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VIA IBFS

Marlene H. Dortch, Secretary
Federal Communications Commission
c/o Natek, Inc., Inc.
236 Massachusetts Avenue, N.E.
Suite 110
Washington, DC 20002

Re: Caribbean Crossings Ltd., Application for Transfer of Control of Submarine Cable Landing License (FCC File No. SCL-T/C-20090506-00009)
Trinity Communications Ltd., Application for Transfer of Control of Section 214 Authorization (FCC File No. ITC-T/C-20090506-00204)

Dear Ms. Dortch:

On behalf of Caribbean Crossings Ltd. ("CCL") and Trinity Communications Ltd. ("Trinity") (together, "the Companies"), this letter responds to the recent inquiry of the staff of the Commission's International Bureau regarding whether the proposed transfer control of the Companies' parent, Cable Bahamas Ltd. ("CBL") will result in an affiliation, as defined by Section 63.09 of the Commission's rules, 47 C.F.R. § 63.09, between the Companies and Bahamas Telecommunications Company ("BTC"), the dominant telecommunications carrier in the Commonwealth of the Bahamas, due to the equity interests in BTC and CBL to be held by agencies of the Government of the Bahamas.[1] For the reasons set forth below, the Companies hereby acknowledge that an affiliation with BTC would arise as a result of the proposed transfer of control, but urge the Commission to refrain from regulating them as dominant carriers pursuant to Section 63.10 of the rules, and to waive certain of its requirements governing affiliated carriers.

1. The Companies Are Affiliated with BTC for Section 63.09 Purposes

1 By this filing, the Companies hereby seek leave to amend their applications to reflect this affiliation.

Pursuant to Section 63.09(e) of the Commission's rules, 47 C.F.R. § 63.09(e), "two entities are affiliated with each other 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 one." *See also* Note to 47 C.F.R. § 1.767 (applying the Section 63.09 definition of affiliation to submarine cable landing license applicants and licensees).

The Companies acknowledge, and do not dispute, that the proposed transfer of control of CBL, as described in the above-captioned applications, would give rise to an affiliation under Section 63.09(e) of the Commission's rules, between the Companies and BTC.

- **<u>BTC</u>**. BTC is a private company organized under the laws of The Commonwealth of The Bahamas, and is the dominant telecommunications carrier in The Bahamas. 100% of the Company's stock is owned by the Treasurer of The Bahamas in trust for the Government.[2] The Company is governed by nine (9) Directors, all of whom are appointed by the Prime Minister of The Bahamas.

BTC is the dominant provider of telecommunications services in The Bahamas, and until 2002 was the Commonwealth's exclusive provider of local and international services. It currently holds an exclusive license for the provisioning of cellular service.

- **<u>CBL</u>**. CBL is a publicly held corporation organized under the laws of The Commonwealth of the Bahamas, whose capital stock is traded on the Bahamas International Stock Exchange (BISX-CAB). Following the transaction described in the above-captioned applications, a 5.0% or greater equity interest in CBL will be held by the National Insurance Board, an instrumentality of the Government of The Bahamas (21.9%)[3] and by the Treasurer of the Government of The Bahamas (7.3%). No other individuals or entities will hold a 5% or greater equity interest in CBL, and BTC itself currently holds, and will hold, no equity interest in CBL at all.

CBL is governed by five (5) directors, all of whom are elected by the Company's shareholders. CBL and BTC have no interlocking directorates, and only one director of CBL, the Chairman of the Commonwealth Airport Authority, holds a governmental office.

In The Bahamas, CBL holds licenses to own and operate a cable television network and to provide public Internet services over its hybrid fiber-coaxial cable television network. The terms of its license expressly prohibit it from providing voice telephony service, including VoIP.

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2 In 2008, the Government of The Bahamas announced its intention to privatize BTC, and to sell off 51% of the Government's ownership interest. The Government anticipates that these events will occur by year's end.

3 The National Insurance Board, established under the National Insurance Act of 1972, is charged with the administration of the Commonwealth's social security program. Its 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.

In addition to this authorization, CBL's wholly owned subsidiary, CCL, holds a license to provide telecommunications transmission capacity over its submarine fiber optic network for the carriage of data services and Internet services. The terms of its license likewise expressly prohibit it from providing services "enabling or equivalent to Voice Telephony to any person other than Bahamas Telecommunications Corporation [BTC's predecessor-in-interest] or Bahamas Telecommunications Company."

2. Rule Waiver Request

Pursuant to Section 63.10 of the Commission's rules, 47 C.F.R. § 63.10, the Companies hereby request the Commission to refrain from regulating them as dominant carriers, despite their affiliation with BTC, and to relieve them of certain specific rule requirements governing dominant carriers. In support of this request, the Companies hereby state as follows:

A. <u>BTC is not a monopoly carrier</u>. Pursuant to Section 63.10(a)(2) of the Commission's rules, "a U.S. carrier that is, or that has or acquires an affiliation with a foreign carrier that is a monopoly provider of communications services in a relevant market in a destination country shall presumptively be classified as dominant for the provision of international communications services on that route." BTC has not been a monopoly carrier in The Bahamas since 2002, when the Bahamas Public Utilities Commission granted a competing operating license for telecommunications services to Systems Resource Group Limited ("SRG"). SRG has provided domestic and international voice telephony service in The Bahamas since 2004. In the submarine fiber optic cable market between the US and The Bahamas, moreover, CCL has competed directly with BTC since 2000.[4] More recently, last year Government of the Bahamas has announced plans to liberalize its regulatory framework governing telecommunications, and to introduce even further competition for telecommunications services into the Commonwealth.[5]

B. <u>BTC's Market Power Should Not Be Attributed To CBL and Its Subsidiaries</u>. Although BTC is not a monopoly, the Companies acknowledge that BTC is the dominant provider of telecommunications services in The Bahamas, and possesses a 50% or greater market share in the international transport and local access markets on the foreign end of the U.S./Bahamas route. Nevertheless, the Companies respectfully submit that the presumption that they are themselves dominant should be rejected in this case for the reasons set forth below.

1. <u>BTC and CBL are direct competitors</u>. 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 the foreign market to favor its U.S. affiliate or to

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[4] 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.

[5] See <u>www.btcprivatisation.com</u>

otherwise obtain an unfair competitive advantage in the U.S. international services market."[6] 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,[7] and BTC has frequently exercised its significant market power against CBL. 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.

2. <u>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</u>. 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, the Utilities Regulation and Competition Authority ("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.

3. <u>The Companies are Not Dominant Carriers in The Bahamas</u>. As noted above, the sole dominant provider of telecommunications service in The Bahamas is BTC. 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. The sole Bahamas submarine fiber

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6 *Market Entry and Regulation of Foreign-Affiliated Entities*, FCC 95-475, released November 30, 1995 at ¶ 73. The Commission retained this standard in its Report and Order on *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, FCC 97-398, released November 26, 1997, at ¶ 223.

7 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.

optic licensee in The Bahamas authorized to provide such services over its network is BTC. Against this background, it is inconceivable that BTC would use its market power in The Bahamas to benefit either CBL or the Companies.

C. Imposition of Dominant Carrier Regulation in this Case is Both Unnecessary and Burdensome. Finally, imposition of dominant carrier regulation would be both redundant and burdensome in this case, given the nature of each of the Companies' operations. Pursuant to Section 63.10(c) of the Commission's rules, 47 C.F.R. § 63.10(c), the obligations of dominant international carriers fall into two general categories: (a) the requirement to provide services through a separate subsidiary, which would maintain separate books of accounts and not jointly own transmission or switching facilities with its affiliate foreign carrier, and (b) the requirement to file traffic, revenue and circuit status reports on a quarterly, as opposed to a yearly basis. Section 63.10(c) also requires dominant carriers to file quarterly reports summarizing the provisioning and maintenance of all basic network facilities and services procured from their foreign carrier affiliates or from an allied foreign carrier.

In the instant case, however, both CCL and Trinity have operated as subsidiaries separate and apart from BTC since their inception, and are likewise separate and apart from their parent company, CBL. Nor does either company procure from BTC or CBL and basic network facilities or services. Finally, given the relatively small size and limited operations of both companies, the Companies respectfully submit that requiring them to file traffic, revenue and circuit status reports on a quarterly basis would be both burdensome and unnecessary.

Conclusion

For the reasons set forth above, CCL and Trinity respectfully submit that, although they are technically affiliated with BTC for purposes of Section 63.09 of the rules, classifying them as dominant carriers is not appropriate or necessary. The Companies therefore urge the Commission to exempt them from dominant carrier status and requirements.

Should the Commission have any further questions on this matter, please feel free to contact the undersigned counsel directly.

Sincerely,

Eric Fishman

Counsel to
Caribbean Crossings Ltd. and
Trinity Communications Ltd.

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