

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FILED/ACCEPTED

SEP 22 2009

Federal Communications Commission
Office of the Secretary

In the Matter of)
)
PC Landing Corp.)
) File No. SCL-T/C-20090715-00022
Application for Authority to Transfer)
Control of PC Landing Corp., Cable)
Landing Licensee of the PC-1 Submarine)
Cable System, to NTT Communications)
Corporation)
)

**PETITION TO ADOPT CONDITIONS TO
AUTHORIZATIONS AND LICENSES**

The Department of Homeland Security (“DHS”), Department of Justice (“DOJ”), and Department of Defense (“DOD”) (collectively, “the Agencies”) submit this Petition to Adopt Conditions to Authorizations and Licenses (“Petition”), pursuant to Section 1.41 of the Federal Communications Commission (“Commission”) rules.¹ Through this Petition, the Agencies advise the Commission that they have no objection to the Commission approving the authority sought in the above-referenced proceeding, provided that the Commission conditions its approval on the assurance of PC Landing Corp., for itself and its affiliates, to abide by the commitments and undertakings set forth in the September 11, 2009 letter of Assurances (“LOA”), which is attached hereto.

In the above-referenced proceeding, the Applicant petitioned the Commission for authority under the Cable Landing License Act, 47 U.S.C. §§ 34-39, Section 1.767 of the Commission’s rules, 47 C.F.R. § 1.767, and Executive Order 10530² transfer control of PC

¹ 47 C.F.R. § 1.41.

² Exec. Ord. No. 10530 § 5(a) (May 10, 1954), reprinted as amended in 3 U.S.C. § 301.

Landing Corp., licensee of the Pacific Crossing Cable system (“PC-1”).³

The Commission has long recognized that law enforcement, national security, and public safety concerns are part of its public interest analysis, and has accorded deference to the views of other U.S. government agencies with expertise in those areas. *See In the Matter of Comsat Corporation d/b/a Comsat Mobile Communications, etc.*, 16 FCC Rcd. 21,661, 21707 ¶ 94 (2001).

After discussions with representatives of the Applicants in connection with the above-referenced proceeding, the Agencies have concluded that the additional commitments set forth in the Agreement will help ensure that the Agencies and other entities with responsibility for enforcing the law, protecting the national security, and preserving public safety can proceed appropriately to satisfy those responsibilities. Accordingly, the Agencies advise the Commission that they have no objection to the Commission granting the application in the above-referenced proceeding, provided that the Commission conditions its consent on compliance by PC Landing Corp., Inc. with the LOA.

The Agencies are authorized to state that the Applicants do not object to the grant of this Petition.

Respectfully submitted,

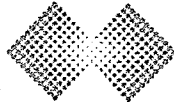
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September 22, 2009

³ See File No. SCL-98-006; SCL-LIC -19980807-00010 (the “Cable Landing License”).



PACIFIC CROSSING

September 11, 2009

Mr. David Heyman
Assistant Secretary for Policy
U.S. Department of Homeland Security
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Mr. David S. Kris
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Ms. Cheryl J. Roby
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Mr. Robert S. Gorman
General Counsel
Defense Information Systems Agency
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Arlington, VA 22204

Re: Pending Application to Transfer Control of PC Landing Corp., Holder of a Cable Landing License Under the Submarine Cable Landing License Act, to NTT Communications Corporation, SCL-T/C-20090715-00022

Dear Assistant Secretary Heyman, AAG Kris, Assistant Secretary Roby, and Mr. Gorman:

This Letter of Assurance (“LOA”) outlines the commitments of Pacific Crossing Limited (“PCL”) for itself and its U.S. subsidiary, PC Landing Corp., to the U.S. Department of Homeland Security (“DHS”), U.S. Department of Justice (“DOJ”), the Federal Bureau of Investigation (“FBI”), and the U.S. Department of Defense (“DoD”) (collectively, the “U.S.G. Agencies”). PCL and PC Landing Corp. are providing this LOA to the U.S.G. Agencies to address national security, law enforcement, and public safety concerns raised by the U.S.G. Agencies in connection with the Transaction referenced below.

PCL is a privately-owned Bermuda company and the sole shareholder of PC Landing Corp. PC Landing Corp., a Delaware corporation, holds the U.S. submarine cable landing license for the



Pacific Crossing submarine cable system, an undersea cable called "PC-1."¹ PC-1 consists of four segments connecting each of its four landing stations: Ajigaura, Japan to Harbour Pointe, Washington; Shima, Japan to Grover Beach, California; Ajigaura to Shima; and Harbour Pointe to Grover Beach.

NTT Communications Corporation ("NTT Communications"), a Japanese stock corporation (*kabushiki kaisha*), is a global telecommunications and information service provider based in Japan. NTT Communications provides diverse high-quality IP, web-based, and managed network solutions combining network management, security, web portals/engines, and global services. NTT Communications is a direct, wholly-owned subsidiary of Nippon Telegraph and Telephone Corporation ("NTT Corp."), Japan's largest telecommunications company and also a Japanese stock corporation. The Japanese government owns 33.75% of the issued shares of NTT Corp.

NTT Communications, PCL, and PCL's principal shareholders have concluded a Stock Purchase Agreement, dated May 22, 2009, pursuant to which NTT Communications will acquire all of the issued and outstanding shares of PCL (the "Transaction"). At the closing of the Transaction, PCL will become a wholly owned direct subsidiary of NTT Communications, PCL will be the sole shareholder of PC Landing Corp., and PC Landing Corp. will be the U.S. cable landing licensee of the PC-1 system.

PC Landing Corp., PCL, and NTT Communications have jointly applied to the Federal Communications Commission ("FCC") for authority to transfer control of PC Landing Corp. to NTT Communications.

PCL and PC Landing Corp. are providing this LOA on the express understanding that, promptly upon execution of this LOA, the U.S.G. Agencies will notify the FCC that they have no objection to the FCC's grant of the pending application for authority to transfer control, and that they will request that the FCC's grant of that application be made subject to this LOA and its resolution of issues relating to national security, law enforcement, and public safety. PCL and PC Landing Corp. have agreed to provide this LOA to the U.S.G. Agencies to address issues raised by the U.S.G. Agencies, and to jointly petition the FCC to condition the requested authorization on compliance with this LOA.

Assuming consummation of the Transaction, (i) PCL undertakes to comply as provided below, and to cause PC Landing Corp. to comply, and (ii) PC Landing Corp. undertakes to comply, with the following commitments to the U.S.G. Agencies:

1. By the later of December 15, 2009 or sixty (60) days following the closing of the Transaction, PC Landing Corp. will provide to the U.S.G. Agencies a list of the Principal Equipment used within the PC-1 cable system and infrastructure for normal, contingency, and

¹ See FCC File No. SCL-98-006; SCL-LIC-19980807-00010.



disaster recovery modes. Principal Equipment includes, but is not limited to, to the extent applicable, network element servers, routers, switches, repeaters, submarine line terminal equipment, system supervisory equipment ("SSE"), signal modulators and amplifiers, multiplexers and demultiplexers (i.e., synchronous digital hierarchy ("SDH") wavelength division multiplexers ("WDM"), dense wavelength division multiplexers ("DWDM"), and coarse wavelength division multiplexers ("CWDM")). The list should include available information on each item's manufacturer and model number, and non-embedded software necessary for the proper monitoring, administration, and provisioning of the Principal Equipment. In addition, the list should include the identity of any vendors, contractors, and, to the extent known to PC Landing Corp. following requests for such information to contractors, the identity of then-current subcontractors for the Principal Equipment of the PC-1 cable system, including outsourced functions that would otherwise be performed by personnel of PC Landing Corp., to install, operate, manage, or maintain the Principal Equipment.

2. PC Landing Corp. will promptly notify the U.S.G. Agencies of changes to the information on the list of PC-1 Principal Equipment and related vendors, contractors, and, to the extent known to PC Landing Corp. following receipt of notification from its contractors (which notification shall be requested of contractors), subcontractors for the Principal Equipment of the PC-1 cable system. PC Landing Corp. agrees to make Network Management Information for the PC-1 cable system, and any security product lists for the operations support system and network management systems for the PC-1 cable system, available to the U.S.G. Agencies upon request. For purposes of this LOA, "Network Management Information" means: (a) network management operations plans, processes and procedures; and (b) descriptions of the placement of network operation center(s) and linkages (for service offload, disaster recovery, or administrative activities) to the PC-1 cable system.

3. If requested by the U.S.G. Agencies, PC Landing Corp. shall provide to the U.S.G. Agencies information regarding the network architecture of, and associated interconnection points to, the Domestic Communications Infrastructure ("DCI") of the PC-1 cable system, including system architecture descriptions of the network management systems and network operation center(s) for managing the DCI and controlled interfaces to network operation center(s). Following the provision of such information, PC Landing Corp. shall notify the U.S.G. Agencies prior to performing any non-emergency maintenance, repair, or replacement that would result in a material modification thereto; provided that in the event of any material modification that is the result of any maintenance, repair or replacement that is undertaken pursuant to a bona fide emergency and is necessary to ensure the continued operation of PC-1, PC Landing Corp. agrees to provide advance notice of the modification to DHS if practicable, and, in any case, as promptly as reasonably practicable after the maintenance, repair or replacement is completed. For purposes of this LOA, "Domestic Communications Infrastructure" means (a) transmission, switching, bridging and routing equipment (including software and upgrades) used by or on behalf of PC Landing Corp. to provide, process, direct, control, supervise or manage Domestic Communications; (b) facilities and equipment used by or on behalf of PC Landing Corp. that are physically located in the United States; or (c) facilities used by or on behalf of PC Landing Corp. to control the equipment described in (a) and (b)



above. DCI does not include equipment or facilities used by service providers other than PC Landing Corp. that are:

- (x) interconnecting communications providers; or
- (y) providers of services or content that are
 - (1) accessible using the communications services of PC Landing Corp., and
 - (2) available in substantially similar form and on commercially reasonable terms through communications services of companies other than PC Landing Corp.

The phrase "on behalf of" as used in this section does not include entities with which PC Landing Corp. has contracted for peering, interconnection, roaming, long distance, or other similar arrangements. DCI does not include equipment dedicated to the termination of international undersea cables outside the United States, provided that such equipment is utilized solely to effectuate the operation of such undersea transport network(s) and in no manner controls land-based transport network(s) or their associated systems in the United States. DCI also does not include network operation center(s) that may be located outside the United States.

4. PC Landing Corp. agrees to take practicable measures to prevent unauthorized access to, and to protect the physical security of, the PC-1 cable system. PC Landing Corp. agrees to make its security policies and procedures for the PC-1 cable system available to the U.S.G. Agencies upon request.

5. Nothing in this LOA shall excuse PCL or PC Landing Corp. from any obligation 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., or to comply with any lawful U.S. process. PCL and PC Landing Corp. employees in the United States will have unconstrained authority to comply, in an effective, efficient, and unimpeded fashion, with lawful U.S. process.

6. Unless otherwise agreed to by the Parties, PCL and PC Landing Corp. shall make available in the United States, in response to lawful U.S. process, customer billing records, customer information, network management information and access logs to facilities and network access logs to systems and applications, and any other related information used, processed or maintained in the ordinary course of business relating to Domestic Communications ("U.S. Records"), if such information is stored by or on behalf of PCL or PC Landing Corp. for any reason. For the purposes of this LOA, "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. "Electronic Communication" has the meaning given it in 18 U.S.C. § 2510(12). "Wire



Communication” has the meaning given it in 18 U.S.C. § 2510(1). PCL and PC Landing Corp. shall store for at least 18 months all customer billing records. Nothing in this paragraph shall require PCL or PC Landing Corp. to store such records for longer than 18 months.

7. PC Landing Corp. agrees that it will not, directly or indirectly, knowingly disclose or permit disclosure of or access to Domestic Communications or any information pertaining to a wiretap order, pen/trap order, subpoena or other lawful demand by a U.S. law enforcement agency, to any person if the purpose of such disclosure or access is to respond to the legal process or request on behalf of a non-U.S. government without first satisfying all pertinent requirements of U.S. law or the authorization of a court of competent jurisdiction in the United States. The term “non-U.S. government” means any government, including an identified representative, agent, component or subdivision thereof, that is not a local, state or federal government in the United States.

8. PC Landing Corp. has designated Kurt E Johnson as a point of contact (“POC”) and agrees to maintain a POC within the United States with the authority and responsibility for accepting and overseeing compliance with a wiretap order, pen/trap order, subpoena or other lawful demand by U.S. law enforcement authorities for the content of communications or U.S. Records. PC Landing Corp. will notify the U.S.G. Agencies of any change in the POC within five (5) business days of such change. Any new point of contact shall be a resident U.S. citizen, and PC Landing Corp. shall cooperate with any request by a U.S. government authority that a background check or security clearance process be completed for a designated POC.

9. PC Landing Corp. will implement a screening process to ensure that all personnel whose positions involve unescorted access to DCI meet personnel screening requirements, including a process to ensure that contractor personnel meet such requirements, as provided herein. The screening process will include a background and financial investigation, in addition to a public criminal records check. PC Landing Corp. represents that no current employees of PC Landing Corp. have unescorted access to DCI. Existing contractors that prior to the closing of the Transaction have screened personnel in accordance with their then-existing personnel screening requirements need not re-screen such personnel, and shall provide to PC Landing Corp. attestations as to such screening requirements and their compliance therewith; provided, however, that PC Landing Corp. shall ensure that, on or before January 31, 2010, existing contractors implement a screening process for new employees that includes the elements set forth above and thereafter provide appropriate attestations to PC Landing Corp. as to their compliance with such requirements. PC Landing Corp. will reasonably address any concerns U.S.G. Agencies may raise with respect to its screening process. PC Landing Corp. will cooperate with reasonable lawful requests by U.S.G. Agencies or any U.S. Government Authority desiring to conduct any further background checks. PC Landing Corp. will maintain records relating to the status of screened personnel, and will provide these records, upon request and consistent with applicable law, to U.S.G. Agencies.

10. PC Landing Corp. agrees that upon reasonable notice, the U.S.G. Agencies may visit PC Landing Corp.’s landing stations and other DCI, and other facilities under its control, to conduct on-site reviews concerning the implementation of the terms of this LOA. During these visits, PC



Landing Corp. will cooperate fully with the U.S.G. Agencies in making available requested information applicable to DCI concerning technical, physical, management, or other security measures to enable the U.S.G. Agencies to verify compliance with the terms of this LOA, provided that such access does not interfere with the operation of the DCI and facilities involved and is otherwise consistent with applicable law. Upon reasonable notice from the U.S.G. Agencies, PC Landing Corp. will make available for interview any officers or employees of PC Landing Corp., and will use reasonable efforts to make available for interview the personnel of any contractor or subcontractor, who are in a position to provide information to verify compliance with the terms of this LOA.

11. If any member of the management of PCL or PC Landing Corp. acquires any information that reasonably indicates that any foreign government, any foreign government controlled entity, or any foreign entity:

- (i) plans to participate or has participated in any aspect of the day-to-day management of PCL or PC Landing Corp., or
- (ii) plans to exercise or has exercised, as a direct or indirect shareholder of PCL or PC Landing Corp., any control of PCL or PC Landing Corp.

in a way that interferes with or impedes the performance by PCL or PC Landing Corp. of their duties and obligations under the terms of this LOA, or interferes with or impedes the exercise by PCL or PC Landing Corp. of their rights under the terms of this LOA, then such member shall promptly cause to be notified the POC, who, in turn, shall promptly notify the U.S.G. Agencies in writing of the timing and the nature of the foreign government's or entity's plans and/or actions.

12. Promptly upon the receipt by any member of the management of PCL or PC Landing Corp. of information that reasonably indicates a breach of this LOA or access to, or disclosure of Domestic Communications or the conduct of Electronic Surveillance, in violation of federal, state or local law or regulation, such member shall report such breach or violation to the POC, who in turn shall notify the U.S.G. Agencies of the breach or violation. The POC's report shall be made in writing to the U.S.G. Agencies, no later than ten (10) calendar days after the POC receives such information. PCL and PC Landing Corp. shall lawfully cooperate in investigating the matters described in this LOA. The POC 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. For purposes of this LOA, "Electronic Surveillance" 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.

13. If after the date that PCL and PC Landing Corp. have executed this LOA, the U.S.G. Agencies find that the terms of this LOA are inadequate to address national security, law enforcement, or public safety concerns, then PCL and PC Landing Corp. will negotiate in good faith to modify this LOA to address those concerns with respect to PC-1's equipment, contracts, or security practices. Conversely, PCL and PC Landing Corp. are providing this LOA on the express understanding that the U.S.G. Agencies agree to negotiate in good faith and promptly with respect to any request by PCL or PC Landing Corp. for relief from the application of specific provisions of this LOA if those provisions become unduly burdensome or adversely affect the competitive position of PCL or PC Landing Corp. Notwithstanding the foregoing, the U.S.G. Agencies reserve the right to object, formally or informally, to the grant of any other FCC application or petition of PCL or PC Landing Corp. for a license or other authorization under the Cable Landing License Act or 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.

14. PCL and PC Landing Corp. are providing this LOA on the express understanding that all notices and information provided to the U.S.G. Agencies pursuant to this LOA shall be treated as confidential business information exempt from disclosure under the Freedom of Information Act, 5 U.S.C. § 552(b)(4).

15. This LOA shall inure to the benefit of, and shall be binding upon, PCL, PC Landing Corp. and their respective successors and assigns.

16. All correspondence to the U.S.G. Agencies under this LOA will be directed to the addressees at the addresses provided on the first page of the LOA. In addition, a courtesy electronic copy of all notices and communications will be forwarded to ttelecom@usdoj.gov, IP-FCC@dhs.gov, GTFCFIUSTeamForwarding@osd.mil, and GeneralCounselDISA@disa.mil.



17. The commitments set forth in this LOA shall not be binding on PCL or PC Landing Corp. if the Transaction is not consummated.

Sincerely,

PACIFIC CROSSING LIMITED

A handwritten signature in black ink that reads "M. J. Simpson". The signature is fluid and cursive, with the first and last names being clearly legible.

By:

Mark Simpson
President and Chief Executive Officer

PC LANDING CORP.

A handwritten signature in black ink that reads "M. J. Simpson". The signature is fluid and cursive, with the first and last names being clearly legible.

By:

Mark Simpson
Director