

August 2, 2018

BY ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

*Re: Request to Modify Cable Landing License for PPC-1 Submarine Cable System,
File Nos. SCL-LIC-20080213-00001 and SCL-MOD-20090910-00027*

Dear Ms. Dortch:

Through their counsel, PPC 1 (US) Inc. and PPC 1 Limited (the “Licensees”) request that the Commission modify the cable landing license for the PPC-1 submarine cable system in order to reflect revisions to the security mitigation arrangements negotiated with the Executive Branch.¹ Effective July 31, 2018, the Licensees’ indirect parent company, TPG Telecom Limited, executed (1) an agreement (the “Termination Agreement”) terminating the 2008 network security agreement (“2008 NSA”) by and between the Licensees and the U.S. Department of Homeland Security (“DHS”) and (2) a new letter of assurances (“2018 LOA”) setting forth the current security commitments governing the ownership and operation of the PPC-1 submarine cable system and replacing an earlier letter of assurances executed by and between TPG Telecom Limited and the Licensees in connection with TPG Telecom Limited’s acquisition of the Licensees and their affiliates (the “2010 LOA”).²

As subsidiaries of TPG Telecom Limited, the Licensees acknowledge that they are subject to the commitments set forth in the 2018 LOA. The Licensees therefore request that the Commission amend the PPC-1 cable landing license to require compliance with the 2018 LOA rather than the 2008 NSA and 2010 LOA. For the convenience of the Commission, we have attached the following appendices:

¹ *Actions Taken Under Cable Landing License Act*, Public Notice, 23 FCC Rcd. 13,419 (2008) (File No. SCL-LIC-20080213-00001); *Actions Taken Under Cable Landing License Act*, Public Notice, 24 FCC Rcd. 13,880, 13,881 (2009) (File No. SCL-MOD-20090910-00027).

² *See Actions Taken Under Cable Landing License Act*, Public Notice, 25 FCC Rcd. 1461 (2010).

Ms. Marlene H. Dortch
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- Appendix 1: 2018 LOA
- Appendix 2: 2018 Termination Agreement
- Appendix 3: 2010 LOA
- Appendix 4: 2008 NSA

Should you have any questions, please contact me by telephone at +1 202 730 1337 or by e-mail at kbressie@hwglaw.com.

Respectfully submitted,



Kent Bressie

*Counsel for PPC 1 (US) Inc., PPC 1 Limited, and
TPG Telecom Limited*

Attachments

cc: David Krech
Glenn Kaminsky (DHS)

APPENDIX 1:
2018 LOA



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TPG Telecom Limited
ABN 46 093 058 069

31 July 2018

Assistant Secretary for Border, Immigration and Trade
U.S. Department of Homeland Security
Office of Policy
Foreign Investment Risk Management
3801 Nebraska Avenue NW
Washington, D.C. 20528
IP-FCC@hq.dhs.gov

Ladies and Gentlemen:

This Letter of Assurances (“LOA”) modifies and updates the commitments originally made by PPC 1 Limited and PPC 1 (US) Inc. (collectively, the “PPC 1 Licensees”) to the U.S. Department of Homeland Security (“DHS”) in a National Security Agreement (“Agreement”) dated September 4, 2008 to address national security, law enforcement, and public safety concerns raised with regard to the PPC 1 Licensees’ Federal Communications Commission (“FCC”) license to land and operate a non-common carrier fiber optic submarine cable system connecting Sydney, Australia with Piti, Guam and Madang, Papua New Guinea (“PPC 1 Cable System”).¹ The commitments contained in the Agreement were subsequently reaffirmed by TPG Telecom Limited (“TPG Telecom”) on January 20, 2010, in connection with the transfer of control of the PPC 1 Licensees from PIPE Networks Limited to TPG Telecom.²

TPG Telecom understands that the Agreement is being terminated by DHS and the PPC 1 Licensees in light of the modified and updated commitments provided through this LOA with respect to the PPC 1 Cable System. TPG Telecom has agreed to provide this LOA to DHS, and TPG Telecom understands that DHS will petition the FCC to condition the cable landing license for the PPC 1 submarine cable system 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.
- B. “Domestic Communications Infrastructure” or “DCI” means: (a) any portion of the PPC 1 Cable System that physically is located in the United States, up to 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 by

¹ SCL-LIC-20080213-00001, Joint Application of PPC 1, for a License to Land and Operate a Private Fiber-Optic Submarine Cable System Connecting the Australia, Guam and New Guinea.

² SCL-T/C-20091230-00041, Application for Consent to Transfer Control of a Private Fiber-Optic Cable System Connecting Australia and Guam, the PPC 1 System.

or on behalf of TPG Telecom to provide, process, direct, control, supervise, or manage Domestic Communications; and (b) Network Operations Center (“NOC”) facilities, as defined in Section D 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 TPG Telecom for purposes of performing network management, monitoring, maintenance, or other operational functions for the PPC 1 Cable System.
- E. “Principal Equipment” means the primary electronic components of the PPC 1 Cable System, which includes the Domestic Communications Infrastructure and Wet Infrastructure. Principal Equipment includes: 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; and any non-embedded software necessary for the proper monitoring, administration, and provisioning of the PPC 1 Cable System (with the exception of COTS software used for common business functions, *e.g.*, Microsoft Office).
- F. “Screened Personnel” has the meaning set forth in Paragraph 9 below.
- G. “Wet Infrastructure” means hardware components installed and residing on the undersea portion of the PPC 1 Cable System, including fiber optic cables, repeaters, branching units, and routers (if any). Wet Infrastructure includes all the components used in order to define the topology of the undersea portion of the PPC 1 Cable System.
- H. “Wire Communication” has the meaning given it in 18 U.S.C. § 2510(1).

TPG Telecom undertakes to comply with the following commitments:

1. Security Points of Contact

TPG Telecom shall maintain a Security Point of Contact (“POC”) for purposes of this LOA. The POC shall be a U.S. citizen and shall reside in the United States. The POC shall be subject to DHS’ review and non-objection, and he/she may be subject to a background check at the sole discretion of DHS. The POC shall 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 the PPC 1 Cable System. The POC shall 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. TPG Telecom shall notify DHS of any proposed change to the POC at least ten (10) business days in advance of such change. Any subsequently proposed POC shall be subject to DHS’ review and non-objection and may be subject to a background check at the sole discretion of DHS.

2. Cable System Information

Within sixty (60) business days of the execution of this LOA, and within fifteen (15) business days upon request by DHS, TPG Telecom agrees to make available the following PPC 1 Cable System Information:

- (a) Network management information, including: (1) a network map that includes physical and logical topology; (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; and (5) descriptions of interfaces and connections to the PPC 1 Cable System for service offload, disaster recovery, or administrative functions;
- (b) Complete and current list of all contracts held by TPG Telecom or its designee(s) for the maintenance and security of the PPC 1 Cable System; and
- (c) A restoration plan for the Principal Equipment and the Wet Infrastructure for the PPC 1 Cable System, as well as interconnection mechanisms with other cable landings for restoration in the case of outages due to cable disruptions.

3. Operational Requirements

With respect to the operation of the PPC 1 Cable System, TPG Telecom agrees as follows:

- (a) TPG Telecom shall have the ability to promptly and effectively interrupt, in whole or in part, traffic to and from the United States on the PPC 1 Cable System by disabling or disconnecting circuits at the U.S. cable landing station or at other locations within the United States;
- (b) TPG Telecom shall configure all necessary systems so the NOC will be able to initiate a suspension or interruption of the optical carrier signal or all of the PPC 1 Cable System within the DCI.

If TPG Telecom is required to interrupt traffic to or from the United States as a result of lawful U.S. process, TPG Telecom shall 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 sixty (60) business days of the execution of this LOA, TPG Telecom shall 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, or maintaining the Principal Equipment.

DHS shall approve or disapprove the Principal Equipment List within thirty (30) business days of receipt. Failure by DHS to respond within the required timeframe shall be deemed to constitute a non-objection to use of the equipment included on the Principal Equipment List and the services of the vendors, contractors, or subcontractors identified on the Principal Equipment List.

5. Material Modifications to Existing Principal Equipment

TPG Telecom shall provide DHS at least fifteen (15) business days' advance notice prior to performing any maintenance, repair, or replacement that would result in any material modification to existing Principal Equipment for the PPC 1 Cable System. TPG Telecom need not comply with the advance notice requirement 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 the PPC 1 Cable System; however, in such circumstances, TPG Telecom shall provide advance notice to DHS of the material modification, if practicable, and, if impracticable, TPG Telecom shall provide notice within ten (10) business days after the material modification of the Principal Equipment. TPG Telecom may continue to utilize any Principal Equipment repaired or replaced pursuant to the process outlined in this paragraph, provided that DHS do not object within thirty (30) business days of notification.

6. Change in Vendors, Contracts, or Subcontracts for Principal Equipment

TPG Telecom shall provide at least thirty (30) business days' advance notice prior to making any modifications to the list of vendors, contractors, or subcontractors involved in providing, installing, operating, managing, or maintaining the Principal Equipment. In addition, TPG Telecom shall provide at least thirty (30) business 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). DHS shall approve or disapprove any modification or change proposed pursuant to this paragraph within thirty (30) business days of receipt. Failure by DHS to respond within the required timeframe shall be deemed to constitute a non-objection to proposed modification or change.

7. Measures to Prevent Improper Use and Unauthorized Access

TPG Telecom agrees to take all reasonable measures to prevent unauthorized access to the PPC-1 Cable System and to prevent any unlawful use or disclosure of information carried on the same. Such measures shall include a cyber-security plan, to 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. In addition, TPG Telecom will take appropriate measures to protect and promote resiliency of the PPC 1 Cable System, including measures to ensure that security patches for systems and applications are kept up to date. In addition, TPG Telecom will maintain or exceed security standards and best practices utilized within the U.S. telecommunications industry for maintenance of password systems and firewalls, non-destructive access logs, and periodic internal network security and switch audits. TPG Telecom will submit a policy regarding logical security measures to DHS within sixty (60) business days of the date of execution of this LOA. TPG Telecom agrees to meet and confer with DHS and to resolve to the satisfaction of DHS any concerns DHS may raise about such policy.

8. Physical Security Measures

TPG Telecom agrees to take all reasonable measures to physically secure the PPC 1 Cable System, including the DCI. TPG Telecom will screen appropriate personnel, and TPG Telecom will require that all visitors who physically access the DCI are escorted at all times by Screened Personnel, as defined herein. TPG Telecom will submit a policy regarding physical security measures to DHS within sixty (60) business days of the date of execution of this LOA. TPG Telecom agrees to meet and confer with DHS and to resolve to the satisfaction of DHS any concerns DHS may raise about such policy.

9. Screening of Personnel

TPG Telecom shall implement, either directly or through a vendor or service provider, a process to screen any existing or newly hired TPG Telecom personnel (or any personnel performing under an agreement with TPG Telecom) in at least the following circumstances:

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

TPG Telecom's personnel screening process shall 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 satisfactory completion of the requirements set forth in the screening policy, such persons shall be considered "Screened Personnel."

TPG Telecom will submit the screening policy to DHS within sixty (60) business days of the date of execution of this LOA. TPG Telecom agrees to meet and confer with DHS and to resolve to the satisfaction of DHS any concerns DHS may raise about such policy. In addition, TPG Telecom will cooperate with any reasonable request by DHS to provide additional identifying information regarding Screened Personnel.

10. Reporting Incidents and Breaches

TPG Telecom agrees to report to DHS promptly if it learns of information that reasonably indicates:

- (a) Unauthorized third-party access to, or disruption or corruption of, the PPC 1 Cable System or any information being carried on the PPC 1 Cable System;
- (b) Any other unauthorized access to or disclosure of Domestic Communications in violation of federal, state, or local law; or
- (c) Any material breach of the commitments made in this LOA.

Any reports required by this provision should be made in writing to DHS within ten (10) business days of discovery of the relevant conduct. TPG Telecom further agrees to cooperate with DHS' recommendations with respect to the remediation of such events and, to the extent it disagrees with such recommendations, to provide for DHS consideration an explanation as to why such measures should not be adopted. TPG Telecom will provide this explanation, as well as a description of any other actions taken in response to a remediation recommendation from DHS, within ten (10) business days of receipt of such recommendation.

11. Instruction of Obligations

TPG Telecom shall instruct appropriate officers, employees, contractors, and agents as to TPG Telecom's obligations under this LOA, including the individuals' duty to report any violation, and shall issue periodic reminders of such obligations. TPG Telecom shall issue these instructions in writing within sixty (60) business days of the date of execution of this LOA. TPG Telecom will submit a copy to DHS at the same time.

12. Change in Services or Cable Operations

TPG Telecom agrees that it will notify DHS in writing at least thirty (30) business days prior to implementing any changes to the communications services or operations of the PPC 1 Cable System such that the material representations made in TPG Telecom's FCC application and associated materials are no longer fully accurate, true, and complete.

13. Change in Control

If TPG Telecom 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 TPG Telecom or the PPC 1 Cable System 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 TPG Telecom, TPG Telecom will provide notice in writing to DHS within ten (10) business days. Notice under this Section shall, 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 TPG Telecom or the PPC 1 Cable System 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 TPG Telecom or the PPC 1 Cable System and, if applicable, the basis for their prospective control of TPG Telecom or the PPC 1 Cable System.

14. Annual Report

On or before the last day of January of each year, TPG Telecom will submit to DHS a report assessing TPG Telecom's compliance with the terms of this LOA for the preceding year. The report shall include:

- (a) The names and contact information of the then-current POCs;
- (b) Cable System Information, as described in Paragraph 2 above, noting any changes during the reporting period;
- (c) An updated Principal Equipment list containing all information described in Paragraph 4 above, identifying any material modifications during the reporting period;
- (d) A copy of the then-current policies adopted in accordance with this LOA, including policies for logical security (Paragraph 7), physical security (Paragraph 8), personnel screening (Paragraph 9), incident reporting (Paragraph 10), and employee training (Paragraph 11), and a summary of any changes during the reporting period and the reasons therefore;
- (e) 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
- (f) 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.

15. DHS Consultation and Visitation

TPG Telecom agrees to meet and confer with DHS and to resolve to the satisfaction of DHS any concerns DHS may raise about materials submitted pursuant to this LOA.

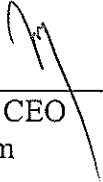
TPG Telecom agrees to negotiate in good faith to resolve to the satisfaction of DHS any national security, law enforcement, or public safety concerns DHS may raise with respect to any matters set forth in this LOA.

TPG Telecom agrees that, upon reasonable advance notice, DHS may visit any part of the DCI to conduct on-site reviews concerning the implementation of the terms of this LOA and TPG Telecom's compliance with its terms. Subject to applicable law, during such visits, TPG Telecom shall cooperate with the requests of DHS to make available information, facilities, and personnel to verify compliance with the terms of this LOA.

This LOA shall inure to the benefit of, and shall be binding upon, TPG Telecom and its successors, assigns, subsidiaries, and affiliates.

TPG Telecom agrees that, in the event the commitments set forth in this letter are breached, in addition to any other remedy available at law or equity, 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 TPG Telecom or any successors-in-interest.

For and on behalf of TPG Telecom



David Teoh, CEO
TPG Telecom

Address: 63-65 Waterloo Road, Macquarie Park, NSW 2113

Phone: + 612 9850 0863

Email: sydrec@tpg.com.au

APPENDIX 2:
2018 Termination Agreement


TERMINATION AGREEMENT

This Termination Agreement is made as of the date of the last signature affixed hereto by officials with the authority to bind the U.S. Department of Homeland Security ("DHS") and PPC 1 Limited and PPC 1 (US) Inc. (collectively, the "PPC 1 Licensees") in relation to the September 4, 2008, Agreement ("Agreement") between DHS and the PPC 1 Licensees.

Per Section 7.6 of the Agreement, DHS and the PPC 1 Licensees herein agree that the Agreement is irrevocably terminated as of the date of the last signature affixed to this Termination Agreement. All of the rights therein are hereby irrevocably relinquished and surrendered; and all obligations and duties owed or required to be performed thereunder are hereby irrevocably waived and released.

This Termination Agreement may be executed in counterparts, and delivery of counterpart signatures may be by facsimile or other electronic means, including "pdf" transmission.

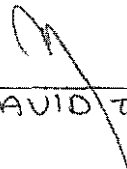
PPC 1 Limited



Printed Name: DAVID TEOH
Title: CEO

31 July 2018
Date

PPC 1 (US) Inc.



Printed Name: DAVID TEOH
Title: CEO

31 July 2018
Date

U.S. Department of Homeland Security



Printed Name: Michael Dougherty
Title: Assistant Secretary for Border, Immigration, and Trade

7/25/18
Date

APPENDIX 3:
2010 LOA

28 January 2010

BY ELECTRONIC MAIL/FILING

Mr. David Heyman
Assistant Secretary for Policy
Department of Homeland Security
Washington, D.C. 20528
ip-fcc@dhs.gov

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Application for Consent to Transfer Control of the PPC 1 Undersea Cable System, FCC File No. SCL-T/C-20091230-00041

Dear Mr. Heyman and Ms. Dortch:


In the above-referenced application, PIPE Networks Limited (“PIPE”) and TPG Telecom Limited (“TPG Telecom”) have sought consent from the Federal Communications Commission (“FCC”) to transfer control of PPC 1 Limited and PPC 1 (US) Inc. (“Licensees,” together with PIPE and TPG Telecom, “Applicants”) and their jointly-held cable landing license for the PPC 1 undersea cable system from PIPE to TPG Telecom in connection with TPG Telecom’s acquisition of all of the outstanding shares of PIPE (the “Proposed Transaction”). In a letter dated November 20, 2009, counsel for the Licensees had previously notified the Department of Homeland Security (“DHS”) of the Proposed Transaction, pursuant to Section 4.2 of the agreement by and between the Licensees and DHS executed on September 4, 2008 to address national security, law enforcement, and public safety concerns in connection with the original grant of a cable landing license for the PPC 1 system by the Commission (the “Security Agreement”).

Subject to receipt of all necessary U.S. and Australian regulatory approvals by no later than early March 2010, the Applicants expect to consummate the Proposed Transaction at the end of March 2010. Thereafter, PIPE and the Licensees will continue to operate as wholly-owned subsidiaries of TPG Telecom.

Pursuant to Sections 4.9 and 5.2 of the Security Agreement, the Licensees hereby notify DHS of their commitment to continue to abide by the terms of the existing Security Agreement and reaffirm that they will remain parties to the Security Agreement upon consummation of the Proposed Transaction. The Licensees also affirm that they will continue to hold jointly the cable landing license for the PPC 1 undersea cable system unless and until they obtain FCC consent for any future substantial assignment or transfer of control beyond the Proposed Transaction. TPG Telecom understands the commitments made by the Licensees in the Security Agreement and reaffirms that the Licensees will continue to abide by those commitments following the consummation of the Proposed Transaction.

The Applicants understand that the Licensees' compliance with the Security Agreement will remain a condition of the PPC 1 cable landing license. The Applicants therefore request that the FCC condition consent to the transfer of control of the PPC 1 cable landing license upon the Licensees' continued compliance with the Security Agreement.

Respectfully submitted,



Tony Moffat
General Counsel
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Peter Burrows
Legal Counsel
PIPE NETWORKS LIMITED
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Attachment

cc: Kemba Walden (DHS)
David Krech (FCC/IB)

Pursuant to Sections 4.9 and 5.2 of the Security Agreement, the Licensees hereby notify DHS of their commitment to continue to abide by the terms of the existing Security Agreement and reaffirm that they will remain parties to the Security Agreement upon consummation of the Proposed Transaction. The Licensees also affirm that they will continue to hold jointly the cable landing license for the PPC 1 undersea cable system unless and until they obtain FCC consent for any future substantial assignment or transfer of control beyond the Proposed Transaction. TPG Telecom understands the commitments made by the Licensees in the Security Agreement and reaffirms that the Licensees will continue to abide by those commitments following the consummation of the Proposed Transaction.

The Applicants understand that the Licensees' compliance with the Security Agreement will remain a condition of the PPC 1 cable landing license. The Applicants therefore request that the FCC condition consent to the transfer of control of the PPC 1 cable landing license upon the Licensees' continued compliance with the Security Agreement.

Respectfully submitted,



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Attachment

cc: Kemba Walden (DHS)
David Krech (FCC/IB)

APPENDIX 4:
2008 NSA

AGREEMENT

THIS AGREEMENT (the “**Agreement**”) is made as of the date of the last signature affixed hereto, by and between PPC 1 Limited and PPC 1 (US) Inc. (referred to collectively as “**PPC 1**”) on the one hand, and the U.S. Department of Homeland Security (“**DHS**”), on the other (each referred to individually as a “**Party**” and collectively as the “**Parties**”).

RECITALS

WHEREAS, U.S. communication systems are essential to the ability of the U.S. Government to fulfill its responsibilities to the public to preserve the national security of the United States, to enforce the laws, and to maintain the safety of the public;

WHEREAS, the U.S. Government has an obligation to the public to ensure that U.S. communications and related information are secure in order to protect the privacy of U.S. persons and to enforce the laws of the United States;

WHEREAS, it is critical to the well being of the Nation and its citizens to maintain the viability, integrity, and security of the communications systems of the United States (see e.g., Executive Order 13231, Critical Infrastructure Protection in the Information Age, and Homeland Security Presidential Directive / HSPD-7, Critical Infrastructure Identification, Prioritization, and Protection);

WHEREAS, protection of Classified and Sensitive Information is also critical to U.S. national security;

WHEREAS, PPC 1 Limited, a company organized under the laws of Bermuda, and PPC 1 (US) Inc., a corporation organized under the laws of Delaware, have jointly applied¹ to the Federal Communications Commission (“FCC”) for a license to land and operate a private fiber-optic submarine cable network between Australia, Papua New Guinea and the United States, with landing stations at Sydney in New South Wales, Agat in Guam, and Madang in Papua New Guinea;

WHEREAS, the PPC 1 submarine cable network will provide telecommunications services to and from the United States which are subject to U.S. privacy and electronic surveillance laws;

WHEREAS, PPC 1 will have direct physical and electronic access to a variety of customer and end-user information that is subject to U.S. privacy and electronic surveillance laws;

WHEREAS, PPC 1 has an obligation to protect from unauthorized disclosure the contents of wire and electronic communications to and from the United States under U.S. law;

WHEREAS, DHS will request that the FCC’s grant of the pending PPC 1 submarine cable landing license Application be made subject to resolution of issues relating to national

¹ Federal Communications Commission File No. SCL-LIC-20080213-00001, filed on February 11, 2008.

security, law enforcement, and public safety, and whereas PPC 1 has agreed to enter into this Agreement with DHS to address issues raised by DHS and to jointly petition that the FCC condition the requested authorization on compliance with this Agreement;

NOW THEREFORE, the Parties are entering into this Agreement to address national security, law enforcement and public safety concerns.

ARTICLE 1: DEFINITION OF TERMS

As used in this Agreement:

1.1 **“PPC 1”** means PPC 1 Limited and PPC 1 (US) Inc., and all Affiliates and all subsidiaries.

1.2 **“Access”** or **“Accessible”** means the ability to physically or logically undertake any of the following actions: (a) read, divert, or otherwise obtain non-public information or technology from or about software, hardware, a system or a network; (b) add, edit or alter information or technology stored on or by software, hardware, a system or a network; and (c) alter the physical or logical state of software, hardware, a system or a network (e.g., turning it on or off, changing configuration, removing or adding components or connections).

1.3 **“Affiliate”** means any entity that PPC 1 Limited or PPC 1 (US) Inc. owns or Controls.

1.4 **“Cable System”** – means all equipment, facilities and services pertaining to any cable system owned or Controlled by PPC 1 that lands in the United States; and all network operations centers ("NOCs").

1.5 **“Classified Information”** shall have the meaning indicated in Executive Order 12958, as amended by Executive Order 13292, or any successor executive order, or the Atomic Energy Act of 1954, or any statute that succeeds or amends the Atomic Energy Act of 1954.

1.6 **“Control”** and **“Controls”** means the power, direct or indirect, whether or not exercised, and whether or not exercised or exercisable through the ownership of a majority or a dominant minority of the total outstanding voting securities of an entity, or by proxy voting, contractual arrangements, or other means, to determine, direct, or decide matters affecting an entity; in particular, but without limitation, to determine, direct, take, reach, or cause decisions regarding:

- (a) the sale, lease, mortgage, pledge, or other transfer of any or all of the principal assets of the entity, whether or not in the ordinary course of business;
- (b) the dissolution of the entity;
- (c) the closing and/or relocation of the production or research and development facilities of the entity;
- (d) the termination or nonfulfillment of contracts of the entity;

- (e) the amendment of the articles of incorporation or constituent agreement of the entity with respect to the matters described in Section 1.6(a) through (d); or
- (f) PPC 1's obligations under this Agreement.

1.7 "**CPNI**" means Consumer Proprietary Network Information.

1.8 "**De facto**" and "**de jure**" control have the meanings provided in 47 C.F.R. § 1.2110.

1.9 "**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.

1.10 "**Domestic Communications Infrastructure**" means any portion of the Cable System used by or on behalf of PPC 1 that is: (a) transmission, switching, bridging and routing equipment (including software and upgrades) to provide, process, direct, control, supervise or manage Domestic Communications; (b) facilities and equipment physically located in the United States; and (c) facilities to control the equipment described in (a) and (b) above, but does not include facilities controlled by entities with which PPC 1 have contracted for peering, interconnection, roaming, long distance, or other similar arrangements on which the Parties may agree, nor equipment or facilities used by service providers other than PPC 1 that are:

- (1) interconnecting communications providers; or
- (2) providers of services or content that are:
 - (A) accessible using the communications services of PPC 1; and
 - (B) available in substantially similar form and on commercially reasonable terms through communications services of companies other than PPC 1.

1.11 "**Effective Date**" means the date this Agreement becomes effective, which is the date this Agreement is signed by the last Party to sign it (as indicated by the date stated opposite that Party's signature).

1.12 "**Electronic Communication**" has the meaning given it in 18 U.S.C. § 2510(12).

1.13 "**Electronic Surveillance**," for the purposes of this Agreement, includes: (a) the interception of wire, oral, or electronic communications as defined in 18 U.S.C. §§ 2510(1), (2), (4) and (12), respectively, and electronic surveillance as defined in 50 U.S.C. § 1801(f); (b) Access to stored wire or electronic communications, as referred to in 18 U.S.C. § 2701 *et seq.*; (c) acquisition of dialing, routing, addressing, or signaling information through pen register or trap and trace devices or other devices or features capable of acquiring such information pursuant to law as defined in 18 U.S.C. § 3121 *et seq.* and 50 U.S.C. § 1841 *et seq.*; (d) acquisition of location-related information concerning a service subscriber or facility; (e) preservation of any of the above information pursuant to 18 U.S.C. § 2703(f); and (f) Access to, or acquisition,

interception, or preservation of, wire, oral, or electronic communications or information as described in (a) through (e) above and comparable state laws.

1.14 “**Foreign**” where used in this Agreement, whether capitalized or lower case, means non-U.S.

1.15 “**Government**,” “**Government Authority**,” or “**Government Authorities**” means any government, or any governmental, administrative, or regulatory entity, authority, commission, board, agency, instrumentality, bureau or political subdivision and any court, tribunal, judicial or arbitral body.

1.16 “**Intercept**” or “**Intercepted**” has the meaning defined in 18 U.S.C. § 2510(4).

1.17 “**Lawful U.S. Process**” means lawful U.S. federal, state, or local Electronic Surveillance or other court orders, processes, or authorizations issued under U.S. federal, state, or local law for physical search or seizure, production of tangible things, or Access to or disclosure of Domestic Communications, Transactional Data, or Subscriber Information.

1.18 “**Management of PPC 1**” means the companies’ officers and members of the Board of Directors.

1.19 “**Network Management Information**” means network management operations plans, processes and procedures; descriptions of the placement of NOC(s) and linkages (for service offload or administrative activities) to other domestic and international carriers, ISPs and other critical infrastructures; descriptions of networks and operations processes and procedures for management control and relation to the backbone infrastructure(s) including other service providers; description of any unique or proprietary control mechanisms as well as operating and administrative software; network performance information; and network access ability and procedures..

1.20 “**Principal Equipment**” means the primary electronic components of a submarine cable system, to include the hardware used at the NOC(s), landing station(s) and the cable itself, such as servers, repeaters, submarine line terminal equipment (SLTE), system supervisory equipment (SSE), power feed equipment (PFE), tilt and shape equalizer units (TEQ/SEQ), optical distribution frames (ODF), and 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.

1.21 “**Pro forma assignments**” or “**pro forma transfers of control**” are transfers that do not involve a substantial change in ownership or control as provided by Section 63.24 of the FCC's Rules (47 C.F.R. § 63.24).

1.22 “**Sensitive Information**” means information that is not Classified Information regarding: (a) the persons or facilities that are the subjects of Lawful U.S. Process; (b) the identity of the Government Authority or Government Authorities serving such Lawful U.S. Process; (c) the location or identity of the line, circuit, transmission path, or other facilities or equipment used to

conduct Electronic Surveillance; (d) the means of carrying out Electronic Surveillance; or (e) the type(s) of service, telephone number(s), records, communications, or facilities subjected to Lawful U.S. Process; as well as all other information that is not Classified Information but is designated in writing by an authorized official of a federal, state, or local law enforcement agency or a U.S. intelligence agency as “Sensitive Information” of some type recognized by the agency involved. The designation “Sensitive” as used in this Section includes but is not limited to information marked or labeled “Official Use Only,” “Limited Official Use Only,” “Law Enforcement Sensitive,” “Sensitive Security Information,” “Sensitive but Unclassified,” “Controlled Unclassified Information,” “Protected Critical Infrastructure Information,” or other similar designations.

1.23 “**Subscriber Information**” means all records or other information relating to customers or subscribers of PPC 1 of the type referred to and Accessible subject to procedures specified in 18 U.S.C. § 2703(c) or (d) or 18 U.S.C. § 2709. Such information shall also be considered Subscriber Information when it is sought pursuant to the provisions of other Lawful U.S. Process.

1.24 “**Transactional Data**” includes the following when associated with a Domestic Communication but does not include the content of any communication:

- (a) “call identifying information,” as defined in 47 U.S.C. § 1001(2), including without limitation the telephone number or similar identifying designator;
- (b) any information related to the sender or recipient of that Domestic Communication, including, without limitation subscriber identification, called party number, calling party number, start time, end time, call duration, feature invocation and deactivation, feature interaction, registration information, user location, diverted to number, conference party numbers, post-cut-through dialed digit extraction, in-band and out-of-band signaling, and party add, drop and hold;
- (c) any information relating specifically to the identity and physical address of a customer or subscriber, or account payer, or the end-user of such customer or subscriber, or account payer, or associated with such person relating to all telephone numbers, domain names, Internet Protocol (“IP”) addresses, Uniform Resource Locators (“URLs”), other identifying designators, types of services, length of service, fees, usage including billing records and connection logs, and the physical location of equipment, if known and if different from the location information provided under (e) below;
- (d) the time, date, size, or volume of data transfers, duration, domain names, Media Access Control (“MAC”) or IP addresses (including source and destination), URL’s, port numbers, packet sizes, protocols or services, special purpose flags, or other header information or identifying designators or characteristics, including electronic mail headers showing From: and To: addresses; and

- (e) as to any mode of transmission (including mobile transmissions), and to the extent permitted by U.S. laws, any information indicating as closely as possible the physical location to or from which a Domestic Communication is transmitted.

1.25 “**United States**,” “**US**,” or “**U.S.**” means the United States of America, including all of its States, districts, territories, possessions, commonwealths, and the special maritime and territorial jurisdiction of the United States.

1.26 “**Wire Communication**” has the meaning given it in 18 U.S.C. § 2510(1).

1.27 **Other Definitional Provisions.** Other capitalized terms used in this Agreement and not defined in this Article shall have the meanings assigned them elsewhere in this Agreement. The definitions in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Whenever the words “include,” “includes,” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.”

ARTICLE 2: OPERATIONS, FACILITIES, INFORMATION STORAGE AND ACCESS

2.1 **Operational Requirements.** With respect to the operation of the Cable System, PPC 1 agrees as follows:

- (a) PPC 1 shall have the ability to promptly and effectively interrupt in whole or in part traffic to and from the United States on the Cable System by disabling or disconnecting circuits at the U.S. cable landing; and
- (b) the Cable System shall be configured so that PPC 1 will be able to view the status of the Cable System and individual cable segments.

2.2 **Compliance with Lawful U.S. Process.** PPC 1 shall configure its Domestic Communications Infrastructure to be capable of complying, and the employees of PPC 1 in the United States will have unconstrained authority to comply, in an effective, efficient, and unimpeded fashion, with:

- (a) lawful U.S. Process;
- (b) the orders of the President of the United States in the exercise of his/her authority under the Cable Landing License Act of 1921, as amended (47 U.S.C. §§ 34-39) and Executive Order 10530 § 5(a), reprinted as amended in 3 U.S.C. § 301, and § 706 of the Communications Act of 1934, as amended, (47 U.S.C. § 606); and
- (c) National Security and Emergency Preparedness rules, regulations and orders issued pursuant to the Communications Act of 1934, as amended (47 U.S.C. § 151 *et seq.*).

2.3 **Cable System Infrastructure.** Within **sixty (60) business days** after the Effective Date PPC 1 shall provide to DHS a finalized list of:

- (a) the Principal Equipment used in all its Cable Systems, to include information on the Principal Equipment's manufacturer and model; and
- (b) all contracts held by PPC 1 for the maintenance and security of its Cable Systems.

PPC 1 shall provide at least **fifteen (15) business days'** advance written notice to DHS prior to performing any maintenance, repair, or replacement that would result in any modification to the Primary Equipment list for any Cable System. PPC 1 need not comply with the advance notice requirement for any maintenance, repair or replacement that is undertaken pursuant to a bona fide emergency and is necessary to ensure the continued operability of the Cable System; however, in such circumstances PPC 1 shall provide advance notice of the modification to DHS if practicable, and if impracticable, within **five (5) business days** after the modification. PPC 1 shall provide at least **thirty (30) business days'** advance written notice to DHS prior to making any modifications to its list of contracts for Cable System maintenance and security. PPC 1 agrees to make its Network Management Information available to DHS upon request. PPC 1 shall negotiate in good faith to resolve any national security, law enforcement or public safety concerns DHS may raise with respect to the Cable System's Primary Equipment, contracts, and Network Management Information.

2.4 **Information Storage and Access.** Unless otherwise agreed to by the Parties, PPC 1 shall make the following available in the United States:

- (a) stored Domestic Communications, if such communications are stored by or on behalf of PPC 1 for any reason;
- (b) any Wire Communications or Electronic Communications received by, intended to be received by, or stored in the account of a domestic customer or subscriber of PPC 1, if such communications are stored by or on behalf of PPC 1 for any reason;
- (c) Transactional Data, if such data are stored by or on behalf of PPC 1 for any reason;
- (d) Subscriber Information, if such information is stored by or on behalf of PPC 1 for any reason;
- (e) billing records of customers or subscribers, if such information is stored by or on behalf of PPC 1 for any reason; and
- (f) Network Management Information.

Nothing in this Section is meant to exclude the use of Transactional Data for business or network management purposes in the normal course of business if said data is subject to security and Access controls. The phrase "on behalf of" as used in this Section does not include entities with which PPC 1 has contracted for peering, interconnection, roaming, long distance, or other similar arrangements on which the Parties may agree.

2.5 **Storage Pursuant to 18 U.S.C. § 2703(f)**. Upon a request made pursuant to 18 U.S.C. § 2703(f) by a Government Authority within the United States to preserve any information in the possession, custody, or control of PPC 1, including any information that is listed in Section 2.3 above, PPC 1 shall ensure such preserved records or other evidence are stored in the United States.

2.6 **Compliance with U.S. Law**. Nothing in this Agreement shall excuse PPC 1 from any obligation it may have to comply with U.S. legal requirements for the retention, preservation, or production of information, records or data as well as all applicable requirements of the Communications Assistance for Law Enforcement Act, 47 U.S.C. § 1001, et seq.

2.7 **Storage of Protected Information**. PPC 1 shall store all Classified Information and Sensitive Information exclusively in the United States.

ARTICLE 3: SECURITY

3.1 **Measures to Prevent Improper Use or Access**. PPC 1 shall take all reasonable measures to prevent the use of or Access to the Domestic Communications Infrastructure to conduct Electronic Surveillance, or to Access, obtain or disclose Domestic Communications, Transactional Data, Subscriber Information, Classified Information or Sensitive Information, in violation of any U.S. federal, state, or local laws or the terms of this Agreement. PPC 1 shall submit the policies and procedures regarding these measures to DHS within 90 days of the effective date for review. PPC 1 agrees to meet and confer with DHS and reasonably address any concerns DHS may raise about the policies or the procedures described therein.

3.2 **Access by Foreign Government Authorities**. PPC 1 shall not, directly or indirectly, disclose or permit disclosure of, or provide Access to Domestic Communications, Transactional Data, or Subscriber Information, stored by or on behalf of PPC 1 to any person if the purpose of such Access is to respond to the legal process or the request of or on behalf of a Foreign Government, identified representative, component or subdivision thereof, without the express written consent of DHS or the authorization of a court of competent jurisdiction in the United States. Any such requests or submission of legal process shall be reported to DHS as soon as possible and in no event later than **ten (10) business days** after such request or legal process is received by or known to PPC 1. PPC 1 shall take reasonable measures to ensure that it will promptly learn of all such requests or submission of legal process. Provided, however, that nothing in this Section 3.2 shall require the express written consent of DHS or the authorization of a court of competent jurisdiction in the United States with respect to any response to the legal process, or the request of or on behalf of the Commonwealth of Australia, identified representative, component or subdivision thereof with respect to the non-U.S. portion of a Wire Communication or Electronic Communication (whether stored or not) that may originate or terminate outside the United States.

3.3 **Disclosure to Foreign Government Authorities**. PPC 1 shall not, directly or indirectly, disclose or permit disclosure of, or provide Access to:

- (a) Classified or Sensitive Information;

- (b) Transactional Data, Subscriber Information, or a copy of any Wire or Electronic Communications, intercepted or acquired pursuant to Lawful U.S. Process; or
- (c) the existence of Lawful U.S. Process that is not already a matter of public record;

to any Foreign Government, identified representative, component or subdivision thereof, without satisfying all applicable U.S. federal, state and local legal requirements, and without obtaining either the express written consent of DHS or the authorization of a court of competent jurisdiction in the United States. Any requests or any legal process submitted by a Foreign Government, an identified representative, a component or subdivision thereof to PPC 1 for the communications, data or information identified that is maintained by PPC 1 shall be referred to DHS as soon as possible and in no event later than **ten (10) business days** after such request or legal process is received by or known to PPC 1, unless the disclosure of the request or legal process would violate applicable law. PPC 1 shall take reasonable measures to ensure that it will promptly learn of all such requests or submission of legal process.

3.4 Notification of Access or Disclosure Requests from Foreign Non-Governmental Entities. Within **ten (10) business days** after receiving legal process or requests from Foreign non-governmental entities for Access to or disclosure of Domestic Communications, PPC 1 shall notify DHS in writing of such legal process or requests, unless such disclosure would be in violation of an order of a court of competent jurisdiction within the United States.

3.5 Security of Lawful U.S. Process. PPC 1 shall protect the confidentiality and security of all Lawful U.S. Process served upon it and the confidentiality and security of Classified and Sensitive Information in accordance with U.S. federal and state law or regulation and this Agreement.

3.6 Point of Contact. Within **sixty (60) business days** of the Effective Date, PPC 1 shall designate one or more Points of Contact with the authority and responsibility for accepting and overseeing the carrying out of Lawful U.S. Process relating to Domestic Communications carried by or through, in whole or in part, the Domestic Communications Infrastructure, or relating to its customers or subscribers. The Point(s) of Contact will be responsible for receiving and addressing any national security, law enforcement or public safety concerns raised by DHS regarding the Cable System, and shall have the authority to negotiate measures to mitigate such concerns. PPC 1 shall ensure that at least one such Representative shall be in the United States, shall be available **twenty-four (24) hours** per day, **seven (7) days** per week, and shall be responsible for responding to inquiries from DHS concerning PPC 1's compliance with the terms of this Agreement, accepting service, and maintaining the security of Classified Information, Sensitive Information and any Lawful U.S. Process relating to Domestic Communications carried by or through, in whole or in part, the Domestic Communications Infrastructure, or relating to the customers or subscribers of PPC 1. If the designee cannot satisfy these requirements, PPC 1 shall in **ten (10) business days** or less notify DHS in writing of a new Point of Contact. PPC 1 shall notify DHS of all other future changes in such designation, also in **ten (10) business days** or fewer. The Point of Contact shall be a resident U.S. citizen or citizens who, based on the information in PPC 1's possession, are eligible for appropriate U.S. security clearances. PPC 1 shall cooperate with any request by a Government Authority within the

United States that a background check, security clearance process or both be completed for a designated point of contact.

3.7 **Information Security Plan.** Within **ninety (90) calendar days** of the Effective Date PPC 1 shall:

- (a) take appropriate measures to prevent unauthorized Access to data or facilities that might contain Classified or Sensitive Information;
- (b) assign U.S. citizens, who meet high standards of trustworthiness for maintaining the confidentiality of Sensitive Information, to positions that handle or that regularly deal with information identifiable to such person as Sensitive Information;
- (c) upon request from DHS provide the name, date of birth, and other relevant requested identifier information of each person who regularly handles or deals with Sensitive Information;
- (d) require that personnel handling Classified Information shall have been granted appropriate security clearances pursuant to Executive Order 12968;
- (e) provide that the Point(s) of Contact described in Section 3.6 of this Agreement shall have sufficient authority over any employees of PPC 1 who may handle Classified or Sensitive Information to maintain the confidentiality and security of such information in accordance with applicable U.S. legal authority and the terms of this Agreement; and
- (f) maintain appropriately secure facilities (e.g., offices) for the handling and storage of any Classified or Sensitive Information.

PPC 1 shall make the policies and procedures regarding its Information Security Plan available to DHS upon request.

3.8 **Nondisclosure of Protected Data.** PPC 1 shall not directly or indirectly disclose information concerning Lawful U.S. Process, Classified Information, or Sensitive Information to any third party, or to any officer, director, shareholder, employee, agent, or contractor of PPC 1, including those who serve in a supervisory, managerial or executive role with respect to the employees working with the information, unless disclosure has been approved by prior written consent obtained from DHS or there is an official need for disclosure of the information in order to fulfill an obligation consistent with the purpose for which the information is collected or maintained.

3.9 **Notice of Obligations.** PPC 1 shall instruct appropriate officials, employees, contractors, and agents as to PPC 1's obligations under this Agreement, including the individuals' duty to report any violation of this Agreement and the reporting requirements in Article 4 of this Agreement, and shall issue periodic reminders to them of such obligations. PPC 1 shall have issued these instructions in writing within **forty-five (45) calendar days** of the Effective Date, and shall submit them to DHS at the same time as it issues the instructions to officials, employees, contractors, and agents.

3.10 **Access to Classified or Sensitive Information.** Nothing contained in this Agreement shall limit or affect the authority of a U.S. Government Authority to deny, limit or revoke whatever access PPC 1 might have to Classified or Sensitive Information under that Government Authority's jurisdiction.

ARTICLE 4: REPORTING AND NOTICE

4.1 **Filings Concerning *de jure* or *de facto* Control of PPC 1.** If PPC 1 makes any filing with the FCC or any other Government Authority relating to the *de facto* or *de jure* control of PPC 1, or any Cable System, except for filings with the FCC for assignments or transfers of control that are *pro forma*, PPC 1 shall promptly provide to DHS written notice and copies of such filing.

4.2 **Change in Control.** If any member of the managements of PPC 1 (including officers and members of the Boards of Directors) acquires any information that reasonably indicates that any single foreign entity or individual, other than those already identified in connection with the pending FCC Application filed by PPC 1, has or will likely obtain an ownership interest (direct or indirect) in PPC 1, or in any Cable System, above ten (10) percent, as determined in accordance with 47 C.F.R. § 63.09, or if any foreign entity or individual, singly or in combination with other foreign entities or individuals, has or will likely otherwise gain either: (i) Control; or (ii) *de facto* or *de jure* control of PPC 1 then such officer or director shall promptly cause PPC 1 to notify DHS in writing within **ten (10) business days**. Notice under this Section shall, at a minimum:

- (a) identify the entity or individual(s) (specifying the name, addresses, and telephone numbers of the entity);
- (b) identify the beneficial owners of the increased or prospective increased interest in PPC 1 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 will likely obtain in PPC 1 and, if applicable, the basis for their prospective Control of PPC 1.

4.3 **Procedure and Process on Reporting.** Within **forty-five (45) calendar days** of the Effective Date, PPC 1 shall adopt and distribute to all officers and directors, a written procedure or process for the reporting by officers and directors of noncompliance with this Agreement. This written procedure or process shall also provide for the reporting by employees, agents and contractors to management of information that must be reported to DHS under this Article. Any violation by PPC 1 of any material term of such corporate policy shall constitute a breach of this Agreement. By a written statement, PPC 1 shall notify all employees, contractors and agents that the general categories of information identified in this Article should be disclosed to senior management and shall set forth in a clear and prominent manner the contact information for a senior manager to whom such information may be reported. The written statement informing employees, contractors, and agents of the need to report this information shall also state that PPC 1 will not discriminate against, or otherwise take adverse action against, anyone who reports

such information to management or the United States government. PPC 1 shall make such process or procedure documents available to DHS upon request.

4.4 **Non-retaliation.** Within **forty-five (45) calendar days** after the Effective Date, PPC 1 shall, by duly authorized action of its Board of Directors, adopt and distribute to all officers and directors an official corporate policy that strictly prohibits PPC 1 from discriminating or taking any adverse action against any officer, director, employee, contractor, or agent because he or she has in good faith initiated or attempted to initiate a notice or report under this Article, or has notified or attempted to notify the management to report information that he or she believes in good faith is required to be reported to DHS under either this Article or under PPC 1's written notices to employees on the reporting of any such information. Any violation by PPC 1 or any of its Affiliates of any material term of such corporate policy shall constitute a breach of this Agreement. PPC 1 shall make such process or procedure documents available to DHS upon request.

4.5 **Reporting of Incidents.** PPC 1 shall report to DHS any information acquired by PPC 1 or any of its officers, directors, employees, contractors or agents that reasonably indicates:

- (a) a breach of this Agreement;
- (b) access to or disclosure of Domestic Communications, or the conduct of Electronic Surveillance, in violation of federal, state or local law or regulation;
- (c) access to or disclosure of CPNI or Subscriber Information in violation of federal, state or local law or regulation (except for violations of FCC regulations relating to improper commercial use of CPNI); or
- (d) improper access to or disclosure of Classified or Sensitive Information.

This report shall be made in writing by the appropriate PPC 1 officer to DHS no later than **ten (10) calendar days** after PPC 1 acquires information indicating a matter described in this Section. PPC 1 shall lawfully cooperate in investigating the matters described in this Section. PPC 1 need not report information where disclosure of such information would be in violation of an order of a court of competent jurisdiction in the United States.

4.6 **Access to Information and Facilities.** DHS, or other agencies or personnel assigned to assist DHS, may visit at any time any part of PPC 1's Domestic Communications Infrastructure and security offices to conduct on-site reviews concerning the implementation of the terms of this Agreement and may at any time require unimpeded access to information concerning technical, physical, management, or other security measures needed by DHS to verify compliance with the terms of this Agreement.

4.7 **Access to Personnel.** Upon reasonable notice from DHS, or other agencies or personnel assigned to assist DHS, PPC 1 shall make available for interview any officer or employee of PPC 1 or any of its Affiliates, and any contractor located in the United States, who is in a position to provide information to verify compliance with the terms of this Agreement.

4.8 **Annual Report.** On or before the last day of January of each year, a designated senior corporate officer representing PPC 1 shall submit to DHS a report assessing PPC 1's compliance with the terms of this Agreement for the preceding calendar year. The report shall include:

(a) a copy of the then current policies and procedures adopted to comply with this Agreement;

(b) a summary of the changes, if any, to the policies or procedures, and the reasons for those changes;

(c) a summary of any known acts of noncompliance with the terms of this Agreement, 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; and

(d) identification of any other issues that, to PPC 1's knowledge, will or reasonably could affect the effectiveness of or its compliance with this Agreement.

4.9 **Notices.** Effective upon execution of this Agreement by the Parties, all notices and other communications relating to this Agreement, such as a proposed modification, shall be in writing and shall be deemed given as of the date of receipt and shall be sent by electronic mail (if an email is specified below or in a subsequent notice) and by one of the following methods: (a) delivered personally, (b) sent by facsimile, (c) sent by documented overnight courier service, or (d) sent by registered or certified mail, postage prepaid, addressed to the Parties' designated representatives at the addresses shown below, or to such other representatives at such addresses as the Parties may designate in accordance with this Section:

Department of Homeland Security
Assistant Secretary for Policy
Washington, DC 20528
ip-fcc@dhs.gov

PPC 1 Limited
Crawford House
50 Cedar Avenue
Hamilton HM 11
Bermuda
+61 7 3233 9800 tel
+61 7 3233 9883 fax
notices@pipeinternational.com

With a copy to:

PIPE International (Australia) Pty Ltd
Level 17, PIPE Networks House
127 Creek Street
Brisbane QLD 4000
Australia

+61 7 3233 9827 tel
+61 7 3233 9883 fax
peter.burrows@pipeinternational.com

and

Kent Bressie
Harris, Wiltshire & Grannis LLP
1200 18th Street, N.W. Suite 1200
Washington, DC 20036-2516
202-730-1337 tel
202-730-1301 fax
kbressie@harriswiltshire.com

ARTICLE 5: FCC CONDITION

5.1 **FCC Approval.** Upon the execution of this Agreement by the Parties DHS shall on its own motion at an appropriate time or at the request of PPC 1 notify the FCC that, provided the FCC adopts a condition substantially the same as set forth in Exhibit A attached hereto (the “Condition to FCC Authorization”), DHS has no objection to the FCC’s grant of the pending Application described in the Recitals of this Agreement. This Section is effective upon the Effective Date, provided however that in the case of a material modification or withdrawal of the Application after the execution of this Agreement the effectiveness of this Section may be suspended by DHS, and any such FCC filing is subject to the right to object reserved in Section 5.2.

5.2 **Right to Object to Future FCC Filings.** PPC 1 agrees that in any application or petition by PPC 1 to the FCC for licensing or other authority related to any Cable System filed with or granted by the FCC after the execution of this Agreement, except with respect to *pro forma* assignments or *pro forma* transfers of control, PPC 1 shall request that the FCC condition the grant of such licensing or other authority on compliance with the terms of this Agreement. Notwithstanding Section 7.9, DHS reserves the right to object, formally or informally, to the grant of any other FCC application or petition of PPC 1 for a license or other authorization under Titles II and III of the Communications Act of 1934, as amended, and to seek additional or different terms that would, consistent with the public interest, address any threat to the ability of the United States to enforce the laws, preserve the national security and protect the public safety raised by the services and transactions underlying any such application or petition.

ARTICLE 6:DISPUTES

6.1 **Informal Resolution.** The Parties shall use their best efforts to resolve any disagreements that may arise under this Agreement. Disagreements shall be addressed, in the first instance, at the staff level by the Parties’ designated representatives. Any disagreement that has not been resolved at that level shall be submitted promptly to the legal counsel for PPC 1 and the Assistant Secretary for Policy of DHS, or their respective designees, unless DHS believes that important national interests can be protected, or PPC 1 believes that paramount commercial interests can be resolved, only by resorting to the measures set forth in Section 6.2. If, after

meeting with higher authorized officials, either Party determines that further negotiation would be fruitless, then that Party may resort to the remedies set forth in Section 6.2. If resolution of a disagreement requires access to Classified Information, the Parties shall designate a person or persons possessing the appropriate security clearances for the purpose of resolving that disagreement.

6.2 **Enforcement of Agreement.** Subject to Section 6.1 of this Agreement, if any Party believes that the other party has breached or is about to breach this Agreement, that Party may bring an action against the other Party for appropriate judicial relief. Nothing in this Agreement shall limit or affect the right of a U.S. Government Agency to:

- (a) require that the Party believed to have breached, or about to breach, this Agreement cure such breach within **thirty (30) calendar days**, or whatever shorter time period is appropriate under the circumstances, upon receiving written notice of such breach;
- (b) request that the FCC modify, condition, revoke, cancel, or render null and void any license, permit, or other authorization granted or given by the FCC to PPC 1 or any of its Affiliates, request that the FCC take other action, or request that the FCC impose any other appropriate sanction, including but not limited to a forfeiture or other monetary penalty, against PPC 1 or its Affiliates;
- (c) seek civil sanctions for any violation by PPC 1 of any U.S. law or regulation or term of this Agreement;
- (d) pursue criminal sanctions against PPC 1, or any director, officer, employee, representative, or agent of PPC 1, or against any other person or entity, for violations of the criminal laws of the United States; or
- (e) seek suspension or debarment of PPC 1 from eligibility for contracting with the U.S. Government, in accordance with applicable law and regulation.

6.3 **Irreparable Injury.** PPC 1 agrees that the United States would suffer irreparable injury if for any reason PPC 1 failed to perform any of its obligations under this Agreement, and that monetary relief would not be an adequate remedy. Accordingly, PPC 1 agrees that, in seeking to enforce this Agreement, DHS shall be entitled, in addition to any other remedy available at law or equity, to specific performance and injunctive or other equitable relief.

6.4 **Waiver.** The availability of any civil remedy under this Agreement shall not prejudice the exercise of any other civil remedy under this Agreement or under any provision of law, nor shall any action taken by a Party in the exercise of any remedy be considered a waiver by that Party of any other rights or remedies. The failure of any Party to insist on strict performance of any of the provisions of this Agreement, or to exercise any right they grant, shall not be construed as a relinquishment or future waiver; rather, the provision or right shall continue in full force. No waiver by any Party of any provision or right shall be valid unless it is in writing and signed by the Party.

6.5 **Waiver of Immunity.** PPC 1 agrees, to the extent that it or any of its property (including FCC licenses and authorizations and intangible property) is or becomes entitled at any time to any immunity on the ground of sovereignty or otherwise based upon a status as an agency or instrumentality of Government from any legal action, suit or proceeding or from setoff or counterclaim relating to this Agreement, from the jurisdiction of any competent court or the FCC, from service of process, from attachment prior to judgment, from attachment in aid of execution of a judgment, from execution pursuant to a judgment or arbitral award, or from any other legal process in any jurisdiction, it, for itself and its property expressly, irrevocably and unconditionally waives, and agrees not to plead or claim, any such immunity with respect to matters arising with respect to this Agreement or the obligations herein (including any obligation for the payment of money) in any proceeding brought by a U.S. federal, state, or local Government Authority. PPC 1 agrees that the waiver in this provision is irrevocable and is not subject to withdrawal in any jurisdiction or under any statute, including the Foreign Sovereign Immunities Act, 28 U.S.C. § 1602 *et seq.* The foregoing waiver shall constitute a present waiver of immunity at any time any action is initiated by a U.S. federal, state, or local Government Authority against PPC 1 with respect to compliance with this Agreement.

6.6 **Forum Selection.** It is agreed by and between the Parties that a civil action among the Parties for judicial relief with respect to any dispute or matter whatsoever arising under, in connection with, or incident to, this Agreement shall be brought, if at all, in the United States District Court for the District of Columbia.

ARTICLE 7: OTHER

7.1 **Right to Make and Perform Agreement.** Each Party represents that it has and shall continue to have throughout the term of this Agreement the full right to enter into this Agreement and perform its obligations hereunder and that this Agreement is a legal, valid, and binding obligation of each Party enforceable in accordance with its terms.

7.2 **Headings.** The Article and Section headings and numbering in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of the terms of this Agreement.

7.3 **Other Laws.** Nothing in this Agreement is intended to limit or constitute a waiver of: (a) any obligation imposed by any U.S. federal, state, or local laws on PPC 1, (b) any enforcement authority available under any U.S. or state laws; (c) the sovereign immunity of the United States; or (d) any authority the U.S. Government may possess over the activities or facilities of PPC 1 located within or outside the United States (including authority pursuant to the International Emergency Economic Powers Act). Nothing in this Agreement is intended to or is to be interpreted to require the Parties to violate any applicable U.S. law.

7.4 **Statutory References.** All references in this Agreement to statutory provisions shall include any future amendments to such statutory provisions.

7.5 **Non-Parties.** Nothing in this Agreement is intended to confer or does confer any rights on any person other than the Parties and any Government Authorities that utilize Lawful U.S. Process.

7.6 **Entire Agreement; Modifications.** This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations, and discussions, whether oral or written, of the Parties with respect to the subject matter. This Agreement may only be modified by written agreement signed by both Parties. DHS agrees to consider promptly and in good faith possible modifications to this Agreement if PPC 1 believes that the obligations imposed on it under this Agreement are substantially more restrictive than those imposed on other U.S. and foreign licensed service providers in like circumstances in order to protect U.S. national security, law enforcement, and public safety concerns. Any substantial modification to this Agreement shall be reported to the FCC within **thirty (30) calendar days** after approval in writing by the Parties.

7.7 **Severability.** The provisions of this Agreement shall be severable and if any provision thereof or the application of such provision under any circumstances is held invalid by a court of competent jurisdiction, it shall not affect any other provision of this Agreement or the application of any provision thereof.

7.8 **Changes in Circumstances for PPC 1.** DHS agrees to negotiate in good faith and promptly with respect to any request by PPC 1 for relief from application of specific provisions of this Agreement if there is a change in circumstances such that those provisions become unduly burdensome or have a demonstrably adverse effect on PPC 1's competitive position.

7.9 **Changes in Circumstances for DHS.** If after the date that the Parties have executed this Agreement, DHS finds that the terms of this Agreement are inadequate to address national security, law enforcement, or public safety concerns, then PPC 1 will negotiate in good faith to modify this Agreement to address those concerns.

7.10 **Counterparts.** This Agreement may be executed in one or more counterparts, including by facsimile, each of which shall together constitute one and the same instrument.

7.11 **Successors and Assigns.** This Agreement shall inure to the benefit of, and shall be binding upon, the Parties, and their respective successors and assigns. This Agreement shall also be binding on all subsidiaries, divisions, departments, branches, and other components or agents of PPC 1.

7.12 **Effectiveness of Agreement.** Except as otherwise specifically provided in the provisions of this Agreement, the obligations imposed and rights conferred by this Agreement shall take effect upon the Effective Date.


7.13 **Notice of Additional Services.** PPC 1 shall provide a minimum of **thirty (30) calendar days** advanced notice to DHS in the event that PPC 1 changes or intends to change the technical or operational plans set forth in the Recitals to this Agreement such that the material representations made therein are no longer fully accurate, true and complete.

[Signature Pages Follow]

This Agreement is executed on behalf of the Parties:

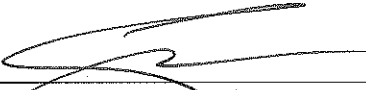
PPC 1 Limited

Date: 4 SEPTEMBER 2008

By: 
Printed Name: Bevan Slattery
Title: Director

PPC 1 (US) Inc.

Date: 4 SEPTEMBER 2008

By: 
Printed Name: Bevan Slattery
Title: President and Director

Department of Homeland Security

Date: _____

By: _____
Printed Name: Stewart A. Baker
Title: Assistant Secretary for Policy

EXHIBIT A
CONDITION TO FCC AUTHORIZATION

IT IS FURTHER ORDERED, that this authorization and any licenses granted thereunder are subject to compliance with the provisions of the agreement (the “Agreement”) between PPC 1 Limited and PPC 1 (US) Inc., on the one hand, and the Department of Homeland Security (“**DHS**”), on the other, dated September __, 2008, which Agreement is designed to address national security, law enforcement, and public safety concerns of DHS regarding the authority granted herein. Nothing in the Agreement is intended to limit any obligation imposed by federal law or regulation including, but not limited to, 47 U.S.C. § 222(a) and (c)(1) and the FCC’s implementing regulations.