



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
445 12th STREET S.W.
WASHINGTON D.C. 20554

News media information 202-418-0500
Internet: <http://www.fcc.gov> (or <ftp.fcc.gov>)
TTY (202) 418-2555

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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, 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: 09/20/2019

Acceptability for Filing Public Notice: Application filed by GU Holdings Inc. (GU Holdings) for a license to construct, land, and operate a non-common carrier fiber-optic submarine cable system connecting Los Angeles, California and Valparaiso, Chile. The cable system will be known as the Curie cable system. The Application was placed on Public Notice on October 30, 2018. See Streamlined Submarine Cable Landing License Applications Accepted for Filing, File No. SCL-LIC-20181008-00034, Public Notice, Report No. SCL- 00227S (IB, rel. Oct. 30, 2018). No comments or oppositions were filed in response to the Public Notice. The Applicant was granted Special Temporary Authority on December 21, 2018 to construct, connect and test at its own risk those portions of the cable system in U.S. territory prior to the grant of this cable landing license. See File Nos. SCL-STA-20181207-00039, SCL-STA-20190530-00017.

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 <https://2001-2009.state.gov/r/pa/prs/ps/2001/6951.htm>. The Department of Homeland Security (DHS) filed a Petition to Adopt Conditions to Authorizations and Licenses on September 19, 2019 (Petition). DHS has no objection to the Commission approving authority to construct, land, and operate the Curie cable system, provided that the Commission conditions its approval on the commitment of GU Holdings to abide by the undertakings set forth in the September 18, 2019 Letter of Assurances from GU Holdings to DHS.

Actions Taken: (1) Grant of Cable Landing License to GU Holdings for the purpose of landing and operating a non-common carrier fiber-optic submarine cable system, Curie, connecting Los Angeles, California and Valparaiso, Chile; (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 September 19, 2019 by the Department of Homeland Security.

Licensee Information: GU Holdings, a Delaware corporation, is a wholly-owned subsidiary of Google International LLC. Google LLC holds a 100% interest in Google International (97% direct and 3% through its wholly owned subsidiary, YouTube, LLC). Google LLC is wholly owned by XXVI Holdings Inc., which in turn is wholly owned by Alphabet Inc. All of these entities are organized in the state of Delaware. According to GU Holdings, the following persons (all U.S. citizens) have a 10% or greater voting or equity interest in Alphabet Inc. as of March 29, 2018: Larry Page (42.5% of Class B common stock, giving him a 25.9% voting interest); and Sergey Brin (41.1% of Class B common stock, giving him a 25.1% voting interest). No other individual or entity has ten percent or greater direct or indirect voting or equity interest in GU Holdings.

Cable Design and Capacity: The cable system will consist of the main trunk from Los Angeles, California, to Valparaiso, Chile (Main Trunk) and three stubbed branches. The first stubbed branch will point towards Mazatlán, Mexico, the second towards Panama City, Panama, and the third towards Lurín, Peru. All three stubbed branches will be on the high seas. The Main Trunk will have a total length of 10,476 kilometers and will consist of four fiber pairs. The stubbed branches will each have a total length of 10 kilometers and consist of four fiber pairs. Each fiber pair will have a total design capacity of 18 Tb/s (for a total of 72 Tb/s for the system as a whole). Currently, there are no specific plans to build out of the stubbed branches. The system will provide capacity to connect GU Holdings' affiliates' data centers and points of presence in the United States and South America. GU Holdings states that the grant of the license will serve the public interest, convenience and necessity because the system will provide new and replacement capacity on U.S.-South American routes, where demand has substantially increased in recent years. Further, GU Holdings states that this system will be would be the first cable to directly connect South America to the West Coast of the United States, ultimately strengthening the capacity of U.S.-South American telecommunications.

Ownership of the Cable System and Landing Points: GU Holdings and its affiliates - Google Infrastructure Bermuda Limited (GIB) and Inversiones y Servicios Dataluna Limitada (Dataluna) - will hold 100% of the participation (i.e. economic) and voting interests in the system's Main Trunk and stubbed branches. GU Holdings will own 100% participation and voting interest in the portion of the Main Trunk in the U.S. territory. GIB will own 100% participation and voting interest in the portion of the Main Trunk in international waters. Dataluna will own 100% participation and voting interest in the portion of the Main Trunk in Chilean territory. GIB will hold 100% participation and voting interest in each of the three stubbed branches. GIB and Dataluna will not use the U.S. end points of the system.

The system will use an existing cable landing station in Los Angeles, California (the LA4 Station), which is owned by Equinix, Inc. (Equinix) and controlled by GU Holdings. The system will also use an existing cable landing station, in Valparaiso, Chile (the Century Link Station), which is owned by Century Link Chile S.A. and controlled by Dataluna.

Applicant requests a waiver of Section 1.767(h)(1) of the rules so that its affiliates need not be joint applicants for the Curie license. GU Holdings argues that although Equinix owns the LA4 Station it will have no independent ability to affect the system's operation and consequently Equinix need not be an applicant/licensee for the cable system. GU Holdings states that Equinix will provide certain limited services that will not provide Equinix with any ability to affect significantly the system's operation" and therefore Equinix need to be an applicant/licensee.

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 GU Holdings, since it will exclusively operate and control the Curie System and have unfettered access to facilities that it leases or IRUs it is not necessary for Equinix or any other entities to be a licensee. GU Holdings intends to contract with Equinix for the right to use collocation space in the LA4 Station for system equipment, including terminal equipment and power feed equipment. GU Holdings also intends to contract with Equinix for certain operation and maintenance services at LA4. The agreement with Equinix will have a term of 20 years and, at the sole discretion of GU Holdings, may be extended for additional term of 10 years.

The purpose of the 1.767(h)(l) 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 Equinix is the owner of the cable landing station in Los Angeles, we find that GU Holding has demonstrated that Equinix will not have the ability to significantly affect the operation of the Curie cable system. GU Holdings will retain effective operational authority and provide direction to Equinix in all matters relating to the LA4 Station. Accordingly, we grant GU Holdings a waiver of section 1.767(h)(l) and do not require Equinix to be on this Cable Landing License.

Regulatory Status of the Cable: Applicant proposes to operate the Curie System on a non-common carrier basis. GU Holdings intends to use the system capacity as an input for services offered by its affiliates or by providing bulk capacity to wholesale and enterprise customers on particularized terms and agreements pursuant to individual negotiations. GU Holdings will not sell capacity indifferently to the user public. GU Holdings state that the system capacity will either be used by GU Holdings and its affiliates to meet their own internal needs for bandwidth or made available to third parties pursuant to individually negotiated indefeasible rights of use and capacity leases, the terms which will vary depending on the characteristics and needs of the particular capacity purchase. GU Holdings further asserts that while providing substantial additional capacity on the U.S.-Chile route, the system will compete with a number of existing and proposed cable systems. GU Holdings contends that these alternative facilities providing U.S.-Chile connectivity are sufficient to preclude the system from being a bottleneck facility on that 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 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: GU Holdings shall comply with the routine conditions specified in section 1.767(g) of the Commission's rules, 47 § CFR 1.767(g), 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 19, 2019, by the Department of Homeland Security. Accordingly, we condition grant of the application on GU Holdings abiding by the commitments and undertakings contained in the September 18, 2019 Letter of Assurances from Austin Schlick, President, GU Holdings, Inc. to the Assistant Secretary for Border, Immigration and Trade, Office of Policy, DHS (2019 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 2019 LOA are publicly available and may be viewed on the FCC website through the International Bureau Filing System (IBFS) by searching for SCL-LIC-20181008-00034 and accessing "Other filings related to this application" from the Document Viewing area.
