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

Comments on Responses

Submitted to the

Utilities Regulation and Competition Authority

July 17, 2013

Submitted by

Cable Bahamas Ltd

Contents

1 Introduction

Cable Bahamas Ltd, and its affiliates Caribbean Crossings Limited and Systems Resource Group Limited, (collectively, "CBL") hereby provides its comments on responses provided by other parties to the Utilities Regulation and Competition Authority's ("URCA") 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" (the "Consultation Document").

CBL is in possession of responses (the "Responses") to the Consultation Document filed with URCA on 17 June 2013 by the following two parties:

- The Bahamas Telecommunications Company Limited ("BTC")
- Digicel Group ("Digicel")

In the following, CBL provides its comments on statements made and positions advanced by BTC and Digicel in their Responses. CBL emphasizes however that failure on CBL's part to address any specific statement made or position advanced in the Responses should not be interpreted as implying CBL's agreement with or support for any such statements or positions.

2 Issues raised in BTC and Digicel Responses

2.1 Relevant Product Market

In CBL's opinion, BTC's and Digicel's Responses to URCA's preliminary product market definitions raise several concerns, specifically relating to proposals regarding:

i) the definition of the relevant product market,

ii) the adoption of a calling party pays ("CPP") regime via non-zero domestic mobile termination rates, and

iii) the inclusion of an implicit universal service obligation ("USO") funding mechanism within international mobile termination rates.

2.1.1 Definition of the Relevant Product Market

In the Consultation Document, URCA provided a detailed description of call termination services and set out its preliminary conclusion on the definition of the relevant product markets for call termination services in The Bahamas.[1] BTC proposed in its Response that URCA consider providing "more detailed" fixed and mobile product market definitions based on definitions developed by Ofcom in the United Kingdom.[2] In this respect, BTC recognized that Ofcom's definitions would have to be modified to reflect circumstances in The Bahamas.

[1] In Sections 2, 3.1 and 5.4 of the Consultation Document.

[2] BTC Response, page 4.

However, BTC did not provide proposed modified definitions in its Response. It simply suggested URCA make whatever modifications to the Ofcom definitions URCA deems necessary.

CBL agrees that clear definitions of the relevant product markets for call termination services in The Bahamas are necessary. Ofcom's definitions could provide a possible starting point for adding clarity to the definitions, although they would require modification to reflect circumstances in The Bahamas and to ensure consistency between the fixed and mobile call termination service market definitions. In CBL's view, whether URCA maintains its currently proposed definitions or modifies them to some degree along the lines suggested by BTC, at a minimum, URCA should qualify to the scope of the market definitions to avoid any doubt as to the specific fixed and mobile call termination services they cover. These clarifications can be drawn from URCA's call termination services description already provided in Section 3.1 of the Consultation Document. For instance, the "any-to-any" principle of interconnection should be explicitly reflected in the definitions. As well, for the elimination of doubt, the termination calls to "all" fixed and mobile numbers – regardless of technology – should also be explicitly reflected in the definitions. In the latter case, this should specifically include termination of calls to roaming customers on BTC's mobile network[3] as well as to BTC's Vibe customers.[4]

In addition, as noted in CBL's Response, mobile call termination service in BTC's case should also explicitly include BTC's transit service, given that direct connection to BTC's mobile network has not yet been made available by BTC to new entrant operators ("NEOs"). Moreover, direct connection to BTC's mobile network may not in the future be made readily available to NEOs given that the service is subject to a feasibility test under BTC's Reference Access and Interconnection Offer (which is intended to establish the technical, physical and economic feasibility of providing the interconnection service in a specific location).

Further, CBL notes that URCA's proposed fixed call termination service market definition does not explicitly include calls terminating to BTC's Vibe subscribers. CBL considers that the market definition should be technology neutral and, therefore, should include call termination to BTC's Vibe subscribers along with BTC's legacy technology fixed line subscribers.

2.1.2 Domestic Mobile Termination and Adoption of CPP Regime

To varying degrees, both BTC and Digicel proposed in their Responses that, as part of its market analysis of domestic mobile voice call termination, URCA consider the adoption of a Calling Party Pays ("CPP") regime in The Bahamas. Specifically, Digicel proposed that a CPP regime should be adopted for fixed-to-mobile and mobile-to-mobile calls. BTC proposed a CPP regime for mobile-to-mobile calls. BTC did not suggest specific timing for its proposals.[5] Digicel, on the other hand, appeared to suggest that the CPP regime for fixed-to-mobile should be adopted immediately, with an interim domestic mobile termination rate set at the same level as BTC's current international mobile termination rate of 6.03¢ per minute.[6] Digicel proposed that the same CPP regime should apply to mobile-to-mobile once mobile competition commences in the

3 As discussed in CBL's Response, page 5.

4 BTC's "Voice Internet Bahamas Electronic" or Vibe service which is based on Voice over Internet Protocol ("VoIP") technology.

5 BTC Response, page 5.

6 Digicel Response, pages 2-3.

future. Digicel also seemed to suggest that the same interim mobile termination rate of 6.03¢ per minute could apply in that case as well, assuming an alternative rate had not been approved by URCA.

As the Commission is well aware, BTC's mobile monopoly is scheduled to continue well into 2014. Further, with no other parties even granted a licence to provide mobile services at the current time, the prospect of mobile competition in The Bahamas is at best two to three years away given the timeframes necessary to design and build mobile network facilities and launch a new alternative mobile services. Consequently, CBL considers that it would be premature in the context of the present proceeding to adopt any specific charging regime for mobile-to-mobile services, let alone set interim domestic mobile termination rates for such services, as suggested by Digicel.

In CBL's view, domestic mobile voice call termination was not addressed in the Consultation Document[7] and, therefore, is not within the scope of the present proceeding. CBL agrees, however, that in the future URCA will need to conduct a review of the domestic mobile voice call termination market. If a CPP-based interconnection regime is adopted, URCA will also need to determine the most appropriate method for setting cost oriented domestic mobile termination rates. CBL would add, in this respect, that the scope of the CPP charging regime would also have to be carefully considered. For instance, applying CPP to domestic fixed-to-mobile calls could have a potentially significant impact on fixed retail charges.

In any event, in CBL's view, analysis of the domestic mobile voice call termination market and the possible adoption of a CPP regime for domestic fixed-to-mobile and mobile-to-mobile voice calls is best left for a subsequent and separate URCA consultation and determination-making process in the 2014 or 2015 time frame.

2.1.3 USO Funding via International Mobile Termination Rates

In its Response, BTC indicted that its international mobile termination rate of 6.03¢ per minute is set "above-cost" and, as such, could “distort other markets because it creates the potential for cross subsidisation”; however, seemingly to mitigate such concerns, BTC suggested “that the resulting revenues [cross subsidy] should be used to fund universal service obligations” (“USO”).[8] BTC did not identify the degree to which the current international mobile termination rate is above cost and, therefore, the magnitude of the resulting cross subsidy generated under the current international mobile termination rate.

CBL notes that URCA recently issued a comprehensive USO decision which addresses, among other matters, provisions related to the eligibility to receive compensation for USOs as well as

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7 Page 12 of the Consultation Document included the following statement:

> *Note that the regulated termination rate for mobile only applies to incoming calls received from outside The Bahamas. This is because fixed calls originating domestically to mobile numbers in The Bahamas are charged on a RPP basis and hence no termination rate applies.*

8 BTC Response, page 6:

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

the compensation mechanism in the form of a universal service fund ("USF") (the "USO Decision"[9]). CBL is alarmed that BTC's proposals in this respect appear to disregard some of the main substantive elements of the USO Decision.

- First, BTC has not made a USO funding application, nor has URCA approved such an application pursuant to the USO Decision. Therefore, BTC is not currently eligible to receive any USO compensation.
- Second, even if it were to be eligible for USO compensation, BTC cannot use "above-cost" revenues from current international mobile termination rate to compensate itself. The USO Decision clearly stated that the only allowed USO compensation mechanism, if any, is the USF described therein.

Given the above USO-related conclusions, CBL is deeply concerned about the competitive effects of the current international mobile termination rate. CBL strongly urges URCA to investigate whether, by BTC's own admission, "the resulting above-cost pricing for call termination markets would distort other markets because it creates the potential for cross-subsidisation." As a first step in such n investigation, CBL considers that URCA should in the interim require BTC to produce an updated cost study to determine the cost of mobile voice call termination to quantify the subsidy embedded in BTC's current international mobile termination rate.

Lastly, CBL notes that the fact that BTC's current international mobile termination rate has been set to generate an implicit subsidy to BTC underscores why it should not be used as a proxy rate for domestic fixed or mobile voice call termination, as suggested by Digicel, in the event that a CPP interconnection regime were adopted at some point in the future.

2.2 SMP in Call Termination Services

In its Response, BTC argues that all network operators, including itself and NEOs, have significant market power ("SMP") in the provision of call termination services and, consequently, all network operators should be susceptible to *ex ante* SMP regulation of call termination services. In support of this position, BTC claims that the fact that CBL has refused to reduce its fixed termination rates in line with the reductions URCA ordered for BTC is evidence that CBL possesses SMP. Moreover, BTC claims that the fact that CBL's fixed termination rates are now higher than those of BTC is evidence that CBL's rates are "excessive".[10] BTC further claims that since it has been unable to force CBL to reduce its rates in line with its own is evidence that BTC does not possess countervailing buyer power ("CBP").

In reply, CBL notes that its current interconnection agreement with BTC was jointly negotiated and agreed to less than two years ago (i.e., in September, 2011). As explained in CBL's Response,[11] the fixed termination rates agreed to at the time were effectively imposed on CBL by BTC. From CBL's perspective, it was effectively a "take or leave it" proposal from BTC.

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9 See "Framework for the Clarification and Implementation of Existing Universal Service Obligations (USO) under Section 119 and Schedule 5 of the Communications Act 2009 : Statement of Results and Final Decision´ ECS 01/2013, January 23, 2013

10 Note that the interconnection agreement with BTC is through CBL's affiliate, Systems Resource Group Limited ("SRG").

11 CBL Response, pages 7-8.

Consequently, CBL's experience in that negotiation process was that BTC had significant CBP and, indeed, was able and willing to exert it. BTC continues to possess CBP as has been demonstrated in CBL's unsuccessful attempt to date to reach an agreement with BTC to terminate mobile roaming traffic on BTC's mobile network.

Indeed, BTC highlighted in its Response the fact that commercial negotiations with other local operators ("OLOs") have worked effectively to date, where it noted:

> *… it has had successful commercial negotiations with other operators, on the terms and conditions of termination services, including reciprocity of termination rates. This pattern was disrupted when BTC was required to lower its call termination rates by URCA, and the OLOs refused to follow suit.*[12]

The fact that CBL and other NEOs have chosen to maintain fixed termination rates that were very recently mutually agreed to through a commercial negotiation process is in no way unreasonable nor evidence of market failure as implied by BTC. CBL adds that there is no provision in the agreement requiring reciprocal rates. Furthermore, there is no reason to believe and, indeed, no evidence was offered by BTC to suggest that NEO fixed termination rates are excessive. Even BTC admits that NEOs would have higher termination costs due to their lack of economies of scale (i.e., low traffic volumes compared to the incumbent operator). Regardless, BTC proposes that symmetric termination charges be imposed on NEOs and that they to simply absorb the resulting losses as a cost of business – a proposal that it certainly would not support were the roles reversed.[13]

In CBL's submission, BTC's claims regarding its alleged lack of CBP and excessive pricing by NEOs are unfounded and should be rejected by URCA. As explained in CBL's Response, the fact of the matter is that BTC enjoys significant SMP by virtue of its position of incumbency, scale, market influence and extensive market experience.

CBL notes that BTC also claims in its Response that designating all network operators as possessing SMP and, therefore, subjecting all network operators to equivalent *ex ante* SMP regulation is consistent with international best practice.

In reply, CBL notes that this claim is highly misleading. International experience with respect to the regulation of incumbent operator and NEOs varies widely and, therefore, cannot simply be assumed to support URCA's preliminary determinations with regard to SMP designations and the imposition of *ex ante* SMP regulations on all network operators. Like URCA in the Consultation Document, BTC has also relied heavily on experience in Europe to make this claim. However, as shown in CBL's Response,[14] European experience shows that no single approach has been employed by members of European Union ("EU") since fixed and mobile markets were initially opened to competition. Indeed, only after competition was well established (i.e., at least a decade after competition was permitted) did the European Commission ("EC") issue a recommendation to move to symmetric termination rates. This move was not made immediately,

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[12] BTC Response, page 8.

[13] BTC Response, page 10, where BTC states the following:

> *… new entrants are aware in their business plans that for the initial years of operation their traffic levels are low while they establish their networks, and take full account of this in their decisions to enter the market.*

[14] CBL Response, pages 18-21.

but rather over the course of a multi-year transition period with rate targets set on the basis of a bottom-up long run incremental costing ("BU-LRIC") methodology applied to a hypothetical single efficient scale operator (determined based on market share).

Similarly, picking and choosing a handful of countries, either in the Caribbean region or elsewhere, which happen to support URCA's preliminary determinations in whole or part is also misleading. Again a variety of approaches have been followed in different countries. Consideration of the underlying historical and environmental factors resulting in a particular regulatory policy is critical in each case, such as the length of time the markets have been open to competition, the markets covered (mobile and/or fixed) as well as the existence of transitionary mechanisms. Consequently, the blanket claim that URCA's preliminary proposals are consistent with international best practice is misleading and, in fact, unfounded. This issue is addressed further below.

2.3 Proposed Wholesale Price Controls

In the Consultation Document, URCA proposed on a preliminary basis to impose wholesale price controls on all SMP licensees' call termination services and that regulated wholesale call termination rates should be set on a symmetric basis equal to BTC's wholesale call termination rates. BTC provided a number of reasons as to why it supports URCA's proposals in this regard which can be grouped under two categories: (i) general arguments in support of symmetric wholesale price controls and (ii) international precedents. In both cases, CBL considers BTC's arguments in this respect to be unfounded or misleading.

2.3.1 BTC's Unfounded Arguments in Support of Symmetric Wholesale Price Controls

In its Response, BTC indicated that it was in agreement with URCA preliminary proposals in this respect. Specifically, BTC supported symmetrical termination rates because, it claimed, they would:[15]

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

b) *Encourage operators to greater efficiency because the operators with higher termination rates are not being rewarded for their inefficiency, thus bringing more efficient resource allocation and preventing productive inefficiencies from occurring*

c) *Discourage differential on net and off net retail call pricing, which can add costs to consumers and deter the development of competition because higher off net call charges discourage customers from leaving larger networks*

d) *Reduce confusion amongst retail customers from call tariffs that charge different prices for calls to different networks*

15 BTC Response, pages 9-10.

e) *Lessen the burden on operators and regulatory authorities of calculating cost models and call termination rates for each operator.*

As explained in its Response, CBL does not consider that wholesale call termination price controls are necessary or warranted in the case of NEOs. If they are nevertheless imposed, CBL does not support URCA's proposed method of setting regulated wholesale call termination rates, specifically including the proposal to set them on a symmetrical basis equal to BTC's approved rates. That said, in CBL's view, none of the reasons provided by BTC supports the imposition of symmetric call termination rates on NEOs as proposed in the Consultation Document.

First, in the Consultation Document, URCA indicated that its preferred method for setting call termination rates is on cost oriented basis using, in BTC's case, historical cost accounting and a fully distributed costing approach ("HCA-FDC"). This approach has so far been problematic, however, given the costing results provided by BTC to date have proven unreliable. It appears that this approach could be revisited later this year when BTC's 2012 accounting separation cost results become available. In the interim, URCA has opted for a second-best benchmarking approach to set BTC's call termination rates. These approaches are aimed at ensuring BTC's call termination rates are cost oriented and not excessive.

CBL notes that there is no evidence that has been provided to date to suggest that the rates currently approved for BTC are reflective of NEOs' fixed termination costs. Indeed, BTC recognized this fact in its Response. It discussed a variety of factors that would generate significant differences in call termination costs between incumbents and entrants. Most notably, BTC identified the fact that lower traffic volumes on NEOs' networks would imply that NEOs would have higher per minute call termination costs than the incumbent.[16] CBL adds that BTC ignored the significant costs NEOs, including CBL, incur in converting Internet Protocol ("IP") traffic to Time Division Multiplex ("TDM") circuit switched protocol to accommodated BTC legacy network architecture. Both of these factors suggest that NEOs' call termination costs would be higher than those of an incumbent.

Consequently, symmetric rates as proposed under URCA's preliminary proposal are not designed to prevent excessive charging other than in BTC's case. To the contrary, it is very likely that they will result in below-cost pricing in the case of NEOs.

CBL also notes that BTC carries its claim that CBL's current termination rates are excessive one step further still by alleging that the rates as they stand provide a cross subsidy to CBL's broadband and cable TV services.[17] Again this allegation is entirely unfounded. No evidence in support of the claim was provided. Indeed, as noted, BTC implicitly acknowledged that NEOs' call termination costs would be higher than those of an incumbent due to low traffic volumes and CBL also identified additional IP conversion costs that NEOs face, but BTC avoids. Consequently, the allegation that CBL is cross subsidizing its broadband and cable TV services via its call termination services is groundless.

Furthermore, BTC's arguments on the issue of excessive pricing are also contradicted by its own behaviour. Its wholesale call termination rate to its Vibe subscribers is currently 2.01¢ per minute, more than twice the approved rate of 0.938¢ per minute for call termination to its legacy

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16 BTC Response, page 10.

17 BTC Response, pages 2-3 and 11.

circuit switched fixed line subscribers. Following its own logic, BTC's wholesale Vibe call termination should be reduced to 0.938¢ per minute since as it stands it is excessive. As noted earlier, CBL considers that call termination to BTC's Vibe subscribers should be included in the defined relevant market for fixed call termination and also considers that the associated rate set in accordance with BTC's approved wholesale fixed call termination rate of 0.938¢ per minute.

Second, BTC's suggestion that URCA's symmetric pricing proposal will "encourage operators to greater efficiency because the operators with higher termination rates are not being rewarded for their inefficiency" runs counter to BTC's first reason in support of symmetric pricing. BTC's current call termination rates are intended to reflect its own costs. Consequently, the efficiency incentive contemplated by BTC under its second reason is clearly intended to apply to NEOs rather than itself. It seems that BTC considers that setting symmetric rates based on its own costs should have the effect of incenting NEOs to become more efficient as quickly as possible and, in the mean time, they should simply absorb call termination losses as a cost of business.

The third and fourth reasons offered by BTC in support of symmetrical wholesale call termination rates both relate to concerns that asymmetrical rates could lead to differential retail on- and off-net call rates. No evidence was offered by BTC in support of this claim, especially as it pertains to on- and off-net calling to fixed line numbers, which is the case relevant to the consultation at hand. Specifically, there is no evidence of differential pricing in The Bahamas today even with asymmetrical termination rates in place. Consequently, these two inter-related reasons simply stand as unsubstantiated assertions.

Lastly, BTC's suggestion that requiring all network operators to adopt symmetric rates equal to BTC's approved call termination charges would "lessen regulatory burden" is self-serving and disingenuous. Considerable effort has been expended to ensure as best as possible that BTC's call termination rates reflect BTC's costs. Once BTC's 2012 accounting separation cost results become available, BTC's rates could be revisited once again. However, in the interest of lessening regulatory burden, BTC is suggesting that all NEOs set their call termination rates equal to BTC's regardless of whether or not those rates reflect their costs. This approach may serve to lessen regulatory burden, but it also amounts to an arbitrary rate making exercise in the case of NEOs, one which will likely prevent them from properly and fairly recovering their costs of entering the fixed services market in The Bahamas.

2.3.2 BTC's Misleading References to International Experience

BTC claims that international experience supports the adoption of a symmetric termination rate policy. Like URCA, BTC focuses largely on EU precedent in this respect. It quotes from the European Regulators Group ("ERG", now BEREC) as well as the EC Recommendation on termination rates.

As explained in CBL's Response, EU experience does not necessarily support the symmetric termination rate policy approach proposed by URCA in the Consultation Document. There are significant differences between the European and Bahamian markets (e.g., in terms of the evolution and current state of competition in EU member countries compared to The Bahamas) and significant differences in principles underlying the EC Recommendation versus URCA's proposals. For instance, in the case of the EU, fixed and mobile call termination rates are to be based on a pure BU-LRIC costing approach as determined for an hypothetical single efficient scale operator (determined based on market share), not the incumbent's costs as under URCA's proposal using a HCA-FDC approach or, as a second best option, a benchmark-based approximation of the incumbent's HCA-FDC-based costs. As well, even after more than a decade of competition in Europe, most EU member countries (i.e., almost 70%) had asymmetric termination rates in place.[18] Furthermore, and importantly, while the EC Recommendation calls for a policy of symmetric termination rate, based on a pure BU-LRIC costing approach, it provides for a transition period from asymmetric to symmetric rates of 4 to 5 years. Consequently, in CBL's view, European experience does not support either the cost basis for setting call termination rates proposed by URCA or the flash-cut implementation of symmetric termination rates as proposed by URCA and BTC.

As noted above, BTC also makes reference to a handful of jurisdictions in the Caribbean region that have introduced symmetric call termination rate policies. Here again, CBL notes that the historical and environmental circumstances in each of these cases should be taken into account before they should be used to support the adoption of call termination market policies in The Bahamas. BTC provided no context for any of the examples it provided. For instance, some five examples pertain to either in the case of mobile and fixed termination rates and others just mobile. Some have also adopted transition programs to adjust rates over time. In any event, the examples provided represent a very small sample of countries in the region, let alone more broadly. In CBL's view, it is not appropriate to base policy in The Bahamas based on a highly selective sample of jurisdictions in the Caribbean region.

There are other jurisdictions in the Caribbean that have followed a different approach. The territories of the French West Indies (“FWI”) provide one such example. The FWI consists of Guadeloupe, Martinique, St. Martin and St. Bartholomew. All are overseas territories of the French Republic and, therefore, under regulation of the French National Regulatory Authority, ARCEP. They are subject to EC jurisdiction, including the EC Recommendation with respect to mobile termination rates ("MTRs").

Five operators provide mobile service in the French West Indies – i.e., Orange, Digicel, Only, Dauphin Telecom, and UTS Caraibe – each with different geographic coverage:

- There are currently three licensed mobile operators that are operational in each of Guadeloupe and Martinique: Orange, Digicel and Only.
- There are currently four licensed mobile operators that are operational in each of St. Martin and St. Bartholomew: Orange, Digicel, Dauphin Telecom and UTS Caraibe.

Orange is the incumbent, with traditionally the largest market share in the FWI as a whole. Over the last half decade or so, Digicel has gained market share so that these two operators have had a combined market share in the FWI as a whole of about 80% (split approximately 50/50). Only has had a market share of about 15% over the last half decade or so, while Dauphin and UTS Caraibe each generally having market shares less than 3% over the same period in the FWI as a whole.

Table 1 below shows the evolution of MTRs in the FWI for each of the five operators for the period 2006 to July 2013. Consistent with the EC Recommendation, the MTRs became symmetric as of July 2013 after a multi-year transition process. The MTR rate as of July 2013 is based on the application of BU-LRIC methodology applied to a hypothetical single efficient

[18] CBL Response, Table 1, page 19.

scale operator. However, as the MTRs in the table show, MTR asymmetry was the rule prior to July 2013. In 2006, for instance, the MTRs of Orange was lowest, followed by Digicel and UTS Caraibe. The MTRs for Only and Dauphin were more than double that of Orange. When the EC Recommendation was issued in 2009, a similar situation held, with the MTRs of the three smaller operators being double that of Orange. Digicel's MTR was also higher than Orange's. Orange and Digicel's MTRs were not made symmetric until 2011, when Dauphin and UTS Caraibe were still set at double that rate, a relation that remained until July 1, 2013.

Table 1: French West Indies MTRs (Euro-cents/minute)

	2006	2007	2008	2009	2010	2011	2012	Jan 2013	July 2013
Orange Caraibe	16.4	13.2	11.0	8.7	5.5	4.0	2.5	1.0	1.0
Digicel	22.6	18.4	16.0	12.2	6.5	4.0	2.5	1.0	1.0
Outremer Telecom (Only)	45.4	29.4	22.9	15.7	9.0	5.5	2.8	1.0	1.0
Dauphin Telecom	42.1	36.7	24.9	16.7	12.0	8.0	5.0	2.5	1.0
UTS Caraibe	28.6	28.6	25.9	17.7	12.0	8.0	5.0	2.5	1.0

Source: ARCEP, http://www.arcep.fr/?id=8080

These Caribbean-region examples, along with the EU and Nigerian experience discussed in CBL's Response, show that it is misleading to suggest that international experience supports the imposition of symmetric call termination rates. The fact of the matter is that many countries have maintained asymmetric call termination rate regimes, especially in the initial years after opening markets to competition and, moreover, where symmetric call termination rates have been implemented, they have typically been phased-in over a multi-year transition period.

2.4 Other Issues – Retroactivity

In its Response, BTC proposed not only that symmetric termination rates be implemented, but that they be mandated retroactively to start from the date when BTC's current termination rates came into effect (i.e., 1 January 2013).[19] According to BTC, by setting NEOs' termination rates on a retroactive basis, the "inequities and distortions" BTC's alleges occurred as a result asymmetric termination rates in the Bahamian market would be removed.

As already noted, in CBL's view there is no need to designate NEOs as SMP licensees and, even if URCA decides to do so, no need to apply wholesale price controls to NEO call termination rates. Should URCA nevertheless do so, in CBL's view, the *Comms Act* does not provide URCA with the power or authority to backdate SMP determinations along with any associated SMP remedies. Consequently, CBL submits that BTC's proposals in this regard should be dismissed by URCA.

Furthermore, CBL notes that BTC offered no legal basis for the backdating of SMP determinations and remedies. As well, BTC also provided no evidence that CBL's current call termination rates have resulted in any form of inequity or market distortion. Even if it had, however, that would still not provide legal grounds for URCA to backdate SMP determinations and any associated SMP remedies found necessary.

[19] BTC Response, page 14.

3 Conclusion

Nothing in the Responses of either BTC or Digicel has provided cause for CBL to alter its views on URCA's proposals set out in the Consultation Document. CBL maintains its positions on the regulatory treatment of call termination services as set out in its Response.

Respectfully Yours,

Cable Bahamas Ltd.