



PUBLIC NOTICE

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Report No. SCL-00379

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 CFR § 1.767, the following applications ARE GRANTED. These grants of authority are taken under section 0.261 of the Commission's rules, 47 CFR § 0.261. Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 CFR §§ 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 CFR § 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); Commission Announces Department of State's Revised Procedures for its Consideration of Submarine Cable Landing License Applications, IB Docket No. 16-155, Public Notice, DA 22-435 (rel. Apr. 19, 2022).

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 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.

Submarine Cable Landing License
Grant of Authority

Date of Action: 06/16/2022

An application has been filed by Hawaiian Telcom, Inc. (HTI), Hawaiian Telcom Services Company, Inc. (HTSC), and Level 3 Telecom of Hawaii, LP (Level 3) (together, Applicants) for authority to renew the cable landing license for the Hawaiian Islands Fiber Network (HIFN or HIFN Cable) (SCL-LIC-19950627-00024 (previous File No. SCL-95-003), SCL-MOD-20131114-00012) for an additional 25 years. Streamlined Submarine Cable Landing License Applications, Accepted for Filing, Report No. SCL-00363S, Public Notice, March 11, 2022. On April 29, 2022, Mr. Aaron Stene filed a comment and on May 9, 2022, the Applicants filed a response. On June 1, 2022, the Applicants filed a supplement regarding control of the cable landing stations.

HTI, HTSC, and Level 3 jointly own the HIFN Cable. It is a common carrier cable system that consists of approximately 400 miles of undersea fiber that connects and provides capacity for broadband traffic between six of the Hawaiian Islands: Kauai, Oahu, Molokai, Lanai, Maui, and the island of Hawaii. The Commission granted a cable landing license for the HIFN Cable in 1996. See GST Pacwest Telecom Hawaii, Inc., File No. SCL-95-003, Application for License to Land and Operate a High Capacity Digital Submarine Cable System Extending between the Hawaiian Islands of Kauai, Oahu, Molokai, Lanai, Maui and Hawaii, Cable Landing License, 11 FCC Rcd 3024 (IB 1996). The HIFN Cable became operational on June 27, 1997 and its initial 25-year license term is scheduled to expire on June 27, 2022.

The Applicants request an additional 25-year term for the continued operation of the HIFN Cable. The Applicants state that the HIFN Cable will help meet the demand for voice, data, and Internet traffic on routes between the Hawaiian Islands. They add that the HIFN Cable provides facilities-based bandwidth on these inter-island routes and continued operation will enhance service quality, increase resiliency (e.g., providing redundancy in the event of an outage), and decrease latency in serving these routes. The Applicants state that the demand for communications services (including emerging voice and data services and technologies) on these routes is increasing and that the HIFN Cable remains capable of meeting this demand. The Applicants will continue to operate the HIFN Cable on a common carrier basis.

On April 29, 2022, Mr. Stene filed comments more than a month after the comment period ended. We accept, on our own motion, Mr. Stene's late-filed comment and the Applicants' response to ensure we have as complete of a record as possible. Mr. Stene contends that the Commission should not grant another 25-year license term for the HIFN Cable unless the Applicants address the reliability of the cable and disclose their future upgrade plans. He adds that HIFN Cable experienced outages in 2003, 2010, and 2019 and requests that the Commission grant a short-term license renewal (of less than the 25 years) if the Applicants are unable to satisfy these concerns. In their response, Applicants argue that the three outages over the course of 25 years, "especially in light of the considerable human and seismic activity surrounding the Hawaiian Islands," demonstrates that HIFN has "provided reliable capacity to customers over its lifespan." The Applicants further state that "[d]iscontinuing this fully functioning cable with plenty of capacity to serve customers would, in fact, reduce capacity available to serve customers on the Hawaiian Islands," and would reduce the resiliency between the six major islands on Hawaii. The Applicants contend that the public interest is better served by renewal of the HIFN Cable license so that it can continue to provide capacity on these routes.

Based on our review of the record, we find that the public interest will be served by granting a new 25-year license term for the HIFN Cable. We are unpersuaded by Mr. Stene's arguments and agree with the Applicants that the "HIFN Cable's outage records show that it has provided reliable capacity to customers over its lifespan." Importantly, the continued operation of the HIFN Cable for an additional 25 years serves the public interest by continuing to provide capacity to the Hawaiian Islands and contributing to the overall resiliency of the communications network infrastructure in this region. Accordingly, we deny Mr. Stene's request that the HIFN Cable renewal term be denied or limited to less than 25 years, and we deny Mr. Stene's request that the Applicants disclose future upgrade plans.

The Application has been coordinated with the Department of State as required by Executive Order 10530, pursuant to section 1.767(b) of the Commission's rules, and consistent with the established Department of State procedures. Executive Order 10530, Section 5(a) reprinted as amended in 3 U.S.C. § 301; 47 CFR §1.767(b); 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); Commission Announces Department of State's Revised Procedures for its Consideration of Submarine Cable Landing License Applications, IB Docket No. 16-155, Public Notice, DA 22-435 (rel. Apr. 19, 2022).

Pursuant to Commission rules, we exercised our discretion to not refer this application to the Executive Branch agencies for national security, law enforcement, foreign policy and trade policy review. Unlike most cable landing license applications, as discussed below, this Application involves an existing facility with mitigation agreements specific to the cable system that were executed last year, on March 12, 2021. Thus, we found that this Application presented a low or minimal risk to national security, law enforcement, foreign policy, and trade policy. See Streamlined Submarine Cable Landing License Applications, Accepted for Filing, Report No. SCL-00363S, Public Notice, March 11, 2022. Although we did not refer this application, we provided a courtesy copy of the accepted for filing public notice to the Executive Branch agencies. See Executive Branch Review Process Order, 35 FCC Rcd 10927, 10941, para. 36, n. 99 (2020); see also id. at 10957, para 81, n. 205.

Actions Taken: We grant the Cable Landing License to Hawaiian Telcom, Inc. (HTI), Hawaiian Telcom Services Company, Inc. (HTSC), and Level 3 Telecom of Hawaii, LP (Level 3) for the purpose of landing and operating a common carrier fiber-optic submarine cable system, the HIFN Cable that connects six of the Hawaiian Islands.

Licensee Information: HTI, a Hawaii corporation, and HTSC, a Delaware corporation, are both wholly owned subsidiaries of Hawaiian Telcom Communications, Inc. (HTCI), a Delaware holding company. HTCI is wholly owned by Hawaiian Telcom Holdeo, Inc., a Delaware holding company, which in turn is wholly owned by Cincinnati Bell Inc., an Ohio holding company. Cincinnati Bell Inc. is wholly owned by Red Fiber Parent, LLC, which is wholly owned by RF Topco LLC, which in turn is wholly owned by Red Fiber Holdings LLC (Red Fiber Holdings), all Delaware holding companies. The following entities hold a 10% or greater direct interest in Red Fiber Holdings: (a) MIP V RF Partners, L.P. (MIP V RFP), a Delaware investment fund, 65.8% voting and equity; (b) REST US Infrastructure No. 2 Trust, an Australian Special Purpose Vehicle, 16.6% voting and equity; and (c) several alternative investment vehicles collectively known as the Ares AIVs, collective 17.6% voting and equity.

MIP V RFP is wholly owned by MIP V (FCC) AIV, L.P. (MIP V (FCC)), a Delaware investment fund. Macquarie Infrastructure Partners V GP LLC (MIP V GP), a Delaware investment management company, is the general partner of both MIP V RFP and MIP V (FCC) and indirectly owns 65.8% of HTI and HTSC. Macquarie Infrastructure Partners Inc. (MIP Inc.), a Delaware investment management company, has management control of MIP V GP. Macquarie Infrastructure and Real Assets Inc. (MIRA Inc.), a Delaware investment management company, owns 100% (voting and equity) of MIP Inc. and is a managing member of MIP V GP. Macquarie Infrastructure and Real Assets Limited (MIRA Ltd), a United Kingdom investment company, an affiliate of MIRA Inc. and a wholly owned subsidiary of Macquarie (UK) Group Services Limited, a United Kingdom investment company. MIRA Ltd owns a 100% equity interest in MIP V GP. Both MIRA Inc. and MIRA Ltd. are ultimately wholly owned and controlled by Macquarie Group Limited (MGL), an Australian investment company, ultimately giving MGL a 65.8% indirect (voting and equity) interest in HTI and HTSC.

REST US Infrastructure No. 2 Trust, an Australian Special Purpose Vehicle, directly owns 16.6% (voting and equity) of Red Fiber Holdings. REST Nominees No. 2 Pty Ltd, an Australia special purpose vehicle, is the trustee of the REST US Infrastructure No. 2 Trust. REST International Infrastructure Investments Holding Trust (REST International Infrastructure), an Australia investment company, is the 100% beneficial owner of the REST US Infrastructure No. 2 Trust and REST Nominees No. 2 Pty Ltd. REST Nominees No. 1 Pty Ltd., an Australia special purpose vehicle, is the legal owner of REST Nominees No. 2 Pty Ltd and the trustee of REST International Infrastructure. Retail Employees Superannuation Trust (REST), an Australia superannuation trust, is the 100% beneficial owner of both REST International Infrastructure and REST Nominees No. 1 Pty Ltd. Retail Employees Superannuation Pty Ltd, an Australia trustee entity, is the trustee of REST and the legal owner of REST Nominees No. 1 Pty Ltd. The Applicants state that while Retail Employees Superannuation Pty Ltd is the trustee of REST, its shares must be held by a person who is a sponsor (persons who represent the interests of employers or members who participate in REST or a group of such employers or members) or their nominee. The Applicants indicate that currently, 4 A Class shares and 4 B Class shares are issued and held by nominees for the sponsor members of REST. Approximately 1.7 million members are the ultimate beneficial owners of Retail Employees Superannuation Trust. The Applicants state that these members have no voting or control rights in REST.

Ares Management Corporation, a publicly traded Delaware corporation, owns through several intermediaries organized in Delaware: (i) the alternative investment vehicles (SSF AIVs) controlled by ASSF Management IV, L.P., a Delaware limited partnership, as the general partner of the SSF AIVs; (ii) alternative investment vehicles (ASOF AIVs) controlled by ASOF Management, L.P., a Delaware limited partnership, as the general partner of the ASOF AIVs; and, (iii) alternative investment vehicles (the Ares Co-Invest AIVs, and together with the SSF AIVs and the ASOF AIVs, the "Ares AIVs") controlled by Ares PE Co-Invest GP LLC, a Delaware limited partnership, as the general partner of the Ares Co-Invest AIVs. Combined, the Ares AIVs hold approximately 17.6% of Red Fiber Holding Holdings (voting and equity), and consequently 17.6% of the Applicants, HTI and HTSC.

Level 3, a Delaware limited partnership, is 99% owned (voting and equity) by Level 3 Telecom Holdings II, LLC (Level 3 Telecom Holdings II) and 1% owned (voting and equity) by Level 3 Telecom Holdings, LLC (Level 3 Telecom Holdings), both Delaware holding companies. Level 3 Telecom Holdings II is wholly owned by Level 3 Telecom Holdings which is wholly owned by Level 3 Telecom, LLC (Level 3 Telecom), a Delaware holding company. Level 3 Telecom is wholly owned by Level 3 Financing, Inc. which in turn is wholly owned by Level 3 Parent LLC (Level 3 Parent), both Delaware holding companies. Level 3 Parent is wholly owned by Wildcat Holdco LLC which is wholly owned by Lumen Technologies, Inc. (Lumen), both Delaware holding companies. The Vanguard Group, Inc., a Pennsylvania investment management company, owns an 11% interest (voting and equity) in Lumen. Lumen is a publicly held company with no 10% or greater owners other than The Vanguard Group, Inc.

Landing Points and Ownership: The HIFN Cable has eight interisland cable segments with eight landing sites. The landing sites are: (1) Kawaihae Data Center at Spencer Beach, Hawaii; (2) Lihue Central Office at Wailua Golf Course, Kauai; (3) Lanai Central Office at Manele Bay, Lanai; (4) Kihei Central Office at Mokapu, Maui; (5) Kaunakakai Central Office at Kaunakakai, Molokai; (6) Kokohead Central Office at Sandy Beach, Oahu; (7) Waianae Central Office at Makaha, Oahu; and (8) Keawaula, Oahu. The Applicants state that the Keawaula, Oahu landing station is inactive and the cable segment connecting it to Makaha, Oahu is not operational. HTI owns and controls all the cable landing stations, except it jointly owns and controls the Kawaihae Data Center in Hawaii with HTSC. With respect to the Kawaihae Data Center, HTI owns the equipment and HTSC owns the building.

Cable Design and Capacity: The HIFN Cable has two branching units between Oahu and Maui, Passive Branching Unit #1 (PBU1) and Passive Branching Unit #2 (PBU2). The segments for HIFN are: Segment A from Kauai to Oahu (Makaha); Segment B from Makaha to Keawaula (currently inactive); Segment D from Oahu (Sandy Beach) to PBU1; Segment D1 from PBU1 to Molokai; Segment E from PBU1 to PBU2; Segment E1 from PBU2 to Lanai; Segment F from PBU2 to Maui; and Segment G from Maui to Hawaii. Each segment has 24 fiber strands, except Segments D1 and E1 which each have 8 fiber strands. Level 3 and HTI each own 12 fiber strands on each segment, except that HTI owns all 8 fiber strands on Segments D1 and E1. The amount of HTI's design capacity varies by segment, from 400 to 880 gigabits per second (Gbps), as does its lit capacity, from 20 to 190 Gbps. Level 3's design capacity for each of its segments of the HIFN Cable is 800 Gbps and its lit capacity is 200 Gbps. Segment B is currently inactive and has no capacity.

Regulatory Status of the Cable: The Applicants state that they will continue to operate the HIFN cable system on a common carrier basis.

Conditions and Requirements: The Applicants will comply with the routine conditions set out in section 1.767(g) of the Commission's rules. 47 CFR § 1.767(g).

The Applicants request that the Commission condition grant of the renewal application on their continued compliance with their existing mitigation agreements with the Department of Homeland Security (DHS), Department of Justice (DOJ) and the Department of Defense (DOD). Specifically, HTI provided a Letter of Assurances to DHS, DOJ and DOD directly covering HIFN as well as the Hawaii Inter-Island Cable System (HICS) on March 12, 2021 (HTI LOA). See Letter of Assurances from Christopher J. Wilson, Vice President and General Counsel, Hawaiian Telcom Inc., to Assistant Secretary for Trade and Economic Security, Office of Strategy, Policy, and Plans, U.S. Department of Homeland Security; Chief, Foreign Investment Review Section (FIRS), Deputy Chief, Compliance and Enforcement (FIRS) on behalf of the Assistant General for National Security, United States Department of Justice National Security Division; and, Mark Hakun, Principal Director of Chief Information Officer for Cybersecurity, U.S. Department of Defense (dated Mar. 12, 2021) (see SCL-T/C-20200520-00020 and SCL-T/C-20200520-00021).

—Cincinnati Bell and Red Fiber Parent, the parent organizations of HTI and HTSC, provided a Letter of Agreement to DOJ and DOD on March 12, 2021 (Cincinnati Bell LOA). See Letter of Agreement from Christopher J. Wilson, Vice President and General Counsel, Cincinnati Bell Inc., Anton Moldan, Vice President, Red Fiber Parent, LLC, and John H. Kim, Secretary, Red Fiber Parent, LLC, to the Chief, Foreign Investment Review Section (FIRS), Deputy Chief, Compliance and Enforcement (FIRS) on behalf of the Assistant Attorney General for National Security, United States Department of Justice National Security Division (dated Mar. 12, 2021) (see SCL-T/C-20200520-00020, SCL-T/C-20200520-00021, ITC-T/C-20200515-00070, ITC-T/C-20200515-00071, ITC-T/C-20200515-00072, ISP-PDR-20200515-00003).

Similarly, Lumen (then known as CenturyLink), the parent organization of Level 3, provided a Letter of Assurances to DHS, DOD and DOJ on September 29, 2017 (Level 3 LOA). See Letter from R. David Mahon, Vice President and Chief Security Officer, CenturyLink, to Assistant Secretary for Policy, DHS; Director, Foreign Investment Review Staff, National Security Division, DOJ; Department of Defense Chief Information Officer, DOD; and, General Counsel, Defense Information Systems Agency, DOD (Sep. 29, 2017) (see ITC-T/C-20161213-00343, ITC-T/C-20161212-00344, ITC-T/C-20161212-00345, ITC-T/C-20161212-00346, ITC-T/C-20161212-00347, ITC-T/C-20161212-00348, SCL-T/C-20161212-00022, SCL-T/C-20161212-00023, SCL-T/C-20161212-00024, SCL-T/C-20161212-00025).

We grant Applicants' request that the Commission condition grant of the renewal application on their continued compliance with the HTI LOA, the Cincinnati Bell LOA, and the Level 3 LOA. The application does not propose any changes to the cable system since the HTI LOA and the Cincinnati Bell LOA were entered into on March 12, 2021 and there have been no changes in the foreign ownership since the HTI LOA, Cincinnati Bell LOA and Level 3 LOA were entered into. Accordingly, we condition grant of the application on continued compliance with commitments and undertakings contained in the (1) HTI LOA, (2) Cincinnati Bell LOA, and (3) Level 3 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 grant of the transfer of control application may also result in monetary sanctions or other enforcement action by the Commission. Copies of the three LOAs are publicly available and may be viewed on the FCC website through IBFS by searching for the appropriate file number and accessing "Other filings related to this application" from the Document Viewing area.

License Term: Under the Commission's rules, a cable landing license shall expire 25 years after the in-service date for the cable. 47 CFR § 1.767(g)(15). As the HIFN Cable is already licensed and in-service, this license shall expire on June 27, 2047, 25 years from the expiration of the current license on June 27, 2022.
