PUBLIC NOTICE
FEDERAL COMMUNICATIONS COMMISSION
445 12th STREET S.W.
WASHINGTON D.C. 20554

News media information 202-418-0500
Internet: http://www.fcc.gov (or ftp.fcc.gov)
TTY (202) 418-2555

DA No. 17-1234
Thursday December 21, 2017

Report No. SCL-00207

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, Telecommunications and Analysis 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.

These applications have been coordinated with the Department of State and other 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://2001-2009.state.gov/r/pa/prs/ps/2001/6951.htm.

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.
Cable Design and Capacity: The Hawaiki cable system will have five segments and land in five locations. Segment 1 will connect Sydney, Australia, and Mangawhai Heads, New Zealand, and will have one fiber pair with a total capacity of 12 terabits per second (Tbps). Segment 2 will connect Mangawhai Heads with Kapolei, Oahu, Hawaii, and Pacific City, Oregon, and will have 3 fiber pairs with a total capacity of 30 Tbps. Segment 5 will connect a branching unit (BU) on the New Zealand to Hawaii fiber pair. With the OADM technology, express wavelengths on all fiber pairs (Australia and New Zealand to the United States) will have no dependence on the Pacific Islands. Given the requirements of the islands, the applicant intends to divert one or two wavelengths for an island (100 Gbps or 200 Gbps) with full upgrade capacity.
Ownership of the Cable System and Landing Points: The main trunk of Hawaiki, between Australia and Oregon, will be 100% owned and constructed by HSC LP, the direct parent of HSC USA. HSC LP and its affiliates will also own and/or control the cable landing stations in Australia, New Zealand, and Oregon. The landing station in Sydney will be leased from Equinix. HSC LP will build and own a new landing station in Mangawhai Heads. HSC USA will build and own a new landing station in Kapolei. DRFortress will manage the landing station in Hawaii under contract with HSC USA and will act as the landing party. HSC LP has entered into a contractual agreement with Tillamook Lightwave to lease space in its existing landing station in Pacific City. ACS is under contract with HSC USA to provide operation and maintenance services for the Pacific City landing station. All of the capacity on the main trunk will be owned by HSC LP and its affiliates. HSC LP will have control of the NOCs. DRFortress, Tillamook Lightwave and ACS will not own any capacity on Hawaiki.

ASTCA will own, construct and operate the spur connecting American Samoa to a branching unit on the Hawaiki submarine cable system. ASCTA will also own, construct and operate the cable landing station in Tafuna.

Regulatory Status of the Cable: Applicants state that Hawaiki will increase competition on U.S.-Australia-New Zealand routes and enhance the service quality, redundancy, and resilience of communications systems in the region. Upon deployment, the applicants state that Hawaiki will immediately and significantly increase regional and transpacific capacity, providing an alternative and diverse transmission route from the mainland U.S. to Australia, New Zealand, Hawaii, and American Samoa.

The Applicants propose to operate Hawaiki on a non-common carrier basis. Applicants state there are a variety of competitive alternatives including the PIPE Pacific Cable 1, Southern Cross and Telstra Endeavour cable systems, as well as the South-East Asia-United States system currently under construction. Applicants also state that capacity on Hawaiki will either be used by the Applicants to meet their own internal needs for bandwidth or made available to third parties on individually tailored agreements.

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 or 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 (2000).

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

We grant the Petition to Adopt Conditions to Authorizations and Licenses (Petition) filed in this proceeding on December 19, 2017 by the Department of Homeland Security with the concurrence of the Department of Justice and Department of Defense. Accordingly, we condition grant of this application on Hawaiki Submarine Cable USA LLC abiding by the commitments and undertakings contained in December 15, 2017 letter from Christophe Terral, Manager, Hawaiki Submarine Cable USA LLC to Assistant Secretary for Policy, DHS, the Department of Defense Chief Information Officer, and the General Counsel, Defense Information Systems Agency (LOA). A failure to comply and/or remain in compliance with any of these commitments and undertakings shall constitute a failure to meet a condition of the cable landing license and thus grounds for declaring license terminated without further action on the part of the Commission. Failure to meet a condition of the license may also result in monetary sanctions or other enforcement action by the Commission. A copy of the Petition and the LOA are publicly available and may be viewed on the FCC website through the International Bureau Filing System (IBFS) by searching for SCL-LIC-20160906-00019 and accessing "Other filings related to this application" from the Document Viewing area.