

Section 310(b) Petition for Declaratory Ruling : Filing Completed

This is to confirm that, effective 12/20/2016, you have successfully filed a Section 310(b) Petition for Declaratory Ruling.

For administrative purposes, File Number: ISP-PDR-20161220-00011 has been assigned to this action.

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

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|--|---|-------------------|
| In the Matter of |) | |
| |) | |
| AST Telecom, LLC d/b/a Bluesky |) | File No. ISP-PDR- |
| Petitioner/Licensee |) | |
| |) | |
| and |) | |
| |) | |
| Amalgamated Telecom Holdings Limited |) | |
| Petitioner/Transferee |) | |
| |) | |
| Petition for Declaratory Ruling Under |) | |
| Section 310(b)(4) of the Communications |) | |
| Act of 1934, as Amended |) | |

PETITION FOR DECLARATORY RULING

AST Telecom, LLC d/b/a Bluesky (“AST”), a company holding common carrier wireless licenses in American Samoa, and Amalgamated Telecom Holdings Limited (“ATH”), a Fiji-organized telecommunications holding company, hereby jointly request a declaratory ruling, pursuant to Section 1.990(a)(1) of the Commission’s rules,¹ that indirect investment of 100 percent in AST by ATH is consistent with the public interest standard under Section 310(b)(4) of the Communications Act of 1934, as amended (the “Act”).² AST is indirectly owned by Amper, S.A. (“Amper”). 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 Transaction”). A

¹ 47 C.F.R. § 1.990(a)(1).

² 47 U.S.C. § 310(b)(4).

demonstration that the public interest would be served by granting the Petition is set forth in Exhibit 1.

I. BACKGROUND

A. The Licensee

AST, a Delaware limited-liability company headquartered in Pago Pago, American Samoa, holds multiple common carrier Commercial Mobile Radio Service (“CMRS”) licenses in the cellular, broadband PCS, AWS, and lower 700 MHz services, as well as a common carrier earth station license, all in American Samoa.³ AST also is the proposed assignee of two additional 700 MHz CMRS licenses in American Samoa. AST is currently a direct, wholly-owned subsidiary of eLandia International Inc. (“eLandia”), a Delaware corporation. eLandia is an indirect subsidiary of Amper, a Spanish holding company whose shares are traded publicly on the Madrid Stock Exchange under the symbol AMP. A diagram of the current ownership structure is set forth in Attachment B of Exhibit 1.

B. The Proposed Transaction and the FCC Applications

This Petition is filed in connection with the Proposed Transaction, in which a newly formed wholly-owned U.S. subsidiary of ATH will, among other things, acquire from eLandia all of AST’s outstanding member interests. ATH is a company organized under the laws of the Republic of Fiji, and it will create a new U.S. holding company to hold AST’s member interests. As a result, the foreign ownership in AST will be indirect and the transaction will comply with the requirements of Section 310(b)(4) of the Act and Section 1.990(a)(1) of the FCC’s rules.

³ The AST licenses that are subject to Section 310(b)(4) are listed in Section II.C. below.

In Exhibit 1, the Applicants provide additional details of the Proposed Transaction and its public interest benefits. The following applications being filed with respect to the Proposed Transaction are expressly related to this Petition for Declaratory Ruling:

1. An application to transfer control of multiple CMRS licenses held by AST (FCC Form 603), and
2. An application to transfer control of one common carrier satellite earth station authorization held by AST (FCC Form 312).

C. The Transferee, Amalgamated Telecom Holdings Limited, a Fiji Company

ATH is an experienced and financially sound holding company which owns several communications carriers that have a long and successful history of providing communications services to island-based markets in the South Pacific. ATH, based in Suva, Fiji, was incorporated as a public company in 1998 as a vehicle through which the Fiji government consolidated its investments in the telecommunications sector for the purpose of privatization and liberalization under Fiji's public sector reform program. ATH is listed on the South Pacific Stock Exchange.

ATH is Fiji's principal telecommunications holding company. ATH provides, through its operating subsidiaries, a wide range of telecommunications and related services to retail, enterprise and wholesale customers in Fiji. Specifically, Telecom Fiji Limited ("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 Limited ("Vodafone Fiji") provides mobile voice, broadband, and data in Fiji. Fiji International Telecommunications Limited ("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. ATH, through its operating

subsidiary Amalgamated Telecom Holdings (Kiribati) Limited, also provides fixed telephony, broadband Internet and data, and wireless services in the Republic of Kiribati.

Neither ATH nor any of its subsidiaries currently holds or controls any FCC licenses or authorizations. Consummation of the Proposed Transaction will allow ATH to leverage its considerable experience and expertise in serving island markets and AST's record of innovation and infrastructure development to ensure innovation, investment, and a superior customer service experience for users in American Samoa. A diagram of the proposed ownership structure is set forth in Attachment B of Exhibit 1.

D. ATH's Ownership and Governance

The Fiji National Provident Fund ("FNPF") currently holds approximately 72.6 percent of the shares of ATH. The FNPF is a superannuation fund with assets exceeding FJ \$5 billion 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 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. FNPF's seven directors are appointed by the Minister of Finance of the Fiji government. Under the statute creating the FNPF, board members must meet qualifications set forth by the Fiji Reserve Bank that assures that the funds are managed by a board with broad skillsets 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 may be a civil servant.

The Fiji government currently holds an approximate 17.3-percent equity and voting interest in ATH. No other shareholder or group of shareholders holds a five-percent-or-greater equity or voting interest in ATH. The remaining 10.10 percent of ATH's shares are held by more than 1500 shareholders.

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 the South Pacific Stock Exchange Listing Rules, at least one-third of directors must be "independent" directors. Currently one vacancy exists on the ATH board of directors. At the present time, only one ATH director is employed in the civil service, and the other five ATH directors are all employed in the private sector.

II. INFORMATION REQUIRED BY SECTION 1.991 (1.5001)⁴

Pursuant to Section 1.991 (1.5001) of the Commission's rules, the petitioners provide the following information in support of this Petition.

A. Contact Information, FRN, Place of Organization, Type of Business, and Certification Information (Section 1.991(a) (1.5001(a))

| | |
|-------------------------------|--|
| Petitioner/Transferee: | Amalgamated Telecom Holdings Limited |
| FRN: | 0026027409 |
| Address: | Level 2, Harbour Front Building, Rodwell Rd. G.P.O. Box 11643 Suva, Fiji Islands |
| Place of Organization: | Fiji |
| Telephone: | +679.330.8700 |
| Fax: | +679.330.8044 |
| Email: | ivan.a.fong@gmail.com / IvanF@ath.com.fj |
| Type of Business: | Corporation |
| Certifying Officer: | Ivan Fong, General Manager and Company Secretary |
| Licensee: | AST Telecom, LLC d/b/a Bluesky |

⁴ Section 1.991 of the FCC's rules will be replaced by Section 1.5001 effective January 30, 2017. The new rule is noted parenthetically after the currently effective rule.

FRN: 0007435902
Address: P.O. Box 478, Laufou Shopping Center
Pago Pago, American Samoa 96799
Place of Organization: Delaware
Telephone: +1 684.699.2759
Fax: +1 684.699.6593
Email: dcreevey@blueskypacificgroup.com
Type of Business: Limited liability company
Certifying Officer: Douglas Creevey, Chief Executive Officer

B. Legal Counsel Contact Information (Section 1.991(b) (1.5001(b))

Counsel for Transferee:

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C. Licenses Covered by Declaratory Ruling (Section 1.991(c)(1) (1.5001(c)(1))

AST is the licensee of one PCS broadband license (call sign KNLF302), one advanced wireless service (“AWS”) license (call sign WQD479), one cellular license (call sign WQHM554), one 700 MHz lower band license (call sign WQJQ800), and one common carrier

fixed earth station license (call sign E990019). AST is also the proposed assignee for two 700 MHz lower band licenses (call signs WQOU674 and WQOU675).⁵

D. Associated Applications (Section 1.991(c)(2) (1.5001(c)(2))

This Petition is associated with the applications to transfer control of AST's PCS broadband, AWS, cellular, and 700 MHz licenses (File No. 0007584554) and common carrier earth station license from Amper to ATH. These applications will be filed concurrently with or shortly after this Petition is filed.

E. Type of Declaratory Ruling (Section 1.991(d) (1.5001(d))

ATH seeks authority pursuant to Section 1.991(a)(1) of the Commission's rules to exceed the 25 percent indirect foreign ownership benchmark established by Section 310(b)(4) of the Act.

F. Direct Ownership Information (Section 1.991(e), (g) (1.5001(e), (g))

Following the consummation of the Proposed Transaction, ATH's new U.S.-incorporated holding company ("U.S. HoldCo"), which is not yet formed, will own 100 percent of AST's member interests. ATH will notify the Commission once ATH forms U.S. Holdco.

G. Indirect Ownership Information (Section 1.991(f), (g) (1.5001(f), (g))

As noted immediately above, following the consummation of the Proposed Transaction, U.S. HoldCo will own all of AST's member interests. The indirect owners of AST will be:

⁵ 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 (WQOU674) and a Lower 700 MHz E Block license (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.

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 100 percent of the shares of 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 (“Fiji”)
Address: P.O. Box 2212, Government Buildings
Suva, Fiji
Citizenship: Fiji
Principal Business: government
Ownership interest: Fiji holds an approximate 17.3 percent equity and voting interest in ATH

H. No other entity currently holds an interest of five percent or more of transferee ATH and therefore an indirect interest of five percent or more of Bluesky. Estimate of Aggregate Foreign Ownership (Section 1.991(h)(1) (1.5001(h)(1)).

Attachment B of Exhibit 1 is the post-transaction ownership chart that identifies that the estimated aggregate foreign ownership as a result of the Proposed Transaction will be 100 percent. The percentages listed are calculated based on the share ownership in each respective entity. The circumstances that prompted the filing of this Petition are described in Section I.B. of this Petition. A demonstration that the public interest would be served by granting the Petition is set forth in Exhibit 1.

I. Ownership and Control Structure (Section 1.991(h)(2) (1.5001(h)(2))

Attachment B of Exhibit 1 describes the post-transaction ownership and control structure of AST, including an ownership diagram that identifies the real-party-in-interest and illustrates the proposed vertical ownership structure.

J. Requests for Specific Approval (Section 1.991(i), (j) (1.5001(i), (j))

The petitioners request specific approval for investment in AST for the following indirect foreign ownership:

Name: Amalgamated Telecom Holdings Limited (“ATH”)
Address: Level 2, Harbour Front Building, Rodwell Rd.
G.P.O. Box 11643
Suva, Fiji
Citizenship: Fiji
Entity Type: Corporation
Principal Business: Holding company (telecommunications)
Ownership interest: ATH holds 100 percent of the shares of U.S. Holdco and will hold a 100 percent indirect equity and voting interest in AST.

Name: Fiji National Provident Fund (“FNPF”)
Address: Plaza 2, 33 Ellery St., Private Mail Bag
Suva, Fiji
Citizenship: Fiji
Entity Type: Investment Fund
Principal Business: Superannuation (pension) fund
Ownership interest: FNPF holds approximately 72.6 percent of the shares of ATH and would have a 72.6 percent indirect equity/voting interest in AST.

Name: Fiji Government
Address: P.O. Box 2212, Government Buildings
Suva, Fiji
Citizenship: Fiji
Entity Type: Sovereign government
Principal Business: Government
Ownership interest: The Fiji government holds approximately 17.3 percent of the shares of ATH and would have a 17.3 percent indirect equity/voting interest in AST.

K. Requests for Advance Approval (Section 1.991(k)(2) (1.5001(k)(2))

The petitioners request advance approval for indirect investment of more than five percent in AST for Unit Trust of Fiji (Trustee Company) Limited (“UTOF”) formed under the laws of Fiji, which currently holds approximately 4.64 percent of the shares of ATH but which may want to increase its shares of ATH through open market purchases up to and including a non-controlling 25 percent. UTOF was established in 1978 to provide an equal opportunity fund for creating wealth for ordinary Fijians and currently represents a wide range of investor individuals, clubs, associations, groups, corporations and institutions. UTOF is managed by Unit Trust of Fiji (Management) Limited, licensed by the Reserve Bank of Fiji, to conduct and carry out the business of managing UTOF. The “Trustee” of UTOF is Unit Trust of Fiji Limited.

| | |
|---------------------|--|
| Name: | Unit Trust of Fiji (Trustee Company) Limited (“UTOF”) |
| Address: | Level 2, Provident Plaza 1, Ellery Street, GPO Box 14551 Suva, Fiji |
| Citizenship: | Fiji |
| Entity Type: | Investment Fund |
| Principal Business: | Investment Fund |
| Ownership interest: | UTOF currently holds approximately 4.64 percent of the shares of ATH and thus would have a 4.64 percent indirect equity/voting interest in AST; specific approval is requested to allow it to acquire as much as 25 percent in the future. |

III. PUBLIC INTEREST STATEMENT

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

IV. CONCLUSION

For the reasons stated above, it is respectfully requested that the Commission issue a Declaratory Ruling determining that the public interest would be served by a greater-than-25-percent indirect foreign ownership interest in AST.

Respectfully submitted,

By: AST Telecom, LLC d/b/a Bluesky

/s/ Douglas Creevey

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December 20, 2016