

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of

UNITED UTILITIES, INC., and
GCI COMMUNICATION CORP.,

Application for a License to Land and Operate
a Private Fiber-Optic Cable System between
Williamsport and Homer, Alaska, for

THE COOK INLET SEGMENT OF TERRA-SW

File No. SCL-LIC-2010-_____

**JOINT APPLICATION FOR CABLE LANDING LICENSE—
STREAMLINED PROCESSING REQUESTED**

United Utilities, Inc. (“UUI,” FCC Registration Number 0001571561) and GCI Communication Corp. (“GCIC,” FCC Registration Number 0001568880) (together, “Applicants”) hereby apply for a license to land and operate in the United States a private fiber-optic submarine cable system traversing Cook Inlet to connect the Alaska communities of Williamsport and Homer, Alaska. This non-common carrier cable system will be known as the Cook Inlet Segment of TERRA-SW.¹ UUI will own and operate the marine portion of the Cook Inlet Segment, while GCIC will own and operate the cable station at existing facilities in Homer. Both UUI and GCIC are subsidiaries of General Communication, Inc. (“GCI Parent”). UUI will

¹ The Cook Inlet Segment is one component of the larger TERRA-SW project. TERRA-SW is a hybrid-fiber/microwave network connecting 65 villages throughout southwest Alaska to each other, to existing Alaskan fiber networks, and to the global Internet.

make capacity on the Cook Inlet Segment available to customers on an indefeasible right-of-use (“IRU”) or leased-capacity basis, on terms tailored to those customers’ particular needs. UUI intends to begin operation of the Cook Inlet Segment in the third quarter of 2011. The Applicants request streamlined processing for this application, as it raises no foreign ownership, competition, or other public-interest concerns.

A grant of this application will advance the public interest. The Cook Inlet Segment will connect UUI’s TERRA-SW network to GCIC’s existing undersea cable network, providing true broadband to a vast portion of Southwest Alaska that currently relies on satellite links, which suffer from propagation delays. In addition, existing satellite links are capacity-constrained. The Cook Inlet Segment will allow customers to access a state-of-the-art system and provide much-needed high-speed capacity in Southwestern Alaska.

I. COMPLIANCE WITH SECTION 1.767

In accordance with Section 1.767 of the Commission’s rules and Executive Order No. 10,530, the Applicants submit the following information:

(1) **Applicants’ Names, Addresses and Telephone Numbers²**

The name, address, and telephone number of UUI and GCIC are, respectively:

GCI COMMUNICATION CORP.
2550 Denali Street
Suite 1000
Anchorage, Alaska 99503
+1 907 265 5600 tel
+1 907 265 5676 fax

and

² See 47 C.F.R. § 1.767(a)(1).

UNITED UTILITIES, INC.
5450 A St.
Anchorage, Alaska 99518
+1 907 561-1674

(2) **Applicants' Incorporations**³

GCIC and UUI both are corporations organized under the laws of the State of Alaska.

(3) **Contact Information**⁴

The Commission should address correspondence regarding this application to:

Christopher P. Nierman
Director, Federal Regulatory Affairs
GCI COMMUNICATION CORP.
1350 I Street, N.W., Suite 1260
Washington, D.C. 20005
+1 202 457 8815 tel
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*Counsel for United Utilities, Inc., and
GCI Communication Corp.*

(4) **System Description**⁵

The Cook Inlet Segment will be a digital fiber-optic system connecting Williamsport and Homer, on opposite sides of the Cook Inlet in south-central Alaska. The segment will consist of

³ See *id.*, § 1.767(a)(2).

⁴ See *id.*, § 1.767(a)(3).

⁵ See *id.*, § 1.767(a)(4).

24 fibers (12 fiber pairs), with an initial capacity of OC-48, upgradeable to OC-192. At Williamsport, the Cook Inlet Segment will terminate at a splice point with terrestrial facilities, and there will be no cable station. At Homer, the Cook Inlet Segment will terminate at a cable station to be housed in existing GCIC facilities. Exhibit A of this application provides a route map showing the routing of the Cook Inlet Segment.

The Applicants anticipate that the Cook Inlet Segment will enter into commercial service in the third quarter of 2011.

(5) **Landing Points**⁶

Below, the Applicants provide specific location information for the beach manholes, the Williamsport splice point, and the Homer cable station for the Cook Inlet Segment's landing points:

1. Williamsport

- Beach manhole: 59° 41.07' N Latitude, 153° 37.86' W Longitude
- Splice point: same

2. Homer

- Beach manhole: 59° 38.38' N Latitude, 151° 32.83' W Longitude
- Cable Station: 59° 38.50' N Latitude, 151° 32.88' W Longitude

GCI Facilities
3541 Greatland Street
Homer, AK 99603-7845
(907) 235-6366

Maps of these specific landing points are provided in Exhibit B to this application.

⁶ See *id.*, § 1.767(a)(5).

(6) **Regulatory Status**⁷

UUI will operate the Cook Inlet Segment on a non-common carrier basis. Non-common carrier status of the proposed system is consistent with established Commission policy and judicial precedent, and will advance the public interest.

First, the Commission should not subject the Cook Inlet Segment to common carrier regulation because the Cook Inlet Segment will not operate on a common carrier basis as defined in *NARUC I*.⁸ The courts have stated that “[t]he primary *sine qua non* of common carrier status is a quasi-public character, which arises out of the undertaking ‘to carry for all people indifferently.’”⁹ On the Cook Inlet Segment, however, UUI will not sell capacity indifferently to the user public. Instead, UUI will provide bulk capacity to particular users—including common carriers, carrier consortia, and large end users—who will be able to obtain capacity on the system through IRUs and capacity leases. Capacity on the Cook Inlet Segment will be assigned pursuant to individualized decisions, depending on the characteristics and needs of the particular capacity purchaser. The Commission has previously found that such offerings do not make an applicant a common carrier.¹⁰

⁷ See *id.*, § 1.767(a)(6).

⁸ See *National Ass’n of Regulatory Utility Commissioners v. FCC*, 525 F.2d 630, 642 (D.C. Cir.) (“*NARUC I*”) (stating that the court must inquire “whether there are reasons implicit in the nature of . . . [the] operations to expect an indifferent holding out to the eligible user public”), *cert. denied*, 425 U.S. 992 (1976). See also *Virgin Islands Telephone Corp. v. FCC*, 198 F.3d 921 (D.C. Cir. 1999) (affirming FCC’s use of *NARUC I* test for distinguishing common carrier and private carrier services following enactment of the Telecommunications Act of 1996).

⁹ *National Ass’n of Regulatory Utility Commissioners v. FCC*, 533 F.2d 601, 608 (D.C. Cir. 1976) (“*NARUC II*”).

¹⁰ See *AT&T Corp. et. al, Cable Landing License*, 13 FCC Rcd. 16,232, 16,238 (Int’l Bur. 1998) (“*China-U.S. Cable Order*”) (finding that individualized decisions concerning the sale or lease of capacity on the China-U.S. Cable Network would not constitute the effective provision of a service to the public so as to make the applicant a common carrier); *AT&T*

Second, the Commission should not subject the Cook Inlet Segment to common carrier regulation because there is no legal compulsion or other public interest reason for UUI to operate the Cook Inlet Segment in such a manner. Under the *NARUC I* test, the Commission must determine whether the public interest requires common carrier operation of the cable system.¹¹ Traditionally, the Commission has focused on whether the applicant has sufficient market power to warrant common carrier regulation.¹² The Cook Inlet Segment poses no such competitive concerns.

On the Southwestern Alaska route, UUI will compete vigorously with existing providers in the region, who rely on a combination of satellite and terrestrial facilities:

- AT&T Alascom, which provides high-speed Internet to Aniak;
- Bristol Bay Telephone Co-op, which provides narrowband service to Ekwok, Iguigig, King Salmon, Koliganek, Levelock, Naknek, New Stuyahok, South Naknek, Tununak, and Upper Kalskag;
- Bush-Tell, which provides narrowband service to Aniak, Anvik, Grayling, Holy Cross, Lower Kalskag, Shageluk, and Upper Kalskag;
- Nushagak Telephone Co-op, which provides narrowband service to Aleknagik, Clark's Point, Dillingham, and Manokotak; and
- TelAlaska, which provides narrowband service to Iliamna.

Submarine Systems, Inc., 11 FCC Rcd. 14,885, 14,904 (Int'l Bur. 1996) (“*St. Thomas-St. Croix Cable Order*”) (finding that an “offer of access, nondiscriminatory terms and conditions and market pricing of IRUs does not rise to the level of an ‘indiscriminate’ offering” so as to constitute common carriage), *aff’d* 13 FCC Rcd. 21,585 (1998), *aff’d sub. nom Virgin Islands Telephone Corp. v. FCC*, 198 F.3d 921 (D.C. Cir. 1999).

¹¹ *NARUC I*, 525 F.2d at 642 (stating that the court must inquire “whether there will be any legal compulsion . . . to serve [the public] indifferently”).

¹² *See St. Thomas-St. Croix Cable Order*, 11 FCC Rcd. at 14,893.

The Commission has previously found the existence of intermodal competition sufficient to justify non-common carrier status for an undersea cable system.¹³

UUI's intended operation of the Cook Inlet Segment is consistent with the Commission's long-standing policy to encourage competition through private submarine cable transmissions, pursuant to which the Commission has granted numerous cable landing licenses. As the Commission noted in drawing an analogy between its private cable policy and its policy of allowing the private sale of domestic satellite transponders, the operation and sale of capacity on a non-common-carrier cable:

would (1) permit the providers of capacity to make tailored and flexible arrangements with customers that are not possible under the regimen of a tariffed service offering, (2) enable customers to make long-term plans for the use of facilities with assurance as to facility availability and price, (3) permit systems to be specifically designed to customer needs, and (4) result in positive market development for new and innovative service offerings.

(7) **Cable Ownership Information**¹⁴

UUI will own and operate the wet link of the Cook Inlet Segment, as well as the cable facilities at Williamsport. GCIC will own and operate the cable station at existing facilities at Homer.

(8) **Corporate Control and Affiliate Information**¹⁵

The Applicants submit the following information specified in Sections 63.18(h) through (k) and Section 63.18(o) of the Commission's rules:

¹³ See, e.g., *General Communication, Inc., Cable Landing License*, 12 FCC Rcd. 18,292, 18,297 ¶ 16 (Int'l Bur. 1999) (noting that existing terrestrial microwave and satellite facilities provided competition on the proposed route of GCI's Alaska United East system), *aff'd*, *Order on Review*, 16 FCC Rcd. 4314 (2001) ("AU-East Order on Review").

¹⁴ See 47 C.F.R. § 1.767(a)(7).

¹⁵ See *id.*, § 1.767(a)(8).

(i) **Certification Regarding Ownership, Citizenship, Principal Businesses, and Interlocking Directorates**¹⁶

By the signature below, the Applicants certify to the following.

United Utilities, Inc., is a direct, wholly-owned subsidiary of GCIC. Its address is as follows:

5450 A St.
Anchorage, Alaska 99518

GCIC is a direct, wholly-owned subsidiary of GCI Holdings, Inc., a corporation organized under the laws of the State of Alaska and engaged in the business of telecommunications. GCI Holdings, Inc. is a direct, wholly-owned subsidiary of GCI, Inc., a corporation organized under the laws of the State of Alaska and engaged in the business of telecommunications. GCI, Inc., is a direct, wholly-owned subsidiary of GCI Parent, a corporation organized under the laws of the State of Alaska and engaged in the business of telecommunications. GCIC, GCI Holdings, Inc., GCI, Inc., and GCI Parent all share the same address:

2550 Denali Street
Suite 1000
Anchorage, Alaska 99503

GCI Parent's shares trade publicly on the NASDAQ exchange under the symbol GNCMA and are widely held. GCI Parent has only two 10-percent-or-greater direct or indirect shareholders:

- John W. Stanton and Theresa E. Gillespie, who are husband and wife and own, as tenants in common, 40.1 percent of GCI Parent's outstanding Class B common shares and 4.8 percent of GCI Parent's outstanding Class A shares. On a fully-diluted basis across all share classes, this gives Mr. Stanton and Ms. Gillespie an 18.3-percent voting interest and

¹⁶ See *id.*, § 63.18(h).

a 6.9-percent equity interest in GCI Parent. Both Mr. Stanton and Ms. Gillespie are U.S. citizens. Mr. Stanton and Ms. Gillespie are both Managing Directors of, and investors in, Trilogy Equity Partners LLC, a venture-capital firm focused on the telecommunications and technology sectors. The address of Mr. Stanton and Ms. Gillespie is:

P.O. Box 53508
Bellevue, Washington 98015

- Arctic Slope Regional Corp., which owns 14.4 percent of GCI Parent’s Class A shares. On a fully-diluted basis across all share classes, this gives Arctic Slope Regional Corp. a 9-percent voting interest and a 13.6-percent equity interest in GCI Parent. Arctic Slope Regional Corp. is a private, for-profit Alaska corporation owned by Alaska Natives and representing the business interests of the Arctic Slope Inupiat. The address of its principal office is:

3900 C St. Suite 801
Anchorage, Alaska 99503

Neither UUI nor GCIC has any interlocking directorates with a foreign carrier.

(ii) **Certification Regarding Foreign Carrier Status and Foreign Affiliation**¹⁷

By the signature below, each Applicant certifies that it is not a foreign carrier and is not affiliated with any foreign carrier.

(iii) **Certification Regarding Destination Markets**¹⁸

By the signature below, each Applicant certifies to the following: (1) it is not a foreign carrier in any country outside the United States; (2) it does not control a foreign carrier in any other country; (3) no entity owning more than 25 percent of it or controlling it controls a foreign

¹⁷ See 47 C.F.R. §§ 1.767(a)(8), 63.18(i).

¹⁸ See *id.* §§ 1.767(a)(8), 63.18(j).

carrier in any other country; and (4) no grouping of two or more foreign carriers (or parties that control foreign carriers) own, in aggregate, more than 25 percent of it and are parties to, or beneficiaries of, a contractual relation affecting the provision or marketing of international basic telecommunications services in the United States.

(iv) **Certification Regarding WTO Status, Market Power, and the Effective Competitive Opportunities Test**¹⁹

As neither Applicant has made an affirmative certification in response to Section 63.18(j) of the Commission's rules, the Applicants need not make a showing under Section 63.18(k) of the Commission's rules.

(v) **Certification Regarding the Anti-Drug Abuse Act of 1988**²⁰

By the signature below, the Applicants certify that no party to this application is subject to a denial of federal benefits that includes FCC benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.

(9) **Certification Regarding Routine Conditions Set Forth in Section 1.767(g) of the Commission's Rules**²¹

By the signature below, each Applicants certifies that it accepts and will abide by the routine conditions specified in Section 1.767(g) of the Commission's rules.

II. CERTIFICATION REGARDING SERVICE TO EXECUTIVE BRANCH AGENCIES

Pursuant to Section 1.767(j) of the Commission's rules,²² the Applicants have sent a complete copy of this application to the U.S. Department of State, the U.S. Department of

¹⁹ See *id.* §§ 1.767(a)(8), 63.18(k).

²⁰ See 47 C.F.R. §§ 1.767(a)(8), 63.18(o).

²¹ See 47 C.F.R. §§ 1.767(a)(9), (g).

²² See 47 C.F.R. § 1.767(j).

Commerce, and the Defense Information Systems Agency. The Applicants certified such service in the certificate of service attached to this application.

III. REQUEST FOR STREAMLINED PROCESSING

Pursuant to Section 1.767(k) of the Commission's rules,²³ the Applicants request streamlined processing for this application, as the application clearly qualifies for such processing. This application raises no foreign ownership, competition, or public interest concerns that would merit consideration outside the Commission's streamlined review process. The Applicants certified above that they are not foreign carriers and that they are not affiliated with any foreign carrier in any of the cable's destination markets.²⁴ By the signature below, the Applicants certify that they are aware of and will comply with the requirements of the Coastal Zone Management Act of 1972, as amended ("CZMA"), and the National Oceanic and Atmospheric Administration's CZMA implementing rules, codified at 15 C.F.R. Part 930 Subpart D, although the Commission's new certification requirement in Section 1.767(k)(4) is not yet effective.²⁵

²³ *See id.* § 1.767(k).

²⁴ *See id.* § 1.767(k)(1).

²⁵ *See Federal Communications Commission, Modification of the Rules and Procedures Governing the Provision of International Telecommunications Service, Notice of Final Rule*, 72 Fed. Reg. 54,365 (Sept. 25, 2007) (establishing an effective date of October 25, 2007, for the note to Section 1.767(a)(10) but not Section 1.767(k)(4), which remains subject to approval by the Office of Management and Budget). In certifying its compliance with the CZMA, the Applicants do not concede that the legality or policy-appropriateness of the Commission's new CZMA rules. The Applicants therefore makes this certification without prejudice to any further action that the North American Submarine Cable Association ("NASCA") may take with respect to the Commission's CZMA-related findings, conclusions, and rules adopted in the Commission's Report and Order, FCC 07-118, in IB Docket No. 04-47 (released June 22, 2007). The Applicants' affiliate Alaska United Fiber System Partnership is a NASCA member.

CONCLUSION

For the foregoing reasons, the Commission should expeditiously grant this application pursuant to streamlined processing.

Respectfully submitted,

**UNITED UTILITIES, INC.
GCI COMMUNICATION CORP.**

/s/ Tina Pidgeon

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14 September 2010

Attachments

CERTIFICATE OF SERVICE

I, Kent D. Bressie, hereby certify that consistent with Section 1.767(j) of the Commission's rules, 47 C.F.R. § 1.767(j), I have served copies of the foregoing Joint Application for Cable Landing License of United Utilities, Inc., GCI Communication Corp. by hand- or overnight delivery on this 14th day of September 2010, to the following:

Ambassador Philip L. Verveer
U.S. Coordinator
Int'l Communications & Information Policy
Bureau of Economic and Business Affairs
U.S. DEPARTMENT OF STATE
EB/CIP : Room 4826
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Kent D. Bressie

Exhibit A

Cook Inlet Segment

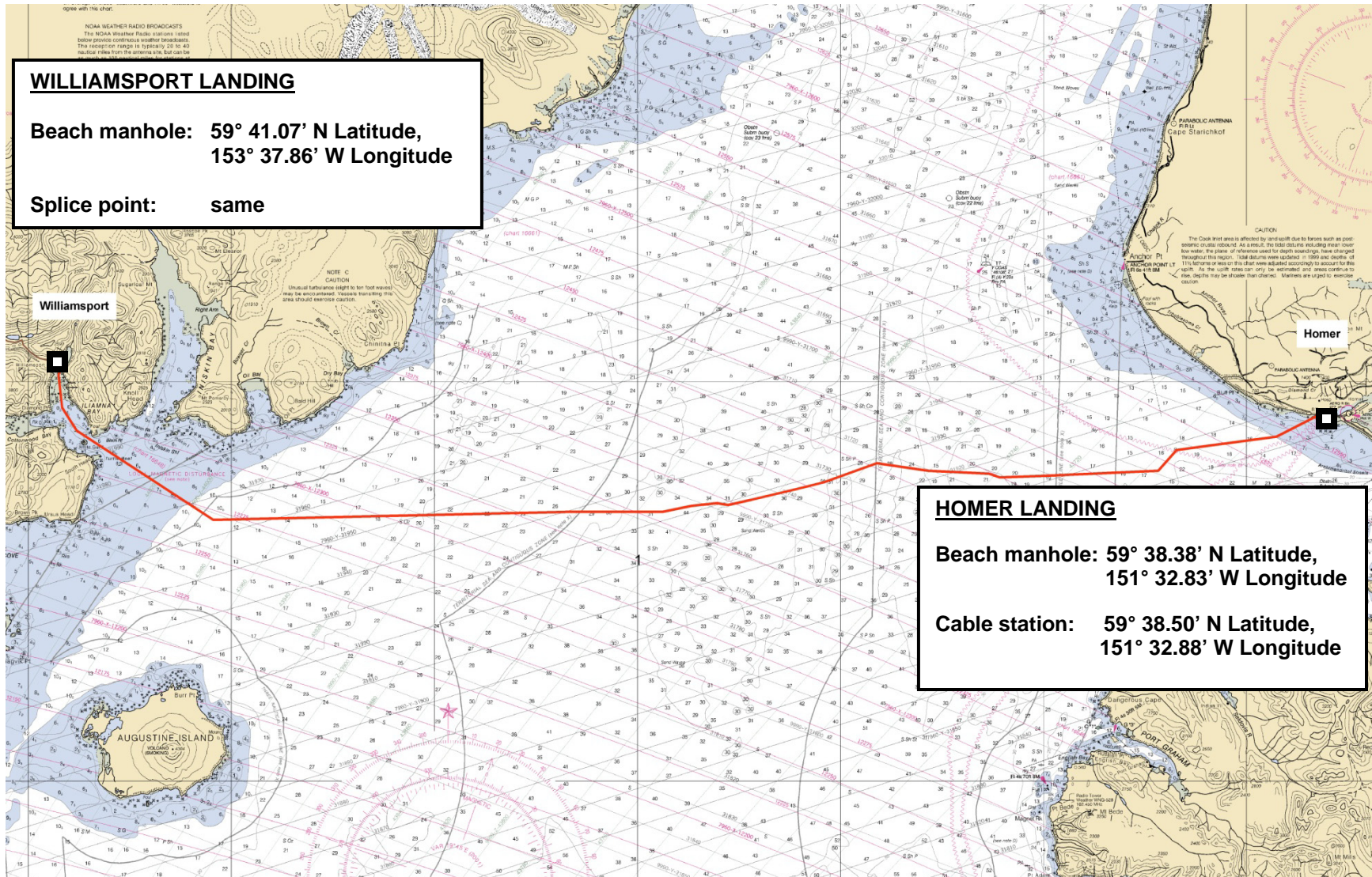
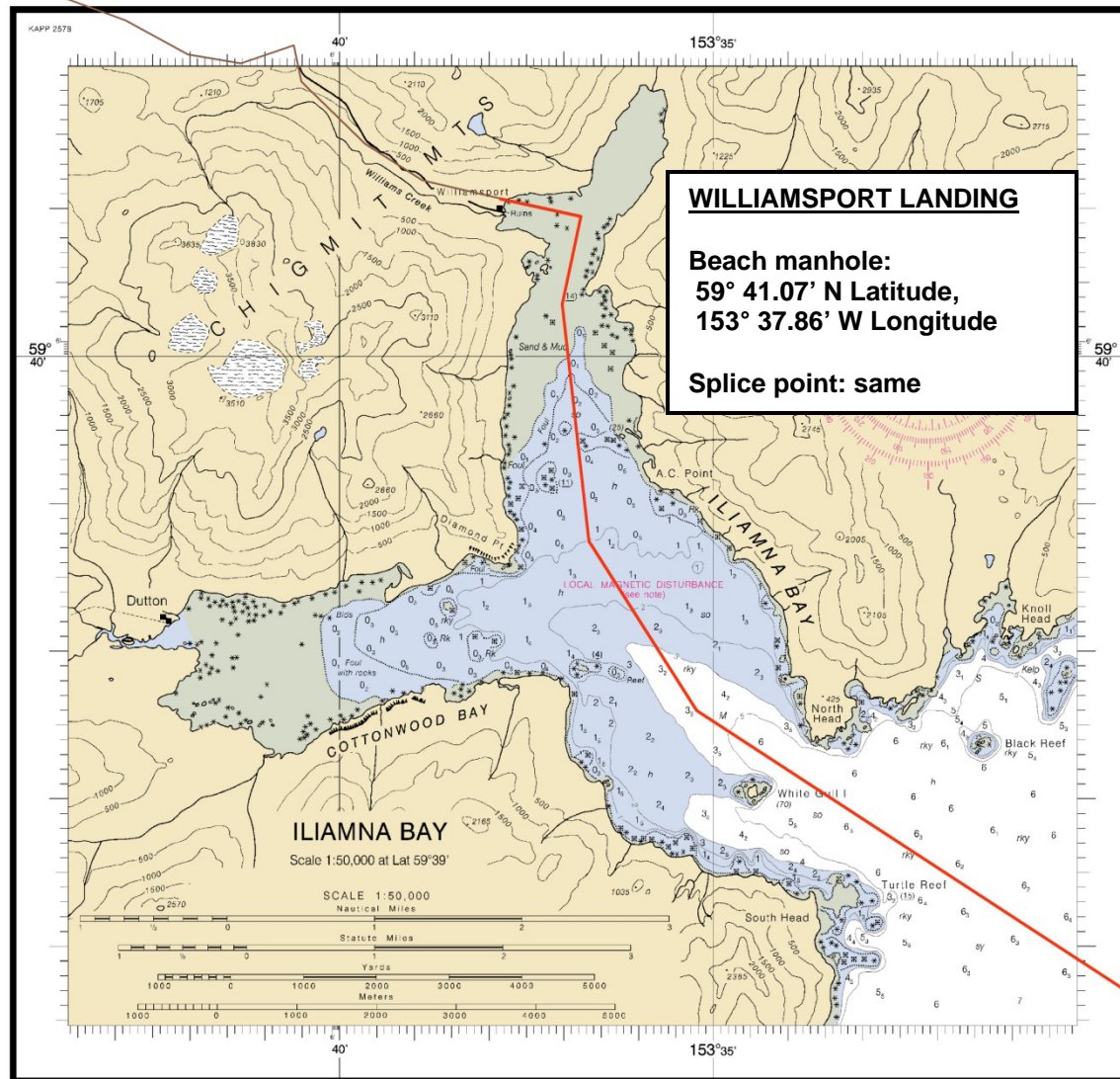


Exhibit B

Williamsport Landing Point



Homer Landing Point

