



# PUBLIC NOTICE

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Report No. SCL-00245

## 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-LIC-20180417-00008 EATN Undersea Cable Corporation

Submarine Cable Landing License

Grant of Authority

Acceptability for Filing Public Notice: Application filed by ATN Undersea Cable Corporation (ATN Cable or Applicant) for a license to land and operate a non-common carrier fiber-optic submarine cable extending between the islands of St. Thomas and St. Croix in the United States Virgin Islands (USVI) - the VILink System. Applicant filed a supplement to the application on July 9, 2018. (July 13, 2018 Supplement). The Application was placed on Public Notice on July 13, 2018, Streamlined Submarine Cable Landing License Applications Accepted for Filing, File No. SCL-LIC-20180417-00008, Public Notice, Report No. SCL-00217S (IB, rel. July 13, 2018). No comments or oppositions were filed in response to the Public Notice.

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 the 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); Submarine Cable Landing License Requests, State Department Media Note (Revised) (rel. December 20, 2001) available at <https://2001-2009.state.gov/t/pa/prs/ps/2001/6951.htm>. The Department of Homeland Security (DHS) filed a letter to defer action on July 24, 2018. DHS filed a Petition to Adopt Conditions to Authorizations and Licenses on July 11, 2019 (Petition). DHS has no objection to the Commission approving authority to construct, land and operate the VILink System cable, provided that the Commission conditions its approval on the commitment of ATN Undersea Cable Corporation to abide by the undertakings set forth in the June 18, 2019 Letter of Assurances from ATN Undersea Cable Corporation to DHS.

Actions Taken: (1) Grant of Cable Landing License to ATN Undersea Cable Corporation for the purpose of landing and operating a non-common carrier fiber-optic submarine cable system connecting Nazareth, St. Thomas and Christiansted, St. Croix in the United States Virgin Islands (USVI); (2) waiver of section 1.767(h)(1) of the Commission's rules, 47 CFR §1.767(h)(1), in connection with the license; and (3) grant of the Petition to Adopt Conditions to Authorizations and Licenses filed on July 11, 2019 by the Department of Homeland Security.

Licensee Information: The applicant for the cable landing license for the VILink System is ATN Undersea Cable Corporation.

ATN Cable is a wholly-owned subsidiary of ATN International, Inc. (ATN), a publicly traded corporation organized in Delaware. According to the Applicant, as of February 12, 2018, only one individual or entity has a ten percent or greater direct or indirect equity or voting ownership interest in ATN International, Inc.: Cornelius B. Prior, Jr., a U.S. citizen, owns 27.3% of ATN International, Inc.

Cable Design and Capacity: The VILink System will be a high-capacity digital fiber-optic system landing in Nazareth, St. Thomas and Christiansted, St. Croix. It will have one non-repeated, linear segment composed of 24 fiber strands. The cable's initial deployment will use 10 gigabit/second wavelengths on a single fiber pair, and may be upgraded to use 40 and/or 100 gigabit/second technology in the future. Applicant states that the engineered life expectancy of the cable is 25 years.

Ownership of the Cable System and Landing Points: ATN Cable will be the landing party in both St. Thomas and St. Croix. ATN Cable will exclusively control and operate all aspects of the VILink System. The Virgin Islands Telephone Corporation d/b/a Viya (Viya), an affiliate of ATN Cable (both ATN Cable and Viya are wholly-owned subsidiaries of ATN International, Inc.), will lease the land under the beach manholes in both Nazareth and Christiansted for 25-year terms and Viya will sublet access to ATN Cable for the same term. Applicant further states that Viya or one of its commonly controlled USVI affiliates will own both beach manhole vaults and the backhaul facilities to the Nazareth and Christiansted landing stations, which are expected to be located in the Viya central office locations in Nazareth and Christiansted. Viya (or its affiliate) will lease or provide an indefeasible right of use (IRU) over these facilities (i.e., the vaults, backhaul facilities, and landing stations) to ATN Cable for a 25 year term. Applicant says that in the event that its construction plans change, it will provide notice of the change to the Commission no later than 90 days prior to commencement of construction.

Applicant requests a waiver of Section 1.767(h)(1) of the rules so that its affiliates need not be joint applicants for the VILink System license. ATN Cable argues that it "will exclusively operate and control the VILink System, and will have unfettered access to those component facilities [i.e., beach manhole vaults, landing stations, and the fiber backhaul facilities between them] that it leases or IRUs from other commonly controlled ATN subsidiaries" and therefore Viya and its affiliates do not need to be applicants/licensees. July 13, 2018 Supplement at 4.

Section 1.767(h)(1) requires that "any entity that owns or controls a cable landing station in the United States" shall be an applicant for, and licensee on, a cable landing license. 47 C.F.R. § 1.767(h)(1). According to ATN Cable, since it will exclusively operate and control the VILink System and have unfettered access to facilities that it leases or IRUs it is not necessary for Viya or any other entities to be a licensee. July 13, 2018 Supplement at 4-5. Furthermore, ATN Cable notes that all VILink System component facilities that are not directly owned by ATN Cable will be owned by its affiliates and under common control with ATN Cable. Id. at 5.

The purpose of the 1.767(h)(1) requirement is to ensure that entities having a significant ability to affect the operation of the cable system become licensees so that they are subject to the conditions and responsibilities associated with the license. See Submarine Cable Landing License Report and Order, 16 FCC Rcd at 22194-95, paras. 53-54. While Viya or its affiliate is the owner of the cable landing station where the VILink System cable will land in St. Thomas and St. Croix, we find that, based upon the agreements between ATN Cable and Viya described above, Viya and its affiliates will not have the ability to significantly affect the operation of the cable system. ATN Cable will retain effective operational authority and provide direction to Viya in all matters relating to the St. Thomas and St. Croix landing stations. Accordingly, we grant ATN Cable a waiver of section 1.767(h)(1) and do not require Viya or its affiliates to be on this Cable Landing License.

Regulatory Status of the Cable: Applicant proposes to operate the VILink System on a non-common carrier basis. ATN Cable intends to use the VILink System's capacity to provide communications services to customers of Viya, its affiliate. ATN Cable may also sell excess capacity on a wholesale basis to other carriers pursuant to individually tailored and negotiated terms and conditions. It also states that since other submarine cable systems serve the St. Thomas-St. Croix route (such as viNGN and AT&T C-1) and that competitive alternatives (e.g., satellite and microwave links) are also available, the VILink System will not enable ATN Cable to exercise market power on the interisland route and will instead increase competition and service on the route.

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 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, § 1.768 (Notification by and prior approval for submarine cable landing licenses that are or propose to become affiliated with a foreign carrier).

We grant the Petition to Adopt Conditions to Authorizations and Licenses filed on July 11, 2019 by the Department of Homeland Security (Petition). Accordingly, we condition grant of this application on ATN Cable abiding by the commitments and undertakings contained in the June 18, 2019 letter from Mary Mabey, Secretary, ATN Undersea Cable Corporation, to the Assistant Secretary for Border, Immigration, and Trade, Office of Strategy, Policy, and Plans, U.S. Department of Homeland Security (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 the 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 LOA are publicly available and may be viewed on the FCC website through the International Bureau Filing System (IBFS) by searching for SCL-LIC-20180417-00008 and accessing "Other filings related to this application" from the Document Viewing area.

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