



**OBLIGATIONS ON BAHAMAS TELECOMMUNICATIONS COMPANY  
LTD. UNDER S. 116(3) OF  
THE COMMUNICATIONS ACT, 2009**

**REPLY OF CABLE BAHAMAS LTD  
TO  
COMMENTS RESPONDING TO URCA'S  
CONSULTATION ON BTC'S DRAFT ACCESS AND  
INTERCONNECTION OFFER  
(RAIO) (ECS 22/2010)**

November 12, 2010

## 1. INTRODUCTION

### A. BTC's Comments Raise Fundamental Concerns

Cable Bahamas Ltd. ("CBL") hereby replies to the comments submitted by the Bahamas Telecommunications Company, Ltd. ("BTC") and others in response to URCA's consultation document (ECS 22/2010) on the draft Reference Access and Interconnection Offer ("RAIO") proposed by BTC. The content and tone of BTC's comments demonstrate the natural resistance of a virtual monopolist to market opening, the success of which depends critically on the availability of access and interconnection ("A&I") on reasonable terms from the incumbent. Nothing in the comments filed by BTC or LIME, BTC's putative acquirer, undermines the core positions set forth in URCA's consultation document, which by and large reflects international best practice appropriately tailored to The Bahamas.

CBL urges URCA not to be swayed by the vitriol of BTC's submission. However, because BTC appears to be signalling that delayed implementation of the A&I regime is in store, URCA should take all appropriate procedural measures to ensure that a workable interim A&I regime can be imposed, if necessary, in order to prevent further delays in bringing the benefits of vigorous fixed-voice competition to the people of The Bahamas. It is already clear from BTC's complete lack of responsiveness to CBL's attempts to initiate A&I negotiations pending completion of this consultation<sup>1</sup> that BTC's strategy is to use every means available to delay for as long as possible the provision of A&I and the actual introduction of competition. CBL expects to achieve compliance with its own SMP obligations shortly and will be ready to activate its voice services at that time. A final or interim A&I solution should be available to OLOs by that time.

URCA should forcefully reject BTC's assertion that URCA has only a limited role to play in developing the RAIO.<sup>2</sup> On the contrary, under the legal and regulatory framework established by the Communications Act, 2009 ("Comms Act"), URCA's role is a substantial one. BTC's claim that URCA has overstepped its bounds by taking "ownership" of the RAIO from BTC is a distraction meant to obscure URCA's legitimate and necessary role in this process. BTC's overwhelming dominance in the fixed voice market means that its wholesale customers/retail competitors cannot exert normal commercial leverage in order to successfully negotiate reasonable A&I terms on their own behalf. URCA's role under the Comms Act is to ensure that this commercial imbalance is mitigated *ex ante* in order to prevent (or at least minimize) harmful anticompetitive effects.

BTC concedes that URCA's role is to ensure that "the document" complies with the Comms Act and relevant regulations. Yet BTC ignores the fact that in material and obvious respects, the draft RAIO falls far short of achieving that objective. The extent of URCA's concerns and proposed revisions, as set forth in the consultation document, is simply a

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<sup>1</sup> This was expressly contemplated by URCA in its Final Decision imposing significant market power ("SMP") obligations on BTC. ECS 11/2010, p. 39. Well over three months ago, CBL formally commenced the A&I application process in accordance with the terms of BTC's draft RAIO. However, BTC has repeatedly failed to engage with CBL based on its spurious arguments to support its delay tactics. BTC's failure to come to the table was fully documented in a letter of complaint dated Sept. 30, 2010 from Judith Smith, Legal Counsel, CBL to Usman Saadat, Director of Policy & Regulation, URCA. On Oct. 1, 2010, URCA sent a written notice to BTC of CBL's complaint and requested "a full explanation" by Oct. 8, 2010. CBL has not as yet received a copy of BTC's response and understands that BTC did not respond to URCA's notice. In any event, the notice has had no effect on BTC's stonewalling tactics.

<sup>2</sup> See BTC Comments, p. 1.

reflection of the extraordinary degree to which BTC's draft RAIO fails to meet a minimum threshold of reasonableness.

BTC's rather astonishing follow-on assertion that "URCA is **not** responsible for . . . detailed implementation" of the RAIO<sup>3</sup> confirms that BTC fundamentally misapprehends the basic implications of the new regulatory framework that is now in place in The Bahamas. URCA's role under the Comms Act is not and should not be limited to that of document reviewer. URCA must also foresee — and oversee — detailed implementation of the RAIO to the extent that these details affect the ability of BTC's customer-competitors to compete at the retail level.

The scope of URCA's role is clear from both section 40(1) of the Comms Act<sup>4</sup> and the conditions of BTC's licence.<sup>5</sup> Based on experience elsewhere, it is well established that the devil is often in the details of a RAIO. The degree to which BTC's initial draft deviates from reasonable compliance with its SMP obligations strongly suggests that URCA will in fact need to remain closely involved in the "implementation details" as well as the documentation.

In light of BTC's apparent strategy of delay, CBL urges URCA to make clear in its final determination on the RAIO that it will, if necessary, mandate interim A&I terms and conditions and impose severe penalties for every day that BTC fails to comply with URCA's interim orders, in accordance with URCA's express powers under the Comms Act.

## **B. Priority Issues for a Competitive Fixed Voice Market in The Bahamas**

CBL has provided extensive comments on the consultation document that provide legal and factual support for virtually all of the positions taken by URCA.<sup>6</sup> We will not repeat those arguments here. Although CBL believes that all of the issues raised in its initial comments are important, CBL wishes to highlight that the following issues are "deal breakers" from its perspective:

1. Both the RAIO and the actual A&I agreement (which should mirror the relevant provisions of the RAIO) should consist primarily of a unilateral offer, with mutual or reciprocal provisions being limited to those few activities which BTC and the OLOs would be unable to implement in the absence of such arrangements.
2. BTC should not be allowed to limit the scope of its SMP obligation by unjustifiably excluding from the RAIO the termination of foreign-originated calls delivered by OLOs for termination on BTC's network. The charges for terminating such international calls should be the same as the charges to

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<sup>3</sup> BTC Comments, p. 3 (emphasis in original).

<sup>4</sup> "URCA *may impose specific conditions* on licensees determined to have SMP" (emphasis supplied).

<sup>5</sup> Individual Operating Licence, cl. 34.1 ("If so determined by URCA, the SMP Licensee shall . . . conclude an agreement . . . for interconnection and Access or both . . . on fair and reasonable terms, Conditions and charges *or on such terms, Conditions and charges as URCA may from time to time direct*" (emphasis supplied)).

<sup>6</sup> The comments submitted by Systems Resource Group Limited ("SRG"), which has had actual experience dealing with BTC in A&I negotiations and with implementation of an actual voice interconnect agreement, provide added support for most of the positions set forth in URCA's consultation document.

terminate calls from national locations. Any other result would be in clear violation of URCA's SMP decision and unlawfully discriminatory.

3. BTC should be required to offer direct points of interconnection ("POI") — *for the termination of both fixed and mobile traffic* — on Abaco, Eleuthera, Grand Bahama and New Providence. Alternatively, BTC should be required to provide virtual interconnection (that is, no transit charges should apply) for traffic to the mobile network and/or islands where there is no BTC POI.
4. If BTC cannot demonstrate that its unlimited local call offer is cost-orientated, then it must demonstrate that its proposed wholesale offer (both the structure and the charges) would enable a reasonably efficient operator to replicate BTC's retail offer. If neither of these tests can be satisfied in the short term, then CBL agrees with SRG that a Bill and Keep regime would be the best alternative. CBL would voluntarily agree to an interim Bill and Keep arrangement if the obligation is imposed on BTC.
5. If a Mobile Party Pays ("MPP") regime is approved by URCA, then no mobile termination charges should be payable by OLOs except for calls from international locations delivered by OLOs to BTC's mobile network.
6. BTC should be required to develop revised wholesale charges based on URCA's required amendments to BTC's Accounting Separation model, in particular with respect to the cost allocations for points of interconnection.
7. URCA should, as proposed in the consultation document, undertake an efficiency study to ensure that BTC's costs reflect those of a reasonably efficient operator, and BTC should be required to adjust any affected RAIO charges in accordance with URCA's findings, with applicability on a retroactive basis.

Finally, CBL would point out that in one point of commonality with BTC, CBL does not believe that it is necessary for URCA to impose a cost orientation obligation on BTC for international call transit services, for which there appears to be reasonable competitive alternatives available on the market.

### **C. Structure of CBL's Reply Comments**

In the following two sections, CBL provides its detailed reply to the comments submitted by BTC as well as LIME, which has an obvious interest in the outcome of this consultation as the likely new owner of BTC and whose comments should be read in that light.

In section 2, CBL responds to new information provided by BTC relating to (a) charges for joining circuits, and (b) forecasting and planning. In section 3, CBL responds to new information raised by BTC and LIME in their comments that CBL believes it is necessary to rebut in its reply.

## **2. BTC'S PROPOSALS FOR JOINING CIRCUITS AND FORECASTING AND PLANNING PROCEDURES**

As discussed below, BTC’s selective reliance on a single tariff – adopted in Jamaica in 2007 – does not provide a reasonable basis for establishing the price of its joining circuits. By contrast, the proposals that BTC has made regarding forecasting and planning appear to be reasonable and, therefore, should be accepted by URCA.

**A. Joining Circuits, Customer-sited Interconnection and In-Span Interconnection**

CBL objects strongly to BTC’s suggested prices for joining circuits, customer-sited interconnection and in-span interconnection. These prices, BTC acknowledges, are “taken from the Jamaican RIO-5”.<sup>7</sup> This is objectionable for several reasons. First, the benchmark that BTC selected – the prices in the Jamaica-5 RIO – is, by BTC’s own admission, out-of-date. Second, there is no need to rely on benchmarks in this instance. And, finally, the proposed prices are significantly above those currently charged in other benchmark jurisdictions. We discuss each issue below.

**Use of benchmarks.** BTC’s reliance on benchmarks in this instance is flatly inconsistent with BTC’s general opposition to the use of benchmarks.<sup>8</sup> Indeed, elsewhere in its comments BTC specifically objects to the use of the Jamaica-5 RIO, which BTC concedes is “*somewhat out-of-date*”.<sup>9</sup> BTC cannot have it both ways, objecting to the use of benchmarks when they indicate that BTC’s proposed prices are excessive, but then relying on benchmarks when they yield lower rates. Either the benchmarking in general — and the Jamaica-5 RIO in particular — provide a relevant benchmark or they do not.

**Need for benchmarks.** While CBL believes that benchmarking can play a useful role in URCA’s assessment of BTC’s proposed prices,<sup>10</sup> reliance on benchmarks is not necessary where actual cost data is readily available. In the present case, CBL recognises that BTC’s accounting separation model currently being developed would not provide a credible basis for determining the cost of BTC’s joining circuits. However, given that the primary cost drivers of the joining circuit service are civil engineering work and labour costs, CBL believes that BTC could develop a reliable estimate of the cost of these services using currently available data.

**BTC’s exclusive reliance on the Jamaica-5 RIO.** Even if benchmarking could be justified in this instance, the benchmark that BTC has selected – the Jamaica-5 RIO – is not appropriate. As BTC itself elsewhere concedes, the prices contained in the Jamaica-5 RIO are out-dated, and comments filed by the local industry (in particular by Digicel) point to the excessive level of the prices imposed for joining circuits.

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<sup>7</sup> BTC Comment, p. 84.

<sup>8</sup> See BTC Comments, p. 6 (“URCA must not put too much reliance on such benchmarks, particularly in the absence of a detailed understanding of the impact of the above differences between the benchmarking countries, and therefore on their relevance for tariffs in The Bahamas.”).

<sup>9</sup> BTC Comments, p. 41; see *id.* p. 42 (objecting to the use of Jamaica as a benchmark) (“[T]he approved RIO tariffs in Jamaica are in fact from 2007 and these tariffs are therefore somewhat out-of-date. It is BTC’s view that a more recent RIO would be more appropriate to use if it is URCA’s aim to present current cost estimates for comparable services.”).

<sup>10</sup> Please see our comments, in Section 3.B, below.

More fundamentally, BTC's reliance on a single benchmark is not methodologically sound. Indeed, as BTC itself elsewhere acknowledges, reliance on Jamaica as "*the single benchmark country used . . . [does] not provid[e] a stable starting point for tariff setting purposes.*"<sup>11</sup> By contrast, in other areas, BTC has relied on data from multiple jurisdictions to try to justify prices for other services, such as the fixed and mobile termination rates. BTC could and should have done the same in this instance. Indeed, contrary to BTC's suggestion, there is no need to limit the potential benchmarks to island nations because providing joining circuit services between two operators does not require the use of undersea cable network. Moreover, the cost of joining circuits should not be affected by the density of traffic or of population.

**BTC's proposed prices exceed relevant benchmarks.** The prices that incumbent operators in other jurisdictions charge for comparable products appear to be significantly lower than the prices proposed by BTC. For example, Jersey Telecom publishes the details of the charges for the joining circuit service using in-span interconnection, in a finalised RIO. Specifically, in the Jersey Telecom RAIO, the price for new ducts is approximately<sup>12</sup> about 70 percent less than the USD 1,646 proposed by BTC. Similarly, the price of shared duct is approximately about 98 percent less than the USD 545/month/mile proposed by BTC. Incumbents in other jurisdictions, such as France, charge even lower prices for such services.

In light of the above, CBL urges URCA to carefully review BTC's tariffs for joining circuits. In the absence of a cost study, URCA should require BTC to reduce its proposed prices so that they are aligned with the most recent RAIO prices (such as the price currently charged by Jersey Telecom) – rather than selectively relying on the out-dated prices contained in a single RIO.

## **B. Forecasting and Planning**

CBL wishes to comment briefly regarding three issues associated with forecasting and capacity planning system. Specifically: traffic forecasting and management, physical link installation and commissioning and anticipated network evolution. Subject to the qualification stated below, CBL believes that the proposals that BTC has made are reasonable as a starting point and, therefore, should be accepted by URCA; however, the process should be monitored closely by URCA during the first few years of the RAIO.

**Traffic forecasting and management.** Appropriate traffic forecasting is necessary in order to ensure that BTC has sufficient network capacity to terminate or transit the traffic of OLOs. Nevertheless, CBL has reconsidered its initial position following review of BTC's and SRG's comments, and now agrees that it is not necessary for URCA to prescribe a detailed traffic forecasting process, so long as BTC terminates OLOs' traffic on its (fixed or mobile) networks on a non-discriminatory basis as to both quality of service and price.<sup>13</sup>

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<sup>11</sup> BTC Comments, p. 41.

<sup>12</sup> See Jersey Telecom, RIO Schedule 6 version 1.5, dated February 2009 ([http://www.jerseytelecom.com/upload/documents/in\\_business/reference\\_interconnect\\_offer/JT\\_RIO\\_Tariff\\_Schedule\\_v1-5\\_Feb\\_09.pdf](http://www.jerseytelecom.com/upload/documents/in_business/reference_interconnect_offer/JT_RIO_Tariff_Schedule_v1-5_Feb_09.pdf)).

<sup>13</sup> In other words, the quality of service that BTC provides for OLO traffic must be equivalent to the quality of service that BTC provides when conveying its own traffic.

**Physical link installation and commissioning.** A process must be in place to ensure that BTC has sufficient manpower and that its interconnection equipment has sufficient capacity. Such a process must include procedures by which BTC provides OLOs with sufficient notice and lead times as well as the availability of equipment and manpower. CBL has reviewed the process proposed by BTC and believes that it provides an acceptable starting point.

**Anticipated network evolutions.** Finally, BTC must adopt a process by which it will provide notice to OLOs regarding anticipated changes in the BTC network, such as the introduction of NGN/NGA functionality. BTC, moreover, must provide such notice sufficiently far in advance of deployment so that OLOs have adequate time to make appropriate changes to their networks and strategies. This is a statutory obligation of SMP operators pursuant to section 40(4)(b) of the Comms Act. Here again, CBL has reviewed the process proposed by BTC and has concluded that it is acceptable. However, CBL wishes to emphasize the importance of having sight of BTC's NGA deployments and implementation plan as soon as URCA's final determination is issued.

In sum, CBL does not object to BTC's proposals regarding traffic forecasting and management, physical link installation and commissioning, and anticipated network evolution. CBL strongly recommends, however, that URCA closely monitor the performance of BTC with regard to these matters at least during the first few years of the RAIO. This would allow URCA to intervene quickly if BTC were to adopt practices that could be detrimental to OLO operations and, ultimately, to the development of effective competition on the market.

### **3. NEW ISSUES RAISED BY BTC AND LIME**

In their comments, BTC and LIME raise a number of new issues that CBL believes, warrant a response. These issues relate to: (A) the mobile interconnection regime; (B) the use of benchmarks; (C) efficiency adjustments; (D) BTC's accounting separation model; (E) termination of international traffic; (F) the definition of "access"; (G) reciprocity of termination rates; (H) the replicability test; and (I) the treatment of new services. We discuss each issue, in turn, below.

#### **A. The mobile interconnection regime**

URCA has expressed its concern that BTC's mobile interconnection regime could result in "double recovery" of costs related to the termination of fixed-to-mobile calls. This would occur if BTC were permitted to charge mobile subscribers for call termination (MPP) *and* to impose a mobile interconnection charge on the origination OLO. Despite URCA's well-founded concern, BTC insists on applying a mobile termination rate even if URCA adopts an MPP regime.

As CBL has previously observed, URCA should promptly decide whether to adopt MPP or a calling party pays ("CPP") regime for mobile traffic in The Bahamas. If URCA adopts an MPP regime, BTC should not be allowed to impose fixed-to-mobile termination charges. By contrast, if URCA adopts a CPP regime, BTC should be allowed to include a cost-oriented mobile termination service in the RAIO. Only by aligning the retail and wholesale charging regimes can URCA prevent double-recovery.

BTC's insistence on charging for fixed-to-mobile interconnection regardless of the retail charging regime also raises a serious concern regarding discrimination. At the present time, BTC's retail mobile subscribers are not charged when they receive a call from BTC's fixed network. We understand, however, that BTC plans to charge its retail mobile subscribers when they receive calls from other operators' networks. We urge URCA to investigate this matter and, if correct, to require BTC to treat all traffic that it delivers to its mobile customers – whether originating on BTC's network or on an OLO's network – in the same manner.

CBL's initial comments also emphasized that URCA must assess BTC's proposed wholesale pricing arrangements in relation to the level and structure of BTC's corresponding retail rates in order to determine whether an equally efficient OLO would be able to use BTC's wholesale services to offer a competitive retail service. This concept is sometimes referred to as the replicability principle<sup>14</sup>. This principle is particularly applicable to the mobile market. If OLOs are required to pay wholesale charges for calls terminated on their mobile networks, whereas BTC does not have to impute such costs as the basis for its retail prices, OLOs will be unable to replicate BTC's retail mobile offering regardless of how efficient they are. This classic margin squeeze situation will deprive consumers of the benefits of effective competition. Given the difficulties of establishing an appropriate fixed-to-mobile interconnection regime, and the fact that URCA has not yet determined whether to adopt an MPP or a CPP regime at the retail level, we urge URCA to consider SRG's proposal to apply a Bill and Keep regime for fixed-to-mobile traffic as an interim measure, pending resolution of relevant issues.

## **B. Use of benchmarks and cost models to set RAIIO prices**

As noted above, BTC has repeatedly criticised URCA's use of international benchmarks. In particular, BTC contends that international benchmarks do not reflect the particularized conditions in The Bahamas, which, BTC notes, is “*a relatively small country, with population scattered across a large number of islands, requiring an expensive submarine cable network for the provision of services*”.<sup>15</sup> BTC's criticisms of benchmarking are not well-founded.

As an initial matter, BTC's criticism of benchmarking is undercut by BTC's willingness to cite benchmarks – such as the Jamaica-5 RIO – when it serves BTC's purposes. In any event, incumbent operators typically claim that their network is unique and that the unique conditions in their country preclude meaningful comparisons with operators in other countries – especially countries that are further along in the liberalisation process. We recognise that The Bahamas has some important distinguishing characteristics. However, the use of international benchmarks can provide an effective means to assess the reasonableness of an incumbent operator's costs.

Of course, URCA should only use benchmarks that provide an appropriate basis for comparison. In some cases, that may require the use of benchmarks from countries with similar characteristic to The Bahamas. For example, when seeking to identify benchmarks for services such as inter-island call termination, it is appropriate to make comparison to other multi-island countries, where the provision of these services requires the use of

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<sup>14</sup> See section 3.H, below.

<sup>15</sup> BTC Comments, p. 6.



submarine cables. By contrast, services such as intra-island call termination or joining circuits are not affected significantly by local conditions. When seeking to benchmark BTC's proposed charges for such services, URCA can and should consider cost data from a wider range of countries.

That said, if URCA were to reverse its position and conclude that the use of international benchmarks is not appropriate due to the specific situation of The Bahamas, then it would have to require BTC to build a detailed cost model designed to assess the cost of a reasonably efficient operator. In most jurisdictions, such an assessment is based on a bottom-up cost model because (as BTC is discovering with its AS model) a top-down approach has severe limitations in its ability to provide granular, detailed information and to make needed efficiency adjustments. As a result, if URCA concludes that international benchmarking does not provide an appropriate tool for assessing the reasonableness of BTC's proposed costs, URCA should direct BTC to rapidly adopt a detailed bottom-up cost model (preferably based on LRIC) that could perform this function.

### **C. Comments regarding an efficiency adjustment and the concept of Modern Equivalent Asset ("MEA")**

In its comments, BTC criticises URCA's efforts to assess the efficiency of BTC's operations. Specifically, BTC states that "[a]t no stage before this consultation did URCA mention any methodologies to the industry to assess efficiency, nor did URCA conduct a study that stands up to reasonable scrutiny."<sup>16</sup> Regardless of what efficiency measures (if any) BTC employed when it developed its proposed costs, URCA is clearly empowered to consider network efficiency when assessing those costs and should do so.

Consistent with international best practice, BTC's wholesale interconnection prices should be based on the costs to provide these offerings that would be incurred by a reasonably efficient operator using current efficient technologies, a methodology sometimes referred to as Modern Equivalent Asset (MEA) costing. This reflects the practice in competitive markets, where a market participant must set its prices at the level of its most efficient competitor – otherwise no one will buy its product — regardless of whether that price will recover the participant's historical costs.

Adopting a MEA-based approach typically requires some adjustment to the incumbent operator's prices. For example, as demonstrated in numerous European studies, the cost of providing voice telephony using a modern NGN network is significantly less than the cost of providing the same service using a legacy public switched network. Applying a MEA-based methodology, however, may have less of an impact on BTC than on incumbents in other countries that have a less developed infrastructure. BTC's NGN network deployment should provide lower unit costs, which should be reflected in BTC's wholesale charges.

### **D. BTC's Cost Allocation Model/Allocation of Costs to the POI Element**

URCA has concluded that only POI-specific costs (*i.e.*, the PoI-specific depreciation and return and capital employed values) should be allocated to the PoI component, while all remaining non-POI-specific interconnection-related costs should be recovered across all of

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<sup>16</sup> BTC Comments, p. 38.

BTC's interconnection and retail products. This approach, URCA has explained, "*will help ensure non-discriminatory access provision and facilitate effective competition . . .*" URCA further observed that "*end-users, including those from BTC, ultimately benefit from enhanced competition and should therefore contribute to the cost of establishing these interconnect regimes.*"<sup>17</sup> BTC, however, strongly rejects URCA's proposed approach on the grounds that it is "*inconsistent with the principle of cost causality which is the fundamental basis upon which accounting separation models are developed.*"<sup>18</sup>

As an initial matter, even from a cost-causation perspective, BTC's proposed POI pricing appears to reflect an over-allocation of interconnection-related costs (such as legal and regulatory costs) to this interconnection element<sup>19</sup>. Therefore, at a minimum, such costs (if justified at all in the rate base) should be appropriately allocated among all interconnection elements, while only the POI-specific costs should be allocated to the POI component. However, not all interconnection-related costs need be recovered through charges for interconnection-related services. To the contrary, CBL strongly agrees with URCA's conclusion that, while cost-causation should be a primary consideration, a cost allocation regime may reflect other relevant principles. These include the distribution of benefits and the promotion of effective competition. Therefore, the allocation of some interconnection-related costs to retail services is entirely appropriate. As URCA recognises, this approach has repeatedly been adopted in other jurisdictions, including the United Kingdom or Ireland, when developing AS models.

#### **E. Termination of international calls**

BTC objects to URCA's proposal that BTC be required to offer, as part of its RAIO, international call termination service. While BTC does not object to providing domestic call termination services pursuant to the RAIO, it contends that international call termination service should be provided pursuant to commercial agreements. This discriminatory treatment, BTC contends, would be "*beneficial to all operators active in The Bahamas telecommunications industry*" because it "*ensures that revenues associated with international termination are kept at current levels.*"<sup>20</sup> Simply stated, BTC argues that URCA's proposal would reduce international settlements rates, while keeping these rates high would benefit both BTC and the OLOs. CBL does not agree.

As CBL observed in its previous comments, regulated access to the provision of call termination on BTC's network (irrespective of the origin of the call) on a cost-oriented basis under a RAIO is required to allow OLOs to compete effectively with BTC in the retail telephony market. The origin of the call has no impact whatsoever on the technical characteristics of the national call termination service provided by BTC to OLOs. Therefore, the cost of BTC's call termination service on its network is the same regardless of whether the origin of the call is national or international. Consequently, URCA should require BTC to include in the RAIO the provision of national call termination service for all calls – regardless of the place of origin or domestically. Moreover, URCA should expressly provide that BTC should charge the same price for this service regardless of whether the call originated internationally or domestically.

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<sup>17</sup> URCA Consultation Document, p. 36.

<sup>18</sup> BTC Comments, p. 34.

<sup>19</sup> For example, it would be particularly unfair for BTC to be allowed to allocate the costs of extensive litigation over the RAIO in a way that would enable it to pass these costs onto OLOs through its SMP wholesale charges.

<sup>20</sup> BTC Comments, p. 17.

Requiring BTC to offer call termination service on a non-discriminatory basis is consistent with the approach taken by most countries at the start of the liberalisation process. To do otherwise in this case would violate section 116(1)(a) of the Comms Act and URCA's Final Decision on SMP obligations. Indeed, in countries that have not mandated a non-discriminatory approach, legal complaints have usually been filed to address the problem.<sup>21</sup> These operators plainly did not believe that having to pay the incumbent more to terminate international calls than they paid it to terminate domestic calls was "beneficial" to them.

Like BTC, LIME opposes requiring international call termination to be provided pursuant to the RIAO. In support of its position, LIME describes the problems that from which Jamaica supposedly "*suffered*" when the regulator required the incumbent to offer a cost-based international call termination service. Based on CBL's understanding of the situation in Jamaica, LIME's version of the facts omits significant details. Whatever the experience in Jamaica may have been, it has little relevance for The Bahamas. This is because the amount of in-bound and out-bound traffic is far more imbalanced in Jamaica than it is The Bahamas. As a result, the significance of settlements revenue is far greater in Jamaica than in The Bahamas.

The vast majority of international calls originating or terminating in The Bahamas are to or from the United States. According to figures compiled by U.S. Federal Communications Commission, in 2008 US operators paid \$3,424,646 to Bahamian operators for terminating traffic that originated in the U.S., while Bahamian operators paid U.S. operators \$784,422 for terminating traffic that originated in The Bahamas.<sup>22</sup> This resulted in net revenues to The Bahamas of \$2,640,222. Viewed another way, the payment imbalance between the U.S. and The Bahamas is about 4.3 to 1 in The Bahamas' favour.

By contrast, in 2008, U.S. operators paid \$87,985,670 to Jamaican operators for terminating traffic that originated in the U.S., while Jamaican operators paid U.S. operators \$3,787,725 for terminating traffic that originated in Jamaica.<sup>23</sup> This resulted in net revenues to Jamaica of \$84,197,941. Thus, while the population of Jamaica is about eight times larger than the population of The Bahamas, the amount of money generated from settlements payments was thirty-two times greater – or four times as much on a per capita basis. Put another way, the payment imbalance between the U.S. and Jamaica is about 23.2 to 1 in Jamaica's favour. This is more than five times greater than the 4.3 to 1 payment imbalance between the U.S. and The Bahamas. Thus, even if competition puts downward pressure on international settlement rates, the revenue impact on the operators in The Bahamas will be far less significant than the impact on operators in Jamaica.

#### **F. Inclusion of "Access Services" in BTC's Agreements with OLOs**

BTC contends that its RAIO does not actually include any access services and that it is therefore appropriate to characterize the RAIO-based agreements between BTC and OLOs as "interconnection agreements." CBL is concerned that BTC's intentions involve more than

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<sup>21</sup> For instance, in Morocco, Wana filed a dispute against Maroc Telecom on this issue.

<sup>22</sup> See U.S. Federal Communications Commission, 2008 Annual Section 43.61 International Traffic Data for All U.S. Points, Table A1. Bahamian operators paid an additional \$3,606,789 in settlements to US operators for transit traffic, while receiving only \$1,925. If this is factored in, the payment imbalance is \$964,642 in the US operators' favour. See *id.*

<sup>23</sup> See *id.*

semantics and in fact reflect an intent to limit inappropriately the types of services that it can be required to offer under the RAIO.

As a threshold matter, BTC's assertion that no access products are included in its draft RAIO is inaccurate. Co-location is one of the principal types of access needed by OLOs to compete effectively with incumbent operators in the fixed voice market. Physical co-location and associated services are clearly covered by BTC's RAIO<sup>24</sup> in accordance with the A&I Guidelines. CBL is therefore at a loss to understand why BTC argues that "access" is not covered. Moreover, as time goes by, other forms of access may need to be included in the RAIO in order for BTC to fulfil its SMP obligations. This could include, for example, access to ducts for NGA interconnect or access by fixed wireless access providers to BTC's antenna site or towers.

CBL believes that it is important for both the reference offer and the mirror agreements to be characterized as covering both interconnection *and access*. The RAIO and the agreements that spring from it should be structured to accommodate the addition of new access services, as well as new types of interconnection, for the provision of fixed voice services and mobile termination, as and when necessary.

### **G. Reciprocal Charging Arrangements**

BTC and LIME vigorously dispute URCA's view that BTC must not use the RAIO to impose reciprocal termination rates on OLOs. As discussed in CBL's comments, URCA's position is completely consistent with that taken by most other regulators who have considered the issue. URCA should also forcefully confirm that BTC may not use the interconnection agreements arising out of the RAIO to impose reciprocal charges on OLOs.

In its comments, LIME argues that URCA's position on reciprocity is at odds with the approach followed by the European Commission. Nothing could be further from the truth. In fact, the European Commission has taken a consistent approach in the case of both fixed and mobile termination. To be sure, the Commission has found that, termination on each individual network (fixed or mobile) may be defined as the relevant market. However, this does not mean that all operators – and especially start-up operators – have SMP in the call termination market. Rather, factors such as the countervailing buyer power of the incumbent and the obligation imposed on OLOs to negotiate any-to-any connectivity can act as constraints on the ability of smaller terminating operators to exercise market power. As discussed in the Explanatory Memorandum accompanying the EU Commission's (second) Recommendation on Relevant Products and Service Markets (SEC (2006) 837):

*Small networks will normally face some degree of buyer power that will limit their associated market power. Absent any regulatory rules on interconnection, a small network may have very little market power relative to a larger one in respect of call termination.*<sup>25</sup>

BTC contends that without a reciprocity obligation, OLOs might attempt to negotiate higher termination rates for BTC traffic terminating on their networks. In the specific case of

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<sup>24</sup> See BTC Draft RAIO (2 July 2010), p. 51.

<sup>25</sup> SEC(2006)837, fn. 24 and accompanying text.

CBL, BTC questions the “notion” of “higher per minute charges on the grounds of ‘scale inefficiencies’ or something similar.”<sup>26</sup> BTC’s concern is without merit.

Asymmetrical termination rates are common in countries where market liberalization is in its infancy. This reflects the fact that new entrants face higher actual (not notional) unit costs than well established providers due to a lack of customers and traffic volume over which the new entrant can spread its costs. This is plainly the case in The Bahamas. Contrary to BTC’s assertion, CBL has made significant investments in network equipment, personnel and provisioning systems in order to provide carrier-grade voice services. CBL must recover these costs through retail and wholesale charges. During the start-up period, however, CBL will not be able to take advantage of the scale or scope economies that are available to BTC. Therefore, CBL may need to impose higher per-unit termination charges than BTC.

BTC’s contention that reciprocal termination rates are necessary to prevent OLOs from seeking to extract excessive termination payments is unfounded. BTC’s continuing monopoly over mobile voice services and the very high rate of mobile penetration in The Bahamas will impose significant constraints on OLOs’ ability to extract substantially higher termination rates from BTC than BTC imposes on them. BTC has indicated that it would resort to on-net/off-net pricing if faced with asymmetric termination rates, which means that a BTC fixed-network customer would have to pay more to terminate a call to a customer on an OLO’s network (off-net) than to a customer on BTC’s own network (on-net). This would motivate such callers to avoid fixed-to-fixed off-net calls and instead make fixed-to-mobile calls, which would be the same as calling on-net. OLOs will therefore find it difficult to recover the real cost of termination on their networks under any scenario.

In any case, contrary to BTC’s suggestion, disputes regarding OLO termination rates will not delay the onset of competition. Rather, should the parties be unable to agree, URCA can easily impose an interim termination regime, subject to adjustment following completion of an appropriate cost study.

#### **H. Replicability of BTC's Wholesale Charges**

BTC argues that URCA may not require it to revise its retail rates as part of the RAIO consultation process, but instead is required to initiate a tariff review proceeding<sup>27</sup>. Although initiating such a proceeding is an option, it certainly is not an efficient one. Regulators in Europe and elsewhere have found ways to resolve potential margin squeeze issues without resorting to extended multiple rounds of iterative proceedings. URCA is fully empowered by the Comms Act to do the same.

In evaluating BTC’s wholesale rates, URCA must seek to determine whether each charge is cost-oriented. If it is not possible to make that determination with reasonable certainty, URCA must ensure that the charge is non-discriminatory as between OLOs and BTC’s retail operations. In this circumstance, URCA should apply the replicability test, as described in section 3.A above, to ensure that the wholesale charges imposed by BTC do not subject OLOs to an immediate anticompetitive margin squeeze, thereby preventing OLOs from offering retail services on a profitable basis.<sup>28</sup> To do so, URCA must analyse the costs

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<sup>26</sup> BTC Comments, p. 28.

<sup>27</sup> BTC Comments, p. 6.

<sup>28</sup> The replicability test is a second-best interim solution, since even when the OLO is not placed in a margin squeeze situation, if it is paying excessive wholesale rates for SMP services, the SMP operator

that a reasonably efficient operator would incur to market and sell retail services over and above the wholesale SMP services.

If, upon examination, it becomes clear that the wholesale rates proposed by BTC would not allow a reasonably efficient operator to use URCA's wholesale services to develop a competitive retail offering, then URCA may give BTC the choice of adjusting either its wholesale rates downward or its retail rates upward, or a combination of both, in order to eliminate the margin squeeze<sup>29</sup>. CBL urges URCA to apply the replicability test to any of BTC's wholesale charges under the RAIO that cannot be shown to be cost oriented.

#### **I. Classification of "New Services" Under the RAIO**

BTC has questioned URCA's approach with respect to the treatment of new services under the RAIO, in particular services that are not included on any of the service schedules attached to the RAIO.<sup>30</sup> During the transitional process governed by section 116 of the Comms Act, competition cannot be assured in markets adjacent to those designated in the Act as SMP markets. Because the markets designated in the Act are not precisely defined, it is important that URCA require BTC to follow a pre-defined process when it receives an OLO's request for related services that do not fall under the RAIO. BTC's assumption that competitive alternatives will necessarily exist clearly does not pertain in these circumstances.

CBL also believes that the classification of "new service" needs to be clarified so that there is no doubt that BTC is obligated to provide IP-based interconnection and access services to requesting OLOs as and when its NGA network goes live in each area. Consistent with the principle of the "technology neutrality", BTC's SMP obligations apply to markets, not the underlying technology. URCA's final decision on the BTC RAIO should not leave any doubt on this point. Rather, URCA should stipulate that IP-based interconnect and access services are covered by the SMP designation, and therefore should be included in BTC's RAIO as scheduled offerings pursuant to an appropriate timetable linked to BTC's own NGA roll-out plan.

#### **4. CONCLUSIONS AND NEXT STEPS**

By any reasonable assessment, URCA has struck an appropriate balance in its assessment of BTC's draft RAIO. CBL is conscious that URCA will now have the opportunity to refine its initial views. CBL urges URCA to adhere to the preliminary views set forth in the consultation document except where there is a clear industry consensus that a change is acceptable. At a minimum, URCA should ensure that the core issues identified in section 1.B of this reply are dealt with as proposed by CBL.

Finally, in resolving the critical issues before it, URCA should think strategically by formulating and structuring its final determination and orders so as to ensure that a workable interim solution can be put into place without delay, including by means of enforcement orders and the imposition of penalties if necessary.

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achieves a significant competitive advantage by raising its rival's costs, while at the same time simply paying the above-cost charges internally from "one pocket to the other."

<sup>29</sup> As noted above, in the case of termination, a Bill and Keep solution would be a practical solution for an interim period, pending completion of a cost study.

<sup>30</sup> BTC Comments, p. 47.