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Assistant Secretary for Policy
U.S. Department of Homeland Security
Office of Policy
Foreign Investment Risk Management
3801 Nebraska Avenue NW
Washington, D.C. 20528
IP-FCC@hq.dhs.gov

Department of Defense Chief Information Officer
c/o Mitchell Komaroff, Director Implementation & Acquisition Integration
6000 Defense Pentagon, Room 3D1048
Washington, DC 20301-6000
mitchell.komaroff.civ@mail.mil
osd.pentagon.dod-cio.list.team-telecom@mail.mil

General Counsel
c/o James DeBose, Associate General Counsel
Defense Information Systems Agency
6910 Cooper Avenue
Fort Meade, MD 20755
james.w.debose.civ@mail.mil

Ladies and Gentlemen:

This Letter of Assurances (“LOA”) outlines the commitments made by Hawaiki Submarine Cable USA LLC (“Hawaiki”) to the U.S. Department of Homeland Security (“DHS”) and the U.S. Department of Defense (“DOD”), together “the USG Parties,” in order to address national security, law enforcement, and public safety concerns raised with regard to an application filed by Hawaiki Submarine Cable USA LLC; Tillamook Lightwave IGA; ACS Cable Systems, LLC, DRFortress, LLC and American Samoa Telecommunications Authority (“Hawaiki Applicants”) with the Federal Communications Commission (“FCC”) requesting authority to land and operate a fiber optic submarine cable system linking the United States, Australia and New Zealand (“Hawaiki Cable System”).¹ The Hawaiki Cable System will be a non-common carrier fiber optic cable.

Hawaiki has agreed to provide this LOA to the USG Parties to address issues raised by the USG Parties, and Hawaiki understands that the USG Parties will petition the FCC to condition the requested authorization on compliance with this LOA.

¹ SCL-LIC-20160906-00019, Joint Application of Hawaiki Submarine Cable USA LLC; Tillamook Lightwave IGA; ACS Cable Systems, LLC, DRFortress, LLC and American Samoa Telecommunications Authority, for a License to Land and Operate a Private Fiber-Optic Submarine Cable System Connecting the United States, Australia and New Zealand.

For purposes of this LOA:

- A. “Domestic Communications” means: (a) Wire Communications or Electronic Communications (whether stored or not) from one U.S. location to another U.S. location and (b) the U.S. portion of a Wire Communication or Electronic Communication (whether stored or not) that originates or terminates in the United States.
- B. “Domestic Communications Infrastructure” or “DCI” means: (a) any portion of the Hawaiki Cable System that physically is located in the United States, up to the submarine line terminating equipment, including (if any) transmission, switching, bridging, and routing equipment, and any associated software (with the exception of commercial-off-the-shelf (“COTS”) software used for common business functions, *e.g.*, MS Office) used by or on behalf of the Hawaiki Applicants to provide, process, direct, control, supervise, or manage Domestic Communications; and (b) Network Operations Center (“NOC”) facilities, as defined in Section D below.
- C. “Electronic Communication” has the meaning given it in 18 U.S.C. § 2510(12).
- D. “Network Operations Center” or “NOC” means the locations and facilities designated as such by Hawaiki for purposes of performing network management, monitoring, maintenance, or other operational functions for the Hawaiki Cable System including the B-NOC located in the United States.
- E. “Principal Equipment” means the primary electronic components of the Hawaiki Cable System, which includes the Domestic Communications Infrastructure and Wet Infrastructure. Principal Equipment includes: network element servers; routers; switches; repeaters; submarine line terminal equipment (“SLTE”); system supervisory equipment (“SSE”); signal modulators and amplifiers; power feed equipment (“PFE”); tilt and shape equalizer units (“TEQ/SEQ”); optical distribution frames (“ODF”); branching units (“BU”); synchronous optical network (“SONET”), synchronous digital hierarchy (“SDH”), wave division multiplexing (“WDM”), dense wave division multiplexing (“DWDM”), coarse wave division multiplexing (“CWDM”), or optical carrier network (“OCx”) equipment, as applicable; and any non-embedded software necessary for the proper monitoring, administration, and provisioning of the Hawaiki Cable System (with the exception of COTS software used for common business functions, *e.g.*, MS Office).
- F. “Screened Personnel” has the meaning set forth in Paragraph 9 below.
- G. “Wet Infrastructure” means hardware components installed and residing on the undersea portion of the Hawaiki Cable System, including fiber optic cables, repeaters, branching units, and routers (if any). Wet Infrastructure includes all the components used in order to define the topology of the undersea portion of the Hawaiki Cable System.
- H. “Wire Communication” has the meaning given it in 18 U.S.C. § 2510(1).

Upon grant of the requested FCC authority, Hawaiki undertakes to comply with the following commitments:

1. Security Points of Contact

Within sixty (60) business days of the execution of this LOA, Hawaiki shall nominate a Security Point of Contact (“POC”) for purposes of this LOA, as well as at least one alternate POC in the event the primary POC cannot be reached. The nominated POCs shall be U.S. citizens and shall reside in the United States. The nominated POCs shall be subject to the USG Parties’ review and non-objection, and they may be subject to a background check at the sole discretion of the USG Parties. The POC, or an alternate, shall be available twenty-four (24) hours per day, seven (7) days per week, regarding any national security, law enforcement, or public safety concerns that the USG Parties may raise with respect to the Hawaiki Cable System. The POCs shall be responsible for receiving and promptly effectuating any lawful inquiries or requests for information and for otherwise ensuring compliance with obligations set forth in this LOA. Hawaiki shall notify the USG Parties of any proposed change to a POC at least ten (10) business days in advance of such change. Any subsequently proposed POC shall be subject to the USG Parties’ review and non-objection and may be subject to a background check at the sole discretion of the USG Parties.

2. Cable System Information

Within sixty (60) business days of the execution of this LOA, and within fifteen (15) business days upon request by the USG Parties, Hawaiki agrees to make available the following Hawaiki Cable System Information:

- (a) Network management information, including: (1) a network map that includes physical and logical topology; (2) network and telecommunications architecture descriptions and associated descriptions of interconnection points and controlled gateways to the DCI and Wet Infrastructure; (3) network operational plans, processes, and procedures; (4) locations and functions of any NOCs, data centers, and main distribution facilities; and (5) descriptions of interfaces and connections to the Hawaiki Cable System for service offload, disaster recovery, or administrative functions;
- (b) Complete and current list of all contracts held by Hawaiki or its designee(s) for the maintenance and security of the Hawaiki Cable System; and
- (c) A restoration plan for the Principal Equipment and the Wet Infrastructure for the Hawaiki Cable System, as well as interconnection mechanisms with other cable landings for restoration in the case of outages due to cable disruptions.

3. Operational Requirements

With respect to the operation of the Hawaiki Cable System, Hawaiki agrees as follows:

- (a) Hawaiki shall have the ability to promptly and effectively interrupt, in whole or in part, traffic to and from the United States on the Hawaiki Cable System by disabling or disconnecting circuits at the U.S. cable landing station or at other locations within the United States;
- (b) Hawaiki shall configure all necessary systems so the NOC will be able to initiate a suspension or interruption of the optical carrier signal or all of the Hawaiki Cable System within the DCI.

If Hawaiki is required to interrupt traffic to or from the United States as a result of lawful U.S. process, Hawaiki shall be permitted to disclose publicly that it was required to interrupt service in response to lawful U.S. process, without disclosing any of the content of such request.

4. Initial Principal Equipment List

Within thirty (30) business days of the execution of this LOA, Hawaiki shall provide the USG Parties with a list to include:

- (a) A complete and current list of all Principal Equipment, including: (1) a description of each item and the functions supported, (2) each item's manufacturer, and (3) the model and/or version number of any hardware or software; and
- (b) Any vendors, contractors, or subcontractors involved in providing, installing, operating, managing, or maintaining the Principal Equipment.

The USG Parties shall approve or disapprove the Initial Principal Equipment List within thirty (30) business days of receipt. Failure by the USG Parties to respond within the required timeframe shall be deemed to constitute a non-objection to use of the equipment included on the Initial Principal Equipment List and the services of the vendors, contractors, or subcontractors identified on the Initial Principal Equipment List.

5. Material Modifications to Existing Principal Equipment

Hawaiki shall provide the USG Parties at least ten (10) business days' advance notice prior to performing any maintenance, repair, or replacement that would result in any material modification to existing Principal Equipment for the Hawaiki Cable System. Hawaiki need not comply with the advance notice requirement for any maintenance, repair, or replacement that is undertaken in response to an unforeseen or uncontrollable event and that is necessary to ensure the continued operability of the Hawaiki Cable System; however, in such circumstances, Hawaiki shall provide advance notice to the

USG Parties of the material modification, if practicable, and, if impracticable, Hawaiki shall provide notice within ten (10) business days after the material modification of the Principal Equipment. Hawaiki may continue to utilize any Principal Equipment repaired or replaced pursuant to the process outlined in this paragraph, provided that the USG Parties do not object within thirty (30) business days of notification.

6. Change in Vendors, Contracts, or Subcontracts for Principal Equipment

Hawaiki shall provide at least thirty (30) business days' advance notice prior to making any modifications to the list of vendors, contractors, or subcontractors involved in providing, installing, operating, managing, or maintaining the Principal Equipment. In addition, Hawaiki shall provide at least thirty (30) business days' advance notice prior to changing the service offerings or support from a previously-listed vendor, contractor, subcontractor (*i.e.*, where a previously-listed provider will be offering support in a previously unidentified way). The USG Parties shall approve or disapprove any modification or change proposed pursuant to this paragraph within thirty (30) business days of receipt. Failure by the USG Parties to respond within the required timeframe shall be deemed to constitute a non-objection to proposed modification or change.

7. Measures to Prevent Improper Use and Unauthorized Access

Hawaiki agrees to take all reasonable measures to prevent unauthorized access to the Hawaiki Cable System and to prevent any unlawful use or disclosure of information carried on the same. Such measures shall include a National Institute of Standards and Technology (NIST)-compliant cyber-security plan, to include items such as configuration management, security audits, and system interconnection documentation, as well as contractual safeguards and screening procedures for personnel with logical access to the DCI. In addition, Hawaiki will take appropriate measures to protect and promote resiliency of the Hawaiki Cable System, including measures to ensure that security patches for systems and applications are kept up to date. Hawaiki will submit a policy regarding logical security measures to the USG Parties within sixty (60) business days of the date of execution of this LOA. Hawaiki agrees to meet and confer with the USG Parties and to resolve to the satisfaction of the USG any concerns the USG Parties may raise about such policy.

8. Physical Security Measures

Hawaiki agrees to take all reasonable measures to physically secure the Hawaiki Cable System, including the DCI. Hawaiki will screen appropriate personnel, and Hawaiki will require that all visitors who physically access the DCI are escorted at all times by Screened Personnel, as defined herein. Hawaiki will submit a policy regarding physical security measures to the USG Parties within sixty (60) business days of the date of execution of this LOA. Hawaiki agrees to meet and confer with the USG Parties and to resolve to the satisfaction of the USG any concerns the USG Parties may raise about such policy.

9. Screening of Personnel

Hawaiki shall implement, either directly or through a vendor or service provider, a process to screen any existing or newly hired Hawaiki personnel (or any personnel performing under an agreement with Hawaiki) in at least the following circumstances:

- (a) Any person whose position could involve logical access to the DCI; and
- (b) All personnel charged with securing the DCI.

Hawaiki's personnel screening process shall be reflected in a written policy and will include background investigations, public criminal records checks, or other analogous means to ascertain a person's trustworthiness. Upon satisfactory completion of the requirements set forth in the screening policy, such persons shall be considered "Screened Personnel."

Hawaiki will submit the screening policy to the USG Parties within sixty (60) business days of the date of execution of this LOA. Hawaiki agrees to meet and confer with the USG Parties and to resolve to the satisfaction of the USG any concerns the USG Parties may raise about such policy. In addition, Hawaiki will cooperate with any reasonable request by the USG Parties to provide additional identifying information regarding Screened Personnel.

10. Reporting Incidents and Breaches

Hawaiki agrees to report to the USG Parties promptly if it learns of information that reasonably indicates:

- (a) Unauthorized third-party access to, or disruption or corruption of, the Hawaiki Cable System or any information being carried on the Hawaiki Cable System;
- (b) Any other unauthorized access to or disclosure of Domestic Communications in violation of federal, state, or local law; or
- (c) Any material breach of the commitments made in this LOA.

Any reports required by this provision should be made in writing to the USG Parties within ten (10) business days of discovery of the relevant conduct. Hawaiki further agrees to cooperate with the USG Parties' recommendations with respect to the remediation of such events and, to the extent it disagrees with such recommendations, to provide for USG consideration an explanation as to why such measures should not be adopted. Hawaiki will provide this explanation, as well as a description of any other actions taken in response to a remediation recommendation from the USG Parties, within ten (10) business days of receipt of such recommendation.

11. Instruction of Obligations

Hawaiki shall instruct appropriate officers, employees, contractors, and agents as to Hawaiki's obligations under this LOA, including the individuals' duty to report any violation, and shall issue periodic reminders of such obligations. Hawaiki shall issue these instructions in writing within sixty (60) business days of the date of execution of this LOA. Hawaiki will submit a copy to the USG Parties at the same time.

12. Change in Services or Cable Operations

Hawaiki agrees that it will notify the USG Parties in writing at least thirty (30) business days prior to implementing any changes to the communications services or operations of the Hawaiki Cable System such that the material representations made in the pending FCC Application(s) and associated materials are no longer fully accurate, true, and complete.

13. Change in Control

If Hawaiki learns of any information that reasonably indicates that any single foreign entity or individual, other than those already identified in connection with the pending FCC application(s), has or likely will obtain an ownership interest, whether direct or indirect, in Hawaiki or the Hawaiki Cable System above ten (10) percent, or if any foreign entity or individual, singly or in combination with other foreign entities or individuals, has or likely otherwise will gain either: (i) control, as determined in accordance with 47 C.F.R. § 63.09(b); or (ii) *de facto* or *de jure* control of Hawaiki, Hawaiki will provide notice in writing to the USG Parties within ten (10) business days. Notice under this Section shall, at a minimum:

- (a) Identify the entity or individual(s) acquiring control (specifying the name, addresses, and telephone numbers of the entity or individual(s));
- (b) Identify the beneficial owners of any such increased or prospective increased ownership interest in Hawaiki or the Hawaiki Cable System by the entity or individual(s) (specifying the name, addresses, and telephone numbers of each beneficial owner); and
- (c) Quantify the amount of ownership interest that the entity or individual(s) has or likely will obtain in Hawaiki or the Hawaiki Cable System and, if applicable, the basis for their prospective control of Hawaiki or the Hawaiki Cable System.

14. Annual Report

On or before each anniversary of the date of execution of this LOA, Hawaiki will submit to the USG Parties a report assessing Hawaiki's compliance with the terms of this LOA for the preceding year. The report shall include:

- (a) The names and contact information of the then-current POCs;
- (b) Cable System Information, as described in Paragraph 2 above, noting any changes during the reporting period;
- (c) An updated Principal Equipment list containing all information described in Paragraph 4 above, identifying any material modifications during the reporting period;
- (d) A copy of the then-current policies adopted in accordance with this LOA, including policies for logical security (Paragraph 7), physical security (Paragraph 8), personnel screening (Paragraph 9), incident reporting (Paragraph 10), and employee training (Paragraph 11), and a summary of any changes during the reporting period and the reasons therefore;
- (e) A summary of any events that occurred during the reporting period that will or reasonably could impact the effectiveness of or compliance with this LOA; and
- (f) A summary of any known acts of noncompliance with the terms of this LOA that occurred during the reporting period, whether inadvertent or intentional, with a discussion of what steps have been or will be taken to prevent such acts from occurring in the future.

15. USG Parties Consultation and Visitation

Hawaiki agrees to meet and confer with the USG Parties and to resolve to the satisfaction of the USG any concerns the USG Parties may raise about materials submitted pursuant to this LOA.

Hawaiki agrees to negotiate in good faith to resolve to the satisfaction of the USG any national security, law enforcement, or public safety concerns the USG Parties may raise with respect to any matters set forth in this LOA.

Hawaiki agrees that, upon reasonable advance notice, the USG Parties may visit any part of the DCI to conduct on-site reviews concerning the implementation of the terms of this LOA and Hawaiki's compliance with its terms. Subject to applicable law, during such visits, Hawaiki shall cooperate with the requests of the USG Parties to make available information, facilities, and personnel to verify compliance with the terms of this LOA.

This LOA shall inure to the benefit of, and shall be binding upon, Hawaiki and its successors, assigns, subsidiaries, and affiliates.

Hawaiki agrees that, in the event the commitments set forth in this letter are breached, in addition to any other remedy available at law or equity, the USG Parties may request that the FCC

modify, condition, revoke, cancel, terminate, or render null and void any relevant license, permit, or other authorization granted by the FCC to Hawaiki or any successors-in-interest.

Hawaiki understands that, promptly upon execution of this letter by an authorized representative or attorney for Hawaiki, the USG Parties shall notify the FCC that it has no objection to the FCC's grant of the pending application.

For and on behalf of Hawaiki Cable USA, Inc.



Christophe Terral, Manager
Hawaiki Submarine Cable USA LLC
16192 Coastal Highway, Lewes, Delaware 19958
Email: christophe.terral@hawaikicable.co.nz
Phone: +687 76 18 32