

On Wed, Feb 9, 2022 at 7:58 PM Lubuw Falanruw <lubuw@falanruw.com> wrote:
Dear Mr. Takuro Akinaga,

Thank you for allowing us the time to evaluate properly our decision regarding TRA's bottleneck determination, more importantly in terms what what we offered as your folks discretion in terms of its best use and hence if confidentiality be applied.

Understanding that today is our deadline to adhere to policiies to either withdraw or remove any confusions as to confidentiality, then we have determined our original comments sent via email to you, dated Feb. 04, 2022, with minor but imortant adjustments, hereby be our official comments/feedback submitted.

For your convenience, our updated, which is not far from our original one with identifying questoins we still needed clarity, but below is our official feedback.

We do seek further advise and recommendations, for the best of the objectives of liberalization.

Respectfully,

Lubuw Falanruw
iBoom

REVISES & UPDATED SLIGHTLY

----- Forwarded message -----

From: **Lubuw Falanruw** <lubuw@falanruw.com>

Date: Thu, Feb 3, 2022 at 2:55 PM

Subject: Re: FW: Draft Decision Consultation Paper

To: <consultations@tra.fm>, Takuro Akinaga <takuro.akinaga@tra.fm>

Hi Mr. Takuro and consultations at TRA,

Based on the final drafted determination received Feb 2, 2022; specific to the determination document section pasted here;

Draft Determination

The Authority has made, and hereby publishes, a [draft] determination that the following facilities are bottleneck facilities for the purposes of the FSM Telecommunications Act of 2014

- All submarine fiber optic cable facilities, including any ancillary equipment necessary for the operation of the cable (such as Power Feed Equipment) that have been built as of the date of this decision. For clarity, these are:
 - (a) The Yap Spur, consisting of the physical submarine cable from the Yap cable landing station to and including the branching unit on the SEA-US submarine cable system and access to capacity to international termination in Guam;
 - (b) The Chuuk- Pohnpei Cable, consisting of the physical submarine cable from the Chuuk cable landing station to the Pohnpei cable landing station; and
 - (c) The Pohnpei Spur, consisting of the physical submarine cable from the Pohnpei cable landing station to and including the branching unit on the HANTRU-1 submarine cable system and access to capacity to international termination in Guam.
- All fiber to the premise (FTTP) network facilities, consisting of optical fiber from and including the distribution frame in the exchange(s) to and including the termination point in the relevant customer premises, on islands where FTTP network facilities have been built as of the date of this decision. For clarity, these are Yap, Weno and Pohnpei.

While we have always supported, followed, and abided by the Act. 2014, as well as seeking all directions from both OAE, and Keeping TRA abreast, and following TRA's whenever applicable. Here is our initial feedback, especially as it relates to the definitions related to draft language determinations, and to the very unique and different circumstances we find iBoom to be within.

iBoom entered the market in 2019, and doing as much due-diligence and homework leading up to the point oTelco license being granted, and as well as full corporations and seeking every and all guidance by OAE & in cases where as directed, with TRA, here is our feedback;

The final draft declaration of bottleneck facilities still has many gaps or area's for iBoom's special and un-authodoxo entry, understandings, and many areas of directions that blurred the line between what was iBoom's role and what was OAE's role. We also could not help but doing our best to make best business decisions, with inaccurate data, and many areas of a moving target...starting from the directions that we were told we needed to hold off for any movement into Yap so that we can follow proper procedures, and also support vs complicated Grant terms, etc.

We greatly applaud this effort in determinations of bottleneck facilities, but unfortunately, unique to iBoom's case, and however the time that this process has finally arrived for determination, unfortunately, has come at a point far beyond the main objectives for new fair competition entries into what we believed was to be a competition environment. As such, iBoom, after exhausting all it's efforts, in order to meet its mission, requests, and timely sensitive demands and needs for our people in Yap state, this draft declaration, has eventually come at a time, where, once again, unique to iBoom's situation; whereby iBoom had been put in a difficult situation long prior, to finally, with approvals, take on enormous costs and eventually filling in for gaps way beyond iBoom's role and responsibilities, incidents due to unfair competitive actions against iBoom, resulting in iBoom bearing the majority of costs & delays far above and beyond's iBoom's scope as a new entry, iBoom's unique unfortunate, but valiant and successful efforts, entirely at its own costs and detriments, may not fit this suggested wording, broad term and definition of the draft determination document. We believe iBoom has complied in every way possible, and in good faith, and trust that at some point soon, clarity and proper reconciliation between parties unique to iBoom's circumstances, can be reconciled and put back on track. Until then, our feedback with this draft's broad definitions, while it may be relevant to others, does not fit iBom's unique and very difficult journey of circumstances. I also recognize these discrepancies can be remediated, so that iBoom can be treated fairly, as such is the intention of the Act. 2014.

- Because iBoom was put in a situation of the most challenging circumstances from both Yap CLS, as well as Guam CLS, we do not have enough definition of what "**access to capacity to international termination in Guam**" really means and any available technical terms definition? As you may or may not know, the conditions we were specifically told that would be made available for us at both Yap CLS, as well as at Guam CLS for Yap's fiber, we found actually not to be accurate, as it required us in building out enormous workarounds and filling gaps that were costly, and simply could have been avoided had there been more transparency, sharing of information and/or different decisions made out of our controls. These factors created not only extensively costly delays, despite overhead expenses, infrastructure expenses to fill in gaps along the way, as well as short & long term contract's incurred by iBoom with 3rd parties in order to cover all bases, as so many unknowns had to be dealt with using all potential outcomes to be covered.
- For the last bullet of the draft determination letter; (FTTP) - we have still been operating under many unknown factors; These are just a few examples;
 - As you know, since 2019, iBoom, in anticipation, had asked several times how to proceed or what were the protocols or steps to move forward in starting its efforts to fast track operations for Yap's grossly underserved and unserved island(s) and communities; there were too many unanswered and unknown factor's forcing iBoom eventually, with permission, to undertake all responsibilities, costs, delays made by decisions outside of our controls; everything iBoom has built to date, far and above it's scope, has been beared on its own. It would seem unfair to simply brush all this under the rug, and allow any party (which we actually want to support), but not under conditions where it has been to the detriment at iBoom's costs and success. Again, we feel this is unique to iBoom circumstances.
 - In 2020, at some point, iBoom got wind that FSMTC was by then already moving fast ahead in laying Fiber throughout the entire island of Yap, putting iBoom at great disadvantage. Per OAE & TRA, iBoom followed directions given, and sent a request to FSMTC, as per law's of Act 2014, for commercial agreement for just a handful of dark fiber strand's, for two or so locations. All dark fiber requests were ignored and not given any answer to. This extended far beyond the Act 2014 regulations of 30 days, and in fact extended to much of the rest of 2020, to which point iBoom gave up the request. While there was some talk about the need to declare the Fiber a bottleneck facility at the time, and several other factors, such as waiting for plans and bid's per OAE instructions, iBoom had no course of action for the majority of 2020.
 - At some point between later at much time later, iBoom was given permission, which it received with great excited with finally a course of action forward, iBoom without hesitation, immediately tried to proceed, at its own costs, with gusto in delivering tangible results, despite still having very challenging limitations.
 - In a nutshell, iBoom was put in a difficult situation, of taking up nearly all the costs, and even much larger costs unforeseen due to lack of information that was critical for iBoom to have known ahead of time. This has been the case to this day.

At this stage and for the purpose of the second bullet of the draft Determination; due do complexities & costs reconciliation that still need to be addressed, and pending deadline of this determination; we would recommend as a draft response; that all this be taken into consideration; that perhaps the definition should exclude iBoom's as a temporary bases due to it's unique circumstances.

Its our understanding, FSMTC's cables and communications facilities belong to FSM -OAE. However, iBoom's cable, equipment, and all missing engineering to work around gaps, are listed as the company's own assets as the sole bearer of the costs, not to mention costly delays created by unfair competitive practices, as well as lack of visibility, and decisions given to us that felt extremely counter intuitive in supporting open fair competition. Purporting to govern/regulate iBoom's at this time will expose the FSM government to avoidable legal liability. In many ways, it would be double jeopardy, perhaps even futile, for a company to enter a supposed "liberated" market, pay for its own infrastructure gaps far beyond its scope and no where near using infrastructure supposedly for "plug and play" even at the core major infrastructure points, out of its own pocket, all the while facing-off with a government subsidized monopoly, then submit to regulations allowing additional competition as the cart before the horse, which we are happy to rectify.

We do desire to help all in cooperative efforts to the objectives of liberalization, which we wholeheartedly support & embrace. However, it would also seem counterproductive under the true definition of open, fair competition objectives, that iBoom's circumstances be dealt with first.

If time is of the essence, perhaps iBoom due to its unique situation as compared to other's, be separated from this portion of TRA determination as a temporary determination, until such reconciliation and mutual agreement and by the parties need to be met, whichever comes first.

We applaud TRA for this effort, and we really wished it could have come in our time of need.

With much respects,

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Lubuw Falanruw
808-381-5327

iBoom