

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

*In the Matter of*

PPC 1 LIMITED

and

PPC 1 (US) INC.,

Application Modify the Cable Landing License  
for

THE PPC 1 SYSTEM

File No. SCL-MOD-2009-\_\_\_\_\_

**APPLICATION FOR MODIFICATION OF CABLE LANDING LICENSE—  
STREAMLINED PROCESSING REQUESTED**

Pursuant to Section 1.767(e) of the Commission’s rules, PPC 1 Limited (“PPC 1 Parent,” FRN 0017368408) and PPC 1 (US), Inc. (“PPC 1 US,” FRN 0017368432) (together, “Licensees”), hereby jointly seek authority to modify the cable landing license for the private fiber-optic submarine cable network known as PPC 1 (the “PPC 1 System”).<sup>1</sup> Specifically, the Licensees seek to exclude the PNG Spur from the system description and to remove the Madang, Papua New Guinea landing point from the list of the PPC 1 System’s approved landing points, as PPC 1 Parent has entered into an agreement to sell the PNG Spur and will consequently

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<sup>1</sup> 47 C.F.R. § 1.767(e); *Actions Taken Under Cable Landing License Act, Public Notice*, 23 FCC Rcd 13,419 (2008) (granting cable landing license for PPC 1) (“*PPC 1 Cable Landing License*”).

relinquish all ownership, control, and operational interests in the PNG Spur as a consequence of the transaction.

## **I. OVERVIEW AND CONSEQUENCES OF THE SALE OF THE PNG SPUR**

As predicted in the original cable landing license application, PPC 1 Parent has entered into an agreement with Telikom PNG Limited (“Telikom PNG”) to transfer ownership of the PNG Spur—a segment of undersea cable connecting the Madang, Papua New Guinea, cable station to a branching unit on PPC 1’s Australia-Guam Trunk—to Telikom PNG.<sup>2</sup>

Consequently, PPC 1 Parent and its affiliates will no longer have any ownership interest in the PNG Spur or have any ability to control or operate the PNG Spur or control traffic thereon.

None of the facilities to be sold is located in the United States or its territories (including the U.S. territorial sea). Following the consummation of the sale of the PNG Spur, PPC 1 Parent will continue to own, control, and operate the branching unit on PPC 1 System’s Australia-Guam Trunk, which will allow connection of the PNG Spur to the Australia-Guam Trunk. In a separate agreement, PPC 1 Parent will sell to Telikom PNG an indefeasible right of use on the PPC 1 System, permitting Telikom PNG to originate traffic to, and terminate traffic from, points beyond Papua New Guinea.

The Licensees believe that modification of the PPC 1 System’s cable landing license to exclude the PNG Spur and the Papua New Guinea landing point from the scope of the PPC 1 System’s cable landing license is consistent with the Cable Landing License Act, which govern

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<sup>2</sup> 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, File No. SCL-LIC-20080213-00001, at 8 n.19 (filed Feb. 11, 2008) (“PPC 1 Application”) (stating that “[a]t a future date or dates, PPC 1 Limited will likely seek to transfer ownership of the PNG Spur to Telikom PNG.”). As the Licensees have advised the Commission, Telikom PNG already owns the Madang Cable Station. *See* PPC 1 Application, at 8.

undersea cables landing in the United States and its territories but not interconnecting facilities outside the United States and its territories.<sup>3</sup> The Licensees believe that this modification is also consistent with the Commission’s recent action in licensing the HANTRU1 system without requiring that the Republic of the Marshall Islands spur (owned by the Marshall Islands National Telecommunications Authority (“MINTA”)) or the Federated States of Micronesia Spur (owned by the Federated States of Micronesia Telecommunications Corporation (“FSMTC”))—both of which will interconnect at sea with HANTRU1 via branching units controlled by HANTRU1’s licensees—to be joint licensees for HANTRU1.<sup>4</sup>

Although the Licensee’s believe that Telikom PNG’s ownership and operation of the PNG Spur is beyond the scope of the Cable Landing License Act and the Commission’s implementing rules, they also recognize that Telikom PNG may require separate authority under Section 214 of the Communications Act of 1934, as amended, and Section 63.18(e) of the Commission’s rules, to the extent it were to provide telecommunications services to or from the United States.

The Licensees request streamlined processing for this application pursuant to Section 1.767(k)(2) of the Commission’s rules. The Licensees’ foreign affiliates lack market power in

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<sup>3</sup> 47 U.S.C. § 34 (providing that “[n]o person shall land or operate in the United States any submarine cable directly or indirectly connecting the United States with any foreign country, or connecting one portion of the United States with any other portion thereof, unless a written license to land or operate such cable has been issued by the President of the United States.”).

<sup>4</sup> *See Actions Taken Under Cable Landing License Act, Public Notice*, 24 FCC Rcd. 7828 (Int’l Bur. 2009) (granting a cable landing license for HANTRU1 and noting that “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 KCS Funding, LLC, and Truestone, LLC, Application for a License to Land and Operate a Private Fiber-Optic Cable System Connecting the U.S. Army Kwajalein Atoll/Reagan Test Site, in the Republic of the Marshall Islands, and Guam for the HANTRU1 System, File No. SCL-LIC-20090302-00005, at 4-5 (filed Feb. 25, 2009).

the PPC 1 System's (post-consummation) destination market of Australia, and the application raises no competition or other public-interest concerns.

## **II. COMPLIANCE WITH SECTION 1.767**

In accordance with Section 1.767 of the Commission's rules and Executive Order No. 10,530, the Licensees submit the following information:

### **(1) Licensees' Names, Addresses and Telephone Numbers<sup>5</sup>**

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

PPC 1 LIMITED  
Crawford House  
50 Cedar Avenue  
Hamilton HM 11  
Bermuda  
+61 7 3233 9800 tel  
+61 7 3233 9883 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 9883 fax

### **(2) Licensees' Places of Incorporation<sup>6</sup>**

PPC 1 Parent is a Bermuda limited-liability company. PPC 1 US is a Delaware corporation.

### **(3) Contact Information<sup>7</sup>**

The Commission should address correspondence regarding this application to:

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<sup>5</sup> See 47 C.F.R. § 1.767(a)(1).

<sup>6</sup> See *id.*, § 1.767(a)(2).

<sup>7</sup> See *id.*, § 1.767(a)(3).

Peter Burrows  
Legal Counsel  
PIPE NETWORKS LIMITED  
Level 17, PIPE Networks House  
127 Creek Street  
Brisbane QLD 4000  
Australia  
+61 7 3233 9827 tel  
+61 7 3233 9868 fax  
peter.burrows@.pipeinternational.com

*with a copy to:*

Kent D. Bressie  
WILTSHIRE & GRANNIS LLP  
1200 18th Street, N.W., Suite 1200  
Washington, D.C. 20036-2516  
+1 202 730 1337 tel  
+1 202 730 1301 fax  
kbressie@wiltshiregrannis.com

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

(4) **System Description**<sup>8</sup>

Following the sale of the PNG Spur, the PPC 1 System will consist of the Australia-Guam Trunk, connecting suburban Sydney, Australia, with Guam. The PPC 1 System is expected to enter into commercial service in the fourth quarter of 2009. In all other respects, the PPC 1 System description has not changed materially since the original application was filed and approved by the Commission.<sup>9</sup>

(5) **Landing Points**<sup>10</sup>

Following the sale of the PNG Spur, the PPC 1 System's landing points will no longer include the Madang, Papua New Guinea landing. In all other respects, the PPC 1 System's

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<sup>8</sup> See *id.*, § 1.767(a)(4).

<sup>9</sup> See PPC 1 Application at 3-4; *PPC 1 Cable Landing License*, 23 FCC Rcd. at 13,420.

<sup>10</sup> See *id.*, § 1.767(a)(5).

landing points have not changed materially since the original application was filed and approved by the Commission.<sup>11</sup> Maps of these specific landing points were provided in Exhibit B to the original application.<sup>12</sup>

(6) **Regulatory Status**<sup>13</sup>

The facts supporting the non-common-carrier status of the PPC 1 System and the Commission's regulatory classification thereof have not changed materially since the original application, supported by supplementary information, was filed and approved by the Commission.<sup>14</sup>

(7) **Cable Ownership Information**<sup>15</sup>

The ownership of the PPC 1 System has not changed materially since the original application, supported by supplementary information, was filed and approved by the Commission.<sup>16</sup> The sale of the PNG Spur will not change this information, as the PNG Spur will no longer comprise part of the PPC 1 System.

(8) **Corporate Control and Affiliate Information**<sup>17</sup>

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

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<sup>11</sup> See PPC 1 Application at 5-7; *PPC 1 Cable Landing License*, 23 FCC Rcd. at 13,420.

<sup>12</sup> See PPC 1 Application, exh. B.

<sup>13</sup> See *id.*, § 1.767(a)(6).

<sup>14</sup> 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 Cable Landing License*, 23 FCC Rcd. at 13,420-21.

<sup>15</sup> See 47 C.F.R. § 1.767(a)(7).

<sup>16</sup> See PPC 1 Application at 8-10; *PPC 1 Cable Landing License*, 23 FCC Rcd. at 13,420.

<sup>17</sup> See 47 C.F.R. § 1.767(a)(8).

(i) **Certification Regarding Ownership, Citizenship, Principal Businesses, and Interlocking Directorates**<sup>18</sup>

By the signature below, the Licensees certify respectively to the following. PPC 1 US is a direct, wholly-owned subsidiary of PPC 1 Parent, the details of which are described in part II(1) above. PPC 1 Parent is a direct, wholly-owned subsidiary of PIPE International, an Australian proprietary company limited by shares, organized under the laws of Queensland, Australia, and engaged in the business of telecommunications. PIPE International is a direct, wholly-owned subsidiary of PIPE Networks Limited (“PIPE Networks”), an Australian public company limited by shares, organized under the laws of Queensland, Australia, and engaged in the business of telecommunications. PIPE International and PIPE Networks share the same address:

Level 17, PIPE Networks House  
127 Creek Street  
Brisbane QLD 4000  
Australia

PIPE Networks’ shares trade publicly on the Australian Stock Exchange under the symbol PWK and are widely held.

PIPE Networks has two 10-percent-or-greater direct or indirect shareholders. *First*, Stephen Ross Baxter, an Australian citizen, owns approximately 15 percent of PIPE Networks’ ordinary shares. Mr. Baxter is a director and a co-founder of PIPE Networks. His address is as follows:

2503 Mardell Way  
Mountain View CA 94043  
United States of America

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<sup>18</sup> See *id.*, § 63.18(h).

*Second*, Bevan Slattery, an Australian citizen, owns approximately 15 percent of PIPE Networks' ordinary shares. Mr. Slattery is Chief Executive Officer, a director, and a co-founder of PIPE Networks. His address is as follows:

Unit 2, 670-680 Jesmond Road  
Fig Tree Pocket  
QLD 4069  
Australia

PPC 1 Parent and PPC 1 US have the following interlocking directorates with foreign carriers:

- Stephen Baxter, who is a director of both PPC 1 Parent and PPC 1 US, is also a director of PIPE Networks and PIPE International;
- Gregory Baynton, who is a director of both PPC 1 Parent and PPC 1 US, is also a director of PIPE Networks and PIPE International;
- Roger Clarke, who is Chairman of both PPC 1 Parent and PPC 1 US, is also Chairman of PIPE Networks and PIPE International;
- Jason Sinclair, who is a director of both PPC 1 Parent and PPC 1 US, is also a director of PIPE Networks and PIPE International; and
- Bevan Slattery, who is a director and President of PPC 1 US and is also Managing Director of PPC 1 Parent, PIPE Networks and PIPE International.

(ii) **Certification Regarding Foreign Carrier Status and Foreign Affiliations<sup>19</sup>**

By the signature below, PPC 1 Parent certifies that it is a foreign carrier and affiliated with the following Australian foreign carriers: (1) PIPE International, and (2) PIPE Networks.

By the signature below, PPC 1 US certifies that it is not a foreign carrier and that it is affiliated with the following Australian foreign carriers: (1) PIPE International, and (2) PIPE Networks.

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<sup>19</sup> See *id.*, §§ 1.767(a)(8), 63.18(i).



(iii) **Certification Regarding Destination Markets**<sup>20</sup>

By the signature below, PPC 1 Parent certifies to the following: (1) it is not a foreign carrier in the PPC 1 System's destination market, Australia; (2) PIPE International directly controls PPC 1 Parent, while PIPE Networks directly controls PIPE International, an Australian carrier; and (3) no grouping of two or more foreign carriers (or parties that control foreign carriers) own, in aggregate, more than 25 percent of PPC 1 Parent and are parties to, or beneficiaries of, a contractual relation affecting the provision or marketing of international basic telecommunications services in the United States.

By the signature below, PPC 1 US certifies to the following: (1) it is not a foreign carrier in the PPC 1 System's destination market, Australia; (2) it does not control a foreign carrier in the PPC 1 System's destination market, Australia; (3) PIPE International indirectly controls PPC 1 US, while PIPE Networks directly controls PIPE International, an Australian carrier; and (4) no grouping of two or more foreign carriers (or parties that control foreign carriers) own, in aggregate, more than 25 percent of PPC 1 US and are parties to, or beneficiaries of, a contractual relation affecting the provision or marketing of international basic telecommunications in the United States.

(iv) **Certification Regarding WTO Status, Market Power, and the Effective Competitive Opportunities Test**<sup>21</sup>

By the signature below, the Licensees certify that Australia—the only country identified in response to Section 1.767(a)(8) and 63.18(j) of the Commission's rules—is a member of the World Trade Organization.<sup>22</sup>

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<sup>20</sup> See *id.*, §§ 1.767(a)(8), 63.18(j).

<sup>21</sup> See *id.*, §§ 1.767(a)(8), 63.18(k).

<sup>22</sup> 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](http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm)>.

(v) **Certification Regarding the Anti-Drug Abuse Act of 1988**<sup>23</sup>

By the signature below, the Licensees 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**<sup>24</sup>

By the signature below, the Licensees certify that they accept and will abide by the routine conditions specified in Section 1.767(g) of the Commission's rules.

**II. CERTIFICATION REGARDING SERVICE TO EXECUTIVE BRANCH AGENCIES**

Pursuant to Section 1.767(j) of the Commission's rules,<sup>25</sup> the Licensees 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. The Licensees' counsel has certified such service in the certificate of service attached to this application.

**III. REQUEST FOR STREAMLINED PROCESSING**

The Licensees 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 the PPC 1 System's destination markets.<sup>26</sup> The application raises no competition or public interest concerns that would merit consideration outside the Commission's streamlined review process. Each of the

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<sup>23</sup> See 47 C.F.R. §§ 1.767(a)(8), 63.18(o).

<sup>24</sup> See *id.*, §§ 1.767(a)(9), (g).

<sup>25</sup> See *id.*, § 1.767(j).

<sup>26</sup> See *id.*, § 1.767(k)(2).

foreign carriers and affiliates in PPC 1's identified above in response to Section 1.767(a)(8) and 63.18(j) of the Commission's rules qualifies for a presumption of non-dominance.<sup>27</sup>

- PIPE International is a newly-formed Australian carrier created for the purpose of landing and operating the PPC 1 system in Australia and holding company created for the purpose of owning the PPC 1 cable station in suburban Sydney and the equity interests in PPC 1 Parent, and PPC 1 US; as such, it has zero percent market share in each of Australia's international transport and local access markets.
- PIPE Networks holds a telecommunications Carrier License issued by the Australian Communications 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 Australia's local access markets, where it competes vigorously with other carriers, including the dominant incumbent, Telstra.

None of these three companies appears on the Commission's list of foreign telecommunications carriers presumed to possess market power in foreign telecommunications markets.<sup>28</sup> Moreover, streamlined processing is appropriate under the U.S.-Australia Free Trade Agreement, which 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.<sup>29</sup>

By the signature below, the Licensees certify that they are aware of and will comply with the requirements of the Coastal Zone Management Act of 1972, as amended ("CZMA"), and the

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<sup>27</sup> See *id.*, §§ 63.10(a)(3), 63.12(c)(1)(ii).

<sup>28</sup> 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).

<sup>29</sup> See U.S.-Australia Free Trade Agreement, arts. 11.1, 11.2 (entered into force Jan. 1, 2005).

National Oceanic and Atmospheric Administration's CZMA implementing rules, codified at 15 C.F.R. Part 930 Subpart D.<sup>30</sup>

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<sup>30</sup> See *Federal Communications Commission, Modification of the Rules and Procedures Governing the Provision of International Telecommunications Service, Notice of Final Rule*, 72 Fed. Reg. 54,365 (Sept. 25, 2007) (establishing an effective date of October 25, 2007, for the note to Section 1.767(a)(10) but not Section 1.767(k)(4), which remains subject to approval by the Office of Management and Budget). In certifying its awareness of and compliance with the CZMA, the Licensees do not concede that the legality or policy-appropriateness of the Commission's new CZMA rules, given the pending challenge by the North American Submarine Cable Association ("NASCA") to the Commission's CZMA-related findings, conclusions, and rules adopted in the Commission's Report and Order, FCC 07-118, in IB Docket No. 04-47 (released June 22, 2007). See NASCA Consolidated Petition for Reconsideration and Petition to Defer Effective Date, IB Docket No. 04-47 (filed Oct. 25, 2007).

## CONCLUSION

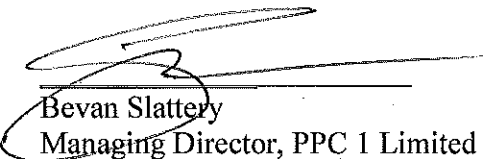
For the foregoing reasons, the Commission should expeditiously grant this modification application pursuant to streamlined processing.

Respectfully submitted,

**PPC 1 LIMITED  
PPC 1 (US), INC.**

Kent D. Bressie  
WILTSHIRE & GRANNIS LLP  
1200 18th Street, N.W.  
Suite 1200  
Washington, D.C. 20036-2516  
+1 202 730 1337 tel

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



Bevan Slattery  
Managing Director, PPC 1 Limited  
President, PPC 1 (US), Inc.

Level 17, PIPE Networks House  
127 Creek Street  
Brisbane QLD 4000  
Australia  
+61 7 3233 9827 tel

10 September 2009

**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 Modification of Cable Landing License of PPC 1 Limited and PPC 1 (US), Inc. by hand- or overnight delivery on this 10th day of September 2009, to the following:

Ambassador Philip Verveer  
U.S. Coordinator  
Int'l Communications & Information Policy  
Bureau of Economic and Business Affairs  
U.S. DEPARTMENT OF STATE  
EB/CIP : Room 4826  
2201 C Street, N.W.  
Washington, D.C. 20520-5818

Kathy Smith  
Chief Counsel  
U.S. DEPARTMENT OF COMMERCE/NTIA  
14th Street and Constitution Avenue, N.W.  
Room 4713  
Washington, D.C. 20230

Hillary Morgan  
Deputy General Counsel, Regulatory &  
International Law  
Code RGC  
DEFENSE INFORMATION SYSTEMS AGENCY  
701 South Courthouse Road  
Arlington, Virginia 22204



Kent D. Bressie