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Federal Communications Commission (F.C.C.)

Cable Landing License

\*1 IN THE MATTER OF GST TELECOM, INC.  
File No. SCL-96-001

Application for a License to Land and Operate a Submarine Fiber Optic Cable  
Extending Between the Northern Mariana Islands of Saipan, Tinian, and Rota and  
the Territory of Guam

DA 97-522

Adopted: March 11, 1997

Released: March 14, 1997

\*\*3608 By the Chief, Telecommunications Division:

1. In this Order, we grant the application of GST Telecom, Inc., (GST) under the Cable Landing License Act [FN1] for authority to land and operate a submarine fiber optic cable system to be called the "Mariana-Guam Cable" extending between the Commonwealth of Northern Mariana Islands (CNMI) and the Territory of Guam. The cable will have landing points on Guam and the three CNMI islands of Saipan, Tinian, and Rota. The cable will be operated on a non-common carrier basis. We find that GST 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.

GST's Application

2. GST is a Delaware corporation and a wholly owned subsidiary of GST USA, Inc., another Delaware corporation. GST USA, Inc., is wholly owned by GST Telecommunications, Inc., a publicly traded Canadian corporation with its headquarters in Vancouver, Washington. Mr. John Warta, a U.S. citizen, is the president and chief executive officer of GST Telecommunications, Inc., and owns or controls approximately 10 percent of its shares. No other single person or entity controls ten percent or more of the applicant, and U.S. citizens and companies own a majority of the shares of GST Telecommunications, Inc. Mr. Warta is also chairman and CEO of the applicant GST, which has three other officers, \*\*3609 one of whom is Canadian and the other two of whom are U.S. citizens. GST would own the entire cable system, including plant and equipment at all four landing points.

3. The cable system will consist of three segments: Segment A, between Saipan and Guam; Segment B, between Saipan and Tinian; and Segment C, between Rota and a

branching unit on Segment A. The exact landing points have yet to be finalized. The applicant states that the landing points will be chosen to ensure secure submarine and land routes and to facilitate connection to the CNMI and Guam intra-island systems, U.S. private and interexchange systems, and international facilities. GST states that the sites will conform to plans approved by the governmental administrations with the appropriate jurisdiction.

4. The design of the Mariana-Guam Cable will be based upon the use of submarine fiber optic technology employing the appropriate transmission rate necessary to meet what GST anticipates will be the high capacity requirements of the users of the system. GST expects that the minimum system design will consist of twelve fibers operating at a Synchronous Optical Network (SONET) rate, for each fiber, equivalent to 622 Mbps and having a system capacity of 24,192 equivalent voice-grade channels. The cable will ensure system reliability through the deployment of the appropriate cable system design using state-of-the-art technology. GST states that, because of the short distances between the cable segments, the Mariana-Guam Cable will not use repeaters.

\*2 5. GST states that the Mariana-Guam Cable will provide a vital, secure, high-quality digital telecommunications link between Guam and the CNMI islands of Saipan, Tinian, and Rota for existing and emerging communications requirements to entities that seek access to the cable. The existing analog microwave systems and satellite earth stations that carry traffic between the Commonwealth islands and to points beyond are vulnerable to disruption due to the high number of tropical storms and typhoons. Submarine cables are not as susceptible to such atmospheric disturbances.

6. GST states that it will sell or lease the capacity of the Mariana-Guam Cable on a private carrier basis. Specifically, the applicant states, it will make tailored and flexible arrangements with customers that are not possible under the regime of a tailored service offering; make long-term plans for the facilities with assurance regarding facility availability and price; design systems to meet customer needs; develop new and innovative service offerings; and offer bulk capacity to a specific class of eligible users. [FN2] Thus, the applicant states, it "will not hold itself out indifferently to serve the public; rather, it will make individualized decisions in particular cases whether and on what terms to deal." [FN3] GST argues that it is therefore not required to apply for authority under Section 214 of the **\*\*3610** Communications Act of 1934 [FN4] because the cable system will not be common carrier in nature, and it urges us to consider its application pursuant only to the Cable Landing License Act.

#### Comments

7. GST's application was placed on public notice on January 23, 1996. Pursuant to Section 1.767(b) of the Commission's rules, [FN5] the Cable Landing License Act, and [Executive Order No. 10530](#), [FN6] we informed the Department of State of

GST's application. [FN7] 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. [FN8]

8. The Guam Telephone Authority (GTA) filed comments, and the Governor of Guam filed reply comments essentially supporting the comments of GTA. GST and the government of the CNMI filed oppositions to GTA's comments. GTE Micronesian Telecommunications Corporation (MTC) then filed an ex parte letter in response to the earlier filings. Both GTA and the Governor of Guam later withdrew their objections to the application. Therefore, there are no outstanding timely comments.

9. MTC's ex parte letter stated that it did not oppose the application but was concerned about an apparent agreement between GST and the Governor's office of the CNMI that would have given GST an exclusive right to a submerged lands lease in the CNMI for three years. MTC stated that the Commission should grant GST's application only on the condition that GST maintain no agreements with the CNMI government that would provide GST exclusive rights to land or operate a cable between Guam and CNMI.

**\*\*3611 Discussion**

\*3 10. When GST's application was filed, GST and the Governor of CNMI had agreed to a submerged-lands lease with a provision that the Commonwealth would not lease submerged lands for a competing cable for the first three years of the GST cable's operation. This exclusivity arrangement was a subject of the comments filed by GTA and the Governor of Guam, and it was the only objection stated in MTC's ex parte letter. Since the application was filed, the CNMI legislature has rejected GST's exclusive lease and has enacted legislation making such rights-of-way available without need for a lease to anyone who meets certain conditions. [FN9] Therefore, in light of the withdrawals of comments by GTA and the Governor of Guam and the satisfaction of MTC's only concern, there does not appear to be any opposition to a grant of this license. We also need not decide whether such an exclusivity provision would violate Section 253 of the Act. [FN10]

11. GST request a license under the Commission's private submarine cable policy to promote competition in the provision of international transmission facilities. [FN11] 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. [FN12]

12. The CNMI is currently served by INTELSAT circuits and analog microwave systems. Because of the number of tropical storms and typhoons that strike the islands, these existing systems are vulnerable to disruption and poor-quality transmission. A submarine cable would provide more-reliable, higher-quality service to

those islands.

13. MTC, the only provider of intra- and inter-island communications services in CNMI, has been granted a cable landing license and accompanying Section 214 authorization to land and operate a common carrier cable between Guam and the islands of Saipan, Tinian, and Rota. [FN13] We understand that MTC has recently secured a submerged-lands lease from the **\*\*3612** CNMI government and is going ahead with plans to construct the cable. The CNMI government believes that, because GST is a relative newcomer to the Mariana-Guam region, its construction and operation of a submarine cable would bring an added dimension of competition to the region. [FN14]

14. In light of MTC's planned common carrier cable and the status of competition in the CNMI, we find that there is no public-interest reason to require that the Mariana-Guam Cable be operated on a common carrier basis. MTC's current satellite and microwave facilities and its planned cable will provide sufficient intra- and inter-island common carrier capacity, and we anticipate that GST's cable, operated on a non-tariffed, non-common carrier basis, will provide a competitive alternative for other carriers that could choose to provide telecommunications services to the islands of the CNMI.

**\*4** 15. In addition, because GST will, in the operation of the cable, 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,'" [FN15] there is no reason to expect that the proposed cable's capacity will be held out to the public indifferently. [FN16] We therefore conclude that GST will not offer capacity in the Mariana-Guam Cable to the public on a common carrier basis and thus is not subject to regulation under Title II of the Communications Act. [FN17]

16. Consistent with prior decisions, we find that GST's description of the landing points of the Mariana-Guam Cable, which states that the cable system will land on Guam, Rota, Saipan, and Tinian, is sufficient to determine whether the proposed cable system would comply with the provisions of the Cable Landing License Act and Commission rules. [FN18] Pursuant to Section 1.767(a)(5) of the Commission's rules, GST 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 **\*\*3613** 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.

17. Based on the information provided by GST and pursuant to the Commission's procedures implementing the National Environmental Policy Act of 1969, [FN19] we conclude that a grant of the requested license would not significantly affect the environment. Consequently, GST is not required to submit an environmental assess-

ment, and this application is categorically excluded from environmental processing.

18. Accordingly, we conclude that U.S. interests under the Cable Landing License Act will be served by grant of a cable landing license to GST, as conditioned below.

#### Ordering Clauses

19. Consistent with the foregoing and pursuant to the Cable Landing License Act and [Executive Order 10530](#), we hereby GRANT AND ISSUE to GST Telecom, Inc., a license to land and operate a submarine fiber optic cable system (expected to consist of twelve fibers operating at 622 Mbps for each fiber and having a system capacity of 24,192 equivalent voice-grade channels) extending between the Commonwealth of the Northern Mariana Islands and the Territory of Guam, with landing points on Guam and the Commonwealth islands of Saipan, Tinian, and Rota. 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 may hereafter 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:

**\*5** (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 cable from injury or destruction by enemies of the United States of America;

**\*\*3614** (3) The Licensee or any persons or companies 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 the United States, its territories, or its possessions unless such service be authorized by the Commission pursuant to section 214 of the Communications Act, as amended;

(4) The Licensee or any persons or companies controlling it, 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 its 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 company by reason of any concession, contract, understanding, or working arrangement to which the Licensee or

any persons controlling it, controlled by it, or under direct or indirect common control with it are parties;

(5) 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;

(6) 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;

(7) 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;

\*6 (8) 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 cable from the stations to the beach joint of the submerged portion of the cable;

(9) 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 direct or indirect ownership in the cable;

\*\*3615 (10) 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;

(11) 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

(12) 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.

20. 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

Diane Cornell

Chief

Telecommunications Division

International Bureau

FN1. An Act Relating to the Landing and Operation of Submarine Cables in the United States, 47 U.S.C. §§ 34-39 (1994) (Cable Landing License Act).

FN2. Letter from Catherine Wang, Counsel for GST Telecom, Inc., to William F. Caton, Acting Secretary, Federal Communications Commission (Feb. 12, 1997).

FN3. Id.

FN4. 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 ...").

FN5. 47 C.F.R. § 1.767(b) (1995).

FN6. Exec. Order No. 10,530, reprinted as amended in 3 U.S.C.A. § 301 at 1052 (1985).

FN7. 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 (Feb. 8, 1996).

FN8. Letter from Richard C. Beard, 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).

FN9. See Fiber Optic Communications Facilitation and Competitive Telecommunications Act of 1996, Pub. L. No. 10-14 (June 18, 1996).

FN10. Telecommunications Act of 1996, Pub. L. No. 104-104, sec. 101, § 253, 110 Stat. 56 (to be codified at 47 U.S.C. § 253) (providing that no state or local statute or regulation may prohibit or have the effect of prohibiting any entity to provide any telecommunications service).

FN11. See [Tel-Optik Ltd.](#), 100 F.C.C.2d 1033, 1041 (1985).

FN12. 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).

FN13. [Micronesian Telecommunications Corporation](#), 8 FCC Rcd 748, DA 93- 91, File No. **SCL-92-003** (1993) (cable landing license); [Micronesian Telecommunications Corporation](#), 8 FCC Rcd 750, DA 93-92, File No. ITC-92- 140 (1993) (Section 214 authorization).

FN14. CNMI Opposition at 3.

FN15. GST Application at 8 (quoting [NARUC 1](#), 525 F.2d at 641); see also Letter from Catherine Wang, Counsel for GST Telecom, Inc., to William F. Caton, Acting Secretary, Federal Communications Commission (Feb. 12, 1997).

FN16. See [NARUC I](#), 525 F.2d 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).

FN17. 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); see [Tel-Optik](#), 100 F.C.C.2d at 1046.

FN18. 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.

FN19. 47 C.F.R. §§ 1.1301-.1319 (1995).

1997 WL 112052 (F.C.C.), 12 F.C.C.R. 3608, 12 FCC Rcd. 3608

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