



PUBLIC NOTICE

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Report No. SCL-00085S

Tuesday May 5, 2009

STREAMLINED SUBMARINE CABLE LANDING LICENSE APPLICATIONS ACCEPTED FOR FILING

Unless otherwise specified, the following procedures apply to the applications listed below:

The applications listed below have been found, upon initial review, to be acceptable for filing and subject to the streamlined processing procedures set forth in section 1.767 of the Commission's rules, 47 C.F.R. § 1.767. Pursuant to the Submarine Cable Landing License Act, 47 U.S.C. §§ 34-39, and Executive Order No. 10530, reprinted as amended in 3 U.S.C. § 301, each applicant seeks: (a) the grant of a cable landing licensee; (b) the modification of a cable landing license; and/or (c) the assignment or transfer of control of an interest in a submarine cable landing license.

Pursuant to its decision 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) and section 1.767 of the rules, the Commission will take action upon these applications within forty-five (45) days after release of this public notice, unless the Commission has informed the applicant in writing that the application, upon further examination, has been deemed ineligible for streamlined processing.

Ex parte communications between outside parties and Commission staff concerning these applications are permitted subject to the Commission's rules for "permit-but-disclose proceedings." See 47 C.F.R. § 1.1206. Filings relating to this application must be received within 14 days of this notice. Such filings will not necessarily result in an application being deemed ineligible for streamlined processing.

Copies of all applications listed here are available for public inspection in the FCC Reference and Information Center, located in room CY-A257 at the Portals 2 building, 445 12th Street, SW, Washington DC 20554. The center can be contacted at (202) 418-0270. People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty). All applications listed are subject to further consideration and review, and may be returned and/or dismissed if not found to be in accordance with the Commission's rules, regulations, and other requirements.

Submarine Cable Landing License

Application filed by Hannon Armstrong KCS Funding, LLC ("Hannon Armstrong") and Truestone, LLC ("Truestone") (together, the "Applicants") for authority to land and operate a non-common carrier fiber-optic submarine cable network connecting the U.S. Army Kwajalein Atoll/Reagan Test Site, in the Republic of the Marshall Islands ("RMI"), with Guam, the HANTRU1 System ("HANTRU1"). This will be the first fiber-optic facility to connect the RMI with Guam and beyond.

HANTRU1 will consist of one (1) segment of digital fiber-optic cable connecting the U.S. Army Kwajalein Atoll/Reagan Test Site with Guam. It will consist of two optical fiber pairs, with an initial configuration capacity of 20 Gbps (protected OC-192; 2 wavelengths) and a final design capacity of 160 Gbps (16 wavelengths). HANTRU1 will land on Kwajalein Atoll in the RMI at a cable station to be owned and operated by the U.S. Army Kwajalein Atoll/Reagan Test Site, and at an existing cable station owned and operated by Tata Communications (US) Inc. ("Tata") at Piti, Guam.

HANTRU1 will also include two branching unites (also owned by Hannon Armstrong and operated by Truestone) that will connect to two separate cable systems owned by the Federated States of Micronesia Telecommunications Corporation ("FSMTC") and the Marshall Islands National Telecommunications Authority ("MINTA"). FSMTC has contracted separately with Tyco Telecommunications (US) Inc. ("Tyco Telecom") for the supply and installation of a system between the western branching unit and Pohnpei, in the Federated States of Micronesia ("FSM System"). MINTA has contracted separately with Tyco Telecom for the supply and installation of a system between the eastern branching unit and Majuro, in the Republic of the Marshall Islands ("RMI System"). FSMTC and MINTA will own, control, construct, and operate the FSM System and RMI System, respectively. FSMTC and MINTA have each entered into IRU agreements with Hannon Armstrong to provide onward dark-fiber connectivity to Guam.

Hannon Armstrong will own the wet-link portion of HANTRU1, as well as the Kwajalein Atoll and Guam shore-end portions of the cable. Hannon Armstrong has granted an IRU to Truestone, which has, in turn, entered into an agreement with the Defense Information Systems Agency ("DISA") to provide service for the benefit of the U.S. Army Kwajalein Atoll/Reagan Test Site. Truestone will operate these facilities under a management agreement with Hannon Armstrong. The U.S. Department of the Army will outfit, refurbish, own, and operate two existing buildings to serve as the cable station at the U.S. Army Kwajalein Atoll/Reagan Test Site facilities on Kwajalein Atoll. Tata will continue to own and operate the existing cable station at Piti, Guam.

Applicants request a waiver of section 1.767(h)(1) so that they need not add Tata as a joint applicant. Section 1.767(h)(1) requires that "any entity that controls a cable landing station in the United States" shall be "applicants for, and licensees on, a cable landing license." 47 C.F.R. § 1.767(h)(1). According to the Applicants, Tata will not be able to affect significantly the operation of HANTRU1 and it is not necessary for Tata to be a licensee to ensure compliance with the Cable Landing License Act, the Commission's rules or the terms of the cable landing license. Application at 19. According to the Applicants, Tata will provide certain limited services that would not provide it with any ability to affect significantly HANTRU1's operation. Truestone will enter into an agreement with Tata granting HANTRU1 an IRU for Tata's beach manhole at Agat, and for conduit connecting the beach manhole with Tata's Piti cable station. Tata will also provide Truestone with collocation space in the cable station building. Id. at 20. In the event Hannon Armstrong terminates its management agreement with Truestone, Hannon Armstrong has the right to step into Truestone's agreement with Tata to ensure continuity of service to DISA and the U.S. Army.

Truestone will have exclusive control over and access to HANTRU1 terminal equipment, which it will collocate in Tata's Piti cable station building. Equipment for HANTRU1 will be separately caged and controlled exclusively by the Applicants from their network operations center in Rockville, Maryland. The Applicants will retain operational authority over their facilities and provide direction to Tata in all matters relating to HANTRU1. Pursuant to the agreement between Truestone and Tata, Tata will perform certain limited "remote hands" monitoring, testing, and maintenance services on the Applicants' equipment, which would be performed in accordance with Truestone's directions.

The Applicants propose to operate HANTRU1 on a non-common carrier basis. The Application states that HANTRU1 will provide bulk capacity to a single customer, the DITCO-PAC/PL711 arm of DISA, on individually negotiated terms and conditions. Application at 6-7. HANTRU1 is custom-designed to meet the needs of the U.S. Army Space and Missile Defense Command at its facilities on Kwajalein Atoll. Applicants also state that HANTRU1 will not have sufficient market power to warrant common carrier regulation. Id. at 10. Although HANTRU1 will be the first fiber-optic facility to connect the RMI with Guam and beyond, Applicants state that it will not function as a bottleneck facility so as to warrant common carrier treatment because existing satellite facilities will provide competitive alternatives. Id. at 11.

Hannon Armstrong is directly owned by its sole member, Hannon Armstrong Capital, LLC ("HAC"). HAC has two 10-percent-or-greater owners: Jeffrey W. Eckel (20% membership interest) and MissionPoint HA Parallel Fund L.P. ("Parallel Fund LP") (75% membership interest).

Parallel Fund LP has two limited partners: MissionPoint HA Parallel Fund Corp. ("Limited Partner") (11%) and MissionPoint HA Parallel Fund, LLC ("HoldCo I") (89%). Limited Partner is wholly owned by Mission Point Parallel Fund II LLC (HoldCo II). No member of HoldCo I or HoldCo II holds indirectly a ten-percent-or-greater interest in Hannon Armstrong. The general partner of Parallel Fund LP is MPCP I GP, LLC ("General Partner"). General Partner maintains a "Carried Interest" which entitles it to receive 20 percent of the return generated by Parallel Fund LP, provided that Limited Partner and HoldCo I first realize a return of capital and a targeted return. In exchange for this carried interest, General Partner manages the business affairs of Parallel Fund LP. General Partner may be removed at any time by vote of not less than 75 percent of the investors in HoldCo I and HoldCo II.

Four parties hold 10-percent-or-greater voting interests in General Partner: MissionPoint Capital Partners LLC ("MissionPoint") (which manages General Partner) and the three members of MissionPoint's controlling Executive Committee. Each committee member is a U.S. citizen and holds one-third of the voting interests in MissionPoint, and, in turn, in General Partner, Parallel Fund LP, HAC and Hannon Armstrong.

Truestone is a direct, wholly-owned subsidiary of Qivliq, LLC ("Qivliq"), an Alaska Native Corporation. Qivliq is an indirect, wholly-owned subsidiary of NANA Regional Corporation ("NANA"), which also is an Alaska Native Corporation. NANA has no 10-percent-or-greater shareholders.

Applicants agree to accept and abide by the routine conditions specified in section 1.767(g) of the Commission's rules, 47 C.F.R. § 1.767(g).

REMINDERS:

Applicants must certify that neither the applicant nor any party to the application is subject to a denial of federal benefits by federal and/or state courts under authority granted in 21 U.S.C. § 862. See C.F.R. §§ 1.2001-1.2003.

The Commission's rules applicable to submarine cable landing licenses (47 C.F.R. §§ 1.767, 1.768) are available at <http://www.fcc.gov/ib/td/pf/telecomrules.html>. See also http://hraunfoss.fcc.gov/edoc_public/attachmatch/DA-02-5981A1.pdf for a March 13, 2002 Public Notice; http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-01-332A1.pdf for the December 14, 2001 Report and Order.

By this notice, we inform the public that submarine cable landing license applications and international section 214 applications that are part of larger transactions involving multiple Commission licenses or authorizations may involve "extraordinary circumstances" as referenced in Review of Commission Consideration of Applications under the Cable Landing License Act, Report and Order, 16 FCC Rcd 22167 (2001) and Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891 (1997), paras. 327-28, Order on Reconsideration, 15 FCC Rcd 18158 (2000). Additionally, these extraordinary circumstances may result where Executive Branch agencies petition the Commission to defer decision on certain transactions pending the resolution of potential national security, law enforcement, foreign policy and trade policy issues. Accordingly, these applications may not be acted on within the 90-day review period that the Commission has established as the period of time normally required to reach a decision on non-streamlined cable landing licenses and international section 214 applications. This notice shall serve as public notice to applicants that, in these circumstances, additional time may be required for Commission review and final action. No additional formal public notice will be provided routinely with respect to specific applications in the event that the applicable review period extends beyond 90 days.