

# **ATTACHMENT B**



September 30, 2010

Mr. David Heyman  
Assistant Secretary for Policy  
U.S. Department of Homeland Security  
3801 Nebraska Avenue, N.W.  
Washington, D.C. 20528  
ip-fcc@dhs.gov

Ms. Cheryl J. Roby  
Assistant Secretary of Defense for Networks NII (Acting)  
U.S. Department of Defense  
6000 Defense Pentagon Room 3E240  
Washington, D.C. 20301-6000

Mr. Robert S. Gorman  
General Counsel  
Defense Information Systems Agency  
P.O. Box 4502 (DISA OGC)  
Arlington, VA 22204

Mr. David Kris  
Assistant Attorney General  
National Security Division  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530  
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Re: Pending Application for authority to provide international facilities-based and resold services to all international points for Hibernia Group ehf (FCC File # ITC-214-20090612-00283).

Dear Assistant Secretary Heyman, Ms. Roby, Mr. Gorman, and Mr. Kris:

This Letter of Assurance ("LOA") outlines the commitments of Hibernia Group ehf ("Hibernia"), for itself and its subsidiaries, Hibernia Atlantic U.S. LLC, a Washington state limited liability company; Hibernia Atlantic Communications (Canada) Company, a Nova Scotia company; Hibernia Atlantic (UK) Limited, a company formed under the laws of England and Wales; Hibernia Atlantic Cable System Limited, an Irish company; CVC Acquisition (CI).

Corporation, a Cayman Island company, and Hibernia Media LLC, a U.S. limited liability company, 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"). Hibernia is 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 application referenced below.

Hibernia, a private limited liability company incorporated in Iceland, is a holding company for the five companies that collectively own and operate the Hibernia Atlantic Cable system. Hibernia Atlantic U.S. LLC, one of the companies owned by the holding company, currently holds a U.S. submarine cable landing license (FCC File # SCL-LIC-19990804-00012TC) for the Hibernia Atlantic submarine cable system, an undersea cable called "Hibernia Atlantic." The Hibernia Atlantic Cable system consists of four segments connecting its four landing stations from Lynn, Massachusetts, USA, to Herring Cove, Nova Scotia, Canada, to Dublin, Ireland, and to Southport, UK. Further, Hibernia Atlantic U.S. LLC 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 (the "Act"), 47 U.S.C. § 214. (FCC File # ITC-214-20090612-00283).

Hibernia is providing this LOA on the express understanding that, promptly upon execution of the LOA, the U.S.G. Agencies will notify the FCC that they have no objection to the FCC's grant of the pending application for international authority pursuant to Section 214 (FCC File # ITC-214-20100303-00093), and will request that the FCC's grant of that application be made subject to this LOA and its resolution of issues relating to national security, law enforcement, and public safety. Hibernia has agreed to provide this LOA to the U.S.G. Agencies to address issues raised by the agencies, and to jointly petition the FCC to condition the requested authorization on compliance with this LOA.

Assuming the license is granted, Hibernia undertakes to comply with the following commitments to the U.S.G. Agencies:

1. By the later of November 15, 2010 or 60 days following the granting of the license, Hibernia will provide to the U.S.G. Agencies a list of the Principal Equipment used within the Hibernia Atlantic Cable system and network infrastructure for normal, contingency, and disaster recovery modes. Principal Equipment includes, but is not limited to, to the extent applicable, network element servers, routers, switches, repeaters, submarine line terminal equipment, system supervisory equipment ("SSE"), optical distribution frames, signal modulators and amplifiers, multiplexers and demultiplexers (*i.e.*, synchronous digital hierarchy ("SDH") wavelength division multiplexers ("WDM"), dense wavelength division multiplexers ("DWDM"), and coarse wavelength division multiplexers ("CWDM")). The list should 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 of the Hibernia Atlantic Cable system, including outsourced functions that would otherwise be

performed by Hibernia personnel to install, operate, manage, or maintain the Principal Equipment.

2. Hibernia will promptly notify the U.S.G. Agencies of changes to the information on the list of Hibernia Atlantic Principal Equipment and related vendors, contractors, subcontractors and, to the extent known to Hibernia following receipt of notification from its contractors (which notification shall be requested of contractors), subcontractors for the Principal Equipment of the Hibernia Atlantic Cable system. Hibernia agrees to make Network Management Information for the Hibernia Atlantic Cable system, and any security product lists and hardware appliances for domestic communications infrastructure protection, operations support system ("OSS") utilization, and network management systems for the Hibernia Atlantic Cable system, available to the U.S.G. Agencies upon request. For purposes of this LOA, "Network Management Information" means: (a) network management operations plans, processes and procedures; and (b) descriptions of the placement of network operation center(s), data centers, and main distribution facilities ("MDF") and linkages (for service offload, disaster recovery, or administrative activities) to the Hibernia Atlantic Cable system.

3. If requested by the U.S.G. Agencies, Hibernia shall provide to these agencies information regarding the network and telecommunications architectures of, and associated interconnection points and controlled gateways to, the Domestic Communications Infrastructure ("DCI") of the Hibernia Atlantic Cable system, including system and application architecture descriptions of the network management systems and network operations center(s) ("NOCs") and data centers for managing the DCI. Following the provision of such information, Hibernia shall notify the U.S.G. Agencies prior to performing any non-emergency maintenance, repair, or replacement that would result in a material modification thereto; provided that in the event of any material modification that is the result of any maintenance, repair or replacement that is undertaken pursuant to a bona fide emergency and is necessary to ensure the continued operation of Hibernia Atlantic, Hibernia agrees to provide advance notice of the modification to the U.S.G. Agencies if practicable, and, in any case, as promptly as reasonably practicable after the maintenance, repair or replacement is completed. For the purposes of this LOA, "Domestic Communications" means: (a) Wire Communications or Electronic Communications (whether stored or not) from one U.S. location to another U.S. location; and (b) the U.S. portion of a Wire Communication or Electronic Communication (whether stored or not) that originates or terminates in the United States. "Electronic Communication" has the meaning given it in 18 U.S.C. § 2510(12). "Wire Communication" has the meaning given it in 18 U.S.C. § 2510(1). For purposes of this LOA, "Domestic Communications Infrastructure" means (a) transmission, switching, bridging and routing equipment (including software and upgrades) used by or on behalf of Hibernia to provide, process, direct, control, supervise or manage Domestic Communications; (b) facilities and equipment used by or on behalf of Hibernia that are physically located in the United States; or (c) facilities used by or on behalf of Hibernia to control the equipment described in (a) and (b). DCI does not include equipment or facilities used by service providers other than Hibernia that are:

- (a) interconnecting communications providers; or
- (b) providers of services or content that are

- (1) accessible using the communications services of Hibernia, and
- (2) available in substantially similar form and on commercially reasonable terms through communications services of companies other than Hibernia.

The phrase "on behalf of" as used in this section does not include entities with which Hibernia has contracted for peering, interconnection, roaming, long distance, or other similar arrangements. DCI does not include equipment dedicated to the termination of international undersea cables outside the United States, provided that such equipment is utilized solely to effectuate the operation of such undersea transport network(s) and in no manner controls land-based transport network(s) or their associated systems in the United States.

4. Hibernia agrees to take practicable measures to prevent unauthorized access to, and protect the physical and logical security of, the Hibernia Atlantic Cable system. Hibernia agrees to make its security policies and procedures, including security products list, for the Hibernia Atlantic Cable system available to the U.S.G. Agencies upon request. Hibernia will work with the U.S.G. Agencies to address any concerns identified with respect to these policies or procedures within a reasonable period of time

5. Nothing in this LOA is intended to excuse Hibernia from any obligation to comply with U.S. legal requirements for the retention, preservation, or production of information, records or data, or from any applicable requirements of the Communications Assistance for Law Enforcement Act, 47 U.S.C. § 1001, *et seq.*, or to comply with lawful U.S. process; nor shall it constitute a waiver of: (a) any obligation imposed by any U.S. Federal, state or local laws on Hibernia; (b) any enforcement authority available under any U.S. or state laws; (c) the sovereign immunity of the United States; or (d) any authority the U.S. government may possess (including without limitation authority pursuant to the International Emergency Economic Powers Act) over the activities of Hibernia located within or outside the United States. Hibernia employees in the United States will have unconstrained authority to comply, in an effective, efficient, and unimpeded fashion, with lawful U.S. process. Nothing in this LOA is intended, or is to be interpreted, to require Hibernia to violate any applicable U.S. law. Likewise, nothing in this LOA limits the right of the U.S. government to pursue criminal sanctions or charges against Hibernia, and nothing in this LOA provides Hibernia with any relief from civil liability.

6. Unless otherwise agreed to by the parties, Hibernia shall make available in the United States, in response to lawful U.S. process, customer billing records, customer information, Network Management Information, and access logs to facilities and network access logs to systems and applications, and any other related information used, processed or maintained in the ordinary course of business relating to Domestic Communications ("U.S. Records"), if such information is stored by or on behalf of Hibernia for any reason. Hibernia shall store for at least 18 months all customer billing records.

7. Hibernia agrees that it will not, directly or indirectly, knowingly disclose or permit disclosure of or access to Domestic Communications or any information pertaining to a wiretap order, pen/trap order, subpoena or other lawful demand by a U.S. law enforcement agency to any

person if the purpose of such disclosure or access is to respond to the legal process or request on behalf of a non-U.S. government, without first satisfying all pertinent requirements of U.S. law or the authorization of a court of competent jurisdiction in the United States. Any such requests or legal process submitted by a non-U.S. government to Hibernia shall be referred to the U.S.G. Agencies as soon as possible, and in no event later than five (5) days after such request or legal process is received by or known to Hibernia, unless the disclosure of the request or legal process would be in violation of U.S. law or an order of a court in the United States. The term "non-U.S. government" means any government, including an identified representative, agent, component or subdivision thereof, that is not a local, state or federal government in the United States.

8. Hibernia has designated James P. Prenetta, Jr. as a point of contact ("POC"), and agrees to maintain a POC within the United States who is a resident U.S. citizen with the authority and responsibility for accepting and overseeing compliance with a wiretap order, pen/trap order, subpoena or other lawful demand by U.S. law enforcement authorities for the content of communications or U.S. Records. Hibernia will notify the U.S.G. Agencies of any change in the POC within 5 business days of such change. Hibernia shall cooperate with any request by a U.S. government authority that a background check or security clearance process be completed for a designated POC.

9. Hibernia has designated James P. Prenetta, Jr. as a security officer ("Security Officer"), and agrees to maintain a Security Officer within the United States who is a resident U.S. citizen with the primary responsibility for carrying out Hibernia's assurances in this LOA. The Security Officer shall have appropriate knowledge and ability to design and implement a security program to implement the terms of this LOA consistent with industry best practices. Hibernia will notify the U.S.G. Agencies of any change in the Security Officer within five (5) business days of such change. Hibernia shall cooperate with any request by a U.S. government authority that a background check be completed for a designated Security Officer.

10. On or before the anniversary of the effective date of each year, Hibernia shall submit to the U.S.G. Agencies a report assessing Hibernia's compliance with the terms of this LOA for the preceding calendar year. The report shall include:

- (a) a copy of the then current policies and procedures adopted to comply with this LOA;
- (b) a summary of the changes, if any, to the policies and procedures adopted to comply with this LOA, and the reasons for any such changes;
- (c) a summary of any known acts of noncompliance with the terms of this LOA, not otherwise reported under section 13 whether inadvertent or intentional, with a discussion of what steps have been or will be taken to prevent such acts from occurring in the future;
- (d) a summary of any other events occurring during the reporting period that, to the knowledge of Hibernia, will or reasonably could impact the effectiveness of, or Hibernia's compliance with, this LOA; and

- (e) a description of any changes to the Hibernia Atlantic Cable system network topology, to include a detailed description and map of the Hibernia Atlantic Cable system.

11. Hibernia agrees that upon reasonable advance notice, the U.S.G. Agencies may visit its landing stations, NOCs, data centers, MDFs, and other facilities under its control, to conduct on-site reviews concerning the implementation of the terms of this LOA. During these visits, Hibernia will cooperate fully with the U.S.G. Agencies in making available requested information applicable to DCI concerning technical, operational, physical, management, or other security measures to enable the U.S.G. Agencies to verify compliance with the terms of the LOA, provided that such access does not interfere with the operation of the DCI and facilities involved and is otherwise consistent with applicable law. Upon reasonable notice from the U.S.G. Agencies, Hibernia will make available for interview any officers or employees of Hibernia or its subsidiaries, and will use reasonable efforts to make available for interview the personnel of any contractor or subcontractor, who are in a position to provide information to verify compliance with the terms of the LOA.

12. If any member of the management of Hibernia acquires any information that reasonably indicates that any foreign government, any foreign government controlled entity, or any foreign entity:

- (a) plans to participate or has participated in any aspect of the day-to-day management of Hibernia, or
- (b) plans to exercise or has exercised, as a direct or indirect shareholder of Hibernia, any control of Hibernia,

in a way that interferes with or impedes the performance by Hibernia of its duties and obligations under the terms of this LOA, or interferes with or impedes the exercise by Hibernia of its rights under the terms of the LOA, then such member shall promptly cause to be notified the Security Officer, who, in turn, shall promptly notify the U.S.G. Agencies in writing of the timing and the nature of the foreign government's or entity's plans and/or actions.

13. Promptly upon the receipt by any member of the management of Hibernia of information that reasonably indicates a breach of this LOA or access to, or disclosure of, Domestic Communications or the conduct of Electronic Surveillance, in violation of federal, state or local law or regulation, such member shall report such breach or violation to the Security Officer, who in turn shall notify the U.S.G. Agencies of the breach or violation. The Security Officer's report shall be made in writing to the U.S.G. Agencies no later than 10 calendar days after the Security Officer receives such information. Hibernia shall lawfully cooperate in investigating the matters described in this LOA. The Security Officer need not report information where disclosure of such information would be in violation of an order of a court of competent jurisdiction in the United States. For purposes of this LOA, "Electronic Surveillance" includes: (a) the interception of wire, oral, or electronic communications as defined in 18 U.S.C. § 2510(1), (2),

(4) and (12), respectively, and electronic surveillance as defined in 50 U.S.C. § 1801(f); (b) access to stored wire or electronic communications, as referred to in 18 U.S.C. § 2701 *et seq.*; (c) acquisition of dialing, routing, addressing, or signaling information through pen register or trap and trace devices or other devices or features capable of acquiring such information pursuant to law as defined in 18 U.S.C. § 3121 *et seq.* and 50 U.S.C. § 1841 *et seq.*; (d) acquisition of location-related information concerning a service subscriber or facility; (e) preservation of any of the above information pursuant to 18 U.S.C. § 2703(f); and (f) access to, or acquisition, interception, or preservation of, wire, oral, or electronic communications or information as described in (a) through (e) above and comparable state laws.

14. Hibernia shall adopt and distribute an official corporate policy that strictly prohibits Hibernia from discriminating or taking any adverse action against any officer, director, employee, contractor or agent because he or she has in good faith initiated or attempted to initiate a notice or report under Section 13 of this LOA, or has notified or attempted to notify directly the Security Officer to convey information that he or she believes in good faith would be required to be reported to the U.S.G. Agencies by the Security Officer under this LOA. Such corporate policy shall set forth in a clear and prominent manner the contact information for the Security Officer to whom such contacts may be made directly by any officer, director, employee, contractor or agent for the purpose of such report or notification.

15. If, after the date that Hibernia has executed this LOA, the U.S.G. Agencies find that the terms of this LOA are inadequate to address national security, law enforcement, or public safety concerns, then Hibernia will negotiate in good faith to modify this LOA to address those concerns with respect to Hibernia Atlantic's equipment, contracts, or security practices. Conversely, Hibernia is providing this LOA on the express understanding that the U.S.G. Agencies agree to promptly negotiate in good faith with respect to any request by Hibernia for relief from the application of specific provisions of this LOA if those provisions become unduly burdensome or adversely affect the competitive position of Hibernia. Notwithstanding the foregoing, the U.S.G. Agencies reserve the right to object, formally or informally, to the grant of any other FCC application or petition of Hibernia for a license or other authorization under the Cable Landing License Act or Titles II and III of the Communications Act of 1934, as amended, and to seek additional or different terms that would, consistent with the public interest, address any threat to the ability of the United States to enforce the laws, preserve the national security and protect the public safety raised by the services and transactions underlying any such application or petition.

16. Hibernia is providing this LOA on the express understanding that all notices and information provided to the U.S.G. Agencies pursuant to this LOA shall be treated as confidential business information exempt from disclosure under the Freedom of Information Act, 5 U.S.C. § 552(b)(4).

17. This LOA shall inure to the benefit of, and shall be binding upon, Hibernia and its respective successors, assigns, subsidiaries, and affiliates, including the five subsidiaries within Hibernia as a holding company, and that are: Hibernia Atlantic U.S. LLC, Hibernia Atlantic




Communications (Canada) Company, Hibernia Atlantic (UK) Limited, Hibernia Atlantic Cable System Limited, and CVC Acquisition (CI) Corporation.

18. All correspondence to the U.S.G. Agencies under this LOA will be directed to the addressees at the addresses provided on the first page of the LOA. In addition, a courtesy electronic copy of all notices and communications will be forwarded to [telecom@usdoj.gov](mailto:telecom@usdoj.gov), [IP-FCC@dhs.gov](mailto:IP-FCC@dhs.gov), [GTECFIUSTeamForwarding@osd.mil](mailto:GTECFIUSTeamForwarding@osd.mil), and [GeneralCounselDISA@disa.mil](mailto:GeneralCounselDISA@disa.mil).

19. The commitments set forth in this LOA shall not be binding on Hibernia if the license is not granted.

Sincerely,

HIBERNIA GROUP EHF

By:   
Name: Bjarni K. Thorvardarson  
Title: Chief Executive Officer and Director