On behalf of NewCo2015 Limited

Response to Consultation on

Preliminary Determination on Proposed Changes to the Reference Access and Interconnection Offer Published by The Bahamas Telecommunications Company Limited

ECS 09/2016

Submitted to

The Utilities Regulation & Competition Authority

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Filed by

Cable Bahamas Ltd.

Introduction

Cable Bahamas Ltd.(CBL) on behalf of NewCo2015 Limited(NewCo) welcomes URCA's consultation that is seeking to settle any potential issues relating to interconnection of its network with BTC's network arising from NewCo's anticipated entry into the mobile telecommunications market in The Bahamas.

NewCo was incorporated under The Companies Act, 1992 (as amended) on the 25th day of February 2016 in anticipation of being awarded the second mobile licence as per Section 114 of The Communications Act, 2009 (as amended). When established, CBL will assume ownership of 48.25% of the shares in NewCo and will have Board and management control of NewCo.

CBL is submitting these comments with a view to securing the best interests of the second mobile operator. As the strategic partner in the venture, CBL will be responsible among other things, for providing marketing and technical services to NewCo and in the expectation that NewCo will very soon be joining the CBL corporate family, CBL submits these comments.

NewCo believes that a level playing field is crucial to the successful introduction of competition in this market and that interconnection is a fundamental value chain component that has a very significant ability to affect the degree to which NewCo will be able to effectively compete with BTC.

NewCo is of the view that in order to create an environment in which healthy and sustainable competition will flourish in the mobile telecommunications market in The Bahamas so that NewCo can meet its License obligations in relation to roll-out timing that –

1. BTC should be obligated to provide interconnection to NewCo within 30 days of the initial request by NewCo; and
2. BTC should not be allowed to unilaterally determine whether a Calling Party Pays ("CPP") or Mobile Party Pays ("MPP") regime should apply for calls terminated on its mobile network as this will allow BTC to exert the significant market power it has in relation to termination of mobile calls on its mobile network. BTC's choice is very likely to cause NewCo to adopt the regime of BTC's choosing. It is worth noting that if NewCo did not follow BTC's regime choice, a mixed CPP-MPP regime would follow. The consequences of such a combination of regimes are not well understood because there are few – if any – precedents in the world. NewCo requests that in the event that BTC and NewCo fail to agree on the regime that should be adopted in the market that URCA immediately intervenes using the remedies as its disposal due to BTC's significant market power in the termination of mobile calls and indeed in all mobile markets as well as in the origination of fixed calls to mobile and removes BTC's unilateral power to decide on a CPP or MPP regime.

NewCo believes that the main threats to healthy and sustainable competition in the mobile telecommunications market in The Bahamas as a result of BTC being allowed to unilaterally determine whether a CPP or MPP regime should apply for calls terminated on its mobile network are as follows –

- MPP regime - price discrimination against NewCo incoming calls v incoming calls from other BTC customers: For example, BTC charge their mobile customers 33 cents per minute to receive a call from a NewCo customer but do not charge their own mobile customers to receive a call from another BTC customer.
- CPP regime –
    - BTC charge their mobile customers prices for calls made on-net to other BTC customers retail prices that are below the MTR.
    - A further major threat to the development of competition could be the choice of inefficient and unreasonable MTRs, possibly obtained after lengthy, resource-intensive processes that can further hamper the timely launch of NewCo to provide effective competition. NewCo would like URCA to be mindful of these issues and how to address them in a manner that does not hamper or delay effective competition when making its final determination on any changes to BTC's RAIO.

NewCo understands that prior to the launch of its mobile network services to customers in the Bahamas it will have to make the choice as to whether to apply the CPP or MPP regime to calls terminated on its mobile network. In addition, it will need to determine the prices it will charge to its customers for off-net calls that will terminate on BTC's mobile network. These decisions will be fundamental to NewCo's competitive positioning in the mobile market. However, NewCo is unable at this time to decide which regime or off-net prices it would like to apply because –

- BTC has not stated a preference to CBL or to NewCo as to which regime should apply for calls terminated on BTC's mobile network;
- BTC has not yet stated what mobile terminating rate ("MTR") it would seek to charge NewCo for terminating NewCo's traffic on its mobile network and the result from BTC's cost study in this regard is unknown;
- NewCo is unable to perform any accurate estimations of the MTR that BTC would seek to charge NewCo because –
    - the methodology BTC is using to derive a cost-based figure is unknown;
    - the principles and guidelines against which URCA will assess BTC's cost study are unknown; and
    - BTC's historic separated accounts have not been made available to NewCo to enable it to perform its own estimations and calculations despite the URCA ruling that required these to be made available publicly since 2012[1].

In summary, NewCo requests that URCA promotes healthy and sustainable competition in the mobile telecommunications market in The Bahamas by –

[1] See ECS 18/2012 Publication of Regulatory (Separated) Accounts for SMP Licensees - Statement of Results and Final Decision, p. 30: "…BTC shall publish its separated accounting information in the prescribed format on its website within eight months of the end of BTC's relevant financial year and maintained those published accounts on its website for a period no less than three years."

- Imposing time bound obligations on BTC in relation to delivery of interconnection;
- Not allowing BTC to determine unilaterally whether a CPP or MPP regime should apply in relation to calls terminating on BTC's mobile network and as a result utilising their significant market power to impose their chosen regime on the mobile market;
- Ensuring through this consultation process that NewCo obtains the BTC information necessary for it to determine its preference for CPP or MPP;
- Add a MTR to BTC's RAIO ONLY if either –
    - BTC and NewCo agree that a CPP regime should apply in the mobile market; or
    - URCA has to intervene to impose CPP because BTC and NewCo fail to agree on the regime to be applied and URCA considers this the correct solution.

Responses to consultation questions

Q1: Do you agree that the BTC RAIO should be amended to include cost-based charging for domestic mobile call termination? If not, why?

NewCo's understanding is that the amendment of BTC's RAIO to include a MTR for call termination on BTC's mobile network will allow BTC to choose between a CPP and an MPP regime for call termination on its own network[2]. BTC's choice will not necessarily be in the best interest of consumers in The Bahamas and it will not necessarily contribute to establishing a level competitive playing field given BTC's SMP in key markets relevant to this assessment, namely fixed voice origination together with mobile origination and mobile termination. Furthermore, BTC has significant market power (SMP) in all mobile retail markets[3] as well as termination of voice calls and text messages on its network[4].As an SMP operator, BTC has a recognised potential to engage in anti-competitive practices. This potential in conjunction with BTC's possible lack of alignment with consumer and market interests make a unilateral decision by BTC regarding the call termination regime extremely risky with regards to the development of effective competition in the mobile sector.

BTC's option to decide the charging regime for call termination on its own network unilaterally implies an information asymmetry: BTC will know ahead of NewCo which termination regime will be applied. This information asymmetry is not conducive to fair and effective competition.

As a result of BTC's market power regarding all mobile services, NewCo will be coerced to implement the same charging regime as BTC.[5]

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[2] This refers only to traffic originated in the Bahamas. Mobile termination of traffic originating outside the Bahamas is currently charged at 4.61 cents per minute.

[3] ECS 14/2014 Assessment of Significant Market Power in the Electronic Communications Sector in The Bahamas under Section 39(1) of the Communications Act, 2009

[4] ECS 13/2013 Assessment of Significant Market Power in Call Termination Services in The Bahamas under Section 39(1) of the Communications Act, 2009

[5] Although NewCo may be legally entitled to implement its preferred charging regime, it would not be commercially feasible to diverge from BTC's charging regime: There are no precedents for such divergent bahavior from a new entrant NewCo is aware of.

It is unclear to NewCo why the current RAIO would have to be modified at this time to include a CPP MTR as a result of NewCo's market entry. Under the current regime, BTC can recover costs incurred for terminating calls on its mobile network from its customers via incoming call charges (MPP regime) and as such no MTR is necessary or included in the RAIO because it is zero.

NewCo's positions as outlined in the Introduction section above is that URCA should make preparations for but ONLY add a MTR to BTC's RAIO if either –

- BTC and NewCo agree that a CPP regime should apply in the mobile market; or
- URCA has to intervene to impose CPP because BTC and NewCo fail to agree on the regime to be applied and URCA considers this the correct market solution.

As outlined in the Introduction section NewCo will only be in a position to determine whether a CPP or MPP regime is appropriate when it has obtained all of the BTC information it outlines in that section (from this consultation process or otherwise) and its new Board of directors has been convened to consider it and make a final determination. As a result, NewCo would request that URCA refrain from amending the BTC RAIO to include a MTR for domestic call termination until NewCo and BTC have both been able to make this determination.

<u>In case a CPP regime is implemented:</u>

Cost-based rates

Notwithstanding, NewCo does not oppose the principle of using a cost-based MTR in the event a RAIO modification is required in the circumstances outlined above. The cost-based figure would be fundamental to the development of effective competition and should therefore be derived without bias and according to international best practice. It is unclear at this time and without detailed information being available to NewCo how a cost-based figure calculated solely by BTC could meet these basic requirements, even if reviewed by URCA. In any case, if the rate is based on BTC's cost, an efficiency adjustment would be required in order to let BTC only recover efficiently incurred cost. It is to be noted that cost outcomes for NewCo will largely be higher than for BTC because of a much smaller base over which to spread costs in the first 3-5 years.

Given the significance of an MTR[6] in the development of sustainable and effective competition it is fundamental that it be derived in a transparent manner following best practice principles in terms of methodology, calculation process. In our opinion, there should be a separate consultation on the calculation of the MTR. According to international best practice the consultation would have the following phases:

1. Methodology document published by URCA, setting out principles and guidelines for the MTR calculation
2. Stakeholders given the opportunity to respond

[6] For instance, the MTR level effectively sets a retail price floor. If it is excessive, customers will be charged excessive rates, innovative unlimited usage bundles will be too risky to be feasible, just to mention a few potential effects on consumers and NewCo.

3. URCA to make final determination on methodology
4. Implementation of the methodology
5. Stakeholders given the opportunity to review every aspect, i.e. inputs, calculations and outputs, of the MTR calculation and comment on it
6. URCA to assess comments on calculation and determine potential changes to the calculation
7. Implementation of changes and setting of MTRs

NewCo understands that this process may not be completed before it launches services and proposes to interconnect under the current RAIO of 0. The MTR setting process should not delay the amendments to BTC's RAIO which are consulted upon in the next three questions.

Ex-ante control of on-net/off-net differentials

Regardless of the interconnect regime, excessive on-net/off-net retail pricing differentials set by BTC may represent a barrier to expansion for NewCo and restrict competition. NewCo fully agrees with URCA's view regarding these differentials as expressed in the context of fixed telephony and believes it should apply also to mobile voice services:

> *"Absent any prevailing cost differences between on-net and off-net calls, URCA considers any prevailing on-net/off-net pricing by a SMP licensee to be of potential competitive harm. As such, URCA is of the preliminary view to only allow on-net/off-net pricing of fixed voice services offered by SMP licensees (i.e., currently BTC) which are reflective of justifiable cost differences in delivering these call services."*[7]

A reasonable, unbiased unit cost of call termination would provide a suitable basis to assess the extent to which on-net/off-net differentials are justified. Given the initial vulnerability of NewCo and thus competition in the mobile sector, it is key to apply any remedies ex-ante as opposed to months or years after BTC has implemented potentially anti-competitive on-net/off-net differentials.

Alignment with calls from fixed lines

Furthermore, if a CPP regime for call termination on BTC's mobile network was implemented for calls originating on NewCo's network, the same regime should be applicable to calls originating on fixed networks. Otherwise, BTC would be "charging different prices to different customers for the same products"[8] as NewCo and BTC mobile customers would be charged different prices[9] for the same product, i.e. mobile termination on BTC's network. A certain

[7] P. 115 of ECS 10/2014 Preliminary Determination on the Assessment of Significant Market Power in the Electronic Communications Sector in The Bahamas under Section 39(1) of the Communications Act, 2009 – Consultation Document

[8] This quote is part of the definition of 'price discrimination' stated in paragraph 72 of ECS 06/2014 REGULATION OF RETAIL PRICES FOR SMP OPERATORS - RULES

[9] Unless the charges levied by BTC's mobile network business for incoming calls from fixed lines are reduced to cost-based levels

degree of substitutability[10] between fixed and mobile originated voice calls may indicate undue discrimination.

Further reasons for extending a CPP regime to calls originating on mobile networks are:

- the reduction of complexity: customers will understand better how they are being charged and will therefore be able to make more informed choices and decisions, thereby increasing consumer welfare;
- the reduction of cross-subsidies: currently, BTC's fixed line business may be receiving cross subsidies from incoming mobile call revenues. If BTC fixed were to pay for mobile termination and BTC mobile lost its incoming from fixed line revenue, cross-subsidies would be reduced. A reduction of cross subsidies from a monopoly business (BTC mobile) to a business exposed to competitive pressures (BTC fixed) would arguably lead to more effective and fair competition;
- alignment with international best practice: for –amongst others- the aforementioned reasons, there is a broad international consensus in favour of the same regime for incoming calls originated on fixed and mobile phones. Deviating drastically from international consensus and thereby entering uncharted economic and legal territory is highly risky as the direct and indirect consequences of a virtually unique combination of charging regimes are unknown. The risk is compounded by two factors: the end of a monopoly in the provision of mobile telecommunications services and the crucial role the interconnect regime plays in the development of effective and fair competition.

For the aforementioned four reasons, NewCo believe that there is no alternative to moving to a CPP regime for incoming calls from fixed networks in case a CPP regime for incoming calls from NewCo is implemented.

It is worth noting that this position reflects both CBL and NewCo's view.

Discrimination

To avoid undue discrimination against NewCo and/or subscribers, URCA should not allow BTC to apply a different termination charge regime for calls originating in BTC's mobile network and NewCo's mobile network.

<u>In the event that a RPP regime is implemented:</u>

A measure constraining competition in a RPP regime would be the price discrimination against calls reaching a BTC mobile customer from a NewCo phone. According to URCA's definition[11], charging a BTC mobile customer a higher price to receive a call from a NewCo subscriber than from another BTC mobile subscriber would constitute price discrimination. As a result, BTC mobile customers would be more likely to reject incoming calls from NewCo than from a BTC mobile. As the main purpose of such a measure would arguably be to make NewCo's service offering unattractive without NewCo being able to respond specifically to an issue resulting

[10] As stated in ECS 14/2014, p. 20 BTC is of the view that "…in the future, mobile voice services will need to be considered as being in the same market as fixed voice services, and that substitution between the two will need to be taken into consideration going forward"
[11] As stated in ECS 06/2014 REGULATION OF RETAIL PRICES FOR SMP OPERATORS - RULES

from BTC's market dominance and entirely outside NewCo's control, the price discrimination would be undue and anti-competitive.

Q2. Do you agree that the BTC RAIO should be amended to include direct Points of Interconnection (POI) between BTC's mobile switch and other networks providing fixed and/or mobile communication services in The Bahamas? If not, why?

NewCo agrees that BTC's RAIO should be amended to include the right for a Licensed Operator to request and an obligation for BTC to provide within [30] days of such request direct Points of Interconnection (POI) between BTC's mobile switch and the Licensed Operator's network that provides fixed and/or mobile communication services in The Bahamas. This would present NewCo with the option (but not the obligation) to interconnect at BTC's mobile switches. Any non-delivery by BTC of direct POI between BTC's mobile switch and NewCo's switch within the URCA specified timeframe could lead to the failure by NewCo to meet its License obligations in relation to roll-out timing which would put it in breach of its License obligations. Given the materially adverse consequences on NewCo of any such non-delivery by BTC, NewCo requests that URCA considers introducing specific remedies including financial penalties to the BTC RAIO amendments. Furthermore, in the event that BTC failed to implement direct mobile to mobile interconnection within the established time frames, URCA should determine that BTC would forgo the right to charge a transit fee.

Q3. Do you agree that BTC's RAIO should be amended to provide IP Interconnection links upon request and without undue delay? If not, why?

NewCo agrees that BTC's RAIO should be amended to obligate BTC to provide IP Interconnection links upon request and without undue delay[12]. Further, we believe that BTC should be obligated to provide such IP Interconnections links within 30 days of such a request by a Licensed Operator. Any non-delivery by BTC of IP interconnection links between BTC's mobile switch and NewCo's switch within the URCA specified timeframe could lead to the failure by NewCo to meet its License obligations in relation to roll-out timing which would put it in breach of its License obligations. Given the materially adverse consequences on NewCo of any such non-delivery by BTC, NewCo requests that URCA considers introducing specific remedies including financial penalties to the BTC RAIO amendments. Furthermore, in the event that BTC failed to implement direct mobile to mobile IP interconnection within the established time frames, URCA should determine that BTC would forgo the right to charge a transit fee.

[12] Service quality is also essential: IP Interconnection must meet QoS design and deployment best practices (i.e loss, latency, jitter) as well as adhere to CODEC (i.e G.711, G.729) and marketization standards.

Q4. Do you agree that the BTC RAIO should be amended to include mobile message termination service and associated cost-based charging for the service? If not, why?

NewCo's answer to Question 1 applies also to Question 4.

However, as SMS termination is not currently in BTC's RAIO, NewCo believes it should be added under the same terms as domestic-originated voice call termination on BTC's network, i.e. at no charge[13]. It would allow cost recovery from retail customers without the need for a complex process of cost calculations[14]. This would be a suitable interim solution until BTC and NewCo have completed their negotiations. If these fail, URCA should determine the charging regime for reasons explained in NewCo's response to Question 1.

Respectfully submitted

Cable Bahamas Ltd.
On behalf of NewCo2015 Limited

[13] See BTC RAIO, annex G3

[14] It is worth noting that traffic originated by an SMS is negligible in comparison with voice and other data services and the purchase price of dedicated equipment such as an SMSC has fallen significantly over time. Near 0 SMS network costs can therefore be expected.