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June 28, 2004

By *ECFS*

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

**RE: The American Samoa Government's Proposed Rate
Integration Plan for American Samoa;
Policy and Rules Concerning the Interstate
Interexchange Marketplace; Implementation of Section
254(g) of the Communications Act of 1934, as amended;
CC Docket No. 96-61**

Dear Ms. Dortch:

The American Samoa Telecommunications Authority ("ASTCA"), by counsel and pursuant to the Public Notice, "Amendment to the Rate Integration Plan Filed by the American Samoa Telecommunications Authority," DA 04-1441 (WCB, rel. May 28, 2004), hereby responds to the comments of AST Telecom, LLC dba Blue Sky ("Blue Sky"). Blue Sky is the only party that filed comments in response to the Public Notice. For the reasons set forth below, the Commission should disregard the bulk of Blue Sky's comments because they address issues that are beyond the scope of this proceeding and, in some cases, beyond the scope of the FCC's jurisdiction.

First, in response to Blue Sky's contentions regarding its plans to provide interexchange service and its point of presence ("POP") in American Samoa (Blue Sky Comments at p. 2), ASTCA acknowledged in its May 3, 2004 letter (at p.3) that it had received a *bona fide* request from Blue Sky for equal access and Feature Group D ("FGD") interconnection arrangements. Moreover, as part of the discussions relating to the upcoming October 2004 conversion whereby American Samoa will join the North American Numbering Plan ("NANP"), ASTCA has

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informed Blue Sky that ASTCA's FGD capability has been installed and ready for two years, and that equal access arrangements would be completed as soon after the NANP conversion as possible.

In response to Blue Sky's request for a definite schedule in which ASTCA will implement equal access and FGD (Blue Sky Comments at 3), ASTCA stated in its letter (p.3) that it hopes to do so during calendar year 2004. However, ASTCA cannot commit to a definite schedule for implementing equal access and FGD because such implementation depends in part on actions by third parties over which it has no control. As a preliminary matter, as noted above, Blue Sky was an active participant in numerous teleconferences over the course of 2003, which were moderated by NANP Administrator NeuStar and which detailed the myriad tasks associated with the NANP conversion. Thus, Blue Sky is aware of the tasks associated with the conversion, the time frames for completing the tasks, and the related follow up projects.

Toward this end, ASTCA is actively coordinating with Telcordia and NeuStar, as well as with AT&T, MCI, Sprint and Verizon Hawaiian Telephone, in connection with the upcoming NANP conversion. Indeed, ASTCA has already obtained a Revenue Accounting Office ("RAO") billing code, as well as Common Language Location Identifier ("CLLI") codes for its various switches, and is in the process of obtaining Carrier Identification Codes ("CICs"). Although ASTCA is fully engaged and the steps are well underway, ASTCA must complete all necessary steps in order to implement FGD and equal access. For these reasons, ASTCA respectfully submits that the Commission should deny Blue Sky's request to require ASTCA to meet definitive scheduling milestones for FGD and equal access.

Moreover, the Commission is currently conducting a proceeding to review and possibly sunset or modify the current equal access rules. *Review of the Equal Access and Nondiscrimination Obligations Applicable to Local Exchange Carriers*, Notice of Inquiry, 17 FCC Rcd 4015 (2002). Given the pendency of that proceeding, the Commission should not indulge Blue Sky's off-hand suggestion that ASTCA be required to commit to a definite schedule for a potentially disruptive equal access "balloting" process (Blue Sky Comments at 3). Such a process should not be required at this time; any such process should be deferred until after the resolution of the issues in the Equal Access Notice of Inquiry proceeding.

Finally, the Commission should ignore Blue Sky's arguments regarding issues that are beyond the scope of this proceeding. The structure of intrastate telecommunications regulation in American Samoa (Blue Sky Comments

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at 4-5) is not subject to the FCC's jurisdiction – and is beyond the control of ASTCA. In any event, the High Court of American Samoa has already considered and rejected identical arguments presented by Blue Sky's predecessor, and upheld the role of the Governor of American Samoa acting as Telecommunications Regulatory Commissioner. *American Samoa License, Inc. v. Sunia*, CA No. 116-98 (Dec. 21, 1998) (a copy of this decision is attached as Exhibit A). The correct figures on telecommunications subscribership, ASTCA's status as a government-owned entity, and ASTCA's business practices (Blue Sky Comments at 3-5) are all outside the scope of this proceeding – Blue Sky admits as much with respect to the last of these (Blue Sky Comments at 5). Thus, ASTCA declines to respond to these irrelevant assertions.

Please contact me if you have any further questions.

Respectfully submitted,



David L. Sieradzki
Counsel for the American Samoa
Telecommunications Authority

cc: Judith Nitsche
Lenworth Smith
Joy Nolan
Caressa D. Bennet

Exhibit A

IN THE HIGH COURT OF AMERICAN SAMOA
TRIAL DIVISION

AMERICAN SAMOA LICENSE, INC.
Plaintiff,
v.
TAUESE P.F. SUNIA, as Governor
of American Samoa, GOVERNMENT OF
AMERICAN SAMOA, AMERICAN SAMOA
TELECOMMUNICATIONS BOARD OF
DIRECTORS and ALEKI SENE, its
Executive Director,
Defendants.

CA No. 116-98

OPINION AND ORDER

1030
M. W. Thompson 12/21/98

Before KRUSE, Chief Justice, TUA'OLO, Associate Judge, and
LOGOAI, Associate Judge.

Counsel: For Plaintiff, Charles V. Ala'ilima
For Defendants Sunia and American Samoa Government,
Henry W. Kappel, Assistant Attorney General
For Defendants American Samoa Telecommunications Board
of Directors and Aleki Sene, Brian M. Thompson

On December 4, 1998, plaintiff American Samoa License, Inc.
("ASLI") filed a complaint seeking declaratory relief and an
injunction directing defendant Tauese P.F. Sunia ("the Governor")
to refrain from acting in the capacity of a "state commission"
for purposes of regulating the telecommunications industry in
American Samoa. ASLI further filed an application for temporary
restraining order and order to show cause for preliminary
injunction on December 14, 1998. Defendants' joint memorandum in
opposition to issuance of temporary restraining order or order to
show cause, along with a joint motion to dismiss complaint and

memorandum in support, were submitted on December 17, 1998. The next day, ASLI filed a supplemental memorandum in support the application for temporary restraining order and order to show cause.

A hearing was held on December 18, 1998, with all counsel present. At the hearing, both parties agreed that the material facts in this case are not in dispute. For that reason and pursuant to T.C.R.C.P. 65, this court deems it appropriate to consolidate the hearing of the preliminary injunction with a trial of the action on the merits.

FACTS

As noted above, the relevant facts in this matter are uncontested. ASLI is a private corporation engaged in the telecommunications business. On July 8, 1998, ASLI made a request to the American Samoa Telecommunications Authority ("ASTCA") to interconnect with ASTCA's facilities pursuant to § 252 of the federal Communications Act of 1934. 47 U.S.C.S. § 252.

The 1996 amendments to this Act set forth arbitration procedures to be followed for negotiating the terms and conditions of that interconnection, and those procedures include a role for the "state commission" charged with regulation of the telecommunications industry. 47 U.S.C.S. § 251. As early as October, 1998, ASLI was informed that the Governor was identified as the state commission for these purposes. On December 8, 1998, the Governor issued "emergency Regulations of Local

Telecommunications Operations," officially declaring himself to be the "Telecommunications Regulatory Commissioner," and thereby purporting to assume jurisdiction over the parties' dispute pursuant to 47 U.S.C.S. § 153(40) and (41). See Attachment C to Defendants' Joint Memorandum in Support, December 14, 1998.

DISCUSSION

As a threshold matter, defendants claim that this court does not have subject matter jurisdiction over this issue. This court, however, has jurisdiction to issue injunctions and declaratory relief. A.S.C.A. § 43.1301 et. seq.; A.S.C.A. § 43.1101.

ASLI bases its complaint on the grounds that the Governor has not been granted statutory authority to regulate telecommunications in the Territory. In this instance, the Governor not only has statutory authority but Constitutional authority to regulate. Under the federal Telecommunications Act, a state commission is charged with regulating the telecommunications industry in respect to intrastate operations. 47 U.S.C.S. § 252. A state commission is defined as "the commission, board or official (by whatever name designated) which under the laws of any State has regulatory jurisdiction with respect to intrastate operations of carriers." 47 U.S.C.S. § 153(41). The term state includes territories and possessions. 47 U.S.C.S. § 153(40). American Samoa, therefore, is given the power to regulate its own telecommunications industry.

In addition, the Governor has explicit constitutional powers

to issue executive regulations not in conflict with the laws of the United States applicable to American Samoa, laws of American Samoa, or with the American Samoa Constitution. REV. CONST. AM. SAMOA. art. IV, sec. 6. The Governor's regulation of the telecommunications industry does not conflict with any laws of the United States applicable to American Samoa, laws of American Samoa or with the American Samoa Constitution. Rather, the Governor's regulations fill a void left by the Legislature, and therefore represent a constitutionally valid exercise of executive power.

ORDER

For the foregoing reasons and pursuant to T.C.R.C.P. 65, the petition for injunctive relief is denied and judgment shall be entered for the defendants.

It is so Ordered.

Dated: 12/21/98

[Handwritten signature]

F. MICHAEL KRUSE
Chief Justice

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TUAOLO M.E. FRUEAN
Associate Judge

[Handwritten signature]

LOGOAI SIAKI P.
Associate Judge