

May 30, 2016

BY ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: DOCOMO Pacific, Inc., Application for a License to Land and Operate a Private Fiber-Optic Submarine Cable System Connecting Guam with Saipan, Rota, and Tinian in the Commonwealth of the Northern Mariana Islands, File No. SCL-LIC-20160314-00008—Notice of Ex Parte Presentation

Dear Ms. Dortch:

In its latest attempt to prolong its monopoly and drive up a competitor's costs, PTI Pacifica, Inc. d/b/a IT&E ("IT&E") seeks to draw the Commission into a dispute over cable crossings—a dispute entirely of IT&E's making over an issue that the submarine cable industry routinely and effectively addresses through private commercial negotiations using well-established industry guidelines.¹ Specifically, IT&E seeks to bar DOMOCO Pacific, Inc. ("DOCOMO Pacific") from installing its new Atisa submarine cable system—which will end IT&E's fiber monopoly on the Guam-Commonwealth of the Northern Mariana Islands ("CNMI") route—to cross IT&E's Mariana-Guam Cable in accordance with industry guidelines and practices. IT&E has long permitted crossings of its Mariana-Guam Cable by systems other than Atisa, and it installed the Mariana-Guam Cable to cross numerous other systems. With the competing Atisa system, however, IT&E initially declined to engage with DOCOMO Pacific to minimize the risk of damage to both systems, contrary to the routine practice of cable operators worldwide. Instead, IT&E filed with the Commission seeking regulatory relief that would protect its monopoly in the CNMI under the guise of a premature and unfounded technical objection. DOCOMO Pacific urges the Commission to reject IT&E's attempt to derail the Atisa licensing process in order to thwart DOCOMO Pacific's market entry on the Guam-CNMI route. To the extent IT&E might have any legitimate concerns, IT&E has clear recourse under well-established industry standards, and the Commission should encourage IT&E to use it.

¹ Letter to Marlene H. Dortch from Timothy J. Conney and Phillip J. Roselli, Wilkinson Barker Knauer LLP, File No. SCL-LIC-20160314-00008 (filed May 10, 2016) ("May 10 Supplement").

As a legal matter, IT&E does not own that portion of the seabed occupied by its Mariana-Guam Cable. Nowhere do cable landing licenses issued by the Commission or Section 10 permits issued by the Army Corps of Engineers grant property rights or rights of exclusive use to a submarine cable operator with respect to a portion of the seabed.²

In fact, IT&E itself has routinely permitted crossings by other cables over its Mariana-Guam Cable, and it crossed on top of other submarine cable systems with its Mariana-Guam Cable. IT&E's Mariana-Guam Cable crosses the Taiwan-Guam, TPC-1, TPC-2, TPC-3, and TPC-5 systems. The Australia-Japan Cable and Asia-America Gateway systems, which were installed in 2001 and 2009 respectively, cross on top of the Mariana-Guam Cable. In Exhibit A, DOCOMO Pacific details these crossings by and of the Mariana-Guam Cable.

Cable crossings are routine and addressed by well-established international recommendations, which the submarine cable industry implements on a daily basis. The International Cable Protection Committee ("ICPC")—the primary global submarine cable protection organization whose global membership includes submarine cable operators (including DOCOMO Pacific but not IT&E), suppliers, marine survey companies, governments, and others (including this law firm)—has adopted specific recommendations addressing criteria and best practices for cable crossings and communications between operators.³ ICPC Recommendation No. 2 establishes principles and criteria for cable crossings "based on best practice/worst case scenarios" but recognizes that "given the proliferation of modern cables, it is unlikely that many proposed crossings will meet all, or even most of the criteria."⁴ It does not recognize the right of one submarine cable operator to block a crossing by another. It is therefore unsurprising that hundreds of crossings exist between submarine cables globally.

DOCOMO Pacific has carefully observed the criteria of ICPC Recommendation No. 2 and worked with its system supplier and consultants to engineer a route that protects existing infrastructure while ensuring the delivery of much-needed competitive connectivity to the CNMI. Atisa is designed to cross IT&E's cable only where absolutely necessary and at an angle close to 90 degrees⁵—a best practice that minimizes the area subject to friction with the other cable and makes it possible to recover the correct cable in the event that it becomes necessary to repair either cable.⁶ As described in the Declaration of Stephen Lentz, attached as Exhibit C, the geography of the Guam-CNMI route makes it impossible to serve Rota and Tinian without

² 47 U.S.C. §§ 34-39; 33 U.S.C. § 403.

³ See International Cable Protection Committee, Recommendation No. 2, Issue 11, *Recommended Routing and Reporting Criteria for Cables in Proximity to Others* (Nov. 3, 2015) ("ICPC Recommendation No. 2"), attached as Exhibit B.

⁴ *Id.* at 4.

⁵ See Attachments to May 10 Supplement (ICPC Agreement to Cross Notifications).

⁶ ICPC Recommendation No. 2 at 6.

crossing the Mariana-Guam Cable at some point. *See* Exhibit D (mapping the cables near Guam and the CNMI). Near Saipan, DOCOMO Pacific must route Atisa close to the Mariana-Guam Cable in order to avoid a seamount. Nowhere has IT&E suggested that DOCOMO Pacific's actions are inconsistent with industry guidelines and practices. IT&E neglects even to mention that such guidelines and practices exist.

DOCOMO Pacific has also carefully followed ICPC Recommendation No. 2 as it pertains to communications with other submarine cable operators. DOCOMO Pacific sought to begin informal coordination with a request to IT&E's Chief Executive Officer as early as March 14, 2016.⁷ Hearing nothing in response, DOCOMO Pacific sent two formal crossing notifications to IT&E on May 6, 2016, using the ICPC template notification.⁸ Rather than respond directly to DOCOMO Pacific to initiate crossing-related discussions or accept the crossing proposal, as at least six other system owners have already done with DOCOMO Pacific,⁹ IT&E sought to turn the issue into a regulatory one by complaining to the Commission. DOCOMO Pacific received no response of any kind until May 20, after IT&E filed its supplement with the FCC.¹⁰ IT&E's reaction to DOCOMO Pacific's crossing notification evidences either a lack of familiarity with, or blatant disregard for, established industry practices. It also attempts to enlist the Commission as a referee in a technical matter that IT&E could easily address directly and by itself.

DOCOMO Pacific has a strong incentive to implement ICPC recommendations and minimize the risk of damage to the Mariana-Guam Cable in order to protect Atisa. Damage to the Mariana-Guam Cable might not only expose DOCOMO Pacific and/or any contractor to liability, but it would increase the risks to Atisa itself due to abrasion, repair operations (including grapnel runs and anchoring), and consequently sea floor disturbance in the vicinity of Atisa. Yet IT&E's unwillingness to engage directly with DOCOMO Pacific impairs DOCOMO Pacific's ability to reduce any risks that the crossings might pose to Atisa as well as the Mariana-Guam Cable.

If the Commission were to endorse IT&E's view that the submarine cable owners should be empowered to block cable crossings, the United States would have fewer submarine cables, with less capacity, less network resilience, and much higher capacity prices. In many cases, alternative routes without crossings do not exist (as in the case of landings on Rota and Tinian). In other cases, the costs of routing around existing submarine cables would render new cables prohibitively expensive.

⁷ *See* Exhibit C (Declaration of Steve Lentz) ¶ 4.

⁸ *Id.* ¶ 5.

⁹ *Id.*

¹⁰ *Id.* ¶ 6.

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The Commission should reject IT&E's attempts to use this licensing proceeding to gain a commercial advantage.

Should you have any questions, please contact Kent Bressie by telephone at +1 202 730 1337 or by e-mail at kbressie@hwglaw.com.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kent Bressie".

Kent Bressie
Austin Bonner

Counsel for DOCOMO Pacific, Inc.

Attachments