG Parties a report assessing Telxius' compliance with the terms of this LOA for the preceding year. The report shall include:

- (a) Cable System Information, as described in Paragraph 1 above, noting any changes during the reporting period;
- (b) An updated Principal Equipment list containing all information described in Paragraph 3 above, identifying any material modifications during the reporting period;
- (c) A summary of any events that occurred during the reporting period that will or reasonably could impact the effectiveness of or compliance with this LOA; and
- (d) A summary of any known acts of noncompliance with the terms of this LOA that occurred during the reporting period, whether inadvertent or intentional, with a discussion of what steps have been or will be taken to prevent such acts from occurring in the future.

10. USG Parties Consultation and Visitation

Telxius agrees to meet and confer with the USG Parties and to address any concerns the USG Parties may raise about materials submitted pursuant to this LOA.

Telxius agrees to negotiate in good faith to resolve any national security, law enforcement, or public safety concerns the USG Parties may raise with respect to any matters set forth in this LOA.

Telxius agrees that, upon reasonable advance notice, the USG Parties may visit any part of the DCI, to include the NOC the BRUSA Cable System located in Lurin, Peru, to conduct on-site reviews concerning the implementation of the terms of this LOA and Telxius' compliance with its terms. Subject to applicable law, during such visits, Telxius shall cooperate with the requests of the USG Parties to make available information, facilities, and personnel to verify compliance with the terms of this LOA.

This LOA shall inure to the benefit of, and shall be binding upon, Telxius and its successors, assigns, subsidiaries, and affiliates.

Telxius 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, the USG Parties may request that the FCC modify, condition, revoke, cancel, terminate, or render null and void any relevant license, permit, or other authorization granted by the FCC to Telxius or any successors-in-interest.

Telxius understands that, promptly upon execution of this letter by an authorized representative or attorney for Telxius, the USG Parties shall notify the FCC that it has no objection to the FCC's grant of the pending application.

For and on behalf of Telxius Cable USA, Inc.



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