

July 3, 2020

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Dear Sirs,

This Letter of Assurances (“LOA”) outlines the commitments made by Pacific Carriage Limited Inc. (“PCLI”) to the U.S. Department of Homeland Security (“DHS”) to address national security, law enforcement, and public safety concerns raised with regard to an application filed by PCLI with the Federal Communications Commission (“FCC”) for a license to land and operate a private fiber-optic submarine cable network connecting Australia, New Zealand, Fiji, Samoa, Tokelau, Kiribati, and California known as the Southern Cross NEXT Cable System (“SX NEXT”)<sup>1</sup> and by and Pacific Carriage Limited (“PCL, together with PCLI, “Licensees”) with respect to the existing fiber-optic submarine cable network connecting Australia, New Zealand, Fiji, Hawaii, California, and Oregon, known as the Southern Cross Cable Network (“SCCN”)<sup>2</sup> (together with SX NEXT, the Southern Cross Cable System or “SCCS”).

The Licensees have agreed to provide this LOA to DHS; PCLI understands that DHS will petition the FCC to condition the requested license for NEXT on compliance with this LOA. PCL will request that the FCC modify the cable landing license for SCCN to condition it on compliance with this LOA.

For purposes of this LOA:

- A. “Domestic Communications” means: (a) Wire Communications or Electronic Communications (whether stored or not) from one U.S. location to another U.S. location and (b) the U.S. portion of a Wire Communication or Electronic Communication (whether stored or not) that originates or terminates in the United States.

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<sup>1</sup> FCC File No. SCL-LIC-20190809-00026, Joint Application for a Cable Landing License.

<sup>2</sup> FCC Cable License SCL-97-005 and SCL-MOD-19990216-00002. The SCCN connects Australia, New Zealand, Fiji, Hawaii, California and Oregon.

- B. “Domestic Communications Infrastructure” or “DCI” means: (a) any portion of SCCS that physically is located in the United States, up to and including the submarine line terminating equipment, including (if any) transmission, switching, bridging, and routing equipment, and any associated software (with the exception of commercial-off-the-shelf (“COTS”) software used for common business functions, *e.g.*, Microsoft Office) used to provide, process, direct, control, supervise, or manage Domestic Communications; and (b) Network Operations Center (“NOC”) facilities, as defined in Section E below.
- C. “Electronic Communication” has the meaning given it in 18 U.S.C. § 2510(12).
- D. “Network Operations Center” or “NOC” means the locations and facilities designated as such by the Licensees for purposes of performing network management, monitoring, maintenance, or other operational functions for SCCS.
- E. “Principal Equipment” means the primary electronic components of SCCS, which comprises the DCI and Wet Infrastructure. Principal Equipment consists of: network element servers; routers; switches; repeaters; submarine line terminal equipment (“SLTE”); system supervisory equipment (“SSE”); signal modulators and amplifiers; power feed equipment (“PFE”); tilt and shape equalizer units (“TEQ/SEQ”); optical distribution frames (“ODF”); branching units (“BU”); synchronous optical network (“SONET”); synchronous digital hierarchy (“SDH”); wave division multiplexing (“WDM”), dense wave division multiplexing (“DWDM”); coarse wave division multiplexing (“CWDM”); or optical carrier network (“OCx”) equipment, as applicable; any non-embedded software used for monitoring, administration, or provisioning of SCCS (with the exception of COTS software used for common business functions, *e.g.*, Microsoft Office); and any other such equipment, whether physical or logical, that performs the functions of the equipment described in this definition that SCCS may use in the normal course of business.
- F. “Screened Personnel” has the meaning given it in Section 11 below.
- G. “United States” (“U.S.”) means the United States of America including all of its states, districts, territories, possessions, commonwealths, and special maritime and territorial jurisdiction.
- H. “Wet Infrastructure” means hardware components installed and residing on the undersea portion of SCCS, including fiber optic cables, repeaters, branching units, and routers (if any). Wet Infrastructure includes all the components used to define the topology of the undersea portion of SCCS.
- I. “Wire Communication” has the meaning given it in 18 U.S.C. § 2510(1).

The Licensees undertake to comply with the following commitments:

## 1. Security Points of Contact

The Licensees agree to maintain a Point of Contact (“POC”) for purposes of this LOA. The POC will possess the appropriate authority, reporting lines, independence, skills and resources to ensure compliance with the terms of this LOA. The POC will be a U.S. citizen and, to the knowledge of the Licensees, will be eligible to hold U.S. Government security clearances at the “Secret” level or higher. The Licensees agrees to nominate its proposed POC within **45 days** of the execution of this LOA. The Licensees understand that the POC nomination will be subject to DHS review and approval and that each may be subject to a background check at the sole discretion of DHS. In order to facilitate this, upon request by DHS, the Licensees will provide personally identifiable information as needed by DHS.

The POC will be available twenty-four (24) hours per day, seven (7) days per week, regarding any national security, law enforcement, or public safety concerns that DHS may raise with respect to SCCS. Upon request by DHS, the POC will make themselves available in person within the United States within **72-hours**, at a date and location, including in a classified setting, as deemed necessary by DHS. The POC will be responsible for receiving and promptly effectuating any lawful inquiries or requests for information and for otherwise ensuring compliance with obligations set forth in this LOA.

The Licensees agree to notify DHS of any proposed change to the POC at least **15 days** in advance (except in the case of the unexpected firing, resignation or death of the POC in which case such written notice must be provided within **5 days** of such event) of such proposed change. The Licensees understands that any proposed POC will be subject to DHS review and approval and may be subject to a background check at the sole discretion of DHS.

## 2. Cable System Information

Within **45 days** of the execution of this LOA, and, thereafter, within **30 days** upon request by DHS, the Licensees agree to make available the following SCCS information:

- (a) Network management information, including, as follows: (1) a network map that includes physical and logical topology, including any terrestrial backhaul from the cable landing stations to SLTE locations or other facilities housing SCCS Principal Equipment; (2) network and telecommunications architecture descriptions and associated descriptions of interconnection points and controlled gateways to the DCI and Wet Infrastructure; (3) network operational plans, processes, and procedures; (4) locations and functions of any NOCs, data centers, and main distribution facilities; (5) an organizational chart, to include specific reference to the names and positions of senior officials responsible for operations of SCCS, and/or senior officials of any third parties performing such duties on behalf of the Licensees; and (6) descriptions of interfaces and connections to SCCS for service offload, disaster recovery, or administrative functions;
- (b) A complete and current list of all contracts held by the Licensees or its designee(s) for the maintenance, repair and security of SCCS; and

- (c) A restoration plan for the Principal Equipment and the Wet Infrastructure for SCCS.

### 3. Operational Requirements

With respect to the operation of SCCS, the Licensees agree as follows:

- (a) The Licensees will have the ability to promptly and effectively physically interrupt, in whole or in part, traffic to and from the United States on SCCS by disabling or disconnecting circuits at the U.S. cable landing station or at other locations within the United States;
- (b) The Licensees will configure all necessary systems to ensure it can suspend or interrupt the optical carrier signal or all of SCCS within the DCI.

Within **45 days** of the execution of this LOA, the Licensees agree to notify DHS in writing of the proposed location or locations and, if not the Licensees, the controller, operator, or manager for, the SCCS NOC or NOCs. The Licensees understand DHS will approve or disapprove the location or locations within **45 days** of acknowledgement of receipt or as otherwise agreed to by the Licensees and DHS, with the right of approval not waived unless provided in writing by DHS. The Licensees agree to notify DHS of any proposed change to NOC location(s), to include the addition of new NOC locations, at least **45 days** in advance of such proposed change. The Licensees understand DHS will approve or disapprove the new location or locations within **45 days** of acknowledgement of receipt or as otherwise agreed to by the Licensees and DHS, with the right of approval not waived unless provided in writing by DHS.

If the Licensees are required to interrupt traffic to or from the United States as a result of lawful U.S. process, it will be permitted to disclose publicly that it was required to interrupt service in response to lawful U.S. process without disclosing any of the content of such request.

### 4. Principal Equipment List

Within **45 days** of the execution of this LOA, the Licensees agree to provide DHS with a list to include:

- (a) A complete and current list of all Principal Equipment, including:
  - (1) a description of each item and the functions supported,
  - (2) each item's manufacturer, and
  - (3) the model and/or version number of any hardware or software; and
- (b) Any vendors, contractors, or subcontractors involved in providing, installing,

operating, managing, repairing, or maintaining the Principal Equipment.

At the sole discretion of DHS, the Licensees agree to supplement in writing the foregoing definition of Principal Equipment to address subsequent technological developments with submarine systems.

Objections to the Principal Equipment List will be handled pursuant to Section 8.

## **5. Modifications to Existing Principal Equipment**

The Licensees agree to provide DHS at least **45 days'** advance notice prior to any maintenance, repair, or replacement that would result in any modification to the quantum, function, configuration, operation, or location of existing Principal Equipment.

The 45 days' advance notice requirement is waived for any maintenance, repair, or replacement that is undertaken in response to an unforeseen or uncontrollable event and that is necessary to ensure the continued operability of SCCS; however, in such circumstances, the Licensees agree to provide advance notice to DHS of the modification, if practicable, and, if impracticable, the Licensees agree to provide notice within **10 days** after the maintenance, repair, or replacement. This notice will include a detailed description of the equipment replaced and the circumstances surrounding the need to replace the Principal Equipment without 45 days' advance notice.

The Licensees may continue to utilize any Principal Equipment maintained, repaired, or replaced pursuant to the process outlined in this Section, provided that DHS does not object pursuant to Section 8. In the event of such an objection, the Licensees will not expand the existing deployment or enhance the capabilities of any Principal Equipment to which DHS has objected, and the Licensees agree to meet, confer, and otherwise attempt in good faith to resolve DHS's objection. Until the objection is resolved, the Licensees will not upgrade, install, replace, or service any objectionable Principal Equipment without written authorization from DHS.

## **6. Change in Vendors, Contractors, or Subcontractors for Principal Equipment**

The Licensees agree to provide at least **45 days** advance notice prior to any change to the list of vendors, contractors, or subcontractors involved in providing, installing, operating, managing, repairing, or maintaining the Principal Equipment.

In addition, the Licensees agree to provide at least **45 days** advance notice prior to changing the service offerings or support from a previously-listed vendor, contractor, subcontractor (*i.e.*, where a previously-listed provider will be offering support in a previously unidentified way).

Objections to any new vendor, contractor, or subcontractor for the Principal Equipment or the proposed service offerings thereof will be handled pursuant to Section 8.

## **7. Equipment Testing**

The Licensees agree to provide at least **45 days** advance notice prior to initiating the testing of any new Principal Equipment connected to SCCS by any vendor not already on the approved Principal Equipment List. Objections to any testing proposed pursuant to this Section will be handled pursuant to Section 8.

## **8. Objection Resolution**

Within **90** days of receipt of any notice provided by the Licensees pursuant to Sections 4, 5, 6, or 7, DHS shall either provide written approval or disapproval to the Licensees of the action described in such notice. If within the 90-days approval/disapproval period DHS seeks additional information from the Licensees, the approval/disapproval period shall be extended by the number of days DHS awaited the requested information. In the event of a disapproval, the Licensees will not expand the existing deployment or enhance the capabilities of any Principal Equipment of which DHS has disapproved, and the Licensees agree to meet, confer and resolve DHS's objection. Until the DHS's rationale for disapproval is resolved, the Licensees will not upgrade, install, replace, or service any disapproved Principal Equipment without written authorization from DHS.

## **9. Measures to Prevent Improper Use and Unauthorized Logical Access**

The Licensees agree to take all practicable measures to prevent unauthorized logical access to SCCS and to prevent any unlawful use or disclosure of information carried on the same, and the Licensees will include these measures in the policies that they develop and implement pursuant to this LOA. For purposes of this Section, such "practicable measures," at a minimum, include effectuating compliance with all applicable U.S. laws and regulations governing cybersecurity, information security, and privacy and will be measures consistent with best practices and guidelines, such as but not limited to the Cybersecurity Framework of National Institute of Standards and Technology and 27001 Series standards of the International Organization for Standardization. These measures should also include items such as configuration management, security audits, and system interconnection documentation, as well as contractual safeguards and screening procedures for personnel with logical access to the DCI.

The Licensees agree to take appropriate measures to protect and promote resiliency of SCCS, including measures to ensure that security patches for systems and applications are up to date.

The Licensees agrees to maintain security standards and best practices utilized within the U.S. telecommunications industry for maintenance of password systems and firewalls, monitoring and oversight of logical access to SCCS, maintenance of non-destructive logical access logs, and periodic internal audits of network security and associated network devices.

The Licensees agree to submit a policy regarding logical security measures adopted in accordance with the requirements of this Section to DHS within **90 days** of the date of execution of this LOA. DHS will approve or disapprove the policy within **90 days** of receipt or as otherwise agreed to by the Licensees and DHS, with the right of approval not waived unless provided in writing by DHS.

## **10. Physical Security Measures**

The Licensees agrees to take all practicable measures to physically secure SCCS, including the DCI and Wet Infrastructure. The Licensees will screen appropriate persons in accordance with Section 11 below, and the Licensees will require that all persons who physically access the DCI are escorted at all times by Screened Personnel, as defined herein.

The Licensees agree to submit a policy setting forth the Licensees' physical security measures to DHS within **90 days** of the date of execution of this LOA. DHS will approve or disapprove the policy within **90 days** of receipt or as otherwise agreed to by the parties, with the right of approval not waived unless provided in writing by DHS.

## **11. Screening of Personnel**

The Licensees agree to implement, either directly or through a vendor or service provider, a process to screen any existing or newly hired Licensee personnel (or any person performing under an agreement or arrangement with the Licensees) in, at minimum, the following circumstances:

- (a) Any person whose position could involve logical access to the DCI; and
- (b) Any person charged with securing the DCI.

The Licensees' screening process will be reflected in a written policy and will include background investigations, public criminal records checks, or other analogous means to ascertain a person's trustworthiness. Upon satisfying the requirements set forth in the screening policy, such persons will be considered "Screened Personnel."

The Licensees agree to submit the screening policy to DHS within **90 days** of the execution of this LOA. DHS will approve or disapprove the policy within **90 days** of receipt or as otherwise agreed to by the Parties, with the right of approval not waived unless provided in writing by DHS. The Licensees agree to cooperate with any request by DHS to provide additional identifying information regarding Screened Personnel.

## **12. Reporting Incidents and Breaches**

The Licensees agree to report to DHS within **48 hours** if it learns of information that reasonably indicates:

- (a) Unauthorized third-party access to, or disruption or corruption of, SCCS or any information being carried on SCCS;
- (b) Any other unauthorized access to or disclosure of Domestic Communications on SCCS in violation of federal, state, or local law; or
- (c) Any material breach of the commitments made in this LOA.

Upon request by DHS, the Licensees agree to submit in writing a follow-up report describing in greater detail the incident and the Licensees' steps to remediate to DHS within **15 days** of discovery of the relevant conduct. The Licensees also agrees to submit in writing supplementary information regarding any follow-up report until such evaluation is complete. The Licensees agree to remediate any incidents or breaches reported pursuant to this provision to the satisfaction of DHS.

### **13. Instruction of Obligations**

The Licensees agree to instruct appropriate officers, employees, contractors, and agents as to the Licensees' obligations under this LOA, including the individuals' duty to report any violation, and to issue periodic reminders of such obligations.

The Licensees agree to issue initial instructions in writing and provide appropriate training within **90 days** of the execution of this LOA, and the Licensees agrees to submit a copy of such instructions to DHS at the same time. The Licensees agree to issue updated instructions or training annually thereafter.

### **14. Change in Services or Cable Operations**

The Licensees anticipate using the SCCS Cable System (a) for its or its affiliates' own internal use and (b) for offering wholesale, government and enterprise customers leased, indefeasible right-of-use for, or other non-ownership interests of capacity, spectrum or dark fibers on particularized terms and conditions pursuant to individualized negotiations. The Licensees agrees to notify DHS in writing at least **45 days** prior to implementing any changes to the nature of these services as offered to non-affiliate third-party customers of the Licensees. The Licensees agree to provide a detailed description of the proposed change including the terms, conditions, or entities involved in making the change to the communications services or operations.

### **15. Change in Control**

If the Licensees learns of any information that reasonably indicates that any single foreign entity or individual, other than those already identified, has or likely will obtain an ownership interest, whether direct or indirect, in the Licensees or SCCS above ten (10) percent, or if any foreign entity or individual, singly or in combination with other foreign entities or individuals, has or likely otherwise will gain either: (i) control, as determined in accordance with 47 C.F.R. § 63.09(b); or (ii) *de facto* or *de jure* control of a Licensee



or SCCS, the Licensees agrees to provide notice in writing to DHS within **15 days**. Notice under this Section will, at a minimum:

- (a) Identify the entity or individual(s) acquiring control (specifying the name, addresses, and telephone numbers of the entity or individual(s));
- (b) Identify the beneficial owners of any such increased or prospective increased ownership interest in the Licensee(s) or SCCS by the entity or individual(s) (specifying the name, addresses, and telephone numbers of each beneficial owner); and
- (c) Quantify the amount of ownership interest that the entity or individual(s) has or likely will obtain in the Licensee(s) or SCCS and, if applicable, the basis for their prospective control of the Licensee(s) or SCCS.

## **16. Annual Report**

On the anniversary of the date of this LOA, the Licensees agree to submit to DHS a report assessing the Licensees' compliance with the terms of this LOA for the preceding year. The report will include:

- (a) The names and contact information of the then-current POCs;
- (b) Cable System Information, as described in Section 2 above, noting any changes during the reporting period;
- (c) An updated Principal Equipment List containing all information described in Section 4 above, identifying any modifications during the reporting period;
- (d) A copy of the then-current policies adopted in accordance with this LOA, including policies for logical security (Section 9), physical security (Section 10), screening (Section 11), incident reporting (Section 12), and employee training (Section 13), and a summary of any changes during the reporting period and the reasons therefore;
- (e) A list of all Screened Personnel. Such list will include: (1) Full name (last, first, middle name); (2) All other names and aliases used; (3) Address; (4) Country and city of residence; (5) Date of birth; (6) Place of birth; (7) U.S. Social Security number (where applicable); (8) National identity number, including nationality, date and place of issuance, and expiration date (where applicable); and (9) U.S. or foreign passport number (if more than one, all must be fully disclosed);
- (f) Updated list of all persons, vendors, contractors, or other entities that have been granted unescorted physical access to any SCCS DCI or Principal Equipment;

- (g) A summary of any events that occurred during the reporting period that will or reasonably could impact the effectiveness of or compliance with this LOA; and
- (h) A summary of any known acts of noncompliance with the terms of this LOA that occurred during the reporting period, whether inadvertent or intentional, with a discussion of what steps have been or will be taken to prevent such acts from occurring in the future.

## 17. Third-Party Audit

At its sole discretion, but no more frequently than once every calendar year unless the original audit is found by DHS to have been unsatisfactory, DHS may request a third-party audit of the Licensees' compliance with the terms of this LOA. In connection with the audit:

- (a) Within **60 days** of DHS requesting a third-party audit, the Licensees to nominate two third-party auditors, subject to the approval of the DHS. Within **60 days** of the nominations, DHS will approve or disapprove the nominated third-party auditor firms.
- (b) If DHS disapproves of either of the nominated third-party auditors, the Licensees agree to nominate another third-party auditor within **30 days** of such objection. If DHS disapproves the nomination of a supplemental third-party auditor, the Licensees will provide to DHS 3 additional candidates within **30 days** to be considered for third-party auditor from which DHS may choose at its discretion.
- (c) As part of the auditor nomination and approval process, DHS may condition approval of a nominated auditor on the Licensees providing information regarding the Licensees' and nominated auditor's pre-existing relationship (if any).
- (d) The Licensees will be solely responsible for any costs associated with any third-party audit carried out pursuant to this Section. DHS, however, will consider avoidance of unreasonable costs as a factor when exercising its rights under this Section.
- (e) The Licensees will ensure the selected third-party auditor submits, prior to commencing the audit, a methodology and proposed scope of audit, both of which will be subject to DHS approval.
- (f) The Licensees will ensure that the executed engagement agreement with the third-party auditor is provided to DHS within **five (5) days** of execution.
- (g) The third-party auditor will promptly deliver to DHS and the Licensees all reports and related information generated or gathered during its review that relate directly

to the Licensees' compliance with the terms of this LOA and agrees to meet independently with DHS upon request.

## 18. Consultation and Visitation

The Licensees agree to meet and confer with DHS and to resolve to the satisfaction of DHS any concerns DHS may raise regarding compliance with this LOA.

The Licensees agree to negotiate in good faith to resolve to the satisfaction of DHS any national security, law enforcement, or public safety concerns DHS may raise with respect to any matters set forth in this LOA.

The Licensees agree that, upon **48 hours** advance notice, except when due to exigent circumstances such advance notice is not practicable, DHS may visit the Licensees and/or SCCS facilities to conduct on-site reviews to verify the implementation of and compliance with the terms of this LOA. Subject to applicable law, the Licensees will provide unimpeded access to any information, facilities, and personnel necessary to verify compliance with the terms of this LOA on the understanding that when advance notice of a visit is not provided, the Licensees will provide DHS with access to information, facilities, and personnel within **24 hours** of such an access request.

## 19. Computing Time

In computing any time period pursuant to this LOA, the below rules apply.

a. For any period stated in days:

- (a) the day of the event that triggers the period is excluded;
- (b) every day thereafter is counted, including intermediate Saturdays, Sundays, and federal holidays, except for those days that are tolled pursuant to Section 19(c); and
- (c) the last day of the period is included, but if the last day is a Saturday, Sunday, or federal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or federal holiday.

b. For any period stated in hours:

- (a) begin counting immediately on the occurrence of the event that triggers the period;
- (b) count every hour, including hours during intermediate Saturdays, Sundays, and federal holidays, except for those hours that are tolled pursuant to Section 19(c).; and

- (c) if the period would end on a Saturday, Sunday, or federal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or federal holiday.
- c. Any approval provision applicable to DHS pursuant to this LOA shall be tolled during a lapse in appropriations or any time when the Federal government in the greater Washington, D.C. area is closed.

This LOA shall inure to the benefit of, and shall be binding upon, the Licensees and their successors, assigns, subsidiaries, and affiliates.

The Licensees agrees that, in the event that the Licensees breach the commitments set forth in this LOA, DHS may request that the FCC modify, condition, revoke, cancel, terminate, or render null and void any relevant license, permit, or other authorization granted by the FCC to the Licensees or any successors-in-interest, in addition to any other remedy available at law or equity.

If, after this LOA takes effect, DHS or the Licensees believes that changed circumstances warrant modifying or terminating this LOA (including if DHS determines that the terms of this LOA are inadequate or no longer necessary to address national security, law enforcement, or public safety concerns), the Licensees and DHS agree to negotiate in good faith to modify this LOA. Rejection of a proposed modification alone shall not constitute evidence of a failure to negotiate in good faith.

Nothing in this LOA is intended to excuse the Licensees from its obligations to comply with all applicable legal requirements and obligations, including all applicable statutes, regulations, requirements, or orders.

For and on behalf of Pacific Carriage Limited Inc. and Pacific Carriage Limited



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