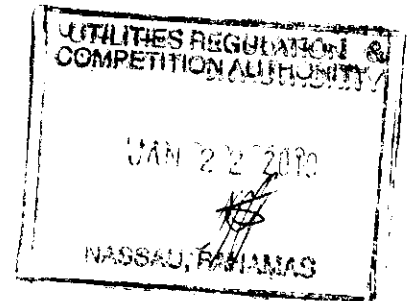




January 22, 2010



Mr. Michael J. Symonette
Chief Executive Officer
The Utilities Regulation & Competition Authority
4th Terrace Collins Avenue
Nassau, Bahamas

Dear Sir:

**Re: BTC's Submission Final Comments on BTC's Proposals on
URCA's Preliminary Determination and on Other Parties' Responses
to the Preliminary Determination: Consultation Documents
on Types of SMP Obligations**

The Bahamas Telecommunications Company Limited (BTC) encloses its Submission due today on the Consultation topic at caption.

Yours sincerely,

A handwritten signature in cursive script, appearing to read 'Felicity L. Johnson'.

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

FLJ/ksw

Encls.

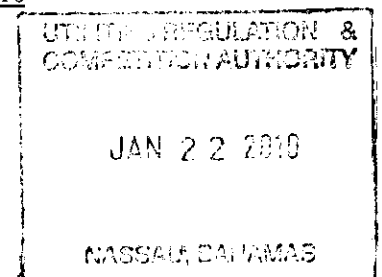


The Bahamas Telecommunications Company Limited

Final Comments on BTC's
proposals on URCA's
Preliminary Determination
and on other parties' responses
to the Consultation
Documents:

- i. *ECS 18/09: Types of Obligations on the Bahamas Telecommunications Company Limited under S.116 (3) of the Communications Act, 2009*
- ii. *ECS 19/09: Types of Obligations on Cable Bahamas Limited under S116 (3) of the Communications Act, 2009*
- iii. *ECS 20/09: Draft Guidelines Accounting Separation & Cost Accounting issued to BTC*
- iv. *ECS 22/09: Draft Guidelines Access & Interconnection*

22 January 2010



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1 Executive Summary

BTC has previously presented its views on the market review process, accounting separation (AS) and reference access and interconnection offer (RAIO) in its response to URCA's consultation on 18th December 2009. This document therefore presents an expansion of the initial submission and submits alternative revised proposals in accordance with Section 116(3)(b) of the Communications Act in order to satisfy the requirements stated in the Preliminary Determination of URCA pursuant to Section 116(2) of the Communications Act. This document also highlights the key points in BTC's December consultation and responds to the consultation submissions of Cable Bahamas and Caribbean Crossing (CBL), SRG and Digicel.

Market review and SMP analysis

Before significant market power (SMP) can be established, a full market review process needs to be undertaken by URCA.

It is BTC's position that the SMP presumption under s.116(1) of the Communications Act 2009 ("Comms Act"), which assumes that BTC and CBL have SMP in the provision of certain communications services at the time the Comms Act comes into force, is intended to be an interim measure of a transitional nature. Section 116(8) requires that "*as soon as possible after this Act comes into force, URCA shall exercise its powers to determine whether licensees... have SMP under the terms of s.39*". Under s.39 and s.40, URCA must undertake a formal, detailed market review to determine whether a licensee is an SMP licensee "*prior to imposing any obligations under s.40(1)*" In this regard BTC takes a similar position to that taken by CBL in its initial submission.¹

Further, the Electronic Communications Sector Policy states at section 45 that "it is critical that this [issuing the interim SMP determinations] takes place as quickly as possible as any licensee determined to have SMP must comply with the basic SMP obligations imposed before the licensee is allowed to enter new markets". The basic nature of the interim SMP obligations is contrasted at Section 52 with the formal nature of the market reviews required to establish SMP: "it is very important that URCA commences formal market reviews as soon as possible as the interim market definitions and SMP determinations become rebuttable after 12 months and would be subject to more detailed market reviews to be conducted by URCA."

In this regard URCA's policy mandate is clearly the implementation of interim, basic SMP conditions upon the Comms Act becoming effective, and as soon as possible thereafter, consultation regarding, and creation of the process for, market review (as set out at Policy section 51). This is intended to enable URCA to undertake formal, detailed market reviews with a view to setting the full SMP obligations under s.39 and s.40 of the Comms Act.

¹ Response of Cable Bahamas LTD and Caribbean Crossings LTD to URCA's Preliminary Determination, Draft order and Consultation document on types of obligations on The Bahamas Telecommunications Company LTD under S.116(3) Communications Act, 2009 (ECS 18/2009), page 6

In considering SMP, URCA has failed to consider, or in some cases erroneously considered, key economic concepts which are essential for correctly defining economic markets and assessing SMP. These concepts include the following.

- *Technology neutrality.* The pricing constraints imposed by Vibe on PSTN voice products should be considered.
- *Classification of competitive, non competitive and prospectively competitive markets.* This classification is consistent with the principles reflected in the EU Electronic Communications Framework. Prospectively competitive markets should be subject to minimal regulation, since the compliance costs are unlikely to outweigh short-term benefits.
- *Product markets versus geographic markets.* URCA notes that CBL and BTC have different geographic footprints and therefore should not be considered in the same product market. This is not the correct assessment because:
 - First, a product market should consider similarity of product characteristics and demand-side constraints. International precedent and a review of national characteristics suggests that CBL telecommunications products are in the same product market as those provided by BTC.
 - Second, URCA should consider the possibility of a single national geographic market compared to sub national markets. Due to a national pricing constraint between Islands, competitive conditions in New Providence or Grand Bahama will spill over into those Islands where CBL has less coverage. This suggests a single national geographic market is appropriate. URCA has suggested that in the absence of regulation, BTC would not price on a nationally averaged basis, however BTC disagrees with this assertion.

URCA has also failed to fully consider the financial impact of its proposed set of remedies. Until such time as the access deficit, the cost of the universal service obligation (USO) and rebalancing are resolved, URCA should be mindful of imposing stringent cost-orientation remedies on wholesale products. It should be recognised that BTC is required to continue to support loss making services and that the services from which BTC can cross-subsidise will be reduced in a liberalising environment. Wholesale services could be a source of subsidisation and this would also ensure that new entrants shared the burden of the USO / access deficit until such time as suitable funding mechanisms are put in place by URCA (e.g. USO contributions / ADCs) or rebalancing has occurred. Therefore, BTC urges URCA to consider the range of products that are regulated and the basis of pricing remedies, in the context of BTC's overall operating position. A further consideration is that imposing wholesale cost

orientation obligations on loss making retail products could lead to a forced margin squeeze position, where the wholesale price is above the retail price².

URCA has also not considered the impact of the proposed remedies on incentives for infrastructure investment. BTC is in the process of rolling out a next generation network (NGN), which is expected to bring considerable benefits for BTC customers and for the wider economy in terms of quality and the launch of new services. URCA has not assessed the extent to which the proposed remedies could reduce BTC's incentives to invest in these new technologies. Furthermore, URCA has not considered how requiring BTC and CBL to open their networks may reduce incentives for network investment by other operators. For example, the requirement to provide national backhaul on a cost orientated basis may reduce the incentives for SRG and new entrants to roll-out a network. A more limited national backhaul obligation could facilitate new entry and encourage core network investment.

In light of the issues above, BTC regards URCA's proposed interim remedies to be unnecessarily onerous.

Wholesale mobile regulation:

CBL asserts that wholesale access regulations should be applied to BTC's mobile network. BTC disagrees with this. BTC has the following specific comments on CBL's proposals for MVNOs:

- The Electronic Communications Sector Policy (section 50) clearly states that the Government will issue no further cellular licences until the cellular liberalisation process is commenced 12 months after the privatisation and sale of a majority of the shares of BTC. MVNOs would require a license to operate and the granting of such licenses would clearly contradict section 50 of the Sector Policy.
- The introduction of MVNOs is inappropriate before such time as additional cellular infrastructure licences have been issued.
- A public consultation is required before the introduction of MVNOs.

BTC therefore disagrees with CBL's proposed treatment of wholesale mobile services and concurs with URCA's approach to regulating this market.

Mobile retail regulation

BTC recognises that URCA may wish to monitor the price of mobile retail services for which BTC holds exclusivity. However, additional mobile licences are expected to be granted in the near future and evidence from other Caribbean markets suggests new entrants employ aggressive strategies and markets quickly become competitive. Therefore, the remedies in this market should be limited due to

² A solution previously mooted has been to require wholesale products to be sold on a retail minus basis. However, this would require BTC to subsidise its competitors as well as its own retail customers which is not viable in a liberalising market.

their short-life. As an example, the application of price caps on mobile services would not be consistent with a light touch approach. This would also be inconsistent with the EU approach, where mobile markets are not regulated at the retail level.

Leased lines:

BTC disagrees with SRG's claim that national and international leased lines should be regulated and supports URCA's position. BTC doubts that, following a full market review process, it would be found to be dominant in this market. This suggests that these markets are competitive, or at the very least, prospectively competitive. In support of this position, BTC notes the following:

- Leased lines are provided by BTC and CBL.
- A single national geographic market should be defined, and the common pricing constraint between islands should be considered.
- BTC has 10%-30% of the market, the rest being CBL (URCA).
- BTC is therefore not individually dominant in this market. URCA could consider joint dominance, however the conditions for this finding do not exist in the Bahamas.

Similarly, BTC doubts that it would be found dominant in the provision of international leased lines for the following reasons.

- URCA has notified BTC that it has less than 25% market share by revenue and between 20% and 40% by capacity.
- CBL and BTC are actively competing in this market, as evidenced by declining prices and customers switching between the two operators. The following table show the decrease in BTC charges for international leased lines.

Figure 1: BTC international leased lines old and current prices

64 Kbps	716.00	501.20
128 Kbps	1,433.00	1,003.10
256 Kbps	2,623.00	1,836.10
384 Kbps	3,582.00	2,507.40
512 Kbps	4,665.00	3,265.50
786 Kbps	5,331.00	3,731.70
1.024 Mbps	5,998.00	4,198.60
1.544 Mbps	7,000.00	4,900.00
2.048 Mbps	7,997.00	5,597.90
3.066 Mbps	9,520.00	6,664.00

International backhaul

There are a number of providers of international connectivity in the Bahamas, many of whom have similar geographic reach to BTC. The Americas Region Caribbean Optical-ring System (ARCOS-1), which is owned by Columbus Networks (which BTC understands was, until recently, the controlling shareholder of CBL), is a major provider of international capacity for the Bahamian operators. Moreover, CBL, through its subsidiary Caribbean Crossing owns and operates an undersea fibre optic cable system linking four of the major islands of The Bahamas-Grand Bahama, New Providence, Abaco and Eleuthera with the continental United States. This submarine cable is more modern than the Bahamas II cable.

BTC uses both ARCOS-1 and Bahamas II to carry its international traffic. However, the Bahamas II cable, because of its geographic reach and restrictions imposed by the owning consortium, does not allow easy interconnection with the US operators. The ARCOS-1 cable allows easier interconnection and therefore BTC buys substantial capacity on this cable and uses it to carry its data and large parts of its international voice traffic.

BTC notes URCA's concerns over replicability. However, it is not necessary for a new entrant to purchase international backhaul from BTC in order to be able to access BTC's national network. For example, capacity could be purchased from CBL or SRG, who buys capacity from CBL and ARCOS-1. Furthermore, as explained above, BTC has to buy capacity from ARCOS-1 for its own traffic and therefore is not in a position to provide international backhaul to new entrants, BTC could only do so on a re-sell basis.

BTC urges URCA to investigate the exact capacity available to each of these players, as well as the ownership links between the various companies. However, BTC is of the opinion that, with three independent players in the market, there is no justification for URCA to assume that effective competition does not exist in this market.

Vibe

In their submission, both CBL and SRG argue that BTC Vibe services should be regulated. BTC strongly disagree with this conclusion for the following reasons:

- Vibe products have been clearly excluded by URCA from the SMP market and therefore no regulatory remedy should be imposed on them.
- No regulation should be imposed on a product until dominance is established. The declining price trend of the Vibe products is evidence that these services are subject to considerable competitive pressure and therefore no regulation is warranted.
- The concept of technology neutrality require that the competitive constrains imposed by VOI on PSTN need to be considered in the assessment of dominance. These constraints might be

sufficient to de-regulate some markets and certainly do not imply that regulation should be extended to the products that create the constraints.

- Where regulated and non regulated services are bundled together, it should not necessarily be assumed that the service as a whole should be regulated.

BTC therefore disagrees with CBL and SRG that remedies should be imposed on this product and concurs with URCA's proposed treatment.

Retail broadband internet access

BTC disagrees with CBL that CBL should not be subject to retail broadband regulation. CBL and BTC's products are clearly in the same product market and CBL has a consistently high market share that supports an SMP finding and the imposition of remedies.

Moreover, BTC agrees with SRG's observation that URCA needs to clarify that the broadband services provided by CBL over its fibre network (Axel) also need to be subject to the same regulatory obligations imposed on the broadband services provided over cable. The difference in technology is not relevant for the purpose of determining dominance and remedies. BTC urges URCA to clarify its position with respect to Axel products.

BTC does not however agree that BTC should be subject to remedies on retail broadband. BTC offers geographically averaged broadband prices that create a common pricing constraint. In the absence of regulation, BTC would continue to offer geographically averaged prices and would publicly commit to doing so. Therefore, the competitive effects felt in areas where CBL provides broadband alongside BTC are also felt in areas where CBL is not present. BTC should therefore not be regulated in the broadband internet access market.

By imposing remedies in one geographic market, URCA is implicitly regulating broadband on a national basis and reducing BTC's competitiveness. For example, due to a national pricing and product roll-out policy, BTC is unable to decrease prices or modify service conditions in New Providence or Grand Bahama without first going through an onerous tariff approval process in the regulated markets. BTC recognises that it could reduce prices and rollout new services in the unregulated markets in advance of adjusting those in regulated markets, however this would appear inequitable to customers and would be difficult for BTC from a business management perspective.

Wholesale broadband access market (bitstream)

As CBL notes, URCA's mapping of wholesale to retail product markets is at times unclear. However, BTC notes that bitstream is typically one remedy that may be applied in the wholesale broadband access market. It is unclear to BTC that it has SMP in this market, given the constraints from CBL. Therefore, any remedies should be light touch until a full market review is completed. BTC agrees with CBL that URCA may wish to consider other wholesale remedies apart from bitstream that could be implemented until such time as CBL and BTC are technically able to provide bitstream. BTC notes that

it does not believe that it is technically more complex for CBL to provide access than for BTC and so remedies should be imposed on CBL and BTC in a symmetric manner. However, operators may choose to employ different technical solutions may be used to comply with the remedy.

Tariff approval process

BTC has already expressed its disagreement with the tariff approval process in its first submission and in particular would like to draw URCA's attention to the following concerns:

- Special offer sign-off and 30 day notification period for price decreases deny consumers the benefits of timely price reductions and reduce BTC's opportunity to compete fairly. Price reductions and special offers should instead be allowed immediately, subject to provision to URCA, no less than 24 hours in advance, of evidence that the price reduction or special offer does not harm competition. Should URCA subsequently find that the price change is inconsistent with fair competition in the market, URCA could mandate the offer or price reduction be withdrawn. This would reconcile URCA's need to prevent anticompetitive behaviour, while allowing consumers to enjoy the benefits of timely price reductions.
- A 30-day notification period is excessive also for price increases: it is unclear to BTC why it would take so long for URCA to review a proposed price increase. BTC considers 20 days to be more than sufficient for URCA to satisfy itself of the reasonableness (or otherwise) of a price increase, particularly given URCA will soon have BTC's regulated accounts to assist in this approval process.
- A bundle of regulated and unregulated products should not automatically be regulated. URCA needs to consider this on a case-by-case basis.
- No notification for the introduction of new services should be required. This reduces incentives to innovate and limits consumers' choice.
- The requirement to file volume and revenue information for two years is excessive and unjustified. Moreover, URCA has not considered that such requirement was never imposed on BTC before and therefore it might be difficult at present to source of all the data.

BTC suggests that URCA considers the possibility of implementing different tariff approval processes for different products and for price increases / decreases. Furthermore, URCA could state that it would endeavour to provide an initial decision within 24 hours or 48 hours but reserves the right to take a longer period.

Process for undertaking AS and submitting the RAIO

Recognising the importance of the regulatory accounts to the successful liberalisation of the sector, BTC has begun developing its regulatory cost model based upon the draft AS guidelines. BTC has begun this process in good faith, since URCA has still to finalise the AS guidelines.

BTC is producing a robust set of regulatory accounts using 2009 financial information as speedily as possible, recognising these accounts are required for the RAIO and other regulatory remedies, including rebalancing. BTC notes that other respondents, in particular SRG, are also of the view that accounts should be produced on a 2009 basis. The following changes to URCA's process will allow BTC to meet this challenge and also aligns with the timeline put forward put by SRG.

- The requirement to produce 2008 test regulatory accounts is untimely, since 2009 data is available and unduly onerous because it requires twice the level of analysis. This would delay the 2009 accounts by at least 3 months, which would also impact the RAIO timeline. Instead, BTC proposes to submit its 2009 accounts no later than end May 2010 (a month sooner than URCA's deadline). BTC notes the following:
 - It is proposing to submit 2009 accounts in the timeline that URCA set out for the 2008 accounts, therefore the 2008 test requirement should be removed.
 - Usually operators have a minimum of 1 year from the publication of final AS guidelines to produce regulatory accounts. BTC's proposal to submit 2009 accounts in little over 3 months shows its commitment to this process.
- BTC proposes to submit the RAIO within 1 month of the regulatory accounts submission, during June 2010. Should URCA require the regulatory accounts to be revised, BTC will endeavour to submit a revised RAIO within 3 weeks of the revised accounts submission.
- Requiring a regulatory audit, particularly on a fairly presents basis, is disproportionate, inconsistent with international precedent and costly, amounting to \$6.40 per line per year. It would also delay the regulatory accounts submission by 16 weeks. Instead, BTC proposes that URCA publishes a comprehensive final AS methodology and is involved in the development and review of the accounts. That way, URCA can satisfy itself that BTC is implementing the methodology as set out. SRG has also proposed this approach. BTC notes that a regulatory audit is not required in many other small countries.
- Following comments from URCA with which BTC agrees, BTC will update and resubmit its accounts. BTC will endeavour to resubmit these within 1 month of receiving comments. BTC hopes that regular and constructive interaction with URCA and its consultants during the model development process will negate the requirement to resubmit.

AS methodology

In some cases the AS methodology proposed by URCA appears overly complex and could delay the submission of the accounts beyond end May 2009 as:

- The product set required in the accounting separation model is excessive and includes a number of products in which BTC has not been found to be dominant and which URCA explicitly excluded from the market review. In particular, BTC is required to develop a wholesale product

catalogue containing 100+ wholesale products for sale to the retail business. This is not only disproportionate at this time, but would delay the submission by up to 6 months. BTC therefore urges URCA to clarify the AS guidelines and the requirements in Annex 5.

- Where BTC does not currently provide a wholesale product, the cost of the product cannot be included in an AS model based upon historical accounting information. However, URCA will be provided with the network and retail component costs and could apply routing factors to calculate these hypothetical product costs.

BTC proposes that URCA and BTC discuss this issue further and that URCA clarifies its methodology before issuing the final guidelines. BTC proposes to submit accounts without annex 5 (the wholesale / retail product catalogue). This is consistent with the European Recommendation for the implementation of Accounting Separation models³. Should URCA subsequently decide that the accounts do not provide sufficient transparency, which BTC doubts will be the case, URCA can require the additional steps to be implemented in 2010 and beyond.

Comments on the services in the RAIO

The product list proposed for the RAIO appears inconsistent with the set of products in which URCA has declared BTC to be dominant. BTC requests that URCA confirms that the RAIO is intended to be indicative and that the mandated products are limited to those in which BTC has SMP. BTC notes the following:

- URCA has clarified verbally to BTC that the RAIO guidelines are intended to be indicative and that the SMP services are the minimum set which must be included. Additional services, for example CPS, should not be mandated until a separate SMP and remedies consultation has occurred.
- BTC proposes that the minimum set of services in the RAIO should be those in which BTC has been found to have SMP and where there is demand for those services. For example, BTC has not had a request to provide international backhaul and so it would be costly for BTC to develop an offering for this service when demand does not exist for it. BTC commits to developing an offer within 3 months of a request for any SMP service not contained in the RAIO.

Digicel asserts that interconnection should be provided at any feasible point. BTC disagrees with this and would like to point out that there is a fixed cost of providing interconnection at each point of and for this reason, along with regulators typically wishing to encourage network competition, interconnection is usually limited to a set number of interconnection gateways.

³ Commission Recommendation of 19 September 2005 on accounting separation and cost accounting systems under the regulatory framework for electronic communications, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:266:0064:0069:EN:PDF>

Consistency of regulation of CBL

CBL asserts that different obligations with respect to the same product (for example, broadband access) should be imposed on CBL and BTC on the basis of international precedents. BTC has reviewed the benchmarks that have been presented by CBL.

- Where telecommunication remedies have not been imposed on Cable companies, this is because the cable company has not been found to be dominant in that particular market and not because cable was excluded from the market review process. Telecoms services provided by cable are consistently determined to be in the same product market as those provided by the fixed line operator within the EU.
- CBL has been selective in its choice of benchmark countries. There are countries in which cable companies have been subject to telecommunications remedies following a market review. For example, in the Netherlands, Singapore and Denmark.
- CBL has benchmarked remedies being imposed on cable-tv operators. However, BTC notes that CBL is not purely a cable-tv operator and, through its subsidiary Caribbean crossing, provides telecommunication services including broadband, international connectivity and leased lines. This is not common to the benchmarked cable companies. BTC notes in Denmark, where there is common ownership between the telecoms and the cable company, the regulator considered the combined market share of the company and imposed remedies on both entities.

URCA should consider telecommunication services being provided by CBL and its subsidiaries to be in the same product market as those provided by BTC. CBL and BTC should be assessed under a consistent market review process and a consistent set of remedies imposed. Where multiple operators are found to be dominant in a market, symmetric and non-discriminatory remedies should be imposed. For example, CBL should be required to provide bitstream in the wholesale broadband access market.

BTC disagrees that CBL should not be required to provide separated accounts. First, these are required to understand the costs of the cable-tv business versus the telecommunications business. Second, where CBL has been found to be dominant then the AS accounts are required to set cost orientated prices. CBL notes AS is an unusual obligation for a cable-tv company, however CBL should recognise that the AS requirement reflects market conditions in The Bahamas and it having a telecommunications subsidiary (CBL).

Regulation of new entrants

Digicel argues that new entrants should be allowed to charge higher interconnection rates than incumbents, based on higher per-unit cost at the beginning of an operator's operations. BTC strongly disagrees with this view on the basis that, if two or more operators are designated to have SMP on a market, then treating these operators differently may lead to significant efficiency losses due to their impact on incentives to invest and innovate and artificially discouraging (or encouraging) investment by

an operator relative to another. This argument has been ruled out by the EU who no longer permit new entrants to be exempted from mobile termination rate regulation and require symmetrical termination rates, except where spectrum allocations are sufficiently different.

2 Introduction

2.1 Background

On the 30th September 2009, the Utilities Regulation and Competition Authority (URCA) issued 5 consultation documents to define the obligations imposed on the operators with presumed Significant Market Power (SMP) as set out in Schedule 4 of the Communications Act 2009 (Comms Act). These are the following:

- Preliminary Determination: Types of obligations on The Bahamas Telecommunications Company Limited under S.116(3) of Comms Act (the "Preliminary Determination on BTC");
- Preliminary Determination: Types of obligations on Cable Bahamas Ltd. under S.116(3) of Comms Act (the "Preliminary Determination on CBL");
- Draft Guidelines: Accounting Separation and Cost Accounting issued to The Bahamas Telecommunications Company Limited (the "AS guidelines for BTC");
- Draft Guidelines: Accounting Separation and Cost Accounting issued to Cable Bahamas Ltd. (the "AS guidelines for CBL"); and
- Draft Guidelines: Access and Interconnection (the "Access and Interconnection guidelines").

On the 21st December 2009, URCA published the responses to the consultation documents received from all interested parties. This document sets out BTC's comments on the responses submitted by the other parties to URCA's consultation documents. It addresses each response in turn. In this response, references to Cable Bahamas (CBL) are intended to refer to the operations of both CBL and its subsidiary Caribbean Crossing (CCL).

In response to a request from URCA, this document also summarises the obligations that BTC feels are appropriate to impose on BTC given the consultation document published by URCA and discussions between URCA and BTC to date consistent with URCA's Public Notice of the Revised URCA timetable.

3 Summary of BTC's proposed alternative obligations

3.1 Proposed alternative remedies

Without prejudice to the legal arguments regarding the process followed by URCA in this consultation, which are set out in section 4.13 of this document, this section provides a high-level summary of BTC's alternative proposed obligations. Additional comments and rationales have been already provided in BTC's first submission to URCA and in the previous sections of this document. Notwithstanding BTC's provision of the summary alternative proposed obligations below, and its constructive engagement with URCA in this response, BTC reserves its rights to challenge the validity of the process in any subsequent administrative or judicial proceeding.

Additional comments and rationales are provided in BTC's first submission to URCA and in the following sections of this document.

Figure 2: BTC proposed alternative remedies

Market	Proposed Remedy on BTC
Retail fixed voice and access markets	<ul style="list-style-type: none"> - <u>Price decreases and special offers</u>: 24 hour notice to URCA, but URCA reserve the right to mandate the price reduction to be withdrawn, if anticompetitive. - <u>Price increases</u>: 20 day notification period - <u>Bundles</u>: URCA to consider on a case-by-case basis if a bundle or regulated and unregulated products need to be regulated - <u>New Services</u>: no regulation - <u>International long distance calls (ILD)</u>: included in the list of regulated services, but without being subject to tariff approval process
Retail mobile voice, access and data markets	<ul style="list-style-type: none"> - <u>Price decreases and special offers</u>: 24 hour notice to URCA, but URCA reserve the right to mandate the price reduction to be withdrawn, if anticompetitive. - <u>Price increases</u>: 20 day notification period - <u>Bundles</u>: URCA to consider on a case-by-case basis if a bundle or regulated and unregulated products need to be regulated - <u>New Services</u>: no regulation
International incoming calls	Removal of charges to customers
Wholesale call transit and call termination services on fixed network	URCA to separately define termination and transit products and clarify definition. Inclusion in the RAIO Cost orientation Symmetric regulation to new entrants

Wholesale call transit and call termination services on mobile network	URCA to separately define termination and transit products and clarify definition. Inclusion in the RAIO Cost orientation Symmetric regulation to new entrants
Other mobile wholesale markets	No regulation
Retail broadband internet access	No regulation (but commitment to national pricing policy)
Wholesale broadband internet access	No regulation until dominance assessment is carried out. Should URCA seek to impose remedies. URCA should also consider alternatives to Bitstream. However, should URCA persist with a Bitstream remedy, this should not be mandated until technically feasible (subject to NGN roll-out). This should also be imposed symmetrically to CBL.
National backhaul	This market should be separated into trunk and backhaul and URCA should provide a clear definition of these two products. No regulation should be imposed on trunk segments. Backhaul is a complement product to Bitstream and therefore it should not be mandated until Bitstream services can be provided. Once provision is feasible, there should be an obligation to include in the RAIO, but no cost orientation
International backhaul	No regulation, except obligation to provide (obligation to be imposed on all parties with international capacity ownership). If cost orientation is imposed, then URCA must consider that BTC needs to purchase additional capacity from either Bahamas II or ARCOS-I. Two separate prices need to be calculated, depending on the cable (Bahamas II or ARCOS-I) chosen by the new entrant.
Vibe	No regulation
National Leased Lines	No regulation
International Leased Lines	No regulation

3.2 AS guidelines

In BTC's consultation response, BTC set out its alternative proposals to changes in the AS guidelines issued by URCA.

URCA has requested that BTC demonstrates that the proposed changes to the AS guidelines are compliant with the EU recommendations⁴. The following table summarises the EU Recommendations for the implementation of Accounting Separation models and how these will be satisfied in practice in BTC's AS model.

Figure 3: EU AS recommendations and BTC AS model compliance solutions

EU recommendation	BTC model implementation
(1) The purpose of imposing an obligation to implement a cost accounting system is to ensure that fair, objective and transparent criteria are followed by notified operators in allocating their costs to services in situations where they are subject to obligations for price controls or cost-oriented prices	All cost and revenues allocation will be developed in a transparent manner, based on the principle of cost causality. URCA will be provided with detailed explanations of the data and calculations used for the development of each allocation.
(2) It is recommended that national regulatory authorities require from the notified operators the disaggregation of their operating costs, capital employed and revenues to the level required to be consistent with the principles of proportionality, transparency and regulatory objectives mandated by national or Community law	Operating costs, capital employed and revenues accounts are taken directly from BTC GL and clearly distinguished in the model. The mapping from GL accounts to AS cost categories will be provided to URCA.
(3) It is recommended that the allocation of costs, capital employed and revenue be undertaken in accordance with the principle of cost causation (such as activity-based costing, 'ABC').	All allocation will be developed based on the principle of cost causation and activity-based costing is used for the development of allocations.
(4) The cost accounting and accounting separation systems of the notified operators need to be capable of reporting regulatory financial information to demonstrate full compliance with regulatory obligations. It is recommended that this capability be measured against the qualitative criteria of relevance, reliability, comparability and materiality	P&L and statement of capital employed will be provided for each network business (and each network component) and for each retail and wholesale service. Unit costs for each network component and service will also be provided.
(5) It is recommended that national regulatory authorities satisfy themselves as to the adequacy and effectiveness of the cost accounting and accounting separation systems; such systems may be subject to public consultation	BTC is open to meetings with URCA to discuss and explain the model methodology, so that URCA can satisfy itself that the methodology used is adequate and consistent with the guidelines.
(6) It is recommended that a national regulatory authority, when assessing the features and specification of the cost accounting system, reviews the capability of the notified operator's cost accounting system to analyse and present cost data in a way that supports regulatory objectives. In particular, the cost accounting system of the notified operator should be capable of differentiating between direct costs, and indirect costs.	The methodology adopted in BTC AS model clearly identifies those costs which are directly attributed to a service or network component and those costs which need to be allocated. The information provided to URCA allows clear identification of direct and indirect costs.
(7) It is recommended that national regulatory authorities, having adopted a decision on a cost accounting system based on current costs set clear deadlines and a base year for their notified operators' implementation of new cost accounting systems based on current costs	Not currently relevant.

⁴ Commission Recommendation of 19 September 2005 on accounting separation and cost accounting systems under the regulatory framework for electronic communications, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:266:0064:0069:EN:PDF>

<p>(8) Evaluation of network assets at forward-looking or current value of an efficient operator, that is, estimating the costs faced by equivalent operators if the market were vigorously competitive, is a key element of the 'current cost accounting'(CCA) methodology. This requires that the depreciation charges included in the operating costs be calculated on the basis of current valuations of modern equivalent assets. Consequently, reporting on the capital employed also needs to be on a current cost basis. Other cost adjustments may be required to reflect the current purchase cost of an asset and its operating cost base. Evaluation of network assets at forward-looking or current value may be complemented by the use of a cost accounting methodology such as long run incremental costs (LRIC), where appropriate. It is recommended that national regulatory authorities have due regard to price and competition issues that might be raised when implementing CCA, such as in the case of local loop unbundling. It is recommended that national regulatory authorities take due regard to further adjustments to financial information in respect of efficiency factors, particularly when using cost data to inform pricing decisions since the use of cost accounting systems (even applying CCA) may not fully reflect efficiently incurred or relevant costs. Efficiency factors may consist of evaluations of different network topology and architecture, of depreciation techniques, of technology used or planned for use in the network.</p>	<p>Not currently relevant</p>
<p>(9) It is recommended that notified operators required to report accounting separation provide a profit and loss statement and statement of capital employed for each of the regulatory reporting entities (based on the relevant markets and services). Transfer charges or purchases between markets and services need to be clearly identified in sufficient detail to justify compliance with non discrimination obligations. These accounting separation reporting obligations may require the preparation and disclosure of information for markets where an operator does not have SMP</p>	<p>P&L and statement of capital employed will be provided for each network business (and each network component) and for each retail and wholesale service. Transfer charges between the network businesses and the retail and wholesale products will be clearly identified. Non discrimination is assured by the application of the same unit costs of network components for both retail and wholesale services. Costs and revenues for non-regulated services will be included in the statements for reconciliation purposes.</p>
<p>(10) For consistency and data integrity, it is recommended that the financial reports of the regulatory accounts be consolidated into a profit and loss statement and a statement of capital employed for the undertaking as a whole. A reconciliation of the separate regulatory accounts to the statutory accounts of the operator is also required. These statements should be subject to an independent audit opinion or a national regulatory authority compliance audit (subject to the availability of suitably qualified staff).</p>	<p>A consolidated P&L and statement of capital employed will be provided for consistency. BTC believe that a regulatory audit is not appropriate in the case of the Bahamas, but instead proposes that URCA conducts its own review of the model.</p>

<p>(11) It is recommended that national regulatory authorities make relevant accounting information from notified operators available to interested parties at a sufficient level of detail. The detail of information provided should serve to ensure that there has been no undue discrimination between the provision of services internally and those provided externally and allow identification of the average cost of services and the method by which costs have been calculated. In providing information for these purposes, national regulator authorities should have due regard for commercial confidentiality. In this respect, the publication by the notified operator of sufficiently detailed cost statements showing, for example, the average cost of network components will increase transparency and raise confidence on the part of competitors that there are no anti-competitive cross-subsidies. This is considered to be particularly important for wholesale services.</p>	<p>Regulatory accounts will be provided to URCA on the basis that these will be made public. BTC however requires that other information which will be provided to URCA remains confidential. This will be discussed with URCA.</p>
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4 BTC Comments on CBL and Caribbean Crossing responses to BTC and CBL preliminary determinations

This section of the document outlines BTC comments on the responses and arguments provided by CBL in its submissions to URCA. It covers CBL's response to both the BTC and CBL Preliminary Determinations.

4.1 Process for assessing SMP on Cable and BTC

In their submission, CBL and Caribbean Crossing state that URCA has not conducted an appropriate assessment of dominance and has imposed remedies which are disproportionate. In particular, CBL states that no regulation on CBL's retail broadband can be justified under the new framework.

BTC urges URCA to take the following considerations into account when assessing the market for broadband services.

When defining a product market, URCA should consider the extent to which there are demand-side and supply-side substitution possibilities. In most cases, telecommunication products provided by CBL provide an effective demand side substitute to BTC's products and should be considered in the same product market. This is consistent with international precedent. For example, the majority of EU countries consider cable broadband to be a substitute to DSL. Differences in geographic footprint are not the usual basis upon which to define separate product markets, but URCA should consider the footprint of the operators when considering geographic markets. BTC agrees with CBL that there are differences in footprint between the two operators for different services. For example, due to regulatory obligations, BTC serves Family Islands whereas CBL does not. However, this does not in itself support non-national geographic market definitions or separate product market definitions. To the extent that a national pricing constraint exists then competitive conditions in New Providence and Grand Bahama will also be felt in the smaller islands. This supports a single national geographic market⁵.

URCA has noted that it does not consider there to be a national pricing constraint on BTC's products and that in the absence of regulation it doubts that BTC would continue to price products on a national basis. BTC addresses this in more detail for particular products later in this document, however BTC notes that it has always priced on a national basis and that its systems and sales and marketing functions are not set up to facilitate non national pricing (i.e. different pricing by reference to different geographic areas). Furthermore, international evidence shows that most operators continue to price on a nationally averaged basis even in the absence of retail price regulation. There is no evidence to suggest that BTC would not do the same. BTC is willing to commit to continuing to price on a national basis in particular markets should this negate a finding of SMP in a particular market.

⁵ An example of national pricing constraints in defining geographic markets is provided by Ofcom in <http://www.ofcom.org.uk/consult/condocs/wbamr07/>

Where there is a national pricing constraint, imposing a remedy in the regulated market automatically creates a constraint in the unregulated market, for example, to the extent that BTC is required to wait 30 days to reduce tariffs or to make changes to its product in the regulated areas, this requirement will also be felt in the other areas. BTC recognises that it could change its business structure, systems and processes to allow it to offer price reductions and new products to unregulated areas ahead of regulated ones. However, this would be inequitable and may create customer confusion and dissatisfaction. It would also be costly and difficult to implement.

SMP should be considered within the defined markets. In many international countries, including those referenced by CBL, cable operators have not been found dominant in the provision of telecoms services. However, in these cases often the incumbent PSTN operator is also not found dominant, e.g. retail broadband. Also, often the cable operator does not provide the range of telecommunication services being (or soon to be) supplied by CBL.

BTC notes that the market review and SMP assessment should take place with respect to national market conditions. International cable benchmarks, whilst interesting, are not of much assistance in The Bahamas where market conditions are significantly different from those that exist in the benchmark countries. In particular, the proportion of cable based broadband is higher, there is only one cable tv operator and CBL also provides national and international connectivity for telecommunication purposes. Had these features been present in the benchmark countries put forward by CBL, then it is possible that the cable companies may have been found to be individually or jointly dominant in telecommunication products and also be subject to regulatory remedies.

In the context of a full market review, when considering SMP in the correctly defined product/ geographic markets, URCA is likely to find that in some cases no single operator has individual dominance. In this case, consideration should be given to joint dominance. In reviewing this issue, URCA must be mindful that market share alone is insufficient to support a finding of joint dominance.

Figure 4: Market features to be considered in joint dominance assessment

Market feature	Joint Dominance Consideration
Similarity of market shares	Players with similar market shares are likely to have similar incentives, increasing the potential for collusion
Similarity of cost structures	Similarity of cost structures facilitates knowledge of other players' pricing behaviour and strategy, and increases the sustainability of collusion
Homogeneity of product	A lack of product differentiation aligns players' incentives and reduces uncertainty, facilitating collusion
Retaliatory mechanisms	Allows players to overcome short term incentives to defect from a collusive arrangement
Other informal links	Allows exchange of information, which reduces

	uncertainty about other players' moves and increases sustainability of collusion
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Under s.39(1) of the Comms Act, URCA has the power to determine that licensees have SMP, and in particular joint dominance, as follows:

"URCA may at any time determine that a licensee is an SMP licensee if the licensee, individually or with others, enjoys a position of economic strength which enables it to hinder the maintenance of effective competition on the relevant market by allowing it to behave to an appreciable extent independently of its competitors, consumers and subscribers"(emphasis added)

This provision gives URCA a power to make an SMP determination if a licensee either individually, or with others, is able to hinder competition. There is no requirement for any agreement, collusion or concerted practice between the licensees to give rise to this power. This provision therefore empowers URCA to make a finding of joint dominance between two competitors in the same market, although BTC submits that any such finding should be subject to an assessment of the existence of the market features set out in the joint dominance assessment table set out at figure 4 above.

4.2 Proportionality, consistency and symmetry of regulation and process

BTC has previously stated the importance of applying regulatory remedies to SMP operators on a consistent basis. For example, the requirement to provide access to SMP products on a cost-orientated basis should be consistently applied to CBL and BTC for products in respect of which they have SMP.

The legal basis for this consistency of approach is set out at s.8(1) of the Utilities Regulation and Competition Authority Act 2009 (URCA Act). This provides that *"all regulatory and other measures by URCA shall be proportionate to their purpose and introduced in a manner that is transparent, fair and non-discriminatory"*. Section 7 of the Sector Policy confirms the importance of a non-discriminatory, technology neutral approach in describing how the Government has set out to create a *"converged regulatory framework, overseen by a converged regulatory and competition authority"*. Section 16 of the Sector Policy also recognises the need for consistency, symmetry and non-discrimination, in describing the *"the need to ensure as level a playing field for all as possible"*.

Finally, s.5 of the Comms Act requires that all policy measures, decisions and laws to take effect in the electronic communications sector in The Bahamas should comply with guidelines stipulating that *"market forces shall be relied upon as much as possible as the means of achieving the electronic communications policy objectives"*. Where market forces are, in URCA's view, unlikely to achieve the electronic communications policy objective within a reasonable timeframe, regulatory and other measures which are to be imposed must be *"efficient and proportionate to their purpose and introduced in a manner that is transparent fair and non-discriminatory"*.

Accordingly URCA has a statutory duty to apply a consistent regulatory process and principles to all licensees and the regulatory remedies applied as a result should be applied in a transparent, fair and non-discriminatory manner. As a result, any challenge to the SMP condition setting process by CBL or any other person must not result in the application of a different regulatory process or regime to different licensees if URCA is to discharge its statutory duties correctly. In particular, the same restraints on entering new markets in s.116(5) of the Comms Act should apply to both BTC and CBL.

CBL strongly argues in its submission that URCA has not paid sufficient consideration to the costs of the proposed obligations on CBL. BTC agrees in principle with the requirement to consider the costs versus benefits of individual remedies and to ensure that the remedies are proportionate and not unduly burdensome.

Where URCA introduces regulatory and other measures, it must, under s.5 of the Comms Act, have "*due regard to the costs and implications of those regulatory and other measures on affected parties.*" As set out above, these measures should also be "*efficient and proportionate to their purpose and introduced in a manner that is transparent fair and non-discriminatory*". The importance of this principle is demonstrated by the inclusion of the same requirement for proportionality, fairness and non-discrimination in s.8(1) of the URCA Act. It is important that the burden and cost imposed upon BTC and CBL should be equivalent if it is to be non-discriminatory.

Section 8(2) of the URCA Act provides that "URCA shall carry out its functions and exercise its powers in a manner... that is best calculated to promote any policy objectives applicable to any regulated sector". URCA must therefore have regard to the Sector Policy objectives requiring the application of proportionate remedies. Section 9 of the Sector Policy states that, "to ensure a continued incentive for electronic communications providers to invest in up-to-date and innovative services and infrastructures, it is critical that the overall policy and regulatory framework governing the sector is set out clearly and ...strikes the right balance between regulatory oversight and commercial freedom". Section 13 of the Sector Policy further states that "adopting a fair attitude to existing providers" is important. Imposing SMP obligations without regard to whether the cost is fair, proportionate and balanced by the resulting benefits to consumers arguably runs counter to these Sector Policy objectives

Section 24 of the Sector Policy outlines the Government's expectation that "URCA should, where consistent with the core objectives, apply a light touch regulatory approach to the electronic communications sector". Again, applying burdensome and costly whole scale SMP obligations during a transitional period and without first applying a proper market review process runs contrary to this objective. .

The principle in s.40 of the Comms Act, while relating to the imposition of full scale regulation, could and should also inform URCA's approach to the interim SMP regulation. Section 40(2) requires that, prior to imposing any specific conditions on licensees determined to have SMP in the relevant market(s), URCA must "review the market or markets in which the licensee has SMP" and "consider the regulatory burden and the benefits to consumers of imposing any such obligation on a licensee".

As URCA has not yet carried out a full analysis of the applicable market forces, the market failures (if any) that exist or are likely to exist have not yet been identified, and consequently the measures required to correct such failures are not yet clear. As a result, full scale regulation which places significant burdens on interim SMP licensees should not be imposed during the transitional, pre-market review period. The block on entering new markets under s.116(5) provides a further reason why such full scale regulation is not necessary during the transitional period. BTC's initial response identifies the ways in which BTC believes the market review process and imposition of SMP conditions should be effected in order to fulfil the requirements set out above.

Whilst CBL argues that the proposed SMP regulation on it imposes unwarranted cost, BTC notes that CBL then proceeds to propose that regulation on BTC should be substantially increased from that proposed by URCA, without any consideration as to the costs to BTC. BTC urges URCA to note the imbalance in CBL's arguments and to continue to regulate BTC and CBL in a consistent, non-discriminatory manner, so as not to create distortions in the market and so as to correctly discharge its statutory obligations. In response to CBL's comments, BTC estimates that the costs of implementing a specific remedy by BTC and CBL are likely to be relatively similar and that cost is unlikely to provide a sufficient rationale for removing remedies from CBL that continue to be applied to BTC.

CBL asserts that different obligations with respect to the same product (for example, broadband access) should be imposed on CBL and BTC on the basis of international precedents. BTC has reviewed the benchmarks that have been presented by CBL and responds as follows:

- Where regulatory remedies have not been imposed on cable companies, this is because the cable company has not been found to be dominant in that particular market. The products supplied by the cable company will have been considered in the market review, but the company will have been found not to be dominant. For example, this occurs in the UK where Virgin Media is not found dominant in any market due its market shares being below the SMP threshold. This is not the case in the Bahamas where CBL has SMP in some markets.
- CBL has been selective in its choice of benchmark countries. There are countries in which cable companies have been subject to regulatory remedies following a market review. For example, the Dutch regulator OPTA has recently imposed a WLR remedy on the Cable TV company. Similar remedies are also in place in Denmark and Singapore.
- CBL has benchmarked remedies being imposed on cable-tv operators. However, BTC notes that CBL is not purely a cable-tv operator and, through its subsidiary CCL, provides a range of telecommunication services including broadband, international connectivity and leased lines. This is not common to the benchmarked cable companies. BTC notes in Denmark, where there is common ownership between the telecoms and the cable company, the regulator considered the combined market share of the companies and imposed remedies on both entities. URCA should consider the products being provided by CBL and its subsidiaries and recognise these differ from those imposed in the countries benchmarked by CBL.

BTC therefore urges URCA to apply remedies on dominant operators in a symmetric and non discriminatory manner, as URCA has proposed in its initial consultation.

4.3 Interconnection services mandated on BTC

CBL states that the set of interconnection services which BTC is mandated to provide is insufficient. In particular, CBL states that the list of interconnection products which are subject to SMP obligations should include all products listed on page 155 of the Preliminary Determination on BTC. This list includes products such as indirect access (call origination), mobile termination, access to the local loop and co-location/facilities sharing. BTC strongly believes that these additional products should not currently be mandated, based on the following considerations:

- Additional regulation should only be imposed on the basis of a finding of SMP. BTC believes that CBL will be found either singly or jointly dominant in the provision of many of these services. The technical difficulties faced by CBL in terms of co-locating equipment are no greater than those difficulties faced by BTC.
- Imposing full scale SMP regulation of this nature during a transitional period runs counter to the objectives outlined in the Sector Policy, in particular Section 52, which recognises that these should be *"interim market definitions and SMP determinations...subject to more detailed market reviews"* in 12 months' time; Section 24, which requires URCA to apply a *"light touch regulatory approach"*, and Section 13, which outlines the importance of *"adopting a fair attitude to existing providers"*.
- Before imposing remedies such as indirect access, mobile call origination (which implies the introduction of MVNOs) and access to the local loop, there must be a proper market review and a consultation process must be conducted. It seems quite contradictory that CBL criticises URCA for its "serious procedural flaws"⁶ and at the same time propose that URCA should impose such advanced regulatory remedies in this interim phase, in the absence of a full market review and without a public consultation.
- The results of a cost/benefit analysis on these remedies in such a small country such as The Bahamas are uncertain. The fixed costs of provision of the services above are high and might not be outweighed by the resulting benefits. This analysis will need to be conducted before these remedies are imposed.
- BTC cannot be required to provide all interconnection services at once. The technical, financial and administrative burden which would be imposed on BTC if all these services were imposed at the same time would be excessive. Section 40 of the Comms Act requires URCA to

⁶ Response of Cable Bahamas LTD and Caribbean Crossings LTD to URCA's Preliminary Determination, Draft order and Consultation document on types of obligations on Bahamas Telecommunications Company LTD under S.116(3) Communications Act, 2009 (ECS 18/2009), page 3

consider the regulatory burden and the benefits to consumers of imposing any SMP obligation under s.40(2)(b) in respect of full scale regulation, and BTC submits that it is even more important to take such costs into consideration in respect of interim regulation imposed under the transitional provisions of s.116 before a proper market review has been carried out. The liberalisation of the market and the imposition of regulation should follow a gradual process.

With reference to specific remedies set out by CBL, BTC has the following comments:

- *MVNO access.* CBL has not given consideration to BTC's mobile exclusivity which prevents licensing of MVNOs. Furthermore, introducing MVNOs would reduce the potential for infrastructure based competition in the future. For this reason, MVNO access is more often granted on a commercial basis than due to regulation
- *Access to facilities and Infrastructure sharing and co-location.* CBL does not specify the facilities to which they require access. However, BTC believes that consideration should be given to the economic efficiency as well as the technical feasibility of infrastructure sharing. This must be analysed with reference to the specific facilities which an operator wants to share. URCA should also consider the extent to which infrastructure sharing can reduce both BTC's and the other operator's incentive to invest in and innovate in relation to their network. This is clearly contrary to the objectives stated in s.4(a)(ii) of the Comms Act, to "promote investment and innovation in electronic communications and networks", and might create a monopoly in parts of the networks which would otherwise have the potential to be competitive. A detailed explanation of BTC's position with respect to the sharing of specific facilities can be found in section 4.3.2 of BTC's submission to URCA.
- *Indirect access.* As explained in section 4.3.2 of BTC's response, both carrier selection (CS) and carrier pre-selection (CPS) are usually only implemented after a regulatory consultation and impact assessment. This should take into account the cost of implementing these solutions alongside the likely demand (and therefore benefit) of the solution. A cost benefit analysis is required on this prior to a decision on these products.
- *Number portability.* This should only be imposed after a consultation process. Moreover, it is unclear to BTC why CBL suggests such remedy to be imposed only on BTC. If such remedy is imposed by URCA, it should apply symmetrically on all operators on a consistent basis.

4.4 Regulation of international connectivity (leased lines and backhaul)

BTC has reviewed the paper by Analysys consulting on the international connectivity market in The Bahamas. This indicates that CBL and BTC international connectivity products are part of the same

product market and that both parties are able to provide voice and data services⁷. Therefore each others' international capacity acts as a demand side constraint.

URCA could also evaluate competition on individual routes. For example, Ofcom deregulated many international routes where C&W, BT and others were competing but maintained regulation on other routes where there was only a single provider. In the case of The Bahamas, the destination of the international links are similar and the most important route is to the US where there are multiple links provided by CBL, BTC and others. Evidence of effective competition can also be seen by falling international prices and prices that are comparable to others in the region, as evidenced by Analysys.

BTC supports CBL's argument that the international leased line market is competitive and should not be regulated. BTC wishes to note the following, which supports the proposition that the international leased line market is competitive and that URCA is correct in not imposing remedies on BTC for wholesale and retail international leased lines:

- BTC has only 5-25% of market share by revenue or 20%-40% of market share by capacity in this market (URCA). This is less than the market share of CBL and related companies (including Caribbean Crossing and Columbus Networks).
- BTC does not meet the criteria for individual dominance and so joint dominance would need to be considered.
- Low and declining prices alongside no evidence of co-ordination between parties does not justify a finding of joint dominance. Therefore remedies should not be imposed on BTC in this market. This concurs with URCA's view. The following table show the decrease in BTC charges for international leased lines.

Speed			
64 Kbps	716.00	501.20	-30%
128 Kbps	1,433.00	1,003.10	-30%
256 Kbps	2,623.00	1,836.10	-30%
384 Kbps	3,582.00	2,507.40	-30%
512 Kbps	4,665.00	3,265.50	-30%
786 Kbps	5,331.00	3,731.70	-30%
1.024 Mbps	5,998.00	4,198.60	-30%
1.544 Mbps	7,000.00	4,900.00	-30%
2.048 Mbps	7,997.00	5,597.90	-30%
3.066 Mbps	9,520.00	6,664.00	-30%

⁷ CBL provides voice services through the sale of an IRU to SRG

- Separately, URCA should investigate the ownership details of CBL with regards to its interest in SRG (through the supply of international capacity) and links to Columbus Networks and ARCOS-1 via its parent company. Moreover, URCA should consider that CBL also owns its own submarine cable, in addition to the capacity it owns on ARCOS-1. Aggregating international capacity market share across all companies with ownership links may support a finding of international dominance on CBL. In which case, remedies could be applied to CBL.

Despite URCA stating that remedies are unnecessary in the international leased line markets, URCA proceeds to impose an obligation to supply on a cost orientated basis in the international backhaul market. BTC does not currently supply this product and there have been no requests to supply. URCA has informed BTC that it is imposing an obligation not merely on SMP grounds, as defined by market shares, but due to concerns about replicability. URCA's power to impose SMP regulation in the interim period is imposed/confined by s.116, which (at s.116(2)) provides powers for URCA to impose obligations only "*in relation to each market in which it is presumed to have SMP*" and only for "*the objective of encouraging, promoting and enforcing sustainable competition*". Given these constraints and the fact that URCA has chosen to exclude international leased lines from SMP regulation in the interim period BTC submits that URCA should not be imposing any obligation on URCA in this market. In any event:

- BTC is of the view that there is a sufficiently large number of international connectivity in the Bahamas, many of whom have similar geographic reach to BTC. The Americas Region Caribbean Optical-ring System (ARCOS-1), which is owned by Columbus Networks (which BTC understands was, until recently, the controlling shareholder of CBL), is a major provider of international capacity for the Bahamian operators. Moreover, CBL, through its subsidiary Caribbean Crossing owns and operates an undersea fibre optic cable system linking four of the major islands of The Bahamas - Grand Bahama, New Providence, Abaco and Eleuthera with the continental United States. BTC is part of the consortium that owns the Bahamas II cable, but it also uses ARCOS-1 to carry its international traffic. BTC urges URCA to investigate the exact capacity available to each of these players and also to confirm the ownership links between the players.
- CBL's cable is more modern and has different characteristics to BTC's Bahamas II cable and is able to provide services that BTC is not able to. For example, the Bahamas II cable cannot as easily be used for data traffic, due to difficulties of interconnection with the US Network Access Points (NAPs). BTC therefore is forced to buy capacity on ARCOS-1 to carry its own international data and voice traffic.
- CBL has a far greater number of customers for its international connectivity than BTC. For example, SRG only buys international capacity from CBL and ARCOS-1 and not from BTC. Moreover, BTC only provides capacity to one ISP and in discussion with a possible second ISPs. Other ISPs therefore must be buying capacity from CBL (on the cable directly owned by CBL) and ARCOS-1.

- For services for which BTC's Bahamas II cable connectivity is fit for purpose, and in particular voice, BTC may also be unable to provide international backhaul services since the consortium that owns Bahamas II does not allow other carriers that are not a part of the consortium to access the cable. Moreover, due to the lack of access to the US NAPs this cable is less attractive for external carriers. On this basis, it is not reasonable to assume that new entrants would try to buy international capacity from BTC, especially considering that BTC does not have any spare capacity that it can sell to other operators. Were BTC to sell capacity to other operators, it could only do so on a re-sell basis (i.e. buying capacity from ARCOS-1 and resell it).
- It is not necessary to purchase international backhaul from BTC in order to be able to convey services over BTC's network. It is possible for the service to be transported using CBL's or ARCO-1 cable and then for traffic to be handed over to BTC or vice versa.

Based upon the above evidence, BTC submits that a more appropriate remedy would be an obligation to supply, subject to technical feasibility, given (i) the s.5(a) Comms Act guidelines to rely upon market forces as much as possible as the means of achieving the Sector Policy objectives and (ii) URCA's s.116 duties to impose interim SMP obligations only in relation to each market in which it is presumed to have SMP and only for "*the objective of encouraging, promoting and enforcing sustainable competition*", BTC does not propose that a cost orientation remedy is proportionate or necessary given the pricing constraints from CBL and ARCO-1 who have a far higher share of capacity, and are *able to offer a greater range of services and therefore are able to constrain* BTC's prices.

4.5 Regulation of national leased lines

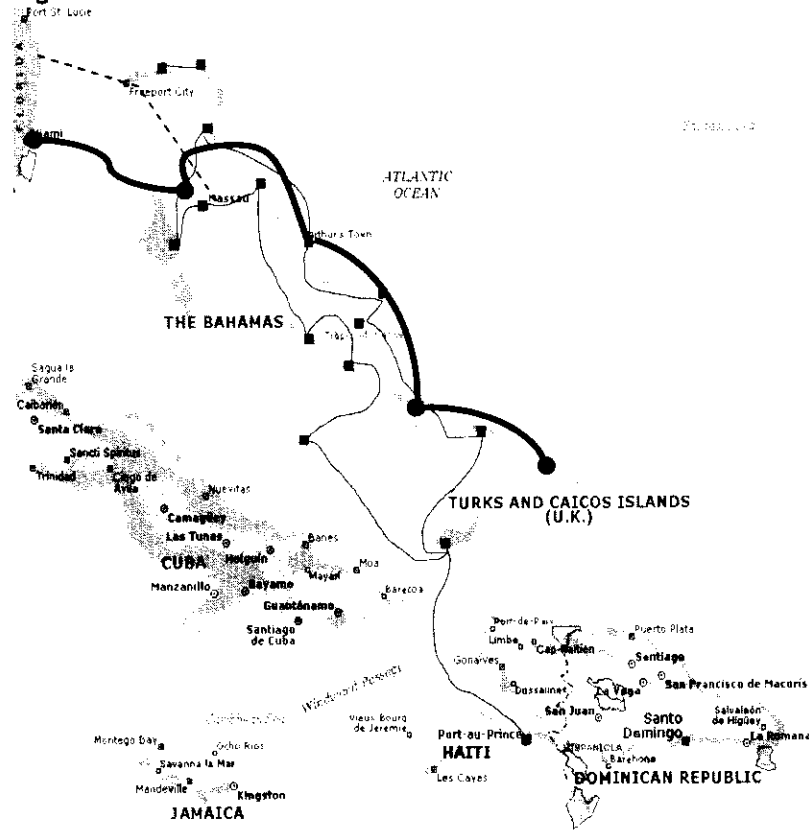
BTC provides national leased lines to business customers and also leases some circuits to SRG, which SRG uses for its own connectivity, either for backhaul or as joining circuits.

Retail prices for leased lines of different capacities are available on BTC's website.

BTC agrees with CBL that both operators are in the same product market for national leased lines, due to similar characteristics of the leased-line products. This position is consistent with that taken by other regulators who typically consider the incumbent and competing operators to be in one product market. BTC and CBL actively compete to provide leased line products, as evidenced by declining prices and movements in market share.

The following maps show the reach of BTC and CBL submarine cables.

Figure 5: BTC submarine network with ARCOS-1 cable included





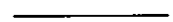
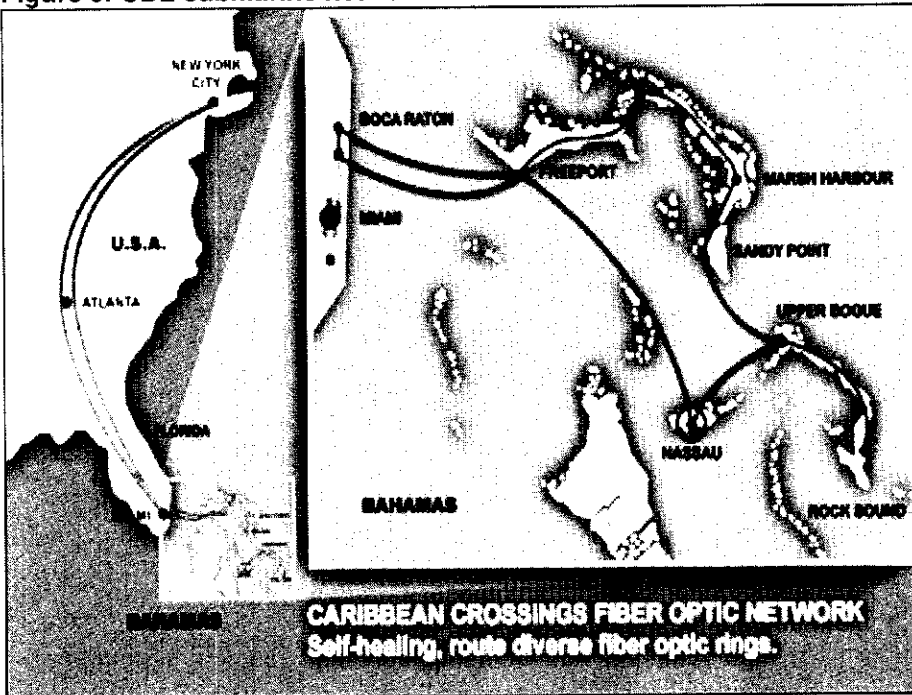
ARCOS-1 
 BAHAMA II 
 BDSNi 

Figure 6: CBL submarine network



Having defined the product market, URCA should then consider the geographic market. BTC agrees that it has a greater geographic reach than CBL. However, in the largest markets of New Providence, Abaco and Grand Bahama, both CBL and BTC are present and actively competing. BTC currently provides only a small number of national leased circuits to customers where SRG or CBL do not have a presence. URCA could consider defining separate geographic markets for Family Islands and other islands not provisioned by CBL. However as BTC prices on a national basis, this creates a common pricing constraint so that the competitive pressures in New Providence, Abaco and Grand Bahama are felt across The Bahamas. This implies that if BTC were to impose a SSNIP in the outer islands then it would also raise its prices in New Providence, Abaco and Grand Bahama, due to averaged prices, which would lead to substitution in New Providence, Abaco and Grand Bahama from BTC to CBL leased line products. This would render the price increase unprofitable. Therefore there is no justification for regulating different islands on a different basis.

BTC agrees with CBL that the national leased line market should not be regulated due to evidence of effective competition between the operators in the market. BTC submits that:

- A single product and geographic market should be defined.
- URCA should consider market shares in this market. BTC only has a market share of 10% - 30% of circuits (URCA), and so presumably CBL has a market share of 70% - 90% on a national basis. When considering only those areas where CBL has a presence, its market share will be higher than this. SRG also provides national leased lines using wireless technology, although their market share is not known to BTC at present. SRG uses Wimax technology to provide

leased lines and therefore can offer high speeds comparable to those offered by CBL and BTC.

- CBL's high market share and evidence of pricing pressure shows that it acts as an effective constraint on BTC's national leased line products and that a SSNIP would not be profitable. A national pricing constraint exists, since BTC sells leased lines to a particular customer based on a single tariff schedule for The Bahamas. There may be pricing differentials between customers, but there are not pricing differentials between geographic areas for a particular customer. Therefore, competitive tensions in those areas where CBL and BTC are both present will be evidenced in those areas that only BTC serves. BTC also notes that it provides only a small proportion of leased lines in those areas where CBL is not present. Therefore BTC concurs with URCA that remedies should not be imposed on BTC.
- URCA should separately consider whether CBL has SMP, noting that CBL is more likely to have SMP than BTC given its higher market share in leased lines. URCA could consider regulating CBL in this market, however given the competitive tensions between the two parties that have resulted in falling leased line prices, BTC agrees with URCA that there is little justification to regulate CBL.
- URCA could consider joint dominance of BTC and CBL, but BTC views it unlikely that joint dominance conditions would be satisfied.

BTC therefore concurs with CBL and URCA's proposal that remedies are not appropriate at this time, and, as set out in more detail in section 4, disagrees with SRG's view that remedies should be imposed in this market.

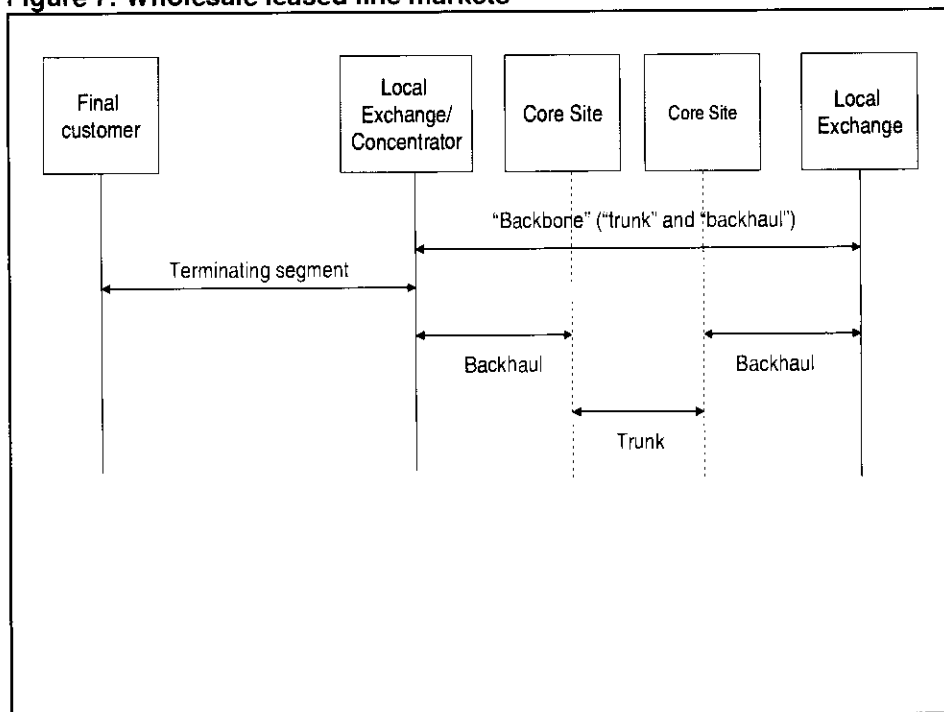
Additional details on BTC's leased line product will be provided separately to URCA, as part of BTC response to URCA's data request.

4.6 Regulation of national backhaul

URCA defines a national backhaul product and regulates this, without fully defining the wholesale market to which national backhaul belongs or providing a detailed product description. Backhaul, as described by URCA, could be interpreted as providing connectivity at various points within the network. This could include, for example, from the line card to the OLO, or from the transit switch to the OLO.

Before imposing remedies, URCA should provide a clear definition of the backhaul product. BTC notes that it is usual for backhaul and trunk markets to be separately defined and that typically the boundary between trunk and backhaul lies in the tandem (core) exchanges. The distinction between the different segments of leased lines is based on the degree of competition or contestability across different parts of the fixed line network. These boundaries are illustrated in the figure below. BTC would welcome a clear definition from URCA on "national backhaul".

Figure 7: Wholesale leased line markets



A backhaul product, as defined above, is normally bought as a complement to a local access product, e.g. bitstream or LLU. Since URCA is not mandating LLU at this time, BTC assumes that URCA's proposals on backhaul are for it to be sold as a complement to bitstream access.

National backhaul is not currently being provided in the market, since there is no demand for this product and therefore BTC agrees with CBL that conducting a SSNIP on hypothetical products for which no prices are available leads to speculative results, as it is not possible to compare prices and characteristics of purely hypothetical products. However, BTC notes that a national backhaul product would be provided over the same infrastructure that BTC and CBL use to provide retail and wholesale leased lines. Competitive conditions may therefore be similar and a lack of competition cannot be used as the basis for imposing an obligation to supply on a cost orientated basis.

URCA stated to BTC that its proposal to impose remedies in this market is due to replicability and the facilitation of competition. However, BTC agrees with CBL that a wholesale remedy should be considered as a facilitator of retail competition, rather than as an SMP product to which access should be granted. BTC additionally notes that URCA should consider the trade-off between granting access to backhaul at a particular price point (e.g. cost based) and the longer term development of infrastructure competition in The Bahamas. Whilst national backhaul is an important facilitator of competition, particularly at the early stages of market entry, in the longer term it may limit infrastructure build particularly where the price of national backhaul is low in relation to the cost of building a new

network. Therefore URCA's proposals in their current form could work against the facilitation of network competition.

BTC requests that URCA first provides a clear definition of national backhaul, separating it into backhaul and trunk market as set out in the previous figure. The requirement to impose remedies should be considered separately for each market.

BTC believes that remedies should not be imposed on the trunk market. BTC does not define this to be backhaul and it is not necessary for an OLO to be provided with trunk services in order to enter the telecommunications market. BTC requests that URCA notes the following points.

- CBL and SRG trunk networks closely overlap with BTC's, suggesting that the core (tandem) sites are an appropriate boundary between trunk and backhaul, and that BTC is facing strong competition in the trunk segment. This is evidenced by BTC's leased line market shares.
- This market is highly contestable and URCA should be actively promoting network investment and competition in this market. A requirement to supply this service on a cost-orientated basis would reduce the likelihood of new entry in this market and deny consumers the benefits of network competition in the longer term.
- In some countries, for example in the UK, trunk services are regulated. However, this would appear to be the exception and most European markets have deemed trunk markets to be competitive.

BTC submits that the trunk market in The Bahamas is also competitive or prospectively competitive as noted by URCA's proposal not to define wholesale leased line remedies. Therefore, BTC requests that URCA clarifies its definition of backhaul to exclude connectivity between core sites and to define a separate trunk product. The trunk product should be unregulated due to competition / contestability or should be regulated by an obligation to supply but without a cost orientation remedy as that would reduce infrastructure investment incentives.

Backhaul should then be defined as connectivity between BTC's local exchanges and the OLO. This would be a complementary product to bitstream access. The provision of this product reduces the requirement for OLOs to build out their networks to all of BTC's local exchanges and therefore BTC understands URCA's rationale for mandating this product in the RAIO. However, URCA should recognise that mandating this product on a cost orientated basis reduces incentives for OLOs to invest. URCA should consider whether it should instead be trying to facilitate competition in this market.

4.7 Regulation of broadband (retail and wholesale)

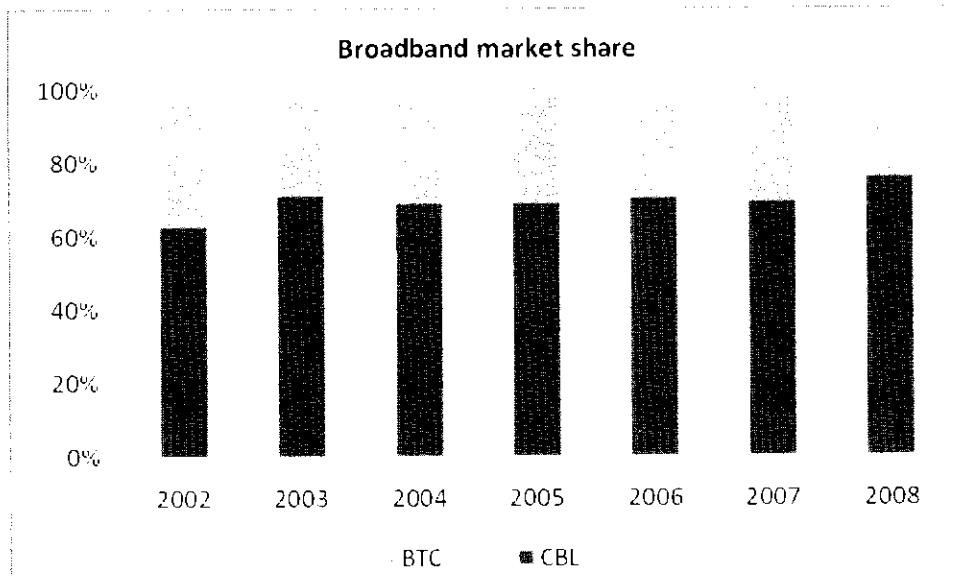
CBL argues that it should not be subject to regulation on broadband. It does this on this basis of a set of international benchmarks. However, this ignores two key points. Firstly CBL is presumed, by virtue of Schedule 4 of the Comms Act to have SMP in respect of "*high speed data services and connectivity*" and therefore URCA has a statutory obligation to set SMP conditions in the transitional period in

respect of such services. By contrast, the presumption of SMP applies to BTC only in respect of "fixed voice", "mobile voice" and "mobile data services" (Schedule 4 of the Comms Act). Fixed line broadband should not therefore be included within the scope of SMP regulation imposed on BTC in this transitional phase because the words "fixed voice" plainly mean voice traffic and not data traffic. If it was intended that fixed line data services also be included within the presumption of SMP the Comms Act would have referred to "fixed data services" in Paragraph (a) Schedule 4 as it has referred to "mobile data services" in Paragraph (c) of Schedule 4. From a plain reading of the Comms Act therefore URCA has no power to set SMP conditions in respect of fixed line data in respect of BTC at this stage. BTC notes that URCA has pointed to the Sector Policy which says that the reference to "fixed voice" is intended to cover both voice and data services but the fact remains that the scope of URCA's powers to impose SMP regulation in this transitional period are set by section 116 and Schedule 4 of the Comms Act which do not refer to "fixed data" in the presumptions of SMP.

Secondly, BTC notes that the market in The Bahamas is significantly different from the benchmark markets in CBL's response. For example, a far higher share of retail broadband lines are provided by cable modem as opposed to DSL and the cable reach in The Bahamas covers a far higher proportion of homes than in many other countries. For this reason, cable has a far higher market share in many retail and wholesale markets than in other countries. In terms of the retail broadband market, BTC notes the following:

- BTC agrees with CBL that cable-modem and DSL broadband are usually considered in the same retail market. This is because their characteristics are similar and a national pricing constraint leads to a single geographic market. Although there may be differences in some product characteristics, e.g. download speeds, due a chain of substitution, these are not sufficient to separate the market. This was recently reviewed by Ofcom in its WBA market review who concluded that differences in speed do warrant a structural break in the market. Regulators in Ireland, Austria, Holland and Denmark amongst others have also concluded that DSL and cable modem are in the same market. We agree with CBL that this is a standard approach and should also be the approach taken in The Bahamas.
- URCA suggests that CBL does not provide an effective constraint on BTC in those areas where CBL is not present. This is not correct as BTC offers geographically averaged prices for retail broadband which creates a common pricing constraint. Therefore competitive constraints in one geographic area will also constrain other areas, even where competition is not present.
- CBL has a consistently high market share in retail broadband at around 70% on a national basis (URCA). Excluding areas where CBL is not present, the market share would be higher than this. Contrary to CBL's response, there is no evidence that BTC's market share is growing or that BTC's DSL product provides an effective constraint on CBL. In a forward-looking market review, it is highly likely that CBL would be found to have SMP and should therefore be subject to retail remedies.

Figure 8: Broadband market share



- BTC is not dominant in any part of this market, including those areas where CBL does not have coverage due to the existence of a common pricing constraint. CBL acts as an effective constraint on BTC in those markets where CBL is present. BTC has a national pricing policy on broadband access which implies that competitive constraints in one area are automatically felt in other areas, even where CBL is not present. Therefore, BTC should not be considered dominant in any part of the market. The consideration of common pricing constraints is usual in assessing markets and SMP, for example Ofcom explicitly considered common pricing constraints in its review of the WLA and WBA markets and concluded that a national pricing policy justified a wider market definition.
- In other countries, remedies have not been imposed at the retail level as no company has been found to be dominant. Often multiple cable and fixed line companies provide these services, supported by wholesale remedies (e.g. bitstream). This is not the position in The Bahamas, where CBL has a high market share.

In terms of the wholesale markets, BTC notes the following:

- Wholesale broadband access (for which bitstream is the common remedy) and wholesale local access (for which LLU is a potential remedy) are the corresponding wholesale markets. LLU is considered a longer term remedy and it would not be proportionate or timely to consider this as a Bahamian remedy at this time.
- Cable and non cable based products are usually defined within a single market, due to indirect constraints. For example, Ofcom considers Siamese cables (used by the cable company) to be

in the same product market as BT's local loop. Ofcom acknowledges that there may not be direct substitution between cable and non cable following a SSNIP in wholesale products. However, since the wholesale input price is a large proportion of the retail price then any increase in wholesale prices is likely to lead to a sufficiently large increase in the retail price to induce switching between products at the retail level. This indirect substitution renders an increase in the wholesale price unprofitable and places cable and non cable in the same product market. This approach is used throughout the EU.

- Cable companies are often not regulated at the wholesale level because their market shares are too low to warrant a finding of SMP. However where cable market shares are higher, remedies may be imposed. The Dutch regulator OPTA has recently imposed wholesale remedies on cable companies. Remedies are also imposed in Denmark.

In a combined cable and non-cable market, it is likely that CBL will be found either individually dominant (as in the case of retail broadband products) or, potentially, jointly dominant with BTC. Following such a finding, CBL should be subject to symmetric obligations to those imposed on BTC. Should URCA impose separate product markets for cable and non cable based products then CBL will automatically be dominant in these and should be regulated as such.

Following a finding of SMP on CBL for a particular product, symmetric and non-discriminatory regulation should be imposed.

- To the extent that BTC is required to provide wholesale broadband access to its network, e.g. bitstream, then CBL should be required to provide similar access. CBL notes that it is technically difficult to provide this product, however as BTC has informed URCA it would also involve significant investment for BTC to be able to provide this product. Therefore, it would be discriminatory for URCA to remove the bitstream requirement on CBL and not BTC due to technical difficulties.
- CBL should be required to publish a cost based RAI0 so that new entrants can choose between BTC and CBL. This would create network competition.

Should BTC eventually be required to provide LLU or any other wholesale local access product then the requirement should also be imposed on CBL so as to ensure that regulation is being imposed in a non-discriminatory manner. BTC agrees that CBL may face technical difficulties in unbundling and particularly in finding space in its cabinets. However these technical difficulties are also faced in equal measure by BTC.

CBL should be required to publish separated accounts so that URCA may use these to set cost based regulated prices as well as to understand those areas in which excessive prices are being made. Contrary to CBL's submission, separated accounts are published by dominant cable operators.

4.8 Regulation of Vibe

CBL states that it “urges URCA to confirm that BTC’s VoIP services are indeed subject to the Section 3.2 SMP obligations” on the basis that Schedule 4 of the Comms Act imposes a presumption of SMP on BTC in the provision of fixed voice and mobile voice and data services and that, as stated in the Sector Policy document, the fixed voice market “is intended to include the full product set delivered over BTC’s fixed network, including both voice and data services”. However, CBL has not considered that there is a distinction between including a product in the SMP market and imposing regulation on the product. In fact, in its Preliminary Determination on BTC, URCA very clearly states that “the presumption that BTC has SMP does not imply that URCA will necessarily impose wide-ranging regulatory obligations on BTC”. BTC agrees with URCA in this respect and notes that no regulation should be imposed on a product until dominance by one or more operators is established. Moreover, BTC would like to point out that, whilst there is a presumption of SMP imposed on BTC, regulation is not required in order to meet the objectives in s.116 of the Comms Act.

BTC also notes that URCA has taken the same approach with regard to some CBL products and in particular Pay-per-view and HDTV packages. This is consistent with the requirement of consistent treatment of the two SMP operators.

As clearly explained in BTC’s response, BTC believes that it is important that in future market reviews URCA does not consider Vibe to be a separate product, but merely a different technology for the provision of voice products traditionally provided over PSTN. Therefore, the issue that URCA should be considering is not whether Vibe should be regulated or not, but whether the competitive constraints imposed by VOI on PSTN are sufficient to de-regulate some markets and in particular the domestic and international long distance call markets. Although at this point there might be insufficient evidence to validate this, such considerations will need to be made in future reviews.

The importance of the concept of technology neutrality has also been recognised by CBL page 12-13 of their submission document on CBL Preliminary Determination. It is therefore unclear why CBL has not applied the same principle to their analysis of VOI products.

4.9 Regulation of Wholesale Mobile services

CBL states that URCA should impose wholesale regulation in the mobile voice and data markets and in particular should have mandated the introduction of MVNOs. CBL state that the introduction of MVNOs would not contradict the two-year exclusivity period condition which was included in the Sector Policy document. BTC disagrees with CBL for the following reasons.

- The Sector Policy clearly states (section 50) that “The Government will issue no further cellular licences” until the cellular liberalisation process is commenced 12 months after the privatisation and sale of a majority of the shares of BTC. MVNOs would also require a license to operate and the granting of such licenses would clearly contradict the Sector Policy document.

- The introduction of MVNOs is inappropriate before such time as additional cellular infrastructure licences have been issued. MVNOs are likely to reduce the attractiveness of future mobile infrastructure licences and reduce the longer term potential for infrastructure competition in The Bahamas.
- A public consultation is required before the introduction of MVNOs. The premature introduction of MVNOs would discourage further entry and infrastructure development in the sector in the future. A cost/benefit analysis needs to be conducted before these remedies are imposed.

BTC notes that there is no rationale for regulating any other form of wholesale access since BTC is the only mobile operator in the market and will continue to be until the end of its exclusivity period.

URCA has not explicitly included an obligation on mobile termination rates, although URCA has clarified verbally with BTC that it intended this to be part of the obligation to provide mobile call transit services on a cost orientated basis. BTC accepts a cost orientated mobile termination rate, but requests that URCA applies this remedy symmetrically to any new operator who subsequently enters the market. This would discharge URCA's duty to regulate in a non-discriminatory manner and is consistent with EU policy which requires NRA to impose symmetric termination rates on MNOs except in the case of vast differences in spectrum allocation.

4.10 Regulation of retail mobile services

BTC recognises that URCA may wish to monitor the price of mobile retail services whilst BTC holds exclusivity. However, additional mobile licences are due to be issued in the Bahamas within the next 2 years and evidence from other Caribbean countries suggest that entry will be aggressive and markets will quickly become competitive. Therefore, only light touch regulation should be imposed since the compliance costs are unlikely to be outweighed by benefits when they are only imposed on a temporary basis. URCA is required to consider the regulatory burden and the benefits to consumers of imposing any SMP obligation under s.40(2)(b) in respect of full scale regulation, and BTC submits that it is even more important to take such costs into consideration in respect of transitional regulation imposed before a proper market review has been carried out.

The application of a price cap on mobile services would not be consistent with a light touch approach, as required under section 24 of the Sector Policy. Additionally, BTC notes that it has been decreasing mobile prices and it believes these to be broadly in line with those in other Caribbean countries – this despite continuing to invest in new technologies and data services.

4.11 Regulation of Cable TV services

CBL requests that URCA does not impose remedies on cable-tv services, citing international precedent. BTC does not agree with this position.

- In the benchmark countries put forward by CBL, there are multiple pay-tv providers. In these cases, a lack of dominance may be the basis for the lack of remedies.

- The EU is currently consulting on this issue and is recommending that access be regulated to cable tv platforms and content.
- Ofcom is in the process of analysing pay-tv markets. There is currently a requirement to provide access to content and this requirement may be extended to include cost based access.

BTC requests that URCA assess the pay-tv market in the Bahamas, where CBL is the dominant provider of these services. The high barriers to entry in this market provide a further rationale for regulating access.

4.12 Reporting requirements on Cable

CBL states that it is unusual for reporting requirements and, in particular, an accounting separation obligation, to be imposed on a cable television company. However, this is because cable television companies have typically not been found to be dominant due to the underlying country market characteristics.

Different market conditions in The Bahamas lead to a finding of SMP of CBL in certain telecommunication markets as well as pay-tv. Therefore, CBL should be subject to regulatory reporting requirements and on a symmetric, non-discriminatory basis to BTC. CBL should be required to undertake AS for the following reasons:

- Separate the costs of the telecommunication products and services, both those provided by CBL and Caribbean Crossing, from the costs of providing cable-tv services.
- Provide the costs of specific telecommunication services in which CBL is dominant, for inclusion in the RAIO or for price control purposes.
- Provide the costs of specific pay-tv services in which CBL is dominant, for inclusion in the RAIO.

It is important for URCA to require CBL to produce this information, since it is needed to set cost orientated prices.

BTC notes that internationally, particularly where there are several players in a market, the regulator has produced a bottom-up costing model as opposed to requiring the dominant operator to undertake AS. Should CBL not supply cost based rates from AS then URCA should develop bottom-up cost models to calculate costs for CBL products. These costs should then be used to regulate the market and should be included in the RAIO.

4.13 Regulatory process

BTC has noted the comments made by CBL in its submission to URCA regarding the implementation of the s.116 interim regulatory obligations⁸. BTC agrees with CBL that there are aspects in which the process operated by URCA has deviated from that required by the Comms Act. URCA has departed from the process set out at s.116(3) of the Comms Act, and its use of the s.99/s.100 determination procedure does not sit entirely squarely with the requirements of s.116.

BTC notes that the Public Notice issued by URCA in November 2009 has gone some way to remedying URCA's departure from the s.116 process and achieving compliance with s.116(3), by allowing the existing licensees to submit alternative revised proposals in accordance with s.116(3)(b) that would satisfy the requirements of s.116(2).

However, in circulating the Preliminary Determinations, Draft Orders and Guidelines and specifying the obligations URCA is seeking to impose upon BTC and CBL, URCA has gone much further than merely specifying the type of obligations that it would accept as SMP conditions. In doing so, it has, in practice, constrained the way in which respondents have responded to URCA, rather than allowing them the freedom prescribed in s.116(3)(b) to propose their own set of obligations.

Further, the issue of the timetable within which the existing licensees have been required to provide their proposed obligations to URCA remains unresolved. Section 116(3)(b) is silent regarding the period of time within which licensees must submit their proposed obligations, in contrast to s.116(3) which clearly prescribes the three month timeframe within which URCA is required to review and accept/object to the proposed obligations. The imposition of the timetable under s.100, where s.116 imposes none, has not been remedied in the alternative procedure set out in URCA's November 2009 Public Notice,

The s.99/s.100 process is concerned with terms of licence in general, but there is a specific mechanism in s.116(3) which applies to the transitional circumstances in question, and in applying s.100 URCA has departed from it. It is unclear as to why the s.100 process was used at all, since there is nothing preventing clarity, transparency and public consultation under the s.116 process.

However, BTC recognises that requesting the formal withdrawal of the Preliminary Determination, Draft Order and Guidelines at this time, and recommencing the process, would not promote the efficient and effective progress of the market liberalisation process. BTC has therefore engaged constructively in the alternative process set out in URCA's Public Notice issued in November 2009, and includes its alternative proposed obligations in this submission, in accordance with its obligations under s.116(3)(b).

⁸ Response of Cable Bahamas LTD and Caribbean Crossings LTD to URCA's Preliminary Determination, Draft order and Consultation document on types of obligations on Bahamas Telecommunications Company LTD under S.116(3) Communications Act, 2009 (ECS 18/2009), Annex 1, page 29

However, notwithstanding BTC's submission of its proposed obligations and its constructive engagement with URCA as set out in this response, BTC reserves its rights to challenge the validity of the process in any subsequent administrative or judicial proceeding.

4.14 Other comments on CBL's responses

Although BTC believes that CBL/CCL's statements at pages 11 and 14 of their response should not be considered in the context of a forward looking market review and determination, BTC nevertheless would like to point out some factual inaccuracies contained in those statements.

Although the former monopolist/incumbent is one hundred percent owned by the Government of The Bahamas, BTC, and its predecessor in title Batelco, have always been subject and adhered to the standard fiscal duties of any viable entity. With the exception of the 1996-1999 Three Year Capital Development Plan when, in return for customs duties exemptions, the then Batelco built out its fixed network throughout the archipelago as a part of its universal service obligation. BTC has had no concessions from the Government, its shareholder. This build out facilitated the requirement in the Telecommunications Sector Policy – July 2001 revised October 2002 – that BTC provide basic service to all settlements of ten or more households throughout the country.

Furthermore, in said Sector Policy, the quid pro quo for BTC's continuing cellular monopoly and limited fixed voice services competition prior to 1st September 2010 has been the continuing USO obligation with no assistance/contribution from the government or any other licensed operator .

Additionally, BTC has paid a \$4 million per annum franchise fee to the Treasury since 1992; pays annual Business Licence fees to the Treasury, negotiated and secured loans with the commercial banks as needed with no government guarantee nor any favourable conditions as alleged and paid full stamp and customs duty on all equipment. Indeed, between 2005 and 2008, BTC paid \$7.6mn (2005); \$10.3mn (2006); \$12.1mn (2007); and \$12.4mn (2008) per annum in customs duties. BTC has also declared in excess of \$150 million in dividends to its shareholder, the Government since 2004. Additionally BTC's cell towers on government and Crown land are as of 1st March 2009, the subject of a Master Agreement which attracts a \$500,000.00 per annum lease payment.

BTC also, of course, makes charitable and social contributions, the most significant of which is the partial underwriting of the Technical Cadet Corps Programme at approximately \$200,000.00 per annum. This is a record of contribution to the Public Treasury which no other government or private entity can boast of in the country.

5 BTC Comments on SRG responses to BTC and CBL draft determinations

This section of the document outlines BTC comments on the response and argumentations provided by SRG in its submissions to URCA with regard to BTC and CBL Draft Determinations.

5.1 Timeline

In its response to URCA's Preliminary Determination on BTC and CBL, SRG notes that the timeline defined by URCA appears to be inconsistent. SRG makes the following points.

- It is unclear "how the Reference Access and Interconnect Offer ("RAIO") required on April 22, 2010 will be able to include the prerequisite cost orientated prices that are based upon separated accounts that will not yet have been published, even in test form". SRG proposes that the RAIO should be published on the same day as the 2008 accounts and the prices in the RAIO should be considered interim prices only, to be amended after the publication of the 2009 accounts.
- URCA does not appear to have established a process for the review of the methodology utilised for the calculation of costs. SRG believes that the methodology should be independently reviewed and approved, outside the scope of the regulatory audit. SRG proposes that URCA review and approves the methodology used in the costing models within 2 months from the publication of the 2008 accounts.
- BTC should be allowed a reasonable period of time between the publication of the 2008 and 2009 accounts. SRG proposes that BTC and CBL should be allowed to publish the 2009 accounts two months after URCA formally approves the costing methodology.

BTC broadly agrees with SRG regarding the apparent inconsistency in the timeline proposed by URCA for the publication of the regulatory accounts and RAIO. This was pointed out in sections 3.1 and 4.2 of the BTC response documents. However, BTC notes that the timeline proposed by SRG would considerably delay the publication of the final accounts and RAIO and this is unlikely to be in the interest of all the concerned parties.

As outlined in the BTC response, BTC has proposed an alternative timeline, which would address all concerns raised by SRG, while also trying to meet URCA's desire for a timely publication of a RAIO and regulatory accounts. BTC proposes the following:

- BTC only produces accounts for 2009, to be published in mid-May 2010. Consistently with SRG comments, BTC believes that the publication of the 2008 accounts would be of little value to either URCA or the other market players, as the results from the 2008 model would only be temporary and the RAIO would need to be changed for the 2009 results. Therefore, the effort

required in producing the 2008 accounts is, in BTC's opinion, disproportionate compared to the benefits.

- BTC believes that the review of the methodology does not need to wait until the publication of the accounts. BTC has already started discussions with URCA on the costing methodology and process and fully intends to cooperate with URCA during the model development process, in order to reassure URCA and all other concerned parties that the methodology employed in the costing model is consistent with the draft guidelines and with international best practice. BTC proposes to meet regularly with URCA during the modelling process, to allow URCA to understand and challenge the methodology adopted.
- Since the methodology will be reviewed and approved by URCA, and inputs assumptions will also be submitted to URCA, BTC strongly believes that a regulatory audit should not be required, in light of the disproportionate cost compared to the benefit of the audit. BTC believes that a review and approval by URCA should be sufficient to reassure the public and the other market players on the correctness of the model and results.

BTC's proposed timeline is set out below. BTC believes that this should address SRG's concerns.

Figure 9: BTC's proposed timeline for the regulatory accounts and RAIO

BTC's proposed timeline

- 2009 accounts are submitted in line with the timeline for the 2008 test accounts, removing the requirement for 2008 test accounts (no later than end May 2010*).
- The RAIO is submitted based on these 2009 accounts, no later than end June 2010.
- URCA is involved in the development of the cost model / methodology and undertakes a review once the model is submitted (BTC commits to supporting this review).
- BTC resubmits the regulatory accounts to reflect URCA's review, within 1 month of receiving comments (subject to their extensiveness).
- The RAIO is resubmitted based on these updated accounts.
- BTC submits a CFO responsibility statement in lieu of a regulatory audit opinion.

*subject to URCA publishing final AS guidelines by mid February 2010

BTC would like to reiterate again that it agrees with SRG about the inappropriateness of a regulatory audit, not only for those reasons put forward by SRG but also on the grounds of proportionality. The cost of a regulatory audit is high and the benefits will not outweigh its cost.

- Is likely to cost \$850,000 in the first year, reducing to \$600,000 in subsequent years. This represents 4% of net revenues or an additional \$6.40 per fixed line per year.
- Would delay the publication of the regulatory accounts by at least 3-6 months (and would impact the RAIO timeline).
- Is not justified by international precedent which shows that regulatory audits are uncommon in small markets. This is because a regulatory audit fee is fairly fixed and so results in a high relative cost in small markets.
- If a regulatory audit is conducted, a "Fairly presents" opinion, as suggested by URCA, is too high a level of assurance. A "Properly prepared in accordance with" opinion is more common (this would decrease the audit cost by approximately 25%).

Figure 10: Regulatory audit requirement in a selection of countries

Regulatory Jurisdiction	Regulatory Audit required	Population	Fixed line subscribers	Mobile subscribers	GDP – per capita (PPP - \$)
Monaco					
Cayman Island					
Jersey					
Barbados					
Bahamas	Yes*	309,156	133,000	358,000	29,600
Bahrain					
Jamaica					
Finland					
Denmark					
UK - BT					
UK - MNO price control compliance					

5.2 Bitstream access

In its response to the Preliminary Determinations on BTC and CBL, regarding the provision of Bitstream access services, SRG makes a number of points.

- URCA has not defined a set of minimum technical or operational requirements for the provision of the service; and
- Both BTC and CBL seem to have too much freedom in the definition of the standards of the service and are not subject to a proper compliance review.

As pointed out in section 4.3.1 of the BTC response to URCA's consultation documents, while BTC has in principle agreed to provide Bitstream access, the provision of this service is not currently feasible from a technical perspective. This is because BTC is in the process of rolling out its NGN network. This will significantly change the topology of the network and the equipment required to provide Bitstream access. Therefore, this service cannot be provided until the roll-out of the NGN network is completed. Once the NGN roll-out is complete, BTC is open to discussions with URCA and the other interested parties regarding the technical specifications for the provision of the service.

Moreover, BTC would like to point out, in response to SRG comments, that once a product is included in the RAIO, URCA guidelines require that Service Level Agreements, which outline technical specifications and standards, and technical service level commitments, are included in the RAIO. These Service Level Agreements and commitment, as well as the technical specifications, will need to be approved by URCA as part of the RAIO approval process. Following URCA's approval, BTC is obliged to use the RAIO as a basis for the contracts with other operators. Should BTC not fulfil the Service Level Agreements and technical commitments included in the RAIO, this would constitute a breach of contract on behalf of BTC. Therefore, BTC believes that the level of details and commitments required by URCA in the RAIO are sufficient to reassure all interested parties about the technical service levels of the services provided by BTC and that the conditions imposed in the RAIO are sufficiently binding.

SRG continues by observing that, in their view, URCA's proposals regarding the provision of Bitstream access by BTC and CBL are not sufficient to resolve the lack of competition in this market. BTC does not agree with SRG on this point. URCA has proposed to mandate the provision of Bitstream access services from both BTC and CBL and the provision of these services will be regulated by the terms and conditions included in the RAIO (which will need to be approved by URCA). It is therefore unclear why SRG considers these provisions to be inadequate.

5.3 National and international leased lines

BTC commented on national and international leased lines in its response to CBL's submission. The comments below are additional to this.

SRG disagrees with URCA's conclusion that national and international leased lines are outside the scope of retail and wholesale regulation. SRG bases its conclusion on the observation that the Government is, at present, the sole shareholder of BTC (and will remain a significant shareholder even after the privatisation process is complete) and is and is likely to remain a large shareholder of CBL. As such, SRG seems to imply that the Government of The Bahamas might influence both BTC's and

CBL's managements into engaging in some anticompetitive behaviour with respect to the provision of these services. BTC strongly disagrees with SRG observations and would like to point out the following:

- It seems unlikely that the Government of The Bahamas might engage in anticompetitive practices that go against the objectives stated in the Comms Act and the Sector Policy, which include consumer protection and promotion of competition. Such behaviour would damage the long-term development of the telecoms market in The Bahamas and the wider economy.
- Even more importantly, URCA has not excluded national and international leased lines from the high level SMP market and has explicitly stated that "URCA retains its rights to mandate the introduction of retail price regulation for national and international leased lines in the future should it consider this to be necessary. URCA will observe the developments in the leased lines market and any future decisions to impose retail price regulation will take into account the behaviour of BTC and CBL in the market"⁹. Therefore, no anticompetitive behaviour has been observed by URCA at present and, should URCA deem BTC or CBL to be behaving in an anticompetitive manner in the future, it has reserved the right to impose regulation on leased lines product.

In light of these considerations, BTC regards SRG's request for immediate ex-ante regulation on leased lines product to be disproportionate and contrary to international experience and best practice. BTC believes the conclusions reached by URCA on these products to be correct, for the reasons set out in BTC's response to CBL's submission.

5.3.1 Broadband services provided by CBL

In its response to the Preliminary Determination on CBL, SRG correctly points out that, in its analysis of broadband products offered by CBL, URCA has only considered the "Coral" family of products, which are offered over CBL cable network.

However, CBL also offers high speed broadband services over its direct fibre network, under the name of "Axel". Axel is targeted to business customers and is provided with speeds from 1 Mbps to 1Gbps.

As already discussed previously, CBL is clearly the dominant provider in the market for broadband services, with a market share of over 70%. Consistently with the principle of technology neutrality, whether broadband services are provided over CBL's cable or fibre network is irrelevant for the purpose of assessing dominance and imposing regulation. Therefore, BTC agrees with SRG that it is necessary for URCA to clarify that the broadband regulation it has imposed on CBL broadband services also include the Axel products.

⁹ URCA, "Preliminary Determination, Types of obligations on the Bahamas Telecommunications Company LTD. under S. 116(3) of Communications Act, 2009", Page 152

5.4 Vibe

In its response to the Draft Determination on BTC, SRG points out that Vibe should be price regulated, on the basis that it is a bundle of price regulated services (including local calls, domestic and international long distance calls and calls to mobile). BTC strongly disagree with SRG conclusion for the following reasons:

- As already pointed out in BTC response and in Section 4.4 above, URCA has not considered that VOI is not a separate product, but only a different technology which can be used to provide call services. URCA should have therefore adopted the internationally accepted concept of technology neutrality and should not have analysed VOI separately from the call products provided over PSTN. For example, the product "international long distance call" is unique, regardless of whether it is provided over PSTN or VOI.
- If the concept of technology neutrality is applied, domestic and international long distance calls are unlikely to remain regulated, as VOI products are imposing strong competitive constraints over PSTN call products.
- As explained in BTC response, where regulated and non regulated services are bundled together, it should not necessarily be assumed that the service as a whole should be regulated. URCA should consider the requirement for intervention on a case by case basis.

5.5 Common ownership

In its submission, SRG discusses the "common ownership" of CBL and BTC and the potential for concerted behaviour of the two companies. BTC strongly disputes this claim on the basis of the following considerations:

- BTC and CBL are two separate companies, with independent decision-making executive boards.
- BTC is at present a 100% Government-own entity, although a privatisation process, which should result in a 51% share of BTC being sold to a third party player, is under way. The Government does not, on the other hand, own a controlling share of CBL. CBL has recently bought back the controlling 30.2% proportion of its shares that was previously owned by Columbus Networks (transaction approved by the FCC on the 22nd December¹⁰). Contrary to SRG's statement, this transaction did not result in an increase in the Government ownership proportion of CBL. On the contrary, in order to avoid the additional FCC scrutiny which would have resulted, had the Government increased its ownership share to over 25%, the shares which CBL have bought back have been granted to an independent Trust.

¹⁰ See FCC decision on http://www.fcc.gov/Daily_Releases/Daily_Business/2009/db1224/DA-09-2632A1.txt

- BTC returned the shares it owned in CBL in 2002 and therefore has no longer any ownership interest in CBL.

6 BTC Comments on Digicel responses to the Access and Interconnection Draft Guidelines

This section of the document outlines BTC comments on the response and argumentations provided by Digicel in its submission to URCA with regard to the Draft Guidelines on Access and Interconnection.

6.1 Consistency of regulations

In its submission, Digicel appears to invoke asymmetric price regulation for incumbent and new entrants in the market, on the basis of higher per unit costs. BTC strongly disagrees with this view.

- Firstly, regulation should not be imposed if no SMP is found. A new entrant is unlikely to be found to have SMP in many markets and therefore should only be subject to regulation on those markets for which it has SMP (such as termination on its network).
- If two or more operators are designated to have SMP in a market, then treating these operators differently may lead to significant efficiency losses due to their impact on incentives to invest and innovate and artificially discouraging (or encouraging) investment by an operator relative to another. Therefore, symmetric regulation of all operators and reciprocity are preferable to asymmetries which can introduce distortions. URCA's statutory duty to regulate in a non-discriminatory manner also requires the imposition of symmetric regulation. Such regulation is also consistent with international best practice and experience. For example, in the EU, all operators were found to have SMP in the market for call termination on their own network. Differences in termination rates are generally not allowed in the EU, unless they arise from differing spectrum allocations (and even this argument has not been accepted by all regulators).

6.2 Scope of the Access and Interconnection Guidelines

In its submission, Digicel seems to be extending URCA's Access and Interconnection Draft Guidelines with additional considerations which, BTC believes, Digicel proposes to be included in the final guidelines.

Digicel seems to imply that the scope of the Access and Interconnection guidelines should be extended to include the promotion of investment, entrepreneurship and innovation in electronic communications networks and services, as well as the interworking of networks and more cost effective interconnection solutions. Moreover, the guidelines should, in Digicel opinion, mandate interconnection at any technically feasible point of the network, focus interconnection obligations on former monopolies and dominant operators and stop anti-competitive practice.

BTC agrees in principle on the importance of promoting investment and innovation in the communications sector and prevent anticompetitive behaviours and believes that the Access and Interconnection Guidelines have been drafted by URCA with these objectives in mind.

However, BTC disagrees with Digicel on several points.

- Interconnection to be provided at any feasible point: as already pointed out in BTC response, there is a fixed cost of providing interconnection at a point of interconnection and for this reason, along with regulators typically wishing to encourage network competition, interconnection is usually limited to a set number of interconnection gateways. Many technically-feasible interconnection points are not economically feasible, either individually or collectively. The economics and wider aims must be considered before interconnection services or points of interconnection are specified in a RAIO.
- BTC proposes to include its current set of POI in its RAIO. Should licenced operators request additional POI then BTC will assess their technical validity before agreeing or denying the request. However, BTC reserves the right to charge the operator for the changes to the network / additional investment that are required facilitate additional POI. BTC notes that that due to its network architecture it is likely that provision of additional POI will be high and doubts that it would be financially beneficial for a new operator to make this request.

Figure 11: Technical and economic feasibility of additional POI

- As a result of the introduction of NGN, all of the DMS switches located in the various Family Islands and New Providence will be removed. BTC has already designed its network for two major switch locations. The switches have already been installed at selected location in the country; the new locations will be the only locations where traffic is switched such as local switches, and international switches. Such locations have been identified by BTC as technically feasible point of Interconnection.
- More cost effective interconnection solutions: while the tariffs published in the RAIO should be derived from the efficiently-incurred costs calculated in the Accounting Separation or other costing model, it should not be within the scope of either the RAIO or the AS guidelines to define new technical solutions which could lead to different service cost results. Consistently with international best practice, the costing model on which the tariffs in the RAIO are based, should reflect the current topology of the network (scorched node principle) and should not try to "optimise" the network by altering its design. BTC intends to use the Scorched Node approach in the calculation of its costs.

6.3 Resolution of disputes

Digicel discusses the need for a clearer and more effective dispute resolution process. BTC agrees with Digicel in this regard, as a clearly defined dispute resolution process would increase transparency

and efficiency of negotiations. However, BTC would also like to point out that, due to the high costs involved (both in terms of financial costs and efforts required by the parties), disputes should only be a last-resort solutions. Therefore, the process should allow for a sufficiently long period of time (generally 6 months) in which commercial negotiations should continue before either operator is allowed to require the intervention of the regulator.

BTC would also like to remind Digicel that requests for interconnection can only be made by licenced operators and that any dispute procedure mechanism is only valid from the date at which a valid request for interconnection is made.

7 Conclusion

Finally, BTC has provided herein what it believes to be a very balanced response inclusive of alternative proposals to URCA's preliminary determinations in this Public Consultation.

URCA is reminded that this initial imposition of SMP remedies on BTC is mandated by the Communications Act 2009 to be transitional and proportionate and therefore interim and basic in their requirements in the absence of a proper market review, so as to not unduly burden incumbent operators and stifle their ability to enter new markets and provide new services and thereby unduly delay full competition in the market place.

BTC has found it necessary also to point out that URCA has deviated somewhat from the process as set out in Section 116 of the Communications Act and Section 116(2) and 116 3 (b) in particular. In this regard, BTC has been constrained to reserve all legal rights to challenge the validity of the process in any subsequent administrative or judicial proceeding which BTC determines necessary to initiate in order to ensure fair and equitable regulation in the sector.

The submissions of other parties particularly concerning what they believe should be imposed on BTC by way of SMP obligations have been of great interest to BTC and BTC has embraced the opportunity provided by URCA to respond to those submissions and the comments related to BTC in particular. This second exercise has ensured that there is the requisite transparency and proportionality required by the Sector Policy. BTC has provide substantial comments on CBL's responses, in particular as it is also an incumbent operator upon whom SMP obligations are being imposed.

It is quite evident that CBL is far more than a cable company and is a long time entrant into the telecoms market. URCA has been urged by BTC to provide consistency of regulation of CBL and to consider the combined market share of CBL and CCL as both a telecoms and a cable company and to ensure that all components of CBL and CCL are included in the imposed SMP remedies. It is especially important in this regard that URCA unravel the seemingly complex relationship of the CBL/CCL and Columbus Holdings group of companies including relationships with overseas affiliates in order to ensure that it fully understands the transfer of resources between them and, in particular determines the nature of the transactions between CBL'S wholesale and retail services for the purposes of the transparency of the Accounting Separation obligation and the proper accounting of transactions between the entities for costing and pricing.

BTC has addressed the issues raised by way of this Public Consultation 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 Regulator'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.

Final Comments on BTC's
proposals on URCA's
Preliminary Determination
and on other parties' responses
to the Consultation

Documents:

- i. *ECS 18/09: Types of Obligations on the Bahamas Telecommunications Company Limited under S.116 (3) of the Communications Act, 2009*
- ii. *ECS 19/09: Types of Obligations on Cable Bahamas Limited under S116 (3) of the Communications Act, 2009*
- iii. *ECS 20/09: Draft Guidelines Accounting Separation & Cost Accounting issued to BTC*
- iv. *ECS 22/09: Draft Guidelines Access & Interconnection*

22 January 2010