

APPLICATION GUIDELINE AND REQUIREMENT LISTING
FOR
UNDERSEA CABLE LANDING LICENSES/PERMIT
APPLICATIONS

BTPSKAM

Bureau Telecommunications and Post St. Maarten
(2011)

UNDERSEA CABLE LANDING LICENSES/PERMIT APPLICATION REQUIREMENTS.

General Requirements:

(a) Applications for cable landing licenses should be filed in accordance with the provisions of that Executive Order. These applications should contain:

1. The name, address and telephone number(s) of the applicant;
2. The Government, State, or Territory under the laws of which each corporate or partnership applicant is organized;
3. The name, title, post office address, and telephone number of the officer and any other contact point, such as legal counsel, to whom correspondence concerning the application is to be addressed;

Technical Requirements:

4. A description of the submarine cable, including the type and number of channels and the capacity thereof. In the event a branching unit is utilized full disclosure on the type, location and use of the unit shall be included;
5. A specific description of the cable landing station on the shore of Sint Maarten and in foreign countries where the cable will land. The description shall include a map showing specific geographic coordinates, and may also include street addresses, of each landing station. The map must also specify the coordinates of any beach joint where those coordinates differ from the coordinates of the cable station. The applicant initially may file a general geographic description of the landing points; however, the granting of the application will be conditioned on the Regulatory Telecommunication Authority's final approval of a more specific description of the landing points, cable route, including all information required by this paragraph, to be filed by the applicant no later than ninety (90) days prior to construction. The Regulatory Telecommunication Authority will give public notice of the filing of this description, and grant of the license will be considered final if the Regulatory Telecommunication Authority does not notify the applicant otherwise in writing no later than ninety (90) days after receipt of the specific description of the landing points, unless the Regulatory Telecommunication Authority designates a different time period;

6. A statement as to whether the cable will be operated on a common carrier¹ or non-common carrier basis; A list of the proposed owners of the cable system, including each foreign or SXM cable landing station, their respective voting and ownership interests in the (each) SXM cable landing station, their respective voting interests in the wet link portion of the cable system, and their respective ownership interests by segment in the cable; For each applicant of the cable system, a certification as to whether the applicant is, or is affiliated with, a foreign carrier, including an entity that owns or controls a foreign cable landing station in any of the cable's destination markets. Include the citizenship of each applicant and information and certifications required; A certification that the applicant accepts and will abide by the routine conditions specified in paragraph (g) of this section; and Any other information that may be necessary to enable the Regulatory Telecommunication Authority to act on the application.

The applicant shall submit negotiated and concluded cable landing/co-location/interconnection or cross connection agreements for each landing station connecting the cable to St. Maarten.

7. Note to paragraph (a)(10): Applicants for cable landing licenses may be subject to consistency² compliance with the requirements of the Sint Maarten Harbor & Coastal Zone Management policies and guidelines, if they propose to conduct activities, in or outside of a coastal zone of Sint Maarten with a national-approved management plan, affecting any land or water use or natural resource of Sint Maarten coastal zone. Before filing their applications for a license to construct and operate a submarine cable system or to modify the construction of a previously approved submarine cable system, applicants must determine whether they are required to certify that their proposed activities will comply with the enforceable policies of a Dutch Sint Maarten approved Harbor & coastal management program. In order to make this determination, applicants should consult closely with the Sint Maarten Harbor and Coastal Management. The cable landing license application filed with the Regulatory Telecommunication Authority shall include any consistency

¹ A common carrier holds itself out to provide service to the general public without discrimination (to meet the needs of the regulator's quasi judicial role of impartiality toward the public's interest) for the "public convenience and necessity". Carriers who are not obligated to provide transportation to all who apply are not common carriers.

² A consistency certification is simply a statement certifying that the National permitted or national funded project has been designed to meet all international and local laws and that all necessary local permits have been obtained. This is usually just a paragraph in an application form that you are required to sign.

certification of approval by the Harbor and Coastal management. Upon documentation from the applicant, or notification from the Harbor and Coastal Management, that the harbor and coastal management has either concurred, or by its inaction, is conclusively presumed to have concurred with the applicant's consistency certification, the Regulatory Telecommunication Authority may take action on the application.

Environmental requirements:

Following the submission of the cable route, that Regulatory Telecommunications Authority may require environmental studies to be executed and surveys to be submitted to support proper protection of seabed/coral and/or sea life. The applicant shall be required to comply with all environmental requirements set. Applications not meeting these requirements shall not be processed.

Conditions:

Ownership transfer:

8. (i) If applying for authority to assign or transfer control of an interest in a cable system, the applicant shall complete paragraphs (a)(1) through (a)(3) of this section for both the transferor/assignor and the transferee/assignee. Only the transferee/assignee needs to complete paragraphs (a)(8) through (a)(9) of this section. At the beginning of the application, the applicant should also include a narrative of the means by which the transfer or assignment will take place. The application shall also specify, on a segment specific basis, the percentage of voting and ownership interests being transferred or assigned in the cable system, including in a SXM cable landing station. The Regulatory Telecommunication Authority reserves the right to request additional information as to the particulars of the transaction to aid it in making its public interest determination.
- (ii) In the event the transaction requiring an assignment or transfer of control application also requires the filing of a foreign carrier affiliation notification, the applicant shall reference in the application the foreign carrier affiliation notification and the date of its filing. See also paragraph (g)(7) of this section (providing for post-transaction notification of pro forma assignments and transfers of control).
- (iii) An assignee or transferee must notify the Regulatory Telecommunication Authority no later than thirty (30) days after either consummation of the assignment or transfer or a decision not to consummate the assignment or transfer. The notification shall identify the file numbers under which the initial license and the authorization of the assignment or transfer were granted.

- (b) These applications are acted upon by the Regulatory Telecommunication Authority after obtaining the approval of the Minister of Tourism Economics Affairs Traffic and Telecommunications and such assistance from any executive department or establishment of the Government as it may require.
- (c) Original files relating to submarine cable landing licenses and applications for licenses since October 10 2010 are kept by the Regulatory Telecommunication Authority. Such applications for licenses (including all documents and exhibits filed with and made a part thereof, with the exception of any maps showing the exact location of the submarine cable or cables to be licensed) and the licenses issued pursuant thereto, with the exception of such maps, shall, unless otherwise ordered by the Regulatory Telecommunication Authority, be open to public inspection in the offices of the Regulatory Telecommunication Authority on Sint maarten.
- (d) Original files relating to licenses and applications for licenses for the landing operation of cables on Sint Maarten prior to October 10 2010, were kept by the Bureau of Telecommunications in Curacao, and such files prior to 2010 should have been transferred to the Regulatory Telecommunication Authority, on Sint Maarten; and the Regulatory Telecommunication Authority in the event of missing information will obtain such files from the Regulatory Telecommunication Authority in Curacao.
- (e) A separate application shall be filed with respect to each individual cable system for which a license is requested, or for which modification or amendment of a previous license is requested. The application fee for a non common-carrier cable landing license is payment type code NCCL. Applicants for common carrier cable landing licenses shall pay the fees for both a common carrier cable landing license (payment type code CCCL) and overseas cable construction (payment type code OCCC). There is no application fee for modification of a cable landing license, except that the fee for assignment or transfer of control of a cable landing license is payment type code TCCL) of this chapter.
- (f) Applicants shall disclose to any interested member of the public, upon written request, accurate information concerning the location and timing for the construction of a submarine cable system authorized under this section. This disclosure shall be made within 30 days of receipt of the request.
- (g) Routine conditions. Except as otherwise ordered by the Regulatory Telecommunication Authority, the following rules apply to each licensee

of a cable landing license granted on or after October 10, 2010:

- (1) Grant of the cable landing license is subject to:
 - (i) All rules and regulations of the Regulatory Telecommunication Authority;
 - (ii) Any treaties or conventions relating to communications to which Sint Maarten is or may hereafter become a party; and
 - (iii) Any action by the Regulatory Telecommunication Authority or the Government of Sint Maarten rescinding, changing, modifying or amending any rights accruing to any person by grant of the license;
- (2) The location of the cable system within the territorial waters of Sint Maarten, its territories and possessions, and upon its shores shall be in conformity with plans approved by the Sint Maarten Government. The cable shall be moved or shifted by the licensee at its expense upon request of the Sint Maarten Authorities, whenever he or she considers such course necessary in the public Interest, for reasons of national security and safety, or for the maintenance and improvement of harbors for navigational purposes;
- (3) The licensee shall at all times comply with any requirements of the Sint Maarten 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 malicious intent, terrorists or enemies of Sint Maarten;
- (4) The licensee, or any person or company controlling it, controlled by it, or under direct or indirect common control with it, does not enjoy and shall not acquire any right to handle traffic to or from Sint Maarten, its territories or its possessions unless such service is authorized by the Regulatory Telecommunication Authority pursuant to the present Communications Act, or as may be as amended;
- (5)
 - (i) The licensee shall be prohibited from agreeing to accept special concessions directly or indirectly from any foreign carrier, including any entity that owns or controls a foreign cable landing station, where the foreign carrier possesses sufficient market power on the foreign end of the route to affect competition adversely in the SXM market, and from agreeing to accept special concessions in the future.
 - (ii) For purposes of this section, a special concession is defined as an

exclusive arrangement involving services, facilities, or functions on the foreign end of a SXM international route that are necessary to land, connect, or operate submarine cables, where the arrangement is not offered to similarly situated SXM submarine cable owners, indefeasible-right-of-user holders, or lessor's, and includes arrangements for the terms for acquisition, resale, lease, transfer and use of capacity on the cable; access to collocation space; the opportunity to provide or obtain backhaul capacity; access to technical network information; and interconnection to the public switched telecommunications network.

Note to paragraph (g)(5): Licensees may rely on the Regulatory Telecommunication Authority's list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points for purposes of determining which foreign carriers are the subject of the requirements of this section. The Regulatory Telecommunication Authority's list of foreign carriers that do not qualify for the presumption that they lack market power is available upon request.

- (6) Except as provided in paragraph (g)(7) of this section, the cable landing license and rights granted in the license shall not be transferred, assigned, or disposed of, or disposed of indirectly by transfer of control of the licensee, unless the Federal Communications Regulatory Telecommunication Authority gives prior consent in writing;
- (7) A pro forma assignee or person or company that is the subject of a pro forma transfer of control of a cable landing license is not required to seek prior approval for the pro forma transaction. A pro forma assignee or person or company that is the subject of a pro form transfer of control must notify the Regulatory Telecommunication Authority no later than thirty (30) days after the assignment or transfer of control is consummated. The notification must certify that the assignment or transfer of control was pro forma, and, together with all previous pro forma transactions, does not result in a change of the licensee's ultimate control. The licensee may file a single notification for an assignment or transfer of control of multiple licenses issued in the name of the licensee if each license is identified by the file number under which it was granted;
- (8) Unless the licensee has notified the Regulatory Telecommunication Authority in the application of the precise locations at which the cable will land, as required by paragraph (a)(5) of this section, the licensee shall notify the Regulatory Telecommunication Authority no later than ninety (90) days prior to commencing construction at that landing location. The Regulatory Telecommunication Authority will give public notice of the filing of each description, and grant of the cable landing

license will be considered final with respect to that landing location unless the Regulatory Telecommunication Authority issues a notice to the contrary no later than ninety (90) days after receipt of the specific description. See paragraph (a)(5) of this section;

- (9) The Regulatory Telecommunication Authority reserves the right to require the licensee to file an environmental assessment should it determine that the landing of the cable at the specific locations and construction of necessary cable landing stations may significantly affect the environment. The cable landing license is subject to modification by the Regulatory Telecommunication Authority under its review of any environmental assessment or environmental impact statement that it may require pursuant to its rules;
 - (10) The Regulatory Telecommunication Authority reserves the right, to impose common carrier regulation or other regulation consistent with the Cable Landing License policy or any related acts on the operations of the cable system if it finds that the public interest so requires;
 - (11) The licensee, or in the case of multiple licensees, the licensees collectively, shall maintain de jure and de facto control of the SXM portion of the cable system, including the cable landing stations in Sint Maarten, sufficient to comply with the requirements of the Regulatory Telecommunication Authority's rules and any specific conditions often license;
 - (12) The licensee shall comply with the requirements stipulated in the license and by law;
 - (13) The cable landing license is revocable by the Regulatory Telecommunication Authority after due notice and opportunity for hearing pursuant to failure to comply with the terms of the license or with the Regulatory Telecommunication Authority's rules; and
 - (14) The licensee must notify the Regulatory Telecommunication Authority within thirty (30) days of the date the cable is placed into service. The cable landing license shall expire twenty-five (25) years from the in-service date, unless renewed or extended upon proper application. Upon expiration, all rights granted under the license shall be terminated.
- (h) Applicants/Licensees. Except as otherwise required by the Regulatory Telecommunication Authority, the following entities, at a minimum, shall be applicants for, and licensees on, a cable landing license:
- (1) Any entity that owns or controls a cable landing station in Sint Maarten; and

- (2) All other entities licensed to undertake telecommunications services or operate telecommunications infrastructure owning or controlling a five percent (5%) or greater interest in the cable system and using the SXM points of the Cable system, having established a local landing partnership with a licensed telecommunication concession holder.
- (i) Processing of cable landing license applications. The Regulatory Telecommunication Authority will take action upon an application eligible for streamlined processing, as specified in paragraph (k) of this section, within forty-five (45) days after release of the public notice announcing the application as acceptable for filing and eligible for streamlined processing. If the Regulatory Telecommunication Authority deems an application seeking streamlined processing acceptable for filing but ineligible for streamlined processing, or if an applicant does not seek streamlined processing, the Regulatory Telecommunication Authority will issue public notice indicating that the application is ineligible for streamlined processing. Within ninety (90) days of the public notice, the Regulatory Telecommunication Authority will take action upon the application or provide public notice that, because the application raises questions of extraordinary complexity, an additional 90-day period for review is needed. Each successive 90-day period may be so extended.
- (j) Applications for streamlining. Each applicant seeking to use the streamlined grant procedure specified in paragraph (i) of this section shall request streamlined processing in its application. Applications for streamlined processing shall include the information and certifications required by paragraph (k) of this section. On the date of filing with the Regulatory Telecommunication Authority, the applicant shall also send a complete copy of the application, or any major amendments or other material filings regarding the application, to: the Regulatory Telecommunications Authority, and shall certify such service on a service list attached to the application or other filing.
- (k) Eligibility for streamlining. Each applicant must demonstrate eligibility for streamlining by:
- (1) Certifying that it is not a foreign carrier and it is nonaffiliated with a foreign carrier in any of the cable's destination markets;
 - (2) Demonstrating pursuant to (c)(l)(i) through (iii) of this chapter that any such foreign carrier or affiliated foreign carrier lacks market power; or
 - (3) Certifying that the destination market where the applicant is, or

has an affiliation with, a foreign carrier is a World Trade Organization (WTO)³ Member and the applicant agrees to accept and abide by the reporting requirements set out in paragraph (l) of this section. An application that includes an applicant that is, or is affiliated with, a carrier with market power in a cable's non-WTO Member destination country is not eligible for streamlining.

- (4) Certifying that for applications for a license to construct and operate a submarine cable system or to modify the construction of a previously approved submarine cable system, the submarine cable system will not be located in any location where the cable landing licenses maybe subject to the consistency certification requirements of the SXM Harbor & Coastal Zone Management.

- (l) Reporting Requirements Applicable to Licensees Affiliated with a Carrier with Market Power in a Cable's WTO Destination Market. Any licensee that is, or is affiliated with, a carrier with market power in any of the cable's WTO Member destination countries, and that requests streamlined processing of an application under paragraphs (j) and (k) of this section, must comply with the following requirements:
 - (1) File quarterly reports summarizing the provisioning and maintenance of all network facilities and services procured from the licensee's affiliate in that destination market, within ninety (90) days from the end of each calendar quarter. These reports shall contain the following:
 - (i) The types of facilities and services provided (for example, a lease of wet link capacity in the cable, collocation of licensee's equipment in the cable station with the ability to provide backhaul, or cable station and backhaul services provided to the licensee);
 - (ii) For provisioned facilities and services, the volume or quantity provisioned, and the time interval between order and delivery; and
 - (iii) The number of outages and intervals between fault report and facility or service restoration; and
 - (2) File quarterly circuit status reports, within ninety (90) days from the end of each calendar quarter and in the format set out by the Regulatory Telecommunications Annual circuit status report requirements with the exception that activated or idle circuits must be reported on a facility-by-facility basis and derived circuits need not be specified. See (c)(5) of this chapter.

³ The kingdom of the Netherlands is a member of the WTO via the EC. The WTO agreement as it pertains to the Dutch Caribbean territories/Islands were ratified by the Netherlands Antilles Federal Government.

- (m) (1) Except as specified in paragraph (m)(2) of this section, amendments to pending applications, and applications to modify a license, including amendments or applications to add a new applicant or licensee, shall be signed by each initial applicant or licensee, respectively. Joint applicants or licensees may appoint one party to act as proxy for purposes of complying with this requirement.
- (2) Any licensee that seeks to relinquish its interest in a cable landing license shall file an application to modify the license. Such application must include a demonstration that the applicant is not required to be a licensee under paragraph (h) of this section and that the remaining licensee(s) will retain collectively de jure and de fact control of the SXM portion of the cable system sufficient to comply with the requirements of the Regulatory Telecommunication Authority's rules and any specific conditions of the license, and must be served on each other licensee of the cable system.

Applications shall be filed to the attention of the Minister of Tourism Economics Affairs Traffic and Telecommunication through the Regulatory Telecommunications Authority.

The application shall entail compliance with all requirements set forth herein.

The application shall be execution in a standard petition format, in triplicate;

The application shall furthermore contain all documentation regarding civil works to be executed between the beach manhole and the cable landing station as submitted to the pertinent Ministry to acquire the permit for execution of such work. Right of way permits must be requested in so far required and a copy hereof shall accompany the application.

The application shall further contain the necessary documentation for review and certification by the Harbor and Coastal Management Agency, regarding projected activities to be undertaken in the Harbor and/or Coastal waters of St. Maarten.

In the event of cable crossings the applicant shall file the pertinent proof of no-objection issued by the cable owner/operator of the cable being crossed.

The application in compliance with all requirements shall be deemed complete for processing. Processing shall be executed in accordance with the procedures outlined, if a streamlined processing is not applicable.

The Regulatory Telecommunications Authority shall be deemed:
Bureau Telecommunications and Post t. Maarten

The Harbor and Coastal Management Agency shall be deemed:
The pertinent entity of the Harbor Group of Companies tasked with
the Harbor and Coastal of St. Maarten

All applications for permits regarding civil works and right of way
shall be directed to the Ministry of VROMI

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