



PUBLIC NOTICE

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DA 11-597
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**NOTIFICATION OF PROPOSED FOREIGN CARRIER AFFILIATIONS AND REQUEST FOR
A DETERMINATION THAT THE INDEPENDENT STATE OF SAMOA PROVIDES
EFFECTIVE COMPETITIVE OPPORTUNITIES TO U.S. CARRIERS TO LAND AND
OPERATE A SUBMARINE CABLE IN SAMOA AND PROVIDE INTERNATIONAL SERVICES**

**IB Docket No. 11-57
FCN-NEW-20110315-00002
FCN-NEW-20110316-00003**

PLEADING CYCLE ESTABLISHED

**Comments Due: April 18, 2011
Reply Comments Due: April 25, 2011**

AST Telecom, LLC, d/b/a Blue Sky Communications (“Blue Sky”), American Samoa Hawaii Cable, LLC (“ASHC”), and Samoa American Samoa Cable, LLC (“SASC,” collectively with Blue Sky and ASHC, “Cable Landing Licensees”), and American Samoa License, Inc. (“ASLI”) have filed notifications pursuant to section 1.768 and section 63.11 of the Commission’s rules¹ to become affiliated with SamoaTel Limited (“SamoaTel”), a foreign carrier in the Independent State of Samoa (“Independent Samoa”).² SamoaTel is authorized to provide telecommunications services in Independent Samoa and also owns and controls the cable station at Apia, Independent Samoa, where the American Samoa Hawaii cable system (“ASH Cable”) lands.³ The Cable Landing Licensees are jointly licensed to land and operate the ASH Cable in the United States, connecting Keawaula, Hawaii and Iliili, American Samoa with Independent Samoa.⁴ ASLI holds international section 214 authorization to provide facilities-based and resale service.⁵

Independent Samoa is not currently a full member of the World Trade Organization (“WTO”).⁶ The Cable Landing Licensees and ASLI therefore request a determination that Independent Samoa offers

¹ 47 C.F.R. §§ 1.768, 63.11.

² Blue Sky Foreign Carrier Affiliation Notification, FCN-NEW-20110316-00003, filed March 16, 2011 at 1 (“Blue Sky Notification”); ASLI Foreign Carrier Affiliation Notification, FCN-NEW-20110315-00002, filed March 15, 2011 at 1 (“ASLI Notification”).

³ *Id.* The Commission licensed the ASH Cable on January 9, 2009. *See Actions Taken Under Cable Landing License Act*, SCL-LIC-20080814-00016, Public Notice, 24 FCC Rcd 226 (2009).

⁴ SCL-LIC-20080814-00016.

⁵ ITC-214-19980918-00671; ITC-214-19981207-00860.

⁶ Blue Sky Notification at 2; ASLI Notification at 1.

effective competitive opportunities to U.S. carriers to land and operate undersea cables⁷ and to provide telecommunications services in Independent Samoa.⁸

PROPOSED ACQUISITION

On January 11, 2011, Blue Sky, a wholly-owned, direct subsidiary of eLandia International, Inc. (“eLandia”),⁹ entered into an agreement with the Government of Independent Samoa to acquire control of SamoaTel. Blue Sky directly owns 68 percent of a special-purpose subsidiary, Blue Sky SamoaTel Investments, Ltd., which will, upon consummation, directly own 75 percent of SamoaTel’s shares outstanding.¹⁰ ASLI is a wholly-owned direct subsidiary of Blue Sky.¹¹ Upon consummation, both the Cable Landing Licensees and ASLI will become affiliated with SamoaTel. The Cable Landing Licensees and ASLI expect Blue Sky’s acquisition of SamoaTel to close on March 31, 2011.¹²

ECO TEST

Section 1.768 of the Commission’s rules requires that, where a U.S. submarine cable landing licensee seeks to become affiliated with a foreign carrier with market power in a country where the U.S. cable lands, and that country is not a Member of the WTO, the licensee must demonstrate that there are effective competitive opportunities for U.S. companies to land and operate a submarine cable in that country (the “ECO Test”).¹³ Similarly, section 63.11 of the rules requires that, where a U.S. international carrier is authorized to provide facilities-based and/or resale services between the United States and a destination country where it seeks to become affiliated with a foreign carrier that has market power in the destination country, and the country is not Member of the WTO, the U.S. international carrier must make an ECO Test showing.¹⁴

⁷ Blue Sky Notification at 14 *citing* 47 C.F.R. § 1.767(g)(2).

⁸ ASLI Notification at 15 *citing* 47 C.F.R. § 63.18(k)(3)(i).

⁹ eLandia, a Delaware corporation, has entered into an agreement whereby Amper S.A. will acquire approximately 84.88 percent of eLandia’s issued and outstanding shares, and, upon closing, indirectly control the Cable Landing Licensees and ASLI. *See* Blue Sky Notification at 2-6 and ASLI Notification at 3-5.

¹⁰ ASCH is 33 percent owned by The American Samoa Government and 66 percent owned by eLandia Technologies, Inc. ASCH, in turn, owns 100 percent of the member interests in SASC. However, for purposes of the proposed acquisition, only Blue Sky has entered into an agreement to purchase a controlling interest in SamoaTel. *See* Blue Sky Notification at 5-6, and 9.

¹¹ ASLI Notification at 1.

¹² Blue Sky Notification at 10; ASLI Notification at 8.

¹³ 47 C.F.R. § 1.768(g)(2); Note to Paragraph (g)(2) (*citing Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket No. 97-142, Report and Order and Order on Reconsideration, 12 FCC 23891, 23094-50, ¶ 130 (1997) (*Foreign Participation Order*), *Order on Reconsideration*, 15 FCC Rcd 1858 (2000). *See also* 63.18(k)(3).

¹⁴ The applicant shall make the following showing:

The named foreign country provides effective competitive opportunities to U.S. carriers to compete in that country's market for the service that the applicant seeks to provide (facilities-based, resold switched, or resold non-interconnected private line services). An effective competitive opportunities demonstration should address the following factors:

(i) If the applicant seeks to provide facilities-based international services, the legal ability of U.S. carriers to enter the foreign market and provide facilities-based international services, in particular international message telephone service (IMTS);

The ECO Test was originally adopted by the Commission in the *Foreign Carrier Entry Order*.¹⁵ In the *Foreign Participation Order*, the Commission found that it was no longer necessary to apply the ECO Test to WTO Member countries, but retained the test for entry by carriers that possess market power in non-WTO member countries.¹⁶

Independent Samoa is not a WTO Member country. The Cable Landing Licensees and ASLI are proposing to become affiliated with SamoaTel, which has market power in the market for fixed local termination on the U.S.-Independent Samoa route.¹⁷ For purposes of the ECO Test, a U.S. international carrier or cable landing licensee is affiliated with a foreign carrier if, *inter alia*, the carrier/licensee, or a controlling entity, directly or indirectly holds a controlling interest in the foreign carrier.¹⁸ Upon consummation of the proposed acquisition, Blue Sky, which is one of the Cable Landing Licensees and which controls ASLI, an authorized U.S. international carrier, will indirectly own 75 percent of SamoaTel's shares outstanding.

The Cable Landing Licensees and ASLI state that the Independent Samoan market offers effective opportunities for U.S. investors and carriers to land and operate undersea cables and provide facilities-based and resale telecommunications services in Independent Samoa, and thus the notifications should be granted.

First, the Cable Landing Licensees and ASLI maintain that U.S. carriers have the legal ability to enter the Independent Samoan market to provide land and operate undersea cables in Independent Samoa and provide facilities-based and resale international services, including IMTS.¹⁹ The

(ii) If the applicant seeks to provide resold services, the legal ability of U.S. carriers to enter the foreign market and provide resold international switched services (for switched resale applications) or non-interconnected private line services (for non-interconnected private line resale applications);

(iii) Whether there exist reasonable and nondiscriminatory charges, terms and conditions for interconnection to a foreign carrier's domestic facilities for termination and origination of international services or the provision of the relevant resale service;

(iv) Whether competitive safeguards exist in the foreign country to protect against anticompetitive practices, including safeguards such as:

(A) Existence of cost-allocation rules in the foreign country to prevent cross-subsidization;

(B) Timely and nondiscriminatory disclosure of technical information needed to use, or interconnect with, carriers' facilities; and

(C) Protection of carrier and customer proprietary information;

(v) Whether there is an effective regulatory framework in the foreign country to develop, implement and enforce legal requirements, interconnection arrangements and other safeguards; and

(vi) Any other factors the applicant deems relevant to its demonstration.

47 C.F.R. § 63.18(k)(3). *See also* 47 C.F.R. § 1.767(a)(8).

¹⁵ *Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket No. 95-22, Report and Order, 11 FCC Rcd 3873, 3881-3099, ¶¶ 19-72 (1995) (*Foreign Carrier Entry Order*).

¹⁶ *Foreign Participation Order* 12 FCC at 23094-50, ¶ 130.

¹⁷ Blue Sky Notification at 11; ASLI Notification at 9.

¹⁸ 47 C.F.R. § 63.09(e). *See also* 47 C.F.R. § 63.18(j)(3); *id.* § 1.767(a)(8).

¹⁹ Blue Sky Notification at 17; ASLI Notification at 14.

Telecommunications Act, adopted by Independent Samoa in 2005,²⁰ requires a license for the provision of international facilities-based and resale services but does not impose limitations on the number of licenses or licensees or foreign ownership in licenses other than requiring a Foreign Investment Certificate from the Independent Samoa Ministry of Commerce, Industry and Labour.²¹ Further, the Cable Landing Licensees and ASLI note that the regulator has licensed a variety of service providers, including incumbent SamoaTel.²²

Second, according to the Cable Landing Licensees and ASLI, under the Telecommunications Act, the dominant service provider must provide interconnection to interconnecting service providers under substantially the same conditions and of substantially the same quality as it provides for the dominant service provider's own telecommunications services, and make available on request all necessary or reasonable required information and interconnection.²³ Further, the Telecommunications Act specifies that a dominant service provider must maintain cost-based interconnection charges and must file a copy of any interconnection agreement with the Regulator within 10 days of execution, after which time the Regulator will publish the agreement on its website.²⁴ In the event that private negotiations fail, the Telecommunications Act directs the Regulator to impose interconnection arrangements and rates and to resolve interconnection disputes among service providers.²⁵

Third, the Cable Landing Licensees and ASLI believe that Independent Samoa's telecommunications regulatory framework establishes competitive safeguards to protect against anticompetitive safeguards. The Telecommunications Act establishes cost allocation rules, timely and nondiscriminatory disclosure of technical information needed to use, or interconnect with, carriers' facilities, protection of carrier and customer proprietary information, and numerous other safeguards to guard against a dominant service provider from abusing its market position, including price fixing and bundling of telecommunications services.²⁶

Finally, the Cable Landing Licensees and ASLI state that Independent Samoa has an effective regulatory framework. The Telecommunications Act establishes detailed legal requirements for the Independent Samoa telecommunications sector and tasks the Regulator with enforcing those requirements including interconnection disputes between licensed carriers.²⁷

***EX PARTE* STATUS OF THIS PROCEEDING**

Pursuant to Section 1.1200(a) of the Commission's rules,²⁸ the Commission may adopt modified or more stringent *ex parte* procedures in particular proceedings if the public interest so requires. We

²⁰ See Telecommunications Act (No. 20) 2005, as amended ("Telecommunications Act"), attached as Exhibit 1 to the Notification and available at www.regulator.gov.ws/LegalFramework/TelecommunicationsAct/tabid/2978/language/en-US/Default.aspx.

²¹ Blue Sky Notification at 17-18; ASLI Notification at 14-15.

²² Blue Sky Notification at 18; ASLI Notification at 14.

²³ Blue Sky Notification at 21; ASLI Notification at 18.

²⁴ Blue Sky Notification at 22; ASLI Notification at 19.

²⁵ Blue Sky Notification at 23; ASLI Notification at 20.

²⁶ Blue Sky Notification at 25-28; ASLI Notification at 22-25.

²⁷ Blue Sky Notifications at 29-31; ASLI Notification at 25-27.

²⁸ 47 C.F.R. § 1.1200(a).

announce that this proceeding will be governed by permit-but-disclose *ex parte* procedures that are applicable to non-restricted proceedings under Section 1.1206 of the Commission's rules.²⁹

We direct parties making oral *ex parte* presentations to the Commission's statement re-emphasizing the public's responsibility in permit-but-disclose proceedings. Parties are reminded that memoranda summarizing the presentation must contain the presentation's substance and not merely list the subjects discussed.³⁰ More than a one- or two-sentence description of the views and arguments presented is generally required.³¹ Other rules pertaining to oral and written presentations are set forth in Section 1.1206(b) as well.³² We urge parties to use the Electronic Comment Filing System (ECFS) to file *ex parte* submissions.

GENERAL INFORMATION

Interested parties must file comments no later than **April 18, 2011**. Persons and entities that timely file comments may participate fully in the proceeding, including seeking access to any confidential information that may be filed under a protective order (subject to the restrictions contained in the protective order) and seeking reconsideration of decisions. Reply comments must be filed no later than **April 25, 2011**. All filings concerning matters referenced in this Public Notice should refer to **DA 11-597** and **IB Docket No. 11-57**, as well as the specific file numbers of the individual applications or other matters to which the filings pertain.

Under the Commission's current procedures for the submission of filings and other documents,³³ submissions in this matter may be filed electronically (*i.e.*, through ECFS) or by hand delivery to the Commission.

- **If filed by ECFS,**³⁴ comments shall be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet email.
- **If filed by paper,** the original and four copies of each filing must be filed by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, S.W.,

²⁹ *Id.* § 1.1206.

³⁰ See Commission Emphasizes the Public's Responsibilities in Permit-But-Disclose Proceedings, *Public Notice*, 15 FCC Rcd 19945 (2000).

³¹ See 47 C.F.R. § 1.1206(b)(2).

³² *Id.* § 1.1206(b).

³³ See Implementation of Interim Electronic Filing Procedures for Certain Commission Filings, *Order*, 16 FCC Rcd 21483 (2001); FCC Announces Change in Filing Location for Paper Documents, *Public Notice*, 24 FCC Rcd 14312 (2009).

³⁴ See Electronic Filing of Documents in Rulemaking Proceedings, GC Docket No. 97-113, *Report and Order*, 13 FCC Rcd 11322 (1998).

Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- One copy of each pleading must be delivered electronically, by email or facsimile, or if delivered as paper copy, by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (according to the procedures set forth above for paper filings), to the Commission's duplicating contractor, Best Copy and Printing, Inc., at FCC@BCPIWEB.COM or (202) 488-5563 (facsimile).

Additionally, filers must deliver courtesy copies by email to the following Commission staff:

- 1) David Krech, Policy Division, International Bureau, at david.krech@fcc.gov; and
- 2) Jodi Cooper, Policy Division, International Bureau, at jodi.cooper@fcc.gov.

Copies of the Applications and any subsequently-filed documents in this matter may be obtained from Best Copy and Printing, Inc., in person at 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, via telephone at (202) 488-5300, via facsimile at (202) 488-5563, or via email at fcc@bcpiweb.com. The Application and any associated documents are also available for public inspection and copying during normal reference room hours at the following Commission office: FCC Reference Information Center, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. The Applications also are available electronically through the Commission's ECFS, which may be accessed on the Commission's Internet website at <http://www.fcc.gov>.

People with Disabilities: To request this Public Notice in accessible formats (computer diskette, large print, audio recording, and Braille) send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (tty).

For further information, contact David Krech or Jodi Cooper, Policy Division, International Bureau, at (202) 418-1460.

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