

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

In the Matter of)
)
Amper, S.A.)
 Transferor)
)
and)
)
Amalgamated Telecom Holdings Limited)
 Transferee)
)
Joint Application for Consent to Transfer)
Control of Domestic and International)
Authorizations Pursuant to Section 214 of the)
Communications Act of 1934, As Amended)

**JOINT APPLICATION TO TRANSFER CONTROL OF DOMESTIC AND
INTERNATIONAL SECTION 214 AUTHORIZATIONS**

Pursuant to Section 214 of the Communications Act of 1934, as amended (“the Act”),¹ and Sections 63.04, 63.18, and 63.24 of the Commission’s rules,² Amper, S.A. (“Amper” or “Transferor”) and Amalgamated Telecom Holdings Limited (“ATH” or “Transferee”) request Commission consent to transfer control of the domestic and international Section 214 authorizations of AST Telecom, LLC d/b/a Bluesky (“AST”) (together with Amper and ATH, “Applicants”) from Amper to AST. Amper and its affiliates and ATH have entered into a purchase agreement pursuant to which ATH will acquire control of AST and its affiliates in American Samoa, Independent Samoa, the Cook Islands, and New Zealand (the “Proposed

¹ 47 U.S.C. § 214.

² 47 C.F.R. §§ 63.04, 63.18, and 63.24.

Transaction”). The Proposed Transaction specifically involves the transfer of control of AST, which holds domestic and international Section 214 authorizations, Commercial Mobile Radio Service (“CMRS”) licenses, and common carrier and non-common carrier earth stations. It also involves the transfer of control of the cable landing license for the American Samoa-Hawaii Cable System (“ASH Cable System”), and its licensees AST, American Samoa Hawaii Cable, LLC (“ASHC”), and Samoa American Samoa Cable, LLC (“SASC”).

The Applicants are specifically submitting the following in connection with obtaining the Commission’s approval for the Proposed Transaction:³

1. A joint application to transfer control of the blanket domestic Section 214 operating authority and international Section 214 authorizations of AST.
2. An application to transfer control of multiple CMRS licenses held by AST.
3. Applications to transfer control of one common carrier and one non-common carrier fixed earth station license held by AST.
4. An application to transfer control of the cable landing license for the ASH Cable System and its licensees.
5. A petition for declaratory ruling that it would serve the public interest to permit the indirect foreign ownership of AST’s CMRS licenses and common carrier earth station license in excess of the 25 percent benchmark of Section 310(b)(4) of the Act.

This narrative provides the information required by the International Section 214 Main Form and Sections 63.04, 63.12, and 63.18 of the Commission’s rules. Attached as Exhibit 1 is a statement providing a more detailed description of the parties and of the proposed transaction, and demonstrating that the transaction will serve the public interest.

³ A list of the FCC authorizations and licenses subject to these applications are listed in Attachment A to Exhibit 1.

I. RESPONSE TO ITEMS ON INTERNATIONAL SECTION 214 MAIN FORM

A. Answer to Question 10 – Section 63.18(c)-(d)

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Neither ATH nor any of its affiliates hold any international Section 214 authorizations.

AST holds two international Section 214 authorizations to provide global facilities-based services (File No. ITC-214-19980918-00671) and global resale services (File No. ITC-214-19981207-00860).⁴

⁴ These authorizations were previously assigned on a *pro forma* basis to AST from American Samoa License, Inc. (“ASLI”), which was merged into AST earlier in 2016, with AST surviving. *See International Authorizations Granted*, Public Notice, 31 FCC Rcd 4672, 4673 (2016); File No. ITC-ASG-20160414-00138.

B. Answer to Question 11 – Section 63.18(h)

Prior to closing the Proposed Transaction, ATH will form a U.S.-incorporated holding company (“U.S. HoldCo”)⁵ that ATH will designate to purchase all of the issued and outstanding member interests of AST, so that, upon completion of the Proposed Transaction, AST will be a direct wholly-owned subsidiary of U.S. HoldCo. The following entities will hold an indirect 10-percent-or-greater ownership interest in AST post-closing:

Name: Amalgamated Telecom Holdings Limited (“ATH”)
Address: Level 2, Harbour Front Building, Rodwell Rd.
G.P.O. Box 11643
Suva, Fiji
Citizenship: Fiji
Principal Business: holding company
Ownership interest: ATH will hold a 100 percent equity and voting interest in U.S. HoldCo

Name: Fiji National Provident Fund (“FNPF”)
Address: Plaza 2, 33 Ellery St., Private Mail Bag
Suva, Fiji
Citizenship: Fiji
Principal Business: Superannuation fund
Ownership interest: FNPF holds an approximate 72.6 percent equity and voting interest in ATH

Name: Fiji Government
Address: P.O. Box 2212, Government Buildings
Suva, Fiji
Citizenship: Fiji
Principal Business: government
Ownership interest: The Fiji government holds an approximate 17.3 percent equity and voting interest in ATH

No other person or entity will hold a direct or indirect 10-percent-or-greater voting or equity interest in AST post-closing. Attachment B of Exhibit 1 includes charts depicting the pre- and post-closing ownership structure of AST.

⁵ ATH will notify the FCC of U.S. HoldCo’s name, address, and state of organization once it is formed.

C. Answer to Question 12 – Section 63.18(h)

ATH has no interlocking directorates with unaffiliated foreign carriers, but the following

ATH directors also are directors of ATH's operating subsidiaries in Fiji and Kiribati:

- Mr. Ajith Kodagoda, Chairman of ATH, is Chairman of Fiji International Telecommunications Limited (“FINTEL”) and Chairman of Vodafone Fiji Limited (“Vodafone Fiji”).
- Mr. Tom Ricketts, a Director of ATH, is Chairman of Telecom Fiji Limited (“Telecom Fiji”).
- Mr. Arun Narsey, a Director of ATH, is Chairman Amalgamated Telecom Holdings (Kiribati) Limited (“ATH Kiribati”) and a Director of Telecom Fiji.
- Mr. Umarji Musa, a Director of ATH, is a Director of Telecom Fiji.
- Mr. Ivan Fong, General Manager and Company Secretary of ATH, is a Director of ATH Kiribati.
- Mr. Sashi Singh, a Director Telecom Fiji, is a Director of FINTEL.

D. Answer to Question 13 – Narrative of Transfer of Control and Public Interest Statement

A description of the Proposed Transaction and demonstration of how it will serve the public interest is attached as Exhibit 1.

E. Answers to Questions 14-17 – Foreign Carrier Affiliates

AST is not a foreign carrier. As it has previously notified the Commission, AST is currently affiliated, and will continue to be affiliated post-closing, with foreign carriers in the following markets:

- Cook Islands: Telecom Cook Islands Ltd. d/b/a Bluesky Cook Islands⁶
- Independent Samoa: Bluesky Samoa Limited (“Bluesky Samoa”)⁷

⁶ See Foreign Carrier Affiliation Notification of ASLI, File No. FCN-NEW-20151016-00012 (filed Oct. 16, 2015).

- New Zealand: Bluesky Holdings NZ Limited (“Bluesky NZ”)⁸

AST is currently regulated as a dominant carrier on the U.S.-Cook Islands and U.S.-Independent Samoa routes.

ATH is affiliated with Telecom Fiji, Vodafone Fiji, and FINTEL, all of which are authorized to provide telecommunications services in Fiji. Specifically, Telecom Fiji, a wholly-owned subsidiary of ATH, is the dominant provider of fixed telephony services, broadband Internet, international voice and data connectivity, and equipment in Fiji. Vodafone Fiji, a joint venture between ATH and the FNPF, provides mobile voice, broadband, and data in Fiji. FINTEL, a wholly-owned subsidiary of ATH, provides and operates international telecommunication facilities in and out of Fiji, with a gateway for submarine cable and satellite communications. In addition, ATH is affiliated with ATH Kiribati, which is the dominant provider of fixed telephony, broadband Internet and data, and mobile services in the Republic of Kiribati. Upon consummation of the Proposed Transaction, AST thus will also become affiliated with these entities.

Pursuant to Section 63.10 of the Commission’s rules, the Applicants request that upon consummation of the Proposed Transaction, AST be regulated as non-dominant on all U.S.-foreign routes except the routes between the U.S. and the Cook Islands, Fiji, Independent Samoa,

⁷ ASLI, which has since been merged into AST with AST surviving, had previously notified the Commission of its affiliation with Bluesky Samoa and sought non-dominant treatment on the U.S.-Independent Samoa route. *See* Foreign Carrier Affiliation Notification, File No. FCN-NEW-20110315-00002 (filed Mar. 15, 2011); Amendment to Foreign Carrier Affiliation Notification, File No. FCN-NEW-20110315-00002 (filed Aug. 20, 2012) (amending notification to reflect Independent Samoa’s new membership in the World Trade Organization). AST commits to amend the notification and withdraw without prejudice the request for non-dominant treatment on the U.S.-Independent Samoa route, reserving the right to seek such reclassification in the future. AST will notify Commission staff once that amendment has been filed.

⁸ *See* Foreign Carrier Affiliation Notification of AST Telecom, LLC, File No. FCN-NEW-20160720-00009 (filed July 20, 2016).

and Kiribati, where one or more affiliates is presumed to have market power based on a greater-than-50-percent market share in the local, intercity, or international transport market of the relevant destination market. AST agrees that upon consummation of the Proposed Transaction, it will comply with the dominant carrier safeguards contained in Section 63.10(c) of the Commission's rules on the routes between the United States and the Cook Islands, Fiji, Independent Samoa, and Kiribati, while reserving the right to seek reclassification in the future.

AST is presumptively considered non-dominant on the routes on which it has no foreign carrier affiliates. The Commission also should continue to treat AST as presumptively non-dominant on the U.S.-New Zealand route. AST established its New Zealand foreign carrier affiliate, Bluesky NZ, as a new market entrant offering resold prepaid wireless service and it holds far less than a 50-percent share in New Zealand's local, intercity, or international transport markets. AST also should continue to be classified as dominant on the U.S.-Cook Islands and U.S.-Independent Samoa routes.

With regard to the new Fiji and Kiribati affiliations created by the Proposed Transaction, the Applicants note that Fiji has been a member of the World Trade Organization ("WTO") since 1996 and supports the liberalization of the telecommunications marketplace, and has promoted increased competition and infrastructure sharing.⁹ Kiribati, although not a WTO member, also supports the liberalization of its telecommunications marketplace and increasing competition and does not restrict the ability of foreign investors, including U.S. investors, to enter the Kiribati

⁹ Fiji has a population of only approximately 900,000 and a relatively small telecommunications market that experiences a low volume of traffic between Fiji and other countries. U.S. operators currently use hubbing arrangements where traffic volume can be aggregated (and thus be more economical) to carry traffic to and from Fiji instead of contracting directly with carriers in Fiji. Indeed, the effective rate paid by U.S. carriers for calls terminating in Fiji through these hubbing arrangements is typically between \$0.09 and \$0.11 per minute.

market.¹⁰ Kiribati's Communications Act of 2012 established the Communications Commission of Kiribati ("CCK"). Its statutory mandate is to create an open, level playing field in the communications market through fair distribution of communications resources, transparency, technologically and competitively neutral regulations to promote fair competition, and innovation for universal delivery of affordable and quality communication services and digital data services. Over the last several years, the CCK has worked to implement a regulatory framework by which competitors can obtain licenses to provide both fixed line and mobile services, as well as provide for cost-based, non-discriminatory interconnection and access. Indeed, the CCK issued a license in March 2016 for competitive mobile services under its new framework.

The new Fiji and Kiribati affiliations will serve the public interest. As further described in Exhibit 1, among other things, the Proposed Transaction will allow AST to leverage ATH's resources and considerable experience operating island-based communications networks in the region, including on the routes between American Samoa and Fiji and Kiribati. The Proposed Transaction also is expected to create operating efficiencies and scale, which in turn will facilitate more cost-effective provision of services. The Commission's dominant carrier safeguards, reporting requirements, and no special concessions rule provide the Commission

¹⁰ See Communications Act 2012, art 32(7) (stating that "the Foreign Investment Act 1985 does not apply to carrying on the business of owning or operating a communications network or providing a communications service by a licensee,") *available at* <http://www.cck.ki/index.php/downloads/finish/23-publication/48-communications-act-2012.html>. Indeed, ATH – a Fijian investor – entered the Kiribati market in 2015 when it acquired Telecom Services Kiribati Ltd. (now known as ATH Kiribati) following a privatization process.

with ample tools to address any potential public interest concerns triggered by these new affiliations.¹¹

F. Answer to Question 20 – Section 63.12

The Applicants do not request streamlined treatment of the application because it proposes to become affiliated with ATH Kiribati, which is presumed to have market power in Kiribati, a non-WTO-member country.¹²

II. INFORMATION REQUIRED BY SECTION 63.04 OF THE COMMISSION'S RULES IN RELATION TO THE TRANSFER OF BLANKET DOMESTIC 214 AUTHORITY

In support of their request for consent to transfer control of AST from Amper to ATH, the Applicants submit the following information pursuant to Section 63.04(a)(6) through (a)(12) of the Commission's rules.¹³

Section 63.04(a)(6) – Description of the transaction:

A description of the Proposed Transaction and demonstration of how it will serve the public interest is attached as Exhibit 1.

Section 63.04(a)(7) – Description of the geographic area in which the transferor and transferee offer domestic telecommunications services, and what services are provided in each area:

AST offers domestic telecommunications services in American Samoa. A description of the services AST provides in American Samoa is contained in Exhibit 1. Neither ATH nor any of its affiliates provide any domestic telecommunications services in the United States.

¹¹ 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).

¹² See *id.* at 4265 ¶ 21.

¹³ 47 C.F.R. § 63.04.

Section 63.04(a)(8) – Statement as to how the application qualifies for streamlined treatment:

The domestic Section 214 component of this application qualifies for presumptive streamlined processing pursuant to Section 63.03(b)(1)(ii) because ATH is not a telecommunications provider in the United States. Nevertheless, as explained above in Section I.F. above, the Applicants do not request streamlined treatment.

Section 63.04(a)(9) – Identification of all other Commission applications related to this transaction:

The FCC applications that are being filed in connection with this transaction are identified on page 2 of this narrative.

Section 63.04(a)(10) – Statement of whether the applicants request special consideration because either party is facing imminent business failure:

The Applicants do not request special consideration because no party to the Proposed Transaction is facing imminent business failure.

Section 63.04(a)(11) – Identification of any separately filed waiver requests being sought in conjunction with this application:

No separately filed waiver requests are being sought in conjunction with this application.

Section 63.04(a)(12) – Statement showing how grant of the application will serve the public interest, convenience and necessity:

A demonstration of how the transaction will serve the public interest is attached as Exhibit 1.

III. CONCLUSION

For the reasons stated above and in Exhibit 1, the Applicants respectfully request that the Commission expeditiously approve the transfer control of AST's domestic and international Section 214 authorizations.

Respectfully submitted,

By: Amper, S.A.

/s/ Jaime Espinosa de los Monteros

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December 20, 2016

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EXHIBIT 1

**DESCRIPTION OF THE APPLICANTS AND PROPOSED TRANSACTION, PUBLIC
INTEREST STATEMENT, AND ADMINISTRATIVE MATTERS**

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EXHIBIT 1

DESCRIPTION OF THE APPLICANTS AND PROPOSED TRANSACTION, PUBLIC INTEREST STATEMENT, AND ADMINISTRATIVE MATTERS

I. INTRODUCTION AND SUMMARY

Amper, S.A. (“Amper” or “Transferor”) and Amalgamated Telecom Holdings Limited (“ATH” or “Transferee”) request Commission consent under Sections 214 and 310 of the Communications Act of 1934, as amended (the “Act”),¹ and An Act Relating to the Landing and Operation of Submarine Cables in the United States (“Cable Landing License Act”),² to the transfer of control of AST Telecom, LLC d/b/a Bluesky (“AST”), American Samoa Hawaii Cable, LLC (“ASHC”), and Samoa American Samoa Cable, LLC (“SASC”) (together with AST and ASHC, the “Bluesky Licensees,” together with Amper and ATH, the “Applicants”) from Amper to ATH. The proposed transaction contemplates the transfer of control of domestic and international Section 214 authorizations, Commercial Mobile Radio Service (“CMRS”) licenses, and common carrier and non-common carrier earth station licenses held by AST, as well as the transfer of control of the cable landing license associated with the American Samoa-Hawaii Cable System (“ASH Cable System”).³

Amper and its affiliates and ATH have entered into a Sale and Purchase Deed, dated September 23, 2016 (the “Purchase Agreement”) pursuant to which ATH will acquire control of the Bluesky Licensees and their affiliates (the “Proposed Transaction”) in American Samoa, Independent Samoa, the Cook Islands, and New Zealand (collectively, the “Bluesky

¹ 47 U.S.C. §§ 214, 310.

² 47 U.S.C. §§ 34-39 (“Cable Landing License Act”), Executive Order No. 10530, reprinted as amended in 3 U.S.C. § 301.

³ Attachment A includes a list of FCC licenses and authorizations subject to this transaction.

Communications Group”). Following the consummation of the Proposed Transaction, the Bluesky Licensees will exist as indirect subsidiaries of ATH.

The public interest will be served by ATH’s acquisition of the Bluesky Licensees. ATH is a financially-sound company experienced in serving island-based communities in the South Pacific region. The Bluesky Licensees’ operations in American Samoa will benefit from additional financial and managerial resources and ATH’s commitment to improving its South Pacific networks and services. It will also permit the Bluesky Licensees’ current parent company, Amper, to focus on its core IT businesses in Europe and the Americas.

Neither ATH nor any of its affiliates is currently a provider of any telecommunications in American Samoa or any other U.S. jurisdiction. The transaction will be seamless and transparent to all of the Bluesky Licensees’ customers and it will have no anticompetitive effects in the relevant product or geographic markets. To the contrary, ATH’s commitment to the Bluesky Licensees’ businesses will likely spur competition in the telecommunications sector in American Samoa. Because the Proposed Transaction will bring significant public interest benefits and will not result in any material harm, the Commission should expeditiously approve it.

II. DESCRIPTION OF THE PARTIES AND THE PROPOSED TRANSACTION

A. Seller Entities

1. Amper, S.A.

Amper is the Transferor and ultimate parent company of the seller, eLandia International, Inc. (“eLandia”), in the Proposed Transaction. It is a holding company for operating businesses in the telecommunications, defense, and homeland security sectors. It is a corporation organized under Spanish law and headquartered in Madrid. Its shares trade publicly on the Madrid Stock Exchange under the symbol AMP. The Bluesky Licensees and their affiliates are the only

telecommunications providers owned by Amper. Amper acquired the Bluesky Licensees and their affiliates in 2011 as part of a larger acquisition of eLandia.

2. eLandia International, Inc.

eLandia is the seller in the Proposed Transaction and an indirect subsidiary of Amper, which controls a 91.8 percent interest in eLandia. It is a diversified holding company with operating businesses in the information technology and communications sectors. It is a corporation organized under Delaware law and headquartered in Miami, Florida. Following the consummation of the Proposed Transaction, eLandia will retain ownership of its non-telecommunication-provider businesses.

B. Bluesky Licensees and Related Holding Company to Be Acquired by ATH

1. eLandia Technologies, Inc.

eLandia Technologies, Inc. (“ELT”), is a holding company for the Bluesky Communications Group’s investment in the ASH Cable System but is not itself a Commission licensee. It is a Delaware corporation headquartered in Miami, Florida.

2. AST Telecom, LLC d/b/a Bluesky

AST is a diversified communications provider in American Samoa offering: mobile voice and broadband services; fixed broadband services using a hybrid fiber-coaxial (“HFC”) network; fixed wireless broadband services using unlicensed broadband spectrum in the 5 GHz band; interstate interexchange services; international telecommunications services; local exchange and exchange access services; and prepaid calling card services. AST owns the Iliili, American Samoa, cable landing station and operates the ASH Cable System on a day-to-day basis. AST is a Delaware limited-liability company headquartered in Pago Pago, American Samoa. eLandia owns a 100 percent equity and voting interest in AST.

3. American Samoa Hawaii Cable, LLC

ASHC is a Delaware limited-liability company headquartered in American Samoa. It owns the ASH Cable System segment between Iliili, American Samoa, and Keawaula, Hawaii (where it lands at a cable landing station owned and operated by AT&T) and sells capacity services on that segment to carrier-customers. It is a joint cable landing licensee for that system. ELT owns an approximate 66.67 percent equity and voting interest in ASHC. The American Samoa Government owns an approximate 33.33 percent voting and equity interest in ASHC.

4. Samoa American Samoa Cable, LLC

SASC is a Delaware limited-liability company headquartered in American Samoa. It owns the ASH Cable System segment between Iliili, American Samoa, and Apia, Independent Samoa (where it lands at a cable landing station owned and operated by Bluesky Samoa Limited), and sells capacity services on that segment to carrier-customers. It is a joint cable landing licensee for that system. ASHC holds a 100 percent voting and equity interest in SASC.

C. The Purchaser: Amalgamated Telecom Holdings Limited

ATH is a company organized under the laws of the Republic of Fiji. ATH is an experienced and financially sound company that has a long and successful history of providing communications services to island-based and rural markets in the South Pacific. ATH was incorporated as a public company in 1998 as a vehicle through which the Fiji government's investments in the telecommunications sector were consolidated for the purpose of privatization and liberalization under its public sector reform program.

ATH, through its operating subsidiaries, is Fiji's principal telecommunications holding company. It provides a wide range of telecommunications and related services to retail, enterprise, and wholesale customers. The principal activities of the ATH group include the provision of wireline and wireless voice, Internet, and data related services; equipment; business

communications solutions; transaction management and prepaid services; directory information services; business processing outsourcing, including call center services; and international telecommunications facilities. ATH's operating units include the following companies:

- Telecom Fiji Limited ("Telecom Fiji"), a wholly-owned subsidiary of ATH, is the principal provider of fixed telephony services, broadband Internet, international voice and data connectivity, and equipment in Fiji;
- Vodafone Fiji Limited ("Vodafone Fiji"), a joint venture between ATH and the Fiji National Provident Fund ("FNPF"), provides mobile voice, broadband, and data in Fiji;⁴ and
- Fiji International Telecommunications Limited ("FINTEL"), a wholly-owned subsidiary of ATH, provides and operates Fiji's principal international gateway for submarine cable and satellite communications, and serves as the Fiji landing party for the Southern Cross Cable Network (which connects Fiji, Australia, New Zealand, Hawaii, California, and Oregon), the Interchange Cable Network 1 (which connects Fiji and Vanuatu), and the Tonga Cable (which connects Fiji and Tonga).

ATH also provides fixed telephony, broadband Internet and data, and mobile services in the Republic of Kiribati through Amalgamated Telecom Holdings Kiribati Limited.

ATH is listed on the South Pacific Stock Exchange ("SPSE"). The FNPF currently holds approximately 72.6 percent of the shares of ATH. The FNPF is a superannuation fund that collects compulsory contributions from private sector and public sector employees and employers to provide retirement benefits to Fiji workers, and it provides other financial services

⁴ Vodafone Fiji uses the Vodafone brand name pursuant to an agreement with Vodafone plc but is wholly owned by ATH.

to members. As part of its operations, FNPF invests contributions received from members into various asset classes, including local and foreign equities, local and foreign term deposits, Government securities such as bonds and treasury bills, direct property, and commercial lending. Income derived from these investments is distributed to the members' accounts at the end of each financial year. The Fiji government currently holds approximately 17.3 percent of the shares of ATH. The remaining 10.10 percent of ATH's shares are held across more than 1500 other shareholders, none of which hold five percent or more of its shares.

FNPF's seven directors are appointed by the Minister of Finance of the Fiji government, under qualifications set forth by the Fiji Reserve Bank that assure that the funds are managed by a board with broad skill sets that include investment management; corporate governance; accounting and auditing; finance and banking; risk management; law; actuarial or auditing experience and information technology or a similar engineering discipline. No more than one director of FNPF may be a civil servant.

ATH's board of directors is comprised of seven members, four of which are designated by the FNPF and three of which are designated by the Fiji government. Pursuant to SPSE listing rules, at least one third of directors must be "independent" directors, *i.e.*, a person with no material relationship with the listed company, either directly or as a partner, shareholder or officer of an organization that has a relationship with the company. At the present time, only one director is employed in the civil service, and the other five directors are all employed in the private sector. There is one vacancy on ATH's board of directors.

D. Qualifications

ATH has the requisite citizenship, character, financial, technical, and other basic qualifications under the Act and the Commission's rules, regulations, and policies to control

Commission licenses and authorizations.⁵ ATH has operated for over 15 years as Fiji's principal telecommunications holding company, providing a broad range of telecommunications and related services. Furthermore, ATH is financially sound and has the resources to acquire control of and manage AST, ASHC, and SASC. In short, ATH is clearly qualified to obtain control over the Bluesky Licensees.

E. Description of the Proposed Transaction

ATH, Amper, eLandia, ELT, and AST executed the Purchase Agreement, pursuant to which ownership of the Bluesky Licensees and ultimate control of their FCC licenses and authorizations will be transferred from Amper to ATH. Specifically, under the Purchase Agreement, eLandia will sell to a U.S.-incorporated holding company ("U.S. Holdco") that will be a wholly-owned direct subsidiary of ATH,⁶ all of the issued and outstanding member interests in AST, and eLandia will sell to ATH all of the issued and outstanding shares of ELT. Thus, post-closing, AST will become an indirect, wholly-owned subsidiary of ATH, while ASHC and SASC will become indirect majority-owned subsidiaries of ATH. The pre- and post-consummation ownership structure of the Bluesky Licensees is illustrated in the diagrams in Attachment B. ATH's acquisition of the Bluesky Licensees is part of the larger Proposed Transaction, in which ATH will acquire Amper's interests in the Bluesky Communications Group's operations in the Cook Islands, Independent Samoa, and New Zealand. The parties seek to consummate the Proposed Transaction no later than December 2017. Consummation of the

⁵ As noted below, the Applicants are concurrently filing a petition for a declaratory ruling confirming that it is in the public interest to permit a greater than 25 percent indirect foreign ownership interest in AST.

⁶ ATH will notify the FCC of U.S. HoldCo's name, address, and state of organization once it is formed.

Proposed Transaction is subject to satisfaction of a number of closing conditions, including receipt of regulatory consents and clearances as described in part IV below.

III. STANDARD OF REVIEW

Under Sections 214(a) and 310 of the Act and the Cable Landing License Act, the Commission must determine whether the proposed transfer of control is consistent with the public interest, convenience, and necessity.⁷ The Commission generally considers applications under a four pronged test focused on potential benefits and harms: (1) whether the transaction would result in the violation of the Act or any other applicable statutory provision;⁸ (2) whether the transaction would result in a violation of Commission rules;⁹ (3) whether the transaction would substantially frustrate or impair the Commission’s implementation or enforcement of the Act or interfere with the objectives of that and other statutes;¹⁰ and (4) whether the transaction

⁷ See, e.g., *Applications of AT&T Inc. and DIRECTV For Consent to Assign or Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 30 FCC Rcd 9131, 9139-40 ¶ 18 (2015) (“*AT&T-DIRECTV Order*”); *Applications of XO Holdings and Verizon Communications, Inc. to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, DA 16-1281, WC Docket No. 16-70, at 4 ¶ 7 (WCB, IB, WTB, rel. Nov. 16, 2016) (“*Verizon-XO Order*”).

⁸ See *AT&T-DIRECTV Order*, 30 FCC Rcd at 9139 ¶ 18 (citations omitted); *Verizon-XO Order* at 4 ¶ 7; *SoftBank Corp., Starburst II, Inc., Sprint Nextel Corp., and Clearwire Corp. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, Declaratory Ruling, and Order on Reconsideration, 28 FCC Rcd 9642, 9650-51 ¶ 23 (citations omitted)2013) (“*SoftBank-Sprint-Clearwire Order*”); *Quest Communications International Inc. and CenturyTel, Inc. d/b/a CenturyLink for Content to Transfer Control*, Memorandum Opinion and Order, 26 FCC Rcd 4194, 4198-99 ¶ 7 (2011) (“*Qwest-CenturyLink Order*”); *AT&T Inc. and BellSouth Corp. Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd 5662, 5672 ¶ 19 (2007) (“*AT&T-BellSouth Order*”).

⁹ See *AT&T-DIRECTV Order*, 30 FCC Rcd at 9139-40 ¶ 18 (citations omitted).

¹⁰ See *AT&T-DIRECTV Order*, 30 FCC Rcd at 9140 ¶ 18 (citation omitted); *Verizon-XO Order* at 4 ¶ 7; *SoftBank-Sprint-Clearwire Order*, 28 FCC Rcd at 9651 ¶ 23 (citation omitted); *Qwest-CenturyLink Order*, 26 FCC Rcd at 4199 ¶ 7; *AT&T-BellSouth Order*, 22 FCC Rcd at 5672 ¶ 19.

promises to yield affirmative public interest benefits without any material countervailing harms.¹¹ In this case, the Proposed Transaction offers significant public interest benefits without any countervailing public interest harms. The Commission should therefore expeditiously grant consent for the consummation of the Proposed Transaction.

IV. THE PROPOSED TRANSACTION WILL SERVE THE PUBLIC INTEREST, CONVENIENCE, AND NECESSITY

In considering the public interest benefits of the Proposed Transaction, it is important to recognize the unique aspects of offering services in American Samoa, an unincorporated territory of the United States located in the South Pacific Ocean. Part of the Samoan Islands chain, American Samoa consists of five main islands and two coral atolls covering a total land area of approximately 78 square miles (slightly larger than Washington, D.C.). American Samoa is located approximately 2,600 miles from Honolulu and 4,700 miles from Los Angeles. By contrast, American Samoa's main island of Tutuila is a mere 769 miles from the island of Viti Levu in Fiji, where ATH is headquartered.

American Samoa is the only populated U.S. territory in the Southern Hemisphere, with a total population of approximately 55,000, almost all of which resides on Tutuila. The Manua Islands Group, located 68 miles east of Tutuila, has a population of approximately 1,400. Per-capita income in American Samoa is significantly lower than on the U.S. mainland.

American Samoa's islands have mostly rocky and mountainous terrain covered by tropical rain forests and heavily-indented coastlines. American Samoa suffers from seasonal cyclones (known elsewhere as hurricanes or typhoons) and tropical storms. The territory's

¹¹ See *AT&T-DIRECTV Order*, 30 FCC Rcd at 9140 ¶ 18 (citation omitted); *Verizon-XO Order* at 4 ¶ 7; *SoftBank-Sprint-Clearwire Order*, 28 FCC Rcd at 9651 ¶ 23 (citation omitted); *Qwest-CenturyLink Order*, 26 FCC Rcd at 4199 ¶ 7; *AT&T-BellSouth Order*, 22 FCC Rcd at 5672 ¶ 19 (citation omitted).

marine climate also takes a significant toll on network equipment. Given all of these factors, transport costs for any business enterprise are high, and economies of scale can be difficult to achieve.

A. ATH’s Control of the Bluesky Licensees Will Serve the Public Interest

1. ATH Has Strong Technical and Financial Qualifications and Extensive Experience in Island-Based Markets in the South Pacific

ATH has significant expertise in operating facilities-based communications networks in the South Pacific region in island environments similar to American Samoa. Moreover, ATH has the requisite technical qualifications to control the Bluesky Licensees and operate their licensed facilities. Because ATH affiliates operate communications networks in Fiji and Kiribati, with similar operating challenges in terms of terrain, weather, and population densities, ATH is well aware of, and has significant experience dealing with, the operational and other difficulties presented by the provision of telecommunications services in remote island communities such as American Samoa. Adding ATH’s expertise to oversee the existing staff of the Bluesky Licensees will enhance their operations in American Samoa. ATH also expects to improve staff training and development, provide cross-employment opportunities for American Samoa employees, and assist AST’s businesses in American Samoa to modernize and upgrade their back-office systems and services.

“The Pacific Islands is one of the world’s most vulnerable regions to natural disasters,”¹² and ATH has extensive experience in implementing effective disaster planning and executing on disaster recovery efforts. Like American Samoa, Fiji is particularly vulnerable to cyclones.

¹² GSMA, Pacific Islands Mobile Economy 2015 at 40, <https://gsmaintelligence.com/research/?file=23485245295f02524925b2bd3aeec6de&download>.

During the 2015-2016 storm season, for example, Fiji suffered a direct hit from Cyclone Winston, a Category 5 storm that was the strongest on record to make landfall in the Southern Hemisphere. Due to ATH's preparatory efforts, the core networks of its operating subsidiaries remained intact, and interrupted services were quickly restored.¹³

2. ATH Has a Proven Track Record of Increasing Broadband Deployment in Its Service Markets

ATH has a proven track record in Fiji of providing both mobile and fixed broadband penetration in its operating companies' service markets. Fiji has one of the highest mobile penetration rates, as well as one of the highest mobile broadband penetration rates in the South Pacific, with increasing growth in the acceptance of its LTE offerings throughout ATH's served markets. ATH's Telecom Fiji unit is also deploying fiber to the home to improve internet capacity and speeds to consumers in its primary markets.

3. ATH is Financially Well Established, with a Proven Record of Investment

ATH is financially stable and has invested significant resources in its existing networks over the last few years. For example, after it acquired the assets of Telecom Services Kiribati Limited in early 2015 – in a market with significantly greater challenges than Fiji or American Samoa – ATH upgraded and launched a 3G/4G wireless network in Kiribati with improved coverage and reliability that has already nearly doubled the number of active services and

¹³ See 2016 Annual Report of Amalgamated Telecom Holdings Limited at 4, www.ath.com.fj/images/athannualreport2016.pdf. ATH's companies also provided free communications services to Fiji's National Disaster Management Office and other Fiji government offices to support their response and rebuilding efforts. The Vodafone ATH Foundation and Telecom Fiji also provided relief packs directly to affected families during the recovery period.

international bandwidth consumed by customers in Kiribati. ATH also continues to improve wireless services to Kiribati's outer islands.

With revenues for the ATH group of companies totaling more than FJ \$350 million in its last fiscal year, the Bluesky Licensees will benefit from the financial resources of the ATH family of providers. Control by ATH will provide the Bluesky Licensees with access to significant capital resources needed to upgrade networks and offer innovative services at competitive prices.

ATH expects that the combined companies will have greater scale and, consequently, greater purchasing power with equipment and software vendors. Thus, the Proposed Transaction will lead to a stronger regional network in the South Pacific region and deliver real benefits to all stakeholders by improving access and connectivity and delivering modern, enhanced services to consumers. This, in turn, will contribute to the economic and social well-being of American Samoans by supporting local businesses and access to employment, educational, and health care opportunities.

B. Customers Will Not Be Negatively Affected By the Transaction

The Proposed Transaction will be seamless and transparent to customers in American Samoa. AST, ASHC, and SASC will continue to provide services in the normal course without interruption, at the same rates, terms, and conditions that existed before the transaction was consummated.

Customer contracts and tariffs will not be affected by the transaction, and customers will not be required to change accounts or telephone numbers. Indeed, customers will continue to pay their bills in the same places and in the same manner as they currently do. As discussed above, over time AST's customers will benefit from the investment, experience, and commitment to high quality and cost-effective services that ATH will bring to American Samoa.

V. THE PROPOSED TRANSACTION WILL ENHANCE COMPETITION IN AMERICAN SAMOA

Consummation of the Proposed Transaction will enhance competition in American Samoa. ATH's acquisition of the Bluesky Licensees will create a stronger competitor to the incumbent carrier in American Samoa. Moreover, it will not create any horizontal effects in the relevant geographic or product markets.

A. The Combination of ATH and the Bluesky Licensees Will Create a Stronger Competitor in the American Samoa Market

As ATH and the Bluesky Licensees do not currently compete in the provision of any telecommunications offerings in American Samoa, the consummation of the Proposed Transaction will not reduce the number of service providers in that market.¹⁴ Nor does ATH or any of its affiliates currently hold, have an interest in, or otherwise have access to any spectrum in American Samoa that might be used for interconnected voice or data services. Consequently, consummation of the Proposed Transaction will not create any geographic overlap with any of the CMRS spectrum held by AST. Moreover, ATH had no preexisting plans for entering the American Samoa telecommunications market independent of the Proposed Transaction.

On the other hand, the Proposed Transaction will give the Bluesky Licensees access to the greater financial and other in-region resources of a prominent South Pacific telecommunications provider that will improve its ability to compete against American Samoa Telecommunications Authority ("ASTCA"), the incumbent local exchange carrier in American

¹⁴ See, e.g., *Applications Filed by Frontier Communications Corp. and AT&T Inc. for the Assignment or Transfer of Control of the Southern New England Telephone Company and SNET America, Inc.*, Memorandum Opinion and Order, 29 FCC Rcd 9203, 9208 ¶ 14 (2014) (concluding that Frontier's acquisition of AT&T's ILEC business in Connecticut "is unlikely to have adverse effects on existing competition" because the companies "do not currently compete against each other in the transaction market area [and] the transaction does not reduce the number of service providers").

Samoa that is wholly owned by the American Samoa Government. Bluesky currently competes against ASTCA in a full range of services, including mobile voice and broadband, fixed broadband Internet access, interstate interexchange, international telecommunications, and local exchange and exchange access services. ASTCA also will soon compete directly with the Bluesky Licensees in the submarine cable capacity market, as ASTCA will serve as the landing party for the new Hawaiki submarine cable system connecting Australia, New Zealand, American Samoa, and Oregon.¹⁵ In short, rather than present any potential harm to competition in American Samoa, the Proposed Transaction should spur even greater competition between these two entities.

B. Any Competition Concerns Raised by the Bluesky Licensees' Post-Transaction Affiliations with Foreign Carriers Will Be Addressed Through Dominant-Carrier Regulation on the Relevant Routes

Although the Bluesky Licensees are presently affiliated with foreign carriers presumed to have market power in foreign telecommunications markets and will acquire new affiliations with such carriers in Fiji and Kiribati, the Commission has well-established dominant carrier safeguards to address such affiliations. The Applicants agree to comply with those safeguards as a condition of consent for the Proposed Transaction. Accordingly, the Bluesky Licensees' post-transaction foreign carrier affiliations should not raise any unresolved competitive concerns.

VI. ADMINISTRATIVE MATTERS

A. Petition for Section 310(b)(4) Foreign Ownership Declaratory Ruling

ATH and AST are concurrently filing a petition for a declaratory ruling confirming that it is in the public interest to permit a greater than 25 percent indirect foreign ownership interest in

¹⁵ See FCC File No. SCL-LIC-20160906-00019.

AST, which holds multiple CMRS licenses and one common carrier satellite earth station authorization.

B. Request for Approval of Additional Authorizations

The authorizations identified in the associated applications are intended to be a complete list that includes all of the licenses and authorizations held by AST, ASHC, and SASC that are subject to the Proposed Transaction. The Bluesky Licensees, however, may now have on file, or may hereafter file, additional requests for authorizations for new or modified facilities related to the assets to be transferred to ATH, which may be granted before the Commission takes action on the transfer of control applications.¹⁶

Accordingly, the Applicants request that any Commission consent for the Proposed Transaction include authority for ATH to acquire control of the following:

- Any license or authorization issued to AST, ASHC, or SASC during the Commission's consideration of the applications and the period required for consummation of the transaction following approval, including but not limited to

¹⁶ In particular, AST and Club 42 CM Limited Partnership ("Club 42") have filed an application seeking Commission consent to the assignment of a Lower 700 MHz B Block license (call sign WQOU674) and a Lower 700 MHz E Block license (call sign WQOU675) from Club 42 to AST, which is currently pending. *See* ULS File No. 0007294780; *AST Telecom, LLC d/b/a Bluesky and Club 42 CM Limited Partnership Seek FCC Consent to the Assignment of Two Lower 700 MHz Licenses in American Samoa*, Public Notice, WT Docket No. 16-264, DA 16-1065 (rel. Sept. 21, 2016). AST and Club 42 have also entered into a long-term spectrum manager leasing arrangement to allow AST to commence operations pending the Commission's review of the assignment application. Club 42 notified the Commission of the leasing arrangement as required under the Commission's rules. *See* ULS File No. 0007541549.

the Lower 700 MHz licenses that are the subject of AST's pending assignment application with Club 42;¹⁷

- Any construction permits held by AST, ASHC, or SASC that mature into licenses after closing; and
- Applications that are filed after the date of these applications and that are pending at the time of consummation.

Such authorization would be consistent with Commission precedent.¹⁸ The Applicants also request that the Commission's approval of the transaction include any facilities or authorizations that may have been inadvertently omitted.

C. Exemption from Cut-Off Rules

Pursuant to Sections 1.927(h), 1.929(a)(2) and 1.933(b) of the Commission's rules, to the extent necessary,¹⁹ the Applicants request a blanket exemption from any applicable cut-off rules

¹⁷ Because the joint application of AST and Club 42 seeking consent to assign Club 42's American Samoa licenses remains pending before the Commission, the Applicants have not listed the Club 42 licenses in the Form 603 application associated with the Proposed Transaction. To the extent the assignment of the Club 42 licenses to AST is consummated while the instant transfer of control is pending, AST and ATH will amend their Form 603 application to include the licenses acquired from Club 42. Such an amendment should be treated as minor given that AST's proposed acquisition of the Club 42 licenses is disclosed herein and, if consummated, would not materially alter the Commission's analysis of public-interest, competition, or spectrum-aggregation issues associated with the Proposed Transaction.

¹⁸ See *Qwest-CenturyLink Order*, 26 FCC Rcd at 4214-15 ¶ 46; *Frontier Communications Corp. and Verizon Communications Inc. for Assignment or Transfer of Control*, Memorandum Opinion and Order, 25 FCC Rcd 5972, 5996 ¶ 64 (2010); *AT&T Wireless Services, Inc. and Cingular Wireless Corp. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 19 FCC Rcd 21522, 21626 ¶ 275 (2004) ("*AT&T-Cingular Order*"); *Application of WorldCom, Inc., and MCI Communications Corp. for Transfer of Control of MCI Communications Corp. to WorldCom, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 18025, 18153 ¶ 226 (1998); *NYNEX Corp. and Bell Atlantic Corp. for Consent to Transfer Control of NYNEX Corp. and Its Subsidiaries*, Memorandum Opinion and Order, 12 FCC Rcd 19985, 20097 ¶ 247 (1997); *Craig O. McCaw and Am. Tel. and Telegraph Co. for Consent to the Transfer of Control of McCaw Cellular Communications, Inc. and its Subsidiaries*, Memorandum Opinion and Order, 9 FCC Rcd 5836, 5909 ¶ 137 n.300 (1994) ("*McCaw-AT&T Order*").

in cases where the parties file amendments to pending applications to reflect consummation of the proposed transfer of control. This exemption is requested so that amendments to pending applications to report the change in ultimate ownership of these licenses would not be treated as major amendments. The Proposed Transaction's scope demonstrates that the ownership change would not be made for the acquisition of any particular pending application, but as part of a larger transaction undertaken for an independent and legitimate business purpose. Grant of such an exemption would be consistent with previous Commission decisions routinely granting a blanket exemption in cases involving similar transactions.²⁰

D. *Ex Parte* Status

The Applicants request that the Commission treat this proceeding as permit-but-disclose pursuant to Section 1.1206 of the Commission's rules. The public interest in expeditiously

¹⁹ See *Sprint Nextel Corp. and Clearwire Corp. Applications for Consent to Transfer Control of Licenses, Leases, and Authorizations*, Memorandum Opinion and Order, 23 FCC Rcd 17570, 17611 ¶ 105 (2008) ("*Sprint-Clearwire Order*"). With respect to cut-off rules under Sections 1.927(h) and 1.929(a)(2), the Commission has previously found that the public notice announcing the transaction will provide adequate notice to the public with respect to the licenses involved, including for any license modifications pending. In such cases, it determined that a blanket exemption of the cut-off rules was unnecessary. See *Ameritech Corp. and GTE Consumer Services Inc. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 15 FCC Rcd 6667, 6668 ¶ 2 n.6 (WTB 1999); *Comcast Cellular Holdings, Co. and SBC Communications, Inc. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 14 FCC Rcd 10604, 10605 ¶ 2 n.3 (WTB 1999).

²⁰ See, e.g., *Sprint-Clearwire Order*, 23 FCC Rcd at 17611 ¶ 105; *AT&T-Cingular Order*, 19 FCC Rcd at 21626 ¶ 275; *PacifiCorp Holdings, Inc. and Century Tel. Enterprises, Inc. for Consent to Transfer Control of Pacific Telecom, Inc., a Subsidiary of PacifiCorp Holdings, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 8891, 8915-16 ¶ 47 (WTB 1997); *McCaw-AT&T Order*, 9 FCC Rcd 5909 ¶ 137 n.300.

considering these applications would be served by the flexibility permitted by permit-but-disclose procedures.²¹

E. Unconstructed Facilities and Trafficking

To the extent authorizations for unconstructed systems are implicated by the Proposed Transaction, these authorizations are merely incidental, with no separate payment being made for any individual authorization or facility. This transaction thus raises no trafficking issues, and there is no reason to review the transaction for trafficking.²²

VII. CONCLUSION

For the reasons above, the Applicants respectfully submit that the grant of these applications will serve the public interest, convenience, and necessity, and thus warrants prompt Commission approval.

²¹ The Commission may adopt modified ex parte procedures in particular proceedings if the public interest so requires. *See* 47 C.F.R. § 1.1200(a).

²² *See id.* § 1.948(i)(1) (authorizing the Commission to request additional information if the transaction appears to involve unconstructed authorizations obtained for the “principal purpose of speculation”).

ATTACHMENT A – FCC LICENSES AND FRNS

FCC Licenses

Licensee(s)	License/Authorization	File Number/ Call Sign/ Registration Number
AST Telecom, LLC d/b/a Bluesky	International Section 214 Authorization for Global Resale Services	ITC-214-19980918-00671
	International Section 214 Authorization for Global Facilities-Based Services	ITC-214-19981207-00860
	Blanket Domestic Section 214 Authorization	n/a
	CW – PSC Broadband	KNLF302
	AW – AWS	WQGD479
	CL – Cellular	WQHM554
	WY – 700 MHz Lower Band (Blocks A, B & E)	WQJQ800 WQOU674* WQOU675*
	Common Carrier Transmit-Receive Satellite Fixed Earth Station Authorization	E990019
	Antenna Structure Registrations	1227925
		1227926
		1227927
		1229996
		1251224
		1285505
		1286661
AST Telecom, LLC d/b/a Bluesky American Samoa Hawaii Cable, LLC Samoa American Samoa Cable, LLC	Cable Landing License	SCL-LIC-20080814-00016

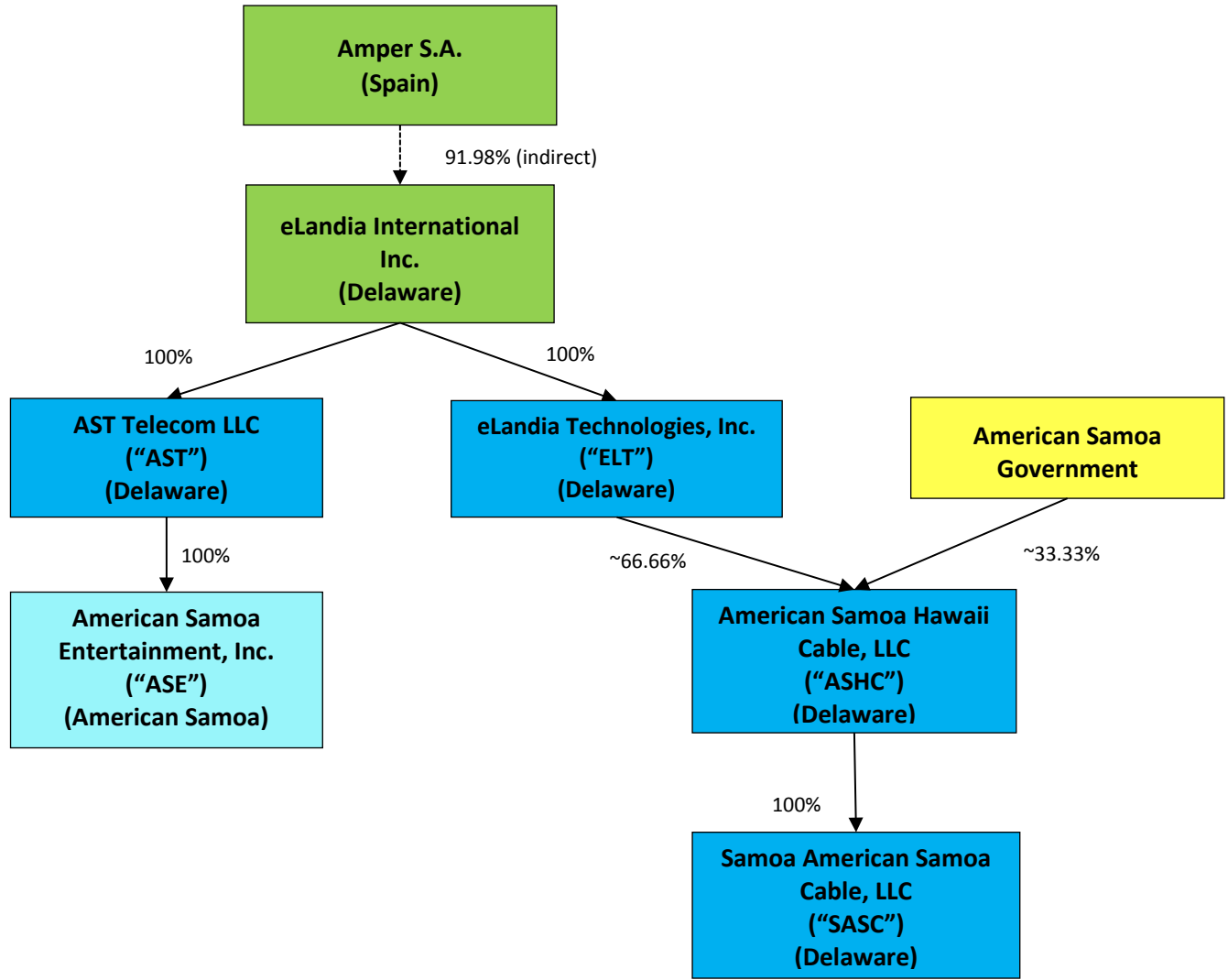
* AST and Club 42 have filed an application seeking Commission consent to the assignment of a Lower 700 MHz B Block license (WQOU674) and a Lower 700 MHz E Block license (WQOU675) from Club 42 to AST, which is currently pending. See ULS File No. 0007294780.

FCC Registration Numbers

Applicant	FRN
Amalgamated Telecom Holdings Limited	0026027409
American Samoa Hawaii Cable, LLC	0017874215
Amper, S.A.	0020086716
AST Telecom, LLC d/b/a Bluesky	0007435902
eLandia International, Inc.	0016157018
eLandia Technologies, Inc.	0010731263
Samoa American Samoa Cable, LLC	0019470731
U.S. Holdco	TBD

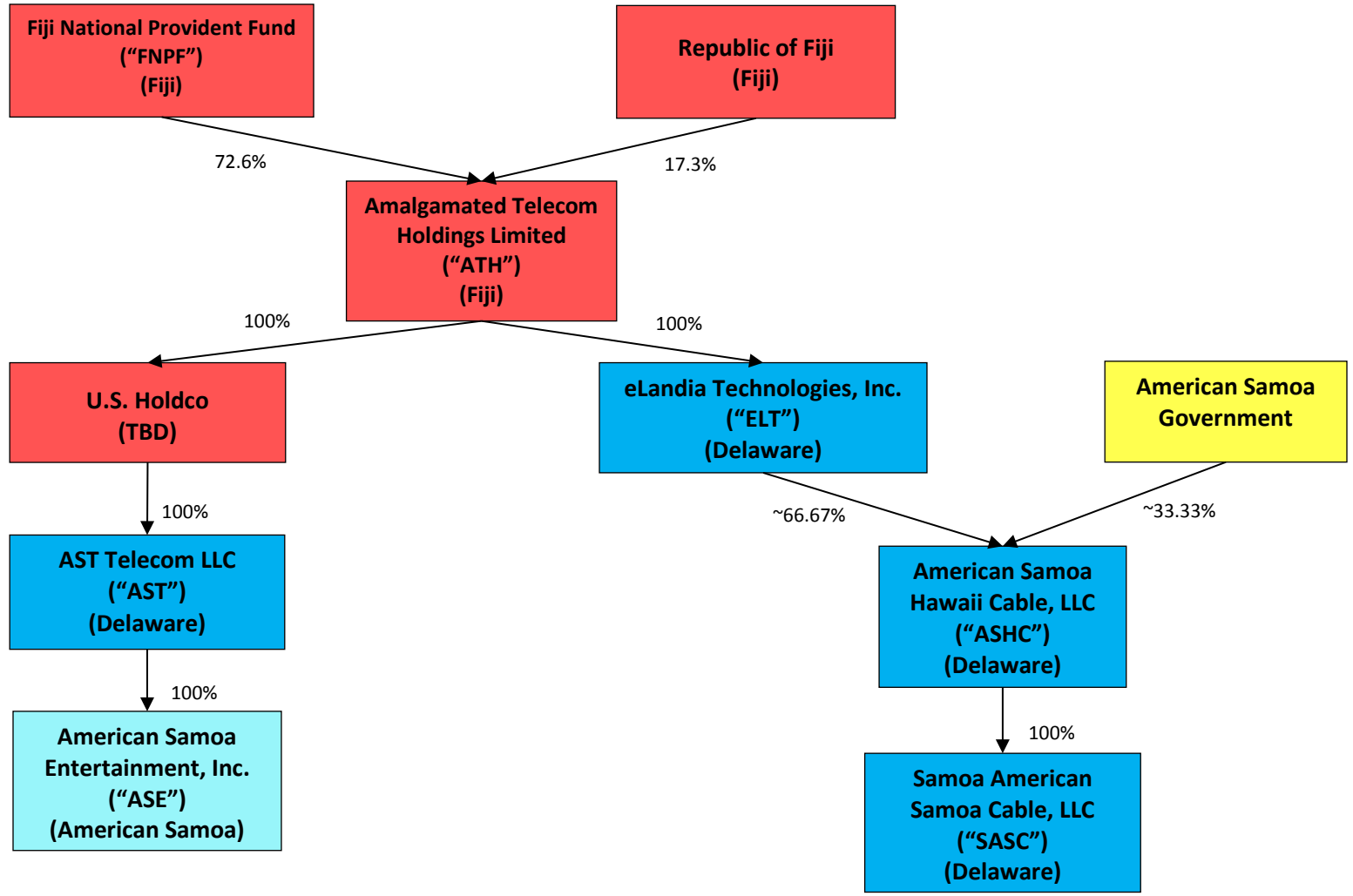
ATTACHMENT B – CURRENT AND POST-CLOSING OWNERSHIP STRUCTURE

Current Ownership Structure of Bluesky Licensees



- Seller entities
- Bluesky Licensees
- Other Bluesky business

Post-Closing Ownership of Bluesky Licensees



- Buyer entities
- Bluesky Licensees
- Other Bluesky business