

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
GST Telecom Hawaii, Inc. and)
Pacific Lightnet, Inc.)
)
) SCL-ASG-20010516-00013
)
Application for Assignment of License to)
Land and Operate the GST Interisland)
Cable System)
)

MEMORANDUM, OPINION and ORDER

Adopted: September 27, 2001

Released: September 28, 2001

By the Acting Chief, Telecommunications Division, International Bureau:

I. Introduction

1. In this Order, we grant the Application of GST Telecom Hawaii, Inc. (GST Hawaii) and Pacific Lightnet, Inc. (Pacific Lightnet) (collectively Applicants) to assign the interest of GST Hawaii in the Cable Landing License for the GST Interisland Cable System to Pacific Lightnet. The original license authorized GST Pacwest Telecom Hawaii, Inc., (GST Pacwest) pursuant to the Cable Landing License Act, and Executive Order No. 10530, to land and operate the GST Interisland Cable System, a common carrier fiber optic submarine cable system extending between the Hawaiian Islands of Kauai, Oahu, Molokai, Lanai, Maui, and Hawaii. We subsequently granted the application of GST Pacwest Hawaii,

1 See GST Telecom Hawaii, Inc. and Pacific Lightnet, Inc., Application for Modification of License to Land and Operate an Interisland Cable System to Assign Interest in License, filed May 16, 2001 (Application). On May 17, 2000, GST Telecommunications and its subsidiaries (GST), including GST Hawaii, filed for protection under Chapter 11 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court. On March 9, 2001, GST filed an asset purchase agreement with the Bankruptcy Court in order to receive approval of the sale of various assets of GST Hawaii and its affiliates to TM Communications Hawaii, LLC (TM), or its nominee, including the GST Interisland Cable System. On March 22, 2001, the Bankruptcy Court approved the agreement relating thereto. Prior to closing the transaction, TM will assign to Pacific Lightnet, its nominee, all of its rights under the Agreement, and Pacific Lightnet will be the direct purchaser of the GST Hawaii assets. See Application at 2. Closing of the transaction is conditioned, among other things, upon obtaining all necessary regulatory approvals. See Application at 5.

2 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).

3 Exec. Ord. No. 10530 reprinted as amended in 3 U.S.C. § 301.

4 See GST Pacwest Telecom Hawaii, Inc. Application for License to Land and Operate a High Capacity Digital Submarine Cable System Extending Between the Hawaiian Islands of Kauai, Oahu, Molokai, Lanai, (continued....)

Inc. for a *pro forma* transfer and assignment of the license from GST Pacwest to GST Hawaii, as part of a corporate reorganization.⁵

2. Under supervision of the U.S. Bankruptcy Court, Applicants are requesting that 12 fibers that are currently owned by GST Hawaii as part of the GST Interisland Cable System connecting the islands of Kauai, Oahu, Maui and Hawaii, as well as eight fibers on the branches connecting the islands of Lanai and Molokai to the GST Interisland Cable System, be assigned to Pacific Lightnet.⁶ Previously, Time Warner Hawaii had acquired a shared ownership interest in the remaining portions of the GST Interisland Cable System.⁷ Time Warner Hawaii will continue to own 12 fibers, specifically identified to Time Warner Hawaii, extending from Kauai (Wailua Golf Course) to Oahu (Makaha) to Oahu (Keawaula) to Oahu (Sandy Beach), to Maui (Mokapu), and from Maui to Hawaii (Spencer Beach).⁸

3. GST Hawaii is a Hawaii corporation that is an indirect, wholly-owned subsidiary of GST Telecom, Inc., a Delaware corporation.⁹ According to the Application, GST is a facilities-based integrated communications service provider, currently offering voice, data, and Internet service throughout the western United States. Applicants assert that GST is authorized to provide intrastate interexchange service in 49 states and intrastate local exchange service in 11 states. GST also holds authority to provide interstate and international telecommunications services as a non-dominant common carrier.¹⁰

4. Pacific Lightnet is a corporation organized under the laws of the State of Hawaii. According to the Application, fifty percent of the voting stock of Pacific Lightnet is owned by NextNet Investments, LLC, a Washington limited liability company. The other fifty percent is owned by TM, a Delaware limited liability company. Pacific Lightnet was incorporated on March 23, 2001, for the purpose of acquiring the GST Hawaii assets and operating the GST Hawaii business. As noted, TM Communications Hawaii, LLC has designated Pacific Lightnet as its nominee to acquire title to the GST Hawaii assets at the closing of the bankruptcy sale. Pacific Lightnet will thereafter provide

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Maui and Hawaii, Cable Landing License, 11 FCC Rcd 3024 (*GST Cable Order*) (IB/1996). Although this is a common carrier submarine cable, there was no international section 214 authorization issued concurrently with the cable landing license because this is a domestic cable, connecting one portion of the United States with another portion of the United States. Given this, the order granting the cable landing license cautioned that “the service provided on a common carrier basis is limited to domestic service. Should GST seek to provide any type of international communications services on the GST Interisland Cable, it is required to file an application under section 214 of the Communications Act, as amended, requesting such authority.” See *GST Cable Order*, 11 FCC Rcd at para. 7.

⁵ See *Overseas Common Carrier Section 214 Applications Actions Taken*, Public Notice, Report No. I-8266, File No. SCL-95-003-AL, 12 FCC Rcd 16423 (IB/TD, 1997).

⁶ See Application at 2-3.

⁷ See *GST Telecom Hawaii, Inc. and Time Warner Telecom of Hawaii, L.P., Application for Modification of License to Land and Operate the GST Interisland Cable System*, FCC File No. SCL-MOD-20001025-00036, DA 01-104 (IB/TD, January 17, 2001).

⁸ See Application at 3.

⁹ *Id.* at 3.

¹⁰ *Id.* at 3-4 (incorporating by reference GST Hawaii’s qualifications to provide telecommunications service filed in the original cable landing license applications and *pro forma* transfer application).

telecommunications services in the State of Hawaii.¹¹

5. Under section 1.767(a)(8) of the Commission's rules, applicants are required to disclose their affiliations with foreign carriers.¹² Pacific Lightnet has certified that it is neither a foreign carrier nor affiliated with a foreign carrier, as defined in section 63.09 of the Commission's rules.¹³

II. Comments

6. We placed the Application on public notice on May 25, 2001.¹⁴ No comments were received. Pursuant to Section 1.767(b) of the Commission's rules,¹⁵ the Cable Landing License Act, and Executive Order No. 10530, we informed the Department of State of the Applicants' request.¹⁶ The Department of State, after coordinating with the National Telecommunications and Information Administration and the Department of Defense, stated that it has no objection to the assignment of interest in the cable.¹⁷

III. Discussion

7. We grant Applicants' request to assign the interest of GST Hawaii in the Cable Landing License for the GST Interisland Cable system to Pacific Lightnet. We conclude that assigning the interest of GST Hawaii in the cable landing license raises no competitive concerns, and does not provide a basis for altering the common carrier status of the cable.¹⁸ No commenter has alleged that the proposed assignment raises competitive concerns. Moreover, Applicants have asserted that the Application is in the public interest because the proposed transaction will enable customers to continue to receive high-quality, competitively priced telecommunications services without interruption on the GST Interisland Cable System.¹⁹ Applicants further assert that: 1) Pacific Lightnet will operate as a nondominant competitive local exchange carrier in Hawaii, competing against the dominant local exchange provider, Verizon; 2) Verizon also owns a competing cable system; and 3) Pacific Lightnet's proposed acquisition of GST

¹¹ *Id.* at 4.

¹² *See* 47 C.F.R. § 1.767(a)(8).

¹³ *See* 47 C.F.R. § 63.09.

¹⁴ *See Non Streamlined International Applications Accepted for Filing*, Public Notice, Report No. TEL-00400NS (rel. May 25, 2001).

¹⁵ 47 C.F.R. § 1.767(b).

¹⁶ Letter from George Li, Deputy Chief, Telecommunications Division, International Bureau, Federal Communications Commission, to Steven Lett, Deputy U.S. Coordinator, Office of International Communications and Information Policy, U.S. Department of State (May 25, 2001).

¹⁷ Letter from Richard C. Beard, United States Coordinator, Acting, International Communications and Information Policy, U.S. Department of State, to Donald Abelson, Chief, International Bureau, Federal Communications Commission (Sept. 7, 2001).

¹⁸ We reiterate, as the *GST Cable Order* granting the initial cable landing license made clear, that the service provided on a common carrier basis is limited to domestic service. If Applicants wish to provide any type of international communications services on the GST Interisland Cable, they are required to file an application for international section 214 authority specifically for this cable.

¹⁹ *See* Application at 10.

Hawaii's assets will help to ensure competition in the region.²⁰ We therefore find that grant of the Application is in the public interest.

IV. Ordering Clauses

10. Consistent with the foregoing and pursuant to the Cable Landing License Act and Executive Order 10530, IT IS ORDERED that the Application, File No. SCL-ASG-200105160-0013 IS GRANTED and the interest of GST Hawaii in the cable landing license (File No. SCL-95-003-AL) for the GST Interisland cable system is assigned to Pacific Lightnet.

11. This Order does not modify any other terms or conditions imposed in the license.

12. This Order is issued under section 0.261 of the Commission's rules, 47 C.F.R. § 0.261, and is effective upon adoption. 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 public notice of this Order (see 47 C.F.R. § 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Kathryn O'Brien
Acting Chief, Telecommunications Division
International Bureau

²⁰

Id.