

## ATTACHMENT 1: REQUEST FOR SPECIAL TEMPORARY AUTHORITY

AST Telecom, LLC, d/b/a Blue Sky Communications (“Blue Sky,” FRN 0007435902), respectfully requests Special Temporary Authority (“STA”) pursuant to the Cable Landing License Act, Executive Order No. 10,530, Section 1.767 of the Commission’s rules, and the cable landing license for the American Samoa Hawaii Cable system (“ASH Cable”)<sup>1</sup> for continuing operation of the ASH Cable following the consummation by Blue Sky of an acquisition of a controlling interest in SamoaTel Limited (“SamoaTel”) and during the pendency of Blue Sky’s foreign carrier affiliation notification filed concurrently and pursuant to Section 1.768(a)(1) of the Commission’s rules.<sup>2</sup>

SamoaTel is the incumbent wireline carrier in Independent Samoa, a politically- but not ethnically-distinct nation directly northwest of the Territory of American Samoa. SamoaTel presently has more than 50-percent market share in Independent Samoa’s fixed local access market. Consequently, Blue Sky does not qualify for post-consummation notification of the foreign carrier affiliation notification pursuant to Section 1.768(b) of the Commission’s rules.<sup>3</sup>

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<sup>1</sup> “An act relating to the Landing and Operation of Submarine Cables in the United States, *codified at* 47 U.S.C. §§ 34-39 (“Cable Landing License Act”); Executive Order No. 10530 (May 10, 1954), *codified at* 3 C.F.R. 189 (1954-1958), *reprinted in* 3 U.S.C. § 301 app. (1988); 47 C.F.R. § 1.767; *Actions Taken Under Cable Landing License Act*, Public Notice, 24 FCC Rcd. 226 (2009) (“ASH Cable Landing License”); FCC File No. SCL-LIC-20080814-00016.

<sup>2</sup> 47 C.F.R. § 1.768(a)(1). Blue Sky incorporates this notification by reference and includes as Attachment 2 to this STA request. As discussed with International Bureau staff in advance of filing this STA request, American Samoa Hawaii Cable, LLC (“ASHC”), and Samoa American Samoa Cable, LLC (“SASC”), are not making parallel STA requests along with Blue Sky, even though they have filed simultaneous foreign carrier affiliation notifications pursuant to 47 C.F.R. § 1.768(a). That rule section does not require a prior notification of the proposed affiliation by ASHC and SASC because neither ASHC nor SASC is a parent entity of Blue Sky, and because no foreign carrier is acquiring an interest in ASHC or SASC.

<sup>3</sup> *Id.* § 1.768(b).

Blue Sky was the winning bidder in an auction conducted by the Government of Independent Samoa for sale of a majority stake in, and privatization of, SamoaTel. On January 21, 2011, Blue Sky entered into an agreement with the Government of Independent Samoa to acquire that controlling stake in SamoaTel. Blue Sky directly owns 68 percent of a special-purpose subsidiary, Blue Sky SamoaTel Investments, Ltd. (“BSI”), which will, upon consummation, directly own 75 percent of SamoaTel’s shares outstanding. The Government of Independent Samoa has consistently stated a preference for immediate consummation of this transaction, and Blue Sky remains concerned that further delay in consummation would jeopardize the transaction without providing any corresponding public interest benefits.

As demonstrated at length in Blue Sky’s concurrently-filed foreign carrier affiliation notification, Blue Sky believes that its effective competitive opportunities showing satisfies the requirements of Section 1.768(g)(2) of the Commission’s rules.<sup>4</sup> Independent Samoa has a well-developed regulatory framework to safeguard competition and allow U.S. carriers and investors to land and operate undersea cables in Independent Samoa. Although Independent Samoa is not yet a WTO Member (it has applied and has observer status), its regulatory framework is much more developed and sophisticated than that of many WTO Members.

U.S. investors and carriers have the legal ability to enter the Independent Samoa market to land and operate undersea cables in Independent Samoa. Independent Samoa’s regulatory framework for interconnection ensures the ability of U.S. investors and carriers to operate undersea cables in Independent Samoa. Its telecommunications regulatory framework

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<sup>4</sup> See 47 C.F.R. § 1.768(g)(2). See also *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order and Order on Reconsideration, 12 FCC Rcd. 23,891, 23,946 ¶ 130 (1997) (“*Foreign Participation Order*”); Cable Landing License Act § 2, codified at 47 U.S.C. § 35.

establishes competitive safeguards that ensure the ability of U.S. investors and carriers to operate undersea cables in Independent Samoa. Independent Samoa also has an effective regulatory framework for developing, implementing, and enforcing legal requirements, Interconnection arrangements, and other safeguards, thereby ensuring the ability of U.S. investors and carriers to operate undersea cables in Independent Samoa

To provide the Commission with further assurance during the pendency of Blue Sky's foreign carrier affiliation notification, Blue Sky agrees to comply with the reporting requirements in Section 1.767(l) of the Commission's rules effective *immediately* upon consummation of Blue Sky's acquisition of SamoaTel and throughout the pendency of its foreign carrier affiliation notification.

The public interest will be served by grant of this STA request. Grant of this STA request would avoid jeopardizing Blue Sky's acquisition of SamoaTel, a transaction that Blue Sky believes to be of great commercial and strategic importance. Timely consummation of the transaction will permit private investment in, and renewal of, SamoaTel and improved services between Independent Samoa and American Samoa, island groups that have extremely close familial, cultural, and economic ties. Compliance with the dominant-carrier safeguards in Section 1.767(l) of the Commission's rules and continuing vigorous regulation by the Independent Samoa regulator will safeguard competition, provide transparency, and ensure continuing access by U.S. carriers to the Independent Samoa market.

Accordingly, Blue Sky respectfully requests grant of this STA request for the interim period until the Commission acts on the underlying foreign carrier affiliation notification. Blue Sky acknowledges that grant of this request will not prejudice action by the Commission on the

underlying notification and that any authority granted pursuant to this request is subject to cancellation or modification upon notice but without a hearing.