



# PUBLIC NOTICE

Federal Communications Commission  
445 12<sup>th</sup> St., S.W.  
Washington, D.C. 20554

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Internet: <http://www.fcc.gov>  
TTY: 1-888-835-5322

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## New Submarine Cable Landing License Rules Scheduled to Take Effect March 15

### Existing Licensees Must File For Modification of Cable Landing Licenses To Take Advantage of Certain Rules

On December 14, 2001, the Commission released a Report and Order adopting streamlined procedures for processing applications for submarine cable landing licenses. *See Review of Commission Consideration of Applications under the Cable Landing License Act*, IB Docket No. 00-106, Report and Order, 16 FCC Rcd 22167 (2001) (*Submarine Cable Report and Order*). The rules adopted in this proceeding, set out in sections 1.767 and 1.768 of the Commission's rules, become effective March 15, 2002.<sup>1</sup> This public notice provides information on the new rules.

#### Pro Forma Rule

Existing cable landing licenses contain a condition that prohibits the assignment or transfer of an interest in the cable landing license without the express prior approval of the Commission. *See*,

<sup>1</sup> All of the rules adopted in this proceeding become effective on March 15, 2002. The rules were published in the Federal Register on January 14, 2002. Those rules containing information collections were subject to approval by the Office of Management and Budget (OMB). OMB approved the information collections on February 19, 2002 (OMB 3060-0944). In addition, the effective date of the rules was conditioned upon receipt of appropriate correspondence from the Executive Branch (*see Submarine Cable Report and Order* at para. 80). On December 3, 2002, the Under Secretary of State for Economic, Business, and Agricultural Affairs approved new, streamlined procedures for the Department of State's review of submarine cable landing license applications submitted to the Commission, and authorized the Commission to grant or revoke all such applications, provided that the Commission has notified in writing the United States Coordinator for International Communications and Information Policy of each such license application and that no objections are raised by the Department within 30 days after such notification. *See Streamlined Procedures for Executive Branch Review of Submarine Cable Landing License Requests*, Media Note (Revised) (rel. Dec. 20, 2001), at [www.state.gov/r/pa/prs/ps/2001/index.cfm?docid=6951](http://www.state.gov/r/pa/prs/ps/2001/index.cfm?docid=6951).

*e.g., Japan-U.S. Cable*, Cable Landing License, 15 FCC Rcd 24056 (2000), at para. 28(5). In codifying the routine cable conditions into its new rules at section 1.767(g), the Commission has provided a limited exception to the prior approval requirement, permitting post-transaction notification of pro forma assignments and transfers of control of interests in submarine cable landing licenses. *See* 47 C.F.R. 1.767(g)(7).

1. *Applicability to New Licenses.* The new pro forma rule will apply to submarine cable systems licensed on or after March 15, 2002.
2. *Applicability to Existing Licenses.* The *Submarine Cable Report and Order* provides that licensees of submarine cable systems licensed prior to March 15, 2002 MAY NOT substitute post-transaction notification for prior approval of pro forma transactions UNTIL they have followed the procedures set out in para. 63 of the Commission's Report and Order. Para. 63 permits a licensee to file an application with the Commission seeking a modification of an existing cable landing license to incorporate this limited pro forma exception to the prior approval requirement. For the convenience of licensees, para. 63 is reprinted below.
63. For cable landing licenses granted prior to the effective date of this Report and Order, a licensee may file an application with the Commission seeking a modification of its license to incorporate this limited exception to the prior approval requirements currently set forth in the applicable license condition. The application should identify the cable landing license by its name and file number, list all licensees, reference the new pro forma rule we adopt herein, and state that each licensee accepts and will abide by the provisions of the new pro forma rule. Each licensee or joint licensee must sign the application. The application should be captioned, "Cable Landing License Modification – Request to Add Pro Forma Condition," and should be addressed to the Secretary of the Commission, with a copy to the Chief, International Bureau. The Commission will forward these applications to the Department of State for approval consistent with Executive Order No. 10530, following which the Commission will grant the modifications. Licensees interested in effecting this modification to their cable landing licenses at the earliest possible date should file these applications with the Commission within 30 days of the effective date of this Report and Order.
3. *Para. 63 Procedures.* Licensees seeking to amend their cable landing licenses to incorporate the new pro forma rule should follow the procedures set out in para. 63 of the Report and Order. Joint licensees should take particular note that ALL joint licensees on a cable landing license must sign the application to modify the condition. As noted, the International Bureau will forward the applications to the Department of State and, once the Bureau has granted modifications, will maintain a list of those cables for which pro forma assignments and transfers do not require prior approval. Applications for modifications received by April 15 will receive priority processing. Licensees that do not file an application for modification by April 15 nonetheless may file such applications at a later date.
4. *Section 1.767(g)(7) Procedures.* Licensees for cable landing licenses granted on or after March 15, 2002, and existing licensees whose applications to modify their existing licenses

to include the new pro forma rule are granted, should be cognizant of the new rule's procedural requirements. New section 1.767(g)(7) reads as follows:

A pro forma assignee or a person or company that is the subject of a pro forma transfer of control of a cable landing license is not required to seek prior approval for the pro forma transaction. A pro forma assignee or person or company that is the subject of a pro forma transfer of control must notify the Secretary, Federal Communications Commission, Washington, D.C. 20554, with a copy to the Chief, International Bureau, Federal Communications Commission, no later than thirty (30) days after the assignment or transfer of control is consummated. The notification may be in the form of a letter (in duplicate to the Secretary), and it must contain a certification that the assignment or transfer of control was pro forma, as defined in § 63.24(a) of this chapter, and, together with all previous pro forma transactions, does not result in a change of the licensee's ultimate control. A single letter may be filed for an assignment or transfer of control of more than one license issued in the name of a licensee if each license is identified by the file number under which it was granted.

The Commission will maintain copies of these notifications in its reference room.

#### No Special Concessions Rule

The Report and Order also adopted a no special concessions rule that is narrower in scope than the no exclusive arrangements condition attached to existing cable landing licenses. *See Submarine Cable Report and Order* at paras. 31-33; *see also* 47 C.F.R. § 1.767(g)(5).

1. *Applicability to New Licenses.* The new no special concessions rule is applicable to submarine cable landing licenses granted on or after March 15, 2002.
2. *Applicability to Existing Licenses.* For submarine cable systems licensed prior to March 15, 2002, licensees MAY NOT substitute the new no special concessions rule for the no exclusive arrangements conditions in their licenses UNTIL they have followed the procedures set out in para. 33 of the Commission's Report and Order. Para. 33 permits a licensee to file an application with the Commission seeking a modification of an existing cable landing license to substitute this more narrowly targeted safeguard for the prohibition against exclusive arrangements currently set forth in the license. For the convenience of licensees, para. 33 is printed below:
  33. For cable landing licenses granted prior to the effective date of this Report and Order, a licensee may file an application with the Commission seeking a modification of its license to substitute this more narrowly targeted safeguard for the prohibition against exclusive arrangements currently set forth in the license. The application should identify the cable landing license by its name and file number, list all licensees, reference the new no special concessions rule we adopt herein, and state that each licensee accepts and will abide by the provisions of the new rule. Each licensee or joint licensee must sign the application. The application should be captioned, "Cable

Landing License Modification – Request to Modify No Exclusive Arrangements Condition,” and should be addressed to the Secretary of the Commission, with a copy to the Chief, International Bureau. The Commission will place these applications on public notice and forward them to the Department of State for its consideration consistent with Executive Order No. 10530, following which the Commission will act on the applications either by public notice or by formal written order if it is necessary to address any significant issues in writing. Licensees interested in effecting this modification to their cable landing licenses at the earliest possible date should file these applications with the Commission within 30 days of the effective date of this Report and Order.

3. *Para. 33 Procedures.* Licensees seeking to amend their cable landing licenses to incorporate the new no special concessions rule should follow the procedures set out in para. 33 of the Report and Order. Joint licensees should take particular note that ALL joint licensees on a cable landing license must sign the application to modify the condition. As noted, the International Bureau will forward the applications to the Department of State and, once the Bureau has granted modifications, will maintain a list of those cables to which the new no special concessions rule applies. Applications for modifications received by April 15 will receive priority processing. Licensees that do not file an application for modification by April 15 nonetheless may file such applications at a later date.

#### Required Applicants and Licensees

The Report and Order limits entities required to become applicants, and thus licensees, to those entities that own or control a U.S. landing station or own or control a five percent or greater interest in a cable system and use the U.S. points of the cable system. *See Submarine Cable Report and Order* at paras. 53-60. This is a change in Commission practice, which previously required all entities using the U.S. end of the cable to be applicants.

1. *Identification of All Original Owners.* We continue to require applicants for a cable landing license to identify all original owners, including those with less than five percent interests. *See Submarine Cable Report and Order* at para. 54; *see also* 47 C.F.R. § 1.767(a)(7).
2. *Applications to Relinquish Interests in a Cable Landing License.* Once an applicant becomes a licensee, it is subject to the Commission’s rules for modifications, assignments and transfers of control of interests in cable landing licenses, even where these interests are less than five percent. The Commission’s rules retain the routine condition of every license requiring the licensees to maintain de jure and de facto control of the U.S. portion of the cable system, sufficient to comply with the requirements of the Commission’s rules and any specific license conditions. A licensee that does not own or control a U.S. landing station and has less than a five percent interest in the cable may file an application to relinquish its interests in a license, but must serve a copy of its application on each other joint licensee of the cable system. This service requirement provides each other joint licensee with specific notice and opportunity to consider whether grant of the application would affect the ability of the joint licensees to comply with the routine condition to maintain control of the U.S.

portion of the cable system. *See Submarine Cable Report and Order* at para. 59; *see also* 47 C.F.R. § 1.767(m)(2).

#### Applications Requesting Streamlined Procedures

Applicants that request streamlined processing of their cable landing license applications should follow the procedures and requirements set out in 47 C.F.R. § 1.767(j)-(l), in addition to the other requirements of the rules.

#### Notifications of Foreign Carrier Affiliations

All cable landing licensees, including those licensed prior to March 15, 2002, are required by new rule 1.768 to notify the Commission of their affiliations with carriers that operate on the foreign end(s) of the U.S.-licensed submarine cable. Certain affiliations require prior approval by the Commission. Licensees should review new rule 1.768 carefully to ensure compliance with its provisions.

International Bureau contacts: Peggy Reitzel, Kathleen Collins or David Krech at 202-418-1460.