

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Foreign Carrier Affiliation Notifications of)	IB Docket No. 11-57
AST Telecom, LLC, American Samoa)	
Hawaii Cable, LLC, Samoa American Samoa)	FCN-NEW-20110315-00002
Cable, LLC, and American Samoa License,)	FCN-NEW-20110316-00003
Inc.)	

**COMMENTS OF
AMERICAN SAMOA TELECOMMUNICATIONS AUTHORITY**

American Samoa Telecommunications Authority (“ASTCA”)¹ submits these comments in response to the *Public Notice* issued in the above-referenced proceeding.² As described in the *Public Notice*, AST Telecom, LLC, d/b/a Blue Sky Communications (“Blue Sky”) recently acquired control of SamoaTel Limited (“SamoaTel”).³ SamoaTel is the dominant wireline provider in the Independent State of Samoa (“Samoa”), owns and controls the cable landing station for the only undersea cable connecting Samoa with the U.S., and is “Samoa’s largest provider of Telecommunications products and services.”⁴ In connection with this acquisition,

¹ ASTCA provides wireline and wireless telecommunications services in American Samoa. ASTCA is governed by a Board of Directors and owned by the Government of American Samoa.

² *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*, Public Notice, DA 11-597, IB Docket No. 11-57 (rel. April 4, 2011) (“*Public Notice*”). Due to a government holiday in American Samoa and the unavailability of key ASTCA personnel due to travel, ASTCA was unable to file these comments by the April 18, 2011 date set in the Public Notice for initial comments. ASTCA is serving Blue Sky’s counsel with an electronic copy of these comments to ensure Blue Sky’s timely awareness of this filing in the docket.

³ The transaction closed as expected on March 31, 2011. See “Blue Sky and Samoa Government Close SamoaTel Deal,” samoanews.com (Mar. 31, 2011), available at www.samoanews.com/viewstory.php?storyid=25170.

⁴ See “Welcome to SamoaTel,” available at www.samoatel.ws.

Blue Sky and certain of its affiliates (collectively, the “Blue Sky Entities”), through the filing of two foreign carrier affiliation notifications (“FCNs”),⁵ seek a determination that Samoa offers effective competitive opportunities for U.S. investors and carriers to land and operate undersea cables and to provide facilities-based and resale telecommunications in Samoa – *i.e.*, that Samoa passes the Commission’s “ECO Test.”⁶ In particular, the Blue Sky Entities seek to be regulated as non-dominant on the U.S.-Samoa route.⁷

ASTCA urges careful Commission review of the FCNs, consistent with the principles and competition concerns articulated in the Commission’s *Foreign Participation Order*.⁸ As the Commission explained there, “our primary competitive concern in this proceeding is preventing carriers that control bottleneck facilities in foreign countries from using those bottlenecks to discriminate against unaffiliated U.S. carriers. Our experience ... indicates that there can be significant risks to competition when a U.S. carrier owns a controlling interest in a foreign carrier with market power.”⁹

Such concerns should particularly apply here. In addition to SamoaTel’s undisputed dominance in the market for fixed local termination,¹⁰ Blue Sky and its affiliates now control

⁵ See FCN-NEW-20110316-00003 (the “Cable Licensees FCN”) and FCN-NEW-20110315-00002 (the “ASLI FCN”).

⁶ See *Public Notice* at 2.

⁷ See Cable Licensees FCN at 10-11; ASLI FCN at 9.

⁸ See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891 ¶ 140 (1997) (“*Foreign Participation Order*”).

⁹ *Id.*

¹⁰ See *Public Notice* at 3. Moreover, ASTCA notes that Samoan government policy establishes that “all International Gateway Services Licensees shall be deemed to be dominant in relation to the provision of international services ... until such time, if any, when the Regulator formally determines otherwise.” See Ministry of Communications & Information Technology, “Government Policy on International Gateway (IGW) Services” (Mar. 5 2009) at § 3.1.5., available at www.mcit.gov.ws/Portals/161/Publications/Policy/GOVERNMENT%20POLICY%20ON%20INTERNATIONAL%20GATEWAY%20%28IGW%29%20SERVICES%20AS%20AT%2005%20MARCH%2009.pdf. Thus, absent evidence that the Regulator has made such a determination, SamoaTel should be considered dominant with regard to international services.

connections on both ends of the only cable connecting Samoa and American Samoa. Samoa-originating traffic bound for ASTCA customers must pass through Blue Sky's cable terminal equipment in American Samoa before interconnecting with ASTCA's network. Likewise, traffic on the cable bound for Samoa must pass through SamoaTel (now Blue Sky-owned) facilities before terminating either with SamoaTel or Digicel Samoa (a competing wireless provider) customers.¹¹ Due to the historically close cultural, language and economic ties between American Samoa and Samoa, ASTCA originates and terminates more traffic to/from Samoa than any other international destination.¹²

Given the significance of the American Samoa-Samoa route, the Commission should proceed cautiously and should take any action necessary to safeguard competition, including by classifying the Blue Sky Entities as dominant on the U.S.-Samoa route. The reports and other obligations required of dominant carriers can help identify any potential future anti-competitive behavior.¹³ Moreover, such a result would be fully consistent with well-established Commission precedent. In ruling on ECO Test showings involving foreign carriers that have dominant status in their home markets, the Commission routinely imposes dominant carrier regulation on the affiliated U.S. carrier with regard to routes between the U.S. and the foreign market at issue.¹⁴

¹¹ The ability to monitor and address any potential anti-competitive behavior with regard to traffic transiting the cable is further lessened by the fact that the Commission granted non-common carrier status to the cable, based on an argument by the cable licensee that it would lack market power. *See Actions Taken Under Cable Landing License Act*, Report No. SCL-00080, Public Notice, 24 FCC Rcd. 226 (Pol. Div., IB 2009).

¹² Currently, all Samoa traffic bound for ASTCA from SamoaTel and Digicel is routed through Blue Sky on the cable. However, ASTCA continues to use a pre-existing microwave link to route ASTCA traffic bound for Samoa. As is the case with the cable landing station, SamoaTel controls the microwave facilities on the Samoa end of the link.

¹³ *See* 47 C.F.R. § 63.10(c)-(e).

¹⁴ *See, e.g., Cable & Wireless*, Order, Authorization, and Certificate, 14 FCC Rcd 1863 (1998); *PLD Telekom Inc.*, Order, Authorization, and Certificate, 13 FCC Rcd 9505 (1998) (for Sakhalin Island region); *Telefónica Larga Distancia de Puerto Rico, Inc.*, Memorandum Opinion, Order, and

Indeed, with regard to dominant foreign carriers in non-WTO countries, ASTCA is aware of no cases, and the FCNs cite no cases, where the Commission has applied non-dominant classification to the affiliated U.S. carrier. The FCNs have failed to present adequate justification for departing from this precedent here.

Respectfully Submitted,

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Authorization, 13 FCC Rcd 9483 (1998) (for Peru, Chile, and Argentina); *Telecom New Zealand Limited*, Order, Authorization, and Certificate, 12 FCC Rcd 19379 (1996).