

**Digicel's response to a Consultation Paper on Access &
Interconnection framework for the Electronic
Communications Sector**

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Introduction

Paragraph (11) We believe it is more beneficial for the consultation document to focus on **wholesale markets** rather than retail. With the limited resource that the URCA would have (we assume), it would be prudent to have one's resource focused on wholesale pricing. Through adequate policing of wholesale markets it should in any case be possible to ensure that in the majority if not all cases, that there is sufficient retail competition.

Some consideration should be made for market size. We have noticed that current legislation and approaches are often copied from the EU, however, there is failure to adequately reflect on huge differences between Caribbean/European countries, particularly the availability of financial and therefore human resources.

Key Principles of Access & Interconnection

Paragraph (20) We support the decision to use the EU definition of access together with the definition of interconnection in the Comms Act for the Bahamas.

Paragraph (21) **IMPORTANT** - The incumbent should be required to publish a Reference Access Interconnection Offer RAIO approved by URCA as soon as possible. New entrants should be able to comment on the draft RAIO in advance of its finalisation. This will help prevent competition being delayed by the requirement to negotiate an agreement (with the possibility for disputes) after a licence has been granted.

The framework should also set out who pays for interconnection. If the costs are not to be shared equally then it is necessary to set out what exactly should be deemed to be interconnection equipment and in what manner the equipment (including ongoing spares required) should be paid for - upfront or through per minute interconnection charges. Even if each party has to pay for the interconnection equipment within their networks, the issue of how to establish the fibre links between the respective switches and who pays for that element has to be addressed.

In an environment where licence numbers in each category (mobile, fixed, international only etc) are to be limited to the approximate numbers of operators that the regulator believes has a good chance of being viable on a long term basis then we feel that operators should meet their own costs of interconnection. This is because an operator is not exposed to a requirement to meet an endless number of requests for interconnection. In our view interconnection equipment includes the multiplexer and the optical cards fitted in to the multiplexer and not equipment further in to an operator's network. In terms of the fibre links between the switches we feel that in a limited licence environment the costs should be shared as both parties benefit from the fibre connecting the networks. The only exception in the latter case would be where the new entrant placed it's switched in a location which drove up significantly the reasonable costs e.g. if the switch was built in a location where there was no nearby fibre ducting.

The regulator should also stipulate how many points of interconnection and to which networks the above conditions would apply.

Question 1: Do you agree that the legislation for 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.

As outlined in responses to earlier consultation documents more could be done to give URCA sufficient powers.

It may also be wise to impose ex ante rules which avoid the need for the very complex and time consuming regulation where possible. The following kinds of rules may be a way of achieving desired results without such complex and time consuming regulation:

1/:

- no dominant operator would be allowed to offer bundled discounts for originating calls from more than one of its own networks to one or more of its multiple networks (to avoid cross leverage of market power);
- no dominant operator would be allowed to offer discounts for originating communications from one of its own networks to terminate on more than one of its own networks (to avoid another form of cross leverage of market power);

Both of these would help to avoid the need for accounting separation at the outset of competition.

2/:

- In respect of bespoke offers by operators with market power, we suggest that it may be appropriate for such an operator to be required to submit the details of business contracts to the regulator to ensure that the above rules are complied with - otherwise the rules above may be difficult to enforce.

This area (ex ante rules aimed at reducing the need for costly and complex regulatory interventions) would require careful thought but here and elsewhere there may be a number of ways in which much of the harm that some complex regulatory interventions seek to avoid can be avoided by relatively simple ex ante interventions. This would benefit everyone from a time, resources and cost viewpoint.

Specific provision needs to be made here:

1/ to ensure that URCA has the power to make interim orders. For the avoidance of doubt all categories of orders must be listed within the definition orders including determinations and adjudications - the precise definition of orders could be set out in the Communications Bill as it would then apply to the UAT Bill also.

2/ to give URCA the power to make retrospective orders. The prospect of retrospective orders has the power to bring negotiators to the table to resolve disputes even in the face of ongoing litigation and can therefore be a very valuable tool in the interests of consumers, the economy and the majority of market players.

3/ Benchmarks: The regulator should have the option of using benchmarks to deal with disputes on rates and not be limited merely to taking prices in comparable markets into account. In our view an appropriate mix of benchmarks can provide as good as or better answer than cost models. Moreover a benchmark can be derived in a fraction of the time and at a fraction of the cost. Any dispute reliant on a cost model for a solution could take years to resolve due to the costs and complexities involved.

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.

- **Obligation to interconnect:** We agree that all Operators are obliged to respond but we would make this more of a clear statement where the URCA should stipulate firm dates for the response to be received;
- **Timeliness:** The words “timely fashion” is often used to respond to requests. There needs to be a hard cut-off point, a specific date stipulated for a response. In our experience around the Caribbean “timely fashion” means different things to different Operators. There should be firm timeframes for responding to requests for interconnection and for completing physical interconnection and billing testing. All correspondence between the incumbent and its equipment and other suppliers in respect of interconnection matters should be provided to the URCA. Another tactic Digicel has encountered is for incumbents to hold up the delivery of interconnection equipment even while at the same time telling the authorities that everything is being done to expedite interconnection;
- **Record Keeping:** The incumbent should be required to keep and hand over to the URCA switch records in a form that enables URCA to determine what settings were on the switch at what times: Digicel has been subjected to call blocking activities by incumbents in some countries.

Incumbents can delete incriminating evidence which then makes it impossible to prove what actions have been taken; it is therefore too late to take action after the event;

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

The following items should be included in the content of an RAIO:

Joint Working Manual and Operations & Maintenance Manual

1 TECHNICAL SPECIFICATION

- TECHNICAL CHARACTERISTICS FOR THE OPTICAL IN-SPAN JOINING SERVICE
- NETWORK LINK CHARACTERISTICS
- NETWORK LINK QUALITY OF SERVICE
- SIGNALLING
- TRAFFIC HANDLING OF SERVICES

2 OPERATIONS AND MAINTENANCE

- ROLES AND RESPONSIBILITIES
- FORECASTING, ORDERING AND PROVISIONING
- ACCEPTANCE TESTING
- FAULT MANAGEMENT
- PLANNED AND EMERGENCY MAINTENANCE
- O&M PROVISIONS

3 BILLING

- DATA COLLECTION AND INVOICING PROCESSING
- INVOICE DISPUTES
- UNDETECTED BILLING ERRORS
- LATE USAGE
- VALIDATION
- RETENTION OF BILLING DATA

4 TESTING

- INTERCONNECT TESTING - OBJECTIVES AND SCOPE
- INTERCONNECT TESTING FRAMEWORK
- TEST SPECIFICATION STRUCTURE
- TEST PHASES
- TEST SHEETS AND REPORT
- TEST SUITES
- FAULT HANDLING PROCEDURE TO BE USED IN TESTING PHASES
- FAULT CLASSIFICATION

- ROLES AND RESPONSIBILITIES FOR TESTING
- INTERCONNECT TESTING DOCUMENTATION

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

The call based remedies proposed are still relevant and may form part of any new RAIO produced.

Further, we feel that similar obligations should be placed on the incumbent in terms of providing access to national and international freephone numbers and in terms of requiring the incumbent to provide an interconnect call origination service to premium rate numbers on the networks of other operators. The incumbent's charge for such calls could be the cost based fee for origination on its network (which will vary by network - the origination cost would equal any termination cost on that kind of network), plus the premium rate cost levied by the terminating operator.

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

We agree that 'Calls to Directory Information Service' obligation should be included in a future RAIO.

Question 6: Do you agree that indirect access should be within the scope of the RAIO.

We disagree. Indirect access should not be considered at this stage of the Bahamas regulatory development. . If indirect access should be considered it is imperative that it only applies to the **fixed incumbent** since if applied to new fixed operators or mobile operators, it would be counter-productive, placing unnecessary costs on new entrants actually may deter them from entering the market in the first place.

Question 7: What Market conditions do you consider should prevail in order for URCA to mandate an SMP operator to implement indirect access?

When indirect access is applied it's almost exclusively only on the incumbent fixed line, post paid customers and not mobile networks.

New entrants should be subject to best practice competition law approaches which would place them in the category of dominance only after proper market and dominance assessments have been carried out. Remedies would then be imposed only if there was shown to have been an abuse of dominance and only in proportion to the abuse that takes place.

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.

No preference (see answer to question 7) - however if imposed it should only apply on the fixed incumbent operator.

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

Refer to answer in Question 8.

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

We disagree. For the reasons pointed out earlier on indirect access (Carrier Pre Selection).

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

We would recommend that the following connectivity based services to be used in any new RAIO:

1. Joining services

- Optical in-span joining service

2. Termination services

- PSTN terminating access service (including list of service supplier codes)
- PLMN terminating access service (including list of service supplier codes)
- Incoming international call termination to PLMN service

- Incoming international call termination to PSTN service

3. Special access services

- Emergency services access service
- National DQ service
- International DQ service
- SMS termination service
- National freephone service
- International freephone service
- Premium rate access services

4. PSTN transit services

5. Points of Connection - direct to mobile and fixed networks

6. International incoming and outgoing transit services

7. Interconnection Access Areas (includes all number ranges to be used)

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

We do not believe this is necessary. Technology has now developed to a point where 'Alternative network infrastructure' is available which would negate the need for wholesale broadband remedies in an RAIO. Should there be a need to offer such services it ought to be offered in a separate agreement and only after a separate assessment that there is such a demand and need in the market. It should also only be required from on the fixed incumbent operator.

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

New entrants should be subject to best practice competition law approaches which would place them in the category of dominance only after proper market and dominance assessments have been carried out. Remedies would then be imposed only if there was shown to have been an abuse of dominance and only in proportion to the abuse that takes place.

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

N/A - see answers above.

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

N/A - see answers above.

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.

Question 16 is virtually the same as question 12 – Refer to answer in question 12.

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

An example of time intensive regulated access competition is local loop unbundling. This is very much a second best approach which should be avoided if at all possible. Technology has moved on. It is no longer appropriate to mandate resource intensive LLU because of the alternate infrastructure now available such as WiMAX which emulates classic enterprise services such as PSTN, Frame Relay and DIA as well as residential ADSL and Cable Broadband. Should there be a need to offer such services it ought to be offered in a separate agreement and only after a separate assessment that there is such a demand and need in the market. It should also only be required from on the fixed incumbent operator.

Question 18: What market conditions do you consider should prevail in order for URCA to mandate that an SMP operator implements LLU remedies?

Refer to answer in Question 13.

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

No preference - see answer above.

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

N/A - see answer above.

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.

Question 21 is virtually the same as question 17. Refer to answer in Question 17.

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

Again, this is very much a second best approach which should be avoided if at all possible.

We would suggest the URCA should be concerned with the following questions for TV networks:

- Will the Government adopt the ITU policy on Digital Spectrum?
- What steps are being taken by Government/URCA to make spectrum available for Digital Broadcasting?

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?

Refer to answer in Question 13.

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.

N/A - see answers above.

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

We do not believe this is necessary. Technology has now developed to a point where 'Alternative network infrastructure' is available which would negate the need for Cable TV network remedies in an RAIO. Should there be a need to offer such services it ought to be offered in a separate agreement and only after a separate assessment that there is such a demand and need in the market.

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

Yes, but this should go a step further and also include a specific requirement to enable connectivity to and from a new entrant's network and the international carriage networks of operators not registered in the Bahamas. This is another form of leased line.

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

Dominance in the market for the provision of such services should be presumed at the start of liberalisation.

Question 28: Do you agree with the proposal that the co-location based services listed are still relevant and should form part of any new RAIO produced?

Digicel considers that in-span interconnection (interconnection between switch sites using a fibre link) rather than physical or virtual co-location is the most practical way forward. It is generally undesirable and a security concern for any operator if another operator has physical or contractual rights with respect to equipment or circuits within the first operator's network. We are aware that this is

a bigger issue with respect to unbundling local loops but as indicated previously we believe that promoting competition through alternative network infrastructures is a better way forward than unbundling. If URCA is required to police physical and virtual co-location this could be a very time consuming process.

With respect to tower sharing we believe that one for one sharing is the best way forward. It must be borne in mind that competitors compete on coverage but will be less able to do so if they are forced to enable co-location on any number of towers. We also underline that it would be inappropriate to require sharing on towers where they form part of a very critical SDH backbone transmission ring. The space on such towers is in high demand by the original operator and failure of them has the potential to cause major outages on an operator's network.

Duct sharing again may cause security and network resilience concerns but we believe that in order to avoid costs ducts sharing should be available but subject to very strict access regulations and terms and conditions. In any event operators should be required to at least to lease capacity on fibres running through such ducts.

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

We agree.

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.

N/A - see previous relevant answers above.

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.

N/A - see previous relevant answers above.

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.

We agree. Access to the Directory Assistance database, both national and International should form part of the 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.

We agree. A 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 then please substantiate your answer.

Digicel believes that CPP is the best pricing model. We do not support Mobile Part Pays (MPP) or otherwise known as Receiving Party Pays (RPP). RPP tends to inhibit the growth in mobile penetration as it reduces the utility of the mobile service by creating an incentive for users to switch off their mobile phones to avoid being charged for incoming calls and discourages them from giving out their mobile phone numbers.

Important principle – the difference between termination on a fixed network and termination on a mobile network reflects the underlying differences in network architecture, performance and costs between a fixed network and a mobile network. It is for that reason that mobile terminating rates are significantly higher than fixed termination rates.

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

Any form of costing methodologies and accounting systems will invariably take some time to develop and have proven to be very costly for regulators in the Caribbean (and elsewhere) who have adopted the cost model approach. A pragmatic alternative is to derive basic interconnection rates based on best international practice. Benchmarking has the advantage of being straightforward, decisive, transparent and cost effective and does reflect the principle of cost orientation.