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US body approves TGN's transfer to VSNL

New York | May 04, 2005 12:40:16 PM IST

New York, May 4 : The US Federal Communications Commission (FCC) has approved the application of India's Videsh Sanchar Nigam Limited (VSNL) to transfer the Tyco Global Network (TGN) landing station licences.

VSNL is India's leading provider of international telecommunications and Internet services. It had announced in November 2004 that it had agreed to acquire TGN, the world's most advanced submarine cable system, for \$130 million.

The approval comes in the wake of some strong objections from at least three Republican Senators and one US company which separately cited homeland security concerns in letting a "demonstrably hostile" entity take over a strategic American asset.

The FCC's approval concludes a nearly six-month process that included a formal review by the Committee on Foreign Investment in the United States (CFIUS), the Department of Homeland Security (DHS), the Department of Defence (DOD), the Department of Justice (DOJ), the Federal Bureau of Investigation (FBI) and other agencies to ensure the transaction would not pose competition, law enforcement, national security or public safety concerns.

"By obtaining approval from the FCC for this transaction, VSNL has crossed a significant milestone in its drive to acquire TGN," N. Srinath, director of operations, VSNL, was quoted as saying in a press release.

"This acquisition is a major component of our strategy to offer enterprise and carrier customers seamless, end-to-end telecommunications solutions that circle the globe.

"This network, coupled with our expansive network within India and into Asia, will provide our customers unprecedented choice with regard to global data services. It will also give customers the ability to receive service under one brand with one single point of contact."

Crest Communications Corp, a US corporation, had filed a petition with the FCC asking it to reject Tyco Communications' applications to sell its global fibre network to VSNL on the ground of homeland security concerns.

In its Petition to Deny before the FCC, Crest Communications Corp's vice president Brian Roussell had said: "This sale of the last remaining global undersea cable network under US ownership and control represents a direct threat to our nation's security."

"By approving this sale, the FCC would be giving up US control of this vital international communications artery, which accounts for over 85 percent of the total trans-Pacific submarine cable capacity. We would lose our ability to ensure safe, reliable and secure telecommunications services that are essential to the US military in a time of crisis," he contented.

Republican Senators Jon Kyl of Arizona, Ted Stevens of Alaska and Jeff

Sessions of Alabama had written to Energy Secretary John Snow opposing the proposed the takeover. They had called for a full investigation by the Committee on Foreign investment in the US.

"TGN is a strategic asset of incalculable value to the United States security and commercial interest. It is an immense, international network offering massive amounts of high-quality fibre optic bandwidth," the senators wrote.

"This transaction gives the Indian government control over a significant portion of the world's submarine cable network (including more than 80 percent of the total trans-Pacific undersea capacity) and over key strategic submarine cable landing stations in the US," they wrote.

It was not immediately clear whether the FCC approval meant the takeover would not run into any more obstacles.

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VSNL obtains all major US regulatory approvals to acquire Tyco Global Network

May 3, 2005

Videsh Sanchar Nigam Limited (VSNL) (NYSE: VSL), India's leading provider of international telecommunications and internet services, today announced that the Federal Communications Commission (FCC) in the United States approved its application on April 29, 2005 to transfer the Tyco Global Network (TGN) landing station licenses from Tyco to VSNL. The FCC's approval culminates a nearly six-month process that included a formal review by the Committee on Foreign Investment in the United States (CFIUS) as well as the Department of Homeland Security (DHS), the Department of Defense (DOD), the Department of Justice (DOJ), the Federal Bureau of Investigation (FBI) and other agencies to ensure the transaction would not pose competition, law enforcement, national security or public safety concerns. All agencies agreed it would not.

"By obtaining approval from the FCC for this transaction, VSNL has crossed a significant milestone in its effort to acquire TGN. This acquisition is a major component of our strategy to offer enterprise and carrier customers seamless, end-to-end telecommunications solutions that circle the globe," said N Srinath, director of operations, VSNL. "This network, coupled with our expansive network within India and into Asia, will provide our customers unprecedented choice with regard to global data services. It will also give customers the ability to receive service under one brand with one single point of contact."

In November 2004, VSNL announced that it agreed to acquire Tyco Global Network, the world's most advanced submarine cable system for \$130 million (not including the assumption of certain liabilities).

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Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
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DA 05-1268
April 29, 2005

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 application IS GRANTED. This grant of authority is taken under section 0.261 of the Commission's rules, 47 C.F.R. § 0.261, and is effective upon release of this public notice. 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 for a March 13, 2002 Public Notice; http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-01-332A1.pdf for the December 14, 2001 Report and Order.

SCL-ASG-20050304-00003 **Tyco Telecommunications (US) Inc., Assignor and VSNL Telecommunications (US) Inc., Assignee**
ASSIGNMENT OF INTERESTS IN LICENSES

SCL-T/C-20050304-00005 **Tyco International Ltd., Transferor, VSNL Telecommunications (US) Inc., Transferee, and Tyco Networks (Guam) L.L.C., Licensee**
TRANSFER OF CONTROL

**SCL-MOD-20050304-00004 Tyco Telecommunications (US) Inc. and Tyco Networks (Guam) L.L.C.
MODIFICATION OF LICENSE**

On March 4, 2005, Tyco International Ltd. (“Tyco”), Tyco Telecommunications (US) Inc. (“Tyco Telecom”), Tyco Networks (Guam) L.L.C. (“Tyco Guam”), and VSNL Telecommunications (US) Inc. (“VSNL USA” and, together with Tyco, Tyco Telecom, and Tyco Guam, the “Applicants”) filed the three above-captioned applications.¹ On March 17, 2005, we placed the applications on public notice.² Today, we find that grant of the applications serves the public interest, and we grant the applications, subject to the listed conditions.

The three applications seek to: (1) assign Tyco Telecom’s interests in the two Tyco Global Network submarine cables that land in the United States, Tyco Atlantic and Tyco Pacific, to VSNL USA; (2) transfer control of Tyco Guam, a joint licensee with Tyco Telecom for the Tyco Pacific cable, to VSNL USA; and (3) prior to the assignment and transfer, modify the Tyco Pacific license to remove from the license the authority to construct, land and operate the original southern segment of the cable (unbuilt with the exception of a six-mile-long stub extending from the Hermosa Beach, California landing) and issue a separate cable landing license for that segment.³ Tyco Atlantic and Tyco Pacific are two of five submarine cable systems (along with Tyco Northern Europe, Tyco Western Europe, and Tyco Pan-Asia) collectively known as the Tyco Global Network.⁴ Pursuant to a November 1, 2004 stock and asset purchase agreement, Videsh Sanchar Nigam Ltd. (“VSNL”) and various subsidiaries, including VSNL USA, will acquire the Tyco Global Network as well as a terrestrial network of leased capacity and dark

¹ Application for Assignment of a Cable Landing License for the Tyco Atlantic Submarine Cable System and a Jointly-Held Cable Landing License for the Tyco Pacific Submarine Cable System, File No. SCL-ASG-20040304-00003; Application for Transfer of Control of a Jointly-Held Cable Landing License for the Tyco Pacific Submarine Cable System, File No. SCL-T/C-20050304-00005; Application to Modify the Cable Landing License for the Tyco Pacific Submarine Cable System, File No. SCL-MOD-20050304-00004 (filed March 4, 2004).

² Streamlined Submarine Cable Landing License Applications Accepted for Filing, Public Notice, DA 05-700 (PD/Int’l Bur. March 17, 2005) (“Acceptable for Filing Public Notice”).

³ Our grant of the above-referenced modification application (File No. SCL-MOD-20050304-00004) filed by Tyco Telecom and Tyco Guam removes the California-Hawaii-Guam southern segment, currently unbuilt except for the six-mile-long stub, from the Tyco Pacific cable landing license. Applicants state that, prior to closing the transactions described in File Nos. SCL-ASG-20050304-00003 and SCL-T/C-20050304-00005, Tyco Guam will assign to Tyco Telecom, on a *pro forma* basis, its entire ownership interest in the original southern segment (California-Hawaii-Guam), including any new cable landing license issued for that segment. (See File No. SCL-MOD-20020412-00027, amending the Tyco Pacific cable landing license to permit the filing of post-transaction notifications of *pro forma* transfers or assignments.) Thus, at the time of closing, Tyco Guam will have no interest in the unbuilt southern segment, the cable stub, or any separate cable landing license issued for the unbuilt segment and cable stub. The six-mile-long stub currently does not connect the Hermosa Beach beach landing with any U.S. or foreign point and is not capable of being operational absent further construction. By separate action today, we issue a separate cable landing license for the original southern segment of Tyco Pacific to Tyco Telecom. See *Tyco Telecommunications (US) Inc., Cable Landing License*, File No. SCL-LIC-20050304-00011, Public Notice, Actions Taken under Cable Landing Act, DA 05-1269 (PD/Int’l Bur. Apr. 29, 2005).

⁴ Tyco Atlantic is a non-common carrier cable extending between the United States and the United Kingdom. Tyco Telecom, a wholly-owned indirect subsidiary of Tyco International, is the successor-in-interest to Tyco Atlantic (US) Inc., the original licensee of Tyco Atlantic. Tyco Pacific is a non-common carrier cable extending from the continental United States to Japan, with a link from Japan to Guam. Tyco Telecom, the successor-in-interest to Tyco Networks (US) Inc., an original licensee of Tyco Pacific, and Tyco Guam (formerly, Tyco Networks (Guam) L.L.C.), a wholly-owned indirect subsidiary of Tyco, are the joint U.S. licensees of Tyco Pacific.

fiber within the United States.⁵ Upon consummation of the transaction, VSNL intends to rename Tyco Atlantic and Tyco Pacific.

Crest Communications Corporation (“Crest”) filed a petition to deny and reply against the applications.⁶ Crest objects to grant of the applications on national security and competition grounds.⁷ Crest argues that VSNL USA’s purchase of Tyco Pacific would permit VSNL USA’s ultimate parent, VSNL, to preserve and strengthen its monopoly power in the U.S.-India telecommunications market.⁸ Crest asks the Commission to remove the applications from 45-day streamlined review and, ultimately, to deny the applications.⁹ The Applicants respond that Crest’s allegations lack merit. They assert that the sale of

⁵ VSNL USA is a newly-created Delaware corporation, wholly owned by VSNL Nederlands B.V. (“VSNL Nederlands”), itself a subsidiary of VSNL Singapore Pte. Limited (“VSNL Singapore”), which in turn is wholly owned by VSNL, the incumbent provider of international telecommunications services in India. The Tata Group, an India commercial conglomerate, holds an aggregate 46.6% ownership interest, and exercises a controlling ownership and managerial interest, in VSNL. The Government of India holds an approximate 26% ownership interest in VSNL. The Bank of New York holds 13.3% of VSNL as American Depository Receipts. VSNL is publicly traded on the Bombay Stock Exchange and India’s National Stock Exchange.

⁶ Petition to Deny of Crest Communications Corporation (filed Mar. 31, 2005) and Reply Brief in Support of Petition to Deny of Crest Communications Corporation (filed Apr. 18, 2005). Crest is the parent of Northern Lights, which has a conditional submarine cable license to land the Northern Lights cable system at three cable stations in Alaska and connect the Northern Lights cable through two branching units on the northern link of Tyco Pacific. See *Northern Lights Holdings, Inc., Submarine Cable Landing License*, Public Notice, Actions Taken under Cable Landing License Act, DA 02-2554, 17 FCC Rcd 19571 (PD/Int’l Bur. 2002) (“*Northern Lights Public Notice Grant*”). The license is conditional because Northern Lights had not filed the prerequisite landing point notification, with specific geographic coordinates, that it must file at least 90 days before beginning construction. See 47 C.F.R. § 1.767(a)(5), (g)(8); 17 FCC Rcd at 19572, 19773, 19574. The Northern Lights cable, once constructed, would be a network of three interrelated cable segments.

⁷ Crest’s national security argument is based on its concern that its economic interests in the as-yet-unbuilt Northern Lights cable system, which would serve points in Alaska by interconnecting with Tyco Pacific, could be adversely affected by VSNL USA’s purchase of Tyco Pacific. Crest advises that it has been in discussions with the U.S. Department of Defense (“DOD”) about using the Northern Lights cable system for military purposes. Crest states that it is concerned that the transfer of Tyco Pacific to VSNL USA would diminish DOD’s interest in using the Northern Lights cable system, the segments of which would be interconnected through branching units and capacity acquisition on Tyco Pacific.

⁸ Crest asks the Commission to define the relevant market as the U.S.-India route, rather than focusing on Japan and the United Kingdom as the destination markets of Tyco Pacific and Tyco Atlantic. Crest alleges that, if the transaction is approved, VSNL will have an end-to-end pipe between India and the United States. Crest contends that VSNL’s cable network would include the Tata Indicom cable between India and Singapore, dark fiber on the c2c network between Singapore and Japan, and Tyco Pacific, arguing that VSNL would have “unquestioned dominance on the critical U.S. to India route across the Pacific.” Crest suggests that VSNL’s acquisition of Tyco Pacific would deter other carriers from building new undersea cables in the Pacific and landing stations in India. Crest asserts that the transaction would eliminate Tyco as a potential threat to VSNL in the India cable station market. Crest contends that Tyco, as owner of Tyco Pacific, is a potential competitor to construct a new cable landing station in India that competes with those owned by VSNL. Crest argues that if Tyco retained ownership of Tyco Pacific, Tyco would have a strong incentive to break VSNL’s bottleneck in India, which, Crest says, would result in opening the India market and increasing demand for transpacific cable capacity.

⁹ In its reply, Crest first raises two requests for alternative relief. If the Commission does not deny the applications, Crest asks the Commission to grant the transfer and assignments conditioned on VSNL’s divestiture of two Tyco Pacific fiber pairs and/or on imposition of common carrier regulation on the Tyco Pacific cable. As noted below, we deny the new requests for relief on procedural grounds. See *infra* notes 19 & 21.

Tyco Atlantic and Tyco Pacific raises no competition or market access concerns, in particular raising no competitive concerns on the U.S.-Japan or transpacific routes served by Tyco Pacific.¹⁰

On April 11, 2005, the U.S. Department of Justice, including the Federal Bureau of Investigation (“DOJ/FBI”), the U.S. Department of Homeland Security (“DHS”), and the U.S. Department of Defense (“DOD” and, together with DOJ/FBI and DHS, the “Executive Branch Entities”) and VSNL USA, VSNL America and VSNL submitted a Joint Petition to Adopt Conditions to Authorizations and Licenses (“Petition”). The Petition states that on April 7, 2005 the Executive Branch Entities entered into an agreement (“Agreement”) with VSNL USA, VSNL America and VSNL that is intended to ensure that the Executive Branch Entities and other entities with responsibility for enforcing the law, protecting the national security, and preserving public safety can proceed in a legal, secure, and confidential manner to satisfy these responsibilities. The Petition advises that the Executive Branch Entities do not object to the grant of the above-referenced applications, provided that the Commission conditions such grant on compliance with the commitments set forth in the Agreement.¹¹

After careful consideration of the record in this proceeding, we conclude that the concerns raised by Crest are not sufficient to persuade us to remove the applications from streamlined treatment.¹² WE GRANT the applications, SUBJECT TO the conditions set forth below.¹³

¹⁰ Applicants note that neither Tyco Pacific nor the overall Tyco Global Network serves India. They state that transpacific capacity increased by 2500 percent from 1998 to 2003 and this new capacity has resulted in a “capacity glut” that essentially eliminates the risk of dominant behavior on the U.S.-Japan route. They contend that VSNL has no incentive to depress demand for Tyco Pacific’s transpacific capacity by artificially raising capacity rates to above-market levels. The Applicants state that Crest filed its petition to deny to obtain commercial leverage over Tyco Telecom in negotiations over ongoing business transactions involving Tyco Telecom’s undersea cable supply business. The ongoing negotiations concern the price for construction of the Northern Lights cable system. Joint Opposition to Petition to Deny (filed Apr. 11, 2005). Crest, in its reply, denies that it filed its petition as part of a retaliation campaign against Tyco.

¹¹ The Agreement is available as an attachment to the two files for the assignment and transfer of control applications in the Commission’s International Bureau Filing System. See http://svartifoss2.fcc.gov/servlet/ib.page.FetchAttachment?attachment_key=429057. VSNL America is a subsidiary of VSNL that has international section 214 authority. See *VSNL America Inc., Application for Authority under Section 214 of the Communications Act of 1934, as amended, to Operate as a Facilities-Based Carrier and as a Resale Carrier for the Provision of International Switched and Private Line Services to All International Points*, Order, Authorization and Certificate, File No. ITC-214-20030728-00376, DA 04-2668, 19 FCC Rcd 16555 (Int’l Bur. 2004) (granting VSNL America international section 214 authority conditioned on compliance with network security agreement).

¹² In addition to the Crest pleadings, we received an April 28, 2005 letter from counsel for Polargrid LLC, a company that has a contractual dispute with VSNL that currently is before the U.S. District Court, S.D.N.Y. Letter from Mark S. Baldwin to Donald Abelson, Chief, International Bureau, Federal Communications Commission (dated Apr. 28, 2005). We do not find that the pending litigation justifies either deferring action on the applications or dismissing them. It is long-standing Commission policy not to involve itself with private contract disputes. See, e.g., *Applications of Verestar, Inc. (Debtor-in-Possession) for Consent to Assignment of Licenses to SES Americom, Inc.*, Memorandum, Opinion, Order and Authorization, IB Docket No. 04-174, DA 04-3639, 19 FCC Rcd 22750, 22756, para. 16 (Int’l Bur. & Wireless Tele. Bur. 2004). We find that the letter is not timely filed, and we dismiss the letter on procedural grounds. See 47 C.F.R. § 1.45; Acceptable for Filing Public Notice, *supra* note 2 (filings in proceeding due by March 31).

¹³ Today’s grant of the above-referenced assignment application (File No. SCL-ASG-20050304-00003) authorizes VSNL USA to acquire from Tyco Telecom the New Jersey cable station, the portions of Tyco Atlantic extending between the New Jersey cable station and the twelve-nautical-mile limit of the U.S. territorial sea, and the Tyco Atlantic cable landing license. VSNL Bermuda Limited (“VSNL Bermuda”), a wholly-owned subsidiary of VSNL Singapore, will own the subsea portions of Tyco Atlantic located in international waters, and VSNL Telecommunications (UK) Limited, a wholly-owned subsidiary of VSNL Netherlands, will own the cable station in

The comments filed do not provide a basis to deny these applications. Under Commission precedent, we defer to the Executive Branch's expertise on national security and law enforcement issues. WE GRANT the Joint Petition to Adopt Conditions to Authorizations and Licenses, and WE CONDITION our grant of the applications in File Nos. SCL-ASG-20050304-00003 and SCL-T/C-20050304-00005 on the commitments in the Agreement, as set forth below. The commitments in the Agreement address the Executive Branch's concerns regarding national security, law enforcement, and public safety. We find no additional national security, law enforcement or public safety concerns.

Moreover, we do not find credible evidence that the transaction is likely to raise any significant competitive concern. Japan and the United Kingdom, the destination markets for the two cables, are World Trade Organization Members.¹⁴ Thus, under the Commission's rules, VSNL USA is entitled to a rebuttable presumption that a grant of the applications does not present competitive concerns that may arise by virtue of VSNL's market power in India.¹⁵ Crest, however, does not substantiate its claim that VSNL's purchase of Tyco Pacific raises substantial potential harms to competition, either vertical or horizontal. We find that the transaction will not result in a significant increase in concentration on the U.S.-Japan or U.S.-U.K. routes.¹⁶ The record does not support the contention that whoever owns Tyco Pacific – Tyco, VSNL, or some third entity – would have market power in the transpacific international transport market for the Pacific Ocean Region.¹⁷ No VSNL entity operates submarine cable facilities in Tyco Pacific's destination market of Japan or on the U.S.-Japan route.¹⁸ Crest has not substantiated its

the United Kingdom. Today's grant of the assignment application also authorizes VSNL USA to acquire from Tyco Telecom the California and Oregon cable stations, the portions of Tyco Pacific extending between the California and Oregon cable stations and between each station and the twelve-nautical-mile limit of the U.S. territorial sea, and Tyco Telecom's interest in the Tyco Pacific cable landing license. VSNL Bermuda will own the subsea portions of Tyco Pacific located in international waters, and VSNL Japan K.K., also a wholly-owned subsidiary of VSNL Singapore, will own the cable station in Japan.

Today's grant of the transfer of control application (File No. SCL-T/C-20050304-00005) authorizes Tyco to transfer control of Tyco Guam, including its joint interest in the Tyco Pacific cable landing license, as modified by grant of File No. SCL-MOD-20050304-00004, from Tyco to VSNL USA. Tyco Guam owns and operates the portion of Tyco Pacific located in the territory of Guam, including the cable station and the portion of Tyco Pacific extending between the cable station and one-half nautical mile beyond the twelve-nautical-mile limit of the U.S. territorial sea. Applications state that, post transaction, Tyco Guam will be renamed VSNL Guam.

¹⁴ We also note that VSNL does not possess market power in either country.

¹⁵ In the exceptional case where an application poses a very high risk to competition in the U.S. market because of a particular foreign carrier's market power in a cable's destination market, where the Commission's codified safeguards and other conditions would be ineffective, the Commission has reserved the right to deny the application. *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Market Entry and Regulation of Foreign Affiliated Entities*, IB Dockets Nos. 97-142, 95-22, Report and Order and Order on Reconsideration, 12 FCC Red 23891, 23913-14, 23916-17, 23933-35, 23950-55, paras. 51, 57, 93-96, 143-149 (1997).

¹⁶ The applications state that VSNL and its affiliated companies currently control nominal amounts of capacity (substantially less than one percent of lit capacity) on each of the transatlantic and transpacific routes.

¹⁷ In addition to Tyco Pacific, the largest cable in terms of capacity, numerous transpacific submarine cables, both private and common carrier, currently serve the U.S.-Japan route. These include TPC-5, Japan-U.S., China-U.S., PC-1 and, indirectly, Southern Cross. These cables, as well as transatlantic capacity and satellite capacity, can serve as substitutes for capacity carried over Tyco Pacific.

¹⁸ VSNL also does not operate submarine facilities in Tyco Atlantic's destination market of the United Kingdom or on the U.S.-U.K. route. The U.S.-U.K. route is served by several cables, including the Apollo, Atlantic Crossing-1, Flag Atlantic, Hibernia, TAT-14, and Yellow cables.

claim that VSNL's purchase of Tyco Pacific and Tyco Atlantic would strengthen VSNL's existing ability to leverage its market power in the Indian market into the transatlantic or transpacific international transport markets to the detriment of U.S. consumers. As a result, we do not find record support for Crest's request that we deny the applications or that we grant the transfer and assignment applications conditioned on VSNL's divestiture of two Tyco Pacific fiber pairs and/or on the imposition of common carrier regulation, as Crest requests.¹⁹ Further, no VSNL entity has or will have market power in the United Kingdom or Japan. Thus, pursuant to the Commission's rules, the applications are eligible for 45-day streamlined review.²⁰ Therefore, WE DENY Crest's petition.²¹

Conditions and Requirements

Our grant of the applications IS SUBJECT TO the following conditions:

Tyco Atlantic:

See Tycom Atlantic (US) Inc., Application for a License to Land and Operate a Private Fiber-Optic Cable System between the United States Mainland and the United Kingdom, File No. SCL-LIC-20000308-00007, 15 FCC Rcd 14881 (Int'l Bur. 2000) (initial license), as modified by File Nos. SCL-MOD-20010201-00005, 16 FCC Rcd 3600 (Int'l Bur. 2001) (changes to U.K. landing), SCL-MOD-20020412-00016 and SCL-MOD-20020412-00017, 17 FCC Rcd 12916 (Int'l Bur. 2002) (modification of conditions for Tyco Atlantic cable). VSNL USA shall comply with the requirements of section 1.768 (notifications and prior approval for submarine cable landing licensees that are or propose to become affiliated with a foreign carrier), 47 C.F.R. § 1.768. VSNL USA shall notify the Commission of the consummation of the transaction within 30 days of consummation, and further shall notify the Commission of the new name given to Tyco Atlantic.

Today's authorization to assign the Tyco Atlantic cable landing license to VSNL USA, as well as the assigned Tyco Atlantic cable landing license itself, ARE CONDITIONED on compliance with the provisions of the Agreement between VSNL, VSNL USA, and VSNL America, on the one hand, and the DOJ/FBI, DHS and DOD, on the other hand, which Agreement is designed to address national security, law enforcement, and public safety concerns of DHS, DOJ, FBI and DOD regarding the authority granted herein. Nothing in this Agreement is intended to limit any obligation imposed by Federal law or regulation including, but not limited to 47 U.S.C. § 222(a) and (c)(1) and the Commission's implementing regulations.

¹⁹ As noted above, *see supra* note 9, Crest failed to make its requests for alternative relief until it filed its reply. As discussed *infra* at note 21, we deny these alternative requests on procedural grounds. In any case, we note that we retain the ability to impose common carrier regulation under the existing conditions of the Tyco Pacific cable landing license, if we should need to do so in the future. *See Tycom Networks (US) Inc. and Tycom Networks (Guam) L.L.C., Application for a License to Land and Operate a Private Fiber-Optic Cable System between the United States Mainland, Hawaii, Guam, and Japan*, File No. SCL-LIC-20000717-00026, 15 FCC Rcd 24078, 24086 (Int'l Bur. 2000) ("Pursuant to Section 35 of the Cable Landing License Act, 47 U.S.C. § 35, Executive Order No. 10530, as amended, and Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, the Commission reserves the right to impose common carrier or common-carrier-like regulation on the operations of the cable system if it finds that the public interest so requires"); *see also* 47 C.F.R. § 1.767(g)(10) (common carrier condition).

²⁰ *See* 47 C.F.R. § 1.767(k).

²¹ We deny on procedural grounds Crest's requests for alternative relief – asking for VSNL's divestiture of two Tyco Pacific fiber pairs and/or imposition of common carrier regulation on the Tyco Pacific cable – first raised by Crest in its reply. *See* 47 C.F.R. § 1.45(c) (reply shall be limited to matters raised in the opposition); *see also supra* notes 9 and 19.

Tyco Pacific:

See Tycom Networks (US) Inc. and Tycom Networks (Guam) L.L.C., Application for a License to Land and Operate a Private Fiber-Optic Cable System between the United States Mainland, Hawaii, Guam, and Japan, File No. SCL-LIC-20000717-00026, 15 FCC Rcd 24078 (Int'l Bur. 2000) (initial license), as modified by File Nos. SCL-MOD-20010326-00010, 16 FCC Rcd 11778 (Int'l Bur. 2001) (changes to cable landing stations), SCL-MOD-20020412-00027 and SCL-MOD-20020412-00028, 17 FCC Rcd 12916 (PD/Int'l Bur. 2002) (modification of conditions), File No. SCL-MOD-20020826-00079, 17 FCC Rcd 22508, 22511 (PD/Int'l Bur. 2002) (approving new southern segment), and File No. SCL-MOD-20050304-00004 (PD/Int'l Bur. Apr. 29, 2005) (removing original southern segment). VSNL USA shall comply with the requirements of section 1.768 (notifications and prior approval for submarine cable landing licensees that are or propose to become affiliated with a foreign carrier), 47 C.F.R. § 1.768. VSNL USA shall notify the Commission of the consummation of the transaction within 30 days of consummation, and further shall notify the Commission of the new name given to Tyco Pacific.

Today's authorization to assign Tyco Telecom's interests in the Tyco Pacific cable landing license, and to transfer control of Tyco Guam, to VSNL USA, as well as the Tyco Pacific cable landing license itself, as modified, ARE CONDITIONED on compliance with the provisions of the Agreement between VSNL, VSNL USA, and VSNL America, on the one hand, and the DOJ/FBI, DHS and DOD, on the other hand, which Agreement is designed to address national security, law enforcement, and public safety concerns of DHS, DOJ, FBI and DOD regarding the authority granted herein. Nothing in this Agreement is intended to limit any obligation imposed by Federal law or regulation including, but not limited to 47 U.S.C. § 222(a) and (c)(1) and the Commission's implementing regulations.

-FCC-



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

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DA 05-1269
April 29, 2005

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 application IS GRANTED. This grant of authority is taken under section 0.261 of the Commission's rules, 47 C.F.R. § 0.261, and is effective upon release of this public notice. 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 for a March 13, 2002 Public Notice; http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-01-332A1.pdf for the December 14, 2001 Report and Order.

SCL-LIC-20050304-00011

Tyco Telecommunications (US) Inc.
SUBMARINE CABLE LANDING LICENSE

Action Taken: Grant of a separate submarine cable landing license to Tyco Telecommunications (US) Inc. for the mostly-unbuilt original southern segment of the Tyco Pacific submarine cable, extending between California, Hawaii, and Guam.

The Tyco Pacific submarine cable landing license (File No. SCL-LIC-20000717-00026) currently is held jointly by Tyco Telecommunications (US) Inc. (“Tyco Telecom”) and its affiliate Tyco Networks (Guam) L.L.C. (“Tyco Guam”). As originally approved by the Commission, the Tyco Pacific cable system included a southern segment extending between California, Hawaii and Guam. Southern Segment A consisted of the whole of the submarine cable system between and including the system interface at the Piti, Guam cable station to be built and owned or controlled by TyCom Networks (Guam) LLC, now Tyco Guam, and the system interface at a new cable station to be built and owned or controlled by TyCom Networks (US) Inc. (“TyCom US”), the predecessor-in-interest to Tyco Telecom, in Honolulu, Hawaii. Southern Segment B consisted of the whole of the submarine cable system between and including the system interface at the Hawaii cable station and a system interface in Los Angeles, California to be built and owned or controlled by TyCom US.

In November 2002, the Commission granted a request to modify the Tyco Pacific submarine cable landing license (File No. SCL-MOD-20020826-00079). The modification approved the construction of a new southern segment between Nedonna Beach/Hillsboro, Oregon and Toyohashi, Japan, which subsequently was constructed and placed into operation. The modification also specified that the joint licensees would defer construction of the previously-planned California-Hawaii-Guam southern segment, except for an already-constructed six-mile stub extending from Hermosa Beach, California. The joint licensees have not built the remainder of the California-Hawaii-Guam southern segment. The six-mile-long stub currently does not connect the Hermosa Beach beach landing with any U.S. or foreign point and is not capable of being operational absent further construction.

In a separate action today, we grant two applications (File Nos. SCL-ASG-20050304-00003 and SCL-T/C-20050304-00005) that seek consent to assign or transfer control of essentially all of the built portions of Tyco Pacific, a non-common carrier cable, to VSNL Telecommunications (US) Inc. (“VSNL USA”).¹ These applications, however, do not request authority for VSNL USA to acquire the mostly unbuilt original southern segment of Tyco Pacific. Instead, the joint licensees request, and in our separate action today we grant, the modification of the Tyco Pacific cable landing license to remove the California-Hawaii-Guam original southern segment, currently unbuilt except for a six-mile-long stub.² Prior to closing the assignments and transfer of control described in File Nos. SCL-ASG-20050304-00003 and SCL-T/C-20050304-00005, Tyco Guam will assign to Tyco Telecom, on a *pro forma* basis, its entire ownership interest in the original southern segment (California-Hawaii-Guam), including its interests in any new cable landing license issued for that segment.³ Thus, at the time of closing, Tyco Guam will have no interest in the unbuilt southern segment, the cable stub, or the separate cable landing license that we here issue for the unbuilt segment and cable stub.

We assign File No. SCL-LIC-20050304-00011 to this separate cable landing license for the original southern segment of Tyco Pacific.

Conditions and Requirements:

¹ *Tyco Telecommunications (US) Inc., Assignor and VSNL Telecommunications (US) Inc., Assignee, et al., Assignments, Transfer of Control, and Modification*, File Nos. SCL-ASG-20050304-00003, SCL-T/C-20050304-00005, SCL-MOD-20050304-00004, Public Notice, Actions Taken Under Cable Landing License Act, DA 05-1268 (PD/Int’l Bur. Apr. 29, 2005).

² *See supra* note 1 (granting SCL-MOD-20050304-00004). *See also* Letter to Marlene H. Dortch, Secretary, Federal Communications Commission, from Kent D. Bressie, Counsel for Tyco Telecommunications (US) Inc. and Tyco Networks (Guam) L.L.C., dated March 15, 2005.

³ *See* File No. SCL-MOD-20020412-00027, amending the Tyco Pacific cable landing license to permit the filing of post-transaction notifications of *pro forma* transfers or assignments.

Our issuance of the cable landing license is subject to the conditions set out in 47 C.F.R. § 1.767(g)(1)-(14). We will continue to regulate the California-Hawaii-Guam cable as a non-common carrier facility. Section 1.767(g)(10) of the rules, 47 C.F.R. § 1.767(g)(10), reserves the right of the Commission to impose common carrier regulation if it finds that the public interest so requires. Section 1.767(g)(8), 47 C.F.R. § 1.767(g)(8), requires Tyco Telecom to provide the specific landing point and cable station locations prior to construction. Tyco shall notify the Commission within 30 days of today's date that it accepts the cable landing license.

Cable Design and Capacity:

Between and including a system interface at the Piti, Guam cable station and a system interface at a new cable station to be built and owned or controlled by Tyco Telecom at Honolulu, Hawaii; and between and including the system interface at the Honolulu, Hawaii cable station and a system interface at a Los Angeles cable station to be built and owned or controlled by Tyco Telecom, with a landing at Hermosa Beach, California. *See also Tycom Networks (US) Inc. and Tycom Networks (Guam) L.L.C.*, 15 FCC Rcd 24078 (Int'l Bur. 2000) (original southern segment).

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Media report
VSNL acquires Tyco for \$130 million
Business Standard — November 2, 2004

Reliance loses race to buy 60,000 km cable network.

Videsh Sanchar Nigam (VSNL), a Tata group company, today announced the acquisition of Tyco Global Network for \$130 million, or Rs 585 crore, in a cash deal.

With the acquisition, VSNL pipped to the post Reliance, another serious bidder, especially after it bought over US-based FLAG Telecom in January for \$211 million.

The acquisition is being housed in VSNL America, which recently received the US Federal Communications Commission's (FCC's) approval to provide international telecommunications services from the US.

VSNL expects to close the deal in 6-9 months. **The acquisition will give the company control over a 60,000 km cable network spread over three continents.**

“The price that VSNL has paid is a fraction of Tyco’s total cable assets. It is a unique global network, with assets of almost \$2.5 billion,” Tata Industries Managing Director Kishor Chaukar said.

“VSNL was short on bandwidth, information, and technology. With this deal no one will be able to beat us,” Chaukar said, pointing out that Tyco’s cables had a data transfer capacity of 10-15 terabit (1 trillion bit per second).

Of this, the unlit capacity of the fibre was 10 times the operational capacity being used, he added. The Tyco cable has 100 clients, which include some of the world’s largest data carriers.

“The deal gives immense flexibility to VSNL in terms of connectivity,” Chaukar said, adding the company would float a special purpose vehicle for the acquisition.

The acquisition would be funded through internal accruals and from the sale of VSNL’s equity in the Intelsat and Newsky satellites, said Amitabh Khanna, chief financial officer of VSNL.

The company expects Rs 780 crore from the sale of Intelsat equity and under Rs 100 crore from the Newsky sale. VSNL also had Rs 1,600 crore in cash reserves, Khanna pointed out.

Chaukar said the deal had given VSNL an unassailable lead in cable capacity but

that would not stop the company from further acquisitions. “We have not closed our eyes to any other opportunities overseas,” he said.

“The agreement is a major step forward in our drive to offer our enterprise and carrier customers seamless, end-to-end telecommunications solutions that circle the globe,” VSNL Director (Operations) N Srinath said.

“The agreement, coupled with the submarine cable we are planning to connect India with Singapore, will give our customers a new choice in global data services. Further, the timing of this transaction is well suited to our international expansion plans,” Srinath added.

“This agreement will allow us to provide our enterprise and carrier clients with customised and robust connectivity solutions under one trusted global brand,” said Dave Ryan, chief operations officer, VSNL America, adding that the agreement would also give multinational customers a local point of contact for their networks.

The acquisition will give VSNL a leg up in its expansion plans. **VSNL has recently set up operations in the US**, Singapore, Europe and Sri Lanka.

The Tyco deal marks the third successful global acquisition for the Tata group in the past one year. In August, Tata Steel acquired the steel business of NatSteel of Singapore for \$283.1 million or Rs 1,313 crore. In March, Tata Motors acquired South Korea’s Daewoo Commercial Vehicle for \$102 million, or Rs 460 crore.

Apart from these acquisitions, the group is investing \$2 billion in Bangladesh for setting up steel, power plants and fertiliser units there.



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Media release

VSNL completes Singapore's first Indian-owned undersea fiber-optic cable

Tata Indicom Cable eases congestion into world's 2nd fastest growing communications route

Enables VSNL to offer new range of communication solutions for carriers and enterprise customers

November 3, 2004

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Videsh Sanchar Nigam Limited (VSNL), announced today the official launch of the Tata Indicom Cable (TIC), Singapore's first fully Indian-owned, undersea fiber-optic cable. The TIC cable is 100 percent owned, operated and maintained by VSNL.

The 3,175-km cable lands in Chennai in India and in Changi in Singapore. Construction of the cable began in November 2003 and went live on September 15, 2004, making it one of the fastest cable build-outs in history.

The new 5.12 terabit (Tbps) TIC cable system will significantly increase the existing bandwidth capacity into India, which is the second fastest growing communications route in the world. This cable is expected to provide much needed diversity to telecom operators and enterprises which are dramatically increasing their presence in India. Full ownership by VSNL will also allow for new solutions and commercial paradigms to be offered.

Speaking at a press conference in Singapore to inaugurate the TIC cable, the Chairman of the Tata Group, Mr. Ratan N. Tata, said, "Several records have been achieved in completing this cable within a year of breaking ground. This cable, along with VSNL's successful bid earlier this week for acquisition of the Tyco Global Network, would position VSNL as one of the world's leading submarine cable bandwidth providers. We now intend to leverage the total capabilities of the Tata Group in the IT and telecom space to strengthen our leadership globally as we continue our tradition of innovation and value-based services."

Mr. Tata added that the launch of Tata Indicom Cable

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will further strengthen Singapore's position as an important IT and telecommunications hub in the Asia-Pacific region.

Also present at the launch was the Chairman of the Singapore Economic Development Board, Mr. Teo Ming Kian. Mr. Teo said: "We welcome VSNL's launch of the Tata Indicom Cable. It will further strengthen the linkage between India and Singapore and add another reason for more companies to tap on Singapore as a bridge between India and the world. Already, there are some 1,400 Indian companies here who have found Singapore to be the appropriate launch-pad to the world and many more companies of other nationalities that find Singapore a convenient access point to India. This will certainly help strengthen Singapore's role in India's economic development. 'Infocomm Development Authority of Singapore' was represented at the launch by its Chief Executive Officer, Mrs Tan Ching Yee. Mrs Tan said, "IDA welcomes and supports VSNL's new cable landing in Singapore. This shows VSNL's commitment to investing in new facilities that can further enhance Singapore's role as a leading infocomm hub. The Tata Indicom Cable will help facilitate business between India and Singapore. Businesses in both countries will now have more choices in direct comms link."

Commenting on the impact of this new cable to India, Frost & Sullivan Partner, Mr. Manoj Menon said, "The rise of the BPO sector, proliferation of MNCs coupled with growth of the domestic economy, spells promising times ahead for the international bandwidth market for India, set to grow at a very healthy CAGR of 43 per cent over the next five years.

TIC aids VSNL's international expansion

VSNL set up the VSNL International Business Group, with its headquarters in Singapore, in April 2004 to extend its service capabilities and customer-facing activities in key markets outside India, including the U.S.A., UK, Europe and Asia. VSNL International intends to grow its staff and operations to more than eight offices and 100 employees by the end of 2005.

Executive Director of VSNL International Business Group, Mr. Vinod Kumar said, "The TIC launch is perfectly timed to meet the growing need for bandwidth into and out of India. TIC also provides the much needed diversity to support the mission critical applications and decision support systems that our customers use."

VSNL has procured capacity on other cable systems to enable the provision of end to end services to other markets. "TIC will be the cornerstone for our international expansion since it provides the most critical component in our effort to build-out true end-to-end service capability to key markets," said Kumar.

Recent milestones for VSNL include:

- November 2004: Acquiring Tyco Global Network of submarine telecom cables
- September 2004: Completes 3,175-km, 5.12 terabits, Tata Indicom Cable system
- June 2004: VSNL International Business Group sets up global headquarters in Singapore
- April 2004: Becomes the first telecom service provider globally to achieve TL 9000 certification.
- April 2004: Establishes VSNL International Business Group
- March 2004: Acquires the narrowband and broadband businesses of Dishnet's ISP division, a pioneer in Digital Subscriber Line (DSL) broadband access services in India.
- February 2004: Announces a strategic partnership with Asia Netcom to enhance India's connectivity to the Asia Pacific region.
- November 2003: Commences work on Tata Indicom Cable system

About VSNL

Videsh Sanchar Nigam Limited (VSNL) is India's leading provider of International Telecommunications and Internet Services and the first telecom service provider in the world to get the prestigious TL 9000 certification. As the country's leader in International Long Distance services and with a strong pan-India National Long Distance presence, VSNL is the leader in the Corporate Data Market in the country today with a strong service offering covering IPLCs, ILLs, Frame relay, ATM and MPLS based IP-VPN services. With established relations with over 80 carriers across the globe, VSNL today has a

strong infrastructure base that covers multiple gateways, earth stations and submarine cable systems.

VSNL is now rapidly growing its retail and corporate presence under the Tata Indicom brand through its products like high speed broadband, dial-up Internet, net telephony and calling cards, and has an internet subscriber base of over 750,000 subscribers. The Company also proposes to consolidate its presence in the Internet space by increasing its impetus on the Retail Broadband business.

VSNL also offers a host of other valued added services that include Television / Video uplinking, Program transmission services, Frame relay services and Inmarsat services.

VSNL is in the process of expanding its global presence and is setting up operations in Sri Lanka, Singapore, Europe and the United States of America. Its international connectivity capabilities, both undersea as well as satellite, offer the greatest diversity in India, which is critical for all customer segments, encompassing wholesale, corporate and retail. The company is augmenting its international connectivity by setting up a 3,175 km undersea cable between Chennai and Singapore with a designed capacity of 5.12 Terabits. VSNL is listed across all the major stock exchanges in India and also has its ADRs listed on the New York Stock Exchange. (www.vsnl.com)

About Tata Indicom Cable (TIC)

The new 3,175 km wholly-owned private submarine cable is a point to point cable system connecting Chennai, India and Singapore. The state-of-the-art cable system has an initial capacity of 320 gigabits per second with the ability to scale up to its design capacity of 5.12 terabits per second. The cable utilizes Dense Wavelength Division Multiplexing technology with a design specification of 96 wavelengths of 10 gigabits per second on 8 fiber pairs.

The cable system is equipped with redundant equipment to provide span protection in case of wavelength failure. The cable route avoids the heavy traffic zones with heavy fishing activities thus improving the cable's uptime and performance.

TIC has a flexible configuration with 4 branching units which allow the cable system to be further extended to

other countries when required.

At Chennai, the cable landing station is owned and operated by VSNL. The station is housed in the same building as VSNL's city Point of Presence (PoP). The PoP is connected to VSNL's extensive national network connecting the TIC to more than 200 cities in India.

The Singapore cable landing station is located at Changi. The cable capacity is backhauled to Global Switch which is a carrier neutral PoP located at Tai Seng Avenue.

TIC Specifications:

Landing Points :Chennai, India and Changi, Singapore

City POP : Chennai, India

Global Switch, Tai Seng Avenue, Singapore

Cable Length 3,175 Km

No. of Fiber Pairs 8

System Capacity 5.12 Terabits per Second

Initial Capacity 320 Giga bits per second

Branching Units 4

Forward-looking and cautionary statements:

Certain words and statements in this release concerning VSNL and its prospects, and other statements relating to VSNL's expected financial position, business strategy, the future development of VSNL's operations and the general economy in India, are forward-looking statements. Such statements involve known and unknown risks, uncertainties and other factors, which may cause actual results, performance or achievements of VSNL, or industry results, to differ materially from those expressed or implied by such forward-looking statements. Such forward-looking statements are based on numerous assumptions regarding VSNL's present and future business strategies and the environment in which VSNL will operate in the future. The important factors that could cause actual results, performance or achievements to differ materially from such forward-looking statements include, among others, changes in government policies or regulations of India and, in particular, changes relating to the administration of VSNL's industry, and changes in general economic, business and credit conditions in India. Additional factors that could cause actual results, performance or achievements to differ materially from such forward-looking statements, many of which are not in VSNL's control, include, but are not limited to, those risk factors discussed in VSNL's various filings with the United States Securities and Exchange Commission. These filings are available at www.sec.gov. These forward-looking statements speak only as of the date of this release. VSNL expressly disclaims any obligation or undertaking to release publicly any updates or revisions to any forward-looking statement contained herein to reflect any change in VSNL's expectations with regard thereto or any change in events, conditions or circumstances on which any such statement is based.

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