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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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APR 11 2005

Federal Communications Commission
Office of Secretary

In the Matters of

TYCO TELECOMMUNICATIONS (US) INC.,
Assignor,

VSNL TELECOMMUNICATIONS (US) INC.,
Assignee,

and

TYCO INTERNATIONAL LTD.,
Transferor,

VSNL TELECOMMUNICATIONS (US) INC.,
Transferee,

and

TYCO NETWORKS (GUAM) L.L.C.,
Licensee,

Application for Modification, Assignment,
and Transfer of Control of Cable Landing
Licenses for the Tyco Atlantic and Tyco
Pacific Submarine Cable Systems

File Nos. SCL-ASG-20050304-0003

SCL-MOD-20050304-0004
SCL-T/C-20050304-0005

JOINT OPPOSITION TO PETITION TO DENY

**TYCO TELECOMMUNICATIONS (US) INC.
TYCO NETWORKS (GUAM) L.L.C.
TYCO INTERNATIONAL LTD.**

VSNL TELECOMMUNICATIONS (US) INC.

11 April 2005

SUMMARY

The Commission should deny the petition to deny of Crest Communications Corporation (together with its corporate predecessors, “Crest”) because it serves only to further Crest’s ongoing corporate “greenmail” and retaliation strategy against Tyco Telecommunications (US) Inc. (“Tyco Telecom”) and because it otherwise lacks any merit. Crest has abused the Commission’s transaction approval process as part of a continuing effort to obtain commercial leverage over Tyco Telecom in negotiations over unconsummated business transactions involving Tyco Telecom’s system supply business—a business Tyco Telecom will retain following the sale of the Tyco Global Network (“TGN”). By opposing the transfer and assignment of the cable landing licenses and assets of the Tyco Atlantic and Tyco Pacific undersea cable systems as part of the sale of TGN to VSNL Telecommunications (US) Inc. (“VSNL USA”), Crest followed through on its explicit threat to Tyco Telecom—made in November 2004—to oppose the TGN sale unless Tyco Telecom were to capitulate to Crest’s pricing demands for a single cable spur to Seward to serve commercial customers on the Alaska-Continental United States route. Crest promised not to object to the TGN sale on any grounds in exchange for Tyco Telecom acceding to Crest’s pricing demand for a price reduction of more than 80 percent for the Seward spur. Tyco Telecom declined Crest’s extortionate and commercially untenable proposal.

Having failed to obtain from Tyco Telecom its desired price reduction, Crest has now retaliated against Tyco Telecom by objecting to the TGN sale for reasons that have nothing to do with Crest’s business.¹ Crest did not bid for TGN or any subcomponent thereof, including Tyco

¹ The personal animosity of one of Crest’s executives may also contribute to Crest’s opposition. Crest’s executive vice president, Brian Roussel, is a former Tyco Telecom

Pacific. Crest does not provide, or seek to provide, service on the international routes served by TGN, such as the U.S.-Japan route served by Tyco Pacific. Crest does not provide, or seek to provide, service on the U.S.-India route, which TGN does *not* serve. Moreover, since 2003, Crest has not discussed with Tyco Telecom any system supply or capacity options that could possibly serve U.S. military operations at Shemya Island, as Crest has focused instead on the Seward spur and the commercial traffic it could attract. In fact, Crest has never proposed to condition its desired supply contract or capacity agreement upon Tyco Telecom's continued ownership of TGN or Tyco Pacific, or upon Tyco Telecom's sale of TGN or Tyco Pacific to a U.S. purchaser. Crest's petition is therefore misleading, inaccurate, and contradicted by Crest's own negotiating activity with, and explicit "greenmail" threats to, Tyco Telecom.

Even setting aside Crest's ignoble motives, Crest's allegations lack any merit whatsoever. No customer or competitor with an interest in the routes served by Tyco Atlantic or Tyco Pacific, much less the U.S.-India route, has raised any concern in this proceeding regarding the sale of Tyco Atlantic and Tyco Pacific or, more generally, the sale of TGN. Moreover, the U.S. Department of Justice ("DoJ") terminated early its review of the TGN sale under the Hart-Scott-Rodino Antitrust Improvements Act of 1975, having concluded that the sale did not raise competition issues that would warrant further investigation. DoJ, along with the Departments of Defense and Homeland Security ("DoD" and "DHS," respectively), as well as the Federal Bureau of Investigation ("FBI"), have spent over five months developing a set of conditions to be observed by VSNL USA and its affiliates in order to safeguard U.S. national security, law enforcement, and public safety interests. In that process, Tyco confirmed that TGN has no direct capacity agreement with any U.S. Government agency involved in national defense or law

executive who played a key role in negotiating with Crest immediately before Tyco Telecom terminated his employment in 2002.

enforcement. Consequently, on April 7, 2005, those agencies signed a network security agreement with VSNL USA and its affiliates calling for approval of this transaction by the Commission, subject to those conditions. Concurrent with this Joint Opposition, VSNL USA and its affiliates have, with DoD, DoJ, DHS, and the FBI, jointly filed a petition with the Commission in which DoD, DoJ, DHS and the FBI have advised the Commission that they do not object to grant of the Application subject to compliance with the network security agreement.

By selling TGN and its network capacity and collocation businesses, Tyco Telecom seeks to strengthen its longstanding, U.S.-based undersea cable manufacturing, installation, and maintenance businesses. Tyco Telecom will therefore retain its research and development laboratories and cable and repeater factories in the United States, as well as its fleet of cable ships stationed around the world.

Having failed to convince other federal agencies with jurisdiction over, and expertise in, competition and national security matters that its arguments have any merit, Crest now seeks to use the same arguments to enlist the Commission in assisting Crest to obtain commercial leverage over Tyco Telecom. The Commission should likewise reject Crest's arguments and grant consent for the modification, assignment, and transfer of control of the Tyco Atlantic and Tyco Pacific cable landing licenses. To do otherwise would subvert the public interest. Tyco and VSNL USA therefore urge the Commission to grant the Application expeditiously pursuant to the Commission's streamlined processing procedures.

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leverage over Tyco Telecom in negotiations over unconsummated business transactions involving Tyco Telecom's system supply business—a business Tyco Telecom will retain following the sale of the Tyco Global Network (“TGN”). By opposing the transfer and assignment of the cable landing licenses and assets of the Tyco Atlantic and Tyco Pacific undersea cable systems as part of the sale of TGN to VSNL Telecommunications (US) Inc. (“VSNL USA”), Crest followed through on its explicit threat to Tyco Telecom—made in November 2004—to oppose the TGN sale unless Tyco Telecom were to capitulate to Crest's pricing demands for a single cable spur to Seward to serve commercial customers on the Alaska-Continental United States route. Crest promised not to object to the TGN sale on any grounds in exchange for Tyco Telecom acceding to Crest's pricing demand for a price reduction of more than 80 percent for the Seward spur. Tyco Telecom declined Crest's extortionate and commercially untenable proposal.

Having failed to obtain from Tyco Telecom its desired price reduction, Crest has now retaliated against Tyco Telecom by objecting to the TGN sale for reasons that have nothing to do with Crest's business.² Even setting aside Crest's ignoble motives, Crest's allegations lack any merit whatsoever. No customer or competitor with an interest in the routes served by Tyco Atlantic or Tyco Pacific, much less the U.S.-India route, has raised any concern in this proceeding regarding the sale of Tyco Atlantic and Tyco Pacific or, more generally, the sale of

² See Petition to Deny of Crest Communications Corporation, File Nos. SCL-ASG-20050304-0003, SCL-MOD-20050304-00004, SCL-T/C-20050304-00005 (filed March 31, 2005) (“Petition to Deny”). The personal animosity of one of Crest's executives may also contribute to Crest's opposition. Crest's executive vice president, Brian Roussell, is a former Tyco Telecom executive who played a key role in negotiating with Crest immediately before Tyco Telecom terminated his employment in 2002. See Declaration of Donald Rotunno ¶ 3 (attached as Exhibit A to this Joint Opposition) (“Rotunno Declaration”).

TGN.³ Moreover, the U.S. Department of Justice (“DoJ”) terminated early its review of the TGN sale under the Hart-Scott-Rodino Antitrust Improvements Act of 1975 (“HSR Act”), having concluded that the sale did not raise competition issues that would warrant further investigation. DoJ, along with the Departments of Defense and Homeland Security (“DoD” and “DHS,” respectively), as well as the Federal Bureau of Investigation (“FBI”), have spent over five months developing a set of conditions to be observed by VSNL USA and its affiliates in order to safeguard U.S. national security, law enforcement, and public safety interests. Consequently, on April 7, 2005, those agencies signed a network security agreement with VSNL USA and its affiliates calling for approval of this transaction by the Commission, subject to those conditions. Concurrent with this Joint Opposition, VSNL USA and its affiliates have, with DoD, DoJ, DHS, and the FBI, jointly filed a petition with the Commission in which DoD, DoJ, DHS and the FBI have advised the Commission that they do not object to grant of the Application subject to compliance with the network security agreement.⁴

This joint opposition consists of four parts. *First*, Tyco Telecom, Tyco International Ltd. (“Tyco International”), and Tyco Networks (Guam) L.L.C. (collectively, “Tyco”), explain that Crest has opposed the sale of Tyco Atlantic and Tyco Pacific as part of an ongoing effort to

³ As noted in the underlying application, VSNL Bermuda Limited and other VSNL entities will acquire assets and stock in components of the TGN sale that are not subject to Commission review or prior Commission consent. *See* Application for Assignment of a Cable Landing License for the Tyco Atlantic Submarine Cable System and of a Jointly-Held Cable Landing License for the Tyco Pacific Submarine Cable System, for Transfer of Control of a Jointly-Held Cable Landing License for the Tyco Pacific Submarine Cable System, and to Modify the Cable Landing License for the Tyco Pacific Submarine Cable System, File Nos. SCL-ASG-20050304-00003, SCL-T/C-20050304-00005, SCL-MOD-20050304-00004, at 8 (filed March 4, 2005) (“Application”); Letter from Kent D. Bressie, Counsel for Tyco Telecommunications (US) Inc., Tyco Networks (Guam) L.L.C., and Tyco International Ltd., to Marlene H. Dortch, FCC Secretary, File Nos. SCL-ASG-20050304-00003, SCL-T/C-20050304-00005, SCL-MOD-20050304-00004 (Mar. 15, 2005).

⁴ *See* Joint Petition to Adopt Conditions to Authorizations and Licenses, File Nos. SCL-ASG-20050304-0003, SCL-MOD-20050304-00004, SCL-T/C-20050304-00005 (filed Apr. 11, 2005).

“greenmail,” and retaliate against, Tyco Telecom. *Second*, Tyco and VSNL USA demonstrate Tyco’s proposed sale of Tyco Atlantic and Tyco Pacific to VSNL USA raises no competition or market access concerns. In particular, the sale poses no risk to competition on the U.S.-Japan and U.S.-United Kingdom routes, much less the U.S.-India route, which TGN does not serve. *Third*, Tyco and VSNL USA argue that, with respect to matters of national security, law enforcement, and public safety, the Commission should defer to the conclusions of the federal agencies with jurisdiction over, and expertise in, such matters. Those agencies have spent five months reviewing the TGN sale, and have signed a network security agreement with VSNL USA and its affiliates to address such matters and have petitioned the Commission to grant the transfer and assignment conditioned upon compliance with that security agreement. *Fourth*, Tyco and VSNL USA argue that the Commission should proceed to grant the Application expeditiously pursuant to the Commission’s streamlined processing procedures.

I. CREST HAS OPPOSED THE SALE OF TYCO ATLANTIC AND TYCO PACIFIC AS PART OF AN ONGOING EFFORT TO “GREENMAIL,” AND RETALIATE AGAINST, TYCO TELECOM

Crest has opposed the sale of Tyco Atlantic and Tyco Pacific to VSNL USA as part of an ongoing effort to “greenmail,” and retaliate against, Tyco Telecom. Crest has no direct interest in the sale of Tyco Atlantic and Tyco Pacific, save for the leverage or retaliation value that Crest’s opposition to the TGN sale might provide in ongoing commercial negotiations with Tyco Telecom.

Crest is a domestic common carrier operating Alaska FiberStar, a terrestrial fiber-optic network in Alaska, and Alaska NorthStar, an undersea cable system connecting Whittier, Valdez, and Juneau in Alaska with the continental United States.⁵ In 2002, Crest proposed to build the

⁵ Crest bought substantially all of the assets of the bankrupt WCI Cable, Inc. *See Cable Landing Licenses Granted, Public Notice*, 17 FCC Rcd. 6053 (Int’l Bur. 2002) (approving

Northern Lights undersea cable system, which would connect two branching units on Tyco Pacific with terrestrial landing points in Alaska in order to provide connectivity between Alaska and the continental United States.⁶ Crest has never built Northern Lights. None of Crest's networks serves, or could serve, the U.S.-Japan route or the U.S.-India route, and Tyco Telecom is not aware of any plans by Crest to serve such routes. Moreover, Crest did not bid for TGN or for any of its component parts, including Tyco Pacific.

Since 2002, Crest has engaged in commercial negotiations with Tyco Telecom regarding a supply contract and capacity agreements for Northern Lights. As explained below, Crest gradually and greatly reduced the scope of the project during three years of negotiations with Tyco Telecom, but the parties have been unable to agree on pricing terms.⁷

A. In 2002, Crest Sought Out Tyco Telecom to Supply the Northern Lights System

Immediately after announcing its plans to build Northern Lights, Crest entered into negotiations with Tyco Telecom regarding construction of the proposed system. Tyco Telecom and Crest signed an Instruction to Proceed ("ITP") on March 20, 2002.⁸ The ITP did not constitute a system supply contract but was instead a preliminary expression of the parties'

transfer and assignment of Alaska NorthStar cable landing licenses); *Wireline Competition Bureau Grants Consent For a Transfer of Control of Domestic 214 Authorization from Alaska Fiber Star, L.L.C. and WCI Cable, Inc. to Neptune Communications, Public Notice*, 17 FCC Rcd. 6361 (Wireline Comp. Bur. 2002); *Application by Neptune Communications, LLC, for Authority To Acquire a Controlling Interest in Alaska FiberStar, LLC, To Provide Intrastate Interexchange Telecommunications Service in Alaska, Order Approving Application, Granting Motion for Expedited Review, and Requiring Filing*, Order Nos. U-02-8, U-02-9, Appendix at 4 n.6 (Reg. Comm'n of Alaska, Apr. 12, 2002). Crest later merged with its parent, Neptune Communications, LLC. See *International Authorizations Granted, Public Notice*, 18 FCC Rcd. 4524, 4529 (Int'l Bur. 2003).

⁶ See *Actions Taken Under Cable Landing License Act, Public Notice*, 17 FCC Rcd. 19,571 (Int'l Bur. 2002); Rotunno Declaration ¶ 3.

⁷ See *id.* ¶ 5; Declaration of Mark McGilvray ¶¶ 4-8 ("McGilvray Declaration") (attached as Exhibit B to this Joint Opposition).

⁸ See Rotunno Declaration ¶ 4.

interest in the proposed system.⁹ In the ITP, Tyco Telecom and Crest expressed their desire to enter into a number of agreements relating to the construction and operation of Northern Lights, to be comprised of two cable segments connecting Tyco Pacific with two terrestrial landing points—Seward and Shemya Island—in Alaska.¹⁰ The cable segments would connect with Tyco Pacific via two new “branching units,” which are physical joints that can be added to undersea cable systems to allow for future connections to other cable systems or segments. A branching unit simply allows for access; it is not, in itself, a cable system or cable segment.

The ITP contemplated a supply contract, pursuant to which Tyco Telecom would construct the cable segments between the two new branching units and the terrestrial landing points in Alaska.¹¹ The ITP also contemplated two indefeasible right-of-use (“IRU”) agreements to provide Crest with capacity on Tyco Pacific and, ultimately, connectivity between the Northern Lights landing points in Alaska and the Tyco Pacific landing point in Oregon.¹² In the ITP, Tyco Telecom quoted a purchase price of \$100 million for the entire Northern Lights project.¹³ Tyco Telecom and Crest never executed the contemplated system supply contract or either of the IRU agreements, and Northern Lights has never been built.¹⁴

As of the effective date of the ITP—and regardless of the status of the other contemplated agreements—Tyco agreed to insert the two branching units into Tyco Pacific and to place them under Crest’s exclusive control.¹⁵ Branching Unit A would allow for future construction of a

⁹ *See id.*

¹⁰ *See id.*

¹¹ *See id.* ¶ 5.

¹² *See id.*

¹³ *See id.*

¹⁴ *See id.*

¹⁵ *See id.* ¶ 6.

cable spur connecting Tyco Pacific with a terrestrial landing point at Seward and/or Kodiak, and Branching Unit B would allow for future construction of a cable spur connecting Tyco Pacific with a terrestrial landing point at Shemya Island.¹⁶ Crest paid Tyco Telecom a \$2.5 million nonrefundable deposit in connection with the ITP's execution.¹⁷ As required by the terms of the ITP, Tyco Telecom placed the two branching units into Tyco Pacific, and, pursuant to the ITP, Crest now controls those branching units.¹⁸

B. Crest's Executive Vice President, Brian Roussell, Is a Former Tyco Telecom Employee Who Played a Lead Role in The ITP Negotiations with Crest Prior to His Termination

Crest's Executive Vice President, Brian Roussell, is a former Tyco Telecom employee who played a lead role in the ITP negotiations with Crest prior to his termination. Roussell joined Tyco Telecom as Vice President for Marketing and Sales in May 2000.¹⁹ In late summer 2002, Roussell was asked about his interest in remaining with Tyco Telecom following an anticipated corporate restructuring and force reduction, and, in response, he stated that he wanted to leave.²⁰ Roussell's reaction surprised other Tyco Telecom executives at the time but later made sense, as Roussell accepted a high-paying position with Crest (i.e., Crest's corporate predecessor in interest) almost immediately after he was terminated by Tyco Telecom.²¹

Tyco Telecom terminated Roussell's employment effective October 5, 2002, as part of the anticipated force reduction and corporate restructuring.²² Roussell went to work for Crest

¹⁶ *See id.*

¹⁷ *See id.*

¹⁸ *See* Declaration of Thomas Lynch ¶ 4 ("Lynch Declaration") (attached as Exhibit C to this Joint Opposition).

¹⁹ *See id.* ¶ 3.

²⁰ *See id.* ¶ 5.

²¹ *See id.* ¶¶ 5, 7-8.

²² *See id.* ¶ 6.

almost immediately thereafter.²³ The timing of Roussell's transition suggests that his employment prospects with Crest clearly influenced his actions while he was still at Tyco Telecom.

C. In November 2004, Crest Specifically Threatened Tyco with Opposing the Sale of TGN to VSNL USA Unless Tyco Telecom Would Accede to Crest's Pricing Demands

On November 1, 2004, Tyco subsidiaries entered into a stock and asset purchase agreement to sell TGN to VSNL USA, subject to regulatory approvals in various jurisdictions, including the United States.²⁴ Two weeks later, Tyco Telecom's President and Tyco International's Vice President of Mergers and Acquisitions participated in a conference call with Roussell and Donald Schroeder, Crest's President and CEO, to discuss proposed commercial arrangements relating to the Northern Lights project.²⁵ In its most recent pricing proposals to Crest regarding Branching Unit A and a Seward spur—made in June 2004 and January 2005—Tyco Telecom had priced the system between \$27.9 million and \$32.7 million for a system supply contract alone.²⁶

In the conference call, Roussell and Schroeder attempted to “greenmail” Tyco. Specifically, they threatened to oppose Tyco's sale of TGN to VSNL USA unless Tyco Telecom would agree to Crest's preferred supply contract (for the commercial spur to Seward only) at Crest's preferred price: the lesser of \$5 million or variable cost.²⁷ The price Crest demanded is

²³ See *id.* ¶ 8.

²⁴ See Declaration of David Coughlan ¶ 6 (“Coughlan Declaration”) (attached as Exhibit D to this Joint Opposition); Application at 8-10.

²⁵ See *id.* ¶ 7.

²⁶ See *id.* ¶ 5; McGilvray Declaration ¶ 7.

²⁷ See Coughlan Declaration ¶ 8.

less than one-fifth of Tyco's \$27.9 million bid for the same supply contract.²⁸ Crest did not condition its demand either on Tyco retaining ownership of TGN (or any part of TGN, including Tyco Pacific), or on a promise by Tyco not to sell TGN (or any part thereof) to VSNL USA or any other foreign purchaser.²⁹ Indeed, Crest indicated that it had, and would raise, no substantive objections to Tyco's sale of TGN to VSNL USA so long as Tyco Telecom met the terms of Crest's pricing demand.³⁰ Within a month of that conference call, Tyco Telecom's president responded to Crest that Tyco Telecom would not accept Crest's pricing demand, as acceptance of the demand would require Tyco Telecom to take an enormous loss on the supply contract.³¹

Had Tyco Telecom agreed to Crest's "greenmail" proposal, Tyco Telecom would presently be constructing the Seward spur from Branching Unit A and proceeding with the TGN sale without opposition from Crest.³² Given Tyco Telecom's rejection of Crest's pricing demands, however, Crest instead followed through on its threat and petitioned the Commission to block the TGN sale.³³

²⁸ *See id.* ¶ 9. Roussell implied Crest's pricing demand covered the system supply contract and IRU agreements. Tyco Telecom's bid of \$27.9 million, by contrast, covered the system supply contract alone. *See id.*

²⁹ *See id.* ¶ 8.

³⁰ *See id.* ¶ 10.

³¹ *See id.* ¶ 12.

³² *See* McGilvray Declaration ¶ 10.

³³ *See* Petition to Deny. Had Tyco and VSNL USA filed a mutually exclusive application involving a wireless license, Crest's conduct would violate Section 1.935(c) of the Commission's rules, which bars "greenmail" attempts related to such applications. In pertinent part, the Commission's anti-greenmail rule provides that: "No person shall make or receive any payments in exchange for withdrawing a threat to file or refraining from filing a petition to deny, informal objection, or any other pleading against an application. . . . Payments made directly to a potential petitioner or objector, or a person related to a potential petitioner or objector, to implement non-financial promises are prohibited unless specifically approved by the Commission." 47 C.F.R. § 1.935(c). While currently limited in its

D. Crest Has Misled the Commission With Respect to Its Intentions Regarding a Shemya Island Spur, the Likely Impact of the TGN Sale on Crest's Commercial Interests, and Any Consequent Implications for National Security

Crest has misled the Commission with respect to its intentions regarding a Shemya Island spur, the likely impact of the TGN sale on Crest's commercial interests, and any consequent implications for national security. Because Crest itself is no longer pursuing development of the Shemya Island spur, and because it has never sought to condition its desired supply contract and IRU agreement on particular TGN ownership, the Commission should reject Crest's public interest arguments as they relate to Crest's commercial interests or national security as wholly unfounded.

As noted in part III below, the federal agencies with jurisdiction and expertise over such operations have signed a network security agreement with VSNL USA and its affiliates and petitioned the Commission to grant the transfer and assignment conditioned upon compliance with that security agreement. These agencies have apparently concluded that the TGN sale raises no concerns with respect to Shemya Island or interests of the Defense Information Systems Agency ("DISA"), and the Commission should defer to their conclusions.

1. Since 2003, Crest Has Not Pursued a Supply Contract or IRU Agreement Involving Shemya Island, Instead Pursuing Only a Commercial Spur to Seward

Crest has misled the Commission with respect to its intentions regarding a Shemya Island spur. Because Crest long ago ceased pursuing a supply contract or IRU agreement with Tyco Telecom with respect to the Shemya Island spur, the Commission should reject Crest's public

applicability, the Commission's anti-greenmail rule establishes a sensible bar to extortionate behavior that, as a matter of sound policy, ought to cover all applications filed with the Commission.

interest arguments premised on the possibility of such a spur supporting national missile defense operations.

Between March 2002 and March 2005, Tyco Telecom and Crest have engaged in sporadic discussions regarding the system supply contract and the IRU agreements.³⁴ In particular, Crest has sought pricing for a Northern Lights system of drastically reduced scope, and one which would serve only to provide alternative capacity to commercial carriers on the Alaska-continental United States route.³⁵ After a few discussion of the proposed spur to Shemya Island in the summer of 2003, Crest has sought agreements with Tyco Telecom only with respect to Branching Unit A and the proposed spur to Seward, with a possible landing in Kodiak and has never again raised with Tyco Telecom the topic of Branching Unit B or the Shemya Island spur.³⁶

Given Crest's failure to express any interest in Branching Unit B or a Shemya Island spur since 2003, many of Crest's representations in its petition to deny are misleading, inaccurate, and contradicted by Crest's own negotiating activity with Tyco Telecom.³⁷ Specifically, the map that Crest has included as Figure 3 to its petition wrongly suggests that Crest is actively pursuing both a supply contract and an IRU agreement involving Branching Unit B and a spur to Shemya Island.³⁸ Similarly, Crest states that it owns a branching unit intended to connect with Shemya Island, and that such a connection would play a role in developing a national missile defense system.³⁹ Crest's statements would mislead an observer to conclude that Crest has continued to

³⁴ See McGilvray Declaration ¶ 4; Coughlan Declaration ¶ 4.

³⁵ See McGilvray Declaration ¶ 4.

³⁶ See *id.* ¶ 5.

³⁷ See *id.* ¶ 6.

³⁸ See Petition to Deny, Figure 3: Trans-Pacific Cable System Branching Units.

³⁹ See *id.* at 40-41.

pursue the development of the Shemya Island spur, when in fact Crest has not pursued the development of that spur since 2003.

2. Crest Has Misled the Commission Regarding the Likely Impact of the TGN Sale on Crest's Commercial Interests

Crest has misled the Commission regarding the likely impact of the TGN sale on Crest's commercial interests. Notwithstanding its "greenmail" and retaliation efforts against Tyco Telecom, Crest has continued to negotiate with Tyco Telecom in pursuit of a supply contract and IRU agreement, expressing concern about a single issue: price.⁴⁰

Neither Rousell nor Crest's corporate lawyers has ever indicated that Crest's continued interest in a supply contract or IRU agreements would depend upon Tyco Telecom continuing to own Tyco Pacific or upon Tyco Telecom's sale of Tyco Pacific or TGN to a U.S. purchaser.⁴¹ Crest has therefore continued to pursue a supply contract and IRU agreement without any conditions relating to the sale of TGN or the nationality of TGN's purchaser. Tyco's announcement that it had reached a deal to sell TGN to VSNL USA and its affiliates in no way altered Crest's interest in concluding either a supply contract or an IRU agreement with Tyco Telecom.⁴²

Given Crest's undiminished interest in pursuing a supply contract or IRU agreement with Tyco Telecom following the announcement of the TGN sale, several of Crest's representations in its petition to deny are misleading, inaccurate, and contradicted by Crest's own negotiating activity with Tyco Telecom. For instance, Crest suggests that the TGN sale would prevent Crest from providing service to the Defense Information Systems Agency ("DISA") because, Crest

⁴⁰ See McGilvray Declaration ¶¶ 8-10.

⁴¹ See *id.* ¶ 9.

⁴² See *id.*

notes, the sale would require DISA traffic to transit cables owned by foreign entities.⁴³ Crest, however, has continued to pursue commercial agreements without any conditions or limitations relating to the ownership of TGN, indicating that Crest does not actually believe that the sale of TGN to VSNL USA would eliminate its customer base or undermine its business plan.⁴⁴

II. THE SALE OF TYCO ATLANTIC AND TYCO PACIFIC RAISES NO COMPETITION OR MARKET ACCESS CONCERNS

The sale of Tyco Atlantic and Tyco Pacific raises no competition or market access concerns, and the Commission's rules and established precedent require the Commission to grant consent for the modification, transfer, and assignment of the Tyco Atlantic and Tyco Pacific cable landing licenses. The Commission itself already addressed and rejected some of Crest's arguments when it granted international Section 214 authorization to VSNL America, Inc. last year, and when it granted streamlined processing for the Application.⁴⁵

DoJ's Antitrust Division has already reviewed, and declined to investigate further, the competitive effects of the entire TGN sale. DoJ reviewed the entire transaction—and not just the sale of Tyco Atlantic and Tyco Pacific, the only components requiring FCC consent—and terminated early its investigation on December 22, 2004, evidently concluding that the TGN sale raised no competition concerns with respect to the trans-Pacific and U.S.-India routes. The Commission should therefore reject Crest's arguments for the same reasons that DoJ did, as the sale raises no competitive concerns regarding horizontal or vertical effects.

⁴³ See Petition to Deny at 38-41.

⁴⁴ See McGilvray Declaration ¶ 11.

⁴⁵ See *VSNL America, Inc., Order, Authorization and Certificate*, 19 FCC Rcd. 16,555 (Int'l Bur. 2004) ("*VSNL America Order*"); *Streamlined Cable Landing License Applications Accepted for Filing, Public Notice*, DA 05-700 (rel. Mar. 17, 2005) ("*Tyco-VSNL Public Notice*").

A. The Commission Must Apply its “Strong Presumption” that It Will Grant the Application Promptly

The Commission must apply its “strong presumption” that it will grant the Application promptly. In the *Foreign Participation Order*, the Commission established the standards that govern its review of the Application.⁴⁶ The Commission adopted a broad “open entry” standard to encourage foreign carriers to enter the U.S. telecommunications market.⁴⁷ Where the U.S. applicant is affiliated with foreign carriers in WTO member countries (as in this case, Japan and the United Kingdom, where Tyco Atlantic and Tyco Pacific land, and India, where they do not land), the Commission established a formal presumption—which it has several times characterized as a “strong presumption”⁴⁸—that it will grant applications expeditiously.⁴⁹ Only in the “exceptional case” or in “very rare circumstances” where granting an application poses a “very high risk to competition in the U.S. market” that cannot be addressed through competitive safeguards will the Commission consider denying an application.⁵⁰ The Commission determined that it was “highly unlikely” this standard would ever be satisfied with respect to a country that “has open, competitive markets and a procompetitive regulatory regime in place.”⁵¹ To the best of Tyco’s and VSNL USA’s knowledge, the Commission has never exercised this authority to prevent a foreign carrier from entering the U.S. telecommunications market.

⁴⁶ See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Report and Order and Order on Reconsideration*, 12 FCC Rcd. 23,891 (1997) (“*Foreign Participation Order*”).

⁴⁷ See *id.* at 23,893, 23,896-97, 23,904, 23,933.

⁴⁸ See e.g., *Australia-Japan Cable (Guam) Limited, Cable Landing License*, 15 FCC Rcd. 24,057 ¶ 10 n.27 (Int’l Bur. 2000); *Telefonica SAM USA, Inc., and Telefonica SAM de Puerto Rico, Inc., Cable Landing License*, 15 FCC Rcd. 14,915 ¶ 8 n.26 (Int’l Bur. 2000).

⁴⁹ See *Foreign Participation Order*, 12 FCC Rcd. at 23,897-98, 23,913-14.

⁵⁰ *Id.* at 23,898, 23,913-14.

⁵¹ *Id.* at 23,914.

In establishing this open-entry standard, the Commission recognized that it was no longer “necessary or appropriate” for it to engage in a “detailed, fact-intensive analysis” of foreign market conditions or conduct that would inevitably prove to be “time consuming and a drain on resources.”⁵² The Commission specifically addressed the possibility that a foreign carrier might control bottleneck foreign cable facilities, and concluded that its existing policies are more than adequate to prevent the misuse of any market power.⁵³ In particular, the Commission emphasized that it possesses the authority to require a non-common carrier cable landing licensee to operate on a common carrier basis, or to impose record-keeping requirements or other conditions on the licensee, to the extent necessary to address issues that arise.⁵⁴

B. The Sale of Tyco Atlantic and Tyco Pacific Does not Involve “Exceptional Circumstances” Posing a “Very High Risk to Competition in the U.S. Market”

The sale of Tyco Atlantic and Tyco Pacific does not involve “exceptional circumstances” posing a “very high risk to competition in the U.S. market.” Indeed, the sale of Tyco Atlantic and Tyco Pacific—and the broader TGN sale—raises no concerns regarding horizontal or vertical effects. The Commission must therefore proceed to grant consent for the sale of Tyco Atlantic and Tyco Pacific under the strong presumption of market entry established in the *Foreign Participation Order*.

1. The Sale of Tyco Pacific Raises No Competitive Concerns Regarding the U.S.-Japan or Trans-Pacific Routes

The sale of Tyco Pacific raises no concerns regarding the U.S.-Japan or trans-Pacific routes under the Commission’s cable landing license rules. Those rules provide that the Commission will examine the competitive effects of a transaction in the destination markets for

⁵² *Id.* at 23,904, 23,915.

⁵³ *See id.* at 23,934.

⁵⁴ *See id.*

the licensed facilities, in this case Japan and the United Kingdom.⁵⁵ By granting streamlined processing for the Application, the Commission presumptively determined that VSNL USA and VSNL Guam are non-dominant, having demonstrated pursuant to Section 63.12(c)(ii) that their foreign carrier affiliates in Japan and the United Kingdom lack market power in their respective markets.⁵⁶

The highly competitive trans-Pacific route has experienced exponential capacity growth—and corresponding capacity price cuts—in recent years. Indeed, trans-Pacific capacity increased by 2500 percent from 1998 to 2003 while capacity prices on the route dropped by more than ninety percent, and analysts expect these trends to continue.⁵⁷ This massive development of new capacity has resulted in a capacity glut that essentially eliminates the risk of dominant behavior on the route. Moreover, due to recent technological innovations, competing operators can boost their existing capacity on the route quickly and at modest cost, further enhancing the route’s competitive characteristics and reducing the risk of anticompetitive conduct. Finally, Tyco expects new trans-Pacific systems to add additional capacity on that route in the near future, as several parties have expressed interest in building such systems. The Commission should therefore reject Crest allegations premised on the supposed market power of VSNL USA and VSNL Guam, which they clearly lack.

2. The Sale of Tyco Pacific and TGN Raises No Competitive Concerns Regarding the U.S.-India Route

Even under broader reading of the Commission’s “public interest” standard or the *Foreign Participation Order*, the sale of Tyco Pacific and TGN raises no competitive concerns

⁵⁵ See 47 C.F.R. §§ 1.767(a)(11)(i), (k).

⁵⁶ See 47 C.F.R. §§ 63.10(a)(3), 63.12(c)(ii).

⁵⁷ See, e.g., INTERNATIONAL BANDWIDTH 2004 VOLUME 1: SUBMARINE NETWORKS, at 93 (TeleGeography 2004).

regarding vertical effects on the U.S.-India route.⁵⁸ Crest's allegations of vertical restraints to trade ignore the actual conditions along the U.S.-India route and lack a coherent theory. Crest's vertical-restraint allegations appear to include two distinct arguments. *First*, Crest wants the Commission to deny the Application so that Tyco will have an incentive to enter the submarine cable bandwidth market *in India*, thereby imposing downward pressure on U.S.-India bandwidth prices.⁵⁹ *Second*, Crest wants the Commission to deny the Application to prevent VSNL from tying capacity sales on cables landing in India (where, Crest alleges, VSNL has market power) to capacity sales at above-market rates on the U.S.-Japan route.⁶⁰ Both of these vertical-restraint theories are far-fetched and should not delay grant of the Application.

a. Crest Ignores Actual Market Conditions on the U.S.-India Route

As a threshold matter, Crest's theories rely on a misleading portrayal of the submarine cable bandwidth market. Tyco Pacific does not land in India. Indeed, Tyco Pacific does not even directly interconnect with a cable that lands in India. Carriers that use Tyco Pacific for U.S.-India traffic must obtain capacity on other cable systems between Japan and India, usually by routing the traffic first to Singapore and then to India.⁶¹ Neither Tyco nor VSNL (nor their affiliates) owns, controls or operates a cable system on the Japan-Singapore route. Rather, VSNL has contractual rights to a modest amount of capacity obtained from unaffiliated system

⁵⁸ Tyco and VSNL USA note that the consolidated Application does not even arguably create a risk of horizontal effects. Today VSNL controls only a very small amount of capacity landing in the United States on the trans-Atlantic and trans-Pacific routes. Hence, the TGN transaction would not result in any significant increase in market concentration on either route.

⁵⁹ See Petition to Deny at 29.

⁶⁰ See *id.* at 32.

⁶¹ U.S. carriers use substantial amounts of both trans-Atlantic and trans-Pacific capacity to route U.S.-India traffic today. Hence, Crest's vertical-restraint theory involving Tyco Pacific applies, at most, to a subset of the traffic on the U.S.-India route.

operators on this route, and, contrary to Crest's allegations,⁶² Tyco Telecom owns only a single dark fiber pair on the Japan-Singapore leg of the C2C cable system.

Crest does not (and cannot) contend that either VSNL or Tyco Telecom has significant capacity, much less market power, on the Japan-Singapore route. Indeed, VSNL has exclusive ownership and operational control of only a single cable system landing in India: the 5.12 terabit/s Tata Indicom cable from Chennai to Singapore. Contrary to Crest's unfounded allegation that VSNL holds a major stake in the planned SEA-ME-WE 4 system,⁶³ VSNL actually holds less than an eight percent interest in the consortium system that is scheduled to become operational in late 2005 with a design capacity of 1.28 terabit/s. The SEA-ME-WE 4 landing station in Chennai that would serve trans-Pacific capacity will be owned and operated by Bharti, not VSNL. Further, Singapore Telecom and Bharti jointly own and operate the i2i cable system with a design capacity of 8.4 terabit/s on the India-Singapore route, and the i2i landing station in India is owned and operated by Bharti, not VSNL. In addition, FLAG Telecom, which is owned by Reliance InfoComm, has announced plans to build the multi-terabit/s FALCON cable system, and FLAG Telecom will own and operate the FALCON landing station in Chennai serving trans-Pacific traffic. Beyond these cables, the incumbent domestic carrier in India, Bharat Sanchar Nigam Limited ("BSNL"), is moving forward to build at least two new cables landing in India—one between India and Sri Lanka⁶⁴ and another cable between India and

⁶² See Petition to Deny at 8.

⁶³ See *id.* at 18.

⁶⁴ See DAILY NEWS (Sri Lanka), *BSNL signs MOU with SLT for submarine cable system: SLT embarks on landmark telecommunication project*, Aug. 18, 2004, available at <http://www.dailynews.lk/2004/08/18/bus03.html>.

Singapore.⁶⁵ As the variety of systems demonstrates, the Indian market is dynamic and characterized by significant new entry from entities other than VSNL.

b. Crest's Vertical Restraint Allegations Are Incoherent and Otherwise Lack Merit

Against this background, Crest's vertical-restraint theories completely fall apart. Crest cannot rely on the Commission's review in hopes of prompting Tyco Telecom to enter India's international bandwidth market. Tyco Telecom has already made a strategic business decision to exit the wholesale undersea cable bandwidth market by selling TGN. VSNL was the only bidder for TGN. And Crest has presented no data or other information from which the Commission could conclude that rejecting the Application would cause Tyco to both (i) reverse its decision to exit this market sector *and* (ii) commit the significant resources needed to enter the India bandwidth market. Notably, Crest fails to cite a single instance in which the Commission made the extraordinary decision to prevent a carrier from exiting a market sector in hopes that the carrier would expand its participation in that market sector going forward. Further, in light of the market developments in India described above, the Commission cannot conclude that Tyco Telecom's entry into India's international bandwidth market is necessary to ensure that new cables will land in India or that carriers other than VSNL will participate actively in that market sector.

The Commission should also reject Crest's alternative vertical-restraint argument that the proposed TGN transactions would allow VSNL to tie capacity sales on the Singapore-India route to sales on the U.S.-Japan route in an anticompetitive manner. Crest's argument fails for purely

⁶⁵ VSNL USA understands that BSNL has received proposals from supply contractors for a cable that would extend between Calcutta, India and Singapore. Recent press reports also indicate that BSNL will play a role in a new terrestrial fiber optic cable system linking India and Pakistan. See Thomas K. Thomas, *THE HINDU BUSINESS LINE, India, Pakistan considering optical fibre cable link*, April 6, 2005, available at <http://www.thehindubusinessline.com/2005/04/07/stories/2005040701291100.htm>.

commercial reasons, however, as VSNL has no incentive to depress demand for trans-Pacific capacity by artificially raising capacity rates to above-market levels. Given the high fixed costs of operating the TGN, as well as the substantial excess capacity on the trans-Pacific route, VSNL will have to sell capacity at market-based rates in order to generate sufficient revenues to cover its costs. Moreover, should VSNL or any other foreign carrier seek to engage in tying or other leveraging arrangements involving capacity on the U.S.-Japan route, such arrangements would face DoJ scrutiny under U.S. antitrust laws. The Commission should therefore reject Crest's "tying" theory for the same reasons DoJ declined to investigate further the TGN sale.⁶⁶

Ultimately, Crest asks the Commission to conclude, in effect, that no foreign carrier deemed to possess market power in its home country may purchase the TGN or a similar U.S. asset as such an arrangement could result in anticompetitive tying arrangements. In other words, Crest's "tying" argument relating to VSNL's acquisition of the TGN applies just as readily to any incumbent foreign carrier. The Commission's well-established policies do not embody or contemplate a generic prohibition directed at incumbent foreign carriers, however, nor would such an approach be consistent with the obligations of the United States under the WTO Basic Telecommunications Agreement.

C. The Commission and USTR Have Already Considered and Addressed the Trade Policy Issues that Crest Raises in Its Petition to Deny

The Commission and the Office of the U.S. Trade Representative ("USTR") have already considered and addressed the trade policy issues that Crest raises in its petition to deny.

⁶⁶ Crest's concerns that VSNL will seek to discriminate against U.S. competitors of VSNL America in its pricing of, or access to, the TGN likewise lack any foundation. TGN can identify direct customers only. By operating TGN (which VSNL USA and its affiliates will re-name), VSNL USA would have no ability to discriminate against U.S. carriers who obtain TGN capacity from another U.S. carrier. Similarly, the TGN owner would not be able to identify which circuits on the Tyco Pacific cable, which serves the U.S.-Japan route, were being used to carry U.S.-India traffic, and hence it could not discriminate against or impose higher prices on the U.S.-India traffic of any specific customer.

Accordingly, the Commission should decline to revisit them here. *First*, the Commission considered—and rejected—these same arguments when granting international Section 214 authorization to VSNL America last year.⁶⁷ *Second*, while USTR noted concerns in its annual Section 1377 report to Congress regarding India’s WTO commitments and regulatory oversight, the Commission has never denied a license application due to such concerns, and neither USTR nor the parties submitting comments in the Section 1377 process asked the Commission to reject the Application. In light of the Commission’s rejection of comparable concerns and USTR’s approach in the Section 1377 review, Crest’s alleged trade policy concerns cannot justify a decision to deny the Application.

D. VSNL Has Not Engaged in the Anticompetitive Conduct Crest Alleges

Crest’s petition to deny constitutes an almost unprecedented effort to oppose market entry based on allegations that are undocumented, misleading, incomplete, and, in many cases, simply false.⁶⁸ At the outset, VSNL notes that the Commission has rejected similarly unfounded allegations in the past. When granting international Section 214 authorization to VSNL America, the Commission noted the lack of any record evidence “show[ing] that VSNL has engaged in adjudicated violations of the Commission’s rules or U.S. antitrust or other competition laws, or in demonstrated fraudulent or other behavior, such that this past behavior

⁶⁷ See *VSNL America Order*, 19 FCC Rcd. at 16,564 n.53.

⁶⁸ Crest’s assertion that the Government of India exerts “substantial control” over VSNL is incorrect. See *Petition to Deny* at 11. The Government of India exerts no control over VSNL. The Government of India does not have the right to direct the network operations of VSNL, to direct the day-to-day management of VSNL, or to appoint the management executives of VSNL. In particular, the Government of India will not have the right to control any systems, equipment or services related to the TGN, nor will the Government of India be able to access, electronically or otherwise, any U.S. communications carried over the TGN.

might indicate that its subsidiary VAI would fail to comply with the Commission's competitive safeguards and other rules."⁶⁹ The Commission should reach the same conclusion here.

While Tyco and VSNL USA cannot respond to each of Crest's allegations, several require prompt correction. *First*, Crest alleges without support that VSNL opposes upgrading the FEA system that lands in India.⁷⁰ To the contrary, VSNL supports upgrading the FEA cable when the upgrade occurs pursuant to an amendment of the FEA Construction and Maintenance Agreement. Indeed, VSNL is working cooperatively with like-minded FEA signatories to achieve that result. *Second*, Crest's allegation that VSNL has restricted FLAG Telecom's access to available capacity on the FEA cable relies on long-outdated information. As the Commission itself noted in granting international Section 214 authorization for VSNL America, VSNL and FLAG Telecom entered into a settlement agreement in May 2004 that fully resolved the dispute between the parties.⁷¹ Crest has not identified any other instance in which VSNL allegedly restricted capacity on the FEA or other cables.

Crest also alleges incorrectly that VSNL has undermined the restoration capability of the i2i network by barring it from interconnecting with other systems at VSNL's landing station in India.⁷² Contrary to Crest's allegations, the Sea-Me-We 3 consortium (*not* VSNL) declined the initial request for mutual restoration. (VSNL has an ownership and voting interest in the Sea-Me-We 3 consortium of less than four percent.) Indeed, VSNL entered into a binding Memorandum of Understanding ("MOU") with Network i2i Limited on February 2, 2005, to ensure that the i2i and Tata Indicom cable systems provide mutual restoration for each other.

⁶⁹ *Id.*

⁷⁰ *See* Petition to Deny at 16.

⁷¹ *See VSNL America Order*, 19 FCC Rcd. at 16,564-65.

⁷² *See* Petition to Deny at 17.

VSNL USA also disputes Crest's unsupported speculation that VSNL America is operating in violation of the No Special Concessions rule. VSNL America has been and remains in full compliance with all applicable FCC regulations and policies. Similarly, VSNL USA rejects Crest's contention that VSNL's conduct troubled the Commission's International Bureau when it granted international Section 214 authorization to VSNL America.⁷³ The Bureau never stated or implied any such thing in its *VSNL America Order*.

Lastly, the Commission should reject Crest's baseless allegation that approving the TGN transaction would enable VSNL or its affiliates to evade regulation in the U.S. and India. With respect to U.S. regulation, the Commission has significant authority over non-common carrier cable landing licensees. In adopting its current open entry policy, the Commission noted that it can require a non-common carrier licensee to operate on a common carrier basis or impose reporting or other conditions, when shown to be necessary to protect the U.S. public interest.⁷⁴

Similarly, the Commission should waste little time in rejecting Crest's allegation that regulatory authorities in India have "abdicated" their responsibility to regulate VSNL.⁷⁵ In general, the Commission should exercise extreme caution before denying market entry based on a third party's self-serving predictions that the national regulatory authority in a WTO member country will not fulfill its functions going forward. With respect to India, the Commission already rejected this allegation last year when it granted international Section 214 authorization to VSNL America.⁷⁶ Since then, the Telecom Regulatory Authority of India ("TRAI") has required VSNL and other facilities-based carriers in India to reduce their rates for high-capacity

⁷³ See *id.* at 20.

⁷⁴ See *Foreign Participation Order*, 12 FCC Rcd. at 23,934.

⁷⁵ See Petition to Deny at 34.

⁷⁶ See *VSNL America Order*, 19 FCC Rcd. at 16,564-65.

bandwidth services by up to seventy percent,⁷⁷ thereby removing any doubt as to TRAI's willingness and ability to regulate. Indeed, Crest undermines its own argument as it appears to argue that TRAI's ability to regulate VSNL effectively will push VSNL to recover lost Indian monopoly rents through above-market pricing of trans-Pacific capacity.⁷⁸

The grant of international Section 214 authorization to VSNL America last year removed any doubt that VSNL and its affiliated companies are fully qualified to participate in the U.S. telecommunications market sector. The Commission should summarily reject Crest's futile attempt to resurrect this issue in the context of the TGN transaction.

III. ON MATTERS OF NATIONAL SECURITY, LAW ENFORCEMENT, AND PUBLIC SAFETY, THE COMMISSION SHOULD DEFER TO THE CONCLUSIONS OF THOSE FEDERAL AGENCIES WITH JURISDICTION OVER, AND EXPERTISE IN, SUCH MATTERS, AS THOSE AGENCIES HAVE ALREADY CONCLUDED A NETWORK SECURITY AGREEMENT WITH VSNL USA AND ITS AFFILIATES RESOLVING ANY CONCERNS

On matters of national security, law enforcement, and public safety, the Commission should defer to the conclusions of those federal agencies with jurisdiction over, and expertise in, such matters. "In assessing the public interest, we take into account the record and afford the appropriate level of deference to Executive Branch expertise on national security and law enforcement issues."⁷⁹ Based on that policy, the Commission should dismiss summarily Crest's arguments that granting this application would harm U.S. national security.

As noted above, DoD, DHS, DoJ, and the FBI spent over five months developing a set of conditions to be observed by VSNL USA and two of its affiliates in order to safeguard U.S. national security, law enforcement, and public safety interests. In that process, Tyco confirmed

⁷⁷ See Telecom Regulatory Authority of India, The Telecommunication Tariff (Thirty Fourth Amendment) Order, 2005 (rel. March 11, 2005).

⁷⁸ See Petition to Deny at 32.

⁷⁹ *VSNL America Order*, 19 FCC Rcd. at 16,568 ¶ 24.

that TGN has no direct capacity agreement with any U.S. Government agency involved in national defense or law enforcement. On April 7, 2005, VSNL USA and those affiliates signed a network security agreement with those agencies addressing those interests. And on April 11, 2005, VSNL USA and its affiliates have, with DoD, DoJ, DHS, and the FBI, jointly filed petition with the Commission in which DoD, DoJ, DHS and the FBI have advised the Commission that they do not object to grant of the Application subject to compliance with the security agreement.

Moreover, by granting consent for Tyco's sale of TGN and its network capacity and collocation businesses, the Commission will ensure that Tyco Telecom is better able to restructure and strengthen its longstanding, U.S.-based undersea cable manufacturing, installation, and maintenance businesses. As Tyco Telecom has noted from the outset, it will retain its research and development laboratories and cable and repeater factories in the United States, as well as its fleet of cable ships stationed around the world.

IV. THE COMMISSION SHOULD GRANT THE APPLICATION PURSUANT TO ITS STREAMLINED PROCESSING PROCEDURES

The Commission should proceed to grant the Application pursuant to the 45-day streamlined processing procedures specified in its rules.⁸⁰ Those rules provide that the Commission will review a transaction based on the destination country of the cable system. The Commission previously streamlined the Application, correctly identifying Japan and the United Kingdom as the destination markets for Tyco Pacific and Tyco Atlantic, respectively.⁸¹

⁸⁰ *In the Matter of Review of Commission Consideration of Applications under the Cable Landing License Act*, 16 FCC Rcd 22167 (2001).

⁸¹ *See Tyco-VSNL Public Notice*.

The Commission also adopted the rule that a petition to deny would not automatically deprive applicants of the benefits of streamlined processing in order to discourage strike petitions or other attempts by parties to hold applications hostage to their own self-serving commercial interests.⁸² With its petition to deny, Crest has sought to test the Commission's commitment to its new cable landing license application processing rules by raising meritless and irrelevant issues which have already been examined and addressed by U.S. Government agencies, including the Commission itself just last year. The Commission should uphold its streamlined processing regime by granting the application pursuant to 45-day streamlined processing.

⁸² See *Review of Commission Consideration of Applications Under the Cable Landing License Act, Report and Order*, 16 FCC Rcd. 22,167, 22,188 ¶ 40 (2002).

CONCLUSION

For the foregoing reasons, the Commission should deny Crest's petition to deny as part of an ongoing corporate "greenmail" and retaliation strategy against Tyco Telecom and because it otherwise lacks any merit. For the reasons stated in the underlying application, the Commission should proceed to grant consent to the transfer and assignment of Tyco Atlantic and Tyco Pacific to VSNL USA pursuant to the Commission's streamlined processing procedures.

Respectfully submitted,

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11 April 2005

LIST OF EXHIBITS

- Exhibit A: Declaration of Donald Rotunno**
- Exhibit B: Declaration of Mark McGilvray**
- Exhibit C: Declaration of Thomas Lynch**
- Exhibit D: Declaration of David Coughlan**
- Exhibit E: Affidavit of Satish Ranade**

CERTIFICATE OF SERVICE

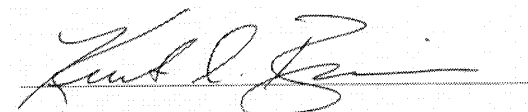
I, Kent D. Bressie, hereby certify that on April 11, 2005, I caused a true copy of the foregoing Opposition to Petition to Deny to be served by Federal Express to the following:

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