

# **ATTACHMENT A**

15 December 2014

Mr. Alan Bersin  
Assistant Secretary  
Office of Policy  
U.S. Department of Homeland Security  
245 Murray Lane, SW  
Mail Stop 0445  
Washington D.C. 20528

Mr. Terry A. Halvorsen  
Acting Department of Defense Chief Information Officer  
c/o Mr. Mitchell Komaroff  
Director, Lifecycle Cyber Security Risk Management  
6000 Defense Pentagon, Rom 3D1048  
Washington, DC 20301-6000

Mr. John Carlin  
Assistant Attorney General for National Security  
U.S. Department of Justice  
National Security Division  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

**Re: Pending Federal Communications Commission (FCC) Applications for Transfer Control of Companies Holding International Section 214 Authority, Blanket Domestic Section 214 Authority, and a Submarine Cable Landing License Pursuant to Section 214 of the Communications Act of 1934, as Amended; ITC-T/C-20140820-00242; ITC-T/C-20140820-00244; SCL-T/C-20140820-00007.**

Dear Messrs Bersin, Halvorsen, and Carlin:

This Letter of Assurance (“LOA”) outlines the commitments of KCK Limited (“KCK”), Hibernia NGS Limited (“Hibernia”),<sup>1</sup> Hibernia Atlantic U.S. LLC (“HB Atlantic”), and Hibernia Media, LLC (“HB Media”), to the U.S. Department of Homeland Security (“DHS”), the Department of Justice (“DOJ”), and the U.S. Department of Defense (“DoD”) (collectively, the “U.S.G. Agencies”). KCK and Hibernia are providing this LOA to the U.S.G. Agencies to address national security, law enforcement, and public safety concerns raised by the U.S.G. Agencies in connection with the license applications referenced below.

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<sup>1</sup> In 2013, newly-formed Hibernia NGS Limited, a company formed under the laws of the Republic of Ireland, was inserted into the chain of ownership between Hibernia Group ehf (“Hibernia ehf”), a private limited liability company incorporated in Iceland, and its direct parent entity, CVC. In January 2014, Hibernia ehf merged with and into Hibernia, with Hibernia assuming Hibernia ehf’s responsibilities under the September 30, 2010 Letter of Assurance.

KCK and several other entities<sup>2</sup> have applied to transfer control of HB Atlantic and HB Media, holders of domestic and international Section 214 authority and, in the case of HB Atlantic, a submarine cable landing license, to KCK through a three stage transaction described further in the associated applications. Hibernia is a holding company for the five companies that collectively own and operate the Hibernia Atlantic Cable system. HB Atlantic currently holds a U.S. submarine cable landing license (FCC File# SCL-L1C-19990804-00012TC) for the Hibernia Atlantic submarine cable system, an undersea cable called "Hibernia Atlantic." The Hibernia Atlantic submarine cable system currently consists of cable landing stations that facilitate the exchange of traffic between the United States, Canada, Ireland, and the United Kingdom. The cable landing stations are located in: Lynn, MA; Halifax, Nova Scotia, Canada; Dublin, Ireland; Southport, United Kingdom; and Portrush, Northern Ireland. Further, HB Atlantic holds a license authorizing it to provide international global resale and facilities-based telecommunications services pursuant to Section 214 of the Communications Act of 1934, as amended (FCC File# ITC-214-20090612-00283). HB Media is the holder of a domestic and international Section 214 Authority previously held by Hibernia. See Notification, pursuant to Section 63.24(f) of the Commission's Rules, of a pro forma assignment of international Section 214 authority (File No. ITC-214-20100303-00093) (July 17, 2014)

On September 30, 2010, Hibernia provided a Letter of Assurance ("2010 LOA") to the U.S.G. Agencies setting forth various commitments associated with the Hibernia Atlantic cable system, on the express understanding that, promptly upon execution of the 2010 LOA, the U.S.G. Agencies would not object to the then-pending applications. KCK and Hibernia are constructing and will operate a new undersea six-fiber optic-pair cable system, known as the Project Express system, which will extend between Halifax, Nova Scotia, Canada, and Brean, United Kingdom. The Project Express system is separate from the Hibernia Atlantic cable system and does not have any direct landing points in the United States. However, the new Project Express system will interconnect with the existing Hibernia Atlantic cable system as well as certain other systems in Halifax and, in the case of one fiber pair on the Project Express system, will use the Hibernia Atlantic subsea cable between Halifax, Nova Scotia and Lynn, MA to bring communications traffic into the United States. The new Project Express system will have a separate, independent landing station in Halifax located adjacent to the current cable landing station for the Hibernia Atlantic cable system.

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<sup>2</sup> The applications referenced herein also involve Columbia Ventures Corporation ("CVC") and Murosa Development S.A R.L. ("Murosa"), as minority investors following the completion of the transaction described in the applications. CVC, a Washington state corporation which owns and operates a portfolio of telecommunications companies and a small number of manufacturing businesses, is the majority shareholder in Hibernia, currently owning 60.1% of the issued and outstanding equity of Hibernia, which, in turn, owns all of the membership interests in HB Atlantic and HB Media. Following the transaction for which approval is sought in the transfer of control applications, CVC own a minority interest in Hibernia. Murosa, currently, a wholly-owned indirect subsidiary of KCK, is an investment company organized under the laws of Luxembourg for the purpose of obtaining an equity interest in Hibernia. Following the transaction contemplated in the applications, Murosa will continue to be controlled by KCK, although not wholly-owned, and will have a direct controlling majority interest in Hibernia.

KCK and Hibernia undertake to continue to comply with the commitments set forth in the 2010 LOA with respect to the Hibernia Atlantic cable system with the following amendment: 1) The definition of Principal Equipment, as set forth in Paragraph 1 is hereby revised as follows:

"Principal Equipment includes, but is not limited to, should they exist, core network elements, servers, routers, switches, signal modulators and amplifiers, repeaters, submarine line terminal equipment (SLTE), system supervisory equipment (SSE), power feed equipment (PFE), tilt and shape equalizer units (TEQ/SEQ), optical distribution frames (ODF), and synchronous optical network (SON ET), synchronous digital hierarchy (SDH), wave division multiplexing (WDM), dense wave division multiplexing (DWDM), coarse wave division multiplexing (CWDM) or optical carrier network (OCN) equipment, as applicable, and any non-embedded software necessary for proper monitoring, administration and provisioning."

In addition, KCK and Hibernia hereby undertake to comply with the following additional commitments to the USG Agencies with respect to the Project Express system:

1. **Initial Equipment Manufacturer List:** Within 5 business days of this LOA, Hibernia will provide the U.S.G. Agencies with a list of the manufacturers of Principal Equipment that Hibernia anticipates using on the Project Express system for normal, contingency, and disaster recovery modes ("Initial Equipment Manufacturer List"). For purposes of this LOA, Principal Equipment includes, but is not limited to, should they exist, servers, routers, switches, signal modulators and amplifiers, repeaters, submarine line terminal equipment (SL TE), system supervisory equipment (SSE), power feed equipment (PFE), tilt and shape equalizer units (TEQ/SEQ), optical distribution frames (ODF), and synchronous optical network (SON ET), synchronous digital hierarchy (SDH), wave division multiplexing (WDM), dense wave division multiplexing (DWDM), coarse wave division multiplexing (CWDM) or optical carrier network (OCN) equipment, as applicable, and any non-embedded software necessary for proper monitoring, administration and provisioning.

Within thirty (30) calendar days of receiving the Initial Equipment Manufacturer List from Hibernia, the U.S.G. Agencies in writing will notify Hibernia whether the U.S.G. Agencies do or do not have a potential concern with Hibernia using equipment on the Project Express system from the manufacturers on the list. If the foregoing notification from the U.S.G. Agencies indicates that they have no concern with the manufacturers on the list, or the U.S.G. Agencies do not respond to Hibernia's Initial Equipment Manufacturer List within thirty (30) calendar days, then Hibernia may treat such notification (or lack thereof) as an approval under this paragraph and proceed to deploy Principal Equipment from those manufacturers. If the notification from the U.S.G. Agencies indicates that they do have a potential concern with one or more manufacturers on the list, then Hibernia will refrain from deploying Principal Equipment from those manufacturers unless and until the U.S.G. Agencies subsequently notify Hibernia that they have completed their review and approve Hibernia to deploy Principal Equipment from those manufacturers. If the U.S.G. Agencies notify Hibernia that they will not approve the deployment of Principal Equipment from one or more of those manufacturers, then Hibernia agrees it will not deploy Principal Equipment from those

manufacturers. The U.S.G. Agencies recognize the commercial importance of a prompt review of any manufacturers that Hibernia identifies in the Initial Equipment Manufacturer List under this paragraph. Where the U.S.G. Agencies, in response to receiving the Initial Equipment Manufacturer List, indicate that they do have a potential concern, the U.S.G. Agencies will endeavor to complete their review in an expeditious manner and, if practicable, within twenty (20) calendar days after the U.S.G. Agencies provide their notification of potential concern to Hibernia.

2. **Principal Equipment List and Deployment of Principal Equipment:** Hibernia shall create and maintain a list of Principal Equipment list for the Project Express system as of the time that it begins to deploy Principal Equipment on the system, which shall be updated when Hibernia adds, removes, replaces, upgrades or otherwise changes the Principal Equipment on the Project Express System. The list of Principal Equipment List will include available information on each item's manufacturer and model number, and non-embedded software necessary for the proper monitoring, administration, and provisioning of the Principal Equipment. In addition, the list should include the identity of any vendors, contractors, subcontractors and, to the extent known to Hibernia following requests for such information to contractors, the identity of then-current subcontractors for the Principal Equipment, including outsourced functions that would otherwise be performed by Hibernia personnel to install, operate, manage, or maintain the Principal Equipment.

Hibernia will provide the U.S.G. Agencies at least 30 calendar days' notice prior to deploying Principal Equipment on the Project Express system, provided that such notice is required only with regard to Principal Equipment of manufacturers that meet *both* of the following criteria: (i) the manufacturer *not* on the Initial Equipment Manufacturer List and (ii) the manufacturer was *not* previously approved pursuant to this paragraph. Such notice will include available information on each item's manufacturer and model number, and non-embedded software necessary for the proper monitoring, administration, and provisioning of the gear or equipment. In addition, the notice should include the identity of any vendors, contractors, subcontractors and, to the extent known to Hibernia following requests for such information to contractors, the identity of then-current subcontractors for the new Principal Equipment to be deployed, including outsourced functions that would otherwise be performed by Hibernia personnel to install, operate, manage, or maintain the new Principal Equipment.

Within thirty (30) calendar days of receiving such notice from Hibernia, the U.S.G. Agencies in writing will notify Hibernia whether the U.S.G. Agencies do or do not have a potential concern with the Principal Equipment and the manufacturer described in the notice. If the foregoing notification from the U.S.G. Agencies indicates that they have no concern, or the U.S.G. Agencies do not respond to Hibernia's notice within thirty (30) calendar days, then Hibernia may treat such notification (or lack thereof) as an approval under this paragraph and proceed to deploy the Principal Equipment and, going forward, other Principal Equipment from that manufacturer. If the notification from the U.S.G. Agencies indicates that they do have a potential concern, then Hibernia will refrain from

deploying Principal Equipment from that manufacturer unless and until the U.S.G. Agencies subsequently notify Hibernia that they have completed their review and approve Hibernia to deploy Principal Equipment from that manufacturer. If the U.S.G. Agencies notify Hibernia that they will not approve the deployment of Principal Equipment from that manufacturer, then Hibernia agrees it will not deploy such Principal Equipment. The U.S.G. Agencies recognize the commercial importance of a prompt review of any manufacturer and Principal Equipment that Hibernia identifies in a notice under this paragraph. Where the U.S.G. Agencies, in response to such notice, indicate that they do have a potential concern, the U.S.G. Agencies will endeavor to complete their review in an expeditious manner and, if practicable, within twenty (20) calendar days after the U.S.G. Agencies provide their notification of potential concern to Hibernia.

3. Hibernia will provide the U.S.G. Agencies notice within thirty (30) days after deploying Principal Equipment on the Project Express system when the Principal Equipment is obtained from manufacturers that meet *either* of the following criteria: (i) the manufacturer is on the Initial Equipment Manufacturer List *or* (ii) the manufacturer has been previously approved pursuant to paragraph 2.
4. For the avoidance of doubt, the U.S.G. Agencies acknowledge that Hibernia has granted unaffiliated third parties indefeasible rights of use ("IRUs") in certain fibers of the Project Express system. Under those IRU arrangements, the IRU holders are free to deploy equipment of their choosing, and Hibernia is without the right or ability to restrict, require, manage or prevent which equipment the IRU holders will deploy. The IRU holders will not be deploying equipment needed to operate the submarine portions of the cable system. The U.S.G. Agencies also acknowledge that Hibernia has no control over equipment that Hibernia customers of capacity carried over the Project Express system may utilize in connection with the services that Hibernia provides and need not provide notice with respect to the equipment that Hibernia's customers utilize in this manner. Hibernia will provide the U.S.G. Agencies notice of any new unaffiliated third parties granted fiber IRUs in the Project Express System.
5. Except as set forth in Paragraphs 1-3 herein (i.e. process by which Hibernia will consult with the U.S.G. Parties regarding Principal Equipment on the Project Express system), KCK and Hibernia agree to apply the commitments set forth in the 2010 Letter of Assurance with respect to the Project Express system.
6. All correspondence to the U.S.G. Agencies under this LOA will be directed to:

IP-FCC@hq.dhs.gov

Mr. Terry A. Halvorsen  
Acting Department of Defense Chief Information Officer  
c/o Mt. Mitchell Komaroff  
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National Security Division  
950 Pennsylvania Avenue, N.W.  
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Attn.: Team Telecom, Foreign Investment Review Staff  
Electronic mail: ttelecom@usdoj.gov

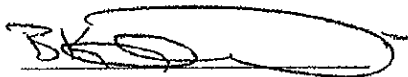
All correspondence to DOJ should be sent via electronic mail to ttelecom@usdoj.gov, as well as first-class or certified mail. Courtesy electronic copies shall additionally be sent to the following, or to those individuals identified by DOJ in the future: Joanne Ongman (at joanne.ongman@usdoj.gov; Richard Sofield (richard.sofield2@usdoj.gov); and Jonathan Frenkel (at jonathan.frenkel@ic.fbi.gov).

Hibernia agrees that in the event the commitments set forth in the Letter of Assurance, as amended, are breached, in addition to any other remedy available at law or equity, the USG Parties may request that the FCC modify, condition, revoke, cancel, terminate, or render null and void any relevant license, permit, or other authorization granted by the FCC to Hibernia or any successors-in-interest. Nothing herein shall be construed to be a waiver by Hibernia of, or limitation on, its right to oppose or comment on any such request. The commitments set forth in this LOA shall not be binding on KCK or Hibernia if the above-referenced applications are not granted.

Sincerely,

**HIBERNIA NGS LIMITED**

**KCK LIMITED**



Bjarni K. Thorvardarson  
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Attn.: Team Telecom, Foreign Investment Review Staff  
Electronic mail: ttelecom@usdoj.gov

All correspondence to DOJ should be sent via electronic mail to ttelecom@usdoj.gov, as well as first-class or certified mail. Courtesy electronic copies shall additionally be sent to the following, or to those individuals identified by DOJ in the future: Joanne Ongman (at joanne.ongman@usdoj.gov; Richard Sofield (richard.sofield2@usdoj.gov); and Jonathan Frenkel (at jonathan.frenkel@ic.fbi.gov).

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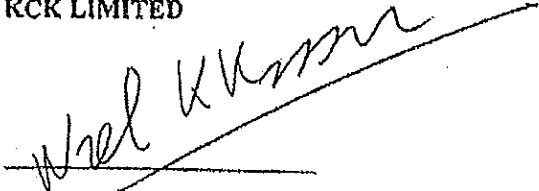
Sincerely,

**HIBERNIA NGS LIMITED**

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Bjarni K. Thorvardarson  
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**KCK LIMITED**



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