

## PC-1 SETTLEMENT AGREEMENT

**AGREEMENT** made this 4<sup>th</sup> day of November 2005 by and between the U.S. Department of Commerce (“Commerce”), National Oceanic and Atmospheric Administration (“NOAA”), U.S. Army Corps of Engineers (“ACOE”), U.S. Department of Justice (“DOJ”) as counsel to Commerce, NOAA and ACOE, Makah Indian Tribe (“Makah Tribe”), a federally recognized Indian Tribe, Pacific Crossing Ltd. (“PCL”)<sup>1</sup>, a Bermuda company, Tyco Telecommunications (US) Inc. (“Tyco”), a Delaware corporation, and their heirs, successors and assigns (collectively referred to as the “Parties”).

### 1. RECITALS

1.1 PCL owns and operates a 13,076 route-mile trans-Pacific fiber optic cable system (“PC-1”), which includes two parallel cables in four segments connecting four landing stations located in Japan and in the states of Washington and California. PC-1 was installed for PCL by Tyco Submarine Systems Ltd (TSSL) now Tyco Telecommunications (US) Inc. (“Tyco”) in 1999 and 2000.

1.2 The U.S. Army Corps of Engineers (“ACOE”) Seattle District (Ref. No. 199802040) (“ACOE WA Permit”) authorized the installation and maintenance of PC-1 in waters of the United States (U.S.) in and adjacent to the state of Washington and through the Olympic Coast National Marine Sanctuary (“OCNMS” or “Sanctuary”), which is administered by the National Oceanic and Atmospheric Administration (“NOAA”) in the U.S. Department of Commerce (“Commerce”). The ACOE Los Angeles District authorized the installation and maintenance of PC-1 in waters in and adjacent to the state of California pursuant to nationwide permit authority (Ref No. 985050200-TW) (“ACOE CA Permit”). The ACOE WA Permit and ACOE CA Permit are collectively referred to as the “ACOE Permits.”

1.3 NOAA issued Authorization/Special Use Permit No. OCNMS-01-99, authorizing the installation and maintenance of PC-1 in OCNMS (“1999 NOAA Special Use Permit”). The 1999 NOAA Special Use Permit contemplated automatic five-year renewals until the end of the life of the PC-1 cable in approximately 25 years.

---

<sup>1</sup> For purposes of this Agreement, PCL (a/k/a Debtor in Case No. 02-12086(PJW) in the United States Bankruptcy Court for the District of Delaware) and the reorganized PCL upon emergence from bankruptcy after confirmation of its Plan of Reorganization by the Bankruptcy Court, consists of the following entities: PC Landing Corp., a Delaware corporation; Pacific Crossing, Ltd., a Bermuda company, Pacific Crossing UK, Ltd., a United Kingdom company; PCL Japan, Ltd., a Japan company; and SCS Bermuda, Ltd., a Bermuda company.

1.4 By virtue of its location near and through OCNMS, the PC-1 cable is also located in the usual and accustomed fishing area of the Makah Indian Tribe (“Makah Tribe”) as provided by the 1855 Treaty of Neah Bay between the U.S. and the Makah Tribe.

1.5 In October 2000, NOAA raised concerns to PCL and Tyco regarding the adequacy of PC-1 cable burial, which were subsequently raised by ACOE in December 2001, and by the Makah Tribe.

1.6 In July 2002, PCL filed for bankruptcy (Case No. 02-12086(PJW) in the United States Bankruptcy Court for the District of Delaware (hereinafter, “Bankruptcy Court”). During bankruptcy, PCL has been managed by CXO LLC, which has been seeking to sell or reorganize the company since that time. PCL has a Plan of Reorganization (“Reorganization Plan”) pending approval before the Bankruptcy Court.

1.7 PCL and Tyco have asserted claims against each other with regard to obligations for the installation and maintenance of PC-1, which are being resolved by a separate settlement agreement between them (“PCL-Tyco Agreement”) and this Settlement Agreement.

1.8 The U.S. Department of Justice (“DOJ”), as counsel to and on behalf of Commerce, NOAA and ACOE (collectively, the “U.S. Government”) in this matter, has asserted non-compliance with the 1999 NOAA Special Use Permit and ACOE Permits (“Permits”) against PCL and Tyco. The U.S. Government has filed proofs of claims in the Bankruptcy Court in May 2003 involving (i) certain monetary claims of the U.S. Government related to the Permits, and (ii) certain matters involving alleged noncompliance issues with asserted regulatory obligations under the Permits (which the U.S. Government asserts do not constitute, and PCL reserves the right to assert do constitute, “claims” in the Bankruptcy Case as defined in 11 U.S.C. § 101(5)), which together with the monetary claims relate to issues arising under the Permits.

1.9 The U.S. Government and PCL entered into a Confidentiality Agreement, dated December 13, 2002, and commenced a negotiated settlement process to resolve the disputes among them. On or about January 2005, the Makah Tribe, ACOE, and Tyco executed the Confidentiality Agreement, as amended, and all Parties commenced settlement negotiations to resolve the disputes among them. Some of the Parties executed additional confidentiality agreements. The Parties also executed Tolling Agreements to stay potential enforcement proceedings and litigation among them during the settlement negotiations.

1.10 On September 16, 2005, after lengthy and complicated negotiations on a wide range of issues, counsel for the Parties executed an Agreement to Recommend Settlement, setting forth the terms of a settlement to resolve the outstanding issues among them (“global settlement”), including agreement on a proposed method and approach to address existing problems with the PC-1 cable burial in OCNMS (“Remediation Protocol”). Contemporaneously, the Makah Tribe and PCL agreed upon

the terms of a separate settlement between them, and Tyco and PCL agreed upon the terms of their separate settlement.

1.11 On October 5, 2005, the Makah Tribe and PCL executed the PCL-Makah Tribe Settlement Agreement and companion Fishing Agreement, which were approved by the Bankruptcy Court on November 1, 2005.

1.12 On October 5 and November 3, 2005, NOAA in cooperation with the ACOE Seattle District, issued a draft and final Environmental Assessment (“EA”), respectively, which has been in preparation for three years, on remediation of the PC-1 cable in OCNMS and associated permitting. The preferred/proposed alternative in the EA is consistent with the Remediation Protocol. The EA was issued for public and intergovernmental review, including consultation with affected Indian Tribes, prior to the Parties’ final decision to enter into this Settlement Agreement.

1.13 This Settlement Agreement is a compromise of claims by all Parties and not an admission of noncompliance or liability by any Party with respect to the issues being settled herein.

1.14 This settlement and Settlement Agreement are in the public interest. The Parties share a mutual interest in resolving complex and costly disputes that have been ongoing for more than five years; in resolving problems and achieving certainty with respect to the condition and ongoing operation of the PC-1 cable and related federal permits; in providing for PC-1 to be located without conflicting with Sanctuary values, Tribal treaty fishing rights, and other public interest considerations; and in not incurring substantial expense and uncertainty to the public, U.S. Government, Makah Tribe, Tyco, and PCL of litigation over enforcement and other claims.

**NOW THEREFORE** in consideration of the above and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows.

## **2. INTEGRATED GLOBAL SETTLEMENT**

2.1 Condition Precedent. The effectiveness of this Settlement Agreement is conditioned upon the confirmation of the Reorganization Plan and on the Bankruptcy Court order approving the Reorganization Plan incorporating the terms of this Settlement Agreement, which includes the settlement agreements between PCL and Tyco and between PCL and the Makah Tribe. Section 8.1 of this Settlement Agreement reserves the Parties’ rights if this condition precedent is not satisfied.

2.2 Implementing Permits. The Parties agree that the NOAA Special Use Permit attached as Exhibit A to this Settlement Agreement (“NOAA Special Use Permit”) will on its effective date fully replace and supersede the 1999 NOAA Special Use Permit. There are no remaining issues among the Parties with respect to the NOAA Special Use

Permit and ACOE WA Permit issued in 1999. To the extent any unit of the Department of Commerce or the ACOE has not yet issued any authorizations needed for activities required by this Settlement Agreement, such authorizations shall be consistent with this Settlement Agreement and the NOAA Special Use Permit in Exhibit A. Except as otherwise expressly provided in this Settlement Agreement, any governmental authorizations for the remediation work described in Section 3 below may be more specific than, but shall not materially increase the Parties' obligations as set forth in this Settlement Agreement.

### **3. REMEDIATION**

3.1 Remediation Protocol. The Parties have developed a Remediation Protocol that represents agreement on the actions to be taken to address the cable condition and describes all principal elements of remediation actions and a schedule for remediation. The Remediation Protocol, including exhibits, is attached as Exhibit B to this Agreement.

3.2 Remediation Plan. Tyco will prepare at its expense a Remediation Plan more detailed than the Remediation Protocol to be approved by the Parties. The Parties agree the Remediation Plan will not reduce the extent of remediation nor materially increase the scope of remediation compared to the Remediation Protocol (e.g., remediation area, installation time, schedule, cost). The Remediation Plan shall not be substantially different than the Remediation Protocol unless all Parties agree.

3.3 Implementation of Remediation Plan. Tyco and/or contractors or subcontractors approved by the Parties will perform the work described in the Remediation Protocol in Exhibit B hereto, to be further articulated in the Remediation Plan as finally refined and accepted by the Parties. The planned schedule is shown in Exhibit B. The Remediation Plan, as finally approved by the Parties, shall be the final statement of work and shall control in the event of any differences between the Remediation Plan and the Remediation Protocol. As cable owner and operator, PCL will authorize the work in accordance with the Remediation Plan. PCL and Tyco shall pay for the work as specified in the PCL-Tyco Settlement Agreement and summarized in Exhibit C.

3.4 Completion of Work. The Remediation Protocol requires the submittal of a burial report within 45 days of remediation. If the remediation and the burial report meet the requirements of the Remediation Plan, NOAA, the ACOE Seattle District, and the Makah Tribe will issue a letter stating that the work has been performed in accordance with the Remediation Plan under this Settlement Agreement ("Completion of Work Letter") to Tyco and PCL within a reasonable agreed-upon time not to exceed 60 days after the burial report is submitted.

3.5 Update of ACOE WA Permit Holder to PCL. Tyco shall remain the permittee on the ACOE WA Permit until the Remediation Plan is implemented. Within 20 days after Tyco's submittal of the Certification of Compliance under the ACOE WA Permit

and the receipt of the Completion of Work Letter, PCL shall sign as “transferee” in the space provided on the permit, and Tyco or PCL will submit the same to the ACOE Seattle District to validate the transfer of this authorization. Thereupon, the permittee for the ACOE WA Permit shall be solely the reorganized PCL (or reorganized PC Landing Corp.) or successor, which shall be deemed to be the successor entity via standard letter notification to the ACOE Seattle District, without the need for permit application or assignment. For the avoidance of doubt, it is the intention of the Parties that Tyco not be the holder of the NOAA Special Use Permit or the ACOE Permits after the issuance of the Completion of Work Letter.

3.6 Satisfaction, Release and Related Reservations of Rights. Effective upon the issuance of the Completion of Work Letter under Section 3.4, the U. S. and the Makah Tribe each hereby release all claims, known or unknown (whether or not discoverable through the exercise of reasonable diligence), including claims that may be valuable to them, which they ever had, could have had, or now have against each other and against each of Tyco, Transoceanic Cable Ship Company, Inc., Tyco Integrated Cable Systems, Inc., Tyco International Ltd., Tyco International (US) Inc. and of PCL, which consists of PC Landing Corp., Pacific Crossing Ltd., Pacific Crossing UK, Ltd., PCL Japan, Ltd., and SCS Bermuda, Ltd., and their respective predecessors (except Global Crossing Ltd., Asia Global Crossing Ltd., and any other parent companies of the foregoing), successors, assigns, directors, officers, employees, and agents arising from or related to the PC-1 cable, based upon any acts or omissions occurring up to and through the date of the issuance of the Completion of Work Letter. The Parties further agree that:

1. Each Party retains all rights, remedies and defenses under the permits or applicable law, including Makah Tribe Treaty fishing rights, with respect to any acts or omissions occurring after the date of the issuance of the Completion of Work Letter;
2. After the issuance of the Completion of Work Letter, should conflicts arise with Tribal treaty fishing rights, Sanctuary resources and values, navigation or public interest considerations under applicable regulatory authority arise related to PC-1 or cable burial conditions, nothing in the foregoing release precludes the U.S. Government from requiring the holder of the NOAA Special Use Permit and ACOE Permits at that time (“Permit holder”) to take reasonable steps necessary to address such future conflicts. The U.S. Government and the Makah Tribe may pursue their legal remedies with regard to the Permit holder and such conflicts, and the Permit holder reserves its defenses with respect to the same.
3. Other than the obligations and reservation of rights set forth herein, the Makah Tribe will not pursue claims against the other Parties, and the other Parties will not pursue any claims against each other or the Makah Tribe with respect to issues relating to the Makah Tribe; nothing herein shall be construed as a waiver of the Tribe’s sovereign immunity; and

4. No provision of the release provided in this Section 3.6 shall apply to any criminal action, any claim for tax liability, or any civil action sounding in fraud.

3.7 Separate Cost-Sharing Agreements. Nothing in this Settlement Agreement limits Tyco and PCL from agreeing to share certain costs with respect to this Settlement Agreement as determined solely by these two parties in any separate agreements. Likewise, nothing in this Settlement Agreement limits agencies of the U.S. Government and the Makah Tribe from agreeing to share certain costs among them.

#### 4. **POST-LAY INSPECTION AND MONITORING**

4.1 Inspection of Cable Condition upon Reburial. If the reburial meets the performance standards set forth in the Remediation Protocol, per the inspections performed in connection with the remediation and documented in the burial report, no further post-lay inspection of the cable condition shall be required until the first post-remediation monitoring event specified in Section 4.2.2.1. If the reburial does not meet the performance standards set forth in the Remediation Protocol, the Parties reserve their rights as provided in the Remediation Protocol and in Sections 3.6 and 8.3 of this Settlement Agreement. The benthic baseline survey to be completed upon reburial is specified in Section 4.2.3.

4.2 Post-Remediation Monitoring Fee Schedule. The Monitoring Fee Schedule attached as Exhibit D provides for monitoring fees to be paid by the NOAA Special Use Permit holder (PCL or any successor) for NOAA to contract for compliance and seabed recovery monitoring and final inspection surveys. The amount of \$535,000 of the monitoring fees previously paid by PCL to NOAA shall be used towards funding PCL's monitoring obligations under this Settlement Agreement. This Settlement Agreement and Exhibit D shall modify and replace the August 3, 2004 monitoring fee stipulation between PCL and DOJ on behalf of Commerce and NOAA, except as to fees already paid and matters not addressed in this settlement. Fees payable hereunder shall be post-confirmation obligations of PCL.

4.2.1 Coordination of Surveys and Fee Payments. To reduce costs, the baseline survey will be performed as an add-on to and immediately after the reburial work making use of vessels on-site for the reburial work, and compliance surveys will be performed as an add-on to seabed recovery monitoring surveys. Fees and expenses for the monitoring will be paid by the NOAA Special Use Permit holder (PCL or any successor) not later than December of the year prior to the survey. Allocation of expenses for the baseline survey is to be shared by PCL and Tyco as separately agreed between them.

4.2.2 Compliance Survey Inspection Schedule. NOAA will perform or contract to have performed any necessary compliance survey on the following schedule (same year as any seabed recovery monitoring):

1. Compliance survey 5-to-7 years after reburial (timing determined by NOAA in coordination with the Permit holder) of the entire route in the Sanctuary.

2. Contingency compliance survey 10-to-14 years after reburial (timing determined by NOAA in coordination with the Permit holder) of specific segments, if another survey is required under the criteria summarized in this paragraph and included in the NOAA Special Use Permit. The criteria for conducting this compliance survey and identifying segments to be surveyed are those locations where: (a) the prior compliance survey indicated there is a reasonable likelihood that a segment of the cable could become exposed in the future due to dynamic seabed conditions (e.g., the segment is long enough that an actual risk of conflict is likely to exist), and agreements to handle fishing gear loss are not sufficient to address the risk; or (b) documented conflicts with the PC-1 cable have occurred. The presumption is that this compliance survey is unnecessary unless triggered by these criteria.

4.2.3 Seabed Recovery Confirmation. The monitoring program since 2000 provided valuable information on seabed recovery, particularly in softer substrates, but biological recovery from disturbance of harder substrates as a result of cable installation is taking longer and has not yet been confirmed. The cable remediation will re-disturb these harder substrate monitoring sites, and NOAA has proposed a seabed recovery monitoring program focusing on biological recovery in harder substrate habitats after the remediation is completed. NOAA will perform or contract to have performed any necessary seabed recovery confirmation monitoring on the following schedule (same year as any compliance monitoring):

1. Baseline survey to be conducted immediately following the reburial with vessels used for the remediation, refitting them as may be necessary for the benthic survey requirements in NOAA's 2005 request for proposals unless it would cost less to use a different ROV that would meet the objectives of the survey.
2. Seabed recovery benthic survey 5-to-7 years after reburial (timing determined by NOAA in coordination with the Permit holder).
3. Contingency benthic survey 10-to-14 years after reburial (timing determined by NOAA in coordination with the Permit holder), if the prior survey identified areas where substrate has not recovered in accordance with criteria to be developed among the Parties and included in the NOAA Special Use Permit.

4.2.4 Final Cable Inspection. A cable inspection survey will be conducted 1-2 years before final expiration of the NOAA Special Use Permit (approximately in 2024) to assist NOAA in its evaluation of whether to have the cable removed after it is taken out of service or to allow it to be left in place in the Sanctuary. This final inspection survey will not be required if the NOAA Special Use Permit and applicable Sanctuary

regulations, including NOAA permitting authority, do not allow the PC-1 telecommunications cables to be left in place in the Sanctuary.

## **5. FMV FEE RESOLUTION**

5.1 FMV Fee. DOJ on behalf of Commerce and NOAA and PCL agree that in settlement of the Fair Market Value (FMV) Fee claim in connection with occupancy of the Sanctuary for the life of the cable (i.e., 25 years), DOJ on behalf of Commerce and NOAA shall be granted an allowed, pre-petition general unsecured claim in the amount of \$4,326,668 but shall agree that in lieu of a Class 4 general unsecured claim and as part of the global settlement, DOJ on behalf of Commerce and NOAA shall receive a one-time cash payment of \$25,000 on account of such claim within 30 days after the effective date of the Reorganization Plan (as effective date is defined therein). The NOAA Special Use Permit for PC-1 shall not contain an FMV Fee obligation including for any renewal or successor permits.

## **6. ACOE CA PERMIT**

6.1 Update of ACOE CA Permit. In the event that: (1) the California State Lands Commission amends Lease PRC 8152.1 with PC Landing Corp. ("PRC 8152.1") to authorize the current as built condition of PC-1 in the waters adjacent to the State of California and to revise the cable burial verification survey condition applicable to PC-1, and (2) the California Coastal Commission amends Coastal Development Permit No. E-98-027 (the "CDP") issued jointly to PC Landing Corp. and PAC Landing Corp. to revise the cable verification survey condition in the CDP applicable to PC-1, ACOE LA District shall update the ACOE CA Permit to reflect these revised conditions through re-verification of the nationwide permit or other appropriate procedure, including any necessary consultation with other agencies and compliance with Coastal Zone Management Act consistency requirements. In the event the ACOE CA Permit is not updated to reflect these revised conditions by December 15, 2005 or such later date as the ACOE LA District and PCL agree, the ACOE reserves its right to pursue all appropriate legal or equitable remedies to enforce compliance with the ACOE CA Permit, and PCL reserves all its rights and defenses with regard to same; provided that PCL waives the right to assert that confirmation of the Reorganization Plan renders any appeal by the U.S. of an order determining that the obligations under the ACOE CA Permit are discharged or dischargeable, equitably moot, or that confirmation of the Reorganization Plan bars such an appeal under the doctrines of res judicata, waiver, or estoppel.

## **7. AGREEMENT WITH MAKAH TRIBE**

7.1 Settlement Agreement between PCL and Makah Tribe. Not later than the execution of this Settlement Agreement, the Makah Tribe and PCL will execute a separate fishing agreement, substantially as previously discussed between them, and a separate agreement on technical assistance, oversight and other matters of mutual

interest that fully resolve the issues between them (“PCL-Makah Tribe Agreements”).

## **8. OTHER RESERVATIONS OF RIGHTS**

8.1 Reservation of Rights if Settlement not Approved. In the event the Effective Date does not occur, the Parties reserve all rights, remedies, and defenses they may have with respect to, but not limited to: all claims that have been tolled by tolling agreements among the Parties, jurisdictional issues, treaty rights, adequacy of environmental documentation, and compliance or noncompliance with regulatory requirements. This reservation of rights relating to jurisdictional issues includes the Parties’ reservations of rights with respect to the appropriate jurisdiction for bringing or defending any enforcement action under this section.

8.2 No Admission of Liability. Nothing herein shall be construed as a determination of non-compliance with any applicable law or requirement, or represents an admission of liability by any of the Parties.

8.3 Compliance with Agreements. The releases granted to each Party herein shall be conditioned upon that Party’s compliance with this Settlement Agreement and separate PCL-Makah Tribe Agreements.

8.4 Waiver of Sovereign Immunity. Nothing herein shall be construed as a waiver of the Tribe’s sovereign immunity.

8.5 Environmental documents. Nothing herein shall be construed as concurrence by Tyco or PCL of the discussion or analysis in the EA, or shall be construed as any prejudice to or limitation on any of the Parties rights to comment on undersea cable installation activities and analyses in the future.

## **9. MISCELLANEOUS**

9.1 Enforceability of Settlement. Obligations set forth in this Settlement Agreement that require future enforceability after confirmation of the Plan shall be incorporated into permits or other documents as may be appropriate. Furthermore, once this Settlement Agreement is incorporated into the Reorganization Plan and approved by the Bankruptcy Court, both this Settlement Agreement, and the provisions of the Reorganization Plan relating to this Settlement Agreement, will be enforceable contracts among the Parties ("Enforceable Settlement Contracts").<sup>2</sup> Any claim for breach or enforcement of the terms of the Enforceable Settlement Contracts and the Bankruptcy Court order(s) approving the Enforceable Settlement Contracts including the confirmation order or the Reorganization Plan may be brought by any Party to this Settlement Agreement in any applicable administrative forum or any court of competent

---

<sup>2</sup> The NOAA Special Use Permit and ACOE Permits will be enforceable as permits under applicable law, and nothing herein characterizes these permits as contracts.

jurisdiction. The Parties have reserved their rights as to the administrative or judicial forum or venue for such dispute.

9.2 Governing Law. This Settlement Agreement shall be governed by the laws of the United States.

9.3 All Writings Contained Herein. This Settlement Agreement and attachments contain the entire understanding among the Parties, and there are no other agreements, understandings, or representations except as set forth or incorporated by reference herein. No subsequent modifications or amendments of this Settlement Agreement shall be of any force or effect unless in writing, signed by the authorized representatives of the Parties. Specific elements of the Remediation Protocol in Exhibit B including the schedule may be modified by the Remediation Plan, to the extent allowed by this Settlement Agreement, without the need to amend this Settlement Agreement.

9.4 Conflicts. If there are conflicts between this Settlement Agreement and the Reorganization Plan or its confirmation order, the terms of this Settlement Agreement shall control.

9.5 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties' respective successors, transferees and assigns.

9.6 Headings Not Controlling. The section headings included herein are for reference only and are not a part of this Agreement. The headings shall not control or alter the meaning of this Agreement as set forth in the text.

9.7 Usage.

9.7.1 The term "Settlement Agreement" refers to this PC-1 Settlement Agreement and its exhibits.

9.7.2 The term "NOAA Special Use Permit" refers to the NOAA Special Use Permit attached in Exhibit A and any renewal or successor permits until the end of the PC-1 cable life.

9.7.3 Unless otherwise specified in this Settlement Agreement, the term "including" means "including but not limited to," and the term "days" means calendar days.

9.8 Confidentiality Agreement. The confidentiality agreements among the Parties shall be deemed terminated as of the Effective Date of this Agreement ("Termination Date"), provided that any obligations required by those confidentiality agreements have been met as of the Termination Date. For a period of two years after the date of the Completion of Work Letter, the obligations to maintain the confidentiality of written or oral communications shall survive termination with respect to any Confidential Material or Confidential Materials that remain in the possession of the Parties or Other U.S.

Agencies (as those terms are defined in the confidentiality agreements) subsequent to the Termination Date.

9.9 Proofs of Claim. As provided in Section 1.8 of this Settlement Agreement, the U.S. Government and PCL have reserved their rights with respect to whether regulatory compliance obligations can be discharged in bankruptcy. Notwithstanding the foregoing, any proofs of claim or other objections submitted to the Bankruptcy Court by any of the Parties in this matter shall be deemed to be of no force and effect as of the Effective Date of this Agreement.

9.10 Execution of this Settlement Agreement. This Settlement Agreement may be executed in counterparts. Each of the signatories hereto hereby represents and warrants that he or she has the right, power, legal capacity and authority to execute into this Settlement Agreement and to bind the entity he or she represents to this Settlement Agreement and the obligations hereunder.

9.11 Effective Date. This Agreement shall become effective upon approval by the Bankruptcy Court and the fulfillment of the conditions precedent set forth in Section 2.1 above.

#### EXHIBITS

Exhibit A: NOAA Special Use Permit

Exhibit B: Remediation Protocol including exhibits

Exhibit C: PCL/Tyco Financial Responsibility for Remediation and Monitoring

Exhibit D: Monitoring Fee Schedule

pc-1 settlement agr final 11-04-05.rtf

#### SIGNATURES

**AGREED** as of the date first written above:

FOR THE UNITED STATES OF AMERICA:



J. Christopher Kohn – Director  
Tracy J. Whitaker – Assistant Director  
Seth B. Shapiro – Trial Attorney  
U.S. Department of Justice – Civil Division  
Commercial Litigation Branch  
P.O. Box 875 – Ben Franklin Station

Washington, D.C. 20044  
202.514.7164 phone  
202.307.0494 fax

FOR THE MAKAH INDIAN TRIBE:

  
\_\_\_\_\_

The Honorable Ben Johnson, Jr.  
Tribal Chairman  
Makah Tribe  
P.O. Box 115  
Neah Bay, Washington 98357  
360.645.3155 phone  
360.645.2323 fax

FOR PCLANDING CORP. AND PACIFIC CROSSING LTD.:

\_\_\_\_\_

Brian G. Kushner  
President and Chief Executive Officer  
PCL  
5956 Sherry Lane  
Suite 1000  
Dallas, Texas 75225 8021  
214.451.6619 phone  
214.368.4886 fax

FOR TYCO TELECOMMUNICATIONS (US) INC.:

\_\_\_\_\_

William Marra  
Vice President  
Tyco Telecommunications (US) Inc.  
250 Industrial Way West  
Eatontown, NJ 07724  
732.578.7220 phone  
732.578.7102 fax

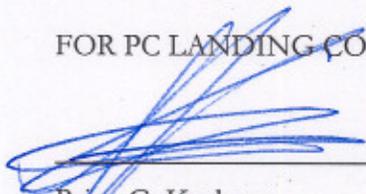
Washington, D.C. 20044  
202.514.7164 phone  
202.307.0494 fax

FOR THE MAKAH INDIAN TRIBE:

---

The Honorable Ben Johnson, Jr.  
Tribal Chairman  
Makah Tribe  
P.O. Box 115  
Neah Bay, Washington 98357  
360.645.3155 phone  
360.645.2323 fax

FOR PC LANDING CORP. AND PACIFIC CROSSING LTD.:



---

Brian G. Kushner  
President and Chief Executive Officer  
PCL  
5956 Sherry Lane  
Suite 1000  
Dallas, Texas 75225-8021  
~~214.451.6619~~ phone 214.451.6919  
~~214.368.4886~~ fax 214.451.6999

FOR TYCO TELECOMMUNICATIONS (US) INC.:

---

William Marra  
Vice President  
Tyco Telecommunications (US) Inc.  
250 Industrial Way West  
Eatontown, NJ 07724  
732.578.7220 phone  
732.578.7102 fax

Washington, D.C. 20044  
202.514.7164 phone  
202.307.0494 fax

FOR THE MAKAH INDIAN TRIBE:

---

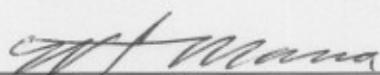
The Honorable Ben Johnson, Jr.  
Tribal Chairman  
Makah Tribe  
P.O. Box 115  
Neah Bay, Washington 98357  
360.645.3155 phone  
360.645.2323 fax

FOR PC LANDING CORP. AND PACIFIC CROSSING LTD.:

---

Brian G. Kushner  
President and Chief Executive Officer  
PCL  
5956 Sherry Lane  
Suite 1000  
Dallas, Texas 75225-8021  
214.451.6619 phone  
214.368.4886 fax

FOR TYCO TELECOMMUNICATIONS (US) INC.:

---

William Marra  
Vice President  
Tyco Telecommunications (US) Inc.  
250 Industrial Way West  
Eatontown, NJ 07724  
732.578.7220 phone  
732.578.7102 fax