



June 26, 2009

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Re: Joint Comments of Cable Bahamas Ltd. and Caribbean Crossings Ltd. on the Public Consultation Paper of The Committee for the Privatisation of The Bahamas Telecommunications Ltd. on behalf of The Government of The Commonwealth of The Bahamas on the Access & Interconnection Framework for the Electronic Communications Sector

Dear Committee Members:

Cable Bahamas Ltd. ("CBL") and its wholly owned subsidiary Caribbean Crossings Ltd. ("CCL") (jointly, "the Companies") hereby jointly respond to the Consultation Paper on Access & Interconnection Framework for the Electronic Communications Sector (the "A&I Consultation") published by the Committee for the Privatisation of The Bahamas Telecommunications Company Ltd. (the "Committee") on behalf of The Government of The Commonwealth of The Bahamas. For the reasons stated herein, the Companies applaud the Government's commitment to improve the communications services used by citizens and consumers in The Bahamas, and to encourage and safeguard future investment in the sector. The Companies respectfully submit, however, that certain of the Government's specific proposals may undermine those objectives and jeopardize future investment in the communications sector.

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

The Companies respectfully submit, that the requirements of general access, interconnection and interoperability should be imposed upon all operators, including those without SMP and URCA is obligated to enforce such duties in a transparent, non-discriminatory fashion.

The Companies submit that URCA must be prepared to consider and adjudicate disputes lodged against operators who fail to provide interconnection or to negotiate a RAIO in good faith and in a timely fashion.

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Such delays in the implementation of interconnection in the early stages can be fatal to emerging carriers and should not be countenanced.

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

The Companies generally agree that the principles set forth in Paragraphs 27 and 28 of the A&I Consultation should form the core access and interconnection principles in the new regulatory framework. The Companies respectfully submit, however, that the new regulatory framework should recognize the inherent differences between the architectures of telecommunications networks and cable TV networks, and not impose upon cable TV operators requirements which are irrelevant to their networks and which would impose upon them substantial and inappropriate regulatory burdens. As the Committee itself has recognized, for example, "Cable networks are fundamentally different from traditional telecoms fixed networks. Owing to the topology and the network and service management applied to cable networks, it is not feasible to apply the same form of physical unbundling as applied to conventional telecoms networks." A&I Consultation, paragraph 59. Because of their configuration, moreover, cable TV networks are not designed to provide any-to-any connectivity. The core access and interconnection principles should recognize these basic distinctions.

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

The Companies respectfully submit that the list in Paragraph 30 of the A&I Consultation should be expanded to include standard terms and conditions governing, *inter alia*, confidentiality, indemnification, limitation of liability, termination and dispute resolution. In addition, metrics, tracking and reporting requirements for service level agreements to be included in each RAIO should be based upon a thorough analysis of the respective networks subject to the RAIO.

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

The Companies agree with the proposal that the call based remedies listed are still relevant and may form part of any new RAIO. The Companies note, however, that these remedies are premised on the use of legacy networks. As next generation networks come into operation, the above remedies may not be appropriate.

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

The Companies agree that a 'Call to Directory Information Service' obligation should be included in the RAIO.

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

The companies agree that indirect access should be within the scope of the RAIO.

Question 7. What market decisions do you consider should prevail in order for URCA to mandate an SMP operator to implement indirect access?

There should be a cost-benefit analysis to see if the implementation of indirect access produces a net benefit to society and whether there is any unfair burden likely to result from the imposition of the indirect access. The market decisions should consider the choices (communications providers) available to consumers in the identified markets, potential business opportunities in the communications sector, likelihood of the reduction in call prices and greater utilization of networks. URCA should further bear in mind that indirect access may be ideally suited for family island residents who do not have access to broadband and thus will have to make inter-island and international calls using the PSTN.

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

If the market conditions exist, the form of indirect access which the Companies would favor would be carrier pre-selection with call-by-call override. This option would afford consumers with maximum flexibility.

Question 9. If indirect access is imposed on an SMP operator how long do you think the SMP operator should have to implement it?

Three months.

Question 10. Do you agree that the specified 'Call Origination' remedies should be included in the RAIO in the future? If you disagree then please explain your reasons.

The Companies agree that the specified 'Call Origination' remedies should be included in the RAIO in the future.

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

The Companies agree with the proposal that the connectivity based services are still relevant and should form part of any new RAIO.

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

The Companies do not agree that wholesale broadband remedies should be within the scope of the RAIO. The market for broadband services in The Bahamas is already highly competitive, with an adequate choice of alternative providers of replicable products.

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

None. The market for broadband services in The Bahamas is already highly competitive, with an adequate choice of alternative providers of replicable products.

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

As noted, the market for broadband services in The Bahamas is already highly competitive, with an adequate choice of alternative providers of replicable products. Against this background no form of wholesale broadband should be mandated by the Government.

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

Not applicable. The market for broadband services in The Bahamas is already highly competitive, with an adequate choice of alternative providers of replicable products.

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

The Companies do not agree that the specified 'Wholesale Broadband' remedies should be included in the RAIO. The market for broadband services in The Bahamas is already highly competitive, with an adequate choice of alternative providers of replicable products.

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

The Companies do not agree that local loop unbundling remedies should be within the scope of the RAIO. The size of The Bahamas market for telecommunications services does not support the investment requirements by new entrants in an unbundled local loop environment.

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

None. The size of The Bahamas market for telecommunications services does not support the investment requirements by new entrants in an unbundled local loop environment.

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

If market conditions exist, the Companies would prefer the approach proposed in Trinidad and Tobago for a phased introduction approach, beginning with full and line-sharing LLU, and the possibility of sub-loop LLU and bit stream to be reviewed at a later date.

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

In the event such remedies are mandated, an SMP operator should be allowed six (6) months in which to implement them.

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

The Companies do not agree that the specified 'Unbundled Access to the Local Loop' remedies could be included in the RAIO. The size of The Bahamas telecommunications market does not support the investment requirements by new entrants in an unbundled local loop environment.

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

The Companies do not agree that access to cable TV network remedies should be within the scope of the RAIO. As the Committee itself has observed, "Cable networks are fundamentally different from traditional telecoms fixed networks. Owing to the topology and the network and service management applied to cable networks it is not feasible to apply the same form of physical unbundling as applied to conventional telecoms networks." A&I Consultation, paragraph 59.

The imposition of RAIO requirements on cable TV and other non-telecommunications networks is also unprecedented. While the Committee cites "case studies" for both Denmark and the Netherlands, by its own admission, there, "as in the rest of the EU, access regulation only applies to wholesale access to broadband *over the telecoms network.*" (emphasis added). A&I Consultation, paragraph 63. In Denmark, access regulation has only been proposed – to date, not adopted – for the country's incumbent telecommunications operator, which also controls large parts of Denmark's cable network. In the Netherlands, the EU has correctly noted that "the Dutch broadcasting market structure diverges from most other EU Member States as cable networks in the Netherlands are the most concentrated grid systems..."¹ The relevance of these examples to The Bahamas, whose market is considerably smaller, is not clear.

Finally, in The Bahamas, the current market for broadband services is highly competitive, with an ample choice of alternative providers of replicable products (cable modem, DSL, satellite and wireless 3G). Under these circumstances, the imposition of an access requirement would be both burdensome and unnecessary.

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

None. The market for broadband services in The Bahamas is already highly competitive, with an ample choice of alternative providers of replicable products (cable modem, DSL, satellite and wireless 3G).

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

As noted above, the Companies do not wish to see any form of unbundled access requirement mandated for cable TV networks. The market for broadband services in The Bahamas is already highly competitive, with an ample choice of alternative providers of replicable products (cable modem, DSL, satellite and wireless 3G).

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

The Companies do not agree that the specified 'Cable TV network access' remedies could be included in the RAIO. See response to Question 22 above.

¹ See "Commission clears Dutch regulatory OPTA's proposal to enhance competition in the broadcasting markets", <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/245&format=HTML&aged=0&language=EN&guiLanguage=en>

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

The Companies agree that the specified 'Backhaul' remedy should be included in the RAIO.

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

URCA should mandate SMP operators to provide backhaul services immediately.

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

The Companies agree with the proposal that the co-location services listed are still relevant and could form part of any new RAIO.

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

The Companies disagree and submit that the sharing of masts and towers for wireless telecommunications equipment and the sharing of ducts should form part of the a RAIO with the applicable cost-orientated pricing. The Companies further submit that the same terms and conditions of access to land and infrastructure afforded to incumbent operators be made available to new entrants.

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

The Companies do not agree that a co-location remedy to support LLU and access to Cable TV networks should be within the scope of the RAIO. The market for broadband services in The Bahamas is already highly competitive, with an ample choice of alternative providers of replicable products (cable modem, DSL, satellite and wireless 3G).

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

The Companies do not agree that URCA should have the power to oblige SMP operators to expand co-location services in the RAIO to provide co-location services for LLU and access to Cable TV network. The market for broadband services in The Bahamas is already highly competitive, with an ample choice of alternative providers of replicable products (cable modem, DSL, satellite and wireless 3G).

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

The Companies agree with the proposal that the ancillary product listed is still relevant and could form part of any new RAIO.

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

The Companies agree that the specified reciprocal 'Data Management Amendment' service should be included in the RAIO.

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

The Companies agree that the proposed charging framework is suitable and practicable for The Bahamas.

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

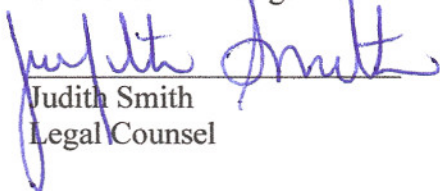
The Companies agree with the proposed approach to the application of cost-orientation.

Conclusion. CBL and CCL applaud the Government's initiative and respectfully submit that the limited revisions proposed herein will have a positive impact on implementation of a transparent, predictable and consistent regulatory framework which will promote network competition, affordable and state-of-the art services, and the health of the telecommunications sector in The Bahamas generally. We welcome the Government's continued efforts to effectuate its goals, and to assisting the Government in developing a regulatory regime which will serve the public interest.

Respectfully submitted,

Cable Bahamas Ltd.
Caribbean Crossings Ltd.

By:


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