

NAKHOTA, LLC

*Legal and
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Solutions*

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VIA EMAIL

FILED ELECTRONICALLY VIA IBFS

25 July 2011

Ms Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554.

Re: Tricom U.S.A., Inc. Request for Special Temporary Authority to Operate Pending Approval of International 214 and Submarine Cable Landing License Application for Transfer of Control: SCL T/C 20100719-00014; ITC T/C 20100719-000295

Dear Ms Dortch:

Authorized carrier Tricom U.S.A., Inc. ("Tricom USA") and its shareholders (collectively ("Transferor")) and Amzak Capital Management, LLC ("AMZAK") and its members (collectively "Transferee", who together with Transferor are referred to as the "Parties"), hereby request new Special Temporary Authority ("STA"), or, in the alternative, extensions of the STA's granted by the Commission staff on August 4, 2010, and extended on October 5, 2010 and December 2, 2010 and January 28, 2011, March 24, 2011 and May 27, 2011¹ pending Commission approval of the Parties' international applications for Commission consent to transfer control of Tricom USA's 214 authorizations to Transferee ("Section 214 Transfer of

¹ The extensions of Tricom USA's international and submarine cable landing license STAs ("International and SCL STAs") are set to expire on July 26, 2011. A separate request for a new or extended international STA will be submitted via IBFS simultaneously herewith.

Control Applications”) as well as the Parties’ application for authority to transfer control of Tricom USA’s Submarine Cable Landing Licenses (“SCL Transfer of Control Applications”), which Section 214 and SCL applications are collectively referred to herein as “Transfer of Control Applications”.² The Parties respectfully seek new STAs, or extension of the existing STAs, which shall expire on July 26, 2011, and request the Commission to continue processing the Transfer of Control Applications.

In April 2010 Amzak, as the largest creditor of Tricom S.A. in the Dominican Republic, (of which Tricom USA is a wholly owned subsidiary) took control of Tricom S.A. and thus inherited Tricom USA out of bankruptcy as of the Effective Date of the Reorganization Order. Following its assuming control of Tricom S.A., Amzak had the opportunity to review the business of Tricom USA and determined that it is no longer necessary to have a U.S. company. Thus, Amzak began the liquidation of Tricom USA and as of December 31, 2010 Tricom USA ceased all service. Neither Amzak nor Tricom S.A. nor any subsidiary or affiliated company have or propose to have a U.S. company or provide any type of telecommunications service in the U.S..³ Nevertheless, in order that the pleading cycles for the transfer of control applications filed by counsel for Tricom USA in July 2010 be completed, so that the dissolution of Tricom USA may be completed, the series of requests for Special Temporary Authority have been submitted each 60 days until the transfer of control applications are resolved finally so that Amzak may surrender Tricom USA’s Section 214 domestic and international authority and the cable landing licenses.

On April 7, 2010, the Parties consummated transactions involving the assignment of Tricom USA's international and domestic Section 214 authorizations ("Section 214 Assignment Applications")⁴ and its SCL licenses ("SCL Assignment Application")⁵ pursuant to a plan of reorganization ("Plan of Reorganization")⁶

² Where necessary, the Parties also request that the STAs cover the Parties’ notification of the *pro forma* assignment of Section 214 international authorizations and SCL licenses from Transferee to Broadband Investments Limited (“Broadband”), a wholly-owned subsidiary of AMZAK (“*Pro Forma* Notifications”), however, this is done only in an abundance of caution as to timing requirements, as Amzak shall surrender the Section 214 authorizations and the cable landing licenses as soon as the FCC process permits, nullifying the need for a pro forma notification within 90 days of the granting of the transfer of control, and as Amzak has no intention of using the licenses either itself or in any of its subsidiaries or affiliated companies.

³ Tricom USA was originally created by Tricom SA to terminate Tricom SA’s U.S.-bound traffic from the Dominican Republic as both AT&T and MCI elected not to do so while they each shared the Dominican-US traffic market with GTE, which controlled the de facto monopoly in the Dominican Republic, Codetel in the early 1990’s.

⁴ See Applications for the Assignment of Domestic and International Section 214 Authorizations from Tricom USA, Inc. Debtor-in-Possession to Tricom USA, Inc. in WC Docket No.10-16, IB Dockets: ITC-ASG-20091223-00543 and SCL-ASG-20091223-00040. The Domestic Section 214 Assignment Application was granted on February 21, 2010. See *Notice of Domestic Section 214 Authorization Granted*, Public Notice, DA 10-294, 25 FCC Rcd 1800 (2010). The International Section 214 Assignment Application was granted on January 29, 2010. See *International Authorizations Granted*, Public Notice, DA 10-232, 25 FCC Rcd 1279 (2010).

Tricom USA's International Section 214 authorizations are as follows: ITC-214-19930101-00257 (Old File No. ITC-93-246); ITC-214-19960925-00468 (Old File No. ITC-96-532); ITC-214-19970421-00220 (Old File No. ITC-97-221); ITC-214-19980430-00286 (Old File No. ITC-98-342, ITC-98-342A); ITC-214-19990325-00153; ITC-MOD-19970618-00335 (Old File No. ITC-96-532-M).

⁵ See File No. SCL-ASG-20091223-00040. The SCL Assignment Application was granted by the Commission on February 17, 2010. See *Actions Taken Under Cable Landing License Act*, Public Notice, DA 10-276, 25 FCC Rcd 1461 (2010).

under the United States bankruptcy laws and in accordance with the Commission's consent.

The exact indirect ownership of the reorganized Tricom USA could not be determined prior to the reissuance of stock pursuant to the Plan of Reorganization. Accordingly, in the Section 214 Assignment Applications and the SCL Assignment Application, the Parties provided estimates of the equity ownership percentages that would be held by each ten (10) percent or greater interest holder in Hispaniola Telecom Holdings, Ltd. ("Holding Company"), the holding company holding at least 99 percent of the ownership interests of reorganized Tricom, S.A. ("Tricom, S.A."), the direct parent company of Tricom USA. As reported in the Section 214 Assignment Applications and the SCL Assignment Application, the Parties reasonably believed that, post-consummation, Amzak Capital Management, LLC would hold a direct ownership interest in Holding Company in excess of 18.5 percent but less than 50 percent, and that two other investors, Ellis Portafolio, S.A. ("Ellis") and MAP Private Trust Company ("MAP"), would hold 10.7 percent and 13.4 percent ownership interests in Holding Company, respectively.

During the time period following the Section 214 and SCL Assignment Applications and prior to the date of consummation, April 7, 2010, AMZAK acquired further unsecured claims for borrowed money against Tricom, S.A. and its subsidiaries. As a result, as of the date of consummation, AMZAK held approximately 57.2 percent

In 1998 and 1999 the Commission authorized Tricom USA's predecessor-in-interest along with several other companies, to construct and operate the Americas II Cable System (File Nos. SCL-98-003, SCL-98-003A), the Maya-1 Cable System (File No. SCL-LIC-19990325-00006) and the Pan American Cable System (File No. SCL-97-001). *See AT&T Corp. et. al, Joint Applications for a License to Land and Operate a Digital Submarine Cable System Among Florida, Puerto Rico, the U.S. Virgin Islands, Martinique, Curacao, Trinidad, Venezuela, French Guiana and Brazil, the Americas-II Cable System, Cable Landing License, 13 FCC Rcd 22540 (1998); AT&T Corp. et. al, Joint Applications for a License to Land and Operate a Digital Submarine Cable System Between the United States, the Cayman Islands, Columbia, Costa Rica, Honduras, Mexico and Panama, the Maya-1 Cable Network, Cable Landing License, 14 FCC Rcd 19456 (1999); Americatel Corp. et. al, Joint Application for a License to Land and Operate a Digital Submarine Cable System Between the U.S. Virgin Islands, Chile, Peru, Ecuador, Panama, Columbia, Venezuela, and Aruba, the Pan American Cable System, Cable Landing License, 13 FCC Rcd 850 (1998).* At the time the Commission granted the license for the Pan American Cable System, Old Tricom USA was known as Domtel Communications, Inc.

⁶ Prior to the consummation of the Plan of Reorganization, all authorizations held by Tricom USA (referred to in the Section 214 Assignment Applications and SCL Assignment Application as "New Tricom USA") were previously held by Tricom USA, Inc. Debtor-in-Possession. Tricom USA, Inc., Debtor-in-Possession previously notified the Commission of the *pro forma* assignment of the Section 214 authorizations and SCL licenses identified herein from Tricom USA, Inc. (referred to in the Section 214 Assignment Applications and SCL Assignment Application as "Old Tricom USA") to Tricom USA, Inc. Debtor-in-Possession. *See* Letter from Cheryl A. Tritt, counsel to Tricom USA, Inc. Debtor-in-Possession, to Marlene Dortch, Secretary, Federal Communications Commission (filed March 27, 2008); Notification of the *Pro Forma* Assignment of International Section 214 Authorizations from Tricom USA, Inc. to Tricom USA, Inc. as Debtor-in-Possession, File No. ITC-ASG-20080327-00158; Tricom USA, Inc., Application for the *Pro Forma* Assignment of Interests in Submarine Cable Landing Licenses, File No. SCL-ASG-20080328-00009.

ownership interest in Holding Company. Ellis and MAP respectively held 12.5 percent and 19.0 percent ownership interests in Holding Company.⁷

Further, the following transactions occurred. On or about April 7, 2010, AMZAK transferred its interest in Holding Company to its wholly-owned subsidiary, Broadband. On April 15, 2010, Ellis and MAP transferred their ownership interests in Holding Company to Broadband. On or about June 7, 2010, Broadband transferred a portion of its ownership interest in Holding Company to PTY Capital Partners Ltd. ("PTY Capital Partners"), a British Virgin Islands company. As a result of these transactions, Broadband held 52.22 percent ownership interest in Holding Company and PTY Capital Partners now holds a 19.24 percent ownership interest in Holding Company.⁸ Part of the Reorganization Order permitted unsecured creditors of Tricom S.A. to exchange their debt holdings for shares of the Holding Company until April 2012. Thus, while the share ownership may change slightly until 2012, as of April 30, 2011, Amzak controls Tricom USA through various companies in the holding chain as follows: As a result of the Court ordered implementation of the Plan, AMZAK owns 100% of Broadband Investments Ltd which in turn owns approximately 55.67% of Hispaniola Telecom Holdings ("Hispaniola") which in turn holds in excess of 99% of Tricom SA shares and Tricom SA owns 100% of Tricom USA.

Based on the transfer of majority control to AMZAK, and the *pro forma* transfer to Broadband, the Parties filed Transfer of Control Applications, the *Pro Forma* Notifications and the International and SCL STA requests (which were promptly granted by Commission staff) in order to comply fully with the Commission's Rules.

The extensions of Tricom USA's International and SCL STAs are set expire on July 26, 2011. The Parties respectfully request new STAs, or in the alternative, further extensions of the existing above-captioned STAs. The Parties submit that good cause exists as the underlying Transfer of Control Applications were removed from streamlined treatment by the Commission while the Executive Branch Agencies, participating in a working group informally known as "Team Telecom" (Department of Homeland Security, Department of Justice, including the Federal Bureau of Investigation, and the Department of Defense), review the Transfer of Control Applications. Team Telecom's review remains ongoing. Team Telecom has been informed of the instant STA extension request, and Team Telecom indicated that it has no objections to the request.

⁷ Applicants informed the Commission of these post-transfer of control ownership percentages in a consummation notice filed on May 7, 2010 via ECFS and IBFS. See Letter to Ms. Marlene Dortch, Secretary, from Michelle W. Cohen, dated May 7, 2010, WC Docket No. 10-16, IB Dockets: ITC-ASG-2009-1223-00543 and SCL-ASG-20091223-00040.

⁸ Contemporary Investments Ltd. ("Contemporary Investments"), a Bahamas company, holds 100 percent of the ownership interests of PTY Capital Partners. Alberto C. Motta, Jr. and Stanley A. Motta, citizens of Panama, each hold a 50 percent ownership interest in Contemporary Investments.

Grant of the instant STA request will serve the public interest as it will continue to authorize the ownership structure that resulted from the change of control while Team Telecom and Commission staff process the underlying Transfer of Control Applications, so that Tricom USA may close its business in an orderly fashion.

The Parties acknowledge that grant of the requested STAs will not prejudice any action the Commission may take with respect to Tricom USA, and that, once granted, the STAs may be revoked on the Commission's own notice, without hearing. Applicants further acknowledge that grant of the STAs and the Transfer of Control Applications will not preclude enforcement action.

Please contact the undersigned if you have any questions or require any additional information.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Judith D. O'Neill". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Judith D. O'Neill
Counsel to Tricom USA, Inc.

Cc: David Krech, FCC

Cc: Jodi May, FCC