

## **ATTACHMENT 1**

**1. Name of the Newly Affiliated Foreign Carrier and the Country or Countries in which It Is Authorized to Provide Telecommunications Services to the Public<sup>1</sup>**

American Samoa License, Inc. (“ASLI”), seeks Commission consent for an affiliation with Telecom Cook Islands Ltd. (“TCIL”). TCIL is authorized to provide telecommunications services in the Cook Islands, a self-governing South Pacific nation in free association with New Zealand. On February 23, 2015, ASLI’s direct parent company, AST Telecom, LLC d/b/a Blue Sky Communications (“Blue Sky”), acquired an indirect, controlling interest in TCIL from Spark New Zealand Limited (“Spark,” formerly known as Telecom New Zealand) (the “Acquisition Transaction”). Blue Sky’s indirect subsidiary, Teleraro Limited (“Teleraro”) was the prevailing bidder in an auction conducted by Spark. Teleraro now holds its interest in TCIL through its wholly-owned subsidiary, TCNZ Cook Islands Limited, which holds a 60-percent direct controlling interest in TCIL.

The Cook Islands consists of 15 islands scattered over an area of more than 849,000 square miles of the southern Pacific Ocean, between the Samoas and Tonga to the west and French Polynesia to the east. Its total land area is about 1.3 times the size of the District of Columbia. Its population is tiny, with slightly more than 10,000 residents. The Cook Islands is a self-governing state in free association with New Zealand, meaning that the Cook Islands makes its own laws pursuant to its own constitution while relying on New Zealand for defense. Cook Islanders are New Zealand citizens, and the Queen in Right of New Zealand is the Cook Islands Head of State. In the telecommunications sector, the Cook Islands Government’s paramount

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<sup>1</sup> 47 C.F.R. § 63.11(e)(1).

concern has long been to ensure that there is connectivity, period. To further that objective, TCIL and its predecessors have since 1979 (when the Crown first organized an external telecommunications provider) generally partnered with a foreign-carrier investor (including Cable & Wireless from 1979 to 1989 and Telecom New Zealand/Spark from 1991 to 2015) in order to increase operating efficiencies.

## **2. WTO Status of Destination Country<sup>2</sup>**

The Cook Islands is not a WTO member or observer, although it remains in free association with New Zealand, which is a WTO member.<sup>3</sup> The Cook Islands has less than one-fifth the population of both the WTO's smallest member (Saint Kitts and Nevis) and the WTO's smallest observer (Andorra) and is significantly more remote than either of those nations.

## **3. Services that the FCC Has Authorized ASLI to Provide to the Cook Islands, and the FCC File Number Under which Each Such Authorization Was Granted<sup>4</sup>**

ASLI holds international Section 214 authority 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).<sup>5</sup> Each of these authorizations permits ASLI to provide services on the U.S.-Cook Islands route, although ASLI does not currently provide any services on that route.

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<sup>2</sup> *Id.* § 63.11(e)(2).

<sup>3</sup> See World Trade Organization, *Members and Observers* as of April 26, 2015, [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org6\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm).

<sup>4</sup> 47 C.F.R. § 63.11(e)(3).

<sup>5</sup> *Overseas Common Carrier Section 214 Applications and Section 310(b)(4); Actions Taken*, Public Notice, 14 FCC Rcd. 4996 (1999); *Overseas Common Carrier Section 214 Applications and Section 310(b)(4); Actions Taken*, Public Notice, 13 FCC Rcd. 22,621 (1998).

**4. Countries that ASLI Serves Solely Through the Resale of the International Switched Services of Unaffiliated U.S. Facilities-Based Carriers<sup>6</sup>**

None.

**5. 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)<sup>7</sup>**

ASLI has the following 10-percent-or-greater direct or indirect shareholders:

**AST Telecom, LLC d/b/a Blue Sky Communications (“Blue Sky”)**

*Address:* P.O. Box 478, Pago Pago, American Samoa 96799

*Citizenship:* Delaware, USA

*Principal Business:* telecommunications

*Relationship:* Blue Sky owns 100 percent of ASLI’s shares.

**eLandia International, Inc. (“eLandia”)**

*Address:* 8200 NW 52nd Terrace, Suite 102, Miami, Florida 33166

*Citizenship:* Delaware, USA

*Principal Business:* holding company

*Relationship:* eLandia owns approximately 100 percent of Blue Sky’s membership interests.

**Amper S.A. (“Amper”)**

*Address:* Calle Marconi, 3, Parque Tecnológico Madrid, 28760 Tres Cantos  
Madrid, Spain

*Citizenship:* Delaware, USA

*Principal Business:* telecommunications and defense

*Relationship:* Amper owns approximately 87 percent of eLandia’s shares.

**Compañía de Emilienteos (“Emilienteos”)**

*Address:* Calle Montalban, 9, 28014 Madrid, Spain

*Citizenship:* Spain

*Principal Business:* investments

*Relationship:* Emilienteos owns approximately 20 percent of Amper.

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<sup>6</sup> 47 C.F.R. § 63.11(e)(4).

<sup>7</sup> *Id.* § 63.11(e)(5).

**Jaime Espinosa de los Monteros Pitarque**

*Address:* Calle Marconi, 3 Tres Cantos, 28760 Madrid, Spain

*Citizenship:* Spain

*Principal Business:* investments

*Relationship:* Mr. Espinosa is the Chairman of Amper's board and owns 66 percent of Emilianteos.

**6. No-Special-Concessions Certification<sup>8</sup>**

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.

**7. Names of Any Interlocking Directorates with TCIL<sup>9</sup>**

ASLI and TCIL have one interlocking directorate, Adolfo Montenegro. Mr. Montenegro is President of ASLI and is currently serving as Interim CEO of TCIL.

**8. Basis of Notification and Projected Closing Date<sup>10</sup>**

This notification is made pursuant to 47 C.F.R. § 63.11(a)(1), as Blue Sky, which owns more than 25 percent of, and controls, ASLI, has acquired an indirect, controlling interest (through Teleraro) in TCIL in the Cook Islands, a market that ASLI is authorized to serve. Teleraro consummated its acquisition of TCIL on February 23, 2015.

ASLI regrets that it was unable to notify the Commission more than 45 days in advance of the consummation of the Acquisition Transaction, as otherwise required by 47 C.F.R. §

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<sup>8</sup> *Id.* § 63.11(e)(6).

<sup>9</sup> *Id.* §§ 63.11(e)(7), 63.09(g).

<sup>10</sup> *Id.* § 63.11(e)(8).

63.11(a)(1). The consummation of the transaction was uncertain until one week before the actual closing date.

**9. Public-Interest Showing<sup>11</sup>**

The Commission should find that ASLI's ownership of TCIL—and the potential of providing service on the U.S.-Cook Islands route—will serve the public interest for the following principal reasons.

**a. Blue Sky's Ownership of TCIL Will Enhance the Potential for High-Quality and Efficient Telecommunications Services on the U.S.-Cook Islands Route**

Blue Sky's ownership in TCIL will leverage Blue Sky's expertise in operating telecommunications businesses in small island markets. Blue Sky has brought innovative and competitive fixed and mobile telecommunications, multichannel video programming, and broadband services as a competitor to the incumbent local exchange carrier in American Samoa. It also acquired and revamped the incumbent fixed operator in Independent Samoa, where it now competes vigorously with Digicel in the mobile and broadband markets.

Blue Sky's ownership in TCIL will also create operating efficiencies and scale, enhancing the potential for cost-effective provision of services on the U.S.-Cook Islands route. As part of the Blue Sky group, TCIL will benefit from greater purchasing power with vendors for telecommunications equipment and services, further enabling TCIL's offering of more innovative and economical services.

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<sup>11</sup> *Id.* § 63.11(g)(2).

**b. The Cook Islands Telecommunications Market Remains Open to U.S. Investment**

The Cook Islands does not restrict the ability of U.S. investors to enter the market. Cook Islands law contains neither general nor sector-specific restrictions on foreign investment in the Cook Islands telecommunications sector. To the contrary, Blue Sky's acquisition of a controlling interest in TCIL demonstrates that the Cook Islands is open to a U.S. investor seeking to acquire a controlling interest in a carrier in the Cook Islands telecommunications market.<sup>12</sup>

The Cook Islands Telecommunications Act 1989, as amended in 1991, 1992, and 1997 (collectively, the "Telecommunications Act") does not grant TCIL a monopoly for the provision of any telecommunications service.<sup>13</sup> The Telecommunications Act also prohibits restrictions on the resale of telecommunications services.<sup>14</sup> Nevertheless, the question of whether a U.S. carrier could obtain authority to enter the Cook Islands telecommunications market remains untested, as no U.S. carrier has previously sought such market entry. This fact should not surprise the Commission, given the small size and remoteness of the Cook Islands, but it also should not be held against ASLI in evaluating this foreign carrier affiliation notification.

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<sup>12</sup> See *Reform of Rules and Policies on Foreign Carrier Entry into the U.S. Telecommunications Market*, Report and Order, 29 FCC Rcd. 4256, 4266 ¶ 22 (2014) ("Market Entry Reform Order") (stating that as part of its public-interest analysis, the Commission may seek information about "the ability of U.S. carriers to obtain a controlling interest in a carrier in the foreign country").

<sup>13</sup> See Telecommunications Act 1989 No. 35, [http://www.paclii.org/cgi-bin/sinodisp/ck/legis/num\\_act/ta1989214/ta1989214.html?stem=&synonyms=&query=telecommunications](http://www.paclii.org/cgi-bin/sinodisp/ck/legis/num_act/ta1989214/ta1989214.html?stem=&synonyms=&query=telecommunications).

<sup>14</sup> *Id.* art. 4(4).

**c. The Combination of TCIL and Blue Sky Does Not Threaten Competition in Telecommunications Services on the U.S.-Cook Islands Route**

The combination of ASLI and TCIL will not create any horizontal or vertical effects in the market for telecommunications services on the U.S.-Cook Islands route. As a consequence of the Acquisition Transaction, TCIL has simply exchanged one foreign telecoms group without other investments in Cook Islands carriers or network infrastructure (Spark New Zealand) for another (Blue Sky and its affiliates).

Although the Telecommunications Act does not establish specific competitive safeguards for the telecommunications sector or expressly require reasonable or nondiscriminatory interconnection arrangements,<sup>15</sup> telecommunications network operators remain subject to the authority of the Minister of Telecommunications, the Office of the Ombudsman,<sup>16</sup> and the Price Tribunal.<sup>17</sup> These mechanisms would help to mitigate any potential harms.

The Cook Islands regulatory regime does not presently address access to submarine cable capacity because there are no current submarine cable landings in the Cook Islands. The proposal to land the South Pacific Island Network (“SPIN”) in the Cook Islands has long been abandoned.<sup>18</sup> All of TCIL’s international network capacity is provided by GSO satellite

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<sup>15</sup> See *Market Entry Reform Order*, 29 FCC Rcd. at 4266 ¶ 22 (stating that as part of its public-interest analysis, the Commission may seek information about competitive safeguards and interconnection arrangements).

<sup>16</sup> See Ombudsman Act 1984 No. 8, [http://www.pacii.org/cgi-bin/sinodisp/ck/legis/num\\_act/oa1984114/oa1984114.html?stem=&synonyms=&query=%22price%20tribunal%20%22](http://www.pacii.org/cgi-bin/sinodisp/ck/legis/num_act/oa1984114/oa1984114.html?stem=&synonyms=&query=%22price%20tribunal%20%22).

<sup>17</sup> See Control of Prices Amendment Act 1973 No. 13, [http://www.pacii.org/cgi-bin/sinodisp/ck/legis/num\\_act/copaa1973274/copaa1973274.html?stem=&synonyms=&query=%22price%20tribunal%20%22](http://www.pacii.org/cgi-bin/sinodisp/ck/legis/num_act/copaa1973274/copaa1973274.html?stem=&synonyms=&query=%22price%20tribunal%20%22).

<sup>18</sup> *Pacific cable project looks to islands for revenue*, ITNews (Mar. 1, 2013) (noting that SPIN “failed to materialise due to lack of funding”), [http://www.itnews.com.au/News/335033\\_pacific-cable-project-looks-to-islands-for-revenue.aspx](http://www.itnews.com.au/News/335033_pacific-cable-project-looks-to-islands-for-revenue.aspx). The Hawaiki Cable proposed in part

operators and the MEO satellites of O3b Networks. In fact, TCIL was O3b Networks' first customer.<sup>19</sup> Neither ASLI nor any of its affiliates owns or controls any satellite infrastructure serving the U.S.-Cook Islands route. Consequently, no potential public-interest harm would result from the absence of a specific regulatory regime addressing access to submarine cable capacity by U.S. carriers.<sup>20</sup>

**d. The Commission Has Ample Tools to Mitigate Other Potential Public-Interest Harms (of Which ASLI Believes There Are None).**

ASLI believes that application and enforcement of the Commission's dominant-carrier safeguards, reporting requirements, and no special concessions rule—by which ASLI has committed to abide—will provide the Commission with ample tools for addressing any potential outstanding public-interest concerns. As the Commission has noted, these measures promote competition while eliminating the burdens of the Commission's old “effective competitive opportunities” test.<sup>21</sup>

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as a successor to SPIN is not configured to land in the Cook Islands. *See* Hawaiki Submarine Cable, Network, <http://www.hawaikicable.co.nz/index.php/network> (last visited Mar. 10, 2015).

<sup>19</sup> *See* O3b Networks, *O3b Networks' first customer—Telecom Cook Islands—goes live* (Mar. 20, 2014), <http://www.o3bnetworks.com/additional-pages/blog/o3b%E2%80%99s-first-customer-%E2%80%93-telecom-cook-islands-%E2%80%93-goes-live>.

<sup>20</sup> *See Market Entry Reform Order*, 29 FCC Rcd. at 4266 ¶ 22 (stating that as part of its public-interest analysis, the Commission may seek information about “whether U.S. cable licensees have the right to enter the market of the non-WTO country and own or access capacity on submarine cables landing in that country”).

<sup>21</sup> *Id.* at 4263 ¶ 14.