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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

FILED/ACCEPTED

JUL 13 2009

Federal Communications Commission  
Office of the Secretary

*In the Matters of*

**CARIBBEAN CROSSINGS LTD.,**

**Application for Transfer of Control of  
Submarine Cable Landing License**

**File No. SCL-T/C-20090506-00009**

**TRINITY COMMUNICATIONS LTD.,**

**Application for Transfer of Control of Section  
214 Authorization**

**File No. ITC-T/C-20090506-00204**

FILED/ACCEPTED

JUL 15 2009

Federal Communications Commission  
Office of the Secretary

**CONSOLIDATED AMENDMENTS TO APPLICATIONS FOR A CABLE LANDING  
LICENSE AND INTERNATIONAL SECTION 214 AUTHORITY**

Caribbean Crossings Ltd. ("CCL") and Trinity Communications Ltd. ("Trinity") (together, "the Companies"), by their undersigned counsel, and pursuant to the Commission's Report and Order in *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, FCC 97-398, released November 26, 1997 ("*Foreign Participation Order*"), on reconsideration, FCC 00-339, released September 19, 2000, and, in the case of Trinity, pursuant to Section 63.18(k)(3) of the Commission's rules, 47 C.F.R. 53.18(k)(3), hereby amend their respective, above-captioned applications to demonstrate that the Commonwealth of The Bahamas provides effective competitive opportunities to U.S. carriers to compete in that country's market for resold and facilities-based telecommunications service, including submarine fiber optic cable service, and that the public interest would be served by the grant of their applications. This filing is necessitated by the fact that the Commonwealth of the Bahamas is not currently a member of the

World Trade Organization ("WTO") and that, as a result of the transfer of control contemplated in the Companies' submissions, the Government of The Bahamas, which currently owns 100% of Bahamas Telecommunications Company ("BTC"), the Commonwealth's dominant provider of domestic and international telecommunications services, will hold a 29.2% ownership interest in Cable Bahamas Ltd. ("CBL"), the Companies' parent. Pursuant to the Commission's rules, this ownership interest transforms BTC into a "foreign affiliate" of the Companies.<sup>1</sup>

## **I. Background**

### **A. The ECO Test**

In its *Foreign Participation Order*, the Commission eliminated the "effective competitive opportunities" ("ECO") standard which was then in effect for applicants seeking Section 214 authorizations and submarine cable landing licenses who were affiliated with foreign carriers in WTO member nations, but retained it for applications involving non-WTO member states. The Commission drew this distinction because it found that "competitive concerns continue to exist for carriers that possess the ability to exercise market power in such [non-WTO Member] countries and that we should continue to pursue our goal of encouraging such countries to open their markets to competition." *Foreign Participation Order*, ¶ 12. The Commission's stated that its "primary competitive concern" was

"preventing carriers that control bottleneck facilities in foreign countries from using those bottlenecks to discriminate against unaffiliated U.S. carriers...Absent effective regulation in our market, we are concerned that a foreign carrier with

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<sup>1</sup> Pursuant to Section 63.09(e) of the Commission's rules, 47 C.F.R. 63.09(e), two entities are affiliated with one another if one of them, or an entity that controls one of them, directly or indirectly owns more than 25% of the capital stock of, or controls, the other. In the instant case, the percentage of equity ownership in CBL held by the Government of The Bahamas will increase from 20.5% to 29.2% as a result of the proposed purchase by CBL of shares of CBL stock currently owned by its largest stockholder, Columbus Communications Ltd. In view of the de minimis amount by which the percentage equity interest of the Government of the Bahamas in CBL exceeds the Commission's 25% threshold, and for the public interest reasons set forth herein, as an alternative remedy the Companies hereby request the Commission to waive its 25% threshold in this case.

market power in an input market on the foreign and of a U.S. international route has the ability to exercise, or leverage, that market power into the U.S. market to the detriment of competition and consumers."

*Id.* at ¶¶ 140, 145.

By retaining the ECO test for non-WTO Member countries, the Commission hoped to encourage such countries "to take unilateral or bilateral steps toward opening their markets to competition and may provide incentives for them to join the WTO." *Id.* at ¶ 125.

The ECO test, set forth in Section 63.18(k)(3) of the Commission's rules, is designed to address these concerns. It requires applicants affiliated with foreign carriers in non-WTO member states to make the following showings:

- (i) If the applicant seeks to provide facilities-based international services, the legal ability of U.S. carriers to enter the foreign market and provide facilities-based international services, in particular international message telephone service (IMTS);
- (ii) If the applicant seeks to provide resold services, the legal ability of U.S. carriers to enter the foreign market and provide resold international switched services (for switched resale applications) or non-interconnected private line services (for non-interconnected private line resale applications);
- (iii) Whether there exist reasonable and nondiscriminatory charges, terms and conditions for interconnection to a foreign carrier's domestic facilities for termination and origination of international services or the provision of the relevant resale service;

(iv) Whether competitive safeguards exist in the foreign country to protect against anticompetitive practices, including safeguards such as:

(a) Existence of cost-allocation rules in the foreign country to prevent cross-subsidization;

(b) Timely and nondiscriminatory disclosure of technical information needed to use, or interconnect with, carriers' facilities; and

(c) Protection of carrier and customer proprietary information;

(v) Whether there is an effective regulatory framework in the foreign country to develop, implement and enforce legal requirements, interconnection arrangements and other safeguards; and

(vi) Any other factors the applicant deems relevant to its demonstration.

#### **B. The Bahamas and the WTO**

While the Commonwealth of the Bahamas is not currently a WTO Member, and is therefore subject to the ECO test, in recent years the Commonwealth has taken both unilateral and bilateral measures to open its telecommunications market to competition, and membership in the WTO itself is imminent. Among the initiatives the Commonwealth has undertaken are the following:

➤ WTO Membership. The Commonwealth of the Bahamas filed an application for accession to the WTO in 2001, and in April of this year submitted to the organization its Memorandum on the Foreign Trade Regime, a critical step in the accession process.<sup>2</sup> Members have been asked to review the Memorandum and submit questions and comments on the

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<sup>2</sup> See [http://www.wto.org/english/thewto\\_e/acc\\_e/acces\\_e.htm](http://www.wto.org/english/thewto_e/acc_e/acces_e.htm)

Bahamas trade regime. See <http://www.ustr.gov/trade-agreements/wto-multilateral-affairs/wto-accessions/other-accessions>.

➤ EU Economic Partnership Agreement. In December 2008, the Bahamas, together with several other Caribbean nations, entered into an Economic Partnership Agreement with the European Union. See [http://trade.ec.europa.eu/doclib/docs/2008/february/tradoc\\_137971.pdf](http://trade.ec.europa.eu/doclib/docs/2008/february/tradoc_137971.pdf). See also [www.crnw.org](http://www.crnw.org). Article 67 of the Agreement generally prohibits, *inter alia*, limitations on the participation of foreign capital in terms of maximum percentage limits on foreign shareholding or the total value of individual or aggregate foreign investment. In May 2009, the Government of the Bahamas submitted to the EU a schedule of its specific market access commitments, and discussions on these commitments are now in progress.

➤ Privatization of BTC. In 2008 the Government of the Bahamas announced plans to privatize Bahamas Telecommunications Company ("BTC"), the Commonwealth's state-owned dominant carrier, with the sale of 51% of BTC's stock to outside investors. On July 14, 2009, the Government issues a Request for Registration, announcing that it was "seeking a partner to acquire a 51% shareholding, including operational control" in BTC, and invited interested parties to register for the bidding process by July 28, 2009. See <http://btcprivatisation.com/index.php?page=notice-of-privatisation>. As part of the privatization process, the Prime Minister of the Bahamas last year appointed a BTC Privatization Committee, which was tasked with the implementation of a new regulatory framework which "will create the conditions which will allow competition to flourish to the benefit of consumers and the nation as a whole." See [www.btcprivatisation.com](http://www.btcprivatisation.com). The Committee has already launched important public consultations on licensing, interconnection and access, retail pricing, and universal service, as detailed below.

➤ New Communications Act. In May 2009, the Legislature of the Bahamas enacted a new Communications Act which, together with concurrently enacted legislation creating a new regulatory authority and appeals tribunal, establishes a new regulatory framework for the Commonwealth. The new legislation sets no barriers to market entry, and requires only that license applicants be entities duly incorporated in The Bahamas. Foreign companies are free to establish Bahamas subsidiaries in order to comply with this requirement. The new legislation also establishes detailed requirements for interconnection and access, special provisions for carriers having significant market power,<sup>3</sup> and contains critical provisions to address anticompetitive conduct. See <http://btcprivatisation.com/index.php?page=consultation>.

➤ Public Consultations. The BTC Privatization Committee has also launched public consultations in anticipation of the liberalization of the new regime, seeing public comments on proposed rules on licensing, universal service, access and interconnection, and retail pricing. *Id.* These rules will ultimately be adopted and implemented by the Commonwealth's new regulatory body, the Utilities Regulatory and Competition Authority ("URCA").

### **C. The Privatization of BTC**

Among the recent developments in The Bahamas relevant to the Companies' pending applications, the planned privatization of BTC deserves special attention. As noted above, the necessity for the instant filing arises from the fact that, as a result of the proposed transfer of control of CBL, the Companies' parent, BTC will become a foreign affiliate of the Companies, for purposes of Section 63.09(e) of the Commission's rules since the Government of the Bahamas which currently owns 100% of the capital stock of BTC, will hold a 29.2% equity

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<sup>3</sup> Under the legislation, BTC is presumed to have significant market power for the provisioning of fixed voice, mobile voice and mobile data service, and CBL is presumed to have significant market power for the provisioning of high speed data services and connectivity and pay TV services. See Communications Bill, Schedule 4, <http://btcprivatisation.com/uploads/Communications%20Bill%20-%20Tabled%20Version.pdf>.

interest in CBL. Pursuant to Section 63.09(e) of the rules, two entities are affiliated with one another if one of them, or an entity that controls one of them, directly or indirectly owns more than 25% of the capital stock of, or controls, the other. Similarly, the ECO test in Section 63.18(k) of the rules is triggered when, pursuant to Rule Section 63.18(j), any entity that owns more than 25 percent of the applicant, or that controls the applicant, controls a foreign carrier in that country.

The privatization of BTC, which is scheduled to occur later this year, will reduce the stake of the Government of the Bahamas in BTC to 49% and, in so doing, will eliminate the foreign carrier affiliation between BTC and the Companies (through CBL) which currently exists under Sections 63.09(e) and 63.18(j) of the Commission's rules. This event, in turn, would have obviated the need for the Companies to make an ECO showing had privatization occurred at the time they submitted their filings, since the Government of the Bahamas would no longer control BTC, and neither CBL, CCL nor Trinity is a provider of telecommunications services in The Bahamas possessing market power. As the Commission itself has recognized, the sole dominant carrier in The Bahamas is BTC.<sup>4</sup> The Companies respectfully urge the Commission to take these factors into account in its review of the instant filing.

#### **D. BTC and the Companies are Direct Competitors**

In its *Foreign Carrier Entry Order*, the Commission held that it was adopting a 25% ownership affiliation rule "because of the potential for a foreign carrier with a less-than-controlling interest in a U.S. carrier to leverage its monopoly control over bottleneck facilities in

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<sup>4</sup> See Public Notice, DA 07-233, released January 26, 2007, [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DA-07-233A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-07-233A1.pdf). Although the newly enacted Bahamas Communications Bill establishes a presumption that CBL possesses significant market power for the provisioning of high speed data services and connectivity and pay TV services, CBL does not provide telecommunications services in The Bahamas, and, in fact, is currently prohibited from doing so under the terms of its licenses. At present, BTC competes for the provisioning of voice telecommunications services in the Bahamas with Systems Resource Group Limited.

the foreign market to favor its U.S. affiliate or to otherwise obtain an unfair competitive advantage in the U.S. international services market.<sup>5</sup> In the instant case, however, there is no reason to believe that BTC would ever use its market dominance in The Bahamas for the benefit of the Companies. Indeed, quite the contrary. In The Bahamas, BTC and CBL are direct, aggressive competitors, to the extent applicable law allows CBL to provide competitive offerings,<sup>6</sup> In the submarine fiber optic cable market between the US and The Bahamas, moreover, CCL has competed directly with BTC since 2000.<sup>7</sup> BTC has frequently exercised its significant market power against both companies. As noted above, for example, the terms of their respective Bahamas licenses expressly prohibit CBL and CCL from providing voice telephony services, including VoIP. For several years, BTC has vigorously and successfully opposed efforts by CBL and CCL to lift these restrictions, so as to enable CBL and CCL to utilize their networks for the carriage or provision of voice services. BTC has also vigorously and successfully resisted efforts by CBL and CCL to require BTC to provide leased circuits to other licensed operators for the carriage of voice traffic. Against this background, there is no precedent whatsoever for BTC utilizing its market power in The Bahamas to benefit the Companies, and the likelihood of such support by BTC ever occurring in the future highly doubtful.

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<sup>5</sup> *Market Entry and Regulation of Foreign-Affiliated Entities*, FCC 95-475, released November 30, 1995 at ¶ 73. The Commission retained this standard in its *Foreign Participation Order*, *supra* at ¶ 223.

<sup>6</sup> CBL competes directly with BTC in The Bahamas for the provisioning of high speed broadband service, and both BTC and CCL operate submarine fiber optic cable networks between the U.S. and The Bahamas. The Companies do not compete with BTC for the provisioning of video services, and, as noted, the terms of the Bahamas operating licenses of CBL and CCL expressly prohibit these companies from providing services which enable, or are equivalent to, voice telephony, including VoIP. The terms of CBL's license are limited solely to the provisioning of non-telecommunications services (cable television and high speed internet service), and the terms of CCL's Bahamas license expressly prohibits it from providing services over its submarine fiber optic network which enable, or are equivalent to, voice telephony, including VoIP.

<sup>7</sup> BTC is a 70% owner of the Bahamas II Cable System authorized by the Commission in 1996. See AT&T Corp. et al, DA 96-1234, released August 6, 1996. The Commission authorized the CCL submarine cable system connecting the U.S. and The Bahamas in 1996. See *Caribbean Crossings Ltd.*, DA 00-1349, released June 20, 2000.

**E. The Government of The Bahamas Has Not Accorded Preferential Treatment to the Companies in the Past, and Is Unlikely to Do So in the Future**

The designation of the Companies as dominant carriers by virtue of the common ownership interest of the Government of The Bahamas in both CBL and BTC also implicitly assumes that the Government of The Bahamas may take actions which would accord to the Companies preferential treatment and advantages over their competitors. As noted above, however, through its regulatory bodies, the Government of The Bahamas has consistently denied to CBL and its subsidiaries the same operational rights and preferences accorded to BTC. This course of conduct is unlikely to change in the Companies' favor simply because the percentage ownership of the Government in CBL will increase to 29%. On the contrary, under recently enacted legislation in The Bahamas, a new regulatory body, URCA, would continue to prohibit CBL and its subsidiaries from providing voice communications services in The Bahamas by virtue of their presumed significant market power in the provisioning of cable television and high speed internet service. While CBL has vigorously opposed this outcome, the new legislation is expected to take effect by year's end.

**F. The 29.2% Equity Interest in CBL to be Held by the Government of the Bahamas is a Passive Investment**

The 29.2% equity interest in CBL to be held by the Government of The Bahamas will be a passive investment on a number of levels, each of which the Companies urge the Commission to take into account. *First*, as noted above, the increase of the percentage equity ownership of the Government of The Bahamas in CBL will occur not because of any stock purchases by the Government, but solely because CBL itself will be purchasing back shares currently held by its

largest shareholder, Columbus Communications. The actual number of shares held by the Government will not change.

*Secondly*, unlike the case of BTC, none of the directors of CBL, CCL or Trinity are officials or employees of the Government of The Bahamas. Assuming the Commission approves the instant applications, this situation will not change, as neither CBL nor the Companies intend to provide for any Government participation on their respective boards post-transaction.

*Thirdly*, the majority of interests in CBL held by the Government of The Bahamas (21.9%) are owned by the National Insurance Board ("NIB"), which administers the Commonwealth's social security program. The NIB's primary mission is to provide income replacement in connection with sickness, invalidity, maternity, retirement, death and industrial injury and disease afflicting citizens of The Bahamas. Its added mission is to provide assistance to needy citizens, and to assist with the social and infrastructural development of the country. The NIB's own funding comes from employers and employees, not the Government of The Bahamas.

*Fourth and finally*, the 29.2% interest which would be held by the Government of The Bahamas immediately following the proposed transfer of control may be diluted in the future as a result of a planned offering of four million shares of CBL convertible preferred stock. While it is impossible to predict with certainty how many of these shares will be sold, how many would be converted, and other variables, the conversion of these shares could, under a number of scenarios, reduce the Government's combined equity interest in CBL to below 25%.

## II. The Commonwealth of the Bahamas Satisfies the ECO Test in All Respects

As set forth below, the Commonwealth of the Bahamas meets each of the ECO test criteria.

A. Legal Ability of U.S. carriers to enter the Bahamas market (47 C.F.R. §§ 63.18(k)(3)(i) and (ii)). Both CCL and Trinity currently provide international telecommunications services pursuant to authorizations issued by the Commission. Specifically, in 2000, the Commission granted authority to CCL to land and operate a private fiber optic submarine cable system between The Bahamas and the United States,<sup>8</sup> and in 2003, the Commission granted to Trinity authority to provide facilities-based and resold international telecommunications service under Section 214 of the Act.<sup>9</sup>

Under the newly enacted communications act of The Bahamas, there are no foreign ownership or other restrictions on the ability of U.S. carriers to enter the Bahamas market to provide either of these types of services, provided that they do so through a subsidiary organized under Bahamas law.<sup>10</sup> Moreover, the Government of the Bahamas has made clear that, with its new regulatory regime, it seeks to encourage new entrants. Indeed, in its recently released Framework Consultation Response, the Government expressed the view that "artificial limits should not be placed on the number of new entrants, preferring the market to decide how many players it will support;" "that barriers to entry should be at a minimum...;" and that it does not favor discrimination among market players.<sup>11</sup>

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<sup>8</sup> *Caribbean Crossings Ltd.*, DA 00-1349, released June 20, 2000.

<sup>9</sup> Public Notice Report No. TEL-00685, DA 03-2185, released July 3, 2003, FCC File No. ITC-214-20030515-00268.

<sup>10</sup> See Section 26(3) of the new Communications Bill, <http://btcprivatisation.com/uploads/Communications%20Bill%20-%20Tabled%20Version.pdf>

<sup>11</sup> See Government of the Commonwealth of The Bahamas, "Communications Regulatory Reform: Towards a New Regulatory Framework for the Communications Sector," <http://btcprivatisation.com/uploads/Framework%20Consultation%20Response.pdf>, ¶ 80.

B. Conditions for Interconnection (47 C.F.R. § 63.18(k)(iii)). Pursuant to the newly enacted Communications Bill, US carriers seeking to originate and terminate international telecommunications service in The Bahamas, or to provide resale services, will also benefit from reasonable and nondiscriminatory charges, terms and conditions for interconnection to BTC's domestic facilities. The new law classifies BTC as a licensee having significant market power ("SMP") and empowers the new regulatory body, URCA, to impose specific conditions on BTC, including obligations relating to cost orientation of prices, and the publication of a reference offer or offers ensuring equivalence of access and/or interconnection to any of those services and/or facilities in which the licensee has SMP at tariffs based on the licensee's costs."<sup>12</sup>

The new law also imposes on BTC certain other conditions and obligations, including the duty:

- Not to unduly discriminate against particular persons or a particular description of persons in relation to electronic communications services offered by them.
- Provide technical specifications, or other relevant information about any interconnection, essential facilities or other mandated wholesale electronic communications services on a reasonable and timely basis, when the information is required by another licensee to provide its licensable services and when the information is not readily available from other sources.

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<sup>12</sup> Section 34.1 of the draft standard license which the Government intends to issue to carriers also empowers URCA, upon the request of any other operator, to require BTC, as the SMP Licensee, to "conclude an agreement (or an amendment to an existing agreement) with that Other Operator for interconnection or Access or both upon terms no less favourable to the Other Operator than those it offers to Other Operators, itself, as soon as reasonably practicable and on fair and reasonable terms, Conditions and charges or on such terms, Conditions and charges as URCA may from time to time direct." See <http://btcprivatisation.com/uploads/Individual%20Licence.pdf>.

➤ Not to adopt technical specifications for a network that prevents interconnection or interoperability with a network of a competitor.<sup>13</sup>

Consistent with these requirements, in a recent public consultation, the Government of the Bahamas has proposed that any reference access and interconnection offer ("RAIO") submitted by BTC must conform with the following core principles:

- Any-to-any connectivity between customers on an SMP licensee's network and customers on other interconnected networks;
- Rights of interconnection to all licensed operators of public telecommunications networks;
- Obligation to interconnect in response to "all and any requests;"
- Good faith negotiation;
- Timeliness – response to all interconnection requests in a timely fashion;
- Non-discrimination;
- Technical standards sufficient to protect integrity of systems and ensure interoperability of interconnected networks;
- Interconnection at any technically feasible point;
- Reasonably unbundled elements;
- Transparency;
- Cost-oriented charges; and
- Clear regulatory processes.<sup>14</sup>

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<sup>13</sup> See Section 40 of the new Communications Bill, <http://btcprivatisation.com/uploads/Communications%20Bill%20-%20Tabled%20Version.pdf>.

<sup>14</sup> See "Access & Interconnection Framework for the Electronic Communications Sector", published May 26, 2009, <http://btcprivatisation.com/uploads/AI%20Consultation%20Final%20260509.pdf>.

C. Competitive Safeguards (47 C.F.R. § 63.18(k)(3)(iv)). The laws of the Government of the Bahamas also include the following competitive safeguards against anticompetitive behavior:

➤ Cost allocation rules to prevent cross-subsidization. Under Section 40(5) of the new Communications Act, URCA may direct SMP licensees to employ specific cost accounting methods or URCA may use cost accounting methods independent of those used by the relevant licensee. URCA may require the SMP licensee to provide full justification for its prices and may, where appropriate, require prices to be adjusted. In preparation for the inauguration of URCA, BTC Privatisation Committee, which has initiated public consultations on the new regulatory framework which will govern in The Bahamas, has invited comment on retail price reform. In this public consultation, the Committee has stated that "the cross-subsidisation cannot be fully supported in a liberalised market,"<sup>15</sup> and has proposed measures to prevent this practice. In preparation for such regulation and other related measures, the Committee's advisors are also consulting with both BTC and CBL on the implementation of regulatory financial reporting and costing information which serves as a critical input to price cap design.

➤ Timely and non-discriminatory disclosure of technical information needed to use, or interconnect with, carriers' facilities. The new Bahamas Communications Act requires SMP licensees to (a) provide technical specifications, or other relevant information about any interconnection, essential facilities or other mandated wholesale electronic communications services on a reasonable and timely basis, when the information is required by another licensee to provide its licensable services and when the information is not readily available from other sources; and (b) not adopt technical specifications for a network that prevents interconnection or

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<sup>15</sup> Public Consultation on Retail Pricing Regulation, published June 17, 2009, ¶ 22. See <http://btcprivatisation.com/uploads/Retail%20pricing%20consultation%20REVISED%20090624.pdf>.

interoperability with a network of a competitor. Section 40(4). The new law also authorizes URCA to adopt technical rules and standards applicable to facilities to ensure against damage to networks or carriage services, or to public health, safety or the environment.

➤ Protection of carrier and customer proprietary information. Section 48 of the new Communications Act provides that (1) a licensee may disclose a subscriber's name, address and listed telephone number in a printed or electronic telephone directory except where the subscriber specifically requests that his or her details be excluded from the directory, and that (2) URCA may by determination or regulation require a licensee to retain or prohibit a licensee from retaining specified information relating to subscribers, including information about billing, beyond a specified period. The Act further states that Sections 48-52 of the Act "provide further protection for consumers including provisions to maintain confidentiality of user information (to protect the personal data of consumers – these provisions are consistent with the Data Protection (Privacy of Personal Information) Act 2003), confidentiality of communications and govern the rights of the licensee access to consumers premises where the licensees' equipment is located."

**D.** Effective Regulatory Framework (47 C.F.R. § 63.18(k)(3)(v). As noted above, in conjunction with the planned privatization of BTC the Government of The Bahamas has launched a number of initiatives, all designed to establish an effective and liberalized regulatory regime. These initiative include –

➤ The adoption in May 2009 by the Bahamas Legislature of a new Communications Act including provisions for open licensing, interconnection requirements, safeguards against anticompetitive conduct, obligations of SMP licensees, universal service, and consumer protection. The new legislation also contains provisions empowering URCA to issue and enforce orders, make determinations and impose fines and forfeitures.

➤ The adoption in May 2009 by the Bahamas Legislature of the Utilities Regulation and Competition Authority Act, establishing a new regulatory body with authority over the telecommunications sector. Under the legislation, URCA has broad powers to enforce its decisions, adopt new rules, and investigate violations of applicable law.

➤ The adoption in May 2009 of the Utilities Appeal Tribunal Act, establishing a tribunal to hear appeals of URCA rulings.

➤ The launching by the Government of the Bahamas, through the BTC Privatization Committee, of a series of public consultations, seeking public comment on the proposed liberalization of policies governing interconnection and access, universal service, licensing, and retail pricing for telecommunications services.

E. Other factors (47 C.F.R. § 63.18(k)(3)(vi)). In addition to the above factors, the Companies respectfully submit that the unilateral and bilateral initiatives which the Government of The Bahamas has taken to open its telecommunications market to competition, as well as the circumstances set forth in Sections I.B-E of this filing, are all relevant to the Commission's evaluation of whether the Government of the Bahamas meets the ECO test, and whether the public interest warrants a grant of their transfer of control applications. Given these circumstances, there is no reason to believe that the Government of the Bahamas will prevent US carriers from entering the Bahamas telecommunications market, or that BTC, currently the Commonwealth's dominant carrier, will be able to use bottleneck facilities to discriminate against US carriers. On the contrary, the facts in this case clearly show that the Government of the Bahamas embraces the Commission's goals of full and robust competition.

### **III. Certification Regarding the Anti-Drug Abuse Act of 1988**

As required by Sections 1.767(a)(8) and 63.18(o) of the Commission's rules, 47 C.F.R. §§ 1.767(a)(8), 63.18(o), the Companies further certify that no party to their applications has been denied federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.

**Conclusion**

For the reasons set forth above, CCL and Trinity respectfully submit that the above evidentiary showing amply demonstrates that The Government of the Bahamas provides effective competitive opportunities to US carriers seeking to provide international telecommunications services in the Bahamas, and that other public interest factors warrant the grant of their pending applications. Alternatively, the Companies respectfully submit that, in view of the de minimis amount by which the percentage equity ownership of the Government of The Bahamas would exceed the Commission's 25% threshold, and the other public interest factors set forth below, that the public interest would be served by a waiver of the Commission's 25% threshold as set forth in Sections 63.09 and 63.18 of its rules.

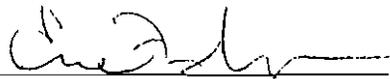
## CONCLUSION

For the reasons set forth above and in the Companies' respective applications, the Companies hereby request that the Commission expeditiously grant the Companies' respective transfer of control applications.

Respectfully submitted,

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July 14, 2009

**CERTIFICATE OF SERVICE**

I, Eric Fishman, hereby certify that I have served copies of the foregoing Consolidated Amendment and Waiver Requests, by hand- or overnight delivery on this 14<sup>th</sup> day of July 2009, to the following:

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