

Digicel

The Bigger, Better Network.

Digicel's Response to the URCA's Draft Guidelines

Access and Interconnection

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Digicel Comments on URCA's Draft Guidelines on Access and Interconnection

The URCA refers to the concept of efficiency when describing the meaning of the term "cost oriented" in the context of setting access and interconnection charges. What kind of efficiency is being referred to here? For example, is the URCA referring to dynamic efficiency? By way of illustration of the meaning of dynamic efficiency a start-up telecommunications operator will have less traffic and higher per minute traffic costs than an established company. Those costs are nonetheless dynamically efficient as they represent the lowest start-up costs that could be incurred in order to create a network sufficient to attract enough customers to make the entrant's business plan viable. Will start-up operators be allowed to recover dynamically incurred costs, or will they be compelled to provide below cost interconnection services unless and until they manage to gain sufficient market share to bring their per minute unit costs close to those of the incumbent? The answer to this question will determine whether asymmetric or symmetric termination interconnection rates are put in place and significantly impact the attractiveness or otherwise of investing in the Bahamas telecommunications market.

Role of URCA in Access and Interconnection

2.6 Resolving inter-operator disputes *in a timely manner*

3. SCOPE OF THE ACCESS AND INTERCONNECTION GUIDELINES

3.1 To promote investment, *entrepreneurship* and innovation in electronic communications networks and services; and

- Promote interworking of networks;
- Promote more cost effective interconnection solutions e.g. Mobile to Mobile interconnection;
- Interconnection at any technically feasible point of the network;
- Focus interconnection obligations on former monopolies and dominant operators;
- Stop anti-competitive practice

3.4 The incumbent should publish the RAIO, approved by URCA in advance of the other operators receiving a license. Potential entrants should be able to comment on the draft RAIO.

4. ACCESS AND INTERCONNECTION PRINCIPLES

- **Anti-competitive behavior:** Ensure the incumbent does not use its SMP to target competitors customers by utilizing interconnection data;

- **Timeliness:** All providers of electronic communications networks and services (including SMP operators) must respond to requests for access and interconnection, and requests for amendments to existing access and interconnection agreements *by predictable dates and in a timely fashion*;
- **Mobile to Mobile:** Should the incumbent have both a fixed and a mobile network then the new entrant mobile operator should be given the option to connect at the lowest cost point e.g. to avoid any possible transit charges from the fixed to the mobile network by allowing the new entrant mobile operator to connect directly to the incumbent's Mobile switch;
- **Right of Access by URCA:** The URCA should have adequate access to switch sites and switch site records where the physical interconnection takes place;
- **Regulatory Intervention:** The URCA should principally be independent yet in instances where they have to intervene they should be guided by the prevailing legislation;

10. DISPUTE RESOLUTION

More effective policies to deal with anti-competitive practices are needed in the Caribbean. Currently, the length of time that it takes for disputes to be resolved in Caribbean countries, and frequently the lack of regulatory powers to take the steps required, results in operators making less use of dispute resolution processes. This in turn limits the effort put into developing such processes and thus they do not improve. In the long run if the resolution dispute process is weak this may lead to 'regulatory by-pass' where operators simply head for the Courts to resolve disputes.

At worst, faced with a long period before resolution, and a detailed intensive and costly dispute process, a small operator might be forced out of business. Alternatively, if investors think they would need regulatory intervention to enter the market place, and anticipating a long and costly struggle, their decision may be not to invest in the first place. The cost and the time required to resolve disputes is hindering ICT development in the region, and prevents additional investment.

The URCA should have firm deadlines for resolution (other than in force majeure cases due to hurricanes for example) to disputes which should be clearly documented for all stakeholders. There should also be hard cut off dates for the submission of information requested from operators. This will achieve focus information requests better, as well as ensuring that operators do not procrastinate about providing the information that is requested. Information submitted outside the deadlines would have to be ignored.

These deadlines will encourage legal certainty and predictability and hence improve the investor environment.

The Harmonisation Project for Legislation and Regulatory Procedures in the Caribbean region (called HIPCAR), which is supported by the ITU and CTU recently drafted policy statements on Access and Interconnection disputes. The following sets out proposed policy guidelines on access and interconnection to bring the CARICOM/CARIFORUM countries in line with international best practices in terms of access and interconnection and provide the building blocks for future model legislative texts on access and interconnection.

1. CARICOM/CARIFORUM COUNTRIES SHALL ENSURE THAT INTERCONNECTION/ACCESS DISPUTES HAVE A SPECIFIC AND EXPEDITED PROCESS AND THAT PARTIES MAY REQUEST THE REGULATOR ADJUDICATION AT ANY TIME AND THAT APPROPRIATE ENFORCEMENT MECHANISMS ARE IN PLACE TO ALLOW THE REGULATOR TO GATHER INFORMATION AND ENFORCE DECISIONS

- Regulators shall publish a referral procedure enabling players in the market to bring disputes before them in accordance with a clear and transparent procedure
- The legal and regulatory framework shall provide for a clear mandate granting the regulator sufficient powers with respect to inspection of, and the collection of current and past records from, actual and potential interconnection sites, facilities and equipment as well as the physical elements at the site.
- Regulators shall ensure decisions on access/interconnection disputes are impartial, and, that they have the option of contracting outside experts to bring in expertise and/or of constituting expert committees comprised of people recognized for their expertise in the area and who are independent of interested parties in the matter
- Regulators shall set a maximum time-frame for the settlement of disputes
- Legislation shall provide for the possibility of the authority initiating an action itself, and the possibility of injunction against an operator in the event of serious problems requiring urgent solution
- Regulators in the region shall cooperate as widely as possible, through CTU, and establish a group for exchanging experience via the Internet and a database of past disputes and their solutions (e.g. tariff benchmark data)

These proposals for Policy Guidelines were adopted by the HIPCAR Working Group on Access and Interconnection which met in Port-of-Spain, Trinidad and Tobago, 26 to 29 October 2009.

We believe the URCA should have the following powers to expedite the dispute resolution process.

- URCA to have 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 Telecoms Act;

- URCA to have 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.
- Dispute resolution mechanisms must compel decisions to be made within a reasonable period of time (say 4 months) short of force majeure obstacles to force everyone to focus on key issues and not get distracted by peripheral matters which absorb large amounts of time and generate more risk and uncertainty for existing and potential investors. There should be hard cut off dates for information submission also (again force majeure reasons aside) within the four month period. All stake holders should clearly understand the timelines involved to enable a sense of urgency and meaningful discussions in disputes.
- This Dispute resolution process timeframe should be clearly documented as part of the policy document and understood by all parties.