

# The Bahamas Telecommunications Company Ltd.

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March 27, 2013

Mr. Stephen Bereaux  
Director of Policy and Regulation  
Utilities Regulation and Competition Authority  
UBS Annex Building, East Bay Street  
Nassau, The Bahamas

Dear Mr. Bereaux,

**Re: Review of the Retail Pricing Framework**

Reference is made to the Utilities Regulation and Competition Authority's (URCA) letter of March 1, 2013 inviting comments from operators deemed to have Significant Market Power (SMP), i.e. The Bahamas Telecommunications Company Limited (BTC) and Cable Bahamas Limited (CBL) regarding proposed changes or amendments to the existing Retail Pricing Rules.

BTC welcomes this opportunity to provide input relative to proposed changes or amendments to the Retail Pricing Rules. The company has long advocated for changes to the Rules in an effort to provide the business with the much needed predictability and flexibility in responding to the needs of its customers. BTC is firmly of the view that the suggested changes aimed at providing greater flexibility within the Rules will ultimately benefit and enhance consumer welfare.

In providing guidance on proposed amendments to the Retail Pricing Rules, BTC notes Sections 5 (a), b(ii) and (c) of the Communications Act (2009) and Paragraph 24 of the Electronic Communications Sector (ECS) Policy. Section 5 (a) of the Communications Act states:

*'Market forces should be relied upon as much as possible as the means of achieving the electronic communications policy objectives..'*

Section 5 (b) (ii) of the Communications Act (2009) states:

*'Regulatory and other measures shall be introduced – having due regard to the costs and implications of those regulatory and other measures on affected parties.'*

Section 5 (c) of the Communications Act (2009) states:

*'Regulatory and other measures shall be efficient and proportionate to their purpose and introduced in a manner that is transparent, fair and non-discriminatory.'*

.../2

Paragraph 24 of the Sector Policy states:

*'URCA should, where consistent with the core objectives, apply a light touch regulatory approach to the electronic communications sector and not unduly restrict market entry, nor the commercial freedom of communication providers.'*

Reviewing the guidelines for regulation and government measures as outlined in the cited sections of Section 5 of the Communications Act (2009) as well as Paragraph 24 of the ECS Sector Policy, BTC maintains that the current Retail Pricing Rules as a regulatory tool have impeded rather than promote the electronic communications policy objectives.

Consistent with Section 5 of the Communications Act and Paragraph 24 of the ECS Sector Policy, the Retail Pricing Rules as a regulatory tool ought to be proportionate, fit for purpose, applying a light touch regulatory approach, having taking into regard the cost to be borne by both the regulator and SMP operators as a result of the imposition of such onerous rules. With this in mind, BTC recommends that the proposed changes ought to reflect the following themes (considerations):

- i. **Flexibility**: In imposing the ex ante regulatory provisions, URCA ought to give careful consideration to market conditions. The existing Rules are quite onerous and significantly slow the Go-To-Market time for BTC's products and services. With fierce competition in the provision of fixed line services from Cable Bahamas Limited, the existing Rules makes it very difficult for BTC to respond to competitive pressures. The requirements for **20 Business Days** (equivalent to an average of **28 calendar days** or longer, if there are intervening holidays) for **Permanent Price Changes**; **10 Business Days** for **Full Length Special Promotion** (or a minimum of **14 calendar days**); and **30 Business Days** (or a **minimum of 42 calendar days**) in the case of permanent price changes for bundled services with at least one (1) price regulate service are extremely onerous on the business. In addition to the time required for approvals of applications as per the Rules, particularly when measured in the number of calendar days required for approval, BTC is challenged by the inflexibility of the Rules which prevents the company from subsidizing handsets on conditional purchase of a price regulated service. It is in fact, an accepted practice in the industry for cellular mobile service providers to subsidize handset purchases on the condition that the subscriber purchase one of the services of the provider.

BTC has always maintained that there ought to be greater flexibility with respect to price reductions compared to price increases, particularly where price reductions relate to the mobile markets, where BTC does not provide upstream wholesale services to alternative carries for a fee (mobile call termination is provided at no charge) which ensures that there is much more limited scope for margin squeeze and predation than in fixed markets, even with a forward-looking view on mobile competitive entry. While there is a Public Consultation for price increases (which in effect is a differentiator compared to price reductions), the lengthy approval process for price reductions, particularly on the mobile

side of the business only has the potential to delay the benefits relating to price reduction of reaching consumers.

The inflexibility of the existing Rules certainly hampers the ability of BTC to respond to trends within the marketplace.

- ii. **Greater transparency of the approval process:** Based on BTC's experience with the Rules to date, even in cases where every effort is made to supply all of the data/information requested as per the Rules relative to an application, there are no guarantees with respect to securing an approval. One application that stands out, was the application in May, 2011, when BTC sought to remove the domestic toll charges for mobile call origination to fixed and cellular mobile lines in the Family Island. It took several rounds of questions/queries before BTC was able to secure an approval.
- iii. **Predictability of Rules:** Paragraph 20 of the Retail Pricing Rules allows the SMP operator to self-assess in order to ensure that the proposed price change is not anti-competitive, i.e. predatory pricing and margin squeeze allegations. The Retail Pricing Rules reference URCA's Competition Guidelines on Abuse of a Dominant Position. However, there no guidelines as to which tests are to be applied with respect to predatory pricing and margin squeeze. BTC believes the process would benefit from greater clarity as to the tests applied and data required, so it is clearer what the requirements are to obtain approvals.
- iv. **More reliance on ex post safeguards:** Given that BTC is required to produce a Reference Offer (RAIO), and this RAIO establishes in effect a price floor for a number of BTC's retail services, the company is firmly of the view that with a RAIO in effect, there is more flexibility for forbearance with respect to the Retail Pricing Rules with respect to BTC's fixed line services. In the case of cellular mobile services, this market is prospectively competitive. It is anticipated based on experiences elsewhere that this market will be fiercely contested and as such the imposition of overly restrictive ex ante rules will only impede BTC's ability to quickly respond to current trends in the market. In the mobile market in particular we would invite URCA to assess the potential problems in the market that ex ante regulation should address. In BTC's view most potential competition problems in this market can be addressed under competition Law, as they are in most markets around the world after competitive entry.

#### **Exercise of Regulatory Forbearance – Case of Turks and Caicos**

In reviewing the exante Retail Pricing Rules and examining scope for changes to the Rules, BTC draws URCA's attention to a recent Public Consultation carried out by the Turks and Caicos Islands Telecommunications Commission.<sup>1</sup> Turks and Caicos share some similarities to The

<sup>1</sup> Fixed Services Price Regulation Review Consultation Document issued by the Turks and Caicos Islands Telecommunications Commission, January 14, 2013.

Bahamas, both small island economies with a relatively small population size. Whilst Turks and Caicos has made the transition to a Price Cap Regulation, the regulator in Turks and Caicos has proposed exercising regulatory forbearance in each of the six (6) relevant markets for retail fixed services covered by LIME.

Table I below, taken from Turks and Caicos' Public Consultation Document on Fixed Services Price Regulation provides an outline of the main services covered in each case and the associated vertical and/or ancillary services, where the Turks and Caicos Islands Telecommunications Commission intends to exercise regulatory forbearance.

<b>Table I: Proposed Defined Relevant Markets for the exercise of Regulatory Forbearance (Turks and Caicos)<sup>2</sup></b>	
<b>Relevant Market</b>	<b>Service Inclusions</b>
<b>1. Residential Access at a Fixed Location</b>	<ul style="list-style-type: none"><li>• Standalone or basic local access</li><li>• Residential Value Added Services, including services such as caller ID and voice mail.</li><li>• Bundled local access services (including bundled local access, VAS and or domestic and or international calling services, etc.)</li><li>• All related services such as installation, activation or reconnection.</li></ul>
<b>2. Business Access at a Fixed Location</b>	<ul style="list-style-type: none"><li>• Standalone or basic single local access.</li><li>• Multiline local access (i.e. PABX)</li><li>• Bundled local access services (e.g. including single line or multiline local access, VAS and or domestic and international calling services, etc.).</li></ul>
<b>3. Domestic Calling from a Fixed Location</b>	<ul style="list-style-type: none"><li>• On island and Inter-Island Fixed to Fixed Calling.</li><li>• Domestic Fixed to Mobile Calling.</li><li>• Includes domestic 'on net' calling (i.e. to LIME fixed and mobile subscribers) and 'off-net' calling (i.e. to other local operators' networks).</li></ul>
<b>4. International Calling from a Fixed Location</b>	<ul style="list-style-type: none"><li>• International calling – all destinations.</li><li>• Includes international calling card services</li></ul>
<b>5. Domestic Private Leased Circuits (DPLC)</b>	<ul style="list-style-type: none"><li>• All DPLC services (i.e. all transmissions speeds and technologies).</li><li>• All related services such as installation, activation or reconnection.</li></ul>
<b>6. International Private Leased Circuits</b>	<ul style="list-style-type: none"><li>• All ILPC services (i.e. all transmissions speeds and technologies).</li><li>• All related services such as installation, activation or reconnection.</li></ul>

<sup>2</sup> Source: Ibid. pg. 10

It should be pointed out that in the context of the exercise of forbearance on the part of Turks and Caicos Islands Telecommunications Commission, LIME in Turks and Caicos has near 100 percent of the fixed access market (excluding mobile access services).

For BTC, the approach taken by the regulator in Turks and Caicos is quite pragmatic. BTC maintains that such an approach as exercised in Turks and Caicos removes much of the bureaucracy and other impediments that would impact BTC's ability to quickly respond to market trends and demands of consumers.

In advocating the relaxation of the existing Retail Pricing Rules for SMP operators and greater reliance on ex post safeguards, taking into account the move on the part of the regulator in Turks and Caicos to exercise regulatory forbearance, it is useful to examine the Forbearance Test Criteria used by the regulator in Turks and Caicos.

**Table II: Proposed Forbearance Test Criteria (Turks and Caicos)<sup>3</sup>**

Test Criterion	Description and Relevance
<p>1. LIME Relevant Market Specific Data</p>	<ul style="list-style-type: none"> <li>• Consideration of historical (five year) volume, price and revenue data for LIME's fixed services included in the relevant market in question.</li> <li>• Consideration of historical service-specific profitability for LIME's fixed services included in the relevant market in question (using LIME's cost separation model).</li> <li>• Consideration of forward looking (two year) trends for same.</li> <li>• <b>Evidence of declining trends for one or more of these factors would be supportive of forbearance.</b></li> </ul>
<p>2. Competitive Alternatives (including evidence of rivalry behavior)</p>	<ul style="list-style-type: none"> <li>• Identification of all existing and potential substitutes or alternatives by technology: wireline, fixed wireless and mobile wireless (as may be applicable).</li> <li>• Including in each case, service coverage, supply capacity and alternative pricing information (as may be applicable).</li> <li>• Evidence of falling prices, vigorous marketing activities and an expanding scope of activities by existing or potential competitors.</li> <li>• <b>Significant evidence of competitive alternatives and rivalrous behavior would be supportive of forbearance.</b></li> </ul>
<p>3. Market Shares</p>	<ul style="list-style-type: none"> <li>• Estimation of LIME's market share.</li> <li>• <b>Low or declining market share would be supportive of forbearance; however, high market share in and of itself would not preclude forbearance.</b></li> </ul>

<sup>3</sup> Ibid. pg. 12

<p><b>4. Market/Sector Trends</b></p>	<ul style="list-style-type: none"> <li>• Considerations of innovations and technological changes affecting the nature and scope of existing and potential competition.</li> <li>• <b>Evidence of market and technology trends in favor of increased competition would be supportive of forbearance.</b></li> </ul>
<p><b>5. Barriers to Entry</b></p>	<ul style="list-style-type: none"> <li>• Identification of any financial, technical or regulatory barriers to market entry or expansion or more generally competition.</li> <li>• Absence of any significant barriers to entry would be supportive of forbearance.</li> </ul>

Table III below provides the Commission's preliminary conclusions and conditions imposed with respect to the exercise of regulatory forbearance in each of the six (6) identified retail fixed markets in Turks and Caicos.

**Table III: Forbearance Proposal and Conditions imposed for each of the six fixed retail markets – Turks and Caicos**

Relevant Market	Forbearance Decision	Explanation accompanying Decision	Forbearance Conditions
<p><b>1. Residential Access at a Fixed Location</b></p>	<p><i>Conditional deregulation price</i></p>	<p>It was pointed out that while there is NO direct competition in the relevant market, potential competition from fixed wireless service may emerge and considerable competitive pressure already exists from mobile services. On a preliminary basis, forbearance was deemed appropriate.</p>	<p>LIME required to continue to provide standalone (basic) residential fixed access at a price no higher than the current price of \$20, with the associated installation fee also capped at the current rate.</p>
<p><b>2. Business Access at a Fixed Location</b></p>	<p><i>Conditional deregulation price</i></p>	<p>In Turks and Caicos, Direct competition exists in this market. The Commission decided that forbearance was appropriate on a conditional basis in this market.</p>	<p>LIME, Turks and Caicos was required to continue to provide basic standalone (basic) business fixed access at a price no higher than the current rate of \$45 with associated installation fee capped at the current rate.</p>

<p><b>3. Domestic Calling from a Fixed Location</b></p>	<p><i>Conditional deregulation price</i></p>	<p>Direct competition exists (using fixed wireless technology) in this market, although it currently appears to be focused on multiline business customers. The Commission considered that on a preliminary basis, forbearance was appropriate.</p>	<p>LIME required to continue to provide a standalone (basic) fixed calling service at prices no higher than the current rate of 15 cents per minute for fixed to fixed calls as of March 31, 2013, 30.75 cents for fixed to mobile calls.</p>
<p><b>4. International Calling from a Fixed Location</b></p>	<p><i>Unconditional deregulation price</i></p>	<p>Direct competition exists in this market in Turks and Caicos. It is also stated that there is significant pressure directly from VoIP services and international calling cards. The Commission considers that on a preliminary basis, forbearance is appropriate on an unconditional basis.</p>	<p>NONE</p>
<p><b>5. Domestic Private Leased Circuits</b></p>	<p><i>Unconditional deregulation price</i></p>	<p>Direct competition exists. Forbearance on an unconditional basis deemed appropriate</p>	<p>NONE</p>
<p><b>6. International Private Leased Lines</b></p>	<p><i>Unconditional deregulation price</i></p>	<p>Given the number of retail and wholesale options available in this market, the regulator decided on a preliminary basis to exercise forbearance on an unconditional basis in this market.</p>	<p>NONE</p>

In summary, URCA is asked to note that in revising the Retail Pricing Framework, consideration ought to be given to the following:

- i. URCA's obligations with respect to the cited provisions under Section 5 of the Communications Act and Paragraph 24 of the ECS Sector Policy, more specifically the provisions contained in these documents that speaks to reliance on market forces as much as possible as a means of achieving the objectives of the electronic communications policy; having due regard to the costs and implications of regulatory and other measures on affected parties; the need for regulatory and other measures to be efficient and proportionate.
- ii. The need for the proposed changes to reflect what BTC refers to as its four (4) themes (considerations). The themes (considerations) are intended to provide flexibility, greater transparency of approval process, predictability of the Rules and greater reliance on ex

post safeguards. Revisions of the Rules to take into account these themes will significantly reduce the Go-To-Market times for BTC's Special Promotions, Permanent Price and Service Changes. All of these considerations ultimately are expected to improve consumer welfare.

- iii. The exercise of regulatory forbearance on the part of the regulator in Turks and Caicos, Turks and Caicos Islands Telecommunications Commission. Turks and Caicos and the shared similarities to that of The Bahamas, for example, the incumbent provider, LIME, Turks and Caicos has market share in the provision of fixed line services comparable to that of BTC, and the regulator has made a decision to exercise regulatory forbearance in six (6) of the identifiable markets for retail services. The case of Turks and Caicos provides a useful model for URCA to examine as it looks at the relaxation of its Retail Pricing Rules.

BTC looks forward to engaging the Utilities Regulation and Competition Authority (URCA) as it reviews the Retail Pricing Framework. BTC now awaits the Public Consultation Document on the review of the Retail Pricing Rules.

Should the need arise, please feel free to contact the undersigned.

*Sincerely yours,*  
**The Bahamas Telecommunications Company Limited**



*Felicity L. Johnson*  
**Senior Vice President of Legal & Regulatory  
& Company Secretary**