Common Carrier
Fiber Optic Cable Systems

The Commission issues a Memorandum Opinion and Order regarding the Commission's general policy direction on transatlantic fiber optic submarine cable systems as proposed in applications filed by Tel-Optik Limited and Submarine Lightwave Cable Company. *—Tel-Optik Limited*

FCC 85-99

**BEFORE THE**

# FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

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| In the Matter of<br>Tel-Optik Limited | File Nos.<br>I-S-C-L-84-002<br>I-S-C-L-84-003 |
| Application for a license to land and operate in the United States a submarine cable extending between the United States and the United Kingdom | |
| In the Matter of<br>Submarine Lightwave Cable Company | File No.<br>S-C-L-85-001 |
| Application for a license to land and operate in the United States a high capacity fiber optic digital submarine cable extending between the United States and other North American countries, on the one hand, and European countries, on the other hand | |

MEMORANDUM OPINION AND ORDER

Adopted: March 1, 1985; Released April 5, 1985

BY THE COMMISSION:

1. The Commission has before it applications filed by Tel-Optik Limited ("Tel-Optik") and Submarine Lightwave Cable Company ("SLC")

pursuant to the provisions of "An Act relating to the landing and operation of submarine cables in the United States," 47 U.S.C. §§ 34-39 (1964); (hereafter referred to as the Cable Landing License Act) for licenses to land and operate in the United States high capacity fiber optic digital transatlantic submarine cable systems. Both applicants propose privately owned systems in which they would sell or lease capacity to private users on a non-common carrier basis. Tel-Optik has filed applications for two fiber optic cables; SLC has filed an application for one fiber optic cable.

2. The two Tel-Optik applications were placed on public notice on October 3, 1984. Comments were filed by the National Telecommunications and Information Administration ("NTIA"), American Telephone and Telegraph Company ("AT&T"), Communications Satellite Corporation ("Comsat"),[1] and RCA Global Communications, Inc. ("RCA"). Tel-Optik filed consolidated reply comments. Comsat also filed reply comments and ITT World Communications Inc. ("ITT") filed a partial opposition to AT&T's comments.

3. The SLC application was placed on public notice on October 24, 1984. Comments were filed by NTIA, AT&T, Comsat, ITT, RCA and Tel-Optik. Both SLC and Comsat filed reply comments.

4. The applications before us present the Commission and the executive branch an opportunity to continue U.S. government support in the development of a diversity of international communications technologies and modes and to achieve more meaningful competition in the provision of North Atlantic transmission facilities. We believe that competition in the form of private submarine cable transmission facilities will result in the same desirable user-benefits now available as a result of our domestic satellite transponder sales policy[2] and we find no public interest reason to require these facilities to be made available on a common carrier basis. The purpose of this order is to provide the Commission's general policy direction on alternative submarine cable systems for the North Atlantic region, to reach preliminary conclusions regarding the particular applications before us, and to solicit the approval of the Secretary of State before taking any final action on the applications.

### *I. The Applications*

5. Tel-Optik is a U.S. corporation in which all directors, officers and stockholders are U.S. citizens with the exception of one Canadian citizen

[1] Comsat filed a motion to file comments one business day out of time because of the need to secure final review of its pleading by Comsat senior management and word processing delays caused by the preparation of another pleading. We will grant this motion and accept the comments.

[2] Domestic Fixed-Satellite Transponder Sales, 90 FCC 2d 1238 (1982), *aff'd*, World Communications, Inc. v. FCC, 735 F.2d 1465 (D.C. Cir. 1984).

serving as an officer, director and stockholder. Tel-Optik has entered into an agreement with Cable and Wireless PLC ("C&W"), a public limited company organized under the laws of the United Kingdom, for the purpose of constructing, owning and operating two fiber optic cables between the United States and the United Kingdom. Tel-Optik and Cable & Wireless each owns fifty percent of this joint venture. The proposed system, to be called "Market-Link," will consist of a northern cable ("PTAT-1") to be placed in operation in 1989, and a southern cable ("PTAT-2") to be placed in operation in 1992. Each cable will contain three working optical fiber pairs and associated regenerators and supervisory circuits. Each fiber pair will be capable of carrying a minimum of two basic system modules of 140 Mbps. A basic system module for the Market-Link system will consist of a 139,264,000 bps both-way digital line section with interface in accordance with CCITT Recommendation G. 703 (Yellow Book Vol. III-Fascicle III-3, November, 1980).

6. The proposed system has been divided into segments for purposes of determining ownership and operational responsibility. Segment A will consist of all submersible plant of each cable between the U.S. and U.K. beach joints;[3] Segment B will consist of all plant between the beach joints and interface points in the United States for each cable and all land and buildings in the United States associated with each cable; Segment C will consist of all plant between the beach joints and interface points in the United Kingdom for each cable and all land and buildings in the United Kingdom associated with each cable.[4] Segment A will be owned in common in equal undivided shares by Tel-Optik and C&W. Segment B will be owned by Tel-Optik and Segment C will be owned by C&W. According to Tel-Optik, C&W is already authorized to install and operate the proposed cables in England through its wholly owned subsidiary, Mercury Communications, Ltd. ("Mercury"). Mercury will provide facilities over its own and other networks to enable Market-Link to be interconnected with terminals in the United Kingdom and Continental Europe. Tel-Optik expects to land both cables in the United States on the eastern New Jersey coastline to the north of Atlantic City. The cable landing points will connect with a common terminal station to be located in the New York area, which will interconnect with U.S. private and interexchange systems. (In the United Kingdom, the cables are to land on the southwest coast with the southern landing between Widemouth Bay and Bristol and the northern landing either to be at this same coastal area or on the South

[3] The Tel-Optik - C&W agreement defines a beach joint as a connection between the submersible cable and the land cable.

[4] An interface point will be the 140 Mbps digital input/output ports on the digital distribution frame which is the interface location where the 139, 264,000 bps digital line section connects with other transmission facilities or equipment.

Wales coast to the west of Bristol.) Tel-Optik states that these landing points will enable secure routes to common terminal stations in London where interconnection will be made with Mercury.

7. SLC is a U.S. corporation in which all directors, officers and stockholders are U.S. citizens. SLC states that it intends to construct a fiber optic transatlantic submarine cable designed primarily to serve the video market, although its application describes a variety of other services that may be available through purchase of capacity in the cable (*see* para. 9 *infra*). The TAV-1 system (for Transatlantic Video submarine cable system) would extend between the United States and other North American countries to various European points. SLC plans to land TAV-1 in the United States in the vicinity of New York City, with other possible U.S. landing points north and south of New York City. SLC states that other cable terminals may be located in Canada and in the Caribbean region. Unlike Tel-Optik, SLC has not yet determined specific European landing points, but is seeking to make arrangements to locate cable terminals in several of the European nations bordering the Atlantic Ocean and North Sea, as well as extensions to the Mediterranean Basin. The applicant states that "conversations are taking place with foreign entities with respect to the location of foreign terminals and other necessary support for the TAV-1 cable project."

8. SLC states that the TAV-1 cable system will have 12 working fibers each operating at 560 Mbps for a total transmission speed of over 6.7 Gbps. The planned twelve working fibers will be three times that of TAT-8.[5] At a 6.7 Gbps transmission speed, TAV-1 could be arranged for at least 144 broadcast quality video channels, each operating at 45 Mbps. Alternatively, the applicant states that TAV-1 could be arranged for at least 72 video channels and over one thousand 1.544 Mbps channels or various combinations thereof. If the entire capacity were to be dedicated to voice use, the cable could carry approximately 50,000 simultaneous two-way telephone conversations, transmitted at 64 kbps, or up to 250,000 such conversations if circuit multiplication equipment were used. The applicant estimates a total cost of approximately $450 million for TAV-1, as compared to the TAT-8 estimate of $350 million, assuming the same rate of inflation and the same number of landing points as TAT-8, with twelve times the capacity. SLC expects the unit cost for TAV-1 to be less than 15% of the cost of a comparable unit of capacity in TAT-8, whether the unit is a video channel, a 1.544 Mbps channel, a 64 kbps channel, or a "bit" of transmission.

9. The applicant will offer TAV-1 capacity on both a half-circuit and a "through-circuit, shore-to-shore" basis. It will offer such services as (1)

[5] For a description of TAT-8, see American Telephone and Telegraph Co., FCC 84-240, (released June 8, 1984).

broadcast quality video channels operated at 45 Mbps, (2) closed circuit television, (3) public switched videophone, (4) teleconferencing video channels at 1.544 Mbps, (5) electronic document transmission channels at 64 kbps, (6) 64 kbps voice-grade channels for message telephone, private line and other services, (7) 9.6 kbps to 6.0 Mbps high-speed data channels, and (8) restoration services. SLC believes that potential customers for lease or sale of bulk capacity in TAV-1 will include (1) the broadcast and cable television industry, (2) the theater industry, (3) bulk suppliers of domestic fiber optics facilities, (4) U.S. communications carriers, foreign telecommunications carriers and similar entities, (5) government agencies, (6) private commercial corporations, and (7) associations and common affinity groups. SLC states that digital units packaged in large quantities will be made available to meet the specialized needs of these purchasers. The applicant plans to have TAV-1 in service in 1989.

10. Both applicants believe that their proposals will result in significant public benefit. They believe that the lease or purchase of bulk capacity in transatlantic fiber optic submarine cables will provide users with the same advantages that users now enjoy in the long-term lease or purchase of domestic satellite capacity. These benefits include the ability to make future business plans with the assurance that capacity will be available when needed at a known price. The applicants believe that the sale of satellite transponders is equivalent to the distribution of large segments of digital cable capacity since, in both cases, the one-time distribution of communications capacity is involved which need not be classified as a common carrier activity. Both applicants point out that by this approach, users will be able to obtain facilities specifically tailored to their specialized usage requirements. And both applicants emphasize that the U.S. ratepayers will not directly bear the financial risks of the proposed cable systems since the costs will not be part of any common carrier rate base. At the same time, the applicants believe that their proposed systems will be an attractive alternative to currently available and planned carrier facilities and services, and that Commission authorization of the systems will promote North Atlantic facilities competition in the area of specialized services, drive charges for international circuits toward costs, permit a further introduction of the latest fiber optic technology through innovative marketing techniques, and possibly result in the stimulation of new services as a result of heretofore unforeseen demand.

## *II. Comments*

11. In its comments, AT&T states that it supports a fully competitive environment with minimal regulation, and believes that the grant of the requested licenses would be consistent with the development of greater competition in the international telecommunications marketplace. Howev-

er, AT&T only supports the cable applications provided the Commission reconsiders its Title II regulation of AT&T and removes itself as arbiter of carriers' facilities loading decisions. AT&T also requests the Commission to condition a grant of the applications by stating that the Commission will not entertain any request by Tel-Optik or SLC to compel common carriers to use any capacity in their cable systems. And, AT&T requests that the Commission make it clear that the proposed cable systems are not subject to, and should not be a part of, the North Atlantic Consultative Planning process.

12. NTIA supports a fully competitive environment and encourages new entry into the international communications marketplace. Therefore, NTIA supports the grant of these license applications, but only if authorized for non-common carrier purposes. In addition, NTIA urges the Commission to impose three conditions on the licenses should they be granted to assure that authorization of the private systems now proposed will not preclude such additional systems at a later time and to assure that foreign firms are not given preferential treatment over U.S. firms in either the acquisition of capacity or in interconnection arrangements at the foreign ends of the proposed cables. Furthermore, NTIA states that, if the cable systems would be used by common carriers to provide common carrier services, the Commission should examine the significance for the Consultative Process of authorizing facilities outside of the process, and consider the effect on the proposed transatlantic cable facilities already authorized and on U.S. trade opportunity and technology development.[6]

13. RCA also supports the applications as an alternative private enterprise initiative in the international telecommunications marketplace. However, RCA states that the applications pose legal and policy issues which should be addressed in a rulemaking proceeding before any licenses are issued. It notes that some of the issues raised by the applications are already the subject of Commission proceedings, including Docket No. 79-184 concerning policies to be followed in the authorization of common carrier facilities to meet North Atlantic telecommunications needs during the 1985-1995 period,[7] and Docket No. 83-1230 considering, in part, questions involving the grant of indefeasible rights of use (IRUs) in international facilities to non-common carriers.[8] In addition, RCA believes that the fact that a major interest in Tel-Optik's proposed cable system is

[6] With respect to Tel-Optik's application, NTIA urges the Commission to consider the relationship between Tel-Optik's implied traffic projection and the current Consultative Process traffic projections.

[7] Policies for Overseas Common Carriers, 73 FCC 2d 193 (1979) (Notice of Inquiry), issues specified, 76 FCC 2d 522 (1980) (Second Notice of Inquiry), 82 FCC 2d 407 (1980) (Notice of Proposed Rulemaking), 84 FCC 2d 760 (1981) (Report and Order).

[8] International Communications, 95 FCC 2d 627 (1983).

to be held by foreign interests presents an opportunity for such interests to gain an unfair advantage in the market. Therefore, RCA maintains that the Commission should include appropriate conditions in the cable licenses which would maintain the ability of U.S. companies to compete fairly in the international telecommunications marketplace. RCA also states that the Commission should deny AT&T's request for immediate deregulation. RCA contends that the review of the cable applications is not the appropriate forum in which to consider the future regulation of AT&T and is clearly outside the scope of the proceedings.

14. In its comments, Comsat asserts that the cable applications present significant public policy issues which the Commission should address before granting any cable landing licenses. Comsat supports RCA's proposal that the Commission initiate a rulemaking proceeding. It argues that a rulemaking proceeding would be the proper forum to consider not only these two cable applications but also the broader question of the specific criteria that should govern the consideration of any similar applications that may be filed. Comsat further argues that the Commission should examine the effect of the applications on the integrity of the Consultative Process and on the proceeding in Docket No. 83-1230. In addition, Comsat contends that the cable applications raise the question of whether Title II authorization may be needed, questions whether any public benefits would result from authorizing these systems, and asserts that there will be an increase in the costs of common carrier circuits that would have to be paid by the ratepayers caused by diversion of traffic from common carrier systems should the proposed private systems be authorized.

15. ITT takes no position on the ultimate disposition of the applications. ITT submits, though, that the proposed cable applications should be considered in the North Atlantic facilities planning proceeding in Docket No. 79-184. It contends that, since such facilities are proposed to be available during the 1985-1995 planning period and could be made available to common carriers for their North Atlantic services, the potential availability of the cables could affect the timing or necessity for future facility in the planning period. In addition, ITT argues that the Commission should not grant AT&T's request to remove Title II regulation of AT&T's facilities loading choices. ITT states that, since these proceedings do not involve Title II regulation of AT&T and there is no notice or record on which to base a proper finding, it would be reversible error for the Commission to make any such findings.

16. In reply comments, Tel-Optik and SLC content that their cable applications should not be considered in the Consultative Process or the related Commission proceedings because the Consultative Process and those proceedings only apply to common carriers. The applicants state

that the Commission's authority for its involvement in the Consultative Process and for considering the issues before it in Docket No. 79-184 and Docket No. 83-1230 stems from Title II of the Communications Act to which only common carriers are subject. The applicants argue that they propose to sell bulk capacity on the cable systems to private users on a non-common carrier basis, and therefore are not subject to Title II of the Communications Act. Further, in response to arguments of potential economic harm because of traffic diversion, applicants contend first that diversion is not an issue the Commission need consider because the cables will be privately owned and the ratepayers will not bear the financial risk. In addition, the applicants also contend that to the extent diversion does occur, (1) it will not be substantial because there will be a significant increase in demand for video services which will allow all systems to be sufficiently used, and (2) it will only cause Comsat to lower its rates to a competitive level. Moreover, the applicants argue that subjecting the cable applications to the Consultative Process would be contrary to the deregulatory goals of the Commission. As to the Commission's proceeding in Docket 83-1230 addressing whether non-common carriers have a right to own IRUs in common carrier facilities, the applicants contend that this issue is not raised by their applications because capacity in the proposed systems is specifically intended to be sold to private entities. And, as to NTIA's proposed conditions regarding acquisition of cable capacity and access to foreign networks by U.S. firms, the applicants contend that they could not comply with such conditions and maintain their non-common carrier status.

17. Finally, in comments specifically directed to SLC's application, Tel-Optik, Comsat, and NTIA state that the application itself is flawed because it fails to include the required information. Specifically, the parties note that the application fails to include ownership and controlling interest information and does not specify the landing points of the cable or the foreign countries with which it would interconnect. In its reply comments, SLC notes that it is wholly owned and controlled by U.S. citizens. SLC also states that it would raise the necessary funds to build its cable once it receives a cable landing license and that it would get an operating agreement with a foreign entity within three years of receiving the license.

*Discussion*

*A. General Policy Considerations*

18. Upon initial review of the applications and comments, we conclude that alternative private cable systems in which bulk capacity will be sold or leased on a non-common carrier basis would introduce more meaningful competition in the provision of North Atlantic transmission facilities. We

further conclude that this increased competition will provide many of the same user-benefits that are now offered by the private sale of domestic satellite transponders and will further stimulate technology and service development to the benefit of international communications users.[9] We further find no need to require these applicants to operate as common carriers.

19. The introduction of private cable systems would provide users of North Atlantic transmission capacity with new alternatives to satisfy their needs. Bulk users of broadband and high-speed digital satellite circuits will be able to use cable to satisfy their transmission capacity needs and any special operational and technical requirements. We found in our *TAT-8 Authorization Order* that fiber optic technology will permit the use of cable for services that heretofore have only been available via satellite.[10] The application of this technology to cable in combination with the provision of transmission capacity on a non-common carrier basis will result in the same user-benefits that are now offered by the private sale of domestic satellite transponders. In our *Transponder Sales* decision, we concluded that the private sale of transponder capacity on a non-tariffed basis would (1) permit the providers of capacity to make tailored and flexible arrangements with customers that are not possible under the regimen of a tariffed service offering, (2) enable customers to make long-term plans for the use of facilities with assurance as to facility availability and price, (3) permit systems to be specifically designed to customer needs, and (4) result in positive market development for new and innovative service offerings.[11] We find that users with bulk capacity needs or special service requirements for international services should enjoy the same benefits. They could acquire their needed transmission capacity by contract to satisfy any special service needs with the assurance that it would be available for the period of time desired at an

[9] We recently took one step toward the introduction of greater competition in the provision of international transmission facilities by modifying our *Authorized User* policy to permit Comsat to (1) provide space segments capacity directly to common carriers and non-common carriers alike pursuant to tariff, and (2) offer end-to-end services directly to users on a common carrier basis through a separate subsidiary. Proposed Modification of the Commission's Authorized User Policy Concerning Access to the International Satellite Services of the Communications Satellite Corporation, CC Docket No. 80-170, FCC 84-633 (released January 11, 1985). We determined that this policy would enhance both intramodal and intermodal competition and spur providers of both international satellite and cable services to keep their services innovative and prices low. The introduction of private transatlantic fiber optic cable systems would add additional facility providers to the market which will provide users of transmission capacity new alternatives to satisfying their needs, and further enhance both intermodal and intramodal competition.

[10] American Telephone and Telegraph, FCC 84-240 at para. 75.

[11] Domestic Fixed-Satellite Transponder Sales, *supra* note 2, at 1251-1252, 1255.

established price.[12] They could not be assured that transmission capacity will be so available from current common carrier offerings since carriers must offer capacity indiscriminately as it is available and may change the price and other terms and conditions of their offer through tariff filings. To the extent that users with bulk capacity needs or special service requirements choose to satisfy their special technical and operational needs by acquiring transmission capacity in the proposed private cable systems, there will be pressure on existing providers of both cable and satellite transmission capacity to respond competitively by developing common carrier services that would be more attractive than the long-term lease or sale of capacity.[13]

20. In addition to new service development, the introduction of private transatlantic fiber optic submarine cable systems could stimulate technological development. In the *TAT-8 Authorization Order*, we found that the introduction of digital fiber optic technology in the North Atlantic would have attendant service benefits-i.e., lower noise levels, lower data error rates, and a greater range of services over analog technology.[14] We also noted that the new digital fiber optic technology prompted the development of new circuit multiplication techniques.[15] Private fiber optic cable systems could provide an opportunity for additional technological development. In addition, as noted in the *TAT-8 Authorization Order*, an increase in the use of transatlantic digital cable services could complement the spread of fiber optic technology within the U.S. domestic communications market.

*B. Review Under the Cable Landing License Act*

21. In acting upon the applications before us, we need not look beyond the Cable Landing License Act. The Cable Landing License Act provides in part that "no person shall land or operate in the United States any submarine cable directly or indirectly connecting the United States with any foreign country . . . unless a written license to land and operate such cable has been issued by the President of the United States." 47 U.S.C. § 34 (1976). The statute was enacted in 1921. In 1934, the function of

[12] For example, television broadcasters which require large digital "bit" streams to transmit their programming could purchase video channels at about 45 Mbps, while newspaper wire services could purchase electronic document transmission channels at 64 kbps.

[13] Comsat asserts that authorization of the proposed private systems will lead to excess capacity and higher per-circuit costs as a result of diversion of traffic. We find here that the long-run benefits offered by the proposed system that are described below will outweigh any short-run problems caused by traffic diversion, and that U.S. carriers and INTELSAT will be able to adjust their long-term facility construction plans to respond to new competition.

[14] American Telephone and Telegraph Co., *supra* note 5 at para. 15, n. 6.

[15] *Id.* at para. 18.

processing cable landing licenses under the 1921 statute was delegated to the Commission through executive order. The President continued to carry out the responsibility of issuing cable landing licenses until 1954 when, by a new executive order, the Commission was delegated the responsibility of both processing applications and issuing licenses.[16] This delegated authority was made subject to the proviso that the Commission may not grant or revoke licenses without first obtaining approval of the Secretary of State and any advice from any executive branch department or establishment of the Government as it may deem necessary. The Commission's rules reflect this requirement.

22. The Cable Landing License Act is intended to achieve reciprocal treatment of United States interests which might desire to lay cables from the United States to foreign points, and otherwise is intended to protect the interests of the United States and its citizens in foreign countries in connection with the issuance of cable landing rights.[17] It both prohibits a cable from being landed without prior authorization and permits revocation of an existing authorization if a country fails to grant United States nationals reciprocal landing rights. While it was enacted at a time when transoceanic cables between the United States and foreign points were owned entirely by one entity, the Act applies in situations where the cable ownership is shared by United States and foreign entities, as is the case with existing transatlantic cables jointly owned by U.S. carriers and foreign administrations. In cases of joint ownership, the objectives of the Act are satisfied if only the United States joint owner is required to obtain

[16] The current delegation to the Commission is provided in Executive Order No. 10530, dated May 10, 1954, which states:

> Sec. 5. (a) The Federal Communications Commission is hereby designated and empowered to exercise, without the approval, ratification, or other action of the President, all authority vested in the President by the act of May 27, 1921, ch. 12, 42 Stat. 8 [sections 34 to 39 of title 47], including the authority to issue, withhold or revoke licenses to land or operate submarine cables in the United States: Provided, That no such license shall be granted or revoked by the Commission except after obtaining approval of the Secretary of State and such advice from any executive department or establishment of the Government as the Commission may deem necessary. The Commission is authorized and directed to receive all applications for the said licenses.

[17] Section 35 of the Act provides, in part:

> The President may withhold or revoke such license when he shall be satisfied after due notice and hearing that such action will assist in securing rights for the landing or operation of cables in foreign countries, or in maintaining the rights or interests of the United States or of its citizens in foreign countries, or will promote the security of the United States, or may grant such license upon such terms as shall be necessary to assure just and reasonable rates and service in the operation and use of cables so licensed.

a cable landing license. The desired reciprocal treatment of the United States joint owner by the foreign administration is achieved because the essence of the joint ownership system is one of partnership and reciprocity.

23. Upon preliminary review of the applications before us, we find that Tel-Optik's applications contain the information required by the Commission's rules and otherwise satisfy the requirements of the Cable Landing License Act. Section 1.767 of the Commission's rules requires an application to contain the name and address of the applicant; the corporate structure and citizenship of officers if the applicant is a corporation; a description of the submarine cable, including the type and number of channels and the capacity thereof; the location of points on the shore of the United States and in foreign countries where cable will land (including a map); the proposed use, need, and desirability of the cable; and such other information as may be necessary to enable the Commission to act on the application. 47 C.F.R. § 1.767(a). Tel-Optik has provided this information, as described above. In addition, Tel-Optik satisfied the threshold reciprocity requirement of the Cable Landing License Act since it has entered into an agreement with Cable & Wireless for the joint ownership and operation of the proposed cables between the United States and the United Kingdom. The two parties will each maintain a fifty percent ownership share in the joint venture. Cable & Wireless is authorized to install and operate the proposed cables in the United Kingdom through its wholly-owned subsidiary, Mercury Communications, Ltd. Subject to further review by the Secretary of State, we conclude that the Tel-Optik-Cable & Wireless agreement contains sufficient reciprocal treatment for each party and otherwise appears to be consistent with United States interests.

24. Three parties contend that the SLC application is incomplete and does not contain sufficient information for the Commission to grant a cable landing license. NTIA states that cable landing license applications are reviewed under the Cable Landing License Act for foreign policy, competition and trade concerns in view of foreign participation in the ownership and operation of cable systems. NTIA contends that the SLC application does not contain sufficient information relevant to these issues, such as information on financing, configuration, operations and foreign participation. NTIA believes that the applicant should be required to provide this information subject to public comment before the Commission acts on the application. Tel-Optik contends that the SLC application does not comply with Section 1.767(a) of the Commission's rules. Tel-Optik states that the application fails: (1) to provide information on the identity or percentage of ownership of its stockholders; (2) to specify the location of points on the shore of the United States and in foreign countries where

the cable will land (including a map); or (3) to name the foreign country or countries where the cable will land. Tel-Optik submits that SLC has not complied with the Commission's rules until it discloses the identity of those who own and control the company and concludes an agreement to land the other end of the cable in at least one specified country. Comsat contends that the Commission should not grant a cable landing license to SLC without requiring sufficient information about the legal, technical, operational and financial qualifications of the applicant, including the names of SLC's principals and their relative ownership shares, the financial arrangements for cable construction, and the foreign countries in which the cable will land and whether these countries will permit landing and use of the cable.

25. In reply, SLC provides information showing the relative ownership shares of its shareholders. SLC argues that there is no existing requirement by the Commission that an applicant for a cable landing license need submit financing plans prior to grant of its application, nor should there be one in a competitive situation. SLC states that it will raise the necessary capital funds following a grant of its cable landing license, and suggests the need for a license before financing can be arranged. In addition, SLC states that it will obtain the necessary foreign agreement for its proposed cable following grant of its cable landing license and that such a grant will facilitate the necessary agreement for foreign landing points. SLC cites past Commission actions in granting Section 214 facility construction and service authorizations without the prior acquisition of necessary foreign agreements as support for not requiring it to acquire a foreign agreement prior to grant of a cable landing license. SLC believes that its application is in substantial compliance with the Commission's rules and requests a waiver of Section 1.767(a) to the extent that a waiver is necessary to bring this older rule in conformity with modern policies.

26. Upon review of SLC's application and reply comments, we find that the applicant has provided sufficient information regarding its corporate structure and citizenship of its officers. We agree with SLC that the Commission's rules do not specifically require that an applicant for a cable landing license present information as to its financial qualifications. However, notwithstanding the Commission's policy of not requiring applicants to show the existence of an operating agreement with its foreign correspondent before issuing Section 214 authorizations, Section 1.767(a) specifically requires an applicant for a cable landing license to specify the location of points in foreign countries where the cable will land and to provide a map showing the proposed landing points. This information is necessary for proper review of the application under the Cable Landing License Act. Without information as to the final ownership and control of the cable system and the foreign points in which it will land,

we cannot determine under Section 35 of the Cable Landing License Act whether reciprocal treatment is being accorded to United States interests. In other words, unless we have information as to what countries the applicant is dealing with and the terms and conditions of arrangements for ownership and operation of the system, we do not believe that we can fully review the application under the Cable Landing License Act. Therefore, SLC must provide this information before we will take final action on its application.

*C. Need for Title II Authority*

27. In its comments, Comsat contends that Tel-Optik and SLC may need Title II authority to construct and operate their proposed cable systems and the applicants provide no basis for the Commission to forbear from exercising its Title II authority. Comsat argues that Tel-Optik's and SLC's distinction between private and common carrier is illusory because of the types of services for which the systems may be used; the absence of any mechanism that would preclude or prevent the applicants' customers from interconnecting with the public switched network; the fact that C&W, a 50% owner of the proposed Market-Link system, is a carrier under U.K. law; and the fact that the applicants cannot show that the traffic, which would be carried by the proposed systems, is not presently being carried on common carrier facilities.

28. We find Comsat's argument unpersuasive. We find no need to require applicants to apply for Title II authority or to decide whether to forbear from exercising Title II jurisdiction. The applicants satisfy the test of the *NARUC I* decision which held that certain offerings need not be classified as common carrier operations. First, the nature of their proposed offerings is outside the definition of common carriage. The applicants propose to sell bulk cable capacity through individual negotiations with potential customers in order to meet the customers' particular technological and marketing requirements. They state that they will be entering into sales or long-term contracts for a particular amount of digital capacity. The Commission previously found in its *Transponder Sales* decision that the sale or long-term lease of domestic satellite transponders by satellite owners does not constitute common carrier activity.[18] In that decision, the Commission considered the definition of common carriage as set forth in the *NARUC I* decision and concluded that the sellers of domestic satellite transponders do not hold themselves out indifferently to serve the user public.[19] We find no distinction between what the cable applicants propose and what we found to be non-common

[18] Transponder Sales, *supra* note 2, at 1256.

[19] *Id.* at 1257; *see* National Association of Regulatory Utility Commissioners v. FCC, 525 F.2d 630 (D.C. Cir.) *cert. denied*, 425 U.S. 999 (1976) ("NARUC I").

carrier activity in our *Transponder Sales* decision. Thus, we find that Tel-Optik and SLC would not be engaged in common carrier activity by selling or leasing bulk capacity in their proposed cables.

29. The second part of the *NARUC I* test as stated in *Transponder Sales* is whether there is a public interest reason for the Commission to require facilities to be offered on a common carrier basis. In our *Transponder Sales* decision, we found that, due to the Wide-scale availability of common carrier transponders and the likelihood that small users could finance the lease or purchase of non-common carrier transponders, we did not need to compel the continued offering of all transponders on a common carrier basis. The facts before us here present even less reason to require that these cables be offered on a common carrier basis. There is currently no shortage of common carrier-provided cable or satellite capacity in the North Atlantic. Unlike domestic satellites, cable capacity is not limited by problems of spectrum allocation or orbital slot assignment.[20] In addition, due to the nature of the planned offerings, we do not believe diversion from common carrier cables should be a major concern. The proposed private cables are intended for use by customers with bulk capacity or special service needs. These users are generally private line customers. In the North Atlantic, the area for which these systems are proposed, non-switched services provided by U.S. carriers account for only about ten percent of international circuits, while switched services account for about 90 percent of international circuits (89 percent is IMTS and one percent is telex).[21] In addition, some customers with bulk capacity or special service needs may require satellite facilities to carry their traffic. As a result, the proposed cables are not likely to divert but a small part of total common carrier circuits. Some users may be able to use their non-switched facilities for voice traffic by attaching PBXs and refiling with other countries. However, the potential for switched traffic diversion in this manner appears to be relatively small.

30. Neither do we anticipate significant common carrier use of the proposed cables. AT&T has stated that it does not intend to use the cables and the international record carriers (IRCs) have not indicated an interest in the cables. We have no reason to expect AT&T and the IRCs to change their positions in view of the significant cable capacity that already exists or is planned and the carriers' significant investment in these facilities, particularly TAT-8. Since nearly 90 percent of Comsat's traffic is switched services, we do not believe the effect on INTELSAT from diversion of bulk capacity or special service customers would be harmful to INTEL-

[20] For these reasons we find it unnecessary, as we decided in *Transponder Sales*, to review each transaction concerning these cables on a case-by-case basis to ensure adequate transatlantic capacity.

[21] Data derived from December 1984 circuit status reports.

SAT.[22] Should AT&T or other carriers propose to use private cable facilities, we will have an opportunity to consider the potential effect of traffic diversion from existing or planned satellite or cable common carrier facilities in the Section 214 application process. Common carriers which propose to purchase and use bulk capacity on these systems still would be required to file for Title II authority before acquiring capacity and providing service over the cables. Therefore, if common carriers seek to divert major amounts of traffic from existing transmission facilities, we can take any steps necessary at that time to determine whether significant economic harm to common carriers owning and using existing cables would occur and would be contrary to the public interest.

31. Thus, the issues raised by Comsat do not persuade us that the proposed offerings will in fact be common carrier offerings, and do not present reasons justifying the denial of a cable landing license. As we have concluded that these applications are for non-common carrier offerings, we have only to consider the requirements of the Cable Landing License Act in acting on the them.[23]

### *D. Relationship With the North Atlantic Consultative Process and Related Commission Proceedings*

32. Several parties contend that the applications should be considered within the ongoing North Atlantic Consultative Process and other related Commission proceedings. The Consultative Process is essentially an ongoing process to discuss facility planning options for the North Atlantic among Canadian (Teleglobe Canada), European (CEPT), and American (the Commission, other U.S. governmental agencies, and U.S. carriers) entities. It is intended to consider demand, technology, costs, usage, and facility options before we are called upon to make a determination of a facilities authorization. Comsat believes that authorization of the proposed cable facilities outside of the Consultative Process would compromise the integrity of the process by forsaking it in favor of an *ad hoc* approach and by failing to consider the views of foreign entities. Similarly, ITT contends that consideration of the proposed cable systems must be incorporated into Docket No. 79-184. Docket No. 79-184 was initiated by the Commission as an adjunct to the Consultative Process, to develop U.S. policies and guidelines governing the construction and use of North Atlantic facilities during the 1985-1995 period.

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[22] Since satellite facilities are not proposed by the applicants, no Article XIV(d) coordination with INTELSAT will be required.

[23] In addition, the trade and technology issues raised by NTIA, see para. 24, *supra* are unsupported. We note that the executive branch will have the opportunity to pass on the applications.

33. On the other hand, AT&T contends that the Commission should make it clear that the proposed cables are not subject to, and should not be part of, the Consultative Process. Both applicants strongly oppose incorporation of their proposals in either the Consultative Process or Docket No. 79-184. The applicants and AT&T argue that the Commission's involvement in the Consultative Process flows from its Section 214 authority, that the proposals under consideration are for non-common carrier systems, and that they are therefore unrelated to the Consultative Process and Docket No. 79-184. NTIA believes that there are some ambiguities in the applications that indicate that capacity in the proposed cable systems could be acquired by carriers to provide common carrier services. If the systems are to be used by common carriers, NTIA states that the Commission should consider: (a) the effect of authorizing, outside of the Consultative Process, facilities which may carry common carrier services; (b) the effect on facilities already authorized to be used for common carrier services; (c) the traffic projections implied by the applicant which appear to be much greater than the projections by the Consultative Process; and (d) the effect on U.S. trade opportunity and technology development.[24]

34. We believe that the decision as to whether or not to grant cable landing licenses to the applicants should not be incorporated into either the Consultative Process or Docket No. 79-184. The Consultative Process and Docket No. 79-184 deal with North Atlantic transmission facilities which are used by authorized U.S. common carriers and their foreign correspondents for the joint provision of services. As we have found, neither applicant proposes to provide common carrier services. Both intend to make private investments in their respective systems at their own risk to sell or lease bulk capacity to users. The risk of investment will not directly fall on any common carrier ratepayers and the scrutiny given by the Commission under Section 214 for facilities investments is not required here.

35. We agree with NTIA that the applicants appear to have reserved the possibility to provide capacity over their systems to common carriers. Any carrier which may want to use either proposed cable system to provide its services clearly must seek Section 214 authority from the Commission to acquire and operate such facilities. To the extent that any U.S. carriers may intend to use the proposed facilities, we believe that any capacity so employed could be considered within the Consultative Process. Since no carrier has stated plans to use the proposed private cable systems, and absent specific information as to the extent of such use, we need not consider at this time the relationship to the Consultative Process

[24] *See* note 20, *supra.*

or the issues raised by NTIA (*see* para. 33, *supra*).[25] In the meantime, we do not believe that potential future common carrier use should delay final action on the applications. Any such delay would deny the benefits that will flow from the proposed systems to users other than common carriers.

*B. Request for a Rulemaking*

36. RCA and Comsat both request the Commission to initiate a rulemaking proceeding to address legal and policy issues raised by the cable applications. They argue that a rulemaking proceeding is a necessary forum in which to consider not only the specific applications but also the broader question of what specific criteria to apply when considering additional applications. In a rulemaking, they believe that the Commission specifically should examine (1) the effect of the applications on the Consultative Process and Docket No. 79-184, and (2) their effect on questions of ownership in cable facilities that are now being considered in the Docket No. 83-1230. In response, Tel-Optik and SLC maintain that the applications do not raise any material issues of law or policy which would warrant the initiation of a rulemaking proceeding or a delay in the grant of their applications. They argue that each of RCA's and Comsat's stated concerns is sufficiently addressed in their applications and comments.

37. We find that a rulemaking proceeding at this time is unwarranted. Tel-Optik and SLC have submitted proposals which request authority which is unprecedented. We have broad authority to proceed by rulemaking or by *ad hoc* adjudication. *SEC v. Chenery Corp.*, 332 U.S. 194, 203 (1947). We find the record in this proceeding to be fully adequate to resolve the applications before us. Numerous parties have participated in this proceeding, including primary providers of competing services. In addition, rejected above the contentions of RCA and Comsat that action on the applications need to be related to Docket No. 79-184 and the Consultative Process. *See* paras. 32-35, *supra*. We also conclude that the applications are not related to Docket No. 83-1230 because that proceeding concerns, among other issues, non-carrier acquisition of IRU's in common carrier transmission facilities.

*F. Suggested Conditions for the Cable Landing Licenses*

38. Some parties propose that certain conditions be imposed on any cable landing license that may be granted to the applicants. AT&T proposes that we condition any license by specifically stating that we "will not entertain" any request by the applicants to compel common carriers to

[25] There may be a need to consider the presence of such private systems in the Consultative Process because of their effect upon the demand for additional common carrier provided facilities that are subject to the Consultative Process. However, this question is better addressed when the cables are constructed and we know what type of traffic and how much is being carried.

use their cable systems. AT&T believes that by such a condition, the Commission would explicitly recognize that the applicants' proposals do not seek any special treatment and must succeed or fail on their own merits. AT&T also believes that such a condition would send the proper signal to the investor community and lead to the appropriate economic allocation of capital resources. Tel-Optik states that it has not requested that the Commission compel common carrier use of the proposed system, does not envisage making such a request and thus does not seek special treatment. SLC does not believe that any conditions are necessary other than those that it proposed be inserted in its own license.

39. We agree that the applicants should not be guaranteed any market share or services. Should we ultimately grant cable landing licenses for the proposed private cable systems, we will do so without any guarantee of traffic from U.S. international common carriers or other sources. It shall be this Commission's policy that any such private systems succeed or fail on their own merits and not through Commission action that would guarantee common carrier use of the systems. At the same time, we will not prohibit common carrier use of the system and will consider any proposed common carrier purchase of capacity in the context of our normal facility planning and authorization procedures. In view of this approach, we see no need to impose AT&T's proposed condition.

40. In addition, although AT&T fully supports the authorization of private cable systems in the transatlantic, it does so only if the Commission reconsiders and withdraws from regulating AT&T's facility loading choices. RCA and ITT contend that the Commission should deny AT&T's request, because this proceeding is not the forum in which to make such a determination. We agree. We are only considering here whether to grant cable landing licenses to the applicants to land and operate private transatlantic cable systems. We are not considering issues relating to our Title II regulation of AT&T's facility loading choices. Since the proposed systems are not scheduled for operation until 1989 at the earliest, we will have sufficient opportunity to consider AT&T's proposals. Any consideration of the merits of AT&T's request within the context of these applications would be beyond the language of the Cable Landing License Act.

41. NTIA requests that any cable landing license granted to the applicants be conditioned: (1) not to preclude approval of additional cable systems between the United States and Europe; (2) to require that cable capacity should be made available to authorized entities on a non-discriminatory basis under Commission imposed terms and conditions; and (3) to require that subscribers of cable capacity be given the same interconnection rights with non-U.S. facilities as foreign entities would be given to interconnect with U.S. facilities. The applicants do not oppose

NTIA's first proposed condition. However, they do oppose the second two conditions which they believe would be inconsistent with and not permit them to maintain their non-common carrier status. As to the second condition, the applicants point out that the sale of bulk cable capacity under individual terms and arrangements made with each private entity is the essence of their proposal and that the proposed second condition may not permit them to operate in this manner. In sum, they state that individualized sales or leases may, almost by definition, raise discrimination issues. The applicants also state that they could not comply with the third condition, because they would have no control over the interconnection arrangements negotiated between the acquirer of capacity and C&W (or Mercury). They emphasize that they would merely be selling capacity that another entity would use.

42. NTIA's first proposed condition is intended to maintain the rights of U.S. companies which may desire, own, and operate cable transmission facilities in the future by assuring that the authorization of the proposed private cable systems will not preclude future authorization of other systems. We believe this condition is unnecessary in light of our finding concerning the long term benefits of increased intramodel competition. *See* paras. 18-20, *supra.* As to the second and third conditions proposed by NTIA, we conclude that they would be inconsistent with the concept upon which we have found the proposed systems to be beneficial — the applicants' ability to lease or sell bulk capacity through individual negotiations to meet specific customer needs. To require the Commission to set the terms, conditions, and procedures under which cable capacity would be made available to purchasers could eliminate the applicants' ability to deal with customers on an individual basis, which is an important factor in the applicants' obtaining status as non-common carriers.[26] In addition, under the current proposals, it appears that the applicants would have no control over the interconnection between the cable facilities and the land facilities on either end once the cable capacity is sold. The purchasers of the bulk capacity would be responsible for making their interconnection arrangements.

[26] We would be concerned if, in practice, a foreign owner or co-owner of a cable were to provide capacity to an affiliated switched or enhanced service provider, for example, on terms far more favorable than those offered to U.S. companies providing similar services. We would view such discrimination undertaken for the purpose of, or resulting in, manipulation of competition in a particular service to be inconsistent with the terms of the Cable Landing License Act. We will reserve the right to condition licenses if practices develop that are antithetical to the reciprocal rights of the U.S. carriers, switched or enhanced service providers, or other U.S. citizens.

*Conclusion*

43. In this order, we have expressed our general policy direction on private alternative submarine cable systems for the North Atlantic region. We have concluded that private systems in which bulk transmission capacity is sold or leased on a non-common carrier basis would introduce more meaningful competition in the provision of North Atlantic transmission capacity, and that such increased competition would provide the same user benefits that are now offered by the private sale of domestic satellite transponders and would further stimulate technology and service development to the benefit of international users. In addition, we have reviewed the two applications before us within the context of the Cable Landing License Act. We have preliminarily concluded that the Tel-Optik applications contain the information required by the Commission's rules, meet the threshold reciprocity showing of the Cable Landing License Act, and otherwise appear to be consistent with United States interest under the Act. However, we will not take final action on the applications until receiving approval by the Secretary of State. In addition, we have preliminarily concluded that the SLC application does not contain the information requested to make these findings. Therefore, SLC must provide certain information to the Commission before we seek approval from the Secretary of State to grant its application under the Cable Landing License Act. As discussed above, we conclude that the applications are not properly part of the North Atlantic Consultative Process, should not be considered within the context of associated rulemaking proceedings, and do not otherwise require initiation of a separate rulemaking proceeding. We further conclude that imposition of the conditions proposed by certain parties have not been shown to be justified under the Cable Landing License Act and would be inconsistent with the nature of the applicants' proposed operations as private systems.

44. Accordingly, IT IS ORDERED that this Order be forwarded to the Secretary of State and that approval be sought to issue Cable Landing licenses to Tel-Optik.

45. IT IS FURTHER ORDERED that SLC must file the information necessary to make its application comply with Section 1.767 of the Commission's rules before the Commission will seek approval from the Secretary of State to grant SLC a cable landing license.

46. IT IS FURTHER ORDERED that Comsat's motion to accept late-filed comments on the Tel-Optik application is granted.

FEDERAL COMMUNICATIONS COMMISSION

WILLIAM J. TRICARICO, *Secretary*

BEFORE THE
**FEDERAL COMMUNICATIONS COMMISSION**
Washington, D. C. 20554



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| In the Matter of | ) | |
| | ) | |
| TEL-OPTIK, LIMITED | ) | File Nos. I-S-C-L-84-002 |
| | ) | I-S-C-L-84-003 |
| Applications for a license to land and operate in the United States submarine cables extending between the United States and the United Kingdom. | ) | |

**CABLE LANDING LICENSE**

Adopted May 16, 1985 Released May 17, 1985

By the Chief, Common Carrier Bureau:

1. The Commission has under consideration two applications File Nos. I-S-C-L-84-002 and I-S-C-L-84-003 filed by Tel-Optik, Limited (Tel-Optik) on September 28, 1984, requesting licenses to land and operate in the United States two high capacity fiber optic digital transatlantic submarine cables between the United States and the United Kingdom. The applicant proposes a privately-owned system in which capacity in the cables would be sold or leased for use on a non-common carrier basis.

2. The proposed cable system will be called "Market-Link" and will consist of a northern cable ("PTAT-1") to be placed in operation in 1989, and a southern cable ("PTAT-2") to be placed in operation in 1992. Each cable will contain three working optical fiber pairs and associated regenerators and supervisory circuits. Each fiber pair will be capable of carrying a minimum of two basic system modules of 140 Mbps. In the United States, both cables will land on the eastern New Jersey coastline to the north of Atlantic City. The cable landing points will connect with a common terminal station to be located in the New York area, which will interconnect with U.S. private and interexchange systems. In the United Kingdom, the cables are to land on the southwest coast with the southern landing between Widemouth Bay and Bristol and the northern landing either to be at this same coastal area or on the South Wales coast to the west of Bristol.

3. The cables will be owned jointly by Tel-Optik and Cable and Wireless PLC ("C&W"), a public limited company organized under the laws of the United Kingdom. Tel-Optik has entered into an agreement with Cable and Wireless for the purpose of constructing, owning and operating the cables. Tel-Optik and Cable and Wireless each owns fifty percent of this joint venture. Cable and Wireless is already authorized to install and operate the proposed cables in England through its wholly owned subsidiary, Mercury Communications, Ltd. ("Mercury"). Mercury will provide facilities over its own and other networks to enable Market-Link to be interconnected with terminals in the United Kingdom and Continental Europe.

4. On April 5, 1985, the Commission released a Memorandum Opinion and Order expressing its general policy direction on private alternative submarine cable systems for the North Atlantic region. [1] The Commission concluded that private systems in which bulk transmission capacity is sold or leased on a non-common carrier basis would introduce more meaningful competition in the provision of North Atlantic transmission capacity, and that such increased competition would provide the same user benefits as are offered by the private sale of domestic satellite transponders and would further stimulate technology and service development to benefit international users. In addition, the Commission preliminarily concluded that the Tel-Optik applications contained all information required by the Commission's Rules and met all requirements for a license under the Cable Landing License Act (47 U.S.C. §§ 34-39 (1964)). Accordingly, pursuant to Executive Order No. 10530, the Commission sought approval of the Secretary of State to grant cable landing licenses to Tel-Optik. [2]

5. By letter of May 14, 1985, the Department of State approved a grant of a cable landing license to Tel-Optik. In view of the precedential authority requested by the applicants and uncertainty as to the specific uses of the proposed cables, the Department stated that its approval is without prejudice to its raising with the Commission foreign policy considerations which may arise from the sale or lease of capacity to particular foreign or domestic entities. It therefore requested the Commission to take whatever steps are necessary to ensure that it remains

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1 Tel-Optik Limited, et al., Mimeo No. FCC 85-99 (released April 5, 1985).

2 Letter from Chairman Fowler to William Schneider, Jr., Under Secretary of State for Security Assistance, Science and Technology, dated April 5, 1985.

in a position to condition the licenses should practices develop that are antithetical to U.S. interests.

6. Upon consideration of the applications, and in view of the foregoing, the Commission hereby GRANTS AND ISSUES, under the provisions of an Act entitled: "An Act relating to the landing and operation of submarine cables in the United States" (47 U.S.C. §§ 34-39) and Executive Order 10530, dated May 10, 1954 (delegating to the Federal Communications Commission certain presidential functions relating to submarine cable landing licenses), to Tel-Optik, Ltd. a license to land and operate two high capacity fiber optic digital transatlantic submarine cables each with three working optical fiber pairs, associated regenerators and supervisory circuits and each cable having potential capacity approximately equivalent to 12,000 to 13,000 voice-grade circuits, extending from the eastern coast of New Jersey north of Atlantic City to the southwest coast of England with the southern landing point between Widemouth Bay and Bristol and the northern landing points either in the same place or on the South Wales coast to the west of Bristol. Grant herein is subject to "An Act relating to the landing and operation of submarine cables in the United States," 47 U.S.C. §§ 34-39 subsequent applicable acts, all rules and regulations of the Federal Communications Commission made pursuant to authority vested in it; any treaties or conventions relating to communications to which the United States of America is or may hereafter become a party; any action by the Commission or the Congress of the United States of America rescinding, changing, modifying or amending any rights accruing to any person hereunder; and the following conditions:

(1) The location of the cable within the territorial waters of the United States of America, its territories and possessions, and upon the foreshore thereof, shall be in conformity with plans approved by the Secretary of the Army, and the cable shall be moved or shifted by the Licensee at its expense upon the request of the Secretary of the Army whenever he or she considers such course necessary in the public interest, for reasons of national defense, or for the maintenance or improvement of harbors for navigational purposes;

(2) The Licensee shall at all times comply with any requirements of United States Government authorities regarding the location and concealment of the cable facilities, buildings, and apparatus with a view to protecting and safeguarding the cable from injury or

destruction by enemies of the United States of America;

(3) Neither this license nor the rights granted herein, shall be transferred, assigned, or in any manner either voluntarily or involuntarily disposed of or disposed of indirectly by transfer or control of the Licensee to any persons, unless the Federal Communications Commission shall give prior consent in writing;

(4) The Licensee shall notify the Commission in writing of the precise locations on the coast of New Jersey at which the cables will land no less than 120 days prior to commencing construction of cable landing stations at those locations. The Commission reserves the right to require the Licensee to file an environmental impact statement should it determine that the landing of the cables at those locations and construction of necessary cable landing stations would constitute a major action within the meaning of Section 1.1305 of the Commission's Rules and Regulations implementing the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321-4347. This license is subject to modification by Commission upon its review of any environmental impact statement that it may require pursuant to its rules;

(5) The Licensee or any persons or companies controlling it or controlled by it do not enjoy and shall not acquire any right, for the purpose of handling traffic to or from the United States, its territories or possessions, to land, connect or operate cables or landlines, to construct or operate radio stations, or to interchange traffic, which is denied to any other United States company by reason of any concession, contract, understanding, or working arrangement to which the Licensees or any persons or companies controlling them or controlled by them are parties;

(6) This License is subject to future modification which may be determined necessary by the Secretary of State to protect U.S. interests

as a result of the sale or lease of capacity to particular foreign or domestic entities;

(7) This License is revocable after due notice and opportunity for hearing by the Federal Communications Commission in the event of breach or non-fulfillment of any requirements specified in Section 2 of "An Act Relating to the Landing and Operation of Submarine Cables in the United States," 47 U.S.C. §§ 34-39, or for failure to comply with the terms of the authorization;

(8) The Licensee shall notify the Commission in writing of the date on which the cable is placed in service; and this license shall expire 25 years from that date, unless renewed or extended upon proper applications duly filed no less than six months prior to the expiration date; and upon expiration of the license, all rights granted under it shall terminate; and

(9) The terms and conditions upon which this License is given shall be accepted by the Licensee by filing a letter with the Secretary, Federal Communications Commission, Washington, D.C. 20554, within 30 days of the release date of this order.

7. This order is issued under Section 0.291 of the Commission's rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of the date of public notice of this order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Albert Halprin
Chief, Common Carrier Bureau