

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

In the Matter of
GST Telecom Hawaii, Inc. and
Time Warner Telecom of Hawaii, L.P.
Application for Modification of License to
Land and Operate the GST Interisland
Cable System
SCL-MOD-20001025-00036

MODIFICATION OF CABLE LANDING LICENSE

Adopted: January 16, 2001

Released: January 17, 2001

By the Chief, Telecommunications Division, International Bureau:

I. Introduction

1. In this Order, we modify the cable landing license for the GST Interisland Cable System held by GST Telecom Hawaii, Inc. (GST Hawaii) to add Time Warner Telecom of Hawaii, L.P. (Time Warner Hawaii) (collectively Applicants) as an additional party to the license. The original license authorized GST Pacwest Telecom Hawaii, Inc., pursuant to the Cable Landing License Act, and Executive Order No. 10530, to land and operate the GST Interisland Cable System, a common carrier fiber optic submarine cable system extending between the Hawaiian Islands of Kauai, Oahu, Molokai, Lanai, Maui, and Hawaii. The Commission subsequently granted the application of GST Pacwest Hawaii, Inc. for a pro

1 See GST Pacwest Telecom Hawaii, Inc. Application for License to Land and Operate a High Capacity Digital Submarine Cable System Extending Between the Hawaiian Islands of Kauai, Oahu, Molokai, Lanai, Maui and Hawaii, Cable Landing License, 11 FCC Rcd 3024 (GST Cable Order) (IB/1996).

2 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).

3 Exec. Ord. No. 10530 reprinted as amended in 3 U.S.C. § 301.

4 Although this is a common carrier submarine cable, there was no international Section 214 authorization issued concurrently with the cable landing license because this is a domestic cable, connecting one portion of the United States with another portion of the United States. Given this, the Order granting the cable landing license cautioned that "the service provided on a common carrier basis is limited to domestic service. Should GST seek to provide any type of international communications services on the GST Interisland Cable, it is required to file an application under Section 214 of the Communications Act, as amended, requesting such authority." See GST Cable Order, 11 FCC Rcd at para. 7.

forma transfer and assignment of the license to GST Hawaii as part of a corporate reorganization.⁵

2. The Application requests authority to add Time Warner Hawaii as an additional party to the license.⁶ Time Warner Telecom, Inc. has designated its subsidiary, Time Warner Hawaii, as the purchaser of GST's assets in Hawaii.⁷ Time Warner Hawaii proposes to acquire 12 of the 24 fibers that are part of the GST Interisland Cable System connecting the islands of Kauai, Oahu, Maui, and Hawaii.⁸ Applicants assert that there is a difference between the description of the cable in the original license and the way the system was actually constructed, and have requested that the Commission's records be updated to reflect this difference. Specifically, the two branching units of the system that connect the islands of Lanai and Molokai consist of eight fibers (four fiber pairs), not 12 fibers (six fiber pairs) as described in the original license.⁹ The rest of the system, identified in the license as the "backbone" of the system, consists of 24 fibers (12 fiber pairs) which is consistent with the original license.¹⁰ The landing points are described in the license and remain unchanged.¹¹

3. GST Hawaii and Time Warner Hawaii propose to each own and operate 12 fibers on the GST Interisland Cable System. Specifically, Time Warner Hawaii will own 12 fibers, extending from Kauai (Wailua Golf Course) to Oahu (Makaha) to Oahu (Keawaula) to Oahu (Sandy Beach), to Maui (Mokapu), and from Maui to Hawaii (Spencer Beach), including ownership of the associated cable sheath; and rights to access the GTE manholes and splice boxes¹² at Wailua, Sandy Beach, Mokapu and Spencer Beach.¹³ GST Hawaii will maintain ownership in the remaining fiber pairs along the routes mentioned

⁵ On July 14, 1997, the Commission granted GST Pacwest Hawaii, Inc.'s request for *pro forma* assignment of the cable landing license to GST Hawaii. See *Overseas Common Carrier Section 214 Applications Actions Taken*, Public Notice, Report No. I-8266, File No. SCL-95-003-AL, 12 FCC Rcd 16423 (1997).

⁶ See GST Telecom Hawaii, Inc. and Time Warner Telecom of Hawaii, L.P., Application for Modification of License to Land and Operate the GST Interisland Cable System, filed Oct. 25, 2000 (Application). On May 17, 2000, GST Telecommunications, Inc. and its subsidiaries (together GST), including GST Hawaii, filed for protection under Chapter 11 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court for the District of Delaware. GST received Bankruptcy Court approval to proceed with an auction of substantially all of its assets. On August 25, 2000, at the completion of the auction, GST requested Bankruptcy Court approval to proceed toward a sale of its assets to Time Warner Telecom Inc. On September 21, 2000, the Bankruptcy Court approved the acquisition of GST's assets by Time Warner Telecom Inc. See Application at 2.

⁷ *Id.* at 2-3.

⁸ *Id.* at 3.

⁹ *Id.* at 7.

¹⁰ *Id.*

¹¹ *Id.*

¹² According to the Application, except for landings at two AT&T cable stations in Oahu, the GST Interisland Cable System does not land at traditional cable stations. Instead, the cable is brought ashore and connected directly to the terrestrial fiber optic network at a "splice box" located close to the shore. *Id.* at 8, n.4.

¹³ Also included are rights to splice into the fibers at such manholes; rights to access the AT&T manhole and splice box and cable station at Makaha, including one-half of GST's rack space therein, access to at least 150 amps of DC power and access to AC power; rights to the AT&T cable station at Keawaula including at least one-half of the space in GST's collocation cage with access to at least 150 amps of DC power and access to AC power and the right to partially partition the cage. Applicants assert that Time Warner Hawaii will assume GST's (continued....)

above and will maintain complete ownership of the eight fibers on the branches connecting the islands of Lanai and Molokai to the GST Interisland Cable System.¹⁴ The system, including the 12 fiber pairs operated by Time Warner Hawaii, will continue to be operated on a common carrier basis.¹⁵

4. GST Hawaii is a Hawaii corporation and is an indirect, wholly-owned subsidiary of GST Telecommunications, Inc., a Canadian corporation, which is a publicly held holding company.¹⁶ According to the Application, GST is a facilities-based integrated communications service provider, currently offering voice, data, and Internet service throughout the Western United States. Applicants assert GST holds authority to provide intrastate interexchange service in 49 states and intrastate local exchange service in 11 states. GST also holds authority to provide interstate and international telecommunications services as a non-dominant common carrier pursuant to the authority of the Commission.¹⁷

5. Time Warner Hawaii is a Delaware limited partnership. Time Warner Telecom Inc., holds a 99 percent limited partnership interest in Time Warner Hawaii; the remaining one percent general partnership interest in Time Warner Hawaii is held by Time Warner Telecom General Partnership.¹⁸ Applicants assert that Time Warner Hawaii and its affiliates currently provide local exchange and exchange access services as well as interexchange service. Specifically, Time Warner Hawaii and its affiliates are authorized to provide intrastate telecommunications services in 13 states and have requests for authority pending in 10 other states.¹⁹

6. Under Section 1.767(a)(8) of the Commission's rules, applicants are required to disclose

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maintenance contract with Tyco (or enter into a new contract with Tyco) with respect to the maintenance of the wet portion of the system, up to the splice boxes or cable stations. GST Hawaii and Time Warner Hawaii will share the cost of the maintenance contract on a per-fiber basis. Applicants further assert that they will negotiate a transitional services agreement pursuant to which Time Warner Hawaii will provide GST with certain services and facilities before closing, such as billing, network alarm monitoring, CARE account record exchange support, and customer service. *Id.* at 8.

¹⁴ *Id.* at 8-9. GST Hawaii states that it is in the process of locating a buyer for the remaining fibers that GST Hawaii owns, and that it will file a separate application to assign its license to the new owner once an Asset Purchase Agreement has been executed. *Id.* at 11, n.7.

¹⁵ *Id.* at 7. See *GST Cable Order*, 11 FCC Rcd at paras. 1, 7-8.

¹⁶ GST Hawaii is a wholly-owned subsidiary of GST Telecom, Inc., a Delaware corporation. GST Telecom, Inc. is a wholly-owned subsidiary of GST USA, Inc., a Delaware corporation, which in turn is a wholly-owned subsidiary of GST Telecommunications, Inc. *Id.* at 3.

¹⁷ *Id.* at 3-4.

¹⁸ Time Warner Hawaii is owned 99 percent by Time Warner Telecom Inc. as limited partner and 1 percent by Time Warner Telecom General Partnership as the general partner. Time Warner Telecom General Partnership is owned 99 percent by Time Warner Telecom Holdings II LLC, which in turn is owned by Time Warner Telecom Holdings Inc. (Holdings). Holdings is owned by Time Warner Telecom Inc., whose ten percent or greater shareholders are Time Warner Inc. (44.5 percent) and Advance/Newhouse Partnership (13.7 percent). No single shareholder of Time Warner Inc. holds a ten percent or greater indirect interest in Time Warner Hawaii. No single owner of Advance/Newhouse Partnership holds a ten percent or great indirect interest in Time Warner Telecom Inc. Newhouse Broadcasting Corp. has a 61.24 percent interest and Advance Communications Corp. has a 38.76 percent interest in the Advance/Newhouse Partnership. *Id.* at 9-10.

¹⁹ *Id.* at 4.

their affiliations with foreign carriers.²⁰ Time Warner Hawaii has certified that it is neither a foreign carrier nor affiliated with a foreign carrier, as defined in Section 63.09 of the Commission's Rules.²¹

II. Comments

7. We placed the Application on public notice on November 1, 2000.²² No comments were received. Pursuant to Section 1.767(b) of the Commission's rules,²³ the Cable Landing License Act, and Executive Order No. 10530, we informed the Department of State of the Modification request.²⁴ The Department of State, after coordinating with the National Telecommunications and Information Administration and the Department of Defense, stated that it has no objection to approving the Applicants' request to add Time Warner Hawaii as an additional licensee to the cable landing license.²⁵

III. Discussion

8. We grant the Applicants' request to modify the GST Interisland Cable System cable landing license to add Time Warner Hawaii as a licensee. Applicants have asserted that the application is in the public interest because the proposed transaction will enable customers to continue to receive high-quality, competitively priced telecommunications services without interruption on the GST Interisland Cable System.²⁶ Applicants further assert that they are both nondominant Competitive Local Exchange Carriers in Hawaii, competing against the dominant local exchange provider, Verizon; that Verizon also owns a competing cable system; and that Time Warner Hawaii's proposed acquisition of GST Hawaii's assets will help to ensure competition in the region.²⁷

9. We conclude that adding Time Warner Hawaii to the cable landing license for the GST Interisland Cable System raises no competitive concerns, and does not provide a basis for altering the common carrier status of the cable.²⁸ Specifically, we conclude that Time Warner Hawaii's ownership of

²⁰ See 47 C.F.R. § 1.767(a)(8).

²¹ See 47 C.F.R. § 63.09.

²² See *Non Streamlined International Applications Accepted for Filing*, Public Notice, Report No. TEL-00308NS (rel. Nov. 1, 2000).

²³ 47 C.F.R. § 1.767(b).

²⁴ 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, U.S. Department of State (Oct. 27, 2000). On December 4, 2000, the Commission granted Applicants' request for Special Temporary Authority to add Time Warner Hawaii as an additional licensee to the cable landing license for the GST Interisland Cable System. See Request of GST Telecom Hawaii, Inc. and Time Warner Telecom of Hawaii, L.P. for Special Temporary Authority for a Cable Landing License Modification, File No. SCL-STA-20001120-00041 (granted Dec. 4, 2000).

²⁵ Letter from Malcolm R. Lee, United States Coordinator, International Communications and Information Policy, U.S. Department of State, to Donald Abelson, Chief, International Bureau, Federal Communications Commission (Dec. 21, 2000).

²⁶ See Application at 12.

²⁷ *Id.*

²⁸ We reiterate, as the *GST Cable Order* granting the initial cable landing license made clear, that the service provided on a common carrier basis is limited to domestic service, and Applicants, if they wish to provide (continued....)

12 fiber pairs on the GST Interisland Cable System will not cause competitive concerns. Accordingly, we find that grant of the Application is in the public interest.

IV. Ordering Clauses

10. Consistent with the foregoing and pursuant to the Cable Landing License Act and Executive Order 10530, IT IS ORDERED that the Application, File No. SCL-MOD-20001025-00036, IS GRANTED and the GST Interisland cable landing license is MODIFIED to: (1) add Time Warner Hawaii as an additional licensee on the cable landing license (File No. SCL-95-003); and (2) correct the description of the cable to reflect the way in which the cable was actually constructed. Specifically, the two branching units of the system that connect the islands of Lanai and Molokai consist of eight fibers (four fiber pairs), not 12 fibers (six fiber pairs) as described in the original license.

11. This Modification of Cable Landing License does not modify any other terms or conditions imposed in the license.

12. This Order is issued under Section 0.261 of the Commission's rules, 47 C.F.R. § 0.261, and is effective upon adoption. 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 (see 47 C.F.R. § 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Rebecca Arbogast
Chief, Telecommunications Division
International Bureau

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any type of international communications services on the GST Interisland Cable, are required to file an application for international Section 214 authority specifically for this cable. See note 4, *infra*.