



# PUBLIC NOTICE

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

DA 09-1856

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**CARIBBEAN CROSSINGS LIMITED AND TRINITY COMMUNICATIONS LIMITED SEEK  
FCC DETERMINATION THAT THE BAHAMAS PROVIDES  
EFFECTIVE COMPETITIVE OPPORTUNITIES TO U.S CARRIERS  
AND CONSENT TO THE TRANSFER OF CONTROL OF SUBMARINE CABLE LANDING  
LICENSE AND INTERNATIONAL SECTION 214 AUTHORIZATION**

**IB Docket No. 09-149**

**PLEADING CYCLE ESTABLISHED**

**Petition/Comments Due: September 24, 2009**  
**Opposition/Reply Comments Due: October 9, 2009**

## **I. INTRODUCTION**

Caribbean Crossings Ltd. (CCL) and Trinity Communications Ltd. (Trinity, together with CCL, the “Applicants”) have filed applications for transfer of control pursuant to the Submarine Cable Landing Licensing Act and section 214 of the Communications Act of 1934, as amended.<sup>1</sup> Applicants seek Commission approval for the transfer of control of the submarine cable license held by CCL and the international section 214 authorization held by Trinity, a wholly-held subsidiary of CCL, from the current controlling shareholder of Cable Bahamas Ltd (CBL) to the other shareholders of CBL. As a result of the proposed transfer of control, the Government of the Bahamas will increase its ownership interest in CBL from 20.5% to 29.2%. The Government of the Bahamas owns and controls Bahamas Telecommunications Corporation (BTC), the dominant carrier in the Bahamas. Because the Bahamas is not a World Trade Organization (WTO) Member country, Applicants request a determination that the Bahamas provides effective competitive opportunities to U.S. carriers.<sup>2</sup>

## **II. PARTIES/TRANSACTION**

CCL holds a cable landing license for the Bahamas Internet Cable System (BICS), extending between the United States and the Bahamas.<sup>3</sup> Trinity provides resold and facilities-based international telecommunications services pursuant to its international section 214 authorization.<sup>4</sup> CCL and Trinity are both wholly-owned subsidiaries of CBL and all three are limited liability companies organized in the

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<sup>1</sup> 47 U.S.C. §§ 34-39, 214.

<sup>2</sup> In the alternative, Applicants request that the Commission waive the 25% threshold for determining affiliation between carriers.

<sup>3</sup> SCL-LIC-20000118-00001, SCL-AMD-20000405-00011, SCL-MOD-20020925-00094.

<sup>4</sup> ITC-214-20030515-00268.

Bahamas. Brendan J. Braddock d/b/a Columbus Communications Ltd (Columbus) is the controlling shareholder of CBL through a 30.2% equity interest in CBL and voting authority to elect three (3) of the five (5) directors of CBL, provided that Columbus holds not less than 20% of the shares in CBL. The only other owners with 5 percent or more of CBL capital stock, are the National Insurance Board (NIB), an instrumentality of the Government of the Bahamas (15.4%) and the Treasurer of the Government of the Bahamas (Treasurer) (5.1%). CBL's capital stock is publicly traded on the Bahamas International Stock Exchange (BISX-CAB).

Pursuant to the terms of a Share Purchase Agreement executed between CBL, Columbus and its indirect parent Columbus Communications Inc., Columbus will sell and CBL will purchase 100 percent of the shares in CBL currently owned by Columbus. As a result of the proposed transaction, the other existing owners will increase their ownership of CBL. The only entities that will have a 5 percent or greater ownership after the transaction will be NIB (21.9%) and the Treasurer (7.3%). In aggregate the Government of the Bahamas will have a 29.2% ownership of CBL.

### III. ECO TEST

The Commission's rules require that for applications where the applicant is affiliated with a foreign carrier with market power in the destination market, and the foreign country is not a WTO Member country, the applicant must show that there are effective competitive opportunities for U.S. carriers in the foreign country (the "ECO Test").<sup>5</sup> The ECO Test was originally adopted by the Commission in the *Foreign Carrier Entry Order*.<sup>6</sup> In the *Foreign Participation Order* the Commission

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<sup>5</sup> The applicant shall make the following showing:

The named foreign country provides effective competitive opportunities to U.S. carriers to compete in that country's market for the service that the applicant seeks to provide (facilities-based, resold switched, or resold non-interconnected private line services). An effective competitive opportunities demonstration should address the following factors:

- (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.

47 C.F.R § 63.18(k)(3). See also 47 C.F.R § 1.767(a)(8).

<sup>6</sup> *Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket No. 95-22, Report and Order, 11 FCC Red 3873, 3881-3099, ¶¶ 19-72 (1995) (*Foreign Carrier Entry Order*).

found that it was no longer necessary to apply the ECO Test to WTO Member countries, but retained the test for entry by carriers that possess market power in non-WTO member countries.<sup>7</sup>

The Bahamas is not a WTO Member country, and as a result of the proposed transaction CBL and Trinity will become affiliated with BTC, which is the incumbent carrier in the Bahamas and has market power in that market.<sup>8</sup> Commission rules, and the ECO Test, define a carrier as affiliated with another carrier if an entity that controls one of them directly or indirectly owns more than 25% of the other one.<sup>9</sup> The Treasurer of the Bahamas owns 100% the stock of BTC, and the Prime Minister of the Bahamas appoints all of the Directors on the BTC Board. Under the proposed transaction, the Government of the Bahamas will have an aggregate 29.2% indirect ownership of CCL and Trinity.

Applicants state that the Bahamas meets the ECO test, and thus the applications should be granted.<sup>10</sup> First, they state that the Bahamas has undertaken a number of steps to open its telecommunications market to competition. In 2001 the Bahamas applied for accession to the WTO.<sup>11</sup> In December 2008, the Bahamas, together with several other Caribbean nations, entered into an Economic Partnership Agreement with the European Union.<sup>12</sup> In 2008, the Government of the Bahamas initiated a privatization of BTC with the intention to sell 51% of the stock and control of BTC to outside investors.<sup>13</sup> In May 2009 the Bahamas enacted a new communications act which sets no barriers to market entry.<sup>14</sup> Second, based on the changes in the new communications act, Applicants state that the Bahamas now meets each of the criteria set out in the ECO Test.<sup>15</sup> In addition, Applicants state that BTC is a direct competitor to Trinity and CCL and thus BTC would not use its market dominance to the benefit of Trinity or CCL.<sup>16</sup>

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<sup>7</sup> *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket No. 97-142, Report and Order and Order on Reconsideration, 12 FCC 23891, 23094-50, ¶¶ 138-142 (1997) (*Foreign Participation Order*), *Order on Reconsideration*, 15 FCC Rcd 1858 (2000).

<sup>8</sup> *See The International Bureau Revises and Reissues the Commission's List of Foreign Telecommunications Carriers that Are Presumed to Possess Market Power in Foreign Telecommunications Markets*, Public Notice, DA 07-223 (PD/IB rel. Jan 26, 2007); available on the FCC web-site at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DA-07-233A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-07-233A1.pdf).

<sup>9</sup> 47 C.F.R. § 63.09(e). *See also* 47 C.F.R. § 63.18(j)(3).

<sup>10</sup> In the alternative, Applicants request a waiver of the 25% threshold for affiliation in the Commission's rules, 47 C.F.R. §§ 63.09(e), 63.18(j)(3), in view of the *de minimis* amount by which The Bahamas exceeds the threshold as well as the public interest measures undertaken by the Bahamas. Consolidated Amendments to Applications for a Cable Landing License and International Section 214 Authority, SCL-T/C-20090506-00009, ITC-T/C-20090506-00204, filed July 14, 2009 at 2 n. 1, 18.

<sup>11</sup> *Id.* at 4-5.

<sup>12</sup> *Id.* at 5

<sup>13</sup> *Id.* at 5-7.

<sup>14</sup> *Id.* at 6.

<sup>15</sup> *Id.* at 11-16.

<sup>16</sup> *Id.* at 7-8.

#### IV. SUBMARINE CABLE LANDING LICENSE

The following application for consent to transfer control of the submarine cable landing license held by Caribbean Crossings Ltd. has been assigned the file number listed below:

<u>File No.</u>	<u>Authorization Holder</u>	<u>Authorization Number</u>
SCL-T/C-20090506-00009 <sup>17</sup>	Caribbean Crossings Limited	SCL-MOD-20020925-00094

#### V. INTERNATIONAL SECTION 214 AUTHORIZATION

The following application for consent to transfer control of the international section 214 authorization held by Trinity Communications Ltd., has been assigned the file number listed below:

<u>File No.</u>	<u>Authorization Holder</u>	<u>Authorization Number</u>
ITC-T/C-20090506-00204	Trinity Communications Limited	ITC-214-20030515-00268

#### VI. EX PARTE STATUS OF THIS PROCEEDING

Pursuant to Section 1.1200(a) of the Commission's rules,<sup>18</sup> 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.<sup>19</sup>

Parties making oral *ex parte* presentations are directed to the Commission's statement reemphasizing the public's responsibility in permit-but-disclose proceedings and are reminded that memoranda summarizing the presentation must contain the presentation's substance and not merely list the subjects discussed.<sup>20</sup> More than a one- or two-sentence description of the views and arguments presented is generally required.<sup>21</sup> Other rules pertaining to oral and written presentations are set forth in Section 1.1206(b) as well.<sup>22</sup> We urge parties to use the Electronic Comment Filing System (ECFS) to file *ex parte* submissions.

#### VII. 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

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<sup>17</sup> On June 25, 2009, the Television Association of Programmers (TAP) filed comments on this application requesting that the Commission consult with other government agencies regarding the ability of U.S. companies to distribute authorized program-encrypted programming in the Bahamas. On July 6, 2009, CCL filed a reply.

<sup>18</sup> 47 C.F.R. § 1.1200(a).

<sup>19</sup> *Id.* § 1.1206.

<sup>20</sup> See Commission Emphasizes the Public's Responsibilities in Permit-But-Disclose Proceedings, *Public Notice*, 15 FCC Rcd 19945 (2000).

<sup>21</sup> See 47 C.F.R. § 1.1206(b)(2).

<sup>22</sup> *Id.* § 1.1206(b).

policies. Final action on these applications will not be taken earlier than thirty-one days following the date of this Public Notice.<sup>23</sup>

Interested parties must file comments or petitions to deny no later than **September 24, 2009**. Persons and entities that timely file comments or 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. Replies or oppositions to comments and petitions must be filed no later than **October 9, 2009**. All filings concerning matters referenced in this Public Notice should refer to **DA 09-1856** and **IB Docket No. 09-149**, 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,<sup>24</sup> submissions in this matter may be filed electronically (*i.e.*, though ECFS) or by hand delivery to the Commission's Massachusetts Avenue location.

- **Electronic Filers:**<sup>25</sup> Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/>. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number. Parties also may submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. 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.

One copy of each pleading must be delivered electronically, by e-mail or facsimile, or if delivered

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<sup>23</sup> See 47 U.S.C. § 309(b).

<sup>24</sup> See Implementation of Interim Electronic Filing Procedures for Certain Commission Filings, *Order*, 16 FCC Rcd 21483 (2001); see also FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence, *Public Notice*, 16 FCC Rcd 22165 (2001); Reminder: Filing Locations for Paper Documents and Instructions for Mailing Electronic Media, *Public Notice*, 18 FCC Rcd 16705 (2003).

<sup>25</sup> See *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322 (1998).

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](mailto:fcc@bcpiweb.com) or 202 / 488-5563 (facsimile).

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

- 1) David Krech, Policy Division, International Bureau, at [david.krech@fcc.gov](mailto:david.krech@fcc.gov) or (202) 418-2824 (facsimile); and
- 2) Sumita Mukhoty, Policy Division, International Bureau, at [sumita.mukoty@fcc.gov](mailto:sumita.mukoty@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@bcpiweb.com](mailto:fcc@bcpiweb.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>.

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For further information, contact David Krech or Sumita Mukhoty, Policy Division, International Bureau, at (202) 418-1460.

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