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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

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Review of Commission Consideration  
of Applications under the Cable Landing  
License Act

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IB Docket No. 00-106

REPLY COMMENTS OF WORLDCOM, INC.

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## Summary

WorldCom and many other commenters in this proceeding agree that the Commission should simplify the proposed standards that applicants would be required to meet before cable landing licenses could qualify for streamlined processing. Like WorldCom, many commenters agree that the specific thresholds for streamlining eligibility proposed in the NPRM are too complex and that a bright-line test would enable more applicants to enjoy the benefits of streamlined processing.

WorldCom urges the Commission to reject Global Crossing's proposals because they will inhibit competition and efficient allocation of resources. Rather, the Commission should adopt a simpler bright-line test, consistent with its other streamlining orders, for determining which cable landing license applications should be eligible for streamlined treatment.

Finally, WorldCom agrees with a number of commenters that urge the Commission to endeavor to grant streamlined applications even earlier than 60 days from the date of public notice. WorldCom encourages the Commission to coordinate with the Executive Branch in order to expedite the process in which applications are reviewed.

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**REPLY COMMENTS OF WORLDCOM, INC.**

WorldCom, Inc. (“WorldCom”) hereby files these Reply Comments in response to the Commission’s Notice of Proposed Rule Making (“NPRM”) in the above-captioned proceeding.<sup>1</sup> WorldCom and many other commenters in this proceeding agree that the Commission should simplify the proposed standards that applicants would be required to meet before cable landing license applications could qualify for streamlined processing. Unless the standards are simplified, the Commission’s licensing of undersea cables would be more time-consuming, complex and burdensome than the existing procedures. WorldCom also urges the Commission to reject Global Crossing’s wholly self-serving and counterproductive proposals.

**I. NEARLY ALL OF THE COMMENTERS AGREE THAT THE COMMISSION’S PROPOSALS ARE UNNECESSARILY COMPLEX**

In its Comments, WorldCom emphasized that the proposals contained in the NPRM will add complexity to the Commission’s submarine cable licensing process, rather than eliminate it, as was the intention.<sup>2</sup> Nearly all the commenters in this proceeding agree.

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<sup>1</sup> *Review of Commission Consideration of Applications under the Cable Landing License Act*, IB Docket No. 00-106, Notice of Proposed Rulemaking, FCC 00-210 (rel. June 22, 2000) (“NPRM”).

<sup>2</sup> *See Comments of WorldCom*, at 6 (filed August 21, 2000) (“WorldCom Comments”).

For example, Level 3 Communications, LLC notes that the specific proposals would exacerbate rather than relieve bottlenecks in the licensing process. Likewise, Cable and Wireless USA (“C&W”) accurately explains that “the proposed eligibility criteria are so complex, that applicants would choose non-streamlined processing in order to avoid the possibility that factual disputes could delay processing time more than the average six months that it usually takes.”<sup>3</sup> AT&T emphasizes that the proposals fall far short of -- and in several instances conflict with -- the Commission’s pro-competitive goals.<sup>4</sup> Several other commenters, including Sprint Communications L.P. (“Sprint”),<sup>5</sup> 360networks, Inc. (“360networks”),<sup>6</sup> FLAG Telecom Holdings Limited, (“FLAG”),<sup>7</sup> TyCom Networks (US), Inc. (“TyCom”),<sup>8</sup> and Viatel, Inc. (“Viatel”)<sup>9</sup> echo WorldCom’s concern that the Commission’s proposed streamlining options would severely undermine the Commission’s

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<sup>3</sup> See Comments of Cable and Wireless USA, Inc., at 22 (filed August 21, 2000) (“C&W Comments”).

<sup>4</sup> See Comments of AT&T and Concert, at 2 (filed August 21, 2000) (“AT&T/Concert Comments”).

<sup>5</sup> Sprint notes that the FCC’s elaborate streamlining proposals are a complicated solution in search of a problem. The proposals would be particularly burdensome on consortium applicants. See Comments of Sprint Communications L.P., at 8 (filed August 21, 2000) (“Sprint Comments”).

<sup>6</sup> 360networks observes that each of the Commission’s three streamlining options requires the applicant to conduct unnecessary competitive analysis. See Comments of 360networks, Inc., at 4 (filed August 21, 2000) (“360networks Comments”).

<sup>7</sup> FLAG Telecom observes that the Commission will effectively streamline the process only if the criteria for qualification are simple and easy to apply. The evidentiary showing to qualify should not be more burdensome than the data showing required to be filed in ordinary, non-streamlined applications. See Comments of FLAG Telecom Holdings Limited, at 4 (filed August 21, 2000) (“FLAG Comments”).

<sup>8</sup> TyCom Networks notes that while the Commission’s proposals are thoughtful and thorough, they also are elaborate and complex. The Commission’s streamlining proposals could be difficult to administer, and might delay the processing of applications. See Comments of TyCom Networks (US), Inc., at 3 (filed August 21, 2000) (“TyCom Comments”).

<sup>9</sup> Viatel comments that the first two options require complex factual showings and should be rejected. See Comments of Viatel, Inc., at 5 (filed August 21, 2000) (“Viatel Comments”).

goal of simplifying the application process. The Commission thus should simplify its proposals by creating bright-line tests for streamlining, as discussed below.

## **II. THE COMMENTERS AGREE THAT THE COMMISSION'S STREAMLINING PROPOSALS SHOULD INCLUDE SIMPLE BRIGHT-LINE TESTS FOR CABLE LANDING LICENSE APPLICATIONS**

A number of commenters concur that streamlining can only be successful if a bright-line test is adopted. AT&T and FLAG Telecom ("FLAG") argue that the Commission can and should identify routes that are presumed to be competitive and thus qualify for streamlined treatment.<sup>10</sup> WorldCom agrees, as FLAG points out, that "it makes no sense agonizing over whether these routes warrant the full-blown competitive analyses of a traditional cable landing license application."<sup>11</sup> WorldCom also agrees with AT&T's analysis that a regional analysis may be more appropriate than a point-to-point analysis.<sup>12</sup> This approach is consistent with competitive realities, and the Commission itself has recognized the fact that widespread use of switched hubbing, refile, reorigination and transit services renders any point-to-point analysis meaningless.<sup>13</sup> WorldCom thus agrees with AT&T that the Commission should adopt a pro-competitive analysis that encompasses a regional approach.

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<sup>10</sup> See AT&T/Concert Comments at 42; see also FLAG Comments at 5.

<sup>11</sup> See FLAG Comments at 5.

<sup>12</sup> See AT&T/Concert Comments at 41.

<sup>13</sup> *Id.*

In its Comments, WorldCom proposed a bright-line test that is easy to understand and apply.<sup>14</sup> Specifically, WorldCom proposed that the Commission should create a list of foreign landing points that are considered to be “presumptively competitive,” and streamline all cable landing license applications that certify that the foreign landing points on a proposed cable are on this list.<sup>15</sup> Where foreign landing points on a proposed cable are not “presumptively competitive,” applications should still be eligible for streamlined processing if an applicant either: (1) certifies that the cable stations at the foreign end of the proposed cable are controlled by a non-dominant foreign carrier; or (2) demonstrates that ownership documents for the proposed cable contain pro-competitive conditions including collocation, backhaul, and capacity upgrade rights. All applications not eligible for streamlined processing under these tests would be subject to the normal processing in place today.

WorldCom’s proposed bright-line is consistent with the Commission’s successful deregulation of its Section 214 authorization and International Settlements Policy (“ISP”) rules.<sup>16</sup> In the *Section 214 Streamlining Order*, the Commission adopted a straightforward list of circumstances under which Section 214 applicants would be eligible for streamlining.<sup>17</sup> In the *ISP Reform Order*, the Commission adopted a simple bright-line test

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<sup>14</sup> The Commission’s Section 214 streamlining rules have been successful as a regulatory tool because they meet this standard. *See* WorldCom Comments at 8-9.

<sup>15</sup> For additional discussion of this proposal, *see* WorldCom Comments at 10.

<sup>16</sup> *See* 1998 Biennial Regulatory Review – Review of International Common Carrier Regulations, Report and Order, 14 FCC Rcd 4909 (1999) (“*Section 214 Streamlining Order*”); 1998 Biennial Regulatory Review – Reform of the International Settlements Policy and Associated Filing Requirements, Report and Order and Order on Reconsideration, 14 FCC Rcd 7963 (1999) (“*ISP Reform Order*”).

<sup>17</sup> *See* *Section 214 Streamlining Order*, 14 FCC Rcd at 4919, ¶ 22 (stating that applications are eligible for streamlining where, among other things, the applicant: (1) will serve unaffiliated routes; (2) has a foreign affiliate but the affiliate lacks market power; or (3) certifies that it will comply with dominant carrier safeguards).

for determining which U.S. carriers' accounting rate arrangements with foreign correspondents would be subject to regulation.<sup>18</sup>

Under WorldCom's proposed bright-line test involving regions or routes that are not "presumptively competitive," the Commission would retain regulatory control of arrangements with those foreign carriers that the Commission has specifically identified as having market power in their home markets. This approach comports with the ISP. As AT&T aptly notes in its Comments, the ISP prevents dominant carriers from discriminating against U.S. carriers.<sup>19</sup>

WorldCom's proposed test involving routes that are not "presumptively competitive" also is consistent with the WTO Reference Paper, which is designed to prevent major suppliers from engaging in anti-competitive, discriminatory behavior.<sup>20</sup> The WTO Reference Paper contains principles relating to competition safeguards, interconnection, transparency of licensing procedures, among other provisions.<sup>21</sup> As AT&T notes, "it thus requires cable station operators with market power to provide collocation and cost-based backhaul services and to allow collocated operators to provide backhaul services to themselves and others."<sup>22</sup> WorldCom agrees, and its proposed bright-line test is carefully

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<sup>18</sup> See ISP Reform Order, 14 FCC Rcd at 7978, ¶ 43. By retaining normal processing for arrangements involving foreign carriers that the Commission has specifically identified as having market power in their home markets, carriers will have near certainty regarding when streamlined processing applies.

<sup>19</sup> See AT&T/Concert Comments at 35 (citing *the ISP Reform Order*, ¶ 21).

<sup>20</sup> See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Report and Order on Consideration*, 12 FCC Rcd 23891 ("Foreign Participation Order"), at ¶ 27. The WTO Reference Paper has been adopted, in whole or in part, by more than 65 WTO Member countries. "Major supplier" is defined in the Reference Paper as a "supplier which has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for basic telecommunications services as a result of: (a) control over essential facilities; or (b) use of its position in the market." *Id.* at ¶ 340, n. 693.

<sup>21</sup> *Id.* at ¶ 340.

<sup>22</sup> See AT&T/Concert Comments at 37.

tailored to address these issues. The Commission thus should adopt WorldCom's proposed bright-line tests for processing applications.

### **III. THE COMMISSION SHOULD REJECT THE PROPOSALS MADE BY GLOBAL CROSSING**

In its Comments, Global Crossing suggests a number of highly burdensome and obviously self-serving "streamlining" proposals as alternatives to those set forth in the NPRM. To support its claim that the Commission should yet add further complexity to its streamlining proposals, Global Crossing argues that open investment "consortium" cables somehow raise competitive concerns by competing with private investment cables such as those owned by Global Crossing.<sup>23</sup> Indeed, Global Crossing goes so far as to say that open investment cables are "no longer necessary." This argument makes clear what Global Crossing is really asking the Commission to do: pick winners and losers in the submarine cable market. As an investor in both types of cable ownership vehicles, WorldCom is in a position to know that private investment and open investment cables each play an important role in the provisioning of submarine cable capacity. Competition does and should lead to a variety of cable ownership structures, and the Commission should not favor one business model over the other.

#### **A. Global Crossing's Competitive Concerns are Unfounded**

Global Crossing argues that private investment cables are more competitive than open investment cables because private cable owners such as Global Crossing are "carrier's

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<sup>23</sup> WorldCom uses the term "private investment cable" to mean a cable owned by one or several companies alone. WorldCom uses the term "open investment cable" to refer to consortia cables, like the Japan-U.S. Cable Network, that have open subscribership. WorldCom owns interests in both types of cable systems.

carriers" and do not themselves provide retail services, while open investment cable owners tend to be retail providers. Global Crossing's assertion is incorrect and irrelevant.

Global Crossing does not explain how it is better for consumers to separate owners of the inputs needed to provide international telecommunications services at the retail level from owners that actually provide retail services. Global Crossing focuses only on what is better for "carrier's carriers" like Global Crossing. Open investment cables, however, enable capacity to be constructed in a flexible and efficient manner by taking advantage of economies of scale and offering capacity ownership to a wide array of carriers, both small and large. There is nothing inherently superior about the financial arrangements that private investment cables entail. The decision on how to finance a cable will depend on a variety of circumstances that are particular to each business case and that regulation cannot predict.

Global Crossing entirely ignores the fact that some private cables are constructed by retail carriers to meet their own capacity needs. Moreover, many owners on open investment cables sell their capacity in the form of IRUs. Global Crossing's notion of the distinction between private and open investment cables, therefore, is overly simplistic. In short, Global Crossing's peculiarly negative view of carriers that invest in their own international capacity inputs, just as they construct their own domestic facilities, must be seen for what it is: an attempt to develop a niche for itself through regulation.

Global Crossing makes a number of other unsupported assertions. It contends that owners on open investment cables can prevent entry by competing cables because the same *carriers that control open investment cables also control key inputs of operating agreements and interconnection*. According to Global Crossing, carriers that might otherwise purchase capacity on private cables will instead feel obligated to "cluster" on the open investment

cable to ensure that the foreign carriers will offer them an operating agreement or interconnection arrangement.<sup>24</sup>

Global Crossing's scenarios are not based on reality. As AT&T points out in its Comments, the Commission has recently found on several occasions that U.S. carriers do not have difficulty in obtaining operating agreements or interconnection from foreign carriers.<sup>25</sup> Nor does Global Crossing point to a single instance in which any U.S. carrier has complained about its ability to obtain a traffic exchange agreement with a foreign carrier as a result of not investing in an open investment cable in which that foreign carrier is an investor.

More significantly, as AT&T points out, a very small portion of the traffic carried over the newest trans-oceanic cables is actually IMTS traffic. The vast majority of trans-oceanic circuits in use today and being planned are private circuits used for data and IP-related transmissions that are not subject to proportionate return and therefore do not require operating agreements with the foreign carriers.<sup>26</sup>

Finally, Global Crossing conveniently ignores the empirical evidence contained in the Japan-US Cable Network proceeding. There, Global Crossing asserted that the Commission should reject the Japan-US cable landing license application based on the same specious argument about clustering. Global Crossing, however, was able to obtain landing rights and interconnection in Japan, and has been very successful in selling capacity on its competing

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<sup>24</sup> See Comments of Global Crossing Ltd., at 9 (filed August 21, 2000) ("Global Crossing Comments").

<sup>25</sup> See AT&T/Concert Comments at 21-22.

<sup>26</sup> *Id.* at 20. Indeed, according to the FCC's Circuit Status Report, only 17 percent of trans-oceanic circuits are used to provide IMTS.

PC-1 Cable despite its objections and the Commission's ultimate grant of the Japan-US license.<sup>27</sup>

In sum, Global Crossing's claims that open investment cables prevent competition from private closed-investment cables are unsupported. The Commission should, therefore, reject Global Crossing's burdensome proposals to streamline only a very narrow category of cable landing license applications and to scrutinize non-streamlined applications using burdensome and unnecessary standards.

**B. Global Crossing's "Safe Harbor" Proposals are Self-Serving and Overly Burdensome**

Global Crossing urges the Commission to adopt the streamlining tests proposed in the NPRM, relying on specious competitive concerns as justification. Specifically, Global Crossing proposes that the Commission streamline applications under three "safe harbor" approaches: (1) on "thin routes;" (2) on proposed routes where the Commission has previously determined that a route is competitive; and (3) where the landing parties on the U.S. end of the cable have a combined share of no more than 35 percent of the active half circuits on the U.S. side of route, attributing IRUs to the IRU-holder and not the cable owner.<sup>28</sup> Global Crossing then argues that the applications that are not streamlined should be scrutinized using the standards proposed by the Commission in the NPRM. Presumably, applications that do not comply with those standards would be denied under Global Crossing's approach. Global Crossing's proposals should be rejected. They are unnecessary and far too burdensome.

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<sup>27</sup> See January 5, 2000 Press Release of Global Crossing, announcing \$100 million sale under which "KDD Group will use capacity on the Global Crossing Network to connect consumers in Asia, the United States, Latin America, and Europe."

<sup>28</sup> *Id.* at 11.

The Commission should reject out of hand Global Crossing's proposed third "safe harbor" standard, which would require no more than 35 percent capacity ownership on the U.S. side of the route. There simply is no basis for the Commission to discriminate among existing and new capacity owners. Global Crossing provides no rational basis for such a distinction, because there is none. Such a dichotomy would be harmful to competition and the customers of existing capacity owners. By arbitrarily restricting the amount of existing capacity that can be owned by an applicant or group of applicants for a new cable landing license, the effect would clearly be to preclude construction of new cables that would otherwise be built. As WorldCom noted in its Comments, the demand for cable capacity is voracious. Deterring construction of cables based on arbitrary capacity ownership, where there is no competitive concern, would have a negative effect on the growth of data and IP-based services, including the Internet.

As AT&T points out, the 35 percent capacity ownership restriction would lead to smaller open investment cables that otherwise might benefit from economies of scale.<sup>29</sup> In other words, the standard would provide artificial incentives to build less efficient cables, which ultimately could lead to higher prices for consumers.

Global Crossing urges the Commission to use the three streamlining standards proposed in the NPRM, which WorldCom and the majority of other commenters have demonstrated are too burdensome even as *streamlining* thresholds, and to apply those standards in order to scrutinize non-streamlined applications.<sup>30</sup> In essence, Global Crossing is asking the Commission to deny applications that cannot meet those standards.

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<sup>29</sup> See AT&T/Concert Comments at 31.

<sup>30</sup> See Global Crossing Comments at 13.

Global Crossing's proposal makes no attempt to hide the fact that it is asking the Commission to twist its regulatory policy to suit Global Crossing's narrow business objectives. Global Crossing's proposal would lead to a denial of streamlined treatment for most open investment cables and even many private investment cables. It insists, however, that IRUs should be attributed to IRU-holders and not capacity owners because virtually all of Global Crossing's capacity is sold via IRUs. Absent this exception, Global Crossing itself might be above the 35 percent ownership threshold on some routes. Global Crossing makes a similar self-serving proposal with respect to the Commission's "competitive capacity expansion test," arguing that IRUs should be attributed to IRU holders and that "dark fiber" should not be counted.<sup>31</sup> By so doing, Global Crossing would ensure that almost none of its huge amounts of capacity would be counted because most is either dark (unsold) or in the form of IRUs held by its customers.

Finally, Global Crossing's proposals are far too burdensome. Rather than assist the Commission in reducing its current cable landing license application processing rules, Global Crossing asks the Commission to add *additional* regulation and processes to its existing procedures. Clearly, the Commission should not ignore its objective of streamlining and deregulating the submarine cable rules. Perhaps not surprisingly, Global Crossing is the only party to file comments in this proceeding that does not think the proposals in the NPRM are too burdensome.

A number of Global Crossing's specific proposals demonstrate how much complexity and uncertainty they would add to the current cable landing process. For example, Global Crossing suggests that in determining the 50 percent threshold for the Commission's

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<sup>31</sup> *Id.* at 24.

“competitive capacity expansion” test, applicants could use section 43.61 circuit reports, supplemental information submitted by the applicants, and “periodic roundtables” conducted by the Commission to collect capacity ownership data.<sup>32</sup> According to Global Crossing, this complex and vague approach to determining a bright-line would then be used “as a general guideline, not as a talisman.”<sup>33</sup>

Incredibly, Global Crossing also asserts that all owners of U.S. landing stations under the “pro-competitive arrangement test” should be required to submit semi-annual circuit pricing and provisioning reports.<sup>34</sup> Global Crossing’s proposal would impose significant burdens on non-dominant U.S. carriers without any rationale. Global Crossing’s reference to the Section 271 compliance reports only highlights the absurdity of its proposal.

In sum, the Commission should reject Global Crossing’s self-serving and counterproductive regulatory approach, and instead focus on further simplifying its streamlining proposals.

#### **IV. STREAMLINING PROCEDURES**

WorldCom agrees with a number of commenters that urge the Commission to endeavor to grant streamlined applications even earlier than 60 days from the date the International Bureau issues a public notice accepting the application for filing. Level 3 proposes that an application that qualifies for streamlined processing should be granted 21 days after it is placed on public notice, while AT&T proposes that such applications should

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<sup>32</sup> *Id.* at 26.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 29.

be approved within 14 days upon public notice.<sup>35</sup> WorldCom supports a shorter processing window, such as 30 or 45 days (or less), and urges the Commission to take whatever steps are necessary to achieve this.<sup>36</sup>

WorldCom agrees with several commenters that the Commission should coordinate its efforts with the Executive Branch in order to expedite the process in which applications are reviewed. For example, TyCom suggests that the agencies implement an expedited process by which applications are forwarded to the three Executive Branch agencies and a timetable for review by these agencies.<sup>37</sup> C&W proposes that the Commission develop a standard form for Executive Branch approval.<sup>38</sup> Level 3 suggests that the Commission work with the Executive Branch to establish a two-week procedure for obtaining its approval. Approval would be automatic if no prior objections are raised within 14 days and supported on the record.<sup>39</sup> These proposals clearly indicate that there is an urgent need for the Commission to work with the Executive Branch in order to review cable landing license applications in a more timely manner. In sum, WorldCom strongly supports the Commission's efforts to expedite the processing time for streamlined applications.

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<sup>35</sup> See Level 3 Comments at 11. See also AT&T/Concert Comments at 12.

<sup>36</sup> See WorldCom Comments at 14.

<sup>37</sup> See TyCom Comments at 20.

<sup>38</sup> The form would identify the proposed cable, its landing points, the applicant(s) and provide two alternative boxes: (1) Application Approved and (2) Application Denied. Executive Branch comments also could be included on the form. See C&W Comments at 14.

<sup>39</sup> See Level 3 Comments at 12.

## VI. CONCLUSION

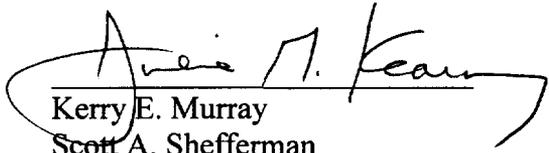
WorldCom and numerous commenters in this proceeding strongly agree with the Commission's objectives of expediting and simplifying its submarine cable landing license process. Like WorldCom, many commenters agree that the specific thresholds for streamlining eligibility proposed in the NPRM are too complex and that a bright-line test would enable more applicants to enjoy the benefits of streamlined processing.

WorldCom also urges the Commission to reject Global Crossing's proposals because they will inhibit competition and efficient allocation of resources. Rather, the Commission should adopt a simpler bright-line test, consistent with its other streamlining orders, for determining which cable landing license applications should be eligible for streamlined treatment.

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