WHOLSESALE FIXED CALL TERMINATION PRICE CONTROL FOR SMP LICENSEES

STATEMENT OF RESULTS TO CONSULTATION AND FINAL DETERMINATION

ECS 12/2014

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UTILITIES REGULATION & COMPETITION AUTHORITY

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Table of Contents

Introduction

This document constitutes the Utilities Regulation and Competition Authority's (URCA) Statement of Results and the Final Determination on setting fixed call termination rates for Cable Bahamas Ltd. (CBL) and IP Solutions International Ltd. (iPSi).

1.1 Background to this Document

On 7 March 2014, URCA released for public consultation the paper titled "*Wholesale Fixed Call Termination Price Control for SMP Licensees*" [ECS 01/2014] (hereinafter referred to as "the Consultation").[1] That public consultation paper outlined URCA's preliminary views and proposals for setting the fixed call termination rates for both licensees.

Subsequent to URCA's finding in 2013[2] that CBL and iPSi have SMP (i.e., Significant Market Power) in the market for call termination on their individual fixed networks, ECS 01/2014 set out URCA's preliminary assessment of the appropriate level of fixed termination rates (FTRs) to be charged by CBL and iPSi.[3] In particular, URCA reviewed whether there was merit in allowing these licensees to set fixed termination rates at a level above those currently determined for Bahamas Telecommunications Company Ltd. (BTC). Based on its preliminary review, URCA concluded that there was no justifiable reason for allowing, in the long term, such an asymmetry in fixed termination rates in The Bahamas. URCA then set out its proposed approach for determining the appropriate fixed termination rates for CBL and iPSi. As such, URCA reached the preliminary conclusion that:

- CBL and iPSi will be required to set their fixed termination rates to be equal to the relevant tariffs for BTC for the period up to 2014/2015;[4] and

- Any existing asymmetry in fixed termination rates should be removed within ninety (90) days of URCA's Final Determination.

At the time, URCA invited interested parties to submit written comments to its Preliminary Determination, set out in ECS 01/2014.

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[1] Available at: http://www.urcabahamas.bs/download/084131300.pdf

[2] "*Assessment of Significant Market Power in Call Termination Services in The Bahamas under Section 39(1) of the Communications Act, 2009 - Statement of Results to Public Consultation and Final Determination*" (ECS 13/2013) available at http://www.urcabahamas.bs/download/084131300.pdf.

[3] Note that BTC also has SMP in the market for call termination on its fixed networks, with its regulated, cost-oriented fixed termination rates being set out in BTC's Reference Access and Interconnection Offer (RAIO) available at www.btcbahamas.com/2014/01/13/Final-BTC-URCA-Approved-RAIO-revised-January-8-2014.pdf.

[4] Table 3 of ECS 25/2012.

1.2 Responses to the Consultation

The original closing date for the receipt by URCA of responses to the consultation paper was 8 April 2014. This was subsequently extended at the request of a prospective respondent to 30 April 2014.

By the 30 April 2014 closing date, URCA had received responses from **BTC** and **CBL** (with CBL's response also being on behalf of its affiliated companies Caribbean Crossings Ltd. and Systems Resource Group Ltd.).

URCA thanks the respondents for their written submissions and participation in the consultation process. The participation by both companies was useful and constructive. Copies of all responses and opening written submissions may be downloaded from URCA's website at www.urcabahamas.bs.

Having reviewed and considered the responses from BTC and CBL, URCA now provides in this Statement of Results its comments on the responses received and its final decision on the key issues raised.

URCA's lack of response to a particular comment and/or proposal should not be taken to mean that URCA agrees with the comment, has not considered the comment or that it considers the comment unimportant or without merit.

1.3 Structure of the Remainder of this Document

The remainder of this document is structured as follows:

- Section 2 - BTC's and CBL's Response to the Consultation; and
- Section 3 - Conclusion and Final Determination.

2 Response to the Consultation

Below, URCA summarizes BTC’s and CBL’s submissions and provides URCA’s comments on each issue raised. This is structured as follows. Firstly, URCA addresses BTC’s general comments to the consultation. This is followed by URCA responses to BTC’s and CBL’s comments on the five questions set out in URCA’s consultation document.

2.1 BTC's General Comments on the Consultation

BTC welcomed the opportunity to submit comments on the consultation paper. Overall, BTC was supportive of moving to symmetric fixed termination rates in The Bahamas. However, it suggested that these should be applied with immediate effect (if not retrospectively since January 2013), instead of through the glide-path suggested by URCA. Prior to responding to URCA’s five consultation questions, BTC made two general comments which are set out below.

2.1.1 General support for symmetrical termination rates

BTC agreed with URCA’s rationale for imposing symmetrical termination rates based on BTC’s RAIO charges. It felt this would: (i) prevent operators from charging excessive prices in these markets, (ii) encourage all operators to achieve greater efficiency since any inefficiencies cannot be absorbed by higher termination rates, and (iii) lower the regulatory burden in terms of setting cost-based termination rates, relative to a regime with different regulated termination rates for each SMP operator.

BTC further stated that common arguments put forward in support of asymmetric termination rates are, in its view, not justified. In particular, in BTC’s view, a new entrant’s capital and operational costs should be lower than those of incumbent operators due to those licensees using the latest technology and not having an obligation to provide universal coverage. As such, BTC asserted that new entrants can focus on urban areas where deployment costs are low and traffic levels per line are higher. The need for higher termination rates for new entrants was further lessened by the fact that, according to BTC, new entrants take into account lower traffic levels during their initial years as part of their overall decision to enter a market (and thus would only enter the market if they had a viable business case under symmetric termination rates).

<u>URCA’s response to BTC’s comments</u>

URCA notes BTC’s general support for symmetric termination rates and its position on new entrant’s costs vis-à-vis those of incumbent operators.

2.1.2 International precedent for symmetric termination rates

BTC stated its view that URCA’s position on symmetric termination rates was in line with precedence from elsewhere and provided some references to support this. For example, BTC cited extracts of a European Regulator's Group's (ERG)'s Common Position on this matter[5] where the ERG (now BEREC) argued that asymmetric call termination rates do not give optimal incentives for operators to act efficiently and can lead to higher retail prices for consumers. BTC further referred to findings by the Dutch regulatory authority OPTA (now ACM)[6] which state that above-cost termination rates may result in higher retail prices unless a complete water-bed effect occurs (i.e., where above cost wholesale charges are competed away at the retail level).

In the context of The Bahamas, BTC raised the concern that allowing CBL to charge above cost termination rates could therefore have the potential to affect not only the fixed voice market, but also the market for broadband and TV services due to CBL offering telephony services bundled with TV and broadband services.

BTC further asserted that since being an established cable TV provider in The Bahamas, CBL should enjoy considerable economies of scale and economies of scope. BTC then provided several quotes from the European Commission's recommendation on termination rates[7] stating, amongst others, that there are commonly no objective exogenous cost differences for fixed network operators which may justify asymmetric termination rates.

Lastly, BTC listed regional precedent (i.e., Anguilla, British Virgin Islands, Jamaica, Trinidad and Tobago and Turks and Caicos Island) and the United Kingdom where symmetric termination rates were implemented.

URCA's response to BTC's comments

URCA notes BTC's citations and references to regional precedent on symmetric termination rates, which URCA sees as in line with a general trend towards symmetric termination rates. URCA also notes that most of these references related to mobile termination services, which could be partly linked to the situation that most jurisdictions are being served by two or mobile network operators, but often only one fixed network operator.

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[5] ERG's Common Position on symmetry of fixed call termination rates and symmetry of mobile call termination rates. Available at: http://www.irg.eu/streaming/erg_07_83_mtr_ftr_cp_12_03_08.pdf?contentId=543020&field=ATTACHED_FILE

[6] OPTA Consultation Paper – Market analysis fixed and mobile call termination, 26 April 2010.

[7] Commission Recommendation of 7 May 2009 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU (2009/396/EC) (the "EC Recommendation").

2.2 BTC's and CBL's Responses to URCA's Consultation Questions

2.2.1 Question 1 – Using BTC's RAIO termination rates as basis for setting symmetric termination rates

BTC's comments

BTC agreed with using BTC's RAIO termination rates as the basis for symmetric call termination rates.

BTC stated that termination rates should be set at marginal cost, which, in the context of telecommunication services is approximated by long run incremental costs (LRIC). BTC further confirmed a need for ex-ante regulation to set termination rates, in line with URCA's Determination on SMP in Termination Markets.[8] In the absence of LRIC models and resulting unit cost estimates for termination services in The Bahamas, BTC considered its RAIO charges, as reviewed and approved by URCA, to represent the best basis for setting a single termination charge in The Bahamas.

CBL's comments

CBL disagreed with URCA's preliminary view that BTC's RAIO termination rates should be the base for setting symmetric fixed call termination rates. CBL based its view on four arguments.

- It argued that symmetric fixed termination rates would not be appropriate as BTC's RAIO rates are set by a glide-path informed by international benchmarking rather than reflecting the costs of a hypothetical efficient operator in The Bahamas. As such, CBL believed that economic theory would not suggest that setting symmetric termination rates based on BTC's RAIO rates would lead to allocative or productive (i.e., 'static') efficiency.
- CBL further argued that URCA did not sufficiently take into account the effects on dynamic efficiency of setting symmetric termination rates. It argued that one of the underlying assumptions of liberalisation in the fixed telecommunications sector was that longer term dynamic efficiency gains from enhanced investments would outweigh any short term static efficiency losses from cost minimisation.
- CBL stated that high fixed and common costs in the market, and competition in retail services, meant that it would anyway have to be efficient, regardless of the regulation of fixed termination rates.
- Finally, CBL also considered that URCA failed to take into account that the European precedent cited does not reflect the market conditions in The Bahamas (i.e., five years after liberalisation). In The Bahamas, entry has already occurred and as such the regulation of termination rates is less about facilitating market entry. Within this context the long-term (dynamic) efficiency was of great importance which, in CBL's

[8] ECS 13/2013

opinion, URCA had not taken account of (including the European Regulators Group (ERG) discussion on this matter[9].

URCA's response to BTC's & CBL's comments

URCA notes BTC's agreement with URCA's preliminary views on using BTC's RAIO termination rates as the basis for setting symmetrical fixed termination rates.

URCA notes CBL's concern that BTC's current RAIO rates may not reflect the cost of a hypothetical efficient operator and therefore not represent a suitable basis for setting symmetric termination rates in The Bahamas (in line with economic theory). In this regard, URCA refers CBL to Section 2.2 of the Consultation. Having established in Section 2.1.1 of the Consultation that termination rates should be symmetric and reflective of an efficient operator's cost of providing the termination service, URCA then recognises in Section 2.2 that it is currently not possible in The Bahamas to know exactly the efficient cost of providing this service as there is no industry bottom-up costing information available. In the absence of such costing data, URCA considers that BTC's regulated and approved termination charges, as set out in its RAIO, represent the most suitable basis for setting symmetric termination rates in The Bahamas. This is because BTC's near ubiquitous fixed line network is likely to provide the most reasonable basis for estimating the costs of fixed line services in The Bahamas, in the absence of an URCA-led exercise to estimate the costs of a hypothetical network operator. URCA further considers this approach to be broadly consistent with Ofcom's decision to set fixed termination rates equal to BT's termination rate.[10] Recognising that symmetry in rates may not be appropriate in all circumstances, in particular where there are significant differences in efficient cost of termination services across operators, URCA then considered these circumstances in Section 3.1 of the Consultation and concluded that these considerations were unlikely to be applicable in the context of providing fixed termination services in The Bahamas. Further, by definition, BTC's termination costs are unlikely to be below an efficient cost level. URCA, for the reasons set out in the Consultation, is of the view that CBL has the ability to match BTC's termination costs. As such, URCA remains of the view that BTC's RAIO charges remain the most suitable reference rate for symmetric fixed termination rates in The Bahamas.

URCA also believes its preliminary analysis took account of the importance of both static and dynamic efficiency. However, in the context of termination services which represent an input to downstream services and thus retail prices, URCA considers it most important to ensure that termination services are provided at cost whilst still allowing all operators the opportunity to earn a reasonable return on capital (taking into account potential exogenous factors, where appropriate). This should provide all operators the right investment incentives and so enable

[9] ERG's Common Position on symmetry of fixed call termination rates and symmetry of mobile call termination rates. ERG (07) 83 final 080312.

[10] Fair and reasonable charges for fixed geographic call termination, Statement and final guidance, Ofcom, para 1.4, available at http://stakeholders.ofcom.org.uk/binaries/consultations/778516/statement/fair-reasonable-statement.pdf

operators to continue to invest appropriately in the sector. URCA considers its position to be in line with that of ERG (referenced by CBL in its consultation response). In particular, URCA notes that whilst encouraging the development of a new entrant in the market to potentially facilitate dynamic efficiency represented one of the justifications for asymmetric rates stated by ERG, ERG clearly recognised the potential drawbacks from asymmetric rates in the longer term (i.e., enhancing productive or allocative inefficiencies). As such, regulatory authorities should only allow asymmetric rates for a limited period of time.[11] In this context, URCA notes that there have been asymmetric termination rates in The Bahamas since January 2013 (and CBL/SRG and iPSi were under no regulatory obligation to charge the same rate as BTC prior to that).

URCA's Final Decision

Having taken into consideration both BTC's and CBL's comments in response to the first consultation question, URCA remains of the view that BTC's RAIO charges remain the most suitable reference rate for setting symmetric fixed termination rates in The Bahamas.

2.3.2 Question 2 – General conditions under which asymmetric termination rates may be justified

BTC's comments

BTC did not agree with URCA's preliminary view on the conditions under which asymmetric rates might be justified. In particular, BTC was of the view that none of the three factors stated by URCA (i.e., objective cost differences outside the control of operators, barriers to entry and expansion and significant traffic imbalances) may justify the existence of asymmetric termination rates.

Whilst BTC agreed with URCA that only **objective and justifiable cost differences** outside the control of operators may justify asymmetric termination rates, it made reference to the EC Recommendation which states that in fixed networks, no such cost differences have been identified. BTC then sought clarification on why URCA then discussed two potential cases for such cost differences as part of Section 3.1.1 of the Consultation. BTC further commented on the application of symmetric termination rates to the mobile sector.

With reference to the presence of **barriers to entry and expansion**, BTC distinguished the situation in the fixed and mobile market. Whilst barriers to entry in the mobile sector were high, BTC stated that the reverse was the case for the fixed market. Whilst, according to BTC, barriers to expansion in the fixed market could be significant, this was not the case when alternative operators could focus on high value customers in highly density areas only (which may even result in cost advantages for the new entrant relative to incumbent operators who face a universal service obligation). Furthermore, BTC argued that even if significant barriers to entry and expansion did exist, this should not lead to asymmetric termination rates as URCA should

[11] See pages 5/6 of ERG (07) 83 final 080312

focus on creating the right environment for efficient entry to occur, rather than support a later entrant to establish itself.

Lastly, BTC challenged URCA's preliminary view that significant **traffic imbalances** may justify asymmetric termination rates for a limited period of time, on the basis that it was not aware of any international precedent for this. BTC stated that any interconnection traffic analysis should only consider domestic fixed termination traffic (i.e., excluding transit traffic and traffic to BTC's mobile network). However, BTC viewed interconnection traffic imbalances between operators as not the right variable to consider, as this provides limited insights into an alternative operators' ability to compete in the downstream markets. Instead, BTC considered that cost based termination rates would address any competition concerns. BTC further considered that under cost based rates an operator's net financial position on termination traffic should not distort competition. BTC finally assumed that URCA's reference to traffic imbalances resulting from "specific pricing strategies aimed to impede the ability of smaller operators to compete" relates to a situation of anti-competitive pricing (such as margin squeeze or predation). If so, BTC considered such practices should best be dealt with through different regulatory measures to asymmetric termination rates.

<u>CBL's comments</u>

CBL partly agreed with URCA's proposed three conditions under which asymmetric rates might be justified. However, CBL was concerned about the required collaboration of BTC to evidence the conditions. Therefore CBL asked URCA to reconsider certain parts of these conditions and make these conditions less stringent. In particular:

Unlike BTC, CBL supported URCA's position that **exogenous cost differences** which are outside the control of operators might justify asymmetric termination rates. However, CBL requested a change in wording such that the reference is made to "BTC's RAIO rates", rather than its costs against which other SMP Licensee's efficient termination costs are compared against. In CBL's view this change was needed as BTC's actual termination costs are unknown (to other SMP licensees). CBL further pointed out that refusals or delays in providing interconnection points would also constitute exogenous and objective cost differences.

CBL also argued that URCA had no reason to assume that there are no cost differences between CBL's cable TV network and BTC's PSTN/NGN network, referring to a European Commission statement which recognised that in exceptional circumstances there may be a need for asymmetric termination rates due to exogenous cost differences. In addition CBL stated the need to consider in more detail the arguments in favour of asymmetry set out in economic literature, in particular: the possibility that long-term dynamic efficiency gains from asymmetric termination rates may overweigh any short-term losses, and the fact that first mover advantages and structural advantages for incumbent operators which could lead to them enjoying lower costs than later entrants. Finally, CBL argued that BTC is likely to benefit from lower equipment prices (relative to CBL) as it is part of a large telecommunications group.

In contrast to BTC, CBL supported URCA's point of view that asymmetric termination rates might be justified if **barriers to entry or expansion** existed in the market. In CBL's view, customer inertia, high switching costs and the incumbent operator's refusal to provide interconnection in a timely and reliable manner also represent barriers to expansion and may inhibit the entrant's ability to achieve similar economies of scale as the incumbent within a short period of time.

CBL was further concerned that, in its view, it was impossible to demonstrate one of the conditions set by URCA, namely that "asymmetric rates would improve the other SMP licensee's ability to grow its customer base and reach the efficient scale, thus improving its ability to compete in the long-run" (being one of the conditions set out by URCA). As such, CBL asked URCA to provide precedents of situations where this condition had been fulfilled or otherwise to remove this specific requirement.

In CBL's view it is also not possible to demonstrate the existence of "significant **traffic imbalances** which impede the ability of other SMP licensees to compete in long-term". This would require detailed financial modelling of the outcomes under symmetric and asymmetric rates, which CBL considered to be impossible due to the need to agree on parameters for each of these modelling scenarios. CBL stated it would welcome an example where such an issue had been identified.

CBL further argued that it was impossible to demonstrate any of the three additional criteria which URCA proposed in the Consultation would need to be fulfilled to justify asymmetric termination rates. In particular:

- CBL believed that the first criterion (that significant traffic imbalances should be negatively impacting the other SMP licensees) cannot be shown due to the reasoning made above.
- CBL argued that the second criterion (that BTC's termination charges should be significantly above costs) is not possible to demonstrate for two reasons. CBL claims that BTC's actual costs are unknown to URCA and other operators and it is therefore not possible to ascertain if BTC's RAIO rates are significantly above costs or not. Secondly, CBL stated that the term "significantly" would need to be defined.
- Finally, CBL considered that the third criterion (that the temporary termination asymmetry would generate demonstrate consumer benefits that outweigh the cost of this asymmetry) would be impossible to demonstrate. CBL argued that neither "consumer benefits" nor "cost of asymmetry" are specified by URCA, and neither of them could be easily quantified objectively. CBL requested that URCA provide a precedent in the telecommunication sector where this criterion had been demonstrated.

URCA's response to BTC's & CBL's comments

URCA notes both respondents' comments on the general conditions under which temporary asymmetry in fixed termination rates may be justified, as set out in Section 2.2.1 of the Consultation.

URCA notes BTC's agreement in principle with URCA's view that, in the context of fixed networks, there are unlikely to be **exogenous cost differences** which may justify any temporary asymmetry in fixed termination rates. As set out in Section 2.2.1 of the Consultation, URCA considers it unlikely that there are any exogenous factors that would result in the efficiently incurred fixed termination costs of another SMP licensee being above BTC's cost. Section 3.1.1 of the Consultation then reviewed network typology and geographic footprint as two potential exogenous factors that might impact termination costs, although URCA clearly concludes that neither of these factors seems to justify asymmetric fixed termination rates in the context of The Bahamas.

URCA notes CBL's feedback on URCA's preliminary view on exogenous cost differences, but disagrees with CBL's position. Whilst URCA recognizes that BTC's cost of fixed termination is unknown to alternative operators, it remains the relevant benchmark for assessing the need for asymmetry in rates. However, in practice, as fixed termination rates will be based on BTC's RAIO charges for all SMP licensees (as URCA considers these rates to be a reasonable proxy for BTC's cost), when setting fixed termination rates, URCA will review any information that is made available to it which seeks to demonstrate that an SMP licensee's fixed termination unit costs are above BTC's RAIO charges and, where it is shown that this is due to exogenous cost differences. URCA further wishes to stress that it has not assumed in its analysis that there are no justifiable exogenous cost differences; however, it has not seen any evidence (including in response to this Consultation) in support of such exogenous cost differences. For example, whilst CBL discusses some potential factors that may result in differences in its cost base vis-à-vis BTC's costs, it has not provided any financial information to support its arguments. As such, URCA remains of the view that, based on the evidence available to URCA, there do not appear to be exogenous cost differences that may justify any temporary asymmetry in fixed termination rates.

URCA notes BTC's comments on symmetry in mobile termination rates; however, URCA considers this to be beyond the scope of this Consultation.

URCA notes BTC's feedback on **barriers to entry and expansion** not representing a valid reason for allowing asymmetric termination rates, which URCA considers to be in line with its preliminary views. However, URCA remains of the view that asymmetric termination rates may be justifiable on a temporary basis, if, where there are barriers preventing a new entrant reaching an efficient scale, a new entrant can demonstrate that it incurs termination costs which exceed the symmetric termination rate due to its smaller size. As discussed in Section 2.1.1 and

Section 3.1.2 of the Consultation, URCA does not consider this to be the case in the context of fixed termination services in The Bahamas.

URCA welcomes CBL's support for its preliminary view on barriers to entry and expansion and notes CBL's reference to customer inertia, high switching costs and the incumbent's refusal to supply interconnection on a timely and reliable basis to be recognised as possible barriers to expansion. URCA agrees, in general, with the need to seek to reduce any possible barriers to entry or expansion. However, URCA is also of the view that allowing for temporary asymmetry to enable the alternative operator to reach an efficient scale may not necessarily be the appropriate regulatory tool to address any barriers to expansion faced by the entrant. Given prevailing information asymmetries, URCA considers it reasonable that the burden of proof resides with the SMP licensee requesting higher termination rates. If no case can be made for asymmetries in termination rates, but URCA considers that barriers to expansion do exist, URCA would seek to identify alternative regulatory instruments to address this issue.

URCA notes BTC's comments on **significant interconnection traffic imbalances** being a potential justification for a temporary asymmetry in termination rates. URCA refers BTC to the discussion on this matter in the ERG Common Position (including a reference to French precedent) which URCA has taken into consideration as part of its assessment.[12]

URCA agrees with BTC that traffic imbalances per se are not necessarily of concern. However, they may be of concern if the additional conditions set out by URCA in the Consultation are fulfilled: that is, if the traffic imbalances are caused by the incumbent operator's retail pricing strategy (i.e., on-net/off-net price differentiation[13]) in combination with termination rates being significantly above costs. This could lead to significant net outpayments from the new entrant to the incumbent operator, which may impact its overall financial position. In such circumstances, a temporary asymmetry in termination rates could be justified to allow for consumer benefits to occur in the long run.

In response to BTC's query, URCA confirms that the call termination traffic analysis presented in the Consultation was based on domestic fixed termination traffic only.

URCA notes CBL's comments on the criteria under which an interconnection traffic imbalance could justify a temporary asymmetry in termination rates. Concerning the negative impact on other SMP licensees, as explained above, this relates to the financial impact of significant net interconnection outpayments that other SMP licensees may face due to the incumbent operator's retail pricing strategy and termination rates being significantly above costs. URCA considers that a licensee ought to be in a position to understand whether it faces such a situation. Concerning the requirement for termination rates to be above costs, this relates to

[12] See pages 100/101 of ERG (07) 83 final 080312

[13] URCA notes that such pricing strategy does not have to be in breach of competition rules (i.e. be anti-competitive) in order to lead to significant interconnection traffic imbalances. As alluded to by BTC, any anti-competitive pricing behaviour would be addressed differently.

whether SMP licensees are able to earn a return on termination services in excess of the cost of capital. For BTC, this can be verified by URCA based on BTC's regulatory accounts. As BTC's termination rates are currently set based on a multi-year glide-path to a proxy of an efficient cost level, it is possible that it could earn a return in excess of its cost of capital, if, for example, it has achieved efficiency gains beyond those foreseen in the glide-path or if unit costs in The Bahamas are below the benchmark cost levels.

URCA concurs with CBL that any assessment of future consumer benefits will require some degree of qualitative assessment. However, URCA considers it important for any temporary asymmetry in termination rates to be justified on the basis of expected consumer benefits going forward. This may be in the form of expected efficiency gains by SMP licensees from scale economies or otherwise, lower retail prices and/or enhanced service provisioning/investments. URCA would ascertain the relevant merits of these expected consumer benefits, taking into account any costs of the asymmetry in rates on a case-by-case basis.

URCA recognises that it is not possible to clearly define thresholds for all the criteria considered in this assessment. As such, these assessments may require an element of judgement, once it has been established that there are differences in the cost of termination services between licensees which are due to exogenous factors, to ascertain whether these differences are impeding the new entrant to compete effectively in the downstream market.

URCA's Final Decision

Having taken into consideration both BTC's and CBL's comments in response to the second consultation question, URCA is of the view that the conditions under which asymmetric fixed termination rates might be justified, as set out in the Consultation and in conjunction with the further explanation provided above, remain valid.

2.3.3 Question 3 – The case for asymmetric fixed termination rates in The Bahamas

BTC's comments

As stated in its responses to the second consultation question above, BTC did not consider any of the aforementioned factors would justify the maintenance of asymmetric fixed termination rates and that none of these factors are currently fulfilled by either of the other two SMP licensees in The Bahamas. In particular:

- BTC agreed with URCA that the topology of underlying networks and geographic footprint of the networks do not lead to **objective cost differences** outside the control of providers in The Bahamas. This is because, according to BTC, these factors are not outside the control of alternative operators, but the result of their network planning, investment and commercial decisions. An alternative operator's ability to target lower cost areas and high value customer segments would, in BTC's point of view, result in that operator enjoying lower average unit costs compared to those of an incumbent operator with a universal service obligation.

- BTC agreed with URCA that **entry and expansion barriers** did not justify asymmetric termination rates in The Bahamas. BTC argued that CBL has the ability to offer its fixed line services only in specific areas within The Bahamas whilst BTC had to offer its service in all areas, including high-cost areas. BTC further argued that CBL benefits from economies of scope (and thus lower unit costs) relative to a fixed voice incumbent operator due to its ability to offer a range of services. Even if barriers to entry or expansion had applied to CBL, its current market share in the fixed voice market suggested that it had now overcome these barriers. As such, BTC argued that CBL should not be deemed a new entrant or small operator in the relevant market any longer.
- BTC was of the view that none of the three features which URCA required to justify asymmetric termination rates through **significant traffic imbalances** was fulfilled in The Bahamas. In particular, whilst it queried the validity of the interconnection data presented by URCA, BTC considered that the first factor does not apply to The Bahamas as any traffic imbalances are not the result of specific pricing strategies aimed at limiting the ability of smaller operators to compete. BTC further stated that the second factor was not fulfilled as its termination rates are not significantly above costs. Finally, BTC noted that URCA did not argue that any temporary asymmetry would generate demonstrable consumer benefits that outweigh the cost of this asymmetry.

<u>CBL's comments</u>

CBL disagreed with URCA that the conditions under which asymmetric rates might be justified are not fulfilled.

In line with its response to Question 2, CBL contended that barriers to expansion in the market existed in terms of customer inertia, BTC's initial refusal to supply interconnection capacity and its refusal to "programme telephone numbers", all of which impeded the ability of CBL and other entrants to reach sufficient scale. Given this, CBL argued that it /SRG has not had sufficient time to reach the cost level of an efficient incumbent operator.

CBL disagreed with URCA's implicit view that CBL had gained a market share which reflects efficient scale. The EU Recommendation URCA quoted in the Consultation states that an operator can reach efficient scale with less than 15-20% of a market, if it focuses on high-density routes in particular areas and/or if it rents relevant network inputs from the incumbent. CBL argued that this did not apply to it, as its cable network does not cover only high density routes, whilst it does also not rent relevant network inputs from BTC. CBL further presented its own analysis of the efficient scale for fixed networks. For this, it adapted the ERG's analysis for mobile networks by adding a comparable analysis for fixed networks using a fixed network LRIC model developed for Mexico. CBL also stated it had then confirmed its analysis based on the Norwegian fixed network LRIC model. Based on this analysis, CBL concluded that a market share of 36% was required for fixed network operators to reach an efficient scale. CBL took this as evidence that it had not reached an efficient scale and therefore exhibited average unit costs for fixed voice services above the cost of a hypothetically efficient operator of BTC's size.

Given the above, CBL was concerned that symmetric termination rates (set below its own termination cost) would lead to a 'water-bed' effect with CBL having to increase its retail price, forces CBL to cross-subsidize its voice business or CBL exiting the market entirely.

Finally CBL agreed with URCA that traffic imbalances between CBL and BTC would not justify asymmetric termination rates.

<u>URCA's response to BTC's & CBL's comments</u>

URCA notes BTC's agreement in principle with URCA's preliminary position on this matter.

On the matter of **objective cost differences** which may justify asymmetry in termination rates, URCA clarifies that Section 3.1.1 of the Consultation only discusses two <u>potential</u> exogenous factors that may impact the cost of termination. URCA did not, within that Section, suggest that one or both of these may apply to CBL or iPSi and thus, justify an asymmetry in fixed termination rates in The Bahamas. To the contrary, URCA has argued that CBL's unit cost for termination services is unlikely to be higher than that of BTC, due to its network typology and geographic footprint. URCA remains of the view that there are unlikely to be any exogenous and objective cost differences that would justify asymmetric fixed termination rates in The Bahamas.

As stated in the context of Question 2 above, URCA confirms that the call **termination traffic** analysis presented in the Consultation was based on domestic fixed termination traffic only.

URCA notes CBL's reference to barriers to expansion, in the form of customer inertia and BTC's refusal to supply interconnection and numbering services on a timely and reliable basis, which – according to CBL, has impeded its ability to reach an efficient scale (estimated to be around 36% market share for fixed networks, according to CBL's analysis).

URCA also notes CBL's conclusion that as a consequence of these barriers and its lower market share, CBL's unit cost for fixed call termination services is above the cost that would be faced by an efficient operator of BTC's size and hence above BTC's fixed termination RAIO rate. URCA does not accept CBL's provided reasoning for its conclusions. URCA notes that CBL has failed to provide any evidence to show that its costs for terminating a call are higher than the fixed termination rates in BTC's RAIO. CBL's summary graph comparing efficient scales in fixed and mobile networks based on an ERG paper and publicly available LRIC models in Mexico seems to indicate an inverse relationship between "unit costs" and "market shares" with most of the unit cost decline occurring whilst the fixed operator grows its market share up to 30%-35%. Besides noting the source of the LRIC model, CBL provides limited details on its analysis (including, for example, what is reflected in the unit cost and market share measures, the underlying technology and coverage assumptions and the rationale for applying a 36% market share as the suitable benchmark for an efficient scale). Further, it remains unclear to URCA how this analysis supports CBL's claim that CBL itself has not reached an efficient scale and thus has higher termination costs than BTC and in particular those implied in BTC's RAIO rates. This is particularly the case, given the discussion in Section 3.1.1 of the Consultation, where URCA's preliminarily concluded that, CBL is unlikely to have higher fixed termination costs than BTC. As such, URCA considers CBL's theoretical arguments and its analysis of efficient scale to be insufficient to allow CBL to continue to charge a higher termination rate than other SMP operators.

In the absence of any specific evidence that the proposed symmetric fixed termination rates are below CBL's efficient termination costs, URCA considers CBL's claim that this would result in below-cost selling and potential increases in retail prices to be unfounded. For the reasons set out above, URCA would expect CBL still to earn a reasonable return on termination services under symmetric rates based on BTC's RAIO charges. As such, URCA sees no reason for CBL to be required to increase its retail prices in response to these wholesale rate changes. Further, URCA would expect competitive forces to constrain CBL's ability to raise retail prices above a competitive level.

Finally, URCA notes CBL's confirmation that interconnection traffic between CBL and BTC is balanced.

URCA's Final Decision

Having taken into consideration both BTC's and CBL's comments in response to the third consultation question, URCA remains of the view that there is currently no case for justifying a temporary asymmetry in fixed termination rates in The Bahamas.

2.3.4 Question 4 – Timeframe for implementing symmetric termination rates

BTC's comments

BTC fully supported URCA's proposed prompt removal of any existing asymmetry in fixed termination rates.

First, BTC argued there was no evidence that alternative operators were disadvantaged from the (negotiated) symmetric termination rates which remained in place until January 2013 and BTC was of the view that these operators would not be negatively impacted if termination rates are symmetrical again going forward.

BTC was further concerned that any delay in removing the current asymmetry would prolong market distortions. Instead, symmetric termination rates would allow BTC to lower prices and increase investments, which would in turn increase consumer welfare.

CBL's comments

CBL disagreed with URCA's proposed prompt removal of the existing asymmetry in fixed termination rates. CBL listed the following five objections to this proposal:

- First, CBL claimed it needed time to adjust retail prices and to improve efficiency, before FTRs could be reduced.
- Second, CBL argued that international precedent was for symmetric rates to be introduced using a glide path to transition to symmetric rates. To underline this claim CBL quoted the ERG Common Position paper,[14] which proposed establishing glide paths lasting four or five years.
- Linked to the above, CBL stated that in some EU countries there were still asymmetric fixed termination rates.
- Fourthly, CBL stated that URCA applied a multi-year glide-path when requiring reductions in BTC's fixed and mobile termination rates to an efficient cost level. As such, CBL argued other SMP licensees should be granted similar treatment. Indeed, CBL argued that this was in line with previous statements made by URCA. In particular, CBL stated that URCA acknowledged the potential need for multi-year glide path towards symmetric rates in August 2013.[15]
- Lastly, CBL claimed that URCA's second condition to justify asymmetric rates in the form of existing barriers to entry and expansion existed and impeded CBL's ability to reach a sufficient scale. As such, it argued that any move to symmetric rates should recognise this through the use of a glide path.

URCA's response to BTC's & CBL's comments

URCA notes BTC's agreement with URCA's preliminary position on this matter.

URCA notes CBL's arguments for a longer transition period for moving to symmetric termination rates. However, URCA disagrees with several of CBL's justifications. In particular:

- Time needed to review retail pricing and improve efficiency. URCA generally welcomes CBL's efforts to improve its efficiency levels. However, absent any evidence in support of CBL's claim that its efficient termination costs are above BTC's RAIO rates, URCA does not consider this to be a reason not to remove the current asymmetries in fixed termination rates. Whilst URCA understands that CBL may wish to review its retail pricing structure in light of the revised fixed termination rates, URCA is of the view that CBL has had sufficient time to do so in light of CBL's SMP designation in August 2013 and since the publication of this Consultation.
- International precedents. URCA is aware of the ERG position and the application of multi-year glide-paths in several European jurisdictions. However, URCA considers the current situation in The Bahamas to be different as the current asymmetry in

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[14] ERG CP report, p.25

[15] Assessment of Significant Market Power in Call Termination Services in The Bahamas under Section 39(1) of the Communications Act, 2009; ECS13/2013, p.24

termination rates was not introduced specifically as an entry assistance measure, but came about when CBL maintained its termination rates when BTC was required to reduce its fixed termination rate in January 2013 in line with the glide-path determined by URCA, allowing CBL to benefit from asymmetric fixed termination rates since then. Going forward, BTC's multi-year glide-path will apply to all SMP licensees, with CBL having to implement the latest rate changes within an expedited timeframe. As such, the move to symmetric rates in the short term effectively requires CBL to "catch up" with the initial steps of the glide path imposed on BTC in 2013.

- URCA's previous statements. URCA notes CBL's reference to BTC's current multi-year glide-path for fixed and mobile termination rates. However, URCA considers the circumstances of BTC's glide-path to differ from the current situation. At the time, BTC's glide-path was set to align BTC's termination charges based on its historic costs to an efficient cost level based on benchmarking. Given the overall difference in those termination rate levels, URCA decided to apply a multi-year glide-path. As stated above, this glide-path will apply to all SMP licensees going forward. However, given the fixed termination rate changes in January 2013, introducing symmetric fixed termination rates requires CBL to now implement BTC's rate reduction from 2013. All SMP operators then need to implement the same rate change, as set out in BTC's glide-path for 2014 (whilst BTC is required to implement this change at the time of URCA publishing the Final Determination, CBL was granted an extra 90 days to do so). As such, the steps within BTC's glide-path will apply to all SMP licensees, with CBL having to implement the latest rate changes within an expedited timeframe. URCA considers this to be consistent with its previous decisions, especially as CBL has benefited from asymmetric fixed termination rates since January 2013, whilst BTC lowered its rates in line with the BTC URCA-approved glide-path.

URCA's Final Decision

Having taken into consideration both BTC's and CBL's comments in response to the fourth consultation question, URCA remains of the view that any existing asymmetry in termination rates should be promptly removed and that, going forward, CBL's and iPSi's call termination charges should be set in line with the termination rates set out and approved by URCA in BTC's RAIO.

2.3.5 Question 5 – Proposed glide path to symmetric termination rates

BTC's comments

BTC disagreed with URCA's preliminary position to introduce symmetric fixed termination rates in two stages as it argued this would prolong the adverse effects for consumers from the current asymmetry in rates and would be impractical to implement (since any rate change requires amendments to wholesale billing systems). Instead, BTC argued for an immediate move to BDS 0.83 cents for on-island fixed call termination services and BDS 1.40 cents for off-island fixed call termination services for all SMP operators on the 1st day of the month after the Final Determination is published.

BTC further proposed that URCA should impose a requirement for the SMP operators to adjust the interconnection payments made between them since January 2013, to correct for the asymmetry there has been in rates since this time.

<u>CBL's comments</u>

CBL disagreed with URCA's proposed glide path for moving to symmetric fixed termination rates. In CBL's view, a certain degree of asymmetry in rates was justified and the suggested two-step adjustment to symmetric termination rates was insufficient and inappropriate, as set out in its response to Question 4. CBL was concerned about the sudden move to symmetry and a second potential significant reduction at the start of the next price cap period (i.e., when URCA may change its methodology to set BTC's RAIO charges).

Instead CBL proposed to move to symmetric termination rates once CBL had reached an efficient scale, which it expected to occur in 2-3 years (if asymmetric termination rates were maintained).

<u>URCA's response to BTC's & CBL's comments</u>

URCA notes BTC's disagreement with URCA's proposed transition to symmetric fixed termination rates and its preference for an immediate adjustment in rates. URCA further notes BTC's reference to the need to take into account practical considerations when implementing changes in termination rate.

URCA further notes CBL's concerns that the proposed transition period is too short and would lead to significant termination rate changes for CBL. As discussed above in the context of Question 3, URCA does not share CBL's view on the need for asymmetry to prevail in order to allow for CBL to reach an efficient scale. It is URCA's understanding that iPSi has matched any fixed termination rate changes imposed on BTC in recent years. This, in conjunction with a lack of strong evidence to support the continued application of asymmetric fixed termination rates in The Bahamas, leads URCA to conclude that a prompt move to symmetric rates remains desirable.

URCA also remains of the view that the rate reductions that are implied for CBL (and iPSi) under its proposals are reasonable as they are in line with the fixed termination rate glide-path underlying BTC's fixed termination rates.

With reference to BTC's request for retroactive adjustments to termination rates for CBL and iPSi and thus payments, URCA sees no merit in BTC's claim, as at the time CBL was under no regulatory obligation to set fixed termination rates equal to BTC's termination rates. URCA reminds BTC of URCA's general position on retroactive adjustments. In general, retroactive adjustments would cause significant uncertainty in the market as they may be regarded as precedent that URCA could choose to implement other decisions in this manner. As previously stated as page 49 of ECS 01/2011 and page 9 of ECS 20/2012, URCA is of the view that retroactive rate adjustments should only be applied in cases of significant errors in the calculation of interconnection rates, proven anti-competitive practices, or an interconnection dispute concerning the appropriate level of charges over a certain period, none of which apply in the present proceeding. Therefore, URCA does not consider this proceeding as the appropriate occasion to apply retroactive rate adjustments.

URCA's Final Decision

Having taken into consideration both BTC's and CBL's comments in response to the fifth consultation question, URCA has decided to retain the two-stage adjustment process for moving to symmetric fixed termination rates. As such, symmetry in fixed termination rates will be achieved based on the following steps:

- CBL and iPSi are required to reduce their fixed call termination rates to BTC's fixed termination rates for 2012/13 as determined by the glide-path set out and approved by URCA in Table 3 of ECS 25/2012[16] (i.e., BSD 0.93/min for on-island and BSD cent 1.40/min for off-island calls) by **1 August, 2014**.

- By **1 October, 2014**, CBL and iPSi will be then required to fully align their fixed call termination rates to BTC's termination rates for 2013/14 as determined by the glide-path set out and approved by URCA in Table 3 of ECS 25/2012[17] (i.e., BSD 0.83 cents /min for on-island and BSD 1.26 cents /min for off-island calls).

- Thereafter, all licensees (i.e., BTC, CBL and iPSi) with SMP in fixed call termination will be subject to the same price control for these services.

The resulting fixed termination rates for CBL and iPSi are presented in Table 1 below.

Table 1: Fixed Termination Rate Glide paths (BSD cent/min)

	August 2014	October 2014	March 2015
On-island service	0.93	0.83	0.75
Off-island service	1.40	1.26	1.13

[16] Available at http://www.urcabahamas.bs/download/068311100.pdf.
[17] Available at http://www.urcabahamas.bs/download/068311100.pdf.

3 Conclusion and Final Determination

3.1 Conclusion and Next Steps

In this Statement of Results to the Public Consultation and Final Determination, URCA has summarized the general comments and answers to the consultation questions and set out its views on those responses. Taking into account the comments received, URCA has also set out its Final Determination on the wholesale price control for fixed termination services for all SMP licensees other than BTC (i.e., CBL and iPSi). This can be summarised as follows:

- Given its assessment and comments received by interested parties, URCA has reached the final conclusion that it is appropriate to impose symmetric fixed termination rates on all SMP licensees.

- As such, CBL and iPSi will be required to set their termination rates to be equal to the tariffs set out and approved by URCA in Table 3 of ECS 25/2012[18] in respect of BTC's RAIO charges for the period up to 2014/15.

- Taking into account current asymmetries in fixed termination rates and comments received by interested parties on its preliminary implementation plan, URCA has reached the final conclusion that the existing asymmetry in fixed termination rates should be removed by October 2014. As such, the revised termination rate glide paths as set out in Table 1 (above) of this document should apply to all SMP licensees.

3.2 Final Determination

For the reasons explained in Sections 2 to 4 of the Consultation and taking into account the comments received from interested parties discussed in Section 2 above, URCA makes the following determination:

- Fixed termination rates of CBL and iPSi should be set with reference to the BTC URCA-approved cost oriented fixed termination charges, which are currently determined by the glide-path set out in Table 3 of ECS 25/2012[19].

- Symmetry in fixed termination will be implemented by 1 October, 2014 based on the following steps:

    - By 1 August, 2014, CBL and iPSi are required to align their fixed call termination rates to BTC's fixed termination rates for 2013/14, as set out in Table 3 of ECS

[18] Available at http://www.urcabahamas.bs/download/068311100.pdf.
[19] Available at http://www.urcabahamas.bs/download/068311100.pdf

25/2012 (i.e., BSD 0.93/min for on-island and BSD cent 1.40/min for off-island calls)

  - By 1 October, 2014 CBL and iPSi are required to fully align their fixed call termination rates to BTC's termination rates for 2013/14as set out in Table 3 of ECS 25/2012 (i.e., BSD 0.83 cents /min for on-island and BSD 1.26 cents /min for off-island calls).

- Thereafter, all licensees with SMP in fixed call termination will be subject to the same price control for these services, including the rates specified in Table 1 above for March 2015.

- URCA will periodically review the rates for fixed termination and other services in BTC's RAIO. Any proposed amendments to the RAIO rates resulting from these periodic reviews will be subject to consultation, in line with URCA's statutory duty to consult stakeholders and the public enshrined in sections 11, 12 and 13 of the Comms Act.