

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

In the Matter of

Alaska Telecom Ltd., L.C. File No. SCL-94-004
Application for a License to Land and
Operate a Submarine Fiber Optic Cable
between the Pacific Northwest
United States and the State of Alaska
U.S.A.

CABLE LANDING LICENSE

Adopted: May 31, 1995;

Released: June 6, 1995

By the Chief, International Bureau

INTRODUCTION

1. The Bureau has under consideration the application of Alaska Telecom Ltd., L.C. ("Alaska Telecom"), received June 17, 1994, requesting a license to land and operate in the United States a fiber optic submarine cable system (the "Northstar" cable), with landing points in the Pacific Northwest United States, Juneau, Alaska, and another point in South Central Alaska. The Applicant proposes a privately owned system in which capacity in the cable would be sold or leased to users on a non-common carrier basis. We find that the Applicant has provided sufficient information to comply with the Cable Landing License Act¹ and therefore approve grant of this cable landing license.

APPLICATION

2. Alaska Telecom is a U.S. limited liability company organized under the laws of Virginia. The entire Northstar cable system, including plant and equipment, will be owned by Alaska Telecom. All of Alaska Telecom's owners and officers are U.S. citizens. The proposed Northstar cable would contain at least two fiber pairs operating at a minimum of 2.5 Gbps per fiber pair. The landing points in the Pacific Northwest and in Alaska have yet to be selected. The cable is scheduled for completion in December 1995.²

3. Alaska Telecom states that, because its application is for non-common carrier offerings and because there is no public interest reason for the Commission to require the Northstar facilities to be offered on a common carrier basis, the application need not be evaluated pursuant to Title II of the Communications Act of 1934.³ Alaska Telecom urges the Commission to only consider the application pursuant to the Cable Landing License Act.⁴

COMMENTS

4. The application was placed on public notice on June 22, 1994. Alascom filed comments which do not oppose the application, but which allege that Alaska Telecom has not submitted sufficient information to enable a submarine cable landing license to be granted. Alaska Telecom replies that the Commission has all the information required under its rules. It states that the information that Alascom asserts is lacking is either not required or has been provided with sufficient specificity. Alascom also proposes that the Commission review the application under its "special policies" relevant to Alaskan telecommunications. Alaska Telecom replies that these policies are not relevant to its application.

5. Pursuant to Section 1.767(b) of the Commission's Rules,⁵ the Cable Landing License Act and Executive Order No. 10530, dated May 10, 1954, we informed the Department of State of Alaska Telecom's application.⁶ The Department of State, after coordinating with the National Telecommunications and Information Administration and the Department of Defense, stated it has no opposition to the grant of the cable landing license.⁷

DISCUSSION

6. Alaska Telecom requests a license to land and operate a non-common carrier submarine cable system under the Commission's private submarine cable policy. In 1985, the Commission adopted this policy to promote competition in the provision of international transmission facilities.⁸ In accord with this policy, the Commission has found non-common carrier cable authorizations to be proper where there is no legal compulsion to serve the public indifferently and where there are no reasons, implicit in the nature of the operations, to expect an indifferent holding out to the eligible user public.⁹ Because of the wide availability of common carrier circuits between the contiguous United States and Alaska, we do not find that there is a public interest reason to require that Alaska Telecom's proposed cable facilities be provided on a common carrier basis.¹⁰ Alaska Telecom will make "individualized decisions, in particular cases, whether and on what terms to deal," and does not undertake to "carry for all people

¹ "An Act Relating to the Landing and Operation of Submarine Cables in the United States," 47 U.S.C. §§ 34-39 (1995) ("Cable Landing License Act").

² Alaska Telecom Application, at 3-4.

³ 47 U.S.C. §§ 201-229 (1995).

⁴ 47 U.S.C. §§ 34-39.

⁵ 47 C.F.R. § 1.767(b).

⁶ Letter from George S. Li, Chief, International Facilities Division, Common Carrier Bureau, FCC, to Steven W. Lett, Director, Office of Satellite and Cable Policy, Bureau of International Communications and Information Policy, U.S. Department of State, September 6, 1994.

⁷ Letter from Michael T. N. Fitch, Deputy U.S. Coordinator, Office of International Communications and Information Policy, U.S. Department of State, to Scott Blake Harris, Chief, International Bureau, FCC, April 24, 1995.

⁸ *Tel-Optik, Ltd.*, 100 FCC 2d 1033, 1041 (1985) (*Private Cable Decision*).

⁹ *Optel Communications, Inc.*, 8 FCC Rcd 2267 (1993); see *National Association of Regulatory Utility Commissioners v. FCC*, 525 F.2d 630 (D.C. Cir.), cert. denied, 425 U.S. 922 (1976) (*NARUC I*).

¹⁰ See Alaska Telecom Application, at 8-10.

indifferently."¹¹ We therefore do not find that there is any reason to expect that the proposed Northstar cable circuits would be held out to the public indifferently.¹² We therefore conclude under applicable precedent that Alaska Telecom's proposal to sell or lease bulk capacity in the Northstar cable is not likely to be made available to the public as a common carrier activity and therefore need not be regulated under Title II of the Communications Act.¹³

7. Alascom asserts in its comments that Alaska Telecom's application fails to comply with Section 1.767(a) of the Commission's Rules¹⁴ because it does not supply a description of the landing points of the cable on the shore of the United States or provide a map.¹⁵ Alaska Telecom's application states that the exact cable landing sites have yet to be selected. It states that landing sites will be chosen to ensure secure submarine and land routes, to facilitate interconnection, and that the landing points will be in conformity with plans approved by the Secretary of the Army. In its reply comments, Alaska Telecom points out that the Commission has found generalized descriptions such as theirs sufficient, and that their application does indeed provide a map.¹⁶

8. We will treat Alaska Telecom's reply comments as a request for a waiver of that portion of Section 1.767(a) which requires an application contain the location of points on shore of the United States where the cable will land. Consistent with prior decisions, we find that Alaska Telecom's description that the cable will land in the Pacific Northwest United States, Juneau, Alaska, and another point in South Central Alaska to be sufficient to determine whether the proposed cable would comply with the provisions of the Cable Landing License Act and Commission Rules.¹⁷ We therefore waive the requirements of Section 1.767(a) to the extent that it requires the specific location of landing points to be provided in this application. We note that Alaska Telecom has provided a general map with its application and find it sufficient to comply with Section 1.767(a). To ensure compliance with the Sections 1.1305-1.1307 of the Commission's rules regarding the protection of the environment,¹⁸ we require as a condition of this license that Alaska Telecom inform us of the precise landing points of the Northstar cable no less than 120 days prior to commencing construction of cable landing stations at those locations.¹⁹ In accord with previous Commission decisions, and contrary to Alascom's assertions, we do not find that an environmental assessment is necessary at this time. We do, however, reserve the right to require Alaska

Telecom to file such a statement should we determine that the landing of the cable would have significant impact on the environment.²⁰

9. Alascom also argues that Alaska Telecom's application is insufficient because its description of the proposed use, need and desirability of the cable is "thin." Alaska Telecom responds that the proposed cable will provide needed additional video, voice and data transmission capacity and interconnect interexchange and international networks between the contiguous United States and Alaska. It states that Alascom controls the only existing fiber optic link between Alaska and the contiguous United States and states that a realistic alternative to Alascom's service is in the public interest. Alaska Telecom asserts that the Northstar cable will provide significant public interest benefits in the form of encouraging market-based competitive entry and increased efficiency, additional capacity, redundancy capacity, and restoration potential. Alaska Telecom further states that the proposed cable will provide much needed terrestrial-based service to Juneau, provide a needed fiber optic diversity path between Alaska and the contiguous United States, and provide additional redundant and secure capacity for military users.²¹ We find that this description of the proposed use, need and desirability of the Northstar cable is sufficient to meet the requirements of Section 1.767(a).

10. Alascom also states that the Commission's "special policies" relevant to Alaskan telecommunications required that Alascom's acquisition of the Alaska Spur be treated as if it were an international facility subject to the Commission's international policies. Alascom asserts that the Commission should review Alaska Telecom's proposed Northstar cable under these same policies. It therefore asks that the Commission review whether Alaska Telecom has any arrangements with international entities for ownership, control or financing, whether domestic firms will be provided a reasonable opportunity to participate in the planning, manufacture, installation, operation or maintenance of the proposed cable, and whether capacity will be made available on a reasonable and non-discriminatory basis.²² Alaska Telecom notes that regulatory treatment of the proposed cable would differ significantly from that of the Alaska Spur because the Alaska Spur is a portion of an international cable, whereas the Northstar cable would be a domestic facility connecting three U.S. points.²³

11. Alascom misconstrues our regulatory treatment of the Alaska Spur and proposes to apply regulatory principles to this proceeding that have no bearing whatever on Alaska Telecom's application for a non-common carrier

¹¹ Alaska Telecom Application, at 11 (quoting *NARUC I*, 525 FCC 2d at 641).

¹² See *NARUC I*, 525 F.2d 630; see also, *Pacific Telecom Cable, Inc.*, 2 FCC Rcd 2686 (1987) (conditional license); 4 FCC Rcd 8061 (1989) (final license); *Transnational Telecom Ltd.*, 5 FCC Rcd 598 (1990) *Transgulf Communications Ltd., Inc.*, 6 FCC Rcd 2335 (1991).

¹³ *NARUC I*, 525 F.2d 630; *Private Cable Decision*, 100 FCC 2d 1033, 1046.

¹⁴ 47 C.F.R. § 1.767.

¹⁵ Alascom Comments, at 1.

¹⁶ Alaska Telecom Reply Comments, at 2-4 (citing *Pacific Telecom Cable, Inc.*, 2 FCC Rcd 2686, 2688; *Transnational Telecom Ltd.*, 5 FCC Rcd 598, 600).

¹⁷ 47 U.S.C. §§ 34-39. See *Pacific Telecom Cable, Inc.*, 2 FCC Rcd 2686, 2688; *Transnational Telecom Ltd.*, 5 FCC Rcd 598, 600.

¹⁸ 47 C.F.R. §§ 1.1305-1.1307.

¹⁹ The Commission placed the same condition on the applicants before granting final cable landing licenses to Tel-Optik, Ltd., Submarine Lightwave Cable Company *Private Cable Decision*, 100 FCC 2d at 1045, 1046, *Pacific Telecom Cable, Inc.*, 2 FCC Rcd at 2688, 2689, and *Transnational Telecom, Inc.*, 5 FCC Rcd at 600.

²⁰ See 47 C.F.R. 1.1305, 1.1307; See also, *Pacific Telecom Cable, Inc.*, 2 FCC Rcd 2686; *Transnational Telecom Ltd.*, 5 FCC Rcd 598.

²¹ Alaska Telecom Application, at 7-11.

²² Alascom Comments, at 3.

²³ Alaska Telecom Reply Comments, at 7. The "Alaska Spur" is a portion of an international cable linking Pacific City, Oregon, Anchorage Alaska, and Miura, Japan. See *Pacific Telecom Cable, Inc.*, 2 FCC Rcd 2686.

submarine cable landing license. Alascom's acquisition of the Alaska spur was considered by the Commission under Section 214 of the Act²⁴ as an acquisition of the domestic portion of an international facility by a dominant interexchange common carrier.²⁵ In contrast, Alaska Telecom, a nondominant carrier, applies for a license to land a non-common carrier cable that is wholly domestic in nature. We find no reason to require the same information regarding costs, circuit capacities, accounting and financing as was required of Alascom in its acquisition of the Alaska Spur.²⁶ Finally, we reject Alascom's request that capacity in this cable be required to be provided "on a reasonable and nondiscriminatory basis."²⁷ Such a requirement would be inconsistent with our policy regarding non-common carrier cables.²⁸

12. Accordingly, in view of the above, we conclude that U.S. interests under the Cable Landing License Act will be served by grant of a license to Alaska Telecom as conditioned below.

ORDERING CLAUSES

13. Consistent with the foregoing, the Commission hereby GRANTS AND ISSUES, under the provisions of an Act entitled "An Act Relating to the Landing and Operation of Submarine Cables in the United States," 47 U.S.C. Sections 34-39, and Executive Order 10530, dated May 10, 1954 (delegating to the Federal Communications Commission certain presidential functions relating to submarine cable landing licenses), to Alaska Telecom. Ltd., L.C., a license to land and operate a high-capacity fiber optic digital submarine cable with at least two working fiber pairs, each pair operating at a minimum of 2.5 Gbps, associated regenerators and supervisory circuits, the southern end of the cable landing in the Pacific Northwest United States and the northern ends landing in Juneau and another point in South Central Alaska. This grant is subject the following conditions:

(1) The location of the cable within the territorial waters of the United States of America, its territories and possessions, and upon its shore, shall be in conformity with plans approved by the Secretary of the Army, and the cable shall be moved or shifted by the Licensee at its expense upon the request of the Secretary of the Army whenever he or she considers such course necessary in the public interest, for reasons of national defense, or for the maintenance or improvement of harbors for navigational purposes;

(2) The Licensee shall at all times comply with any requirements of United States Government authorities regarding the location and concealment of the cable facilities, buildings, and apparatus with a view of protecting and safeguarding the cable from injury or destruction by enemies of the United States of America;

(3) Neither this license nor the rights granted herein, shall be transferred, assigned, or in any manner either voluntarily or involuntarily disposed of or disposed of indirectly by transfer of control of the Licensee to any persons, unless the Federal Communications Commission shall give prior consent in writing;

(4) The Licensee shall notify the Commission in writing of the precise locations on the coast of the Pacific Northwest United States and Juneau and South Central Alaska at which the cable will land no less than 120 days prior to commencing construction of cable landing stations at those locations; the Commission reserves the right to require the Licensee to file an environmental impact statement should it determine that the landing of the cable at those locations and construction of necessary cable landing stations would have a significant impact upon the environment within the meaning of Sections 1.1305-1.1307 of the Commission's Rules and Regulations implementing the National Environmental Policy Act of 1969, 42 U.S.C. Sections 4321-4335; this license is subject to modification by the Commission upon its review of any environmental impact statement that it may require pursuant to its Rules;

(5) This license is revocable after due notice and opportunity for hearing by the Federal Communications Commission in the event of breach or nonfulfillment of any requirements specified in Section 2 of "An Act Relating to the Landing and Operation of Submarine Cables in the United States," 47 U.S.C. Sections 34-39, or for failure to comply with the terms of the authorization;

(6) The Licensee shall notify the Commission in writing of the date on which the cable is placed in service, and this license shall expire 25 years from such date, unless renewed or extended upon proper application, and upon expiration of the license, all rights granted under it shall be terminated; and

(7) The terms and conditions upon which this license is given shall be accepted by the Licensee by filing a letter with the Secretary, Federal Communications Commission, Washington, D.C. 20554, within 30 days of the release of this cable landing license.

14. This order is issued under Section 0.261 of the Commission's Rules, 47 C.F.R. 0.261, and is effective upon release. Petitions for reconsideration under Section 1.106, or applications for review under Section 1.115 of the Commission's Rules, 47 C.F.R. 1.106, 1.115, may be filed within 30 days of the date of public notice of this order (See 47 C.F.R. 1.4(b)(2)).

²⁴ 47 U.S.C. § 214.

²⁵ *Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the Contiguous States and Alaska, Hawaii, Puerto Rico, and the Virgin Islands*, CC Docket No. 83-1376, (October 26, 1993). See *Alascom, Inc.*, 7 FCC Red 2969 (Comm. Car. Bur., 1991).

²⁶ We do note that Alaska Telecom responds to some of

Alascom's concerns by stating that it has no arrangements with any international entities regarding the ownership, control, financing, or operation of the Northstar cable. Reply Comments of Alaska Telecom, at 7.

²⁷ Alascom Comments, at 3.

²⁸ See *Private Cable Decision*, 100 FCC 2d, at 1052.

FEDERAL COMMUNICATIONS COMMISSION

Scott Blake Harris,
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