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Federal Communications Commission (F.C.C.)

Memorandum Opinion and Order

*1 IN THE MATTER OF ALASKA NORTHSTAR COMMUNICATIONS, L.L.C. TRANSFEROR,

AND

WCI CABLE, INC. TRANSFEREE
File Nos. SCL-94-004-TC
SCL-96-002-TC

Application for Modification of Submarine Cable Landing Licenses

DA 97-2563

Adopted: December 5, 1997

Released: December 8, 1997

**20330 By the Chief, Telecommunications Division:

1. On October 24, 1997, Alaska Northstar Communications, L.L.C. ("Alaska Northstar") and WCI Cable, Inc. ("WCI") (collectively "joint applicants") filed an application for approval of the transfer of control of Alaska Northstar to WCI. The applicants submitted the application pursuant to the Cable Landing License Act and Section 1.767 of the Commission's rules. [FN1] We grant the applicants' request.

I. BACKGROUND

2. Alaska Northstar is a Delaware corporation. Alaska Northstar is currently owned by two individuals both of whom are U.S. citizens. Alaska Northstar holds two cable landing licenses for non-common carrier submarine cables between: (1) Alaska and the contiguous 48 states ("Main **20331 Cable") [FN2]; and (2) Whittier and Valdez, Alaska ("Whittier-Valdez Cable") [FN3] (collectively referred to as the "Northstar Cable System"). [FN4]

3. WCI, a Delaware corporation, is 81.9 percent owned by the Australian Mutual Provident Society, a large Australian financial institution, and several other non-telecommunications Australian-based entities and individuals. No entity or individual other than the Australian Mutual Provident Society has more than 10 percent ownership interest in WCI. All the owners and officers of WCI are Australian citizens. WCI, which is not a telecommunications carrier, is separately developing an intrastate fiber facility extending from Anchorage to Whittier, Alaska, which will be operated on a non-common carrier basis. [FN5]

4. Alaska Northstar and WCI request authority for WCI to acquire all of the ownership interests of Alaska Northstar. Alaska Northstar, however, will continue to exist and will remain the licensee following completion of the proposed transaction. [FN6] The application was placed on public notice on November 7, 1997. On November 14, 1997, the United Native American Telecommunications, Inc. filed comments "reserv[ing] the right to file reply comments on these applications or, to file comments along with a motion for leave to submit late-filed comments at a later date." [FN7] No other comments were received. Pursuant to Section 1.767(b) of the Commission's rules, [FN8] the Cable Landing License Act, and [Executive Order No. 10530](#), [FN9] we informed the Department of State of the application. [FN10] The Department of State, after coordinating with the National Telecommunications and Information Administration and the Department of Defense, approved of the proposed ownership change. [FN11]

****20332 II. DISCUSSION**

*2 5. The joint applicants state that consummation of the proposed transaction would serve the public interest for all the same reasons the Commission recognized in granting the two cable landing licenses to Alaska Northstar. For example, the Northstar Cable System provides additional capacity between Alaska and the contiguous 48 states. Also, as evidenced by the recent authorization to General Communications, Inc. for the **Alaska United** Cable System, [FN12] the Northstar Cable System will provide competition in the telecommunications market in Alaska. The joint applicants state that granting their request would not undermine the beneficial aspects of the Northstar Cable System nor would it be novel or inconsistent with the Commission's rules. [FN13]

6. The joint applicants argue that because WCI is neither a telecommunications carrier nor affiliated with a telecommunications carrier the Commission's effective competitive opportunities test does not apply to the proposed transaction. The joint applicants also argue that the reciprocity provisions of the Cable Landing License Act do not apply because the cable system is "purely domestic." Even if the Commission does decide that reciprocity provisions apply, the joint applicants argue that the Commission has previously authorized foreign ownership and control of the U.S. segments of international submarine cables. [FN14]

7. We agree with the joint applicants that an effective competitive opportunities analysis does not apply to this application. In two decisions, the Commission explained that if an applicant or its affiliate has market power in the destination market of the relevant cable, it would examine the legal ability of U.S. carriers to have ownership interests in submarine cables landing in that market. If no explicit legal restrictions on ownership exist, it would examine any practical barriers to entry. [FN15] WCI is not a foreign carrier and is not affiliated with a foreign carrier and therefore cannot possess market power. Thus, we do not need to conduct an effective competitive opportunities analysis.

****20333** 8. Under our Cable Landing License Act analysis, however, we must determine whether there are other factors that weigh in favor of, or against, granting this application under the Cable Landing License Act. We make this determination whether or not the applicant or its affiliate has market power in the destination market. [FN16]

9. The joint applicants request a waiver of the ownership condition imposed on the Whittier-Valdez license, which requires Alaska Northstar to maintain "no less than 50-percent ownership interest and voting control share in the cable, including 100-percent ownership in the cable stations and in the land portion of the cables from the stations to the beach joint of the submerged portion of the cable." [FN17] The joint applicants argue that because there is no foreign landing point there is no opportunity for a foreign carrier or government to engage in activities that would compromise U.S. national security interests. The joint applicants also argue that in the Foreign Participation proceeding the Commission proposed to eliminate foreign ownership limitations on submarine cables and not apply the effective competitive opportunities analysis (or any other reciprocity criteria) as part of its review of applications under the Cable Landing License Act from World Trade Organization ("WTO") Member Countries. [FN18]

***3** 10. As stated above, we received a communication from the Department of State approving the grant of the transfer of control. In their letter, the Department of State did not object to removal of the ownership restrictions imposed on the Whittier-Valdez license. We see no other public interest reason to require these ownership restrictions. Accordingly, we no longer require that the "licensee maintain no less than 50-percent ownership interest and voting control share in the [Whittier-Valdez] cable, including 100-percent ownership in the cable stations and in the land portion of the cables from the stations to the beach joint of the submerged portion of the cable" as required in the original cable landing license authorization. [FN19]

11. Accordingly, we conclude that a grant of the application would be consistent with the Cable Landing License Act. We therefore consent to the proposed transfer of control of Alaska Northstar to WCI.

III. ORDERING CLAUSES

12. In consideration of the foregoing, IT IS ORDERED that the application, File Nos. SCL-94-004-TC and SCL-96-002-TC IS GRANTED, and Alaska Northstar Communications, L.L.C. is authorized to transfer control of Alaska Northstar Communications, L.L.C. to WCI Cable, Inc. The cable landing licenses, SCL-94-004 and SCL-96-002, ARE MODIFIED to reflect this transfer of control.

****20334** 13. This Order is issued under Section 0.261 of the Commission's rules, 47 C.F.R. § 0.261, and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commis-

sion'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

Diane J. Cornell

Chief

Telecommunications Division

International Bureau

FN1. 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"); 47 C.F.R. § 1.767 (1996). We also note that the cable landing licenses granted to Alaska Northstar both contain ordering clauses stating that "[n]either this license nor the rights granted herein shall be transferred, assigned, or in any manner either voluntarily or involuntarily disposed of or disposed of indirectly by transfer of control of the Licensee to any persons, unless the Federal Communications Commission shall give prior consent in writing." Alaska Telecom Ltd., L.C., Cable Landing License, File No. SCL-94-004, 10 FCC Rcd 6072, 6074 (Int'l Bur., 1995) ("Alaska Telecom") (On November 20, 1995, the International Bureau approved the change of name of the licensee from Alaska Telecom Ltd., L.C. to Alaska Northstar Communications, L.L.C.); Alaska Northstar Communications, L.L.C., Cable Landing License, File No. SCL-96-002, DA 96-1815 ¶ 14(4) (Int'l Bur., rel. Nov. 5, 1996) ("Whittier-Valdez Cable").

FN2. Alaska Telecom, supra note 1.

FN3. Whittier-Valdez Cable, supra note 1.

FN4. Alaska Northstar/WCI Application at 1-2.

FN5. Id. at 4.

FN6. Id. at 3.

FN7. Comments of United Native American Telecommunications, Inc. (filed Nov. 14, 1997).

FN8. 47 C.F.R. § 1.767(b) (1996).

FN9. Exec. Order No. 10530, reprinted as amended in 3 U.S.C.A. § 301 app. at 459-60 (1994) ("EO 10530").

FN10. Letter from Diane J. Cornell, Chief, Telecommunications Division, International Bureau, Federal Communications Commission, to Steven Lett, Deputy U.S. Coordinator, Office of International Communications and Information Policy, U.S. De-

partment of State (Nov. 10, 1997).

FN11. Letter from Vonya B. McCann, Acting Assistant Secretary, Bureau of Economic and Business Affairs, U.S. Department of State, to Regina M. Keeney, Chief, International Bureau, Federal Communications Commission (Dec. 4, 1997).

FN12. General Communication, Inc., Cable Landing License, File No. SCL-97- 003, DA 97-2357 (rel. Nov. 7, 1997) (granting a cable landing license extending between the Pacific Northwest United States and Alaska).

FN13. Alaska Northstar/WCI Application at 5.

FN14. See Cable & Wireless, plc., Cable Landing License, File No. SCL-96- 005, [FCC 97-204 \(rel. June 20, 1997\)](#) ("Cable & Wireless") (granting Cable & Wireless, plc., a U.K. company, a license to own a non-common carrier cable, except for the U.S. landing station which is to have no more than 20 percent foreign ownership without prior Commission approval).

FN15. See *Id.* (applying effective competitive opportunities analysis under the Cable Landing License Act to a non-common carrier cable landing license application); Telefonica Larga Distancia de Puerto Rico, Inc., [Memorandum Opinion and Order, 12 FCC Rcd 5173 \(1997\)](#) (applying effective competitive opportunities analysis under the Cable Landing License Act to a common carrier cable landing license application). The Commission has recently adopted new rules to eliminate the effective competitive opportunities test for applications from World Trade Organization Member Countries to land and operate submarine cables in the United States, but these rules are not yet in effect. In the Matter of Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Market Entry and Regulation of Foreign-Affiliated Entities, Report and Order and Order on Reconsideration, FCC No. 97-398 at ¶ 93 (rel. Nov. 26, 1997) ("Foreign Participation Order").

FN16. Cable & Wireless at ¶ 28.

FN17. Whittier-Valdez Cable at ¶ 14(7).

FN18. Alaska Northstar/WCI Application at 6-7. See also *supra* note 15.

FN19. See *supra* note 17.

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