



PUBLIC NOTICE

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DA No. 18-1026

Report No. SCL-00226

Friday October 5, 2018

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.

SCL-AMD-20180510-00009 E Crosslake Fiber USA LP

Amendment

Grant of Authority

Date of Action: 09/26/2018

Amendment filed by Crosslake Fiber USA LP to their application for a license to land and operate in the United States a non-common carrier fiber-optic submarine cable system connecting Toronto, Ontario, with Cambria, New York (Crosslake Fibre cable system). File No. SCL-LIC-20180216-00002, Public Notice, Streamlined Submarine Cable Landing License Applications Accepted for Filing, Report No. SCL-00209S (IB, March 8, 2018). Applicant amends the application to include updated landing point information for its New York landing.

The cable landing license application, as amended, is granted. See SCL-LIC-20180216-00002.

Submarine Cable Landing License
Grant of Authority

Date of Action: 09/26/2018

Acceptability for Filing Public Notice: Application filed by Crosslake Fiber USA LP (CF USA LP) for a license to land and operate in the United States a non-common carrier fiber-optic submarine cable system connecting Toronto, Ontario, with Cambria, New York (Crosslake Fibre cable system). The Application was placed on Public Notice on March 8, 2018. File No. SCL-LIC-20180216-00002, Public Notice, Streamlined Submarine Cable Landing License Applications Accepted for Filing, Report No. SCL-00209S (IB, March 8, 2018). CF USA LP amended its application to include updated landing point information for its New York landing point. See File No. SCL-AMD-20180510-00009, Public Notice, Streamlined Submarine Cable Landing License Applications Accepted for Filing, Report No. SCL-00213S (IB, May 17, 2018). The Applicant was granted Special Temporary Authority on June 18, 2018 to construct the U.S. end points of, and test at its own risk those portions of the Crosslake Fibre system in U.S. territory. See File No. SCL-STA-20180606-00014. Applicant filed a supplement with updated ownership information on August 10, 2018. See File Nos. SCL-STA-20180606-00014 and SCL-AMD-20180510-00009.

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 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://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, filed a Petition to Adopt Conditions to Authorizations and Licenses on September 25, 2018. DHS has no objection to the Commission approving authority to construct, land, and operate the Crosslake Fibre cable system, provided that the Commission conditions its approval on the commitment of Crosslake Fiber USA LP to abide by the undertakings set forth in the September 10, 2018, Letter of Assurances from Crosslake Fiber USA LP to DHS.

Actions Taken: (1) Grant of Cable Landing License to Crosslake Fiber USA LP for the purpose of constructing, landing and operating a private fiber-optic submarine cable network, the Crosslake Fibre cable system, connecting Toronto, Ontario, with Cambria, New York (Crosslake Fibre cable system, and (2) grant of the Petition to Adopt Conditions to Authorizations and Licenses filed on September 25, 2018, by the Agencies.

Licensee Information: The Applicant for the cable landing license for the Crosslake Fibre cable system is Crosslake Fiber USA LP.

CF USA LP is a Delaware corporation. CF USA LP is ultimately controlled by Emil W. Henry, Jr., a U.S. citizen. The 10-percent-or-greater direct or indirect voting and equity interest holders of CF USA LP are: (1) Crosslake Fiber USA LLC (CF USA LLC), a Delaware company (general partner of and 100% voting interest (no equity) in CF USA LP); (2) Crosslake Fibre LP, a Canada company (sole limited partner of and 100% equity interest in CF USA LP, and 100% voting and equity interest in CF USA LLC); (3) 2608254 Ontario Inc., a Canada company (general partner of and 100% voting and 0.01% equity interest in Crosslake Fibre LP); (4) Connect Investments LP (Connect Investments), a Delaware company (limited partner of and 93.26% equity interest in Crosslake Fibre LP, and 93.26% voting and equity interest in 2608254 Ontario Inc.); (5) Tiger Infrastructure Partners Fund II Crosslake AIV LP (Tiger), a Delaware company (limited partner of and 78% equity interest (no voting) in Connect Investments); (6) Tiger Infrastructure Partners Fund II (Europe) Crosslake AIV LP (Tiger Europe), a Delaware company (limited partner of and 22% equity interest (no voting) in Connect Investments); (7) Tiger Infrastructure Associates GP II LP (Tiger Infra), a Delaware company (general partner of and 100% voting interest (no equity) in Connect Investments, and general partner of and 100% voting interest and 1.5% equity interest in Tiger); (8) Emil Henry VI LLC (Tiger LLC), a Delaware company (general partner of and 100% voting and equity interest in Tiger Infra, and (9) Emil W. Henry, Jr. (Emil Henry) (sole member and manager and 100% voting and equity interest in Tiger LLC and Tiger II LLC). The remaining 6.74% equity interest in each of Crosslake Fibre LP and 2608254 Ontario Inc. is held by a mix of Canadian and U.S. investors, including Canadian-citizen management of CF USA LLC. No other entity or individual will hold a 10-percent-or-greater direct or indirect voting or equity interest in Tiger Infra or CF USA LP., or, as shown below, in Tiger or Tiger Europe.

The 10-percent-or-greater direct or indirect voting and equity interest holders in Tiger are: (1) District of Columbia Retirement Board (DCRB), a District of Columbia company (limited partner of and 15.22% equity interest (no voting) in Tiger); (2) CAT Holding, LLC (CAT), a Delaware company (limited partner of and 10.87% equity interest (no voting) in Tiger); (3) Trust u/a/d December 24, 1985 f/b/o the Issue of Dirk Ziff (CAT Trust), a Florida company (99% voting and equity interest in CAT); (4) Kiewit Infrastructure Co. (Kiewit), a Delaware company (limited partner and 8.70% equity interest (no voting) in Tiger); (5) Kiewit Infrastructure Group, Inc. (Kiewit Group), a Delaware company (100% voting and equity interest in Kiewit); (6) Kiewit Corporation (Kiewit Corp.), a Delaware company (100% voting and equity interest in Kiewit Group); (7) Peter Kiewit Sons', Inc. (Kiewit Sons), an employee-owned Delaware company with no controlling shareholder (100% voting and equity interest in Kiewit Group); (8) BAE Systems Pension Scheme (BAE Scheme), an England company (limited partner of and 26.09% equity interest (no voting) in Tiger); and (9) Tiger Infra (100% voting and 1.5% equity interest in Tiger, which is ultimately controlled by Emil Henry. No investor in DCRB and BAE Scheme, shareholder in Kiewit Sons, or beneficiary under the CAT Trust has a 10-percent-or-greater voting or equity interest in CF USA LP. No other entity or individual will hold a 10-percent-or-greater direct or indirect voting or equity interest in Tiger or CF USA LP.

The 10-percent-or-greater direct or indirect voting and equity interest holders in Tiger Europe are: (1) Nationwide Pension Fund Trustee Limited (Nationwide), an England company (limited partner of and 98.5% equity interest (no voting) in Tiger Europe); (2) Tiger Infrastructure Associates GP II LP (Europe) Ltd. (Tiger Infra Europe), a Cayman Islands company (general partner of and 100% voting and 1.5% equity interest in Tiger Europe); (3) Tiger Infrastructure Associates GP II LP (Europe) S.a.r.l. (Tiger Infra Europe S.a.r.l.), a Luxembourg company (100% voting and equity interest in Tiger Infra Europe); (4) Tiger Infrastructure UK 1 Limited (Tiger Infra UK), an England company (100% voting and equity interest in Tiger Infra Europe S.a.r.l.); (5) Tiger Infrastructure Partners LP (Tiger Infra LP), a Delaware company (100% voting and equity interest in Tiger Infra UK); (6) Emil Henry III LLC (Tiger 2 LLC), a Delaware company (100% voting and equity interest in Tiger Infra LP); and (7) Emil Henry (sole member and manager and 100% voting and equity interest holder in Tiger 2 LLC). No investor in DCRB has a 10-percent-or-greater voting or equity interest in CF USA LP. No other entity or individual will hold a 10-percent-or-greater direct or indirect voting or equity interest in Tiger Europe or CF USA LP.

Cable Design and Capacity: The Crosslake Fibre cable system will consist of a single, unrepeated segment across Lake Ontario, with a total length of 58 kilometers. The system will consist of 96 fiber pairs with an initial design capacity of 25 Terrabits per second (Tbps) per fiber pair, for a total of 2,400 Tbps, based on current technology. As an unrepeated system, the Crosslake Fibre cable does not require power feed

equipment typically housed in a cable landing station. Instead of a cable station, CF USA LP will construct, own, and operate an equipment hut in Cambria, New York. In Toronto, Ontario, the fiber pairs will terminate directly at a carrier hotel housing Equinix's TR2 data center.

Ownership of the Cable System and Landing Points: CF USA LP will own and operate the U.S.-territory portion of Crosslake Fibre, including that portion of the wet link in the U.S.-territory portion of Lake Ontario and the cable facilities and equipment hut in Cambria, New York. CF USA LP's commonly-controlled Canadian affiliate, Crosslake Fibre ULC, will own and operate that portion of the wet link beyond U.S. territory.

Regulatory Status of the Cable: CF USA LP proposes to operate the cable system on a private, non-common carrier basis. Applicant states that the Crosslake Fibre System will compete with existing providers' facilities on the U.S.-Canada route, including Zayo, CenturyLink, Hydro One, Bell Canada, GTT, XO Communications, Rogers, and Cogeco. CF USA LP states that capacity (primarily dark fiber) will not be sold indifferently to the user public, but will be sold in bulk capacity to particular carriers, wholesale, enterprise, and government customers pursuant to individually-negotiated indefeasible rights of use (IRUs) and capacity leases, the terms of which will vary depending on the characteristics and needs of the particular capacity purchaser.

Applicant has 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 or 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 (Cable Landing License Act).

Conditions and Requirements:

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

We grant the Petition to Adopt Conditions to Authorizations and Licenses (Petition) filed in this proceeding on September 25, 2018 by the Department of Homeland Security. Accordingly, we condition grant of the application on Crosslake Fiber USA LP abiding by the commitments and undertakings contained in the September 10, 2018 letter from Michael Cunningham, Manager, Crosslake Fiber USA, LLC (the general partner of Crosslake Fiber USA LP), to the Assistant Secretary for Policy, DHS (2018 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 2018 LOA are publicly available and may be viewed on the FCC website through the International Bureau Filing System (IBFS) by searching for SCL-LIC-20180216-00002 and accessing "Other filings related to this application" from the Document Viewing area.
