

**JoAnn Sutton**

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**From:** Sofield, Richard [Richard.Sofield2@usdoj.gov]  
**Sent:** Wednesday, October 29, 2008 1:39 PM  
**To:** Sofield, Richard; David Krech; Francis Gutierrez; George Li; Howard Griboff; James Ball; Janese Parker; JoAnn Sutton; Jodi Cooper; Susan OConnell; Wheaton, Mary (NSD)  
**Cc:** Orngman, Joanne  
**Subject:** RE: [TT] FCC application status for the week of October 27, 2008

Please be advised that DOJ/FBI/DHS request that the following applications referenced in EB 2008-45 be **REMOVED** from streamline:

ITC-214-20081006-00449 POP2Call, LLC  
ITC-214-20081006-00450 Global 1 Touch  
ITC-214-20081007-00451 Blue Apple Telecom Corp.  
SCL-LIC-20081008-00017 Office des postes et Telecommunications de Polynesie francaise  
ITC-214-20081008-00452 Office des postes et Telecommunications de Polynesie francaise  
**ITC-214-20081008-00453** Office des postes et Telecommunications de Polynesie francaise  
ISP-PDR-20080702-00017 Choice Holdings LLC

Please let me know if you have any questions.

Thank you.

**Richard C. Sofield**  
Director  
Foreign Investment Review Staff  
National Security Division  
United States Department of Justice

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10/29/2008

**SCL-LIC-20081008-00017**

**Office des Postes et Télécommunications de Polynésie française**

Application filed by Office des postes et télécommunications de Polynésie française (“OPT”) for authority to land and operate a common carrier fiber-optic submarine cable system directly linking the United States and French Polynesia, the Tahiti-Hawaii Cable System (“Honotua System”). This will be the first fiber-optic submarine cable connecting French Polynesia to the United States.

The Application states that the Honotua System will span 4,650 kilometers (2,890 miles), linking a new cable station in Papenoo, French Polynesia, which is owned by OPT, to the Spencer Beach cable landing station in Kawaihae, Hawaii, which is owned and operated by Pacific LightNet, Inc. (“PLNI”). The Honotua System will provide transmission capacity of up to 1.28 terabits per second, with a maximum design capacity of 32 x 10 Gbps, between French Polynesia and Hawaii. From Hawaii, the Honotua System will interconnect with other cable systems providing direct access to the United States mainland.

The Application states that OPT will own the entire proposed cable system, including each of its segments, wet links and landing stations. The landing point in Papenoo, French Polynesia, is an existing telecommunications center, but a new cable station. The Honotua System will utilize the existing beach manhole and the existing conduit between the beach manhole and the cable station. The Honotua System will be installed in a new underground conduit between the cable station and the beach manhole. For the U.S. landing point, OPT has entered into an agreement with PLNI to use the Spencer Beach cable landing station at Kawaihae, Hawaii, which is owned by PLNI. The Honotua System will utilize the existing beach manhole and the existing conduit between the beach manhole and the cable station. The Honotua System will be installed in the existing conduit between the cable station and the beach manhole.

Applicant requests a waiver of section 1.767(h)(1) which requires that “any entity that controls a cable landing station in the United States” shall be “applicants for, and licensees on, a cable landing license.” 47 C.F.R. § 1.767(h)(1). Amended Application at 2. According to the Applicant, PLNI will not be able to affect significantly the operation of the Honotua System, and it is not necessary for PLNI to be a licensee to ensure compliance with the Cable Landing License Act, the Commission’s rules or the terms of the cable landing license. Id. at 12. The Applicant states that OPT has entered into a landing party agreement (“LPA”) with PLNI pursuant to which OPT will have exclusive control over and access to Honotua’s system terminal equipment, which OPT will collocate at the Kawaihae cable station building. Equipment for the Honotua System will be separately caged and controlled exclusively by the Applicant from its network operations center in French Polynesia. The Applicant will retain operational authority over Honotua System facilities and provide direction to PLNI in all matters relating to the Honotua System. Pursuant to the LPA, PLNI will perform certain limited “remote hands” monitoring, testing, and maintenance services on OPT’s equipment, which will be performed in accordance with OPT’s directions. Id. at 12.



OPT is an *établissement public* (in English, “public establishment”) headquartered in Tahiti and existing under the laws of French Polynesia. French Polynesia is an overseas territory of France. OPT is wholly owned by the Government of French Polynesia, but financially autonomous from the national government. As such, OPT is subject to regulation and oversight by the *Chambre territoriale des comptes de la Polynésie française* (“CTC”) and ultimate government control. OPT is administered by a Board of eight members, all of whom are citizens of French Polynesia.

Applicant agrees to be classified as a dominant carrier to French Polynesia under Section 63.10 of the Commission’s rules, without prejudice to its right to petition for reclassification at a later date. See ITC-214-20081008-00453 (companion section 214 application to construct, acquire, and operate capacity in the Honotua System). Applicant requests, however, a waiver of section 63.10(c) which requires “any carrier classified as dominant for the provision of particular services on particular routes” to provide service along such route “as an entity that is separate from its foreign carrier affiliate....” 47 C.F.R. § 63.10(c)(1). Amended Application at 2.

According to Applicant, OPT cannot create a separate subsidiary without exposing itself to unacceptable legal and financial risk. Applicant states that the creation of new subsidiaries by OPT is unlawful under Article 30 of *la loi organique* (French Polynesia’s constitution). *Id.* at 4. See also *id.*, n.4 (stating that the French Polynesian Government may establish an OPT subsidiary in circumstances where there is a joint venture with a private-sector entity, which is not the case with the government-owned Honotua System). With respect to financial risk, Applicant states that OPT has secured three outside sources of funding with the understanding that OPT will control and operate the Honotua System in its entirety. *Id.* at 6-7. Applicant argues that a transfer of ownership or operation would likely require renegotiation which in today’s deteriorating credit market could result in the withdrawal of funding altogether. It also states that OPT has already drawn funds from a French Polynesian government grant and a commercial loan. Applicant additionally argues that section 63.10(c)’s separate subsidiary requirement does not specifically apply to submarine cables or submarine operators. *Id.* at 7. Finally, Applicant states that OPT will voluntarily commit to comply with additional competitive safeguards as a condition to the grant of its waiver request. *Id.* at 9-11.

Applicant agrees to accept and abide by the routine conditions specified in section 1.767(g) of the Commission’s rules, 47 C.F.R. § 1.767(g).

**JoAnn Sutton**

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**From:** eric.fishman@hklaw.com  
**Sent:** Thursday, October 16, 2008 4:53 PM  
**To:** eric.fishman@hklaw.com; George Li; glenn.werner@hklaw.com  
**Cc:** David Krech; JoAnn Sutton; Susan OConnell; Imani Ellis  
**Subject:** RE: Honotua cable, SCL-LIC-20081008-00017  
**Follow Up Flag:** Follow up  
**Flag Status:** Red

George,

Copies of the applications went out to the Department of State, etc. today, and you should be receiving a copy of my cover letter so stating. As mentioned in a recent e-mail exchange to your office, the client would like to set up meetings with your team and, if possible, with Team Telecom on November 3 or 4, so if you could get back to me as soon as possible, so that the client can make necessary travel and hotel arrangements, it would be most appreciated.

Best wishes,

Eric Fishman

**Holland + Knight**

**Eric Fishman**

Partner

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**From:** Fishman, Eric (NYC - X73268)

10/31/2008

**Sent:** Wednesday, October 15, 2008 2:23 PM  
**To:** 'George.Li@fcc.gov'; Werner, Glenn (WAS - X71818)  
**Cc:** 'david.krech@fcc.gov'; 'JoAnn.Sutton@fcc.gov'; 'susan.o'connell@fcc.gov'; 'Imani.Ellis@fcc.gov'  
**Subject:** Re: Honotua cable, SCL-LIC-20081008-00017

George,

I am out of the office today but will send copies out tomorrow.

Best wishes,

Eric

Sent from my BlackBerry Wireless Handheld

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**From:** George Li  
**To:** Werner, Glenn (WAS - X71818); Fishman, Eric (NYC - X73268)  
**Cc:** David Krech ; JoAnn Sutton ; Susan OConnell ; Imani Ellis  
**Sent:** Wed Oct 15 09:34:02 2008  
**Subject:** RE: Honotua cable, SCL-LIC-20081008-00017

The e-mail below was sent to wrong address. Sorry.

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**From:** George Li  
**Sent:** Thursday, October 09, 2008 2:40 PM  
**To:** 'eric'  
**Cc:** David Krech; JoAnn Sutton; Susan OConnell; Imani Ellis  
**Subject:** Honotua cable, SCL-LIC-20081008-00017

Hi Eric;

Could you certify when you have served copies of the application to the Department of State, NTIA and DOD as required by the Commission's rules 47 C.F.R. sec.1.767 (j) ?

10/31/2008