

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

In the Matter of)	File No.: EB-11-IH-0059
)	
Tricom USA, Inc.)	Acct. No.: 201232080006
)	
)	FRN: 0005005236

CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission and Tricom USA, Inc., by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau's investigation into Tricom USA Inc.'s compliance with Section 214 of the Communications Act of 1934, as amended;¹ the Cable Landing License Act of 1921;² and the Commission's rules and Orders concerning the transfer of control and assignment of domestic and international Section 214 authorizations and the transfer of control and assignment of interest in submarine cable landing licenses; the relinquishment of international Section 214 authorizations; the relinquishment of interest in submarine cable landing licenses; the discontinuance of telephone service; and the assignment of telecommunications service customer accounts.³

I. DEFINITIONS

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) "Adopting Order" or "Order" means an Order of the Commission adopting the terms of this Consent Decree without change, addition, deletion or modification.
 - (c) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (d) "Commission" or "FCC" means the Federal Communications Commission and all of its bureaus and offices.
 - (e) "Cable Landing License Act" means the Cable Landing License Act of 1921, 47 U.S.C. §§ 34-39.
 - (f) "Effective Date" means the date on which the Commission releases the Adopting Order.

¹ 47 U.S.C. § 214.

² Pub. Law No. 8, 67th Cong., 42 Stat. 8 (1921); 47 U.S.C. §§ 34-39. *See also* Executive Order No. 10530 (reprinted as amended in 3 U.S.C. § 301), which empowers the Commission to implement the Cable Landing Act.

³ 47 C.F.R. §§ 1.767, 1.768, 63.03, 63.04, 63.12, 63.18, 63.19, 63.21, 63.23, 63.24, 63.61, 63.62 and 63.71.

- (g) “Executive Branch Agencies” means the Department of Justice, including the Federal Bureau of Investigation, and the Department of Homeland Security.
- (h) “Investigation” means the Bureau’s investigation commenced by its April 19, 2011 letter of inquiry regarding the Tricom USA’s compliance with Section 214 of the Act, 47 U.S.C. § 214, the Cable Landing License Act, 47 U.S.C. §§ 34-39, and the Rules and Orders concerning the transfer of control and assignment of domestic and international Section 214 authorizations and the transfer of control and assignment of interest in submarine cable landing licenses; the relinquishment of international Section 214 authorizations; the relinquishment of interest in submarine cable landing licenses; the discontinuance of telephone service; and the assignment of telecommunications service customer accounts.
- (i) “Parties” means Tricom USA and the Bureau, each of which is a “Party.”
- (j) “Rules” means the Commission's regulations found in Title 47 of the Code of Federal Regulations.
- (k) “Tricom USA” means Tricom USA, Inc. and its predecessors-in-interest and successors-in-interest.

II. BACKGROUND

3. Section 214 of the Act requires telecommunications carriers to obtain a certificate of public convenience and necessity from the Commission before constructing, acquiring, operating or engaging in transmission over lines of communications, or before discontinuing, reducing or impairing service to a community.⁴ In accordance with Section 63.03 of the Rules, any domestic carrier seeking to transfer control of or assign lines or authorization to operate pursuant to Section 214 must obtain prior approval from the Commission.⁵ Section 63.04 of the Rules sets forth the required contents of domestic Section 214 transfer of control and assignment applications.⁶ Section 63.24 of the Rules sets forth the required contents of international Section 214 transfer of control and assignment applications.⁷

4. The Commission’s authority to grant, withhold, or condition cable landing licenses derives from the Cable Landing License Act of 1921⁸ and Executive Order No. 10530.⁹ The Commission has codified rules pursuant to this authority at Section 1.767 of the Rules.¹⁰ Section 34 of the Cable Landing License Act states that no person shall land or operate in the United States “any submarine cable directly or indirectly connecting the United States with any foreign country, or connecting one portion of

⁴ See 47 U.S.C. § 214(a).

⁵ See 47 C.F.R. § 63.03; *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, Report and Order, 17 FCC Rcd 5517, 5521, ¶ 5 (2002).

⁶ 47 C.F.R. § 63.04.

⁷ 47 C.F.R. § 63.24.

⁸ Pub. Law No. 8, 67th Congress, 42 Stat. 8 (1921); 47 U.S.C. §§ 34-39.

⁹ Exec. Ord. No. 10530 § 5(a) (May 10, 1954), reprinted as amended in 3 U.S.C. § 301.

¹⁰ 47 C.F.R. § 1.767. See also *Review of Commission Consideration of Applications Under the Cable Landing License Act*, Report and Order, 16 FCC Rcd 22167 (2001).

the United States with any other portion thereof, unless a written license to land or operate such cable has been issued by the President of the United States.”¹¹ Section 35 of the Cable Landing License Act provides that “the President may withhold or revoke such license when he shall be satisfied after due notice and hearing that such action will assist in securing rights for the landing or operation of cables in foreign countries, or in maintaining the rights or interests of the United States or of its citizens in foreign countries, or will promote the security of the United States, or may grant such license upon such terms as shall be necessary to assure just and reasonable rates and service in the operation and use of cables so licensed.”¹²

5. Executive Order No. 10530 delegates to the Commission the President’s authority under the Cable Landing License Act, with the proviso that “no such license shall be granted or revoked by the Commission except after obtaining approval of the Secretary of State and such advice from any executive department or establishment of the Government as the Commission may deem necessary.”¹³ Since 1954, the Commission has exercised the authority granted by the Cable Landing License Act and Executive Order No. 10530 to grant submarine cable landing licenses.¹⁴

6. Tricom USA is a Delaware corporation¹⁵ established to originate, transport, and terminate international long distance traffic primarily to resellers and other carriers.¹⁶ For a period of time, Tricom USA also offered domestic U.S. and international long distance service to end user customers in the United States.¹⁷ Tricom USA’s predecessor-in-interest (“Old Tricom USA”) held a blanket domestic Section 214 authorization,¹⁸ multiple international Section 214 authorizations,¹⁹ and fractional interests in

¹¹ 47 U.S.C. § 34. Section 34 states further that “[t]he conditions of Sections 34 to 39 of this title shall not apply to cables, all of which, including both terminals, lie wholly within the continental United States.” *Id.*

¹² 47 U.S.C. § 35.

¹³ Exec. Ord. No. 10530 § 5(a).

¹⁴ See, e.g., *Review of Commission Consideration of Applications under the Cable Landing License Act*, Report and Order, 16 FCC Rcd 22167, 22170 ¶ 5 (2001).

¹⁵ See, e.g., IBFS File No. SCL-T/C-20100719-00014, Attachment: “Application for Streamlined Consent to Transfer Control,” (Jul. 19, 2010) at 2.

¹⁶ *Id.*

¹⁷ *Id.* See also, Application for Tricom USA, Inc. for Section 214 Authority to Transfer Control of Blanket Domestic Authorization to AMZAK Capital Management, WC Docket No. 10-150, at 1-2; Letter from Marc Rene Rocher, Vice President of Int’l Business, Tricom USA, Inc., to Jaclyn A. Brilling, Secretary to the Commission, N.Y. State Pub. Serv. Comm’n (Dec. 20, 2010) (requesting cancellation of Tricom USA’s Certificate of Public Convenience and Necessity granted on Feb. 11, 2000, to operate as a facilities-based common carrier and reseller of telephone service including local exchange services), available at <http://documents.dps.state.ny.us/public/Common/ViewDoc.aspx?DocRefId=%7B96796758-116E-4F44-BAE8-483436467718%7D> (last visited Oct. 24, 2011); Letter from Chad G. Hume, Director, Office of Telecommunications, State of New York, Dept. of Public Service to Marc Rene Rocher, Vice President of Int’l Business, Tricom USA, Inc., Re: Matter No. 11-0010 (Jan. 24, 2011) (acknowledging Tricom USA’s notification that it no longer provides telephone service in New York and granting Tricom USA’s request to cancel its tariff and to surrender its Certificate of Public Convenience and Necessity effective Feb. 5, 2011), available at <http://documents.dps.state.ny.us/public/Common/ViewDoc.aspx?DocRefId=%7BFB684C19-69A3-4F9A-926C-5E876882805A%7D> (last visited Oct. 28, 2011).

¹⁸ 47 C.F.R. § 63.01(a). A formal application to the Commission is not required for authorization to provide domestic interstate common carrier communications services as long as the party obtains all necessary authorizations from the Commission for the use of any radio frequencies.

submarine cable landing licenses associated with the Americas II, MAYA-1 and the Pan American cable systems.²⁰

7. For purposes of this Consent Decree, Tricom provided the following explanatory information: On February 29, 2008, Old Tricom USA and its parent company Tricom, S.A. (“Old Tricom, S.A.”) filed for Chapter 11 bankruptcy protection in the United States Bankruptcy Court for the Southern District of New York (“Bankruptcy Court”).²¹ Upon commencement of the bankruptcy proceeding the legal posture of Old Tricom USA and Old Tricom, S.A. was converted to debtor-in-possession status (“Tricom USA DIP” and “Tricom S.A. DIP,” respectively).²² As a consequence of this change in legal status, there was an involuntary pro forma assignment of submarine cable landing licenses, and international Section 214 authorizations, and an involuntary transfer of control of a domestic Section 214 authorization from Old Tricom USA to Tricom USA DIP. On March 27, 2008, pursuant to Sections 63.03(d)(2) and 63.24(g) of the Rules, respectively, counsel to Tricom USA DIP notified the Wireline Competition Bureau (“WCB”) of the pro forma transfer of control of Old Tricom USA’s domestic Section 214 authorization to Tricom USA DIP and notified the International Bureau (“IB”) of the involuntary pro forma assignment of Old Tricom USA’s multiple international Section 214 authorizations to Tricom USA DIP.²³ On March 28, 2008, pursuant to Section 1.767(a)(11) of the Rules, Old Tricom USA and Tricom USA DIP applied to IB for approval of the pro forma assignment of Old Tricom USA’s interests in the Americas II, Maya-1 and Pan American submarine cable systems to Tricom USA DIP.²⁴ On April 16, 2008, IB granted authority for the involuntary pro forma assignment of

¹⁹ 47 C.F.R. § 63.18. Tricom USA’s international Section 214 authorizations are as follows: IBFS File Nos. 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). Note that while there is just a single domestic Section 214 authorization associated with Tricom USA, there are several international Section 214 authorizations due to the multiple international telecommunications activities of Tricom USA. Included are international Section 214 authorizations for global resale service, global facilities-based service, including international Section 214 authority associated with Tricom USA’s fractional interest in the licenses of three submarine cable systems. See *infra* note 20.

²⁰ Tricom USA holds fractional interests in the Americas II Cable System, IBFS File No. SCL-LIC-19980429-00019 (Old File No. SCL-98-003); MAYA-1 Cable System, IBFS File No. SCL-LIC-19980429-00019, and the Pan American Cable System, IBFS File No. SCL-LIC-19970421-00002 (Old File No. SCL-97-001).

²¹ See Application for Authority to Transfer Control of Blanket Domestic Section 214 Authorization from Tricom USA Debtor-in-Possession (FRN 0017516774) to Tricom USA, Inc. (FRN 0005005236) - Application to Transfer Control – Streamlined Processing Requested, WC Docket No. 10-16 (Dec. 22, 2009), at 2 (“*Tricom USA DIP/New Tricom USA Domestic Section 214 Transfer of Control Application*”), Application to Assign the International Section 214 Authorizations of Tricom USA, Inc. Debtor-In-Possession to Tricom USA, Inc., Attachment 1 at 4, IBFS File No. ITC-ASG-20091223-000543 (“*Tricom USA DIP/New Tricom USA International Section 214 Transfer of Control Application*”).

²² See, e.g., IBFS File No. ITC-ASG-20080327-00158, Attachment 1, “Notification of the Pro Forma Assignment of International Section 214 Authorizations from Tricom USA, Inc. to Tricom USA, Inc. Debtor-in-Possession; IBFS File No SCL-ASG-20080328-0009, Attachment “Tricom USA, Inc. (FRN 0005005236) Application for the Pro Forma Assignment of Interests in Submarine Cable Landing Licenses to Tricom USA, Inc. Debtor-in-Possession (FRN 0017516774),” at 2-3.

²³ Notification of Pro Forma Transfer of Control of Domestic Section 214 Authorization for Tricom USA, Inc. to Tricom USA, Inc. Debtor-in-Possession, Letter from Cheryl A. Tritt, Counsel to Tricom USA, Inc., to Marlene H. Dortch, Secretary, Fed. Comm. Comm’n (Mar. 27, 2008). Pro forma transfers of control of domestic Section 214 authorizations that occur due to bankruptcy require notification within 30 days. 47 C.F.R. § 63.03(d)(2); IBFS File No. ITC-ASG-20080327-00158; 47 C.F.R. § 63.24(g).

²⁴ IBFS File No. SCL-ASG-2008328-009; 47 C.F.R. § 1.767(a)(11).

international Section 214 authorizations from Old Tricom USA to Tricom USA DIP.²⁵ On June 8, 2009, IB granted authority for the involuntary pro forma assignment of Old Tricom USA's interest in the above referenced submarine cable landing licenses to Tricom USA DIP.²⁶

8. On October 21, 2009, the Bankruptcy Court confirmed a reorganization plan ("Plan") for Tricom, S.A. DIP and its affiliated debtors, which included Tricom USA DIP.²⁷ Tricom supplied the following information about the Plan:

The Plan provided for the formation of a new holding company, Hispaniola Telecom Holding, Ltd. ("Holding Company"), which would upon the effective date of the Plan own at least 97 percent of the equity interest in a reorganized Tricom, S.A.²⁸ In turn, the reorganized Tricom, S.A. would wholly own a reorganized Tricom USA.²⁹ The Plan allowed for holders of unsecured claims against Tricom, S.A. and its Affiliated Debtors to receive a distribution of shares of Holding Company in proportion to the amount of debt they held on the Plan effective date. It also allowed creditors to sell or acquire debt after the October 21, 2009 confirmation date of the Plan and before the April 7, 2010 effective date of the Plan. Based on the then-existing circumstances, and through this mechanism, unsecured creditor AMZAK Capital Management, LLC ("AMZAK") was expected to obtain a non-controlling direct interest in Holding Company in excess of 18.5 percent, but less than 50 percent, and through its interest in Holding Company obtain a non-controlling indirect interest in Tricom USA of less than 50 percent.³⁰ This Plan proposed changing the direct and indirect control³¹ over the license interests and authorizations held by Tricom USA DIP after it emerged from bankruptcy as Tricom USA. Tricom USA DIP was required to obtain—and did obtain—IB and WCB approval for the transactions necessary to effectuate the change in control over the license interests and authorizations contemplated by the Plan.

²⁵ *International Authorization Granted: Section 214 Applications (47 C.F.R. § 63.18)*, Public Notice, Report No. TEL-01256, 23 FCC Rcd 6524 (FCC/IB 2008)(see item re: IBFS File No. ITC-ASG-20080327-00158). Note that while WCB requires notification by a domestic common carrier when control over it is transferred to a trustee in bankruptcy, WCB does not have a grant process or otherwise issue a public notice in response to this notification.

²⁶ *Actions Taken Under Cable Landing License Act*, Public Notice, Report No. SCL-00087, 24 FCC Rcd 7755 (FCC/IB 2009) (see item re: IBFS File No. SCL-ASG-20080328-00009).

²⁷ See, IBFS File No. ITC-ASG-20091223-00543, Attachment 1: "Application to Assign the International Section 214 Authorizations of Tricom USA, Inc. Debtor-in-Possession to Tricom USA, Inc.," at 5 ("*Tricom USA DIP/Tricom USA Int'l Section 214 Auth. Transfer Application*"); IBFS File No. SCL-ASG-20091223-00040, Attachment: "Application to Assign Interests in Submarine Cable Landing Licenses-Streamlined Processing Requested," at 3-4 ("*Tricom USA DIP/Tricom USA Sub. Cable Transfer Application*"); Application for Authority to Transfer Control of Blanket Domestic Section 214 Authorization from Tricom USA, Inc. Debtor-in-Possession (FRN 0017516774) to Tricom USA, Inc. (FRN 0005005236), Attachment: "Application to Transfer Control-Streamlined Processing Requested," WC Docket No. 10-16, at 2-3 ("*Tricom USA DIP/Tricom USA Domestic Section 214 Auth. Transfer Application*").

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Tricom USA DIP/Tricom USA Int'l Section 214 Auth. Transfer Application* at 3; *Tricom USA DIP/Tricom USA Sub. Cable Transfer Application* at 6; *Tricom USA DIP/Tricom USA Domestic Section 214 Auth. Transfer Application* at 3.

³¹ See 47 C.F.R. §§ 1.767(a)(11), 63.03, 63.18(e).

9. Although AMZAK had held zero equity interest in Tricom S.A. prior to the Plan effective date, after the debt holdings of all unsecured creditors were tallied on April 7, 2010, AMZAK ended up owning debt equal to more than 50 percent of Holding Company, and thus more than 50 percent of Tricom S.A. and Tricom USA. Tricom has stated that this was contrary to what Tricom USA DIP had estimated would be in place after confirmation of the Plan in October 2009, and thus it was contrary to what it had represented in its applications to IB and WCB and to the transactions that these Bureaus had approved concerning ownership of the newly-formed Tricom USA. Revised ownership percentages were reported by Tricom USA to the Commission by letter dated May 7, 2010 following the tally of debt ownership as of the April 7, 2010 effective date.³² Because Holding Company controlled 97 percent of Tricom S.A. and Tricom S.A., in turn, controlled 100 percent of Tricom USA, through its interest in Holding Company, AMZAK now held indirect control over Tricom USA. AMZAK's indirect acquisition of Tricom USA gave AMZAK indirect control over the submarine cable landing license interests and the international and domestic Section 214 authorizations held by Tricom USA as of April 7, 2010. On July 19, 2010, Tricom USA filed applications seeking FCC consent to the substantial transfer of control of its Section 214 authorizations and cable landing licenses to AMZAK and for the pro forma transfer of control from AMZAK to its wholly owned subsidiary, Broadband Investments, Limited ("Broadband"). Based on the above facts, the Commission determined that for the following transactions Tricom USA did not seek and obtain timely IB or WCB approval:

- (a) the unauthorized transfer of control of Tricom USA's domestic Section 214 authorization to AMZAK;³³
- (b) the unauthorized transfer of control of international Section 214 authorizations from Tricom USA to AMZAK;³⁴
- (c) the unauthorized transfer of control of Tricom USA's interest in the submarine cable landing licenses of the Americas II, MAYA-1, and the Pan American cable systems to AMZAK.³⁵

10. Following the April 7, 2010 determination by the Bankruptcy Court of control of Holding Company, AMZAK transferred the majority interest that it acquired in Holding Company to its wholly-owned subsidiary Broadband,³⁶ which the Commission determined resulted in two additional unauthorized pro forma transactions:

- (a) the unauthorized pro forma transfer of international Section 214 authorizations from AMZAK to Broadband caused by the failure to give notice to IB within 30 days of the consummation of the transaction;³⁷

³² See, e.g., Letter from Michelle W. Cohen, Thompson Hine LLP, Counsel to Tricom USA, Inc. to Marlene Dortch, Secretary, Fed. Comm. Comm'n (May 7, 2010) (re: Consummation Notice for Joint International and Domestic Section 214 Applications Filed and Granted for the Assignment of Authorizations from Tricom USA, Inc. Debtor-in-Possession to Tricom USA, Inc., WC Docket No. 10-16; IBFS File Nos. ITC-ASG-20091223-00543 and SCL-ASG-20091223-00040).

³³ See 47 C.F.R. §§ 63.03, 63.04.

³⁴ See 47 C.F.R. § 63.24(e).

³⁵ See 47 C.F.R. § 1.767(a)(11).

³⁶ *Supra* note 34.

³⁷ See 47 C.F.R. § 63.24(f).

- (b) the unauthorized pro forma transfer of control of AMZAK's interest in the submarine cable landing licenses of the Americas II, MAYA-1 and the Pan American cable systems to Broadband caused by the failure to obtain the required pre-authorization from IB.³⁸

It is this series of transactions that gave rise to an investigation by the Bureau and resulted in this Consent Decree.

11. Tricom USA and AMZAK did not file transfer of control applications with WCB and IB, seeking authority for these five substantial and pro forma transactions until July 19-20, 2010.³⁹ Following the July 2010 filings, Tricom USA and AMZAK filed requests for Special Temporary Authority ("STA") with WCB and IB. On August 25, 2010, the Executive Branch Agencies requested that the Commission defer action on the Tricom USA transfer of control and assignment applications pending their review for potential national security, law enforcement, and public safety issues that might exist due to a foreign ownership component of the transactions.⁴⁰ The Commission granted this request.⁴¹

12. Tricom has indicated that after AMZAK became the controlling shareholder of Tricom, S.A., it made a corporate decision to shut down Tricom USA, whose business then consisted of brokering call terminations by U.S. operators in the Dominican Republic with Tricom SA. On December 17, 2010, Tricom USA notified the Commission that it would cease operations in the United States as of December

³⁸ See 47 C.F.R. §1.767(a)(11). Note that the pro forma transfer of control of the interest in the submarine cable landing licenses required a pre-authorization application to IB because the initial license interest was granted prior to the 2002 effective date of the 2001 amendment to Section 1.767, which permits a post-consummation notification of pro forma transactions within 30 days of consummation. A pre-2002 submarine cable landing license required a separate application to modify the license to be eligible for a post-hoc notification of a pro-forma transaction. The application was not made in this instance. See *Review of Commission Consideration of Applications Under the Cable Landing License Act*, Report and Order, 16 FCC Rcd 22167, 22200, 22207 ¶¶ 63, 80 (2001); 67 Fed. Reg. 1619 (Jan. 14, 2002).

³⁹ See Letter from Michelle Cohen, Thompson Hine LLP, Counsel to Tricom USA, Inc. to Fed. Comm. Comm'n and accompanying Application by Tricom USA, Inc. for Authority to Transfer Control of Domestic Section 214 Authority to AMZAK Capital Mgt. Inc., WC Docket No. 10-150 (filed Jul. 19, 2010); IBFS File No. ITC-T/C-20100719-00295, Application for consent to the transfer of control of international Section 214 authorizations, ITC-214-19980430-00286 and ITC-214-19970421-00220, ITC-214-19990325-00153, ITC-214-19930101-00257, ITC-214-19960925-00468 and ITC-MOD-19970618-00335 held by Tricom USA, Inc. to AMZAK Capital Mgt., LLC (filed Jul. 19, 2010); IBFS File No. ITC-T/C-20100719-00296, Notification of the pro forma transfer of control of international Section 214 authorizations, ITC-214-19980430-00286, ITC-214-19970421-00220, ITC-214-19990325-00153, ITC-214-19930101-00257, ITC-214-19960925-00468 and ITC-MOD-19970618-00335 held by Tricom USA, Inc. from AMZAK Capital Mgt., LLC to Broadband Investments Limited (filed Jul. 19, 2010); IBFS File No. SCL-T/C-20100719-00014, Application for consent to transfer control of the interest in the Americas II cable system, SCL-LIC-19980101-00036, the MAYA-1 cable system, SCL-LIC-19990325-00006, and the Pan American cable system, SCL-LIC-19970421-00002 held by Tricom USA, Inc. to AMZAK Capital Mgt., LLC (filed Jul. 19, 2010); IBFS File No. SCL-T/C-20100719-00015, Application for consent to the pro forma transfer of control of the interest in the Americas II cable, SCL-LIC-19980429-00019, the Maya-1 cable, SCL-LIC-19990325-00006, and the Pan American cable, SCL-LIC-19970421-00002, held by Tricom USA Inc., from AMZAK Capital Mgt., LLC to Broadband Investments Ltd. (filed Jul. 19, 2010).

⁴⁰ Letter from Kimberly M. Schmid, Nat'l Sec. Div., U.S. Dept. of Justice to Marlene H. Dortch, Secretary, Fed. Comm. Comm'n (Aug. 25, 2010).

⁴¹ See *Notice of Removal of Domestic Section 214 Application from Streamlined Treatment*, Public Notice, WC Docket No. 10-150, 25 FCC Rcd 12506 (FCC/WCB 2010); *International Authorizations Granted*, Public Notice, DA No. 11-1592, Report No. TEL-01520, DA No. 11-1592 (FCC/IB Sept. 22, 2001).

31, 2010, and that the Company would surrender its international Section 214 authorization effective December 31, 2010.⁴² Tricom USA ceased all operations on December 31, 2010. On April 19, 2011, the Bureau issued a letter of inquiry to Tricom USA.⁴³ A response was filed on May 17, 2011.⁴⁴

13. Based in part on Tricom USA's representation to the Executive Branch Agencies that it sought to surrender to the Commission the authorizations and licenses it had obtained for purposes of providing intrastate and international telecommunications service, on September 20, 2011, the Executive Branch Agencies withdrew their request to defer action on the pending Tricom USA and AMZAK.⁴⁵ This prompted WCB and IB to act on the pending transfer of control applications. On September 21, 2011, WCB granted the application to transfer control of domestic Section 214 authorization from Tricom USA to AMZAK,⁴⁶ and IB granted its consent to the transfer of control of international Section 214 authorizations from Tricom USA to AMZAK and the application for the pro forma transfer of control of international Section 214 authorizations from AMZAK to Broadband.⁴⁷

14. On September 28, 2011, Tricom USA filed with IB its application for consent to modify these cable landing license applications,⁴⁸ and on October 4, 2011, IB placed it on Public Notice for comment.⁴⁹ On November 16, 2011, IB approved of Tricom USA's withdrawal as a fractional interest holder of the Americas II, MAYA-1, and Pan American submarine cable landing licenses and consented to the applications for the substantial transfer of control of these license interests to AMZAK, and AMZAK's pro forma transfer of control of these interests to Broadband.⁵⁰

III. TERMS OF AGREEMENT

15. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.

⁴² Letter from Scott Fisher, Vice President and Treasurer, Tricom USA, Inc., to Marlene H. Dortch, Secretary, Fed. Comm. Comm'n. (Dec. 17, 2010).

⁴³ Letter from Pamela S. Kane, Deputy Chief, Investigations and Hearings Div., Enf. Bur., Fed. Comm. Comm'n, to Judith D. O'Neill, Chief Exec. Officer, Nakhota, LLC, Counsel for Tricom USA, Inc. (Apr. 19, 2011).

⁴⁴ Letter from Judith D. O'Neill, Chief Exec. Officer, Nakhota, LLC, Counsel for Tricom USA, Inc., to Pamela S. Kane, Deputy Chief, Investigations and Hearings Div., Enf. Bur., Fed. Comm. Comm'n (May 17, 2011).

⁴⁵ Letter from Richard C. Sofield, Director, Foreign Investment Review Staff, Nat'l Sec. Div., U.S. Dept. of Justice, to Marlene H. Dortch, Secretary, Fed. Comm. Comm'n (Sept. 20, 2010).

⁴⁶ *Domestic Section 214 Authorization Granted: Domestic Section 214 Application Filed for the Transfer of Control of Tricom USA, Inc.*, Public Notice, DA 11-1589 (FCC/WCB Sept. 21, 2001).

⁴⁷ *International Authorizations Granted*, Public Notice, DA No. 11-1592, Report No. TEL-01520 (FCC/IB Sept. 22, 2001).

⁴⁸ See IBFS File No. SCL-MOD-20110928-00028. On September 22, 2011, Tricom USA also filed a new STA extension request for the pending transfer of control applications regarding Tricom USA's submarine cable landing licenses. See IBFS File No. SCL-STA-20110922-00027.

⁴⁹ See *Non-Streamlined Submarine Cable Landing License Applications Accepted for Filing*, Public Notice, Report No. SCL-00124NS (Oct. 04, 2011).

⁵⁰ *Actions Taken Under Cable Landing License Act*, Public Notice, DA No. 11-1909 (rel. Nov. 17, 2011).

16. **Jurisdiction.** Tricom USA agrees that the Bureau has jurisdiction over Tricom USA and the matters contained in this Consent Decree, and the Bureau has the authority to enter into and adopt this Consent Decree.

17. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other Order of the Bureau. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Bureau Order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Commission Order.

18. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate its Investigation. In consideration for the termination of said Investigation, Tricom USA agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in this Investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion or in response to a third party objection, or recommend to the Commission, any new proceeding, formal or informal, or take any action on its own motion against Tricom USA concerning the matters that were the subject of the Investigation. The Bureau also agrees that in the absence of new material evidence it will not use the facts developed in this Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against Tricom USA with respect to Tricom USA's basic qualifications, including its character qualifications, to hold Commission authorizations.

19. **Cessation of Operations in the United States, its Territories, and Possessions.** Tricom USA has surrendered all of its domestic and international authorizations and licenses previously granted by the Commission for the provision of domestic and international telecommunications services in the United States, its territories and its possessions and between these locations and any foreign point, and has ceased to exist as an entity that is regulated by the Commission. Tricom USA also stipulates that, prior to the Effective Date of the Adopting Order, it ceased all telecommunications operations.

20. **Section 208 Complaints; Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to Section 208 of the Act against Tricom USA or its affiliates for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaint will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by Tricom USA with the Act, the Rules, or Commission Orders.

21. **Voluntary Contribution.** Tricom USA agrees that it will make a voluntary contribution to the United States Treasury in the amount of twenty thousand dollars (\$20,000) in United States currency. The payment shall be made within thirty (30) calendar days after the Effective Date of the Adopting Order. The payment must be made by check or similar instrument, payable to the Order of the Federal Communications Commission. The payment must include the Account Number and FRN referenced in the caption to the Adopting Order. Payment by check or money Order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block

number 24A (payment type code). Tricom USA shall send electronic notification of the voluntary contribution payment to Pamela Kane at Pamela.Kane@fcc.gov and Robert Krinsky at Robert.Krinsky@fcc.gov on the date payment is made.

22. **Waivers.** Tricom USA waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues an Adopting Order, adopting the Consent Decree without change, addition, modification, or deletion. Tricom USA shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither Tricom USA nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Tricom USA shall waive any statutory right to a trial *de novo*. Tricom USA hereby agrees to waive any claims it may have under the Equal Access to Justice Act, 5 U.S.C. § 504, and 47 C.F.R. § 1.1501 et seq., relating to the matters addressed in this Consent Decree.

23. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

24. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which Tricom USA does not expressly consent) that provision will be superseded by such Commission Rule or Order.

25. **Successors and Assigns.** Tricom USA agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

26. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the matters set forth herein. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act or the Rules and Commission's Orders.

27. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

28. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

29. **Authorized Representative.** The individual signing this Consent Decree on behalf of Tricom USA represents and warrants that he is authorized by Tricom USA to execute this Consent Decree and to bind Tricom USA to the obligations set forth herein. The FCC signatory represents that she is signing this agreement in her official capacity and that she is authorized to execute this Consent Decree.

30. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

P. Michele Ellison
Chief
Enforcement Bureau
Federal Communications Commission

Date

Michael David Kazma
Director, Tricom USA, Inc.
Manager, AMZAK Capital Management LLC
Director, Broadband Investments, Ltd.

Date