



**The Bahamas Telecommunications Company Limited**

**Response To:**

**Preliminary Determination and Draft Order**

**Provision of National Roaming Services on the Cellular Mobile Networks of The Bahamas Telecommunications Company Limited in The Bahamas to the Second Cellular Mobile Operator for an Interim Period**

**Consultation Document  
ECS 10/2016**

Legal, Regulatory and  
Carrier Services Division  
**May 6, 2016**

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# 1 Introduction

## 1.1 Background

Bahamas Telecommunications Company Ltd. (BTC) herein provides its comments on the Preliminary Determination and Draft Order regarding the *Provision of National Roaming Services on the Cellular Mobile Networks of the Bahamas Telecommunications Company Ltd. in The Bahamas to the Second Cellular Mobile Operator for an Interim Period*, ECS 10/2016, issued by the Utilities Regulation and Competition Authority (URCA) on 30 March 2016 (the "Consultation Document", "Preliminary Determination" and/or "Draft Order").

In the Preliminary Determination and Draft Order, URCA sets out its proposal to impose a Significant Market Power (SMP) obligation on BTC to provide national roaming services to the second cellular mobile operator (also referred to herein as "NewCo") for an interim period of time. As noted by URCA, the intended purpose of this temporary obligation is to enable the second cellular mobile operator to offer its customers the ability to make and receive calls, send and receive Short Message Service (SMS) and Multimedia Messaging Service (MMS) messages and access data services in areas of The Bahamas where it is yet to build out its cellular mobile network as required under the rollout obligations to be included in its finalized Individual Spectrum Licence (ISL).

In this respect, the Consultation Document effectively consists of two main parts:

- i) URCA's rationale for its Preliminary Determination, including general supporting arguments for its proposals as well as a preliminary market assessment or SMP analysis of the wholesale market for national roaming services; and
- ii) URCA's proposed wording of its Preliminary Determination and Draft Order on national roaming.

In total, there are 18 Consultation Questions in the Consultation Document relating to URCA's preliminary findings and proposals in relation to these matters. In what follows, BTC provides its responses to URCA's questions and also comments on certain aspects of URCA's Preliminary Determination and Draft Order. Where BTC has no significant disagreement with proposals or conclusions referred in certain Consultation Questions, it has not provided responses to the questions in those cases.

## 1.2 Overview of BTC's Submissions

At the outset, BTC provides the following summary of key issues and concerns it has with respect to URCA's proposals and supporting rationale set out in the Consultation Document:

- *Rationale for the Proposed Obligation:* URCA provided no quantitative analysis or supporting evidence demonstrating that consumers would be disadvantaged in any significant way or that the development of cellular mobile competition would be compromised in any significant way without the proposed national roaming service. In addition, URCA provided no quantitative analysis or evidence demonstrating that the benefits of its proposed national roaming obligation would exceed its costs.

Consequently, in BTC's view, URCA has not provided any substantive evidence in support of its assertion that a national roaming obligation on BTC is in fact necessary, appropriate, efficient or proportionate to its purpose as required under the Communications Act.

- *Proposed Timeframe for the Obligation:* Without knowing the specific details of NewCo's finalized network rollout licence obligations, BTC considers that it is inappropriate for URCA to propose a timeframe of up to 36 months for the proposed national roaming obligation. BTC considers that NewCo should be in a position to cover a very high percentage of the population of The Bahamas within 18 months after its licence is granted. The national roaming obligation should be eliminated at that time, since it should have network coverage for the vast majority of the population of The Bahamas (e.g., likely close to 95%) by that time.
- *Proposed Scope for the Obligation:* NewCo's finalized network rollout obligations should be made part of any national roaming service obligation so that all parties are fully aware of its precise rollout obligations, and to also ensure that BTC is not requested to provide national roaming in any area where NewCo is required to provide coverage using its own network pursuant to its licence.

In addition, URCA provided no rationale as to why the scope of the proposed national roaming service should extend beyond "basic" call, messaging and data services. BTC considers that the proposed national roaming service should not include access to its premium LTE network. URCA has provided no evidential support for the necessity, appropriateness or proportionality of this aspect of its proposed obligation.

- *Pricing of the Proposed National Roaming Service:* BTC does not object to an approach whereby the wholesale prices for the proposed national roaming service is set on a "cost-orientation" basis, provided that all cost incurred in setting up the service together with any recurring costs are recovered along with the regulated rate of return. BTC should not be obligated to subsidize NewCo's mobile network rollout.

Providing national roaming on a subsidized basis could incent NewCo to slow the pace of its mobile network rollout, which would limit the benefits of competition for consumers and delay the benefit to the country as whole of having a second cellular mobile network in place across the country which would provide an added degree of network redundancy in the event of natural disasters such as hurricanes.

- *Timing of the Draft Terms, Conditions and Pricing of the Proposed National Roaming Service:* Determining appropriate prices for the proposed national roaming service would be a complex exercise. Similarly, establishing the appropriate non-price terms and conditions for the service would be equally challenging. Providing BTC with little more than a month to complete a draft national roaming agreement, including proposed pricing, and other commercial terms is not realistic. BTC proposes that a period of up to 90 days from the date of URCA's final determination for this purpose would be more appropriate in the circumstances.



## 2 Rationale for the Proposed National Roaming Obligation

### 2.1 URCA's Background and Supporting Arguments

In Section 3 of the Consultation Document, URCA provided general background information on the mobile liberalisation process in The Bahamas. This included making note of the fact that the Government's 2014 Request for Proposals (RFP) *To Operate a Cellular Mobile Network and To Provide Cellular Mobile Services in The Bahamas* made reference to URCA's intention to consider proposals which contemplated national roaming coverage using BTC's network "as an interim measure only" prior to achievement of all the network rollout requirements of the second cellular mobile operator.

URCA went on to note that the draft ISL that accompanied the RFP contained specific obligations for the second cellular mobile operator to rollout a national cellular mobile network within specific timeframes, namely:<sup>1</sup>

- to launch cellular mobile services within 6 months from the issuance date of its licence;
- to offer geographical coverage on its network to at least 75% of the total population of the Group 1 islands<sup>2</sup> at the time of mobile service launch; and
- to complete construction of its network within 36 months of it being issued with its cellular mobile services licence.

URCA added that at the time of commercial launch the second cellular mobile operator would not be expected nor required to have completed the construction of its own cellular mobile network and infrastructure and, consequently, would not have the ability to provide national coverage using its own cellular mobile network and infrastructure. According to URCA, this could potentially place the second cellular mobile operator at a temporary competitive disadvantage and also potentially limit the consumer benefits of competition during its network build out period.

Therefore, URCA concluded that it would be necessary, appropriate and proportionate to impose this interim obligation on BTC to enter into an agreement with the second cellular mobile operator to provide a national roaming service. URCA added that this proposed measure would be for a "restricted period consistent with the second cellular mobile operator's rollout obligations under its licence, and that the obligation would end once its network rollout is complete". Further, URCA stated that BTC would be required to offer roaming "only in those areas where BTC's cellular mobile network is available, but the second cellular mobile network

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<sup>1</sup> Consultation Document, page 8.

<sup>2</sup> As noted in the Consultation Document, the Group 1 islands include New Providence (including Paradise Island), Grand Bahama, Abaco (including Gorda Cay, Grand Cay, Great Guana Cay, Scotland Cay, Green Turtle Cay, Man-O-War Cay, Moores Island, Parrots Cay, Lubbers Cay, Tillo Cay, Cornish Cay, Bridges Cay Wood Cay), Eleuthera (including Harbour Island, Spanish Wells, Russell Island, Current Island), Exuma (including Black Point, Little Farmers Cay, Staniel Cay and Stocking Island), Andros, Bimini (including Cat Cay and Ocean Cay).

has not yet been constructed and is not yet required to have been constructed as per the licence obligations."

### **Consultation Question – Justification for National Roaming**

#### **Q1. Do you agree with URCA's proposal that national roaming should be used to support nationwide access to mobile communications services for an interim period? If not, why?**

In BTC's view, at the time of commercial launch, NewCo should be in position to offer cellular mobile services to the vast majority of the national population and should have initial network coverage in the most densely populated areas of the country. Without the proposed national roaming service, NewCo would have a strong incentive to extend its network coverage as rapidly as possible. The gaps in NewCo's mobile network coverage would be expected to decrease rapidly, and national coverage would likely be achieved even more quickly than contemplated in its draft ISL. Moreover, even with short term coverage gaps, NewCo would still be well positioned to provide consumers an effective competitive mobile service alternative during its network rollout period.

However, other than anecdotal generalities listed on page 8 of the Consultation Document, URCA has offered no quantitative analysis or evidence that consumers would be disadvantaged in any significant way or that the development of cellular mobile competition would be compromised in any significant way without the proposed national roaming service.

For instance, URCA has suggested that some subscribers could be inconvenienced because they may need to temporarily own two SIM cards. Yet in many countries, including many in the Caribbean region, it is quite common for subscribers to have more than one SIM card. This is done for a variety of reasons, including to take advantage of lower on-net call rates and/or differences in international call rates, among other reasons. In fact, even with mandated national roaming, it is possible that some, perhaps even many, subscribers could decide to purchase two SIM cards due to price, quality and other considerations. URCA made no attempt to determine whether the possibility of some subscribers choosing to own two SIM cards, with or without national roaming, is in fact a significant inconvenience versus a potential benefit.

URCA also suggested that customers outside of the new entrant's initial and ongoing network rollout footprint would not be provided with a competitive alternative to BTC as reason to justify imposition of a national roaming obligation. Yet no attempt was made to quantify or assess this concern. What percentage of the population would be affected in this way 6, 12 or 18 months after NewCo's launch? Likely very few. Moreover, in the absence of national roaming, NewCo would have a strong incentive to ensure that percentage declined rapidly. In any event, URCA has made no attempt to even gauge the extent of its alleged concerns.

In addition, no attempt was made to collect or assess information on the costs of the proposed obligation. The more remote geographic areas that would be covered by the national roaming obligation are BTC's highest-cost serving areas. Adding capacity to handle national roaming demands these areas would impose significant costs to BTC.

URCA provided no quantitative analysis or assessment to determine whether the benefits of its proposed national roaming obligation exceed its costs. Moreover, URCA provided no

quantitative or substantive evidence in support of its assertion that imposition of a national roaming obligation on BTC is in fact necessary or appropriate or, more importantly, efficient and proportionate to its purpose as required under Section 5(c) of the Communications Act.

URCA has chosen not to justify the necessity, efficiency and proportionality of its proposed regulatory measure, but, instead to concentrate almost the entire bulk of the Consultation Document to an analysis of whether BTC possesses SMP in the provision of national roaming services. BTC submits that URCA has overlooked the most important task required for a Preliminary Determination in this matter, which was to justify the proposed obligation on a cost/benefit basis.

To the extent URCA is determined to nevertheless go ahead with its proposal, absent any supporting market analysis or cost-benefit assessment, then in BTC's view the adopted national roaming obligation should be strictly limited in scope and duration and, provided on a full cost recovery basis.

## **2.2 URCA's SMP Assessment and Proposed Obligations**

### **2.2.1 Proposed Market Definition**

In Section 4 of the Consultation Document, URCA undertook a preliminary SMP assessment of the wholesale market for national roaming services following past URCA's established practices for such exercises. For the most part, BTC has no comments to offer on the specifics of URCA's SMP analysis and findings.

However, one matter of concern is URCA's proposed definition of the relevant market, which URCA refers to as the wholesale market for Mobile Access and Call Origination (MACO) services. The relevant market is defined by URCA as follows:

*A single national wholesale market for Mobile Access and Call Origination services (MACO) on cellular mobile networks in The Bahamas. It includes all outbound mobile calls independent of their destination, mobile messaging (SMS and MMS), Internet/data access services and access to other services such as calling features and emergency numbers. For the avoidance of doubt, the wholesale market also includes the Mobile Virtual Network Operator access and self-supply of wholesale mobile access and call origination. The market is defined on a technology neutral basis and thus includes any network technology, which is currently or may in the future, be deployed by licensees for the purpose of operating a cellular mobile network and providing cellular mobile services in The Bahamas.<sup>3</sup>*

**Consultation Question –Market Review Stage 1 – Product/Geographic Market Definitions**  
**Q2. Do you agree with URCA's proposed definition of the market for wholesale mobile access and origination? If not, why?**

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<sup>3</sup> Consultation Document, page 14.



BTC has no objection to URCA's proposed relevant market definition, with the exception of the inclusion of MVNOs in the definition. MVNOs typically provide retail mobile services and, as such, would normally be a "customer" rather than "supplier" of wholesale MACO services. It appears that URCA may be assuming that a MVNO (assuming one or more operated in the contemplated relevant market) could act as reseller of a Mobile Network Operator's (MNO) wholesale MACO services (assuming it was permitted by the MNO to do so) and, therefore, it be considered a supplier of wholesale MACO services for relevant market definition purposes.

BTC considers that this scenario would be unlikely in many if not most wholesale cellular mobile markets and, in any event, not applicable to the case at hand. For one, URCA stated explicitly in relation to the relevant market definition that "for the avoidance of doubt, this does not mean (and should not be interpreted as meaning) that URCA is imposing on BTC, through this regulatory measure, an obligation to offer access to MVNOs on regulated terms and conditions".<sup>4</sup> Moreover, there is no further reference to MVNOs in any of the subsequent stages of URCA's SMP assessment of the market for wholesale MACO services.

Therefore, it is unclear to BTC why URCA would include MVNOs as sources of wholesale MACO services in the definition of the relevant market in the case at hand. Consequently, BTC considers that any reference to MVNOs should be removed from the proposed definition of the relevant market.

## 2.2.2 Proposed Obligation to provide National Roaming

In subsection 4.3.4 of the Consultation Document, URCA sets out the national roaming service obligation it proposes to impose on BTC. There are two components to the obligation, the first relates timeframe and the second scope.

In the first case, URCA proposes that:

BTC should be obliged to offer, upon request and for an **interim period of up to three (3) years** from the date of issuance of the second cellular mobile operator's licence, wholesale mobile access and call origination to the second cellular mobile network.<sup>5</sup> (emphasis added)

In the second case, URCA adds that the proposed national roaming service should:

... enable mobile subscribers served by the second cellular mobile operator to make or receive calls (including calls to local emergency numbers), send or receive mobile messages (SMS and MMS), and other services including access to calling features and the internet outside of the second cellular mobile operator's coverage footprint but which are within BTC's cellular mobile network footprint. For the avoidance of doubt, **it is not proposed that BTC should be required to provide national roaming in any area in The Bahamas in which the second cellular mobile operator is required to have covered using its own network pursuant to its licence or in any area where the second cellular mobile operator has established, maintains and operates network coverage**

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<sup>4</sup> See footnote 16 of the Consultation Document.

<sup>5</sup> Consultation Document, page 20.

**pursuant to roll-out targets or network development targets specified in licences issued to the second cellular mobile operator.** (emphasis added)

**Consultation Question– Market Review Stage 3 – Remedy Design**

**Q6. Do you disagree with URCA’s proposed scope of the national roaming obligation to be provided by BTC? If so, why?**

Without knowing the specific details of the finalized network rollout obligations to be included in NewCo's ISL, BTC considers that URCA's proposed 36 month timeframe for the proposed roll out obligation is too lenient.

BTC believes that NewCo should be in a position to provide coverage to a large percentage of the population of The Bahamas within 18 months after its licence is finalized and granted. That would include a 6 month pre-commercial launch network build out period and a further 12 month period to continue to rollout its network coverage to less populated areas. At that point, NewCo's network should cover the vast majority of the population of the Bahamas (e.g., likely close to 95%) and, consequently, the national roaming obligation could be eliminated. Extending the obligation to 36 months would simply allow NewCo to limit its network rollout coverage to high population density, lower build out cost areas, while continuing to benefit from BTC's network coverage for the lowest density, highest build out cost areas of the country. This would only serve to reduce NewCo's incentive to complete its network rollout in a timely and expeditious manner. Moreover, URCA has not demonstrated that NewCo requires near 100% coverage to provide an effective competitive alternative in the mobile market. Accordingly, BTC considers that the timeframe for the proposed national roaming obligation should be limited to no more than 18 months from the date of issuance of NewCo's licence.

In addition, to ensure the all parties understand the precise timing and limited scope of the obligation, BTC submits that NewCo's finalized cellular mobile network rollout obligations, as included in its finalized ISL, should be made part of the defined national roaming service obligation. At this time, BTC is aware of only a high-level draft statement of NewCo's cellular mobile network rollout obligations. To give force to the limitation that BTC should not be required to provide national roaming in any area in The Bahamas in which NewCo is required to have covered using its own network pursuant to its licence, NewCo's finalized network rollout obligations should be included in the URCA's proposed national roaming determination as well as its Draft Order.

Provision should also be made to ensure BTC is kept informed in a timely manner as to the progress and status of NewCo's cellular mobile network build out relative to its rollout obligations. This information would be necessary to give force to the additional limitation that BTC should not be required to provide national roaming in any area where NewCo has established, maintains and operates network coverage pursuant to rollout targets or network development targets specified in its licence or beyond the requirements of its licence.

BTC also notes that while URCA may have defined the relevant market for wholesale MACO services to include those provided using GSM, HSPA and LTE, URCA provided no rationale as to why the proposed national roaming service obligation must cover all available technologies, where available. As a purely regulatory measure, there is no reason why the proposed national

roaming service should extend beyond the provision of "basic" mobile service capabilities – i.e., the ability to make and receive calls, send or receive SMS messages and have basic access to the Internet. For instance, there is no reason why high speed LTE data access capabilities should be included as part of the obligation, especially if BTC would be required to upgrade its LTE network capacity to handle temporary demand requirements from NewCo's roaming subscribers. Here again, URCA has provided no evidential support for necessity, appropriateness or proportionality of this aspect of its proposed obligation.

### **2.2.3 Proposed Obligation to provide Terms & Conditions**

URCA has proposed that, at a minimum, the terms and conditions associated with the proposed national roaming service to be provided by BTC should include:

- the price list (comprising all charges associated with the service and details of those charges); and
- the main non-price terms or conditions of the wholesale electronic communications services to be delivered.

In addition, URCA proposed that BTC should be required to submit its proposed standard terms and conditions for national roaming for URCA's review and approval within 35 days of the date of URCA's final determination and also submit the same information to NewCo upon request.

### **Consultation Question – Market Review Stage 3 – Remedy Design**

**Q7. Do you agree with URCA's proposal on the information to be provided by BTC? If not, why?**

As discussed in the following section, BTC considers that determining appropriate prices for the contemplated national roaming service will be a complex exercise. Similarly, establishing the appropriate non-price terms and conditions for the service will be equally challenging. In BTC's view, providing little more than a month for the preparation of a complete draft national roaming agreement, including proposed pricing, is not realistic. BTC is not aware of any other jurisdiction where so short a period has been set to determine the details of such a complex inter-carrier arrangement.

Assuming the proposed national roaming service is mandated, BTC will make every effort to comply with this requirement in an expeditious manner. However, BTC considers that a period of up to 90 days from the date of URCA's final determination would be a more appropriate and realistic timeframe for the submission of a proposed agreement covering standard terms and conditions, including prices, for the proposed national roaming service as may be defined by URCA in its decision on this consultation.

### **2.2.4 Proposed Wholesale Price Control**

URCA has proposed that tariffs for national roaming services should be set on the principle of cost orientation of prices. In this respect, URCA noted two options for setting national roaming tariffs. First, URCA suggested BTC's most recent cost accounting results could be used together with any justifiable adjustments BTC considers to ensure that tariffs reflect an efficient level of

costs. Second, in the absence of suitable costing information from BTC, URCA indicated that it would consider setting charges based on appropriate and reasonable benchmarks from comparable jurisdictions.

Additional considerations noted by URCA in relation to the pricing of the proposed national roaming service included the following:

- Tariffs should reflect the national average cost of providing the service.
- Any additional costs reasonably incurred by BTC in providing national roaming to the second cellular mobile operator (i.e., roaming overhead cost factors) and of a material nature may be taken into account.
- Tariffs for voice services should be expressed as a 'per minute' price and may be reasonably differentiated for peak and off-peak periods.
- Tariffs for data services should be charged according to usage or "by the bit".

### **Consultation Question – Market Review Stage 3 – Remedy Design**

**Q8. Do you agree with URCA's preliminary view that wholesale tariffs for national roaming should be set on the principle of cost orientation of prices? If not, why?**

BTC is in agreement that wholesale tariffs for the proposed national roaming service should be set on a cost-orientation basis. However, applied properly, this principle should ensure that any such tariffs permit full recovery of BTC's actual start-up and ongoing costs (including a return on capital) of providing the proposed national roaming service. BTC should not be obligated by URCA to subsidize NewCo's mobile network rollout by being required to provide the proposed national roaming service below cost.

URCA has suggested that BTC's most recent cost accounting results could be used as a starting point to set wholesale tariffs for national roaming. BTC is currently exploring the feasibility of this approach. However, BTC notes that its cost accounting model was not developed with a view to determining the wholesale costs associated with a national roaming service. Consequently, modifications to the existing model would be required in order to develop reasonable estimates of the costs of wholesale national roaming calling, messaging and data services.

From a practical perspective, BTC notes that its currently available cost accounting results are for the fiscal year 2014-15. Consequently, adjustments to these costs would have to be made to reflect BTC's expected market share losses once mobile competition begins. BTC's unit costs can be expected to rise as its subscriber base falls due to subscriber losses. As well, adjustments would also need to be made to reflect the higher unit costs of serving lower population density areas of the country where the proposed national roaming service would be provided, consistent with NewCo's finalized final rollout licence obligations. In addition, start-up costs associated with the provision of a national roaming services would also need to be included in the cost of providing the service.

BTC notes that URCA has in the past considered the need for and appropriateness of applying "efficiency adjustments" to costs derived from BTC's cost accounting model. While BTC does not agree with URCA's views in this respect, BTC submits that no such adjustment(s) would be applicable in the case at hand. As noted, any national roaming obligation placed on BTC should be priced on a full cost recovery basis so that, as a matter of principle, BTC is not required to subsidize the second mobile network operator's network rollout.

URCA also suggested that benchmarking could be used as an alternative approach to set national roaming rates. However, BTC considers that benchmarking would not provide a feasible means for setting tariffs for national roaming. As noted in the Consultation Document, there are only a few examples of countries who have introduced a national roaming service to support entrants to the cellular mobile market.<sup>6</sup> None of the referenced countries are even remotely comparable to The Bahamas. Moreover, BTC suspects that for the most part the specific details and tariffs associated with such national roaming plans would be confidential. Consequently, the feasibility of conducting a benchmarking exercise in this case would be very limited at best, and any results derived from such an exercise would not be comparable to the uniqueness of The Bahamas.

Another approach that may be considered is an adjusted retail pricing methodology. In this case, BTC's effective retail prices for call, messaging and data services could be used as a starting point for national roaming rates. The retail prices could be adjusted for retail service costs as well as other factors, such as geographic cost differences and market share loss impacts. This approach could potentially serve as a practical and feasible alternative approach for setting cost-oriented national roaming rates. BTC is currently exploring the feasibility of using such an approach.

BTC also notes that it has discussed in its response to URCA's Preliminary Determination on BTC's RAIO (ECS 09/2016) the need for and importance of URCA considering and ruling on the appropriate pricing regime for fixed to mobile and mobile to mobile calling – i.e., calling party pays (CPP) vs receiving party pays (RPP). National roaming rates would be affected by the pricing regime that is mandated by URCA or, if not mandated by URCA, determined by the market. In the latter case, there would be added uncertainty relating to the determination of national roaming rates.

Regarding the other pricing principles or considerations listed by URCA in the Consultation Document, BTC notes URCA has proposed that national roaming service "tariffs should reflect the national average cost of providing the service". BTC is unclear as to what is implied by URCA from this proposed requirement. By "national", does URCA mean the country as whole despite the fact that the service would only be provided in certain areas of the country where NewCo is yet to deploy its mobile network as per its rollout obligations? Or by "national" does URCA mean the average cost over all areas in the country where the roaming service is actually provided at any given point in time?

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<sup>6</sup> As noted by URCA at page 7 of the Consultation Document: "Examples of countries that are using (or have used) national roaming to support entrants to the cellular market are New Zealand, India, UK, Denmark, Spain, Slovakia, Turkey and Canada."

If the first interpretation is what is implied, then BTC strongly disagrees that such a pricing principle should apply to a national roaming service. If adopted, such a requirement would explicitly require BTC to subsidize NewCo's market entry. As it stands, NewCo's preliminary rollout obligations require NewCo to build out its cellular mobile network in the highest population density, lowest build out cost areas of the country first – i.e., including New Providence and Grand Bahama et al. The national roaming service that NewCo would be acquiring from BTC would allow NewCo to extend its coverage to the remaining parts of the country – i.e., lower population density, higher build out cost areas – where the cost of national roaming would be higher than average and vary from island to island. URCA has stated that tariffs for the proposed national roaming service should be set based on the principle of cost orientation. However, such a national averaging requirement would clearly violate this principle since it would require BTC to provide the proposed national roaming service below cost. BTC submits that this proposed tariff requirement should be deleted from URCA's Preliminary Determination and Draft Order as it is unfair and contrary to regulatory principles.

Further, BTC notes that providing national roaming to NewCo on a subsidized or effectively below-cost basis could incent NewCo to slow the pace of its cellular mobile network rollout. This could limit the benefits of competition for consumers. As well, it could also delay one of the fundamental benefits mobile competition will bring to the country that is, having a second cellular mobile network in place across the country which would provide a redundant network in the event of natural disasters such as hurricanes.

Alternatively, if URCA intended to more appropriately imply that the national average cost of providing the service should be calculated only over those areas where the national roaming service is provided, then the requirement should be clarified to reflect that fact. In such case, the price of the service should also be updated periodically to reflect the decreasing area over which national roaming would be provided during NewCo's network rollout period.

Regarding URCA's proposed pricing metrics, BTC notes that while URCA suggests that voice services should be priced on a "per minute" basis and data services should be priced on a "per bit" basis, there is no mention SMS or MMS prices. In this respect, BTC considers that SMS/MMS<sup>7</sup> would be priced on a "per message" basis, with the latter also including a "per bit" data component.

Lastly in terms of pricing structure, while BTC does not object to the base prices being set on a per minute, per message and per bit basis, provision should also made for inclusion of a monthly or quarterly minimum guarantee payment component in the tariff for any national roaming service obligation that may be established. The magnitude of such a minimum guaranteed payment may be tied to NewCo's traffic forecast and demands for the proposed national roaming service over its network during the rollout period. The objective of the minimum guaranteed payment requirement would be to ensure that BTC's costs of providing national roaming would be recovered even if demand for the service is lower than expected or dwindles with the passage of time.

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<sup>7</sup> BTC in its response to ECS 09/2016 at page 19 has stated that it should not be required to include MMS as a service offering under its RAIO

## 3 URCA's Preliminary Determination and Draft Order

### 3.1 URCA's Preliminary Determination

In Section 1.1 of Annex 1 of the Consultation Document, URCA provides the proposed wording of its Preliminary Determination. While no Consultation Questions were posed by URCA in this respect, BTC nevertheless has several comments and suggestions regarding the proposed Preliminary Determination:

- i) **Regarding proposed Determination 1:** For the reasons provided earlier, BTC submits that URCA's proposed definition of the relevant market for national roaming should eliminate reference to MVNOs.

In addition, the fact that the relevant market for wholesale MACO services is defined on a technology neutral basis should not imply that the proposed national roaming service cover all available technologies. A separate regulatory impact analysis is required to determine whether it is necessary, appropriate, efficient and proportionate to introduce such a broadly defined obligation.

- ii) **Regarding proposed Determination 3(b):** For the reasons provided earlier, BTC submits that the timeframe for the proposed national roaming obligation should be specified as a period of "up to" 18 rather than 36 months.

- iii) **Regarding proposed Determination 3(b)(i):** BTC finds the wording of this element of the Preliminary Determination relating to the scope of the national roaming obligation to be imprecise and inconsistent with similar statements elsewhere in the Consultation Document. BTC suggests that URCA largely maintain the wording of this same scope-related requirement initially used on page 20 of the Consultation Document and/or as set out in paragraph 2.7 of the proposed Draft Order. For instance, BTC suggests that the wording of item 3(b)(i) could be revised as follows:

*BTC shall provide wholesale mobile access and call origination services (national roaming) on its cellular mobile network to the second cellular mobile provider, in all geographical areas that are outside of the second cellular mobile operator's coverage footprint but which are within BTC's cellular mobile network footprint. For the avoidance of doubt, BTC is not required to provide national roaming in a) any area in The Bahamas in which the second cellular mobile operator is required to have covered using its own network pursuant to its licence, b) in any area where the second cellular mobile operator has established, maintains and operates network coverage pursuant to rollout targets or network development targets specified in its licence; or c) in any other area where the second cellular mobile operator has established, maintains and operates network coverage.*

## 3.2 URCA's Draft Order

URCA's proposed Draft Order is set out in Section 2.2 of Annex 1. BTC offers the following comments and suggestions regarding specific provisions included in the proposed Draft Order:

- i) **Regarding the proposed Final Determination Section of the Draft Order:** BTC suggests that all of the above-noted changes to the Preliminary Determination be carried over to the Draft Order.
- ii) **Definition of National Roaming Period:** As above, BTC suggest this provision be revised to state that this means a period of "up to" 18 months from the date of the issuance of NewCo's ISL.
- iii) **Section 2 on the Scope of the National Roaming Obligation:** In BTC's view, once NewCo's ISL is issued, NewCo's finalized cellular mobile network rollout obligations should be included in Section 2 of the Draft Order (or alternatively an annex to the Draft Order) to provide clarity and certainty as to the geographic areas and precise timeframes that will pertain to the national roaming obligation.
- iv) **Section 4 on the National Roaming Period:** BTC notes that paragraph 4.3 of the Draft Order would provide NewCo with the means to apply to extend the national roaming period. BTC has serious concerns with this provision since NewCo would be in violation of its ISL in order for this provision to be engaged. As stipulated in paragraph 2.7 of the Draft Order (with which BTC has no objection), BTC should not be required provide national roaming in geographic areas that NewCo is required to cover with its own network at specified intermediate milestone dates during the course of its national cellular mobile network rollout. Equally so, nor should BTC required to provide national roaming beyond the scheduled end of the national period in any geographic areas NewCo fails to cover in accordance with its ISL rollout obligations.

In fact, to minimize the risk of a national roaming period extension application, BTC suggests that a provision be included in the Draft Order requiring NewCo to report to URCA at a minimum every 3 months the ongoing status of its cellular mobile network build out and its ongoing compliance with its network rollout obligations.

- v) **Paragraph 6.3 on Wholesale Tariffs for National Roaming Service:** BTC submits that paragraph 6.3 of the Draft Order which states that "cost-based [national roaming] tariffs should reflect the national average cost of providing the service" should either deleted or clarified. As explained above, if this requirement is intended to average roaming costs across the country as a whole, then it is inconsistent with principle of cost orientation and, if implemented, would result in a subsidy being provided by BTC to NewCo. Moreover, the requirement would be inconsistent with paragraph 6.1 of the Draft Order which requires that "cost-based pricing for National Roaming should permit a fair and suitable margin between BTC network's retail tariffs and its wholesale National Roaming tariffs." In more remote and less densely populated geographic areas of the country where BTC's national roaming service would be provided, BTC's costs are higher and its margins lower than the national average. By artificially reducing the costs to be charged to NewCo in these areas relative to what BTC actually incurs, by



imposing a national cost averaging requirement, URCA would be providing NewCo with higher margins than those of BTC in areas subject to the national roaming obligation. This would be neither be fair, suitable or sustainable in BTC's view. Therefore, if the provision is retained, it should be revised to state that the national average would be calculated only over those areas where national roaming is provided and the rate would be periodically updated to reflect changes in the geographic area subject to the obligation.

- vi) **Paragraph 6.5 on Wholesale Tariffs for National Roaming Service:** BTC suggests that URCA expand paragraph 6.5 of the Draft Order to allow for other alternative reasonable and suitable approaches to setting national roaming tariffs in addition to benchmarking. As noted earlier, it is highly unlikely benchmarking would provide a reasonable or valid basis to set national roaming tariffs for The Bahamas. Consequently, if BTC's cost accounting results prove to be inadequate for the purpose of setting some or all of the tariffs for the proposed national roaming service, BTC considers that URCA leave room for other approaches to be considered such as adjusted retail prices.
- vii) **Section 6 on Wholesale Tariffs for National Roaming Service:** As already noted, BTC suggests that URCA should add an additional paragraph in Section 6 of the Draft Order stating that "Tariffs for SMS/MMS messaging services should be expressed on a per message basis."

**Paragraph 11.1 on Seamless Roaming:** BTC notes that paragraph 11.1 suggests that NewCo subscribers should be able to "roam seamlessly between the cellular mobile networks" of BTC and NewCo. BTC notes that no definition of "seamless roaming" is provided in the Preliminary Determination or Draft Order. Absent a definition of this term, BTC is unable to confirm whether or not it can support the contemplated functionality or offer its opinion of the appropriateness of its inclusion in the Draft Order.

## 4. CONCLUSION

It is clear that there are a number of important technical and costs issues that need to be considered to provide national roaming. We would recommend that the deadline to respond to responses be postponed until July 10, 2016 to allow the sector an opportunity to thoroughly consider all aspects of these proposed changes and the associated ramifications, in the interest of making cost effective decisions which at the end of the day benefit all consumers.

Also, BTC would recommend that URCA establishes a task force to facilitate and expedite the discussion and resolution of issues. This collaborative approach is likely to be more cost-effective than adopting rules which not fit the unique environment of the Bahamas.

### Reservation of Rights

BTC has addressed the issues but reserves the right to comment at this time on all issues and states categorically that the decision not to respond to any issue raised on this Consultation in whole or in part does not necessarily represent agreement in whole or in part with the URCA's

position, nor does any position taken by BTC in this consultation mean a waiver of any of BTC's rights in any way. BTC expressly reserves all its rights.