

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

*In the Matter of*

AMERICAN SAMOA HAWAII CABLE, LLC,

PAC-RIM REDEPLOYMENT, LLC,

and

AST TELECOM, LLC,

D/B/A BLUE SKY COMMUNICATIONS,

Application for a License to Land and Operate  
a Private Fiber-Optic Cable System Connecting  
Hawaii, American Samoa, and Samoa, for

THE AMERICAN SAMOA-HAWAII CABLE

File No. SCL-LIC-2008-\_\_\_\_\_

**JOINT APPLICATION FOR CABLE LANDING LICENSE—  
STREAMLINED PROCESSING REQUESTED**

American Samoa Hawaii Cable, LLC (“ASHC,” FCC Registration Number 0017874215), Pac-Rim Redeployment, LLC (“PRR,” FCC Registration Number 0017882309), and AST Telecom, LLC, d/b/a/ Blue Sky Communications (“Blue Sky,” FCC Registration Number 0007435902) (together with ASHC and PRR, “Applicants”), hereby jointly apply for a license to land and operate within the United States a private fiber-optic submarine cable network connecting Keawaula, Hawaii, Iliili, American Samoa, and Apia, the Independent State of Samoa (commonly known as “Samoa”).<sup>1</sup> This non-common carrier cable system will be

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<sup>1</sup> As American Samoa is an unincorporated and unorganized territory of the United States, two of the three landing points of the ASHC System will be located in U.S. territory and subject to Commission jurisdiction. American Samoa is politically (though not ethnically) distinct from the independent country of Samoa, formerly known as Western Samoa.

known as the American Samoa-Hawaii Cable (“ASHC System”). The Applicants will make ASHC System capacity available to other carriers, Internet service providers, and large end users on an indefeasible right-of-use (“IRU”) or leased-capacity basis, on terms tailored to those customers’ particular needs.

To construct the ASHC System, the Applicants will remove a section of the former Pac Rim East undersea cable system between New Zealand and Hawaii (which ceased carrying commercial traffic on that route in 2007) and reinstall that section to terminate at new cable stations at Iliili, American Samoa, and Apia, Samoa. The new ASHC System will still use the same Hawaii landing facilities as the former Pac Rim East system.

The Applicants intend to begin operation of the ASHC System in the first quarter of 2009. Due to weather conditions in the South Pacific, the Applicants must commence *and* complete construction in the November-December 2008 timeframe. Timely grant of a cable landing license is therefore of paramount importance for the ASHC System.

The Applicants request streamlined processing for this application, as it raises no foreign ownership, competition, or other public-interest concerns. In particular, the Applicants are U.S.-owned. The Applicants request streamlined processing pursuant to Section 1.767(k)(1), as it is not affiliated with a foreign carrier in any of the ASHC System’s destination markets. An expeditious grant of this application will significantly advance the public interest by providing the first-ever undersea cable capacity connecting to American Samoa and Samoa—a much needed and less-expensive alternative to existing satellite circuits. By reusing portions of the Pac Rim East system, the ASHC System will provide low-cost connectivity to support significant new economic opportunities in the remote and economically depressed U.S. territory of

American Samoa. The ASHC System will also provide the first-ever undersea cable connectivity for Samoa, supplementing existing satellite and microwave facilities.

**I. COMPLIANCE WITH SECTION 1.767**

In accordance with Section 1.767 of the Commission’s rules and Executive Order No. 10,530, the Applicants submit the following information:

**(1) Applicants’ Names, Addresses and Telephone Numbers<sup>2</sup>**

The names, addresses, and telephone numbers of the Applicants are:

AMERICAN SAMOA HAWAII CABLE, LLC  
PAC-RIM REDEPLOYMENT, LLC  
P.O. Box 7870  
Pago Pago, American Samoa 96799  
+1 684 699 2100 tel  
+1 684 699 2105 fax

*and*

AST TELECOM, LLC  
D/B/A BLUE SKY COMMUNICATIONS  
P.O. Box 478  
Pago Pago, American Samoa 96799  
+1 684 699 2759 tel  
+1 684 699 6593 fax

**(2) Applicants’ Places of Incorporation<sup>3</sup>**

ASHC, PRR, and Blue Sky are all limited-liability companies organized under the laws of the State of Delaware.

**(3) Contact Information<sup>4</sup>**

The Commission should address correspondence regarding this application to:

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<sup>2</sup> See 47 C.F.R. § 1.767(a)(1).

<sup>3</sup> See *id.*, § 1.767(a)(2).

<sup>4</sup> See *id.*, § 1.767(a)(3).

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*barry@rjvlaw.com*

*with a copy to:*

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HARRIS, WILTSHIRE & GRANNIS LLP  
1200 18th Street, N.W., Suite 1200  
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*Counsel for American Samoa Hawaii Cable, LLC,  
Pac-Rim Redeployment, LLC, and AST Telecom, LLC*

**(4) System Description<sup>5</sup>**

The ASHC System will consist of two segments of digital fiber-optic cable. The first, domestic, segment will connect Keawaula, on the island of Oahu in Hawaii, with Iiili, American Samoa. The second segment will connect Iiili, American Samoa, with Apia, Samoa. On the Hawaii-American Samoa segment, the ASHC System will consist of 2 optical fiber pairs, with a design capacity and initial configuration capacity of 1.12 Gbps. On the American Samoa-Samoa segment, the ASHC system will consist of 2 optical fiber pairs, with an design capacity of 160 Gbps but an initial capacity of 2.5Gbps..

To construct the ASHC System, the Applicants will remove a section of the former Pac Rim East undersea cable system between New Zealand and Hawaii (which ceased carrying commercial traffic on that route in 2007) and reinstall that section to terminate at the cable

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<sup>5</sup> See *id.*, § 1.767(a)(4).

stations at Iliili, American Samoa, and Apia, Samoa.<sup>6</sup> The new ASHC System will still use the same Hawaii landing facilities as the former Pac Rim East system, including the existing bore pipes, beach manhole, conduit, and Keawaula cable station. TPC-5 and the soon-to-be-built Sydney-Hawaii Cable System will also land in Hawaii using these facilities.<sup>7</sup>

Exhibit A of this application provides a route map for ASHC System. The Applicants anticipate that the ASHC System will enter into commercial service in the first quarter of 2009.

(5) **Landing Points**<sup>8</sup>

The ASHC System's specific landing points are located as follows:

1. Keawaula, Hawaii
  - Beach manhole: 21° 32' 52.134"N, 158° 14' 25.1448"W
  - Keawaula cable station:
    - Street address: Kaena Point Tracking Station Road, Wai'anae, Hawaii 96792
    - Geographic coordinates: 21° 32.1870'N, 158° 14.420'W
2. American Samoa
  - Pago Pago beach manhole: 14° 20' 23.06"S, 170° 43' 17.95" W
  - Iliili cable station:
    - Street address: Golf Course Rd, Iliili, American Samoa 96799
    - Geographic coordinates: 14° 20' 17.40"S, 170° 43' 52.22" W

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<sup>6</sup> See Letter from James J.R. Talbot, Senior Attorney, AT&T, Inc., to FCC Secretary Marlene H. Dortch, FCC File Nos. SCL-90-003 and ITC 90-072 (Oct. 3, 2007) (notifying the Commission that the PacRimEast undersea cable system was retired on July 31, 2007).

<sup>7</sup> See FCC File Nos. SCL-20070621-00009 (granting a cable landing license for the Sydney-Hawaii cable system), SCL-92-005 (granting a cable landing license for TPC-5).

<sup>8</sup> See *id.*, § 1.767(a)(5).

3. Apia, Samoa
  - Beach manhole: 13° 50.30.47' S, 171° 44.27.56' W
  - Apia cable station:
    - Street address: SamoaTel Headquarters, Maluafofu Complex, at the intersection of Falealili Street and Logan Road, Apia
    - Geographic coordinates: 13° 50'14.29" S, 171° 45' 41.26" W

Maps of these specific landing points are provided in Exhibit B to this application.

(6) **Regulatory Status**<sup>9</sup>

The Applicants will operate the ASHC System on a non-common carrier basis. Non-common carrier status of the proposed system is consistent with established Commission policy and judicial precedent, and will advance the public interest

*First*, the Commission should not subject the ASHC System to common carrier regulation because the ASHC System will not operate on a common carrier basis as defined in *NARUC I*.<sup>10</sup> The courts have stated that “[t]he primary *sine qua non* of common carrier status is a quasi-public character, which arises out of the undertaking ‘to carry for all people indifferently.’”<sup>11</sup> On the ASHC System, however, the Applicants will not sell capacity indifferently to the user public. Instead, the Applicants will provide capacity to particular users—including common carriers, Internet service providers, and large end users, such as call

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<sup>9</sup> See *id.*, § 1.767(a)(6).

<sup>10</sup> See *National Ass’n of Regulatory Utility Commissioners v. FCC*, 525 F.2d 630, 642 (D.C. Cir.) (“*NARUC I*”) (stating that the court must inquire “whether there are reasons implicit in the nature of . . . [the] operations to expect an indifferent holding out to the eligible user public”), *cert. denied*, 425 U.S. 992 (1976). See also *Virgin Islands Telephone Corp. v. FCC*, 198 F.3d 921 (D.C. Cir. 1999) (affirming FCC’s use of *NARUC I* test for distinguishing common carrier and private carrier services following enactment of the Telecommunications Act of 1996).

<sup>11</sup> *National Ass’n of Regulatory Utility Commissioners v. FCC*, 533 F.2d 601, 608 (D.C. Cir. 1976) (“*NARUC II*”).

centers—who will be able to obtain capacity on the system through leases of capacity varying by volume, term, and price. Capacity on the ASHC System will be assigned pursuant to individualized decisions, depending on the characteristics and needs of the particular capacity purchaser. The Commission has previously found that such offerings do not make an applicant a common carrier.<sup>12</sup>

**Second**, the Commission should not subject the ASHC System to common carrier regulation because there is no legal compulsion or other public interest reason for the Applicants to operate the ASHC System in such a manner. Under the *NARUC I* test, the Commission must determine whether the public interest requires common carrier operation of the cable system.<sup>13</sup> Traditionally, the Commission has focused on whether the applicant has sufficient market power to warrant common carrier regulation.<sup>14</sup> The ASHC System poses no such competitive concerns.

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<sup>12</sup> See *AT&T Corp. et. al, Cable Landing License*, 13 FCC Rcd. 16,232, 16,238 (Int’l Bur. 1998) (“*China-U.S. Cable Order*”) (finding that individualized decisions concerning the sale or lease of capacity on the China-U.S. Cable Network would not constitute the effective provision of a service to the public so as to make the applicant a common carrier); *AT&T Submarine Systems, Inc.*, 11 FCC Rcd. 14,885, 14,904 (Int’l Bur. 1996) (“*St. Thomas-St. Croix Cable Order*”) (finding that an “offer of access, nondiscriminatory terms and conditions and market pricing of IRUs does not rise to the level of an ‘indiscriminate’ offering” so as to constitute common carriage), *aff’d* 13 FCC Rcd. 21,585 (1998), *aff’d sub. nom Virgin Islands Telephone Corp. v. FCC*, 198 F.3d 921 (D.C. Cir. 1999).

<sup>13</sup> *NARUC I*, 525 F.2d at 642 (stating that the court must inquire “whether there will be any legal compulsion . . . to serve [the public] indifferently”).

<sup>14</sup> See *St. Thomas-St. Croix Cable Order*, 11 FCC Rcd. at 14,893 ¶ 30. Although the International Bureau and the Commission have traditionally looked to the existence of alternative facilities, they have not limited their analysis to that approach. See *Australia-Japan Cable (Guam) Limited, Cable Landing License*, 15 FCC Rcd. 24,057, 24,062 ¶ 13 (Int’l Bureau 2000); *AT&T Corp. et. al., Joint Application for a License to Land and Operate a Submarine Cable Network Between the United States and Japan, Cable Landing License*, 14 FCC Rcd. 13,066 ¶ 39 (2000) (finding that “competing facilities will at least partially constrain the operations of the Japan-US CN so that it will not become a bottleneck facility” (footnote omitted)). The International Bureau has also considered whether or not the applicant is affiliated with foreign carriers with market power, and also the management approach to a particular undersea cable system. See *Project Oxygen (USA) LLC, Cable Landing License*, 14 FCC Rcd. 3924, 3926 ¶ 8 (Int’l Bur. 1999).

On routes served by the ASHC System, the Applicants will compete vigorously with providers' existing and planned facilities on Southern Pacific routes, including Intelsat's IS-602 and SES New Skies' NSS-5. On the American Samoa-Samoa segment, ASHC will also supplement existing terrestrial microwave facilities. The Commission has previously considered satellite circuits in evaluating adequate alternative facilities on a particular route<sup>15</sup> and found that the existence of intermodal competition from satellite and terrestrial microwave facilities is sufficient to justify non-common carrier status for an undersea cable system.<sup>16</sup> Although the satellite circuits cited in many International Bureau licensing decisions were common-carrier in nature, neither the Bureau nor the Commission has explicitly required that such circuits be regulated on a common-carrier basis in order to justify licensing competing undersea cable facilities on a non-common-carrier basis. To the contrary, the concept of intermodal competition is much broader.<sup>17</sup>

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<sup>15</sup> See *SSI Atlantic Crossing LLC*, 13 FCC 5961, 5963 & n.12 (Int'l Bur. 1997) (noting that Intelsat satellite circuits will provide competitive alternative facilities to the Atlantic Crossing cable system), *modified*, 12 FCC Rcd. 17,435 (Int'l Bur. 1997), *further modified*, 13 FCC Rcd. 7171 (Int'l Bur. 1998); *TeleBermuda International, L.L.C.*, 11 FCC Rcd. 21,141, 21,145 & n.14 (Int'l Bur. 1996) (noting that Intelsat satellite circuits will provide the only alternative common carrier facilities to the BUS-1 cable system); *Tel-Optik Ltd.*, 100 FCC 2d 1033, 1041 (1985) ("*TelOptik*") (noting that with a private cable system, "[b]ulk users of broadband and high-speed digital satellite circuits will be able to use cable to satisfy their transmission capacity needs and any special operational and technical requirements").

<sup>16</sup> See, e.g., *General Communication, Inc., Cable Landing License*, 12 FCC Rcd. 18,292, 18,297 ¶ 16 (Int'l Bur. 1999) (noting that existing terrestrial microwave and satellite facilities provided competition on the proposed route of GCI's Alaska United East system), *aff'd* 16 FCC Rcd. 4314 (2001); *Tel-Optik*, 100 FCC 2d at 1040, 1052.

<sup>17</sup> See *St. Thomas-St. Croix Cable Order*, 11 FCC Rcd. at 14,896 ¶ 39 (noting that "[u]nder *NARUC I* and Commission precedent, our decision necessarily must consider whether the proposed cable system is a competitive 'bottleneck' (*i.e.*, whether there are no competitive substitutes, enabling the owner to restrict output or raise prices), or whether there are, in fact, competitive alternatives.").



(7) **Cable Ownership Information**<sup>18</sup>

The ASHC System and Hawaii and Apia landing facilities will be owned as follows:

- ***Wet-Link and Shore-End Segments:*** PRR will construct and initially own the wet-link portion of the ASHC System—including both the Hawaii-American Samoa and American Samoa-Samoa segments—as well as the Hawaii, American Samoa, and Samoa shore-end portion of the ASHC System. Upon commissioning of the system, ASHC will acquire the ASHC system by purchase from PRR pursuant to a purchase and sale, finance and development agreement between PRR and ASHC. ASHC will then own and operate the wet-link portion of the ASHC System—including both the Hawaii-American Samoa and American Samoa-Samoa segments—as well as the Hawaii, American Samoa, and Samoa shore-end portion of the ASHC System. Given that ASHC will undertake—prior to commissioning of the system and assumption of ownership from PRR—certain activities (including arrangements for the Keawaula landing) with respect to the operation of the ASHC System, ASHC is a joint Applicant with PRR for the cable landing license.
- ***Cable Station in Hawaii:*** AT&T, Inc. (“AT&T”), will continue to own and operate the existing cable station Keawaula, Hawaii, which the Commission has licensed separately as part of the TPC-5, Sydney-Hawaii, and Asia American Gateway cable systems.<sup>19</sup>

ASHC will enter into an agreement with AT&T giving ASHC a license for space in

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<sup>18</sup> See 47 C.F.R. § 1.767(a)(7).

<sup>19</sup> See *American Telephone & Telegraph Co. et al., Cable Landing License*, FCC File No. SCL-92-005, 7 FCC Rcd. 7674 (Com. Car. Bur. 1992) (granting a cable landing license for TPC-5); *Actions Taken Under the Cable Landing License Act, Public Notice*, FCC File No. SCL-LIC-20070621-00009, 23 FCC Rcd. 7446 (Int’l Bur. 2008), (granting a cable landing license for Telstra’s Sydney-Hawaii Cable System); *Actions Taken Under the Cable Landing License Act, Public Notice*, FCC File No. SCL-LIC-20070824621-00015, 23 FCC Rcd. 10,386 (Int’l Bur. 2008), (granting a cable landing license for the Asia American Gateway Cable Network).

AT&T's conduit connecting the ASHC System's beach landing with the Keawaula cable station and a license for collocation space in the Keawaula cable station building. In part IV below, the Applicants request a waiver of Section 1.767(h)(1) of the Commission's rules so that they need not add AT&T as a joint applicant to this application.

- **Cable Station in American Samoa:** Blue Sky will construct, own, and operate the Iliili cable station in American Samoa.
- **Cable Station in Samoa:** SamoaTel Limited ("SamoaTel"), the principal fixed and mobile carrier in Samoa, will construct, own, and operate the Apia cable station in Samoa. SamoaTel will not have any equity interest in the ASHC System or the cable stations in Hawaii or American Samoa.

(8) **Corporate Control and Affiliate Information**<sup>20</sup>

The Applicants submit the following information specified in Sections 63.18(h) through (k) and Section 63.18(o) of the Commission's rules:

(i) **Certification Regarding Ownership, Citizenship, Principal Businesses, and Interlocking Directorates**<sup>21</sup>

Diagrams showing the direct and indirect ownership of the Applicants are provided at Exhibit C. Diagram 1 shows the ownership structure of ASHC. Diagram 2 shows the ownership structure of eLandia International, Inc. Diagram 3 shows the ownership structure of PRR. By the signatures below, the Applicants certify respectively to the following.

Three entities own membership interests in ASHC: (1) the American Samoa Government (33.33 percent); (2) eLandia Technologies, Inc. (53.44 percent); and (3) MC Cable II, LLC (13.33 percent).

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<sup>20</sup> See 47 C.F.R. § 1.767(a)(8).

<sup>21</sup> See *id.*, § 63.18(h).

- ***American Samoa Government (“ASG”)***: ASG governs American Samoa, an unincorporated and unorganized territory of the United States. Although the United States Congress has given plenary authority over American Samoa to the U.S. Department of the Interior, the Secretary of the Interior has given American Samoa the authority to draft its own constitution, under which the democratically-elected ASG functions through an executive branch led by the directly-elected governor and a bicameral legislature, known as the Fono. The current governor is the Honorable Togiola T.A. Tulafono, who maintains his office at the following address:

Office of the Governor  
Executive Office Building  
Third Floor, Utulei  
Pago Pago, American Samoa 96799.

- ***eLandia Technologies, Inc. (“eLandia”)***: eLandia is a corporation organized under the laws of the State of Delaware. eLandia is engaged in the provision of telecommunications products and services and information technology. eLandia’s address is:

133 Sevilla Avenue  
Coral Gables, Florida 33134

eLandia is a wholly-owned, direct subsidiary of eLandia International, Inc. (“eLandia Parent”), a corporation organized under the laws of the State of Delaware. eLandia Parent is a diversified holding company, with investments in the information technology and communications sectors. eLandia Parent’s address is:

133 Sevilla Avenue  
Coral Gables, Florida 33134

As detailed in Exhibit C, Diagram 2, eLandia Parent’s only 10-percent-or-greater shareholder is Stanford International Bank Ltd. (“SIB”), which owns 68.1 percent of, and

controls, eLandia Parent. SIB is a company limited by shares and organized under the laws of Antigua and Barbuda; it engages the business of financial services. SIB is a direct, wholly-owned subsidiary of Stanford International Bank Holdings Ltd. (“SIB Holdings”), a company limited by shares and organized under the laws of Antigua and Barbuda. SIB Holdings engages in the business of a holding company. SIB and SIB Holdings share the same address:

No. 11 Pavilion Drive  
St. John’s, Antigua

SIB Holdings is wholly owned by Mr. R. Allen Stanford, a U.S. citizen and investor. Mr. Stanford’s address is:

201 South Biscayne Boulevard, 27th Floor  
Miami, Florida 33131

Consequently, eLandia is ultimately U.S.-owned.

- ***MC Cable II, LLC (“MC Cable II”)***: MC Cable II is a limited-liability company organized under the laws of Georgia and engaged in the business of investing in telecommunications and broadband infrastructure. MC Cable II’s address is:

c/o Merchant Capital, LLC  
One Buckhead Plaza  
2060 Peachtree Road  
Suite 1700  
Atlanta, Georgia 30305

MC Cable II is owned by two members: (1) Pac Rim Investments, LLC, which owns 51 percent of MC Cable II’s membership interests, and (2) MC Partners American Samoa Holdings, LLC, which owns 49 percent of MC Cable II’s membership interests.

- ***Pac Rim Investments, LLC (“Pac Rim”)***: Pac Rim is a limited-liability company organized under the laws of the State of Georgia. PacRim is engaged in the business of a holding company. Its address is:

c/o Merchant Capital, LLC  
One Buckhead Plaza  
2060 Peachtree Road  
Suite 1700  
Atlanta, Georgia 30305

All of the ownership interests of Pac Rim are owned by James R. Wilson, a U.S. citizen engaged in the business of investments. Mr. Wilson also serves as Manager of ASHC and PRR. His address is:

2282 Peachtree Road #16  
Atlanta, Georgia 30305

- ***MC Partners American Samoa Holdings, LLC (“MC-PASH”)***: MC-PASH is a limited-liability company organized under the laws of the State of Alabama. MC-PASH is engaged in the business of a holding company. Its address is:

c/o Merchant Capital, LLC  
One Buckhead Plaza  
2060 Peachtree Road  
Suite 1700  
Atlanta, Georgia 30305

MC-PASH has five owners, all of whom are U.S. citizens and all of whom are engaged in the business of investments. Although none of these persons holds a ten-percent-or-greater direct or indirect ownership interest in ASHC, the Applicants have provided this ownership information for purposes of completeness and to evidence the entirely U.S. ownership of ASHC. These five owners hold the following membership interests in MC-PASH and have the following addresses:

Thomas A. Harris (owns 32.0 percent)  
2045 Myrtlewood  
Montgomery, Alabama 36111

Michael P. Dunn (owns 24.0 percent)  
3026 Jasmine Road  
Montgomery, Alabama 36111

John B. Rucker III (owns 17.6 percent)  
41 Avenue of the Waters  
Pike Road, Alabama 36064

Douglas C. Sellers (owns 13.5 percent)  
2517 Jamestown Lane  
Montgomery, Alabama 36111

Kenneth C. Funderburk (owns 5.0 percent)  
7217 Timbermill Drive  
Montgomery, Alabama 36117

Philip W. Fletcher III (owns 7.9 percent)  
1161 Brimer Road  
Newnan, Georgia 30263

Consequently MC Cable II is ultimately U.S.-owned.

Blue Sky is a direct subsidiary of eLandia Parent, whose ownership is described above.

Two entities own membership interests in PRR: (1) eLandia (80.0 percent), and (2) MC Cable I, LLC (20.0 percent).

- **eLandia**: For place-of-organization, citizenship, address, principal business, and ownership information, see discussion above with respect to ASHC.
- **MC Cable I, LLC (“MC Cable I”)**: MC Cable I is a limited-liability company organized under the laws of Georgia and engaged in the business of investing in telecommunications and broadband infrastructure. MC Cable I’s address is:

c/o Merchant Capital, LLC  
One Buckhead Plaza  
2060 Peachtree Road  
Suite 1700  
Atlanta, Georgia 30305

MC Cable I has identical ownership to MC Cable II. For citizenship, address, principal business, and ownership information with respect to those owners, *see* discussion above with respect to ASHC. Consequently, MC Cable I is ultimately U.S.-owned.

Neither ASHC nor PRR nor Blue Sky has any interlocking directorates with a foreign carrier.

(ii) **Certification Regarding Foreign Carrier Status and Foreign Affiliations**<sup>22</sup>

By their respective signatures below, ASHC and PRR each certifies that it is not a foreign carrier and that it is not affiliated with the any foreign carrier.

By its signature below, Blue Sky certifies that it is not a foreign carrier and that it is not affiliated with any foreign carrier.

(iii) **Certification Regarding Destination Markets**<sup>23</sup>

By the signature below, ASHC certifies to the following: (1) it is not a foreign carrier in any country outside the United States; (2) it does not control a foreign carrier in any other country; (3) no entity owning more than 25 percent of ASHC or controlling ASHC controls a foreign carrier in any other country that is a destination market for the ASHC System (which does not land in any foreign country); and (4) no grouping of two or more foreign carriers (or parties that control foreign carriers) own, in aggregate, more than 25 percent of ASHC and are

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<sup>22</sup> *See id.*, §§ 1.767(a)(8), 63.18(i).

<sup>23</sup> *See id.*, §§ 1.767(a)(8), 63.18(j).

parties to, or beneficiaries of, a contractual relation affecting the provision or marketing of international basic telecommunications services in the United States.

By the signature below, PRR certifies to the following: (1) it is not a foreign carrier in any country outside the United States; (2) it does not control a foreign carrier in any other country; (3) no entity owning more than 25 percent of PRR or controlling PRR controls a foreign carrier in any other country that is a destination market for the ASHC System (which does not land in any foreign country); and (4) no grouping of two or more foreign carriers (or parties that control foreign carriers) own, in aggregate, more than 25 percent of PRR and are parties to, or beneficiaries of, a contractual relation affecting the provision or marketing of international basic telecommunications services in the United States.

By the signature below, Blue Sky certifies to the following: (1) it is not a foreign carrier in any country outside the United States; (2) it does not control a foreign carrier in any other country; (3) no entity owning more than 25 percent of Blue Sky or controlling Blue Sky controls a foreign carrier in any other country that is a destination market for the ASHC System (which does not land in any foreign country); and (4) no grouping of two or more foreign carriers (or parties that control foreign carriers) own, in aggregate, more than 25 percent of Blue Sky and are parties to, or beneficiaries of, a contractual relation affecting the provision or marketing of international basic telecommunications services in the United States.

(iv) **Certification Regarding WTO Status, Market Power, and the Effective Competitive Opportunities Test<sup>24</sup>**

As neither ASHC nor PRR nor Blue Sky has made an affirmative certification in response to Section 63.18(j) of the Commission's rules, neither ASHC nor PRR nor Blue Sky need make a showing under Section 63.18(k) of the Commission's rules.

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<sup>24</sup> See *id.*, §§ 1.767(a)(8), 63.18(k).



(v) **Certification Regarding the Anti-Drug Abuse Act of 1988**<sup>25</sup>

By their respective signatures below, each Applicant certifies that no party to this application is subject to a denial of federal benefits that includes FCC benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.

(9) **Certification Regarding Routine Conditions Set Forth in Section 1.767(g) of the Commission's Rules**<sup>26</sup>

By their respective signatures below, each Applicant certifies that it accepts and will abide by the routine conditions specified in Section 1.767(g) of the Commission's rules.

**II. CERTIFICATION REGARDING SERVICE TO EXECUTIVE BRANCH AGENCIES**

Pursuant to Section 1.767(j) of the Commission's rules,<sup>27</sup> the Applicants have sent a complete copy of this application to the U.S. Department of State, the U.S. Department of Commerce, and the Defense Information Systems Agency. The Applicants' counsel has certified such service in the certificate of service attached to this application.

**III. REQUEST FOR STREAMLINED PROCESSING**

The Applicants request streamlined processing pursuant to Section 1.767(k)(1) of the Commission's rules.<sup>28</sup> ASHC, PRR, and Blue Sky have certified above that none is a foreign carrier or affiliated with a foreign carrier in any of the cable's destination markets.<sup>29</sup> Moreover, the application raises no competition or public interest concerns that would merit consideration

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<sup>25</sup> See 47 C.F.R. §§ 1.767(a)(8), 63.18(o).

<sup>26</sup> See *id.*, §§ 1.767(a)(9), (g).

<sup>27</sup> See *id.*, § 1.767(j).

<sup>28</sup> See *id.*, § 1.767(k)(2).

<sup>29</sup> See *id.*, § 1.767(k)(1).

outside the Commission’s streamlined review process. By the signature below, the Applicants certify that they are aware of and will comply with the requirements of the Coastal Zone Management Act of 1972, as amended (“CZMA”), and the National Oceanic and Atmospheric Administration’s CZMA implementing rules, codified at 15 C.F.R. Part 930 Subpart D.<sup>30</sup>

#### **IV. REQUEST FOR WAIVER OF SECTION 1.767(h)(1)**

The Applicants hereby request a waiver of Section 1.767(h)(1) of the Commission’s rules so that AT&T need not be a joint applicant for the ASHC System cable landing license. “The purpose of [Section 1.767(h)(1)] is to ensure that entities having a significant ability to affect the operation of the cable system become licensees so that they are subject to the conditions and responsibilities associated with the license.”<sup>31</sup> AT&T, however, will not have the ability to affect significantly the operation of the ASHC System. Moreover, the addition of AT&T as a joint applicant would not be necessary to ensure compliance by the Applicants with the Cable Landing License Act, the Commission’s cable landing license rules, or the terms of any cable landing license.

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<sup>30</sup> See *Federal Communications Commission, Modification of the Rules and Procedures Governing the Provision of International Telecommunications Service, Notice of Final Rule*, 72 Fed. Reg. 54,365 (Sept. 25, 2007) (establishing an effective date of October 25, 2007, for the note to Section 1.767(a)(10) but not Section 1.767(k)(4), which remains subject to approval by the Office of Management and Budget). In certifying its awareness of and compliance with the CZMA, the Applicants do not concede that the legality or policy-appropriateness of the Commission’s new CZMA rules, given the pending challenge by the North American Submarine Cable Association (“NASCA”) to the Commission’s CZMA-related findings, conclusions, and rules adopted in the Commission’s Report and Order, FCC 07-118, in IB Docket No. 04-47 (released June 22, 2007). See NASCA Consolidated Petition for Reconsideration and Petition to Defer Effective Date, IB Docket No. 04-47 (filed Oct. 25, 2007).

<sup>31</sup> See *Actions Taken Under the Cable Landing License Act, Public Notice*, FCC File SCL-LIC-20070222-00002, 23 FCC Rcd. 227, 229 (Int’l Bur. 2008) (“*TPE Cable Landing License*”) (citing *Review of Commission Consideration of Applications under the Cable Landing License Act, Report and Order*, 16 FCC Rcd. 22,167, 22,194-95 ¶¶ 53-54 (2001)).

For the Hawaii landing of the ASHC System, AT&T will provide certain limited services that would not provide it with any ability to affect significantly the operation of the ASHC System. ASHC will enter into an agreement with AT&T licensing to ASHC use of AT&T's conduit connecting the ASHC System's Hawaii beach landing with the Keawaula cable station and collocation space in the Keawaula cable station building. The agreement has a term of 10 years or until the ASHC System is retired, whichever is earlier.

ASHC will have exclusive control over and access to ASHC System terminal equipment, which it will collocate in the Keawaula cable station building. Equipment for the ASHC System will be separately caged and controlled exclusively by the Applicants from their network operations center in the Iiili cable station. The Applicants will retain operational authority over their ASHC System facilities and provide direction to AT&T in all matters relating to the ASHC System. Pursuant to the agreement between ASHC and AT&T, AT&T will perform certain limited "remote hands" monitoring, testing, and maintenance services on the Applicants' equipment, which would be performed in accordance with ASHC's directions.

Since the adoption of Section 1.767(h)(1) in late-2001, the International Bureau has often declined to require owners of existing and separately-licensed cable stations to be joint applicants or licensees for new undersea cable systems that connect, or will connect, to those existing cable stations and has generally declined to require a waiver of Section 1.767(h)(1).<sup>32</sup>

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<sup>32</sup> See *Actions Taken Under the Cable Landing License Act, Public Notice*, FCC File No. SCL-LIC-20060413-00004, 21 FCC Rcd. 6380 (Int'l Bur. 2006) (declining to require that AT&T—which owned an existing cable station at Seward, Alaska—be a joint applicant or licensee for the Kodiak-Kenai Cable System, which landed at the Seward cable station); *Actions Taken Under the Cable Landing License Act, Public Notice*, FCC File No. SCL-LIC-20050418-00010, 20 FCC Rcd. 14,639 (Int'l Bur. 2005) (declining to require that AT&T and Global Crossing St. Croix, Inc.—which owned existing cable stations in Puerto Rico and St. Croix, respectively—be joint applicants or licensees for the Global Caribbean Network, which landed at the Puerto Rico and St. Croix cable stations); *Actions Taken Under the Cable Landing*

Most recently, the International Bureau granted a waiver to the joint applicants for the Trans-Pacific Express Network (“TPE”), declining to require that WCI Cable, Inc.—which owns an existing cable station at Nedonna Beach, Oregon—be a joint applicant or licensee for TPE, which will land at the Nedonna Beach cable station.<sup>33</sup>

Consistent with these licensing precedents and the purpose of Section 1.767(h)(1) of the Commission’s rules, the Applicants believe they have made a sufficient showing in support of a waiver of Section 1.767(h)(1). They therefore request that the Commission grant this waiver request.

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*License Act, Public Notice*, FCC File No. SCL-LIC-20031125-00032, 19 FCC Rcd. 446 (Int’l Bur. 2004) (declining to require that Global Crossing St. Croix, Inc.-which owned the existing cable station in St. Croix, USVI-be a joint applicant or licensee for the Antilles Crossing system, which landed at the St. Croix cable station); *Actions Taken Under the Cable Landing License Act, Public Notice*, FCC File No. SCL-LIC-20031209-00033, 19 FCC Rcd. 8564 (Int’l Bur. 2003) (declining to require that Telecomunicaciones Ultramarinas de Puerto Rico, Inc.-which owned an existing Puerto Rico cable station-be a joint applicant or licensee for the SMPR-1 system, which landed at the Puerto Rico cable station), *aff’d Order on Review*, 20 FCC Rcd. 18,732 (2005).

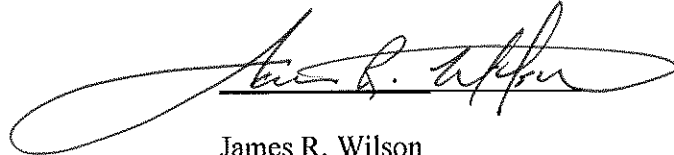
<sup>33</sup> See *TPE Cable Landing License*, 23 FCC Rcd. at 229 (finding that “WCIC will not have the ability to affect the operation of the TPE Network. Verizon will retain effective operational authority and provide direction to WCIC in all matters relating to the TPE Network”).

**CONCLUSION**

For the foregoing reasons, the Commission should expeditiously grant this cable landing license application pursuant to streamlined processing.

Respectfully submitted,

**AMERICAN SAMOA HAWAII CABLE, LLC  
PAC-RIM REDEPLOYMENT, LLC**



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Pac-Rim Redeployment, LLC, and  
AST Telecom, LLC, d/b/a Blue Sky  
Communications*

**AST TELECOM, LLC D/B/A  
BLUE SKY COMMUNICATIONS, LLC**

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13 August 2008

Attachments

## CONCLUSION

For the foregoing reasons, the Commission should expeditiously grant this cable landing license application pursuant to streamlined processing.

Respectfully submitted,

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13 August 2008

Attachments

## CERTIFICATE OF SERVICE

I, Kent D. Bressie, hereby certify that consistent with Section 1.767(j) of the Commission's rules, 47 C.F.R. § 1.767(j), I have served copies of the foregoing Joint Application for Cable Landing License of American Samoa Hawaii Cable, LLC, Pac-Rim Redeployment, LLC, and AST Telecom, LLC, d/b/a Blue Sky Communications by hand- or overnight delivery on this 13 day of August 2008, to the following:

Ambassador David Gross  
U.S. Coordinator  
Int'l Communications & Information Policy  
Bureau of Economic and Business Affairs  
U.S. DEPARTMENT OF STATE  
EB/CIP : Room 4826  
2201 C Street, N.W.  
Washington, D.C. 20520-5818

Kathy Smith  
Chief Counsel  
U.S. DEPARTMENT OF COMMERCE/NTIA  
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Washington, D.C. 20230

Hillary Morgan  
Deputy General Counsel, Regulatory &  
International Law  
Code RGC  
DEFENSE INFORMATION SYSTEMS AGENCY  
701 South Courthouse Road  
Arlington, Virginia 22204

A handwritten signature in black ink, appearing to read "Kent D. Bressie", written over a horizontal line.

Kent D. Bressie

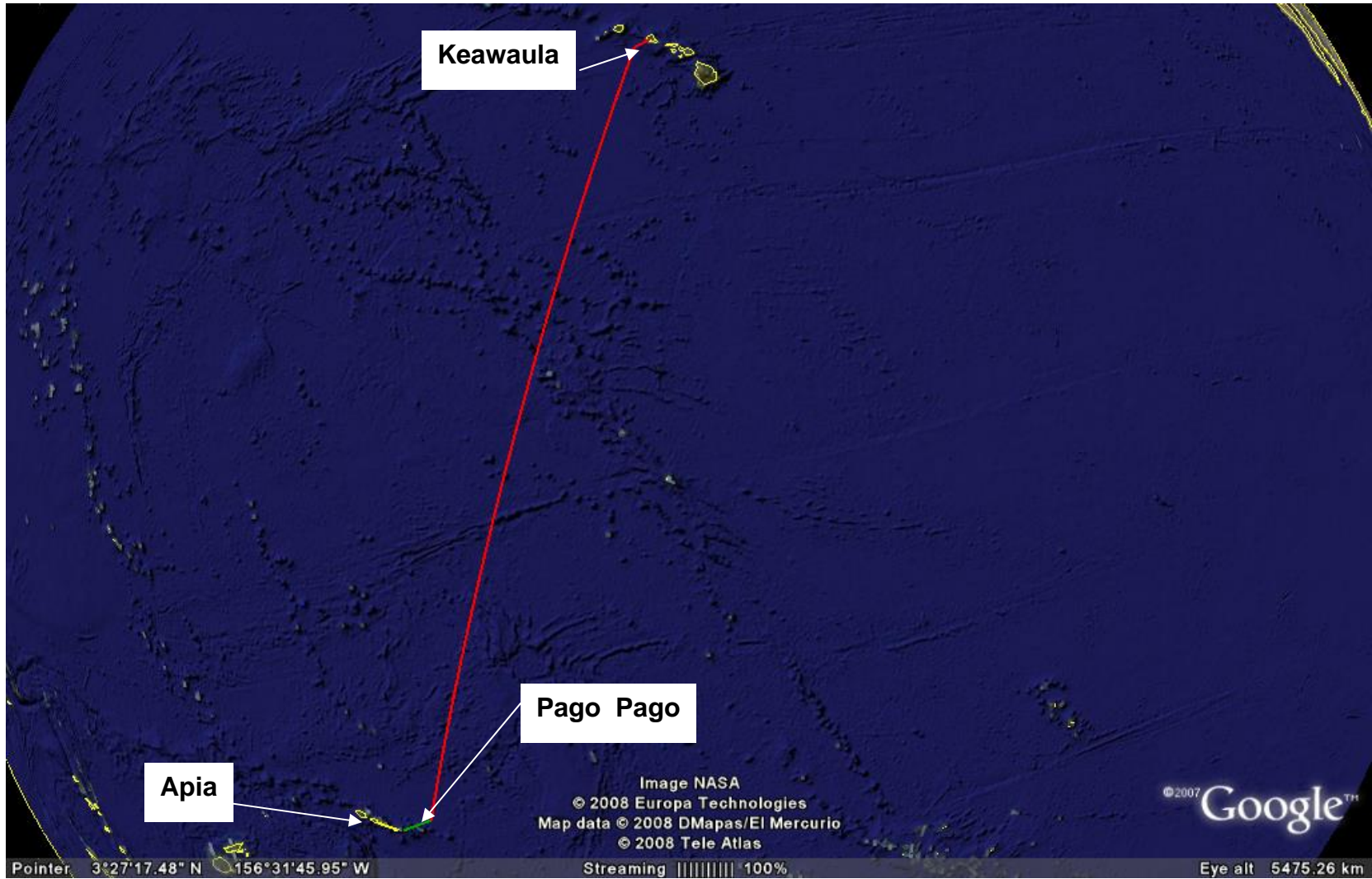
## **LIST OF EXHIBITS**

- Exhibit A: General Route Map for the American Samoa-Hawaii Cable System**
- Exhibit B: Maps Providing Specific Landing Point Information in Compliance with 47 C.F.R. § 1.767(a)(5)**
- Exhibit C: Diagrams Showing Direct and Indirect Ownership of the Applicants**



**EXHIBIT A**

**General Route Map for  
the American Samoa-Hawaii Cable System**



**EXHIBIT B**

**Maps Providing Specific Landing Point Information  
in Compliance with 47 C.F.R. § 1.767(a)(5)**

American Samoa Landing



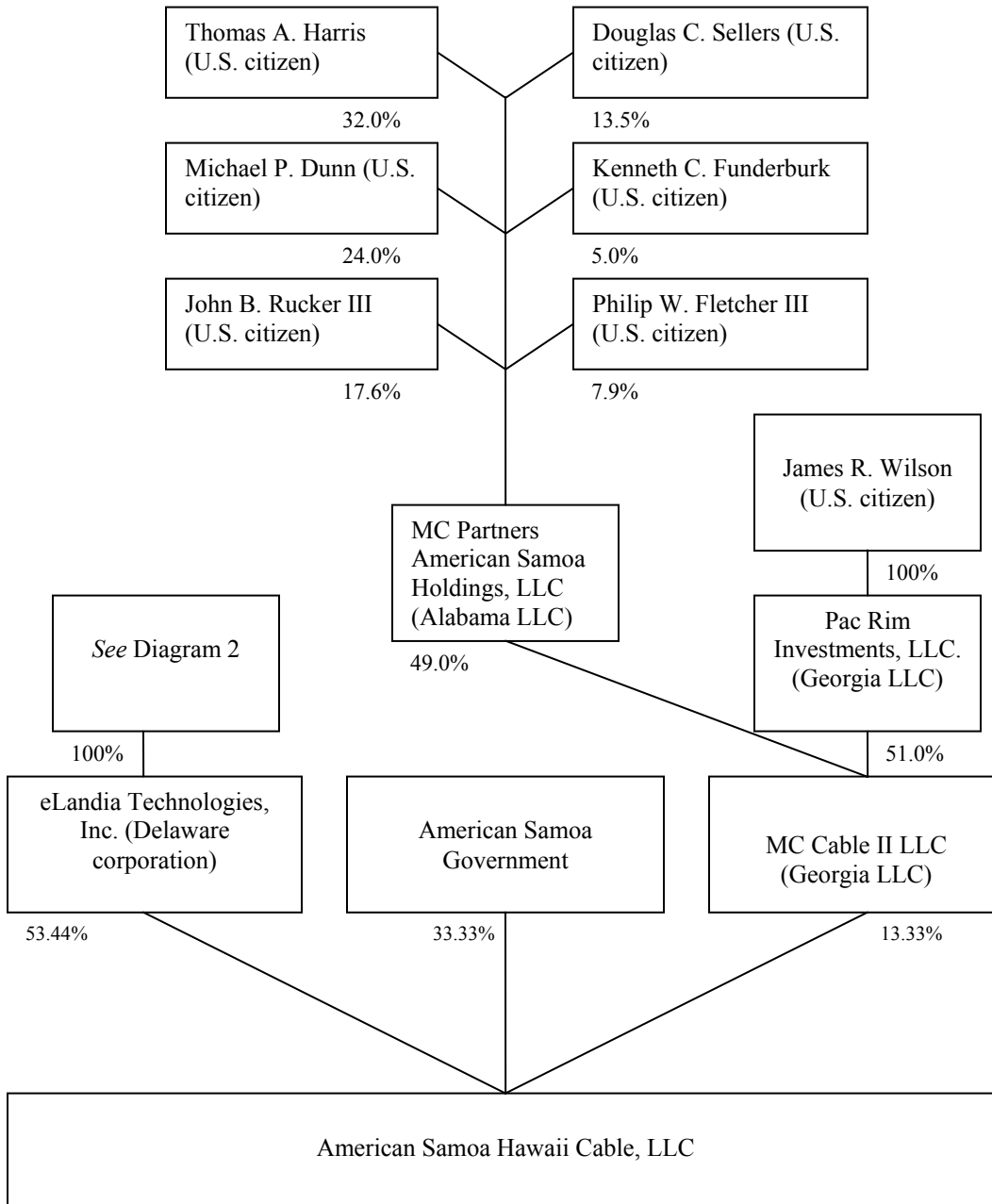
# Apia, Samoa, Landing



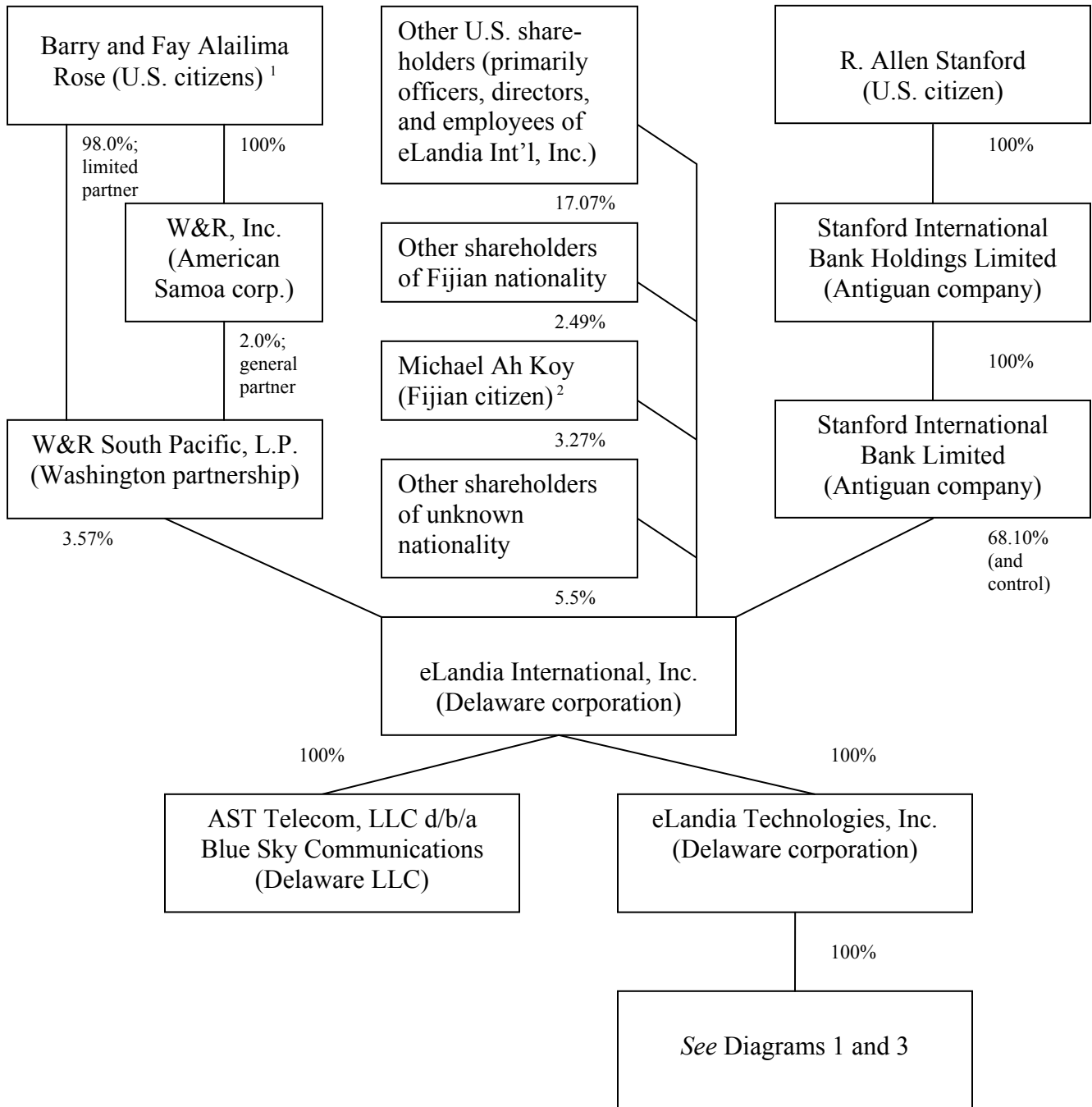
**EXHIBIT C**

**Diagrams Showing  
Direct and Indirect Ownership of the Applicants**

## Diagram 1: Ownership of American Samoa Hawaii Cable, LLC



**Diagram 2:  
Ownership of Elandia International, Inc., and  
AST Telecom, LLC**



<sup>1</sup> Barry and Fay Alailima Rose are husband and wife and hold their ownership interests jointly.

<sup>2</sup> Michael Ah Koy's interest reflects direct shareholdings and his indirect interest as a beneficiary and trustee of the James Michael Ah Koy Trust, the shareholdings of which are also reflected in the total number for Mr. Ah Koy.

### Diagram 3: Ownership of Pac-Rim Redeployment, LLC

