



Proposed Revision of Access and Interconnection Framework

FINAL DETERMINATION

ECS 08/2015

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1 INTRODUCTION

This document contains the Utilities Regulation and Competition Authority's (URCA) Final Determination providing for the revision of the existing Access and Interconnection framework by the implementation of specific timeframes for the negotiation and establishment of interconnection, issued pursuant to section 99 of the Communications Act, 2009 (Comms Act).

1.1 Structure of this Document

The remainder of this document is structured as follows:

- Section 2 – Background and Discussion: providing an overview of the context, legislative provisions, and processes within which URCA makes this Final Determination;
- Section 3 – Responses to Consultation on the Preliminary Determination: setting out the comments received from and representations made by interested persons following the publication by URCA of its Proposed Revision of Access and Interconnection Framework (ECS 02/2015);
- Section 4 – Conclusion and Final Determination: setting out URCA's Final Determination on the Proposed Revision of Access and Interconnection Framework and the accompanying Order.

2 BACKGROUND

In its Preliminary Determination on the Proposed Revision of Access and Interconnection Framework (ECS 2/2015) URCA proposed to revise the existing Access and Interconnection Framework in The Bahamas by implementing specific timeframes for the negotiation and establishment of interconnection for the purpose of carrying out the electronic communications policy objectives under section 4(a) of the Communications Act, 2009 (Comms Act).

URCA recognizes that the interconnection of public voice networks is fundamental to the development of sustainable competition in the electronic communications sector. Effective interconnection is one of the main drivers of entry, innovation and growth in the telecommunications market. In this vein, and based on URCA's experience thus far, URCA reached the preliminary view, as set out in Section 3 of the Preliminary Determination, that a more active role is required to ensure timely negotiation and implementation of reasonable and non-discriminatory interconnection agreements.

URCA's power and process for making determinations is contained in sections 99 through 102 of the Comms Act. These sections of the Comms Act require that URCA first issue and consult on a Preliminary Determination, allowing at least one (1) month for the submission of representations by interested persons, and thereafter, having taken into account any representations made, URCA may issue its Final Determination. URCA's Final Determination may also, where appropriate, be accompanied by an Order (issued under and in accordance with sections 95 through 98 of the Comms Act).

2.1 URCA's Consultation on the Proposed Revision of the Access and Interconnection Framework

On May 5, 2015, URCA issued a Preliminary Determination document entitled "Proposed Revision to Access and Interconnection Framework" (hereinafter referred to as the "Preliminary Determination") inviting comments from interested persons on the issues pertaining to the implementation of the specific timeframes outlined therein. URCA received comments from the Bahamas Telecommunications Company Ltd. (BTC) and Cable Bahamas Limited (CBL). Having considered the comments received in response to the Preliminary Determination in accordance with section 100(4) of the Comms Act, BTC's and CBL's comments are summarised herein and reference is made to the matters contained in the Preliminary Determination, where appropriate.

URCA thanks the respondents for their submissions and participation in this proceeding. URCA's failure to respond to any issue raised by the respondents does not necessarily signify agreement in whole or in part with the comment, that it has not considered the comment or that it considers the comment unimportant or without merit.

3 COMMENTS AND REPRESENTATIONS TO THE PRELIMINARY DETERMINATION

3.1 Submission of Comments

The Preliminary Determination required the submission of representations by no later than June 7, 2015. Comments were submitted by CBL on the Preliminary Determination within the timeframe provided. BTC submitted its comments on June 8, 2015. Although BTC representations were submitted one day late, the late submission was accepted by URCA, as the lateness of the comments did not prejudice the applicability of the comments or completion of the documents. Both submissions have been considered by URCA in reaching this Final Determination. The comments submitted by BTC and CBL, and URCA's responses to those comments, are summarised in the remainder of this Section.

3.2 General Comments

BTC

BTC commended URCA on the steps taken by URCA to establish efficient standards in the establishment and delivery of interconnection. BTC expressed concerns that the proposed revisions do not achieve the anticipated levels of harmonization in the interconnection process. BTC also cautioned URCA to ensure that in the implementation of any protocol associated with interconnection, the principles as set out in the Preliminary Determination are applicable to and for all operators offering interconnection services/ call termination in the telecommunications market. BTC notes that it always maintained that in the event that market forces alone are not likely to achieve the electronic communications sector (ECS) objectives, then intervention by the regulator ought to take place. BTC also expressed the view that in imposing regulatory requirements, the regulator must pay to cost and in particular the need to ensure that the costs to all affected parties, including the regulator, are proportionate to the problem sought to be remedied. BTC further noted that any proposed remedy must be both forward looking and fit for purpose.

BTC expressed a general concern that the Preliminary Determination at its core appears to ignore the role of the access seekers or other licenced operators and any delay that may be attributable to them in the negotiation process. BTC is of the view that the Preliminary Determination has not considered that often, whether due to lack of understanding or lack of resources, the access seeker or other licenced operator can cause delays in the establishment of interconnection.

BTC also stated that the Preliminary Determination has not provided for mutually agreed extension of timelines between the parties to interconnection. BTC is of the view that the parties should be free to extend timelines at different stages of the process to take account of their commercial and/or technical realities.

URCA's Response to BTC's General Comments

URCA notes BTC's concerns that the core of the proposed revision does not appear to take into consideration possible delays that occur as a result of the inexperience or lack of resources of the access seeker. URCA considers that while the historical data that has led to the issuance of the Preliminary Determination involved experiences with interconnection with BTC, URCA reminds BTC that the

proposed revision, inclusive of the timelines, will apply to all licensees of public voice networks (fixed/cellular mobile) inclusive of new operators as well as existing operators. URCA anticipates a highly competitive market once a second mobile operator enters the market and is of the view that the proposed framework will ensure the prompt and effective negotiation of interconnection agreements between licensees. URCA considers that it is not unreasonable for parties to an interconnection agreement to mutually agree to an extension of time. Where there is mutual agreement for either a shorter or longer timeframe the parties are free to follow the mutually agreed timeframe. URCA is of the view that in the event of a failure to agree on the length of time of the extension, URCA will intervene to set an extension period.

CBL

CBL commends URCA's recognition that efficient interconnection is fundamental to the development of sustainable competition in the ECS. CBL stated that it shares URCA's concerns that the existing regulatory framework in relation to interconnection has not proven sufficient to achieve the policy objectives contained in the Comms Act. CBL notes that it supports the intentions behind the proposed streamlining of the negotiation and implementation of processes of interconnection by setting reasonable timeframes on a non-discriminatory basis. CBL further stated that an efficient and effective interconnection regime will become even more important with the entrance of a second mobile operator into the market. CBL expressed the general view that the proposals as contained in the Preliminary Determination do not go far enough and requires clarification in several respects in order to be effective. CBL outlined several areas where it seeks clarification as follows:

- (1) CBL notes that the deadlines for the negotiation and implementation of interconnection contained in the revised Access and Interconnection Framework would supersede those set out in a Significant Market Power (SMP) operator's approved Reference Access and Interconnection Offer (RAIO) where there is a conflict, insofar as the RAIO provides a longer timeframe.
- (2) CBL stated that as operational interconnection must be provided within three months of receipt of a request for information, the revised framework should provide for an interim commercial arrangement to be determined by URCA if the parties are not in agreement, with retroactive application of the final terms and conditions agreed by or alternatively imposed on the parties.

- (3) CBL is of the view that the proposed revised framework should mandate that interconnection links facilitate direct interconnection between the mobile switch of BTC and that of any other operator providing fixed and/or mobile communication services.
- (4) CBL further states that, in its view, the interconnection links must be technology neutral and include Session Initiation Protocol (“SIP”) upon request. CBL further states that time division multiplexing (“TDM”) interconnection is outdated, costly and inadequate. Additionally CBL states that the revised framework should make it clear that unjustified delays will not be tolerated and that URCA should require intervention by URCA in cases of delay of termination of certain types of calls.
- (5) CBL further notes that access is not covered by the Preliminary Determination and the proposed revisions. CBL states that the proposed revisions should make it clear that delays in the provision of access to infrastructure will not be tolerated. CBL then notes the importance of access to BTC’s tower infrastructure to the second mobile operator in The Bahamas.
- (6) CBL further reminded URCA of issues and problems that plague BTC’s provision of Fixed Line Number Portability. CBL is of the view that an efficient and effective interconnection regime goes hand in hand with an efficient number portability system and that URCA should address these issues in parallel with the delays involved in interconnection.

URCA’s Response to CBL’s General Comments

URCA notes CBL’s support of the intention to streamline the negotiation and implementation processes of interconnection. In response to CBL’s listed areas of clarification, URCA responds in turn below:

1. URCA notes CBL’s suggestion that where there is a conflict between an SMP operator’s approved RAIO and the revised framework, the latter will supersede the provision in the RAIO in cases where the RAIO provides for a longer time period. URCA considers that should the framework be revised by the implementation of the proposed timeframes, there would be no conflict as the changes would then require an amendment of all URCA approved RAIOs and/or Access and Interconnection Terms and Conditions to ensure consistency.
2. URCA notes CBL’s comments regarding the “operational interconnection” that must be achieved within 3 months of receipt of a request for interconnection. However, URCA clarifies that the proposed framework does not require operational interconnection within three months of the request, but rather the proposed timeframe requires operational interconnection within three

months of signing a contract to deliver the joining links. The contract is to be concluded within a month of the request, resulting in a period of 4 months from the time the request for interconnection is made to achieving operational interconnection. URCA further notes CBL's suggestion that the proposed revisions should also provide for an interim commercial agreement to be determined by URCA in cases where the parties do not agree, with the retroactive application by URCA of the final terms and conditions on the parties if necessary. URCA notes that where justified in the particular circumstances, and the conditions set out in section 96 of the Comms Act are met, URCA would be able to impose an interim commercial measure by way of Interim Order. URCA does not consider it necessary or appropriate to specify the circumstances where that power might be exercised in this document.

3. URCA notes CBL's position that interconnection links should facilitate direct interconnection with BTC's mobile switch. However, URCA considers this comment to be outside the scope of the Preliminary Determination. URCA will consider this issue in its forthcoming consultation on BTC's RAIO and related matters.
4. URCA notes CBL's assertion that the interconnection links ought to be technology neutral and must include SIP upon request. While URCA agrees that TDM is somewhat outdated, and can be costly, URCA does not agree that the issue of the types of links used for interconnection falls within the scope of the Preliminary Determination nor would it be within the natural scope of this regulatory proceeding. URCA will consider this issue in its forthcoming consultation on BTC's RAIO and related matters. URCA also notes CBL's concerns relative to delays in termination for certain types of calls, namely calls to 300 toll free numbers. However URCA considers that this issue is outside the remit of this proceeding.
5. URCA notes CBL's comments relating to access and the need for URCA intervention for the prevention of delays in delivering access to infrastructure in cases where the provider has SMP. URCA however states that this issues falls outside the scope of the Preliminary Determination and is addressed in the Infrastructure Sharing Regulations published on September 3, 2015.
6. URCA notes CBL's comments regarding Fixed Number Portability and the need for URCA to address the problems associated therewith. While URCA agrees that an efficient number portability system is important, it notes that Number Portability is not a subject of the Preliminary Determination on the revisions to the Access and Interconnection framework and as such is outside of the scope of this document.

3.3 Comments to Consultation Questions

Question 1: Do you agree there is a need within the current interconnection framework for the implementation of clear timeframes which will facilitate the timely conclusion of the negotiation of interconnection agreements as well as the conclusion of the interconnection process?

BTC

BTC agreed substantively with the need for timelines relative to the negotiation and establishment of interconnection and noted that timeframes already exist in Annex B of BTC's RAIO. BTC states however that a timeline of one month may not be achievable in circumstances where the other licensed operator (OLO) is unable to satisfy the relevant credit check where the access seeker lacks the expertise or financial resources to effectively negotiate. BTC further noted the difficulties faced in circumstances where the OLO is unclear of the relevant wholesale services, including the necessary infrastructure and facilities to become operational. BTC submits that it cannot be the provider of the wholesale service as well as serve as a *de facto* resource for the OLO during the negotiation process.

URCA's Response to BTC

URCA notes BTC's substantive agreement as to the need to effect timely interconnection. URCA does not agree with BTC that URCA has seemingly failed to consider that delay and failures in interconnection arise at times as a result of the OLO. URCA, in issuing the Preliminary Determination is not so much concerned as to the reasons behind the delays experienced thus far but rather is concerned with the reduction of delays in the process, regardless of fault. URCA is aware that there will be factors that make it difficult for parties negotiating an interconnection agreement to conclude a contract providing for the purchase, delivery and installation of interconnection links within a period of one month. However the proposed timeline calls for "best endeavours" on the part of Licensees to meet this timeframe. Additionally, URCA considers that should there be a need for an extension of time, in circumstances as put forth by BTC, for example the inability of a Licensee to satisfy credit checks, such extension can be sought from URCA where the Parties to an agreement are unable to mutually agree to an extension of time. It is intended and as set out in Clause 3.9 of the Preliminary Determination that time does not begin to run until receipt of a proper request that meets the requirements set out at Clause 3.9 of the Preliminary Determination. URCA notes BTC's concerns surrounding the readiness and the expertise of the OLO. URCA makes it unequivocally clear that the proposed timeframe places no

requirement on BTC to serve as a resource for the OLO during the process of negotiating interconnection.

CBL

CBL agrees that there is a need for revision of the current interconnection framework in order to establish clear and reasonable deadlines for the processes of negotiation and implementation of interconnection. CBL states that the timeline proposed in the Preliminary Determination would significantly improve the existing situation as it relates to fixed line interconnection. CBL is of the view that URCA should make it clear that it will intervene where necessary and impose effective penalties for unnecessary delays.

Additionally CBL states that this Final Determination should provide that in the absence of a waiver of an established deadline issued by URCA in advance of the expiration of the deadline, an SMP operator's failure to comply with the stated timeline will constitute a breach of Condition 11.1 of the Individual Operating Licence (IOL).

URCA's Response to CBL

URCA notes CBL's agreement that clear timeframes are necessary to facilitate the processes of negotiation and establishment of interconnection. URCA is of the view that its powers of enforcement, inclusive of the imposition of penalties and fines are inherent in and attached to any breach of any regulatory measure, including this Final Determination and as such, it is unnecessary to restate the same herein. URCA however, considers that a failure to comply with the proposed timeframes, in the absence of good cause, may indeed lead to a finding of a breach of Condition 11.1 of a Licensee's IOL and the general obligation to negotiate interconnection in good faith contained therein.

Question 2: Do you agree there is a need within the current interconnection framework for more reasonable timeframes which will facilitate the timely negotiation and implementation of amendments to interconnection agreements, and the implementation of changes, modifications, enhancements of the interconnection facilities?

BTC

BTC is of the view that the timescales ought to be used as a guide to ensure that interconnection is negotiated and concluded in a reasonable timeframe, given the experience level and resource constraints faced by some new entrants.

BTC believes that the timeframes as proposed in the Preliminary Determination in some cases are unreasonable and do not take into account the technical feasibility or capacity issues that may be facing the access provider. Specifically, BTC is of the view that the requirement to effect operational interconnection which includes the acquisition and installation of interconnection links/joining circuits within 3 months may not be achievable in all instances.

BTC further states that there is no need for URCA's intervention relative to modifications or changes to the interconnection agreement, given Clause 21 of the BTC RAIO which outlines conditions for changes and modifications.

URCA's Response to BTC

URCA notes BTC's comments. As discussed in the Preliminary Determination, URCA is of the view that historically speaking, the negotiation and implementation processes of interconnection has been less than efficient in circumstances where licensees were merely expected to negotiate and conclude interconnection in a "reasonable timeframe" as required by the Final Guidelines for Access and Interconnection (ECS 14/2010). URCA is now of the view that a more active role is necessary and that the imposition of closely monitored timeframes would decrease the delays experienced by parties to the negotiation of interconnection.

URCA also notes BTC's view that in some cases the timescales are unreasonable and do not take into account the technical feasibility and capacity issues faced by the interconnection provider. URCA disagrees with BTC's view that the timescales are unreasonable as the timescales allow for flexibility where an extension of time is approved by URCA in circumstances where certain conditions exist, as pointed out by BTC, for example, in the case where a government approval is necessary.

URCA further notes BTC's comments relative to Clause 21 of its RAIO and its view that there is no need for URCA intervention relative to changes or modifications to the interconnection agreement. URCA however reminds BTC of the scope of the proposed timeframes as set out in the Preliminary Determination. In particular URCA reminds BTC that the proposed timeframes will apply to all Licensees

like BTC who are providing public voice telephone services and also to interconnection agreements between other licensees that do not involve interconnection with BTC.

CBL

CBL reiterates its agreement with the proposed timelines contained in the Preliminary Determination. However CBL notes its concerns as to how the proposed timeframes will be applied. CBL further states that the final determination should provide for the following:

- (i) That in the event of a conflict between the revised Access and Interconnection Framework and an SMP operator's RAIO, the deadlines in the this Final Determination will supersede those set out in the RAIO where a RAIO provides for a longer time period;
- (ii) That "operational interconnection" be given the meaning full and active operation of the joining circuits or links to provide for the exchange of traffic;
- (iii) That interconnection links or joining circuits facilitate direct interconnection between the mobile switches of the parties, in accordance with standard practice;
- (iv) That the interconnection links required by the Final Determination should be technology-neutral and must include Internet Protocol (IP) interconnection or SIP as TDM interconnection is not only outdated and costly, but are inadequate for digital technology. CBL further stated that if legacy TDM interconnection is permitted to continue being used, the result will be costly conversion and further delays, which is counter-productive to the proposed timeframes.

URCA's Response to CBL

URCA notes CBL's agreement to the proposed timeframes. URCA notes CBL position that it should be made clear that the proposed timeframes are not simply guidelines but that adherence to the same will constitute evidence of good faith to negotiate, conclude, and amend interconnection agreements. URCA agrees that the proposed timeframes are not guidelines. URCA considers that breach of the proposed timelines, without good cause and absent an extension of time by URCA, will lead to enforcement of this Final Determination. URCA also notes that CBL's comments in response to Question 2 repeats its concerns raised in its general comments. URCA has addressed these points at items 1-4 of its response to CBL's general comments in Section 3.2 above.

Question 3: Do you agree with the proposed timelines? Should you disagree, kindly give a detailed explanation for your views and suggest alternative timeframes.

BTC

BTC notes that the timescales in some instances allow for an extension of time only by URCA. BTC is of the view that the imposition of the regulator in matters such as delivery time adjustments does not create an environment conducive to light touch regulation, which, BTC feels would better serve the Bahamian telecoms market at this stage of its development. BTC further states that the requirement of approval from URCA will present further delay where additional administrative steps need to be taken. BTC's view is that intervention by the regulator should be a last resort in circumstances where the parties cannot resolve issues relative to timeframes for the negotiation and establishment of interconnection as well as other issues. BTC further stated that the proposed timeframes in the Preliminary Determination appear to be based on the following assumptions:

- (i) Delays in negotiation and establishment of interconnection are due to the actions of the SMP provider;
- (ii) The timescales take into consideration the minimum amount of time required to complete the various tasks involved in the interconnection process.

BTC is of the view that there should be flexibility which would allow for mutually agreed extensions to the timescales.

URCA's Response to BTC

URCA notes BTC's issues with the involvement of the regulator in matters involved in the negotiation of interconnection such as the adjustment of delivery times. URCA notes BTC's view that the market would be better served through light touch regulation but disagrees with BTC in this regard. As set out in the Preliminary Determination, URCA is of the view that unless there is regulatory intervention, the delays and issues encountered during the negotiation process of interconnection will continue. URCA however considers that it is not unreasonable for parties to an interconnection agreement to mutually agree to an extension of time. Where there is mutual agreement for either a shorter or longer timeframe the parties are free to follow the mutually agreed timeframe. URCA is of the view that in the event of a failure to agree on the length of time of the extension, URCA will intervene to set an extension period.

URCA also notes BTC's contention that the proposed timeframes are based on the assumption that delays in negotiation and establishment of interconnection are due to the actions of the SMP provider. URCA disagrees with this view. The discussion and examples of failed or stalled interconnection negotiations contained in the Preliminary Determination are based on URCA's experience and the complaints received in relation thereto. URCA, however, considers that there could be other reasons for undue delays in establishing interconnection agreements. URCA notes BTC's statement regarding the assumption that the proposed timeframes take into consideration the minimum amount of time required to complete the tasks involved in the negotiation and establishment of interconnection. URCA is of the view that the proposed timeframes are reasonable and that interconnection ought to be established in the most efficient and timely manner possible.

CBL

CBL is in agreement with the timescales as they relate to TDM interconnect. However, CBL is of the view that an operator establishing an interconnection link for the first time will likely have challenges as the new operator will have to order additional hardware to accommodate a TDM interconnection. CBL notes that to do this, inclusive of testing within three months, may be a challenge.

CBL states that in a case where joining circuits are in place and capacity is available to transit calls, then the 3 month timeline is reasonable.

CBL notes that an IP interconnect would facilitate a quicker entry to the market and reduce costs for both parties.

URCA's Response to CBL

URCA notes CBL's comments. URCA is of the view that CBL's comments are based on the assumption that a new operator will be seeking a TDM interconnection. In cases where this is not the case, the issues associated with ordering hardware to accommodate a TDM interconnection fall away. URCA notes and agrees with CBL's view that where joining circuits and capacity are available, the establishment of interconnection within the proposed timeframes is feasible.

As to CBL's comments regarding the advantages of IP interconnect, URCA reiterates its position that the issue of the type of interconnection falls outside of the scope of this Final Determination. URCA

proposes to deal with this topic in URCA's forthcoming consultation on the BTC RAIO and related matters.

Question 4: Do you agree that the improper impairment of interconnection services could potentially cause severe harm to licensee and on competition in the ECS? Do you agree that a requirement for Licensees to consult URCA prior to any impairment action would minimize potential harm to Licensee and the ECS in general? Should you disagree, kindly give a detailed explanation for your views and suggest alternative measures.

BTC

BTC notes that it is important that the proposed measures and timescales are consistent with provisions contained in BTC's existing RAIO and that those provisions in its RAIO are considered in the context of the proposed timeframes. BTC further states that this provision of the Preliminary Determination removes any obligation on URCA to respond to the complainant in a timely manner once consulted before impairment action is taken. Further, BTC is of the view that in circumstances where the access seeker threatens the integrity of the access provider's network and/or revenue streams, for example, in the case of fraudulent behaviour, it is imperative that URCA respond in a timely manner. BTC suggests that URCA establish timeframes for its response to inquiries or complaints of an access provider.

URCA's Response to BTC

URCA notes BTC's comments. In making the proposed changes as set out in the Preliminary Determination, URCA considered and reviewed all components that make up the existing Access and Interconnection Framework, inclusive of the BTC RAIO and the timeframes and procedures outlined therein. As far as consistency, it is URCA's view that any approved RAIO would be amended in order to ensure conformity and consistency with the proposed timeframes.

URCA further notes BTC's comments relative to the need for a timely response from URCA in circumstances where the proposed changes to the interconnection framework call for consultation with URCA prior to impairment of interconnection services. URCA does not agree that this Section of the Preliminary Determination removes the obligation on URCA to respond to complaints in a timely manner. URCA in fact is of the view that a lack of timeliness of a response of the regulator can in circumstances present a barrier to competition in the market. URCA considers that the implementation of timeframes

applicable to URCA on receipt of notification of a breach of an interconnection agreement necessitating impairment of interconnection services would be difficult having regard to the fact that interconnection disputes may involve complex issues that require extensive investigation. Additionally, specifying timeframes may pose legal and operational risks for URCA.

CBL

CBL states that under most circumstances they would be in agreement with this proposed revision in circumstances where a Licensee is not threatened by actions that could compromise its network or its operations or in cases of technical outages or *force majeure*. CBL noted that it would be unreasonable to require consultation with URCA prior to any impairment, as URCA is not available 24 hours a day, 7 days a week. CBL states that in such circumstances it ought to be sufficient that URCA is notified without delay and provide details as to the expected time period of impairment.

CBL sees no reason for URCA's intervention in cases of routine testing and maintenance of limited duration and notified at least 30 days in advance. CBL states that a clear definition of what is meant by "blocking" or "impairing" an interconnection or access service is needed. CBL also suggests that there be an agreed process and associated timelines when a licensee consults with URCA prior to a planned and pre-notified disruption for testing and maintenance. CBL urged URCA to make it clear that unilateral blocking behaviour will not be tolerated.

URCA's Response to CBL

URCA notes CBL's concern that in some cases (e.g., *force majeure*) it would be unreasonable to consult URCA prior to impairment action given URCA's operating hours, and that in such cases a requirement that Licensees notify URCA "without delay" and provide details should be sufficient. URCA agrees that there will inevitably be occasions where unforeseen technical outages or *force majeure* events prevents compliance with this proposed timeframe. This proposed requirement, as set out at Clause 7 of the Preliminary Determination, refers to a direct and intentional blocking action on the part of a licensee with a view to disconnecting or impairing interconnection. As stated in URCA's response to BTC's comments to Question 4 above, URCA does not consider it practical to set timeframes that will apply to URCA given the nuances of its investigation process in circumstances where a licensee consults URCA for consent to impair interconnection services in accordance with the terms of the interconnection agreement between the parties.

4 Conclusion and Final Determination

4.1 Conclusion and Next Steps

URCA has summarized the general comments and comments to the consultation questions and set out its views on those responses. Taking into account the comments received, URCA now sets out its Final Determination on the proposed revisions to the access and interconnection framework applicable to all licensees offering public telephone services as defined in Condition 1.1 of their Individual Operating Licence as well as those Licensees with SMP in public telephone services. Given its assessment and comments received by interested parties, URCA has reached the final conclusion that it is appropriate to revise the existing access and interconnection framework and establish the proposed timeframes.

As such, all licensees offering public telephone services (fixed/mobile) as defined in Condition 1.1 of their Individual Operating Licence who are also required by Condition 11.1 of their licence *“in good faith to negotiate, conclude and amend agreements with any Other Operator for Interconnection, Access and other related services, including the types and amount of charges”* will be required to negotiate, conclude and amend agreements with any other licensee for interconnection, access and other related services, including the types and amount of charges as set out in the Final Determination. For the avoidance of doubt, the provisions of the Final Determination also apply to URCA-approved RAIOS and other Access and Interconnection Terms and Conditions mandated by URCA which have to be amended to reflect the revised timeframes and other changes as set out in the Final Determination.

FINAL DETERMINATION

This Determination is issued pursuant to section 99 of the Communications Act 2009;

WHEREAS Condition 11.1 of the standard form Individual Operating Licence provides that:

“Subject to the Conditions of this Licence, the Communications Act, any Regulatory and other Measures issued by URCA pursuant to the Communications Act and any other relevant enactment, the Licensee is required in good faith to negotiate, conclude and amend agreements with any Other Operator for Interconnection, Access and other related services, including the types and amount of charges” and

WHEREAS on 22 April 2010 URCA published its Final Decision on Obligations Imposed on Operators with Significant Market Power, (ECS 11/2010) inclusive of its Final Guidelines on Access and Interconnection (ECS 14/2010),

WHEREAS and in accordance with the Final Guidelines on Access and Interconnection, URCA has reviewed the Final Guidelines on Access and Interconnection and proposed to supplement the said guidelines by the implementation of interconnection timeframes based on industry experience and further liberalization of the electronic communications sector,

WHEREAS on May 5, 2015, URCA issued its Preliminary Determination on the Proposed Revisions to the Access and Interconnection Framework; and

WHEREAS in response to the Preliminary Determination the Bahamas Telecommunications Company Limited (BTC) and Cable Bahamas Limited (CBL) have made representations to URCA on the matters set out in the Preliminary Determination.

NOW URCA, having reviewed and considered all recommendations made by interested persons, and in respect of the Preliminary Determination, makes the following Determination in accordance with section 99 of the Communications Act, 2009:

A holder of an Individual Operating Licence (hereinafter referred to as a Licensee) for the purpose of operating a public voice network (fixed/mobile) shall, in respect of the negotiation and implementation of interconnection and access services requested by or from the Licensee, comply with the following rules:

- (1) The Licensees shall use best endeavours to conclude a contract providing for the purchasing, delivery and installation of interconnection links or joining circuits forthwith but in any event

within **one (1) month** following receipt or the making of a valid request to negotiate an interconnection agreement, unless the parties mutually agree to a shorter or longer timeframe or an extension of time is granted by URCA.

- (2) The Licensees shall effect operational interconnection by the completion of acquisition and installation of physical interconnection links or joining circuits, inclusive of testing within **three (3) months** of signing the contract to deliver or obtain interconnection.
- (3) The Licensees are allowed a further **two (2) months** for the conclusion of an executed full interconnection agreement on terms consistent with the BTC RAIO or any other URCA mandated terms and conditions, as well as other access and interconnection services.
- (4) The Licensee shall use best endeavours to conclude any amendments or changes to an executed interconnection agreement, on terms consistent with the BTC RAIO or any other URCA mandated terms and conditions.
- (5) A Licensee shall implement any additional capacity, additional circuits or other technical changes to existing interconnection services, within **three (3) months** of receiving a valid request from an interconnecting Licensee. A valid request shall be one which is compliant in all material respects with the requirements of the interconnection agreement between the parties.
- (6) URCA may, in its sole discretion, extend any of the timeframes determined herein for any period that URCA deems necessary or appropriate on application by a Licensee, which application shall be submitted in writing and submitted at least seven (7) days before the expiry of the relevant timeframe. In determining any application for an extension URCA shall also consider representations made by any other party to the proposed interconnection. Parties to an interconnection agreement may also mutually agree to a variation of the timeframes in this Final Determination and are free to follow such mutually agreed varied timeframe. In the event that the parties fail to agree on the length a variation of the timeframes herein, either party may apply to URCA or URCA may of its own volition intervene to set time frame that is binding on the parties.
- (7) A Licensee shall not interrupt, block, discontinue or otherwise impair any interconnection or access service it provides to any other Licensee unless with prior written consent of URCA and in accordance with the terms and conditions of the interconnection agreement between the parties.
- (8) As such, all Licensees offering public telephone services (fixed/mobile) as defined in Condition 1.1 of their Individual Operating Licence who are also required by Condition 11.1 of their licence

“in good faith to negotiate, conclude and amend agreements with any Other Operator for Interconnection, Access and other related services, including the types and amount of charges” will be required to negotiate, conclude and amend agreements with any other licensee for interconnection, access and other related services, including the types and amount of charges prior to 31 January 2016 to reflect the provisions as set out in this Final Determination. Upon making the said changes (where applicable), licensees are required to notify URCA that the amendments have been made. For the avoidance of doubt, the provisions of this Final Determination also apply to URCA-approved RAIOS and other Access and Interconnection Terms and Conditions mandated by URCA which now must be amended to reflect the revised timeframes and other changes as set out in this Final Determination.

Dated the 30th day of December 2015

Utilities Regulation and Competition Authority



Kathleen Riviere-Smith
Chief Executive Officer