

Before the
Federal Communications Commission
Washington, D.C. 20554

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| In the Matter of |) | |
| |) | |
| Caribbean Crossings Ltd. |) | |
| |) | SCL-AMD-20000405-00011 |
| Application for a License to Land and Operate in |) | SCL-LIC-20000118-00001 |
| the United States a Private Submarine Fiber Optic |) | |
| Cable between the United States and the Bahamas |) | |
| |) | |
| |) | |

CABLE LANDING LICENSE

Adopted: June 19, 2000

Released: June 20, 2000

Before the: Chief, Telecommunications Division

I. Introduction

1. In this order, we grant the Application of Caribbean Crossings Ltd. (Caribbean Crossings), under the Cable Landing License Act¹ and Executive Order No. 10530,² for authority to land and operate a private fiber optic submarine cable system to be called the Bahamas Internet Cable System (Bahamas Internet) extending between the United States and the Bahamas. The system will be operated on a non-common carrier basis. We find that Caribbean Crossings has provided sufficient information under our rules to comply with the Cable Landing License Act and that it would be serve the public interest to grant the cable landing license subject to the conditions listed below.

II. Application

2. According to the Application, as amended, Caribbean Crossings, a Bahamas corporation, is a wholly-owned subsidiary of Cable Bahamas Ltd. (Cable Bahamas), also a Bahamas corporation.³ Cable Bahamas is owned 32.25% by Columbus Communications Ltd., a Bahamas corporation and 20% by the Government of the Commonwealth of the Bahamas as a beneficial owner, with nominee Bahamas Electricity Corp. responsible for 10% of Cable Bahamas shares and nominee Bahamas Telecommunications Corp. responsible for the other 10%. The remaining 47.75% of Cable Bahamas stock

¹ An Act Relating to the Landing and Operation of Submarine Cables in the United States, 47 U.S.C. §§ 34-39 (Cable Landing License Act).

² Exec. Ord. No. 10530 *reprinted as amended in* 3 U.S.C. § 301.

³ The Amended Application filed April 5, 2000, amended and restated the application filed on Jan. 18, 2000 by Cable Bahamas Ltd. to Land and Operate in the United States a Private Fiber Submarine Fiber Optic Cable Extending Between the United States and the Bahamas.

is publicly traded with no entity having a five percent or greater interest in Cable Bahamas.⁴ The sole shareholder of Columbus Communications Ltd. is Phillip Keeping, a citizen of Canada.

3. As shown in Exhibit A attached to this Order, the proposed Bahamas Internet system will connect Boca Raton, Florida and Hawksbill, Grand Bahama Island, the Bahamas. According to the Application, the Bahamas Internet system will be comprised of 12 fiber pairs with a capacity of 2.5 Gbps using one fiber pair. The ultimate network capacity will be 30 Gbps using the 12 fiber pairs at 2.5 Gbps per pair. An upgrade to the system using Wavelength Division Multiplexing (WDM) technology is contemplated, subject to the completion of the system survey and design. The ultimate network capacity for this upgraded design is 240 Gbps. The Applicant anticipates having the system in service during the Fourth Quarter 2000.⁵

III. Comments

4. We placed the Application on public notice on January 28, 2000 and the Amended Application on public notice on April 12, 2000.⁶ We received no comments. Pursuant to Section 1.767(b) of the Commission's rules,⁷ the Cable Landing License Act, and Executive Order No. 10530, we informed the Department of State of the Application.⁸ The Department of State, after coordinating with the National Telecommunications and Information Administration and the Department of Defense, stated that it has no objection to the issuance of the cable landing license.⁹

IV. Discussion

A. Private Submarine Cable Policy

5. Caribbean Crossings proposes to operate the Bahamas Internet system as a non-common

⁴ The remaining 47.75% of Cable Bahamas is owned by 3,000 citizens of The Commonwealth of the Bahamas and is publicly traded on the Bahamas Over the Counter Market with no one entity having a five percent or greater interest in Cable Bahamas. *See* Caribbean Crossings Ltd. Amended Application to Land and Operate in the United States a Private Fiber Submarine Fiber Optic Cable Extending Between the United States and the

Bahamas, filed April 5, 2000, at Exhibit D (Amended Application).

⁵ *See* Amended Application at 3.

⁶ *See Non Streamlined International Applications Accepted for Filing*, Public Notice, Report Nos. TEL-00183NS (rel. Jan. 28, 2000) and TEL-00215NS (rel. April 12, 2000).

⁷ 47 C.F.R. § 1.767(b).

⁸ Letters from Rebecca Arbogast, Chief, Telecommunications Division, International Bureau, Federal Communications Commission, to Steven Lett, Deputy U.S. Coordinator, Office of International Communications and Information Policy, U.S. Department of State (Jan. 28, 2000 and April 7, 2000).

⁹ Letter from Malcolm R. Lee, United States Coordinator, International Communications and Information Policy, U.S. Department of State, to Donald Abelson, Chief, International Bureau, Federal Communications Commission (June 16, 2000).

carrier submarine cable system, offering bulk capacity to a specific class of eligible users, including common carriers, on an original ownership, indefeasible right of use (IRU), or lease of capacity basis.¹⁰ Capacity will not be offered indifferently to the public. Caribbean Crossings requests a license under the Commission's private submarine cable policy, which is intended to promote competition in the provision of international transmission facilities.¹¹ Pursuant to this policy, the Commission has authorized non-common carrier cables where: (1) there is no legal compulsion to serve the public indifferently; and (2) there are no reasons implicit in the nature of the operations to expect that the applicant would make capacity available to the public indifferently and indiscriminately.¹²

6. In applying the first prong of the test to submarine cable authorizations, the Commission has stated that there will be no legal compulsion to serve the public indifferently where there is no public interest reason to require facilities to be offered on a common carrier basis.¹³ This public interest analysis has generally focused on whether an applicant will be able to exercise market power because of the lack of alternative facilities.¹⁴ Where there are sufficient alternatives, the Commission has found that the licensee will lack market power and will not be able to charge monopoly rates for cable capacity.¹⁵ The Commission has found that, in those circumstances, the public interest would be served by allowing a submarine cable to be offered on a non-common carrier basis.¹⁶

7. Caribbean Crossings asserts that there are sufficient existing and planned facilities on the route to prevent it from exercising market power in offering services to the public.¹⁷ Caribbean Crossings also asserts that there are a number of operational or planned non-common carrier systems in the region,¹⁸ including the following cables authorized by the Commission that include the Bahamas as a landing point: (1) Bahamas II;¹⁹ and (2) ARCOS-1.²⁰ Bahamas II is currently in service. Caribbean Crossings also

¹⁰ See Amended Application at 4.

¹¹ See Tel-Optik, Ltd., *Memorandum Opinion and Order*, 100 F.C.C.2d 1033, 1040-42, 1046-48 (1985); see also Cable & Wireless, plc, *Cable Landing License*, 12 FCC Rcd 8516 (1997) (*Cable & Wireless*).

¹² See *Cable and Wireless*, 12 FCC Rcd at 8522; see also Optel Communications, Inc., *Conditional Cable Landing License*, 8 FCC Rcd 2267 (1993); *National Association of Regulatory Utility Commissioners v. FCC*, 525 F.2d 630, 642 (D.C. Cir.) (*NARUC I*), cert. denied, 425 U.S. 992 (1976).

¹³ See, e.g., *Cable & Wireless*, 12 FCC Rcd at 8522-23.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See Amended Application at 10.

¹⁸ *Id.* at 6, 10.

¹⁹ See AT&T Corp., MCI International, Inc., The St. Thomas and San Juan Telephone Company, Inc., and Telefonica Larga Distancia de Puerto Rico, Inc. *Joint Application for Authorization to Construct, Acquire and Operate Capacity in a Digital Submarine Cable System between the U.S. Mainland and the Bahamas, the BAHAMAS II Cable System*, DA 96-1234, File No. ITC-96-234 (rel. Aug. 6, 1996).

certifies it is not affiliated with any foreign carrier.²¹ Accordingly, Caribbean Crossings does not control any bottleneck facilities in the markets the Bahamas Internet system proposes to serve.

8. No one has advocated that the public interest requires the Bahamas Internet system to be operated on a common carrier basis. Given the unopposed evidence of the availability of alternative cables and Caribbean Crossings' certification that it is not affiliated with any carrier on the U.S.-Bahamas route, we find that it would not serve the public interest to impose common carrier regulation on the operations of the Bahamas Internet system at this time. We note, however, that we maintain the ability to impose common carrier or common-carrier-like obligations on the operations of this or any other submarine cable system if the public interest so requires.²² Furthermore, we have always maintained the authority to classify facilities as common carrier facilities subject to Title II of the Communications Act if the public interest requires that the facilities be offered to the public indifferently.²³

9. Regarding the second prong of the test, we conclude that there is no reason to expect that capacity in the proposed cable system would be held out to the public indifferently. Caribbean Crossings states that capacity will not be sold indifferently to the user public. Rather, capacity will be assigned pursuant to individualized decisions in particular cases, whether and on what terms to deal, and bulk capacity will be offered to a significantly restricted class of users, including common carriers.

10. We conclude that Caribbean Crossings will not offer capacity in the Bahamas Internet system to the public on a common carrier basis and that the public interest does not require that they do so. Accordingly, we conclude that it is appropriate to license the Bahamas Internet system on a non-common carrier basis. We also find that the Applicant will not provide a telecommunications service for a fee to such class of users as to be “effectively available directly to the public” and thus will not be a “telecommunications carrier” under the 1996 Act.²⁴

B. Ownership and Landing Points

11. Caribbean Crossings has provided the ownership information required by Sections

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²⁰ See *ARCOS-1 USA, Inc.*, 14 FCC Rcd 10597 (1999). The ARCOS-1 cable was recently authorized by the Commission on a non-common carrier basis, and we are not aware that it is currently in service.

²¹ See Amended Application at 9. We note that while Bahamas Telecommunications Corp. is the nominee/owner of 10% of Caribbean Crossings, such an ownership interest does not create an affiliation within the meaning of Section 63.09(e) of our rules, 47 C.F.R. § 63.09(e). We also note that we do not need to engage in an effective competitive opportunities test for the Bahamas, which is not yet a WTO member, because Caribbean Crossings is not affiliated with any carriers with market power in the Bahamas. See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Market Entry*, IB 97-142, *Market Entry and Regulation of Foreign Affiliated Entities*, IB 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23946 ¶ 130 (1997), *recon. pending (Foreign Participation Order)*.

²² See 47 U.S.C. § 35 (providing that a license may be granted “upon such terms as shall be necessary to assure just and reasonable rates and service in the operation and use of cables so licensed”).

²³ See *Foreign Participation Order*, 12 FCC Rcd at 23934 ¶ 95; *Cable & Wireless*, 12 FCC Rcd at 8530 ¶ 39; *AT&T Corp. et al.*, Cable Landing License, 13 FCC Rcd 16232, 16237 ¶ 15 (Int’l Bur. 1998).

²⁴ See 47 U.S.C. § 153(44) (defining “telecommunications carrier”); *Cable & Wireless*, 12 FCC Rcd at 8523.

1.767(a)(6) and 63.18 of the Commission's rules.²⁵ Caribbean Crossings will own and control the U.S. landing station and that portion of the Bahamas Internet system located in U.S. territorial waters. Caribbean Crossings will also own the wet portions of the cable in international waters, in Bahamian waters, and the Bahamian landing station.²⁶

12. The Applicant has stated that the landing site in Boca Raton, Florida will be located at latitude 26°20.990' N, longitude 80°04.213' W and that the landing site in Hawksbill, Grand Bahama Island will be located at latitude 26°29.749' N, longitude 78°44.037' W.²⁷

C. Environmental Impact

13. Based on the information provided by the Applicant and pursuant to the Commission's procedures implementing the National Environmental Policy Act of 1969,²⁸ we find that acting on this Application would not significantly affect the environment according to Section 1.1307(a) or (b) of the Commission's rules. Therefore, pursuant to Section 1.1306 of the Commission's rules, we conclude that grant of the requested license would not significantly affect the environment. Consequently, Caribbean Crossings is not required to submit an environmental assessment, and this Application is categorically excluded from environmental processing.

V. Conclusion

14. We grant Caribbean Crossings Application, as amended, for authority to land and operate a non-common carrier fiber optic submarine cable extending between the United States and the Bahamas, subject to the conditions listed below.

VI. Ordering Clauses

15. Consistent with the foregoing and pursuant to the Cable Landing License Act and Executive Order 10530, we hereby GRANT AND ISSUE Caribbean Crossings a license to land and operate a non-common carrier fiber optic cable comprised of 12 fiber pairs with a capacity of 2.5 Gbps using one fiber pair with an ultimate network capacity will be 30 Gbps using the 12 fiber pairs at 2.5 Gbps per pair, extending between the United States and the Bahamas. This grant is subject to all rules and regulations of the Commission; any treaties or conventions relating to communications to which the United States is or may hereafter become a party; any action by the Commission or the Congress of the United States rescinding, changing, modifying, or amending any rights accruing to any person hereunder; and the following conditions:

(1) The location of the cable system within the territorial waters of the United States, its territories and possessions, and upon its shore shall be in conformity with plans approved by the Secretary of the Army, and the cable shall be moved or shifted by the Licensee at its expense upon the request of the Secretary of the Army whenever he or she considers such course necessary in the public

²⁵ See Amended Application at 2, 7-9 and Exhibit D.

²⁶ Letter from Mark J. Palchick, Attorney for Applicant, to Donna Christianson, Federal Communications Commission (May 2, 2000).

²⁷ *Id.*

²⁸ 47 C.F.R. §§ 1.1301-.1319.

interest, for reasons of national defense, or for the maintenance or improvement of harbors for navigational purposes;

(2) The Licensee shall at all times comply with any requirements of U.S. government authorities regarding the location and concealment of the cable facilities, buildings, and apparatus for the purpose of protecting and safeguarding the cable from injury or destruction by enemies of the United States;

(3) The Licensee or any persons or companies controlling it, controlled by it, or under direct or indirect common control with it do not enjoy and shall not acquire any right to handle traffic on a common carrier basis to or from the United States, its territories, or its possessions unless such service be authorized by the Commission pursuant to Section 214 of the Communications Act, as amended;

(4) The Licensee or any persons or companies controlling it, controlled by it, or under direct or indirect common control with it shall not acquire or enjoy any right for the purpose of handling or interchanging traffic to or from the United States, its territories, or its possessions to land, connect, or operate cables or land lines, to construct or operate radio stations, or to interchange traffic, that is denied to any other United States company by reason of any concession, contract, understanding, or working arrangement to which the Licensee or any persons controlling it, controlled by it, or under direct or indirect common control with it are parties;

(5) Neither this license nor the rights granted herein shall be transferred, assigned, or in any manner either voluntarily or involuntarily disposed of or disposed of indirectly by transfer of control of the Licensee to any persons, unless the Commission shall give prior consent in writing;

(6) The Commission reserves the right to require the Licensee to file an environmental assessment or environmental impact statement should it determine that the landing of the cable at those locations and construction of necessary cable landing stations would significantly affect the environment within the meaning of Section 1.1307 of the Commission's procedures implementing the National Environmental Policy Act of 1969; this license is subject to modification by the Commission upon its review of any environmental assessment or environmental impact statement that it may require pursuant to its rules;

(7) Pursuant to Section 2 of the Cable Landing License Act, 47 U.S.C. § 35; Executive Order No. 10530, as amended; and Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, the Commission reserves the right to impose common carrier or common-carrier-like regulation on the operations of the cable system if it finds that the public interest so requires;

(8) The Licensee shall maintain *de jure* and *de facto* control of the U.S. portion of the cable system, including the cable landing stations in the United States, sufficient to comply with the requirements of this license;

(9) This license is revocable by the Commission after due notice and opportunity for hearing pursuant to Section 2 of the Cable Landing License Act, 47 U.S.C. § 35, or for failure to comply with the terms of the authorizations;

(10) The Licensee shall notify the Commission in writing of the date on which the cable is placed in service, and this license shall expire 25 years from such date, unless renewed or extended upon proper application, and, upon expiration of this license, all rights granted under it shall be

terminated; and

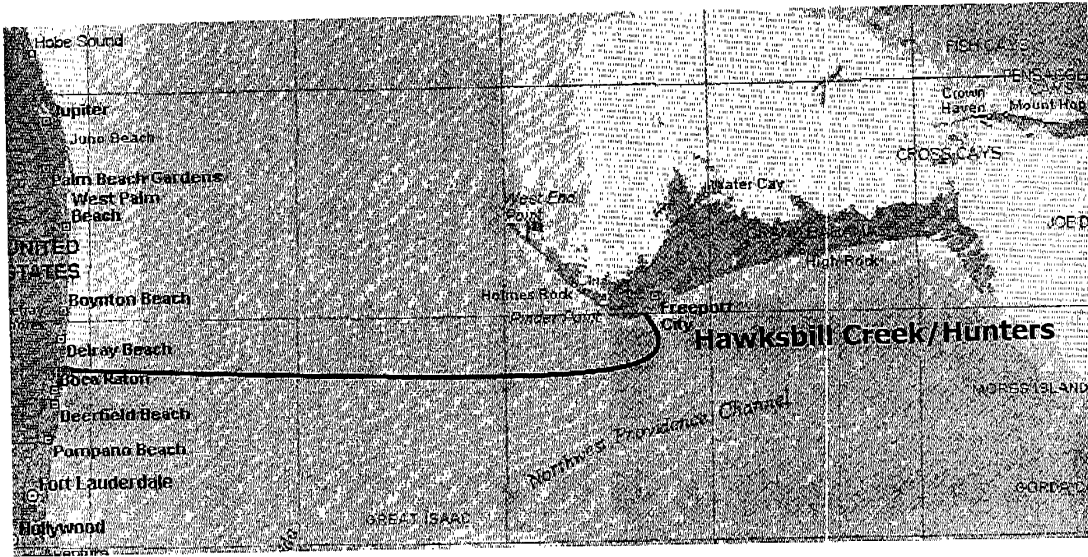
(11) The terms and conditions upon which this license is given shall be accepted by the Licensee by filing a letter with the Secretary, Federal Communications Commission, Washington, D.C. 20554, within 30 days of the release of the cable landing license.

16. This Order is issued under Section 0.261 of the Commission's rules, 47 C.F.R. § 0.261, and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.115, may be filed within 30 days of the date of public notice of this order (see 47 C.F.R. § 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Rebecca Arbogast
Chief, Telecommunications Division
International Bureau

EXHIBIT A



Proposed Landing Sites:

Bahamas: Hawksbill Creek, Grand Bahama Island
 Latitude: 26° 29.749' N
 Longitude: 78° 44.037' W

United States: Boca Raton, Florida
 Latitude: 26° 20.990' N
 Longitude: 80° 04.213' W