

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

In the Matter of	)	
	)	
ARCOS-1 USA, INC.	)	
Com Tech International Cable Corporation	)	SCL-MOD-20010302-00007
Telecomunicaciones Ultramarinas de Puerto Rico	)	
	)	
Application for Authority to Modify a Cable	)	
Landing License	)	
	)	

**MODIFICATION OF CABLE LANDING LICENSE**

**Adopted:** August 23, 2001

**Released:** August 24, 2001

By the Associate Chief, Telecommunications Division, International Bureau:

**I. Introduction**

1. In this Order, we modify the cable landing license for the Americas Region Caribbean Ring (ARCOS-1) cable system held by ARCOS-1 USA, Inc. (ARCOS-1 USA) to add Com Tech International Cable Corporation (Com Tech) and Telecomunicaciones Ultramarinas de Puerto Rico, Inc. (Ultracom) to the cable landing license.<sup>1</sup> The license authorized ARCOS-1 USA, pursuant to the Cable Landing License Act,<sup>2</sup> and Executive Order No. 10530,<sup>3</sup> to land and operate the ARCOS-1 cable system, a non-common carrier fiber optic submarine cable system extending between the United States mainland, the Bahamas, the Turks and Caicos Islands, the Dominican Republic, Puerto Rico, Curacao, Venezuela, Colombia, Panama, Costa Rica, Nicaragua, Honduras, Guatemala, Belize, and Mexico.<sup>4</sup>

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<sup>1</sup> See *ARCOS-1 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 Mainland, the Bahamas, the Turks and Caicos Islands, the Dominican Republic, Puerto Rico, Curacao, Venezuela, Colombia, Panama, Costa Rica, Nicaragua, Honduras, Guatemala, Belize, and Mexico*, Cable Landing License, File No. SCL-LIC-19981222-00032, 14 FCC Rcd 10597 (TD/IB 1999) (*ARCOS-1 Cable Landing License Order*).

<sup>2</sup> An Act Relating to the Landing and Operation of Submarine Cables in the United States, 47 U.S.C. §§ 34-39 (Cable Landing License Act).

<sup>3</sup> Exec. Ord. No. 10530 *reprinted as amended* in 3 U.S.C. § 301.

<sup>4</sup> Subsequently we approved transfers of control involving the ARCOS-1 cable: (1) CENTA, which originally held a 100 percent ownership interest in ARCOS-1 USA, changed its name to New World Network Holdings, Ltd. and its jurisdiction of incorporation to Bermuda (File No. SCL-T/C-19991006-00023), *see International* (continued....)

2. In this Application, ARCOS-1 USA, Com Tech and Ultracom (jointly, Applicants) request authority for: (1) the addition of Com Tech, a wholly owned subsidiary of ARCOS-1 USA, as the owner of the cable landing station in North Miami Beach, Florida, the U.S. land portion from the landing station to the U.S. beach joints of the submerged portion of the cable, and all other related assets; and (2) the addition of Ultracom as owner of the cable landing station and beachhead facilities in San Juan, Puerto Rico and as owner of a 0.35 percent capacity interest in the cable system.<sup>5</sup> Applicants advise that ARCOS-1 USA will maintain *de jure* and *de facto* control of the North Miami Beach landing station and beachhead facilities, and that the proposed transaction will result only in a change of the direct subsidiary company that will be performing the day-to-day operations of the cable landing station.<sup>6</sup> Applicants also advise that Ultracom will perform the day-to-day operations of the cable landing station in San Juan and the day-to-day maintenance of the equipment and cables, but that, through an Indefeasible Right of Use (IRU), Ultracom will grant to ARCOS-1 USA or one of its affiliates access to the San Juan cable landing station and its vicinity, including the beachhead facilities, cable rights-of-way, cable ducts, and to the services or equipment necessary for the operation and maintenance of the ARCOS-1 system. ARCOS-1 USA will continue to maintain ultimate *de jure* and *de facto* control of the ARCOS-1 system.<sup>7</sup>

3. ARCOS-1 USA is a corporation organized and existing under the laws of the state of Delaware. ARCOS-1 USA is a wholly-owned subsidiary of New World Network Ltd. (New World), a Bermuda company, which in turn is an indirect wholly-owned subsidiary of New World Network Holdings, Ltd. (NWN Holdings), a Bermuda company. NWN Holdings, together with its wholly-owned operating subsidiaries, owns and operates the ARCOS-1 cable system.<sup>8</sup> Shareholders owning 10 percent or more of NWN Holdings include: Inversiones JAAFE, S.A., a Panama investment business (12 percent), which is 90-percent owned by Julio Carrizosa Mutis, a Colombian citizen; Brightstar, Ltd., a Bermuda investment business (47 percent), which is wholly-owned by UN, Ltd. of Canada, a Bermuda investment business, which in turn is wholly-owned by Global Light Telecommunications Inc. (Global Light), a Canadian holding company; and Siemens Project Ventures GmbH, a German investment business (19 percent), which is wholly-owned by Siemens AG, a Germany engineering and telecommunications business.<sup>9</sup>

4. Com Tech is a company organized under the laws of the state of Delaware. Com Tech, a  
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*Authorizations Granted*, Public Notice, Report No. TEL-00165, 15 FCC Rcd 1607 (TD/IB 1999); (2) New World Network Holdings, Ltd. transferred control of ARCOS-1 USA to its wholly-owned subsidiary New World Network, Ltd. (File No. SCL-T/C-20000502-00016), *see International Authorizations Granted*, Public Notice, Report No. TEL-00236, 15 FCC Rcd 18682 (TD/IB 2000), *see also Erratum*, 15 FCC Rcd 17943 (TD/IB 2000); and (3) Brightstar, Ltd. and Siemens Project Ventures GmbH acquired a controlling equity interest in New World Network Holdings, Ltd. (File No. SCL-T/C-20000428-00015), *see ARCOS-1 USA, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 17943 (TD/IB 2000).

<sup>5</sup> *See* ARCOS-1 USA, Inc., Com Tech International Cable Corporation, and Telecomunicaciones Ultramarinas de Puerto Rico, Inc., Application for Authority to Modify a Cable Landing License, File No. SCL-MOD-20010302-00007 (filed Mar. 2, 2001) (Application).

<sup>6</sup> *Id.* at 4.

<sup>7</sup> Application at 5.

<sup>8</sup> *See* Application at 3.

<sup>9</sup> *See* Application at 9-11.

wholly-owned subsidiary of ARCOS-1 USA, is qualified to do business in Florida.<sup>10</sup>

5. Ultracom is a predominantly government-owned company organized and existing under the laws of the Commonwealth of Puerto Rico.<sup>11</sup> The Government Development Bank for Puerto Rico (GDBPR) owns 100 percent of the common voting stock of Ultracom and 85.1 percent of the company's issued stock.<sup>12</sup> The remaining 14.9 percent of the issued stock of Ultracom is owned by Telefónica International Holding, B.V. (TISA), a Netherlands corporation that is a wholly-owned subsidiary of Telefónica Internacional de España, S.A., a corporation organized under the laws of Spain and whose principal business is telecommunications, which in turn is wholly-owned by Telefónica de España, S.A.<sup>13</sup> Telefónica de España, S.A., which also is organized under the laws of Spain and has a principal business of telecommunications, is listed on several stock exchanges. No individual shareholder of Telefónica de España, S.A. holds a 10-percent or higher direct or indirect interest in Ultracom.<sup>14</sup>

6. The Application also notifies the Commission of several additional investors that have acquired an ownership interest in the capacity of the ARCOS-1 cable, stating that all of these investors collectively own approximately 13 percent of all of the capacity of the ARCOS-1 cable system.<sup>15</sup> Applicants further state that because these investors do not have any right, title or interest in any specific ARCOS-1 system assets within the United States, there is no requirement to add them to the cable landing license.<sup>16</sup> However, Applicants state that they provide this notification based on paragraph 14(10) of the *ARCOS-1 Cable Landing License Order*.<sup>17</sup> The investors include: Alestra, S. de R.L. de C.V.; Avantel, S.A.; Bahamas Telecommunications Corporation; Belize Telecommunications Limited; Cable & Wireless (W.I.) Ltd.; Cable Onda; Caribbean Cable Links, Inc.; Centennial Undersea Cable Corp.; Compañía Dominicana de Teléfonos, C. por A.; Compañía Anónima Nacional Teléfonos de Venezuela; Concert Global Network Services, Ltd.; Concert Global Networks USA, L.L.C.; Empresa Hondureña de Telecomunicaciones; Genuity Inc.; Interconexión Eléctrica S.A. E.S.P.; MCI International, Inc.; Nicatel, S.A.; Orbinet Inc.; Radiográfica Costarricense S.A. (RACSA); Servicios Globales de Telecomunicaciones, S.A.; Ultracom; Tricom USA, Inc.; and Tricom Dominican Republic.

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<sup>10</sup> See Application at 3.

<sup>11</sup> See Application at 3-4.

<sup>12</sup> GDBPR is a company created by Law Number 25, approved on May 26, 1974, by the Legislature of the Commonwealth of Puerto Rico. See Application at 4.

<sup>13</sup> See Application at 4, 12.

<sup>14</sup> See Application at 12.

<sup>15</sup> Application at 5.

<sup>16</sup> Application at 5-6.

<sup>17</sup> See *ARCOS-1 Cable Landing License Order*, at para. 14(10) (requiring ARCOS-1 USA to file, prior to the consummation of the sale of any original ownership interest in the U.S. segment of the cable system, an amendment to the cable landing license to update the ownership and voting interests in the license). See also *ARCOS-1 Cable Landing License Order*, at para. 10 (noting ARCOS-1's plans to solicit U.S. and foreign investors to obtain original ownership interests in the cable system and requiring ARCOS-1, if successful in such solicitations, to file an amendment to the cable landing license to update the ownership and voting interests).

7. Under section 1.767(a)(8) of the Commission's rules, applicants are required to disclose their affiliations with foreign carriers.<sup>18</sup> Applicants state they are affiliated with Bestel, a Mexican domestic and international facilities-based long distance carrier, because Global Light owns 100 percent of GST Mextel, Inc., a Delaware corporation that owns 49 percent of Bestel.<sup>19</sup>

## II. Comments

8. We placed the Application on public notice on March 23, 2001.<sup>20</sup> We received no comments. Pursuant to section 1.767(b) of the Commission's rules,<sup>21</sup> the Cable Landing License Act, and Executive Order No. 10530, we informed the Department of State of the Application.<sup>22</sup> 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 approving Applicants' request to modify the cable landing license.<sup>23</sup>

## III. Discussion

9. We grant the Applicants' request to modify the ARCOS-1 cable system landing license to add Com Tech and Ultracom as licensees. We conclude that adding Com Tech and Ultracom to the cable landing license for the ARCOS-1 cable system raises no significant competitive concerns and does not provide a basis for altering the non-common carrier status of the cable.<sup>24</sup> Specifically, we find that Com Tech's ownership and operation of the North Miami Beach, Florida cable station, and Ultracom's ownership of the San Juan, Puerto Rico cable landing station and 0.35 percent ownership of the cable capacity in the ARCOS-1 system, do not change our earlier competitive analysis for this cable. Moreover, Applicants have asserted that grant of the Application is in the public interest because the proposed transaction will help ARCOS-1 USA to efficiently operate the ARCOS-1 system, which in turn

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<sup>18</sup> See 47 C.F.R. § 1.767(a)(8). See also 47 C.F.R. § 63.09.

<sup>19</sup> See Application at 13 and Attachment B. Applicants also state that Global Light has a 52-percent interest in Highpoint, a publicly traded Canadian corporation that owns companies that provide or whose subsidiaries provide telecommunications services in Canada and Europe, which are not destination points for the ARCOS-1 cable system. *Id.* Applicants also state they have interlocking directorates with North American Gateway, Bestel, and Orbinet, Inc. See Application at 12 and Attachment A [sic].

<sup>20</sup> See *Non Streamlined International Applications Accepted for Filing*, Public Notice, Report No. TEL-00370NS (rel. Mar. 23, 2001).

<sup>21</sup> See 47 C.F.R. § 1.767(b).

<sup>22</sup> 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 (Mar. 23, 2001).

<sup>23</sup> Letter from Richard C. Beard, Acting United States Coordinator, International Communications and Information Policy, U.S. Department of State, to Donald Abelson, Chief, International Bureau, Federal Communications Commission (Aug. 20, 2001).

<sup>24</sup> Existing and planned cables with landing points in most of the destination markets to be served by ARCOS-1 include Americas-I, Americas-II, Antillas I, Bahamas-II, Bahamas Internet, MAYA 1, PAC, PanAmerican, SAC, SAM-1, TCS-1, and 360americas.

will provide connection from two locations in the United States to fourteen countries in the Caribbean and in North, Central and South America.<sup>25</sup> Applicants further assert such connection will provide additional submarine cable capacity on these routes and will facilitate route diversity and restoration capabilities for existing cables landing in the United States.<sup>26</sup> Although a number of the additional investors that have taken small original ownership interests in ARCOS-1 are dominant telecommunications carriers and serve as the landing station parties in their destination markets, ARCOS-1 has provided a summary of relevant conditions from the ARCOS-1 Construction and Maintenance Agreement (C&MA), and further notes that the foreign landing parties are not affiliated with Applicants.<sup>27</sup> These C&MA conditions – involving backhaul and collocation access – serve to mitigate possible concerns about potential dominant carrier control over foreign landing stations in the cable's destination markets. ARCOS-1 states it will ensure that the landing parties fully comply with the obligations set forth in the C&MA.<sup>28</sup> Accordingly, we find that grant of the Application is in the public interest.

10. We also conclude that Applicants have provided information that is consistent with paragraph 14(10) of our licensing order.<sup>29</sup> Further, although paragraph 14(10) requires licensees to file an amendment to the cable landing license to update any changes in original ownership interests in the U.S. segment, prior to consummation of the sale of any original ownership interest in the U.S. segment, it is at this time uncertain whether the new minority investors will own interests in the U.S. segment when the cable is put into service. Their interests may be limited to non-U.S. links of this multi-link ring system. Therefore, we agree with Applicants that they do not need to add these investors to the cable landing license at this time.

#### IV. Ordering Clauses

11. Consistent with the foregoing and pursuant to the Cable Landing License Act and Executive Order No. 10530, IT IS ORDERED that the Application, File No. SCL-MOD-20010302-00007, IS GRANTED and the ARCOS-1 cable landing license IS MODIFIED to: (1) add Com Tech as the owner of the cable landing station in North Miami Beach, Florida, the U.S. land portion from the landing station to the U.S. beach joints of the submerged portion of the cable, and all other related assets; and (2) add Ultracom as owner of the cable landing station and beachhead facilities in San Juan, Puerto Rico and as owner of a 0.35 percent capacity interest in the cable system.

12. This Modification of Cable Landing License does not modify any other terms or conditions imposed in the license.

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<sup>25</sup> See Application at 7.

<sup>26</sup> *Id.*

<sup>27</sup> See Letter from José A. Palma and Troy F. Tanner, Counsel for Applicants, to Kathleen Collins, International Bureau, Federal Communications Commission (May 10, 2001).

<sup>28</sup> *Id.* at 2. ARCOS-1 further states that its parent New World controls the majority of voting interests and the Management Committee and thus has *de jure* and *de facto* control over the ARCOS-1 system. Moreover, as Network Administrator, New World will be responsible for operating and administering the ARCOS-1 system. *Id.* at 4.

<sup>29</sup> See *ARCOS-1 Cable Landing License Order*, 14 FCC Rcd 10597, at para. 14(10).

13. This Order is issued under section 0.261 of the Commission's rules, 47 C.F.R. § 0.261, and is effective upon adoption. 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

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