



PUBLIC NOTICE

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DA No. 03-3937
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ACTIONS TAKEN UNDER CABLE LANDING LICENSE ACT

Section 1.767(a) Cable Landing Licenses, Modifications, and Assignments or Transfers of Control of Interests in Cable Landing Licenses (47 C.F.R. § 1.767(a))

By the Chief, Policy Division, International Bureau:

Pursuant to 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), Executive Order No. 10530, Exec. Ord. No. 10530 *reprinted as amended in* 3 U.S.C. § 301, and section 1.767 of the Commission's rules, 47 C.F.R. § 1.767, the following applications ARE GRANTED. These grants of authority are taken under section 0.261 of the Commission's rules, 47 C.F.R. § 0.261, and are effective upon release of this public notice. 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 this public notice.

This public notice serves as each cable landing licensee's Cable Landing License, or modification thereto, pursuant to the Cable Landing License Act and sections 1.767 and 1.768 of the Commission's rules. Cable landing licensees should review carefully the terms and conditions of their licenses. Failure to comply with these terms and conditions or relevant Commission rules and policies could result in fines or forfeitures.

The Commission most recently amended its rules applicable to submarine cable landing licenses in *Review of Commission Consideration of Applications under the Cable Landing License Act*, IB Docket No. 00-106, FCC 01-332, 16 FCC Rcd 22167 (2001), 67 Fed. Reg. 1615 (Jan. 14, 2002). An updated version of sections 1.767 and 1.768 of the rules is available at <http://www.fcc.gov/ib/pd/pf/telecomrules.html>. See also http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-02-598A1.pdf for a March 13, 2002 Public Notice; http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-01-332A1.pdf for the December 14, 2001 Report and Order.

SCL-T/C-20031024-00031

FLAG Telecom Global Network Limited (Licensee)
FLAG Telecom Group Limited (Transferor)
(NEW) FLAG Telecom Group Limited (Transferee)

TRANSFER OF CONTROL

Action Taken: Grant of authority to transfer control of the Cable Landing License for the FLAG Atlantic-1 cable (SCL-LIC-19990301-00005) (see also SCL-ASG-20020814-00065) held by FLAG Telecom Global Network Limited, from FLAG Telecom Group Limited to (New) FLAG Telecom Group Limited.

Conditions and Requirements: See *FLAG Atlantic Limited, 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 the United Kingdom and France*, Cable Landing License, File No. SCL-LIC-19990301-00005, DA 99-2041, 15 FCC Rcd 21359, 21363-64, para. 15 (Int'l Bur. 1999); *FLAG Atlantic Limited Debtor-in-Possession, Licensee and Assignor, FLAG Telecom Global Network Limited, Assignee, FLAG Telecom Holdings Limited as Debtor-in-Possession, Transferor, and FLAG Telecom Group, Transferee*, Pro Forma Assignment and Transfer of Control, File No. SCL-ASG-20020814-00065, Public Notice, Actions Taken Under Cable Landing License Act, DA 02-2523, 17 FCC Rcd 19286 (Int'l Bur. 2002).¹ FLAG Global shall comply with the requirements of section 1.768 of the Commission's rules (notifications and prior approval for submarine cable landing licensees that are or propose to become affiliated with a foreign carrier), 47 C.F.R. § 1.768.

Licensee Information:

FLAG Telecom Global Network Limited ("FLAG Global"), an entity organized under the laws of Bermuda, is the licensee for the Flag Atlantic-1 submarine cable. FLAG Global is a subsidiary of FLAG Telecom Group Limited ("FTGL"), also an entity created under the laws of Bermuda. FTGL, through its subsidiaries, operates a global telecommunications network comprised of fiber optic cable systems and interfaces that are owned by, leased to, or otherwise available to FTGL and its subsidiaries.² FTGL and its subsidiaries are carriers' carriers that offer a variety of telecommunications services over the FTGL network to a target customer base in the international wholesale broadband market.³ FTGL and its subsidiaries do not have any local access assets, but rather own, operate or control primarily subsea, international long haul networks.⁴

¹ We note that, as the licensee has not sought and received authority to modify paragraph 15(5) the Cable Landing License to add the new *pro forma* condition set out in section 1.767(g)(7) of the Commission's rules for cable landing licenses granted on or after March 15, 2002, the licensee shall continue to seek prior Commission approval for any *pro forma* assignment or transfer of control. Similarly, as the licensee has not sought and received authority to substitute the no special concessions condition set out in section 1.767(g)(5) of the rules for cable landing licenses granted on or after March 15, 2002 for the no exclusive arrangement condition set out in paragraph 15(4) of the Cable Landing License, the Cable Landing License shall continue to be subject to paragraph 15(4). See 47 C.F.R. §§ 1.767(g)(5)-(7); see also *New Submarine Cable Landing License Rules Scheduled to Take Effect March 15 and Existing Licensees Must File for Modification of Cable Landing Licenses to Take Advantage of Certain Rules*, Public Notice, DA 02-598, 17 FCC Rcd 4597 (Int'l Bur. 2002).

² See Application Pursuant to the Cable Landing License Act for Consent to Transfer Control of FLAG Telecom Global Network Limited, Licensee of Submarine Cable Landing License SCL-LIC-19990301-00005 – Streamlined Processing Requested, File No. SCL-T/C-20031024-00031 (filed Oct. 24, 2003) ("Application"), at 3.

³ See *id.*

⁴ See *id.*

Under the proposed transaction, FTGL will merge, or “amalgamate,” with Gateway Net Bermuda Limited (“Gateway Bermuda”), a company to be formed for the purpose of the acquisition of FTGL and its subsidiaries, including FLAG Global.⁵ After the amalgamation, both FTGL and Gateway Bermuda will cease to exist and the new company resulting from the amalgamation will be (NEW) FLAG Telecom Group Limited (“NEW FTGL”), which also will be organized under the laws of Bermuda.⁶ An Indian corporation, Reliance Gateway Net Limited (“Reliance Gateway”), will wholly own NEW FTGL.⁷ Reliance Gateway is wholly owned by Reliance Infocomm Limited (“Reliance Infocomm”), an entity licensed to provide competitive wireline and wireless voice and data services in India.⁸ Reliance Communications Infrastructure Limited (“RCIL”), which holds a telecommunications infrastructure license in India, owns 74.16 percent of Reliance Infocomm.⁹ Following consummation of the transaction, FLAG Global will remain the licensee and will be wholly owned by NEW FTGL.¹⁰

⁵ *See id.* at 2.

⁶ *See id.*

⁷ *See id.* at 4. FTGL has entered into an Agreement and Plan of Amalgamation with Reliance Gateway pursuant to which Reliance Gateway will acquire all of the outstanding capital stock, on a fully diluted basis, of FTGL in exchange for \$207 million in cash, subject to the receipt of required Bermuda and U.S. regulatory approvals and the approval of the shareholders of FTGL. *See id.*

⁸ *See id.*

⁹ *See id.* Reliance Industries Limited (“Reliance Industries”), a diversified, publicly-held Indian company primarily engaged in the petrochemical and oil refining business, wholly controls RCIL and directly owns 45% of the equity of RCIL. *See id.*; *see also* Letter from Stephen R. Bell to Secretary, Federal Communications Commission (filed Oct. 31, 2003) (“Letter”), at 2. Reliance Industries also has an 8.61% direct interest in Reliance Infocomm. *See* Application at 4. Reliance Industries also has a 25.6% direct interest in Reliance Telecom Limited, a provider of cellular mobile and competitive local landline services in India, and indirectly wholly owns Reliance Communications, Inc., which holds an international section 214 authorization to operate as a facilities-based and resale telecommunications carrier. *See id.*; *see also* *Reliance Communications, Inc., International Telecommunications Certificate, Grant of Authority*, File No. ITC-214-20021107-00535, Public Notice, International Authorizations Granted, DA 03-2, 18 FCC Rcd 3, 4 (Int’l Bur. 2003). No single individual or entity owns 10% or more of the equity of Reliance Industries, a publicly held company. *See* Letter at 2.

¹⁰ *See* Application at 5. Following consummation of the proposed transaction, FLAG Global, the U.S. licensee, will continue to own 100% of the ownership and voting interests in: (1) the U.S. cable landing stations; (2) the portions of the Flag Atlantic-1 system from the U.S. landing stations to the U.S. territorial limit; and (3) the portion of the system located in international waters. *See* Letter at 2. FLAG Atlantic UK Limited, which also will become a wholly-owned subsidiary of NEW FTGL, will continue to own 100% of the ownership and voting interests in the U.K. cable landing station and the portions of the system from the U.K. landing station to the U.K. territorial limit. *See id.* FLAG Atlantic France SAS, which also will become a wholly-owned subsidiary of NEW FTGL, will continue to own 100% of the ownership and voting interests in the French landing station and the portions of the system from the French landing station to the French territorial limit. *See id.*

After consummation of the proposed transaction, FLAG Global will be affiliated with foreign carriers lacking market power in India and in the cable's destination markets of the United Kingdom and France, all three of which are WTO Member countries.¹¹

Interlocking Directorates: FLAG Global identifies two interlocking directorates between NEW FTGL and Reliance Communications UK Limited, but no interlocking directorates, within the meaning of section 63.09(g)(1), between FLAG Global and a foreign carrier.¹²

Regulatory Status of Cable: The Flag Atlantic-1 cable system operates on a non-common carrier basis. *See* Cable Landing License, File No. SCL-LIC-19990301-00005, 15 FCC Rcd 21359, para. 1.

Cable Design and Capacity: *See* Cable Landing License, File No. SCL-LIC-19990301-00005, 15 FCC Rcd 21359, 21360, para. 4, 21366, Exhibit A; *see also* FLAG Atlantic-1 Landing Point Notification, File No. SCL-LPN-19991228-00025 (filed Dec. 28, 1999).

¹¹ In India, FLAG Global will become affiliated with Reliance Infocomm, RCIL, and Reliance Telecom Limited. In the United Kingdom, FLAG Global is or will become affiliated with: (1) FLAG Atlantic UK Limited, which is the Flag Atlantic-1 cable landing station owner in the United Kingdom; (2) Reliance Communications UK Limited, a UK carrier that holds a simple voice resale class license in the United Kingdom; and (3) FLAG Telecom Ireland Limited, which is licensed as a public telecommunications operator in the United Kingdom. In France, FLAG Global is affiliated with FLAG Atlantic France SAS, which is the Flag Atlantic-1 cable landing station owner in France. *See* Application at 10-12.

¹² *See* Application at 10. *See also* 47 C.F.R. § 63.09(g)(1); 47 C.F.R. § 1.768(e)(5).