

**American Samoa Telecommunications
Authority
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in reply refer to:

Serial: 55-11
ASTCA: 11

May 5, 2011

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

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

Dear Ms. Dortch:

American Samoa Telecommunications Authority (“ASTCA”) submits this *ex parte* letter to update the Commission on developments since the filing of ASTCA’s comments in the above-referenced proceeding.¹ In its comments, ASTCA urged the Commission to carefully review the Foreign Carrier Affiliation Notifications (“FCNs”) filed by AST Telecom, LLC, d/b/a Blue Sky Communications and its affiliates (“Blue Sky Entities”) and to classify the Blue Sky Entities as dominant on the U.S-Samoa route, given that the American Samoa-Samoa route is especially vulnerable to anti-competitive behavior.

Blue Sky acquired control of SamoaTel Limited (“SamoaTel”) on March 31, 2011.² Adolfo Montenegro, the President and CEO of Blue Sky, assumed the position of CEO and Chairman of SamoaTel. Eleven days later, SamoaTel provided an international settlements

¹ See Comments of American Samoa Telecommunications Authority, IB Docket No. 11-57 (April 21, 2011) (“ASTCA Comments”).

² The Blue Sky Entities obtained Special Temporary Authority because the FCNs were not filed at least 45 days prior to the acquisition as required under the Commission’s rules. See File No. SCL-STA-20110315-00007. ASTCA notes that in an earlier transaction involving the transfer of control of the Blue Sky Entities, applications for Commission consent were not filed until almost a year after the transaction closed. An Enforcement Bureau investigation resulted in the adoption of a Consent Decree. See *AST Telecom, LLC d/b/a/ Blue Sky Communications*, File No. EB-10-IH-2090, Order, DA 11-60 (rel. April 18, 2011).

statement and invoice to ASTCA that, according to SamoaTel's correspondence, was "based on our perception of your expected traffic declaration" for calendar year 2010. The correspondence demanded payment within 14 days and warned that "[f]ailure to make payment by the due date will result in disconnection"³

Despite a request from ASTCA for additional time to review SamoaTel's "perception" of the 2010 traffic, on April 27, 2011, SamoaTel proceeded with a partial disconnection, prevented ASTCA-originating traffic from reaching the network of Digicel Samoa ("Digicel"), the competing wireless provider in Samoa. As a result, ASTCA has been forced to reroute traffic bound for Digicel customers through New Zealand. Currently, SamoaTel continues to terminate traffic bound for its own customers in Samoa.

ASTCA competes against Blue Sky in the market for wireless communications services in American Samoa. As ASTCA noted in its Comments, the primary concern underlying the Commission's foreign carrier affiliation rules is "preventing carriers that control bottleneck facilities in foreign countries from using those bottlenecks to discriminate against unaffiliated U.S. carriers. ... [T]here can be significant risks to competition when a U.S. carrier owns a controlling interest in a foreign carrier with market power."⁴ The recent action by Blue Sky-owned SamoaTel is a classic illustration of how foreign bottleneck facilities can be used to disadvantage an unaffiliated U.S. carrier. ASTCA and SamoaTel, and their predecessors, have been doing business together for the past 40 plus years, however, this is the first time that a billing dispute between the carriers has resulted in disconnection. While there can certainly be legitimate disputes between U.S. and foreign carriers regarding international settlement amounts, the timing of SamoaTel's action – coming within the first month after the acquisition – suggests that its new owners were not simply executing a disconnection that was planned by the prior management. Moreover, it is telling that Blue Sky decided to interrupt traffic from its only wireless competitor in American Samoa bound for its only wireless competitor in Samoa, while choosing not to inconvenience its own customers who could have been prevented from receiving calls from friends and family who are ASTCA subscribers, had SamoaTel undertaken a full disconnection.

³ ASTCA has disputed SamoaTel's calculations based on a number of different factors.

⁴ 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*").

ASTCA is not asking the Commission to intervene in ASTCA's international settlements dispute with SamoaTel in this proceeding, but is simply asking that SamoaTel's recent action, under Blue Sky's management, be taken into consideration as the Commission decides whether to impose dominate carrier regulation on the Blue Sky Entities.

Respectfully Submitted,



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