

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

In the Matter of)
)
MFS INTERNATIONAL, INC.)
)
MFS GLOBENET, INC.)
)
PACIFIC CARRIAGE LIMITED)
)
Application for Modification of License to Land and)
Operate in the United States a Private Fiber Optic)
Submarine Cable System Extending Among the)
United States and Australia and New Zealand)

File No. SCL-MOD-19990216-00002

MODIFICATION OF CABLE LANDING LICENSE

Adopted: August 26, 1999

Released: August 27, 1999

By the Chief, Telecommunications Division:

I. Introduction

1. In this Order, we modify the cable landing license granted to MFS International, Inc. (MFSI).¹ That license authorized MFSI, under the Cable Landing License Act,² to land and operate a fiber optic submarine cable system to be called the Southern Cross Cable Network (Southern Cross), extending between the United States mainland, Hawaii, Australia and New Zealand. Southern Cross is operated on a common carrier basis. We here grant the licensee's request to modify the license to: (1) permit Pacific Carriage Limited (PCL) to be the licensee for the landing station facilities in Hawaii, including the cable landing segment linking the islands of Oahu and Hawaii, as well as the wet plant to the 12 nautical mile limit; (2) permit MFS Globenet, Inc. (MFSG) to be the licensee for the landing station facilities in California, including the terrestrial cables extending between the California cable stations, and the wet plant to the 12 nautical mile limit; and (3) add the Republic of the Fiji Islands as a landing point for the cable system.

¹ File No. SCL-97-005, DA 98-272, rel. Feb. 13, 1998.

² An Act Relating to the Landing and Operation of Submarine Cables in the United States, 47 U.S.C. §§ 34-39 (1994) (Cable Landing License Act).

II. Comments

2. The application was placed on public notice on February 26, 1999. No comments were received. Pursuant to Section 1.767(b) of the Commission's rules,³ the Cable Landing License Act, and Executive Order No. 10530,⁴ we informed the Department of State of the application.⁵ 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 issuance of the modification of the cable landing license.⁶

III. Discussion

3. The application requests that the Cable Landing License be amended as follows:
- a. To permit PCL, instead of MFSI, to hold the license for the cable landing stations and related terrestrial and submarine segments of Southern Cross in Hawaii, including the terrestrial and submarine cable landing segment extending between the cable stations on the islands of Oahu and Hawaii, and the submarine portions of Southern Cross extending to the 12 nautical mile limit of U.S. territorial waters to the beach joints at the Hawaiian landing sites;
 - b. To permit MFSG, instead of MFSI, to hold the license for the cable station facilities in California, including the terrestrial cables extending between the California cable stations, and the wet plant to the 12 nautical mile limit; and
 - c. To add the Republic of the Fiji Islands as a landing point for the cable system.

4. We grant the applicants' request to complete a *pro forma* assignment of the Hawaiian cable landing facilities from MFSI to MFSG, a wholly-owned subsidiary, and thereafter to transfer control of these facilities to PCL. PCL, a Bermuda corporation, is a wholly-owned subsidiary of Pacific Carriage Holdings Limited (PCHL), a Bermuda corporation. PCHL is owned by TCNZ Bermuda Limited (50%),⁷ a Bermuda company, Optus Networks Pty Limited (39.99%),⁸ an Australian

³ 47 C.F.R. § 1.767(b) (1997).

⁴ Exec. Ord. No. 10530 *reprinted as amended in* 3 U.S.C. § 301.

⁵ Letter from Rebecca Arbogast, 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 (March 11, 1999).

⁶ Letter from Amb. Vonya B. McCann, Acting Assistant Secretary, Bureau of Economic and Business Affairs, U.S. Department of State, to Donald Abelson, Chief, International Bureau, FCC (Aug. 24, 1999).

⁷ TCNZ Bermuda Limited is a wholly-owned subsidiary of Telecom Southern Cross Limited, a New Zealand corporation, which in turn is an indirect wholly-owned subsidiary of Telecom Corporation of New Zealand, which also owns Telecom New Zealand Limited (TNZL). TNZL held several Section 214 authorizations until 1998, when they were transferred to its U.S. affiliate, Telecom New Zealand USA Limited. *In re Telecom USA New Zealand Limited, Request for Pro Forma Transfer of Control of Authorizations*

company, and MFS CableCo U.S. (10.01%), a U.S. company. As a result, the Hawaiian cable landing stations and adjoining submarine segments in U.S. territorial waters will be 89.99% indirectly foreign owned. Thus, PCL is a wholly-owned subsidiary of PCHL, which is comprised of a U.S. company, MFS CableCo U.S., and two foreign entities: Optus (Australia), and TCNZ Bermuda (Bermuda), which is indirectly owned by a New Zealand common carrier, Telecom New Zealand Limited (TNZL). Optus and TNZL are carriers in Australia and New Zealand, both of which are landing points of the cable and are members of the World Trade Organization (WTO). We therefore find that Optus and TNZL are entitled to a presumption that their proposed investment interests in certain U.S. assets of Southern Cross do not raise concerns that would justify denial of the transfer of control application on competition grounds.⁹ Accordingly, we see no reason not to grant the applicants' request to modify the ownership structure. PCL will assume ownership interests in, and become the FCC licensee of, all of the following U.S. assets of Southern Cross:

- a. The cable landing station at Kahe Point on the Hawaiian island of Oahu;¹⁰
- b. The terrestrial segments of the cables extending from the beach joints to the cable stations at Kahe Point on the island of Oahu, Hawaii and Spencer Beach on the island of Hawaii;
- c. The terrestrial and submarine segments of the cable connecting both the Hawaiian cable landing stations;¹¹ and
- d. The two segments of Southern Cross extending from the 12 nautical mile limit of the U.S. territorial seas to the cable landing stations at Kahe Point, Oahu and Spencer Beach, Hawaii.

Granted Pursuant to Section 214 of the Communications Act, as Amended, File No. ITC-98-277-TC, granted April 15, 1998.

⁸ Optus is wholly-owned by C&W Optus Limited (C&W Optus), an Australian company that is wholly-owned by Optus Communications PTY Limited. C&W Optus is 52.8% owned by Cable & Wireless plc, a United Kingdom company.

⁹ *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, 12 FCC Rcd 23891, 23913 (¶50), 23933-34 (¶93) (1997).

¹⁰ The applicants state that there is no separate cable landing station at the Spencer Beach landing point on the island of Hawaii for purposes of Southern Cross. Rather, the applicants have contracted with GTE Hawaiian Tel International Incorporated (GTE), a Delaware corporation, for the right to use GTE's central office, via a virtual collocation arrangement, for purposes of landing the cable. GTE will provide the telecommunications landing services for Southern Cross at the Spencer Beach location, as well as the necessary electronic equipment, subject to PCL's ultimate oversight and direction.

¹¹ The applicants indicate that the terrestrial and submarine cables connecting both of the Hawaiian cable stations, defined as Segment I of the Southern Cross cable system in Appendix A attached to this order, was not indicated in MFSI's initial application because at the time of filing of the initial application, the parties had not finally determined the preferred configuration of the cable system and the technical feasibility of certain routes.

5. We also grant the applicants' request to complete a *pro forma* assignment of the California landing facilities from MFSI to MFSG.¹² Because MFSG is a wholly-owned subsidiary of MFSI, there will be no change in the ultimate management and control of the California landing segments of Southern Cross. Accordingly, we see no reason to deny the applicants' request to modify the ownership structure. MFSG will retain 100% ownership interest in, and remain the FCC licensee of, the following U.S. assets of Southern Cross:

- a. The cable landing stations at Monterey Bay and Morro Bay, California;
- b. The terrestrial landing segments of the California cable stations at Monterey Bay and Morro Bay, California;
- c. The terrestrial cables extending between the California cable stations; and
- d. The submarine portions of Southern Cross extending from the Monterey Bay and Morro Bay, California beach joints to the 12 nautical mile limit.

6. Finally, we grant the applicants' request to add Suva, the Republic of the Fiji islands as a landing point for Southern Cross. The system description set forth in MFSI's original application and approved in the initial MFSI License will remain physically unchanged except for the proposed addition of the two Fiji segments. As set forth in Appendix A, Segment G1 of Southern Cross will be a traffic path between the Island of Oahu, Hawaii and Suva, Fiji, while Segment G2 of Southern Cross will be a traffic path between Suva, Fiji and Belrose, Australia. An existing cable station at Suva, Fiji (the cable station used to land the ANZCAN cable) will be used for the termination of both segments. With these additional segments, Southern Cross will be comprised of nine separate traffic paths: California-Australia, California-Fiji, California-New Zealand, California-Hawaii, Hawaii-Australia, Hawaii-Fiji, Hawaii-New Zealand, and Fiji-Australia. In their letter dated July 15, 1999, Applicants provided information on the location of the Suva landing point.¹³

IV. Ordering Clauses

7. Consistent with the foregoing and pursuant to the Cable Landing License Act and Executive Order 10530, IT IS ORDERED that application, File No. SCL-MOD-1990216-00002, is GRANTED and the Southern Cross landing license is MODIFIED to: (1) permit PCL to hold the license for the cable station facilities in Hawaii, including the terrestrial and submarine cables

¹² We note that this *pro forma* assignment of the California landing facilities is not a separate transaction from the *pro forma* assignment of the Hawaiian cable landing facilities. Rather, MFSI, the current licensee of the Southern Cross cable, will assign its cable landing license to MFSG, a wholly-owned subsidiary. As a result of this *pro forma* assignment, all interest and obligations associated with the U.S. assets of the Southern Cross cable will belong, temporarily, to MFSG. MFSG will then assign PCL all of its ownership interests and obligations in the U.S. assets of the Southern Cross cable located in and relating to Hawaii. Letter from Kerry Murray, counsel for MFSI and MFSG, and Aileen A. Pisciotta and Erin M. Reilly, counsel for PCL, to Frances G. Eisenstein, FCC (March 8, 1999).

¹³ Letter from Erin R. Swansiger to Donna Christianson, Federal Communications Commission, International Bureau (July 15, 1999).

extending between the cable stations on the islands of Oahu and Hawaii, and the wet plant to the 12 nautical mile limit; (2) permit MFSG to own the cable station facilities in California, including the terrestrial cables extending between the California cable stations, and the wet plant to the 12 nautical mile limit; and (3) add Suva, the Republic of the Fiji Islands as a landing point for Southern Cross.

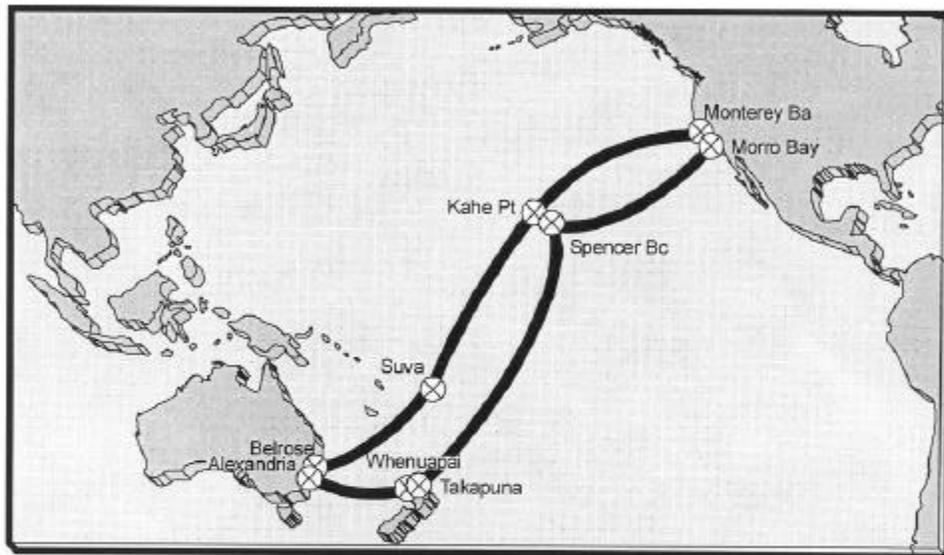
8. This Modification of Cable Landing License does not modify any other terms or conditions imposed in the license issued on February 13, 1998.

9. 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

Rebecca Arbogast
Chief, Telecommunications Division
International Bureau

APPENDIX A



APPENDIX A

