



# PUBLIC NOTICE

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**Report No. SCL-00088**

**DA No. 09-1309**  
**Thursday June 11, 2009**

## **ACTIONS TAKEN UNDER CABLE LANDING LICENSE ACT**

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

By the Chief, Policy Division, International Bureau:

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

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

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

Submarine Cable Landing License

Grant of Authority

Date of Action: 06/10/2009

Acceptability for Filing Public Notice: The Application was placed on Public Notice on May 5, 2009. See Hannon Armstrong KCS Funding, LLC and Truestone, LLC Application for Authority to Land and Operate a non-common carrier fiber-optic submarine cable network connecting the U.S. Army Kwajalein Atoll/Reagan Test Site, in the Republic of the Marshall Islands with Guam, the HANTRU1 System, File No. SCL-LIC-20090302-00005, Public Notice, Streamlined Submarine Cable Landing License Applications Accepted for Filing, Report No. SCL-000085S (Int'l Bur., May 5, 2009). No oppositions or other comments were filed in response to the Public Notice.

The Application has been coordinated with the Department of State and other relevant Executive Branch agencies pursuant to section 1.767(b) of the Commission's rules, 47 C.F.R. § 1.767(b), and consistent with procedures established with the Department of State. See Review of Commission Consideration of Applications under the Cable Landing License Act, IB Docket No. 00-106, Report and Order, 16 FCC Rcd 22167, 22192-93, paras. 51-52 (2001) (Submarine Cable Landing License Report and Order); Streamlined Procedures for Executive Branch Review of Submarine Cable Landing License Requests, State Department Media Note (Revised) (rel. Dec. 20, 2001) available at <http://www.state.gov/r/pa/prs/ps/2001/6951.htm>.

Actions Taken: (1) Grant of Cable Landing License to Hannon Armstrong KCS Funding, LLC ("Hannon Armstrong") and Truestone, LLC ("Truestone") (together, the "Applicants") for the purpose of landing and operating a non-common carrier private fiber-optic submarine cable system, the HANTRU1 System ("HANTRU1"), connecting the U.S. Army Kwajalein Atoll/Reagan Test Site, in the Republic of the Marshall Islands ("RMI") with Guam and (2) waiver of section 1.767(h)(1) of the Commission's rules, 47 C.F.R. § 1.767(h)(1), in connection with the License.

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

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

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

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

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

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

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

Applicants request a waiver of section 1.767(h)(1) so that they need not add Tata as a joint applicant. Section 1.767(h)(1) requires that "any entity that controls a cable landing station in the United States" shall be "applicants for, and licensees on, a cable landing license." 47 C.F.R. § 1.767(h)(1). The purpose of this requirement is to ensure that entities having a significant ability to affect the operation of the cable system become licensees so that they are subject to the conditions and responsibilities associated with the license. See Submarine Cable Landing License Report and Order, 16 FCC Rcd at 22194-95, paras. 53-54.

According to the Applicants, Tata will not be able to affect significantly the operation of HANTRU1 and it thus is not necessary for Tata to be a licensee to ensure compliance with the Cable Landing License Act, the Commission's rules or the terms of the cable landing license. Application at 19. According to the Applicants, Tata will provide certain limited services that would not provide it with any ability to affect significantly

at 17. According to the Applicants, Tata will provide certain limited services that would not provide it with any ability to affect significantly HANTRU1's operation. Truestone will enter into an agreement with Tata granting HANTRU1 an IRU for Tata's beach manhole at Agat, and for conduit connecting the beach manhole with Tata's Piti cable station. Tata will also provide Truestone with collocation space in the cable station building. Id. at 20. In the event Hannon Armstrong terminates its management agreement with Truestone, Hannon Armstrong has the right to step into Truestone's agreement with Tata to ensure continuity of service to DISA and the U.S. Army.

Although Tata will continue to own the existing cable station at Piti, Truestone will have exclusive control over and access to HANTRU1 terminal equipment, which it will collocate in Tata's Piti cable station building. Equipment for HANTRU1 will be separately caged and controlled exclusively by the Applicants from their network operations center in Rockville, Maryland. The Applicants will retain operational authority over their facilities and provide direction to Tata in all matters relating to HANTRU1. Pursuant to the agreement between Truestone and Tata, Tata will perform certain limited "remote hands" monitoring, testing, and maintenance services on the Applicants' equipment, which would be performed in accordance with Truestone's directions. Accordingly, we grant Applicants a waiver of section 1.767(h)(1) and do not require Tata to be on the Cable Landing License.

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

Applicants have provided information and demonstrated that the proposed operation of the cable on a non-common carrier basis satisfies the requirements set forth in *National Association of Regulatory Utility Commissioners v. FCC*, 525 F.2d 630, 642 (D.C. Cir 1976) (NARUC I), cert. denied, 425 U.S. 992 (1976). See also *Submarine Cable Landing License Report and Order*, 16 FCC Rcd at 22202-22203, paras. 69-70; *Review of Commission Consideration of Applications under the Cable Landing License Act*, IB Docket No. 00-106, Notice of Proposed Rulemaking, 15 FCC Rcd 20789, 20815-20818, paras. 62-67.

Conditions and Requirements: Applicants shall comply with the routine conditions set out in section 1.767(g)(1)-(14) of the Commission's rules, 47 C.F.R. § 1.767(g)(1)-(14), and with the requirements of section 1.768 of the Commission's rules, 47 C.F.R. § 1.768 (notifications and prior approval for submarine cable landing licensees that are or propose to become affiliated with a foreign carrier).

Applicants "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 for the purpose of protecting and safeguarding the cables from injury or destruction by enemies of the United States of America." 47 C.F.R. § 1.767(g)(3). The International Bureau will inform the licensees of specific requirements in connection with this condition.

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