

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of

PIPE NETWORKS LIMITED,
Transferor,

TPG TELECOM LIMITED,
Transferee,

PPC 1 LIMITED and
PPC 1 (US) INC.,
Licensees,

Application for Consent to Transfer Control of
a Private Fiber-Optic Cable System
Connecting Australia and Guam,

THE PPC 1 SYSTEM

File No. SCL-T/C-2009-_____

**JOINT APPLICATION FOR CONSENT TO TRANSFER CONTROL—
STREAMLINED PROCESSING REQUESTED**

PIPE Networks Limited (“PIPE Networks,” FRN 0019313998) and TPG Telecom Limited (previously named SP Telemedia Limited¹), an Australian corporation (“TPG Telecom,” FRN 0019355338, and together with PIPE Networks, “the Applicants”), hereby apply for consent to transfer control of the cable landing license for the PPC 1 undersea cable system (“PPC 1 System”), for which PPC 1 Limited (FRN 0017368408) and PPC 1 (US), Inc. (“PPC 1 US”), FRN 0017368432, and together with PPC 1 Limited, the “Licensees”) are joint licensees.

¹ SP Telemedia Limited changed its name to TPG Telecom Limited on December 1, 2009.

The PPC 1 System is a private fiber-optic undersea cable network connecting Sydney, Australia, with Piti, Guam. It entered into commercial service on October 1, 2009, providing much-needed competitive connectivity on the U.S.-Australia route. On November 11, 2009, PIPE Networks and TPG Telecom entered into an agreement in which TPG Telecom will acquire all of the outstanding shares of PIPE Networks (the “Proposed Transaction”), as described in further detail in part I below.

The Applicants request streamlined processing pursuant to Section 1.767(k)(2) of the Commission’s rules, as TPG Telecom and its foreign affiliates lack market power in Australia, the destination market for the PPC 1 System. The application raises no competition or public-interest concerns. An expeditious grant of this application will advance the public interest by providing customers with enhanced international and domestic service offerings and by expanding TPG Telecom’s capabilities as a broadband, data, and voice communications provider through access to PIPE Networks’ metropolitan dark-fiber network in Australia.

I. BACKGROUND

A. Parties to the Proposed Transaction

PIPE Networks: PIPE Networks is the transferor in the Proposed Transaction and the indirect parent company of the joint licensees, PPC 1 Limited and PPC 1 US. Through its operating subsidiaries, PIPE Networks owns and operates advanced metropolitan-area fiber-optic networks as well as the PPC 1 System. PIPE Networks is an Australian public company limited by shares and headquartered in Brisbane. PIPE Networks’ operating subsidiaries compete vigorously with Telstra, the Australian incumbent carrier, in the Australian market and with Telstra and Southern Cross for wholesale transport on the U.S.-Australia route.

PPC 1 Limited: PPC 1 Limited is a joint licensee for the PPC 1 System.² PPC 1 Limited owns and operates the wet-link portions of the PPC 1 System. PPC 1 Limited is a limited-liability company organized under the laws of Bermuda. PPC 1 Limited is an indirect, wholly-owned subsidiary of PIPE Networks.

PPC 1 (US) Inc.: PPC 1 US is a joint licensee for the PPC 1 System.³ PPC 1 US contracts for landing-related arrangements on Guam. PPC 1 US is a Delaware corporation. It is a direct, wholly-owned subsidiary of PPC 1 Limited and an indirect, wholly-owned subsidiary of PIPE Networks.

TPG Telecom Limited: TPG Telecom is an Australian public company limited by shares. Those shares trade publicly on the Australian Securities Exchange (“ASX”) under the symbol TPM.⁴ Through its wholly-owned operating subsidiaries, TPG Telecom owns and operates advanced telecommunications networks and provides fixed and mobile telecommunications and Internet services in Australia under the “Soul” and “TPG” brands. TPG Telecom’s operating subsidiaries compete vigorously with Telstra, Australia’s incumbent carrier.

B. Overview of the Proposed Transaction

On November 11, 2009, PIPE Networks entered into a merger agreement with TPG Telecom whereby TPG Telecom will acquire all of PIPE Networks’ outstanding shares and, upon closing, will indirectly own and control the Licensees.⁵ PIPE Networks, PPC 1 Limited,

² See *Actions Taken Under Cable Landing License Act, Public Notice*, 23 FCC Rcd. 13,419 (2008) (FCC File No. SCL-LIC-20080213-00001) (“*PPC 1 License*”).

³ See *id.*

⁴ Before December 7, 2009, the ASX Code for SP Telemedia Limited was SOT.

⁵ Based on PIPE Networks’ public disclosures to the ASX, TPG Telecom currently holds a non-controlling, 4.73 percent interest in PIPE Networks and also holds options granted by two existing shareholders of PIPE Networks to acquire a further 15.12 percent interest in PIPE Networks.

and PPC 1 US will continue to exist as wholly-owned subsidiaries of TPG Telecom following the consummation of the Proposed Transaction. Exhibit A to this application illustrates the pre-transaction organizational structure of PIPE Networks and its subsidiaries. Exhibit B to this application illustrates the post-consummation organizational structure of TPG Telecom and its subsidiaries. Subject to regulatory and certain other customary approvals, the Applicants expect to consummate the Proposed Transaction on or about April 2, 2010.

II. COMPLIANCE WITH SECTION 1.767

In accordance with Section 1.767 of the Commission's rules and Executive Order No. 10,530, the Applicants submit the following information in support of their application for consent to transfer control of PPC 1 Limited and PPC 1 US from PIPE Networks to TPG Telecom:

(1) Applicants' Names, Addresses, and Telephone Numbers³⁶

The names, addresses, and telephone numbers of the Applicants are:

<u><i>Transferor</i></u>	<u><i>Transferee</i></u>	<u><i>Licensees</i></u>
PIPE NETWORKS LIMITED Level 17 PIPE Networks House 127 Creek Street Brisbane QLD 4000 Australia +61 7 3233 9800 tel +61 7 3233 9868 fax	TPG TELECOM LIMITED 65 Waterloo Road North Ryde, NSW 2113 Australia +61 2 9850 0800 tel +61 2 9888 9148 fax	PPC 1 LIMITED Clarendon House 2 Church Street Hamilton HM 11 Bermuda +61 7 3233 9800 tel +61 7 3233 9868 fax PPC 1 (US), INC. c/o Wiltshire & Grannis LLP 1200 18th Street, N.W. Suite 1200 Washington, D.C. 20036-2516 +61 7 3233 9800 tel +61 7 3233 9868 fax

⁶ See 47 C.F.R. § 1.767(a)(1).

(2) **Applicants' Places of Incorporation**⁷

PIPE Networks is an Australian public company limited by shares. TPG Telecom is also an Australian public company limited by shares. PPC 1 Limited is a Bermuda limited-liability company. PPC 1 US is a Delaware corporation.

(3) **Contact Information**⁸

The Commission should address correspondence regarding this application to:

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*Counsel for PIPE Networks Limited,
PPC 1 Limited, and PPC 1 (US), Inc.*

and

⁷ See *id.*, § 1.767(a)(2).

⁸ See *id.*, § 1.767(a)(3).

Tony Moffat
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Counsel for TPG Telecom Limited

(4) **System Description**⁹

The system description has not changed materially since the original application and subsequent modification application were filed with and granted by the Commission.¹⁰

⁹ See *id.*, § 1.767(a)(4).

¹⁰ See PPC 1 Limited and PPC 1 (US) Inc., Application for a License to Land and Operate a Private Fiber-Optic Cable System Connecting Australia, Guam, and Papua New Guinea, for the PPC 1 System, FCC File No. SCL-LIC-20080213-00001, at 3-4 (filed Feb. 11, 2008) (“PPC 1 Application”); *PPC 1 License*, 23 FCC Rcd. at 13,420; PPC 1 Limited and PPC 1 (US) Inc., Application to Modify the Cable Landing License for the PPC 1 System, at 5 (filed Sept. 10, 2009) (“PPC 1 Modification Application”); *Actions Taken Under Cable Landing License Act, Public Notice*, DA 09-2452, at 2 (rel. Nov. 20, 2009) (consent to modification of system description to exclude PNG Spur and landing in Papua New Guinea) (“*PPC 1 Modification Grant*”).

(5) **Landing Points**¹¹

The landing points of the PPC 1 System have not changed materially since the original application and subsequent modification application were filed with and granted by the Commission.¹²

(6) **Regulatory Status**¹³

The facts supporting the non-common-carrier status of the PPC 1 System have not changed materially since the original application, as supplemented, was filed with and granted by the Commission.¹⁴

(7) **Cable Ownership Information**¹⁵

With one exception, the ownership of the PPC 1 System has not changed materially since the original application, as supplemented, and subsequent modification application were filed with and granted by the Commission.¹⁶ Although it was originally envisioned that PPC 1 US and PIPE International (Australia) Pty Ltd. (“PIPE International”) would own and operate, respectively, the U.S. territorial sea and Australian territorial sea portions of the PPC 1 System, it

¹¹ See 47 C.F.R. § 1.767(a)(5).

¹² See PPC 1 Application at 4-5; *PPC 1 License*, 23 FCC Rcd. at 13,420; PPC 1 Modification Application at 5-6; *PPC 1 Modification Grant* at 2.

¹³ See 47 C.F.R. § 1.767(a)(6).

¹⁴ See PPC 1 Application at 5-7; Letter from Kent D. Bressie, Harris, Wiltshire & Grannis LLP, Counsel for PPC 1 Limited and PPC 1 (US), Inc., to FCC Secretary Marlene H. Dortch, File No. SCL-LIC-20080213-00001, at 3-4 (May 9, 2008) (“PPC 1 May 8th Letter”); *PPC 1 License*, 23 FCC Rcd. at 13,420.

¹⁵ See 47 C.F.R. § 1.767(a)(7).

¹⁶ See PPC 1 Application at 8-10; PPC 1 May 8th Letter at 1-3; *PPC 1 License*, 23 FCC Rcd. at 13,420; PPC 1 Modification Application at 6; *PPC 1 Modification Grant* at 2.

was subsequently decided that PPC 1 Limited would own and operate all wet-link portions of the PPC 1 System.¹⁷

(8) **Corporate Control and Affiliate Information**¹⁸

The Applicants submit the following information specified in Sections 63.18(h) through (k) and Section 63.18(o) of the Commission's rules:

(i) **Certification Regarding Ownership, Citizenship, Principal Businesses, and Interlocking Directorates**¹⁹

By the signature below, TPG Telecom certifies to the following. No person or entity owns a majority of TPG Telecom's ordinary shares or otherwise exercises *de jure* or *de facto* control over TPG Telecom under the FCC's rules. As of 9 December 2009, TPG Telecom has four 10-percent-or-greater direct or indirect shareholders:

- (1) Washington H. Soul Pattinson and Company Limited
Type of Organization: public company limited by shares
Place of Organization: New South Wales, Australia
Address: First Floor, 160 Pitt Street, Sydney NSW 2000, Australia
Principal Businesses: investments in real property and in shares of companies in the telecommunications, pharmaceuticals, and coal mining sectors
Interest: directly owns 28.26 percent of TPG Telecom's ordinary shares
- (2) Brickworks Limited
Type of Organization: public company limited by shares
Place of Organization: New South Wales, Australia
Address: 738-780 Wallgrove Road, Horsley Park, NSW 2175, Australia
Principal Businesses: investments; manufacture and distribution of clay products
Interest: directly owns 42.85 percent of Washington H. Soul Pattinson and Company Limited; holds indirect economic interest of 12.2 percent of TPG Telecom's ordinary shares

¹⁷ See PPC 1 Application at 8-10.

¹⁸ See 47 C.F.R. § 1.767(a)(8).

¹⁹ See *id.*, § 63.18(h).

- (3) Mr. David Teoh
Country of Citizenship: Australia
Address: 65 Waterloo Road, North Ryde, NSW 2113, Australia
Principal Business: Chairman, Executive Director, and CEO of TPG Telecom
Interest: directly owns 19.25 percent of TPG Telecom's ordinary shares
- (4) Ms. Vicky Teoh
Country of Citizenship: Australia
Address: 65 Waterloo Road, North Ryde, NSW 2113, Australia
Principal Business: None. (wife of Mr. David Teoh)
Interest: directly owns 19.25 percent of TPG Telecom's ordinary shares

TPG Telecom has the following interlocking directorates with foreign carriers:

- David Teoh is a director of TPG Telecom and the sole director of TPG Internet Pty Ltd, Soul Communications Pty Ltd, SPTCom Pty Ltd and Soul Pattinson Telecommunications Pty Ltd, each of which falls within the definition of a foreign telecommunications carrier. Stephen Banfield is the sole company secretary for each of those companies.

(ii) **Certification Regarding Foreign Carrier Status and Foreign Affiliations²⁰**

By the signature below, TPG Telecom certifies that it is not a foreign carrier and that, as of the consummation of the Proposed Transaction, it will be affiliated with the following foreign carriers: (1) PIPE Networks, an Australian fixed-line carrier; (2) PIPE International, an Australian fixed-line carrier; (3) PPC 1 Limited, a Bermuda carrier; (4) Soul Pattinson Telecommunications Pty Ltd. ("Soul"), an Australian fixed-line carrier; (5) SPTCom Pty Ltd, an Australian fixed-line carrier; (6) Soul Communications Pty Ltd, an Australian fixed-line and mobile carrier; and (7) TPG Internet Pty Ltd, an Australian fixed-line and mobile carrier.

(iii) **Certification Regarding Destination Markets²¹**

By the signature below, TPG Telecom certifies to the following: (1) it is not a foreign carrier in PPC 1's destination market, Australia; (2) as of the consummation of the Proposed

²⁰ See *id.*, §§ 1.767(a)(8), 63.18(i).

²¹ See *id.*, §§ 1.767(a)(8), 63.18(j).

Transaction, it will control six carriers in Australia, the destination market for the PPC 1 System:

(i) PIPE Networks; (ii) PIPE International; (iii) Soul; (iv) Soul Communications Pty Ltd; (v) SPTCom Pty Ltd; and (vi) TPG Internet Pty Ltd; (3) no entity controlling a foreign carrier in Australia owns more than 25 percent of TPG Telecom or controls TPG Telecom; and (4) no grouping of two or more foreign carriers (or parties that control foreign carriers) owns, in aggregate, more than 25 percent of TPG Telecom and are parties to, or beneficiaries of, a contractual relation affecting the provision or marketing of international basic telecommunications services in the United States.

(iv) **Certification Regarding WTO Status, Market Power, and the Effective Competitive Opportunities Test**²²

By the signatures below, the Applicants certify that Australia—the only country identified in response to Sections 1.767(a)(8) and 63.18(j) of the Commission’s rules—is a member of the World Trade Organization.²³

(v) **Certification Regarding the Anti-Drug Abuse Act of 1988**²⁴

By the signatures below, the Applicants certify that no party to this application is subject to a denial of federal benefits that includes FCC benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.

(9) **Certification Regarding Routine Conditions Set Forth in Section 1.767(g) of the Commission’s Rules**²⁵

By the signature below, TPG Telecom certifies that it accepts and will abide by the routine conditions specified in Section 1.767(g) of the Commission’s rules.

²² See *id.*, §§ 1.767(a)(8), 63.18(k).

²³ List of WTO Members and Observers (as of July 23, 2008), *available at* http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm.

²⁴ See 47 C.F.R. §§ 1.767(a)(8), 63.18(o).

²⁵ See *id.*, §§ 1.767(a)(9), (g).

III. CERTIFICATION REGARDING SERVICE TO EXECUTIVE BRANCH AGENCIES

Pursuant to Section 1.767(j) of the Commission's rules,²⁶ the Applicants have sent a complete copy of this application to the U.S. Department of State, the U.S. Department of Commerce, and the Defense Information Systems Agency. Counsel for PIPE Networks, PPC 1 Limited, and PPC 1 US has certified such service in the certificate of service attached to this application.²⁷

IV. REQUEST FOR STREAMLINED PROCESSING

The Applicants request streamlined processing pursuant to Section 1.767(k)(2) of the Commission's rules, as they and their foreign affiliates lack market power in Australia, the sole destination market for the PPC 1 System.²⁸ The application raises no competition or public-interest concerns that would merit consideration outside the Commission's streamlined review process.

Each of the foreign carriers and affiliates identified above in response to Sections 1.767(a)(8) and 63.18(j) of the Commission's rules qualifies for a presumption of non-dominance.²⁹

- PIPE Networks holds a telecommunications Carrier License issued by the Australian Communications & Media Authority and operates fiber-optic networks in and around Brisbane, Sydney, and Melbourne; it has zero-percent market share in Australia's international transport market and far less than a 50-percent market share in

²⁶ See *id.*, § 1.767(j).

²⁷ The Applicants have initiated discussions with national security and law enforcement agencies to address any potential concerns those agencies may have with respect to the Proposed Transaction.

²⁸ See *id.*, § 1.767(k)(2).

²⁹ See *id.*, §§ 63.10(a)(3), 63.12(c)(1)(ii).

Australia's local access market, where it competes vigorously with other carriers, including the dominant incumbent, Telstra.

- PIPE International holds a telecommunications Carrier License issued by the Australian Communications & Media Authority and owns and operates the Australian-territory portions of the PPC 1 System, including the PPC 1 cable station in suburban Sydney. As the PPC 1 System entered into commercial service only on October 1, 2009, PIPE International has a small but growing market share in Australia's international transport market—one that is well below the 50-percent threshold. It competes vigorously with Telstra and Southern Cross on the U.S.-Australia route, which remained a duopoly until the launch of the PPC 1 System. PIPE International has zero percent market share in Australia's local access market.
- Soul Pattinson Telecommunications Pty Ltd. holds a telecommunications Carrier License issued by the Australian Communications & Media Authority and operates fixed and mobile telecommunications networks throughout Australia. It has zero-percent market share in Australia's international transport market and far less than a 50-percent market share in Australia's local access markets.
- Soul Communications Pty Ltd is a supplier of fixed line and mobile telephone services in Australia. It owns no telecommunications networks but uses the networks of Soul Pattinson Telecommunications Pty Ltd, TPG Internet Pty Ltd, and other unrelated company suppliers such as Telstra and Optus to sell services. It has a zero-percent market share in Australia's international transport market and far less than a 10-percent market share in Australia's local access markets.
- SPTCom Pty Ltd is a supplier of fixed-line voice services for wholesale and some corporate customers. It owns and operates a telecommunications network in Australia. It has a very small market share in Australia's international transport market and far less than a 10-percent market share in Australia's local access markets.
- TPG Internet Pty Ltd is a supplier of fixed line data services and mobile services for consumers in Australia. It has about a 10-percent market share of the ADSL2+ market in Australia, which represents a small subset of the available broadband products. It has zero-percent market share in Australia's international transport market. It owns/operates a network of DSLAMs in most states in Australia. Like Soul Communications Pty Ltd, TPG Internet Pty Ltd resells the mobile services of unrelated third party carriers.

On an aggregate basis as a consequence of the transaction, the combination of TPG Telecom and PIPE Networks will have far less than 50- percent market share in either Australia's international transport or local access markets. Moreover, none of these companies appears on the

Commission's list of foreign telecommunications carriers presumed to possess market power in foreign telecommunications markets.³⁰

Streamlined processing is further appropriate under the U.S.-Australia Free Trade Agreement. That agreement provides that the United States will accord to Australian investors and investments treatment no less favorable than that it accords, in like circumstances, to U.S. investors and investments with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.³¹

³⁰ See *The International Bureau Revises and Reissues the Commission's List of Foreign Telecommunications Carriers that Are Presumed to Possess Market Power in Foreign Telecommunications Markets*, Public Notice, 22 FCC Rcd: 945 (2007).


³¹ See U.S.-Australia Free Trade Agreement, arts. 11.1, 11.2 (entered into force Jan. 1, 2005).

CONCLUSION

For the foregoing reasons, the Commission should expeditiously grant this transfer- of- control application pursuant to streamlined processing.

Respectfully submitted,

PIPE NETWORKS LIMITED
PPC 1 LIMITED
PPC 1 (US), INC.



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TPG TELECOM LIMITED

A handwritten signature in black ink, appearing to be 'AM', is written over a horizontal line.

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General Counsel

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Counsel for TPG Telecom Limited

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30 December 2009

Attachments

CERTIFICATE OF SERVICE

I, Kent D. Bressie, hereby certify that consistent with Section 1.767(j) of the Commission's rules, 47 C.F.R. § 1.767(j), I have served copies of the foregoing Application for Consent to Transfer Control by hand- or overnight delivery on this 30th day of December 2009, to the following:

Ambassador Philip Verveer
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Kent D. Bressie

LIST OF EXHIBITS

**Exhibit A: Current Organizational Structure of
PIPE Networks Limited and Its Subsidiaries**

**Exhibit B: Post-Consummation Organizational Structure of
TPG Telecom Limited and Its Subsidiaries (As of
9 December 2009)**

EXHIBIT A:

Current Organizational Structure of PIPE Networks Limited and Its Subsidiaries

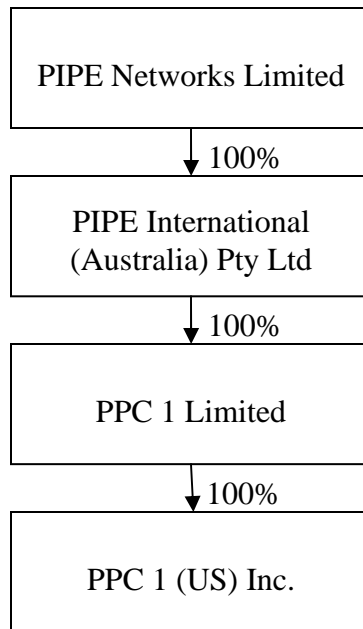


EXHIBIT B:
Post-Consummation Organizational Structure of
TPG Telecom Limited and Its Subsidiaries
(As of 9 December 2009)

