

8 F.C.C.R. 750, 8 FCC Rcd. 750, 1993 WL 756745 (F.C.C.)

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DA 93-92

**\*\*1 IN THE MATTER  
MICRONESIAN TELECOMMUNICATIONS  
CORPORATION**

APPLICATION FOR AUTHORITY UNDER SECTION 214 OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED, TO CONSTRUCT AND OPERATE THE MTC INTERISLAND CABLE BETWEEN THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS AND GUAM

File No. I-T-C-92-140

Adopted: January 21, 1993; Released: February 3, 1993

**\*750 MEMORANDUM OPINION, ORDER AND  
AUTHORIZATION**

By the Chief, Common Carrier Bureau:

1. The Commission has under consideration an application filed by the Micronesian Telecommunications Corporation (hereinafter MTC or Applicant) [FN1] for authority pursuant to Section 214 of the Communications Act of 1934, as amended, to construct and operate a high capacity digital submarine cable system, known as the MTC Interisland Cable. [FN2] The application was placed on the Commission's public notice. IT & E Overseas, Inc. (IT & E) filed a petition to condition or deny the application and MTC filed an opposition in response.
2. The MTC Interisland Cable will link the islands of Saipan, Tinian and Rota, all of which are included in the Commonwealth of the Northern Mariana Islands (CNMI). The cable will then extend between Rota and Guam. The MTC Interisland

Cable will be a high capacity, fiber optic, lightguide submarine cable system with a "design capacity equivalent to 24,192 voice grade channels. The system will consist of twelve fibers each operating at a SONET (Synchronous Optical Network) rate of 622 Mbps. It will be repeatless because of the relatively short distances between the cable landing sites.

3. According to MTC, the MTC Interisland Cable will supplement existing facilities used to provide regularly authorized services in CNMI and between CNMI and Guam and beyond. [FN3] MTC states that it currently provides service between Saipan, Tinian, Rota and Guam via an analog microwave system. Existing traffic will be transferred to the fiber optic MTC Interisland Cable from the analog microwave system which will be retained as a back-up for the Saipan to Tinian to Rota segments. Digital satellite facilities will be used as a back-up for the Rota to Guam segment. MTC states that the change from analog to digital fiber optic facilities will allow it to provide its customers with more efficient and modern services. MTC notes that use of the existing microwave system is difficult due to the distance between the islands and because tropical storms and typhoons occurring in the Pacific make it more susceptible to disruption than submarine cable facilities. In addition, MTC notes that the number of telephone subscribers in CNMI has been growing to the point that there is inadequate capacity in the analog microwave system to meet forecasted customer demand.

4. IT & E filed a petition to condition or deny the application based on alleged violations of the GTE Consent Decree [FN4] and alleged anticompetitive conduct by MTC. Specifically, IT & E cites several examples of anticompetitive conduct which primarily relate to its inability to have what it deems suitable access to scarce facilities controlled by MTC. IT & E also claims that the GTE Consent Decree prohibits MTC from constructing the planned facilities between the CNMI and Guam, both domestic

points, and that a waiver would be required. IT & E states that these issues will be pursued more formally before the Department of Justice in the context of a request for investigation and enforcement of the GTE Consent Decree.<sup>[FN5]</sup> However, IT & E believes that any Commission authorization should be conditioned on the outcome of the Department of Justice's response to both of these issues, including IT & E's request that MTC be required to jointly construct and operate the proposed cable facilities with IT & E and other interested parties.<sup>[FN6]</sup>

**\*\*2 \*751** 5. MTC denies the allegations of anti-competitive conduct as well as IT & E's claims that the proposed cable violates the GTE Consent Decree. MTC notes that Section V(C)(1) of the GTE Consent Decree specifically permits Hawaiian Telephone Company, and inherently its subsidiary MTC, to provide international services. MTC states that these issues are not properly raised in the context of a Section 214 application since the GTE Consent Decree is administered by the District Court and the Department of Justice. Finally, MTC asserts that it is not obligated to offer IT & E an ownership interest in the proposed cable, since control of the cable is necessary to ensure that facilities will be available to serve the residents of CNMI.

6. We dismiss IT & E's petition to deny or condition the application because of alleged violations of the GTE Consent Decree. It is the District Court and the Department of Justice, and not this Commission, that are charged with determining whether certain actions are in violation of the GTE Consent Decree. IT & E acknowledges that the issues raised will be addressed in a formal investigation by the Department of Justice. Our authorization herein will be subject to any decision by the Department of Justice and the District Court with respect to the alleged violation of the GTE Consent Decree. The Commission will take appropriate steps, if necessary, once a decision is rendered on this issue. Thus, there is no need to condition MTC's authorization to construct and operate the subject facilities.

7. After consideration of the application and petition filed by IT & E, we conclude that the construction and operation of the MTC Interisland Cable will serve the public convenience and necessity. The MTC Interisland Cable will introduce digital fiber optic cable technology to the CNMI which will improve service because the current analog microwave system is more susceptible to tropical storms and typhoons than submarine cable facilities. In addition, MTC states that the number of telephone subscribers in CNMI has been growing to the point that there is inadequate capacity in the analog microwave system to meet forecasted demand. However, our finding herein does not in any way prejudice any action by the District Court or Department of Justice concerning the applicability of the GTE Consent Decree to this project. Thus, any decision to proceed with the construction and operation of this cable by MTC will be at its own risk.

8. Accordingly, IT IS ORDERED that application File No. I-T-C-92-140 IS GRANTED and MTC is authorized to:

- (a) construct and operate a digital fiber optic submarine cable system (MTC Interisland Cable) extending between the islands of Saipan, Tinian and Rota, all of which are included in the Commonwealth of the Northern Mariana Islands (CNMI) and between Rota and Guam; and
- (b) activate and operate the capacity in the MTC Interisland Cable for the provision of its regularly authorized telecommunications services.

**\*\*3 9.** IT IS FURTHER ORDERED that IT & E's petition to condition or deny the application IS DISMISSED.

10. IT IS FURTHER ORDERED that the Commission retains jurisdiction to reallocate interests in capacity herein authorized, as the public interest may require to accommodate additional carriers or otherwise, with, where required, the concurrence of the foreign administration or carriers concerned, and, further, jurisdiction is retained by the Commission

over all matters relating to the ownership, management, maintenance, and operation of the cable system as authorized herein, to assure the most efficient use not only of this cable system, but of all means of communications between the points served by the MTC Interisland Cable system.

11. IT IS FURTHER ORDERED that this authorization is issued subject to the terms and conditions of any license issued to the Applicant herein under the act entitled "An Act relating to the landing and operation of submarine cables in the United States" (47 U.S.C. Sections 34-39), covering the subject submarine cable, and shall become effective upon the acceptance of the aforementioned license by MTC.

12. This order is issued pursuant to Section 0.291 of the Commission's rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Rules may be filed within 30 days of the public notice of this order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Cheryl A. Tritt

Chief, Common Carrier Bureau

FN1. MTC is a subsidiary of the Hawaiian Telephone Company (HTC) which is a subsidiary of GTE Corporation.

FN2. Concurrent with the filing of this application, MTC filed a separate application for a cable landing license in File No. S-C-L-92-003. Action on MTC's application for a cable landing license was taken concurrently with our decision herein.

FN3. MTC does not specify the additional points it will serve on an "and beyond" basis and whether these points will be international or other U.S. points. However, in its opposition to IT & E's petition MTC indicates that the cable will not violate the GTE Consent Decree because it permits interna-

tional service to be provided.

FN4. United States v. GTE Corporation, Civ. Action No. 83-1298, Trade Cas. (CCH) 66,355 (D.D.C.1985) ("the GTE Consent Decree").

FN5. On May 30, 1992 IT & E filed with the Department of Justice to investigate specific activities of GTE Hawaiian Telephone Company and MTC, both subsidiaries of GTE Corporation. Among the activities cited by IT & E is the proposed construction of the MTC Interisland Cable.

FN6. IT & E also requests that an exhibit, filed by MTC on March 30, 1992, containing revenue forecasts and circuit activation plans be released for public inspection. The exhibit was filed under separate cover with a request for confidentiality. We disagree with IT & E's suggestion that since the document was filed as part of MTC's application for a cable landing license, it must be open for public inspection pursuant to Section 1.767(c) of the Commission's Rules. Section 1.767(c) provides in part that "Such applications for licenses (including all documents and exhibits filed with and made a part thereof, with the exception of any maps showing the exact location of the submarine cable or cables to be licensed).... shall, unless otherwise ordered by the Commission be open to public inspection." While Section 1.767(c) creates a general presumption of public availability, it is not intended to supersede the Commission's Rules regarding requests that materials or information submitted to the Commission be withheld from public inspection. See 47 C.F.R. § 0.459. Where a document is submitted under a request that it not be made available for public inspection, Section 0.461 of the Commission's Rules, 47 C.F.R. § 0.461, sets forth a procedure that a party requesting inspection of such document must follow. IT & E's request does not comply with this procedure.

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