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On behalf of NewCo2015 Limited

Response to Consultation on

Preliminary Determination on Provision of National Roaming Services on the Cellular Mobile Networks of the Bahamas Telecommunications Company Ltd. in The Bahamas to the Second Cellular Mobile Operator for an Interim Period

ECS 10/2016

Submitted to the

Utilities Regulations and Competition Authority

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Filed By

Cable Bahamas Ltd



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1 Introduction

The successful liberalisation of the mobile telecommunications market in The Bahamas requires the adoption of effective *ex ante* access regulatory measures by the Utilities Regulation and Competition Authority (“URCA”). *Ex ante* national roaming regulatory measures, along with co-location and access to capacity on inter-island submarine cables, is critical in order to ensure that the benefits of mobile telecommunications competition accrues to all the residents of The Bahamas simultaneously and expeditiously. Accordingly, Cable Bahamas Ltd (“CBL”) on behalf of NewCo2015 Limited welcomes the opportunity provided to respond to UCRA’s consultation on the “*Provision of National Roaming Services on the Cellular Mobile Networks of the Bahamas Telecommunications Company Ltd. in The Bahamas to the Second Cellular Mobile Operator for an Interim Period*” (the “**Consultation**”).

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).

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.

When established, CBL will assume ownership of 48.25% of the shares in NewCo and will have Board and management control of NewCo. This therefore is an important and timely consultation occurring prior to the formal award of the second mobile telecommunications licenses in The Bahamas.

2 Justification for National Roaming

Consultation Question – Justification for National Roaming

Q1. Do you agree with URCA’s proposal that national roaming should be used to support nationwide access to mobile communications services for an interim period? If not, why?



CBL broadly supports URCA's proposal that national roaming should be used to support nationwide access to mobile communication services.

3 Market Review Stage 1 - Product/Geographic Market Definition

Consultation Question – Market Review Stage 1 – Product/Geographic Market Definitions

Q2. Do you agree with URCA's proposed definition of the market for wholesale mobile access and origination? If not, why?

CBL broadly supports URCA's proposed definition of the relevant product and geographic market for wholesale mobile access and origination services. CBL would welcome confirmation from URCA that its understanding that national roaming services is intended to fully support the provision of the following teleservices by the second license is correct:

- national, international and international roaming voice services;
- pre-paid and post-paid services;
- on-net calls (*i.e.*, a call originated and terminated on the same mobile network);
- fixed off-net (*i.e.*, a call originated on a fixed network and terminating on a mobile network and a call originating on a mobile network and terminating on a fixed network); and
- mobile off-net calls (*i.e.*, a mobile call terminated on a mobile network other than the one on which it originated).



4 Market Review Stage 2 – Competition Assessment

Consultation Question – Market Review Stage 2 - Competition Assessment

Q3. Do you agree with URCA’s preliminary finding that BTC has SMP in the wholesale market URCA proposes to define? If not, why?

CBL fully supports URCA’s finding that Bahamas Telecommunications Company Limited (“BTC”) has SMP in the wholesale market URCA proposes to define.

5 Market Review Stage 3 – Remedy Design

Consultation Question - Market Review Stage 3 – Remedy Design

Q4. Do you agree with URCA’s preliminary finding that excessive pricing and/or refusal to supply are the main market failures in the wholesale market it proposes to define? If not, why?

Although they are not the only market failures, CBL agrees with URCA’s preliminary finding that excessive pricing and/or refusal to supply are the main market failures in the wholesale market it proposes to define.

6 Market Review Stage 3 – Remedy Design

Consultation Question - Market Review Stage 3 – Remedy Design

Q5. Do you agree with URCA’s preliminary finding that the wholesale market it proposes to define is susceptible to *ex-ante* regulation? If not, why?



CBL fully agrees with URCA's preliminary finding that wholesale market it proposes to define is susceptible to *ex-ante* regulation.

7 Market Review Stage 3 – Remedy Design

Consultation Question– Market Review Stage 3 – Remedy Design

Q6. Do you disagree with URCA's proposed scope of the national roaming obligation to be provided by BTC? If so, why?

Please see sections 10 – 18.

8 Market Review Stage 3 – Remedy Design

Consultation Question – Market Review Stage 3 – Remedy Design

Q7. Do you agree with URCA's proposal on the information to be provided by BTC? If not, why?

Please see sections 10 – 14 below.

9 Market Review Stage 3 – Remedy Design

Consultation Question – Market Review Stage 3 – Remedy Design

Q8. Do you agree with URCA's preliminary view that wholesale tariffs for national roaming should be set on the principle of cost orientation of prices? If not, why?

Please see section 14 below.



10 Scope of National Roaming Service

Consultation Question - Scope of the National Roaming Obligation

Q9. Do you agree with URCA's proposed general obligations in the proposed Order for BTC to provide national roaming? If not, why?

CBL supports URCA's proposed general obligation for BTC to provide national roaming services. Notwithstanding CBL's support of URCA's proposal, CBL respectfully recommends that the following be clarified in the draft order:

- BTC should not be able to deny national roaming services in any specified area or location in The Bahamas if it provides international roaming services in the specified area or location;
- BTC should be explicitly required to provide national roaming services on each of its currently deployed networks (*e.g.*, 2G, 3G, 3.5G, HSPA, LTE and CDMA) and any future networks;
- in Section 2.1 it should be clarified that BTC should provide national roaming on non-discriminatory terms;
- in Section 2.3, 2.7 and 2.7 prior to URCA making the determination set out in the relevant sections it should consult with the second mobile operator;
- in Section 2.7 the phrase "has not constructed" should be replaced with "does not have network coverage using its own cellular mobile network infrastructure (including co-locatable towers and site)" in order to be consistent with the with Section 2.9.
- In Section 2.10 URCA should be required to consult with the second mobile operator prior to any prior written approval being given to BTC to modify, suspend, revoke, interfere with or otherwise impair the National Roaming Services provided to the second mobile operator.



11 Nature and Scope of the Service to be Provided

Consultation Question - Nature and Scope of the Service to be Provided

Q10. Do you agree with the proposed nature and scope of the national roaming services? If not, why?

CBL supports URCA's proposed nature and scope of the national roaming services obligation. Notwithstanding CBL's support of URCA's proposal, CBL respectfully recommends that:

- Section 3.3 should be clarified by ensuring that teleservices, supplementary services and bearer services are those that are defined currently and in any future relevant Global Systems Mobile (GSM) standards of the European Telecommunications Standards Institute or 3GPP IMT-2000 Technical Specifications.

12 Duration of National Roaming Obligation

Consultation Question - Duration of the National Roaming Obligation

Q11. Do you agree with URCA's proposed obligations regarding the duration of the national roaming obligation? If not, why?

CBL welcomes URCA's proposal that BTC will be required to provide national roaming services from the date that the second licensee begins commercial operations. CBL, however, would welcome clarification from URCA that the period referred to in Section 4.1 shall not be shorter than the national roaming period. In addition, CBL is concerned that the proposed national roaming period begins to run thirty-six (36) months from the date of the issuance of the second license. CBL respectfully suggest that the national



roaming period should commence thirty-six (36) months from the date that second licensee begins commercial operations and BTC has provided roaming services in all the specified areas and locations requested by the second licensee or such other longer period as determined by URCA.

13 National Roaming Coverage

Consultation Question – National Roaming Coverage

Q12. Do you agree with URCA's proposals on national roaming coverage? If not, why?

- 5.1 The National Roaming service shall allow LICENSEE SHORT NAME to sell services to retail Customers only and in areas other than those in which LICENSEE SHORT NAME has built its own cellular mobile network and where BTC has network coverage. The terms or conditions of the service shall not be unduly discriminatory against LICENSEE SHORT NAME and its retail Customers.

Note that CBL does not understand the drafting in 5.1 above and as such would welcome clarification from URCA on the meaning and intention.

CBL supports URCA's proposal that national roaming coverage does not contribute towards the second licensees network coverage and rollout obligations provided that BTC and the second licensee have entered into an agreement on co-location and intra-island capacity. Finally, CBL would welcome clarification from URCA that notwithstanding section 5.2 that BTC will not be able to impose any penalty or fines in the event that the second licensee does meet or exceeds the forecast provided to BTC.



14 Wholesale Tariffs for National Roaming Services

Consultation Question – Wholesale Tariffs for National Roaming Service

Q13. Do you agree with URCA's proposals on how tariffs should be set for national roaming services? If not, why?

The tariffs charged by BTC for national roaming services will be fundamental to the second licensees' competitive position in the mobile market and hence the creation of sustainable and effective competition in the mobile telecommunication sector in The Bahamas. At this time it is impossible to comment on how tariffs should be set for national roaming services in The Bahamas as:

- NewCo is in the process of obtaining its telecommunications licence and is not yet a legally constituted entity and as such therefore does not have a Board of Directors in place to analyse the pros and cons for its competitive position and make the decisions in this regard;
- it is unclear whether a CPP or RPP regime will be implemented;
- BTC's historic separated accounts have not been made publically available in order to allow interested parties to perform its own estimations and calculations of cost based National Roaming tariffs.¹

Notwithstanding the limitations outlined above, CBL wishes to make a general observation that wholesale tariffs for national roaming services, whereby the visited network is paid a price for a voice minute, for a text message and for a Mb of data, can result in the second licensee being unable to effectively compete without a change in the

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."



wholesale tariffs. This is due to the fact that wholesale prices that look sensible on the day a national roaming agreement is signed may be out of line within a few weeks or months as a result of the rapidly-changing retail market.

15 National Roaming Proposal and/or Agreements

Consultation Question - National Roaming Proposals and/or Agreements?

Q14. Do you agree with URCA's proposed obligations regarding the content of national roaming proposals and/or national roaming agreements? If not, why?

CBL broadly supports URCA's proposed obligation regarding the content of national roaming agreements and proposals. CBL, however, respectfully request that at a minimum the following be included within a national roaming agreement or proposal:

- an obligation to implement Transferred Account Procedures (TAP) according to the GSM Association Permanent Reference Documents;
- an obligation to implement billing and accounting according to the GSM Association Permanent Reference Documents
- an obligation to comply with the procedures and provisions concerning fraudulent or unauthorised use by Roaming Customers set out in the GSM Association Permanent Reference Documents;
- an obligation to implement the Bulk Data transfer for SMS Interworking in accordance with the GSM Association Permanent Reference Documents;
- an obligation to perform IREG and TADIG testing in accordance with the GSM Association Permanent Reference Documents;
- implementation of customer identity authentication for roamers in accordance with GSM Association Permanent Reference Documents;
- implementation of the Signaling Protocols and/or Inter-PLMN backbone in accordance with the relevant GSM Association Permanent Reference Documents;



In addition, CBL request clarification from URCA:

- that BTC will not be allowed to suspend or terminate the national roaming services without the prior written consent of URCA;
- a roaming proposal should contain customer care principles; and
- all requested and appropriate technical information set out in Section 8.2 ii) shall be provided on a site-by-site basis
- that BTC will be required to broadcast the PLMN of the second mobile operator.

In addition, CBL respectfully suggest that in Section 7.1(i) the phrase “price list” be replaced by “Tariffs” in order to mirror the language in Section 6.

16 Responding to Information Requests

Consultation Question - Responding to Information Requests

Q15. Do you agree with URCA’s proposed obligations regarding responding to requests for information on national roaming? If not, why?

CBL supports URCA’s proposed obligation regarding request for information on national roaming. CBL, however, respectfully request that URCA consider making the following changes to the proposal:

- eliminate the requirement for the second licensee to provide BTC with the date upon which the Roaming Service is required set out in Section 8.1 i) as when read in conjunction with Section 4.2 will mean that BTC would know the exact date on which the Licensee plans to commence its commercial operations;
- rather than require the second licensee pursuant to section 8.1 ii) to set out the services it will offer its subscribers the second licensee should be required to set out the national roaming services it is requesting from BTC in order to ensure that BTC is not privy to the planned service offering of the second licensee prior to the commercial launch of their operations; and



- in Section 8.2 add a requirement for BTC to (i) provide the second licensee with a complete national roaming agreement that will form the basis of negotiations between the parties.

In addition, CBL would welcome clarification from URCA that the list set out in Section 8.1 of the information the second licensee must provide BTC is exhaustive, the word “including” in the section suggests that the second licensee must provide additional information and/or BTC can request additional information.

17 Implementation of National Roaming Obligation

Consultation Question - Implementation of National Roaming Obligation

Q16. Do you agree with URCA’s proposals on the implementation of the national roaming obligation? If not, why?

CBL supports URCA’s proposal on the implementation of the national roaming. CBL, however, respectfully request that URCA undertake the following change in order to clarify the proposal:

- in Section 9.1 include the requirement to put into commercial operation the national roaming agreement within the ninety day period;

In addition, in order to ensure that national roaming services can be provided by the date the second licensee begins its commercial operations, CBL respectfully suggest that the following modifications be made to URCA’s proposal:

- in Section 9.1 the ninety (90) day period should be reduced to thirty (30) calendar days;
- in Section 9.2 the proposal for national roaming, including for the avoidance of doubt a complete national roaming agreement, should be submitted to URCA by BTC within fifteen (15) calendar days of the date of this determination;
- in Section 9.2 URCA should be entitled to make BTC’s proposal, including for the



avoidance of doubt the complete national roaming agreement, available to the successful bidder in the Phase II spectrum auction;

- In Section 9.3 URCA should issue a final decision or determination on the submission within seven (7) days of receipt of the draft proposals.
- in Section 9.4 the twenty-one (21) calendar days should be reduced to seven (7) calendar days

Finally, CBL would welcome clarification from URCA that during the review period set out in Section 9.7 and in the event that URCA requires amendments to be made to national roaming agreement pursuant to section 9.7, the parties will be obliged to continue to implement, test and put into commercial operations the agreement.

18 Disputes and Complaints

Consultation Question – Disputes and Complaints

Q17. Do you agree with URCA’s proposals on disputes and complaints? If not, why?

CBL supports URCA’s proposal that disputes and complaints be resolved pursuant to the relevant provisions of the Communications Act and URCA’s Alternative Dispute Resolution (ADR) Schemes (EC 20/2014).

19 Compatible Standards

Consultation Question – Compatible Standards

Q18. Do you agree with URCA’s proposals on compatible standards for national roaming? If not, why?

CBL fully supports Section 11.1 of URCA’s proposal. With regards to Section 11.2 please



Cable Bahamas Ltd.

see CBL's comments in Sections 10, 11 and 15.

Respectfully submitted
Cable Bahamas Ltd.
On behalf of NewCo 2015 Limited

RESERVATION OF RIGHTS

CBL expressly reserves all rights including the right to comment further on any and all matters herein and categorically states that CBL's decision not to respond to any matter raised herein in whole or in part, or any position taken by CBL herein does not constitute a waiver of CBL's rights in any way.

Whilst CBL has considered its response to this Consultation from NewCo2015 Limited's likely perspective, so far as it is able to do so CBL, on behalf of NewCo2015 Limited reserves all rights for NewCo2015 Limited to provide submissions in its own right at such time as it is established as a licensee of URCA with its management team.

