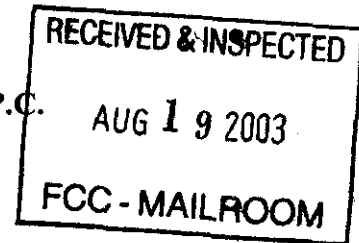


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August 1, 2003

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

Re: Response to July 18, 2003 Letter of Pacific Telecom Inc. and
Bell Atlantic New Zealand Holdings, Inc.; IB Docket No. 03-115

Dear Ms. Dortch:

On behalf of the Office of the Governor of the Commonwealth of the Northern Mariana Islands ("Office of the Governor"), the following responds to the July 18, 2003 letter of Pacific Telecom Inc. ("PTI") and Bell Atlantic New Zealand Holdings, Inc. ("BANZHI") (collectively referred to as "Joint Applicants").

In their July 18, 2003 letter, the Joint Applicants claim that the July 2, 2003 Reply of the Office of the Governor ("Reply") to the Joint Opposition of Pacific Telecom, Inc. and Bell Atlantic New Zealand Holdings, Inc. dated June 24, 2003 ("Joint Opposition") is not authorized under the Commission's rules. However, as the Reply itself clearly indicates, it is an authorized reply under Section 1.45(c) of the rules.¹ In point of fact, it is the Joint Applicants -- not the Office of the Governor -- whose submission is unauthorized as they fail to cite any authority or legal basis whatsoever for their July 18, 2003 letter.

**A. If Not Denied, The Applications Should be Designated
for Evidentiary Hearing as a Matter of Right**

The Joint Applicants are correct that the language in Section 1.764(b) of the Commission's rules authorizes a hearing to be held at the request of a Governor. The Joint Applicants are also correct that Section 1.764(b) of the Commission's rules applies to applications to discontinue, reduce or impair service. While it is likely that the proposed transfer

¹ See Reply at 1 (citing 47 U.S.C. § 1.45(c)).

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of control would result in a reduction or impairment of service², this issue does not need to be decided in order to determine that the Office of the Governor is afforded the right to a hearing upon request under the Commission's rules. Language identical to that found in Section 1.764(b) of the Commission's rules authorizing a hearing at the request of a Governor is found in Section 1.763(b) of the Commission's rules as well. Commission precedent clearly establishes that Section 1.763(b) applies to applications for transfers of control.³ Significantly, both Section 1.763(b) and Section 1.764(b) of the Commission's rules as well as Section 214(b) of the Communications Act of 1934, as amended ("Act"), evince a policy of extending special consideration to the views of Governors. Clearly, the Office of the Governor is entitled to a hearing as a matter of right if the Applications are not denied.

B. The Office of the Governor has Established a *Prima Facie* Showing that Grant of the Applications is not in the Public Interest

As the Office of the Governor has clearly established, the Applicants have failed to meet their burden, under Sections 214(a) and 310(d) of the Act, of demonstrating that the proposed transfer of control serves the public interest, convenience, and necessity.⁴ Thus, their Applications and petition for declaratory ruling under Section 310(b)(4) should be denied without a hearing.

Furthermore, the Joint Applicants are incorrect that the Office of the Governor has failed to establish a *prima facie* showing that grant of the applications would not serve the public interest.⁵ Under the FCC's two-part test for assessing whether a hearing should be granted to a party filing a petition to deny under Section 309(d) of the Act, the Commission must first decide whether or not the facts offered in the petition to deny, *if true*, would demonstrate that a grant of

² See Petition of the Office of the Governor to Deny, or, In the Alternative, To Designate For Hearing at 33, IB Docket No. 03-115 (June 9, 2003) ("Petition to Deny") (showing that the proposed transaction would result in the loss of products and services).

³ See Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996; Petition for Forbearance of the Independent Telephone & Telecommunications Alliance, *Report and Order*, 14 FCC Rcd 11364 n.31 (June 30, 1999) (Ness, S., Furchgott-Roth, H., Powell, M., dissenting in part).

⁴ See *id.*; see also 47 U.S.C. § 310(d).

⁵ The 275 word *Marianas Variety* editorial offered in support of the Joint Applicant's position that the Office of the Governor has failed to establish a *prima facie* case for denial has no relevance here. See letter from Peter D. Shields and Jennifer D. Hardin, Attorneys for BANZHI and Kenneth D. Patrich and Timothy J. Cooney, Attorneys for PTI, to Marlene H. Dortch, Secretary, FCC, dated July 18, 2003, Attachment A. In order to determine whether the Office of the Governor has met its burden to establish a *prima facie* case, the facts alleged in its Petition to Deny are assumed to be true. See *In re JOSE FRANCIS*; Petition for Reconsideration of License Grant for Station WPUR492, Pleasant Peak, California and MATHEWS THOMAS; Petition for Reconsideration of License Grant for Station WPUT210, Pleasant Peak, California, *Order on Reconsideration*, 17 FCC Rcd 21136 (Oct. 23, 2002). In any event, the Governor, a publicly elected official, is clearly the party best positioned to speak as to what is in the public interest of the CNMI, not the Joint Applicants, despite their arrogant implication to the contrary.

the application would be inconsistent with the public interest.⁶ In the instant case, if the lack of financial and technical qualification of PTI; the serious national security and public safety concerns presented by a foreign corporation controlling monopoly telecommunications facilities on a U.S. commonwealth distantly situated in the Pacific rim; the potential the transaction has to undermine rate integration in the Commonwealth; and the intentional misrepresentations of PTI are assumed to be true, there can be no question that the transaction would result in serious harm to the public interest.⁷ Thus, the Office of the Governor has clearly established a *prima facie* case.

Under the second prong of the test, the Commission must decide whether, when all alleged facts are taken together, a substantial and material question of *fact*⁸ exists such that an evidentiary hearing would be appropriate.⁹ In the instant case, substantial and material questions of fact exist with respect to each of the issues covered in the preceding paragraph.

Additionally, the Joint Applicants claim that the Office of the Governor has failed to support its allegations with specific facts. To the contrary, the Office of the Governor has supplied a detailed affidavit with its Petition to Deny.¹⁰ Furthermore, a number of important facts in this matter are either bolstered by press reports of which the Commission may take official notice¹¹, or occurred on the record in the prior proceeding in IB Docket No. 02-111.

⁶ See GTE Corp., Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License, *Memorandum Opinion and Order*, 15 FCC Rcd 14032, para. 435 (June 20, 2000); see also In re JOSE FRANCIS; Petition for Reconsideration of License Grant for Station WPUR492, Pleasant Peak, California and MATHEWS THOMAS; Petition for Reconsideration of License Grant for Station WPUT210, Pleasant Peak, California, *Order on Reconsideration*, 17 FCC Rcd 21136 (Oct 23, 2002).

⁷ See Petition to Deny.

⁸ The purpose of an evidentiary hearing is to explore *questions of fact*. Because denial of the Applications is warranted on legal and economic grounds, the Commission should deny the Applications without proceeding to a hearing. See *SBC Communications, Inc. v. FCC*, 56 F.3d 1484, 1497 (1995).

⁹ See In the Matter of Shareholders of the Ackerley Group, Inc. (Transferor) and Clear Channel Communications, Inc. (Transferee), *Memorandum Opinion and Order*, 17 FCC Rcd 10828 (May 24, 2002); see also *Astroline Communications Co Ltd. Partnership v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988).

¹⁰ See Petition to Deny, Exhibit A.

¹¹ See 47 U.S.C. 309(d).

CERTIFICATE OF SERVICE

I, Sandra Safro, a legal assistant with the Law Offices of Thomas K. Crowe, P.C., certify that on August 1, 2003, a copy of the foregoing *Response to July 18, 2003 Letter of Pacific Telecom Inc. and Bell Atlantic New Zealand Holdings, Inc.; IB Docket No. 03-115*, was served by first class United States mail, postage prepaid upon the parties listed below.

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August 1, 2003

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445 12th Street, S.W.
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Re: New Information; IB Docket No. 03-115

Dear Ms. Dortch:

To ensure that neither national security nor public safety in the Commonwealth of the Northern Mariana Islands ("CNMI") is compromised, the Office of the Governor provides the enclosed new information in order to update the record in the above-referenced proceeding.

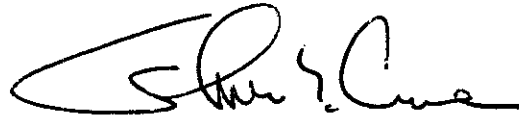
In recent weeks, the U.S. Department of Homeland Security has been conducting training exercises in the CNMI in order to prepare the people of the CNMI for the possibility of terrorist attacks. The enclosed articles published on July 23, 2003 in the *Saipan Tribune* and *Marianas Variety* include statements made by Herbert Marshall, Exercise Program Manager for the Office of Domestic Preparedness, U.S. Department of Homeland Security, expressing concern over the possibility of a terrorist attack on the CNMI, given its proximity to Asia. According to Mr. Marshall, "the CNMI and other U.S. islands could even be more vulnerable to terrorist attacks as they are closer to Asia, where the Al-Qaeda network and other terrorist groups are based."¹

¹ Agnes E. Donato, *Insular Areas Not Immune to Terror Attacks*, *Marianas Variety*, July 23, 2003.

Marlene H. Dortch
August 1, 2003
Page 2 of 2

The above statement and others contained in the attached press reports underscore and further support the national security and public safety arguments raised by the Office of the Governor in the above-referenced matter,² including concerns over the CNMI's location being "within a relatively close distance to regions where U.S. national security could be jeopardized in the future."³

Respectfully submitted,



Thomas K. Crowe
Gregory E. Kunkle,
Counsel for the Office of the Governor
of the Commonwealth of the Northern
Mariana Islands

Enclosures

cc: Attached Service List

² Petition to Deny, or, in the Alternative, to Designate for Hearing, filed on June 9, 2003 at 18-31 ("Petition").

³ Petition at 30.

Anti-terror response training held in NMI

Story by John Ravelo
Reporter



Suppose a boat explodes on Saipan's harbor, resulting in mass casualties, how should different government agencies respond to the emergency?

Such was the hypothetical scenario presented during a workshop attended mostly by local emergency responders at the Hyatt Regency Saipan.

In the example cited, Herbert Marshall said that casualties will have to be brought to health facilities, but the facilities should not be contaminated, should the explosion involve chemical weapons. Decontamination should take place, but those involved with this process should not destroy possible pieces of evidence once the police and the Federal Bureau of Investigation step in.

Marshall, an exercise program manager from the U.S. Department of Homeland Security's Office for Domestic Preparedness, stressed the need of enhancing coordination among responders from the different government agencies during times of disaster.

Homeland Security has allotted around \$1.487 million to the Commonwealth for domestic preparedness, Marshall said. Some \$262,000 of the money is intended for program exercises, including the "tabletop" and brainstorming exercises conducted yesterday. About \$70,000 is allotted for training, while planning aspect for the CNMI's domestic preparedness got an appropriation of \$105,000.

The biggest chunk of the CNMI's share in the \$3.5-billion budget for national domestic preparedness is \$1.05 million, Marshall said. The money has been appropriated for equipment acquisition.

Marshall said the Homeland Security Department considers terrorist threats seriously, preparing all U.S. states and territories for such a scenario.

"It's very possible. It's close to mainland Asia," he said of a potential terrorist attack on the CNMI.

CNMI.

Participating agencies in yesterday's workshop included the Emergency Management Office, the departments of Public Health and Public Safety, the divisions of Fire and Environmental Quality and the Commonwealth Ports Authority, among others.

Representatives from Rota, Tinian, Guam and the American Samoa also joined the workshop.

Dawn Alailima, Samoa's counter-terrorism and HAZMAT (hazardous materials) manager, expressed gratitude to the Homeland Security Department for the "funding to bring Pacific territories together." She underscored the need for Pacific territories to network on anti-terrorism efforts.

Alailima, who was with two other Samoa representatives, also thanked CNMI homeland security adviser Jerry Crisostomo and EMO director Rudolfo Pua for inviting them to the workshop.

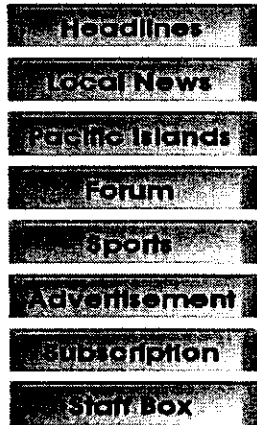
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'Insular areas not immune to terror attacks'

*By Agnes E. Donato
Variety News Staff*

AMERICA'S insular areas in the Pacific are "not immune" to possible terrorist attacks, an official of the U.S. Department of Homeland Security said.

Herbert Marshall, exercise program manager for the Office of Domestic Preparedness, said the CNMI and other U.S. islands could even be more vulnerable to terrorist attacks as they are closer to Asia, where the Al-Qaeda network and other terrorist groups are based.

Marshall and four other representatives from the Office of Domestic Preparedness headed an anti-terrorism preparedness training for CNMI, Guam and American Samoa government officials and staff at the Hyatt Regency Hotel yesterday.

It was the first training conducted by the office in the CNMI.

The Office of Domestic Preparedness was given a budget of \$4 million for conducting training exercises in the U.S. insular areas in the Pacific.

"If you look back historically — on what has been happening to American states and territories in the past 10 to 15 years — you'll know that (a terrorist attack) is going to happen sometime in the future," Marshall said.

The region, he added, could be a target for groups that are out to "hurt the economic interests or the population of the U.S."

In an interview, Marshall said the training aimed to instruct government officials on how to respond to, and recover from, a possible chemical weapons attack at the seaports.

Marshall said that aside from preparedness, the training also aimed to teach measures in preventing chemical attacks.

"We also like the word 'prevention' because if you can prevent a terrorist attack from occurring, you'll save lives and property," Marshall said.

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I, Sandra Safro, a legal assistant with the Law Offices of Thomas K. Crowe, P.C., certify that on August 1, 2003, a copy of the foregoing *New Information; IB Docket No. 03-115*, was served by first class United States mail, postage prepaid upon the parties listed below.

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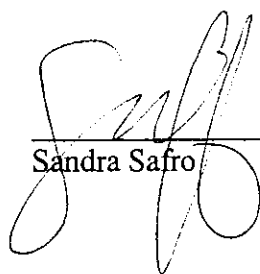
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