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

In the Matter of	)
	)
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

Adopted: February 16, 2000 **Released: February 17, 2000**

By the Chief, Telecommunications Division:

I. Introduction

1. In this Order, we grant the Application of SAC Landing Corp. under the Cable Landing License Act[1] and Executive Order No. 10530,[2] for authority to land and operate a private fiber optic submarine cable system to be called "South American Crossing" or "SAC," extending between St. Croix, U.S. Virgin Islands; Fortaleza, Brazil; Rio de Janeiro, Brazil; Santos, Brazil; Las Toninas, Argentina; Valparaiso, Chile; Lurin, Peru; Buenaventura, Colombia; and Fort Amador, Panama. This system will be operated on a non–common carrier basis. We find that SAC Landing Corp. has 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 listed below.

II. Application

2. According to the Application, SAC Landing Corp., a Delaware corporation, is a wholly owned subsidiary of South American Crossing Ltd., (SAC Ltd.) a Bermuda company, which, through a series of intermediate holding companies, is an indirect wholly-owned subsidiary of Global Crossing Ltd. (Global Crossing), a Bermuda company majority owned by U.S. interests.[3] SAC Landing Corp. will own the St. Croix cable station and will own the cable terminal equipment and the U.S. territory portions of SAC from the landing station to the points that are one-half mile beyond the U.S. territorial limit.[4]

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[1] 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).

[2] Exec. Ord. No. 10530 *reprinted as amended* in 3 U.S.C. § 301.

[3] *See* SAC Landing Corp. Application to Land and Operate in the United States a Digital Submarine Cable System, filed Aug. 23, 1999, at 3, 10 (Application).

[4] *Id*. at 7-8.

Wholly-owned subsidiaries of SAC Ltd.[5] will own or lease space in, and will own the terminal equipment in the Panama, Brazil, Argentina, Chile, Peru and Colombia cable stations. These entities will also own the portions of SAC from the cable stations to the points that are one-half mile beyond the territorial limits of these countries. SAC Ltd. will own, directly or indirectly, the remaining portions of SAC.

3. The proposed SAC system will connect: (1) St. Croix, U.S. Virgin Islands; (2) Fortaleza, Brazil; (3) Rio de Janeiro, Brazil; (4) Santos, Brazil; (5) Las Toninas, Argentina; (6) Valparaiso, Chile; (7) Lurin, Peru; (8) Buenaventura, Colombia; and (9) Fort Amador, Panama.[6] According to the Application, SAC will be a four-fiber pair self-healing ring network that uses advanced dense wavelength division multiplexing technology to provide an initial system capacity of 40 Gbps for service and protection, upgradeable to 80 Gbps (two fiber pairs will initially be dark).[7] Service and protection capacity will be routed on different fiber pairs providing ring and span switching protection. The System Interface is defined as a Synchronous Transport Module One (STM-1), 155 Mbps digital input/output

[5] SAC Ltd. will own greater than 99 percent of these entities with the remaining interest held by South American Crossing Holdings Ltd., the parent company of SAC Ltd.

[6] As shown in Exhibit A attached to this Order, SAC will consist of nine segments:

Segment 1 will include the whole of the submarine cable system between and including the System Interface at the cable station in St. Croix, U.S. Virgin Islands and the System Interface at the cable station in Fortaleza, Brazil.

Segment 2 will include the whole of the submarine cable system between and including the System Interface at the cable station in Fortaleza, Brazil and the System Interface at the cable station in Rio de Janeiro, Brazil.

Segment 3 will include the whole of the submarine cable system between and including the System Interface at the cable station in Rio de Janeiro, Brazil and the System Interface at the cable station in Santos, Brazil.

Segment 4 will include the whole of the submarine cable system between and including the System Interface at the cable station in Santos, Brazil and the System Interface at the cable station in Los Toninas, Argentina. Segment 4 also includes a Branching Unit for a potential additional landing site or interconnection.

Segment 5 will include a terrestrial link, known as Trans Andean Crossing or TAC, that will connect the System Interface at the cable station in Los Toninas, Argentina and the System Interface at the cable station in Valparaiso, Chile.

Segment 6 will include the whole of the submarine cable system between and including the System Interface at the cable station in Valparaiso, Chile and the System Interface at the cable station in Lurin, Peru.

Segment 7 will include the whole of the submarine cable system between and including the System Interface at the cable station in Lurin, Peru and Branching Unit 1.

Segment 8 will include the whole of the submarine cable system between and including Branching Unit 1 and the System Interface at the cable station in Buenaventura, Colombia.

Segment 9 will include the whole of the submarine cable system between and including Branching Unit 1 and the System Interface at the cable station in Fort Amador, Panama.

[7] *See* Application at 5.

port on the digital distribution frame (excluding the digital distribution frame itself). The Minimum Capacity Unit (MCU) will be an STM-1 (155 Mbps). Additionally, capacity may be made available for sale at the DS-3 level. The system will initially be capable of supporting 128 STM-1 MCUs of protected service. Operation of the SAC system is anticipated to begin in the third quarter 2000, with a scheduled system completion date in the first quarter of 2000.

4. According to the Application, SAC is one of a series of undersea cables being developed by Global Crossing, including the Pan American Crossing (PAC) undersea cable system, which will extend from Grover Beach, California to Mexico, Panama, Venezuela and the U.S. Virgin Islands.[8] The PAC system will interconnect with the SAC system in Panama and the U.S. Virgin Islands. The SAC system will also connect, directly or indirectly, with three other undersea cable systems being developed by Global Crossing: the Atlantic Crossing system (AC-1), the Mid-Atlantic Crossing system (MAC), and the Pacific Crossing system (PC-1).[9] These five systems, together with terrestrial systems being developed by Global Crossing companies in Japan, Europe and the United States, will form a high capacity, fiber optical global cable network. A route sketch depicting the five U.S.-based Global Crossing systems is attached to this Order.

III. Comments

5. We placed the Application on public notice on September 17, 1999.[10] We received no comments. Pursuant to Section 1.767(b) of the Commission's rules,[11] the Cable Landing License Act, and Executive Order No. 10530, we informed the Department of State of the Application.[12] 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 issuance of the cable landing license.[13]

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[8] *Id*. at 1-2.

[9] We granted U.S. landing licenses for AC-1 on Sept. 23, 1997, for MAC and PAC on Mar. 18, 1999, and for PC-1 on Nov. 23, 1998. The subsequent transfer of control of the AC-1 landing license from SSI Atlantic Crossing to GT Landing Corp., a wholly-owned subsidiary of Global Crossing, was granted on June 30, 1999. PC-1 is a joint venture between Global Crossing and Marubeni Corporation.

[10] *See Non Streamlined International Applications Accepted for Filing,* Public Notice, Report No. TEL-00135NS (rel. Sept. 17, 1999).

[11] 47 C.F.R. § 1.767(b).

[12] Letter from Rebecca Arbogast, Chief, Telecommunications Division, International Bureau, Federal Communications Commission, to Steven W. Lett, Deputy U.S. Coordinator, Office of International Communications and Information Policy, U.S. Department of State (Sept. 22, 1999).

[13] Letter from Richard C. Beaird, Acting U.S. Coordinator, International Communications and Information Policy, U.S. Department of State, to Donald Abelson, Chief, International Bureau, FCC (Jan. 10, 2000).

IV. Discussion

A. Private Submarine Cable Policy

6. SAC Landing Corp. proposes to operate SAC as a non–common carrier submarine cable system in which capacity will not be offered indifferently to the user public. SAC Landing Corp. requests a license under the Commission's private submarine cable policy, which is intended to promote competition in the provision of international transmission facilities.[14] 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 to expect that the applicant would make capacity available to the public indifferently and indiscriminately.[15]

7. In applying the first prong of the test 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 facilities to be offered on a common carrier basis.[16] This public interest analysis has generally focused on whether an applicant will be able to exercise market power because of the lack of alternative facilities.[17] Where there are sufficient alternatives, the Commission has found that the licensee will lack market power and will not be able to charge monopoly rates for cable capacity.[18] The Commission has found that, in those circumstances, the public interest would be served by allowing a submarine cable to be offered on a non-common carrier basis.[19]

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[14] *See* Tel-Optik, Ltd., *Memorandum Opinion and Order*, 100 F.C.C.2d 1033, 1040-42, 1046-48 (1985); *see also* Cable & Wireless, plc, *Cable Landing License*, 12 FCC Rcd 8516 (1997).

[15] *See Cable & Wireless*, 12 FCC Rcd at 8522; *see also* Optel Communications, Inc*., Conditional Cable Landing License*, 8 FCC Rcd 2267 (1993); *National Association of Regulatory Utility Commissioners v. FCC*, 525 F.2d 630, 642 (D.C. Cir.) *(NARUC I), cert. denied*, 425 U.S. 992 (1976).

[16] *See, e.g., Cable & Wireless*, 12 FCC Rcd at 8522-23.

[17] *Id*.

[18] *Id*.

[19] *Id*.

8. In the Application, SAC Landing Corp. states that it is not affiliated with any foreign carrier with market power in such affiliated carrier's home market, including the markets where SAC lands.[20] In addition, SAC Landing Corp. asserts that there are sufficient existing and planned facilities on the routes to prevent it from exercising market power in offering services to the public.[21] SAC Landing Corp. asserts that there are a number of planned common carrier and private cable systems in this region,[22] including the following cables extending to one or more of the countries in which SAC will land: (1) Project Oxygen;[23] (2) Americas II;[24] (3) Pan American;[25] and (4) Americas I.[26]

9. No one has advocated that the public interest requires SAC to be operated on a common carrier basis. Given the unopposed evidence of the availability of alternative cables and SAC Landing Corp's representation that none of its affiliates has market power in any of the cable's landing countries, we find that it would not serve the public interest to impose common carrier regulation on the operations of SAC at this time. We note, however, that we maintain the ability to impose common carrier or common-carrier-like obligations on the operations of this or any other submarine cable system if the public interest so requires.[27] Furthermore, we have always maintained the authority 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.[28]

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[20] *See* Application at 8-9.

[21] *Id*. at n.15.

[22] *Id*. at 6.

[23] According to SAC Landing Corp., the route for Phase 1C of the Project Oxygen cable includes Panama-Venezuela, Ecuador-Peru, Uruguay-Brazil, Panama-Colombia. See Application at n.15. The Project Oxygen cable was recently authorized by the Commission on a private carrier basis, and we are not aware that it is currently in service.

[24] According to SAC Landing Corp., the route for the Americas II cable is Florida-Puerto Rico-Martinique-U.S. Virgin Islands-Curacao-Netherlands Antilles-Venezuela-Trinidad-Brazil. See Application at n.15. The Americas II cable, which was authorized by the Commission on a common carrier basis, is on schedule to be in service in February 2000.

[25] According to SAC Landing Corp., the route for the Pan American cable is St. Thomas-St. Croix-Aruba-Venezuela-Colombia-Panama-Ecuador-Peru-Chile. See Application at n.15. The Pan American cable, which was authorized by the Commission on a common carrier basis, is currently in service.

[26] According to SAC Landing Corp., the route for the Americas I cable is Florida-St. Thomas-Brazil-Trinidad-Venezuela. See Application at n.15. The Americas I cable, which was authorized by the Commission on a common carrier basis, is currently in service. It is our understanding that the capacity has been nearly, or completely, allocated for some time.

[27] *See* 47 U.S.C. § 35 (providing that a license 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").

[28] *See Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, *Market Entry*, IB 97-142, *Market Entry and Regulation of Foreign Affiliated Entities*, IB 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23934 ¶ 95 (1997), *recon. pending; Cable & Wireless*, 12 FCC Rcd at 8530 ¶ 39;

10. Regarding the second prong of the test, we conclude that there is no reason to expect that capacity in the proposed cable system would be held out to the public indifferently. SAC Landing Corp. states that capacity will not be sold indifferently to the user public. Rather, capacity will be assigned pursuant to individualized decisions, and bulk capacity will be offered to a significantly restricted class of users, such as common carrier cable consortia, common carriers, and large businesses.

11. We conclude that SAC Landing Corp. will not offer capacity in SAC 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 SAC on a non-common carrier basis. We also find that the Applicant will not provide a 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.[29]

B. Ownership and Landing Points

12. SAC Landing Corp. has provided the ownership information required by Sections 1.767(a)(6) and 63.18 of the Commission's rules.[30] SAC Landing Corp. is ultimately controlled by Global Crossing Ltd. SAC Landing Corp. will own or lease space in the St. Croix cable station and will own the cable terminal equipment and the U.S. territory portions of SAC from the landing stations to the points that are one-half mile beyond the U.S. territorial limit. Wholly-owned subsidiaries of SAC Ltd.[31] will own or lease space in, and will own the terminal equipment in, the Brazil, Argentina, Chile, Peru, Colombia and Panama cable stations. These entities will also own the portions of SAC from the cable stations to the points that are one-half mile beyond the territorial limits of these countries. SAC Ltd. will own, directly or indirectly, the remaining portions of SAC. The Applicant states that it is affiliated within the meaning of Section 63.18(h)(1)(A) of the Commission's rules with a Japanese foreign carrier, Global Access Ltd., through Global Crossing Ltd.'s minority investment in Global Access Ltd. Global Access Ltd. is a start-up venture. The Applicant is also affiliated, as a wholly-owned indirect subsidiary of Global Crossing, with entities that have become or are about to become foreign carriers in the following countries: Germany, France, the United Kingdom, the Netherlands, Belgium, Denmark, Switzerland, and Italy. Because the proposed cable does not land in any of the countries where the Applicant has affiliates, we find that these affiliations do not affect the granting of the Cable Landing License.

13. In addition, the Application states that an application for a non-carrier concession for SAC's Argentina landing entity would be filed shortly. The Applicant also anticipates that the SAC Ltd. landing entity in Colombia will require a carrier service provider concession, and that the SAC Ltd. landing entity in Peru will require an international carrier concession. An intermediate telecommunications service concession will be required for the landing entity in Chile. No telecommunications license is required for the SAC Ltd. landing entity in Brazil. To the extent any of these entities may be deemed foreign carriers under the Commission's rules, the Applicant states all are

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AT&T Corp. et al., Cable Landing License, 13 FCC Rcd 16232, 16237 ¶ 15 (Int'l. Bur. 1998).

[29] *See* 47 U.S.C. § 153(44) (defining "telecommunications carrier"); Cable & Wireless, 12 FCC Rcd at 8523.

[30] *See* Application at 7-9 and Attachment C.

[31] SAC Ltd. will own greater than 99 percent of these entities with the remaining interest held by South American Crossing Holdings Ltd., the parent company of SAC Ltd.

start-up companies and none have market power in their home markets, including the markets where SAC lands. Accordingly, we find that the Applicant's affiliations with these entities also do not affect the granting of the Cable Landing License.

14. The Applicant has stated that it will comply with Section 1.767(a)(5) of the Commission's rules by providing specific information on the cable landing locations 90 days prior to commencing construction. We find the Applicant's description of the likely landing points to be sufficient to determine that the proposed cable system will comply with the provisions of the Commission rules. Section 1.767(a) of the Commission's rules permits applicants in an initial application to provide a general description of the landing points. The Applicant 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 the Applicant to the contrary no later than 60 days after receipt of the specific description of the landing point.

C. Environmental Impact

15. Based on the information provided by the Applicant and pursuant to the Commission's procedures implementing the National Environmental Policy Act of 1969,[32] we find that acting on this Application would not significantly affect the environment according to Section 1.1307(a) or (b) of the Commission's rules. Therefore, pursuant to Section 1.1306 of the Commission's rules, we conclude that grant of the requested license would not significantly affect the environment. Consequently, SAC Landing Corp. is not required to submit an environmental assessment, and this Application is categorically excluded from environmental processing.

V. Conclusion

16. We grant SAC Landing Corp.'s Application for authority to land and operate a non-common carrier fiber optic submarine cable extending between St. Croix, U.S. Virgin Islands and Fortaleza, Brazil; Rio de Janeiro, Brazil; Santos, Brazil; Las Toninas, Argentina; Valparaiso, Chile; Lurin, Peru; Buenaventura, Colombia; and Fort Amador, Panama, subject to the conditions listed below.

VI. Ordering Clauses

17. Consistent with the foregoing and pursuant to the Cable Landing License Act and Executive Order 10530, we hereby GRANT AND ISSUE SAC Landing Corp. a license to land and operate a non–common carrier fiber optic cable four-fiber pair self-healing ring network that uses advance dense wavelength division multiplexing technology to provide an initial system capacity of 40 Gbps for service and protection, upgradeable to a minimum capacity of 80 Gbps**,** extending between the U.S. Virgin Islands, Brazil, Argentina, Chile, Peru, Colombia, and Panama. This grant is subject to all rules and regulations of the 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

[32] 47 C.F.R. §§ 1.1301–.1319 (1997).

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 Licensee at its 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 Licensee shall at all times comply with any requirements of U.S. government 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 Licensee or any persons or companies controlling it, controlled by it, or under direct or indirect common control with it 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 Licensee or any persons or companies controlling it, controlled by it, or under direct or indirect common control with it 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 Licensee or any persons controlling it, controlled by it, or under direct or indirect common control with it 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 Licensee to any persons, unless the Commission shall give prior consent in writing;

(6) The Licensee shall notify the Commission in writing of the precise locations at which the cable will land in St. Croix, U.S. Virgin Islands and Fortaleza, Brazil; Rio de Janeiro, Brazil; Santos, Brazil; Las Toninas, Argentina; Valparaiso, Chile; Lurin, Peru; Buenaventura, Colombia; and Fort Amador, Panama. 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 Licensee 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 Licensee 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 Licensee 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; and

(12) The terms and conditions upon which this license is given shall be accepted by the Licensee 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.

18. 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 A
South American Crossing - SAC

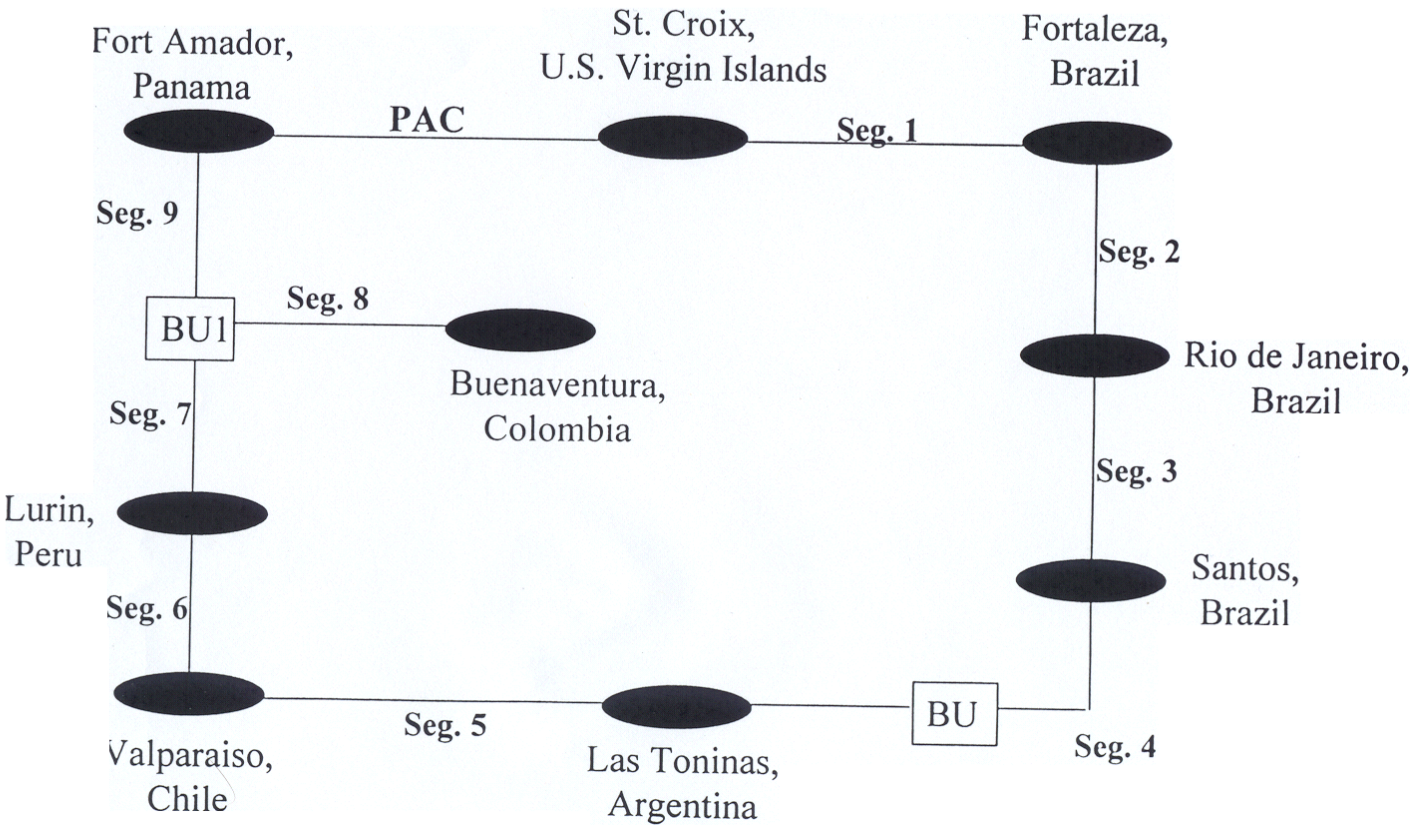


Exhibit A
South American Crossing - SAC

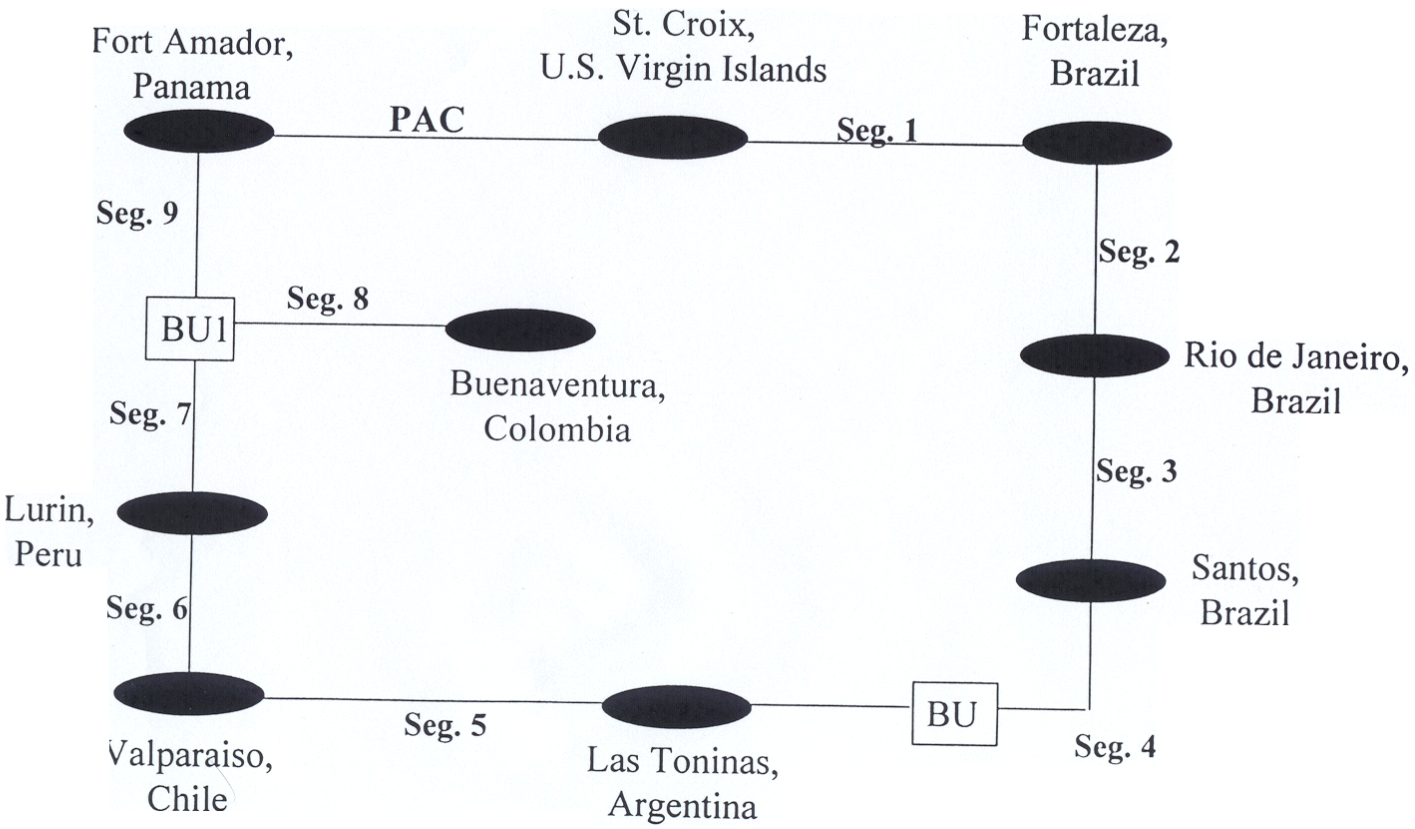
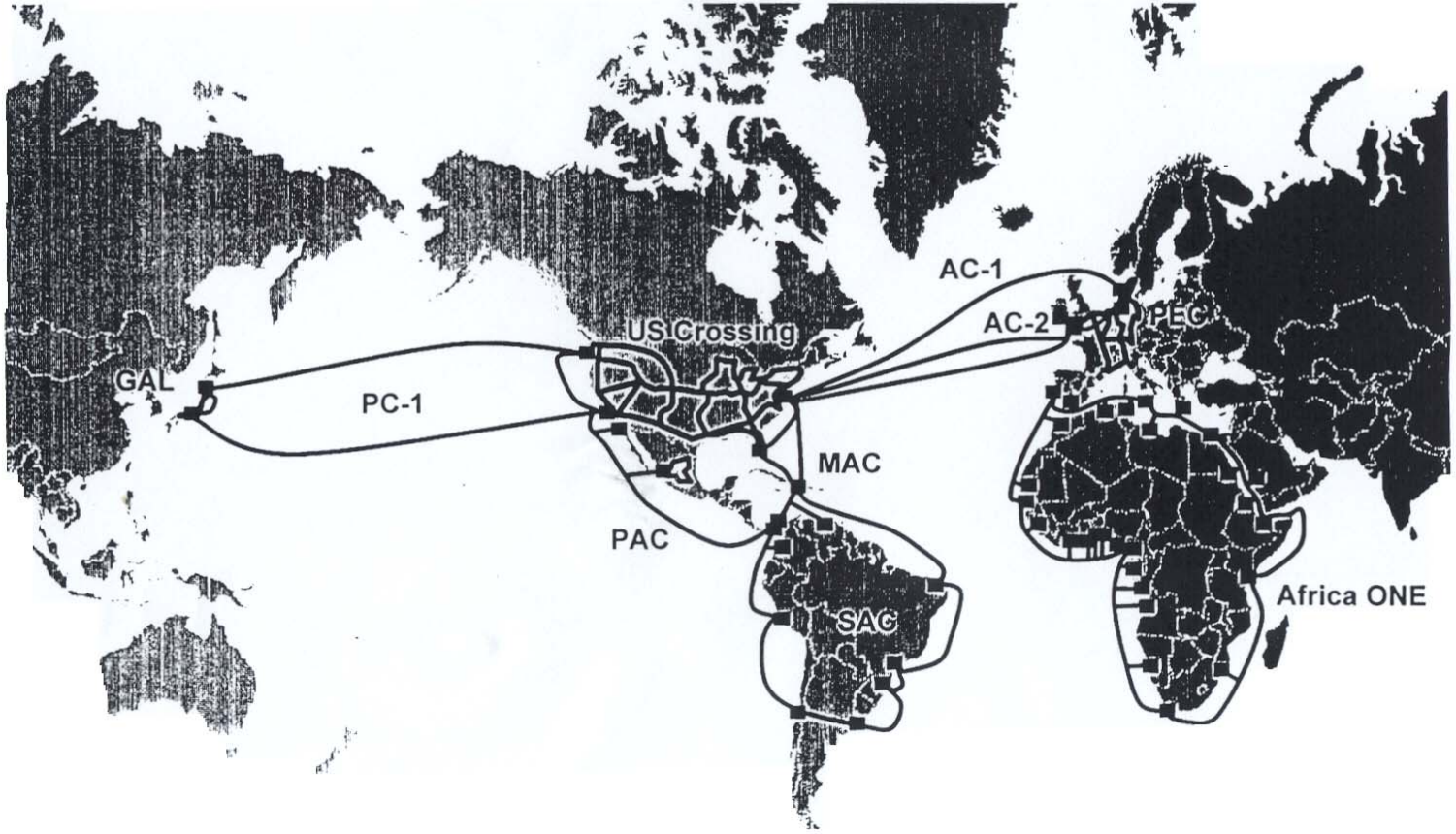


EXHIBIT B

Global Crossing



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