

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

In the Matter of)	
)	
ALASKA NORTHSTAR)	
COMMUNICATIONS, L.L.C.)	
)	File No. SCL-96-002
Application for a license to land and)	
operate a submarine fiber optic cable)	
extending between two cable landing points)	
in South Central Alaska, United States)	

CABLE LANDING LICENSE

Adopted: November 1, 1996

Released: November 5, 1996

By the Chief, Telecommunications Division:

1. In this Order, we grant the application of Alaska Northstar Communications, L.L.C., (Alaska Northstar) under the Cable Landing License Act¹ for authority to land and operate in the United States a coastal submarine fiber optic cable system, to be named the "Northstar Cable System - Extension," between two points in South Central Alaska. The capacity of the Northstar Cable System - Extension will be sold or leased to users on a non-common carrier basis. We find that Alaska Northstar has provided sufficient information under our rules to comply with the Cable Landing License Act and therefore grant the cable landing license, subject to the conditions listed below.

The Application

2. Alaska Northstar is a limited liability company organized and existing under the laws of the Commonwealth of Virginia. The company is owned by its two officers, both of whom are U.S. citizens. Alaska Northstar will own and operate the entire cable system.

3. The exact landing points for the Northstar Cable System - Extension have yet to be determined. One landing station will be at or near Whittier or Seward, and the other will be at or near Valdez. The applicant states that the landing points will be chosen to ensure secure submarine and land routes and to facilitate connection to U.S. domestic private and interexchange systems. The sites will conform to plans approved by the Secretary of the Army.

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).
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4. The planning and development of the Northstar Cable System - Extension will be based upon the use of submarine fiber optic technology judged suitable for implementation at the projected ready for commercial service date, employing the appropriate transmission rate to meet the capacity requirements of the users of the system. The applicant expects that the system capacity will be a minimum of 1.244 gigabits per second (Gbps). The cable system will employ 1.55-micrometer wavelength technology and will be designed to include a minimum of two fiber pairs. Each fiber pair will operate at a minimum of 622 megabits per second (Mbps) per fiber pair. The capacity on each fiber pair will be provided in a minimum of four 155-Mbps streams, with each 155-Mbps stream containing 84 minimum investment units (MIUs) and with each MIU consisting of a 1.544-Mbps bit stream. Alaska Northstar may choose to deploy more than two fiber pairs or to increase the operating bit rate per fiber pair. With two fiber pairs at 622 Mbps, the minimum design capacity would be 336 MIUs per fiber pair. Alaska Northstar will ensure system reliability through the deployment of the appropriate cable system design.

5. Alaska Northstar states that it will sell or lease bulk capacity of the cable system to large users and telecommunications providers on a long-term, highly individualized basis.² Thus, the applicant states, it will make "individualized decisions, in particular cases, whether and on what terms to deal" and does not intend to undertake "to carry for all people indifferently."³ Alaska Northstar also states that there are existing common carrier transmission facilities serving Whittier, Valdez, and Seward. It states that it is therefore not required to apply for authority under section 214 of the Communications Act of 1934,⁴ and it urges us to consider its application pursuant only to the Cable Landing License Act.

6. Alaska Northstar states that the Northstar Cable System - Extension will provide needed additional voice, video and high-speed data transmission capacity and will offer secure, high-quality, high-speed communications to a variety of users by interconnecting with existing and planned Alaskan and U.S. domestic interexchange telecommunications networks.⁵ The introduction of high-quality, reliable, redundant, and cost-effective facilities, the applicant asserts, will cause an immediate and significant increase in demand for and usage of improved telecommunications capabilities. As the first non-common carrier cable along its route, it will facilitate the introduction and expansion of new and improved telecommunications service offerings.

² Application at 10.

³ *Id.* (quoting *National Ass'n of Regulatory Util. Comm'rs v. FCC*, 525 F.2d 630, 641 (D.C. Cir.), cert. denied, 425 U.S. 992 (1976)).

⁴ 47 U.S.C. § 214 (1994), as amended by Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (requiring "carrier[s]" to obtain Commission approval before undertaking construction of a new line or of an extension of any line); see 47 U.S.C. § 153(10) (defining "common carrier" or "carrier" as "any person engaged as a common carrier for hire . . .").

⁵ *Id.* at 5-6.

Comments

7. The Alaska Northstar application was placed on public notice on March 15, 1996. No comments were received. Pursuant to Section 1.767(b) of the Commission's rules,⁶ the Cable Landing License Act, and Executive Order No. 10530,⁷ we informed the Department of State of Alaska Northstar's application.⁸ The Department of State, after coordinating with the National Telecommunications and Information Administration and the Department of Defense, stated that it has no objection to the issuance of the requested cable landing license.⁹

Discussion

8. Alaska Northstar requests a license under the Commission's private submarine cable policy to promote competition in the provision of international transmission facilities.¹⁰ Pursuant to this policy, the Commission has authorized non-common carrier cables where there is no legal compulsion to serve the public indifferently and no reason implicit in the nature of the operations to expect an indifferent holding-out to the eligible user public.¹¹

9. South Central Alaska is served by the NPC cable system,¹² circuits on the Telstar 303 and Aurora 2 satellites, and terrestrial microwave service. Because of the sufficient availability of common carrier circuits along the proposed route of the Northstar Cable System - Extension, there is no public-interest reason to require that it be operated on a common carrier basis.¹³ Also, in light of the sizable present and anticipated future demand for telecommunications facilities, we see no prospect of creating significant overcapacity by the introduction of non-common carrier facilities so as to threaten the economic viability of existing common carrier cable or satellite

⁶ 47 C.F.R. § 1.767(b) (1995).

⁷ Exec. Order No. 10,530, *reprinted as amended in* 3 U.S.C.A. § 301 at 1052 (1985).

⁸ Letter from Diane J. Cornell, Chief, Telecommunications Division, International Bureau, Federal Communications Commission, to Michael T.N. Fitch, Deputy U.S. Coordinator, Office of International Communications and Information Policy, U.S. Department of State (Apr. 2, 1996).

⁹ Letter from Richard C. Beaird, Senior Deputy U.S. Coordinator, International Communications and Information Policy, U.S. Department of State, to Donald H. Gips, Chief, International Bureau, Federal Communications Commission (Aug. 22, 1996).

¹⁰ *See Tel-Optik, Ltd.*, 100 F.C.C.2d 1033, 1041 (1985).

¹¹ *See Optel Communications, Inc.*, 8 FCC Rcd 2267 (1993) (conditional license); *see also National Ass'n of Regulatory Util. Comm'rs v. FCC*, 525 F.2d 630 (D.C. Cir.) (*NARUC I*), *cert. denied*, 425 U.S. 992 (1976).

¹² *See Pacific Telecom Cable, Inc.*, 4 FCC Rcd 8061 (1989) (NPC). We have also granted a license to the Northstar Cable System. *See Alaska Telecom Ltd., L.C.*, 10 FCC Rcd 6072 (1995).

¹³ *See Optel*, 8 FCC Rcd at 2268.

facilities.¹⁴ Thus, there is no reason to require Alaska Northstar to operate the proposed cable system on a common carrier basis.

10. In addition, because Alaska Northstar will make "individualized decisions, whether and on what terms to deal" and does not undertake to "carry for all people indifferently,"¹⁵ there is no reason to expect that the proposed cable circuits would be held out to the public indifferently.¹⁶ We thus conclude that Alaska Northstar will not offer capacity in Northstar Cable System - Extension to the public on a common carrier basis and thus is not subject to regulation under Title II of the Communications Act.¹⁷

11. Consistent with prior decisions, we find that Alaska Northstar's descriptions that the Northstar Cable System - Extension will land at or near Whittier or Seward, Alaska, and at or near Valdez, Alaska, to be sufficient to determine whether the proposed cable would comply with the provisions of the Cable Landing License Act and Commission rules.¹⁸ Pursuant to Section 1.767(a)(5) of the Commission's rules, Alaska Northstar must provide a specific description of the landing locations, including a map, no later than ninety days prior to construction, and we condition this license upon final approval of the landing points. The Commission will give public notice of this description, and grant of the license will be considered final unless we issue a public notice to the contrary no later than sixty days after receipt of the specific description of the landing points.

12. Based on the information provided by Alaska Northstar and pursuant to the Commission's procedures implementing the National Environmental Policy Act of 1969,¹⁹ we conclude that a grant of the requested license would not significantly affect the environment. Consequently, Alaska Northstar is not required to submit an environmental assessment, and this application is categorically excluded from environmental processing.

13. Accordingly, we conclude that U.S. interests under the Cable Landing License Act will be served by grant of the license to Alaska Northstar, as conditioned below.

¹⁴ See *id.* at 2268-69.

¹⁵ See *NARUC I*, 525 F.2d at 641.

¹⁶ See *id.* at 630; see also *Transgulf Communications Ltd.*, 6 FCC Rcd 2335 (1991); *Transnational Telecom Ltd.*, 5 FCC Rcd 598 (1990); *Pacific Telecom Cable, Inc.*, 2 FCC Rcd 2686 (1987) (conditional license); 4 FCC Rcd 8061 (1989) (final license).

¹⁷ Communications Act of 1934 tit. 2, 47 U.S.C. §§ 201-229 (1994), as amended by Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (to be codified at 47 U.S.C. §§ 201-276).

¹⁸ See, e.g., *Guam Telecom Ltd.*, 10 FCC Rcd 12,104 (1995); *Alaska Telecom Ltd.*, 10 FCC Rcd 6072 (1995); *Transnational Telecom Ltd.*, 5 FCC Rcd at 600; *Pacific Telecom Cable, Inc.*, 2 FCC Rcd at 2688.

¹⁹ 47 C.F.R. §§ 1.1301-1319 (1995).

Ordering Clauses

14. Consistent with the foregoing, we hereby GRANT AND ISSUE, under the provisions of the Cable Landing License Act and Executive Order 10530, Alaska Northstar Communications, L.L.C., a license to land and operate a high-capacity fiber optic digital submarine cable (two or more fiber pairs operating at a minimum of 622 Mbps per fiber pair) extending between two points in South Central Alaska, one of which will be at or near Whittier or Seward and the other one of which will be at or near Valdez. This grant is subject to all rules and regulations of the Federal Communications Commission; any treaties or conventions relating to communications to which the United States is or hereafter may become a party; any action by the Commission or the Congress of the United States rescinding, changing, modifying, or amending any rights accruing to any person hereunder; and the following conditions:

- (1) The location of the cable system 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 for the purpose of protecting and safeguarding the cables from injury or destruction by enemies of the United States of America;
- (3) The Licensee or any persons or companies directly or indirectly controlling it or controlled by it or under direct or indirect common control with it shall not acquire or enjoy any right, for the purpose of handling or interchanging traffic to or from the United States, its territories or possessions, to land, connect, or operate cables or landlines, to construct or operate radio stations, or to interchange traffic, that is denied to any other United States carrier by reason of any concession, contract, understanding, or working arrangement to which the Licensee or any persons controlling it or controlled by it are parties;
- (4) 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;
- (5) The Licensee shall notify the Commission in writing of the precise locations at which the cable will land no later than ninety days prior to commencing construction of cable landing stations at those locations. The Commission will give public notice of the filing of these descriptions, and grant of this license will be considered final unless the Commission issues a notice to the contrary no later than sixty days after receipt of the

specific descriptions of landing points;

(6) The Commission reserves the right to require the Licensee to file an environmental assessment or environmental impact statement should it determine that the landing of the cable at those locations and construction of necessary cable landing stations would significantly affect the environment within the meaning of Section 1.1307 of the Commission's procedures implementing the National Environmental Policy Act of 1969; this license is subject to modification by the Commission upon its review of any environmental assessment or environmental impact statement that it may require pursuant to its rules;

(7) The Licensee shall maintain no less than a 50-percent ownership interest and voting control share in the cable, including 100-percent ownership in the cable stations and in the land portion of the cables from the stations to the beach joint of the submerged portion of the cable;

(8) The Licensee shall, by application, obtain Commission approval prior to the sale or transfer to a foreign entity of five percent or more in the aggregate of U.S.-owned and -controlled stock;

(9) This license is revocable by the Commission after due notice and opportunity for hearing pursuant to section 2 of "An Act Relating to the Landing and Operation of Submarine Cables in the United States," 47 U.S.C. § 35, or for failure to comply with the terms of the authorizations;

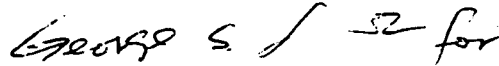
(10) The Licensee shall notify the Commission in writing of the date on which the cable is placed in service, and this license shall expire 25 years from such date, unless renewed or extended upon proper application, and, upon expiration of this license, all rights granted under it shall be terminated;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

(11) 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 the cable landing license.

15. 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)).

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Diane Cornell" with a stylized flourish at the end.

Diane Cornell
Chief, Telecommunications Division
International Bureau