



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
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Report No. SCL-00303NS

Thursday February 18, 2021

Non-Streamlined Submarine Cable Landing License Applications

Accepted For Filing

Unless otherwise specified, the following procedures apply to the applications listed below:

The applications listed below have been found, upon initial review, to be acceptable for filing. Pursuant to the Submarine Cable Landing License Act, 47 U.S.C. §§ 34-39, and Executive Order No. 10530, reprinted as amended in 3 U.S.C. § 301, each applicant seeks: (a) the grant of a cable landing licensee; (b) the modification of a cable landing license; and/or (c) the assignment or transfer of control of an interest in a submarine cable landing license. These applications are not subject to the streamlined processing procedures set forth in Section 1.767 of the Commission's rules, 47 CFR § 1.767.

Filings relating to this application must be received within 14 days of this notice. Ex parte communications between outside parties and Commission staff concerning these applications are permitted subject to the Commission's rules for "permit-but-disclose proceedings." See 47 C.F.R. § 1.1206.

These applications are being 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>.

Pursuant to its decision 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), and section 1.767 of the rules, the Commission will take action upon these applications within ninety (90) days after release of this public notice, unless it determines that additional time is needed.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 1-888-835-5322 (tty). All applications listed are subject to further consideration and review, and may be returned and/or dismissed if not found to be in accordance with the Commission's rules, regulations, and other requirements.

Assignment

Current Licensee: Bankruptcy Estate of Paniolo Cable Company, LLC (Michael Katzenstein, Chapter 11

FROM: Bankruptcy Estate of Paniolo Cable Company, LLC (Michael Katzenstein, Chapter 11

TO: Hawaiian Telcom, Inc.

Application for consent to the assignment of the cable landing license for the Paniolo Cable System, SCL-LIC-20070223-00003, from the Bankruptcy Estate of Paniolo Cable Company, LLC (Michael Katzenstein, Chapter 11 Trustee) to Hawaiian Telcom, Inc. (HTI). The Paniolo Cable System is a non-common carrier, domestic fiber optic system consisting of 48 fiber pairs and serving the Hawaiian islands. The Paniolo Cable system connects the Hawaiian Islands of Kauai, Oahu, Molokai, Maui, and Hawaii. It has four interisland subsea segments with a total of seven landings: (1) Kekaha, Kaua'i to Makaha, Oahu; (2) Hawai'i Kai, Oahu, to Kaunakakai, Moloka'i; (3) Kaunakakai, Moloka'i, to Lahaina, Maui; and (4) Makena, Maui, to Kawaihae, Hawai'i. The cable went into service in 2009. Applicants state that HTI intends to operate this cable on a common carrier basis.

On November 13, 2018, HSBC Securities (USA) Inc., Sunrise Partners Limited Partnership, and Deutsche Bank Trust Company Americas (Petitioning Creditors) jointly filed an involuntary petition for bankruptcy protection of the Paniolo Cable Company, LLC under Chapter 11 of the U.S. Bankruptcy Code with the United States Bankruptcy Court for the District of Hawaii (Bankruptcy Court). On November 29, 2018, the Petitioning Creditors filed a motion with the bankruptcy court seeking the appointment of a Chapter 11 trustee for Paniolo Cable Company, LLC. On February 11, 2019 the Bankruptcy Court entered an Order appointing the Chapter 11 Trustee. On March 8, 2019, Michael Katzenstein, as Chapter 11 Trustee of the Bankruptcy Estate of Paniolo Cable Company, LLC (the Chapter 11 Trustee) notified the Commission of the pro forma assignment of the Paniolo Cable System license from Paniolo Cable Company, LLC to Paniolo Cable Company, LLC, as debtor under the control of the Chapter 11 Trustee. See Public Notice, Report No. SCL-00235, SCL-ASG-20190308-00008, Actions Taken Under Cable Landing License Act, DA 19-200 (IB rel. Mar. 21, 2019).

On November 30, 2020, the Chapter 11 Trustee and HTI entered into an asset purchase agreement pursuant to which HTI will acquire the Paniolo Cable System assets and other unregulated assets. On December 28, 2020, the Bankruptcy Court entered a sale order that, among other things: (1) authorized and approved the sale of Paniolo Cable Company's assets free and clear of all liens, claims, interests, and encumbrances; and (2) approved the asset purchase agreement. Upon consummation of the proposed transaction, HTI will be the owner and operator of the Paniolo Cable System.

HTI is a Delaware corporation that is 100% owned by Hawaiian Telcom Communications, Inc., a Delaware holding company, which 100% owned by Hawaiian Telcom Holdco, Inc., a Delaware holding company, which is 100% owned by Cincinnati Bell, Inc. (Cincinnati Bell), an Ohio holding company. Applicants state that Cincinnati Bell is publicly traded and that its shares are widely held, and that the only entity with a 10% or greater interest is BlackRock, Inc., a Delaware investment management company that owns 14.68% of Cincinnati Bell.

Cincinnati Bell and HTI have pending applications regarding the proposed transfer of control of Cincinnati Bell to Red Fiber Parent LLC (Red Fiber Parent). Red Fiber Parent, a Delaware limited liability company, will acquire 100% of the stock of Cincinnati Bell. See Applications Filed for the Transfer of Control of Cincinnati Bell Inc. and Hawaiian Telcom, Inc. to Red Fiber Parent LLC, WC Docket No. 20-146, Public Notice, 35 FCC Red 11320 (WCB/IB/WTB 2020).

The sole member of Red Fiber Parent is RF Topco LLC (TopCo), a Delaware limited liability company formed at the direction of MIP V (FCC) AIV, L.P. (MIP V), a Delaware limited partnership. The sole member of TopCo is Red Fiber Holdings LLC (RF Holdings), a Delaware limited liability company. At the time of closing, RF Holdings would be majority owned (61.5% equity) and controlled by MIP V RF Partners, L.P. (MIP V Member), a Delaware limited partnership, which, in turn, would be majority owned (73.15% equity) and controlled by MIP V. Both MIP V and MIP V Member are funds managed by Macquarie Infrastructure Partners Inc. pursuant to agreement with the funds' general partner, Macquarie Infrastructure Partners V GP, LLC (MIP V GP), which is controlled by Macquarie Infrastructure and Real Assets Inc. (MIRA). MIRA is ultimately wholly owned and controlled by Macquarie Group Limited (MGL), a publicly traded Australian company that provides banking and investment services. RF Holdings would be indirectly minority owned by (i) certain U.S.-organized alternative investment vehicles (Ares AIVs) managed by the Private Equity Group of Ares Management Corporation (Ares Management), a Delaware entity (an aggregate 21.2% equity interest); and (ii) Retail Employees Superannuation Trust (REST), a widely held Australian public offer pension fund managed by Retail Employees Superannuation Pty Limited (Rest Trustee), as trustee of the fund (17.3% equity). REST's indirect interest in Red Fiber Parent will be held by Rest Nominees No. 2 Pty Ltd as trustee for REST US Infrastructure No. 2 Trust (Rest Immediate Entity). MIP V Member, the Ares AIVs, and Rest Immediate Entity would have the right to appoint directors of RF Holdings and Cincinnati Bell based on their equity interests in RF Holdings. According to the Applicants, passive investors will hold indirect equity interests in Red Fiber Parent, through RF Holdings, in the form of limited partnership interests in MIP V or MIP V Member (or an affiliate entity), or the Ares AIVs, or membership interests in REST. These passive investors would each hold indirect interests of less than 10% in Red Fiber Parent.

HTI certifies that it accepts and will abide by the routine conditions specified in 47 CFR § 1.767(g).

Pursuant to Commission practice, the application is being referred to the relevant Executive Branch agencies for their views on any national security, law enforcement, foreign policy or trade policy concerns related to the proposed foreign ownership of Cincinnati Bell and HTI.

REMINDER:

Applicants must certify that neither the applicant nor any party to the application is subject to a denial of federal benefits by federal and/or state courts under authority granted in 21 U.S.C. § 862. See 47 C.F.R. §§ 1.2001–2003.

By this notice, we inform the public that submarine cable landing license applications that are part of larger transactions involving multiple Commission licenses or authorizations may involve "extraordinary circumstances" as referenced in Review of Commission Consideration of Applications under the Cable Landing License Act, Report and Order, 16 FCC Rcd 22167 (2001) and Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891 (1997), paras. 327-28, Order on Reconsideration, 15 FCC Rcd 18158 (2000). Additionally, extraordinary circumstances result where Executive Branch agencies petition the Commission to defer action on an application pending the resolution of potential national security, law enforcement, foreign policy and trade policy issues. Accordingly, these applications may not be acted on within the 90-day review period that the Commission has established as the period of time normally required to reach a decision on non-streamlined cable landing licenses. This notice shall serve as public notice to applicants that, in these circumstances, additional time may be required for Commission review and final action. No additional formal public notice will be provided routinely with respect to specific applications in the event that the applicable review period extends beyond 90 days.