

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

In the Matter of)
)
ARCOS-1 USA, Inc.) File No. SCL-T/C-20000502-00016
)
Application for authority for a transfer)
Of control of a Cable Landing License)

MEMORANDUM OPINION AND ORDER

Adopted: September 15, 2000

Released: September 18, 2000

By the Chief, Telecommunications Division:

I. Introduction

1. In this Order, we grant the application of ARCOS-1 USA, Inc. ("ARCOS-1 USA"), New World Network Holdings, Ltd. ("New World"), Brightstar, Ltd. ("Brightstar") and Siemens Project Ventures GmbH. ("SPV"), (collectively the "Applicants"), seeking authority to transfer control of the ARCOS-1 Cable Landing License in connection with the acquisition of a 51% equity interest in New World by Brightstar and a 20.4% equity interest in New World by SPV.

II. Background

2. On July 2, 1999, the International Bureau granted the application of ARCOS-1 USA, pursuant to the Cable Landing License Act,1 and Executive Order No. 10530,2 for authority to own and operate a submarine cable system, on a non-common carrier basis, to be known as the Americas Region Caribbean Ring System (the "ARCOS-1 system"), extending between the U.S. Mainland, The Bahamas, the Turks and Caicos Island, the Dominican Republic, Puerto Rico, Curacao, Venezuela, Colombia, Panama, Costa Rica, Nicaragua, Honduras, Guatemala, Belize and Mexico.3

3. CEN-TA Telecom ("CENTA") originally held a 100% ownership interest in ARCOS-1 USA.4 Subsequently, CENTA changed its corporate name to New World Network Holdings and changed

1 See 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).

2 See Exec. Order. No. 10530, reprinted as amended in 3 U.S.C. § 301.

3 See ARCOS-1 USA, Inc., Cable Landing License, 14 FCC Rcd 10597 (Telecom Division 1999).

4 See ARCOS-1 USA, Inc., Application for authority for a transfer of control of a Cable Landing License, File No. SCL-T/C-20000428-00015 (filed April 28, 2000) ("Application") at 1.

its jurisdiction of incorporation from the Cayman Islands to Bermuda, resulting in a *pro forma* transfer of control.⁵ New World then transferred control of ARCOS-1 USA to New World Network, Ltd., an indirectly wholly owned subsidiary of New World. Notwithstanding the change of control at the parent company level, New World still retained 100% indirect ownership of ARCOS-1 USA.⁶

4. ARCOS-1 USA is a corporation organized under the laws of Delaware and is a wholly-owned subsidiary of New World, a corporation organized under the laws of Bermuda.⁷ New World is a privately held holding company organized under the laws of Bermuda.⁸ Through its operating subsidiaries, New World owns and controls 88.51% of the ARCOS-1 System.

5. Brightstar is a corporation organized under the laws of Bermuda.⁹ Brightstar is a wholly-owned subsidiary of UN, Ltd., a Bermudian corporation, which in turn, is a wholly-subsubsidiary of Global Light Telecommunications, Inc. (“Global Light”), a Canadian corporation. Global Light is a publicly-traded company that invests in start-up international telecommunications companies.¹⁰ SPV is a limited liability company organized under the laws of Germany and is the equity investment arm and a wholly owned subsidiary of Siemens AG, a large German conglomerate.¹¹

6. Under the proposed transaction, New World, Brightstar and SPV will enter into a series of agreements, whereby Brightstar will acquire 51% of New World’s equity and SPV will acquire 20.4% of New World. The remaining 28.6% of the shares will continue to be held by New World’s current shareholders.¹²

III. Discussion

7. On April 24, 2000, Applicants submitted the above-captioned Application requesting authority to transfer control of the ARCOS-1 Cable Landing License held by ARCOS-1 USA from New

⁵ See *International Authorizations Granted*, 1999 WL 1124072, File No. SCL-T/C-19991006-00023, Report No. TEL-00165 (Nov. 30, 1999) (granting authority to ARCOS-1 USA for a *nunc pro tunc pro forma* transfer of control of ARCOS-1 USA to New World Network Holdings).

⁶ See *International Authorizations Granted*, 2000 WL 674932, File No. SCL-T/C-20000502-00016, Report No. TEL-00236 (May 25, 2000) (granting authority to ARCOS-1 USA for a *nunc pro tunc pro forma* transfer of control of ARCOS-1 USA to New World Network Ltd.). We note that the public notice of the grant of this application inaccurately described it as occurring by post-transaction notification.

⁷ See Application at 4.

⁸ See Application at 5.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 5-6.

World to Brightstar.¹³ On May 10, 2000, we issued a public notice to announce that the application had been accepted for filing and to establish a pleading cycle to permit interested parties an opportunity to comment on the proposed transaction.¹⁴ We received no comments.

8. Pursuant to Section 1.767(b) of the Commission's rules,¹⁵ the Cable Landing License Act,¹⁶ and Executive Order No. 10530,¹⁷ we informed the Department of State of the Application.¹⁸ After coordinating with the National Telecommunications and Information Administration and the Department of Defense, the Department of State stated that it has no objection to the proposed transfer of control of the ARCOS-1 USA Cable Landing License.¹⁹

9. Pursuant to Section 1.767(a)(8) of the Commission's rules,²⁰ ARCOS-1 is required to disclose its affiliations with foreign carriers. As a result of the transfer of control to Brightstar, ARCOS-1 USA will have affiliations with foreign carriers in Mexico, Canada, Bermuda, the United Kingdom, France, Germany, Belgium and the Netherlands.²¹ Mexico, Canada, the United Kingdom, France, Germany, Belgium and the Netherlands are all Members of the World Trade Organization. We treat Bermuda as a WTO Member for purposes of applying the proper review standard.²² Therefore, it is presumed that the

¹³ See n.4 *supra*.

¹⁴ See *Non Streamlined International Applications Accepted for Filing*, File No. SCL-T/C-20000428-00015, Report No. TEL-00227NS (May 10, 2000) ("Acceptance Public Notice").

¹⁵ 47 C.F.R. § 1.767(b).

¹⁶ See 47 U.S.C. §§ 34-39.

¹⁷ See Exec. Order No. 10530, *reprinted as amended in* 3 U.S.C. § 301.

¹⁸ See 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, Bureau of Economic and Business Affairs, U.S. Department of State (May 10, 2000).

¹⁹ See Letter from Richard C. Beard, Deputy United States Coordinator, Office of International Communications and Information Policy, United States Department of State, to Donald Abelson, Chief, International Bureau, Federal Communication Commission (August 31, 2000).

²⁰ See 47 C.F.R. 1.767(a)(8).

²¹ Global Light, which will indirectly control ARCOS-1 USA, also indirectly owns more than 25% of the following foreign carriers: Bestel, a Mexican domestic and international facilities-based long distance carrier; North American Gateway Inc., a Canadian carrier providing international long distance services in Canada; Vine Telecom Ltd., a Bermudian corporation which in turn owns licensed carriers in the United Kingdom, France, Germany, Belgium and the Netherlands; and Axxon, a Dutch company with wholly owned subsidiaries licensed to provide international domestic voice, data and value-added services in the United Kingdom, France, Germany, Belgium and the Netherlands.

²² See *Cable and Wireless USA, Inc.*, 15 FCC Rcd 3050 (Telecom Division 2000) at ¶ 7 (holding that we treat Bermuda as a WTO Member for the purposes of applying the proper review standard).

Applicants' affiliations with these carriers do not pose any concerns that would justify conditioning or denying this application.²³

10. The applicants have stated, and no party has opposed, that approval of this transaction will ensure that they secure critical financing necessary for the construction of the ARCOS-1 System and is therefore in the public interest.

11. Upon consideration of the Application and in view of the foregoing, we conclude that this transfer of control does not raise any of the concerns listed in the Cable Landing License Act,²⁴ and that consent to transfer control of the Cable Landing License held by ARCOS-1 USA from New World to Brightstar will serve the public interest, convenience and necessity. We therefore grant Applicants' request for authority to transfer control of the ARCOS-1 Cable Landing License as described herein.

IV. Ordering Clauses

12. Consistent with the foregoing and pursuant to the Cable Landing License Act, Section 214 of the Communications Act of 1934, as amended, and Executive Order 10530, IT IS ORDERED that Application File No. ITC-T/C-20000428-00015 IS GRANTED, and that the transfer of control of the Cable Landing License held by ARCOS-1 USA is authorized. The ARCOS-1 Cable Landing License, File No. SCL-LIC-19981222-00032 IS MODIFIED to reflect this transfer of control.

13. This Order is issued under Section 0.261 of the Commission's rules, 47 C.F.R. § 0.261, and is effective upon release. 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.²⁵

FEDERAL COMMUNICATIONS COMMISSION

Rebecca Arbogast
Chief, Telecommunications Division
International Bureau

²³ See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Docket Nos. 97-142 and 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23913 at ¶ 50, 23933-34 at ¶ 93 (1997) (*Foreign Participation Order*), recon. pending.

²⁴ See 47 U.S.C. § 35.

²⁵ See 47 C.F.R. § 1.4 (b)(2).