

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

*In the Matter of*

MICROSOFT INFRASTRUCTURE GROUP, LLC,  
MICROSOFT OPERATIONS PTE LTD,  
CHINA MOBILE INTERNATIONAL LIMITED,  
CHINA TELECOMMUNICATIONS CORPORATION,  
CHINA UNITED NETWORK COMMUNICATIONS  
GROUP COMPANY LIMITED,  
CHUNGHWA TELECOM CO. LTD.,  
AND  
KT CORPORATION,

Application for a License to Land and Operate  
a Private Fiber-Optic Cable System Connecting  
China, Japan, the Republic of Korea, Taiwan, and  
Oregon,

THE NEW CROSS-PACIFIC (“NCP”)  
CABLE SYSTEM

File No. SCL-LIC-2015-\_\_\_\_\_

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

Pursuant to 47 U.S.C. § 34, Executive Order No. 10,530, and 47 C.F.R. § 1.767,  
Microsoft Infrastructure Group, LLC (“MIGL,” FRN 0024920977), Microsoft Operations Pte  
Ltd (“MOPL,” FRN 0024918658), China Mobile International Limited (“CMI,” FRN  
0024510414), China Telecommunications Corporation (“China Telecom,” FRN 0016734873),  
China United Network Communications Group Company Limited (“China Unicom,” FRN  
0018444604), Chunghwa Telecom Co., Ltd. (“Chunghwa,” FRN 0016747578), and KT  
Corporation (“KT,” FRN 0016730822) (collectively, “Applicants”), hereby jointly apply for a  
license to land and operate within the United States a private fiber-optic submarine cable  
network connecting China, Japan, the Republic of Korea, Taiwan, and Oregon, to be known as

the New Cross-Pacific (“NCP”) cable system. The Applicants will operate the NCP cable system on a non-common-carrier basis by using capacity for their own internal needs and by providing bulk capacity to customers on particularized terms and conditions pursuant to individualized negotiations. The existence of robust competition and ample competing facilities on the international routes to be served by the NCP cable system obviates any need for common-carrier regulation on public-interest grounds.

The Applicants intend to commence commercial operation of the NCP cable system in the fourth calendar quarter of 2017. The Applicants therefore view timely grant of a cable landing license by the Commission no later than autumn 2016 of paramount importance.

An expeditious grant of this application will significantly advance the public interest. *First*, NCP will provide multiple fiber pairs employing next generation subsea and transmission technologies to satisfy the escalating bandwidth demands from emerging new applications and broadband mobile services (particularly to access Internet content stored in the United States). NCP will also address the need for greatly expanded capacity as cloud services continue their meteoric growth in the “Internet of Things” era. *Second*, NCP will provide critical connectivity between the United States and its third (China), fourth (Japan), sixth (Korea), and tenth (Taiwan) largest trading partners. *Third*, NCP will enhance competition on U.S.-East Asia routes, competing vigorously with other carriers and consortia that have a well-established presence on these routes. *Fourth*, the NCP cable system will increase route diversity, strengthening the resilience of U.S.-East Asia communications.

The Applicants request streamlined processing for this application, as it raises no competition or other public-interest concerns. MIGL and MOPL request streamlined processing

pursuant to 47 C.F.R. § 1.767(k)(1). CMI, China Telecom, China Unicom, Chunghwa, and KT each request streamlined processing pursuant to 47 C.F.R. § 1.767(k)(3).

## **I. COMPLIANCE WITH 47 C.F.R. § 1.767**

### **A. Information Required by 47 C.F.R. § 1.767(a)(1)-(a)(3), (a)(8), and (g)**

The Applicants provide company-specific responses to and certifications for 47 C.F.R. § 1.767(a)(1)-(a)(3), (a)(8), and (g) in the following appendices:

- Appendix A: Microsoft Infrastructure Group LLC
- Appendix B: Microsoft Operations Pte Ltd
- Appendix C: China Mobile International Limited
- Appendix D: China Telecommunications Corporation
- Appendix E: China United Network Communications Group Company Limited
- Appendix F: Chunghwa Telecom Co., Ltd.
- Appendix G: KT Corporation

### **B. System Description<sup>1</sup>**

NCP will consist of six segments totaling 13,000 kilometers in length:

- **Segment 1:** This segment connects China Telecom's cable landing station at Chongming, China, with MIGL's cable landing station in Pacific City, Oregon. It includes five subsegments, demarcated by the cable landing stations in Chongming and Pacific City, and Branch Units 1 through 4.
- **Segment 2.1:** This terrestrial segment connects the beach manhole at Chongming, China with CMI's terrestrial station at Lingang, China.

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<sup>1</sup> See 47 C.F.R. § 1.767(a)(4).

- **Segment 2.2:** This terrestrial segment connects CMI’s terrestrial station at Lingang, China, with a beach manhole at Nanhui, China.
- **Segment 3:** This segment connects China Unicom’s cable landing station at Nanhui, China, with Branch Unit 1.
- **Segment 4:** This segment connects Branch Unit 2 with KT’s cable landing station in Busan, Korea.
- **Segment 5:** This segment connects Branch Unit 3 with Chunghwa’s cable landing station in Toucheng, Taiwan.
- **Segment 6:** This segment connects Branch Unit 4 with a cable landing station owned and operated by SoftBank Mobile Corp.<sup>2</sup> (“SoftBank”) in Maruyama, Japan.

The NCP cable system will consist of up to seven optical fiber pairs on each segment, with an initial configuration capacity of 1.2 terabits per second (“Tb/s”) and a total design capacity of 70 Tb/s using 100-gigabit wavelength technology. The Applicants expect the NCP cable system to enter into commercial service in the fourth calendar quarter of 2017. In Appendix H, the Applicants provide a map showing the route and landing points of the system.

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<sup>2</sup> Although SoftBank is a member of the NCP consortium and will own and operate the cable landing station in Japan, it does not satisfy either of the minimum criteria for necessary licensees specified in 47 C.F.R. § 1.767(h). SoftBank is not a joint applicant with respect to this application because it owns less than a 5-percent interest in the NCP cable system and will not own or control any U.S. cable landing station for the NCP cable system.

### **C. Landing Points<sup>3</sup>**

The Applicants provide specific landing point information (including geographic coordinates and street addresses, where available, for beach manholes and cable landing stations) in the following appendices:

- Appendix I: Chongming, China
- Appendix J: Lingang, China
- Appendix K: Nanhui, China
- Appendix L: Busan, Korea
- Appendix M: Toucheng, Taiwan
- Appendix N: Maruyama, Japan
- Appendix O: Pacific City, Oregon

Where submarine line terminating equipment (“SLTE”) will not be located in the cable landing station, the parties have also indicated the location of the SLTE in the relevant appendices.

### **D. Regulatory Classification<sup>4</sup>**

The Applicants will operate the NCP cable system on a non-common-carrier basis. Non-common-carrier classification of the proposed system is consistent with established Commission policy and precedent and with judicial precedent, and it will advance the public interest.

*First*, the Commission should not subject the NCP cable system to common-carrier regulation because NCP will not operate on a common-carrier basis as defined in *NARUC I*.<sup>5</sup>

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<sup>3</sup> See *id.* § 1.767(a)(5).

<sup>4</sup> See *id.* § 1.767(a)(6).

<sup>5</sup> See *Nat’l Ass’n of Regulatory Utility Comm’rs v. FCC*, 525 F.2d 630, 642 (D.C. Cir. 1976) (“*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 Tel. Corp. v. FCC*, 198 F.3d 921

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.’”<sup>6</sup> On NCP, however, the Applicants will not sell capacity indifferently to the user public. Instead, the Applicants will sell bulk capacity to particular users—including carriers, Internet service providers, enterprises, and non-profit and educational institutions—pursuant to individually-negotiated indefeasible rights of use (“IRUs”) and capacity leases, the terms of which will vary depending on the characteristics and needs of the particular capacity purchaser. The Commission has consistently found that such offerings do not make an applicant a common carrier.<sup>7</sup>

**Second**, the Commission should not subject the NCP cable system to common-carrier regulation because there is no legal compulsion or other public-interest reason for the Applicants to operate NCP 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.<sup>8</sup>

Traditionally, the Commission has focused on whether the applicant has sufficient market power

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(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).

<sup>6</sup> *Nat’l Ass’n of Regulatory Utility Comm’rs v. FCC*, 533 F.2d 601, 608 (D.C. Cir. 1976) (quoting *Semon v. Royal Indemnity Co.*, 279 F.2d 737, 739 (5th Cir. 1960)).

<sup>7</sup> *See AT&T Corp. et al.*, Cable Landing License, 13 FCC Rcd. 16,232, 16,238 (Int’l Bur. 1998) (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 Submarine Systems, Inc.*, Cable Landing License, 11 FCC Rcd. 14,885, 14,904 ¶ 64 (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).

<sup>8</sup> *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”).

to warrant common carrier regulation,<sup>9</sup> although the Commission “is not limited to that reasoning” and has looked more broadly to determine whether common-carrier licensing is in the public interest.<sup>10</sup> The NCP cable system poses no such competitive or other public-interest concerns.

The NCP cable system will enhance competition by competing vigorously with other submarine cable systems on all of the international routes it will serve. Specifically, the NCP cable system will compete as follows:

- On the U.S.-China route, NCP will compete with the China-U.S. Cable Network and Trans-Pacific Express. It will also compete with a variety of systems that connect China with Japan, Korea, and Taiwan (including the APCN-2, EAC-C2C, SEA-ME-WE-3, and/or Southeast Asia-Japan systems), with onward connectivity to the United States (using the Japan-U.S. Cable Network, Pacific Crossing-1, TGN Pacific, and/or Unity systems or the planned FASTER system).
- On the U.S.-Japan route, NCP will compete with the China-U.S. Cable Network, Japan-U.S. Cable Network, Pacific Crossing-1, TGN Pacific, Trans-Pacific Express, and Unity systems, and the planned FASTER system.

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<sup>9</sup> See *St. Thomas-St. Croix Cable Order*, 11 FCC Rcd. at 14,893 ¶ 30.

<sup>10</sup> See *AT&T Corp. et al.*, Cable Landing License, 14 FCC Rcd. 13,066, 13,080 ¶ 39 (2000) (stating that “[a]lthough this public interest analysis has generally focused on the availability of alternative facilities, we are not limited to that reasoning”); *Australia-Japan Cable (Guam) Limited*, Cable Landing License, 15 FCC Rcd. 24,057, 24,062 ¶ 13 (Int’l Bur. 2000) (stating that “[t]his public interest analysis generally has focused on whether an applicant will be able to exercise market power because of the lack of alternative facilities, although the Commission has not limited itself to that reasoning”); *Telefonica SAM USA, Inc. et al.*, Cable Landing License, 15 FCC Rcd. 14,915, 14,920 ¶ 11 (Int’l Bur. 2000) (stating that “[t]his public interest analysis has focused on the availability of alternative facilities, although the Commission has stated it is not limited to that reasoning”).

- On the U.S.-Korea route, NCP will compete with the China-U.S. Cable Network and Trans-Pacific Express. It will also compete with a variety of systems that connect Korea with China, Japan, and Taiwan (including the APCN-2, EAC-C2C, and/or SEA-ME-WE-3 systems), with onward connectivity to the United States (using the Japan-U.S. Cable Network, Pacific Crossing-1, TGN Pacific, and/or Unity systems or the planned FASTER system).
- On the U.S.-Taiwan route, NCP will compete with the China-U.S. Cable Network, Trans-Pacific Express, and the planned FASTER system. It will also compete with a variety of systems that connect Taiwan with China, Japan, and Korea (including the APCN-2, EAC-C2C, and/or SEA-ME-WE-3 systems), with onward connectivity to the United States (using the Japan-U.S. Cable Network, Pacific Crossing-1, TGN Pacific, and/or Unity systems).

The Commission has previously found that it “can rely upon both existing and planned facilities/services in making competitive assessments”<sup>11</sup> and that facilities need not be identical in order to offer pro-competitive benefits.<sup>12</sup> The existence of ample competing submarine cable facilities providing U.S.-China, U.S.-Japan, U.S.-Korea, and U.S.-Taiwan connectivity ensures that NCP would not function as a bottleneck facility on those routes. The Applicants’ intended operation of the NCP cable system is therefore consistent with the Commission’s long-standing

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<sup>11</sup> *General Communication, Inc.*, Order on Review, 16 FCC Rcd. 4314, 4315 ¶ 4 (2001).

<sup>12</sup> *St. Thomas-St. Croix Cable Order*, 11 FCC Rcd. at 14,898 ¶ 44 (stating that “requiring current identical substitute common carrier facilities before non-common carrier facilities will be authorized would serve as a disincentive for entities to take risks and expend capital to expand and upgrade facilities”).



policy to encourage competition through private submarine cable transmissions, pursuant to which the Commission has granted numerous cable landing licenses.<sup>13</sup>

In addition to offering additional competition on international routes, the NCP cable system will further benefit the public interest for the reasons noted in the introductory section above. *First*, NCP will provide multiple fiber pairs employing next-generation subsea and transmission technologies to satisfy the escalating bandwidth demands from emerging new applications and broadband mobile services (particularly to access Internet content stored in the United States). NCP will also address the need for greatly expanded capacity as cloud services continue their meteoric growth in the “Internet of Things” era. *Second*, NCP will provide critical connectivity between the United States and its third (China), fourth (Japan), sixth (Korea), and tenth (Taiwan) largest trading partners. *Third*, the NCP cable system will increase diversity, adding to a more resilient network system across the Pacific.

**E. Cable Ownership Information<sup>14</sup>**

The Applicants own fractional interests in the entire wet segment of NCP, as indicated in Table 1 below:

**TABLE 1:  
OWNERSHIP INTERESTS IN NCP WET SEGMENT**

<b>CONSORTIUM MEMBER</b>	<b>PARTICIPATION/VOTING INTEREST (%)</b>
MOPL	16.6634
CMI	16.6634
China Telecom	16.6634
China Unicom	16.6634
Chunghwa Telecom	16.6634
KT	16.6634
SoftBank	0.0196

<sup>13</sup> See *Tel-Optik Ltd.*, Memorandum Opinion and Order, 100 FCC.2d 1033, 1041 (1985).

<sup>14</sup> See 47 C.F.R. § 1.767(a)(7).

The cable landing stations at which the NCP cable system will land are owned and controlled as indicated in Table 2 below:

**TABLE 2:  
OWNERSHIP OF CABLE LANDING STATIONS**

<b>CABLE LANDING STATION</b>	<b>OWNER/CONTROLLING PARTY</b>
Chongming, China	China Telecom
Lingang, China (terrestrial)	CMI
Nanhui, China	China Unicom
Busan, Korea	KT
Toucheng, Taiwan	Chunghwa Telecom
Maruyama, Japan	SoftBank
Pacific City, Oregon	MIGL

The relationships among the NCP owners and landing parties are governed by the NCP Construction and Maintenance Agreement.

**F. Certification Regarding Service to Executive Branch Agencies<sup>15</sup>**

The Applicants have sent a complete copy of this application to the U.S. Departments of State, Commerce, and Defense. The Applicants' counsel has certified such service in the certificate of service attached to this application.

**II. REQUEST FOR STREAMLINED PROCESSING**

This application qualifies for streamlined processing, as each of the Applicants qualifies for such processing pursuant to 47 C.F.R. § 1.767(k)(1) or (3). As explained in Appendices A and B respectively, MIGL and MOPL each request streamlined processing pursuant to 47 C.F.R. § 1.767(k)(1), as neither is or is affiliated with a foreign carrier in China, Japan, Korea, or

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<sup>15</sup> See *id.* § 1.767(j).

Taiwan—the four foreign countries in which the NCP cable system will land. As explained in Appendices C, D, E, F, and G, respectively, CMI, China Telecom, China Unicom, Chunghwa Telecom, and KT each request streamlined processing pursuant to 47 C.F.R. § 1.767(k)(3), as each is, or is affiliated with, a foreign carrier with a 50-percent-or-greater share of the international-transport or local-access market in China, Korea, or Taiwan. CMI, China Telecom, and China Unicom each certify that China is a member country of the World Trade Organization and that they agree to accept and abide by the reporting requirements set forth in 47 C.F.R. § 1.767(l). Chunghwa Telecom certifies that Taiwan is a member country of the World Trade Organization and that it agrees to accept and abide by the reporting requirements set forth in 47 C.F.R. § 1.767(l). KT certifies that the Republic of Korea is a member country of the World Trade Organization and that it agrees to accept and abide by the reporting requirements set forth in 47 C.F.R. § 1.767(l).

By the signatures in the appendices, each Applicant certifies that it is not required to submit a consistency certification to any state or territory pursuant to Section 1456(c)(3)(A) of the Coastal Zone Management Act, codified at 16 U.S.C. § 1456(c)(3)(A). Oregon, the only U.S. state in which NCP will land, does not list, and has never proposed to list, a cable landing license as a federal activity requiring a consistency certification.<sup>16</sup>

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<sup>16</sup> See National Oceanic and Atmospheric Administration, Coastal Zone Management Program, *Oregon's Listed Federal Actions*, <http://coast.noaa.gov/czm/consistency/media/or.pdf>; OREGON ADMINISTRATIVE RULES, Div. 35, Federal Consistency, Div. No. 660-035-0015: Activities Subject to Review.

## CONCLUSION

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

Respectfully submitted,

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GROUP COMPANY LIMITED  
CHUNGHWA TELECOM CO. LTD.  
KT CORPORATION

3 November 2015

Attachments

## CERTIFICATE OF SERVICE

I, Kent Bressie, hereby certify that consistent with 47 C.F.R. § 1.767(j), I have served copies of the foregoing application for a cable landing license for the NCP submarine cable system, by hand delivery or electronic mail this 3rd day of November, 2015, to the following:

Ambassador Daniel Sepulveda  
U.S. Coordinator and Deputy Assistant Secretary of State  
Int'l Communications & Information Policy  
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## **LIST OF APPENDICES**

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- Appendix B: Microsoft Operations Pte Ltd Information Responsive to 47 C.F.R. § 1.767(a)(1)-(a)(3), (a)(8), and (g)**
- Appendix C: China Mobile International Limited Information Responsive to 47 C.F.R. § 1.767(a)(1)-(a)(3), (a)(8), and (g)**
- Appendix D: China Telecommunications Corporation Information Responsive to 47 C.F.R. § 1.767(a)(1)-(a)(3), (a)(8), and (g)**
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- Appendix F: Chunghwa Telecom Co., Ltd. Information Responsive to 47 C.F.R. § 1.767(a)(1)-(a)(3), (a)(8), and (g)**
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- Appendix I: Specific Landing Point Information for Chongming, China**
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