

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
MFS GLOBENET, INC.	)	
	)	
Application for a license to land and	)	File No. SCL-96-4
operate in the United States a private	)	
submarine fiber optic cable extending	)	
between the United States and the	)	
United Kingdom	)	

**CABLE LANDING LICENSE**

**Adopted: October 1, 1996**

**Released: October 3, 1996**

By the Chief, Telecommunications Division:

1. In this Order, we grant the application of MFS Globenet, Inc., ("MFS Globenet") under the Cable Landing License Act<sup>1</sup> for authority to land and operate a private fiber optic submarine telecommunications cable system, "MFS-1" and "MFS-2," extending between the United States and the United Kingdom. These cables will be connected to form a fully redundant fiber optic ring between the United States and the United Kingdom.<sup>2</sup> Their landing points will be in the New York City area and in the Lands End area of Cornwall in the United Kingdom. MFS Globenet will operate the cable system on a non-common carrier basis. We find that the proposed cable system would serve the public interest by providing additional capacity and cost-efficient communications between the United States and the United Kingdom. We find that MFS Globenet has provided sufficient information under our rules to comply with the Cable Landing License Act and therefore grant the cable landing license, subject to the conditions listed below.

**The Application**

2. MFS Globenet is a Delaware corporation and a wholly owned subsidiary of MFS International, Inc. ("MFSI"), also a Delaware corporation. MFS Globenet will own the beach head cable segments and will own and operate the landing station facilities. MFS Communications Limited ("MFSL"), a wholly owned subsidiary of MFS Globenet, is expected to be the owner of the corresponding facilities in the United Kingdom, subject to anticipated regulatory developments in the United Kingdom. MFS Globenet and/or a wholly owned subsidiary of MFS Globenet will own 100

<sup>1</sup> An Act Relating to the Landing and Operation of Submarine Cables in the United States, 47 U.S.C. §§ 34-39 (1994) (Cable Landing License Act).

<sup>2</sup> On August 1, 1996, MFS Globenet amended its application by specifying that it seeks to construct and operate an additional fiber optic cable to form a fully redundant fiber optic ring cable system between the United States and the United Kingdom.

percent of the "wet" portion of the submarine cable system.<sup>3</sup> MFSI is 100-percent owned by MFS Communications Company, Inc., a Delaware corporation the shares of which no single shareholder owns 10 percent or more.

3. The proposed cables will use optical fiber technology that employs the appropriate transmission rate necessary to meet the capacity requirements of the users. They will be constructed using state-of-the-art SDH transport equipment and optical amplifiers. Each cable will consist of two fiber pairs, each supporting two multiplexed STM-16 systems, resulting in a transmission speed of 5 Gbps per fiber pair and an entire cable capacity of 10 Gbps, or 4,032 E1 circuit equivalents. The cable system will be designed to operate at and support the standard circuit speeds of E1, DS3, STM-1, and STM-4. The cables together will form a fully redundant fiber optic ring that provides its own restoration services.

4. The capacity of the cable system will be sold or leased to users on a non-tariffed, non-common carrier basis. MFS Globenet will offer bulk capacity to a specific class of eligible users, including common carriers, on the basis of ownership, indefeasible rights of use, or lease of capacity. MFS Globenet states that it will not hold itself out indifferently to serve the public and will make individual decisions, in particular cases, about whether and on what terms to deal. It states that it is therefore not required to apply for authority under Title II of the Communications Act of 1934<sup>4</sup> because it is not offering the proposed services on a common carrier basis, and it urges the Commission to consider its application pursuant only to the Cable Landing License Act.

#### Comments

5. MFS Globenet's application was placed on public notice on June 21, 1996. On July 19, Atlantic Express Communications, L.L.C., filed a Petition to Deny, arguing that the application is deficient and should be denied or dismissed.

6. Atlantic Express argues that MFS Globenet has provided insufficient information as to the ownership of the proposed cable. It argues that without specific information as to the ownership of the cable, the Commission cannot make the findings necessary under the Cable Landing License Act. Atlantic Express also argues that the fact that MFSI and its subsidiaries would own and control both ends of the cable system presents an important policy issue that may have precedential implications for other applications to the United Kingdom and other destination countries. Atlantic Express would have us act on this application "only . . . in the context of the principles it may establish for action on applications by foreign entities for end-to-end ownership."<sup>5</sup> Finally, Atlantic Express asserts that MFS Globenet has not provided the information required by Section 1.767 of our rules<sup>6</sup> with respect to the additional cable referred to in its August 1 amendment.

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<sup>3</sup> Letter from Andrew D. Lipman and Helen E. Disenhaus, Attorneys for MFS Globenet, Inc., to William F. Caton, Acting Secretary, Federal Communications Commission (Sept. 5, 1996).

<sup>4</sup> 47 U.S.C. §§ 201-229.

<sup>5</sup> Reply to Opposition to Petition to Deny at 4 n.3.

<sup>6</sup> 47 C.F.R. § 1.767 (1995), as amended by the Section 214 Streamlining Order.

7. In its opposition to Atlantic Express's petition, MFS Globenet argues that it has provided sufficient ownership information under the Commission's rules. It states that the cable stations in the United States and the United Kingdom would be 100-percent owned by a wholly owned MFS affiliate. On September 5, 1996, MFS Globenet filed a letter clarifying that MFS Globenet and/or a wholly owned subsidiary of MFS Globenet would also own 100 percent of the "wet" portion of the cable system.<sup>7</sup>

8. MFS Globenet also argues that the proposed end-to-end ownership should weigh in its favor because the issues of reciprocity and national security that arise when foreign entities propose to land cables in the United States do not arise here. It explains that MFS Globenet is a nondominant U.S. carrier unaffiliated with any dominant foreign carriers, and its ownership and control of both ends of the cable system eliminates all concerns relating to foreign carriers landing a cable on U.S. shores.<sup>8</sup> The applicant also argues that its control of both ends enhances its ability to construct and operate advanced fiber optic facilities in competition with longer-established providers.

9. Pursuant to Section 1.767(b) of the Commission's rules,<sup>9</sup> the Cable Landing License Act, and Executive Order No. 10530,<sup>10</sup> we informed the Department of State of MFS Globenet's application.<sup>11</sup> The Department of State, after coordinating with the National Telecommunications and Information Administration and the Department of Defense, stated that it has no objection to the issuance of the cable license.<sup>12</sup>

#### Discussion

10. MFS Globenet requests a license under the Commission's private submarine cable policy to promote competition in the provision of international transmission facilities.<sup>13</sup> Pursuant to this policy, the Commission has authorized non-common carrier cables where there is no legal compulsion

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<sup>7</sup> Letter from Andrew D. Lipman and Helen E. Disenhaus, Attorneys for MFS Globenet, Inc., to William F. Caton, Acting Secretary, Federal Communications Commission (Sept. 5, 1996).

<sup>8</sup> Opposition to Petition to Deny at 5.

<sup>9</sup> 47 C.F.R. § 1.767(b) (1995).

<sup>10</sup> Exec. Order No. 10,530, *reprinted as amended in* 3 U.S.C.A. § 301 at 1052 (1985).

<sup>11</sup> Letter from Diane J. Cornell, Chief, Telecommunications Division, International Bureau, Federal Communications Commission, to Michael T.N. Fitch, Deputy U.S. Coordinator, Office of International Communications and Information Policy, U.S. Department of State (July 12, 1996).

<sup>12</sup> Letter from Richard C. Beard, Senior Deputy U.S. Coordinator, International Communications and Information Policy, U.S. Department of State, to Donald H. Gips, Chief, International Bureau, FCC (Sept. 23, 1996).

<sup>13</sup> *See Tel-Optik, Ltd.*, 100 F.C.C.2d 1033, 1041 (1985).

to serve the public indifferently and no reason implicit in the nature of the operations to expect an indifferent holding-out to the eligible user public.<sup>14</sup>

11. Because of the wide availability of common carrier circuits on existing and future cables and satellite circuits between the United States and the United Kingdom,<sup>15</sup> there is no public-interest reason to require that MFS Globenet's proposed cable facilities be provided on a common carrier basis.<sup>16</sup> Also, in light of the sizable demand for telecommunications facilities, we see no prospect of creating significant overcapacity by the introduction of non-common carrier facilities so as to threaten the economic viability of existing common carrier cable or satellite facilities.<sup>17</sup> Thus, there is no reason to require MFS Globenet to operate the proposed cable on a common carrier basis.

12. In addition, because MFS Globenet will make "individualized decisions, whether and on what terms to deal" and does not undertake to "carry for all people indifferently,"<sup>18</sup> there is no reason to expect that the proposed cable circuits would be held out to the public indifferently.<sup>19</sup> We thus conclude that MFS Globenet will not offer capacity in the MFS-1 and MFS-2 cables to the public on a common carrier basis and thus is not subject to regulation under Title II of the Communications Act.<sup>20</sup>

13. With respect to Atlantic Express's concerns about the sufficiency of information provided regarding ownership of the cable, MFS Globenet has supplemented its application by stating that the undersea portion of the cable will be wholly owned by MFS Globenet and/or a wholly owned subsidiary of MFS Globenet. On that basis, we find that the information submitted by the applicant as to ownership of each part of the proposed cable is sufficient to comply with Section 63.18 and for us to evaluate the application under the Cable Landing License Act.

14. We agree with MFS Globenet that ownership of both ends of the cable by MFSI and its subsidiaries would enhance competition in the United States and the United Kingdom, because MFS's

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<sup>14</sup> See *Optel Communications, Inc.*, 8 FCC Rcd 2267 (1993) (conditional license); see also *National Ass'n of Regulatory Util. Comm'rs v. FCC*, 525 F.2d 630 (D.C. Cir. 1976) (*NARUC I*), cert. denied, 425 U.S. 992 (1976).

<sup>15</sup> The continental United States and the United Kingdom are served by Intelsat satellite circuits and a number of other submarine cables, including the TAT-12/TAT-13 cable network, see *TAT-12/TAT-13 Cable Landing License*, 8 FCC Rcd 4808 (1993), and the Atlantic Express I and II cables, see *Atlantic Express Cable Landing Licenses*, File Nos. SCL-95-005 and SCL-95-006 (June 10, 1996).

<sup>16</sup> See *Optel*, 8 FCC Rcd at 2268.

<sup>17</sup> See *id.* at 2268-69.

<sup>18</sup> See *NARUC I*, 525 F.2d at 641.

<sup>19</sup> See *id.* at 630; see also *Transgulf Communications Ltd., Inc.*, 6 FCC Rcd 2335 (1991); *Transnational Telecom Ltd.*, 5 FCC Rcd 598 (1990); *Pacific Telecom Cable, Inc.*, 2 FCC Rcd 2686 (1987) (conditional license); 4 FCC Rcd 8061 (1989) (final license).

<sup>20</sup> 47 U.S.C. §§ 201-229; see *Tel-Optik*, 100 F.C.C.2d at 1046; see also *AT&T Submarine Systems, Inc.*, File No. S-C-L-94-006, ¶¶ 16-29 (rel. May 8, 1996).

U.K. affiliate is a relatively new entrant in the United Kingdom and thus does not possess market power. In addition, MFS Globenet's U.S. affiliates are regulated as non-dominant. We also agree that end-to-end cable ownership by a U.S.-owned company or its affiliates does not raise any reciprocity or national security issues.

15. Consistent with prior decisions, we find that MFS Globenet's descriptions that MFS-1 and MFS-2 will land "in the New York City area, including Long Island, and central New Jersey" and "in the Lands End area of Cornwall" to be sufficient to determine whether the proposed cable system would comply with the provisions of the Cable Landing License Act and Commission rules.<sup>21</sup> Pursuant to Section 1.767(a)(5) of the Commission's rules, MFS Globenet must provide a specific description of the landing locations, including a map, no later than ninety days prior to construction, and we condition this license upon final approval of the landing points. The Commission will give public notice of this description, and grant of the license will be considered final unless we issue a public notice to the contrary no later than sixty days after receipt of the specific description of the landing points.

16. Because MFS Globenet's August 1 amendment stated that MFS-2 will operate together with MFS-1 as a fully redundant fiber optic ring, we find that it is not an "individual cable system" for which a separate application is required under Section 1.767(e). The information provided in the application and the amendment is therefore sufficient to enable the Commission to grant a single cable landing license for the entire proposed system.

17. Based on the information provided by MFS Globenet and pursuant to the Commission's procedures implementing the National Environmental Policy Act of 1969,<sup>22</sup> we conclude that the grant of the requested authorizations would have no significant effect on the quality of the human environment and is therefore categorically excluded from environmental processing. Consequently, MFS Globenet is not required to submit an environmental assessment with this application.

18. Accordingly, we conclude that U.S. interests under the Cable Landing License Act will be served by grant of the license to MFS Globenet, as conditioned below.

#### Ordering Clauses

19. Consistent with the foregoing, we hereby GRANT AND ISSUE, under the provisions of the Cable Landing License Act and Executive Order 10530, MFS Globenet, Inc., a license to land and operate a cable system consisting of two high-capacity fiber optic digital submarine cables (two fiber pairs each, operating at 5 Gbps per fiber pair) extending between the United States and the United Kingdom, with landing points in the New York City area, including Long Island and central New Jersey, and the Lands End area of Cornwall in the United Kingdom. This grant is subject to all rules and regulations of the Federal Communications Commission; any treaties or conventions relating to communications to which the United States is or may hereafter become a party; any action by the

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<sup>21</sup> See, e.g., *Guam Telecom Ltd.*, 10 FCC Rcd 12,104 (1995); *Alaska Telecom Ltd.*, 10 FCC Rcd 6072 (1995); *Transnational Telecom Ltd.*, 5 FCC Rcd at 600; *Pacific Telecom Cable, Inc.*, 2 FCC Rcd at 2688.

<sup>22</sup> 47 C.F.R. §§ 1.1301-1.1319 (1995).

Commission or the Congress of the United States rescinding, changing, modifying, or amending any rights accruing to any person hereunder; and the following conditions:

- (1) The location of the cables within the territorial waters of the United States of America, its territories and possessions, and upon its shore shall be in conformity with plans approved by the Secretary of the Army, and the cables shall be moved or shifted by the Licensee at its expense upon the request of the Secretary of the Army whenever he or she considers such course necessary in the public interest, for reasons of national defense, or for the maintenance or improvement of harbors for navigational purposes;
- (2) The Licensee shall at all times comply with any requirements of United States government authorities regarding the location and concealment of the cable facilities, buildings, and apparatus with a view of protecting and safeguarding the cables from injury or destruction by enemies of the United States of America;
- (3) The Licensee or any persons or companies directly or indirectly controlling it or controlled by it or under direct or indirect common control with it shall not acquire or enjoy any right, for the purpose of handling or interchanging traffic to or from the United States, its territories or possessions, to land, connect, or operate cables or landlines, to construct or operate radio stations, or to interchange traffic, that is denied to any other United States carrier by reason of any concession, contract, understanding, or working arrangement to which the Licensee or any persons controlling it or controlled by it are parties;
- (4) Neither this license nor the rights granted herein shall be transferred, assigned, or in any manner either voluntarily or involuntarily disposed of or disposed of indirectly by transfer of control of the Licensee to any persons, unless the Federal Communications Commission shall give prior consent in writing;
- (5) The Licensee shall notify the Commission in writing of the precise locations at which the cables will land no later than ninety days prior to commencing construction of cable landing stations at those locations. The Commission will give public notice of the filing of these descriptions, and grant of this license will be considered final unless the Commission issues a notice to the contrary no later than sixty days after receipt of the specific descriptions of landing points;
- (6) The Commission reserves the right to require the Licensee to file an environmental assessment or environmental impact statement should it determine that the landing of the cables at those locations and construction of necessary cable landing stations would significantly affect the environment within the meaning of Section 1.1307 of the Commission's procedures implementing the National Environmental Policy Act of 1969; this license is subject to modification by the Commission upon its review of any environmental assessment or environmental impact statement that it may require pursuant to its rules;
- (7) The Licensee shall maintain no less than a 50-percent ownership interest and voting control share in the cables, including 100-percent ownership in the cable stations in the United States and in the U.S. land portion of the cables from the stations to the U.S. beach joint of the submerged portion of the cables;

- (8) The Licensee shall, by application, obtain Commission approval prior to the sale or transfer to a foreign entity of five percent or more in the aggregate of U.S.-owned and -controlled stock;
- (9) This license is revocable by the Commission after due notice and opportunity for hearing pursuant to section 2 of "An Act Relating to the Landing and Operation of Submarine Cables in the United States," 47 U.S.C. § 35, or for failure to comply with the terms of the authorizations;
- (10) The Licensee shall notify the Commission in writing of the date on which the cables are placed in service, and this license shall expire 25 years from such date, unless renewed or extended upon proper application, and, upon expiration of this license, all rights granted under it shall be terminated; and
- (11) The terms and conditions upon which this license is given shall be accepted by the Licensee by filing a letter with the Secretary, Federal Communications Commission, Washington, D.C. 20554, within 30 days of the release of the cable landing license.
20. It is further ordered that Atlantic Express's petition to deny is hereby dismissed.

21. This Order is issued under Section 0.261 of the Commission's rules, 47 C.F.R. § 0.261, and is effective upon release. 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 public notice of this order (see 47 C.F.R. § 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

*George S. [Signature]*

Diane Cornell  
Chief, Telecommunications Division  
International Bureau