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YOUR CONNECTION TO THE WORLD

June 17, 2013

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

Dear Mr. Bereaux,

Re: <u>Preliminary Determination – On the Assessment of Significant Market Power in Call Termination Services in the Bahamas Under Section 39(1) of the Communications Act, 2009</u>

Pursuant to the URCA's Preliminary Determination on the Assessment of Significant Market Power in Call Termination Services in the Bahamas Under Section 39(1) of the Communications Act, 2009 – ECS 06/2013 dated May 17, 2013, The Bahamas Telecommunications Company Limited (BTC) hereby submits its response.

Yours sincerely,

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

FLJ/ksw

Attch.

The Bahamas Telecommunications Company Limited:

Response To

Preliminary Determination on the Assessment of Significant Market Power in Call Termination Services in The Bahamas under Section 39(1) of the Communications Act, 2009

Consultation Document
ECS 06/2013

Legal & Regulatory
June 17, 2013

Executive Summary

The Bahamas Telecommunications Company Limited (BTC) welcomes the opportunity to respond to the Utilities Regulation and Competition Authority's (URCA) Consultation Document on its Preliminary Determination on the Assessment of Significant Market Power in Call Termination Services in The Bahamas under Section 39(1) of the Communications Act, 2009. BTC supports URCA's intervention in the market for the provision of call termination services.

BTC has long advocated URCA's intervention in the market for the provision for call termination services, given the positive externality of this intervention in advancing the interest of consumers. This Public Consultation is an important step in preventing an SMP operator's abuse of its dominant position by virtue of its absolute control over terminating facilities on its network, and therefore in the absence of regulatory intervention having the latitude to charge excessive termination rates to other licensees, who have no alternative but to pay these charges so that their customers can communicate with customers of the terminating operator.

BTC supports URCA's intention to declare as dominant those operators that provide call termination services on their own networks. BTC also supports URCA's proposal that these operators should set their wholesale call termination charges at the same rate as BTC's wholesale call termination charges. The setting of reciprocal wholesale call termination charges provides predictability and fosters the promotion of competition. The alternative, asymmetric call termination charges, will lead to differentials between on net and off net retail call tariffs, with unintended consequences where the calling party (fixed line network) alters his/her behaviour such that fewer calls are placed to subscribers on the network with higher termination charges, resulting in inefficiency in the allocation of resources.

Reciprocal termination rates also provide the predictability among operators and engender effective sustainable competition, which are clearly in the interest of consumers. In addition, reciprocal termination rates will ensure both allocative and productive efficiencies in the market and prevent distortions like excessive wholesale charging, high or inefficiently structured retail rates and inefficient market entry. BTC provides ample evidence in this submission from the EU Commission, the European Regulators Group or BEREC, Ofcom and various regional regulators in support of this position.

BTC has noted that URCA in its Preliminary Determination has not differentiated between Cable Bahamas Limited (CBL) and other new entrants in the telephony market. Whilst CBL's entry into the market for the provision of fixed line services is recent (2011), CBL provides a range of telecommunications services and has the benefit of economies of scale and scope when compared to smaller new entrants like IP Solutions International Limited (IPSI). Given CBL's ability to benefit from economies of scale and scope on its large and well-established cable network, and given its wide ranging product line, there is a compelling argument in support of URCA's position for other operators to have termination charges equivalent to BTC's termination charges, particularly in the case of CBL where there is the additional potential impact of distortions to the broadband and TV markets, because CBL bundles its telephony service with such services in the retail market. Any distortions in the retail markets stemming from above-cost termination rates would therefore have a significant and detrimental impact on consumers in multiple retail markets in The Bahamas.

BTC notes that URCA has reviewed the market for call termination of SMS and MMS services, even though there is currently a monopoly in the related mobile retail market for such services and there cannot therefore be an anticompetitive or other effect to the detriment of consumers stemming from behaviour in these wholesale markets. BTC supports the principle of forward-looking regulation and would urge URCA to review the market for call termination on mobile networks for mobile to mobile traffic. This market, of course, will become relevant at the same time as the markets for SMS and MMS termination when the second mobile operator enters the market. As outlined in Section 40(2)(a) of the Communications Act, 2009, prior to imposing any obligations under Section 40(1) of the Act, URCA is required to review the market or markets in which the licensee has SMP. BTC is of the view that at the time of the second mobile competitor entry, URCA should declare the new entrant as having SMP in the market for call termination services on its network and impose the obligations as outlined in Section 40(1) of the Act. In the interest of regulatory predictability, BTC encourages URCA to set out a process where a market review is automatically triggered by the entry of a new operator. This entry, of course, immediately creates a new bottleneck termination market in which abuse is possible.

BTC considers that URCA should provide more detail about the transparency obligation that will be imposed on a SMP licensee that was not required prior to the Determination to publish a Reference Access and Interconnection Offer (RAIO) for its call termination services. Under Condition 40(1)(b) of the Communications Act, when a licensee is determined to have SMP, URCA may impose an obligation requiring the publication of a reference offer ensuring equivalence of access and or interconnection to any of those services and or facilities in which the licensee has SMP at tariffs based on the licensee's costs. While URCA may not wish to impose the obligation of publishing a full RAIO in the interests of minimising regulatory burdens, BTC considers that it should be more specific about the information that SMP operators must publish.

Specific answers to URCA's questions

Question 1: Please provide comments on URCA's preliminary views on the relevant product market definitions for fixed and mobile termination services.

Although URCA does not request comments on Sections 3 and 4 of its Preliminary Determination, BTC considers that these sections, which explain the concepts of call termination markets and market analysis, provide a fair summary of international best practice. We note that the list of other countries that URCA has reviewed (pages 18 and 19) is somewhat random and that the references for these countries are, in some cases, out of date and have been overtaken by more recent decisions.

In general BTC favours the use of benchmarks from countries with similar operational, demographic and operational circumstances to The Bahamas. In the case of call termination markets however, the market definition and the lack of competitive dynamics in these markets are not influenced by local market circumstances and BTC therefore believes that benchmarks from the EU are the most relevant, particularly because the legislative framework in The Bahamas is based on the EU framework. We summarise some relevant decisions by other national regulatory authorities below.

Market definition

In Section 5.3 URCA has carried out work to describe the call termination markets, as set out in rest of section 5, but we suggest that a closer definition of the markets is necessary in order to reduce confusion later. For example, OFCOM uses the following definitions:

Fixed call termination market

Wholesale fixed geographic call termination on each individual network. Call termination in this context includes the conveyance of all signals (including relevant control signals) required to terminate calls on a customer's exchange line from the first point in the network where those signals can be accessed by another communications provider[1]

Mobile call termination market

Termination services that are provided by [named mobile communications provider] (MCP) to another communications provider, for the termination of voice calls to UK mobile numbers which that MCP has been allocated by Ofcom in the area served by that MCP and for which that MCP is able to set the termination rate[2]

We suggest that URCA should adopt these more detailed definitions, with suitable changes of wording, for The Bahamas. In particular, we consider that the references to numbers allocated to the operator in the National Numbering Plan, is important so as to avoid later debates, for example about whether call termination should include calls to IP addresses. We consider that the fixed call termination market definition should also include a reference to the Bahamas National Numbering Plan.

Individual networks

In paragraph 5.3 URCA proposes that call termination markets should be defined by operator, and BTC considers that this is an important statement. As URCA's analysis in the following paragraphs demonstrates, each operator's market is distinct from those of other operators because its customers are allocated unique numbers from the National Numbering Plan, and this makes switching to an alternative impracticable. This is true irrespective of the size of the operator's customer base. This approach is also in line with best practice regionally and internationally, and is fully supported by BTC.

[1] OFCOM. Review of the fixed narrowband services wholesale markets. 15 September 2009, para 7.25.

[2] OFCOM. Wholesale mobile voice call termination statement. 15 March 2011, para 3.2

Mobile call termination market definition

BTC does not disagree with the conclusions of Section 5.3.2 that the call termination market on its mobile network is a distinct market. However BTC considers that the analysis leading up to this conclusion is inadequate. URCA has limited its analysis to calls from callers in other countries to BTC mobile numbers on the grounds that the receiving party pays system is used for domestic fixed to mobile calls. The method used to pay for call termination should not prevent market analysis being carried out, and BTC considers that URCA should include fixed to mobile calls in its analysis.

In addition, BTC suggests that URCA should review mobile to mobile calls as well. Such calls are charged on the Calling Party Pays basis which, if extended to the new mobile entrant, would create markets for call termination of domestic mobile calls on all relevant mobile networks within the planning horizon of this consultation. Such a review would therefore provide regulatory predictability and certainty to all players in the market, in accordance with URCA's obligations under the Act.

Termination of calls on mobile networks from international originations

Specifically on the market for call termination of international calls, BTC believes URCA has now accepted that the downstream retail markets are not relevant markets for regulation in the Bahamas, as these markets are located in other countries (i.e. the markets where such traffic is originated) and therefore do not affect the interest of consumers *in* The Bahamas. However, BTC notes that URCA is concerned about the potential impact of mobile termination rates on the international transit market[3]:

"Alternative operators in The Bahamas may wish to compete with BTC in bringing international incoming calls into The Bahamas. These calls constitute two elements (i) a transit element from the international gateway and (ii) a termination element to the mobile end user in The Bahamas. When terminating these calls on BTC's mobile network, the mobile termination rate applies. The price any operator is able to offer for this end-to-end service will depend on the cost of the transit and termination elements. To enable alternative operators to compete fairly with BTC therefore requires two conditions:

- *Requiring BTC to offer the termination element on a non-discriminatory basis to other licensed operators in The Bahamas; and*
- *Setting cost oriented mobile termination charge*

Whereas, the former is a necessary condition to facilitate competition, absent cost oriented termination charges, alternative operators may not be able to replicate BTC's pricing offer for the full service. This is because of BTC being able to reflect any difference in the mobile call termination rate and its actual cost of terminating the call in its price to the foreign operator. However, the alternative local operator will not be able to do so, as the termination charge forms a fixed input to its pricing decisions. As such, in order to match BTC's offering, the alternative local operator

[3] URCA Statement of Results and to Public consultation and Final Decision. Setting interconnection charges for BTC going forward. ECS25/2012. Pages 8 and 9.

would have to be able to provide the transit element at lower cost than BTC in order to compete on price with BTC. In URCA's view, this unfairly distorts competition for these services."

It is BTC's view that the above behaviour described by URCA, that of margin squeeze, is possible with or without cost-oriented mobile termination rates and could easily be prevented by ensuring that BTC does not charge for the transit component of the price to foreign operators below its cost, in addition to a transparent and non-discriminatory mobile termination rate. This is already an obligation on BTC under URCA's competition guidelines to prevent vertical leveraging of market power. The obligations on BTC, in order for the international transit market to function should therefore be:

- To offer the termination element on a non-discriminatory basis to other licensed operators in The Bahamas – to ensure all operators, including BTC, compete on an equal footing;
- To offer the termination element on a transparent basis to other licensed operators in The Bahamas – to ensure all operators are aware of the mobile termination rates charged by BTC to OLOs and to itself;
- For BTC to set a reasonable mobile termination charge.

A case could be made that the resulting above-cost pricing for call termination markets would distort other markets because it creates the potential for cross-subsidisation. It is for this reason that BTC suggests that the resulting revenues should be used to fund universal service obligations in areas where the cost of supply exceeds revenues. BTC considers that the case of mobile termination rates for calls originated internationally is one of the few cases where wholesale prices **not** based on cost can be justified.

Emails and smartphones

In Section 5.3.1.vi BTC is surprised to see the comment that a recipient of an email from a fixed network customer must have a smartphone and subscribe to a data plan. Many will have some form of computer equipment and an internet connection already, making an email a practical, if imperfect, substitute for a fixed voice call. However BTC does not consider that this error invalidates the overall conclusion that the fixed voice call termination market is adequately defined.

Again, in Section 5.3.3.iii a smartphone and a subscription to a data plan is not essential to receive emails as this can be done over the fixed network as well.

Question 2: Please provide comments on URCA's preliminary view on the relevant geographic market definition in relation to fixed and mobile call termination services.

BTC considers that for call termination markets a single geographic market covering the whole of the Commonwealth of The Bahamas is adequate.

Question 3: Please provide comments on URCA's preliminary views that the licensees identified have SMP in relation to the wholesale supply of call and/or mobile message termination services on their respective networks.

BTC agrees with URCA's views that individual operators have SMP in the termination markets on their own networks, and notes that this conclusion is fully in line with decisions made by regulatory authorities in the Caribbean region, Europe and elsewhere.

Countervailing buying power

BTC agrees with URCA's comments in Section 6.3, and wishes to point to evidence for the lack of countervailing buying power in The Bahamas. In 2012, BTC was required by URCA to reduce its call termination rates for calls received from other operators. Prior to that, BTC had negotiated reciprocal termination rates with the other operators, including CBL. CBL, which is not currently subject to regulation on its termination rates, has refused to reduce its termination rates in line with BTC's, resulting in its termination rates being double BTC's. Because of the regulatory requirement for BTC to interconnect with all other licensed operators, BTC has to accept CBL's charges, whatever they are. In addition, BTC cannot in return vary the conditions for its termination services, due to BTC's regulated status in this market. Hence BTC considers that this provides strong hard evidence of the SMP possessed by other operators in the call termination market in The Bahamas, and of the need for regulatory intervention.

New operators

BTC concurs with URCA's conclusion that individual operators have SMP in their own call termination market. This is in line with international best practice, which considers call termination markets are enduring bottleneck facilities. As new fixed and mobile operators enter the Bahamian market, the same analysis will apply to their call termination markets, and BTC considers that there should be an automatic presumption that as soon as a public operator starts to provide service on its network to end customers using numbers from the National Numbering Plan, it possesses SMP in its call termination market. This position has been adopted by, for example, the Telecommunications Regulatory Commission in the British Virgin Islands[4]. This would avoid the need to repeat the process of market analysis and public consultation each time a new public operator is licensed. BTC suggests that this position should be made clear in the process of making additional mobile network licences available which is due to start in 2014.

Question 4: Please provide comments on URCA's preliminary views on the main competition problems or market failures that could arise from a licensee having SMP in the provisioning of wholesale call and/or mobile message termination services on its own network.

[4] Telecommunications Regulatory Commission, British Virgin Islands. Short report on the market analysis of wholesale call and SMS termination on individual fixed and mobile networks: determination of dominance and interconnection requirements. 22 September 2011. P/01/2011. Page 3.

BTC considers that URCA has provided a fair summary of the problems that can arise from unregulated termination rates. The Fair Trading Commission in Jamaica has provided a more detailed literature review[5], and in The Bahamas there is a practical example of the damage caused by unregulated termination rates in CBL's current charges (see above). BTC considers that CBL's refusal to reduce its termination rates in line with BTC's reductions has resulted in excessive charges by CBL, which are producing a subsidy from BTC to CBL and are enabling CBL to engage in unfair competition at the retail level by using this subsidy to reduce its prices.

Question 5: Please provide comments on URCA's preliminary view that the wholesale termination markets identified are susceptible to SMP regulation.

BTC agrees that ex ante regulation is necessary for all call termination markets. This is in line with international best practice.

Question 6: Please provide comments on URCA's preliminary view that the SMP licensees identified should, at a minimum, be obligated to comply with the SMP obligations specified in section 40(4) of the Comms Act.

BTC considers SMP operators in call termination markets have no option but to comply with the obligations set out in section 40(4) of the 2009 Communications Act as this becomes a legal requirement once a SMP designation has been made by URCA.

Question 7: Please provide comments on URCA's preliminary view regarding publication of tariff and non-price terms and conditions governing supply of wholesale termination services.

Commercial negotiations

On pages 44 and 45 URCA alleges that commercial negotiations "have almost invariably failed". BTC would like to point out that it has had successful commercial negotiations with other operators, on the terms and conditions of termination services, including reciprocity of termination rates. This pattern was disrupted when BTC was required to lower its call termination rates by URCA, and the OLOs refused to follow suit, providing support for the notion that excessive termination charges by OLOs should be URCA's primary concern in this consultation.

Unreasonable terms and conditions

URCA proposes that each operator with SMP in call termination markets should publish its terms and conditions, but this proposal does not solve the underlying problem, that a SMP operator can abuse its position by imposing unreasonable terms and conditions, whether they are published or not. URCA should propose a remedy to prevent, or at least enable the resolution of such a problem.

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[5] Fair Trading Commission, Jamaica. Staff Opinion on the Competitive Dynamics of Call Termination Provision. 2 June 2010.

An ex-ante solution would be for URCA to set out an outline of the terms and conditions that should be published, as URCA did for BTC's RAIO[6], and to require URCA's overview of the terms and conditions proposed. An ex-post solution would enable any operator dissatisfied with the published terms and conditions to initiate a disputes process, which could result in a reference to URCA. A simpler process than either of the above suggestions would be to use BTC's RAIO as a model, which would normally be adopted by other operators as their model terms and conditions. This would have the advantage of standardising interconnection arrangements between operators in The Bahamas.

Question 8: Please provide comments on URCA's preliminary view regarding price regulation of call termination services.

BTC agrees that call termination services should be subject to price regulation. The present situation in The Bahamas, where CBL charges twice the termination rate of BTC, illustrates the urgent need for such regulation.

Question 9: Please provide comments on URCA's preliminary proposal to set wholesale call termination charges equal to BTC's regulated wholesale termination charges for all SMP operators. If respondents consider that reciprocal charging is not appropriate, respondent should describe their preferred alternative approach, with supporting rationale.

Bill and keep

BTC agrees with URCA that a bill and keep system is not desirable today in The Bahamas. Under a previous interconnection agreement with SRG BTC operated a bill and keep system, and found that this encouraged inefficient "gaming" of the system.

Benchmarks

BTC reminds URCA that BTC's current mobile and fixed termination rates are set by reference to benchmarks[7]. Section 8.3.2, and particularly the last paragraph of this section, should reflect this fact.

Symmetrical termination rates

BTC fully supports URCA's proposal that the call termination rates for each operator's market should be symmetrical to the rates set out in BTC's RAIO, as approved by URCA. BTC accepts the rationale for symmetrical rates proposed by URCA, namely that symmetrical rates:

- Prevent excessive charging by any operator in these markets, because all termination rates would be set at a level deemed efficient by URCA, as when it set termination rates for BTC in ECS 25/2012

[6] URCA. Access and interconnection guidelines. ECS 14/2010. 22 April 2010, section 5.

[7] URCA. Setting regulated interconnection charges of BTC going forward. Statement of results ad final decision. ECS 25/2012. 21 December 2012.

- Encourage operators to greater efficiency because the operators with higher termination rates are not being rewarded for their inefficiency, thus bringing more efficient resource allocation and preventing productive inefficiencies from occurring
- Discourage differential on net and off net retail call pricing, which can add costs to consumers and deter the development of competition because higher off net call charges discourage customers from leaving larger networks
- Reduce confusion amongst retail customers from call tariffs that charge different prices for calls to different networks
- Lessen the burden on operators and regulatory authorities of calculating cost models and call termination rates for each operator.

The counter argument put by some operators is that asymmetric rates should be used because the cost per minute for new networks is higher than for established networks. BTC wishes to point out that this argument is weak. The capital and operating costs of new networks should be significantly lower than for incumbent operators because they utilise the latest technology and operating processes, and because they do not have the requirement to provide universal services. Indeed, new operators focus on urban areas and business customers, where the costs of rural deployment are not incurred and where traffic levels per line can be much higher than average. In addition, new entrants are aware in their business plans that for the initial years of operation their traffic levels are low while they establish their networks, and take full account of this in their decisions to enter the market. Hence there is no need to provide additional incentives through asymmetric termination rates.

International precedents for symmetrical termination rates

This position is supported through many international precedents. For example, the European Regulators Group (ERG, now BEREC) stated[8]:

"Economic principles tend to recommend a unique and uniform TR [Termination Rate], determined with reference to costs incurred by an hypothetic efficient operator, i.e. a termination rate which does not depend on costs effectively incurred by the operators or on their market shares. This efficient TR level indeed is the right signal to give incentives for productive efficiency[9], less efficient operators trying to overcome their inefficiency (in lowering their costs to avoid losses which ultimately result in market exit) and more efficient operators realizing profits over regulated prices, investing and innovating. Gains in productive efficiency put pressure on final services' prices and contribute to end-users welfare."

And in the summary of comments:

[8] European Regulators Group. ERG Common Position on symmetry of fixed call termination rates and mobile call termination rates, in ERG(07) 83 12 March 2008, page 4

[9] According to economic theory, "productive efficiency" is achieved when firms minimize total cost (given inputs needed and competitive prices of inputs) with respect to technology of production.

"[....] optimal incentives for productive efficiency are given by symmetric termination rates at the cost level of an efficient operator independent of the level of competition. The logic is that allowing asymmetric tariffs to take into account any higher costs does not give optimal incentives to get a market structure that produces at the lowest costs, so it does not give optimal incentives for incentives for productive efficiency."

In other words, allowing any operators to charge a termination rate above the efficient cost level would result in distortions to the incentives to achieve efficiencies, which would in turn distort competition in the retail market. For example, OPTA finds there are two main ways that such a distortion may take place[10]:

- It is possible in some markets that the effects of above-cost call termination rates are fully competed away in the retail market, the so-called 'complete water-bed effect' – here, above-cost termination rates result in higher retail call charges, which are in turn compensated through lower fixed monthly charges, but the average overall retail tariff level is not affected. The result is inefficient service take-up and call volumes below the efficient level.
- The 'incomplete water-bed effect'. In this case above-cost termination rates result in average retail rates rising above the efficient level, leading to overcharging of end-users, ain addition to the 'complete water-bed' effect.

It is clear that both effects can simply be avoided by following the ERG guidelines on this matter and ensuring reciprocal charges apply would prevent these effects from affecting the market in The Bahamas. This is particularly important in relation to CBL, because any impact of above-cost termination rates on the network of CBL have the potential to affect not only the telephony market, but also the markets for broadband and TV. This is because CBL bundles telephony services with TV and broadband services, both service markets in which CBL has been found to have SMP.

In addition CBL is a well-established cable television operator, and asymmetric termination rates, which are currently imposed by CBL, cannot be justified on the grounds of costs. CBL enjoys considerable economies of scale from its extensive network and economies of scope from the use of its cable television network for telecommunications. In addition, leaving aside whether cost differences between operators exist, such cost differences should not affect termination rates unless they are outside the control of operators involved. We quote from the EU Commission's Recommendation on Fixed and Mobile Termination rate and its explanatory document[11]:

"*In setting termination rates any deviation from <u>a single efficient cost level</u> should be based on objective cost differences outside the control of operators. <u>In fixed networks, no such objective cost differences outside the control of the operator have been identified</u>.*" [Emphasis added].

[10] OPTA. Consultation Paper - Market analysis fixed and mobile call termination. 26 April 2010.

[11] Commission recommendation of 7 May 2009 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU (2009/396/EC).

And:

"NRAs should set termination rates based on the costs incurred by an efficient operator. This implies that they would also be symmetric".

And:

"An important argument for symmetric rates at the level of efficient cost is that asymmetric pricing can foster inefficient behaviour and generate productive inefficiencies. Productive efficiency takes place when a good is produced at the lowest cost possible. Rewarding an operator with a price above an efficient or cost based level can reduce its incentives to innovate and minimise costs. For example, asymmetries based on differences in dates of market entry and scale may discourage innovation and cost efficiency on the part of the later entrant/smaller operator, and may give rise to inappropriate investment incentives and inefficient entry"

And finally:

"Consequently, consumers may end up paying higher prices than would otherwise be the case in a situation of cost-based symmetric termination rates. This is because the higher termination rates have to be recovered by the originating operators and will presumably be passed onto consumers in the form of higher retail prices. This effectively creates a cross-subsidy from lower-cost operators and their consumers to their less efficient rivals, thereby generating allocative-efficiency concerns. Meanwhile, the less efficient operator benefits from the lower termination rates of its rivals, thus enabling it to lower its retail prices and win customers. As the subsidized operators expand, the negative impact on retail process and consumer welfare is even greater. Given that the stated purpose of the regulation of wholesale termination charges is to prevent excessive pricing and its negative impact on consumer welfare, it is arguably counter-intuitive to apply a remedy that also generates allocative and productive inefficiencies."

Hence BTC considers that symmetrical rates should be required for all terminating operators in The Bahamas as soon as possible. The use of symmetrical termination rates is in line with best international practice, and BTC notes that other regional and international regulatory authorities have considered whether to use symmetrical or asymmetrical termination rates, and have come down firmly on the side of symmetrical rates, for example:

Anguilla

The Public Utilities Commission mandated symmetrical rates in its decision on termination rates in 2007[12], and this was continued in its review in 2012[13].

[12] Public Utilities Commission Anguilla, Review of interconnection prices. Telecommunications Decision PUC 2007 – 102. Para 22, Page 6.

British Virgin Islands

The Telecommunications Regulatory Commission considered arguments in favour of asymmetric termination rates, but rejected them on the grounds that they would cause distortions in the domestic market.[14]

Jamaica

The Office of Utilities Regulation has implemented a single mobile termination rate for all operators, despite cost models showing different costs per minute.[15]

Trinidad and Tobago

Asymmetric rates were a major issue in the disputes between TSTT and Digicel between 2006 and 2008. The Panel appointed by the Telecommunications Authority of Trinidad and Tobago to investigate the disputes considered that asymmetrical rates could not be justified. While it accepted that a smaller operator may have higher costs per minute because its traffic levels are lower that the incumbent operator, it noted that a new entrant would take this into consideration in its business planning. It was concerned that asymmetric rates could encourage inefficient entry, and that these operators would exit the market once rates became symmetrical[16].

Turks and Caicos Islands

In its decision on mobile termination rates, the Turks and Caicos Islands Telecommunications Commission reported that all respondents agreed with the Commission's view that that the mobile termination rate should be set symmetrically[17].

United Kingdom

Reciprocal termination rates were introduced in 1997 on the grounds that they removed distortions in competition and achieved competitive neutrality. They have been maintained during several reviews of wholesale prices between operators since then. This policy was most recently reviewed in detail during 2011, and OFCOM concluded that reciprocal rates were fair and reasonable because they:

- Provide strong incentives for operators to minimise the cost of terminating calls
- Remove distortions in efficient interconnection arrangements
- Promote competition in transit markets[18].

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[13] Public Utilities Commission Anguilla, Review of interconnection prices. Telecommunications Decision PUC 2012 – 101.

[14] Telecommunications Regulatory Commission, British Virgin Islands. Consultation on market analysis of wholesale call and SMS termination on individual fixed and mobile networks. 30 September 2011. C/02/2011. Para 6, page 10

[15] Office of Utilities Regulation, Jamaica. Mobile Termination Rate: Determination Notice Document No: TEL2012006_DET001 4 June 2012 page 21.

[16] Telecommunications Authority of Trinidad and Tobago. Rcport and Decision of the Arbitration Panel. 7 March 2008. Pages 35 – 38.

[17] Turks and Caicos Islands Telecommunications Commission. Decision on the Mobile Termination Rate Review. 24 January 2011, para 2.2.5 page 10.

[18] OFCOM. Fair and reasonable charges for fixed geographic call termination Statement and final guidance. 27 April 2011. Para 3.101, page 36.

Implementation of symmetrical termination rates

BTC wishes to propose that symmetrical termination rates should be mandated to start from the date when the current termination rates became asymmetric, that is from 1 January 2013 when URCA required BTC to introduce the new, lower call termination rates. In this way the inequities and distortions produced by asymmetric termination rates in the Bahamian market will be removed, and BTC will be compensated for the losses it is incurring by having to pay excessive charges to the other operators while URCA carries out its due process in producing its Preliminary and Final Determinations.

Conclusion

BTC welcomes URCA's Preliminary Determination on call termination markets, and the opportunity to comment on its proposals. BTC:

- Agrees that call termination markets exist in each network provided by individual network operators
- Suggests that a more detailed definition of termination markets on fixed and mobile networks is required, and that mobile to mobile calls should be included in the analysis
- Asks URCA to reconsider the termination rate charged for terminating calls on mobile networks from international originations
- Agrees that the geographic extent of the call termination market should be the Commonwealth of The Bahamas
- Agrees that operators have SMP in call termination markets on their own networks, and proposes that this should be automatically extended to new public operators when they start operation without the need for a new market analysis
- Considers that URCA has identified the main problems that may occur in these markets without regulation, and that ex-ante regulation is necessary
- While agreeing that SMP operators should publish their terms and conditions for supplying call termination services, BTC proposes that URCA should set out in detail what information should be published and that there should be a mechanism to ensure that the proposed terms and conditions are fair
- Fully supports URCA in regulating the charges for call termination services and in proposing that they should be the same as BTC's charges on the grounds of economic efficiency, benefit to consumers, reduction of regulatory burdens, and international precedents
- Proposes that symmetrical termination rates should be backdated to 1 January 2013
- Thanks URCA for undertaking this market review, which should remove, in URCA's own words, some of the "anomalies in the market, due to different levels of regulation for termination on different networks"[19].

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[19] URCA. 2012 Annual Report and 2013 Annual Plan. Page 54.

Reservation of rights

BTC has addressed the issues but reserves the right to comment at any time on all issues and states categorically that the decision not to respond to any issue raised in this Consultation in whole or in part does not necessarily represent agreement in whole or in part with URCA'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 reserve all its rights.