



PUBLIC NOTICE

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Friday March 11, 2022

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 and subject to the streamlined processing procedures set forth in section 1.767 of the Commission's rules, 47 C.F.R. § 1.767. 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 license; (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.

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 forty-five (45) days after release of this public notice, unless upon further examination an application is deemed ineligible for streamlined processing.

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. Unless otherwise specified, interested parties may file comments with respect to these applications within 14 days of this notice. Such filings will not necessarily result in an application being deemed ineligible for streamlined processing.

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.

Submarine Cable Landing License

An application was 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, SCL-MOD-20131114-00012 (old File No. SCL-95-003)) for an additional 25 years. HTI, HTSC, and Level 3 jointly own the HIFN Cable. The HIFN Cable's initial 25 year license term is scheduled to expire June 27, 2022. Applicants filed a restated and amended application on February 14, 2022. Applicants filed a supplemental letter on March 4, 2022.

HIFN 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. See Letter from Steven P. Golden, Vice President, External Affairs, Hawaiian Telcom, Inc. to Tom Sullivan, Chief, International Bureau, FCC, SCL-LIC-19950627-00024 (filed, May 11, 2018) (available on the FCC website through the International Bureau Filing System (IBFS) by searching for SCL-LIC-19950627-00024 and accessing "Other filings related to this application" from the Document Viewing area).

HIFN 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. Applicants state that the Keawaula landing station is inactive and the cable segment connecting it to Makaha is not operational. HTI owns all the cable landing stations, except it jointly owns the station on Hawaii (Kawaihae Data Center) with HTSC; HTI owns the equipment and HTSC owns the building.

HIFN 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 fibers 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.

The Applicants request an additional 25-year term for the continued operation of the HIFN Cable. The Applicants state that HIFN will help meet the demand for voice, data and Internet traffic on routes between the Hawaiian Islands. They note that HIFN 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. 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. Applicants will continue to operate HIFN on a common carrier basis.

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 Holco, 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. 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. 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. 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. Applicants certify that they accept and will abide by the routine conditions specified in Section 1.767(g) of the Commission's rules, 47 C.F.R. § 1.767(g).

Although the Commission will generally refer an application with reportable foreign ownership to the Executive Branch for review for any national security, law enforcement, foreign policy, and trade policy concerns, it stated that it would exclude from referral certain applications that present a low or minimal risk to national security, law enforcement, foreign policy, and trade policy. See Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership, IB Docket 16-155, Report and Order, 35 FCC 10927, 10938-42, paras. 29-39 (2020) (Executive Branch Review Process Order).

Applicants request that the Commission exercise its discretion and not refer this application. They contend that it meets the criteria for exclusion from referral even if it does not fit directly into one of the categories set out by the Commission. See Executive Branch Review Process Order, 35 FCC at 10938-40, paras 30, 33. Specifically they argue that there are existing mitigation agreements covering the HIFN Cable System and the applicants, that there has been no change in the foreign ownership of the applicants since the effective date of the mitigation agreements and that they agree to continue to comply with the terms of these mitigation agreements. Applicants acknowledge that in the Executive Branch Review Process Order the Commission limited this exclusion from referral to applications regarding international section 214 authorizations but argue that the rationale for the exclusion applies to this application for a renewal of a cable landing license. See Executive Branch Review Process Order, 35 FCC at 10939-40, paras 33-34. Specifically, they state that HTI provided a Letter of Assurances to the Department of Homeland Security (DHS), Department of Justice (DOJ) and the Department of Defense (DOD) directly covering HIFN as well as the Hawaii Inter-Island Cable System (HICS) on March 12, 2021, less than a year ago (HTI LOA). See SCL-T/C-20200520-00020 and SCL-T/C-20200520-00021. -They also note that Cincinnati Bell and Red Fiber Parent, the parent organizations of HTI and HTSC, provided a Letter of Agreement to DOJ and DOD at the same time (Cincinnati Bell LOA). See 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 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. Further, 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. Copies of 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.

We are exercising our discretion and are not referring this application to the Executive Branch for national security, law enforcement, foreign policy and trade policy review. We find that this application presents a low or minimal risk to national security, law enforcement, foreign policy, and trade policy. Unlike most cable landing license applications this one involves an existing facility with a mitigation agreement specific to the cable system and was agreed to around a year ago. The application does not propose any changes to the cable system since the HTI LOA was 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. Finally, the Applicants have requested that the Commission condition grant of the application on their continued compliance. Consequently, we agree with the Applicants and will not refer this application to the Executive Branch for national security, law enforcement, foreign policy, and trade policy review. While we are not referring this application, we will provide a courtesy copy of this public notice to the Executive Branch agencies. See Executive Branch Review Process Order, 35 FCC Rcd at 10941, para. 36, n. 99; see also id. at 10957, para 81, n. 205. We will still coordinate the application with the Department of State as required by Executive Order 10530, Section 5(a) reprinted as amended in 3 U.S.C. § 301. See also 47 CFR § 1.767(b).

REMINDERS:

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 C.F.R. §§ 1.2001-1.2003.

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 be removed from streamlined processing and 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.