

# The Bahamas Telecommunications Company Ltd.

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July 31, 2009

Communications Consultation  
c/o KPMG Corporate Finance  
5<sup>th</sup> Floor Montague Sterling Centre  
East Bay Street  
Nassau, Bahamas

Attention: Mr. Simon Townend

Dear Sir:

**Re: Submission of The Bahamas Telecommunications Company Limited (BTC)  
Public Consultation Paper on Retail Pricing in the Communications Sector**

I enclose a copy of the submission prepared by the Legal, Regulatory & Interconnection Division of BTC on the Retail Pricing Regulation Consultation.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Felicity L. Johnson', followed by a long horizontal line.

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

FLJ/ksw

Encl.

pc: Julian Francis, Executive Chairman, BTC  
I. Kirk Griffin, Acting President/CEO, BTC



The Bahamas Telecommunications Company Limited

Response To

**Public Consultation Paper on Retail Pricing in the  
Communications Sector ('Retail Pricing Regulation  
Consultation')**

Legal, Regulatory and  
Interconnection Division  
**3 August, 2009**

**Executive Summary**

The Bahamas Telecommunications Company Limited (BTC) welcomes the opportunity to respond to this Public Consultation on Retail Pricing Regulation in the Communications Sector. BTC recognizes the constraints imposed by the current price regulation regime. The current regime is noted for its inflexibility to adjustment of prices as market conditions change. The proposed retail price cap regime would allow for flexibility by way of the X-factor (efficiency gains) and the Z factor as a result of exogenous (unforeseen) events. Further, BTC notes that it is the intent of URCA to ensure that the average change in prices for the basket of regulated services is less than or equal to the price cap index. This comes about as a result of adjusting changes in the price levels (inflation) for the efficiency gains (X-factor).

BTC is of the view that ideally the calculation of the Price Cap Index (PCI) should be based on an index for the communications sector rather than the Consumer Price Index (CPI) which measures changes in the price level for bread basket items. There are characteristics which are unique to the communications sector which distinguishes that sector from a number of other sectors in the economy. Firstly, this sector is highly unionized. Wage pressures as a result of the activity of the unions in this sector would invariably place upward pressure on prices. Secondly, while The Bahamas is a small open economy with a heavy dependence on imports, the import content of this sector would again affect price changes. The equipment and in some cases needed expertise has to be sourced from the outside. However, there is a caveat. While ideally it would be useful to look at an index for the communications sector and it is this index which is supported by BTC, experience has shown that there is a challenge of obtaining data. In the absence of readily available data on movement in prices for the communications sector, consideration can be given to using the CPI as a proxy to track price changes in the communications sector.

The methodology that will be applied in the calculation of the X-factor or efficiency gains is important to know ex ante implementation of the price cap regime. Applying an X-factor that is too high will make it difficult for regulated entities to recover its cost of capital. As outlined in the Public Consultation Paper, the use of benchmarks can be contentious given the geography of The Bahamas and hence potentially significant differences in operating environment when compared to benchmarked firms in other jurisdictions. It is important that prior to implementation of price caps,

there is clarity relative to the approach that will be adopted for the calculation or determination of the X-factor.

Conspicuously absent from the discussion in the Public Consultation Paper are the number and scope of services that will be included as part of the price regulated basket of services. The broader the definition of the service basket, the greater the flexibility BTC will have to adjust prices among individual items as part of a tariff rebalancing exercise. Conversely, the narrower the definition there is less flexibility for tariff rebalancing among individual services making up the basket of services.

BTC notes that it is the intent of URCA to put in place transitional arrangements for a period of six to twelve months prior to implementation of a formal price cap regulation. BTC is also mindful of the data requirements as pointed out in the Public Consultation Paper in developing a price cap regulation, hence the need to look more carefully at transitional arrangements. BTC notes the data requirements as it relates to estimating the Weighted Average Cost of Capital (WACC), forecast growth rates for each regulated entity, and price sensitivity parameters for each regulated services. BTC can appreciate that perhaps URCA may have to resort to benchmarks in the development of a WACC given the absence of well developed capital markets in deriving estimates for the 'cost' of equity. Also, as part of the transitional arrangements, it is understood that the costing information generated from the implementation of the Regulatory Financial Reporting (RFR) systems, will be used in the pricing of regulated retail services until a formal price cap regime is implemented.

The Public Consultation looks at the application of price cap regulation to baskets of services rather than individual services. This approach is welcomed by BTC as it would allow for tariff rebalancing and greater pricing flexibility. By placing a cap on a basket of services, it would allow BTC to increase prices for those services where prices are below the cost of providing services.

In paragraphs 109 to 113 of the Public Consultation Paper, there is a discussion relative to the duration of the price control periods. Given the emergence of new technologies and convergence, BTC is minded that a long duration of the price cap regime will not be in the interest of the company. Over time, it is expected that there will be the need to revisit services which are subject

to price regulation. BTC supports a short duration and will discuss its rationale as part of its response to the Paper.

The company notes from the Public Consultation Paper that based on a sample of seven (7) countries highlighted in Table 4 of the Paper, it took an average of 1-2 years between the commencement of liberalization and the implementation of the price cap regime. As progress is made, there will be the need to revisit the issue as to what may be considered a reasonable time for full implementation of a price cap regime notwithstanding URCA's intent to have a transitional arrangement for a period of six (6) to twelve (12) months.

BTC was particularly pleased to note that in the Public Consultation Paper, there is an acknowledgement of the challenges associated with using benchmarks in the case of The Bahamas in comparing prices for regulated services across countries. Often, it is said that the price of telecommunications services in The Bahamas is quite high compared to other countries, without taking into account the geography of The Bahamas and the purchasing power of the U.S. Dollar when compared to other jurisdictions where the strength of domestic currency relative to the U.S. Dollar is weaker. Due consideration will have to be taken of the archipelagic make up of the country, with an official population of just over 320,000 on twenty nine (29) inhabited islands. While approximately ninety percent of the population can be found on the islands of New Providence, Grand Bahama, Abaco, and Exuma, there is a challenge in duplicating infrastructure to provide services to other islands, a consideration that impacts directly on the cost of providing services.

BTC notes and accepts the exclusion of the Q-factor or quality parameter in the final price cap formula. BTC is firmly of the view that quality parameters should be dealt with as part of Service Guarantees in the operator's licence. The rationale for the support of exclusion of the Q-factor as part of the price cap formula is addressed as part of the company's response to question 19 of the Public Consultation Paper.

The company notes that while URCA has to carry out the appropriate analyses to determine the combination of services that will form the basket of price regulated services that will provide for flexibility for tariff rebalancing, the designation of SMP on BTC for the provision of DLD and ILD

services significantly impedes the ability of the company to compete with illegal VOIP services. Over the years, BTC's revenues from International Long Distance (ILD) calls have eroded significantly. A more in depth discussion on this issue follows in the response to this Consultation. However, an entity with SMP in the provision of ILD calls ought to be in a position, at a minimum, to stop the hemorrhaging of its ILD revenues by way of exercising control over the market for ILD calls.

A more in depth response will be provided to the issues raised in this Public Consultation as part of the response to the questions outlined in the Public Consultation Paper.

<b><i>Introduction</i></b>
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The Bahamas Telecommunications Company (BTC) has seen a marked decline over the years in international long distance (ILD) revenues. Competition from alternative service providers, both licensed and unlicensed have had an adverse effect on the company's revenues. Given the marked decline and despite the company's efforts to reduce the hemorrhaging of ILD revenues, clearly the company cannot be considered a SMP relative to the provision of ILD services. There is a legitimate case to be made for outgoing ILD to be removed from the basket of price regulated services.

***Table I below shows the percentage change in ILD and DLD revenues over the last five (5) years.***

***Table I:***

<b><i>Description</i></b>	<b><i>2004 -2005</i></b>	<b><i>2005- 2006</i></b>	<b><i>2006- 2007</i></b>	<b><i>2007 -2008</i></b>	<b><i>% Chg 2004 - 2008</i></b>
<b><i>International (outgoing)</i></b>	-64.3%	-21.7%	-17.3%	-16.6%	-80.7%
<b><i>Inter-Island (DLD)</i></b>	-5.0%	-4.3%	-4.8%	-12.2%	-23.6%

From 2003, BTC has seen a significant reduction in its ILD revenues. The reduction in revenues is attributed to both a decline in traffic volume as well as a decline in retail tariffs. The reduction in retail tariffs and volumes are in response to competitive pressures as customers seek out alternatives to traditional PSTN services with the use of Vonage, Skype, more recently, Magic Jack and since 2004, competition from Systems Resource Group (SRG), BTC's fixed line competitor. Given the alternatives available to end users with respect to outgoing ILD services, there is a case to be made to have ILD excluded from the basket of price regulated services. The inclusion of outgoing ILD as part of price regulated services impedes BTC's ability to compete with licensed and unlicensed operators.

While price cap regulation is intended as a surrogate to competition, it is important that as part of a wider effort to protect the interest of consumers, the price cap is not so restrictive that it serves as a disincentive to investment in new plant and equipment. It is important that the X-factor, a key component of price cap regulation allows for the recovery of the cost of capital. This is important to BTC moving forward.

***Is there a need for further Tariff Rebalancing in The Bahamas?***

BTC recognizes that Tariff Rebalancing has to be a cornerstone of Price Cap Regulation. Given the substitution of traditional voice services by way of the less costly alternative VOIP services, there is increase downward pressure on traditional voice services and by extension revenues derived from these services. As Table 2 of the Public Consultation Paper shows between the years 2000 and 2006, there was an appreciable reduction in both Domestic Long Distance (DLD) and International Long Distance (ILD) rates. It was these rates that in the past would have been used to subsidize the intra island calls and the provision of access lines. With declining ILD and DLD rates, it becomes increasingly difficult to subsidize intra island calls and access lines. Further, with the separation of reporting by business units, where each business unit would be responsible for the production of separate Profit and Loss Statements, there is greater transparency which prevents any cross subsidization.

In 2004, NERA (National Economic Research Associates) pegged the Access Deficit at approximately \$45 million. Since the production of that report, the price of access lines has increased by 58% for residential customers from \$9.50 to \$15.00 and by 67% for business customers from \$21.25 to \$36.00. While there has been a significant increase in the price of line rentals, based on rough estimates of 130,000 fixed lines, the increase would not be sufficient to eliminate the Access Deficit.

Separation of the mobile business from the fixed line part of the business again removes the possibility of subsidizing local (intra island calls) and access line charges. With mobile accounting for approximately 67% of total revenues for BTC, significant revenues from this part of the business can easily camouflage losses in other areas of the business. With separate reporting, this is eliminated.

Clearly, with Price Cap Regulation for retail services, there is broad support for tariff rebalancing. The caveat however, is in the approach which should be adopted relative to tariff rebalancing. Taking into account socio-political considerations, there has to be a buy in with respect to a tariff rebalancing exercise. While there is clearly an economic argument that would support this exercise, there will be resistance. While BTC would recommend consideration be given to a phased approach to get buy in, this approach will significantly impact the company's profits as it is forced to lower prices for those services where price is significantly above the cost of provision without having the flexibility to increase prices where cost is significantly above price.

***Do you agree that the regulator should design a price regulation framework that enables tariff rebalancing?***

BTC has stated in its response to the previous question that the implementation of a Price Cap Regime independent of a tariff rebalancing exercise will significantly disadvantage the company. The company has to maintain the flexibility to increase prices in cases where the cost of the provision of service is below the price while lowering prices in compliance with the price caps where prices are well above the cost of the provision of those services. Subjecting price caps to baskets of services rather than individual service would allow for flexibility and tariff rebalancing.



While BTC notes the intent of URCA to apply the price cap to a basket of services rather than individual price regulated services, with the former (basket of services) supporting flexibility and tariff rebalancing, BTC has also noted that in the case of Jamaica, the regulator, the Office of Utilities Regulation (OUR) made allowances for the growth in the price cap for individual price regulated services whose prices were well below the cap and required adjustment upward at a rate in excess of the price cap index. In the case of Jamaica, the OUR applied the following formula<sup>1</sup> for individual services where prices were below the cap:

$$PC_t = PC_{t-1} (PI_t / PI_{t-1} + Y)$$

where  $PC_t$  = Price cap in the current period;

$PC_{t-1}$  = Price cap in the previous period;

$PI_t$  = Price Index in current period (this can be the CPI or an index for communications sector);

$PI_{t-1}$  = Price Index for the previous period; and

$Y$  = A parameter for growth in the cap for each price regulated service

The idea here is not necessarily to advocate that URCA should go the route of placing a cap for each service compared to a basket of services, but merely to point out that across jurisdictions, there is support for a price cap regime that allows for tariff rebalancing. Jamaica in the early part of this decade explored for the growth of the cap for individual price regulated services, where prices were found to be below the cost of provision of service.

Certainly BTC supports a tariff rebalancing exercise as part of a price cap regime. The challenge is dealing with any potential fallout from the public as part of the exercise. The fallout can adversely impact BTC's Goodwill. In transitioning to a competitive environment, a balance has to be struck with respect to fulfilling the objectives with a tariff rebalancing exercise while seeking to cultivate or maintain good standing with customers.

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<sup>1</sup> Cable and Wireless Jamaica's Price Cap Plan, Determination Notice, Office of Utility Regulation, August, 2001

***Are there any benefits from introducing an option for monthly line rental at a lower price which excludes free local calls? If so, what type of plans for charged local calls would be most appropriate?***

There are benefits in introducing the option of a monthly line rental at a lower price which exclude free local calls. This option would allow those users with limited fixed incomes (pensioners) who are relatively low users to not be penalized by a fixed line rental where the price is not reflective of their level of consumption. This option may be particularly attractive to persons living in the Family Islands with limited income and minimal usage of their fixed lines. Also, customers who receive a disproportionate amount of calls compared to originating calls (assuming that there is a Calling Party Pays (CPP) regime in place) could benefit from this option. It may also be attractive to second home owners who are away from their vacation homes for extended periods.

BTC is of the view that it would be advantageous to have several options for its customers. One option that would include minimal line rental price with a price per unit for local calls and another option of bundled package with free local calls as part of the line rental.

***Should The Bahamas move to a caller pays principle for all calls? If you disagree, please state your reasons.***

BTC notes the incidence of charges as outlined in Table III of the Public Consultation Paper. Further, BTC notes the Receiving Party Pays principle as it relates to fixed to mobile calls. While BTC clearly accepts that the mobile subscriber accepting the call is subsidizing the fixed line subscriber, the removal of this anomaly in the context of a calling party pays (CPP) regime has to be examined following a policy decision on the treatment of local calls and tariff rebalancing. BTC accepts that applying RPP for fixed to mobile calls is inconsistent with the CPP regime.

***Do you agree that the historical approach to retail price regulation should be reformed in the newly liberalized environment? If you disagree, please state your reasons.***

BTC supports the reform relative to retail price regulation, a necessary step in reforming the communications sector as part of the new liberalized environment. The challenge with the present regime is the inflexibility in adjusting prices. The price cap has a built in flexibility by way of the CPI and X factor. The challenge at the moment is that it is very unclear as to what the rules are by way of price changes. While the Interim License outlines the conditions for making application, there is no clarity by way of adjusting prices. Seemingly the rule of thumb under the present regime is to ensure that the pricing is not anti competitive which invariably is interpreted as ensuring the service is not priced below cost.

***Do you agree with the objectives proposed for price control regulation? If you disagree, please state your reasons.***

In principle, there is agreement with the stated objectives. However, the Price Cap Regulation cannot control for quality of services. While BTC is conscious of its obligations to provide quality service, price control regulation alone cannot control for quality of service with respect to the provision of service by any entity designated SMP. In time, there has to be more consumer education with respect to what the customer should expect by way of quality. There is an incentive on the part of BTC to educate customers on quality differentials, given the competition from VOIP services.

The objective of providing regulated entities with a reasonable opportunity to earn a fair return on capital employed should be more than a theoretical construct. It is important that the implementation of the price cap while intended to achieve its stated objectives is not so onerous that it compromises the ability of regulated entities like BTC to earn a fair return on its capital employed. It is for this reason that the tariff rebalancing exercise is so important to the overall process and key to the elimination of the Access Deficit.

***Do you agree with the Government's view that wholesale price regulation alone may not be sufficient to protect consumer interests in the present and near future?***

There are no objections to the notion that the level of competition in interconnection and wholesale market is too low to remove regulation at the retail level to protect the interest of consumers, hence the need to apply regulation at the retail level. Whilst there is support for price regulation at the retail level, this should not discount the need for overarching Consumer Protection and Consumer Advocacy Legislation in the future.

***Do you agree with the proposal to adopt price cap regulation? If you disagree, please state your reasons***

BTC's responses above indicate that there is support for price cap regulation. However, BTC is of the view that International Long Distance (ILD) calls, more specifically outgoing ILD calls should not be included as part of the regulated basket of services. Competition from licensed entities like Systems Resource Group (SRG) providing its VoIP product, One Phone, and unlicensed products like Vonage and Skype have a direct impact on BTC's ILD revenues. BTC's ILD revenues are further threatened by a new product readily available in the local market, Magic Jack. Products like Magic Jack simply require a broadband connection.

***Do you agree with the proposal to introduce an Interim Pricing Framework in the short term? If you disagree, please state your reasons.***

As noted above, BTC supports the interim measure before the implementation of Price Cap Regulation. BTC is required to complete its Regulatory Financial Reporting systems by the December, 2009. The output of this model, one of which is the economic cost of regulated retail services, will be used as the basis for pricing of regulated retail services in the interim. Further, BTC recognizes the data requirements as outlined in the Public Consultation Paper in implementing a Price Cap regime.

The company notes that the transitional arrangements are intended for a period of six to twelve months. Further, it has been noted that it took some Caribbean countries based on the sample of countries in Table 4 of the Paper, an average of one to two years post liberalization to implement a price cap regulation. It is noted that the interim measure is intended for a considerable shorter period. There is no reference point as to when the six to twelve months for the interim measure will apply. If we made the assumption that it will start six to twelve months post liberalization, the outer bound of twelve months would be the lower end for the average length of time for the sample Caribbean countries. If we assume that the transitional period is six to twelve months following the various Acts coming into force, the transitional period is further shortened relative to the sample countries. As mentioned previously, there should be scope for discussions between the SMP designates and URCA relative to what is considered a reasonable time for the transition to Price Cap Regulation.

***What principles should underpin any Interim Pricing Framework for retail price regulation and on the nature of the interim arrangements?***

BTC notes that the pricing principles outlined in paragraph 69 of the Public Consultation Paper.

- i. Charges for each Price Regulated Service would be changed only with the prior approval of the regulator.
- ii. The regulator would amend the charges for a Price Regulated Service subject to consultation with the operator and any other interested parties, and would issue an instruction, determination or decision to the operator to amend or modify its charges accordingly.
- iii. Where an operator intends to introduce new prices for Price Regulated Services and prices for new Price Regulated Services it would provide the regulator with full details of the same and would ensure that such prices were transparent and non discriminatory.

- iv. All applications to introduce new prices for Price Regulated Services and prices for new Price Regulated Services would have to be reviewed in a timely, transparent, objective and non discriminatory manner and subject to a **reasonable period** of consultation.
- v. The operator would be expected to comply with all instructions and or directives issued by URCA in respect of permanent price changes.

BTC notes that as part of the Interim Pricing Principles outlined in the Public Consultation Paper, in point (iii), there is a discussion relative to allowing for a 'reasonable period' of public consultation. The company is firmly of the view that there is no need for a public consultation as outlined in iv. Whilst BTC recognizes that the provisions are taken from Condition 15 of BTC's existing licence, the pricing principle outlined at iv, should be revisited as part of the Interim Pricing Framework. It creates an unnecessary hurdle, particularly given that the pricing principle at iii is quite adequate. URCA as part of a transitional arrangement will use the data produced from the Regulatory Financial Reporting systems that will provide costing details of products that will be used as a basis to determine prices. Given that URCA will be responsible for signing off of data produced by the RFR system, this would satisfy the requirement of transparency. In introducing a new product, BTC will be required to provide the regulator with details including pricing and demonstrate that the prices are transparent and non discriminatory.

The provision for a public consultation in the existing licence is an impediment that can restrict BTC's ability to be responsive to the needs of customers as market condition changes. Imposing the condition of a public consultation in the interim when introducing new prices for existing products and new price regulated products should not be carried over from the existing framework.

***Do you agree with the proposed regulation of special offers and discounts? If you disagree, please state your reasons.***

BTC notes that the special offer or discount also called special promotion is part of an Interim Pricing Framework. BTC takes the position that as part of the form of controls, provision should be made for extension of special promotions for a period not exceeding thirty (30) days. There are

justified extenuating circumstances, where following the launch of a special promotion, there can be events including force majeure events (e.g. a strike, hurricane, etc.) that can take place that are beyond the control of BTC that can impact the benefits of the promotion. Also, consumers can be slow to respond at the beginning of the special promotion for any number of reasons, allowing an additional thirty days in some cases will allow the company to obtain the benefits from the special promotion ordinarily expected during the course of a ninety (90) day promotion.

BTC notes the sixth bullet point under form of controls for Special Promotion where the operator is required to not offer a special promotion or discount that is *similar* to a special offer or discount that concluded less than 120 days earlier. It would be useful to have guidelines on what the criteria is to determine whether the special offer or discount is similar? The use of the word similar is ambiguous. Certainly, stating that the promotion cannot be the same is clearer.

***Do you agree with the proposed form of a price cap shown above? Do you have views based on experience with price cap regimes on the application of a price cap with this broad form?***

BTC has no objection to the use of the price cap formula of the form:

$$PCI^k_t = PCI^{k}_{t-1} (1 + I_t - X_t \pm Z)$$

Earlier in its response to this Public Consultation, BTC indicated its reservations with the use of the CPI compared to the use of an index for the communications sector, given the peculiarities of this sector when compared to other sectors in the economy. However, in the absence of reliable data to derive an index for the communications sector, URCA may find itself resorting to the CPI as a proxy.

Based on literature from other jurisdictions, there are disagreements between regulated entities and the regulator relative to which model is appropriate for measuring productivity gains (X-factor). The underlying assumptions become critical in deciding which model is appropriate. Going forward,

BTC with the engagement of external assistance along with the regulator will have to examine appropriate measures for the X-factor. This will not be an issue in the first year of the price cap.

The Z factor (exogenous events) apart from hurricanes and administrative/judicial changes that can have an impact on licensed entities should also include changes in international settlements when it comes to setting a price cap for ILD rates.

BTC notes that the equation above in its broad form excludes quality (Q-factor). BTC maintains that the Q-factor should not be included as part of the broad price cap formula. Any deviations from acceptable or minimum quality should be addressed as part of BTC's licence that should provide for Service Quality Guarantees.

***Do you agree with the use of 'building blocks' regime to determine starting prices under the price cap?***

BTC notes the various approaches in deriving the starting price ( $P_0$ ) used for the price cap formula for price regulated services. BTC supports the use of the 'building blocks' regime in developing the starting price compared to the use of price indexation using international comparators. The Bahamas is unique compared to other countries. The geography of the country lends itself to having to duplicate infrastructure to provide basic services throughout the country, this impacts cost compared to providing the same services in a country that is a single land mass.

BTC supports the use of the Interim Pricing Framework model to derive the initial price  $P_0$  that will be used as the basis for the price cap regulation. BTC supports the approach outlined in paragraph 92 of the Public Consultation Paper where as part of the Interim Pricing, cost will be based on the use of:

- Historic cost accounting;
- Fully Distributed costs based on activity based costing; and
- Other information deemed to be relevant



***Do you agree with the use of CPI within the price control formula? If you disagree, please state your reasons.***

There are challenges associated with the use of the CPI, given that this broad index would not be truly reflective of changes taking place in the communications sector. The communications sector is characterized by heavy dependence on imports, which will include equipment and expertise, where the prices of these inputs are largely exogenously determined. Also, changes in wages in the communications sector are dependent on union activities, given that this sector is heavily unionized.

While there is support for a separate index for the communications sector, initial review of data supplied by the Department of Statistics shows that while the Department tracks movement in prices in the communications sector, the communications sector activities are inclusive postal services. The data is not currently in the format that would make it useful to track price movements in the communications sector. Over time, the Department of Statistics should be asked to provide data showing movement in prices for the communications sector excluding postal services.

Due to the relative importance of the communications sector to the economy of The Bahamas, there is a case for a separate index. In the absence of this separate index, the CPI will have to be used as a proxy.

***Do you agree with the proposed use of the prior year's inflation rate as a measure in the All Bahamas Price Index? If you disagree, please state your reasons.***

Given the lag in reporting data by the Department of Statistics, BTC has no objections to the use of prior year's inflation rate as a measure in the All Bahamas Price Index.

***Do you agree with the use of an X-factor to reflect expected productivity gains over the period?***

Discussion on the appropriate model that should be used to measure productivity gains and that will be considered acceptable by URCA should be part of a dialogue between the operator and URCA going forward. Certainly, tariff rebalancing becomes critical prior to making an assessment of productivity gains.

While the Total Factor Productivity (TFP) model is one that is commonly used across jurisdictions, BTC is minded that while these models require large data sets relative to capital employed, and costs of inputs and outputs, it is best over time for BTC to use the data collected to develop the X-factor rather than having to rely on benchmarks. Again, given the geography of the country, the use of benchmarks can disadvantage BTC.

The use of X-factor in determining price caps is consistent with international best practice and as such BTC has no objections.

***What price control period do you think should be used? Do you believe that the appropriate price control period is affected by the proposed phasing in of competition in The Bahamas?***

BTC notes the options that are being proposed as outlined in paragraph 110 of the Public Consultation Paper relative to the duration of the price control period. A long duration period of price control can be to the disadvantage of BTC given the convergence of technology and the proliferation of alternative technologies. The first option as outlined in paragraph 110 of the Paper, is arguably too short to allow for limited experience with the use of Price Cap Regulation and can lead to regulatory uncertainty going into subsequent periods. A longer period as outlined as part of the medium (three to four years) and longer term (five years) options, can lead to over regulation as services which should be removed as part of the Price Cap regulation as the market becomes more competitive, can still be included during a longer time horizon price cap period.

Given that competition is expected in the provision of mobile services two (2) years following privatization and given that the provision of fixed line services is expected to be liberalized immediately following the enactment of the Communications Act, BTC supports a two (2) year price cap control period.

Full liberalization of fixed line services and the introduction of competition in mobile should impact the price control period. Full liberalization of fixed line services is expected to bring about the introduction of converged services which can impact prices offered by competitors. Also, with the introduction of competition, there will be alternatives to the technology deployed currently as well as alternatives to services offered currently. With service supply substitution, there is a need to revisit the duration of the price control period and the basket of price regulated services.

***Should a Z factor be included? If a Z factor is included what are some of the exogenous occurrences that should be considered?***

There is support for the inclusion of a Z factor in the formula for the Price Cap, where Z refers to those events outside the control of the operator. For BTC, hurricanes and their impact on the company's infrastructure and overall operations is an occurrence that immediately comes to mind. Changes in international settlement rates, while the subject of negotiations between BTC and its foreign partner (carrier), can be considered an exogenous event. Similarly changes in legislation, judicial or administrative action are other examples of exogenous events that can have a material impact on the operations of an entity.

While it is not envisaged that there will be any major changes in the tax structure, any changes by way of taxes impacting the cost of doing business for BTC or by way of its effect on customer demand for BTC services should be treated as an exogenous event.

***Do you agree that quality control incentives should be built into price control regulation? What are the relevant key performance indicators (KPI) that you consider could be utilized for monitoring quality?***

Given the challenge associated with measuring quality of service as part of a Price Cap formula, BTC is minded to suggest that the regulator should have instead Guarantee Service Standards for those services which are price regulated. These Guarantee Service Standards would cover fault repair, loss of service, response to customer complaints, and reconnection of service after

disconnection for non payment. These Guarantee Service Standards would become the relevant key performance indicators (KPI) for monitoring quality.

It is useful to note that the Barbados Fair Trading Commission opted to use Guarantee Service Standards rather than incorporating a quality of service parameter in the price cap formula. The Guarantee Service Standards would apply to a specific individual or basket of price regulated services, identifying the target for the relevant price regulated service(s).

It is useful to point out that in the case of Jamaica, the regulator, the Office of Utilities Regulation looked at the inclusion of quality (q-factor) in its price cap formula but insisted that this parameter would be set at zero and operators would only be penalized by the inclusion of this parameter if service quality deteriorates.

BTC advocates that quality control should be addressed as part of a wider context of consumer protection and included as part of BTC's Licence and not as part of the price cap formula. BTC notes that there is reference to quality of service as part of the draft licence.

***Should operators be able to carry over out-performance in early years into later years within the same price control period?***

BTC supports the operator being able to carry over the headroom from one period to a subsequent period within the price control period. BTC should have the flexibility to price below the cap in a given period and have the flexibility to increase prices within the price cap in subsequent periods without being penalized. The simple formula that can be used to apply the headroom is as follows:

$$H_t = \frac{PCI_t - API_t}{PCI_t}$$

Where  $H_t$  = headroom at any particular time during the price cap year t

$API_t$  = Actual Price Index showing the weighted average change in actual prices for the

basket in period t.

$PCI_t$  = Price Cap Index for period t.

In paragraph 127 of the Public Consultation Paper, BTC supports the first option that will give operators the flexibility to adjust prices within the price cap for a given period. BTC is mindful that it has to ensure that the  $API \leq PCI$ , where  $API$  = Actual Price Increase and  $PCI$  = Price Cap Index.

**Do you agree with the initial thinking on the provision of information for use in price control regulation?**

BTC recognizes its obligations to provide URCA with relevant data/information that is needed for effective regulation of the sector, i.e. protection of consumers and the promotion of competition. The provision of data for price control regulation is deemed necessary for the effective regulation of the sector. BTC requests that the data/information supplied to URCA as part of the price cap regulation be considered proprietary and subject to the confidentiality provisions outlined in the various pieces of legislation governing the electronic communications sector.

***Do you agree with the views expressed above on the use of baskets of services in retail price control regulation? Do you have views on the appropriate form of the tariff baskets to be used?***

The application of a price cap to basket of services compared to applying a price cap to an individual service would allow for tariff rebalancing and greater pricing flexibility on the part of BTC. It follows that BTC certainly supports the application of a price cap to baskets of services compared to an individual service.

BTC noted in its response to this Public Consultation that there is no discussion with respect to the form of the tariff baskets. There is no discussion on the scope of the basket relative to the services. BTC is minded that discussion on the form of the tariff baskets should be a separate exercise.

During the interim where BTC will be guided by the Interim Pricing Framework, there is the opportunity for BTC and URCA to consult on the composition of the tariff baskets.

### **Conclusion**

While this Public Consultation addresses remedies ex ante for the protection of consumers and promotion of competition through the use of a surrogate, price cap regulation, URCA should not discount the use of competition policy to address anti competitive issues, albeit ex post. BTC is minded that the ex ante 'label' of SMP can significantly impede its ability to compete in the market, particularly given the competition from illegal operators providing alternatives to ILD services. In looking at the market for the provision of price regulated services, a holistic and practical approach is needed where the totality of the market would comprise both licensed and unlicensed operators. The unlicensed operators also serve as competitors putting downward pressure on prices and thereby forcing BTC to respond.

BTC notes that while this Public Consultation is for Price Regulation of Retail Services in the Communications Sector, there is clearly a bias against BTC, with no reference to the services offered by Cable Bahamas. The examples in the use of price changes in Tables I and II of the Public Consultation Paper, looks exclusively at services offered by BTC. Again, the discussions of the X-factor and Quality of Service references BTC with no discussion on Cable Bahamas. Cable Bahamas under Section 116 of the Communications Act (2009) is presumed to have Significant Market Power in the provision of high speed data services and connectivity, and the provision of cable television services. It is expected that with the full liberalization of fixed line services, Cable Bahamas will be BTC's major competitor. It is important that there is even handedness with respect to the regulation of the two SMPs to remove opportunities for regulatory arbitrage by CBL.

Full liberalization of fixed line services and the introduction of competition in mobile are considerations when looking at the duration of the price cap regulation. It is entirely possible that with the licensing of CBL to provide telecommunications services, once it has fulfilled its obligations in those areas in which it is designated SMP, it can further erode BTC's market share in the provision of services included as part of the basket of price regulated services. There is certainly

support from BTC for URCA to continuously review the basket of price regulated services, particularly following liberalization of cellular mobile services and full liberalization of fixed line services.

It is useful to point out that the Public Consultation Paper did not discuss the substitutability of fixed line services by that of mobile services and the impact of this substitution on the demand for access lines. Liberalization of mobile services will have an impact on prices and competition for the provision of services offered by fixed line networks. In some jurisdictions, following liberalization of mobile, there has been a marked decline in demand for access lines, as customers substitute mobile for fixed line services. Given that the licensing of service provision is technology neutral, mobile services in some cases should be seen as substitute for fixed line services. Ignoring this substitution can lead to over regulation of fixed line services.

The development of price cap regulation and the interim framework that will be put in place until the price cap regulation is well developed will require managing large data sets. BTC would wish to state for the record its position that all costing and relevant data/information needed for price caps as well as any interim pricing measure should be deemed confidential and barred from disclosure to the public, competitors and unauthorized persons within URCA, given that data files will contain highly sensitive and competitive information.

It is important that URCA in its efforts aimed at protecting the interest of consumers by way of price caps and discouraging abuse by firms with significant market power through its policies do not provide a disincentive to investment in the provision of price regulated services. The application of price cap regulation must ensure a degree of flexibility in pricing and at the same time allow for incentive to invest in new plant and equipment. Achieving these objectives requires a delicate balance between promoting social objectives (consumer protection) and encouraging efficiency on the part of regulated firms.

BTC has addressed the issues but reserves the right to comment at any time on all issues and states categorically that the decision not to respond to any issue raised in 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.