



# PUBLIC NOTICE

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DA 17-101  
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**APPLICATIONS FILED FOR THE TRANSFER OF CONTROL OF  
AST TELECOM, LLC D/B/A BLUESKY, AMERICAN SAMOA HAWAII CABLE, LLC, AND  
SAMOA AMERICAN SAMOA CABLE, LLC FROM AMPER S.A. TO  
AMALGAMATED TELECOM HOLDINGS LIMITED AND  
REQUEST FOR DECLARATORY RULING ON FOREIGN OWNERSHIP**

**PLEADING CYCLE ESTABLISHED**

**IB Docket No. 16-420**

**Comments/Petitions to Deny Due: March 1, 2017**

**Reply Comments/Oppositions to Petitions to Deny Due: March 16, 2017**

Amper, S.A. (Amper) and Amalgamated Telecom Holdings Limited (ATH) filed a series of applications pursuant to sections 214 and 310(d) of the Communications Act of 1934, as amended (Act),<sup>1</sup> and the Cable Landing License Act of 1921,<sup>2</sup> seeking approval to transfer control of the domestic and international section 214 authorizations, wireless licenses, satellite earth station authorizations and a cable landing license held by AST Telecom, LLC d/b/a Bluesky (AST), American Samoa Hawaii Cable LLC (ASHC), and Samoa American Samoa Cable, LLC (SASC) (collectively, Bluesky Licensees, and with Amper and ATH, Applicants), from Amper to ATH.<sup>3</sup> The Applicants also filed a petition for declaratory ruling (Petition) pursuant to section 310(b)(4) of the Act,<sup>4</sup> as amended, to permit investment of 100 percent in AST by ATH.

Amper is a holding company for operating businesses in the telecommunications, defense and homeland security sectors that is organized under Spanish law and headquartered in Madrid.<sup>5</sup> It holds a

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<sup>1</sup> 47 U.S.C. §§ 214, 310(d).

<sup>2</sup> 47 U.S.C. §§ 34-39. *See also* Exec. Ord. No. 10530, Sec. 5(a), reprinted as amended at 3 U.S.C. § 301 (delegating the President's authority under the Cable Landing License Act to the Commission).

<sup>3</sup> Joint Application of Amper, S.A. (Transferor) and Amalgamated Telecom Holdings Limited, Licensee, (Transferee) for Consent to Transfer Control of Domestic and International Authorizations Pursuant to Section 214 of the Communications Act of 1934, as Amended, and Sections 63.04 and 63.24 of the Commission's Rules, IB Docket No. 16-419 (filed Dec. 20, 2016) (Lead Application). The file numbers for the other applications are listed *infra*.

<sup>4</sup> 47 U.S.C. § 310(b)(4).

<sup>5</sup> Lead Application, Exh. 1 (Description of the Applicants and Proposed Transaction, Public Interest Statement, and Administrative Matters) at 2.

91.8 percent controlling interest in eLandia International, Inc. (eLandia), the direct parent of AST and the indirect parent of ASHC and SASC.<sup>6</sup> eLandia, a diversified holding company, is organized under Delaware law and headquartered in Miami, Florida.<sup>7</sup> eLandia Technologies, Inc. (ELT), a wholly-owned subsidiary of eLandia, is a Delaware corporation headquartered in Miami, Florida that is the holding company for eLandia's investment in the American Samoa-Hawaii Cable System (ASH Cable System), but is not itself a Commission licensee.<sup>8</sup> AST is a Delaware limited liability company headquartered in Pago Pago, American Samoa. AST is a diversified communications provider in American Samoa and owns the Iliili, American Samoa cable landing station and operates the ASH Cable System on a day-to-day basis. eLandia owns a 100 percent equity and voting interest in AST.<sup>9</sup> 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 and sells capacity services on that segment to carrier customers.<sup>10</sup> ELT owns an approximate 66.67 percent equity and voting interest in ASHC and the American Samoa Government owns an approximate 33.33 percent voting and equity interest in ASHC.<sup>11</sup> SASC, a wholly-owned subsidiary of ASHC, 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 and sells capacity services on that segment to carrier-customers.<sup>12</sup>

ATH is incorporated as a public company under the laws of the Republic of Fiji and listed on the South Pacific Stock Exchange. ATH is a vehicle through which the Fiji government's investments in the telecommunications sector are consolidated.<sup>13</sup> 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, a wholly-owned subsidiary of ATH, is the dominant provider of fixed telephony services, broadband internet, international voice and data connectivity, and equipment on Fiji. Vodafone Fiji Limited, a joint venture between ATH and the Fiji National Provident Fund (FNPf), provides mobile voice, broadband, and data in Fiji.<sup>14</sup> Fiji International Telecommunications Limited (Fintel), a wholly-owned subsidiary of ATH, provides and operates international telecommunications facilities in and out of Fiji, with a gateway for submarine cable and satellite communications.<sup>15</sup> ATH also provides fixed telephony, broadband Internet and data, and mobile services in the Republic of Kiribati through Amalgamated Telecom Holdings Kiribati Limited.<sup>16</sup>

The FNPf 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 for Fiji workers. FNPf's seven directors are appointed by the Minister of Finance of the Fiji government.<sup>17</sup> The Fiji government holds approximately

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<sup>6</sup> *Id.* at 3.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 4.

<sup>14</sup> *Id.* at 4-5. Vodafone Fiji uses the Vodafone brand name pursuant to an agreement with Vodafone plc.

<sup>15</sup> *Id.* at 5.

<sup>16</sup> Lead Application, Exh. 1 at 5.

<sup>17</sup> *Id.* at 6.

17.3 percent of the shares of ATH. The remaining 10.1 percent of ATH's shares are held across more than 1500 other shareholders, none of which hold five percent or more of its shares. ATH's board of directors is comprised of seven members, four of which are designated by the FPNP and three of which are designated by the Fiji government.<sup>18</sup>

Pursuant to the terms of the proposed transaction, eLandia will sell to a U.S.-incorporated holding company (U.S. Holdco) that will be a wholly-owned subsidiary of ATH, 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.<sup>19</sup> 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.<sup>20</sup>

Applicants state that the proposed transaction offers public interest benefits without any material countervailing harms.<sup>21</sup> Applicants state that ATH has expertise in operating facilities-based communications networks in the South Pacific region in island environments similar to American Samoa. Applicants assert that ATH has the technical qualifications to control the Bluesky Licensees and operate their licensed facilities due to its experience operating communications networks in Fiji and Kiribati with similar operating challenges in terms of terrain, weather, and population densities, and has experience with operational difficulties presented by the provision of telecommunications services in remote island communities such as American Samoa. Applicants further state that ATH is financially stable and has invested significant resources in its existing networks over the past few years.<sup>22</sup> Applicants state that control by ATH will provide the Bluesky Licensees with access to capital resources needed to upgrade networks and offer innovative services.<sup>23</sup> They state that the proposed transaction will be seamless and transparent to customers in American Samoa as 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. They further state that the proposed transaction will enhance competition in American Samoa as it will create a stronger competitor to the incumbent carrier.<sup>24</sup> Applicants also assert that 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.<sup>25</sup>

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<sup>18</sup> *Id.*

<sup>19</sup> ATH will notify the Commission of U.S. Holdco's name, address and state of organization once it is formed. Exh. 1 at 7, n.6.

<sup>20</sup> *Id.* at 7.

<sup>21</sup> *Id.* at 9.

<sup>22</sup> *Id.* at 11.

<sup>23</sup> *Id.* at 12.

<sup>24</sup> *Id.* at 13.

<sup>25</sup> *Id.* at 14. Applicants agree to have AST regulated as a dominant carrier and comply with the requirements set out in section 63.10(c) of the Commission's rules, 47 CFR § 63.10(c), on the U.S.-Cook Islands, U.S.-Fiji, U.S.-Independent Samoa and U.S.-Kiribati routes. Lead Application at 5-8. AST, ASHC, and SASC also agree to continue to accept and abide by the reporting requirements in section 1.767(l) of the Commission's rules, 47 CFR § 1.767(l), for the ASH Cable system for the American Samoa-Independent Samoa route. See SCL-T/C-20161220-00026 at 9.

## Domestic Section 214 Authorization

The Applicants filed an application to transfer control of domestic section 214 authority held by AST in connection with the proposed transaction.<sup>26</sup> Applicants state that AST provides local exchange, interexchange, and prepaid calling card services in American Samoa.<sup>27</sup>

## International Section 214 Authorizations

<u>File Number</u>	<u>Authorization Holder</u>	<u>Authorization Number</u>
ITC-T/C-20161220-00377	AST Telecom, LLC d/b/a Bluesky	ITC-214-19980918-00671 ITC-214-19981207-00860

## Cable Landing License

<u>File Number</u>	<u>Authorization Holder</u>	<u>Authorization Number</u>
SCL-T/C-20161220-00026	AST Telecom, LLC d/b/a Bluesky; American Samoa Hawaii Cable, LLC; Samoa American Samoa Cable, LLC	SCL-LIC-20080814-00016

## Satellite Earth Station Authorizations

<u>File Number</u>	<u>Authorization Holder</u>	<u>Lead Call Sign</u>
SES-T/C-20161220-00964	AST Telecom, LLC d/b/a Bluesky	E090201
SES-T/C-20161220-00965	AST Telecom, LLC d/b/a Bluesky	E990019

## Wireless Licenses

<u>ULS File Number</u>	<u>Authorization Holder</u>	<u>Lead Call Sign</u>
0007584554	AST Telecom, LLC d/b/a Bluesky	WQHM554

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<sup>26</sup> Lead Application at 9-10.

<sup>27</sup> Lead Application, Exh. 1 at 3.

## **Petition For Declaratory Ruling Under Section 310(b)(4)**

AST and ATH (Petitioners) jointly request a declaratory ruling, pursuant to section 310(b)(4) of the Act and section 1.990(a)(1) of the Commission's rules,<sup>28</sup> to permit foreign ownership of AST's proposed, controlling U.S. parent (U.S. Holdco) in excess of the 25 percent benchmark in section 310(b)(4). Specifically, the Petition requests approval for the following foreign-organized entities to hold, directly or indirectly, equity and/or voting interests in U.S. Holdco upon consummation of the proposed transaction: ATH (100% equity/voting); FNPF (72.6% equity/voting); and the Fiji Government (17.3% equity/voting). Petitioners also request advance approval for Unit Trust of Fiji (Trustee Company) Limited (UTOF), formed under the laws of Fiji, with a current 4.64 percent ownership stake in ATH, to increase its shares of ATH through open market purchases up to and including a non-controlling 25 percent. As discussed above, the Petitioners assert that the proposed foreign ownership of AST's controlling U.S. parent would serve the public interest without any material countervailing harms.<sup>29</sup>

The Petition for Declaratory Ruling has been assigned File No. ISP-PDR-20161220-00011.

## **Request for Approval of Additional Authorizations and Exemption from Cut-Off Rules**

Applicants have requested that the Commission's grant of consent to the transfer of control of the licenses and other authorizations pursuant to the proposed transaction include authority for ATH to acquire the following: (1) 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 the Lower 700 MHz licenses that are the subject of AST's assignment application with Club 42;<sup>30</sup> (2) any construction permits held by AST, ASHC or SASC that mature into licenses after closing; and (3) applications that are filed after the date of these applications and that are pending at the time of consummation. The Applicants also request a blanket exemption from any applicable cut-off rules in cases where the parties file amendments to pending applications to reflect consummation of the proposed transfer of control. The Applicants state that they request this exemption so that amendments to pending applications to report the change in ultimate ownership of these licenses would not be treated as major amendments.

## **GENERAL INFORMATION**

The applications referenced herein have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Although the Applicants assert that certain of the applications qualify for presumptive streamlined processing under various sections of the Commission's rules,<sup>31</sup> in light of the multiple applications and petition that are pending before the Commission with respect to this transaction and the public interest review associated with them, the applications are not subject to streamlined processing. Interested parties may file comments **on or before March 1, 2017** and reply comments **on or before March 16, 2017**.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first

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<sup>28</sup> 47 CFR § 1.990(a)(1).

<sup>29</sup> Lead Application, Exh. 1 at 9.

<sup>30</sup> Application of AST Telecom, LLC and Club 42CM Limited Partnership for Consent to Assign Licenses, WT Doc. No. 16-264, Memorandum Opinion and Order, DA 17-22 (WTB rel. Jan 6, 2017).

<sup>31</sup> 47 CFR §§ 63.03, 63.12.

page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 1-888-835-5322 (tty).

**In addition, provide one copy of each pleading to each of the following:**

- 1) Kimberly Cook, Telecommunications and Analysis Division, International Bureau, [kimberly.cook@fcc.gov](mailto:kimberly.cook@fcc.gov);
- 2) David Krech, Telecommunications and Analysis Division, International Bureau, [david.krech@fcc.gov](mailto:david.krech@fcc.gov);
- 3) Clay DeCell, Satellite Division, International Bureau, [clay.decell@fcc.gov](mailto:clay.decell@fcc.gov);
- 4) Jim Bird, Office of General Counsel, [TransactionTeam@fcc.gov](mailto:TransactionTeam@fcc.gov);
- 5) Gregory Kwan, Competition Policy Division, Wireline Competition Bureau, [gregory.kwan@fcc.gov](mailto:gregory.kwan@fcc.gov); and,
- 6) Kathy Harris, Mobility Division, Wireless Telecommunications Bureau, [kathy.harris@fcc.gov](mailto:kathy.harris@fcc.gov).

The proceeding in this Notice shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.<sup>32</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte*

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<sup>32</sup> 47 CFR §§ 1.1200 *et seq.*

presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b), 47 CFR § 1.1206(b). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

To allow the Commission to consider fully all substantive issues regarding the Applications in as timely and efficient a manner as possible, petitioners and commenters should raise all issues in their initial filings. New issues may not be raised in responses or replies.<sup>33</sup> A party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously. Submissions after the pleading cycle has closed that seek to raise new issues based on new facts or newly discovered facts should be filed within 15 days after such facts are discovered. Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission.

For further information, please contact Kimberly Cook, Telecommunications and Analysis Division, International Bureau, (202) 418-7532; Clay DeCell, Satellite Division, International Bureau, (202) 418-0803; Gregory Kwan, Wireline Competition Bureau, (202) 418-1191; or Kathy Harris, Mobility Division, Wireless Telecommunications Bureau, (202) 418-0609.

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<sup>33</sup> See 47 CFR §1.45(c).