



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

DA No. 20-347

Report No. SCL-00266

Friday March 27, 2020

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: 03/13/2020

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, the Dunant cable, connecting Virginia Beach, Virginia and Saint-Hilaire-de-Riez, France. The Application was placed on Public Notice on May 8, 2019. See Streamlined Submarine Cable Landing License Applications Accepted for Filing, File No. SCL-LIC-20190410-00015, Public Notice, Report No. SCL-00240S (IB, May 8, 2019). 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 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 letter to defer action on May 30, 2019. DHS filed a Petition to Adopt Conditions to Authorizations and Licenses on March 12, 2020. DHS has no objection to the Commission approving authority to construct, land, and operate the Dunant cable system, provided that the Commission conditions its approval on the commitment of GU Holdings Inc. to abide by the undertakings set forth in the March 10, 2020, Letter of Assurances from GU Holdings Inc. to DHS.

Actions Taken: (1) Grant of Cable Landing License to GU Holdings Inc. for the purpose of constructing, landing and operating a private fiber-optic submarine cable system, the Dunant cable system, connecting Virginia Beach, Virginia and Saint-Hilaire-de-Riez, France, (2) waiver of section 1.767(h)(1) of the Commission's rules, 47 CFR § 1.767, in connection with the license, and (3) grant of the Petition to Adopt Conditions to Authorizations and Licenses filed by DHS on March 12, 2020.

Licensee Information: GU Holdings is a Delaware corporation with its principal place of business in Mountain View, California. GU Holdings is a wholly owned subsidiary of Google International LLC. Google LLC holds an 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. Alphabet's shares are publicly traded on the NASDAQ stock market. 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 April 22, 2019: Larry Page (42.9% of Class B common stock, giving him a 26.1% voting interest); and Sergey Brin (43.1% of Class B common stock, giving him a 25.2% 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 Dunant cable system will consist of a single segment between Virginia Beach, VA, and Saint-Hilaire, France, with a total length of 6,600 kilometers. Dunant will consist of 12 fiber pairs, with a total design capacity of 25 Terabits per second (Tb/s) per fiber pair.

Ownership of the Cable System and Landing Points: GU Holdings and its affiliates - Google Infrastructure Bermuda Limited (GIB) and Google France Sarl (Google France) - will hold 100% of the equity and voting interests in the Dunant system. GU Holdings will own and control the system in U.S. territory. GIB will own and control the system in international waters. Google France will own and control the system in French territory. GU Holdings states that under 1.767(h)(2) of the Commission's rules, 47 CFR § 1.767(h)(2), GIB and Google France are not required to be applicants for the cable landing license since neither entity will use the U.S. endpoints of the system.

The system will use an existing cable landing station in Virginia Beach, VA, which is owned by Telxius Cable USA, Inc. (Telxius USA) and controlled by GU Holdings. Dunant will also use an existing cable landing station in Saint-Hilaire, France (the France Telecom La Pared Preneau Station), which is owned and controlled by Orange S.A. (Orange). Google France contracted with Orange to be the landing party in France. A landing party agreement between Google France and Orange provides that upon completion of Dunant, the supplier will convey to Orange the portion of the system that extends 12 nautical miles from France, and Orange will then grant Google France and indefeasible right-of-use (IRU) for the same portion of the system. Orange will neither own or control a cable landing station in the U.S., nor own or control a five percent or greater interest in the Dunant system.

GU Holdings requests a waiver of section 1.767(h)(1) of the Commission's rules, 47 § CFR 1.767(h)(1), which requires that "any entity that owns and controls a cable landing station in the United States shall be applicants for, and licenses on, a cable landing license." 47 § CFR 1.767(h)(1). According to GU Holdings, although Telxius USA owns the cable landing station in Virginia Beach it will have no independent ability to affect the system's operation, and inclusion of Telxius USA as a joint applicant is not necessary to ensure compliance by the GU Holdings with the Cable Landing License Act, the Commission's cable landing license rules, or the terms of any cable landing license. GU Holdings states that Telxius will provide certain limited services that will not provide Telxius with any ability to affect significantly the system's operation. GU Holdings intends to contract with Telxius for certain operation and maintenance services at the cable landing station and for the right to use separately caged collocation space in the cable landing station. GU Holdings states that Telxius will not have access to GU Holdings' cage except: (1) to perform certain smart hands maintenance services as per GU Holdings' directions and instructions; (2) to conduct work at the cage unrelated to the system, after providing GU Holdings advance notice and opportunity to supervise any such work; or (3) in cases of emergency. GU Holdings' agreement with Telxius will have a term of 25 years. GU Holdings will have operational authority over the landing in Virginia Beach and provide direction to all matters related to Dunant.

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 Telxius USA is the owner of the cable station where the Dunant system lands in the United States, we find that, based upon the agreements between the GU Holdings and Telxius USA described above, Telxius USA will not have the ability to affect significantly the operation of the cable system. Accordingly, we grant the GU Holdings a waiver of 1.767(h)(1) and do not require Telxius USA to be on the cable landing license for the Dunant system.

Regulatory Status of the Cable: GU Holdings proposes to operate the Dunant cable system on a non-common carrier basis. GU Holdings states that Dunant's new landing point at Virginia Beach, Virginia, will provide new and replacement capacity on the U.S.-European routes and will provide geographically-diverse capacity by landing in France, as most existing trans-Atlantic systems connect the U.S. with the United Kingdom, Ireland, and other Northern European countries. Further, the GU Holdings claims that Dunant will compete directly with the existing Apollo and FLAG systems on the U.S.-France route, and compete on broader U.S.-European routes with other cable systems that have connectivity to France via other cable systems and terrestrial networks (AEConnect, Atlantic Crossing-1, Marea, TAT-14, TGN-Atlantic, and Yellow/AC-2). GU Holdings states that it 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 conditions pursuant to individually negotiated indefeasible rights of use (IRU) and capacity leases, the terms of which will vary depending on the characteristics of the particular capacity purchase.

GU Holdings 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 Inc. will comply with the routine conditions set out in 1.767(g) of the Commission rules, 47 C.F.R. § 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 March 12, 2020 by the Department of Homeland Security (DHS). Accordingly, we condition grant of the application on GU Holdings Inc. abiding by the commitments and undertakings contained in the March 10, 2020, Letter of Assurances from Austin Schlick, President, GU Holdings, Inc. to the Assistant Secretary for Border, Immigration and Trade, Office of Policy, DHS (2020 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 2020 LOA are publicly available and may be viewed on the FCC website through the International Bureau Filing System (IBFS) by searching for SCL-LIC-20190410-00015 and accessing "Other filings related to this application" from the Document Viewing area.
