



Federal Communications Commission (F.C.C.)

Cable Landing License

\*1 IN THE MATTER OF SSI ATLANTIC CROSSING LLC  
File No. SCL-97-002

Application for a license to land and operate in the United States a digital submarine cable system extending between the United States and the United Kingdom and Germany

DA 97-2034

Adopted: September 22, 1997  
Released: September 23, 1997

By the Chief, Telecommunications Division:

1. In this Order, we grant the application of SSI Atlantic Crossing, LLC, ("SSI") under the Cable Landing License Act [FN1] for authority to land and operate a digital fiber optic submarine cable system to be called "Atlantic Crossing" or "AC-1," extending between the United States and the United Kingdom and Germany. This system will be operated on a non-common carrier basis. We find that SSI 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. SSI, a limited liability company organized and existing under the laws of the state of Delaware, is a wholly owned subsidiary of SSI Atlantic Crossing Holdings LLC ("AC Holdings"), a Delaware limited liability company. AC Holdings is a wholly owned subsidiary of Submarine Systems International, Ltd., a Delaware corporation, which is now a wholly owned subsidiary of Tyco International Limited ("Tyco"), a Bermuda corporation. [FN2]

3. SSI will own the portion of AC-1 that is one-half mile beyond the U.S. territorial limit to and including the U.S. cable station. The cables will land at a manhole on Fire Island in Brookhaven Township, New York, and will be connected to a new cable station 8.7 miles away on Precision Drive, where the cable system's terminal equipment will be installed. [FN3] Global Telesystems Ltd. ("GT Ltd."), a Bermuda corporation a majority of whose equity is owned by U.S. interests, will own and operate the portion of the cable system located in international waters, and wholly owned subsidiaries of GT Ltd. will own and operate the portions of the

system located within the United Kingdom and Germany.

4. The AC-1 System will employ optically amplified fiber cable operating at 10 gigabits per second ("Gbps") per fiber pair on four fiber pairs. This cable will feature wavelength division multiplexing and will connect the countries involved in a "self-healing ring network."

5. SSI proposes to operate the AC-1 System as a non-common carrier system in which capacity will not be sold indifferently to the user public. SSI will offer bulk capacity in the AC-1 system on the basis of indefeasible rights of user or leases of capacity. The applicant states that capacity on the system will be assigned pursuant to "individualized decisions," and the offering of bulk capacity will be made only to a "significantly restricted" class of users.

#### Comments

6. The application was placed on public notice on May 16, 1997. Atlantic Express Communications II, Ltd., L.C. ("Atlantic Express") filed a petition to deny, but that petition to deny was received after the filing deadline, June 13, 1997. [FN4] We therefore grant SSI's request to dismiss Atlantic Express's filing. In any event, subsequent filings by SSI sufficiently address Atlantic Express's concerns regarding its affiliation with a Bermuda company. [FN5] Pursuant to Section 1.767(b) of the Commission's rules, [FN6] the Cable Landing License Act, and [Executive Order No. 10530](#), we informed the Department of State of the 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 issuance of the cable landing license. [FN8]

#### Discussion

\*2 7. SSI requests a license under the Commission's private submarine cable policy, which is intended to promote competition in the provision of international transmission facilities. [FN9] Pursuant to this policy, the Commission has authorized non-common carrier cables where (1) there is no legal compulsion to serve the public indifferently and (2) there are no reasons implicit in the nature of the operations to expect an indifferent holding-out to the eligible user public. [FN10]

8. The Commission has previously concluded that, particularly in the North Atlantic region, private cable systems introduce meaningful competition that benefits consumers. [FN11] Because of the sufficient availability of common carrier circuits on existing and future cables and satellite circuits between the United States and the United Kingdom [FN12] and between the United States and Germany, [FN13] there is no public interest reason to require that the applicant's proposed cable facilities be provided on a common carrier basis.

9. Regarding the second prong of the test, SSI states in its application that capacity will not be sold indifferently to the user public. Instead, capacity will be assigned pursuant to "individualized decisions," and bulk capacity will be offered to a "significantly restricted" class of users. Thus, there is no reason to expect that capacity in the proposed cable system would be held out to the public indifferently.

10. Based on the above analysis, we conclude that SSI will not offer capacity in AC-1 to the public on a common carrier basis and that the public interest does not require that it do so. Accordingly, we find that the applicant will not provide a telecommunications service for a fee to such class of users as to be "effectively available directly to the public" and thus will not be a "telecommunications carrier" under the 1996 Act. [FN14] We therefore conclude that it is appropriate to license the AC-1 System on a non-common carrier basis.

11. SSI has provided the ownership information required by Section 1.767(a)(6), Section 63.18(e)(6), and Section 63.18(h) of the Commission's rules. [FN15] Although applicant is ultimately a wholly owned subsidiary of Tyco, a Bermuda corporation, Tyco is a publicly held corporation, and a substantial majority of its shareholders are U.S. citizens and companies. The only shareholder with a ten percent or greater share of the outstanding stock of Tyco is Fidelity Management and Research Company, a mutual fund company that is incorporated in Massachusetts. Fidelity is wholly owned by FMR Corp, another Massachusetts corporation. Thus, no foreign ownership concerns are raised by the application, [FN16] and we find that there is no reason to conduct an effective competitive opportunities analysis or any reciprocity analysis pursuant to section 2 of the Cable Landing License Act. [FN17]

12. SSI has complied with Section 1.767(a)(5) of the Commission's rules by providing, with its application, specific descriptions, including maps, of the cable landing locations on the shore of the United States, the United Kingdom, and Germany. [FN18] This license is therefore not subject to any further public notice or Commission approval of the cable system's landing points pursuant to the procedure in Section 1.767(a)(5).

**\*3** 13. Based on the information provided by the applicant and pursuant to the Commission's procedures implementing the National Environmental Policy Act of 1969, [FN19] we conclude that the grant of the requested authorization would not significantly affect the environment. Consequently, SSI is not required to submit an environmental assessment, and this application is categorically excluded from environmental processing.

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

#### Ordering Clauses

15. Consistent with the foregoing and pursuant to the Cable Landing License Act and [Executive Order 10530](#), we hereby GRANT AND ISSUE SSI Atlantic Crossing LLC a license to land and operate a non-common carrier cable system consisting of fiber optic submarine cables (operating at 10 Gbps per fiber pair on four fiber pairs) extending from the United States to the United Kingdom and from the United States to Germany. 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:

(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 cables 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 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 land lines, 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;

**\*4** (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 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 cables 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 cables, including 100-percent ownership in the cable stations in the United States and in the U.S. land portion of the cables from the stations to the U.S. beach joint of the submerged portion of the cables;

(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 direct or indirect ownership in the cable system;

(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.

16. 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

\*5 Diane J. 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. At the time the original application was filed, SSI was a wholly owned subsidiary of AT&T. In that original application, SSI advised us that a sale to Tyco was imminent. In its July 3, 1997, pro forma amendment, SSI advised us that the

sale to Tyco had taken place and that it is no longer a subsidiary of AT&T.

FN3. See Letter from Patrick Joggerst, Vice President, SSI Atlantic Crossing LLC, and Barry Porter, Vice President, Global Telesystems Ltd., to William F. Caton, Acting Secretary, Federal Communications Commission (July 28, 1997) (with enclosures) (describing the location plan of the U.S. landing point); see also Letter from Claire Calandra, Secretary, SSI Atlantic Crossing LLC, and Barry Porter, Vice President, Global Telesystems Ltd., to William F. Caton, Acting Secretary, Federal Communications Commission (Sept. 5, 1997) (with enclosures) (describing the foreign landing points). We construed both letters as amendments to the application and placed the amendments on public notice. Public Notice, Report No. TEL-95-B (July 30, 1997); Public Notice, Report No. TEL-103-B (Sept. 12, 1997). No comments were received.

FN4. See Public Notice, Report No. TEL-83-B (May 16, 1997); [47 C.F.R. § 1.4 \(1996\)](#); cf. [47 C.F.R. § 63.20 \(1996\)](#).

FN5. See Letter from Patrick Joggerst, Vice President, SSI Atlantic Crossing LLC, and Barry Porter, Vice President, Global Telesystems Ltd., to William F. Caton, Acting Secretary, Federal Communications Commission (July 3, 1997); see also Comments of Atlantic Express Communications II, Ltd., LLC (July 11, 1997) at 3 (acknowledging that the applicant has provided the information required by Commission rules).

FN6. [47 C.F.R. § 1.767\(b\) \(1996\)](#).

FN7. Letter from Diane J. Cornell, Chief, Telecommunications Division, International Bureau, Federal Communications Commission, to Steven W. Lett, Deputy U.S. Coordinator, Office of International Communications and Information Policy, U.S. Department of State (May 19, 1997).

FN8. Letter from Ambassador Vonya B. McCann, United States Coordinator, International Communications and Information Policy, U.S. Department of State, to Peter Cowhey, Chief, International Bureau (Sept. 12, 1997).

FN9. See [Tel-Optik, Ltd., 100 F.C.C.2d 1033, 1040-42, 1046-48 \(1985\)](#); see also [Cable & Wireless, plc, FCC 97-204](#), File No. SCL-96-005 (June 20, 1997).

FN10. See [Cable & Wireless ¶ 14](#); see also [Optel Communications, Inc., 8 FCC Rcd 2267 \(1993\)](#) (conditional license); [National Association of Regulatory Utility Commissioners v. FCC, 525 F.2d 630, 642 \(D.C. Cir.\) \(NARUC I\)](#), cert. denied, [425 U.S. 992 \(1976\)](#).

FN11. See [Tel-Optik, 100 FCC.2d at 1053](#).

FN12. The continental United States and the United Kingdom are served by Intelsat satellite circuits and a number of common carrier submarine cables, including the

TAT-8/TAT-9/TAT-10 cable network and the TAT-12/TAT-13 cable network, see [TAT-12/TAT-13 Cable Landing License, 8 FCC Rcd 4808 \(1993\)](#). In addition, a number of non-common carrier cables, including the CANTAT-3/CANUS-1 cable system, see [Optel Communications, Inc.](#), and the Gemini cable system, see [MFS Globenet, Inc., 11 FCC Rcd 12,732 \(1996\)](#), serve or will soon serve this route.

FN13. The continental United States and Germany are also served by Intelsat satellite circuits, as well as submarine cables, including the TAT-12/TAT-13 and TAT-8/TAT-9/TAT-10 cable systems.

FN14. See [47 U.S.C. § 153\(44\)](#) (defining "telecommunications carrier"); [Cable & Wireless ¶ 17](#).

FN15. [47 C.F.R. § 63.18\(h\) \(1996\)](#).

FN16. See [GST International, Inc., DA 97-898, File No. SCL-96-006 \(rel. Apr. 30, 1997\)](#).

FN17. [47 U.S.C. § 35](#); see [Cable & Wireless ¶¶ 18-35](#).

FN18. See [supra n.3](#).

FN19. [47 C.F.R. §§ 1.1301-.1319 \(1996\)](#).

1997 WL 583362 (F.C.C.), 13 F.C.C.R. 5961, 13 FCC Rcd. 5961

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