

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

In the Matter of
360pacific (USA) inc.
Application for a License to Land and Operate in
the United States a Private Submarine Fiber Optic
Cable between the United States and Japan
SCL-LIC-20000620-00024

CABLE LANDING LICENSE

Adopted: November 17, 2000

Released: November 20, 2000

Before the: Chief, Telecommunications Division

I. Introduction

1. In this order, we grant the Application of 360pacific (USA) inc. ("360pacific"), under the Cable Landing License Act and Executive Order No. 10530, for authority to land and operate a private fiber optic submarine cable system to be called the 360pacific Cable Network ("360pacific CN"), extending between the United States and Japan. We find that Applicants have provided sufficient evidence to demonstrate that the capacity of the 360pacific CN will be sold or leased to users on a non-common carrier basis. We conclude that 360pacific has provided sufficient information under our rules to comply with the Cable Landing License Act and that it would serve the public interest to grant the cable landing license subject to the routine conditions listed below.

II. Application

2. According to the Application, 360pacific, a Nevada corporation, is a wholly-owned subsidiary of 360pacific (Denmark) ApS, a Denmark corporation. 360pacific (Denmark) ApS is a wholly-owned subsidiary of 360pacific (Bermuda) ltd., a Bermuda company, which is, in turn, a wholly-owned subsidiary of 360pacific (Bermuda) holdings ltd., a Bermuda company. 360pacific (Bermuda) holdings ltd. is wholly owned by 360atlantic (Bermuda1) holdings ltd., a Bermuda company. 360atlantic (Bermuda 1) holdings ltd. is wholly owned by 360networks (infrastructure holdings) ltd., a Canadian company. 360networks (infrastructure holdings) ltd. is wholly owned by 360networks inc. ("360networks") (formerly

1 47 U.S.C. §§ 34-39.

2 Exec. Ord. No. 10530, Sec. 5(a), reprinted as amended in 3 U.S.C. § 301 (1994).

3 See Application at 2.

4 See id.

known as Worldwide Fiber Inc.), a Canadian company.⁵ 360networks is a publicly traded company on the Nasdaq and Toronto Stock Exchanges. Worldwide Fiber Holdings Ltd., a Canadian company with interests in the construction and communications industries, and Leducor Limited Partnership, a Canadian partnership, own approximately 66 percent of 360networks.⁶ The remaining shares of 360networks are held by officers and directors of 360networks or are widely held. The general partner of Leducor Limited Partnership is Leducor Industries Limited, a Canadian company and a wholly-owned subsidiary of Leducor Inc., a privately held Canadian company.⁷ One hundred percent of the common shares of Worldwide Fiber Holdings Ltd. are held by Leducor Industries Limited. The majority ownership of Leducor Inc. is held by the Lede family, who are Canadian citizens.⁸

3. As shown in Exhibit A attached to this Order, the proposed 360pacific CN system will connect landing points at: Bandon, Oregon; Seattle, Washington; Oahu, Hawaii – North; Oahu, Hawaii – South; Shim, Japan; and Maruyama, Japan.⁹ Two paired landing stations, north and south, are planned in Japan. From Japan, the 360pacific CN will connect with another planned cable network, the 360asia Cable Network, which is planned to connect Japan, South Korea, China, Malaysia, the Philippines, Hong Kong, Singapore, and India. Additional landing points in Bangladesh, Vietnam, and Brunei may also be added to the 360asia CN in the future.¹⁰

4. Applicants assert that the 360pacific CN will be configured as two protected rings, allowing protection switching to occur in each ring independently and enhancing network survivability. It will be comprised of six fiber pairs with an initial capacity of 320 Gb/s, upgradable according to customer demand to 3.84 Tb/s. The system length will be approximately 22,323 kilometers. The cable will be armored wherever the water depth is less than 1,500 meters and buried to a depth of 1.5 meters wherever the water depth is less than 1,500 meters and seabed conditions permit, in conformity with normal industry practices. The system will be engineered at an availability of 99.99 percent (less than 52 minutes outages per year) and a Bit Error Rate of less than 1E-13. 360pacific seeks to place the 360pacific CN in commercial service in the third quarter 2002.¹¹

III. Comments

5. We placed the Application on public notice on June 30, 2000.¹² We received no comments. Pursuant to Section 1.767(b) of the Commission's rules,¹³ the Cable Landing License Act, and

⁵ See *id.* at 3.

⁶ See *id.*

⁷ See *id.*

⁸ See *id.*

⁹ See Exhibit A, attached to this order.

¹⁰ See Application at 1.

¹¹ *Id.* at 4-5.

¹² See *Non Streamlined International Applications Accepted for Filing*, Public Notice, Report Nos. TEL-00235NS (IB/TD rel. June 30, 2000).

¹³ 47 C.F.R. § 1.767(b).

Executive Order No. 10530, we informed the Department of State of the Application.¹⁴ 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 cable landing license.¹⁵

IV. Discussion

A. Private Submarine Cable Policy

6. 360pacific proposes to use its cable system on a non-common carrier basis, offering bulk capacity to a specific class of eligible users, including common carriers, on an original ownership, indefeasible right of use (IRU), or lease-of-capacity basis.¹⁶ Applicants assert that capacity will not be offered indifferently to the public.¹⁷ Given this, 360pacific requests a license under the Commission's private submarine cable policy, which is intended to promote competition in the provision of international transmission facilities.¹⁸ 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 that the applicant would make capacity available to the public indifferently and indiscriminately.¹⁹

7. In applying the first prong of the test to submarine cable authorizations, the Commission has stated that there will be no legal compulsion to serve the public indifferently where there is no public

¹⁴ Letter from George Li, Deputy Chief, Telecommunications Division, International Bureau, Federal Communications Commission, to Steven Lett, Deputy U.S. Coordinator, Office of International Communications and Information Policy, U.S. Department of State, filed June 29, 2000.

¹⁵ Letter from Geoffrey Chapman, Acting United States Coordinator, International Communications and Information Policy, U.S. Department of State, to Donald Abelson, Chief, International Bureau, Federal Communications Commission filed November 6, 2000.

¹⁶ See Application at 6.

¹⁷ *Id.*

¹⁸ See *id.* at 5; *Tel-Optik Limited, Application for a License to Land and Operate in the United States a Submarine Cable Extending Between the United States and the United Kingdom*, File Nos. I-SCL-84-002, I-SCL-84-003, *Submarine Lightwave Cable Company, Application for a License to Land and Operate in the United States a High Capacity Fiber Optic Digital Submarine Cable Extending Between the United States and other North American Countries, on the Other Hand*, File No. S-C-L-85-001, Memorandum Opinion and Order, 100 FCC 2d 1033, 1040-42, 1046-48, ¶¶ 18-20, 27-31 (1985).

¹⁹ *National Association of Regulatory Utility Commissioners v. FCC*, 525 F.2d 630, 642 (D.C. Cir. 1976) (*NARUC*), *cert. denied*, 425 U.S. 992 (1976). The D.C. Circuit recently affirmed the continuing use of the *NARUC* test in light of the addition of the terms "telecommunications carrier" and "telecommunications service" in the Communications Act as part of the Telecommunications Act of 1996. See *Virgin Islands Telephone Corporation v. FCC*, 198 F.3d 921 (D.C. Cir. 1999); *Cable & Wireless, PLC, Application for a License to Land and Operate in the United States a Private Submarine Fiber Optic Cable Extending Between the United States and the United Kingdom*, File No. SCL-9-005, Cable Landing License, 12 FCC Rcd 8516, 8522, ¶ 14 (1997) (*Cable & Wireless Order*); *AT&T Corp. et. al., Joint Application for a License to Land and Operate a Submarine Cable Network Between the United States and Japan*, File No. SCL-LIC-19981117-00025, Cable Landing License, 14 FCC Rcd 13066, 13080, at ¶ 39 (1999) (*Japan-U.S. Order*).

interest reason to require facilities to be offered on a common carrier basis.²⁰ This public interest analysis has generally focused on the availability of alternative common carrier facilities. Where there are sufficient alternatives, the Commission has found that the public interest does not require the licensee to offer capacity on the proposed cable on a common carrier basis, but rather that, in those circumstances, the public interest would be served by allowing a submarine cable to be operated on a non-common carrier basis.²¹

8. 360pacific asserts that there are sufficient existing and planned facilities on the U.S.-Japan route to prevent it from exercising market power in offering services to the public.²² Specifically, 360pacific asserts that alternative common and non-common carrier submarine cables serving this route include: HAW-4/TPC-3;²³ NPC (authorized on a non-common carrier basis to serve the U.S. Mainland, Alaska, and Japan);²⁴ TPC-4 (authorized on a common carrier basis to serve the U.S. mainland, Canada, and Japan);²⁵ and TPC-5 (authorized on a common carrier basis to serve the U.S. Mainland, Hawaii, Guam, and Japan).²⁶ Additionally, 360pacific asserts that Tyco International, Ltd., recently announced plans to build a transatlantic and transpacific cable network that will compete with the 360pacific CN for customers.²⁷ 360pacific contends that, given the existence of multiple common carriers on the relevant route and the fact that 360pacific CN's offerings will not be made available indifferently to the public, there is no

²⁰ See, e.g., *Cable & Wireless Order*, 12 FCC Rcd 8516 at 8522-23, ¶¶ 14-17.

²¹ *Id.*, 12 FCC Rcd 8516 at 8522-23, ¶¶ 15-17.

²² See Application at 6-7.

²³ *AT&T For Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, to Conform the Assignment of Capacity in the HAW-4/TPC-3 Cable System, as Previously Authorized, to the Assignment of Capacity Agreed to by the HAW-4/TPC-3 Owners in Amendatory Agreement No. 1, Signed October 2, 1987, to the Construction and Maintenance Agreement*, File Nos. ITC-85-219, ITC-88-024, Order and Authorization, 3 FCC Rcd 940 (1988).

²⁴ See *Pacific Telecom Cable, Inc., Application for a License to Land Operate in the United States a Private Submarine Cable Between The United States and Japan*, File No. ISCL-86-002-M, Cable Landing License, 7 FCC Rcd 8061 (1989); see also *Pacific Telecom Cable, Inc., Conditional Cable Landing License*, 2 FCC Rcd 2686 (1987). NPC is currently in service.

²⁵ See *AT&T et. al, Joint Application for a License to Land and Operate a High Capacity Digital Submarine Cable Systems Extending from the United States mainland to Canada and Japan*, File No. SCL-89-004, Cable Landing License, 4 FCC Rcd 8040 (1989). TPC is currently in service.

²⁶ See *AT&T et. al, Joint Application for Section 214 Authority to Construct, Acquire Capacity in and Operate a High Capacity Digital Submarine Cable System Between the United States Mainland, the State of Hawaii, the Island of Guam and Japan*, File No. ITC-92-179, Memorandum Opinion, Order and Authorization, 7 FCC Rcd 7758 (CCB 1992). TPC-5 is currently in service.

²⁷ See Laura Joahannes, "Tyco to Build Vast Undersea Network," *Wall St. J.* (Jan. 17, 2000). 360pacific also asserts that multiple telecommunications companies have announced a project to construct a new cable, the Asia Pacific Cable Network 2 (APCN 2), connecting Japan, South Korea, China, Taiwan, Hong Kong, Malaysia, Singapore, and the Philippines. "Telstra Will Join Telecom Companies in Financing \$1 Billion Cable in Asia," *Wall St. J.* (April 19, 2000); see also "Concert and Japan Telecom Plain Asian Subsea Cable," www.totaltele.com World News Article (June 1, 2000).

public interest reason to require 360pacific CN to be operated on a common carrier basis.²⁸ With regard to the first prong, therefore, we do not find a legal compulsion for 360pacific to serve the public indifferently.

9. Regarding the second prong of the test, we conclude that there is no reason to expect that capacity in the proposed cable system would be held out to the public indifferently. 360pacific states that capacity will not be sold indifferently to the user public. Rather, capacity will be assigned pursuant to individualized decisions in particular cases, whether and on what terms to deal, and bulk capacity will be offered to a significantly restricted class of users, including common carriers.²⁹

10. Under Section 1.767(a)(8) of the Commission's rules, 360pacific is required to disclose its affiliations with foreign carriers.³⁰ 360pacific certifies that it is affiliated with the following foreign carriers: 360networks (fiber1) ltd. (Canada); Ledcor Industries Limited (Canada); 360atlantic (Canada) Inc. (Canada); 360atlantic (Ireland) limited (Ireland); 360atlantic (U.K.) limited (United Kingdom); CGC Services Ltda. (Brazil).³¹ 360pacific asserts that none of the countries in which 360pacific's foreign carrier affiliates operate are landing points for the 360pacific CN.³²

11. There were no comments filed on the application, and 360pacific has provided unopposed evidence of the availability of alternative cables serving the U.S.-Japan route. Given this unopposed evidence, we find that the public interest does not require that we impose common carrier regulation on the operations of the 360pacific CN system at this time. Accordingly, we conclude that it is appropriate to license the 360pacific CN system on a non-common carrier basis. We also 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.³³ We note, however, that we maintain the ability to impose common carrier, or common-carrier-like, obligations on the operations of this or any other submarine cable system if the public interest so requires.³⁴

B. Ownership and Landing Points

12. We find that 360pacific has provided the ownership information required by Sections 1.767(a)(6) and 63.18 of the Commission's rules.³⁵ 360pacific will own and control the U.S. landing

²⁸ See Application at 7.

²⁹ See *id* at 6.

³⁰ See 47 C.F.R. § 1.767(a)(8).

³¹ See Application at 9-11.

³² See *id* at 9.

³³ See 47 U.S.C. § 153(44) (defining "telecommunications carrier"); *Cable & Wireless Order*, 12 FCC Rcd at 8523, ¶ 17.

³⁴ See, e.g., *Review of Commission Consideration of Applications Under the Cable Landing License Act*, IB Docket No. 00-106, Notice of Proposed Rulemaking, FCC 00-210 at ¶ 65 (rel. June 22, 2000); *Japan-U.S. Order*, 14 FCC Rcd 13066 at 13080-81, ¶¶ 39-40.

³⁵ See Application at 8. 360pacific states that because 360pacific is owned by Danish, Bermudan, and Canadian Companies, the U.S. landing stations and adjoining submarine segments in U.S. territorial waters will be indirectly owned by non-U.S. Companies. We note that the Commission has stated that it no longer will (continued....)

stations and that portion of the 360pacific CN system located in U.S. territorial waters. 360pacific (Barbados) inc., a corporation organized under the laws of Barbados and a wholly-owned indirect subsidiary of 360networks inc., will own the portion of the cable located in international waters.³⁶ Applicants assert that the cable landing stations in Japan will be owned or leased by a wholly owned indirect subsidiary of 360 networks, which will be organized under the laws of Japan. The portions of the cable located in territorial waters in Japan will also be owned by this Japanese affiliate.³⁷

13. 360pacific has provided the ownership information required by Section 63.18(h) of the Commission's rules. 360pacific provided the following list of 360pacific's 10 percent or greater shareholders, and 360pacific asserts that no other individual or entity directly or indirectly owns more than 10 percent of 360pacific:³⁸ 360pacific (Denmark) ApS owns 100 percent of 360pacific (USA) inc.; 360pacific (Bermuda) ltd. owns 100 percent of 360pacific (Denmark) ApS; 360pacific (Bermuda) holdings ltd. owns 100 percent of 360pacific (Bermuda) ltd.; 360atlantic (Bermuda 1) holdings ltd. owns 100 percent of 360pacific (Bermuda) holdings ltd.; 360networks (infrastructure holdings) ltd. owns 100 percent of 360atlantic (Bermuda 1) holdings ltd.; 360networks inc. owns 100 percent of 360networks (infrastructure holdings) ltd.; Worldwide Fiber Holdings Ltd. and Leducor Limited partnership together hold approximately 66 percent of the beneficial ownership of 360networks inc.³⁹

D. Environmental Impact

14. The Commission has found that the construction of new submarine cable systems, individually and cumulatively, will not have a significant effect on the environment and therefore should be expressly excluded from its procedures implementing the National Environmental Policy Act of 1969.⁴⁰ (Continued from previous page) _____

routinely impose restriction on foreign ownership of cable landing stations unless the State Department has objections based on national security concerns. *See Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Docket No. 95-22, *Market Entry and Regulation of Foreign Affiliated Entities*, IB Docket No. 95-22, Report and Order and Order on Reconsideration, *Foreign Participation Order*, 12 FCC Rcd 23891, 23934, at ¶ 50 (1997) (*Foreign Participation Order*), Order on Reconsideration, FCC 00- 339 (2000); *see also fONOROLA Fiber Development Inc. Leducor Industries Inc., Application for a License to Land and Operate in the United States a Private Fiber Optic Submarine Cable System Extending Between the United States and Canada*, File No. SCL-98-001, Cable Landing License, 13 FCC Rcd 15663 (IB/TD, rel. Aug. 19, 1998) (authorizing a cable landing station indirectly owned by two Canadian companies) (*fONOROLA I*); *fONOROLA Fiber Development Inc. Leducor Industries Inc., Application for Modification of License to Land and Operate in the United States a Private Fiber Optic Submarine Cable System Extending Between the United States and Canada*, File No. SCL-AMD-19980831-00015, Modification of Cable Landing License, 14 FCC Rcd. 1961 (IB/TD, rel. Dec. 21, 1998) (*fONOROLA II*).

³⁶ See Letter from Sophie J. Keefer, Counsel to 360pacific (USA) inc., to Magalie Roman Salas, Secretary, Federal Communications Commission, filed June 30, 2000.

³⁷ See Application at 5, 8.

³⁸ 360pacific also asserts that 360pacific has no interlocking directorates with a foreign carrier. See Application at 9.

³⁹ See Application at 8, Exhibit B.

⁴⁰ See 47 C.F.R. § 1.1306 Note 1 (as amended 1999); *1998 Biennial Regulatory Review – Review of International Common Carrier Regulations*, IB Docket No. 98-118, Report and Order, 14 FCC Rcd 4909, 4937-38 at ¶¶ 67-69.

Therefore, 360pacific is not required to submit an environmental assessment, and this application is categorically excluded from environmental processing.

E. Other Information

15. 360pacific states that Ledcor Industries Inc., an affiliate of 360pacific, has been granted a cable landing license, jointly with fONOROLA Fiber Development Inc., for the AmeriCan-1 cable, which extends, or will extend, between Seattle, Washington, and Vancouver, British Columbia.⁴¹ 360atlantic(USA) inc., also an affiliate of 360pacific, has received a license to construct and operate the 360atlantic cable system (formerly the Hibernia cable system), which will connect cable stations in Boston, Massachusetts, and Halifax, Nova Scotia, with cable stations in Dublin, Ireland, and Liverpool, England.⁴²

16. 360pacific notes that the Commission recently granted 360networks and GlobeNet Communications Group Limited (“GlobeNet”) authority to transfer control to 360networks of the submarine cable landing licenses and Section 214 authorizations held by subsidiaries of GlobeNet.⁴³ 360pacific asserts that the acquisition was scheduled to close on June 20, 2000, and that, pursuant to this transaction, 360networks will acquire control of all GlobeNet’s subsidiaries, including: Atlantica USA LLC; the licensee of the Atlantica-1 cable;⁴⁴ TeleBermuda International limited, partial owner of the TAT-14 cable;⁴⁵ and TeleBermuda International, L.L.C., licensee of the BUS-1 cable.⁴⁶ Additionally, 360pacific

⁴¹ See *fONOROLA I*, 13 FCC Rcd 15663 ; *fONOROLA II*, 14 FCC Rcd 1961; *fONOROLA Fiber Development Inc.; Ledcor Industries Inc., Application for Modification of License to Land and Operate in the United States a Private Fiber Optic Submarine Cable System Extending Between the United States and Canada*, File No. SCL-AMD-19981112-00026, Second Modification of Cable Landing License, 14 FCC Rcd 4507 (IB/TD, rel. Mar. 31 1999) (modifying the cable landing license to add Fiberco Telecommunications Corporation as a third licensee).

⁴² See *Worldwide Telecom (USA) Inc., Application for a License to Land and Operate in the United States a Private Fiber Optic Submarine Cable System Extending Between the United States, Canada, Ireland, and the United Kingdom*, File No. SCL-LIC-19990804-00012, Cable Landing License, 15 FCC Rcd 765 (IB/TD, rel. Jan. 14, 2000) (non-common carrier cable).

⁴³ *Acquisition of GlobeNet Communications Group Limited by 360networks inc.*, FCC File Nos. ITC-T/C 20000328-00186, SCL-T/C-20000328-0010, Memorandum Opinion and Order DA 00-1348 (IB/TD, rel. June 20, 2000).

⁴⁴ See *Atlantica USA LLC, Application for a License to Land and Operate in the United States a Private, Fiber Optic Submarine Cable System Extending Between the United States, Venezuela, Brazil and Bermuda (the Atlantica-I Network)*, File No. SCL-LIC-19990602-00010, Cable Landing License, 14 FCC Rcd 20787 (TD/IB, rel. Dec. 10, 1999).

⁴⁵ See *TeleBermuda International, LLC, Application for Consent to Transfer of Control of TeleBermuda International, LLC to TeleBermuda International Limited*, FCC File No. SCL-LIC-19990303-00004, Memorandum Opinion and Order, DA 99-2381 (IB/TD, rel. Sep.30, 1999).

⁴⁶ See *TeleBermuda International, L.L.C. Application for a License to Land and Operate a Private Submarine Fiber Optic Cable between the United States and Bermuda*, File No. SCL-95-009, Memorandum, Opinion and Order, 11 FCC Rcd 21141, (IB/TD, rel. Dec. 6, 1996) (authorizing TeleBermuda International, L.L.C. to land and operate BUS-1, a digital private fiber optic submarine cable system extending between the United States and Bermuda, on a non-common carrier basis); see also *TeleBermuda International, L.L.C., Application for Transfer of Control of TeleBermuda International, L.L.C. to TeleBermuda International Limited*, File No. SCL-T/C-19990210-00003 Memorandum Opinion and Order, 14 FCC Rcd 18951 (IB/TD, rel. Oct. 29, (continued....))

asserts that 360networks will obtain control of GlobeNet's operating subsidiaries in Brazil and Venezuela, which are currently have pending applications for authority to provide certain telecommunications services.⁴⁷

V. Conclusion

17. For the reasons discussed above, we grant 360pacific's Application for authority to land and operate a non-common carrier fiber optic submarine cable extending between the United States and Japan, subject to the routine conditions listed below.

VI. Ordering Clauses

18. Consistent with the foregoing and pursuant to the Cable Landing License Act and Executive Order 10530, we hereby GRANT AND ISSUE 360pacific a license to land and operate a non-common carrier fiber optic cable comprised of six fiber pairs with an initial capacity of 320 Gb/s, upgradable according to customer demand to 3.84 Tb/s, extending between the United States and Japan. This grant is subject to all rules and regulations of the 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, 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 U.S. 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;
- (3) The Licensee or any persons or companies controlling it, controlled by it, or under direct or indirect common control with it do 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 to land, connect, or operate submarine cables, 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

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1999) (authorizing the transfer of control of the BUS-1 submarine cable landing license held by TeleBermuda International, L.L.C., to TeleBermuda International Limited).

⁴⁷ See Application at 11-13.

any persons, unless the 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 in Japan. Such notification with respect to any given landing location shall occur no later than 90 days prior to commencing construction at the landing location. The Commission will give public notice of the filing of each description, and grant of this license will be considered final with respect to that landing location unless the Commission issues a notice to the contrary no later than 60 days after receipt of the specific description;

(7) Pursuant to Section 1.767(a)(8) of the Commission's Rules and in conformity with Section 63.18 (i) – (k), Licensee shall submit to the Commission in writing an updated certification of its foreign carrier affiliates within 14 days of acquiring a new foreign carrier affiliation.

(8) 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;

(9) Pursuant to Section 2 of the Cable Landing License Act, 47 U.S.C. § 35; Executive Order No. 10530, as amended; and Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, the Commission reserves the right to impose common carrier regulation or other regulation consistent with the Cable Landing License Act on the operations of the cable system if it finds that the public interest so requires;

(10) The Licensee shall maintain *de jure* and *de facto* control of the U.S. portion of the cable system, including the cable landing stations in the United States, sufficient to comply with the requirements of this license;

(11) This license is revocable by the Commission after due notice and opportunity for hearing pursuant to Section 2 of the Cable Landing License Act, 47 U.S.C. § 35, or for failure to comply with the terms of the authorizations;

(12) 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

(13) 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.

19. 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

Rebecca Arbogast
Chief, Telecommunications Division
International Bureau

EXHIBIT A

