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August 2, 2011

**Via IBFS**

Marlene H. Dortch, Secretary  
Office of the Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Room TW-A325  
Washington, DC 20554

**Re: Supplement to Notification of the *Pro Forma* Merger of Tata Communications (US) Inc. with and into Tata Communications (America) Inc. and *Pro Forma* Transfer of Control of Tata Communications (Guam) L.L.C.**

Dear Ms. Dortch:

Pursuant to staff's request, Tata Communications (Guam) L.L.C. ("Tata Guam") hereby submits a separate copy of the *pro forma* notification filed with the Commission on April 29, 2011. For FCC docketing purposes, Tata Guam understands that the FCC intends to designate a separate file number to Tata Guam for the notification (in addition to File No. SCL-ASG-20110429-000013 to Tata Communications (America) Inc. ("Tata America")).

Tata Guam also supplements the notification in response to staff's requests for additional information. Pursuant to staff's request for information about Tata Guam's corporate ownership, Tata Guam submits that Tata America holds a 99% interest in Tata Guam, and Tata Communications (Netherlands) B.V. holds the remaining 1% interest. As described in the notification, Tata America remains a wholly-owned indirect subsidiary of Tata Communications Limited ("TCL"). Tata Communications (Netherlands) B.V. is also a wholly-owned indirect subsidiary of TCL.

Pursuant to staff's request for information about the current ownership of the submarine cable landing license held by Tata Guam and Tata America (SCL-LIC-20000717-00026) and the facilities associated with it, Tata confirms that that ownership remains the same as described in footnote 13 of Public Notice, Actions Taken Under Cable Landing License Act, Section 1.767(a) Cable Landing Licenses, Modifications, and Assignments or Transfers of Control of Interest in Cable Landing Licenses (47 C.F.R. § 1.767(a)), DA 05-1268, File Nos. SCL-ASG-20050304-00003, SCL-T/C-20050304-00005, and SCL-MOD-20050304-00004 (2005). A copy of that Public Notice is attached hereto for the Commission's convenience.

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Marlene H. Dortch, Secretary  
August 2, 2011  
Page 2

Please contact Teresa Marrero, Senior Regulatory Counsel, Tata Communications (America) Inc., at 703-657-8412, or the undersigned if you have any questions regarding this matter.

Respectfully submitted,

A handwritten signature in cursive script that reads "Danielle Burt".

Catherine Wang  
Danielle Burt

Counsel to Tata Communications (Guam) L.L.C.

cc: Teresa Marrero

Catherine Wang  
Danielle Burt  
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April 29, 2011

**Via IBFS**

Marlene H. Dortch, Secretary  
Office of the Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Room TW-A325  
Washington, DC 20554

**Re: Notification of the *Pro Forma* Merger of Tata Communications (US) Inc. with and into Tata Communications (America) Inc. and *Pro Forma* Transfer of Control of Tata Communications (Guam) L.L.C.**

Dear Ms. Dortch:

Tata Communications (America) Inc. ("Tata America"), a Delaware corporation, by undersigned counsel and pursuant to 47 C.F.R. § 1.767(g)(7), notifies the Commission that on March 31, 2011, Tata Communications (US) Inc. ("Tata US"), a Delaware corporation, merged with and into Tata America, with Tata America surviving. As a result of this intracorporate *pro forma* merger, (1) two submarine cable landing licenses held by Tata US, SCL-LIC-20000308-00007 and SCL-LIC-20000717-00026, were transferred to Tata America, and (2) Tata US's interest in Tata Communications (Guam) L.L.C. ("Tata Guam"), which has a submarine cable landing license under SCL-LIC-20000717-00026, has been transferred to Tata America.

Tata America certifies that the merger was *pro forma* and that, together with all previous *pro forma* transactions, did not result in a change in the ultimate owners of any of the parties. Attached as Exhibit 1 is the certificate required by Section 1.767(g)(7). Following the intracorporate *pro forma* merger, Tata America remains a wholly-owned indirect subsidiary Tata Communications Limited ("TCL").

In addition, Tata Guam respectfully notifies the Commission of a name change. Tata Guam changed its name from VSNL International (Guam) Inc. to Tata Communications (Guam) L.L.C. as of April 30, 2008. Tata Guam's failure to previously notify the Commission of the name change was due to an inadvertent oversight.

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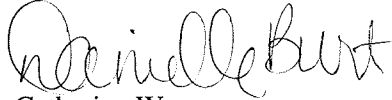
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Marlene H. Dortch, Secretary  
April 29, 2011  
Page 2

Please contact the undersigned if you have any questions regarding this matter.

Respectfully submitted,

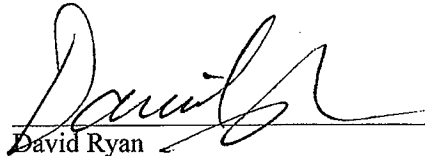
A handwritten signature in black ink, appearing to read "Catherine Wang". The signature is written in a cursive style with a large initial 'C'.

Catherine Wang  
Danielle Burt

Counsel to Tata Communications (America) Inc.  
and Tata Communications (Guam) L.L.C.

**Certificate**

I hereby certify that the merger described in the foregoing letter was a *pro forma* merger and that, together with all previous *pro forma* transactions, did not result in a change in the licensees' ultimate control.

A handwritten signature in black ink, appearing to read "David Ryan", is written over a horizontal line.

David Ryan  
Executive Vice president and  
Head of North America  
Tata Communications (America) Inc.  
Tata Communications (Guam) L.L.C.

Dated: April 27, 2011



# PUBLIC NOTICE

Federal Communications Commission  
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DA 05-1268  
April 29, 2005

## ACTIONS TAKEN UNDER CABLE LANDING LICENSE ACT

### Section 1.767(a) Cable Landing Licenses, Modifications, and Assignments or Transfers of Control of Interests in Cable Landing Licenses (47 C.F.R. § 1.767(a))

#### By the Chief, Policy Division, International Bureau:

Pursuant to An Act Relating to the Landing and Operation of Submarine Cables in the United States, 47 U.S.C. §§ 34-39 (Cable Landing License Act), Executive Order No. 10530, Exec. Ord. No. 10530 *reprinted as amended in* 3 U.S.C. § 301, and section 1.767 of the Commission's rules, 47 C.F.R. § 1.767, the following application IS GRANTED. This grant of authority is taken under section 0.261 of the Commission's rules, 47 C.F.R. § 0.261, and is effective upon release of this public notice. Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.115, may be filed within 30 days of the date of this public notice.

This public notice serves as each cable landing licensee's Cable Landing License, or modification thereto, pursuant to the Cable Landing License Act and sections 1.767 and 1.768 of the Commission's rules. Cable landing licensees should review carefully the terms and conditions of their licenses. Failure to comply with these terms and conditions or relevant Commission rules and policies could result in fines or forfeitures.

The Commission most recently amended its rules applicable to submarine cable landing licenses in *Review of Commission Consideration of Applications under the Cable Landing License Act*, IB Docket No. 00-106, FCC 01-332, 16 FCC Rcd 22167 (2001), 67 Fed. Reg. 1615 (Jan. 14, 2002). An updated version of sections 1.767 and 1.768 of the rules is available at <http://www.fcc.gov/ib/pd/pf/telecomrules.html>. See also [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DA-02-598A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-02-598A1.pdf) for a March 13, 2002 Public Notice; [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-01-332A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-01-332A1.pdf) for the December 14, 2001 Report and Order.

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**SCL-ASG-20050304-00003**      **Tyco Telecommunications (US) Inc., Assignor and VSNL Telecommunications (US) Inc., Assignee**  
**ASSIGNMENT OF INTERESTS IN LICENSES**

**SCL-T/C-20050304-00005**      **Tyco International Ltd., Transferor, VSNL Telecommunications (US) Inc., Transferee, and Tyco Networks (Guam) L.L.C., Licensee**  
**TRANSFER OF CONTROL**

**SCL-MOD-20050304-00004 Tyco Telecommunications (US) Inc. and Tyco Networks (Guam) L.L.C.  
MODIFICATION OF LICENSE**

On March 4, 2005, Tyco International Ltd. (“Tyco”), Tyco Telecommunications (US) Inc. (“Tyco Telecom”), Tyco Networks (Guam) L.L.C. (“Tyco Guam”), and VSNL Telecommunications (US) Inc. (“VSNL USA” and, together with Tyco, Tyco Telecom, and Tyco Guam, the “Applicants”) filed the three above-captioned applications.<sup>1</sup> On March 17, 2005, we placed the applications on public notice.<sup>2</sup> Today, we find that grant of the applications serves the public interest, and we grant the applications, subject to the listed conditions.

The three applications seek to: (1) assign Tyco Telecom’s interests in the two Tyco Global Network submarine cables that land in the United States, Tyco Atlantic and Tyco Pacific, to VSNL USA; (2) transfer control of Tyco Guam, a joint licensee with Tyco Telecom for the Tyco Pacific cable, to VSNL USA; and (3) prior to the assignment and transfer, modify the Tyco Pacific license to remove from the license the authority to construct, land and operate the original southern segment of the cable (unbuilt with the exception of a six-mile-long stub extending from the Hermosa Beach, California landing) and issue a separate cable landing license for that segment.<sup>3</sup> Tyco Atlantic and Tyco Pacific are two of five submarine cable systems (along with Tyco Northern Europe, Tyco Western Europe, and Tyco Pan-Asia) collectively known as the Tyco Global Network.<sup>4</sup> Pursuant to a November 1, 2004 stock and asset purchase agreement, Videsh Sanchar Nigam Ltd. (“VSNL”) and various subsidiaries, including VSNL USA, will acquire the Tyco Global Network as well as a terrestrial network of leased capacity and dark

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<sup>1</sup> Application for Assignment of a Cable Landing License for the Tyco Atlantic Submarine Cable System and a Jointly-Held Cable Landing License for the Tyco Pacific Submarine Cable System, File No. SCL-ASG-20040304-00003; Application for Transfer of Control of a Jointly-Held Cable Landing License for the Tyco Pacific Submarine Cable System, File No. SCL-T/C-20050304-00005; Application to Modify the Cable Landing License for the Tyco Pacific Submarine Cable System, File No. SCL-MOD-20050304-00004 (filed March 4, 2004).

<sup>2</sup> Streamlined Submarine Cable Landing License Applications Accepted for Filing, Public Notice, DA 05-700 (PD/Int’l Bur. March 17, 2005) (“Acceptable for Filing Public Notice”).

<sup>3</sup> Our grant of the above-referenced modification application (File No. SCL-MOD-20050304-00004) filed by Tyco Telecom and Tyco Guam removes the California-Hawaii-Guam southern segment, currently unbuilt except for the six-mile-long stub, from the Tyco Pacific cable landing license. Applicants state that, prior to closing the transactions described in File Nos. SCL-ASG-20050304-00003 and SCL-T/C-20050304-00005, Tyco Guam will assign to Tyco Telecom, on a *pro forma* basis, its entire ownership interest in the original southern segment (California-Hawaii-Guam), including any new cable landing license issued for that segment. (See File No. SCL-MOD-20020412-00027, amending the Tyco Pacific cable landing license to permit the filing of post-transaction notifications of *pro forma* transfers or assignments.) Thus, at the time of closing, Tyco Guam will have no interest in the unbuilt southern segment, the cable stub, or any separate cable landing license issued for the unbuilt segment and cable stub. The six-mile-long stub currently does not connect the Hermosa Beach beach landing with any U.S. or foreign point and is not capable of being operational absent further construction. By separate action today, we issue a separate cable landing license for the original southern segment of Tyco Pacific to Tyco Telecom. See *Tyco Telecommunications (US) Inc., Cable Landing License*, File No. SCL-LIC-20050304-00011, Public Notice, Actions Taken under Cable Landing Act, DA 05-1269 (PD/Int’l Bur. Apr. 29, 2005).

<sup>4</sup> Tyco Atlantic is a non-common carrier cable extending between the United States and the United Kingdom. Tyco Telecom, a wholly-owned indirect subsidiary of Tyco International, is the successor-in-interest to Tyco Atlantic (US) Inc., the original licensee of Tyco Atlantic. Tyco Pacific is a non-common carrier cable extending from the continental United States to Japan, with a link from Japan to Guam. Tyco Telecom, the successor-in-interest to Tyco Networks (US) Inc., an original licensee of Tyco Pacific, and Tyco Guam (formerly, Tyco Networks (Guam) L.L.C.), a wholly-owned indirect subsidiary of Tyco, are the joint U.S. licensees of Tyco Pacific.

fiber within the United States.<sup>5</sup> Upon consummation of the transaction, VSNL intends to rename Tyco Atlantic and Tyco Pacific.

Crest Communications Corporation (“Crest”) filed a petition to deny and reply against the applications.<sup>6</sup> Crest objects to grant of the applications on national security and competition grounds.<sup>7</sup> Crest argues that VSNL USA’s purchase of Tyco Pacific would permit VSNL USA’s ultimate parent, VSNL, to preserve and strengthen its monopoly power in the U.S.-India telecommunications market.<sup>8</sup> Crest asks the Commission to remove the applications from 45-day streamlined review and, ultimately, to deny the applications.<sup>9</sup> The Applicants respond that Crest’s allegations lack merit. They assert that the sale of

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<sup>5</sup> VSNL USA is a newly-created Delaware corporation, wholly owned by VSNL Nederlands B.V. (“VSNL Nederlands”), itself a subsidiary of VSNL Singapore Pte. Limited (“VSNL Singapore”), which in turn is wholly owned by VSNL, the incumbent provider of international telecommunications services in India. The Tata Group, an India commercial conglomerate, holds an aggregate 46.6% ownership interest, and exercises a controlling ownership and managerial interest, in VSNL. The Government of India holds an approximate 26% ownership interest in VSNL. The Bank of New York holds 13.3% of VSNL as American Depository Receipts. VSNL is publicly traded on the Bombay Stock Exchange and India’s National Stock Exchange.

<sup>6</sup> Petition to Deny of Crest Communications Corporation (filed Mar. 31, 2005) and Reply Brief in Support of Petition to Deny of Crest Communications Corporation (filed Apr. 18, 2005). Crest is the parent of Northern Lights, which has a conditional submarine cable license to land the Northern Lights cable system at three cable stations in Alaska and connect the Northern Lights cable through two branching units on the northern link of Tyco Pacific. See *Northern Lights Holdings, Inc., Submarine Cable Landing License*, Public Notice, Actions Taken under Cable Landing License Act, DA 02-2554, 17 FCC Rcd 19571 (PD/Int’l Bur. 2002) (“*Northern Lights Public Notice Grant*”). The license is conditional because Northern Lights had not filed the prerequisite landing point notification, with specific geographic coordinates, that it must file at least 90 days before beginning construction. See 47 C.F.R. § 1.767(a)(5), (g)(8); 17 FCC Rcd at 19572, 19773, 19574. The Northern Lights cable, once constructed, would be a network of three interrelated cable segments.

<sup>7</sup> Crest’s national security argument is based on its concern that its economic interests in the as-yet-unbuilt Northern Lights cable system, which would serve points in Alaska by interconnecting with Tyco Pacific, could be adversely affected by VSNL USA’s purchase of Tyco Pacific. Crest advises that it has been in discussions with the U.S. Department of Defense (“DOD”) about using the Northern Lights cable system for military purposes. Crest states that it is concerned that the transfer of Tyco Pacific to VSNL USA would diminish DOD’s interest in using the Northern Lights cable system, the segments of which would be interconnected through branching units and capacity acquisition on Tyco Pacific.

<sup>8</sup> Crest asks the Commission to define the relevant market as the U.S.-India route, rather than focusing on Japan and the United Kingdom as the destination markets of Tyco Pacific and Tyco Atlantic. Crest alleges that, if the transaction is approved, VSNL will have an end-to-end pipe between India and the United States. Crest contends that VSNL’s cable network would include the Tata Indicom cable between India and Singapore, dark fiber on the c2c network between Singapore and Japan, and Tyco Pacific, arguing that VSNL would have “unquestioned dominance on the critical U.S. to India route across the Pacific.” Crest suggests that VSNL’s acquisition of Tyco Pacific would deter other carriers from building new undersea cables in the Pacific and landing stations in India. Crest asserts that the transaction would eliminate Tyco as a potential threat to VSNL in the India cable station market. Crest contends that Tyco, as owner of Tyco Pacific, is a potential competitor to construct a new cable landing station in India that competes with those owned by VSNL. Crest argues that if Tyco retained ownership of Tyco Pacific, Tyco would have a strong incentive to break VSNL’s bottleneck in India, which, Crest says, would result in opening the India market and increasing demand for transpacific cable capacity.

<sup>9</sup> In its reply, Crest first raises two requests for alternative relief. If the Commission does not deny the applications, Crest asks the Commission to grant the transfer and assignments conditioned on VSNL’s divestiture of two Tyco Pacific fiber pairs and/or on imposition of common carrier regulation on the Tyco Pacific cable. As noted below, we deny the new requests for relief on procedural grounds. See *infra* notes 19 & 21.



Tyco Atlantic and Tyco Pacific raises no competition or market access concerns, in particular raising no competitive concerns on the U.S.-Japan or transpacific routes served by Tyco Pacific.<sup>10</sup>

On April 11, 2005, the U.S. Department of Justice, including the Federal Bureau of Investigation (“DOJ/FBI”), the U.S. Department of Homeland Security (“DHS”), and the U.S. Department of Defense (“DOD” and, together with DOJ/FBI and DHS, the “Executive Branch Entities”) and VSNL USA, VSNL America and VSNL submitted a Joint Petition to Adopt Conditions to Authorizations and Licenses (“Petition”). The Petition states that on April 7, 2005 the Executive Branch Entities entered into an agreement (“Agreement”) with VSNL USA, VSNL America and VSNL that is intended to ensure that the Executive Branch Entities and other entities with responsibility for enforcing the law, protecting the national security, and preserving public safety can proceed in a legal, secure, and confidential manner to satisfy these responsibilities. The Petition advises that the Executive Branch Entities do not object to the grant of the above-referenced applications, provided that the Commission conditions such grant on compliance with the commitments set forth in the Agreement.<sup>11</sup>

After careful consideration of the record in this proceeding, we conclude that the concerns raised by Crest are not sufficient to persuade us to remove the applications from streamlined treatment.<sup>12</sup> WE GRANT the applications, SUBJECT TO the conditions set forth below.<sup>13</sup>

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<sup>10</sup> Applicants note that neither Tyco Pacific nor the overall Tyco Global Network serves India. They state that transpacific capacity increased by 2500 percent from 1998 to 2003 and this new capacity has resulted in a “capacity glut” that essentially eliminates the risk of dominant behavior on the U.S.-Japan route. They contend that VSNL has no incentive to depress demand for Tyco Pacific’s transpacific capacity by artificially raising capacity rates to above-market levels. The Applicants state that Crest filed its petition to deny to obtain commercial leverage over Tyco Telecom in negotiations over ongoing business transactions involving Tyco Telecom’s undersea cable supply business. The ongoing negotiations concern the price for construction of the Northern Lights cable system. Joint Opposition to Petition to Deny (filed Apr. 11, 2005). Crest, in its reply, denies that it filed its petition as part of a retaliation campaign against Tyco.

<sup>11</sup> The Agreement is available as an attachment to the two files for the assignment and transfer of control applications in the Commission’s International Bureau Filing System. See [http://svartifoss2.fcc.gov/servlet/ib.page.FetchAttachment?attachment\\_key=429057](http://svartifoss2.fcc.gov/servlet/ib.page.FetchAttachment?attachment_key=429057). VSNL America is a subsidiary of VSNL that has international section 214 authority. See *VSNL America Inc., Application for Authority under Section 214 of the Communications Act of 1934, as amended, to Operate as a Facilities-Based Carrier and as a Resale Carrier for the Provision of International Switched and Private Line Services to All International Points*, Order, Authorization and Certificate, File No. ITC-214-20030728-00376, DA 04-2668, 19 FCC Rcd 16555 (Int’l Bur. 2004) (granting VSNL America international section 214 authority conditioned on compliance with network security agreement).

<sup>12</sup> In addition to the Crest pleadings, we received an April 28, 2005 letter from counsel for Polargrid LLC, a company that has a contractual dispute with VSNL that currently is before the U.S. District Court, S.D.N.Y. Letter from Mark S. Baldwin to Donald Abelson, Chief, International Bureau, Federal Communications Commission (dated Apr. 28, 2005). We do not find that the pending litigation justifies either deferring action on the applications or dismissing them. It is long-standing Commission policy not to involve itself with private contract disputes. See, e.g., *Applications of Verestar, Inc. (Debtor-in-Possession) for Consent to Assignment of Licenses to SES Americom, Inc.*, Memorandum, Opinion, Order and Authorization, IB Docket No. 04-174, DA 04-3639, 19 FCC Rcd 22750, 22756, para. 16 (Int’l Bur. & Wireless Tele. Bur. 2004). We find that the letter is not timely filed, and we dismiss the letter on procedural grounds. See 47 C.F.R. § 1.45; Acceptable for Filing Public Notice, *supra* note 2 (filings in proceeding due by March 31).

<sup>13</sup> Today’s grant of the above-referenced assignment application (File No. SCL-ASG-20050304-00003) authorizes VSNL USA to acquire from Tyco Telecom the New Jersey cable station, the portions of Tyco Atlantic extending between the New Jersey cable station and the twelve-nautical-mile limit of the U.S. territorial sea, and the Tyco Atlantic cable landing license. VSNL Bermuda Limited (“VSNL Bermuda”), a wholly-owned subsidiary of VSNL Singapore, will own the subsea portions of Tyco Atlantic located in international waters, and VSNL Telecommunications (UK) Limited, a wholly-owned subsidiary of VSNL Netherlands, will own the cable station in

The comments filed do not provide a basis to deny these applications. Under Commission precedent, we defer to the Executive Branch's expertise on national security and law enforcement issues. WE GRANT the Joint Petition to Adopt Conditions to Authorizations and Licenses, and WE CONDITION our grant of the applications in File Nos. SCL-ASG-20050304-00003 and SCL-T/C-20050304-00005 on the commitments in the Agreement, as set forth below. The commitments in the Agreement address the Executive Branch's concerns regarding national security, law enforcement, and public safety. We find no additional national security, law enforcement or public safety concerns.

Moreover, we do not find credible evidence that the transaction is likely to raise any significant competitive concern. Japan and the United Kingdom, the destination markets for the two cables, are World Trade Organization Members.<sup>14</sup> Thus, under the Commission's rules, VSNL USA is entitled to a rebuttable presumption that a grant of the applications does not present competitive concerns that may arise by virtue of VSNL's market power in India.<sup>15</sup> Crest, however, does not substantiate its claim that VSNL's purchase of Tyco Pacific raises substantial potential harms to competition, either vertical or horizontal. We find that the transaction will not result in a significant increase in concentration on the U.S.-Japan or U.S.-U.K. routes.<sup>16</sup> The record does not support the contention that whoever owns Tyco Pacific – Tyco, VSNL, or some third entity – would have market power in the transpacific international transport market for the Pacific Ocean Region.<sup>17</sup> No VSNL entity operates submarine cable facilities in Tyco Pacific's destination market of Japan or on the U.S.-Japan route.<sup>18</sup> Crest has not substantiated its

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the United Kingdom. Today's grant of the assignment application also authorizes VSNL USA to acquire from Tyco Telecom the California and Oregon cable stations, the portions of Tyco Pacific extending between the California and Oregon cable stations and between each station and the twelve-nautical-mile limit of the U.S. territorial sea, and Tyco Telecom's interest in the Tyco Pacific cable landing license. VSNL Bermuda will own the subsea portions of Tyco Pacific located in international waters, and VSNL Japan K.K., also a wholly-owned subsidiary of VSNL Singapore, will own the cable station in Japan.

Today's grant of the transfer of control application (File No. SCL-T/C-20050304-00005) authorizes Tyco to transfer control of Tyco Guam, including its joint interest in the Tyco Pacific cable landing license, as modified by grant of File No. SCL-MOD-20050304-00004, from Tyco to VSNL USA. Tyco Guam owns and operates the portion of Tyco Pacific located in the territory of Guam, including the cable station and the portion of Tyco Pacific extending between the cable station and one-half nautical mile beyond the twelve-nautical-mile limit of the U.S. territorial sea. Applications state that, post transaction, Tyco Guam will be renamed VSNL Guam.

<sup>14</sup> We also note that VSNL does not possess market power in either country.

<sup>15</sup> In the exceptional case where an application poses a very high risk to competition in the U.S. market because of a particular foreign carrier's market power in a cable's destination market, where the Commission's codified safeguards and other conditions would be ineffective, the Commission has reserved the right to deny the application. *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Market Entry and Regulation of Foreign Affiliated Entities*, IB Dockets Nos. 97-142, 95-22, Report and Order and Order on Reconsideration, 12 FCC Red 23891, 23913-14, 23916-17, 23933-35, 23950-55, paras. 51, 57, 93-96, 143-149 (1997).

<sup>16</sup> The applications state that VSNL and its affiliated companies currently control nominal amounts of capacity (substantially less than one percent of lit capacity) on each of the transatlantic and transpacific routes.

<sup>17</sup> In addition to Tyco Pacific, the largest cable in terms of capacity, numerous transpacific submarine cables, both private and common carrier, currently serve the U.S.-Japan route. These include TPC-5, Japan-U.S., China-U.S., PC-1 and, indirectly, Southern Cross. These cables, as well as transatlantic capacity and satellite capacity, can serve as substitutes for capacity carried over Tyco Pacific.

<sup>18</sup> VSNL also does not operate submarine facilities in Tyco Atlantic's destination market of the United Kingdom or on the U.S.-U.K. route. The U.S.-U.K. route is served by several cables, including the Apollo, Atlantic Crossing-1, Flag Atlantic, Hibernia, TAT-14, and Yellow cables.

claim that VSNL's purchase of Tyco Pacific and Tyco Atlantic would strengthen VSNL's existing ability to leverage its market power in the Indian market into the transatlantic or transpacific international transport markets to the detriment of U.S. consumers. As a result, we do not find record support for Crest's request that we deny the applications or that we grant the transfer and assignment applications conditioned on VSNL's divestiture of two Tyco Pacific fiber pairs and/or on the imposition of common carrier regulation, as Crest requests.<sup>19</sup> Further, no VSNL entity has or will have market power in the United Kingdom or Japan. Thus, pursuant to the Commission's rules, the applications are eligible for 45-day streamlined review.<sup>20</sup> Therefore, WE DENY Crest's petition.<sup>21</sup>

### Conditions and Requirements

Our grant of the applications IS SUBJECT TO the following conditions:

#### **Tyco Atlantic:**

*See Tycom Atlantic (US) Inc., Application for a License to Land and Operate a Private Fiber-Optic Cable System between the United States Mainland and the United Kingdom*, File No. SCL-LIC-20000308-00007, 15 FCC Rcd 14881 (Int'l Bur. 2000) (initial license), as modified by File Nos. SCL-MOD-20010201-00005, 16 FCC Rcd 3600 (Int'l Bur. 2001) (changes to U.K. landing), SCL-MOD-20020412-00016 and SCL-MOD-20020412-00017, 17 FCC Rcd 12916 (Int'l Bur. 2002) (modification of conditions for Tyco Atlantic cable). VSNL USA shall comply with the requirements of section 1.768 (notifications and prior approval for submarine cable landing licensees that are or propose to become affiliated with a foreign carrier), 47 C.F.R. § 1.768. VSNL USA shall notify the Commission of the consummation of the transaction within 30 days of consummation, and further shall notify the Commission of the new name given to Tyco Atlantic.

Today's authorization to assign the Tyco Atlantic cable landing license to VSNL USA, as well as the assigned Tyco Atlantic cable landing license itself, ARE CONDITIONED on compliance with the provisions of the Agreement between VSNL, VSNL USA, and VSNL America, on the one hand, and the DOJ/FBI, DHS and DOD, on the other hand, which Agreement is designed to address national security, law enforcement, and public safety concerns of DHS, DOJ, FBI and DOD regarding the authority granted herein. Nothing in this 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 Commission's implementing regulations.

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<sup>19</sup> As noted above, *see supra* note 9, Crest failed to make its requests for alternative relief until it filed its reply. As discussed *infra* at note 21, we deny these alternative requests on procedural grounds. In any case, we note that we retain the ability to impose common carrier regulation under the existing conditions of the Tyco Pacific cable landing license, if we should need to do so in the future. *See Tycom Networks (US) Inc. and Tycom Networks (Guam) L.L.C., Application for a License to Land and Operate a Private Fiber-Optic Cable System between the United States Mainland, Hawaii, Guam, and Japan*, File No. SCL-LIC-20000717-00026, 15 FCC Rcd 24078, 24086 (Int'l Bur. 2000) ("Pursuant to Section 35 of the Cable Landing License Act, 47 U.S.C. § 35, Executive Order No. 10530, as amended, and Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, the Commission reserves the right to impose common carrier or common-carrier-like regulation on the operations of the cable system if it finds that the public interest so requires"); *see also* 47 C.F.R. § 1.767(g)(10) (common carrier condition).

<sup>20</sup> *See* 47 C.F.R. § 1.767(k).

<sup>21</sup> We deny on procedural grounds Crest's requests for alternative relief – asking for VSNL's divestiture of two Tyco Pacific fiber pairs and/or imposition of common carrier regulation on the Tyco Pacific cable – first raised by Crest in its reply. *See* 47 C.F.R. § 1.45(c) (reply shall be limited to matters raised in the opposition); *see also supra* notes 9 and 19.

**Tyco Pacific:**

*See Tycom Networks (US) Inc. and Tycom Networks (Guam) L.L.C., Application for a License to Land and Operate a Private Fiber-Optic Cable System between the United States Mainland, Hawaii, Guam, and Japan*, File No. SCL-LIC-20000717-00026, 15 FCC Rcd 24078 (Int'l Bur. 2000) (initial license), as modified by File Nos. SCL-MOD-20010326-00010, 16 FCC Rcd 11778 (Int'l Bur. 2001) (changes to cable landing stations), SCL-MOD-20020412-00027 and SCL-MOD-20020412-00028, 17 FCC Rcd 12916 (PD/Int'l Bur. 2002) (modification of conditions), File No. SCL-MOD-20020826-00079, 17 FCC Rcd 22508, 22511 (PD/Int'l Bur. 2002) (approving new southern segment), and File No. SCL-MOD-20050304-00004 (PD/Int'l Bur. Apr. 29, 2005) (removing original southern segment). VSNL USA shall comply with the requirements of section 1.768 (notifications and prior approval for submarine cable landing licensees that are or propose to become affiliated with a foreign carrier), 47 C.F.R. § 1.768. VSNL USA shall notify the Commission of the consummation of the transaction within 30 days of consummation, and further shall notify the Commission of the new name given to Tyco Pacific.

Today's authorization to assign Tyco Telecom's interests in the Tyco Pacific cable landing license, and to transfer control of Tyco Guam, to VSNL USA, as well as the Tyco Pacific cable landing license itself, as modified, ARE CONDITIONED on compliance with the provisions of the Agreement between VSNL, VSNL USA, and VSNL America, on the one hand, and the DOJ/FBI, DHS and DOD, on the other hand, which Agreement is designed to address national security, law enforcement, and public safety concerns of DHS, DOJ, FBI and DOD regarding the authority granted herein. Nothing in this 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 Commission's implementing regulations.

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