

FOREIGN CARRIER AFFILIATION OF AMERICAN SAMOA LICENSE, INC.

I. INFORMATION REQUIRED BY 47 C.F.R. § 63.11: PRE-CONSUMMATION FOREIGN CARRIER AFFILIATION NOTIFICATION

A. Name of the newly affiliated foreign carrier and the country or countries in which it is authorized to provide telecommunications services to the public;¹

American Samoa License, Inc. (“ASLI”) proposes to become affiliated with SamoaTel Limited (“SamoaTel”). SamoaTel is authorized to provide telecommunications services in the Independent State of Samoa (“Independent Samoa”). On January 21, 2011, ASLI’s direct parent company, AST Telecom, LLC, d/b/a Blue Sky Communications (“Blue Sky”), 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. (“BSI”), which will, upon consummation, directly own 75 percent of SamoaTel’s shares outstanding.

B. WTO Status of Destination Country²

Independent Samoa is not a WTO Member. Although Independent Samoa has applied for WTO membership, it is currently a WTO observer.³

¹ 47 C.F.R. § 63.11(e)(1).

² 47 C.F.R. § 63.11(e)(2).

³ See World Trade Organization, Accession Status: Samoa, *available at* http://www.wto.org/english/thewto_e/acc_e/a1_samoa_e.htm.

C. Services the Authorized Carrier is Authorized to Provide to Each Named Country, and the FCC File Numbers under which Each Such Authorization was Granted⁴

ASLI holds an international Section 214 authorization for global or limited global facilities-based service (FCC File No. ITC-214-19981207-00860) and an international section 214 authorization for global resale service (FCC File No. ITC-214-19980918-00671).⁵

D. Countries that ASLI Serves Solely Through the Resale of the International Switched Services of Unaffiliated U.S. Facilities-Based Carriers⁶

None.

E. Name, Address, Citizenship, and Principal Business of Any Person or Entity that Directly or Indirectly Owns at Least Ten (10) Percent of the Equity of ASLI, and the Percentage of Equity Owned by Each of Those Entities (to the Nearest One Percent)⁷

1. Existing Ownership of ASLI

ASLI is a wholly-owned, direct subsidiary of **Blue Sky**, a Delaware limited-liability company. Blue Sky's address is:

P.O. Box 478, Pago Pago
American Samoa 96799

⁴ 47 C.F.R. § 63.11(e)(3).

⁵ Public Notice, *Overseas Common Carrier Section 214 Applications and Section 310(b)(4); Actions Taken*, Report No. TEL-00059, 14 FCC Rcd. 4996 (1999); Public Notice, *Overseas Common Carrier Section 214 Applications and Section 310(b)(4); Actions Taken*, Report No. TEL-00031, 13 FCC Rcd. 22,621 (1998).

⁶ 47 C.F.R. § 63.11(e)(4).

⁷ 47 C.F.R. § 63.11(e)(5).

Blue Sky's principal business is providing communications services in American Samoa. Blue Sky is a wholly-owned, direct subsidiary of **eLandia International, Inc.** ("eLandia"), a Delaware corporation. eLandia's address is:

8200 NW 52nd Terrace, Suite 102
Miami, Florida 33166

eLandia is a diversified holding company with investments in the information technology and communications sectors. eLandia is currently controlled by **Pete R. Pizarro** through a voting trust, described below. Mr. Pizarro is also an individual shareholder of eLandia, holding approximately 2.75 percent of the issued and outstanding common shares of eLandia. Mr. Pizarro is the Chief Executive Officer of eLandia, and is a U.S. citizen. Mr. Pizarro's address is:

c/o eLandia International, Inc.
8200 NW 52nd Terrace, Suite 102
Miami, Florida 33166

The **Voting Trust** was established as part of eLandia's capital structure reorganization in February 2009. That transaction replaced Stanford International Bank Limited ("SIBL") as the majority owner of eLandia. SIBL was issued Voting Trust Certificates in exchange for SIBL's shares of eLandia. SIBL has become subject to a receivership imposed by the United States District Court for the Northern District of Texas in connection with a lawsuit by the Securities and Exchange Commission. The Receiver has "complete and exclusive control, possession, and custody" of "the assets, monies, securities, properties, real and personal, tangible and intangible, or whatever kind and description, wherever located" of SIBL.⁸ The Receiver confirmed by letter dated June 2, 2009, to Pete Pizarro that "the assets and business operations of eLandia and its

⁸ See Amended Order Appointing Receiver, *Securities and Exchange Commission v. Stanford Int'l Bank, Ltd.*, Case No. 3-09-cv-0298-N (N.D. Tex Mar. 12, 2009.), ¶¶ 1, 4.

subsidiaries are *not* part of the Receivership Estate. The Voting Trust Certificates are, however, a part of the Receivership Estate.”⁹ The Voting Trust now holds 44.75 percent of the common stock of eLandia, and also holds non-voting preferred stock of eLandia. Under the Voting Trust, Mr. Pizarro is given discretion to vote the eLandia common stock held by the Voting Trust on most matters (and the Voting Trust Agreement sets forth voting requirements on the other matters). Because Mr. Pizarro individually also owns 2.75 percent of the outstanding common stock of eLandia, Mr. Pizarro now exercises the right to vote 47.50 percent of the voting shares of eLandia, and has control of eLandia pursuant to the Communications Act of 1934, as amended, and the Commission’s rules and regulations.¹⁰

The Voting Trust agreement provides that Mr. Pizarro, as trustee, has both the “duty” and “the full power and authority” to vote the shares in the Voting Trust as in the judgment of the trustee may be for the best interest of eLandia “at all meetings of the stockholders” of eLandia and “all actions to be taken by written consent of the stockholders” on any and all matters and questions which may be brought before such meetings, including “in the election of directors.”¹¹ The only limitation imposed by the Voting Trust on Mr. Pizarro’s voting power is a requirement that Mr. Pizarro vote the shares in trust in the same proportion as the holders of the remaining outstanding shares of common stock present and voting at any meeting of the stockholders with

⁹ See Letter from Ralph S. Janvey, Receiver, to Pete R. Pizarro, CEO, eLandia International, Inc. (June 2, 2009) (emphasis added), *filed as attachment to SEC Form 8-K* filed by eLandia International, Inc. (June 3, 2009).

¹⁰ See *Stratos Global Corporation, Transferor, Robert M. Franklin, Transferee, Consolidated Application for Consent to Transfer of Control*, Memorandum Opinion and Order and Declaratory Ruling, 22 FCC Rcd. 21,328 (Dec. 7, 2007) (holding that trustee with the power to vote shares is deemed to control shares in trust).

¹¹ Voting Trust Agreement § 4.2(a).

respect to the sale of eLandia whether by merger, consolidation, sale of all or substantially all the assets, or other similar transaction and with respect to certain increases to the amount of shares issuable pursuant to a stock option or other equity plan.¹² Because Mr. Pizarro possesses voting control of the shares deposited by SIBL in the Voting Trust, he is deemed to control those shares.¹³ Following the consummation of the Proposed Acquisition (described below), Mr. Pizarro will individually own and control 0.42 percent of the voting stock of eLandia.

2. Pending Transfer of Control of ASLI

On July 29, 2010, eLandia entered into an agreement (“Contribution Agreement”) with Amper, whereby **Amper S.A.** (“Amper”) will acquire approximately 84.88 percent of eLandia’s issued and outstanding shares and, upon closing, indirectly control ASLI (“Proposed Acquisition”). Following the consummation of the Proposed Acquisition, ASLI will continue to exist as an indirect subsidiary of Amper. eLandia, ASLI, Amper, and other affiliates have received Commission consent to the transfers of control embodied in the Proposed Acquisition.¹⁴

Pursuant to the Contribution Agreement, Amper will acquire 165,705,913 shares of eLandia’s newly issued common stock in exchange for the contribution to eLandia by Amper of approximately 90 percent of the outstanding capital stock of Hemisferio Norte, S.A. (“Hemisferio”). Hemisferio owns 100 percent of Hemisferio Sul Participações Ltda.

¹² *Id.* § 4.2(b).

¹³ Mr. Pizarro may not be terminated as trustee by SIBL. Mr. Pizarro will cease to be trustee when he ceases to be the Chief Executive Officer of eLandia, or upon his resignation, death, disability, bankruptcy, or breach of the Voting Trust. *See id.* § 6.1.

¹⁴ *See* IB Docket No. 10-229; FCC File Nos. ITC-T/C-20101025-00425, SCL-T/C-20101022-00024, SCL-T/C-20101022-00025, SCL-T/C-20101022-00026, ISP-PDR-20101022-00019; ULS Application Nos. 0004430192, 0004430196.

(“Hemisferio Sul”), which owns 88.96 percent of Medidata Informática, S.A. (“Medidata”), which owns 100 percent of XC Comercial e Exportadora Ltda. (“XC,” with Hemisferio, Hemisferio Sul, and Medidata, the “Contributed Entities”). The shares of eLandia’s common stock being issued to Amper will represent approximately 84.88 percent of eLandia’s issued and outstanding shares of common stock following the closing of the transactions contemplated by the Contribution Agreement.¹⁵

In addition, the Contribution Agreement grants eLandia an option to buy Amper’s remaining interest in Hemisferio in exchange for an option price of \$8.9 million, payable by the issuance of shares of eLandia common stock at a price per share equal to the fair market value of a share of eLandia common stock as of the date of the exercise of the option (“Hemisferio Option”). eLandia may exercise the Hemisferio Option within six months of the closing of the Proposed Acquisition. eLandia’s exercise of the Hemisferio Option would significantly increase Amper’s ownership of eLandia.

The Proposed Acquisition will not terminate the ownership interests of eLandia’s current shareholders. Rather, the current shareholders’ ownership shares will be diluted by eLandia’s newly-issued common stock. The Voting Trust also currently holds non-voting preferred stock of eLandia, which will convert to common shares of eLandia as part of the Proposed Acquisition.¹⁶ In addition, pursuant to the Voting Trust agreement, following the Proposed Acquisition, the Voting Trust will terminate, and ownership of the shares previously held by the

¹⁵ For further detail and pre- and post-close ownership diagrams, please see the applications filed in IB Docket No. 10-229.

¹⁶ SIBL holds Voting Trust Certificates which entitle SIBL to dividends and distributions from eLandia, if any, in respect of the shares SIBL deposited in the Voting Trust.

Voting Trust will revert to SIBL.¹⁷ The Receiver will have “complete and exclusive control, possession, and custody” of those shares.¹⁸

Amper is a Spanish *sociedad anónima*, i.e., corporation. It operates as a Spanish holding company whose shares trade publicly on the Madrid Stock Exchange under the symbol AMP.

Amper’s operating units concentrate in three sectors: telecommunications, defense, and homeland security. Neither Amper nor any of its existing subsidiaries is a telecommunications carrier in any market. Amper’s address is:

Calle Marconi, 3
Parque Tecnológico Madrid
28760 Tres Cantos Madrid
Spain

Following consummation of the Proposed Acquisition, Amper will hold a direct 84.88 percent interest in eLandia, and an indirect 84.88 percent interest in ASLI.

Amper’s only 10-percent-or-greater shareholder is **Tvikap AB** (“Tvikap”). Tvikap is a Swedish *aktiebolaget*, i.e., corporation. Tvikap’s address is:

Höllandargatan 27
SE 113 59 Stockholm
Sweden

Tvikap’s principal business is managing investments for institutional and private clients. Tvikap is privately held, owned by more than forty (40) corporate and individual investors and has no majority or controlling owner. Tvikap owns 22.011 percent of Amper’s shares. Following

¹⁷ Voting Trust Agreement §§ 7, 8.

¹⁸ See Amended Order Appointing Receiver, *Securities and Exchange Commission v. Stanford Int’l Bank, Ltd.*, Case No. 3-09-cv-0298-N (N.D. Tex Mar. 12, 2009), ¶ 4.

consummation of the Proposed Acquisition, Tvikap will hold, on a fully-diluted basis, an indirect 18.68 percent interest in eLandia, and an indirect 18.68 percent interest in ASLI.

F. No-Special-Concessions Certification¹⁹

By the signature below, ASLI certifies that it has not agreed, and will not in the future agree, to access special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses market power on the foreign end of the route.

G. Names of Any Interlocking Directorates with SamoaTel²⁰

ASLI and SamoaTel do not have any interlocking directorates.

H. Basis of Notification and Projected Closing Date²¹

This notification is made pursuant to 47 C.F.R. 63.11(a)(1), as an entity (Blue Sky) which owns more than 25 percent of the capital stock of, and controls, ASLI, has entered into an agreement to acquire a controlling interest in a foreign carrier (SamoaTel) that is authorized to operate in a market (Independent Samoa) that the carrier (ASLI) is authorized to serve. ASLI expects Blue Sky's acquisition of SamoaTel to close on March 31, 2011.

¹⁹ 47 C.F.R. § 63.11(e)(6).

²⁰ 47 C.F.R. §§ 63.11(e)(7), 63.09(g).

²¹ 47 C.F.R. § 63.11(e)(8).

I. Dominant/Non-Dominant Status

During the pendency of this foreign carrier affiliation notification, ASLI has agreed, upon grant of special temporary authority (“STA”), to be regulated as dominant on the U.S.-Independent Samoa route. Nevertheless, upon approval of this foreign carrier affiliation and cancellation or expiration of the STA, ASLI seeks to be regulated as non-dominant on the U.S.-Independent Samoa route, as SamoaTel lacks sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market.

But for SamoaTel’s market share in the market for fixed local termination (discussed further below), the Cable Landing Licensees would qualify for a presumption of non-dominance on the U.S.-Independent Samoa route. The other relevant markets specified in 47 C.F.R. § 63.10(a) are not at issue. There is no distinct market for intercity services given the tiny market of Independent Samoa. As for the market for international facilities and services, Digicel and the Internet service provider CSL have full access to SamoaTel’s cable station at Apia, as required by the Samoa Regulator²² and operate their own international gateways. Moreover, ASLI estimates that Digicel Samoa holds approximately 60 percent market share for international telecommunications services, whereas SamoaTel holds approximately 35 percent of that market.

Even in the market for local termination in Independent Samoa, however, SamoaTel lacks market power as defined by the Commission. In evaluating market power on the foreign

²² See Individual Licence Granted by the Regulator Under the Telecommunications Act 2005 to American Samoa Hawaii Cable, LLC, for the Establishment and Operation of a Submarine Cable System in Samoa, to Be Known as the Samoa-American Samoa Cable System § 10.1 (May 2009).

end of the route which could affect competition adversely in the U.S. market, the Commission focuses on:

(1) the foreign incumbent's market share in the relevant terminating market on the foreign end of the particular route; (2) the supply elasticity of the market; (3) the demand elasticity of the market's customers; and (4) the foreign incumbent's cost structure, size, and resources. In evaluating market power, the Commission has recognized that neither market share, by itself, nor lower costs, sheer size, superior resources, financial strength, and technical capability, by themselves, confer market power. Indeed, the Commission has stated that, consistent with well-accepted economic principles, market conditions related to demand and supply elasticities are the more crucial determinants of a firm's market power. These conditions include the availability of close demand substitutes and ease of entry and expansion.²³

With respect to the first factor, SamoaTel's market share in Independent Samoa's market for local termination is small and has been shrinking. The predominant mode of communications in Independent Samoa is mobile, rather than fixed. Independent Samoa's mobile sector is dominated by Digicel Samoa, with more than 80 percent market share. By ASLI's estimate, Digicel Samoa has more than 50,000 (mobile) subscribers, whereas SamoaTel has approximately 12,000 fixed subscribers and 13,000 mobile subscribers.

With respect to the second factor, the Independent Samoa market for local termination is characterized by significant supply elasticity. "Supply elasticity" is "a measure of the aggregate propensity of firms to expand output of a commodity given an increase in the commodity's price. Two factors determine supply elasticity in a market. The first is the supply capacity of existing

²³ *Americatel Corporation and Telecom Italia of North America, Inc.; Application to Modify Regulatory Classification From Dominant to Non-Dominant on the U.S.- Brazil Route, Memorandum Opinion and Order*, 19 FCC Rcd. 9672, 9683-84, ¶ 20 (Int'l Bur. 2004) ("Americatel Brazil Order").

competitors, and the second is low market entry barriers.”²⁴ In a mere three years, Digicel Samoa has captured more than 80 percent of the Independent Samoa mobile market and more than 70 percent of the local market (accounting for both fixed and mobile services). Moreover, as noted in parts II.A and B below, Independent Samoa has low market-entry barriers.

With respect to the third factor, the Independent Samoa market for local termination is characterized by significant demand elasticity. “Demand elasticity” is “a measure of the propensity of an incumbent’s customers to switch carriers or otherwise change the amount of service that they purchase from an incumbent in response to given changes in price and quality.”²⁵ In a mere four-and-a-half years, Digicel Samoa’s subscriber based has swelled from 10,000 to 50,000, including many former SamoaTel subscribers.

With respect to the fourth factor, SamoaTel’s cost structure, size, resources and financial strength, and technical capabilities do not confer advantages constituting market power. Most importantly, SamoaTel does not receive subsidies from the Independent Samoa Government. For these reasons, ASLI believes that it qualifies for non-dominant regulation on the U.S.-Independent Samoa route.

²⁴ *Americatel Corporation and Telecom Italia of North America, Inc.; Application to Modify Regulatory Classification from Dominant to Non-Dominant on the U.S.-Argentina Route, Memorandum Opinion and Order*, 18 FCC Rcd. 26,811, 26,820-21 ¶ 16 n.81 (Int’l Bur. 2003) (“*Americatel Argentina Order*”).

²⁵ *Id.* at 26,821 ¶ 16 n.82.

II. INFORMATION REQUIRED BY 47 C.F.R. § 63.18(K)(3): EFFECTIVE COMPETITIVE OPPORTUNITIES SHOWING

The public interest would be served in allowing ASLI to operate on the U.S.-Independent Samoa route. Independent Samoa has a well-developed regulatory framework to safeguard competition and allow U.S. carriers and investors to enter the Independent Samoa markets for facilities- and resale-based telecommunications services.

A. Background on the Independent Samoa Telecommunications Market and Regulatory and Investment Environments

In 2005, Independent Samoa adopted the Telecommunications Act 2005, liberalizing the Independent Samoa telecommunications market and opening it to competition.²⁶ As detailed below, the Telecommunications Act establishes a transparent and enforceable framework for market entry, competition, regulation of market dominance, interconnection, and a host of other sectoral matters.

The Telecommunications Act also established the Office of the Regulator (“Regulator”) as an independent and impartial regulator and tasks it with, among other responsibilities: granting individual licenses; fostering cost-based interconnection and competition in the telecommunications sector; enforcing prohibitions on abuse of dominant market position and on other anticompetitive activities; managing and licensing the radio spectrum; administering Independent Samoa’s national numbering plan; ensuring protection of consumers and their network information; and resolving telecommunications-related disputes. The Regulator is

²⁶ See Telecommunications Act (No. 20) 2005, as amended (“Telecommunications Act”), attached as Exhibit 1 to this notification and *available at* www.regulator.gov.ws/LegalFramework/TelecommunicationsAct/tabid/2978/language/en-US/Default.aspx.

independent of the Minister of Communications and Information Technology (“Minister”).

Although the Regulator provides policy advice to the Minister, the Regulator (and not the Minister) retains responsibility for licensing and market-entry-related matters.²⁷

The Telecommunications Act prohibits a dominant service provider from abusing its dominant market position—particularly the interconnection-related obligations discussed in part II.D below.²⁸ The Regulator is charged with regulating such abuses of dominant market position, whether *sua sponte* or in response to a complaint,²⁹ and has exercised its powers to do so, as detailed in part II.F below. Moreover, the Telecommunications Act establishes a variety of remedies to be imposed at the Regulator’s discretion upon a finding of abuse of dominant market position.³⁰

Independent Samoa maintains a very open approach to foreign investment. It does not impose foreign investment restrictions in the telecommunications sector, much less particular restrictions for classes or types of service.³¹

²⁷ See Telecommunications Act §§ 8, 22. The Minister retains particular responsibility with respect to universal access and the universal access fund, *see id.* §§ 21, 22, and also makes interim appointments until a new Regulator is appointed by Independent Samoa’s head of state, *see id.* § 6(4).

²⁸ See Telecommunications Act § 27.

²⁹ See Telecommunications Act § 29.

³⁰ See Telecommunications Act § 30.

³¹ See Foreign Investment Act (No. 3) 2000, as amended (“Foreign Investment Act”), available at www.samoa.ws/parliament/documents/acts/FOREIGN_INVESTMENT_ACT_2000_-_ENGLISH.pdf, attached as Exhibit 2 to this notification. Foreign investment is barred only in the following sectors: buses for transportation of the general public; taxis; vehicles for hire; retailing; and sawmilling. *See id.*, Schedule – Reserved List. Foreign investment is also limited to 40 percent for fishing vessels with shareholders. *See* Ministry of Commerce, Industry and Labour (“MCIL”), *Information Booklet on Procedures for Setting Up a*

For such a small country (Independent Samoa has an estimated population of 179,000), Independent Samoa has a robust telecommunications services sector. The Regulator has licensed a variety of services providers in addition to incumbent SamoaTel, which does not hold a legal monopoly for the provision of any category of service. These licensees include two additional international gateway operators, Digicel (Samoa) Limited (“Digicel Samoa”) and WiMAX Samoa Limited. Digicel Samoa provides a good example of Independent Samoa’s openness to foreign investment. Jamaica-based Digicel Limited (ultimately owned by Irish investors) acquired its 90-percent stake in what is now known as Digicel Samoa from Telecom New Zealand. The remaining 10-percent interest is owned by Fletcher Construction of New Zealand. Digicel Samoa also offers its DigiFixed service—treated by the Regulator as a hybrid fixed-mobile service—in competition with SamoaTel’s local fixed offering.

B. Under Independent Samoa’s Telecommunications Regulatory Framework, U.S. Carriers are Permitted to Enter Independent Samoa to Provide Facilities-Based International Services, Including International Message Telephone Service

U.S. carriers have the legal ability to enter the Independent Samoa market to provide facilities-based international services, including international message telephone service (“IMTS”). The Telecommunications Act requires a license for the provision of facilities-based international services but does not impose limitations on the number of licenses or licensees or foreign ownership in licensees.³² The Regulator has promulgated detailed rules setting forth

Business, at 3 (Feb. 2007), available at www.mcil.gov.ws/idipd/forms/setup_information_booklet.pdf.

³² See Telecommunications Act §§ 12-17.

license application criteria and application processing timeframes.³³ The Licensing Rules do not impose limitations on the number of licenses or licensees or foreign ownership in licensees.³⁴

Foreign investors, including foreign investors in the telecommunications sector, must obtain a Foreign Investment Certificate from the Independent Samoa Ministry of Commerce, Industry and Labour.³⁵ The MCIL has previously granted such certificates to foreign investors in Independent Samoa's telecommunications market.³⁶ ASLI therefore believes that its showing satisfies the requirements of Section 63.18(k)(3)(i) of the Commission's rules.³⁷

C. Under Independent Samoa's Telecommunications Regulatory Framework, U.S. Carriers are Permitted to Enter Independent Samoa to Provide Resale-Based International Services, Including Switched and Non-Interconnected Private Line Services

U.S. carriers have the legal ability to enter the Independent Samoa market to provide resale-based international services, including resale-based international switched services and non-interconnected private line services. As noted in response to part II.B above, the Telecommunications Act and Licensing rules require a license for the provision of resale-based international services (including switched and non-interconnected private-line services) but do not impose limitations on the number of licenses or licensees or foreign ownership thereof. Also

³³ See Rules for the Licensing of Telecommunications Services and the Ownership or Operation of Telecommunications Networks in Samoa (effective Mar. 21, 2006) ("Licensing Rules"), attached as Exhibit 3 to this notification.

³⁴ See *id.*

³⁵ See Interim Guidelines: Application for a Foreign Investment Certificate in Samoa, available at www.mcil.gov.ws/idipd/forms/guidelines_FIC_app.pdf and attached as Exhibit 4 to this notification.

³⁶ For example, Digicel Samoa received such a certificate in connection with its acquisition of Telecom Samoa Cellular Limited.

³⁷ See 47 C.F.R. § 63.11(k)(3)(i).

as noted above, Independent Samoa allows foreign investment of up to 100 percent in a provider of resale-based international switched services and non-interconnected private line services. ASLI therefore believes that its showing satisfies the requirements of Section 63.18(k)(3)(ii) of the Commission's rules.³⁸

D. Independent Samoa's Telecommunications Regulatory Framework Mandates 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

Independent Samoa's telecommunications regulatory framework mandates 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. Independent Samoa has adopted and implemented a transparent, pro-competitive interconnection regime focused on preventing abuses of dominant market position.

At the most general level, the Telecommunications Act tasks the Regulator with promoting "adequate, efficient and cost-oriented interconnection of telecommunications networks and access by service providers to telecommunications facilities of other service providers" and to establish an open, non-discriminatory and commercially viable regulatory framework for interconnection and access with a view to minimizing regulatory and other barriers to entry into telecommunication markets."³⁹ The Telecommunications Act directs the

³⁸ See 47 C.F.R. § 63.11(k)(3)(ii).

³⁹ See Telecommunications Act § 32.

Regulator to impose interconnection arrangements and rates in the event that private negotiations fail and to resolve interconnection disputes among service providers.⁴⁰

Independent Samoa's regulatory framework includes many detailed legal requirements for interconnection:

- ***Duty to Negotiate in Good Faith.*** Upon receipt of a written request by another service provider, a service provider must enter into good-faith negotiations to enter into an interconnection agreement to “connect and keep connected the telecommunications networks of both service providers” and “provide access to such telecommunications facilities, including but not limited to central offices and other switching equipment locations, mast sites, towers, poles, subscriber access lines and underground facilities, as are reasonably requested in order for the service providers to provide telecommunications to their customers.”⁴¹
- ***Deemed Violations of Duty to Interconnect.*** The Telecommunications Act deems the following acts and omissions as violations of the duty to negotiate in good faith to interconnect:
 - (a) obstructing or delaying negotiations, or failing to make reasonable efforts to resolve outstanding disputes; (b) refusing to provide information about a service provider's own telecommunications services or telecommunications network or other facilities that are necessary for the interconnection arrangements; (c) misleading or coercing a party into reaching an agreement the party would not otherwise have made; (d) interfering in any way with a service provider's ability to communicate with the Regulator, including having a service provider sign a nondisclosure agreement that precludes the service provider from providing

⁴⁰ *See id.*

⁴¹ *See* Telecommunications Act § 33.

information requested by the Regulator; or (e) refusing to permit amendment of the interconnection agreement to take into account changes in circumstances, including changes to this Act, a regulation or rule.⁴²

- ***Requests for Interconnection.*** Interconnection arrangements offered by a dominant service provider must comply with the Telecommunications Act and any rules and policies developed by the Regulator. Such offers must “be no less favourable than any reference interconnection offer that has been approved by the Regulator for the service provider.” The dominant service provider must “meet all reasonable requests for interconnection with the dominant service provider’s telecommunications network at any technically feasible point” and “in all other respects, incorporate reasonable terms and conditions, including technical standards and specifications.” A dominant service provider must: apply “similar conditions to all interconnecting service providers under similar circumstances;” 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, or those of the dominant service provider’s affiliates;” make “available on request all necessary or reasonably required information and interconnection;” and use only “information received from a service provider seeking interconnection for the purposes for which such

⁴² *See id.* The Telecommunications Act further defines as abuses of dominant market position the “failing to supply essential facilities to a competitor within a reasonable time after a request and on reasonable conditions, or discriminating in the provision of interconnection or other telecommunications service providers; except under circumstances that are objectively justified based on differences in supply conditions, including different costs or a shortage of available facilities or resources” and the “failing to comply with the interconnection obligations of a dominant service provider specified in Part VII” of the Telecommunications Act. *See id.* § 29.

information was supplied and does not disclose the information or otherwise use the information to obtain a competitive advantage.”⁴³

- ***Interconnection Charges.*** A dominant service provider must maintain cost-based interconnection charges. Such charges must comport with the Telecommunications Act and any rules and policies developed by the Regulator, “including any pricing, costing and cost separation guidelines established by order of the Regulator.” The Regulator may, at its discretion, require advance approval for a dominant service provider’s interconnection charges.⁴⁴
- ***Reference Interconnection Offers.*** A dominant service provider must prepare a reference interconnection offer (“RIO”) for approval by the Regulator within the time period specified by order of the Regulator. The RIO must include a full list of services to be supplied to service providers, setting out the associated terms and conditions, including the charges for each service. The dominant service provider must periodically update its RIO. The RIO must comply with the Telecommunications Act and any rules and policies developed by the Regulator.⁴⁵
- ***Publication of Interconnection Agreements.*** A dominant service provider 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 web site.⁴⁶

⁴³ See Telecommunications Act § 35.

⁴⁴ See *id.* § 36.

⁴⁵ See *id.* § 37.

⁴⁶ See Telecommunications Act § 38.

- ***Non-Compliant Interconnection Agreements.*** If the Regulator determines that an interconnection agreement does not comply with the Act, the Regulator may order the parties to amend the agreement.⁴⁷

The Regulator has established fixed and mobile network interconnection rates applicable to SamoaTel and Digicel Samoa, the two principal service providers in the market and the only ones designated as dominant in the provision of a particular service.⁴⁸ SamoaTel and Digicel Samoa were unable to reach agreement in private negotiations, so the Regulator intervened to establish interconnection rates. The current rates are effective until September 30, 2013 unless modified by the Regulator:

Fixed Termination Rate: The cost based rate for terminating calls on the SamoaTel fixed network that originate on any mobile network in Samoa shall be 3.3 sene per minute.

Mobile Terminating Rate: The cost based rate for terminating on any mobile network in Samoa shall be 17.7 sene per minute. (Where this rate applies to calls originating in the fixed network or another mobile network.)

SMS: The charge for terminating an SMS message shall be 5 sene per message.

Directory Services: The charge for a call to directory enquiries for subscribers to SamoaTel shall not exceed 27 sene per call and all future reductions that might be implemented for this service to the customers of SamoaTel will be passed on to the Digicel customers in the same percentage.

⁴⁷ See Telecommunications Act § 39.

⁴⁸ 47 C.F.R. § 63.11(k)(3)(ii).

Inbound International calls: The parties will charge each other the relevant international transit rate as included in the parties' agreement which has been approved by the Regulator. If the agreement is terminated and is not replaced by a similar agreement, approved by the Regulator, the Regulator shall determine the rates to apply to all incoming international calls transiting their network and destined for the mobile customers of the mobile network of the other party.

Outbound International Traffic: The Parties will charge each other a rate not to exceed that charged to its own customers for traffic to similar destinations and any applicable volume discounts.⁴⁹

ASLI therefore believes that its showing regarding Independent Samoa's interconnection regime satisfies the requirements of Section 63.18(k)(3)(iii) of the Commission's rules.⁵⁰

⁴⁹ The *tala* is the Independent Samoa currency. One *tala* is divided into 100 *sene* and is currently worth approximately US\$0.42. These interconnection rates superseded a series of orders establishing interim interconnection rates and dating back to 2006. *See* Replacement Interconnection Charges Applicable to Digicel (Samoa) Limited and SamoaTel Limited, Order No. 2009/03, *available at* www.regulator.gov.ws/Portals/112/Order2009%2003.pdf; Replacement Interconnection Charges applicable to Digicel (Samoa) Limited and SamoaTel Limited, Order No. 2009/02, *available at* www.regulator.gov.ws/Portals/112/Order2009%2002.pdf; Interim Interconnection Charges applicable to Digicel (Samoa) Limited and SamoaTel Limited, Order No. 2009/01, *available at* www.regulator.gov.ws/Portals/112/Order%202009%2001.pdf; Interim Interconnection Charges, Order No. 2008/03, *available at* www.regulator.gov.ws/Portals/112/documents/legal/Orders/2007-4,%20Interconnection%20rate%20order.pdf; Fixed and Mobile Network Interconnection Terminating Rates, Order No. 2007/4, *available at* www.regulator.gov.ws/Portals/112/documents/legal/Orders/2007-4,%20Interconnection%20rate%20order.pdf; Interim Interconnection Rates for Fixed and GSM Systems, Order No. 2006/4, *available at* www.regulator.gov.ws/Portals/112/documents/legal/Orders/2006-4,%20Interconnect%20Rate%20Order.pdf.

⁵⁰ *See* 47 C.F.R. § 63.11(k)(3)(iii).

E. Independent Samoa's Telecommunications Regulatory Framework Establishes Competitive Safeguards to Protect Against Anticompetitive Practices

Independent Samoa's telecommunications regulatory framework establishes competitive safeguards to protect against anticompetitive practices. These safeguards include prohibition on and remedies for the anticompetitive practices specifically enumerated in Section 63.18(k)(3)(iv) of the Commission's rules, as well as a host of other safeguards.⁵¹

First, Independent Samoa's telecommunications regulatory framework establishes cost-allocation rules in the foreign country to prevent cross-subsidization. The Telecommunications Act specifically defines as an abuse of dominant market power:

[U]sing revenues or the allocation of costs from one telecommunications service to cross-subsidize a competitive telecommunications service with the objective of lessening competition, except where such cross subsidy is specifically approved by order of the Regulator or by approval of tariffs for relevant telecommunications services.⁵²

As noted in part II.A above, the Regulator is charged with enforcing this requirement and applying statutory remedies as necessary. ASLI's showing therefore satisfies the requirements of Section 63.18(k)(3)(iv)(A) of the Commission's rules.⁵³

Second, Independent Samoa's telecommunications regulatory framework establishes timely and nondiscriminatory disclosure of technical information needed to use, or interconnect with, carriers' facilities. The Telecommunications Act specifically defines as an abuse of dominant market power:

⁵¹ 47 C.F.R. § 63.11(k)(3)(iv).

⁵² Telecommunications Act § 27(h)(iv).

⁵³ *See* 47 C.F.R. § 63.11(k)(3)(iv)(A).

[the] failing to make available to other service providers on a timely basis technical specifications, information about essential facilities or other commercially relevant information which is required by such other service providers to provide telecommunications services and which is not available from other sources” where such action has “the effect of impeding or preventing a competitor’s entry into, or expansion in, a market.”⁵⁴

As noted in part II.A above, the Regulator is charged with enforcing this requirement and applying statutory remedies as necessary. ASLI’s showing therefore satisfies the requirements of Section 63.18(k)(3)(iv)(B) of the Commission’s rules.⁵⁵

Third, Independent Samoa’s telecommunications regulatory framework protects carrier and customer proprietary information. “Except as permitted or required by law, or with the consent of the person to whom the personal information relates, a service provider shall not collect, use, maintain or disclose customer information or customer communication for undisclosed purposes.”⁵⁶ The Telecommunications Act also requires that “[t]he purposes for which customer information is collected by a service provider shall be identified at or before collection, and a service provider shall not, subject to this section, collect, use, maintain or disclose customer information for undisclosed purposes.”⁵⁷ Service providers must ensure the accuracy and completeness of customer information, and ensure that both customer information and communications “are protected by security safeguards that are appropriate to the sensitivity

⁵⁴ Telecommunications Act § 27(h)(iv). *See also id.* § 13(6) (providing that “[l]icences for service providers that provide the same telecommunications services or own or operate the same telecommunications networks shall not unfairly discriminate between such licensees.”).

⁵⁵ *See* 47 C.F.R. § 63.11(k)(3)(iv)(B).

⁵⁶ Telecommunications Act § 50(2).

⁵⁷ Telecommunications Act § 50(3).

of such information and communications.”⁵⁸ ASLI’s showing therefore satisfies the requirements of Section 63.18(k)(3)(iv)(C) of the Commission’s rules.⁵⁹

Independent Samoa’s regulatory framework includes numerous other safeguards to guard against anticompetitive conduct. The Telecommunications Act specifically prohibits arrangements between two or more service providers that:

- “directly or indirectly fix the prices or other terms or conditions of telecommunications services in telecommunications markets;”
- “directly or indirectly determine which person will win a contract or business opportunity in a telecommunications market;” or
- “apportion, share or allocate telecommunications markets among themselves or other service providers.”⁶⁰

As noted in part II.A above, the Telecommunications Act also prohibits a dominant service provider from abusing its dominant market position.⁶¹ Such abuses are defined to include (in addition to those discussed above) the following:

- “[B]undling of telecommunications services, whereby the service provider requires, as a condition of supplying a service to a competitor, that the competitor does not require;”
- “[O]ffering a competitor more favourable terms or conditions that are not justified by cost differences if the competitor acquired another service that the competitor does not require;”
- “[P]re-emptively acquiring or securing scarce facilities or resources, including but not limited to rights of way, required by another service provider for the operation of such service provider’s business, with the effect of denying the use of the facilities or resources to such service provider;”
- “[S]upplying competitive telecommunications services at prices below long run average incremental costs or such other cost standard as may be established by the Regulator;”

⁵⁸ Telecommunications Act § 50(4), (5).

⁵⁹ 47 C.F.R. § 63.11(k)(3)(iv)(C).

⁶⁰ See Telecommunications Act § 28.

⁶¹ See Telecommunications Act § 27.

- “[P]erforming any of the following actions, where such actions have the effect of impeding or preventing a competitor’s entry into, or expansion in, a market:”
- “[D]eliberately reducing the margin of profit available to a competitor that requires wholesale telecommunications services from the dominant service provider, by increasing the prices for the wholesale telecommunications services required by that competitor, or decreasing the prices of the retail telecommunications services in markets where they compete, or both;”
- “[R]equiring or inducing a supplier to refrain from selling to a competitor;”
- “[A]dopting technical specifications for networks or systems to deliberately prevent interoperability with a network or system of a competitor;”
- “[F]ailing to make available to other service providers on a timely basis technical specifications, information about essential facilities or other commercially relevant [in]formation which is required by such other service providers to provide telecommunications services and which is not available from other sources;”
- “[U]sing information obtained from competitors for purposes related to interconnection of supply of telecommunications services by the dominant service provider to compete with such competitors;” and
- “[A]ny other action or activity engaged in by a dominant service provider that the Regulator determines in accordance with section 29 [of the Telecommunications Act] to have the effect, or likely to have the effect, of materially restricting or distorting competition in a telecommunications market.⁶²

ASLI therefore believes that its showing regarding Independent Samoa’s competitive safeguards satisfies the requirements of Section 63.18(k)(3)(iv) of the Commission’s rules.⁶³

F. Independent Samoa Has an Effective Regulatory Framework for Developing, Implementing, and Enforcing Legal Requirements, Interconnection Arrangements, and Other Safeguards

Independent Samoa has an effective regulatory framework for developing, implementing, and enforcing legal requirements, interconnection arrangements, and other safeguards. As discussed in parts II.A-D above, the Telecommunications Act itself establishes detailed legal

⁶² See *id.*

⁶³ See 47 C.F.R. § 63.11(k)(3)(iv).

requirements for the Independent Samoa telecommunications sector. It tasks the Regulator with enforcing these requirements and safeguards and arms the Regulator with a variety of enforcement remedies.

Independent Samoa's regulatory framework is no mere formality. To the contrary, the Regulator has used the full range of its powers under the Telecommunications Act to advance its pro-competitive, consumer protection, and market development mandates. The Regulator has issued findings of market dominance in particular sectors.⁶⁴ It has considered and resolved interconnection disputes between licensed carriers⁶⁵ and ordered interconnection and imposed

⁶⁴ See, e.g., Digicel Dominance Order, No. 2006/6 (finding Digicel Samoa dominant in the cellular radio market), *available at* www.regulator.gov.ws/Portals/112/documents/legal/Orders/2006-6.%20Digicel%20Dominance%20Order.pdf; SamoaTel Dominance Order for International ISP Connectivity, No. 2006/5 (finding SamoaTel dominant in the international Internet access services market), *available at* www.regulator.gov.ws/Portals/112/documents/legal/Orders/2006-5.%20Samoa%20Tel%20IP%20Dominance%20Order.pdf; Telecom Samoa Cellular Dominance Order for Cellular Radio Systems, No. 2006/2 (finding TSCL dominant in the cellular mobile market), *available at* www.regulator.gov.ws/Portals/112/documents/legal/Orders/2006-2.%20Order%20Designating%20a%20Dominant%20Service%20Provider%20%28TSCL%29.pdf; SamoaTel Dominance Order for fixed line telephony and interconnection No. 2006/1 (finding SamoaTel dominant in the fixed-line public telephony and interconnection to fixed-line networks markets), *available at* www.regulator.gov.ws/Portals/112/documents/legal/Orders/2006-1.%20Order%20Designating%20a%20Dominant%20Service%20Provider%20%28SamoaTel%29.pdf.

⁶⁵ See, e.g., Refusal by SamoaTel to Interconnect with Digicel's DigiFixed Service, Order No. 2010/02 (ordering SamoaTel to interconnect with Digicel's DigiFixed service and ordering Digicel to refrain from charging customers retail rates below the mobile termination rates as determined by the Regulator in Order 2010/01), *available at* www.regulator.gov.ws/Portals/112/Order%202010.01%20-%20Cost%20Based%20Rates.pdf; Refusal by SamoaTel to Interconnect with Digicel's Fixed Wireless Service, Order No. 2009/04 (ordering SamoaTel to interconnect with Digicel's fixed wireless service), *available at*

interconnection rates between the dominant service providers SamoaTel and Digicel Samoa.⁶⁶ It has set retail rates for dominant service providers.⁶⁷ It has also resolved complaints by one service provider against another.⁶⁸ ASLI therefore believes that its showing regarding Independent Samoa's development, implementation, and enforcement of its telecommunications regulatory framework satisfies the requirements of Section 63.18(k)(3)(v) of the Commission's rules.⁶⁹

www.regulator.gov.ws/Portals/112/Order2009%2004%20-SamoaTel%20to%20interconnect%20with%20Digifixed.pdf.

⁶⁶ See part II.D above.

⁶⁷ See, e.g., Approval of Changes to Retail Pricing Structure for SamoaTel Limited, Order No. 2008/02, available at www.regulator.gov.ws/Portals/112/documents/legal/Orders/2008-02,%20Approval%20of%20Changes%20to%20Retail%20Pricing%20Structure%20for%20SamoaTel%20Limited.pdf; Order for New SamoaTel Fixed to Mobile Rates, Order No. 2008/1, available at www.regulator.gov.ws/Portals/112/documents/legal/Orders/2008-1,%20SamoaTel%20mobile%20rate%20order.pdf.

⁶⁸ See, e.g., SamoaTel Limited's Complaint against Digicel (Samoa) Limited's LCR/Sim Box Units, Order No. 2010/03 (ordering Digicel to reprogram all least-cost router ("LCR") units, refrain from charging customers retail rates below the mobile termination rates as determined by the Regulator in Order 2010/01, provide the Regulator with evidence of regulatory approval for retail rates charged for LCR services, and submit to the Regulator copies of contracts between Digicel Samoa Limited and its LCR customers), available at www.regulator.gov.ws/Portals/112/Use_Order2010.03.pdf.

⁶⁹ See 47 C.F.R. § 63.11(k)(3)(v).

CONCLUSION

ASLI hereby requests expedient approval of this foreign-carrier affiliation notification in order to allow timely closing on ASLI's acquisition of SamoaTel.

AMERICAN SAMOA LICENSE, INC.



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15 March 2011

CERTIFICATION

I certify that I am an officer of American Samoa License, Inc.; that I have examined the foregoing notification and that to the best of my knowledge, information and belief, all statements of fact contained in this notification are true.

Executed on March 15, 2011



Adolfo Montenegro
President
AMERICAN SAMOA LICENSE, INC.

LIST OF EXHIBITS

- Exhibit 1: Telecommunications Act (No. 20) 2005, as amended**
- Exhibit 2: Foreign Investment Act (No. 3) 2000, as amended**
- Exhibit 3: Rules for the Licensing of Telecommunications Services and the Ownership or Operation of Telecommunications Networks in Samoa**
- Exhibit 4: Guidelines: Application for a Foreign Investment Certificate in Samoa**