



7 May, 2018

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Ladies and Gentlemen:

This Letter of Assurances (“LOA”) outlines the commitments made by Amalgamated Telecom Holdings Limited (“ATH”) to the U.S. Department of Homeland Security (“DHS”) in order to address national security, law enforcement, and public safety concerns raised with regard to an application filed by Amper S.A. (“Amper”) and ATH with the Federal Communications Commission (“FCC”) requesting authority to transfer control of the submarine cable landing license for the American Samoa-Hawaii Cable System, a fiber-optic submarine cable system between the United States and the Independent State of Samoa, from Amper to ATH.<sup>1</sup>

ATH has agreed to provide this LOA to DHS to address issues raised by DHS, and ATH understands that DHS will petition the FCC to condition the requested authorization on compliance with this LOA.

For purposes of this LOA:

- A. “Domestic Communications” means: (a) Wire Communications or Electronic Communications (whether stored or not) from one U.S. location to another U.S. location and (b) the U.S. portion of a Wire Communication or Electronic Communication (whether stored or not) that originates or terminates in the United States.
- B. “Domestic Communications Infrastructure” or “DCI” means: (a) any portion of the American Samoa-Hawaii Cable System that physically is located in the United States, up to the submarine line terminating equipment, including (if any) transmission, switching, bridging, and routing equipment, and any associated software (with the exception of commercial-off-the-shelf (“COTS”) software used for common business functions, e.g., Microsoft Office) used by or on behalf of ATH to provide, process, direct, control, supervise, or manage Domestic

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<sup>1</sup> FCC File No. SCL-T/C-20161220-00026, Application for Consent to Transfer Control of the Cable Landing License for the American Samoa-Hawaii Cable System.

- C. Communications; and (b) Network Operations Center (“NOC”) facilities, as defined in Section D below.
- D. “Electronic Communication” has the meaning given it in 18 U.S.C. § 2510(12).
- E. “Network Operations Center” or “NOC” means the locations and facilities designated as such by ATH for purposes of performing network management, monitoring, maintenance, or other operational functions for the American Samoa-Hawaii Cable System.
- F. “Principal Equipment” means the primary electronic components of the American Samoa-Hawaii Cable System, which includes the Domestic Communications Infrastructure and Wet Infrastructure. Principal Equipment includes: network element servers; routers; switches; repeaters; submarine line terminal equipment (“SLTE”); system supervisory equipment (“SSE”); signal modulators and amplifiers; power feed equipment (“PFE”); tilt and shape equalizer units (“TEQ/SEQ”); optical distribution frames (“ODF”); branching units (“BU”); synchronous optical network (“SONET”), synchronous digital hierarchy (“SDH”), wave division multiplexing (“WDM”), dense wave division multiplexing (“DWDM”), coarse wave division multiplexing (“CWDM”), or optical carrier network (“OCx”) equipment, as applicable; and any non-embedded software necessary for the proper monitoring, administration, and provisioning of the American Samoa-Hawaii Cable System (with the exception of COTS software used for common business functions, e.g., Microsoft Office).
- G. “Screened Personnel” has the meaning set forth in Paragraph 9 below.
- H. “Wet Infrastructure” means hardware components installed and residing on the undersea portion of the American Samoa-Hawaii Cable System, including fiber optic cables, repeaters, branching units, and routers (if any). Wet Infrastructure includes all the components used in order to define the topology of the undersea portion of the American Samoa-Hawaii Cable System.
- I. “Wire Communication” has the meaning given it in 18 U.S.C. § 2510(1).

Upon grant of the requested FCC authority, ATH undertakes to comply with the following commitments:

## **1. Security Points of Contact**

Within sixty (60) business days of the execution of this LOA, ATH shall nominate a Security Point of Contact (“POC”) for purposes of this LOA, as well as at least one alternate POC in the event the primary POC cannot be reached. The nominated POCs shall be U.S. citizens or U.S. nationals and shall reside in the United States or its territories. The nominated POCs shall

be subject to DHS review and non-objection, and they may be subject to a background check at the sole discretion of DHS. The POC, or an alternate, shall be available twenty-four (24) hours per day, seven (7) days per week, regarding any national security, law enforcement, or public safety concerns that DHS may raise with respect to the American Samoa-Hawaii Cable System. The POCs shall be responsible for receiving and promptly effectuating any lawful inquiries or requests for information and for otherwise ensuring compliance with obligations set forth in this LOA. ATH shall notify DHS of any proposed change to a POC at least ten (10) business days in advance of such change. Any subsequently proposed POC shall be subject to DHS review and non-objection and may be subject to a background check at the sole discretion of DHS.

## **2. Cable System Information**

Within sixty (60) business days of the execution of this LOA, and within fifteen (15) business days upon request by DHS, ATH agrees to make available the following American Samoa-Hawaii Cable System Information:

- (a) Network management information, including: (1) a network map that includes physical and logical topology; (2) network and telecommunications architecture descriptions and associated descriptions of interconnection points and controlled gateways to the DCI and Wet Infrastructure; (3) network operational plans, processes, and procedures; (4) locations and functions of any NOCs, data centers, and main distribution facilities; and (5) descriptions of interfaces and connections to the American Samoa-Hawaii Cable System for service offload, disaster recovery, or administrative functions;
- (b) Complete and current list of all contracts held by ATH or its designee(s) for the maintenance and security of the American Samoa-Hawaii Cable System; and
- (c) A restoration plan for the Principal Equipment and the Wet Infrastructure for the American Samoa-Hawaii Cable System, as well as interconnection mechanisms with other cable landings for restoration in the case of outages due to cable disruptions.

## **3. Operational Requirements**

With respect to the operation of the American Samoa-Hawaii Cable System, ATH agrees as follows:

- (a) ATH shall have the ability to promptly and effectively interrupt, in whole or in part, traffic to and from the United States on the American Samoa-Hawaii Cable System by disabling or disconnecting circuits at the U.S. cable landing station or at other locations within the United States;

- (b) ATH shall configure all necessary systems so the NOC will be able to initiate a suspension or interruption of the optical carrier signal or all of the American Samoa-Hawaii Cable System within the DCI.

If ATH is required to interrupt traffic to or from the United States as a result of lawful U.S. process, ATH shall be permitted to disclose publicly that it was required to interrupt service in response to lawful U.S. process, without disclosing any of the content of such request.

#### **4. Initial Principal Equipment List**

Within thirty (30) business days of the execution of this LOA, ATH shall provide DHS with a list to include:

- (a) A complete and current list of all Principal Equipment, including: (1) a description of each item and the functions supported, (2) each item's manufacturer, and (3) the model and/or version number of any hardware or software; and
- (b) Any vendors, contractors, or subcontractors involved in providing, installing, operating, managing, or maintaining the Principal Equipment.

DHS shall approve or disapprove the Initial Principal Equipment List within thirty (30) business days of receipt. Failure by DHS to respond within the required timeframe shall be deemed to constitute a non-objection to use of the equipment included on the Initial Principal Equipment List and the services of the vendors, contractors, or subcontractors identified on the Initial Principal Equipment List.

#### **5. Material Modifications to Existing Principal Equipment**

ATH shall provide DHS at least ten (10) business days' advance notice prior to performing any maintenance, repair, or replacement that would result in any material modification to existing Principal Equipment for the American Samoa-Hawaii Cable System. ATH need not comply with the advance notice requirement for any maintenance, repair, or replacement that is undertaken in response to an unforeseen or uncontrollable event and that is necessary to ensure the continued operability of the American Samoa-Hawaii Cable System; however, in such circumstances, ATH shall provide advance notice to DHS of the material modification, if practicable, and, if impracticable, ATH shall provide notice within ten (10) business days after the material modification of the Principal Equipment. ATH may continue to utilize any Principal Equipment repaired or replaced pursuant to the process outlined in this paragraph, provided that DHS do not object within thirty (30) business days of notification.

#### **6. Change in Vendors, Contracts, or Subcontracts for Principal Equipment**

ATH shall provide at least thirty (30) business days' advance notice prior to making any modifications to the list of vendors, contractors, or subcontractors involved in providing, installing, operating, managing, or maintaining the Principal Equipment. In addition, ATH shall provide at least thirty (30) business days' advance notice prior to changing the service offerings or support from a previously-listed vendor, contractor, subcontractor (*i.e.*, where a previously-listed provider will be offering support in a previously unidentified way). DHS shall approve or disapprove any modification or change proposed pursuant to this paragraph within thirty (30) business days of receipt. Failure by DHS to respond within the required timeframe shall be deemed to constitute a non-objection to proposed modification or change.

## **7. Measures to Prevent Improper Use and Unauthorized Access**

ATH agrees to take all reasonable measures to prevent unauthorized access to the American Samoa-Hawaii Cable System and to prevent any unlawful use or disclosure of information carried on the same. Such measures shall include the implementation of a cybersecurity plan that is consistent with the National Institute of Standards and Technology (NIST) Cybersecurity Framework, to include items such as configuration management, security audits, and system interconnection documentation, as well as contractual safeguards and screening procedures for personnel with logical access to the DCI. In addition, ATH will take appropriate measures to protect and promote resiliency of the American Samoa-Hawaii Cable System, including measures to ensure that security patches for systems and applications are kept up to date. ATH will submit a policy regarding logical security measures to DHS within sixty (60) business days of the date of execution of this LOA. ATH agrees to meet and confer with DHS and to resolve to the satisfaction of the USG any concerns DHS may raise about such policy.

## **8. Physical Security Measures**

ATH agrees to take all reasonable measures to physically secure the American Samoa-Hawaii Cable System, including the DCI. ATH will screen appropriate personnel, and ATH will require that all visitors who physically access the DCI are escorted at all times by Screened Personnel, as defined herein. ATH will submit a policy regarding physical security measures to DHS within sixty (60) business days of the date of execution of this LOA. ATH agrees to meet and confer with DHS and to resolve to the satisfaction of the USG any concerns DHS may raise about such policy.

## **9. Screening of Personnel**

ATH shall implement, either directly or through a vendor or service provider, a process to screen any existing or newly hired ATH personnel (or any personnel performing under an agreement with ATH) in at least the following circumstances:

- (a) Any person whose position could involve logical access to the DCI;

and

- (b) All personnel charged with securing the DCI.

ATH's personnel screening process shall be reflected in a written policy and will include background investigations, public criminal records checks, or other analogous means to ascertain a person's trustworthiness. Upon satisfactory completion of the requirements set forth in the screening policy, such persons shall be considered "Screened Personnel."

ATH will submit the screening policy to DHS within sixty (60) business days of the date of execution of this LOA. ATH agrees to meet and confer with DHS and to resolve to the satisfaction of the USG any concerns DHS may raise about such policy. In addition, ATH will cooperate with any reasonable request by DHS to provide additional identifying information regarding Screened Personnel.

## **10. Reporting Incidents and Breaches**

ATH agrees to report to DHS promptly if it learns of information that reasonably indicates:

- (a) Unauthorized third-party access to, or disruption or corruption of, the American Samoa-Hawaii Cable System or any information being carried on the American Samoa-Hawaii Cable System;
- (b) Any other unauthorized access to or disclosure of Domestic Communications in violation of federal, state, or local law; or
- (c) Any material breach of the commitments made in this LOA.

Any reports required by this provision should be made in writing to DHS within ten (10) business days of discovery of the relevant conduct. ATH further agrees to cooperate with DHS recommendations with respect to the remediation of such events and, to the extent it disagrees with such recommendations, to provide for USG consideration an explanation as to why such measures should not be adopted. ATH will provide this explanation, as well as a description of any other actions taken in response to a remediation recommendation from DHS, within ten (10) business days of receipt of such recommendation.

## **11. Instruction of Obligations**

ATH shall instruct appropriate officers, employees, contractors, and agents as to ATH obligations under this LOA, including the individuals' duty to report any violation, and shall issue periodic reminders of such obligations. ATH shall issue these instructions in writing within sixty (60) business days of the date of execution of this LOA. ATH will submit a copy to DHS at the same time.

## **12. Change in Services or Cable Operations**

ATH agrees that it will notify DHS in writing at least thirty (30) business days prior to implementing any changes to the communications services or operations of the American Samoa-Hawaii Cable System such that the material representations made in the pending FCC Application(s) and associated materials are no longer fully accurate, true, and complete.

## **13. Change in Control**

If ATH learns of any information that reasonably indicates that any single foreign entity or individual, other than those already identified in connection with the pending FCC application(s), has or likely will obtain an ownership interest, whether direct or indirect, in ATH or the American Samoa-Hawaii Cable System above ten (10) percent, or if any foreign entity or individual, singly or in combination with other foreign entities or individuals, has or likely otherwise will gain either: (i) control, as determined in accordance with 47 C.F.R. § 63.09(b); or (ii) *de facto* or *de jure* control of ATH, ATH will provide notice in writing to DHS within ten (10) business days. Notice under this Section shall, at a minimum:

- (a) Identify the entity or individual(s) acquiring control (specifying the name, addresses, and telephone numbers of the entity or individual(s));
- (b) Identify the beneficial owners of any such increased or prospective increased ownership interest in ATH or the American Samoa-Hawaii Cable System by the entity or individual(s) (specifying the name, addresses, and telephone numbers of each beneficial owner); and
- (c) Quantify the amount of ownership interest that the entity or individual(s) has or likely will obtain in ATH or the American Samoa-Hawaii Cable System and, if applicable, the basis for their prospective control of ATH or the American Samoa-Hawaii Cable System.

## **14. Annual Report**

On or before each anniversary of the date of execution of this LOA, ATH will submit to DHS a report assessing ATH's compliance with the terms of this LOA for the preceding year. The report shall include:

- (a) The names and contact information of the then-current POCs;
- (b) Cable System Information, as described in Paragraph 2 above, noting any changes during the reporting period;
- (c) An updated Principal Equipment list containing all information described in Paragraph 4 above, identifying any material modifications during the reporting period;
- (d) A copy of the then-current policies adopted in accordance with this LOA, including policies for logical security (Paragraph 7), physical security (Paragraph 8), personnel screening (Paragraph 9), incident reporting (Paragraph 10), and employee training (Paragraph 11), and a summary of any changes during the reporting period and the reasons therefore;
- (e) A summary of any events that occurred during the reporting period that will or reasonably could impact the effectiveness of or compliance with this LOA; and
- (f) A summary of any known acts of noncompliance with the terms of this LOA that occurred during the reporting period, whether inadvertent or intentional, with a discussion of what steps have been or will be taken to prevent such acts from occurring in the future.

## **15. USG Parties Consultation and Visitation**

ATH agrees to meet and confer with DHS and to resolve to the satisfaction of the USG any concerns DHS may raise about materials submitted pursuant to this LOA.

ATH agrees to negotiate in good faith to resolve to the satisfaction of the USG any national security, law enforcement, or public safety concerns DHS may raise with respect to any matters set forth in this LOA.

ATH agrees that, upon reasonable advance notice, DHS may visit any part of the DCI to conduct on-site reviews concerning the implementation of the terms of this LOA and ATH compliance with its terms. Subject to applicable law, during such visits, ATH shall cooperate with the requests of DHS to make available information, facilities, and personnel to verify compliance with the terms of this LOA.

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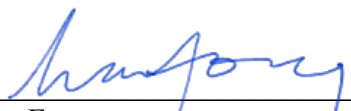


This LOA shall inure to the benefit of, and shall be binding upon, ATH and its successors, assigns, subsidiaries, and affiliates.

ATH agrees that, in the event the commitments set forth in this letter are breached, in addition to any other remedy available at law or equity, DHS may request that the FCC modify, condition, revoke, cancel, terminate, or render null and void any relevant license, permit, or other authorization granted by the FCC to ATH or any successors-in-interest.

ATH understands that, promptly upon execution of this letter by an authorized representative or attorney for ATH, DHS shall notify the FCC that it has no objection to the FCC's grant of the pending application.

For and on behalf of Amalgamated Telecom Holdings Limited



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