

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
Telefónica SAM USA, Inc. )
And )
Telefónica SAM de Puerto Rico, Inc. ) SCL-LIC-20000204-00003
Application for a License to Land and Operate )
in the United States a Private Submarine Fiber )
Optic Cable Network Extending Between )
Florida, Puerto Rico, Brazil, Argentina, Chile, )
Peru, and Guatemala )

CABLE LANDING LICENSE

Adopted: August 9, 2000

Released: August 10, 2000

Before the: Chief, Telecommunications Division, International Bureau

I. Introduction

1. In this Order, we grant the application, subject to certain conditions, of Telefónica SAM USA, Inc. (Telefónica SAM USA) and Telefónica SAM de Puerto Rico, Inc. (Telefónica SAM de Puerto Rico), (collectively "Applicants" or "Telefónica SAM,") under the Cable Landing License Act<sup>1</sup> and Executive Order No. 10530,<sup>2</sup> for authority to land and operate a private fiber optic submarine cable system to be called the South America-1 Cable Network (SAM-1 or "cable system"), extending between: Boca Raton, Florida; Isla Verde, Puerto Rico; Fortaleza, Brazil; Salvador, Brazil; Rio de Janeiro, Brazil; Santos, Brazil; Las Toninas, Argentina; Valparaiso, Chile; Arica, Chile; Lurin, Peru; Puerto San José, Guatemala; and Puerto Barrios, Guatemala.<sup>3</sup> A map of the SAM-1 cable system is attached as Exhibit A. Applicants

<sup>1</sup> An Act Relating to the Landing and Operation of Submarine Cables in the United States, 47 U.S.C. §§ 34-39 (Cable Landing License Act).

<sup>2</sup> Exec. Ord. No. 10530 reprinted as amended in 3 U.S.C. § 301.

<sup>3</sup> See Telefónica SAM USA, Inc. and Telefónica SAM de Puerto Rico, Inc., Application to Land and Operate in the United States a Private Fiber Optic Cable Network, filed Feb. 4, 2000 (Application). Applicants state that they may wish to add Colombia as a landing point in the future, and will seek authority to do so at that time. See Application at 2 n.2.

propose to operate the cable system on a non-common carrier basis. We find that Applicants have provided sufficient information under our rules to comply with the Cable Landing License Act and that it would serve the public interest to grant the cable landing license subject to the conditions discussed below.

## II. Application

2. According to the Application, as updated by Applicants' August 8, 2000 letter,<sup>4</sup> Telefónica SAM USA, a Florida corporation, and Telefónica SAM de Puerto Rico, a Puerto Rico corporation, through a series of intermediate holding companies, are indirect, wholly-owned subsidiaries of Telefónica, S.A. (Telefónica), a Spanish corporation. Telefónica SAM USA and Telefónica SAM Puerto Rico are wholly-owned by Telefónica SAM Uruguay, S.A. (Telefónica SAM Uruguay), a corporation organized under the laws of Uruguay. Telefónica SAM Uruguay is wholly-owned by Emergia Holding N.V. (Emergia), a Netherlands entity. Emergia, in turn, is wholly-owned by Telefónica, the dominant provider of domestic and international communications in Spain. Telefónica, through a series of 100-percent-owned subsidiaries, will indirectly own the cable and each of the cable landing stations.<sup>5</sup>

3. As stated in the Application, Telefónica Internacional, S.A. (TISA)<sup>6</sup> entered into a joint venture with Tyco International Ltd., a Bermuda corporation (Tyco), which provides for the transfer of 15 percent of the shares of Telefónica SAM Uruguay to Tyco Gamma Ltd. (Tyco Gamma), a Bermuda corporation and a wholly-owned subsidiary of Tyco, a diversified manufacturing company that is publicly traded on the New York Stock Exchange.<sup>7</sup> In its letter of August 8, 2000, Telefónica SAM confirms that this transaction, through which Tyco Gamma purchased 15 percent of the outstanding shares of Telefónica SAM Uruguay, has closed into escrow pending European Union approval.<sup>8</sup> Telefónica SAM states that, moreover, subject to future change, Tyco is expected to exchange its 15 percent interest in Telefónica SAM Uruguay for six percent of the shares of Emergia, and notes also that Emergia expects to go public on NASDAQ with an initial public offering in the near future.<sup>9</sup> Applicants indicate that they will

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<sup>4</sup> Letter from Alfred M. Mamlet and Colleen A. Sechrest, Attorneys for Applicants, to Rebecca Arbogast, International Bureau, Federal Communications Commission (Aug. 8, 2000) (Telefónica SAM August 8, 2000 Letter), updating information regarding Applicants' ownership structure and the ownership structure of their foreign affiliates.

<sup>5</sup> See Application at 8-9; Telefónica SAM August 8, 2000 Letter at 4.

<sup>6</sup> TISA is a wholly-owned subsidiary of Telefónica that was, until July 24, 2000, the parent of Telefónica SAM Uruguay. On July 24, 2000, TISA transferred its interest in Telefónica SAM Uruguay to Telefónica, which in turn contributed TISA's shares of Telefónica SAM Uruguay to Emergia. See Telefónica SAM August 8, 2000 Letter at 4.

<sup>7</sup> See Application at 9-10.

<sup>8</sup> See Telefónica SAM August 8, 2000 Letter at 4.

<sup>9</sup> See *id.*

notify the Commission once this transaction is completed.<sup>10</sup>

4. According to the Application, SAM-1 will be a 25,000 km long system (22,000 km of submarine cable and 3,000 km of terrestrial links across Argentina, Chile and Guatemala) in a self-healing ring architecture comprised of four fiber pairs ultimately capable of carrying 48 channels at 10 Gbps each. Initial capacity on the SAM-1 system will be 40 Gbps. Multiple upgrades will be possible using dense wave division multiplexing (DWDM) up to 1.92 Tbps. Applicants anticipate having the system in service by November 30, 2000.<sup>11</sup> SAM-1's undersea cable segments and their capacity are summarized in Exhibit B attached to this Order.

### III. Comments

5. We placed the Application on public notice on February 18, 2000.<sup>12</sup> Tyco Submarine Systems Ltd. (Tyco Submarine) filed comments in support of the application on March 17, 2000.<sup>13</sup> Pursuant to Section 1.767(b) of the Commission's rules,<sup>14</sup> the Cable Landing License Act, and Executive Order No. 10530, we informed the Department of State of the Application.<sup>15</sup> The Department of State, after coordinating with the National Telecommunications and Information Administration and the Department of Defense, stated that it has no objection to the issuance of the cable landing license.<sup>16</sup>

### IV. Discussion

6. Section 35 of the Cable Landing License Act provides that licenses may be granted upon "such terms as shall be necessary to assure just and reasonable rates and service in the operation and use of cables so licensed."<sup>17</sup> In the *Foreign Participation Order*,<sup>18</sup> the

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<sup>10</sup> See Application at 9.

<sup>11</sup> See *id.* at 2, 4.

<sup>12</sup> See *Non Streamlined International Applications Accepted for Filing*, Public Notice, Report No. TEL-00189NS (rel. Feb. 18, 2000).

<sup>13</sup> Comments of Tyco Submarine Systems Ltd., File No. SCL-LIC-20000204-00003, filed March 17, 2000.

<sup>14</sup> 47 C.F.R. § 1.767(b).

<sup>15</sup> Letter from Rebecca Arbogast, Chief, Telecommunications Division, International Bureau, Federal Communications Commission, to Steven Lett, Deputy U.S. Coordinator, Office of International Communications and Information Policy, U.S. Department of State (Feb. 25, 2000).

<sup>16</sup> Letter from Malcolm R. Lee, United States Coordinator, International Communications and Information Policy, U.S. Department of State, to Donald Abelson, Chief, International Bureau, Federal Communications Commission (Aug. 3, 2000).

<sup>17</sup> 47 U.S.C. §35.

Commission adopted a presumption in favor of granting applications by applicants that are affiliated with carriers in destination markets that are World Trade Organization (WTO) members. The Commission observed that if a particular application presents unusual risks to competition, the Commission can address most potential problems by imposing conditions on the license.<sup>19</sup> Each of the five countries in which the proposed cable would land where Applicants have foreign carrier affiliations as described below is a WTO member.

7. Applicants list the following foreign carriers with whom they are affiliated in the countries where they propose to operate the SAM-1 cable. Applicants have certified that they are controlled by Telefónica, which controls foreign carriers in Argentina, Brazil, Chile, Guatemala, and Peru, all destination countries for SAM-1.<sup>20</sup> In three of these countries, Argentina, Chile, and Peru, the foreign carriers possess market power as more fully-described below:

(a) Argentina: Telefónica indirectly owns 71.5 percent of Telefónica de Argentina, S.A. (TASA), which provides telephone service throughout Argentina. TASA also owns 99.9 percent of Telefónica Larga Distancia de Argentina, which provides international services in Argentina. TISA manages TASA pursuant to a management agreement.<sup>21</sup>

(b) Brazil: TISA holds a controlling interest in the following three local wireless carriers:

(1) Telerj Celular S.A. (Rio de Janeiro); (2) Telest Celular S.A. (Spirito Santo); and (3) Celular CRT S.A. (previously a part of the local wireline carrier, Companhia Riograndense de Telecomunicações S.A.). Telefónica indirectly owns 85.6 percent of Telesp S.A., which provides local and domestic long distance services, and 86 percent of Tele Sudeste Celular.<sup>22</sup>

(c) Chile: Telefónica International Holding (TI Holding) owns approximately 43.64 percent of Compañía Teléfonos de Chile (CTC). This approximately 43.64 percent ownership of CTC results from TI Holding's 100 percent ownership of Telefónica Chile Holding B.V., which in turn owns 100 percent of CTC's immediate parent, Telefónica Internacional de Chile, S.A., which owns 43.64 percent of CTC. CTC provides local exchange, long distance and international services.<sup>23</sup>

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<sup>18</sup> *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Docket No. 97-142, *Market Entry and Regulation of Foreign Affiliated Entities*, IB Docket No. 95-22, Report and Order and Order on Reconsideration, 12 FCC Red 23891 (1997), *recon. pending (Foreign Participation Order)*.

<sup>19</sup> *Id.*, 12 FCC Red at 23934, para. 94.

<sup>20</sup> *See* Application at 13.

<sup>21</sup> *See id.* at 11; Telefónica SAM August 8, 2000 Letter at 4.

<sup>22</sup> *See* Application at 11, n.13, 12; Telefónica SAM August 8, 2000 Letter at 4.

<sup>23</sup> *See* Application at 12.

(d) Guatemala: TISA holds a controlling 51 percent interest, through TCG Holdings S.A., in (1) Tele Escucha S.A., which provides paging services in Guatemala; and (2) Telefónica CentroAmerica Guatemala S.A., which provides long distance and wireless services in Guatemala.<sup>24</sup>

(e) Peru: Telefónica indirectly owns 93.2 percent of Telefónica del Peru, S.A. (TDP), a provider of local, long distance and international services in Peru. Telefónica Peru Holding, S.A. controls a majority of the TDP Board and TISA has a management contract to operate TDP.<sup>25</sup>

8. Because the proposed cable's foreign carrier affiliates are in countries that are WTO members, there is a presumption in favor of granting Telefonica SAM's application to land and operate the SAM-1 cable in the United States.<sup>26</sup> We find no reason, based on the record before us, to rebut this presumption. However, as discussed below, where these affiliations are with dominant carriers, we imposed certain conditions designed to address possible harms to competition.

9. The Commission allows submarine cables to be operated on either a common carrier or non-common carrier basis,<sup>27</sup> and requires a cable landing license applicant to indicate under which of these two regulatory categories it seeks to operate.<sup>28</sup> Applicants seek authorization to operate SAM-1 on a non-common carrier basis.<sup>29</sup> As a non-common carrier cable, SAM-1 would not be required to make its capacity available indifferently to the user public.

10. The Commission's private submarine cable policy is intended to promote competition in the provision of international transmission facilities.<sup>30</sup> In determining whether a

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<sup>24</sup> See *id.*

<sup>25</sup> See *id.* at 11, n.13, 13; Telefónica SAM August 8, 2000 Letter at 4.

<sup>26</sup> See Foreign Participation Order, 12 FCC Rcd at 23932-35, paras. 87-96 (concluding that, where an applicant for a submarine cable landing license is a foreign carrier, or affiliated with a foreign carrier, that has market power in a WTO member where the cable lands, the application is evaluated under a strong presumption that it should be granted).

<sup>27</sup> See, e.g., *Tel-Optik Limited*, Memorandum Opinion and Order, 100 FCC 2d 1033 (1985)(*Tel-Optik Order*)(espousing the Commission's private submarine cable policy). As a common carrier, a cable landing licensee is subject to the requirements of Title II of the Communications Act, 47 U.S.C. § 201 *et seq.* The obligations of a common carrier include, among other things, offering facilities and services at reasonable rates on a nondiscriminatory basis, 47 U.S.C. §§ 201, 202. Common carriers also are subject to the complaints process set forth in Section 208 of the Communications Act, 47 U.S.C. § 208.

<sup>28</sup> 47 C.F.R. § 1.767(a)(6).

<sup>29</sup> See Application at 2, 6-8.

<sup>30</sup> See *Tel-Optik Order*, 100 FCC 2d at 1040-42, paras. 18-20, 1046-48, paras. 27-31.

cable system qualifies to be operated on a non-common carrier basis, the Commission uses the two-part test set forth by the United States Court of Appeals for the District of Columbia Circuit in *NARUC I*.<sup>31</sup> Pursuant to this policy, the Commission has authorized non-common carrier cables where: 1) there is no legal compulsion to serve the public indifferently; and 2) there are no reasons implicit in the nature of the operations of the submarine cable system to expect an indifferent holding-out to the eligible user public.<sup>32</sup>

11. In applying the first prong of *NARUC I* to submarine cable authorizations, the Commission has stated that there will be no legal compulsion to serve the public indifferently where there is no public interest reason to require the facilities to be offered on a common carrier basis.<sup>33</sup> This public interest analysis has focused on the availability of alternative facilities,<sup>34</sup> although the Commission has stated it is not limited to that reasoning.<sup>35</sup> Where there are sufficient alternatives, the Commission has found that the public interest does not require the licensee to offer capacity on the proposed cable on a common carrier basis, but rather, in those circumstances, the public interest would be served by allowing a submarine cable to be operated on a non-common carrier basis.<sup>36</sup>

12. If the Commission finds that there is no public interest reason to require the submarine cable facilities to be offered on a common carrier basis, then, under the second prong of the *NARUC I* test, the Commission considers whether there is reason to expect an indifferent holding-out by the applicant to the eligible user public. If the Commission finds that an applicant has shown that it will make individualized decisions whether and on what terms to

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<sup>31</sup> *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). The D.C. Circuit recently affirmed the continuing use of the *NARUC I* test in the context of reviewing an undersea cable license in light of the addition of the terms “telecommunications carrier” and “telecommunications service” in the Communications Act as part of the Telecommunications Act of 1996. See *Virgin Islands Telephone Corporation v. FCC*, 198 F. 3d 921 (D.C. Cir. 1999).

<sup>32</sup> See *NARUC I*, 525 F.2d at 642. See also *AT&T Corp. et. al., Joint Application for a License to Land and Operate a Submarine Cable Network Between the United States and Japan*, File No. SCL-LIC-19981117-00025, Cable Landing License, 14 FCC Rcd 13066, 13080, para. 38 (1999) (*Japan-U.S. Order*); *Cable & Wireless PLC, Application for a License to Land and Operate in the United States a Private Submarine Fiber Optic Cable Extending Between the United States and the United Kingdom*, File No. SCL-96-005, Cable Landing License, 12 FCC Rcd 8516, 8520-23 paras. 11-17 (1997) (*Cable & Wireless UK Cable Order*).

<sup>33</sup> See, e.g., *Japan-U.S. Order*, 14 FCC Rcd at 13080, para. 39; *Cable & Wireless UK Cable Order*, 12 FCC Rcd at 8522, paras. 14-15.

<sup>34</sup> See, e.g., *Cable & Wireless UK Cable Order*, 12 FCC Rcd at 8522-23, paras. 15-16; *Tel-Optik Order*, 100 FCC 2d at 1047, para. 29.

<sup>35</sup> *Japan-U.S. Order*, 14 FCC Rcd at 13080, para. 39; *Review of Commission Consideration of Applications Under the Cable Landing License Act*, IB Docket No. 00-106, Notice of Proposed Rulemaking, FCC 00-210 at para. 65 (rel. June 22, 2000)(*Cable Landing License NPRM*).

<sup>36</sup> *Cable Landing License NPRM* at para. 65. See also *Cable & Wireless UK Cable Order*, 12 FCC Rcd at 8522-23, paras. 15-17.

provide service and will not undertake to serve all customers indifferently, the Commission has held that the second prong of the test has been met.<sup>37</sup>

13. Notwithstanding a Commission decision not to require a submarine cable system to be operated on a common carrier basis, the Commission retains the authority to impose common carrier or common-carrier-like obligations on the operations of that cable system, if the public interest so requires.<sup>38</sup> Furthermore, the Commission has always maintained the authority subsequently to classify facilities as common carrier facilities subject to Title II of the Communications Act if the public interest requires that the facilities be offered to the public indifferently.<sup>39</sup>

14. In this case, with respect to the second prong of the test, Applicants propose to operate the SAM-1 network on a non-common carrier basis and will not hold themselves out to serve the public indifferently, but will make individualized decisions in particular cases whether and on what terms to deal with prospective customers.<sup>40</sup> Based on these representations, we conclude that there is no reason to expect an indifferent holding-out to the eligible user public.

15. With respect to the first prong of the test, Applicants assert that there are sufficient existing and planned facilities on the route to prevent them from exercising market power in offering services to the public.<sup>41</sup> Applicants assert that there are a number of planned common carrier and private cable systems in the region,<sup>42</sup> including the following cables extending to one or more of the countries other than the United States in which SAM-1 would land: (1) Americas-I (authorized on a common carrier basis to serve the U.S. Mainland, the U.S.

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<sup>37</sup> See, e.g., *Cable Landing License NPRM* at para. 66.

<sup>38</sup> See, e.g., *id.* at para. 67; *Japan-U.S. Order*, 14 FCC Rcd at 13080-81, para. 40; *ARCOS-I USA, INC., Application for a License to Land and Operate in the United States a Private Fiber Optic Submarine Cable System Extending between the United States Mainland, the Bahamas, the Turks and Caicos Islands, the Dominican Republic, Puerto Rico, Curacao, Venezuela, Colombia, Panama, Costa Rica, Nicaragua, Honduras, Guatemala, Belize and Mexico*, File No. SCL-LIC-19981222-00032, Cable Landing License, 14 FCC Rcd 10597 at para. 7 (TD/IB 1999) (*ARCOS-I Order*); *MAC LANDING CORP., Application for a License to Land and Operate in the United States a Private Fiber Optic Submarine Cable System Extending Between the United States Mainland and the U.S. Virgin Islands*, File Nos. SCL-LIC-19981030-00023, SCL-LPN-19981106-00027, Cable Landing License, 14 FCC Rcd 3981 at para. 8 (TD/IB, 1999); *PAC Landing Corp., Application for a License to Land and Operate in the United States a Private Fiber Optic Submarine Cable System Extending Among the United States Mainland, Mexico, Panama, Venezuela and the U.S. Virgin Islands*, File Nos. SCL-LIC-19981103-00022, SCL-LPN-19990129-00001, Cable Landing License, 14 FCC Rcd 3989, para. 8 (TD/IB 1999) (*PAC Cable Order*).

<sup>39</sup> See, e.g., *Cable Landing License NPRM* at para. 67; *Foreign Participation Order*, 12 FCC Rcd at 23934, para. 95; *Cable & Wireless UK Cable Order*, 12 FCC Rcd at 8530, para. 39.

<sup>40</sup> See Application at 8.

<sup>41</sup> See *id.* at 6-7, 16-17.

<sup>42</sup> See *id.* at 6-7.

Virgin Islands, Brazil, Trinidad, and Venezuela);<sup>43</sup> (2) Americas-II (authorized on a common carrier basis to serve Florida, Puerto Rico, the U.S. Virgin Islands, Martinique, Curacao, Trinidad, Venezuela, French Guiana, and Brazil);<sup>44</sup> (3) ARCOS-1 (authorized on a non-common carrier basis to serve the U.S. Mainland, Puerto Rico, the Bahamas, the Dominican Republic, the Turks and Caicos Islands, Mexico, Belize, Guatemala, Honduras, Nicaragua, Costa Rica, Panama, Colombia, Venezuela and Curacao);<sup>45</sup> (4) Atlantica-I (authorized on a non-common carrier basis to serve the U.S., Venezuela, Brazil and Bermuda);<sup>46</sup> (5) Pan American (authorized on a common carrier basis to serve the U.S. Virgin Islands, Aruba, Venezuela, Colombia, Panama, Ecuador, Peru, and Chile);<sup>47</sup> (6) Project Oxygen (authorized on a non-common carrier

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<sup>43</sup> See *American Telephone and Telegraph Company et. al., Joint Application for Authorization Under Section 214 of The Communications Act Of 1934, as Amended, to Construct, Acquire Capacity in and Operate a High Capacity Digital Submarine Cable System Between and Among the United States Mainland, U.S. Virgin Islands, Brazil, Trinidad and Venezuela*, ITC-93-030, Memorandum Opinion, Order and Authorization, 8 FCC Rcd 5287 (CCB 1993) (*Americas-I Section 214 Order*); *American Telephone and Telegraph Company, et al., Joint Application for a License to Land and Operate a High Capacity Digital Submarine Cable System Between and Among the United States Mainland, U.S. Virgin Islands, Brazil, Trinidad and Venezuela*, File No. SCL-93-002, Cable Landing License, 8 FCC Rcd 5041 (CCB 1993) (*Americas-I Cable Order*); See *Telefónica Larga Distancia de Puerto Rico, Inc., Application for Authority to Acquire and Operate Facilities for Direct Service Between Puerto Rico, the U.S. Virgin Islands, and the Bahamas*, File No. ITC-92-242, *Application for Authority to Acquire and Operate Facilities for Direct Service between Puerto Rico, the U.S. Virgin Islands, and the Netherlands*, File No. I-T-C-93-033, *Joint Section 214 Applications and Applications for Submarine Cable Landing Licenses For COLUMBUS II and AMERICAS-I Cable Systems*, Memorandum Opinion, Order, Authorization and Certificate, File Nos. I-T-C-93-029, I-T-C-93-030, S-C-L-93-001, S-C-L-93-002, 9 FCC Rcd 4041 (1994). The Americas-I cable is currently in service.

<sup>44</sup> See *AT&T Corp. et al, Joint Application for Authorization Pursuant to Section 214 of the Communications Act of 1934, as Amended, to Construct, Acquire, and Operate Capacity in a Digital Submarine Cable System, the AMERICAS-II Cable System*, File Nos. ITC-98-342, ITC-98-342A, Memorandum Opinion, Order and Authorization, 13 FCC Rcd 22534 (TD/IB 1998); *AT&T Corp. et al., Joint Application for a License to Land and Operate a Digital Submarine Cable System among Florida, Puerto Rico, the U.S. Virgin Islands, Martinique, Curacao, Trinidad, Venezuela, French Guiana and Brazil, the AMERICAS-II Cable System*, File Nos. SCL-98-003, SCL-98-003A, Cable Landing License, 13 FCC Rcd 22540 (TD/IB 1998). We are not aware the Americas-II cable is currently in service.

<sup>45</sup> See *ARCOS-I Order* at para. 1. The licensee recently notified the Commission of the coordinates for the cable landing points prior to commencing construction. See *ARCOS-I USA, Inc., Landing Point Notification*, SCL-LPN-20000714-00027 (July 14, 2000).

<sup>46</sup> See *ATLANTICA USA LLC, Application for a License to Land and Operate in the United States a Private, Fiber Optic Submarine Cable System Extending Between The United States, Venezuela, Brazil and Bermuda (the Atlantica-I Network)*, File No. SCL-LIC-19990602-00010, Cable Landing License, 14 FCC Rcd 20787 (TD/IB 1999). We are not aware that the Atlantica-I cable is currently in service.

<sup>47</sup> See *Americatel Corp. et al., Joint Application for a License to Land and Operate a Digital Submarine Cable System between the U.S. Virgin Islands, Chile, Peru, Ecuador, Panama, Colombia, Venezuela, and Aruba, the Pan American Cable System*, File No. SCL-97-001, Cable Landing License, 13 FCC Rcd 850 (TD/IB 1998) (*Pan American Cable Order*); *Americatel Corp. et al., Joint Application for Authorization Pursuant to Section 214 of the Communications Act of 1934, as Amended, to Construct, Acquire, and Operate Capacity in a Digital Submarine Cable System, the Pan American Cable System*, ITC-97-221, Memorandum Opinion, Order and Authorization, 13 FCC Rcd 857 (TD/IB 1998) (*Pan American Section 214 Order*). We modified the cable (continued....)

basis to serve, among other landing points, Puerto Rico, Colombia, Venezuela, Brazil, Uruguay, Argentina, Chile, and Peru),<sup>48</sup> and (7) South American Crossing or SAC (authorized on a non-common carrier basis to serve the U.S. Virgin Islands, Brazil, Argentina, Chile, Peru, Colombia, and Panama).<sup>49</sup>

16. We find that the public interest would be served by the provision of additional capacity on the routes proposed to be served by SAm-1, particularly on the U.S.-Argentina, U.S.-Chile, and U.S.-Peru routes. Currently, only one U.S. cable, Pan American, directly serves Chile and Peru, and no U.S. cable directly serves Argentina. As noted above, we recently authorized SAC Landing Corp. to land and operate in the United States the South American Crossing Cable, a digital submarine cable system that will extend between the United States and Argentina, Brazil, Chile, Colombia, Panama, and Peru.<sup>50</sup>

17. In its recent Notice of Proposed Rulemaking addressing competition in the submarine cable market, the Commission noted the importance of promoting the expansion of capacity and facilities-based competition, which will result in innovation and lower prices for

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landing license and related Section 214 authorization to include TLD on the cable landing license. See *Telefónica Larga Distancia de Puerto Rico, Inc, Application Pursuant to Section 214 of the Communications Act of 1934, as Amended, to Construct, Acquire, and Operate Capacity in a Digital Submarine Cable System, the Pan American Cable System*, File No. ITC-97-653, Memorandum Opinion, Order and Authorization, 13 FCC Rcd 9483 (TD/IB 1998) (*TLD Pan American 214 Order*); *Telefónica Larga Distancia de Puerto Rico, Inc, Application for a License to Land and Operate a Digital Submarine Cable System between the U.S. Virgin Islands, Chile, Peru, Ecuador, Panama, Colombia, Venezuela, and Aruba, the Pan American Cable System*, File No. SCL-97-001(M), SCL-97-006, Cable Landing License, 13 FCC Rcd 9553 (TD/IB 1998) (*TLD Pan American Cable Order*). The Pan American cable is currently in service.

<sup>48</sup> See *Project Oxygen (USA) LLC, Application for a License to Land and Operate in the United States a Private Fiber Optic Submarine Cable System Extending between the United States and Various Overseas Points*, File No. SCL-LIC-19981014-00020, Cable Landing License, 14 FCC Rcd 3924 (TD/IB 1999) (*Project Oxygen Cable Order*). We note, however, that Project Oxygen is reported to be in the process of ceasing development efforts because of lack of financing. See *Communications Week International Online, Oxygen Collapse Prompts New Pacific Network Plan*, July 17, 2000.

<sup>49</sup> See *SAC Landing Corp, Application for a License to Land and Operate in the United States a Digital Submarine Cable System between the U.S. Virgin Islands, Brazil, Argentina, Chile, Peru, Colombia and Panama*, File No. SCL-LIC-19990823-00015, Cable Landing License, 15 FCC Rcd 3039 (TD/IB 2000) (*South American Crossing Cable Order*). The licensee recently notified the Commission of the coordinates for some of the cable landing points prior to commencing construction. *SAC Landing Corp., Landing Point Notification*, File No. SCL-LPN-20000218-00009 (Feb. 18, 2000).

<sup>50</sup> See *South American Crossing Cable Order*. The South American Crossing system is anticipated to begin operation during the third quarter 2000. *Id.* at para. 3. SAC Landing Corp. has certified that it is not affiliated with any foreign carrier with market power in any of the markets where South American Crossing lands. *Id.* at para. 8. As noted above, we granted an application of Project Oxygen for authority to land and operate a fiber optic submarine cable system extending to several overseas points including Argentina, Chile and Peru. See *Project Oxygen Cable Order*. However, also as noted above, that system is in the process of ceasing development efforts because of lack of financing.

U.S. consumers of international communications services.<sup>51</sup> At the same time, there is risk of competitive harm to U.S. consumers and to competitive providers, including telecommunications service providers and information service providers, on the U.S.-Argentina, U.S.-Chile, and U.S.-Peru routes due to Telefónica SAM's affiliation with dominant foreign carriers and foreign cable landing stations in those foreign destinations.

18. Telefónica SAM's U.S. affiliate, TLD, has been found to be subject to the Commission's dominant carrier regulations on the U.S.-Chile and U.S.-Peru routes because of these same foreign affiliations.<sup>52</sup> The Telefónica SAM Applicants, like their U.S. affiliate TLD, are entities under the control of Telefónica, the dominant telecommunications provider in Spain that also owns and controls foreign carriers and the foreign cable landing stations in Argentina, Chile, and Peru. If Telefónica SAM had applied to land and operate SAM-1 on a common carrier basis, under the Commission's existing rules and precedent, we would apply the Commission's dominant carrier regulations to Telefónica SAM for three of the five destination markets: Argentina, Chile, and Peru. On these routes, we would impose dominant carrier regulation designed to detect and deter anticompetitive behavior due to Telefónica SAM's affiliation with the foreign carriers that have market power in the relevant markets, including anticompetitive behavior with respect to access to cable landing stations and backhaul facilities, in each of these three countries. We are concerned about terms for provisioning facilities, repairs, and interconnection that might be detrimental to unaffiliated entities, including telecommunications service providers and information service providers, and U.S. consumers. Specifically, we are concerned that: (1) the dominant foreign carriers and foreign cable landing station owners might favor Telefónica SAM, TLD, or other affiliates such as Telefónica's information service provider; and (2) Telefónica SAM might favor its affiliates. We conclude, however, that we can address these concerns through a limited set of conditions.<sup>53</sup>

19. In the Telefónica SAM August 8, 2000 Letter, in which Applicants provided additional information as described above, Applicants also indicated that they would not oppose certain conditions for operation of the SAM-1 cable on the U.S.-Argentina, U.S.-Chile, and U.S.-Peru routes, in response to concerns of the International Bureau due to Applicants' affiliation with dominant carriers and foreign landing stations in these three destination countries.<sup>54</sup>

20. *Reporting Conditions.* Section 63.10(c) of the Commission's rules imposes requirements on common carriers classified as dominant for the provision of particular services

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<sup>51</sup> See *Cable Landing License NPRM*, at para. 95.

<sup>52</sup> See *TLD Pan American Section 214 Order* at para. 10; see also Telefónica Larga Distancia de Puerto Rico, Inc., Application for Section 214 Authority, File No. ITC-97-653 (filed Oct. 21, 1997).

<sup>53</sup> We note that the Commission, in its *Cable Landing License NPRM*, at paras. 61-71, is seeking comment on whether and what types of nondiscrimination conditions might be warranted in some situations, such as thin routes, and on the types of situations in which it might be appropriate for the Commission to require a cable to be operated on a common carrier basis.

<sup>54</sup> See Telefónica SAM August 8, 2000 Letter at 2-4.

on particular routes. Among other things, Section 63.10(c) requires a dominant carrier to file quarterly reports summarizing: (1) the provisioning and maintenance of all telecommunications network facilities and services procured from its foreign carrier affiliate or from an allied foreign affiliate;<sup>55</sup> and (2) the status of circuit activation, in the format set out by the Section 43.82 annual circuit status manual.<sup>56</sup> Section 63.21(h) of the Commission's rules requires carriers regulated as dominant to provide the Commission with certain information within 30 days after conveyance of transmission capacity on submarine cables.<sup>57</sup> These conditions are designed to detect and deter anticompetitive behavior in the U.S. market by foreign carriers and their affiliated U.S. carriers by requiring these U.S. carriers to file reports that allow the Commission and others to determine whether they receive favorable treatment at the expense of unaffiliated U.S. carriers and U.S. consumers.<sup>58</sup>

21. Applicants have agreed to a condition under which they would provide the Commission with the following three reports:<sup>59</sup>

- (1) Quarterly circuit status reports (within 90 days from the end of each calendar quarter) in the format set out by the Section 43.82 annual circuit status manual;
- (2) Quarterly reports (within 90 days from the end of each calendar quarter) summarizing the provisioning and maintenance of all network facilities and services procured from Applicants' dominant affiliates and foreign cable landing stations in Argentina, Chile, and Peru, including, but not limited to those services procured on behalf of customers or any joint venture in which Applicants and any dominant affiliates participate. This report will contain the information required in Section 63.10(c)(4) of the Commission's Rules, 47 C.F.R. § 63.10(c)(4); and
- (3) Reports (within 30 days after conveyance of transmission capacity on the SAM-1 cable system) identifying the party to whom capacity was conveyed, and the amount and price of the capacity conveyed.<sup>60</sup>

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<sup>55</sup> 47 C.F.R. § 63.10(c)(4).

<sup>56</sup> 47 C.F.R. § 63.10(c)(5).

<sup>57</sup> See also *Streamlining the International Section 214 Authorization Process and Tariff Requirements*, IB Docket No. 95-118, Report and Order, 11 FCC Rcd 12884 at paras. 40-45, 61-63 (1996).

<sup>58</sup> See *Foreign Participation Order*, 12 FCC Rcd at 23991, 23993-94, 24016-17, 24019-20, paras. 221, 226, 277-79, 284-86.

<sup>59</sup> We note that, in the *Foreign Participation Order*, the Commission allowed carriers subject to the quarterly provisioning and maintenance and circuit status reporting requirements to seek confidential treatment of that information subject to a protective order, which essentially requires parties to whom confidential information is made available to limit the persons who will have access to the information and the purposes for which the information will be use. See *id.*, 12 FCC Rcd at 24017-18, 24020, paras. 279-280, 286.

<sup>60</sup> See *Telefónica SAM August 8, 2000 Letter* at 3-4.

22. These reports are designed to help detect and deter possible anticompetitive behavior in the provisioning, maintenance, activation, and conveyance of transmission capacity on the routes between the United States and Argentina, Chile, and Peru.

23. *No Special Concessions Condition.* Section 63.14 of the Commission's rules, prohibits any U.S. carrier authorized to provide international service from agreeing to accept special concessions from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses sufficient market power at the foreign end of the route to affect competition adversely in the U.S. market and from agreeing to accept special concessions in the future.<sup>61</sup> This rule is designed to prevent the leveraging of foreign market power into the U.S. international services market.<sup>62</sup>

24. Applicants state that they are willing to commit not to either directly or indirectly accept from nor offer to an affiliated dominant carrier or foreign landing station in Argentina, Chile, or Peru a "special concession," as that term is defined in Section 63.14(b) of the Commission's rules, 47 C.F.R. § 63.14(b).<sup>63</sup>

25. This condition is designed to address the ability and incentive of affiliated service providers and cable station operators at both the U.S. and foreign ends of SAM-1 to engage jointly in anticompetitive conduct to the detriment of U.S. consumers.

26. *Availability of Capacity and Access to Backhaul Conditions.* In its Section 214 authorizations for common carrier cables, the Commission routinely orders the licensees to make available half-interests in capacity to such present and future U.S. carriers as may be authorized by the Commission to acquire such capacity.<sup>64</sup>

27. Applicants state that they will make capacity on the SAM-1 cable available, on a nondiscriminatory basis, to all potential customers, including all information service providers, licensed carriers, and others.<sup>65</sup> Applicants also state that their standard cable capacity lease agreement allows for unrestricted resale or transfer of cable capacity.<sup>66</sup> We adopt as conditions

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<sup>61</sup> 47 C.F.R. § 63.14.

<sup>62</sup> See, e.g., *Foreign Participation Order* at para. 157: "If a foreign carrier with market power were to enter into an exclusive arrangement, competing carriers on the foreign end, if any exist, might not have sufficient capacity to accommodate rival U.S. carriers' needs. Such an arrangement, therefore, could limit rival U.S. carriers' ability to provide international services, raise these carriers' costs of termination, or degrade the quality of their service offerings, to the ultimate harm of U.S. consumers."

<sup>63</sup> See *Telefónica SAM August 8, 2000 Letter* at 3.

<sup>64</sup> See, e.g., *AT&T Corp. et al, Joint Application for Authorization Pursuant to Section 214 of the Communications Act of 1934, as Amended, to Construct, Acquire, and Operate Capacity in a Digital Submarine Cable Network, the MAYA-1 Cable Network*, File No. ITC-214-19990325-00153, Memorandum Opinion, Order and Authorization, 14 FCC Rcd 19449 at para. 11(TD/IB 1999).

<sup>65</sup> See *Telefónica SAM August 8, 2000 Letter* at 3.

<sup>66</sup> See *id.*

to the cable landing license: a requirement that Applicants make capacity on the SAM-1 cable available, on a nondiscriminatory basis, to all customers, including all information service providers, licensed carriers, and others; and a requirement that Applicants' standard cable capacity lease agreement allow for unrestricted resale or transfer of cable capacity.

28. Applicants also state that Telefónica SAM will provide backhaul itself in Argentina, Chile, and Peru.<sup>67</sup> Applicants state further that this backhaul capacity has been acquired from their affiliates on an arms-length basis, and that Applicants are negotiating with third parties to acquire backhaul facilities.<sup>68</sup> Applicants also state that they are committed to allowing unaffiliated parties to provide backhaul capacity and that the terms and conditions that will govern the lease of cable capacity will permit, on a nondiscriminatory basis, collocation space in the cable landing stations as well as access to cable capacity and backhaul.<sup>69</sup> Applicants also agree to provide the Commission with their standard cable capacity lease agreement.<sup>70</sup> We adopt as conditions to the cable landing license: a requirement that Applicants allow unaffiliated parties to provide backhaul capacity and permit, on a nondiscriminatory basis, collocation space in the cable landing stations as well as access to cable capacity and backhaul; and a requirement that Applicants provide the Commission with their standard cable capacity lease agreement.

29. These safeguards regarding capacity and backhaul should help ensure that Applicants make capacity on SAM-1 available to unaffiliated entities on a nondiscriminatory basis.

30. The conditions agreed to by Applicants, along with the conditions regularly attached to the grant of non-common carrier cables, should serve to address our concerns that Telefónica SAM's foreign affiliates with market power in Argentina, Chile, and Peru might favor SAM-1 or affiliated telecommunications and information service providers on these routes, or that Telefónica SAM might favor its affiliates to the detriment of unaffiliated U.S. service providers. We note that Applicants may propose the lifting of one or more of the conditions specific to the SAM-1 cable system (in ordering clauses 13 through 18) based on a showing that the predicates for the conditions have changed materially.

31. We conclude that Applicants will not offer capacity in SAM-1 to the public on a common carrier basis and that the public interest does not require that they do so. Accordingly, we conclude that it is appropriate to license SAM-1 on a non-common carrier basis, but with certain common-carrier-like conditions designed to detect and deter anticompetitive activity detrimental to U.S. consumers. If the public interest should require, we retain the authority to modify these conditions and to classify these facilities as common carrier facilities subject to Title II of the Communications Act. We also find that Applicants will not provide a

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<sup>67</sup> *See id.* at 2.

<sup>68</sup> *See id.*

<sup>69</sup> *See id.* at 2-3.

<sup>70</sup> *See id.* at 3.

telecommunications service for a fee to such class of users as to be “effectively available directly to the public” and thus will not be “telecommunications carriers” under the 1996 Act.<sup>71</sup>

## V. Ownership and Landing Points

32. Applicants have provided the ownership information required by Sections 1.767(a)(6) and 63.18 of the Commission’s rules.<sup>72</sup> According to the Application, as updated by Applicants’ August 8, 2000 letter, Telefónica SAM USA and Telefónica SAM de Puerto Rico, through a series of intermediate holding companies, are indirect, wholly-owned subsidiaries of Telefónica. Telefónica SAM USA and Telefónica SAM Puerto Rico are wholly-owned by Telefónica SAM Uruguay. Telefónica SAM Uruguay is wholly-owned by Emergia. Emergia, in turn, is wholly-owned by Telefónica, the dominant provider of domestic and international communications in Spain. Telefónica, through a series of 100-percent-owned subsidiaries, will indirectly own the cable and each of the cable landing stations.<sup>73</sup>

33. Applicants have stated that the SAM-1 cable will land at Boca Raton, Florida; Isla Verde, Puerto Rico; Fortaleza, Brazil; Salvador, Brazil; Rio de Janeiro, Brazil; Santos, Brazil; Las Toninas, Argentina; Valparaiso, Chile; Arica, Chile; Lurin, Peru; Puerto San José, Guatemala; and Puerto Barrios, Guatemala. We find Applicants’ description of the likely landing points satisfies Section 1.767 of the Commission’s rules.<sup>74</sup> Section 1.767(a) of the Commission’s rules permits applicants in an initial application to provide a general description of the landing points.<sup>75</sup> Applicants must file a specific description of any landing point, including a map, no later than 90 days prior to construction at that landing point. The Commission will give public notice of the filing of the specific description, and grant of the license will be considered final with respect to that landing point unless the Commission notifies Applicants to the contrary no later than 60 days after receipt of the specific description of the landing point.

## VI. Environmental Impact

34. The Commission has found that the construction of new submarine cable systems, individually and cumulatively, will not have a significant effect on the environment and therefore should be expressly excluded from our procedures implementing the National Environmental Policy Act of 1969.<sup>76</sup> Therefore, Applicants are not required to submit an

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<sup>71</sup> See 47 U.S.C. § 153(44) (defining “telecommunications carrier”); *Cable & Wireless UK Cable Order*, 12 FCC Rcd at 8523, para. 17.

<sup>72</sup> See Application at 8-10; Telefónica SAM August 8, 2000 Letter at 4.

<sup>73</sup> See Application at 9-10.

<sup>74</sup> See 47 C.F.R. § 1.767.

<sup>75</sup> See 47 C.F.R. § 1.767 (a).

<sup>76</sup> See 47 C.F.R. § 1.1306 Note 1 (as amended 1999); *1998 Biennial Regulatory Review — Review of* (continued....)

environmental assessment, and this application is categorically excluded from environmental processing.

## VII. Conclusion

35. We grant Telefónica SAM USA and Telefónica SAM Puerto Rico's Application for authority to land and operate a non-common carrier fiber optic submarine cable extending between Boca Raton, Florida; Isla Verde, Puerto Rico; Fortaleza, Brazil; Salvador, Brazil; Rio de Janeiro, Brazil; Santos, Brazil; Las Toninas, Argentina; Valparaiso, Chile; Arica, Chile; Lurin, Peru; Puerto San José, Guatemala; and Puerto Barrios, Guatemala, subject to the conditions listed below.

## VIII. Ordering Clauses

36. Consistent with the foregoing and pursuant to the Cable Landing License Act and Executive Order 10530, we hereby GRANT AND ISSUE Applicants a license to land and operate the SAM-1 Cable Network optical fiber submarine cable system (consisting of four fiber pairs initially operating at 40 Gbps in a self-healing ring configuration, expandable to 48 channels at 10 Gbps each, for a total design capacity of 480 Gbps, and with multiple upgrade capability using dense wave division multiplexing up to 1.92 terabits per second) extending between landing points at cable stations in Boca Raton, Florida; Isla Verde, Puerto Rico; Santos, Brazil; Rio de Janeiro, Brazil; Salvador, Brazil; Fortaleza, Brazil; Las Toninas, Argentina; Arica, Chile; Lurin, Peru; Puerto San José, Guatemala; and Puerto Barrios, Guatemala. This grant is subject to all rules and regulations of the Federal Communications Commission; any treaties or conventions relating to communications to which the United States is or may hereafter become a party; any action by the Commission or the Congress of the United States rescinding, changing, modifying or amending any rights accruing to any person hereunder; and the following conditions:

(1) The location of the cable system within the territorial waters of the United States, its territories and possessions, and upon its shore shall be in conformity with plans approved by the Secretary of the Army, and the cable shall be moved or shifted by the Licensees at their expense upon the request of the Secretary of the Army whenever he or she considers such course necessary in the public interest, for reasons of national defense, or for the maintenance or improvement of harbors for navigational purposes;

(2) The Licensees shall at all times comply with any requirements of U.S. government

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*International Common Carrier Regulations*, IB Docket No. 98-118, Report and Order, 14 FCC Rcd 4909 at paras. 67-69 (1999).

authorities regarding the location and concealment of the cable facilities, buildings, and apparatus for the purpose of protecting and safeguarding the cable from injury or destruction by enemies of the United States;

(3) The Licensees or any persons or companies controlling them, controlled by them, or under direct or indirect common control with them do not enjoy and shall not acquire any right to handle traffic on a common carrier basis to or from the United States, its territories, or its possessions unless such service be authorized by the Commission pursuant to Section 214 of the Communications Act, as amended;

(4) The Licensees or any persons or companies controlling them, controlled by them, or under direct or indirect common control with them shall not acquire or enjoy any right for the purpose of handling or interchanging traffic to or from the United States, its territories, or its possessions to land, connect, or operate cables or land lines, to construct or operate radio stations, or to interchange traffic, that is denied to any other United States company by reason of any concession, contract, understanding, or working arrangement to which the Licensees or any persons controlling them, controlled by them, or under direct or indirect common control with them are parties;

(5) Neither this license nor the rights granted herein shall be transferred, assigned, or in any manner either voluntarily or involuntarily disposed of or disposed of indirectly by transfer of control of the Licensees to any persons, unless the Commission shall give prior consent in writing;

(6) The Licensees shall notify the Commission in writing of the precise locations at which the cable will land in Boca Raton, Florida; Isla Verde, Puerto Rico; Fortaleza, Brazil; Salvador, Brazil; Rio de Janeiro, Brazil; Santos, Brazil; Las Toninas, Argentina; Valparaiso, Chile; Arica, Chile; Lurin, Peru; Puerto San José, Guatemala; and Puerto Barrios, Guatemala. Such notification with respect to any given landing location shall occur no later than 90 days prior to commencing construction at that landing location. The Commission will give public notice of the filing of each description, and grant of this license will be considered final with respect to that landing location unless the Commission issues a notice to the contrary no later than 60 days after receipt of the specific description;

(7) The Commission reserves the right to require the Licensees to file an environmental assessment or environmental impact statement should it determine that the landing of the cable at those locations and construction of necessary cable landing stations would significantly affect the environment within the meaning of Section 1.1307 of the Commission's procedures implementing the National Environmental Policy Act of 1969; this license is subject to modification by the Commission upon its review of any environmental assessment or environmental impact statement that it may require pursuant to its rules;

(8) Pursuant to Section 2 of the Cable Landing License Act, 47 U.S.C. § 35; Executive Order No. 10530, as amended; and Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, the Commission reserves the right to impose common carrier

or common-carrier-like regulation on the operations of the cable system if it finds that the public interest so requires;

(9) The Licensees shall maintain *de jure* and *de facto* control of the U.S. portion of the cable system, including the cable landing stations in the United States, sufficient to comply with the requirements of this license;

(10) This license is revocable by the Commission after due notice and opportunity for hearing pursuant to Section 2 of the Cable Landing License Act, 47 U.S.C. § 35, or for failure to comply with the terms of the authorizations;

(11) The Licensees shall notify the Commission in writing of the date on which the cable is placed in service, and this license shall expire 25 years from such date, unless renewed or extended upon proper application, and, upon expiration of this license, all rights granted under it shall be terminated;

(12) The terms and conditions upon which this license is given shall be accepted by the Licensees by filing a letter with the Secretary, Federal Communications Commission, Washington, D.C. 20554, within 30 days of the release of the cable landing license;

(13) The Licensees shall make capacity on the SAM-1 cable available, on a nondiscriminatory basis, to all customers, including all information service providers, licensed carriers, and others. The Licensees' standard cable capacity lease agreement shall allow for unrestricted resale or transfer of cable capacity;

(14) The Licensees shall allow unaffiliated parties to provide backhaul capacity and shall permit, on a nondiscriminatory basis, collocation space in the cable landing stations as well as access to cable capacity and backhaul. The Licensees shall also provide the Commission with their standard cable capacity lease agreement;

(15) The Licensees shall not either directly or indirectly accept from nor offer to an affiliated dominant carrier or foreign landing station in Argentina, Chile, or Peru a "special concession," as that term is defined in Section 63.14(b) of the Commission's rules, 47 C.F.R. § 63.14(b); and

(16) The Licensees shall provide the Commission with the following three reports:

(a) Quarterly circuit status reports (within 90 days from the end of each calendar quarter) in the format set out by the Section 43.82 annual circuit status manual;

(b) Quarterly reports (within 90 days from the end of each calendar quarter) summarizing the provisioning and maintenance of all network facilities and services procured from the Licensees' dominant affiliates and foreign cable landing stations in Argentina, Chile, and Peru, including, but not limited to those services procured on behalf of customers or any joint venture in which the Licensees and any dominant affiliates participate; this report will

contain the information required in Section 63.10(c)(4) of the Commission's Rules, 47 C.F.R. § 63.10(c)(4); and

(c) Reports (within 30 days after conveyance of transmission capacity on the SAm-1 cable system) identifying the party to whom capacity was conveyed, and the amount and price of the capacity conveyed.

37. This order is issued under Section 0.261 of the Commission's rules, 47 C.F.R. § 0.261, and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.115, may be filed within 30 days of the date of public notice of this order (see 47 C.F.R. § 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Rebecca Arbogast  
Chief, Telecommunications Division  
International Bureau



**Exhibit B**  
**SAm-1 Undersea Cable Segments and their Capacity**

Undersea Line Segment	Fiber Pairs	Capacity per Fiber Pair (Gbps)
Santos, Brazil to Las Toninas, Argentina	4	480
Rio de Janeiro, Brazil to Santos, Brazil	2	480
Salvador, Brazil to Rio De Janeiro, Brazil	2	480
Fortaleza, Brazil to Salvador, Brazil	2	480
Fortaleza, Brazil to Santos, Brazil	2	480
Isla Verde, Puerto Rico to Fortaleza, Brazil	4	480
Boca Raton, Florida to Isla Verde, Puerto Rico	4	480
Puerto Barrios, Guatemala to Boca Raton, Florida	4	480
Lurin, Peru to Puerto San José, Guatemala	4	480
Arica, Chile to Lurin, Peru	4	480
Valparaiso, Chile to Arica, Chile	4	480