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YOUR CONNECTION TO THE WORLD

July 24, 2013

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

Dear Mr. Bereaux,

Re: Consultation Document ECS 06/2013: 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

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

Encls.

The Bahamas Telecommunications Company Limited:

Further Comments based on Responses 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 Division
July 24, 2013

Executive summary

The Bahamas Telecommunications Company Limited (BTC) welcomes the opportunity to provide further comments to the Utilities Regulation and Competition Authority's (URCA) Consultation Document on its Preliminary Determination on the Assessment of Significant Market Power (SMP) in Call Termination Services in The Bahamas under Section 39(1) of the Communications Act, 2009. BTC's comments here take into account the initial responses URCA has received from Cable Bahamas Limited (CBL) and Digicel relative to the Authority's Preliminary Determination.

Digicel's response

BTC has noted the submission from Digicel. BTC considers Digicel's response to Question 9 of the Public Consultation to be not relevant to the question posed and hence out of scope. The question looked specifically at reciprocity of charges, i.e. Other Licensed Operator's wholesale charges being equivalent to BTC's regulated wholesale termination charges. Instead, Digicel has focused its response on the various alternative billing arrangements for retail mobile subscribers, i.e. receiving party pays (RPP) compared to a calling party pays (CPP) billing regime.

In the remainder of these comments, BTC therefore considers only the response from CBL.

CBL's response

In reviewing the response provided by CBL to URCA's Preliminary Determination on the Assessment of SMP in Call Termination Services, BTC has concluded that:

- CBL's case that the transit market should be included in the call termination market is incorrect, both from a technical and an economic viewpoint.

- CBL's claim that roaming services should be included in the market definition does not stand up to scrutiny, contains several errors, and is not supported by international precedents.

- CBL introduces the idea that new network operators 'have lower degrees of SMP than BTC' in the market for call termination. This is an unusual position to take given that CBL accepts URCA's definition as to the market for fixed voice call termination on individual networks as the relevant market definition for this consultation. The owners of these networks have 100% market share on their respective call termination markets and no other operator is therefore active in the markets for call termination as defined. This also implies as argued by CBL that market forces cannot be relied on to produce reasonable results through commercial negotiations. This situation, however, applies equally to CBL as it does to BTC and it flows logically from the definition of the market. Many of CBL's comments in its response start from this basic misunderstanding.

- **CBL takes the position that it should not be subjected to ex ante regulation for call termination services as the company does not have SMP in this market based on the argument of a new entrant operator. Without prejudice to BTC's position that will be advanced in this response pointing to flaws of CBL's argument of a new entrant operator, it is important to note:**
  - Firstly, CBL is not a new entrant into the market, as an established company providing broadband and television services, prior to the entry into the market for the provision of fixed line services.
  - **Secondly, the company has access to significant financial resources, a major consideration in assessing Significant Market Power (SMP) under Section 39(3)(b) of the Communications Act. CBL further illustrates its access to significant financial resources by way of its recent announcement of its pending purchase of 'almost $100 million worth of U.S. acquisitions'. According to press statements released by CBL, the company is in the final stages of the acquisition, pending shareholder's approval of several Florida based companies, i.e. Summit Broadband, Marco Island Cable/Nu Vu and U.S. Metropolitan Telecom.[1]**

- CBL's claims that it should have less regulation than BTC, such as no price control, are based on a false argument, likely because the claims support its commercial interests.

- CBL alleges that the alternative operators have not created problems with interconnection. BTC's experience contradicts this, especially CBL's refusal to reduce its termination rates in response to the reductions mandated on BTC by URCA of 2013, resulting in a situation where CBL charges a 100% premium for local call termination compared to BTC. In BTC's view, CBL's behaviour amply illustrates the need for the regulation of call termination rates for all operators. This behaviour not only affects BTC, but also smaller operators in the market, and potential future new entrants.

- CBL advances several arguments in favour of asymmetric termination rates. BTC considers that there are many more arguments against asymmetric termination rates, and that international precedents, both from Europe and the Caribbean, support URCA's proposal for symmetrical termination rates.

[1] Tribune, July 12, 2013: Cable growth triples with $100m US deals.

BTC's detailed comments on CBL's response

2.1 Product market[2]

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

In its response CBL states that "CBL is in general agreement with URCA's proposed definition of the fixed and mobile termination services product markets". This implies that CBL accepts URCA's market definition of the fixed voice call termination **on CBL's network** as the relevant definition for this consultation. This is a useful statement in light of CBL's subsequent comments on its SMP status in this market.

In its response CBL then argues that transit and roaming customers should be included in the definition of the call termination market. BTC considers both arguments to be significantly flawed.

Call transit

The use of the fixed network to transit calls to the mobile network is quite common at the start of competition, and migration to direct interconnection usually takes place when traffic levels make it economic to do so. BTC's RAIO sets out a process for the introduction of new points of interconnection (see Section B6), and BTC and CBL have had discussions about direct interconnection. BTC is therefore surprised that CBL raises this argument as part of its comments, the more so because CBL's case is quite erroneous.

In its 2002 reforms of telecommunications policy, the European Commission identified wholesale transit services in the fixed network as a separate market from call termination. It defined the transit market as:

"... both conveyance between tandem switches on a given network, between tandem switches on different networks and including pure conveyance across a third network"[3].

This is distinct from the call termination market, which is the link from the point of interconnection to the customer.

CBL asserts that if URCA had carried out a SSNIP test on the transit market, it would have concluded that it should be part of the termination market. This is quite incorrect. A small increase in the price of call termination would not lead to customers (i.e. operators wishing to terminate calls) purchasing call transit facilities as transit facilities do not connect to terminating customers, and so are not

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[2] The section headings are taken from CBL's response for ease of reference

[3] European Commission. Commission recommendation on Relevant Product and Service Markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services. Pages 18/19.

substitutes for call termination. On the supply side, a small increase in the price of call termination would not result in suppliers providing call transit because major investment is required to provide new transit links between the points of interconnection and the mobile switch. Thus the application of the SSNIP test demonstrates clearly that call transit is not part of the call termination market. URCA itself has also defined the transit market as separate from call termination markets[4].

CBL's logic in claiming that because transit is essential to provide an end to end call it must be part of the call termination market is faulty. The same comment can be applied to call origination, and it would clearly be a nonsense to include call origination in the market definition for call termination.

Roaming customers

As URCA is well aware through its mediation process, the provision of termination services to mobile customers visiting The Bahamas is the subject of a dispute between CBL and BTC. CBL is incorrect in claiming that BTC is required to provide termination services to roaming customers in its RAIO. Without wishing to repeat the case already presented by BTC to CBL and the mediator provided by URCA on the matter, BTC must point out that the RAIO clearly defines a mobile number as:

"...a number allocated within the National Numbering Plan for use by mobile customers"

and the National Numbering Plan is defined as:

"the National Numbering Plan for The Bahamas as approved and published by URCA".[5]

A roaming customer has a number allocated by the numbering administrator of another jurisdiction, and so is clearly not included in BTC's RAIO services.

The markets for mobile call termination and mobile roaming also have a number of important differences that ensure they are separately defined, including:

- The services are not substitutes on the demand side – termination of a call to a (foreign) roamer is not a substitute for the termination of a call to a domestic mobile customer.

- There is (prospective) substitution on the supply side – in markets with multiple networks, access seekers have a choice of networks for the provision of roaming services, a situation not applicable to mobile call termination which is a classic 'bottleneck' market.

[4] See for example ECS 11/2010 on obligation imposed on operators with significant market power (SMP)
[5] BTC. Reference Access and Interconnection Offer. Page 117.

- Roaming services comprise of more services than just the ability to receive calls, they also comprise of outbound calls and data services.

In the European Union international roaming has been identified as a separate market from mobile call termination, and different remedies have been imposed by the EU[6], The EU has regulated the roaming market because of the way trade between its member states was potentially affected by the treatment of roaming services and this regulation is specific to a block of countries cooperating in an economic zone. This situation does not apply in most other jurisdictions and certainly not in The Bahamas. Outside the EU, roaming is not a regulated market at present, whereas mobile call termination is a regulated market in most countries. This latter situation also applies in The Bahamas.

2.2 Geographic market

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.

CBL accepts URCA's proposals, and BTC has no further comments to make.

3.1 SMP assessment

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.

In its response, CBL argues that URCA should consider that the "NEOs" (new entrant operators) as having less market power than BTC. Again, BTC considers that this argument is wrong, and self-serving. Throughout its comments, CBL, whether it realises it or not, slides between two definitions of the call termination market:

- The call termination market of **all** operators
- The call termination of **individual** operators

URCA makes it quite clear that its consultation is about the second market definition, while CBL's comments in this and subsequent sections appear to be about the first definition. They compare market size and other factors between BTC and the other operators, treating the call termination market as one across all operators. While the European Commission used the first definition in its first round of telecommunications regulation, it moved to the second in 2002 and this has not changed despite a number of policy reviews. BTC supports URCA in using the second, best practice, definition.

[6] European Commission: Regulation No 717/2007 of 27 June 2007 on roaming on public mobile communications networks within the Community.

BTC has some specific comments on CBL's detailed points.

Relative market share (page 7, bullet 1)

As URCA correctly recognises, individual operators have 100% market share of the call termination market on their own networks. Hence the comments about relative factors are not relevant, and illustrate how CBL confuses the two market definitions above.

IP interconnection (page 7, bullet 2)

Bullet 2: Contrary to CBL's assertions, BTC's RAIO permits IP interconnection. CBL and BTC have discussed this, and BTC has agreed to review the introduction of IP interconnection once the migration of its switch to IP has been completed.

Termination rates (page 7, bullet 3)

BTC finds the statements in this section to be divorced from reality. CBL claims that "*... NEOs have no choice but pay the wholesale termination rates dictated by BTC*". In fact BTC's termination rates are determined by URCA after a process of public consultation, and are certainly not dictated by BTC. CBL states that NEOs *"are generally forced to adopt BTC's call termination rates"*. Again this is far from reality. To date other operators, as URCA has recognised, can decide their own termination rates, and this has been amply illustrated by CBL's decision to keep its 2013 termination rates at the same level as for 2012, despite BTC implementing URCA's decision to reduce BTC's termination rates for 2013. BTC can do nothing about this, and considers that this demonstrates BTC's lack of countervailing buying power, not evidence of its presence, as alleged by CBL in this bullet point.

Roaming dispute (page 7, last paragraph)

BTC considers that CBL's statements here about the roaming disputes are a complete misrepresentation of the true position. As stated above, CBL has no right to provide termination services to international customers roaming on BTC's mobile network under the RAIO. Instead CBL has tried to do this without negotiating a proper commercial arrangement, and to bypass BTC's existing agreements with international operators to its own commercial advantage. This is not an example of countervailing buying power, and is not relevant to a consultation on call termination markets.

3.2 Competition problems

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.

In this section CBL repeats its allegations about the roaming dispute as an example of BTC's refusal to supply. As stated above, this misrepresents the facts of the case, and is more an example of CBL's refusal to enter into a commercial relationship with

BTC over the termination of traffic to roaming customers. It is certainly not relevant to a consultation on call termination markets.

BTC rejects CBL's allegation that it was forced to accept reciprocal termination rates. As stated above, BTC's rates are set by URCA after following due process, and during negotiations with BTC, the other operators have freely agreed to set their rates at the same rates as BTC's. BTC surmises that this is because the other operators regard this as a simple and fair solution.

It is widely recognised that without regulation, operators have an incentive to keep termination rates as high as possible[7]. That CBL has decided to keep its 2013 termination rates at the same level as its 2012 rates despite BTC's reductions shows that CBL, contrary to its claims in its comments that it *"...had no option but to agree to fixed call termination rates equal to those of BTC..."* has power to decide its termination rates without reference to customers or competitors. This is a clear example of justifying URCA's conclusion that market failures can and do exist in call termination markets on individual operators' networks.

4.1 Susceptibility of defined markets to SMP regulation

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

CBL here proposes that BTC should be subject to ex-ante regulation and the NEOs to ex-post regulation on the grounds that the NEOs *"have a significantly lower degree of SMP relative to BTC"* and that *"there are no identified market failures in the case of NEOs".* BTC considers that both these claims and CBL's conclusion are incorrect.

The first quotation above from CBL neatly illustrates how CBL uses the definition of the call termination market as that of all operators to advance its case. If URCA was using this definition, CBL's comments may have some validity. However URCA is not using this definition and in fact CBL accepts the market definition proposed by URCA. Under the market definition adopted by URCA, following international best practice, of call termination on the network of individual operators, comments about the relative market power of operators are not relevant. Each operator, including CBL, possesses 100% market power in its call termination market. This market share exceeds all market shares used in other countries to identify the presence of market power (usually 25% to 40%). A 100% market share also implies that no other operator, including BTC, has a market position in the market for call termination on the network of CBL. This is therefore a classic bottleneck market and CBL's arguments about having a "significantly lower degree of SMP" are clearly at odds with CBL's acceptance of URCA's market definition.

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[7] See the literature review: Fair Trading Commission, Jamaica. Staff Opinion on the Competitive Dynamics of Call Termination Provision. 2 June 2010.

CBL's second comment about the lack of market failures in the case of NEOs conveniently ignores its own refusal to reduce its 2013 termination rates (see above). BTC considers that this example neatly justifies URCA's proposal that ex-ante regulation is required in all call termination markets.

An examination of the European Union's three criteria for ex ante regulation, further lends support to URCA's intervention in the market for call termination services. Given that operators, including CBL, have 100% market share for calls terminating on their networks, there is a case for intervention. There is additional support for the regulation of CBL's termination rates, given that company's access to financial resources and given its SMP status in the markets for broadband and TV services. CBL's access to capital and other resources weakens that company's argument supporting the notion for consideration as a New Entrant Operator. The three (3) criteria tests the can be applied justifying URCA's intervention in the market for call termination services are:

i. High and non-transitory barriers to entry.

ii. The market does not tend towards competition.

iii. Application of competition law alone would not address market failures.

Considering that there are no alternatives to terminating a call to the intended network, the operator has (and will continue to have) 100% market share in the provision of call termination services. By virtue of market share and access to capital, the first two criteria of the EU tests are satisfied. Clearly, ex post regulation provides the remedies after the abuse has taken place. URCA's intervention here is to avoid the abuse from taking place by SMP operators.

4.2 Proposed obligations on SMP licensees

4.2.1 Section 40(4) obligations

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.

CBL comments that it has no objection to the conditions set out in the Communications Act 2009 being applied to operators with SMP in their call termination markets. As BTC commented in its own submission, URCA and operators have no option in this matter – it becomes a legal obligation once the SMP designation has been made.

BTC has already rejected CBL's argument about relative market power and its claims about the discussions about IP interconnection above.

4.2.2 Publication of tariff and non price terms

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.

CBL considers that operators, with the exception of BTC, should not be required to publish their terms and conditions so that they can be negotiated commercially. It again bases this on the argument about relative SMP, which, as demonstrated above, is a misunderstanding of the definition of call termination markets. Using the definition used by URCA (and most other national regulatory authorities) operators have 100% market share in the call termination markets on their own networks.

BTC can see no reason why each operator should not be required to publish its prices and other terms and conditions. All the arguments used to justify the requirement on BTC to publish its terms and conditions – transparency, efficiency, avoiding discrimination – apply to operators in their own call termination markets. The cost of publication is minimal.

BTC notes CBL's comment that the *"...current regime allows NEOs to negotiate their own call termination rates and related terms and conditions in an effective manner"* is quite correct – it is very effective from CBL's point of view, but not from the viewpoints of the other operators or the consumer. As described above, BTC has had to accept CBL's decision not to change its 2013 termination rates to reflect the reduction in BTC's termination rates. This experience underlines the limited role that commercial negotiations can play in interconnection, and the need to ensure that all operators are subject to ex-ante regulation, including the publication of their terms and conditions for interconnection.

4.2.3 Wholesale price controls

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

CBL argues that wholesale price controls should not be applied to NEOs. BTC considers that CBL's argument is self-serving and based on a number of false statements, which have been set out in more detail above:

- The market for call termination is for individual operators, not all operators.
- Each operator possesses 100% market share of its call termination market.
- If termination rates are not regulated, operators will keep their termination rates as high as possible, and CBL has recently demonstrated the truth of this statement.

Contrary to CBL's claim in the penultimate paragraph on page 14, its current termination rates do create competition problems (see below), and illustrate the need for the regulation of termination rates on all networks.

BTC considers that URCA's analysis and conclusions that all termination rates should be regulated is correct.

4.2.4 Method of wholesale price control

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.

In this section CBL argues that if wholesale price control is placed on call termination services of all operators, it should be based on the actual costs of each operator. URCA has proposed that they should be the same as BTC's regulated call termination rate.

BTC notes that few national regulatory authorities use the actual costs of an operator to set termination rates. Some, such as URCA, use benchmarks from other countries, and many have used cost models, which are either based on theoretical networks (bottom up models) or rules to remove costs deemed to be irrelevant (top down models). In both cases the resulting cost are abstractions from the actual cost. The aim of the regulator is to approximate termination rates to the costs of an efficient operator so that interconnecting operators are not paying for the inefficiencies of the operator. This principle applies to alternative operators as much as to incumbent operators, and so CBL's argument does not represent good practice.

In CBL's specific case, it is quite possible that its costs of carrying telecommunications traffic is lower than BTC's because CBL's network also carries cable television services. This would raise important questions about how costs should be allocated between services, and provide CBL with plenty of opportunity to skew the results towards its commercial interests. BTC expects that URCA would incur significant time and costs trying to resolve these questions to its satisfaction.

Finally, and probably most importantly, the only cost estimate relevant for setting rates for call termination services is the unit cost associated with the provision of such services as incurred by an efficient operator. Regulatory intervention in these markets aims to mimic the result of a fully competitive market and in the homogenous markets for call termination services no operator would be able to compete in the related retail markets if it has a structural and long-term cost disadvantage in the provision of call termination services. The logical result is symmetric termination rates.

BTC is surprised to see CBL's comments that a reduction in its termination rates would be *"... an unlawful confiscation of CBL's revenues and return on investment".* BTC notes that CBL did not raise similar concerns when URCA mandated a reduction of about 60% in BTC's termination rates over a three year period, and considers CBL's comments to be an excited overstatement. If anything URCA's intervention would not result in a confiscation, but in the prevention of overcharging by CBL.

CBL then comments on BTC's transit rates. BTC notes that URCA's consultation is not about transit rates, and hence CBL's comments are out of place. If URCA decides to undertake a consultation on BTC's transit rates, BTC will be pleased to provide its views in an appropriate way.

4.2.5 Asymmetric termination rates

CBL argues that termination rates should not be reciprocal, that is the same as BTC's, and puts forward some arguments to justify its position. BTC considers that CBL's arguments are misleading, as follows.

URCA's process (page 18, last two paragraphs)

BTC rejects CBL's line of argument that operators do not have significant market power in call termination markets on their own networks, and that they should not be subject to price regulation (see above).

Differences between The Bahamas and European Union (page 19, paragraph 1 and bullet 1)

While BTC accepts that there are differences between the European Union and The Bahamas, they do not prevent The Bahamas from learning from the experience of the EU where relevant. BTC considers that EU experience on symmetrical termination rates is relevant and helpful to The Bahamas. In particular, as the European Regulators' Group noted, the main benefit of asymmetric termination rates is in providing entry assistance to new entrants[8]. This does not apply to CBL, which is a well-established operator with a large existing customer base (see below). BTC notes that the only two new fixed network entrants in The Bahamas (IPSI and Last Mile Communications) have not submitted any comments opposing URCA's proposals for symmetric termination rates.

Market opening (page 19, bullet 2)

CBL includes a table (dated 2008) showing a majority of EU states have permitted asymmetric termination rates as evidence for their use in The Bahamas. However as the accompanying text points out, the telecommunications market has changed since asymmetric termination rates were introduced (early 2000s):

"... in recent years operators have been able to use the same network to provide a wide range of services, including broadcasting and broadband Internet in addition to telephony. This means that revenues from termination services are proportionally

[8] European Regulators Group. Common position on symmetry of fixed termination rates and symmetry of mobile termination rates. ERG (07) 83 final. Page 38

likely to become less important to all operators, incumbents and OAOs alike.

As such any entry assistance policy based on higher OAOs' FTRs is likely to be less effective than in the past. Given that the higher FTRs of OAOs translate in higher prices for calling these networks for consumers, if they are unlikely to promote more competition in the long run, they would be significantly less justifiable than in the past."[9]

BTC considers that the telecommunications market in The Bahamas, especially with CBL's triple play services, matches that described above, and hence the case for asymmetric termination rates for new entrants is weak.

In The Bahamas, CBL's SMP position in the TV and broadband markets also brings with it specific obligations on CBL in the adjacent telephony market, i.e. CBL needs to ensure that it does not leverage dominance from its TV and broadband markets into the telephony market and, of course, CBL should not leverage its dominance in the market for call termination on its telephony network into the retail market for telephony services. It is important in this context that CBL, when bundling telephony services with TV and broadband services, ensures that its bundles are replicable, and that pricing for the telephony component of its retail bundles is consistent with CBL's wholesale tariffs for call termination services – CBL should provide call termination on non-discriminatory terms, including to itself. We invite URCA to have a look at CBL's current double play bundles in this context, an extract of which is presented in the below tables.

Table 1 – CBL unbundled monthly broadband prices

	Price ($)
Revon Charge – 15 MB/s download speed	49.50
Revon Boost – 30 MB/s download speed	71.50
Revon Velocity – 50 MB/s download speed	90.50

Note:
✓Prices exclude modems

Table 2 – CBL unbundled monthly telephony prices

	Price ($)
Revoice Clear	16.99
Revoice Crystal – 600 mins DLD/ILD *)	26.99
Revoice Roar – unlimited DLD/ILD *)	34.99

Note:
✓All packages include unlimited local calling, on-net DLD calling and all calling features included for free
✓Relates to minutes of long-distance calling to landlines in the US, Canada and Europe

[9] ERG op cit page 39

Table 3 – CBL double play monthly prices

	Unbundled Broadband Price ($)	Bundled Price offered	Incremental Telephony Price
Revoice Clear + Revon Charge	49.50	53.69	4.19
Revoice Crystal + Revon Boost	71.50	80.69	9.19
Revoice Roar + Revon Velocity	90.50	101.69	11.19

As can be seen from Table 3, CBL charges an incremental price for its telephony services that is significantly below the stand-alone tariff for its basic telephony offer (Revoice Clear at $16.99). For CBL customers using up their 600 mins in full on the second bundle presented in Table 3, CBL appears content to receive $1.5 cents per minute for calls originating on the CBL network ($9.19 divided by 600 minutes), with this retail revenue per minute covering call origination, international termination costs, relevant retail costs and presumably the cost of providing telephony access. Now contrast this with CBL's position on call termination rates, where CBL insists on receiving $2 cents per minute and it is clear that CBL currently exploits its dominance in the market for call termination services, and that this exploitation has the potential to distort the telephony, TV and broadband markets through CBL's approach to bundling. In the context of this consultation on call termination markets, this clearly implies that CBL's termination prices should be brought in line with URCA's current estimates of efficiently incurred costs for such services, and that termination rates should be reciprocal between operators in the market.

LRIC models (page 19 last bullet and page 20)

CBL claims that the important precedent for symmetrical termination rates from the European Union is conditional on the adoption of a bottom up LRIC approach to setting termination rates. However a fuller reading of the European Union's Explanatory Note shows that the reasons put forward by the EU in favour of symmetrical rates apply whatever method is used to set termination rates. The EU sets out the following disadvantages of asymmetric termination rates:

- They encourage inefficient entry.
- They result in higher retail prices for consumers.
- They result in a cross subsidy from the incumbent operator to the new entrant, thus reducing investment incentives for incumbent operators.

The European Regulators' Group also notes additional disadvantages in the context of asymmetric fixed termination rates[10]:

- New fixed operators can select the area of operation (in contrast to mobile operators, who have to provide national coverage), and so can reach an efficient scale of operation in a short period of time, and therefore do not need any entry assistance provided by asymmetric termination rates.

[10] ERG op cit page 39 - 41

- An inefficient operator receiving asymmetric termination rates has little incentive to reduce termination rates as this will reduce its revenues, and indeed gains a competitive advantage over a more efficient operator.

- Transaction costs are minimised by symmetric rates because the need for negotiations between operators and oversight by regulatory authorities is reduced.

BTC considers that these disadvantages apply whether termination rates are set by LRIC bottom up cost models, statutory HCA-FDC models or (as in the case of The Bahamas) benchmarks.

Duration of asymmetric rates (page 20, bullet 1)

CBL provides a quotation from the ERG report to support its argument that asymmetric termination rates should last for 4 to 5 years. However the context of the ERG report[11] makes it clear that this quotation refers to countries that already have permitted asymmetric termination rates, and the aim of the recommendation is to bring them to an end in an orderly way. It is in no way a justification for introducing them into a country, such as The Bahamas, where asymmetric rates have been in place (as a result of CBL's decision, not URCA's decision) only from January of this year, after a long history of reciprocal termination rates between networks.

Setting fixed termination rates (page 20, third quote)

CBL quotes here from the 2009 EC Recommendation and reads into this quote support for CBL's position that its efficiently incurred costs are different to that of the incumbents. CBL then erroneously continues to state that URCA has adopted a HCA-FDC model for BTC and that consequently URCA's proposal to adopt symmetric termination rates in The Bahamas is not consistent with the approach in the EU. There are multiple factual and logical errors in this section. First of all, URCA did not use BTC's HCA-FDC cost model to set termination rates for BTC, URCA used a benchmarking approach. Second of all the quote makes it clear that "in fixed networks operators have the opportunity to build their networks in particular geographic areas and to focus on high-density routes and/or to rent relevant network inputs from the incumbents". In other words, operators like CBL can select areas to provide services based on their operational and commercial attractiveness and rely on call termination services provided by BTC to reach fixed telephony customers in less attractive (i.e. more costly) service areas. Both these factors *reduce* unit costs for CBL relative to BTC's. The most relevant quote from the 2009 EC Recommendation therefore remains:

"*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].

[11] ERG op cit page 41

It would be disingenuous to present the current EU approach, which is based on the 2009 Recommendation, as anything other than supportive of symmetric call termination rates. This is the current position in the EU, it drives EU policy, and should therefore be treated with more weight than any of the historic data from the EU prior to the 2009 Recommendation.

International precedents (page 21 paragraphs 2 and 3)

CBL questions URCA's statement about the number of countries that have implemented symmetric termination rates. In its first response, BTC listed five states in the Caribbean region that have decided to implement symmetric rates, and summarised the decisions of the United Kingdom on the matter. BTC considers that this list supports URCA's proposals for symmetrical rates, and notes that CBL provides only one example of a country maintaining asymmetric termination rates, Nigeria, which is not normally regarded as providing international best practice. It is also not made clear by CBL why Nigeria provides a relevant benchmark for The Bahamas, of course other than for 'pragmatic' reasons.

Academic analysis (page 21 last paragraph)

Finally, CBL quotes an academic paper that concluded that asymmetric termination rates benefit *"new entrant penetration as well as competitiveness"*. BTC notes that this applies to the mobile market, and is not an analysis of the fixed market (which is the subject of URCA's Preliminary Determination), and that another academic has concluded:

" ... asymmetric mobile-to-mobile termination charges benefit the small network, at the expense of the large network and consumers.... the small firm's profits are slightly higher, while consumer surplus is lower..."[12].

It is likely that academic debate on the issue will continue, but the clear conclusion of most national regulatory authorities is that, especially for the fixed network, symmetric termination rates should be used.

CBL is not a new entrant

BTC also notes that in CBL's case, it is not a new entrant but a well-established electronic communications operator. CBL started its 15 year monopoly in cable television service in 1995, and so has been in operation for 18 years. BTC estimates that CBL now has approximately 80,000 television customers and about 16,000 telecommunications customers[13], and hence considers that any arguments used to justify asymmetric termination rates for new entrants cannot be applied to CBL.

Conclusion

BTC, after an in-depth analysis of the submission made by CBL, considers that CBL has made several arguments with the single aim of supporting its high termination rates, and that these arguments do not stand up to rigorous and detailed examination. BTC therefore supports URCA in the implementation of its Preliminary

[12] Hoernig S. Tariff-Mediated Network Externalities: Is Regulatory Intervention Any Good? November 2007

[13] Based on the statistics in URCA's Annual Report for 2012.

Decision on call termination markets, subject to the comments made by BTC in its first submission.

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 and responses by Other Licensed Operators 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.