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April 29, 2005

**VIA HAND DELIVERY**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
c/o Natek, Inc., Inc.  
236 Massachusetts Avenue, N.E.  
Suite 110  
Washington, DC 20002

Re: Global Caribbean Network  
Cable Landing License Application  
File No. SCL-LIC-20050418-00010  
Supplemental Response to Item 6 of Application (FCC Rule Section 1.767(a)(6))

Dear Ms. Dortch:

Pursuant to the request of the staff of the International Bureau, enclosed please find the supplemental response of Global Caribbean Network to Item 6 of its above-referenced cable landing license application. The enclosed response provides further information concerning GCN's request for designation as a private carrier.

Should any questions arise concerning this matter, please feel free to contact the undersigned counsel directly.

Sincerely



Eric Fishman  
Attorney for  
Global Caribbean Network

Enclosure

cc: Imani Ellis, International Bureau (by electronic mail)

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**Global Caribbean Network  
Cable Landing License Application  
File No. SCL-LIC-20050418-00010**

**Supplemental Response to Item 6 of Application**  
**(FCC Rule Section 1.767(a)(6))**

GCN proposes to operate its submarine cable system on a non-common, private carrier basis. Pursuant to the Commission's private submarine cable 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. *Review of Commission Consideration of Applications under the Cable Landing License Act*, FCC 01-332, released December 14, 2001. See also *National Association for Regulatory Utility Commissioners v. FCC*, 525 F.2d 630, 642 (D.C. Cir. 1976) ("*NARUC I*"), *cert. denied*, 425 U.S. 992 (1976).<sup>1</sup>

In applying the first prong of the *NARUC I* 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 interest reason to require facilities to be offered on a common carrier basis.<sup>2</sup> This public interest analysis has generally focused on whether an applicant will be able to exercise market power because of the lack of alternative facilities.<sup>3</sup> 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 offered on a non-common carrier basis.<sup>4</sup>

GCN is not affiliated with any foreign carrier. In addition, GCN respectfully submits that there are sufficient existing or planned facilities on the routes to prevent them from exercising market power in offering services to the public, including the following cables extending to Guadeloupe, St. Martin, St. Croix and Puerto Rico: (1) Eastern Caribbean Fiber System ("*ECFS*") (service to eastern Caribbean islands, including St. Martin and Guadeloupe);<sup>5</sup> (2) SMPR-1 (service between Puerto Rico and St. Maarten);<sup>6</sup> (3) ARCOS-1 (service between Puerto Rico and other foreign points);<sup>7</sup> (4) Americas I (service between St. Thomas and St. Croix);<sup>8</sup> (5) Americas II (service between Puerto Rico and U.S. Virgin Islands to other foreign points);<sup>9</sup> (6) SAC (service between U.S. Virgin Islands and other foreign points);<sup>10</sup> (7) PAN AM (service

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<sup>1</sup> The D.C. Circuit has affirmed the use of the *NARUC I* 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).

<sup>2</sup> *Cable & Wireless, PLC*, 12 FCC Rcd 8516 (1997), ¶¶ 14-15.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Telefonica Larga Distancia de Puerto Rico, Inc.*, DA 95-2349 (1995).

<sup>6</sup> Public Notice DA 04-1308, released May 11, 2004.

<sup>7</sup> *ARCOS-1 USA, Inc.*, DA 99-1312 (1999).

<sup>8</sup> *AT&T Submarine Systems, Inc.*, FCC 98-263 (1998).

<sup>9</sup> *AT&T Corp. et al.*, DA 98-2294 and DA 98-2295 (1998).

<sup>10</sup> *SAC Landing Corp.*, DA 00-310 (2000).

between U.S. Virgin Islands and other foreign points);<sup>11</sup> (8) Columbus II (service between U.S. Virgin Islands and other foreign points);<sup>12</sup> (9) MAC (service between U.S. mainland and St. Croix);<sup>13</sup> (10) Antillas-I (service between Puerto Rico and Dominican Republic);<sup>14</sup> and TAINO CARIB (service between Puerto Rico, U.S. Virgin Islands and British Virgin Islands).<sup>15</sup> Given the unopposed evidence of the availability of alternative cables, we respectfully submit that the first prong of the *NARUC I* test has been met.

Regarding the second prong of the *NARUC I* test, GCN further submits that there is no reason to expect that capacity on the proposed cable system would be held out to the public indifferently. GCN submits that capacity will not be sold indifferently to the user public. Rather, capacity will be made available to users on an infeasible right-of-use (IRU) or leased-capacity basis, on terms tailored to their particular needs. GCN will provide bulk capacity to particular users, including common carriers, carrier consortia, and other third parties who require significant amounts of capacity. Capacity will be assigned pursuant to individualized decisions, depending on the characteristics and needs of the individual capacity purchaser. Thus, GCN will not offer capacity on its system to the public on a common carrier basis. Nor will GCN 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 "telecommunication carrier" under the 1996 Act.

GCN acknowledges that the Commission maintains 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. 47 C.F.R. § 1.767(g)(10). We further acknowledge that the Commission has always maintained the authority to classify facilities as common carrier facilities subject to Title II of the Communications Act if the public interest requires that the facilities be offered to the public indifferently.

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<sup>11</sup> *Americatel Corp. et al.*, DA 98-82 (1998).

<sup>12</sup> *American Telephone and Telegraph Company et al.*, DA 93-910 (1993).

<sup>13</sup> *MAC Landing Corp.*, DA 99-509 (1999).

<sup>14</sup> *Telefonica Larga Distancia de Puerto Rico, Inc.*, DA 96-1053 (1996).

<sup>15</sup> *Telefonica Larga Distancia de Puerto Rico, Inc.*, DA 92-862 (1992).