



# PUBLIC NOTICE

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**Report No. SCL-00080**

**DA No. 09-45**  
**Friday January 16, 2009**

## **ACTIONS TAKEN UNDER CABLE LANDING LICENSE ACT**

### **Section 1.767(a) Cable Landing Licenses, Modifications, and Assignments or Transfers of Control of Interests in Cable Landing Licenses (47 C.F.R. § 1.767(a))**

By the Chief, Policy Division, International Bureau:

Pursuant to 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), Executive Order No. 10530, Exec. Ord. No. 10530 reprinted as amended in 3 U.S.C. § 301, and section 1.767 of the Commission's rules, 47 C.F.R. § 1.767, the following applications ARE GRANTED. These grants of authority are taken under section 0.261 of the Commission's rules, 47 C.F.R. § 0.261. 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 this public notice.

This public notice serves as each cable landing licensee's Cable Landing License, or modification thereto, pursuant to the Cable Landing License Act and sections 1.767 and 1.768 of the Commission's rules. Cable landing licensees should review carefully the terms and conditions of their licenses. Failure to comply with these terms and conditions or relevant Commission rules and policies could result in fines or forfeitures.

The Commission most recently amended its rules applicable to submarine cable landing licenses in Review of Commission Consideration of Applications under the Cable Landing License Act, IB Docket No. 00-106, FCC 01-332, 16 FCC Rcd 22167 (2001), 67 Fed. Reg. 1615 (Jan. 14, 2002). An updated version of sections 1.767 and 1.768 of the rules is available at <http://www.fcc.gov/ib/pd/pf/telecomrules.html>. See also [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DA-02-598A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-02-598A1.pdf) for a March 13, 2002 Public Notice; [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-01-332A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-01-332A1.pdf) for the December 14, 2001 Report and Order.

Submarine Cable Landing License  
Grant of Authority

Date of Action: 01/15/2009

Acceptability for Filing Public Notice: The Application was placed on Public Notice on September 2, 2008. See American Samoa Hawaii Cable, LLC, Application for a License to Land and Operate a non-common carrier fiber-optic submarine cable network, the American Samoa-Hawaii Cable System connecting Keawaula, Hawaii, Iliili, American Samoa, and Apia, the Independent States of Samoa ("Samoa"), File No. SCL-LIC-20080814-00016, Public Notice, Streamlined Submarine Cable Landing License Applications Accepted for Filing, Report No. SCL-00074S (Int'l Bur., rel. Sept. 2, 2008). No oppositions to the application were filed in response to the Public Notice.

The U.S. Department of the Interior ("DOI") filed a letter in support of the application on September 18, 2008. DOI states that it has administrative responsibility for American Samoa and therefore has a strong interest in promoting the deployment of telecommunications infrastructure to support the American Samoa economy and to lower communications costs. DOI supports the development of a fiber-optic cable system to serve American Samoa to improve connectivity beyond American Samoa while enhancing Internet usage and penetration. According to DOI, the cable will also foster the development of offshore service industries and encourage the use of telemedicine and distance learning.

The Application has been coordinated with the Department of State and other relevant Executive Branch agencies pursuant to section 1.767(b) of the Commission's rules, 47 C.F.R. § 1.767(b), and consistent with procedures established with the Department of State. See Review of Commission Consideration of Applications under the Cable Landing License Act, IB Docket No. 00-106, Report and Order, 16 FCC Rcd 22167, 22192-93, paras. 51-52 (2001) (Submarine Cable Landing License Report and Order); Streamlined Procedures for Executive Branch Review of Submarine Cable Landing License Requests, State Department Media Note (Revised) (rel. Dec. 20, 2001) available at <http://www.state.gov/r/pa/prs/ps/2001/6951.htm> The Department of Homeland Security and the Department of Justice filed a Petition to Adopt Conditions to Authorizations and Licenses on January 9, 2009.

Actions Taken: (1) Grant of Cable Landing License to American Samoa Hawaii Cable, LLC ("ASHC"), Pac-Rim Redeployment, LLC ("PRR"), and AST Telecom, LLC d/b/a Blue Sky Communications ("Blue Sky" and, together with ASHC and PRR, "Applicants") for the purpose of landing and operating a non-common carrier fiber-optic submarine cable system, the American Samoa-Hawaii Cable System (the "ASHC System"), connecting Keawaula, Hawaii, Iliili, American Samoa, and Apia, Samoa, and (2) waiver of section 1.767(h)(1) of the Commission's rules, 47 C.F.R. § 1.767(h)(1), in connection with the License.

Licensee Information: PRR will construct and initially own the wet link portion of the ASHC System, including the Hawaii, American Samoa, and the Samoa shore-end portions of the system. Upon commissioning, pursuant to a Purchase Agreement, ASHC will acquire the ASHC System. ASHC will operate the wet-link portion of the ASHC System, including the Hawaii-American Samoa and American Samoa-Samoa segments, as well as the Hawaii, American Samoa, and Samoa shore-end portions of the ASHC System. Blue Sky will construct, own and operate the Iliili cable station in American Samoa. SamoaTel Limited ("SamoaTel") will construct, own and operate the Apia cable station in Samoa. SamoaTel will not have any equity interest in the ASHC System or the cable stations in Hawaii or American Samoa.

Blue Sky is a wholly-owned, direct subsidiary of eLandia International Inc. Stanford International Bank, Ltd ("SIB"), organized under the laws of Antigua and Barbuda, owns 68.1% of and controls eLandia International. SIB is a wholly-owned, direct subsidiary of Stanford International Bank Holdings Ltd. ("SIB Holdings"), also organized under the laws of Antigua and Barbuda. SIB Holdings is wholly owned by Mr. R. Allen Stanford, a U.S. citizen.

PRR is owned by eLandia Technologies, Inc. (80%) and MC Cable I, LLC (20%). eLandia Technologies is a wholly-owned direct subsidiary of eLandia International. MC Cable I is owned by two members: (1) Pac Rim Investments, LLC (51%) and (2) MC Partners American Samoa Holdings, LLC (49%). Pac Rim Investments is wholly owned by James R. Wilson, a U.S. citizen. MC Partners American Samoa Holdings is owned by six U.S. citizens: (i) Thomas A. Harris (32%), (ii) Michael P. Dunn (24%), (iii) John B. Rucker III (17.6%), (iv) Douglas C. Sellers (13.5%), (v) Philip W. Fletcher III (7.9%), and (vi) Kenneth C. Funderburk (5%).

ASHC is owned by eLandia Technologies (53.44%), the American Samoa Government (33.33%), and MC Cable II, LLC (13.33%). MC Cable II, LLC has the same ownership as MC Cable I, LLC.

Cable Design and Capacity: The ASHC System will initially consist of two (2) segments of digital fiber-optic cable. The first segment will connect Keawaula, on the island of Oahu in Hawaii, with Iliili, American Samoa. The second segment will connect Iliili with Apia, Samoa. On the Hawaii-American Samoa segment, the ASHC System will consist of two (2) optical fiber pairs, with a design capacity and initial configuration capacity of 1.12 Gbps. On the American Samoa-Samoa segment, the ASHC System will consist of two (2) optical fiber pairs, with a design capacity of 160 Gbps but an initial capacity of 2.5 Gbps. To construct the ASHC System, the Applicants will remove a section of the former PAC Rim East cable system between New Zealand and Hawaii and reinstall that section to terminate at the cable stations at Iliili, American Samoa, and Apia, Samoa. The new ASHC System will use the same cable landing facilities in Hawaii as the former Pac Rim East system, including the existing bore pipes, beach manhole, conduit, and Keawaula cable station.

Cable Landing Point Arrangements: The ASHC System will use the existing cable station at Keawaula, Hawaii, which is owned by AT&T, Inc. ASHC has entered into an agreement with AT&T giving ASHC a long-term lease in AT&T's conduits connecting the ASHC System's Hawaii beach landing with the Keawaula cable station and a long-term lease in the collocation space in the Keawaula cable station building. ASHC will have exclusive control over and access to the ASHC System's terminal equipment which it will collocate in the Keawaula cable station building. Equipment for the system will be separately caged and controlled exclusively by the Applicants from their network operations center in the Iliili cable station. Application at 19.

Section 1.767(h) requires that "any entity that owns or controls a cable landing station in the United States" shall be "applicants for, and licensees on, a cable landing license." The purpose of this requirement is to ensure that entities having a significant ability to affect the operation of the cable system become licensees so that they are subject to the conditions and responsibilities associated with the license. See Submarine Cable Landing License Report and Order, 16 FCC Rcd at 22194-95, paras. 53-54.

Although AT&T, Inc. owns the existing cable station at station at Keawaula, Hawaii, it will not be able to affect significantly the operation of the ASHC System. The Applicants will retain operational authority over their ASHC System facilities and provide direction to AT&T in all matters

ASHC System. The Applicants will retain operational authority over their ASHC System facilities and provide direction to AT&T in all matters relating to the ASHC System. Pursuant to an agreement between ASHC and AT&T, AT&T will perform certain limited "remote hands" monitoring, testing, and maintenance services on the Applicants' equipment, which will be performed in accordance with ASHC's directions. Application at 19. See 47 C.F.R. § 1.767(h)(1). Accordingly, we grant Applicants a waiver of section 1.767(h)(1) and do not require AT&T, Inc. to be on this Cable Landing License.

Regulatory Status of Cable: The Applicants propose to operate the ASHC System on a non-common carrier basis. Applicants state that capacity on the ASHC System will not be sold indifferently to the user public, but will be used by the Applicants and offered to other carriers on terms tailored to their particular needs. Applicants state that the ASHC System will not have sufficient market power to warrant common carrier regulation.

Applicants have provided information that the proposed operation of the cable on a non-common carrier basis satisfies the requirements set forth in *National Association of Regulatory Utility Commissioners v. FCC*, 525 F.2d 630, 642 (D.C. Cir 1976) (NARUC I), cert. denied, 425 U.S. 992 (1976). See also *Submarine Cable Landing License Report and Order*, 16 FCC Rcd at 22202-22203, paras. 69-70; *Review of Commission Consideration of Applications under the Cable Landing License Act*, IB Docket No. 00-106, Notice of Proposed Rulemaking, 15 FCC Rcd 20789, 20815-20818, paras. 62-67; 47 C.F.R. §1.767(g)(10) (the Commission reserves the right to impose common carrier regulation or other regulation on the operations of the cable system if it finds that the public interest so requires).

Conditions and Requirements: Applicants shall comply with the routine conditions set out in section 1.767(g)(1)-(14) of the Commission's rules, 47 C.F.R. § 1.767(g)(1)-(14), and with the requirements of section 1.768 of the Commission's rules, 47 C.F.R. § 1.768 (notifications and prior approval for submarine cable landing licensees that are or propose to become affiliated with a foreign carrier).

Applicants "shall at all times comply with any requirements of United States government authorities regarding the location and concealment of the cable facilities, buildings, and apparatus for the purpose of protecting and safeguarding the cables from injury or destruction by enemies of the United States of America." 47 C.F.R. § 1.767(g)(3). The International Bureau will inform the licensees of specific requirements in connection with this condition.

We grant the Petition to Adopt Conditions to Authorizations and Licenses (Petition) filed in this proceeding on January 9, 2009 by the Department of Homeland Security and the Department of Justice. Accordingly, we condition grant of this application on American Samoa Hawaii Cable, LLC and AST Telecom, LLC abiding by the commitments and undertakings contained in their January 9, 2009, Agreement with the Department of Homeland Security. A copy of the Petition and the January 9, 2009, Agreement are publicly available and may be viewed on the FCC website through the International Bureau Filing System (IBFS) by searching for SCL-LIC-20080814-00016 and accessing "Other filings related to this application" from the Document Viewing area.

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