

**The Bahamas Telecommunications Company Ltd.**

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June 26, 2009

Communications Consultation  
c/o KPMG  
Chartered Accountants  
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East Bay Street  
P.O. Box N-123  
Nassau, Bahamas

Dear Sirs:

**Re: Consultation Paper on the Issues and Options for the Access and Interconnection Framework for the Electronic Communications Sector**

The Bahamas Telecommunications Company Limited (BTC) herein submits its response to the Consultation at caption.

BTC looks forward to the published comments to the responses of all interested parties to this Consultation.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Felicity L. Johnson', with a long horizontal flourish extending to the right.

**Felicity L. Johnson**  
**Vice President Legal, Regulatory**  
**& Interconnection & Company Secretary**

FLJ/acs



The Bahamas Telecommunications Company  
Limited:

Response To

**Public Consultation Paper on the Issues and  
Options for the Access and Interconnection  
Framework for the Electronic Communications  
Sector in the Commonwealth of The Bahamas**

**Prepared by:**

Legal, Regulatory and  
Interconnection Division  
**26 June, 2009**

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**SUBMISSION BY**  
**THE BAHAMAS TELECOMMUNICATIONS COMPANY LIMITED**  
**IN RESPONSE TO**  
**THE PUBLIC CONSULTATION PAPER ON THE ISSUES AND OPTIONS FOR**  
**THE ACCESS AND INTERCONNECTION FRAMEWORK FOR THE**  
**ELECTRONIC COMMUNICATIONS SECTOR IN THE COMMONWEALTH OF**  
**THE BAHAMAS**

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**1. GENERAL COMMENTS**

The Bahamas Telecommunications Company Limited (BTC) takes this opportunity to provide its comments on the Consultation Paper dated 26<sup>th</sup> May 2009 on the Issues and Options for the Access and Interconnection Framework for the Electronic Communications Sector (A&I Consultation). It is recognized that the Access and Interconnection remedies are intended to promote competition at the retail level.

This Paper examines international best practice remedies for access and interconnection and their relevance to The Bahamas and the application of the designation of SMP (Significant Market Power) to BTC and Cable Bahamas Limited (CBL) in four retail markets in which they are presumed to have SMP with URCA also defining corresponding Wholesale Markets which will attract access and interconnection remedies.

BTC notes that the provisions in the Communications Act 2009 which will empower the new Regulator, Utilities Regulation and Competition Authority (URCA) in Section 40 to impose a designation of SMP on BTC in a given market, does not include the requirement that URCA conduct the relevant market analysis to determine in an objective and transparent way whether BTC does indeed have SMP in a particular market. Section 116 (9) of the Communications Act requires URCA 'as soon as possible' after this Act comes into force to determine whether licensees including existing licensees have Significant Market Power (SMP) as per Section 39 of the Act.

This requirement should ensure that fairness is applied to BTC as the incumbent and that BTC understands the basis for its designation thereby making it less onerous for BTC to challenge the designation as the sector liberalizes.

Further, the argument to support SMP for access and interconnection is that of essential facilities and given the fact that today, SRG is using Cable Bahamas Limited/Caribbean Crossing Limited's circuits to transit its international calls signals that there is an alternative to BTC's infrastructure.

This is not the first time that BTC has been designated an SMP, as it was automatically applied under the July 2001 Telecommunications Sector Policy (as amended). As a result of that designation BTC found itself impeded in its ability to respond to illegal competition because of this designation.

This Public Consultation on Access and Interconnection is not entirely new for BTC. In June 2006, the Public Utilities Commission (PUC) issued a Public Consultation on Interconnection Guidelines to which BTC responded with substantial submissions. The PUC subsequently issued a Determination on Interconnection Guidelines on 28<sup>th</sup> June 2007 and this document was used to form the basis of the proposed Reference Interconnection Offer (RIO) submitted by BTC under Condition 7 of its Interim Licence to the PUC in July 2008. The work stream on this RIO by the Regulator was halted due to the reform of the communications sector which commenced in late 2008 and continues.

In the meantime, BTC commenced the implementation of its Next Generation IP Network in March 2009. IP soft switches have now been installed and the access nodes build-out from exchanges has commenced with the first four hundred subscribers due to be migrated by October 31<sup>st</sup> 2009. Full implementation of the IP network is due for completion by the first quarter 2011.

Thus, whilst this Consultation takes a snapshot of the existing legacy network today and addresses the access and interconnection remedies on the basis of a legacy but in any event technology neutral network in which the core principles do not change, it is recognized that more work will have to be done by all parties in due course.

It would appear that the model generally being used is the European Model regulation on interconnection and access. It is recognised that:

*“Under the European regulatory framework for electronic communications, regulators;*

*(1) Clearly identify a set of relevant markets that could be of interest;*

*(2) Determine, using tools borrowed from competition law and economics, whether any firm or group of firms has Significant Market Power (SMP) on such a market;*

*(3) Applies a minimally adequate set of ex ante (in advance) remedies only to the firm or firms that possess SMP; and*

*(4) Removes any corresponding obligations that might have previously existed from firms that do not possess SMP.*

*The framework is (insofar as practicable) technologically neutral – whether a service is delivered using a traditional network or an IP-based NGN is irrelevant. A relevant market is determined based on the service or services delivered to the user. The determination reflects consideration of the degree of substitutability with other services, consistent with competition law”<sup>1</sup>*

BTC regards this Consultation as the first step in the regulatory reformation and urges the Regulator **not** to impose an SMP designation on BTC as the incumbent operator in the absence of the appropriate market analysis.

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<sup>1</sup> J. Scott Marcus, WIK Consult GMBH, NGN Interconnection and Access; [www.ictregulationtoolkit.org](http://www.ictregulationtoolkit.org)

BTC also notes that the available time given and deadline imposed, whilst industry norm, are not reflective of the parallel consultations and work streams which are on going. In the apparent haste by the Committee to implement new legislation BTC wishes to state that it is essential to BTC that its viability is assured by a more deliberative and measured process which places a premium on ensuring competitive fairness for BTC and avoids piece meal market-opening measures that might severely damage BTC's prospects and prove irreversible.

BTC, as the incumbent in excess of one hundred years in the provision of telecommunications services in The Bahamas has the correspondingly highest stake in these proceedings as well as a shared interest in an efficient, effective and fair regulatory regime. BTC notes and supports the statement made in the Consultation paper at Paragraph (16) that the current regulatory reform in The Bahamas is based on international best practice and that in the Consultation document factors affecting the local market are taken into account when accessing the appropriateness of applying international best practices to access and interconnection remedies in The Bahamas.

## **2. ORGANIZATION OF THE RESPONSES**

BTC will approach the responses to the question text in sequence.

## **3. RESPONSES**

**Question 1:** *Do you agree that the legislation and license conditions being introduced provide URCA with sufficient powers to ensure SMP operators provide a RAIO in accordance with URCA specifications? If you do not agree then please state your reasons.*

The issues around whether the legislation and license conditions being introduced provide URCA with sufficient powers to ensure SMP operators provide a RAIO are complex. Powers granted by legislation are usually subject to compliance with obligations that have to be undertaken before actions, such as the imposition of regulation, can be initiated. A starting point should be whether URCA has, in fact,

carried out a market analysis that has identified specific access and interconnection markets in the Bahamas which has enabled URCA to designate operators as having SMP in those markets. The regulation currently in place in the EU clearly requires market analyses and regulatory impact analyses as mandatory requirements before the introduction of regulation to specified markets. If these analyses have not been carried out URCA has no powers to impose such regulation and the lack of reference to these requirements in the consultation removes any obligation for the regulator to include them in its regulatory process.

**Question 2:** *Do you agree that the above list should form the core access and interconnection principles in the new regulatory frame work? If you disagree please provide your reasoning.*

BTC agrees that the above list of core access interconnection principles is still relevant in the present market as these are the same interconnection principles that were published as guide lines when BTC was instructed to publish a RIO in 2007 (with the exception of 'compliance with relevant environmental and safety standards').

**Question 3:** *Do you agree that the above list should form the minimum structure of an SMP operator's RIO? If you disagree please provide your reasoning.*

BTC agrees with the statement that all of the items on the list above should form the minimum structure of an SMP operator's RIO, for it appears as though they are requirements in international best practices. BTC notes the inclusion of a Joint Working Manual, Operations and Maintenance Manual and the Service Level Agreement as additional requirements to the guidelines of 2007. Based on its research, BTC has found that *Eircom in Ireland, Cable and Wireless in Jamaica and BT in the UK* has also included these items as part of a RIO.

**Question 4:** *Do you agree with the proposal that the call based remedies are still relevant and may form part of any new RAIIO? If you disagree, please provide your response.*

BTC agrees that these remedies are still relevant. The remedies are elements of basic interconnect services whereby operators can interconnect their network so that customers of one network can have access to customers and services of the other operator.

**Question 5:** *Do you agree that a 'Calls to Directory Information Service' obligation should be included in the RAIO? If you disagree then please explain your reasons.*

BTC strongly disagrees. BTC does not accept this obligation as a requirement to be placed in an interconnection agreement. There are a number of issues that must be taken into consideration. Firstly, BTC presently offers directory assistance to another operator, and even if this were advanced, BTC does not see a reciprocal agreement in place that would allow BTC the same access to other operator's service and provide equivalence of access. Data protection, privacy and security issues are also among issues that would have to be addressed.

BTC does not view this as an obligation on the SMP and has not found a precedent internationally for such obligation being imposed. (Ofcom placed it on BT but later had to remove it).

**Question 6:** *Do you agree that indirect access should be within the scope of the RAIO? If you do not agree, please explain your reasoning?*

BTC does not agree that the Indirect Access should be included in the RAIO at this time and further due to technical limitations, BTC will not be able to offer this service. BTC is concerned that the present switches will require some form of upgrade to facilitate Indirect Access and BTC is not prepared to invest any more funds or man-hours in the present switches, as all of these switches will be turned down and taken out in the coming months. BTC has also installed its Sonus Soft switch.

BTC is in the middle of an NGN network transformation due to be completed in 2011. Because the new service would require new software as yet unavailable and hence



unplanned in the BTC environment for both Soft switch and billing systems, a considerable period of time needs to be allowed if any pre-select facility is introduced. BTC would also need to specify new software to be obtained from their NGN suppliers, obtain quotes and determine pre-select charges appropriate to the specification if indirect access is introduced. It is BTC's position that NGN needs to be completed before any pre-select service is considered, as any disruption of the roll out may cause unacceptable service disruption for BTC's subscribers.

Thirdly, BTC suppliers of software for their NGN Soft switch and billing environment will need time to generate, test and verify their software and put it into a software release. Since new software releases are generally made only once every year at best, it may be up to two years (due solely to this factor) before an additional feature can be introduced into the network.

In conclusion, BTC would have to explore how to offer IA in the IP environment if it can be effectively offered or investigate the possibility of configuring the new switches before it can comment any further.

**Question 7:** *What market conditions do you consider should prevail in order for URCA to mandate an SMP to implement indirect Access?*

The market conditions should be assessed by carrying out a market analysis and a regulatory impact analysis to establish whether there is indeed a market for these services and sufficient demand to make their introduction commercially viable and sustainable from the viewpoint of all operators. The market analysis should be the means of designating an operator as having SMP.

**Question 8:** *If the market conditions exist, do you have a preference as to which form of indirect Access you wish to see imposed in the Bahamas? Please explain your reasons.*

See response to Question 6.

**Question 9:** *If indirect Access is imposed on an SMP operator, how long do you think the SMP operator should have to implement it?*

Please note BTC's response to question six (6) which does not agree with the imposition of indirect access on an SMP operator. Without prejudice to this response position BTC submits that a time frame of 9 – 12 months would be appropriate.

**Question10:** *Do you agree that the specified 'Call Origination' remedies could be included in the RAIO in the future? If you disagree then please explain your reason.*

BTC does not agree. These services are appropriate for inclusion in a RIO but are not appropriate for inclusion in a RAIO.

**Question 11:** *Do you agree with the proposal that the connectivity based services listed are still relevant and should form part of any new RAIO? If you disagree, please provide your reasons.*

It should be reasonable for BTC to agree that connectivity based services are still relevant and should form part of any new RAIO. However, Page 25, Clause (44) Table, Points of Interconnection (POIs) suggests that BTC produce a list of all sites where POIs are available and this is not practical as sites are identified and specified in line with the requirements of specific orders from operators. BTC suggests, therefore, that the text should be amended as follows:

The RIO should:

- Stipulate all physical and technical requirements of the POI facilities offered by the supplier, for co-located, customer sited or in-span facilities. (Detailed specifications for POIs should be included in the interconnection provider's Technical Standards and Specifications).
- The second bullet point should be removed.

This amendment will reflect the fact that each POI facility will be different with regard to location, local conditions and requirements and it is not possible to specify where the POI will be sited until a request for interconnection is received.

Summarily, BTC would agree that these services are still relevant at this time. Conditionally, because at this time there is only one other operator, and that particular operator has been licensed to provide service in three distinct areas of the country. However, as the market changes BTC expects that more operators will be requesting interconnection at different parts of the country resulting in BTC having to specify more exchanges.

As BTC moves toward an IP/NGN environment, BTC will be removing a number of switches and the POI locations will change. The number of POI's presently existing will also decrease dramatically and access to BTC's network would have to be addressed differently as one of the benefits of an NGN will be the ability to have a centralized switching infrastructure for all of The Bahamas.

**Question 12:** *Do you agree that wholesale broadband remedies should be within the scope of the RAIO? If you do not agree, please explain your reasoning.*

BTC supports the proposal that wholesale broadband remedies should be included in the scope of the RAIO. The inclusion of resale of the fixed-line SMP operator's own broadband Digital Subscriber Loop (DSL) based services and wholesale DSL or Bitstream access would be broadly acceptable on the condition that market and regulatory impact analyses are carried out to clearly identify a market requirement and a demand for these wholesale services.

**Question 13:** *What market conditions do you consider should prevail in order for URCA to mandate that an SMP operator implement wholesale broadband remedies?*

As stated in the comment on Question 12 the decision to implement these services should be based upon a market analysis that provides clear evidence of a commercial requirement and a demand for wholesale broadband remedies in The Bahamas.

**Question 14:** *If market conditions exist, do you have a preference as to which form of wholesale broadband you would wish to see mandated on an SMP operator? Please explain your reasons.*

BTC would prefer the Wholesale DSL or Bitstream access. BTC presently has this service deployed. With this service Entrants:

- Are reselling the Operator's services and therefore incur few investments themselves.
- Can deliver own-branded broadband service.
- Own relationship with end-users.
- Can expand offering without network investment.
- And if managed properly could result in lower broadband prices to the end customer.

From BTC's perspective, this service is easier to provide, operate and manage.

**Question 15:** *How long do you think an SMP operator should be allowed to implement each of the remedies in this category?*

Although Cable Bahamas has been designated as the SMP in this market in Schedule 6 of the Communications Act the operator that has SMP in this area should be given enough time to prepare for additional customer and infrastructure upgrade if necessary. It may be feasible therefore to assume between 3½ years – 4 years, to introduce each remedy.

**Question 16:** *Do you agree that the specified 'Wholesale Broadband' remedies could be included in the RAIO? If you disagree then please explain your reasons.*

BTC agrees. BTC expects that with the introduction of wholesale broadband remedies broadband penetration would improve in the country. It would also encourage more competition in the market and can result in cost savings to the Bahamian public.

**Question 17:** *Do you agree that local loop unbundling remedies should be within the scope of the RAIO? If you do not agree, please explain your reasoning.*

BTC does not agree that Local Loop Unbundling remedies should not be within the scope of the RAIO. The market or demand for access to the local loop using Local Loop Unbundling has not been established in The Bahamas. The low density of copper lines is not likely to offer new entrant operators an opportunity to secure revenues that will provide sufficient returns on the capital investment required to implement local loop unbundling. The consequences of low or even no demand for local loop unbundling to BTC are potentially significant due to the necessity for an incumbent operator to carry out a number of time consuming and expensive activities before it is possible to offer local loop unbundling services. At a minimum these activities include, but would not be limited to the:

- Production of a Reference Unbundling Offer for approval by the Regulator.
- Set up new product lines for LLU services and establish cost based tariffs.
- Development of LLU service order handling, installation and repair systems to enable the provision, operation and maintenance of unbundled local loops.
- Upgrade of Operational Support Systems to support activities generated by the introduction of LLU.
- Development of an SLA (Service Level Agreement).

As stated, the activities listed above will need to be carried out in order to enable BTC to offer local loop unbundling services and will incur considerable time and expense that cannot be recovered by BTC if the demand for these services proves to be low or non-existent.

Additionally, because of the geographic nature of the country and the scattered population, other operators would be encouraged to cherry pick. It would also involve a considerable amount of investment to deploy LLU because BTC presently has more than 192 fiber nodes deployed throughout the country. It is also important to note that the copper plant is also more that 20 years old and may require massive infrastructure

upgrade before this can be considered. In addition, in many of the local exchanges, BTC is challenged with space to provide additional equipment for its needs.

It is possible that the costs of LLU to provide traditional voice services may outweigh the benefits. If BTC is directed to go in this direction, it may result in having to increase the line rental to customers and business to subsidize the cost of providing the service.

In summary, local loop unbundling should not be included within the scope of the RAIO whilst the market is yet to be defined and demand remains extremely uncertain.

Finally, BTC supports URCA's views when it states that LLU could be technically difficult and costly to be introduced and may not be sustainable in The Bahamas.

**Question 18:** *What market conditions do you consider should prevail in order for URCA to mandate that an SMP operator implement local loop unbundling remedies?*

Appropriate markets need to be defined and sufficient demand must be clearly identified. Again BTC concurs with URCA that this may not be sustainable at this time.

**Question 19.** *If market conditions exist, do you have a preference as to which form of local unbundling you would wish to see obliged on an SMP operator? Please explain your reasons.*

The only form of unbundling that would be practical and manageable would be resale and/or Bitstream Access. Both of these services offer access to services delivered over the copper network using end-to-end solutions that are provided, operated and managed by the network operator. This arrangement greatly simplifies the commercial and operational processes associated with the provision of these services and allows new operators to enter the market with a minimal outlay of capital investment which will, in turn, encourage the introduction of sustainable competition.

**Question 20:** *How long do you think an SMP operator should be allowed to implement each of the remedies in this category?*

The regulatory obligation for an operator to offer and provide resale and/or Bitstream Access should be maintained until network and market conditions in The Bahamas change to the extent that other operators have established their customer base and / or invested in their own network infrastructure and levels of competition are such that regulation is no longer required. This has happened in Hong Kong and, in the UK on an exchange by exchange basis where four or more principal operators offer broadband services and the exchange is considered to be deregulated

**Question 21:** *Do you agree that the specified 'Unbundled Access to the Local Loop' remedies could be included in the RAIO? If you disagree then please explain your reasons.*

Yes but with Unbundled Access to the Local Loop remedies limited to the provision of Resale and/or Bitstream Access which could be included in the RAIO.

**Question 22:** *Do you agree that access to cable TV network remedies should be within the scope of the RAIO? If you do not agree please explain your reasoning.*

Yes, BTC strongly agrees with this proposal. Regulation should ensure equivalence in the designation of operators being required to offer interconnection access to their networks and there are no significant reasons why cable networks should not be included.

**Question 23:** *What market conditions do you consider should prevail in order for URCA to mandate an SMP operator to implement access to the cable TV network?*

In cases where an operator has been designated as having SMP it must be assumed that the SMP operator enjoys a monopoly in access to customers connected to their network. The SMP operator would also potentially have the ability to use their dominant position to the disadvantage of competitors, such as preventing competing operators

from accessing their network connections and customers. Where these market conditions apply there should be regulation to ensure access to that network.

**Question 24:** *Subject to the results of the market reviews, do you have a preference as to which form of unbundle access to a cable TV network you would wish to see imposed on the SMP operator? Please explain your reasons.*

The preferred option would be wholesale Bitstream access as this would provide the best commercial and operational solution for operators wishing to provide their services on a cable TV network.

**Question 25:** *Do you agree that the specified 'cable TV network access' remedies could be included in the RAIO? If you disagree please explain your reasons.*

Yes, BTC strongly agrees. The only difference to the provision of Bitstream access on a legacy copper access network and a cable TV network is the technology used to connect to the network and deliver customer services. Interconnection should be allowed at any technically feasible point in the network.

**Question 26:** *Do you agree that the specified 'Backhaul' remedy should be included in the RAIO? If you disagree then please explain your reasons.*

BTC disagrees; backhaul should not be a part of the RAIO. Backhaul should be provided on a commercial basis negotiated between Operators. It should not be a requirement or an obligation placed on an operator, firstly, as the market for backhaul has not been formally designated. Secondly, regulation of backhaul is not required because the OLO does not necessarily have to obtain backhaul from the incumbent operator and in fact the incumbent operator does not have a dominant position. In practice, the OLO may choose to obtain backhaul from a competitor, or provide the backhaul itself via wireless or other means. This effectively means that the incumbent does not have SMP in the market for backhaul.



**Question 27:** *What market conditions do you consider should prevail in order for URCA to mandate an SMP operator to provide backhaul services?*

Where specific markets have been defined, sufficient demand for the service clearly identified and an operator is formally designated as having SMP in that market.

**Question 28:** *Do you agree with the proposal that the co-location based services listed are still relevant and could form part of any new RAIO? If you disagree, please provide your reasons.*

BTC agrees that the co-location based services are still relevant. They should, however, be subject to availability of suitable facilities in individual BTC buildings should BTC provide accommodation within the specified BTC operational building, which would have been designated suitable for the installation and operation of Transmission equipment belonging to the OLO. In instances in which POI is requested in accordance with forecasting, capacity planning and ordering this should apply only in respect of equipment specifically required to facilitate Interconnection of the BTC network and the OLO network.

**Question 29:** *Do you agree that whilst access for the sharing of masts or towers for wireless telecommunications equipment and the sharing of ducts should be made available by operators with SMP, it should not form part of a RAIO under standard terms and conditions? If you disagree then please explain your reasons.*

BTC strongly disagrees. Each request for infrastructure sharing will be different and the identified solution, including the cost will be unique to that request. Therefore, it may not be practical to produce a standard set of regulations and associated prices that could address such requests.

The sharing of masts or towers for wireless telecommunications equipment and the sharing of ducts should not be made available by operators with SMP, and should not form part of a RAIO under standard terms and conditions.

Wireless and underground network infra-structure both carry systems and traffic that is considered to be of critical commercial and operational importance and sharing this infrastructure raises numerous issues around security and reliability.

The sharing of ducts especially raises a number of serious concerns with regard to security of physical infrastructure and the integrity of critical services carried by the network. At best duct sharing should be confined to an alternative operator being able to lease or buy an empty duct in a limited location to address a specific and identifiable pinch-point in the network that cannot be solved using any other method. Even under these circumstances the duct should be disconnected from the main network and only be made available at the location of the pinch-point. The alternative operator should be prepared to build out its network to connect to the appropriated duct section.

Each request for Infrastructure Sharing will be different and the identified solution, including the costs, will be unique to that request. Therefore it is not practically possible to produce a standard set of regulations and associated prices that could address all such requests.

The charges for sharing infrastructure in such circumstances should be on a market value basis, not wholesale basis as the infrastructure owner has invested capital costs in deploying infrastructure at a location where the installation of infrastructure was available to any other operator.

Operators should make infrastructure sharing available to other licensees upon demand and on reasonable terms in cases where there is clear evidence that sharing is the only practical solution to overcome clearly defined and unavoidable operational obstacles. The primary role of the regulator with regard to infrastructure sharing should be as an arbiter in cases of resolving disputes between operators.

Therefore, request for such services should be done on a purely commercial basis to be negotiated between operators. The facility sharing service is not a part of any requirement necessary for the achievement of interconnection.

BTC refers to the Communication Act, 2009 Section 40.2 (b) which speaks to conditions placed on the SMP licensees. Consideration should be given to the regulatory burden that may be placed on BTC and to take into account the investment made by BTC to allow a reasonable rate of return on capital efficiently employed.

**Question 30:** *Do you agree that a co-location remedy to support LLU and access to Cable TV networks should be within the scope of the RAIO? If you do not agree, please explain your reasoning.*

As already stated, the case for introducing LLU in the Bahamas is far from being proved on either commercial or operational grounds. The collocation requirements for access to cable TV networks would need to be determined and specified. Therefore, for both LLU and access to Cable TV networks, if URCA were to mandate this remedy the application would be conditional on the practicality and financial cost of providing collocation facilities. It must be noted that all costs incurred by an incumbent operator to provide collocation services are recoverable from the operators using the facilities and actual costs incurred can only be estimated on a case by case basis as all collocation facilities will be different.

**Question 31:** *Do you agree that URCA should have the power to oblige SMP operators to expand co-location services in the RAIO to provide co-location services for LLU and access to Cable TV networks? If you disagree then please explain your reasons.*

BTC must disagree because, as previously noted, all costs incurred by an incumbent operator to provide collocation services is recoverable from the operators using the facilities and the costs associated with expanding existing facilities could be substantial. The fact is that collocation regulation cannot mandate the provision of new facilities or

the expansion of existing facilities regardless of costs.

**Question 32:** *Do you agree with the proposal that the ancillary product listed is still relevant and could form part of any new RAIO? If you disagree, please provide your reasons.*

BTC agrees, however, BTC accepts that it will only be required to provide the service to other operators, to the extent that the OLO's have complied with the requirements of the Interconnect Agreement. BTC shall have no obligation to provide any data base access service other than the Directory data base and there should be reciprocity between operators. It is noted that this is not a requirement in international interconnect agreements. Unlisted numbers will not be listed in the data base and will be kept as confidential.

**Question 33:** *Do you agree that the specified reciprocal 'Data Management Amendment' service should be included in the RAIO? If you disagree than please explain your reasons.*

BTC does not agree with the proposal that specified data management amendments should be included in the RAIO. Data management can be included and addressed with Network Alteration and can be included in the Primary document of the RAIO. However, should URCA decide to proceed in this direction, BTC notes the position taken by BT and other operators in the UK where they agreed to the specific amount of the charges and the condition in which they would be applied.

**Question 34:** *Do you agree that the proposed charging framework is suitable and practicable for the Bahamas? If not then please substantiate your answer.*

BTC accepts that the proposed charging framework is practicable for The Bahamas where interconnection and access charges are cost oriented, including a reasonable return on capital invested. Given that The Bahamas has in place a calling party pays (CPP) regime for the mobile network, it is practical to continue cost based charging for CPP services.

**Question 35:** *Do you agree with the proposed approach to the application of cost-orientation? If not then please substantiate your answer.*

As outlined in this Public Consultation Document, it is not appropriate to predetermined whether a particular service would fall into a given costing category in the absence of market analysis. This becomes particularly relevant in the context of a technology neutral framework. In cases where interconnection and access markets are not contestable, BTC supports cost orientation pricing for interconnection and access markets where cost orientation allows for a reasonable return on capital employed.

#### **4. CONCLUSION**

BTC notes that in addition to the portfolio of ex ante remedies for access and interconnection that could be applied by URCA, URCA is also expected to have competition law powers to address issues ex post. The ex post issues that are expected to be addressed within the competition law framework would involve abuse of SMP position, engagement in anti competitive agreements by way of entering into exclusive supply arrangements with another licensee to prevent other parties from competing, and mergers and acquisitions that can potentially impede competition. It is expected that as the sector evolves, there will be a greater bias towards the use of ex post competition powers, notwithstanding that even in fully liberalized markets there is still reliance on ex ante remedies. BTC is of the view that the ex ante designation of SMP to the company is one which must not be applied without careful analysis and reference to the realities of the sector as it has the potential to unfairly impede BTC in its operations with adverse effects for the company.

The company notes that the designation of SMP in wholesale markets and the application of ex ante remedies are contingent on the definition of these wholesale markets. It is important that while section 116 (6) of the Communications Act allows for the challenge of presumptive SMP subject to section 39 (2) of the Act, there is a need for URCA to periodically review the definition of wholesale markets for which BTC and CBL are designated SMP.

Given the existence of bypass today and the emergence of new technologies that facilitate by pass of BTC's infrastructure, the designation of SMP and the application of ex ante remedies that accompanies this designation, should be weighed in the balance of promoting competition in relevant markets, while providing BTC with the incentive to invest in its plant and facilities.

As URCA seeks to apply ex ante remedies in upstream markets to facilitate competition downstream, assessment of market conditions is paramount. URCA's objectives clearly have to be balanced with BTC's need to continue to invest in its infrastructure that would provide access to licensed operators.

## **5. RESERVATION OF RIGHTS**

BTC has addressed the issues but reserves the right to comment at this time on all issues and states categorically that the decision not to respond to any issue raised on this Consultation in whole or in part does not necessarily represent agreement in whole or in part with the Committee's position, nor does any position taken by BTC in this consultation mean a waiver of any of BTC's rights in any way. BTC expressly reserves all its rights.

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