



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

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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.

Acceptability for Filing Public Notice: Application filed by Pacific Carriage Limited Inc. (PCLI) and Southern Cross Cables Limited (SCCL, together with PCLI, the Applicants) for a license to land and operate a non-common carrier fiber optic submarine cable extending from Australia to the United States, with branching units to New Zealand, Fiji, Samoa, Tokelau, and Kiribati. The system will be known as Southern Cross NEXT. Applicants filed a supplement to the application on August 27, 2019. The application was placed on Public Notice on August 30, 2019. See Streamlined Submarine Cable Landing License Applications Accepted for Filing, File No. SCL-LIC-20190809-00026, Public Notice, Report No. SCL-00248S (IB, rel. August 30, 2019). No comments or oppositions were filed in response to this Public Notice. Applicants filed a supplement to the application on October 14, 2019 updating the ownership information to show an increase in the indirect ownership of PCLI and SCCL by MFS Globenet, Inc. from 6.4% to 12.2% and a corresponding decrease in the interests held by each of TCNZ (Bermuda), Optus Networks Pty Limited ("Optus"), and SingTel EInvestments Pte Ltd ("SingTel EInvestments").

The Application has been coordinated with the Department of State and other Executive Branch agencies pursuant to Section 1.767(b) of the Commission's rules, 47 CFR §1.767(b), and consistent with the 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 Red 22167, 22192-93, paras. 51-52 (2001) (Submarine Cable Landing License Report and Order); Submarine Cable Landing License Requests, State Department Media Note (Revised) (rel. December 20, 2001) available at <https://2001-2009.state.gov/r/pa/prs/ps/2001/6951.htm>. The Department of Homeland Security (DHS), with the concurrence of the Department of Justice (DOJ) and the Department of Defense (DOD), filed a letter to defer action on September 23, 2019. DHS, with concurrence of DOD (DHS and DOD collectively, the Agencies), filed a Petition to Adopt Conditions to Authorizations and Licenses on July 6, 2020 (Petition). The Agencies have no objection to the Commission approving authority to construct, land and operate the Southern Cross NEXT cable, provided that the Commission conditions its approval on the commitment of PCLI and Pacific Carriage Limited to abide by the undertakings set forth in the July 3, 2020 Letter of Assurances from Pacific Carriage Limited Inc. and Pacific Carriage Limited to DHS.

Actions Taken: (1) Grant of Cable Landing License to Pacific Carriage Limited Inc. and Southern Cross Cables Limited for the purpose of landing and operating a non-common carrier fiber optic submarine cable extending from Australia to the United States, with branching units to New Zealand, Fiji, Samoa, Tokelau, and Kiribati; (2) waiver of section 1.767(h)(1) of the Commission's rules, 47 CFR §1.767(h)(1), in connection with the license; and (3) grant of the Petition to Adopt Conditions to Authorizations and Licenses filed on July 6, 2020 by the Department of Homeland Security.

Licensee Information: The licensees for the cable landing license for the Southern Cross NEXT cable are Pacific Carriage Limited Inc. and Southern Cross Cables Limited.

PCLI, a Delaware corporation, is wholly owned by Pacific Carriage Holdings Limited Inc. (PCHLI), a Delaware investment company. The following entities have direct ownership in PCHLI: TCNZ (Bermuda) Limited (TCNZ Bermuda), a Bermuda investment company, holds a 34.8% voting and economic interest; Optus Networks Pty Limited (Optus), an Australia telecommunications company, holds a 27.9% voting and economic interest; Telstra Holdings Pty Limited (Telstra Holdings), an Australian investment company, holds a 25.00% voting and economic interest; and MFS Globenet Inc. (MFS), an indirect wholly-owned subsidiary of Verizon Communications, Inc., holds the remaining 12.3% voting and economic interest in PCHLI. The indirect owners of PCHLI are: (1) Spark New Zealand Limited, a publicly traded New Zealand telecommunications company that has no 10% or greater investors, holds a 100% voting and economic interest in TCNZ Bermuda. (2) Singtel Optus Pty Limited (Singtel Optus), an Australia telecommunications company, holds a 100% voting and economic interest in Optus. Singtel Optus is wholly owned by Singapore Telecom Australia Investments Pty Limited, an Australia investment holding company, which is wholly owned by SingTel Australia Investment Ltd (Singtel Australia), an Australia investment holding company. SingTel Australia is wholly owned by Singapore Telecommunications Limited (Singtel), a Singapore telecommunications company. Temasek Holdings (Private) Limited (Temasek), a Singapore investment holding company, holds a 49.81% voting and economic interest in Singtel. Temasek is wholly owned by the Government of Singapore through the Minister for Finance. Singtel's shares trade on the Singapore Exchange and are widely held. No investor holding any of Singtel's publicly-traded shares holds a 10% or greater direct or indirect interest in PCLI. (3) Telstra Corporation Limited (Telstra), a publicly traded Australia telecommunications company, holds a 100% voting and economic interest in Telstra Holdings. Telstra's shares are widely held and Applicants say that no party holding an interest in Telstra holds a 10% or greater direct or indirect voting or economic interest in PCHLI. (4) MCI International Services, Inc. (MCIS) holds a 100% voting and economic interest in MFS. MCIS is 100% owned (voting and economic interest) by MCI International, Inc. (MCII), which is 100% owned (voting and economic interest) by MCI Communications Corporation (MCI), which is 100% owned (voting and economic interest) by Verizon Business Global LLC (Verizon Business), which is 100% owned (voting and economic interest) by Verizon Communications Inc. (Verizon). MCIS, MCII, MCI, Verizon Business, and Verizon are all telecommunications companies organized in Delaware. Verizon is a publicly traded corporation and Applicants say that no other party holding a direct or indirect economic interest in Verizon holds a 10% or greater direct or indirect voting or economic interest in PCLI.

SCCL, a Bermuda company, is wholly-owned by Southern Cross Cables Holdings Limited (SCCHL), a Bermuda investment company. The following entities have direct ownership in SCCHL: TCNZ (Bermuda) holds a 34.8% voting and economic interest; SingTel EInvestments Pte Ltd (SingTel EInvestments), a Singapore investment company, a 27.9% voting and economic interest; Telstra Holdings, a 25.0% voting and economic interest; and MFS holds the remaining 12.3% voting and economic interest in SCCHL. The indirect owners of SCCHL are: (1) Spark New Zealand Limited, which holds a 100% voting and economic interest in TCNZ Bermuda. (2) Singapore Telecommunications Limited (Singtel), a Singapore telecommunications company, holds a 100% voting and economic interest in SingTel EInvestments. Temasek holds a 49.81% voting and economic interest in Singtel. No individual or entity holds a 10% or greater direct or indirect voting or economic interest in SCCHL through Singtel. Temasek is wholly owned by the Government of Singapore through the Minister for Finance. (3) Telstra holds a 100% voting and economic interest in Telstra Holdings. No individual or entity holds a 10% or greater direct or indirect voting or economic interest in SCCHL through Telstra. (4) MCI International Services, Inc. (MCIS) holds a 100% voting and economic interest in MFS. MCIS is 100% owned (voting and economic interest) by MCI International, Inc. (MCII), which is 100% owned (voting and economic interest) by MCI Communications Corporation (MCI), which is 100% owned (voting and economic interest) by Verizon Business Global LLC (Verizon Business), which is 100% owned (voting and economic interest) by Verizon Communications Inc. (Verizon). MCIS, MCII, MCI, Verizon Business, and Verizon are all telecommunications companies organized in Delaware. Verizon is a publicly traded corporation and Applicants say that no other party holding a direct or indirect economic interest in Verizon holds a 10% or greater direct or indirect voting or economic interest in PCLI.

Cable Design and Capacity: Southern Cross NEXT will consist of a 13,483 kilometer U.S.-Australia trunk with four fiber pairs and six branches and land in eight locations. Each fiber pair of the system will have a design capacity of 18 Tbps (and a total design capacity of 72 Tbps) using current technology. The Applicants state that the system's initial lit capacity has not yet been determined, though they will offer capacity in large increments until the year 2047. Two of the four fiber pairs on the U.S.-Australia Trunk will be express fiber pairs connecting Sydney, Australia, directly to Hermosa Beach, California. The Takapuna Branch will connect a branching unit on the U.S.-Australia trunk and Takapuna, New Zealand, with two fiber pairs, one of which will be an express pair connecting Takapuna, New Zealand, directly to Hermosa Beach, California, and to Sydney, Australia. The Suva Branch will connect a branching unit on the U.S.-Australia trunk and Suva, Fiji, with one fiber pair. The Savu Savu Branch will connect a branching unit on the U.S.-Australia Trunk and Savu Savu, Fiji, also with one fiber pair. The Apia Branch will connect a branching unit on the U.S.-Australia trunk and Apia, Samoa, with one fiber pair. The Nukunonu Branch will connect a branching unit on the U.S.-Australia trunk and Nukunonu, Tokelau, with one fiber pair. The Kiritimati Branch will connect a branching unit on the U.S.-Australia trunk and Tabwakea, Kiritimati, Kiribati, with one fiber pair.

Ownership of the Cable System and Landing Points: PCLI will own the wet segment of Southern Cross NEXT in U.S. territorial waters. SCCL will own the wet link segment of the U.S.-Australia trunk beyond the territorial sea of any landing country. According to the Applicants, the other segments of Southern Cross NEXT will be owned as follows: SCCL Australia Limited will own the portion of the U.S.-Australia Trunk in the territorial sea of Australia. SCCL New Zealand Limited will own the portion of the Takapuna Branch in the territorial sea of New Zealand. SCCL Fiji Limited will own the portions of the Suva and Savu Savu Branches in the territorial sea of Fiji. SCCL Pacific Limited will own the portions of the Apia Branch, the Nukunonu Branch, and the Kiritimati Branch in the respective territorial seas of Samoa, Tokelau, and Kiribati. The Applicants say that among these entities, only SCCL will own a five-percent-or-greater interest in the system and use the U.S. endpoints of Southern Cross NEXT.

PCLI will control Southern Cross Next's landing station in Hermosa Beach, California, which is owned and operated by RTI Infrastructure, Inc. (RTI-I). The cable landing station in Sydney, Australia is owned and controlled by Optus Networks Pty Limited. The cable landing station in Takapuna, New Zealand is owned and controlled by Spark New Zealand Trading Limited. The cable landing station in Suva, Fiji is owned and controlled by Fiji International Telecommunications Pte Limited. A new cable landing station will be constructed in Savu Savu, Fiji and will be owned and controlled by the Government of Fiji. The cable landing station in Apia, Samoa is owned and controlled by Samoa Submarine Cable Company Limited. A new cable landing station will be constructed in Nukunonu, Tokelau and will be owned and controlled by Telecommunication Tokelau Corporation. A new cable landing station will be constructed in Tabwakea, Kiritimati, Kiribati and will be owned and controlled by Bwebwerikinet Limited.

Applicants request a waiver of section 1.767(h)(1) so that RTI-I need not be a joint applicant for the Southern Cross Next cable landing license. According to Applicants, RTI-I, owner of the existing cable landing station in Hermosa Beach, California, will not have the ability to affect significantly Southern Cross NEXT's operation, and inclusion of RTI-I as a joint applicant is not necessary to ensure compliance by the Applicants with the Cable Landing License Act, the Commission's cable landing license rules, or the terms of any cable landing license. Section 1.767(h)(1) requires that "any entity that owns or controls a cable landing station in the United States" shall be "applicants for, and licensees on, a cable landing license." 47 C.F.R. § 1.767(h)(1). PCLI says it will contract with RTI-I for the provision of certain limited services that will not provide RTI-I with any ability to affect significantly Southern Cross NEXT's operation, and PCLI will provide direction to RTI-I in all matters relating to Southern Cross NEXT. The Applicants also state that PCLI will seek to ensure that all indefeasible rights of use (IRUs) and lease agreements for the cable landing station facilities will have initial terms, with extension options at its sole discretion, for a total of 25 years each, coextensive with the term of the cable landing license.

The purpose of the 1.767(h)(1) requirement is to ensure that entities having a significant ability to affect the operation of the cable system become licensees so that they are subject to the conditions and responsibilities associated with the license. See Submarine Cable Landing License Report and Order, 16 FCC Rcd at 22194-95, paras. 53-54. While RTI-I is the owner of the cable landing station where the Southern Cross NEXT cable will land in Hermosa Beach, we find that, based upon the agreements between RTI-I and PCLI described above, RTI-I will not have the ability to significantly affect the operation of the cable system. PCLI will retain effective operational authority and provide direction to RTI-I in all matters relating to the Hermosa Beach landing station. Accordingly, we grant PCLI a waiver of section 1.767(h)(1) and do not require RTI-I to be on this Cable Landing License.

Regulatory Status of the Cable: The Applicants propose to operate Southern Cross NEXT on a non-common carrier basis. The Applicants intend to sell bulk capacity to particular carrier, enterprise, and Internet content customers pursuant to individually-negotiated IRUs and capacity leases, the terms of which, Applicants assert, will vary depending on the characteristics and needs of the particular capacity purchaser. The Applicants argue that the existence of competing facilities providing connectivity (both submarine cables, and in the case of the U.S.-Tokelau and U.S.-Kiribati routes, satellite links) on the relevant U.S.-South Pacific routes will ensure that Southern Cross NEXT would not function as a bottleneck facility on those routes. The Applicants argue that with respect to satellite competition on the U.S.-Tokelau and U.S.-Kiribati routes, "the Commission has previously found that the existence of intermodal competition from satellite facilities is sufficient to justify non-common carrier status for a submarine cable system, and that the facilities need not be identical in order to offer procompetitive benefits." The Applicants state that Southern Cross NEXT "will enhance competition by competing vigorously with other submarine cable systems on the U.S.-South Pacific routes" (cables such as the Hawaiiki system, which offers competition on the U.S.-Australia, U.S.-New Zealand, and U.S.-Samoa routes, and the PPC-1 and Australia-Japan cable, which both connect Australia with Guam). Consequently, the Applicants argue that the Commission should not require them to operate Southern Cross NEXT on a common carrier basis.

Applicants have provided information and demonstrated that the proposed operation of the cable on a non-common carrier basis satisfies the requirements set forth in National Association of Regulatory Utility Commissioners v. FCC, 525 F.2d 630, 642 (D.C. Cir. 1976) (NARUC I), cert. denied, 425 U.S. 992 (1976). See also Submarine Cable Landing License Report and Order, 16 FCC Rcd at 22202-22203, paras. 69-70; Review of Commission Consideration of Applications under the Cable Landing License Act, IB Docket No. 00-106, Notice of Proposed Rulemaking, 15 FCC Rcd 20789, 20815-20818, paras. 62-67 (2000).

Conditions and Requirements: Applicants shall comply with the routine conditions specified in section 1.767(g) of the Commission's rules, 47 C.F.R. § 1.767(g), 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 filed on July 6, 2020 by the Department of Homeland Security with the concurrence of the Department of Defense (Petition). Accordingly, we condition grant of this application on PCLI abiding by the commitments and undertakings contained in the July 3, 2020 letter from Laurie Miller, President and Chief Executive Officer, Pacific Carriage Limited Inc. and

—Pacific Carriage Limited, to the Assistant Secretary for Trade and Economic Security, Office of Strategy, Policy and Plans, U.S. Department of Homeland Security; John W. Wilmer, III, Deputy Chief Information Officer for Cybersecurity, U.S. Department of Defense; and Mark Hakun, Principal Director, Deputy Chief Information Officer for Cybersecurity, U.S. Department of Defense (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 the 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-20190809-00026 and accessing "Other filings related to this application" from the Document Viewing area.
