

The Bahamas Telecommunications Company Limited

P. O. Box N-3048, John F. Kennedy Drive

Nassau, N.P., Bahamas

Tel: 1-242-302-7000 / Facsimile: 1-242-322-3245



Listening.
Improving.
Delivering.
Committed.

Everyday.

February 3, 2014

Mr. Stephen Bereaux
Director Policy & Regulation
URCA
UBS Annex Building
East Bay Street
Nassau, Bahamas

Dear Mr. Bereaux,

Re: BTC's Comments on URCA's Annual Plan 2014

We enclose herewith The Bahamas Telecommunications Company Limited's comments on the Utilities Regulation & Competition Authority Annual Plan for 2014.

Yours sincerely,



Pauline E. Seymour
Vice President, Legal & Regulatory
& Company Secretary

PES/ksw

Encl



BTC
Everyday.



COMMENTS ON THE 2014 ANNUAL PLAN OF THE UTILITIES REGULATORY AND COMPETITION AUTHORITY BY BAHAMAS TELECOMMUNICATIONS COMPANY LTD.

Executive Summary

The Bahamas Telecommunications Company Limited (BTC) takes the opportunity to submit its comments on the Annual Plan for 2014 published by the Utilities Regulation and Competition Authority (URCA). The Company is of the view that this will be a year of significant development in the telecommunications sector.

BTC is pleased with the progress in the development of industry in the past year and that which is anticipated during this year. The company looks forward to engaging in public consultations and discussions on issues critical to the sustained development of the sector.

The increased taxation on the industry is cause for serious concern for BTC. The past year has seen an upward adjustment in business licence fees resulting in an increased burden on the company. The passage of the amendments to the Communications Act in which requires the transfer by URCA to the central government funds of the surplus of fees paid to it by operators, and the increase in the communications licence fees this year will all result in added burdens operators. URCA and the central government should revisit the issues of fees as they have the potential to stifle growth of the telecommunications industry.

BTC embraces the concepts and efforts geared toward the promotion of a competitive environment but cautions that regulations should foster greater predictability and certainty.

1. Fees and Burdens on operators

BTC urges URCA to reconsider its proposal to increase fees charged to operators in the current environment in which telecommunications businesses already face overwhelming fees, charges and taxes. The increase in the 2014 fees from 1.076% to 1.368% is proposed on the basis of the increased resources necessary for work to be done as a result of the introduction of mobile competition after April 2014 and the introduction of Value Added Tax and URCA in its draft budget has anticipated increased expenditure of \$540,000.

Operators are conducting business in one of the most heavily taxed environments in the world. BTC is disappointed in the proposed increase in fees in circumstances in which operators are already faced with hefty Communications Fees, Business Licence fees, Operating fees and Spectrum Licence charges. The continued increase in fees has the potential of stemming growth in the sector. The cost of participating in the telecommunications industry already appears to be prohibitive and can act as a deterrent to the promotion of competition as seen by the sluggish growth in the number of operators entering the market.

BTC is of the view that the URCA (Amendment) Act, 2013 has had the effect of diminishing the goodwill between operators, and URCA and the Minister with responsibility for that authority. The requirement for URCA to transfer surplus to the centralized consolidated fund has resulted in operators being deprived of the funds that would ordinarily have been returned to them after URCA had expended funds in accordance with its budget. The amendments has effectively prevented the \$1,159,769 income in the Electronic Communications Fund for 2012 from being refunded to licensees as originally mandated by the Act, in effect offsetting the fees charged or 2013. The transfer of these funds to the Consolidated Fund is an unfortunate and unnecessary. BTC calls on URCA and the Minister with responsibility for the Authority to reduce the annual fees so that the sector may remain attractive to investors and to ensure operator viability. In this regard a reduction of the Communications Fee from 3% to 2% would be an appropriate start to the promotion of new businesses and a competitive market.

2. URCA's Initiatives

BTC notes that one of the main initiatives on URCA's agenda during this year is the Preparation for Mobile Competition. While there is reference in the annual plan (at pages 15 and 16) to work having begun in preparation for mobile competition, BTC reminds URCA that it should ensure that this process is in keeping with the requirements of the Communications (Amendment) Act, 2011. In accordance with section 114 of the legislation, the process of awarding a licence is only to be issued after 6th April. Section 114 of the said Communications (Amendment) Act, provides:

“as part of the spectrum management under Section 32:

- a. The Minister shall not before the third anniversary of the relevant date
 - i. determine the rules relating to the award of any second cellular licence; or

- ii. directly or indirectly carry out any external process including without limitation by way of public consultation to exercise his responsibilities described in Section 30 (i) with respect to granting the Second Cellular License;...”

BTC is reassured, in light of URCA’s statement at page 20 that work will commence as appropriate that the regulator is aware of the statutory obligations and has had regard to the same in its statement that work will commence as appropriate having regard to the timetable for liberalization established by the government.

3. Growth of Competition

URCA refers to the encouragement of competition and recognizes that vibrant and active competition is the best promoter of public interest. BTC looks forward to a display of URCA’s adherence to such principles through the adjustment of policies.

Regrettably, there has been commitment to and emphasis on the principles of ex ante regulation which speaks to an unwillingness to relinquish outdated administrative procedures, stringent regulations which strait-jacket operators. This was most recently demonstrated in the Public consultation on a Review of Retail Pricing Rules (issued in November 2013). BTC looks forward to further demonstration by URCA of the “exercise of its ex-post powers as appropriate from time to time” to which it alludes. BTC urges URCA to place more emphasis on ex-post regulation which is proven to engender competitive growth.

Continued adherence to ex-ante regulation has the potential to stunt the development of competition as such rules have been shown to conversely impact robust and sustainable competition. Further, URCA through the ex-post regulation would dispel any suggestion of self-perpetuation which adherence to an ex-ante rules may raise.

4. Assessment of Significant Market Power (SMP) in Call Termination

The recent public consultation on the on call termination and URCA’s Statement of Results to the Public Consultation and Final Determination: Assessment of Significant Market Power (SMP) in Call Termination Services (ECS 13/2013) (“Final Determination in Call Termination”), was a missed opportunity for proper regulation of the market. By deferring its substantive decision on this matter URCA has failed to produce a

complete decision on the primary issue before it and which it acknowledged can have an impact on competition and disadvantage consumers because of potential operator disputes.

URCA's failure to address the Public Consultation in a timely manner (only addressing it two years after it was placed on the agenda in URCA's Annual Plan), and to complete the same by delivery of a final decision and now the deferral of the final decision to a very busy 2014, is cause for grave concern. BTC will monitor closely the progress of this process. BTC is optimistic that at the end of this process the discriminatory treatment in terms of the obligations it has to meet as an SMP Operator would have ceased and the regulatory requirements for more detailed Separated Accounts and a Reference Access and Interconnection Offer will also be extended and applied to Cable Bahamas.

BTC advises that a review by URCA fulfillment of operators of obligations placed on them in the Final Determination on Call Termination may be necessary. BTC notes that in the Final Determination in Call Termination Cable Bahamas Limited (CBL) after having being declared as having SMP for calls terminated to its network and therefore subject to wholesale price control, is required to publish on its website tariffs and non-price terms and conditions for interconnection/ wholesale services. This SMP Obligation supports a statutory obligation under Section 30 (4) of the Communications Act and Condition 34 of CBL's Individual Operating Licence. There is no evidence from CBL's website that the company has complied with this obligation.

Further, URCA indicated in its Statement of Results that it planned to consult with stakeholders in relation to the fixed termination rates charged by CBL and IPSI to terminate traffic on their respective network. As URCA had outlined in ECS 13/2013:

'...the fixed termination rates charged by CBL and IPSI to terminate traffic on their respective networks are subject to a wholesale price control **(to be determined by URCA upon further consultation with stakeholders)**.' Reviewing URCA's planned activities/projects for 2014, BTC has noted that URCA has plan to review fixed termination rates for CBL and IPSI in January, 2014.

The review of fixed termination charges by CBL and Other Licensed Operators is paramount to the promotion of competition. As a result of the asymmetry of termination rates between BTC and CBL, where

the former pays the latter more than 100 percent premium on calls terminated to its network, BTC is placed at a competitive disadvantage. This distortion of competition as a result of CBL's wholesale charges being unregulated is not sustainable in the medium to long term. It is important that URCA places the review of the fixed termination charges of CBL and IPSI as an activity/project high on its list for 2014. BTC awaits this Public Consultation of the Revision of Fixed Termination Rates for CBL and IPSI in January, 2014.

5. National Spectrum Plan and Fees

While BTC welcomes the introduction of URCA's proposed National Spectrum Plan 2013 - 16, the proposed review of radio spectrum pricing is of concern as implicit in n URCA's statement is a presumption that the prices are too low. Given the existing regime of fees referred to elsewhere in this document, BTC has a difficulty with any attempt to place additional burdens on operators.

BTC anticipates that as URCA undertakes a review of the spectrum plan and fees it will regularize the anomaly in relation to the allocation of excessive amounts of 2.5 MHz spectrum to Systems Resources group (now Cable Bahamas). This situation has been uncorrected for some time and remains outstanding.

6. Implementation of Universal Service

BTC has noted from the Annual Plan that in 2013, CBL commenced proceedings in the Supreme Court against URCA seeking a review of the decisions made by the Authority in its Universal Service Obligation (USO) Implementation Framework. While the URCA-CBL proceedings will ultimately impact the Authority's planned activities with respect to USO, it is important that the work started on the establishment of a Universal Service Fund (USF) continues. The establishment of a USF is important for operators that continue to fund the provision of service in unprofitable areas.

7. Review of Retail Pricing Rules

BTC looks forward to the conclusion of URCA's Public Consultation on the Review of the Retail Pricing Rules which is scheduled for completion in March, 2014. BTC notes URCA consideration (as outlined on page 21 of the Annual Plan) of a review of the retail price regulation for BTC's mobile services going

forward, more specifically, according to URCA, a determination as to whether mobile services should be subject to retail price regulation.

BTC has maintained that the existing Retail Pricing Rules are quite onerous and impede competition and the provision of benefits to consumers.

8. Mobile Regulation

URCA has indicated that it will review the Mobile Charging Regime and will consider what, if any, regulatory changes will be made. BTC reiterates that it welcomes URCA's consideration as to whether BTC's mobile services will be subject to retail price regulation going forward. Further, the Company is pleased to see consideration given to whether a new cellular mobile operator should be treated as having Significant Market Power (SMP) in mobile termination (voice and SMS/MMS).

URCA appears, from its statements, to recognize that the retail price regulations which are presently applied to fixed voice services would be detrimental to BTC with the advent of mobile competition would not engender and sustain robust competition and a maintenance of a level playing field. BTC urges URCA to have regard for the input of stakeholders and advice and proposals which are well-intentioned and ultimately beneficial to consumers.

9. Facilities Sharing

BTC notes URCA's intention to lessen the high level of investment for market entry by the commonly used strategy of facilities sharing. URCA should be mindful, however, that sustainable competition is best ensured by where mobile operators make necessary investments, building their own tower networks with limited reliance on facilities sharing.

Whilst URCA speaks of the need to minimize new tower construction and avoid duplication of potentially unsightly structures it should be noted that aesthetic challenges may be overcome by creative means of disguising towers. More importantly though, if the premise on which URCA is proceeding is to mandate facilities sharing notwithstanding public consultation requirements and the obligation to give due consideration to submissions of licensees then it must remove regulatory restraints on retail mobile pricing to ensure a level playing field and spirited competition on the entry of a second mobile licensee.

10. Investigation of complaints of anti-competitive behavior

The speed with which issues are addressed by URCA, particularly competition complaints has caused some concern. BTC has maintained that addressing complaints of anti-competitive behavior in a timely manner is important for fostering competition and the overall development of the sector. It is in the interest of all parties concern to have timely resolution of an issue. In the case of the complainant, it is important to have a timely resolution to mitigate losses as in some cases, such where there is loss of market share, attempts of compensation may not be adequate.

It is BTC view that URCA should implement as part of its Key Performance Indicator (KPI), a measure of its timeliness in responding to complaints of anti-competitive behavior. This KPI should start at less than 30 days, more than 30 but less than 45 days, 45 days or more. URCA should also consider a service level agreement with industry partners regarding the resolution of competition complaints.

11. Encouraging Competition

The completion and the publication of the results of the Review of Retail Pricing Rules, the Revision of Fixed Termination Rates of Cable Bahamas and IPSI and the Market Reviews and Consultation and Implementation of Ex ante Remedies arising from Market Reviews are all essential for the promotion of effective competition. BTC is particularly pleased to see URCA's stated commitment as outlined in its Annual Plan to commence the Public Consultation on the Revision of Fixed Termination Rates of Cable Bahamas and IPSI in January, 2014.

12. Institutional Capacity Building

BTC has noted where it is URCA's intention to partner with other regulators to have short term work exchanges/placements. Such an initiative will be beneficial for the sector. Similarly, the proposed summer intern program will provide an opportunity for college students to receive exposure to regulation and competition matters which will assist in developing a cadre of local professionals for the sector.

Conclusion

We are generally pleased with the direction of URCA for 2014. We believe that it is feasible to accomplish the planned activities and essential to promoting much needed competition in the sector. BTC looks forward to working with URCA and industry stakeholders in this process of building the sector and competition promotion.