

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

In the Matter of	)	
	)	
AT&T CORP.	)	
	)	
MCI INTERNATIONAL, INC.	)	
	)	
PACIFIC GATEWAY EXCHANGE	)	
(BERMUDA) LIMITED	)	
	)	
THE ST. THOMAS AND SAN JUAN	)	
TELEPHONE COMPANY, INC.	)	
	)	
STAR TELECOMMUNICATIONS, INC.	)	
	)	
STARTEC GLOBAL COMMUNICATIONS, INC.)	)	
	)	
TELEFONICA LARGE DISTANCIA DE	)	
PUERTO RICO, INC.	)	
	)	
TELEGLOBE USA, INC.	)	
	)	
IDB WORLDCOM SERVICES, INC.	)	
	)	
WORLDxCHANGE COMMUNICATIONS	)	
	)	
Joint application for a license to land and operate	)	File No. SCL-98-005
a digital submarine cable system between	)	
Hollywood, Florida, in the United States, Italy,	)	
Spain and Portugal, the COLUMBUS-III	)	
Cable System	)	

**CABLE LANDING LICENSE**

**Adopted:** August 13, 1999

**Released:** August 20, 1999

By the Chief, Telecommunications Division:

**I. Introduction**

1. In this Order, we grant the joint application of the participating parties<sup>1</sup> (collectively "Joint

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<sup>1</sup> The Joint Applicants are AT&T Corp. (AT&T), MCI International Inc. (MCII), Pacific Gateway Exchange (Bermuda) Limited (PGE), the St. Thomas and San Juan Telephone Company, Inc. (STSJ), STAR Telecommunications, Inc. (STAR), Startec Global Communications, Inc. (Startec), Telefonica

Applicants") under the Cable Landing License Act<sup>2</sup> for authority to land and operate a digital submarine cable system to be called the COLUMBUS-III Cable System (COLUMBUS-III) extending between the United States, Italy, Spain, and Portugal. The cable will be operated on a common carrier basis.<sup>3</sup> We find that the Joint Applicants have 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.

## II. Application

2. AT&T is a corporation organized under the laws of New York. MCII, Teleglobe, WorldCom, and STAR are corporations organized under the laws of Delaware. PGE is a corporation organized and existing under the laws of Bermuda. STSJ is a corporation organized under the laws of the U.S. Virgin Islands. Startec is a corporation organized and existing under the laws of the state of Maryland. TLDI is a corporation organized and existing under the laws of the Commonwealth of Puerto Rico. WorldxChange Communications is the doing-business name of Communication TeleSystems International, a corporation organized and existing under the laws of the state of California. Each of the Joint Applicants is a common carrier subject to the Communications Act of 1934, as amended.

3. The Joint Applicants propose to land and operate COLUMBUS-III as a common carrier system owned by the Joint Applicants and by entities authorized to land and operate an international submarine fiber optic cable system in Italy, Spain, and Portugal. The proposed COLUMBUS-III system will extend between landing points at cable stations in Hollywood, Florida; Mazara de Vallo, Italy; Conil, Spain; and Lisboa, Portugal, and will be connected with the domestic networks in those countries. The Joint Applicants expect to activate COLUMBUS-III by September 1999.

4. COLUMBUS-III will consist of five segments. Segment S shall be the whole of the submarine cable and associated equipment provided between and including all the system interfaces and interconnection equipment at the relevant cable stations, and shall be composed of two optical fiber pairs per subsegment. There will be five subsegments, designated S1, S2, S3, S4, and S5 (see Attachment). These two fiber optic pairs will operate at 2.5 Gbps per wavelength per fiber pair in a trunk and branch structure configured as a collapsed ring. COLUMBUS-III will initially be configured with two wavelengths, but for future upgrading purposes the submerged plant has been designed to support up to eight wavelengths per fiber pair. The capacity of each fiber pair comprises

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Larga Distancia de Puerto Rico, Inc. (TLDI), Teleglobe USA, Inc. (Teleglobe), IDB WorldCom Services, Inc. (WorldCom), and WorldxChange Communications (WorldxChange).

<sup>2</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>3</sup> In a companion order, we grant the joint application for Section 214 authority (File No. ITC-98-437, DA 98-1637).

thirty-two Basic System Modules (BSM), with each BSM containing 63 Minimum Investment Units (MIUs).<sup>4</sup> Each fiber pair will be equipped at the outset with a capacity of 1008 MIUs.

5. COLUMBUS-III will have four other segments, each consisting of the cable terminal at each point. Segment D, consisting of the appropriate portion of the Hollywood, Florida, cable terminal, will be in United States territory. The other three segments, consisting of the appropriate portions of the cable terminals at Mazara de Vallo, Italy (Segment A), Conil, Spain (Segment B), and Lisboa, Portugal (Segment C), will be owned by the appropriate entities in each country. The cable will be extended at each point to the domestic networks of the various countries.

### III. Comments

6. The COLUMBUS-III joint application was placed on public notice on June 17, 1998. Comments were filed by WorldxChange on July 15, 1998. The Joint Applicants filed Comments in Opposition to WorldxChange on August 6, 1998. WorldxChange filed a Reply on August 13, 1998. No other comments were received. Pursuant to Section 1.767(b) of the Commission's rules,<sup>5</sup> the Cable Landing License Act, and Executive Order No. 10530, we informed the Department of State of the application.<sup>6</sup> The Department of State advised the Commission that it has no objection to the issuance of the cable landing license.<sup>7</sup>

### IV. Discussion

7. We have the responsibility, under the Cable Landing License Act, to grant cable landing licenses "upon such terms as shall be necessary to assure just and reasonable rates and service in the operation and use of cables so licensed."<sup>8</sup> The Joint Applicants have agreed to operate COLUMBUS-III on a common carrier basis. In a companion Memorandum Opinion, Order and Authorization,<sup>9</sup> we grant the Joint Applicants authority, pursuant to Section 214 of the Communications Act, to construct, acquire, and operate capacity in COLUMBUS-III on a common

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<sup>4</sup> A BSM is defined as a 155 Mbps digital line section with interfaces provided per all appropriate ITU-T Recommendations. A MIU is defined as a unit designated as the minimum unit of investment mapped onto a VC-12 and allowing the use of a nominal 2 Mbps bearer and all associated overhead bits per second for multiplexing in each direction per all appropriate ITU-T Recommendations.

<sup>5</sup> 47 C.F.R. § 1.767(b) (1997).

<sup>6</sup> Letter from Diane J. Cornell, Chief, Telecommunications Division, International Bureau, Federal Communications Commission, to Steven W. Lett, Deputy U.S. Coordinator, Office of International Communications and Information Policy, U.S. Department of State (June 17, 1998).

<sup>7</sup> Letter from Ambassador Vonya B. McCann, United States Coordinator, International Communications and Information Policy, U.S. Department of State, to Regina M. Keeney, Chief, International Bureau, Federal Communications Commission (Nov. 3, 1998).

<sup>8</sup> 47 U.S.C. § 35 (1994).

<sup>9</sup> See DA 99-1637.

carrier basis. Because this cable system will be subject to common carrier regulation under Title II of the Communications Act of 1934, the Commission will be able to ensure that "[a]ll charges, practices, classifications, and regulations . . . [are] just and reasonable,"<sup>10</sup> and that other common carrier obligations are fulfilled. We therefore conclude that it is unnecessary to impose the additional conditions proposed by WorldxChange requiring that each MIU of 2.048 Mbps have the same price without regard to the volume of MIUs purchased by each individual carrier and that each carrier be accorded equal MIU prices. We do, however, reserve the right to impose additional obligations on the operations of this submarine cable system if the public interest so requires.

8. The Joint Applicants, with the exception of TLDI, further certify that any affiliated foreign carriers do not have market power or the ability to discriminate against unaffiliated carriers through control of bottleneck services and facilities.<sup>11</sup> Based on their application, we find that the Joint Applicants' foreign affiliations do not raise concerns that could persuade us to deny the application under Section 2 of the Cable Landing License Act.<sup>12</sup> TLDI is affiliated with Telefonica de Espana, S.A. (TdeE). The Commission has found that TdeE has market power in Spain, one of the landing points of COLUMBUS-III. However, because Spain is a member of the World Trade Organization (WTO), we do not apply our effective competitive opportunities analysis, and we presume that there is no competition-based reason to deny TLDI's participation in ownership of COLUMBUS-III.<sup>13</sup> Further, TLDI has agreed to be regulated as dominant in its provision of service on the U.S.–Spain route.

9. For the reasons discussed in the companion Memorandum Opinion and Order, we reject WorldxChange's argument, made for the first time in its Reply Comments,<sup>14</sup> that the Robinson-Patman Anti-Discrimination Act<sup>15</sup> requires that we impose conditions on the grant of this license. We conclude that the Robinson-Patman Act does not apply because the interests at issue here are not "commodities of like grade and quality."<sup>16</sup>

10. COLUMBUS-III will have one landing point in the United States, in Hollywood, Florida. The new Hollywood cable terminal will be located at 460 NE 215th Street, Miami, Florida 33179. The beach manhole is planned for Cody Street in Hollywood. We find that the application's description of COLUMBUS-III's landing point is sufficient to satisfy the requirement of Section 1.767(a)(5) of the Commission's rules.

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<sup>10</sup> 47 U.S.C. § 201 (1994).

<sup>11</sup> 47 C.F.R. § 63.18(h)(6)(ii) (1997); *see* Application Attachment B for certifications.

<sup>12</sup> 47 U.S.C. § 35 (1994); *see* Application Attachment B.

<sup>13</sup> *See* Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, *Report and Order and Order on Reconsideration*, 12 FCC Rcd 23,891, ¶¶ 87–96 (1997); *see also* Modification of [COLUMBUS-II] Cable Landing License, DA 98-910 (rel. May 15, 1998), para. 9.

<sup>14</sup> *See* Reply of WorldxChange Communications (Aug. 13, 1998) at 12–16.

<sup>15</sup> 15 U.S.C. §§ 13–13b, 21a (1994).

<sup>16</sup> *See* 15 U.S.C. § 13(a).

11. Based on the information provided by the Joint Applicants and pursuant to the Commission's procedures implementing the National Environmental Policy Act of 1969,<sup>17</sup> we conclude that the grant of the requested authorization would not significantly affect the environment. Consequently, the Joint Applicants are not required to submit an environmental assessment, and this application is categorically excluded from environmental processing.

12. Accordingly, we conclude that U.S. interests under the Cable License Landing Act will be served by grant of the license to the Joint Applicants to land and operate COLUMBUS-III, as conditioned below.

### V. Ordering Clauses

13. Consistent with the foregoing, we hereby GRANT AND ISSUE the Joint Applicants a license to land and operate an optical fiber submarine cable system (consisting of two working fiber pairs initially configured with two wavelengths per fiber pair and operating at 2.5 Gbps per wavelength) extending between landing points at cable stations in Hollywood, Florida; Mazara de Vallo, Italy; Conil, Spain; and Lisboa, Portugal, under the provisions of the Cable Landing License Act and Executive Order 10530. 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 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 cable system within the territorial waters of the United States, its territories and possessions, and upon its shore shall be in conformity with plans approved by the Secretary of the Army, and the cable shall be moved or shifted by the Licensees at their 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 Licensees 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 for the purpose of protecting and safeguarding the cables from injury or destruction by enemies of the United States of America;
- (3) The Licensees or any persons or companies controlling them, controlled by them, or under direct or indirect common control with them do not enjoy and shall not acquire any right to handle traffic to or from the United States, its territories, or its possessions unless such service be authorized by the Commission pursuant to Section 214 of the Communications Act, as amended;
- (4) The Licensees or any persons or companies controlling them, controlled by them, or under direct or indirect common control with them shall not acquire or enjoy any right to land, connect, or operate submarine cables that is denied to any other United States company by

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<sup>17</sup> 47 C.F.R. §§ 1.1301–.1319 (1997).

reason of any concession, contract, understanding or working arrangement to which the Licensees or any persons controlling them, controlled by them, or under direct or indirect common control with them are parties;

- (5) 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 Licensees to any persons, unless the Federal Communications Commission shall give prior consent in writing;
- (6) The Commission reserves the right to require the Licensees 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) Pursuant to Section 2 of the Cable Landing License Act, 47 U.S.C. § 35; Executive Order No. 10530, as amended; and Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, the Commission reserves the right to impose additional common carrier or common-carrier-like regulation on the operations of the cable system if it finds that the public interest so requires;
- (8) The Licensees shall maintain de jure and de facto control of the U.S. portion of the cable system, including the cable landing stations in the United States, sufficient to comply with the requirements of this license;
- (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 Licensees shall notify the Commission in writing of the date on which the cable is 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 Licensees 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.

14. 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

Rebecca Arbogast  
Chief, Telecommunications Division  
International Bureau

COLUMBUS III CABLE SYSTEM

**Columbus III Architecture**

