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December 9, 2009

VIA HAND DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
c/o Natek, Inc.
236 Massachusetts Avenue, NE
Suite 110
Washington, DC 20002

Re: Ex Parte Communication of Office des Postes et Télécommunications de Polynésie française (FRN 0015464282)
FCC File Nos. SCL-LIC-20081008-00017, ITC-214-20081008-00453, ITC-STA-20091203-00528

Dear Ms. Dortch:

On December 8, 2009, the undersigned counsel for Office des Postes et Télécommunications de Polynésie française ("OPT") met with Mindel De La Torre, Arthur Lechtman, James Ball, George Li and David Krech of the staff of the Commission's International Bureau to discuss the above-captioned applications of Office des Postes et Télécommunications de Polynésie française ("OPT"), as amended, for a submarine cable landing license and Section 214 authority, and OPT's recently filed requests for special temporary authority. At this meeting, the undersigned counsel provided the staff with hard copies of the attached Power Point presentation.

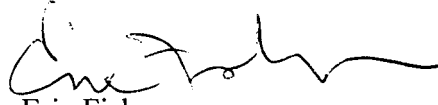
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Should any questions arise concerning these presentations, please feel free to contact the undersigned counsel directly.

Respectfully submitted,



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Attachment

**Presentation of
l'Office des postes et
télécommunications de
la Polynésie française
(OPT) to the FCC
International Bureau**



8 December 2009

Agenda

- I. Background on Honotua and OPT
- II. FCC and Team Telecom Processes to Date
- III. The Conflict-of-Laws Problem
- IV. Waiver Authority
- V. Need for Expedient Action



I. Background on Honotua and OPT



Fiber for French Polynesia

- Honotua (meaning “tie to far away”) will provide the first-ever fiber-optic undersea cable connectivity between French Polynesia and the United States, and among certain islands of French Polynesia
- Honotua will replace existing satellite circuits, thereby providing French Polynesia with faster, more reliable, and more affordable connectivity.
- Honotua will enable true broadband Internet connectivity on the French Polynesia end.
- OPT does not seek to use Honotua to offer any services in the United States.
- Honotua will foster economic development, distance learning, telemedicine, and scientific research.

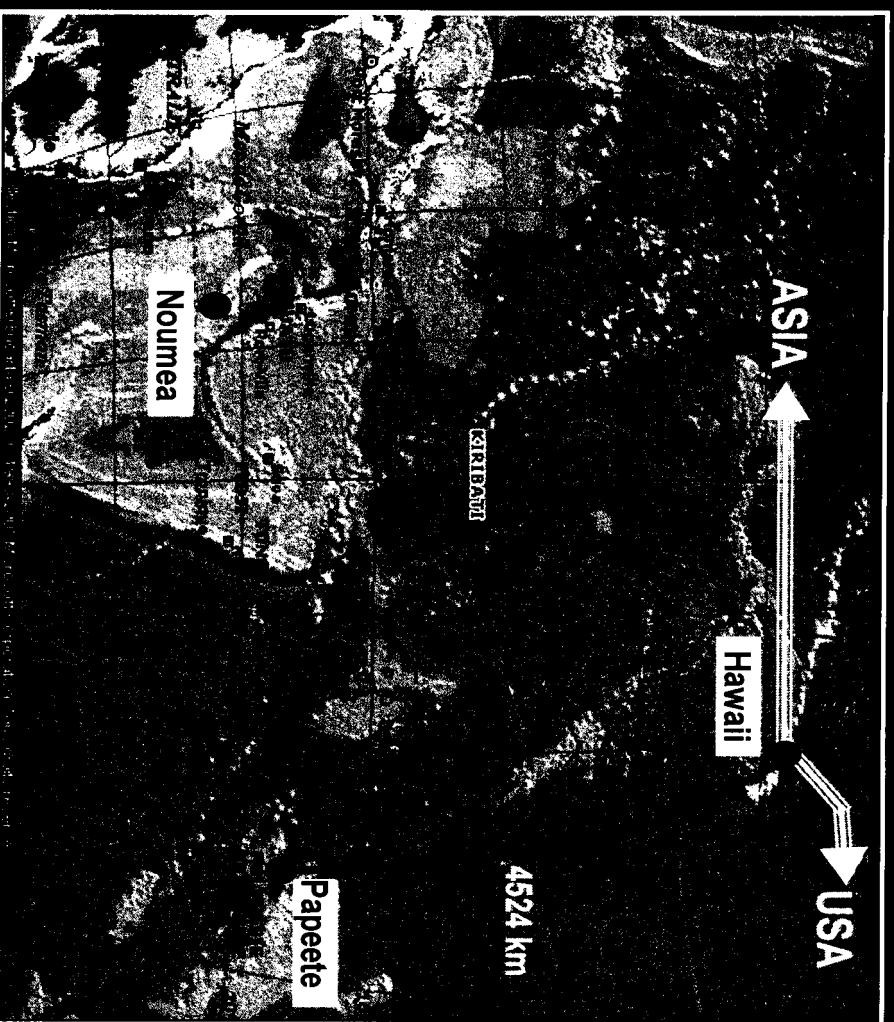


Background 2

- Tahiti landing: Papenoo
- Hawaii landing: Spencer beach, on Big Island
- Total length: 4524 km
- Initial capacity: 2 x 10 Gbit/s
- Maximum design capacity: 32x10 Gbit/s



Route Map for Tahiti-Hawaii Segment



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- Will connect Tahiti, Moorea, Raiatea, Huahine, and Bora Bora
- System length: 324 km
- Maximum depth: 3400 meters
- Unrepeatered technology
- Initial capacity: 2 x 5 Gb/s
- Design capacity: n x 10 Gb/s



Route Map for Domestic Segments



Supply Details

- OPT's supply contract with Alcatel-Lucent Submarine Networks came into force on 30 March 2008.
- Honotua will be ready for service in April 2010.
- Marine installation started at Bora Bora on November 21, 2009.
- Marine installation of the Tahiti-Hawaii segment is scheduled to start on December 16, 2009.
- The system represents an investment of approximately € 72 Million (~\$95 million).



OPT, French Polynesia's principal telecommunications provider

- OPT is an *établissement public* (public establishment) created and owned by the French Polynesia Government.
- OPT provides telecommunications, postal, and financial services in French Polynesia.
- OPT provides wireline, mobile, Internet access, and direct-to-home digital video services.



Status of Competition in French Polynesia Market

- OPT is regulated by the Service des Postes et Télécommunications (“SPT”), a division Ministry of Economy and Finance.
 - OPT must publicly file all rates and terms in *cahiers des charges* (tariff-like filings).
- Competition in the mobile and Internet segments was introduced in 2003.
- In exchange for its public service obligations, OPT continues to hold a legal monopoly on the provision of fixed voice services at the local, national, and international levels.
- OPT manages all of French Polynesia’s satellite communications infrastructure.



II. FCC Team Telecom Processes to Date



Timeline of Applications and Consultations

- September 29, 2008: OPT files with FCC applications for cable landing license and Section 214 authorizations
- December 10, 2008: OPT submits questionnaire responses to Team Telecom
- February-March 2009: OPT consults with FCC and Team Telecom
- May 18, 2009: OPT files with FCC amendments to applications for cable landing license and Section 214 authorization for cable construction, withdraws application for Section 214 authorization for services, requests waiver of Section 63.10(c)(1) of FCC rules (the "separate subsidiary" requirement), and proposes alternative safeguards.



Timeline (continued)

- July 2, 2009: FCC places amended applications on public notice; no comments or oppositions are filed in response.
- August 28, 2009: DHS (with DOJ concurrence) asks FCC to defer action on applications.
- October 2009: DHS staff indicate to OPT that it will not proceed to negotiate assurances until FCC indicates whether or not it will grant waiver; FCC staff indicate to OPT that it will not act on waiver request until DHS confirms that it has negotiated assurances; FCC staff indicated that action on waiver may need to be taken at Commissioner level.
- Early December 2009: OPT files STA requests with FCC.
- Timing is now becoming critical, as marine installation started in November 2009; suspension of construction of the Tahiti-Hawaii segment would be extremely expensive after December 16, 2009.



III. The Conflict-of-Laws Problem



OPT has sought a waiver of Section 63.10(c)(1) of the FCC's rules, as creation of separate subsidiary would otherwise:

- Expose OPT to legal risk under French Polynesia law;
- Be inconsistent with the basis for Section 63.10(c)(1);
- Achieve little if any public-interest benefit; and
- Impose extreme burden on OPT by jeopardizing financing for Honotua.



OPT cannot create a separate subsidiary without exposing itself to further legal risk under French Polynesia law

- French Polynesia law does not contemplate creation of wholly-owned subsidiaries by an *établissement public* (public establishment) such as OPT.
- Law grants limited exception for certain public-private joint ventures (*sociétés d'économie mixte*), which is not relevant here, as Honotua is not a joint venture with a purely private-sector entity.



***Chambre territoriale des comptes de la
Polynésie française (“CTC”)
has found that OPT has no authority to
create subsidiaries***

- CTC regulates all public and semi-public entities (including OPT) established under French Polynesia law regarding their performance of chartered missions and use of public funds.
- CTC stated in its September 2008 report on OPT that article 30 of *la loi organique* (the French Polynesia constitution) that OPT’s “*création des filiales est irrégulière*” (English translation: “OPT’s creation of subsidiaries is illegal”).
- OPT does not agree with the CTC’s conclusion and would like to overturn it; nevertheless, CTC’s interpretation stands.



OPT has asked FCC to respect requirements of French Polynesia law

- Although FCC has applied doctrine of international comity sparingly, it has stated that it may honor a foreign law or regulation where warranted by exceptional circumstances. See *Call Back Reconsideration Order*, 10 FCC Rcd. 9540 ¶ 47 (1995).
- International comity reflects the broad concept of respect among nations and one nation recognizing within its territory the laws of a foreign state. See *Hilton v. Guyot*, 159 U.S. 113, 163-64 (1895); Restatement (Third) of the Foreign Relations Law of the United States, comment e (1986).



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Section 63.10(c)(1) was not designed to address foreign-operator ownership of end-to-end infrastructure

- Both the text of Section 63.10(c)(1) and *Foreign Participation Order's* discussion of structural separation requirements and Section 63.10(c)(1) are silent on subject of undersea cables and cable landing licenses.
- In 1997, when the FCC adopted what is now Section 63.10(c)(1), the undersea cable market looked radically different.
 - U.S.-foreign carrier consortia were still building most cables (AC-1 was only in the planning stages in 1997).
 - Half-circuit ownership was still the dominant commercial model.
 - Internet traffic was insignificant.



Application of Section 63.10(c)(1) to OPT would achieve little, if any, public interest benefit

- U.S.-French Polynesia route is a classic “thin route,” with low traffic levels, and that Honotua will be used principally to provide broadband Internet connectivity on the French Polynesia end.
- Honotua is pro-competitive and pro-consumer, as it seeks to replace expensive, lower-capacity satellite circuits.
- Application of Section 63.10(c)(1) would not prevent “vertical effects” in the market for services on the U.S.-French Polynesia route
 - OPT has a legal monopoly on international services.
 - Other carriers cannot originate, terminate, or transport traffic to or from French Polynesia except through OPT, regardless of whether or not there was a separate subsidiary.
- OPT has offered numerous alternative safeguards, which confirm that OPT is not seeking to avoid regulation.



Application of Section 63.10(c)(1) to OPT would greatly burden OPT by jeopardizing Honotua's financing

- FCC assumed that the structural separation requirements in Section 63.10(c)(1) “will not pose a significant burden on such carriers because most foreign-affiliated carriers operating in the United States do so in a manner that is consistent with the requirements we adopt here.” *Foreign Participation Order*, 23 FCC Rcd. 23,891 ¶ 257 (1997).
- For Honotua, however, imposition of separate subsidiary would require:
 - Renegotiation of government grant, as grant funds are restricted to OPT only; and
 - Renegotiation of commercial financing, as current lending facility applies to OPT only.



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- Risk of loss of financing due to legal concerns: given CTC view that OPT has no authority to create subsidiaries, French Polynesia Government could refuse to reallocate grant to OPT subsidiary; commercial lender could refuse to lend to subsidiary on same grounds.
- Risk of less-favorable financing terms due to current market conditions: renegotiation could provide commercial lender with pretext for withdrawing financing or offering less favorable terms.
- Risk of delay
 - Even financing pursuant to existing terms and conditions would require costly renegotiation.
 - Situation complicated by fact that OPT has already drawn on these sources of funds.



Grant of a waiver would not set a general precedent

The facts of this case—where the foreign country's law has been interpreted to prohibit OPT's creation of subsidiaries—are unique.

Grant of the waiver would therefore be situation-specific and would not encourage copycat requests.



IV. Waiver Authority



Bureau may not act on “new or novel” arguments

The International Bureau does not have the authority “[t]o act on any application, petition, pleading, complain, enforcement matter, or other request that . . . [p]resents new or novel arguments not previously considered by the Commission.” 47 C.F.R. 0.261(b)(ii)



The Bureau has authority to act on the waiver request

Here, the "issue" is not new or novel because the Bureau has long had the authority to act on Section 214 and cable landing license applications and issues raised therein, including conditions of grant. See 47 C.F.R. 0.261(a)(3), (5).

The Bureau as long made decisions about whether or not to recognize other countries' laws and regulations in making decisions in licensing and enforcement matters. See, e.g., *Petition of AT&T Inc. for Settlements Stop Payment Order on the U.S.-Tonga Route, Order and Request for Further Comment*, DA 09-1325 para. 28 n.89 (rel. Jun. 15, 2009).



V. Need for Expedient Action



OPT Requests for Action

- OPT seeks grant of STA requests no later than December 16, 2009.
- OPT seeks clarification as to whether Bureau or 8th floor will act on waiver request.
- OPT seeks grant of waiver, cable landing license, and Section 214 authorization.

OPT

