



# PUBLIC NOTICE

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**Report No. SCL-00200**

**DA No. 17-420**  
**Thursday May 4, 2017**

## **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, Telecommunications and Analysis 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. 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.

These applications have been coordinated with the Department of State and other Executive Branch agencies pursuant to section 1.767(b) of the Commission's rules, 47 C.F.R. §1.767(b), and consistent with procedures established with the Department of State. 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, 22192-93, paras. 51-52 (2001) (Submarine Cable Landing License Report and Order); Streamlined Procedures for Executive Branch Review of Submarine Cable Landing License Requests, State Department Media Note (Revised) (rel. Dec. 20, 2001) available at <http://2001-2009.state.gov/r/pa/prs/ps/2001/6951.htm>.

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.

Submarine Cable Landing License  
Grant of Authority

Date of Action: 05/02/2017

Acceptability for Filing Public Notice: Application filed by Telxius Cable USA, Inc., Edge Cable Holdings USA, LLC, Microsoft Infrastructure Group, LLC, and Telefónica International Wholesale Services América S.A. (together, Applicants) for a license to land and operate a non-common carrier fiber-optic submarine cable network connecting Virginia Beach, Virginia with Bilbao, Spain (the MAREA cable system). The Application was placed on Public Notice on June 30, 2016. File No. SCL-LIC-20160525-00012, Public Notice, Streamlined Submarine Cable Landing License Applications Accepted for Filing, Report No. SCL-00185S (IB, June 30, 2016). On July 1, 2016, Telefónica International Wholesale Services USA, Inc. notified the Commission of its name change to Telxius Cable USA, Inc. Applicants filed a Supplement to the Application on April 20, 2017, clarifying ownership, control, and operation of the Virginia Beach cable landing station. Applicants were granted Special Temporary Authority (STA) predicated upon their assertion that they will test at their own risk those portions of the MAREA cable system in U.S. territory prior to receiving Commission authorization. See File No. SCL-STA-20170318-00007.

The Application has been coordinated with the Department of State and other Executive Branch agencies pursuant to section 1.767(b) of the Commission's rules, 47 CFR § 1.767(b), and consistent with procedures established with the Department of State. 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, 22192-93, paras. 51-52 (2001) (Submarine Cable Landing License Report and Order); Streamlined Procedures for Executive Branch Review of Submarine Cable Landing License Requests, State Department Media Note (Revised) (rel. Dec. 20, 2001) available at <http://www.state.gov/r/pa/prs/ps/2001/6951.htm>. The Department of Homeland Security (DHS), with the concurrence of the Department of Justice, and the Department of Defense (DOD; collectively, the Agencies) filed a Petition to Adopt Conditions to Authorizations and Licenses on May 2, 2017. The Agencies have no objection to the Commission approving authority to land and operate the MAREA cable system, provided that the Commission conditions its approval on the commitment of Telxius Cable USA, Inc. to abide by the undertakings set forth in the April 28, 2017 Letter of Assurances (2017 LOA) from Telxius Cable USA, Inc. to DHS and DOD.

Actions Taken: (1) Grant of Cable Landing License to Telxius Cable USA, Inc., et al. for the purpose of landing and operating a non-common carrier fiber-optic submarine cable system, connecting Virginia Beach, Virginia, with Bilbao, Spain, and (2) grant of the Petition to Adopt Conditions to Authorizations and Licenses filed on May 2, 2017, by the Department of Homeland Security, with the concurrence of the Department of Justice, and the Department of Defense.

Licensee Information: The Applicants for the cable landing license for the MAREA cable system are the following: (1) Telxius Cable USA, Inc. (Telxius USA, formerly Telefónica International Wholesale Services USA, Inc. (TIWS USA)), (2) Edge Cable Holdings USA, LLC (Edge USA), (3) Microsoft Infrastructure Group, LLC (Microsoft Infrastructure), and (4) Telefónica International Wholesale Services América S.A. (TIWS América) (together, Applicants).

Telxius USA, a Florida company, is a wholly owned, direct subsidiary of TIWS América, a Uruguay company. TIWS América is a wholly owned, direct subsidiary of Telxius Telecom, S.A.U. a Spanish company, which in turn is a wholly-owned, direct subsidiary of Telefónica S.A., a Spanish company whose shares are traded publicly on the Madrid stock exchange. No individual or entity has a ten-percent-or-greater direct or indirect equity or voting interest in TIWS América or Telxius USA.

Edge USA, a Delaware company, is a wholly-owned, direct subsidiary of Facebook, Inc. The Chan Zuckerberg Initiative, LLC (CZI) owns 14.2% of Facebook's outstanding shares and holds a 52.2% voting interest in Facebook. Mark Zuckerberg, a U.S. citizen and the Chairman and Chief Executive Officer of Facebook, owns all of CZI's member interests and overall holds approximately 14.7% of Facebook's outstanding shares and holds an approximate 60% voting interest in Facebook. No other individual or entity has a ten-percent-or-greater direct or indirect equity or voting interest in Facebook.

Microsoft Infrastructure, a Delaware company, is a wholly owned, direct subsidiary of Microsoft Corporation. No individual or entity has a ten-percent-or-greater direct or indirect equity or voting interest in Microsoft Corporation.

Cable Design and Capacity: The MAREA cable system will have a single segment between Virginia Beach and Bilbao, with a total length of 6605 kilometers. The cable will consist of eight optical fiber pairs, with a total design capacity of 20 Tbps per fiber pair.

Ownership of the Cable System and Landing Points: The newly constructed cable landing station at Virginia Beach, Virginia, will be managed, operated, and controlled on a day-to-day basis by Telxius USA. Telxius USA will hold a 50% ownership interest in the cable station, and Edge USA and Microsoft Infrastructure will each hold a 25% interest in the cable landing station. Within the MAREA area of the cable landing station building, Edge USA, Microsoft Infrastructure, and Telxius USA will each control separate private spaces for their own equipment, and will share common space for MAREA shared facilities.

The wet segments of the cable will be owned as follows: (1) U.S. territorial waters: Telxius USA (50%), Edge USA (25%), and Microsoft Infrastructure (25%), (2) International Waters: TIWS América (50%), Edge Network Services Limited (Edge) (25%), and Microsoft Datacenter Netherlands B.V. (Microsoft Datacenter) (25%), and (3) Spanish territorial waters: Microsoft Datacenter (25%), Edge (Spain Branch) (25%), and Telxius Cable Espana, S.L. (25%). The cable landing station at Bilbao, Spain, will be owned by Edge (Spain Branch) (25%), Microsoft Datacenter (25%), and Telxius Cable Espana S.L. (50%). Although Edge and Microsoft Datacenter own portions of the MAREA cable system, they are not joint applicants under the Commission's rules because they will not use the U.S. endpoint of the cable station and do not own or control a U.S. cable station. Additionally, as neither Telxius Cable Espana (Spain Branch) nor Edge (Spain Branch) owns or controls a U.S. cable landing station or owns a 5-percent-or-greater interest in MAREA, neither is required by the Commission's rules to be a joint applicant for the MAREA cable system. See 47 CFR § 1.767(h)(1)(2).

Regulatory Status of the Cable: The Applicants propose to operate the MAREA cable on a non-common carrier basis. Applicants claim that they will use the capacity on the MAREA cable system either as an input for services offered by their affiliates or by providing bulk capacity to wholesale and enterprise customers on particular terms and conditions pursuant to individualized negotiations. Application at 4-5. Specifically, MAREA will provide Edge USA and its affiliates with capacity to support Facebook's global platform to connect its users and data centers in the Northern Virginia region. MAREA will also provide Microsoft Infrastructure and its affiliates with capacity to support Microsoft's cloud

— services offerings and connect its data centers, and provide TIWS América and Telxius USA with capacity to support their wholesale capacity businesses in Europe and the Americas. Applicants also state that MAREA will compete directly with multiple cables serving the trans-Atlantic market, including Columbus III, AE Connect, Apollo, Atlantic Crossing-1, FLAG Atlantic-1, Hibernia Atlantic, TAT-14, TGN Atlantic, and Yellow/Atlantic Crossing-2. Application at 6.

Applicants have provided information and demonstrated that the proposed operation of the cable on a non-common carrier basis satisfies the requirements set forth in *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). See also *Submarine Cable Landing License Report and Order*, 16 FCC Rcd at 22202-22203, paras. 69-70; *Review of Commission Consideration of Applications under the Cable Landing License Act*, IB Docket No. 00-106, Notice of Proposed Rulemaking 15 FCC Rcd 20789, 20815-20818, paras. 62-67 (2000).

Conditions and Requirements: Applicants shall comply with the routine conditions specified in section 1.767(g)(1)-(14) of the Commission's rules, 47 C.F.R. § 1.767(g)(1)-(14), and with the requirements of section 1.768 of the Commission's rules, 47 C.F.R. § 1.768 (notifications and prior approval for submarine cable landing licensees that are or propose to become affiliated with a foreign carrier).

Telxius USA and TIWS América are affiliated with a foreign carrier that is presumed to have market power in Spain. Telxius USA and TIWS América each agree to accept and abide by the reporting requirements in section 1.767(l) of the Commission's rules, 47 CFR § 1.767(l), for the U.S.-Spain route.

We grant the Petition to Adopt Conditions to Authorizations and Licenses (Petition) filed in this proceeding on May 2, 2017, by the Department of Homeland Security, with the concurrence of the Department of Justice, and the Department of Defense (DOD). Accordingly, we condition grant of this application on Telxius Cable USA, Inc. abiding by the commitments and undertakings contained in the April 28, 2017 from Guillermo Cañete, President, Telxius Cable USA, Inc., to the Assistant Secretary for Policy, DHS, Department of Defense Chief Information Officer, and the General Counsel, Defense Information Systems Agency (2017 LOA). A failure to comply and/or remain in compliance with any of these commitments and undertakings shall constitute a failure to meet a condition of the cable landing license and thus grounds for declaring license terminated without further action on the part of the Commission. Failure to meet a condition of the license may also result in monetary sanctions or other enforcement action by the Commission. A copy of the Petition and the 2017 LOA are publicly available and may be viewed on the FCC website through the International Bureau Filing System (IBFS) by searching for SCL-LIC-20160525-00012 and accessing "Other filings related to this application" from the Document Viewing area.

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