

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
ASIA DIRECT	)	
COMMUNICATIONS, L.L.C.	)	
	)	File No. SCL-95-013
Application for a license to land and	)	
operate a submarine fiber optic cable	)	
system extending between the west	)	
coast of the United States and Canada,	)	
Japan, the People's Republic of China	)	
and the Republic of Korea	)	

**CABLE LANDING LICENSE**

**Adopted: September 23, 1996**

**Released: September 25, 1996**

By the Chief, Telecommunications Division:

1. In this Order, we grant the application of Asia Direct Communications, L.L.C., (Asia Direct) under the Cable Landing License Act<sup>1</sup> for authority to land and operate a digital fiber optic submarine cable system extending between the west coast of United States and Canada, Japan, the People's Republic of China and the Republic of Korea (Asia Direct cable system), with landing points on the west coast of the continental United States and Canada, and in Japan, the People's Republic of China, and the Republic of Korea, on a non-common carrier basis. The proposed cable would promote the public interest by providing needed additional voice, video, and high speed data transmission capacity between and among the United States, Canada, Japan, the People's Republic of China and the Republic of Korea. We find that Asia Direct has provided sufficient information to comply with the Cable Landing License Act, and therefore grant the cable landing license, subject to the conditions listed below.

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<sup>1</sup> An Act Relating to the Landing and Operation of Submarine Cables in the United States, 47 U.S.C. §§ 34-39 (1995) (Cable Landing License Act).

## Application

2. Asia Direct is a limited liability company organized under the laws of the Commonwealth of Virginia. All of its owners and officers are U.S. citizens. The applicant proposes to land and operate the Asia Direct cable system as a non-common carrier system in which capacity would be sold or leased to users on a non-tariffed, non-common carrier basis.<sup>2</sup> The cable system would be owned by Asia Direct and entities authorized to land and operate an international submarine fiber optic cable system in the following countries: Canada, Japan, the People's Republic of China and the Republic of Korea. All of the proposed cable system's plant and equipment located in the United States would be owned by Asia Direct. All of the proposed cable system's plant and equipment located in Canada, Japan, the People's Republic of China and the Republic of Korea would be owned by entities authorized to land and operate an international submarine fiber optic cable system in those countries. The precise landing points of the proposed cable system on the west coast of the continental United States, in Canada, Japan, the People's Republic of China and the Republic of Korea have yet to be selected. Asia Direct asserts that the landing points will be in conformity with plans approved by the Secretary of the Army and all necessary and appropriate agencies of the Governments of Canada, Japan, the People's Republic of China and the Republic of Korea. The proposed cable system is scheduled to be operational in the fourth quarter of 1998.<sup>3</sup>

3. The proposed cable system will consist of twelve segments: A through L. Segment A is located in U.S. territory. Segment A is the cable landing station to be located on the west coast of the United States. Segment B is the cable landing station to be located in or near Shanghai, People's Republic of China. Segment C is the cable landing station to be located in the southeastern portion of the Republic of Korea. Segment D is the cable landing station to be located in the southern portion of Japan. Segment E is the cable landing station to be located in the southwestern portion of Canada. Segment F consists of the whole

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<sup>2</sup> The Asia Direct system will employ 1.55 micrometer wavelength technology operating on each of its fiber pairs at a minimum of 2.5 gigabits per second (Gbps) per fiber pair. The capacity on each fiber pair will be provided in a minimum sixteen 155 Mbps streams. Each 155 megabits per second (Mbps) stream will contain sixty-three Minimum Investment Units (MIUs), with each MIU consisting of a 2.048 megabits per second digital bit stream. An "MIU" is the minimum unit of ownership investment in the Asia Direct cable system and is equivalent to thirty digital channels each operating at sixty-four kilobits per second. Asia Direct Application at 4.

<sup>3</sup> Asia Direct states that planning and development of the proposed cable system will be based upon the use of submarine fiber optic technology judged suitable for implementation at the projected ready for commercial service date of the proposed cable system, employing the appropriate transmission rate necessary to meet the capacity requirements of the users of the system. Asia Direct expects that the minimum system design capacity will be 2.5 Gbps per fiber pair and will ensure system reliability through the deployment of appropriate cable system design. *Id.* at 3.

of the submarine cable system between the system interface<sup>4</sup> at Segment A and branching unit 1 (BU1). Segment G consists of the whole of the submarine cable system between BU1 and the system interface at Segment E. Segment H consists of the whole of the submarine cable system between BU1 and branching unit 2 (BU2). Segment I consists of the whole of the submarine cable between BU2 and the system interface at Segment D. Segment J consists of the whole of the submarine cable system between BU2 and branching unit 3 (BU3). Segment K consists of the whole of the submarine cable system between BU3 and the system interface at Segment C. Segment L consists of the whole of the submarine cable system between BU3 and the system interface at Segment B. Segments F, H and J will each have four fiber pairs with a design capacity of 1,008 MIUs per fiber pair for a total design capacity of 4,032 MIUs. Segments K and L will each have three fiber pairs with a design capacity of 1,008 MIUs per fiber pair for a total design capacity of 3,024 MIUs. Segments G and I will each have two fiber pairs with a design capacity of 1,008 MIUs per fiber pair for a total design capacity of 2,016 MIUs.<sup>5</sup>

4. Asia Direct states that because it seeks to provide capacity in the proposed cable system on a non-common carrier basis and there is no public interest reason for the Commission to require the Asia Direct facilities to be offered on a common carrier basis, its application need not be evaluated pursuant to Title II of the Communications Act of 1934.<sup>6</sup> Asia Direct thus urges the Commission to consider the application only pursuant to the Cable Landing License Act.

5. Asia Direct also states that its proposed cable will yield significant public benefits. The proposed cable, Asia Direct asserts, will provide needed additional international voice, data and video telecommunications services between and among the United States, Canada, Japan, the People's Republic of China and the Republic of Korea with greater cost efficiency than is presently available. Asia Direct submits that the proposed cable will result in the expansion and introduction of new and improved service offerings, including private line services, electronic document interchange services, message services, and broadband services. The proposed cable system, Asia Direct submits, will interconnect with the domestic and international interexchange telecommunications networks of the United States, Canada, Japan, the People's Republic of China and the Republic of Korea and points beyond. Asia Direct also states that the proposed cable system will provide high reliability and low cost capacity, redundancy, security and restoration for communications between and among the United States, Canada, Japan, the People's Republic of China and the Republic of Korea.<sup>7</sup>

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<sup>4</sup> A "system interface" is defined by Asia Direct as a nominal 155 Mbps digital input/output port on the digital distribution frame, excluding the digital distribution frame itself. *Id.* at 4.

<sup>5</sup> *Id.* at 3-4.

<sup>6</sup> 47 U.S.C. §§ 201-229.

<sup>7</sup> Asia Direct Application at 7-14.

## Comments

6. The Asia Direct application was placed on public notice on December 1, 1995. No comments were received. Pursuant to Section 1.767(b) of the Commission's Rules,<sup>8</sup> the Cable Landing License Act and Executive Order No. 10530, we informed the Department of State of Asia Direct's application.<sup>9</sup> The Department of State, after coordinating with the National Telecommunications and Information Administration and the Department of Defense, stated that it has no opposition to the grant of the cable landing license.<sup>10</sup>

## Discussion

7. Asia Direct requests a license under the Commission's private submarine cable policy to promote competition in the provision of international transmission facilities.<sup>11</sup> Pursuant to this policy, the Commission has authorized non-common carrier cables where there is no legal compulsion to serve the public indifferently and where there are no reasons, implicit in the nature of the operations, to expect an indifferent holding out to the eligible user public.<sup>12</sup>

8. Because of the wide availability of common carrier circuits on existing and future cables and satellite circuits between and among the United States, Canada, Japan, the People's Republic of China and the Republic of Korea<sup>13</sup> there is no public interest reason to require that Asia Direct's proposed cable facilities be provided on a common carrier basis.<sup>14</sup> Also, in light of the significant demand for telecommunications facilities, we see no prospect

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<sup>8</sup> 47 C.F.R. § 1.767(b).

<sup>9</sup> Letter from Diane J. Cornell, Chief, Telecommunications Division, International Bureau, Federal Communications Commission, to Michael T.N. Fitch, Deputy U.S. Coordinator, Office of International Communications and Information Policy, U.S. Department of State (Jan. 16, 1996).

<sup>10</sup> Letter from Michael T.N. Fitch, Deputy U.S. Coordinator, Office of International Communications and Information Policy, U.S. Department of State, to Donald H. Gips, Chief, International Bureau, Federal Communications Commission (Aug. 1, 1996).

<sup>11</sup> *Tel-Optik, Ltd.*, 100 F.C.C.2d 1033, 1041 (1985).

<sup>12</sup> *See Optel Communications, Inc.*, 8 FCC Rcd 2267 (1993) (conditional license); *see also National Association of Regulatory Utility Commissioners v. FCC*, 525 F.2d 630 (D.C. Cir. 1976), *cert. denied*, 425 U.S. 992 (1976) (NARUC I).

<sup>13</sup> The west coast of the continental United States and the Pacific Ocean Region are served by Intelsat satellite circuits and a number of cable systems. *See, e.g., Pacific Telecom Transmission Services, Inc.*, 6 FCC Rcd 230 (1991); *AT&T, CICI, Inc., et al.*, 7 FCC Rcd 7758 (1992) (TPC-5); *AT&T, et al.*, 4 FCC Rcd 8042 (1989) (TPC-4); *Pacific Telecom Cable, Inc.*, 2 FCC Rcd 2686 (1987) (conditional license); *Pacific Telecom Cable, Inc.*, 4 FCC Rcd 8061 (1989) (final license) (NPC).

<sup>14</sup> *See Optel*, 8 FCC Rcd at 2268.

of creating significant overcapacity by the introduction of non-common carrier facilities, so as to threaten the economic viability of existing common carrier cable or satellite facilities.<sup>15</sup> Thus, there is no reason to require Asia Direct to operate the proposed systems on a common carrier basis.

9. In addition, since Asia Direct will make "individualized decisions, whether and on what terms to deal" and does not undertake to "carry for all people indifferently,"<sup>16</sup> there is no reason to expect that the proposed cable circuits would be held out to the public by Asia Direct indifferently.<sup>17</sup> We thus conclude that Asia Direct will not in fact offer capacity in the Asia Direct Cable System to the public on a common carrier basis, and thus is not subject to regulation under Title II of the Communications Act.<sup>18</sup>

10. Consistent with prior decisions, we find that Asia Direct's descriptions that the proposed cable will land in the west coast of the continental United States and Canada, and in Japan, the People's Republic of China and the Republic of Korea to be sufficient to determine whether the proposed cable would comply with the provisions of the Cable Landing License Act and Commission rules.<sup>19</sup> In the Section 214 Streamlining Order, the Commission reduced the amount of information required in cable landing license applications.<sup>20</sup> Specifically, the Section 214 Streamlining Order permits applicants in their initial applications to provide a general geographic description of the landing points. It requires that grant of cable landing license applications be conditioned on final approval of a specific description of landing points no later than ninety days prior to construction.<sup>21</sup> The Commission will give public notice of this description, and grant of the license will be considered final unless we issue a public notice to the contrary no later than sixty days after receipt of the specific description of the landing points.

11. Based on the information provided by Asia Direct, we conclude that the grant

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<sup>15</sup> *Id.* at 2268-69.

<sup>16</sup> *See NARUC I*, 525 F.2d at 641.

<sup>17</sup> *See id.* at 630; *see also Pacific Telecom Cable, Inc.*, 2 FCC Rcd 2686 (1987) (conditional license); 4 FCC Rcd 8061 (1989) (final license); *Transnational Telecom Ltd.*, 5 FCC Rcd 598 (1990); *Transgulf Communications Ltd., Inc.*, 6 FCC Rcd 2335 (1991).

<sup>18</sup> 47 U.S.C. §§ 201-229; *see Tel-Optik*, 100 F.C.C.2d at 1046; *see also AT&T Submarine Systems, Inc.*, File No. S-C-L-94-006, ¶¶ 16-29 (rel. May 8, 1996).

<sup>19</sup> *See Guam Telecom Ltd.*, 10 FCC Rcd 12104; *Alaska Telecom Ltd.*, 10 FCC Rcd 6072; *Pacific Telecom Cable, Inc.*, 2 FCC Rcd at 2688; *Transnational Telecom Ltd.*, 5 FCC Rcd at 600.

<sup>20</sup> *See Streamlining the International Section 214 Authorization Process and Tariff Requirements*, IB Docket No. 95-118, Report and Order, FCC 96-79 (rel. Mar. 13, 1996)

<sup>21</sup> 47 C.F.R. § 1.767(a)(5).

of the requested authorizations will not have a significant effect on the environment as defined in Section 1.1307 of the Commission's rules and regulations implementing the National Environmental Policy Act of 1969.<sup>22</sup> Consequently, no environmental assessment is required to be submitted with these applications under Section 1.1311 of the Commission's rules.<sup>23</sup>

12. Accordingly, we conclude that U.S. interests under the Cable Landing License Act will be served by grant of the license to Asia Direct, as conditioned below.

### Ordering Clauses

13. Consistent with the foregoing, we hereby GRANT AND ISSUE, under the provisions of the Cable Landing License Act and Executive Order 10530, Asia Direct Communications, L.L.C., a license to land and operate a high-capacity fiber optic digital submarine cable (with four fiber pairs operating at a minimum 2.5 Gbps per fiber pair) extending between the continental United States, Canada, Japan, the People's Republic of China and the Republic of Korea, with landing points in the west coast of the continental United States and Canada, and in Japan, the People's Republic of China and the Republic of Korea. This grant is subject to all rules and regulations of the Federal Communications Commission; any treaties or conventions relating to communications to which the United States is or may hereafter become a party; any action by the Commission or the Congress of the United States 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 its shore, 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 of protecting and safeguarding the cable from injury or destruction by enemies of the United States of America;
- (3) The Licensee or any persons or companies directly or indirectly controlling it or controlled by it, or under direct or indirect common control with it, shall not acquire or enjoy any right, for the purpose of handling or interchanging traffic to or from the

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<sup>22</sup> 42 U.S.C. §§ 4321-4335.

<sup>23</sup> 47 C.F.R. § 1.1311.

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 carrier by reason of any concession, contract, understanding, or working arrangement to which the Licensee or any persons controlling it or controlled by it are parties;

(4) 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 of control of the Licensee to any persons, unless the Federal Communications Commission shall give prior consent in writing;

(5) The Licensee shall notify the Commission in writing of the precise locations at which the cables will land no less than ninety days prior to commencing construction of cable landing stations at those locations. The Commission will give public notice of the filing of these descriptions, and grant of this license will be considered final unless the Commission issues a notice to the contrary no later than sixty days after receipt of the specific descriptions of landing points;

(6) The Commission reserves the right to require the Licensee to file an environmental impact statement should it determine that the landing of the cable at those locations and construction of necessary cable landing stations would have a significant impact upon the environment within the meaning of Sections 1.1305-1.1307 of the Commission's rules and regulations implementing the National Environmental Policy Act of 1969, 42 U.S.C. Sections 4321-4335; this license is subject to modification by the Commission upon its review of any environmental impact statement that it may require pursuant to its rules;

(7) The Licensee shall maintain no less than a 50 percent ownership interest and voting control share in the proposed cable, including 100 percent ownership in the cable station in the United States and in the U.S. land portion of the cable from the station to the U.S. beach joint of the submersible portion of the proposed cable;

(8) The Licensee shall, by application, obtain Commission approval prior to the sale or transfer to a foreign entity of five percent or more in the aggregate of U.S.-owned and -controlled stock;

(9) The license is revocable by the Commission after due notice and opportunity for hearing pursuant to section 2 of "An Act Relating to the Landing and Operation of Submarine Cables in the United States," 47 U.S.C. § 35, or for failure to comply with the terms of the authorizations;

(10) The Licensee shall notify the Commission in writing of the date on which the cable is placed in service and the license shall expire 25 years from such date, unless renewed or extended upon proper application, and, upon expiration of the license, all

rights granted under it shall be terminated; and

(11) 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 of the cable landing license.

14. This Order is issued under Section 0.261 of the Commission's Rules, 47 C.F.R. § 0.261, and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules, 47 C.F.R. §§ 1.106, 1.115, may be filed within 30 days of the date of public notice of this order (see 47 C.F.R. § 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

  
for Diane J. Cornell  
Telecommunications Division  
International Bureau