



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
445 TWELFTH STREET, S.W.
WASHINGTON, D.C. 20554

DA 10-2172

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Released: November 10, 2010

**eLANDIA INTERNATIONAL INC., PETE R. PIZZARO, AND AMPER, S.A. SEEK FCC
CONSENT TO TRANSFER OF CONTROL APPLICATIONS AND REQUEST A
DECLARATORY RULING ON FOREIGN OWNERSHIP**

IB Docket No. 10-229

PLEADING CYCLE ESTABLISHED

Petitions Due: December 10, 2010
Oppositions Due: December 20, 2010
Replies Due: December 27, 2010

INTRODUCTION

eLandia International Inc. (“eLandia”), Pete R. Pizzaro (“Mr. Pizzaro”), and Amper, S.A. (“Amper,” together with eLandia and Mr. Pizzaro, the “Applicants”) have filed applications for transfer of control pursuant to Sections 214 and 310(d) of the Communications Act of 1934, as amended (Communications Act), and the Submarine Cable Landing Licensing Act.¹ In these applications, Applicants seek Commission approval to transfer control of subsidiaries of eLandia that hold FCC authorizations and licenses – AST Telecom, LLC d/b/a Blue Sky Communications (“Blue Sky”), American Samoa License, Inc. (“ASLI”), American Samoa Hawaii Cable, LLC (“ASHC”), and Samoa American Samoa Cable LLC (“SASC”) – from the current shareholders of eLandia, including Mr. Pizzaro, who acts as a trustee of a Voting Trust for a substantial portion of eLandia’s voting stock, to Amper. These applications pertain to wireless licenses in the Advanced Wireless Service (AWS), 700 MHz Lower Band, Cellular Radiotelephone Service, and Broadband Personal Communications Service, earth station licenses, a submarine cable landing license, and international Section 214 authorizations. Applicants also seek a declaratory ruling allowing the indirect foreign ownership of Blue Sky and ASLI in excess of the 25 percent benchmark of Section 310(b)(4).²

PARTIES

eLandia is a holding company organized in Delaware. Mr. Pizarro, a U.S. citizen, is the Chief Executive Officer of eLandia, and the trustee of a Voting Trust³ which currently holds 44.75% of the

¹ 47 U.S.C. §§ 34-39, 214, 310(d).

² 47 U.S.C. § 310(b)(4).

³ In February 2009, eLandia executed a capital structure reorganization, to establish a Voting Trust and effectuate the replacement of Stanford International Bank Limited (SIBL) as the majority owner of eLandia. SIBL was issued Voting Trust Certificates (VTC) in exchange for SIBL’s shares of eLandia. SIBL is currently subject to a receivership imposed by the U.S. District Court for the Northern District of Texas, *see* Amended Order Appointing

common stock of eLandia, and also holds non-voting preferred stock of eLandia. Mr. Pizzaro also has approximately 2.75% ownership in eLandia as an individual shareholder. Foreign shareholders and shareholders of unknown nationality currently hold a combined 16.2% of the common stock of eLandia.

eLandia does not directly hold any FCC licenses or authorizations. Blue Sky, a Delaware limited liability company, is a wholly-owned direct subsidiary of eLandia and holds wireless licenses and earth station licenses, and owns and operates the cable landing station for the American Samoa-Hawaii Cable System located in American Samoa. ASLI, an American Samoa corporation, is an indirect wholly-owned subsidiary of eLandia; Blue Sky is the direct parent of ASLI. ASLI holds wireless licenses, earth station licenses, and international section 214 authorizations. eLandia has an indirect controlling interest in ASHC and its wholly-owned subsidiary SASC. ASHC owns the Hawaii-American Samoa wet-link portion and the Hawaii and American Samoa shore-end portions of the American Samoa-Hawaii Cable System. SASC owns the Samoa-American Samoa wet-link and Samoa shore-end portions of the American Samoa-Hawaii Cable System.

Amper is a widely-held Spanish corporation that is publicly traded on the Madrid Stock Exchange. Tvikap AB (Tvikap), a Swedish corporation, with a 22.01% interest, is the only shareholder with a greater than 10 percent interest in Amper.

PROPOSED TRANSACTION

On July 29, 2010, eLandia and Amper entered into a Contribution Agreement, whereby Amper will acquire approximately 84.88% of eLandia's issued and outstanding shares of common stock and thus will gain control over eLandia and its subsidiaries. Pursuant to the Contribution Agreement, Amper will acquire 165,705,913 shares of eLandia's newly-issued common stock.⁴ The Contribution Agreement also provides an option, whereby, if exercised, Amper's ownership of eLandia would increase significantly.⁵

The existing ownership interests of current shareholders will not be terminated. Instead, such ownership interests will be diluted by eLandia's newly issued common stock. eLandia's non-voting preferred stock currently held by the Voting Trust will convert to common shares of eLandia. Following the proposed acquisition, the Voting Trust will terminate, and the shares will revert to the SIBL Receiver, who will hold "complete and exclusive control, possession, and custody" of those shares.⁶ Mr. Pizarro will individually own and control less than one percent of the voting stock of eLandia.

Receiver, *Securities and Exchange Commission v. Stanford Int'l Bank Ltd.*, Case No. 3-09-cv-0298-N (N.D. Tex. Mar. 12, 2009), and the VTC are part of the Receivership Estate. The assets and business operations of eLandia and its subsidiaries are not part of the Receivership Estate. *See* Letter from Ralph S. Janvey, Receiver, to Mr. Pizarro, CEO, eLandia International, Inc. (June 2, 2009), *filed as attachment* to SEC Form 8-K filed by eLandia International, Inc. (June 3, 2009)

⁴ In exchange, Amper will contribute to eLandia a 89.60% ownership in Hemisferio Norte, S.A. (Hemisferio) a wholly-owned subsidiary of Amper. Hemisferio owns 100% of Hemisferio Sul Participacoes Ltda., which owns 88.96% of Medidata Informatica, S.A., which in turn owns 100% of XC Comercial e Exportadora Ltda. (the Contributed Entities).

⁵ This would occur through the purchase by eLandia of Amper's remaining interest in Hemisferio, in exchange for additional shares in eLandia.

⁶ Voting Trust Agreement §§ 7, 8; *see* Amended Order Appointing Receiver, *Securities and Exchange Commission v. Stanford Int'l Bank, Ltd.*, Case No. 3-09-cv-0298-N (N.D. Tex. Mar. 12, 2009), at ¶ 4.

WIRELESS LICENSES

<u>File No.</u>	<u>Authorization Holder</u>	<u>Lead Call Sign</u>
0004430192	AST Telecom, LLC	WQGD479
0004430196	American Samoa License, Inc.	KNLF302

EARTH STATION LICENSES

<u>File No.</u>	<u>Authorization Holder</u>	<u>Call Sign</u>
SES-T/C-20101025-01349	American Samoa License, Inc.	E990019
SES-T/C-20101025-01350	AST Telecom, LLC	E090201

PETITION FOR DECLARATORY RULING

eLandia has filed a petition pursuant to Section 310(b)(4) for a declaratory ruling that it is in the public interest to allow up to 100% indirect foreign ownership of Blue Sky and ASLI. eLandia requests that Amper be allowed to hold up to an 84.88% indirect interest in Blue Sky and ASLI, and requests the ruling permit additional foreign ownership, up to 100%, to allow eLandia to exercise an option in the future that would result in a significant increase in Amper's ownership of eLandia and to accommodate incremental shifts in ownership that may occur as a result of minor changes in shareholdings of companies or individuals in the ownership chain. eLandia notes that it currently has a declaratory ruling allowing indirect ownership of Blue Sky and ASLI in excess of the 25 percent benchmark in Section 310(b)(4).⁷

eLandia states that upon completion of the transaction with Amper, eLandia will be owned by the following entities: Amper (84.88%); SIBL, an Antigua and Barbuda limited company that is controlled by a receiver who is a United States citizen (6.76%); Jorge Enrique Alverado Amado, an Italian citizen (1.37%); Michael Ah Koy, a Fijian citizen (0.37%); other shareholders of Fijian nationality (0.41%); other shareholders of unknown nationality (0.31%); W & R South Pacific, L.P., a Washington partnership (0.71%) and other U.S. shareholders, most of whom are officers, directors and employees of eLandia (4.77%). eLandia states that W & R South Pacific, L.P. is owned by Barry and Fay Alailima Rose, citizens of the United States (directly in limited partnership interests of 98%) and W & R Inc., an American Samoa corporation (directly as a general partner with a 2% interest), which in turn is 100% owned by Barry and Fay Alailima.

eLandia states that Amper's shares are widely held and that it has only one 10 percent-or-greater shareholder: Tvikap AB, a entity organized in Sweden (22.011%), and eight one-percent-or-greater direct or indirect shareholders: Banco Castilla La Mancha, a bank organized in Spain (9.946%); Telefonica S.A., an entity organized in Spain (5.78%); Monte de Piedad y Caja de Ahorros San Fernando de Huelva, Jerez y Sevilla, a bank organized in Spain (5.1%); Naropa Capital S.L., an entity organized in Spain (5.06%); Liquidambar Inversiones Financieras, S.L., an entity organized in Spain (5.0%); Compania de Seguros y Reaseguros, an entity organized in Spain (2.97%); Goldman Sachs Securities (Nominees) Limited, an entity organized in the United Kingdom (1.82%) and State Street Bank and Trust Co., a Massachusetts organized entity (1.21%).

⁷ *AST Telecom, LLC*, File No. ISP-PDR-20080401-00006, DA 08-2577, 23 FCC Rcd 17114 (Int'l Bur. 2008).

Antigua and Barbuda, Fiji, Italy, Spain, Sweden and the United Kingdom are all member countries of the World Trade Organization (“WTO”).

The Petition for Declaratory Ruling has been assigned File No. ISP-PDR-20101022-00019.

INTERNATIONAL SECTION 214 AUTHORIZATIONS

The following application for consent to transfer control of the international section 214 authorizations held by American Samoa License, Inc., has been assigned the file number listed below:

<u>File No.</u>	<u>Authorization Holder</u>	<u>Authorization Numbers</u>
ITC-T/C-20101025-00425	American Samoa License, Inc.	ITC-214-19981207-00860 ITC-214-19980918-00671

SUBMARINE CABLE LANDING LICENSE

The following applications for consent to transfer control of the submarine cable landing license for the American Samoa-Hawaii Cable System have been assigned the file numbers listed below:

<u>File No.</u>	<u>Licensee</u>	<u>License Number</u>
SCL-T/C-20101022-00024	American Samoa Hawaii Cable, LLC	SCL-LIC-20080814-00016
SCL-T/C-20101022-00025	AST Telecom, LLC	SCL-LIC-20080814-00016
SCL-T/C-20101022-00026	Samoa American Samoa Cable, LLC	SCL-LIC-20080814-00016

***EX PARTE* STATUS OF THIS PROCEEDING**

Pursuant to Section 1.1200(a) of the Commission’s rules,⁸ the Commission may adopt modified or more stringent *ex parte* procedures in particular proceedings if the public interest so requires. We announce that this proceeding will be governed by permit-but-disclose *ex parte* procedures that are applicable to non-restricted proceedings under Section 1.1206 of the Commission’s rules.⁹

We direct parties making oral *ex parte* presentations to the Commission’s statement re-emphasizing the public’s responsibility in permit-but-disclose proceedings. Parties are reminded that memoranda summarizing the presentation must contain the presentation’s substance and not merely list the subjects discussed.¹⁰ More than a one- or two-sentence description of the views and arguments presented is generally required.¹¹ Other rules pertaining to oral and written presentations are set forth in

⁸ 47 C.F.R. § 1.1200(a).

⁹ *Id.* § 1.1206.

¹⁰ See Commission Emphasizes the Public’s Responsibilities in Permit-But-Disclose Proceedings, *Public Notice*, 15 FCC Rcd 19945 (2000).

¹¹ See 47 C.F.R. § 1.1206(b)(2).

Section 1.1206(b) as well.¹² We urge parties to use the Electronic Comment Filing System (ECFS) to file *ex parte* submissions.

GENERAL INFORMATION

The transfer of control 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 or policies. Final action on these applications will not be taken earlier than thirty-one days following the date of this Public Notice.¹³

Interested parties must file petitions to deny no later than **December 10, 2010**. Persons and entities that file timely petitions to deny may participate fully in the proceeding, including seeking access to any confidential information that may be filed under a protective order (subject to the restrictions contained in the protective order) and seeking reconsideration of decisions. Oppositions to such pleadings must be filed no later than **December 20, 2010**. Replies to such pleadings must be filed no later than **December 27, 2010**. All filings concerning matters referenced in this Public Notice should refer to **DA 10-2172** and **IB Docket No. 10-229**, as well as the specific file numbers of the individual applications or other matters to which the filings pertain.

Under the Commission's current procedures for the submission of filings and other documents,¹⁴ submissions in this matter may be filed electronically (*i.e.*, through ECFS) or by hand delivery to the Commission.

- **If filed by ECFS,**¹⁵ comments shall be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail.
- **If filed by paper,** the original and four copies of each filing must be filed by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes 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 should be addressed to 445 12th Street, S.W., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

¹² *Id.* § 1.1206(b).

¹³ *See* 47 U.S.C. § 309(b).

¹⁴ *See* Implementation of Interim Electronic Filing Procedures for Certain Commission Filings, *Order*, 16 FCC Rcd 21483 (2001); FCC Announces Change in Filing Location for Paper Documents, *Public Notice*, 24 FCC Rcd 14312 (2009).

¹⁵ *See* Electronic Filing of Documents in Rulemaking Proceedings, GC Docket No. 97-113, *Report and Order*, 13 FCC Rcd 11322 (1998).

- One copy of each pleading must be delivered electronically, by e-mail or facsimile, or if delivered as paper copy, by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (according to the procedures set forth above for paper filings), to the Commission's duplicating contractor, Best Copy and Printing, Inc., at FCC@BCPIWEB.COM or (202) 488-5563 (facsimile).

Additionally, filers must deliver courtesy copies by email or facsimile to the following Commission staff:

- 1) Kathy Harris, Mobility Division, Wireless Telecommunications Bureau, at kathy.harris@fcc.gov or (202) 418-7224 (facsimile);
- 2) Brian Wondrack, Broadband Division, Wireless Telecommunications Bureau, at brian.wondrack@fcc.gov or (202) 418-4418 (facsimile);
- 3) Karl Kensinger, Satellite Division, International Bureau, at karl.kensinger@fcc.gov or (202) 418-0748 (facsimile);
- 4) Jeanette Spriggs, Satellite Division, International Bureau, at jeanette.spriggs@fcc.gov or (202) 418-0748 (facsimile)
- 5) David Krech, Policy Division, International Bureau, at david.krerch@fcc.gov or (202) 418-2824 (facsimile);
- 6) Sumita Mukhoty, Policy Division, International Bureau, at sumita.mukhoty@fcc.gov or (202) 418-2824 (facsimile); and,
- 7) Carrie-Lee Early, Policy Division, International Bureau, at carrie-lee.early@fcc.gov or (202) 418-2824 (facsimile).

Copies of the Applications and any subsequently-filed documents in this matter may be obtained from Best Copy and Printing, Inc., in person at 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, via telephone at (202) 488-5300, via facsimile at (202) 488-5563, or via e-mail at fcc@bcpweb.com. The Applications and any associated documents are also available for public inspection and copying during normal reference room hours at the following Commission office: FCC Reference Information Center, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. The Applications also are available electronically through the Commission's ECFS, which may be accessed on the Commission's Internet website at <http://www.fcc.gov>.

People with Disabilities: To request this Public Notice in accessible formats (computer diskette, large print, audio recording, and Braille), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (tty).

For further information, contact Kathy Harris, Mobility Division, Wireless Telecommunications Bureau, at (202) 418-0609; Brian Wondrack, Broadband Division, Wireless Telecommunications Bureau, at (202) 418-0653; Karl Kensinger or Jeanette Spriggs, Satellite Division, International Bureau, at (202) 418-0727; David Krech or Sumita Mukhoty, Policy Division, International Bureau, at (202) 418-1460.