Obligations imposed on Operators with Significant Market Power (SMP)

Final Decision

ECS 11/2010

22 April 2010

UTILITIES REGULATION & COMPETITION AUTHORITY

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1 Introduction

Section 116 of the Communications Act 2009 (the "Comms Act") sets out presumptions of SMP for Bahamas Telecommunications Company Limited. ("BTC") and Cable Bahamas Limited ("CBL") for two high level markets respectively[1] and imposes a duty on URCA to determine which specific, if any, *ex ante* obligations should be imposed on these two operators. The obligations are to be "*designed to maintain … the objective of encouraging, promoting and enforcing sustainable competition*".

The process for determining the types of obligations to impose on the presumed SMP operators has been underway since shortly after the Comms Act came into force in September 2009. Below is an overview of the main milestones in the process so far:

- 30th September 2009 – Publication of Preliminary Determinations and Draft Orders issued for public consultation using a s.100 process in discharge of URCA's duties under s.116 of the Comms Act.[2] In addition, publication of Draft Guidelines for Accounting Separation for BTC, Draft Guidelines for Accounting Separation for CBL, and Draft Guidelines for Access & Interconnection.
- 20th, 21st October 2009 – Meetings with BTC and CBL to present the Preliminary Determinations.
- 18th December 2009 – Submissions received from interested parties[3] discussing the Preliminary Determinations and Draft Orders and the various guidelines.[4]
- 13th, 14th January 2010 – Meetings with BTC and CBL to present their submissions to URCA.
- 22nd January 2010 – Second set of submissions received from operators, proposing alternative obligations and taking account of the 18th December 2009 submissions made by other operators.[5]
- 15th February 2010 – Publication of Final Determination (closure of original s.100 process and timelines) issued.[6]
- 22nd, 24th February 2010 – Meetings with operators to discuss URCA's position based on their submissions and other information received.
- 19th March 2010 – Publication of Position Paper issued on Types of Obligations on BTC and CBL under s.116 (3) of the Comms Act. The purpose of the paper was to set out URCA's current thinking on the types of obligations, and the reasons for possible changes to the Preliminary Determinations issued in September 2009.

Throughout the process URCA has been sensitive to the importance of engagement with the industry. Where possible, URCA has sought to extend deadlines for submissions and

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[1] For CBL, these markets are the high speed data and connectivity market and the pay TV market. For BTC, these markets are the fixed voice and data services market and the mobile voice and mobile data services market.
[2] "Types of obligations on Bahamas Telecommunications Company Ltd under s.116(3) of Communications Act, 2009" (ECS 18/2009) and "Types of obligations on Cable Bahamas Ltd under s.116(3) of Communications Act, 2009" (ECS 19/2009), both issued 30 September 2009.
[3] BTC, CBL, SRG and Digicel
[4] These submissions are publicly available on the URCA website at http://www.urcabahamas.bs/publications.php?cmd=view&id=24&pre=y
[5] These submissions are publicly available on the URCA website at http://www.urcabahamas.bs/publications.php?cmd=view&id=27&pre=y
[6] http://www.urcabahamas.bs/publications.php?cmd=view&id=30&pre=y

employed a process that provided it with sufficient time to review and analyse those submissions in detail. URCA held numerous meetings and conference calls with both BTC and CBL to ensure that the operators understood the process and URCA's thinking with regards to the products in the SMP markets and types of obligations.

URCA has not sought to respond in this document to every comment made by the operators throughout this process. URCA has tried to address all the substantive concerns raised by operators through workshops, the Final Determination (15^{th} February 2010 – ECS 04/2010) and the Position Paper (ECS 07/2010). URCA sets out in this document its Final Decision on the obligations to be imposed on the operators with SMP and provides a summary of the entire process. For greater detail on the reasoning and analysis undertaken, readers should refer to the Preliminary Determinations and Position Paper. As noted, where URCA has made revisions to its thinking in the Position Paper, it has set out the reasons in Section 2 of this document.

This Final Decision is structured as follows:

- In Section 2, URCA sets out any updates to URCA's analysis compared to the analysis contained in the Position Paper. In the Position Paper, URCA did not propose specific obligations for certain products of BTC or CBL. These areas were left open for further consideration and further proposals or information were sought from the SMP operators - now URCA outlines the information received, the nature of the resulting changes and the impact on the Final Decision.
- In Section 3, URCA provides a summary of the s.116 process for ease of reference.
- In Section 4, URCA sets out its final list of products that are found to be in the high-level SMP market and the list of specific *ex ante* obligations to which the operators must adhere.
- In Section 5, URCA outlines the process and parameters for compliance with each of the *ex ante* obligations imposed on certain products in which the operator has been presumed to have SMP. In accordance with s.116, and in particular s. 116(5) of the Comms Act, URCA sets out a transparent set of next steps in order to provide greater clarity on what is expected in terms of regulatory oversight, how reviews will be conducted, and how each of the operators is able to demonstrate compliance according to these definitions in order to enter new markets.

The remainder of the document consists of supplementary appendices to the Final Decision. These are:

- Appendix A: URCA outlines clarifications to the methodology set out in the Preliminary Determinations, including a discussion on proportionality. These updates have been made in direct response to concerns raised by the operators and to provide greater transparency and clarity.
- Appendix B: URCA sets out the products which it considers should remain in the high level SMP markets for each of the operators respectively. A short summary of the key reasons for the inclusion of these products is included; however, for a detailed review readers should refer to the Preliminary Determinations and the Position Paper.
- Appendix C: URCA presents the *ex ante* obligations for each product where the operator is considered to have SMP. For a detailed review of the framework used to assess the options for *ex ante* regulation available to URCA, and the rationale behind

the identified preferred solution, readers should refer to the Position Paper and Section 2 of this document.

In support of the Final Decision, URCA has also taken into account comments received from the industry and proposals from the SMP operators and published the following separate documents in final form:

- ECS 12/2010 – Final Accounting Separation and Cost Accounting – Guidelines for BTC
- ECS 13/2010 – Final Accounting Separation and Cost Accounting – Guidelines for CBL
- ECS 14/2010 – Final Access & Interconnection Guidelines
- ECS 15/2010 – Regulation of Retail Prices for SMP Operators – Rules ("Retail Pricing Rules").[7]

As stated in Sections 4 and 5 of this Final Decision, compliance with the SMP obligations must be in accordance with these accompanying guidelines and rules.

1.1 Note on the process adopted by URCA

Following the publication of the Preliminary Determinations on 30 September 2009, a number of concerns were raised by the operators on the methodology and process adopted by URCA. URCA has sought to address these concerns through further engagement and consultation with the industry. The methodological concerns were discussed in URCA's Position Paper which fully documented the framework used for the selection of obligations.

The s.100 Final Determination (published on 15 February 2010 – ECS 04/2010) addressed concerns around the process, which were as follows:

- Whether the statutory procedure is *ultra vires*
- Whether the procedure materially prejudices CBL
- Constitutional challenge to the interim presumption of SMP

In this document, URCA would like to reiterate the following points:

- URCA's decision to adopt and follow s.100 of the Comms Act as the procedure for determining the products in the SMP markets and types of obligations was based on URCA's wish to provide the greatest transparency for the industry.

- S.116 of the Comms Act simply sets out the general framework for the introduction of obligations on BTC and CBL; it is silent as to the specific process to be followed. S.11 of the Comms Act makes it clear that URCA has the discretion to select the procedure to be followed when no specific procedure is imposed. URCA decided to follow the determination procedure in s.100 because it included a clear procedure for consulting with the public and was designed to ensure high levels of transparency.

[7] These rules were previously included within the main body of the Preliminary Determinations, but are now being published separately for ease of reference and future review.

- The s.100 procedure allows flexibility for stakeholders to comment (it only requires that stakeholders have "at least" one month to provide comments) but imposes a strict timetable on URCA (requiring that a final determination is published within one month of the consultation period closing). To accommodate stakeholders' requests for workshops following submission of their proposals, URCA closed the determination procedure on 15th February 2010 and now issues its Final Decision under s.116(3)(c) of the Comms Act.

2 Updates from the Position Paper

The Position Paper set out URCA's review of the information that was available to it at the time of publication. Where further clarification or consideration was required, URCA refrained from making assumptions or drawing conclusions.

As a result, a number of areas required further input or proposals from the SMP operators. Before providing a list of accepted or mandated obligations in Section 4, URCA sets out below the basis by which it has reached its Final Decision on those areas or any other areas where URCA has had an objective reason to re-examine the product market or obligation.

2.1 CBL broadband internet - untying

In the Position Paper, URCA considered the obligations available to address CBL's current practice of tying pay TV and broadband internet services. These obligations were all forms of untying, specifically untying for all customers, untying for all customers on demand and untying for new customers only.

In the Position Paper, URCA held the view that consumer welfare was likely to be maximised when untying is implemented for all customers, rather than only on demand or for new customers. CBL had made high level proposals in relation to the untying obligation. The proposals included the use of filters for untying for new broadband customers only, or digitisation of the network that will allow for untied services for all broadband customers (new and existing).

As the process of evaluating the proposals was still ongoing when URCA published the Position Paper, it chose not to take a view either way on the most appropriate obligation, in order to further consider the proposals from CBL and to develop URCA's own views about the most proportionate obligation.

For reasons of commercial confidentiality URCA has not set out the detailed technical specifications of the obligations proposed by CBL.

2.1.1 <u>**Preferred option**</u>

As noted in the Position Paper, URCA believes that competition will be best promoted, thereby furthering consumers' interests, by ensuring the untied services are available to all customers. Accordingly, URCA has decided to impose an obligation on CBL to implement untying for all customers, with the technical details of complying with this obligation to be determined by CBL.

2.2 Access to the broadband network and services and Access to the transmission network

In the Position Paper, URCA did not propose a specific technical obligation which would enable access to the broadband network and services. Instead, URCA left it to the operators to make a constructive suggestion of the specifications on how to comply with this obligation. URCA had proposed 3 options: (i) Obligation to negotiate commercially, (ii) Resale obligation, and (iii) Reference Access and Interconnection Offer ("RAIO").

Without knowledge of the possible specifications of the product, URCA was obliged to include access to the transmission network as a product in the high level SMP market. This was to ensure that any necessary transmission components of the broadband access product suggested by the operator were included for consideration.

Following the publication of the Position Paper, URCA has been engaged with the operators to further develop proposals for the specifications of this product. CBL provided a specific proposal to URCA in response to the paper. Whilst BTC engaged with URCA during meetings, no proposal was submitted for URCA to approve or otherwise under the s.116 process.

Based on the information received and discussions with BTC and CBL, URCA considers that the resale obligation has a lower risk associated with it than commercial negotiation (in terms of the potential for disputes and delays), and lower costs associated with it than the more onerous obligations of access to the broadband network and services and access to the transmission network through a RAIO.

Therefore, both SMP operators must provide resale of their existing broadband products. This must be an end-to-end resale broadband product, available on a white-label basis[8], allowing for resale of all the SMP operator’s existing retail broadband products on fair and reasonable commercial terms and conditions.

This obligation effectively meets the requirement to provide access to the broadband service as well as access to the transmission network.

2.3 International leased lines

URCA stated in the Position Paper and Preliminary Determinations that retail and wholesale international leased lines should remain part of the high level SMP market and susceptible to *ex ante* regulation.

CBL and BTC subsequently provided data to URCA regarding the structure of the international leased lines product, in terms of spare capacity available on each cable system and the ownership structure. URCA used this information for the following analysis:

[8] A white-label product or service is a product or service produced by one company (the producer) that other companies (the marketers) rebrand to make it appear as if they made it.

	Leased lines available	Majority owner	Total capacity	Used by	Capacity used by operator	Additional considerations
ARCOS	International	Columbus Communications Ltd (96%)	1Tbps	BTC for international voice and voice traffic	BTC has 9 STM-1 or 1.37 Mbps	BTC states that it would only be able to sell capacity to another operator if it did so on a resale basis (BTC would buy from ARCOS and sell on)
				CBL for broadband services	10%	
BICS	National and international	Caribbean Crossings Ltd.	12.5 Gbps	CBL	Approx 45% for broadband and internet	Provides retail leased lines and capacity services to corporate clients, ISPs and overseas operators
				SRG	2.5Gbps	If there is sufficient spare capacity, SRG may resell international capacity to third parties provided its agreement with CBL allows this
Bahamas II	National and international	BTC	2.5 Gbps	BTC	BTC has 2 STM-1 or 311.04 Mbps or 12% of total capacity	Only carriers that are part of the Bahamas II consortium are allowed to access the cable Thought to be a less resilient and robust system than the other systems and has a lower installed capacity

The information set out in the table above was incomplete at the time of publication of the Position Paper. However URCA has now been able to review its impact fully and has found that retail and wholesale international leased lines should be removed from the high level SMP market for both BTC and CBL, whilst national leased lines should remain in the high level SMP market. The reasoning for this decision is set out in Sections 2.3.1 and 2.3.2 below.

As a preliminary point, URCA addresses a query raised by CBL in its response of 18th December 2009 to the CBL Preliminary Determination. In Appendix 5, point 5.2 of that response, CBL stated that "the imposition of ex ante obligations on [CBL/CCL's] international data transmission services could have a significant impact on the activities of CBL/CCL's affiliates in the USA which will also have repercussions in The Bahamas".

URCA is obviously bound by the laws of The Bahamas and extra-jurisdictional repercussions cannot determine the way in which URCA makes decisions. URCA's analysis of whether a service should remain in a high level SMP market is an objective exercise. In order to be helpful, however, URCA received a legal opinion from US Counsel and it is URCA's understanding that the impact of including leased lines within a high level SMP market would have possibly been significant had URCA intended to impose specific obligations on CBL in relation to leased lines, such as a requirement to publish a RAIO, or offering access to all potential users indifferently.

As the Position Paper explained, it was not URCA's intention to impose specific obligations on retail and wholesale international leased lines. Based on the additional information received, URCA will not mandate specific obligations in relation to international leased lines. URCA will do all that it reasonably can to ensure that the position of all operators in The Bahamas is properly understood by foreign regulators.

2.3.1 Impact on retail international leased lines

Should it remain in the high level SMP market?

- URCA found that, currently, only CBL and BTC offer retail international leased lines which could be considered substitutes for each other's products.
- URCA has concerns that the provision of leased lines from CBL and BTC would not provide long-term effective competition, given that CBL and BTC are the only two operators with extensive networks and that they both have vertically integrated networks and service provision. These concerns arise from evidence in other markets where the existence of two vertically integrated providers does not result in price levels similar to those achieved in countries with more than two providers.

Is it susceptible to *ex ante* regulation?

- Barriers to entry: The existence of Columbus Communications Ltd, a third party provider of wholesale leased lines who does not compete in the retail market for leased lines in The Bahamas, means it should be possible for competitors to BTC and CBL to acquire capacity on reasonable terms, resulting in a reduction of the potential barriers to entry to the retail market. A new entrant should be able to choose from CBL, BTC or Columbus Communications Ltd. to secure access to leased lines, which it would then have the option to resell on a retail basis. The information provided suggests that there is sufficient spare capacity to support this.
- Following the methodology set out for the EU three criteria test, as the market conditions suggest there are not high and non-transitory barriers to entry, one of the three criteria have not been met and there is no need to consider the remaining two criteria regarding emerging competition and the sufficiency of *ex post* competition law. Failure of any one of the three criteria would indicate that a market should not be identified as susceptible to *ex ante* regulation.

<u>Conclusion</u>

URCA believes that the competition identified in wholesale international leased lines may result in competition emerging in retail international leased lines. Consequently, URCA believes that retail international leased lines should be removed from the high level SMP market and not be susceptible to *ex ante* regulation.

2.3.2 Impact on wholesale international leased lines:

Should it remain in the high level SMP market?

- URCA has found that there are demand-side substitutes available for BTC's and CBL's international leased lines products from Columbus Communications Ltd. As Columbus Communications Ltd. does not have a vested interest in increasing or defending its market share in The Bahamas, it will offer effective competition to BTC's and CBL's products. That is, there should be no incentive for Columbus Communications Ltd. to employ anti-competitive pricing strategies. Columbus Communications Ltd. should act as a constraint to BTC's and CBL's pricing of wholesale international leased lines.

Is it susceptible to *ex ante* regulation?

- As URCA has determined that there is effective competition in the international leased lines product and should not remain in the high level SMP market, it is not necessary to consider the EU three criteria test.

<u>Conclusion</u>
URCA believes that the competition identified in wholesale international leased lines is effective and that the product should be removed from the high level SMP market and not be susceptible to *ex ante* regulation.

2.3.3 Further considerations for ILD[9] fixed calling

As set out above, based on information received regarding the spare capacity and ownership of the existing networks, URCA believes that retail and wholesale international leased lines should be removed from the high level SMP market. This Section considers the potential impact of this decision on ILD fixed calling provided by BTC. The ILD market relies on international capacity such that it is necessary to consider whether there are any knock-on effects of removing retail and wholesale international leased lines from the high level SMP market. Specifically, the issue to be considered is whether access to international leased lines will enable sufficient prospective or emergent competition to result in a constraint to BTC's pricing of ILD, within the timeframe under consideration, to remove ILD calls from the high level SMP market.

In principle, access to international leased lines capacity provides scope for a new entrant to offer ILD services in The Bahamas. However, at a practical level, for a new entrant to effectively provide an ILD service in The Bahamas would require time and some level of infrastructure investment as well as national leased lines access (in the absence of its own local network), substantially beyond that involved in gaining access to international capacity. The alternative would be for a new entrant to purchase an end-to-end solution from the incumbent provider (i.e., BTC) on a wholesale basis via a prepaid platform. However, BTC is not obligated to offer such wholesale solution to other licensees. As a result, URCA considers that access to wholesale international capacity is unlikely to result in emerging competition that will provide a sufficient constraint on BTC's provision of ILD calling. For these reasons, ILD calling should remain in the high level SMP market and be susceptible to *ex ante* regulation. URCA will continue to actively monitor developments in this market.

[9] International long distance (ILD)

2.4 **Accounting separation**

Since the publication of the Preliminary Determinations, URCA has continued to assess the suitability of the accounting separation remedy proposed for both CBL and BTC. In the Position Paper, URCA set out its revised proposals for the audit requirements to be applied to separated accounts (in 2009 and beyond), the requirement for a CFO Responsibility Statement and the requirement for SMP operators to prepare accounts using 2008 data – these are summarised in Section 3.

Since publishing the Position Paper, URCA has continued to receive representations and proposals from stakeholders regarding the accounting separation obligation. In light of these representations and its further analysis of the products forming part of the high level SMP markets, URCA has since revised the Accounting Separation obligation in two aspects:

- The requirement for SMP operators to publish the accounting statements for 2009; and
- The scope of the Accounting Separation obligation imposed on CBL.

2.4.1 **Publication of accounting statements for 2009**

Since publishing the draft guidelines, stakeholders have made several representations to URCA regarding the issue of publication of separated accounting information. For example, CBL (through its advisers), stated that, "*publication of detailed accounting data could be severely prejudicial to the operator whose information is disclosed.*"[10] Additionally, during meetings with URCA, BTC has expressed concerns about the impact of publication in the context of the privatisation of BTC and potential impact on the sale.

In light of the representations made by stakeholders, URCA has considered further the relative merits of imposing a publication requirement on the SMP operators.

The costs and benefits of publishing accounting separation Information

As set out in the Position Paper, the main objectives of Accounting Separation and Cost Accounting include:

- supporting retail price regulation where applied;
- promoting transparency and non-discrimination, especially between an SMP operator's retail business and its downstream competitors;
- supporting any setting or assessing of cost-oriented wholesale charges, such as those required by a RAIO;
- overcoming the information asymmetry between the regulator and regulated entities;
- providing for audit independence and objectivity; and
- supporting any *ex post* assessment under the competition provisions of the Comms Act (e.g., margin squeeze, predatory pricing and excessive pricing).

URCA continues to believe that publication can support these objectives. For example, by requiring SMP operators to publish separated accounts:

[10] Analysys Mason, "*Report on the guidelines on RAIO and accounting separation*", 18 December 2009 (Annex 6 of CBL's response to the draft decision on SMP).

- other licensed operators and potential entrants can understand the derivation of regulated access and interconnection charges and so participate fully in consultations on proposed rates;
- other licensed operators can develop more thoroughly any complaints regarding potential anti-competitive behaviour by SMP operators (for example, by examining the costs faced by the SMP operators); and
- transparency, and hence confidence in the regulatory system, can be increased.

However, URCA recognises that separated accounting information can also be commercially sensitive and that, potentially, the publication of such information may cause detriment to the SMP operators. URCA has therefore considered whether it is also possible to achieve the objectives of Accounting Separation, without requiring those accounts to be published. The table below outlines URCA's views on this matter.

Supporting retail tariff regulation	Retail tariffs are subject to URCA's approval and only subject to public consultation in limited circumstances (i.e., price increases and withdrawals / discontinuation of price regulated services). Publication of Accounting Separation data will therefore have limited bearing on meeting this objective.
Transparency and non-discrimination between upstream and downstream business units	Publishing Accounting Separation data will allow other operators, as well as URCA, to assess whether the SMP operator is engaging in price discrimination. However, in reality, the complex nature of the accounts and cost allocation methodologies may mean that URCA is best placed to review non-discrimination. It will therefore still be possible to meet the objective without publishing the accounts.
Supporting cost based wholesale charges	URCA will play a leading role in reviewing proposed RAIO charges and ensuring they reflect principles of cost orientation, based on Accounting Separation results. Without publication of all Accounting Separation information (including documentation), other operators will not be able to conduct a detailed review of how charges were derived. However, they will still be in a position to comment on the absolute level of charges.
Overcoming information asymmetry between regulator and operator	This objective seeks to close the information asymmetry between the regulator and the SMP operator. It is therefore not affected by the decision on whether to publish the separated accounts.
Audit independence and objectivity	This is concerned with ensuring an independent and objective review of the SMP operator's cost accounting information. This should be met by audit requirements imposed on Accounting Separation statements and is not affected by whether accounts are published.

Supporting *ex post* inquiries	Regardless of whether the accounts are published, URCA will be able to use Accounting Separation information to conduct an initial assessment of the merits of any complaints regarding alleged anti-competitive behaviour. Without publication, other operators will be less able to include detailed cost information in their complaints (and so to assess the merit of potential complaints before these are submitted). However, this will not limit the ability of operators to submit complaints.

Based on the above analysis, in the context of the interim period, URCA does not believe that publishing the separated accounts is critical to it achieving the objectives of the Accounting Separation obligation.

Conclusion

Since publishing the Preliminary Determinations and the Position Paper, and in the light of industry representations, URCA has continued to examine the requirement for SMP operators to publish parts of their separated accounts.

URCA continues to believe that publishing separated accounting information can add to transparency in the market, reduce the information asymmetry between SMP operators and other licensees, and increase confidence in the regulatory framework. However, as set out above, it is also the case that a publication requirement is not central to achieving the objectives of the Accounting Separation obligation.

Taking all the above into account, URCA has concluded that, at this stage of the development of the market, it would be reasonable not to require BTC and CBL to publish their Accounting Separation statements for 2009. However, following completion of the 2009 separated accounts, URCA intends to launch a public consultation on the future publication requirements of separated accounting information. This will include a discussion of which aspects of separated accounts should be published in the future, and criteria for how URCA should determine if particular information is confidential.

2.4.2 **The scope of the accounting separation obligation imposed on CBL**

Compared to its position in the CBL Preliminary Determination and the Position Paper, URCA has concluded that it would be reasonable to impose *ex ante* obligations on a reduced set of CBL's products, limiting retail price control to the SuperBasic package and not imposing *ex ante* price regulation on wholesale services.

URCA has, therefore, now further considered the merits of imposing an Accounting Separation obligation on CBL, together with the scope of such remedy, if any. Taking into account the six objectives for accounting separation set out in the Position Paper (and summarised above in the table on publication requirements), URCA still believes that imposing some form of Accounting Separation obligation on CBL is critical to developing a well-functioning competitive communications sector in The Bahamas. However, URCA also acknowledges that its revised position in respect of other *ex ante* obligations for CBL also affects the required scope of the accounting separation obligation.

Taking into account the other SMP obligations imposed on CBL, and URCA's findings throughout the interim market review process, the following table sets out how imposing an

Accounting Separation obligation on CBL will serve to fulfil URCA's objectives. In summary, given the other obligations imposed on CBL, the main benefits of imposing an Accounting Separation obligation on CBL are:

- to support retail tariff regulation of the SuperBasic package;
- to overcome the information asymmetry between URCA and CBL;
- to guarantee audit independence and objectivity in the cost information provided to URCA; and
- to support *ex post* inquiries.

In contrast, the objectives related to wholesale pricing and ensuring non-discrimination are less central to an Accounting Separation obligation on CBL.

Supporting retail tariff regulation	CBL's SuperBasic TV product and bundles including SuperBasic TV will be subject to retail price regulation, whereby any permanent or temporary changes to the prices must be approved by URCA. As set out in the Retail Pricing Rules, CBL will be required to submit detailed service cost information alongside any tariff proposals. Although this places the burden on CBL to provide suitable cost information, an Accounting Separation framework (including an agreed approach to cost allocation) will expedite the review of any price approvals submitted to URCA.
Transparency and non-discrimination between upstream and downstream business units	Given the removal of any requirement to offer cost oriented wholesale services, this objective becomes less important.
Supporting cost based wholesale charges	CBL is no longer required to offer access to its network at cost oriented prices. To this extent, this objective of Accounting Separation is therefore not applicable to CBL. However, CBL will be required to offer a 'white label' broadband resale service. URCA is not imposing any *ex ante* price control obligation on this service and instead will rely on its *ex post* competition powers in the event that it receives any complaint regarding the terms and conditions of the service, whilst it also reserves the right to conduct such an investigation under its own initiative. Any competition concerns are likely to centre around the available headroom between the wholesale broadband access product and the prices of CBL's retail broadband products (i.e. whether CBL is conducting a margin squeeze). As such, to assess any alleged anti-competitive conduct by CBL, URCA is likely to primarily require information on the retail cost of CBL's broadband services.
Overcoming information asymmetry between regulator and	In order to adequately discharge its duties, URCA requires information on the financial performance of CBL in those products / services where it has SMP. For example, this information can be used in future market reviews and to respond to any complaints

operator	raised against CBL.
Audit independence and objectivity	It is important for URCA to have confidence in the financial information provided by SMP operators, as this will form a key part of the evidence base used by URCA in its decision making.
Supporting *ex post* inquiries	An allocation of costs to SMP services provides a useful starting point for any *ex post* investigations, particularly in enabling URCA to assess whether a complaint has merit. *Ex post* competition complaints can take place in any market. This does not mean that all companies should be required to provide detailed financial information to competition authorities. However, CBL has SMP in both upstream and downstream markets. This means that it could potentially engage in anti-competitive behaviour.

In its initial submissions to URCA on the CBL Preliminary Determination, CBL argued that an obligation for it to prepare a service costing model rather than separated accounts would fulfil URCA's regulatory objectives at lower cost. In particular, CBL pointed out that it is possible to impose cost oriented (regulated wholesale) charges without developing a full Accounting Separation model. CBL will no longer be required to offer cost based wholesale products. However, URCA does not consider that only requiring CBL to prepare a service cost model will meet the other objectives set out above. This is because a cost model will not be subject to the same standards of audit independence and objectivity, and may not include a detailed assessment of retail costs and produce required outputs such as income statements or a statement of mean capital employed.

In a revised proposal submitted to URCA dated 16th April 2010, CBL reiterated its view that imposing an obligation on it to prepare separated accounts was disproportionate and unnecessary, given the context of the SMP process and the burden it would place on CBL. Therefore, it proposed to provide to URCA, on a regular basis, a 'regulatory cost accounting pack' instead of annual separated accounting statements. Such a pack would contain financial information (representing a profit and loss statement and a statement of mean capital employed) for the following five business areas:

- SuperBasic TV,
- Digital TV,
- Broadband Internet,
- Leased Lines, and
- all other activities.

CBL proposed to source this financial information predominantly from information contained in its financial and management accounts. Although the proposal included reporting revenues and cost of sales on a product basis, it did not include any allocation of costs which are not directly attributable to a given product or business. Therefore, it believes that the proposal to report costs on an 'end-to-end' basis for given business areas is sufficient.

To support URCA's understanding of the cost accounting information, CBL also proposed to provide "high level documentation" and additional operational information, such as subscriber numbers by product, and staff numbers by cost centre.

URCA agrees that the accounting separation obligation imposed on CBL should be aligned with the other *ex ante* obligations it faces. For example, CBL's proposal does not include a proposal to provide financial information for separate retail and wholesale business units. Given that URCA is not imposing any *ex ante* price obligations on CBL's wholesale products, URCA agrees that it would not be reasonable to require a full set of reports for wholesale businesses, or explicit cost-oriented transfer charge information.

However, URCA does not consider that CBL's proposal fully meets its requirements. In particular, the lack of cost allocation under CBL's proposal would not allow URCA to understand fully the end-to-end cost of SMP products and hence would limit its ability to perform its regulatory duties.

URCA believes it is still reasonable to impose an Accounting Separation obligation on CBL. This is because the Accounting Separation obligation will continue to support other *ex ante* obligations, possible *ex post* investigations and reduce the information asymmetry between URCA and CBL.

Accounting Separation is a commonplace obligation in the electronic communications sector where an operator has SMP in upstream (wholesale) and downstream (retail) markets. Although they are less commonplace in Cable / Pay TV markets, the decision to impose it reflects the particular legal framework for Cable TV in The Bahamas and CBL's position in the market.

However, when developing the details of the obligation, URCA has been cognisant of the potential costs that detailed accounting separation reporting obligations could impose on CBL. At this stage of market development, therefore, URCA has imposed proportionate obligations necessary to fulfil its regulatory policy objectives.

<u>Conclusion</u>

As set out above, URCA is of the view that it is still reasonable to impose a form of Accounting Separation obligation on CBL. However, this should be reduced in scope from the draft guidelines. This reduced scope would primarily reflect the reduced obligations CBL is facing in terms of retail pricing and the provision of a RAIO.

URCA further believes that the obligation it is imposing will form the basis for any further required development of CBL's Accounting Separation and regulatory reporting system, once URCA has conducted its first full market review. Given this, URCA has amended the scope and structure of the separated accounts CBL is required to prepare to reflect:

- the limited scope of *ex ante* price regulation imposed on CBL at either a retail or wholesale level; and
- its revisions to the markets in which CBL holds SMP.

The former requires separated financial statements[11] and total unit cost information for each of the services offered by CBL subject to *ex ante* obligations beyond the standard SMP licence obligations.[12] Under URCA's final SMP decision, these services are:

[11] Covering a profit and loss statement and statement of mean capital employed

- SuperBasic TV product. To assess any tariff applications from CBL for its SuperBasic TV product, URCA requires information on the end-to-end cost of this product.
- 'Wholesale broadband access' services[13]. URCA does not impose any *ex ante* price control obligation on this service and instead will rely on *ex post* competition investigation. Any competition concerns are likely to centre around the available headroom between the wholesale broadband access product and the prices of CBL's retail broadband products (i.e., whether CBL is conducting a margin squeeze). As such, URCA primarily requires information on the retail cost of CBL's broadband services to assess any alleged anti-competitive conduct by CBL.

In relation to the second factor, URCA needs to receive sufficient information to enable it to review CBL's conduct in the markets where it holds SMP, even if no *ex ante* obligations have been imposed over those set out in CBL's licence (i.e., wholesale and retail national leased lines, retail broadband packages and digital TV packages). For each of these markets, URCA therefore requires separated financial information.

Instead of the 'vertical' business separation contained in the draft guidelines, URCA is imposing a 'horizontal' accounting separation requirement on CBL[14], containing five separate businesses:

- SuperBasic TV
- Digital TV services
- Broadband Internet
- National leased lines; and
- Other (containing all remaining services not listed above, including the remainder of TV services and international leased lines).

For each of the above businesses, CBL is required to provide separated financial statements (including a separation of costs into specific retail and network elements).

URCA believes that the requirement for CBL to prepare separated accounts at this level does not add significantly to the burden it would face if it only had to prepare a cost model for the same services, as a cost model will form the key input to the accounts. Although CBL will have to allocate network capital and operating costs to each business, such cost allocation would also be required if CBL only had to prepare a cost model for the same services. Furthermore, the structure of the accounting separation obligation for CBL reflects the split of CBL's activities into the business areas put forward by CBL in its last proposal.

Compared to CBL's own proposal of developing a network cost model, complying with the accounting separation obligation will require CBL to also allocate revenues and retail costs to each business. However, URCA does not consider that these additional requirements will create a significant extra burden for CBL. Allocating revenues between, for example, the SuperBasic TV package and other services should be a straightforward exercise using

[12] This excludes retail broadband services, which are subject to an untying obligation. However, financial statements for broadband services are still required so that URCA has at its disposal sufficient information to perform its general regulatory duties.

[13] The March Position Paper required two wholesale broadband products, a network access product and transmission network product. However, it its response CBL has stated that it would offer a single wholesale broadband product that would "allow for the resale, on a white-label basis, of CBL's broadband offerings" (p. 7).

[14] The 'vertical separation' model, commonly applied to fixed and mobile operators, contains separate core and access network business, and a separate retail business. This separation aims to provide transparency into the transfer charges between these businesses. A 'horizontal separation' model focuses on product separation, on an end-to-end basis (i.e., no split between network and retail businesses).

General Ledger data. Further, CBL will not be required to allocate retail costs to any individual commercial services below the business areas set out above.

Furthermore, the revised Accounting Separation model does not require CBL to identify transfer charges between individual business units. This is because, in the absence of *ex ante* obligations for CBL to set cost oriented charges for regulated wholesale services, URCA is interested primarily in the end-to-end cost of services. URCA, therefore, considers that imposing a 'vertical' separation on CBL (with transfer charges between network and retail businesses) is disproportionate given the nature of the competition problems identified and the other SMP obligations imposed.

2.5 Retail pricing rules

In the Preliminary Determinations and Draft Orders, URCA published its Retail Price Regulation rules in draft form. Comments were received from both SMP operators on the draft retail price regulation rules in their December 2009 and January 2010 submissions to URCA.

However, in the March 2010 Position Paper, URCA did not provide any additional thinking on its position on the retail price regulation rules. This Section 2.5, in response to industry comments, provides the reasons for URCA's final decision on the retail price regulation rules – where appropriate, URCA has either provided the underlying basis for the rules, why particular parameters in the rules (such as the number of days required for approval) have been amended or the basis whereby parts of the rules remain unchanged.

The rules were previously included within the main body of the Preliminary Determinations, but are now published separately in final form for ease of reference, future reviews and modifications (please refer to ECS 15/2010 Regulation of Retail Prices for SMP Operators – Rules).

As a general comment, URCA believes that the new retail price regulation rules should be given a period of time over which URCA, and the industry, can assess how the rules function. Appropriate revisions may be reasonably required as all stakeholders get more comfortable with the level of interaction, compliance and analysis.

2.5.1 <u>Retail Price Regulation</u>

URCA has amended its position that the SMP operators will be deemed immediately compliant with the Retail Price Regulation obligation (para. 1 of ECS 15/2010). Instead, the SMP operators must file their initial prices along with terms and conditions information (para. 3 of ECS 15/2010) before requesting confirmation of compliance from URCA. Thereafter, the SMP operators would have to comply with the remaining aspects of the retail price regulation rules to remain compliant. This represents a minor change in approach; it is a simple administrative requirement to satisfy.

2.5.2 <u>Filing of Initial Prices</u>

URCA has clarified the 30 days for the information to be filed as being 30 business days from the issue of the Final Decision (para. 3 of ECS 15/2010).

URCA has reduced the requirement for two financial years worth of data on volume of sales and revenues for each price regulated service to the previous financial year's data (para. 4 of

ECS 15/2010). The requirement for only the prior financial year's data is determined to be a less onerous one for the SMP operators to fulfil.

Further clarification has also been provided on the initial filing of prices (para. 5 of ECS 15/2010). It is URCA's view that an SMP operator, in complying with its initial filing obligations, should not be required to seek approval for the existing prices.

2.5.3 **Investigations**

URCA has not made any fundamental changes in this area. However, further clarification has been provided by URCA on its right to investigate prices, terms and conditions of price regulated service (para. 6 of ECS 15/2010).

2.5.4 **Approval Process**

This is a new rule to reflect comments from the industry to streamline the process. It reduces duplication of rules and covers, in one rule, the general requirements for a price change that is independent of the type of price change (permanent or temporary; single or bundled products). The new rule also provides clarity on the approach that URCA has adopted in reviewing the said types of applications and do not result in any additional obligation on the SMP operators compared to those in the draft rules (para. 8 – 11 of ECS 15/2010).

For consumer protection purposes, URCA has added a requirement that the SMP operator should not advertise or publicly announce in any way its proposed price during the approval process (para 9). The SMP operator is only allowed to advertise or publicly announce its price once it has received approval from URCA – in the event that URCA does not approve the price change, the confidentiality of the price tactics of the SMP operator is protected.

It may be the case that URCA will receive incomplete applications. URCA has introduced an initial review period where it assesses the validity of the application received without making a judgment on the merits of the application. Within the first five business days, URCA shall make an assessment as to the completeness of an application (para. 11.1 of ECS 15/2010).

URCA has now explicitly stated the application types (price increases, withdrawal or discontinuation of Price Regulated Services) that could be subject to public consultation (para. 11.2 of ECS 15/2010). This provides further clarity to the SMP operators on the approval process. The review process for price increases will focus on consumer protection and universal service issues. Given the likely implications of price increases on the public (i.e., a measure of public significance), price increases could be subject to consultation.

URCA has removed the timeframe within which it must respond to the SMP's operator's application following a public consultation. While URCA believes that it is good practice to respond within 30 days of the close of the public consultation, URCA may need more than 30 days to analyse comments received on the public consultation. URCA will make every effort to respond to the SMP operator's application as soon as possible after the close of the public consultation.

URCA has introduced a 'stop the clock' mechanism in the price approval process, whereby it can suspend the notification period whilst it awaits further information from the operator concerned (para. 11.4). After the SMP operator responds to the request for more information, the timeframe for review re-starts from the point where it was suspended.

Such a policy is relatively common in similar price approval processes or reviews of competition complaints. If, after the submission of more information, URCA does not have sufficient information on which to make a reasoned assessment of the proposed price, it shall reject the application on the grounds of insufficient data. The SMP operator would then be able to submit a revised application, addressing the information gaps.

In response to the SMP operators' comments and to provide regulatory certainty, URCA has now added a deemed approval rule, where applications are approved if URCA does not respond to the application within the specified timeframe (para. 11.5).

2.5.5 **Implementing the proposed price or service change**

This rule has been added to provide clarity on the process for implementing price changes once URCA has approved an application (para. 12.1 – 12.3). This new rule does not impose any additional obligation on the SMP operator.

2.5.6 **Permanent Price Changes**

This rule now only applies to single Price Regulated Services. In order to respond to comments made by the SMP operators and reduce any confusion, URCA has developed a new rule - Introducing or Changing the Price of Bundles of Price Regulated Services, to deal with bundles (para. 34 – 42).

Notification Period

In the Preliminary Determination, URCA proposed to treat permanent price increases in the same way as permanent price decreases. In each case, the SMP operator was required to give URCA 30 days notice of the proposed price change and to submit detailed costing and other data on the proposed price change. Following stakeholder comments on the Preliminary Determinations, URCA has now reconsidered the notification period. URCA has reduced the period from 30 days and shall respond to a price change application within 20 business days of receipt of the application (para. 23).

URCA requires 20 business days to review any permanent price change application so that it can perform various tests and assessments including but not limited to benchmarking studies, cost analysis, efficiency studies, and assessments of the potential impact of the proposed price on competition in a relevant market.

At the outset of the regime, it is important that URCA applies a relatively simple (although still robust) price approval procedure. It is reasonable for URCA to continue to apply the same notification period for price increases and decreases to individual (i.e., non-bundled) services (para. 14). This is because:

- In practice, SMP operators may look to change a number of prices at the same time, for example as part of a price rebalancing plan. In this case, it is likely to be easier if all proposed price changes are dealt with in one application.
- It will allow URCA to have a single set of similar rules regardless of it being a permanent price increase or decrease.
- Although SMP operators may look to introduce price reductions at short notice, in order to match price reductions of non-SMP operators, it will be important for URCA to undertake a detailed review of proposed price reductions. This is because permanent price reductions set below costs can have a significant impact on the level of competition in relevant markets.

Data submission

In general, the cost information collected by URCA should allow it to review the declarations made by the SMP operators that the proposed price changes are not anti-competitive. Therefore, URCA has sought to bring further clarity as well as simplify the data and information to be provided in a price change application (para. 16.1 – 16.8 of ECS 15/2010).

URCA has removed the requirement mandating that an SMP operator provide information on the estimated impact of the price change on its rate of return or profitability. The cost data that is provided will be inclusive of the cost of capital and, therefore, can be used to determine if the SMP operator is earning a reasonable return on the regulated service.

Assessing proposed price decreases

Proposed price decreases should not be subject to public consultation. This is because such consultation would limit the ability of SMP operators to compete properly in the market. Therefore, URCA has removed the implied concept that all price changes including decreases could be subject to public consultation (para. 11.2 of ECS 15/2010).

Competition tests

URCA believes it is reasonable to require SMP operators to self-certify that they meet the relevant tests (para. 20 of ECS 15/2010). Requiring the operators to sign such a declaration should encourage them to conduct the formal tests required and provide information to URCA in a way that can be reasonably easily understood. Requiring the declaration to be signed by relatively senior management is also likely to ensure that the operator cross-checks the data it provides before signing the declaration.

The margin squeeze and predatory pricing tests will be relevant to proposed price decreases. It is therefore important that information sufficient to assess the SMP operator's compliance with these tests is submitted alongside the price change application (para. 20 – 21 of ECS 15/2010).

The Preliminary Determinations also included an "unfair cross subsidy test". A cross subsidy occurs when an SMP operator allocates all or part of the costs of an activity in one geographical or product market to an activity in another geographical or product market. If a service which is the subject of a price change application is priced below cost, this should be reflected in the predatory pricing and / or margin squeeze tests. Proving that a cross-subsidy is taking place would require cost information for more than just the product which is the subject of the price application. Given this, URCA has removed the unfair cross subsidy test from the rules.

2.5.7 **Special Offers or Discounts ("Special Promotions")**

Short term promotions may often be introduced as a competitive response to the actions of another provider, or in recognition of a particular event. By definition, promotions will be of a temporary nature. This means that they may be less likely to cause long term competitive harm than permanent price changes.

In response to comments made by the SMP operators, URCA has reconsidered the review period for special promotions and now defines different categories of special promotions (para. 24.1 – 24.3 of ECS 15/2010) with varying notification/approval times (para. 25, 30 – 31 of ECS 15/2010). URCA felt that it needed to give the SMP operators some flexibility on special promotions and has provided the following framework:

- For single day promotions, five (5) business days notification to URCA – this is not an approval requirement but simply notification. The SMP operator is limited to ten (10) one day special promotions in a calendar year (para 25).
- For one week promotions, application must be submitted at least five (5) business days before the proposed launch date (para. 30 of ECS 15/2010). URCA must respond within five (5) business days of receiving the application (para. 31 of ECS 15/2010).
- For promotions longer than one week, application must be submitted at least ten (10) business days before the proposed launch date (para. 30 of ECS 15/2010). URCA must respond within ten (10) business days of receiving the application (para. 31 of ECS 15/2010).

URCA believes it is reasonable to review short term promotions that will last for longer than one week in a period of 10 business days, compared to 20 business days for permanent price changes. The five day notification period for single day promotions is a reasonable compromise between providing SMP operators with some additional flexibility to introduce promotions at short notice and ensuring that URCA has sufficient time to review applications in a manner proportionate to the nature of short term promotions.

As with permanent price changes, the SMP operators will not have to provide profitability or rate of return data when applying for special promotions. The background to the promotion, together with relevant cost data (excluding single day promotions), must still be provided (para. 25 and 30 of ECS 15/2010), thus still enabling URCA to review the extent to which the promotion is cost oriented.

2.5.8 <u>Introducing or Changing the Price of Bundles of Price Regulated Services</u>

In the Preliminary Determinations, URCA proposed to review proposed price changes of bundles in the same manner as price increases and decreases. However, the Preliminary Determinations did not provide a detailed description of how the pricing of bundles would be assessed.

In order for a bundled offer to be approved, it should pass both a replicability test and a pricing test (not anti-competitive) (para. 39 of ECS 15/2010). Such tests are commonplace in jurisdictions where an operator retains SMP in the relevant product markets.

Regulators often require that any bundles offered by operators with SMP in relevant markets should be replicable. That is, the SMP operator’s competitors should also be able to offer an equivalent bundle (para. 39.2). If a bundle is not replicable (with, for example, one of the two products in the bundle not available to other operators), the SMP operator could possibly leverage its market power from the provision of the non-replicable product to the replicable (potentially competitive) product by bundling the two together.

As part of the pricing test, the SMP operator must demonstrate that the proposed price of the bundle is not anti-competitive and would not have the effect of lessening competition in a relevant market (par. 41 of ECS 15/2010). URCA further requires the SMP operator to provide cost information for the bundle and the individual services in the bundle consistent with the costing data required for a single price regulated service (para. 42 of ECS 15/2010).

The approach for reviewing and approving the prices of bundles is likely to be more complicated than that for reviewing price increases or decreases for single price regulated services. This is because the bundle includes more than one service and URCA has to review the replicability and pricing tests as well as the other standard tests and assessments that URCA would normally conduct. Therefore, URCA will need more time to review a price change application for a bundle versus a single service. As a result, URCA shall respond to a price change application for a bundle within 30 business days of receipt of the said application (para. 37 of ECS 15/2010).

2.5.9 **Introduction of New Services**

Given the current structure of the Bahamian electronic communications market, URCA believes it is appropriate that any new service offered by an SMP operator falling within a market in which the operator has SMP could be subject to price regulation. A first step in the process for approving new services should involve identifying the relevant economic market to which the service belongs (para. 43.3 of ECS 15/2010).

URCA will require the SMP operators to notify/seek approval from URCA for all new services, regardless of which market the operator believes the service falls in (para. 43).

The review of new services will therefore be conducted in two stages:

1) An assessment of the market in which the new service falls. This review will be based primarily on the qualitative information on service characteristics provided by the SMP operator. If the service does not belong to a market in which the operator has SMP, it should not be price regulated (para. 45); and
2) If required, a review of the proposed price (para. 46).

As reviews of new (price regulated) services include an additional stage compared to reviews of price changes for existing services, URCA believes that 30 business days is a reasonable notification period (para. 46). This is the same as the proposed time period for reviewing price changes for bundles.

Responding to concerns raised by operators over the time taken for this review process, URCA will decide whether or not the new service should be price regulated within 15 business days of the submission. If the new service is not subject to price regulation the operator would then be free to introduce the service.

2.5.10 **Withdrawal and Discontinuation of Price Regulated Services**

URCA has reduced its review and response period from 30 days to 20 business days (para. 52 of ECS 15/2010). There have not been any other changes made to these rules as URCA did not receive any comments requesting it to change its initial position.

3 Summary of URCA's Acceptance/Rejection of Proposal Received from SMP Operators

As set out in s.116(2) of the Comms Act, products for which the operator is presumed to have SMP shall be subject to obligations "designed to maintain…the objective of encouraging, promoting and enforcing sustainable competition."

In accordance with s.116(3):
(a) URCA was required to inform the operators of the types of obligations that, in its view, would satisfy s.116(2) within one month of the Comms Act coming into force,
(b) The operators were required to propose obligations that, in their view, would satisfy s.116(2),
(c) Within three months of receiving these proposals, URCA was required to either accept the proposed obligations, or reject the proposed obligations. If URCA rejected the proposed obligations, it could then decide to either mandate obligations or require the operator to modify its original proposal.

Set out below is a summary of the results of this process for each operator presumed to have SMP. Note that where an SMP operator has submitted a proposal under s.116(3)(b) of the Comms Act which required further detail, URCA has listed that proposal as "rejected" even though the mandated obligation is in line with the SMP Operator's proposal.

CBL Proposed Obligations

s.116(3)(a)	**s.116(3)(b)**	**s.116(3)(c)**
Types of obligations outlined by URCA in Preliminary Determination ECS 19/2009 of 30 Sept 09	**Obligation proposed by CBL on 22 January 2010 (unless otherwise stated)**	**Accepted/Rejected by URCA with reasons**
SuperBasic TV and digital packages – retail price regulation Wholesale access to SuperBasic TV and/or digital packages	**SuperBasic Pay TV – retail price regulation:** CBL proposes retail price regulation that would take into account "the costs for delivering the service (in particular, programming costs, associated network, IT,	**SuperBasic Pay TV – retail price regulation:** Rejected. Although the proposed obligation is of the type that would be expected by URCA, it lacks the detail required to be implemented. URCA will mandate retail price regulation that expressly includes: temporary prices,

Access for content distribution (bitstream)	marketing and SG&A costs)". Annual or semi-annual price review. CBL would not change the content of the package without URCA's prior approval. As CBL would provide specific cost data, there would be no need for cost accounting for "full blown" regulatory cost accounting or accounting separation. **Wholesale access to SuperBasic TV and/or digital packages:** no regulation **Access to content distribution:** no regulation	permanent prices and promotional tariffs. Accounting separation will be required to provide transparency and support wholesale obligations). **Wholesale access to SuperBasic TV and/or digital packages:** Accepted **Access to content distribution:** Accepted
Broadband internet – retail price regulation and delinking from SuperBasic TV package Access to the broadband network and services & Access to the transmission network (originally considered as bitstream access to broadband)	**Broadband internet – untying:** (i) Immediate untying of SuperBasic TV and broadband for any new installation where the customer orders broadband only. CBL proposed working with URCA to discuss cost-recovery for this interim solution. (ii) CBL rejected the idea of digitisation in its 22nd January submission. In its submission dated 8th April 2010, CBL proposed digitisation of its network, subject to agreeing cost recovery with URCA. **Access to the broadband network and services & Access to the transmission network:** Wholesale broadband product that will allow for resale, on a white-label basis, of CBL's broadband offerings	**Broadband internet – untying:** (i) Rejected. The 22nd January 2010 solution will not address the need for untying existing customers that request broadband only. (ii) Accepted **Access to the broadband network and services & Access to the transmission network:** Accepted[15]

[15] Although CBL submitted its access for broadband internet proposal after the deadline for proposed obligations, to prevent delay to the process URCA has incorporated this proposal into its review of CBL's proposed obligations.

National leased lines: no regulation	National leased lines: no regulation	Accepted
International leased lines: no regulation	International leased lines: no regulation	Removed from high level SMP market
Accounting separation for retail: Basic Cable TV package (currently called SuperBasic Package); digital Packages (add-on packages, Oceans Sport/ Movies/ Complete, premium addons such as NFL Sunday Ticket, NBA Season Pass, etc.); remainder of TV services (all TV services not captured in the above categories, such as free-to-air broadcast TV, HDTV, pay-per-view, etc.); national Leased Lines; broadband Internet; remainder of retail business. Accounting separation wholesale: bitstream access for Broadband Internet; national leased lines; remainder of wholesale transmission services.	In its initial submissions to URCA on the draft SMP determination, CBL argued that an obligation for it to prepare a service costing model rather than separated accounts would fulfil URCA's regulatory objectives at lower cost. In particular, CBL pointed out that it is possible to impose cost oriented (regulated wholesale) charges without developing a full accounting separation model.	Rejected. URCA does not consider that a service cost model will meet some of the key objectives of accounting separation, including overcoming information asymmetry between the regulator and operator and meeting audit independence and objectivity standards. A cost model may also not include a detailed assessment of retail costs.
Accounting separation for retail: Basic Cable TV package (currently called SuperBasic Package); digital Packages (add-on packages, Oceans Sport/ Movies/ Complete, premium addons such as NFL Sunday Ticket, NBA Season Pass, etc.); remainder of TV services (all TV services not captured in the above categories, such as free-to-air broadcast TV, HDTV, pay-per-view, etc.); national Leased Lines; broadband Internet; remainder of retail business. Accounting separation wholesale: bitstream access for Broadband Internet; national leased lines; remainder of wholesale transmission services.	On 16th April 2010 CBL submitted an alternative proposal to URCA containing a horizontal separation of its businesses into five areas: SuperBasic TV, Digital TV, Broadband Internet, Leased Lines and all other activities. Predominantly based on information contained in its financial and management accounts, CBL would develop income and MCE statements for each of the five businesses above on an end-to-end basis. Revenues and cost of sales would be reported on a product basis, However, CBL's proposal did not include any allocation to products or businesses of any costs which are not directly attributable to a given business or product.	Rejected. Although URCA agrees with the needs to align CBL's accounting separation requirements with its reduced *ex ante* obligations, URCA does not consider CBL's proposal to fully meet its requirements. In particular, the lack of cost allocation under CBL's proposal would not allow URCA to understand fully the end-to-end cost of SMP products and hence would limit its ability to perform its regulatory duties.

A ‘test’ set of separated accounts to be prepared using 2008 data	In its initial response, CBL stated that it considered it unrealistic to produce test accounts based on 2008 data and initial accounts based on 2009 data within the given time frame.	Accepted. Test accounts using 2008 data are no longer required
Separated accounts for 2009 onwards to be audited under a ‘Fairly presents’ audit standard	CBL’s proposal made to URCA on 16th April 2010 did not include an audit of the separated accounting statements and concluded that an audit requirement is ‘unjustified’	Rejected. URCA has removed the audit requirement for the 2009 accounts. Future sets of accounts will be required to be audited to a ‘properly prepared’ audit standard. A CFO Responsibility Statement will be required on each set of annual separated accounts.

BTC Proposed Obligations

s.116(3)(a)	**s.116(3)(b)**	**s.116(3)(c)**
Types of obligations outlined by URCA in Preliminary Determination ECS 18/2009 of 30 Sept 09	**Obligation proposed by BTC on 22 January 2010**	**Accepted/Rejected with reasons**
Retail fixed voice products and access: retail price regulation	Retail fixed and voice access markets: (i) Price decreases and special offers (24 hour notice to URCA) (ii) Price increases (20 day notification to URCA) (iii) Bundles – to be handled on a case by case basis (iv) New services: no regulation (v) International long distance calls – included in list of regulated services without being subject to tariff approval process	Rejected. (i) The price decreases and special offers obligation would enable BTC to introduce below cost prices without URCA having the opportunity to review the prices or ensure that a suitable wholesale package is available. (ii) URCA will require 30 days prior notification to review price increases. (iii) All bundles involving a price regulated product will be subject to URCA’s approval. (iv) New services will be price regulated to the extent that they are an extension of services which fall within the SMP high level services. (v) ILD calls will be subject to the retail price regulation.

		VOI and mobile services do not provide sufficient competitive constraints on fixed ILD.
Retail mobile voice products and data access: retail price regulation	Retail mobile voice access and data markets: (i) Price decreases and special offers (24 hour notice to URCA) (ii) Price increases (20 day notification to URCA) (iii) Bundles – to be handled on a case by case basis (iv) New services: no regulation	Rejected. (i) The price decreases and special offers obligation would enable BTC to introduce below cost prices without URCA having the opportunity to review the prices or ensure that a suitable wholesale package is available. (ii) URCA will require 30 days prior notification to review price increases. (iii) All bundles involving a price regulated product will be subject to URCA's approval. (iv) New services will be price regulated to the extent that they are an extension of services which fall within the SMP high level services.
International incoming calls: removal of charges to customers	International incoming calls: removal of charges to customers	Accepted.
Wholesale call transit, call termination services and wholesale customer entry to the directory enquiries database and ancillary services on fixed network: RAIO	Wholesale call transit and call termination services on fixed network: (i) URCA to separately define termination and transit products and clarify definition. (ii) Inclusion in the RAIO. (iii) Cost orientation. (iv) Symmetric regulation to new entrants.	(i) to (iii) accepted. (iv) rejected. (i) – (iii): URCA defines termination and transit products in its decision and proposes that they are included in the RAIO, which will be cost orientated. (iv): Regulatory measures will be introduced in a manner that is transparent, fair and non-discriminatory. This does not mean, however, that URCA will impose the same regulation on all operators.
Wholesale call transit and call termination services on mobile network: RAIO	Wholesale call transit and call termination services on mobile network:	(i) to (iii) accepted. (iv) rejected. (i) – (iii): URCA defines termination and transit products in

	(i) URCA to separately define termination and transit products and clarify definition. (ii) Inclusion in the RAIO. (iii) Cost orientation. (iv) Symmetric regulation to new entrants.	its Access & Interconnection guidelines and proposes that they are included in the RAIO, which will be cost orientated. (iv): Regulatory measures will be introduced in a manner that is transparent, fair and non-discriminatory. This does not mean, however, that URCA will impose the same regulation on all operators.
Other mobile wholesale products: no regulation	Other mobile wholesale markets: no regulation	Accepted.
Retail broadband internet access: retail price regulation	Retail broadband internet access: no regulation (but commitment to national pricing policy)	Accepted. URCA will mandate the commitment to geographic averaging of prices as an SMP obligation.
Access to the broadband network and services & Access to the transmission network (originally considered as bitstream access to broadband)	Access for broadband internet: No regulation until dominance assessment is carried out. Any obligations should be applied to CBL as well.	Rejected. URCA will mandate a resale obligation in lieu of a specific access product.
Vibe: not in SMP high level market	Vibe: no regulation	Accepted
National leased lines: no regulation	National leased lines: no regulation	Accepted
International leased lines: no regulation	International leased lines: no regulation	Removed from high level SMP market
Accounting separation for retail: fixed voice products and access; mobile voice products and data access; broadband internet; remainder of retail business. Accounting separation wholesale: call transit; call termination; national leased lines; wholesale directory enquiry and ancillary services; remainder of wholesale access services.	In its response to the Draft Decision, BTC proposed that the Annex 5 reporting requirement should be removed from the guidelines and replaced with a report mapping network components to retail and wholesale services.	Accepted. In the final guidelines, URCA has removed Annex 5 (wholesale : retail mapping) and extended Annex 3 to include routing factors and network component unit costs for retail products and wholesale products which BTC must include in its RAIO.

A 'test' set of separated accounts to be prepared using 2008 data	In its letter of 25 November 2009, BTC stated that, as the model results would not be available until mid 2010, it did not see any merit in requiring a test run based on 2008 data. This additional requirement would likely delay the preparation of the 2009 accounts. Furthermore, some of the required input data (incl. traffic) was not available. The above was reiterated in BTC's December response to URCA's consultation,	Accepted. Test accounts using 2008 data are no longer required
Separated accounts for 2009 onwards to be audited under a 'fairly presents' audit standard	In its letter of 25 November, BTC stated that the cost of a regulatory audit opinion of at least $ 700,000,, outweighed the benefits. Instead, BTC proposed a) providing URCA with a CFO responsibility statement; and b) close cooperation with URCA during the model development and methodology In case URCA insisted on an audit, BTC requested this to be under a "properly prepared" audit standard. The above was reiterated in BTC December response to URCA's consultation,	Modified. URCA has removed the audit requirement for the 2009 accounts. Future sets of accounts will be required to be audited to a 'properly prepared' audit standard. A CFO Responsibility Statement will be required on each set of annual separated accounts.
Non-confidential aspects of separated accounts should be published. This encompasses separated financial statements, reconciliation statements, statements of accounting principles and policies a wholesale-retail mapping matrix, and the audit report.		Modified. URCA has removed the publication requirement for the 2009 accounts. URCA will, in due course, consult publicly on future publication requirements.

4 Specific Obligations

In this Section, URCA sets out sets out the specific list of products that it has decided belong in the high level SMP markets in which CBL and BTC are presumed to have SMP, and the specific obligations (that are objective and proportionate) for the interim period. [16]

4.1 Obligations on CBL

As specified in Part G of the standard Individual Operating Licence published by URCA on 1st September 2009, standard SMP obligations apply to all products found to comprise the high level SMP markets. These are non-discretionary and additional to the specific obligations set out below.

The remainder of this Section covers the products which URCA considers remain in the high level SMP market for which CBL is presumed to have SMP and the specific obligations it must comply with under s.116 (2). Further details on how to comply with these obligations and the process that URCA shall adopt before confirming compliance are outlined in Section 5.

4.1.1 Products in the high level SMP markets

As a result of the methodology adopted and analysis carried out, further details of which can be found in the Appendices, URCA finds that the following products remain within CBL's high level SMP markets:

- SuperBasic TV package
- Digital TV packages
- Retail national leased lines
- Broadband internet access
- Access to the broadband network and services and Access to the transmission network
- Wholesale national leased lines

4.1.2 Specific obligations for CBL

Pursuant to s.116(3)(c)(ii) of the Comms Act, URCA sets out below those obligations that CBL must comply in order to meet the requirements in s.116(2) of the Comms Act.

Product	Final Obligation	Details of the obligation
Retail - SuperBasic TV package	Retail price regulation (rules based)	Adherence to the approval processes outlined in the Retail Pricing Rules governing initial notification, investigations, price increases, decreases, special promotions, new services, bundling,

[16] The methodology adopted by URCA was published as part of the Preliminary Determinations, and the Position Paper. Further summary information on URCA's analysis and conclusions can be found in the appendices to this document.

		withdrawal and discontinuation of price regulated services.
Retail - Broadband internet	Untying of broadband packages from pay TV packages	Untying for all customers. The technical details of complying with this obligation to be determined by CBL.
Wholesale - Access to the broadband network and services & Access to the transmission network	Resale broadband product	End-to-end product to allow for resale of all of CBL's retail broadband products on a white-label basis, including access to the transmission network and access to the internet, on reasonable commercial terms
All SMP products	Accounting Separation	Develop separated accounts in accordance with the Accounting Separation Guidelines for CBL

4.2 Obligations on BTC

As specified in Part G of the standard Individual Operating Licence published by URCA on 1st September 2009, standard SMP obligations apply to all products found to comprise the high level SMP markets. These are non-discretionary and additional to the specific obligations set out below.

The remainder of this Section covers the products which URCA has found should remain in the high level SMP market for which BTC is presumed to have SMP and the specific obligations it must comply with under s.116 (2). Further details on how to comply with these obligations and the process that URCA shall adopt before confirming compliance are outlined in Section 5.

4.2.1 **Products in the high level SMP markets**

As a result of the methodology adopted and analysis carried out, further details of which can be found in the Appendices, URCA finds that the following products remain within BTC's high level SMP markets:

- Fixed telephony access and local calling
- Domestic long distance fixed calling, domestic fixed calls to rated numbers and international long distance fixed calling
- Broadband internet access in specified areas[17]
- Retail national leased lines
- Mobile access, local mobile calling, domestic long distance mobile calling, international long distance mobile calling and mobile data
- Incoming international calls to mobile customers
- Call transit (domestic, international and mobile), call termination services and wholesale customer entry to the directory enquiries database[18] and ancillary services (call termination and service provision)[19]

[17] Areas not covered by CBL's network.
[18] A product which allows non-BTC subscribers to be entered into the directory enquiries database.

- Wholesale national leased lines
- Access to the broadband network and services and Access to the transmission network

4.2.2 **Specific obligations for BTC**

Pursuant to s.116(3)(c)(ii) of the Comms Act, URCA sets out below those obligations that BTC must comply with in order to meet the requirements in s.116(2) of the Comms Act.

Product	**Final Obligation**	**Details of the obligation**
Retail Fixed telephony access and local calling Domestic long distance (DLD) fixed calling, domestic calls to rated numbers and outgoing international long distance (ILD) fixed calling Mobile access, local mobile calling, DLD mobile calling, ILD mobile calling and mobile data	Retail price regulation (rules based)	Adherence to the approval processes outlined in the Retail Pricing Rules governing initial notification, investigations, price increases, decreases, special promotions, new services, bundling, withdrawal and discontinuation of price regulated services.
Retail - Broadband internet	Geographic averaging of prices	All prices to be set at the same level regardless of where in The Bahamas a customer wishes to purchase the product.
Retail - Incoming international calls to mobile customers	Specific one-time retail price adjustment	Removal of charges for incoming international calls to mobile customers.
Wholesale - Call transit (domestic, international and mobile), call termination services*, wholesale customer entry to the directory enquiries database and ancillary services (call termination and service provision)	RAIO with cost-based charges	To include all the services listed in addition to any enabling products required (further information is provided below). The RAIO should comply fully with URCA's Access & Interconnection guidelines. BTC is also required to provide enabling wholesale products that wholesale customers may reasonably require in order to make use of the products listed including: 1. the joining circuits which contain: (i) a carrier system; (ii) interconnection links; and

[19] This includes call termination (domestic and mobile), termination of emergency calls to the police, termination of automated ancillary services, termination of calls to freephone numbers, termination of calls to operator assistance facilities and termination of calls to directory enquiries.

		(iii) signalling links. 2. a point of interconnection, which may be provided: (i) at the wholesale customer's location (Customer Sited Interconnection - CSI); (ii) at a point in the network between the wholesale customer's location and the SMP operator's location (In Span Interconnection - ISI); or (iii) at the SMP operator's location (co-location). 3. Data Management Amendment service 4. Any necessary Signalling Transfer Point (STP).
Wholesale - Access to the broadband network and services & Access to the transmission network	Resale broadband product	End-to-end product to allow for resale of all of BTC's retail broadband products on a white-label basis, including access to the transmission network and access to the internet, on reasonable commercial terms
All SMP products	Accounting Separation	Develop separated accounts in accordance with the Accounting Separation Guidelines for BTC

* Includes call termination (domestic and mobile), termination of emergency calls to the police, termination of automated ancillary services, termination of calls to freephone/toll-free numbers, termination of calls to operator assistance facilities and termination of calls to directory enquiries.

5 Process and Steps Required for Achieving Compliance

In order for each of the two SMP operators to enter into new markets, they must demonstrate compliance with each of the obligations set out in Section 4 of this Final Decision. As described in this paper, the Preliminary Determinations and the Position Paper, URCA has identified obligations which it believes to be necessary for the prevention of either of the SMP operators abusing that SMP or leveraging their SMP into adjacent markets so as to create market foreclosure. In addition to seeking to prevent market foreclosure through the imposition of *ex ante* obligations, URCA is concerned with the ability of an SMP operator to abuse its position of dominance to the detriment of consumers.

URCA has selected the obligations to be proportionate and necessary to meet the objectives set out in s.116, based on its understanding of the market conditions.

URCA is aware that achieving compliance with the obligations will require time and resources on behalf of the two SMP operators. Throughout this process URCA has made efforts to signal as early as possible what types of obligations were likely to be imposed on the operators, so as to enable them to start planning and possibly start preparations for compliance. In this Section, URCA sets out how it will measure compliance for each of the obligations set out in Section 4.

On achievement of compliance, and verification of this by URCA, SMP operators will be permitted to enter new markets.

While the framework in s.116 of the Comms Act creates incentives for the two SMP operators to comply with their obligations as quickly as possible, URCA is conscious that timely compliance is also necessary in order to further the introduction of competition in the markets for electronic communications in The Bahamas. Accordingly, where practicable, URCA has set compliance deadlines.

URCA has sought to only specify exact deadlines for compliance where the achievement of compliance is not dependent on actions by URCA, such as the need for public consultation or further review of proposals.

5.1 Compliance Process - Obligations Common to CBL and BTC

5.1.1 <u>**Retail Price Regulation Rules**</u>

The rules-based price regulation framework focuses on two types of intervention by URCA:

1. approval of pricing for new products or services, or when proposing to change prices for existing products and services; and
2. investigations into existing pricing, either in response to a complaint from consumers or competitors, or initiated by URCA itself

Neither of these two types of intervention requires any up-front activity in order for the SMP operator to achieve compliance, other than the initial step of filing its initial prices for Price Regulated Services (Paragraphs 3-5 of ECS 15/2010 – Regulation of Retail Prices for SMP

Operators – Rules). This is because existing prices for single and bundled services are assumed to be compliant unless an investigation is launched.

The SMP operator may send a request for confirmation of this compliance to URCA.

5.1.2 **Accounting Separation**

URCA has, in its analysis, found that the availability of transparent accounting information for individual parts of the SMP operators' businesses will be a critical component in URCA's ability to both implement other *ex ante* obligations and to deal with any allegations of discrimination or other anti-competitive behaviour. Therefore, URCA considers it imperative that an SMP operator has fully complied with the relevant accounting separation obligations, as specified individually for each of the two SMP operators, before URCA can deem them compliant. Below is a description of how URCA will evaluate whether an SMP operator is considered compliant with its accounting separation obligation.

Throughout this process URCA has been engaged with both operators to develop details of the accounting separation obligations, and this is reflected in the final accounting separation guidelines for each operator. However, whilst it is possible to set a deadline for the submission of accounting separation statements from BTC, it is not yet possible for URCA to do this for CBL[20].

For the avoidance of doubt, the submission of accounting separation statements alone by either BTC or CBL is not sufficient to determine that the operator in question has complied with this obligation. Before each operator can be deemed to have complied, URCA must review the submitted accounts. Any aspects of the accounts which do not conform to the guidelines (including the principles laid out in the guidelines) must be revised. URCA has therefore defined the following compliance process for the Accounting Separation obligation:

- SMP operators shall submit and present the results and documentation on Accounting Separation to URCA for its review:
  - BTC shall submit its Accounting Separation information and results to URCA on or before 31 May 2010.
  - CBL must provide, on or before 31 May 2010, its timelines for submitting Accounting Separation documentation and results.

- Following submission, URCA will review the Accounting Separation results and documentation to ensure compliance with the final Accounting Separation guidelines for BTC and CBL, and other relevant documents.

- URCA shall then write to the SMP operator concerned setting out any changes that it requires the operator to make to its separated accounts. As part of this letter, URCA will also specify the deadline by which revised accounts must be submitted, taking into account the nature of the amendments required.

[20] URCA's engagement with BTC has largely focused on the details and mechanics of the implementation of accounting separation. In contrast, engagement with CBL has largely focused on the merits and proportionality of the accounting separation obligation on CBL; CBL proposed its approach to meeting the accounting separation obligation on 16th April. As a result, the differences in progress between the two SMP operators has a bearing on the deadlines imposed for accounting separation – these have necessarily have had to be tailored to reflect the varying stages of implementation.

- BTC and CBL must then submit revised Accounting Separation results and documentation to URCA, consistent with the letter described above.

- Following receipt of the revised accounts, URCA will review the revised information to ensure that the required changes have been implemented.

- Upon satisfactory completion of the steps outlined above, the operators should send a request to URCA for confirmation they have complied with their Accounting Separation obligation. For the avoidance of doubt, should URCA not require an SMP operator to make any amendments to its first set of accounts, it will inform the SMP operator in writing of such a decision. Upon receipt of such notification, the operator concerned will be able to send its request to URCA for confirmation it has complied with its Accounting Separation obligation.

5.1.3 **Resale broadband access**

In order for URCA to declare an SMP operator compliant with this obligation, URCA requires that the SMP operator produces all the documentation and specifications required for ordering and implementation of the service by a wholesale customer. For the elimination of doubt, the obligation to offer resale broadband access products is not a RAIO obligation. Instead, URCA requires that the SMP operator develop all technical, administrative and commercial documentation for the product. At a minimum, this documentation shall include:

- a draft contract for the resale broadband services in question;
- a detailed service description;
- a list of all charges associated with the service and details of those charges;
- service level agreements covering service provision, fault management and maintenance, escalation and dispute resolution; and
- processes and procedures for requesting the service, including a description of the letter of application, information to be supplied by the wholesale customer, and how the parties can make changes to the agreement after it is in effect.

General Principles

In preparing its offer, the SMP operator shall abide by the following principles.

- The SMP operator must provide its resale broadband access products to any licensed operator in The Bahamas under the Comms Act.
- The resale obligation applies to all existing retail broadband products offered by the SMP operator.
- URCA will not approve terms and conditions but will carry out a high level review of the documents for completeness.
- Terms and conditions for the service, including charges must be fair and reasonable, non-discriminatory, transparent and meet *"...the objective of encouraging, promoting and enforcing sustainable competition".*
- URCA reserves the right to conduct an *ex post* investigation under the Competition Guidelines at any time, either on its own accord, or in response to a complaint. Disputes referred to URCA will be subject to any dispute resolution procedures already in place or any new procedures subsequently issued by URCA.

URCA's specific compliance process for the resale broadband access product obligation is as follows:

- The SMP operator shall prominently publish on its website, on or before 30th June 2010, its draft resale broadband product descriptions and documentation for all its existing retail broadband offerings. It shall, for at least a period of one month, invite comments from any interested parties on the draft specifications and request that all such comments should also be copied to URCA, for its reference.

- Following the deadline for the receipt of comments, the SMP operator shall prepare a final draft of its resale broadband product descriptions and documentation and submit this to URCA accompanied by a statement that in preparing this final draft the opeartor has considered all comments received.

- Following receipt of the SMP operator's final draft product descriptions and statement as per above, URCA will confirm whether the product descriptions and documentation are complete.

- Upon receiving such confirmation, the SMP operator may send a request for compliance confirmation to URCA.

5.2 Compliance Process - Obligations Specific to CBL

5.2.1 Untying

URCA has decided to impose an obligation on CBL to implement untying of pay TV and broadband packages for all customers (existing and new) with the technical details of complying with this obligation to be determined by CBL. Below is a description of how URCA will evaluate whether CBL is considered to be compliant with this obligation:

- Within 2 months of publication of the Final Decision, CBL shall submit to URCA the technical details of the investment required, business plan, consumer terms and conditions, and a roll-out plan for untying.

- URCA will conduct an objective full-scale review of the entire proposal, using international regulatory standards and principles, and consult on any areas of public interest.

- URCA shall specify the measure of compliance, as part of its review, in terms of minimum geographic areas where untying is available to customers

- Following a review, CBL must re-submit to URCA for approval its proposal (in its original form, or modified following a full-review).

- Upon completion of this, CBL must prominently publish on its website its untied broadband offer, which is to be available to all existing and new customers, provide URCA with evidence of the availability of the untied offer in specified geographic areas and provide URCA with a binding commitment to complete the remaining roll-out within a time limit approved by URCA.

- Upon completion of the steps outlined above, CBL may send a request for compliance confirmation to URCA.

5.3 Compliance Process - Obligations Specific to BTC

5.3.1 **National averaging of charges for Retail Broadband**

Where URCA has mandated that BTC must comply with a national price averaging obligation, BTC must ensure that its prices are at all times set at the same level regardless of where in The Bahamas a customer wishes to purchase the product or service in question (subject to the availability of the specified product or service in such location).

To confirm compliance, URCA will require BTC to submit a written notice certifying that its prices for the specified product or service are the same in all parts of The Bahamas where that product or service is available.

5.3.2 **Removal of Incoming International Calls to Mobile National averaging of charges**

By 30th June 2010, BTC must remove charges for incoming international calls to mobile customers and publicly inform customers of this change. BTC is required to submit evidence of its compliance when requesting compliance confirmation from URCA.

5.3.3 **Reference Access & Interconnection Offer (RAIO)**

General Approach
Fair, transparent, reasonable and non-discriminatory access and interconnection provisions are recognised across the world as being critical components of effective competition in telecommunications, in particular for voice services but also for non-voice services.

Where URCA has mandated that an SMP operator must produce a RAIO, including a list of the services and interfaces that must be included, URCA will require that the RAIO is produced in accordance with URCA's Access and Interconnection Guidelines and submitted to URCA in draft form for review.

Based on a check for completeness and a limited review to ensure that the draft RAIO complies with the requirements set out in URCA's Final Decision and with the Access and Interconnection Guidelines, the SMP operator will be required to prominently publish the draft RAIO on its website.[21]

If URCA considers that the draft RAIO presented does not comply with URCA's specifications or with the Access & Interconnection Guidelines, URCA will direct the SMP operator to make changes and resubmit a revised draft RAIO for review. Once URCA has considered the revised draft RAIO to be complete, then the SMP operator must publish the revised draft RAIO on its website.

It is important to note that URCA passing the draft RAIO as 'complete' does not constitute compliance with the SMP obligation.

Following publication of the draft RAIO on the SMP operator's website, URCA will initiate a public consultation process to request comments on the contents of the RAIO. In particular,

[21] In such a manner that the RAIO is easy to locate.

this is designed to ensure that interconnection seekers have the opportunity to comment on areas of commercial or technical interest, such as on service levels or technical specifications, where they are better suited to provide insights.

URCA may mandate changes to the RAIO as a result of the consultation process, however, interested parties may, in the meantime, use the published draft RAIO as the basis for initiating interconnection and access negotiations with the SMP operator. Any agreements reached based on the draft RAIO would automatically be amended to reflect the terms and conditions of the final RAIO once that document has been approved and published.

Once URCA has approved the final version of the RAIO, it will formally communicate its approval to the SMP operator in accordance with s.116(4) of the Comms Act. URCA's approval communication to the SMP operator will stipulate the publication of the RAIO as a necessary precondition for compliance. URCA may stipulate specific parameters for how the document should be published in order to ensure that it is easily accessible for all interested parties.

Specifics of the Compliance Approach
With regards to the obligation on BTC to produce a RAIO as specified in this Decision, URCA requires BTC to comply with the following steps and timetable:

- BTC shall submit and present its draft RAIO to URCA for its review on or before 31st May 2010.

- URCA will review the draft RAIO to ensure consistency with the Final Decision on BTC's RAIO and other relevant documents (e.g., Comms Act, final Guidelines on Access and Interconnection, relevant licence conditions). This is to ensure that the Draft RAIO is 'complete'.

- URCA may require BTC to amend or add to the draft RAIO in order to ensure that it is complete.

- No later than five (5) business days after URCA has confirmed that the draft RAIO is complete (which may be following one or more reviews after which BTC has amended the draft RAIO), BTC must publish the draft RAIO on its website

- BTC shall host a workshop / public meeting to present its draft RAIO to interested parties. This workshop shall take place no later than two (2) weeks after the draft RAIO has been published on BTC's website.

- URCA will consult publicly on BTC's draft RAIO and publish a final decision on the results of the consultation. The final decision may require BTC to make additions or changes to the draft RAIO. BTC shall complete such changes no later than thirty (30) business days after being instructed to do so by URCA and shall present the amended draft RAIO to URCA for review.

- At its discretion URCA may elect to hold industry workshop(s) to explain/clarify the RAIO process and any proposals set out in the public consultation document.

- Upon completion of the steps outlined above the, SMP operator may send a request for compliance confirmation to URCA, including the wesbite URL for how to access the documentation.

- BTC must then publish on its website its fully approved RAIO no later than ten (10) business days from the date of approval by URCA.

- Existing and new licensees may, at any time, initiate interconnection and/or access negotiations with BTC, based on the published draft RAIO. Any agreements reached based on the draft RAIO would automatically be amended to reflect the terms and conditions of the final RAIO once that document has been approved and published.

Appendices

A Selection of ex ante obligations

Selection of obligations framework

The Position Paper included details of the framework adopted by URCA for the selection of obligations to apply to the operators for those products found to comprise the high level SMP markets and to be susceptible to *ex ante* regulation.

The framework is guided by the objectives of the interim SMP process and the Comms Act, particularly by the objective in s.4(a)(iii) of the Comms Act to:

"…further the interests of consumers by promoting competition and in particular…to encourage, promote and enforce sustainable competition".

In accordance with the electronic communications sector policy, URCA considers that effective *ex ante* regulation of SMP operators is critical in giving effect to the policy framework applicable in The Bahamas through the prevention of market foreclosure and any abuse of dominant position by an SMP operator.

In selecting obligations to apply to SMP operators URCA has:

- Considered whether market forces may be relied upon to achieve policy objectives;
- Had due regard to the costs and implications of regulatory measures on affected parties; and
- Ensured that regulatory measures are efficient and proportionate to their purpose and introduced in a manner that is transparent, fair and non-discriminatory.

As discussed in the Position Paper, the selection of regulatory obligations is the final stage in a market review process. In line with international best practice, the framework adopted by URCA seeks to ensure that the most appropriate option is selected having due regard to the costs and benefits and taking into account URCA's objectives and statutory obligations. While it is generally accepted that, where an operator is designated as having SMP in a relevant market, one or more appropriate *ex ante* obligations should be applied, the framework adopted by URCA seeks to consider whether the option of not imposing specific obligations is appropriate. For example, in all cases, URCA considered whether the existing regulatory framework, which includes standard SMP obligations, is sufficient to meet URCA's objectives.

The framework consists of the following steps, which are described in more detail in the Position Paper:

1) Define the objective – market failure identification
2) Identify options to address the objective
3) Impact analysis – costs, benefits and risks
4) Assess impacts and identify preferred solution

This framework was applied to each of the markets determined to be susceptible to *ex ante* regulation in order to determine the appropriate obligation(s) – if any – to be applied to the relevant SMP operator. These obligations are outlined in Section 4 of this Final Decision. It is important to note that, while the framework is applied consistently and on a technology-neutral basis, this does not mean that the obligations placed on SMP operators will necessarily be the same. The selection of obligations is specific to the relevant market and the market failure(s) identified.

For retail markets, the framework also considers whether the market failures identified have been adequately addressed at the wholesale level. If measures at the wholesale level are not capable of addressing the market failures identified, then obligations at the retail level may be applied. Although it is not standard to include this at the conclusion of the selection of obligations process, this has been done for ease of inclusion.[22]

URCA considered a range of options to address the market failures identified in each market with the aim of selecting that obligation which was deemed to be the most efficient and proportionate, having due regard to identified costs and benefits. It should be noted, however, that URCA has not undertaken a full cost and benefit assessment (nor is it required to do so under the Comms Act). For this process, the identification of costs and benefits is used as high level guidance in the selection of obligations. As discussed above, in all circumstances URCA initially considered whether the obligations that are already in place in the regulatory framework – which includes standard SMP obligations[23] (in addition to accounting separation requirements[24]) – would be sufficient before considering other obligations.

Proportionality

As described above, URCA is obliged under the Comms Act to ensure that any regulatory measures are efficient and proportionate to their purpose. Responses to the Preliminary Determinations were particularly concerned with URCA not having included its analysis of the proportionality of obligations applied to SMP operators in the Preliminary Determinations. URCA sought to address these concerns in the Position Paper by providing more detail regarding how proportionality was taken into account within the framework for selecting obligations. We provide a summary of that discussion here.

URCA considers that a regulatory remedy is efficient and proportionate when it is the minimum intervention required to achieve the objective set out.[25] That is, where there is a choice between several **appropriate** measures, preference should be given to that which is the least onerous. The framework adopted by URCA to select appropriate *ex ante* obligations involves examining several obligations[26] that may meet URCA's objectives to varying degrees. For the selected measure to be considered proportionate, it should therefore be the least burdensome obligation that meets URCA's objective.

Under s.5(b)(ii) of the Comms Act, URCA must have "*due regard to the costs and implications*" associated with different regulatory remedies in the context of the relevant market and market failure(s) being examined. The obligation in s.5(b)(ii) of the Comms Act falls significantly short of an obligation on URCA to conduct a full analysis of the actual costs and benefits of proposed remedies.

[22] This is typically considered as part of the SSNIP test but as the interim SMP process is non-standard, URCA has included this step in the framework for the selection of obligations.

[23] These "standard" SMP obligations are set out in Part G of the standard Individual Operating Licence and apply to any licensee that is determined to have SMP or presumed to have SMP in one or more markets.

[24] Accounting separation is a requirement placed on both BTC and CBL across all SMP products and the rest of the SMP operators' business.

[25] The objective of regulation is to mimic competition in those markets in which competition has not yet emerged and to put remedies in place where there is potential for SMP operators to abuse their market position ("market failures").

[26] Except where it is considered that the existing regulatory framework is sufficient to meet URCA's objectives.

URCA fulfilled its duty under s.5(b)(ii) of the Comms Act by considering the relative burden of various potential obligations on the SMP operators and selecting the least onerous obligation that satisfies the requirements of s.116(2) of the Comms Act. URCA has not undertaken a process of quantifying the costs for each obligation but has made a qualitative assessment based on submissions from the SMP operators. This approach is consistent with s.8(2) of the Utilities Regulation and Competition Authority Act ("URCA Act"), which requires URCA to use its resources efficiently.

In addition to the above, when selecting the most proportionate obligation, URCA also has regard to the following:

- Whether the interaction of obligations applied as part of the interim SMP process lead to any unintended consequences that frustrate regulatory objectives or lead to a disproportionate burden being placed on market players.
- Consistency between obligations, so that the introduction of additional obligations does not unintentionally undermine the effectiveness of others.
- Finding a balance between general and specific obligations.

URCA's intention in selecting obligations is primarily to ensure that its objective of furthering the interests of consumers through the promotion of sustainable competition is met. At the same time, URCA is mindful that such obligations should be proportionate and not place an undue burden on SMP operators. This is taken into account in the framework described above and in more detail in the Position Paper.

B Products included in the high level SMP market

Section 4 stated the products found to be part of the high level SMP markets.[27] This Section sets out a high level review of URCA's reasoning for the inclusion of each product.

The detailed reasons for the inclusion of these products in the high level SMP markets can be viewed by referencing the Preliminary Determinations, the Position Paper and Section 2 of this document. The points raised by operators with regards to these products can be reviewed in both the Position Paper and the submissions by operators, which URCA has made available, where appropriate, on its website.

Cable Bahamas Limited

URCA found that the following CBL products should be included in the high level SMP markets:

- SuperBasic package
- Digital packages
- Retail national leased lines
- Broadband internet access
- Access to the broadband network and services and Access to the transmission network
- Wholesale national leased lines

In the Position Paper, URCA also considered retail and wholesale international leased lines to be part of the high level SMP market; however for the reasons set out in Section 2, these have subsequently been removed from the SMP market.

<u>SuperBasic package</u>

As stated in the CBL Preliminary Determination[28], URCA found that the SuperBasic package should remain in the high level SMP market and be susceptible to *ex ante* regulation for the following reasons:

Should it remain in the high level SMP market?

- URCA found that it is unlikely that there would be any demand- or supply-side substitutes which would result in effective competition in the time frame considered. URCA did not identify any alternative products (satellite pay TV, internet streaming and IPTV were reviewed) which consumers would find to be substitutable for CBL's SuperBasic package, in the time frame, in terms of coverage, price or variety of content.
- CBL's current strategy of tying its broadband packages to the purchase of a SuperBasic or digital package, and the relatively low incremental price of the broadband once the consumer has subscribed to a pay TV service, resulted in URCA considering it unlikely that a significant number of subscribers would switch to an alternative, if one existed.

Is it susceptible to *ex ante* regulation?

[27] Defined in the Communications Act for CBL as the high speed data and connectivity market and the pay TV market and for BTC as the fixed voice (and data) market and the mobile voice and mobile data market.
[28] Section 10.1 of the CBL Preliminary Determination.

- Barriers to entry are high as a new entrant would require its own access and distribution network or be able to successfully negotiate access to CBL's.
- Emerging competition is too uncertain; at this stage of IPSI's development URCA has insufficient information about its product specifications, prices and coverage to determine whether it would be considered as a substitute by consumers for CBL's SuperBasic package.
- The main competition problem identified for this product is the barrier to entry for new entrants who require access to viable access and distribution networks in order to provide services. *Ex post* competition law is not considered to be sufficient to address this issue.

<u>Digital packages</u>

As stated in the Position Paper, URCA found that the digital packages should remain in the high level SMP market and be susceptible to *ex ante* regulation.[29] CBL challenged the inclusion of the digital packages in the high level SMP market in its response to the Position Paper; however URCA believes its conclusion is valid for the following reasons:

Should it remain in the high level SMP market?

- Whilst URCA has been unable to determine CBL's exact market share in the provision of digital packages, and CBL have been unable to provide consistent data, CBL's share is believed to be at least 60%. Satellite providers, both licensed and unlicensed, are believed to make up the remainder of the market.
- Whilst CBL does not have exclusive access to local Bahamian channels, URCA believes that US satellite providers are very unlikely to include local channels given that The Bahamas is not their target market. This makes satellite TV packages less substitutable for CBL's.
- CBL's pricing of digital packages does not appear to have been constrained by the presence of satellite providers in the market. If CBL were to increase its pricing for digital packages by 5-10% its prices would still be below those of the satellite providers. Based on this, URCA considered it unlikely that consumers would switch away from CBL.
- CBL's current strategy of tying its broadband packages to the purchase of a SuperBasic or digital package, and the relatively low incremental price of the broadband once the consumer has subscribed to a pay TV service, resulted in URCA considering it unlikely that a significant number of subscribers would switch to an alternative, if one existed.

Is it susceptible to *ex ante* regulation?

- Barriers to entry are high as a new entrant would require its own platform for transmission of pay TV services or be able to successfully negotiate access to CBL's.
- Emerging competition is too uncertain; at this stage of IPSI's development URCA has insufficient information about its product specifications, prices and coverage to determine whether it would be considered a substitute by consumers for CBL's digital packages.
- The main competition problem identified for this product is the barrier to entry for new entrants related to the provision of access to viable access and distribution networks. *Ex post* competition law is not considered to be sufficient to address this issue.

[29] Section 3.1.3 of the Position Paper.

National leased lines

As a preliminary point, URCA addresses a query raised by CBL in its response of 18 December 2009 to the Preliminary Determination. In Appendix 5, point 5.2 of that response, CBL stated that "the imposition of ex ante obligations on [CBL/CCL's] international data transmission services could have a significant impact on the activities of CBL/CCL's affiliates in the USA which will also have repercussions in The Bahamas".

URCA is bound by the laws of The Bahamas and extra-jurisdictional repercussions cannot determine the way in which URCA makes its decisions. URCA's analysis of whether a service should remain in a high level SMP market is an objective exercise. In order to be helpful, however, URCA checked the position with US Counsel and it is URCA's understanding that the impact of including leased lines within a high level SMP market would have possibly been significant if URCA had intended to impose a requirement on CBL akin to the publication of a RAIO for leased lines.

As the Position Paper explained, it was not URCA’s intention to impose a RAIO obligation on retail and wholesale national or international leased lines. URCA will respond to requests where necessary to ensure that the position of all operators in The Bahamas is properly understood by foreign regulators.

Retail national leased lines

As stated in the Position Paper and CBL Preliminary Determination[30], URCA found that retail national leased lines should remain in the high level SMP market and be susceptible to *ex ante* regulation. CBL challenged the inclusion of retail leased lines in the high level SMP market in its response to the Position Paper; however URCA believes its conclusion is valid for the following reasons:

Should it remain in the high level SMP market?

- URCA found that the alternatives available for CBL’s leased lines, from SRG and BTC, would not result in effective competition.
- URCA has concerns that provision of leased lines from CBL and BTC would not provide long-term effective competition, given that CBL and BTC are the only two operators with extensive networks and that they both have vertically integrated networks and service provision. These concerns arise from evidence from other markets where the existence of two vertically integrated providers does not result in price levels achieved in countries with more than two providers.

Is it susceptible to *ex ante* regulation?

- Barriers to entry are high as a new entrant would require its own network, which would represent a considerable investment both in terms of cost and time, or be able to successfully negotiate access to either CBL’s or BTC’s.
- Emerging competition is too uncertain; at this stage of IPSI’s development URCA has insufficient information about its product specifications, prices and coverage to determine whether it would be considered as a substitute by consumers for CBL’s leased lines.
- *Ex post* competition law is not considered to be sufficient to tackle an abuse of CBL’s SMP position. Precedents indicate that access to infrastructure controlled by another provider is best achieved by recourse to regulation.

[30] Section 3.1.4 of the Position Paper and Section 6.2 of the CBL Preliminary Determination.

Broadband internet access

As stated in URCA's Position Paper and the CBL Preliminary Determination[31], URCA found that broadband internet access should remain in the high level SMP market and be susceptible to *ex ante* regulation for the following reasons:

Should it remain in the high level SMP market?

- CBL's current strategy of tying its broadband packages to the purchase of either SuperBasic or digital packages, and the relatively low incremental price of the broadband once the consumer has subscribed to a pay TV service, resulted in URCA considering it unlikely that a significant number of subscribers would switch to an alternative broadband provider.
- Even if CBL were to untie the products URCA has concerns that the resulting competition would not be sufficient to serve consumer interests; BTC and CBL own the only two infrastructures currently able to deliver broadband services to large parts of The Bahamas. A new entrant would either have to invest in a new network or negotiate access to one of these networks.
- BTC has made changes to its AutoSpeed and CruiseSpeed products resulting in their characteristics moving closer to those of CBL's products. However, due to CBL's practise of tying broadband packages to pay TV, URCA considers it unlikely that a significant number of subscribers would switch. Additionally, some of CBL's products have download limits as compared to BTC's unlimited offers, which reduce URCA's ability to compare these products directly.

Is it susceptible to *ex ante* regulation?

- Barriers to entry are high as a new entrant would require its own platform to allow for provision of broadband services or be able to successfully negotiate access to CBL's or BTC's.
- Emerging competition is too uncertain; there is potentially a new operator, IPSI, but at this stage of IPSI's development URCA has insufficient information about its product specifications, prices and coverage to determine whether it could be considered an effective substitute within the 12-24 month period that the interim SMP process relates to.
- *Ex post* competition law is not considered to be sufficient to tackle an abuse of CBL's SMP position. Precedents indicate that access to infrastructure controlled by another provider is best achieved by recourse to regulation (rather than the application of competition law).[32]

Access to the broadband network and services and Access to the transmission network

As stated in the CBL Preliminary Determination and the Position Paper[33], URCA found that access to the broadband network and services and access to the transmission network should remain in the high level SMP market and be susceptible to *ex ante* regulation.

Should it remain in the high level SMP market?

- Whilst BTC may offer limited demand-side substitutability, URCA does not believe that this would result in long term effective competition in the market for access,

[31] Section 3.1.1 of the Position Paper and Section 6.1 of the CBL Preliminary Determination.
[32] Section 6.1.3.3 of the CBL Preliminary Determination.
[33] Section 8.1 of the CBL Preliminary Determination and Section 3.1.6 of the Position Paper.

given that CBL and BTC are the only two operators with extensive networks and that they both have vertically integrated networks and service provision.

Is it susceptible to *ex ante* regulation?

- Of key concern to URCA was that, at present, broadband services in The Bahamas are provided by only two network and service providers and that new entrants may face substantial market entry barriers. New entrants would either have to invest in access infrastructure (whether wire-line or wire-less) or gain access to the infrastructure of one of the current infrastructure providers. Based on international experience, it is unlikely that SMP operators would offer access to new entrants voluntarily.
- Emerging competition is considered unlikely given the high barriers to entry discussed above.
- The main competition problem identified for this product is the barrier to entry for new entrants who require access to viable access and distribution networks. *Ex post* competition law is not considered to be sufficient to address this issue; there is little international precedent for broadband providers offering access to their broadband networks and services absent of regulation.

<u>Wholesale national leased lines</u>

As stated in the Position Paper and CBL Preliminary Determination[34], URCA found that wholesale national leased lines should remain in the high level SMP market and be susceptible to *ex ante* regulation. CBL challenged the inclusion of wholesale national leased lines in the high level SMP market in its response to the Position Paper, however URCA believes its conclusion is valid for the following reasons:

Should it remain in the high level SMP market?

- URCA found that the alternatives available for CBL's leased lines, from SRG and BTC, would not result in effective competition. SRG has a very limited presence in the market and does not own its own infrastructure.
- URCA has concerns that provision of leased lines from CBL and BTC would not provide long-term effective competition, given that CBL and BTC are the only two operators with extensive networks and that they both have vertically integrated networks and service provision. These concerns arise from evidence from other markets where the existence of two vertically integrated providers does not result in price levels achieved in countries with more than two providers.

Is it susceptible to *ex ante* regulation?

- Barriers to entry are high as a new entrant would require its own network, which would represent a considerable investment both in terms of cost and time, or be able to successfully negotiate access to either CBL's or BTC's to allow for resale.
- Emerging competition is too uncertain; at this stage of IPSI's development URCA has insufficient information about its product specifications, prices and coverage to determine whether it would be considered as a substitute by consumers for CBL's leased lines.
- *Ex post* competition law is not considered to be sufficient to tackle an abuse of CBL's SMP position. Precedents indicate that access to infrastructure controlled by another provider is best achieved by recourse to regulation.

[34] Section 3.1.5 of the Position Paper and Section 8.3 of the CBL Preliminary Determination.

The Bahamas Telecommunications Company Limited

URCA found that the following BTC products should be included in the high level SMP markets:

- Fixed telephony access and local calling
- Domestic long distance calling, domestic fixed calls to rated numbers and international long distance fixed calling
- Broadband internet access in specified areas
- Retail national leased lines
- Mobile access, local mobile calling, domestic long distance mobile calling and international long distance mobile calling
- Mobile data services
- Incoming international calls to mobile customers
- Call transit (domestic, international and mobile), call termination services and wholesale customer entry to the directory enquiries database and ancillary services (call termination and service provision)
- Wholesale national leased lines
- Access to the broadband network and services & Access to the transmission network

In the Position Paper, URCA also considered retail and wholesale international leased lines to be part of the high level SMP market; however for the reasons set out in Section 2, these have subsequently been removed from the SMP market.

<u>Fixed telephony access and local calling</u>

As stated in URCA's Position Paper and the BTC Preliminary Determination[35], URCA found that fixed telephony access and local calling should remain in the high level SMP market and be susceptible to *ex ante* regulation for the following reasons:

Should it remain in the high level SMP market?

- URCA found that there are unlikely to be any demand- or supply-side substitutes which would result in effective competition in the time frame considered. This included consideration of SRG's fixed access product (only available for business customers), BTC's mobile services and VoI services. These and other alternative products were not considered to be effective substitutes as they did not demonstrate sufficiently similar characteristics.
- Business and residential customers should remain in the high level SMP market and be considered together as the same product based on the data provided to URCA to date.

Is it susceptible to *ex ante* regulation?

- Barriers to entry are high as a new entrant would require its own local access network, or be able to successfully negotiate access to BTC's, in order to provide competing services.
- Emerging competition from SRG and potentially CBL is too uncertain in the time frame considered.
- *Ex post* competition law is not considered to be sufficient to tackle an abuse of BTC's SMP position. Precedents indicate that access to infrastructure controlled by

35 Section 3.2.1 of the Position Paper and Section 6.1 of the BTC Preliminary Determination.

another provider is best achieved by recourse to regulation (rather than the application of competition law).[36]

Domestic long distance calling, domestic fixed calls to rated numbers and international long distance fixed calling

As stated in URCA's Position Paper and the BTC Preliminary Determination[37], URCA has found that domestic long distance calling, domestic fixed calls to rated numbers and international long distance fixed calling should remain in the high level SMP market and be susceptible to *ex ante* regulation for the following reasons:

Should it remain in the high level SMP market?

- URCA found that there are unlikely to be any demand- or supply-side substitutes which would result in effective competition in the time frame considered. This includes URCA's considerations regarding the extent to which VoI and mobile services can be considered as substitutes for fixed voice services.
- URCA maintains that the quality of VoI services is not comparable to that of a fixed service. URCA believes that any evidence of customers switching away from fixed services in favour of VoI services could be an example of the cellophane fallacy, where customers accept a lower quality service because the price differential is so substantial. Based on information provided by the Department of Statistics, in 2009 only 51% of Bahamians had access to the internet, which means that nearly 50% of the population would be unable to subscribe to a VoI service.
- URCA maintains that the quality of mobile services is not comparable to that of a fixed service. URCA accepts that for a low usage mobile customer, a prepaid service may be cheaper than a fixed service. However, there is very little evidence of regulators actually determining that fixed and mobile services should be part of the same market, and hence substitutes, even in markets where liberalisation and competitive markets have been operating for a long time.
- Business and residential customers should remain in the high level SMP market and be considered together as the same product based on the data provided to URCA to date.

Is it susceptible to *ex ante* regulation?

- Barriers to entry are high as a new entrant would require its own local access network, or be able to successfully negotiate access to BTC's, in order to provide competing services.
- Emerging competition from SRG and potentially CBL is too uncertain in the time frame considered.
- *Ex post* competition law is not considered to be sufficient to tackle an abuse of BTC's SMP position. Precedents indicate that access to infrastructure controlled by another provider is best achieved by recourse to regulation (rather than the application of competition law).[38]

Further considerations for ILD fixed calling

Please reference Section 2 of this document for URCA's considerations of the impact of wholesale international leased lines being removed from the SMP market and ILD fixed calling.

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[36] Section 6.1.3.3 of the BTC Preliminary Determination.
37 Section 3.2.2 of the Position Paper and Section 6.2 of the BTC Preliminary Determination.
[38] Section 6.2.4.3 of the BTC Preliminary Determination.

Broadband internet access in specified areas[39]

As stated in URCA's Position Paper and the BTC Preliminary Determination[40], URCA found that broadband internet access to specified areas should remain in the high level SMP market and be susceptible to *ex ante* regulation for the following reasons:

Should it remain in the high level SMP market?

- The areas where only BTC has coverage tend to consist of smaller communities; these are less likely to be attractive to new entrants as they are unlikely to be as economically viable as the more populated islands. Consequently URCA believes that it is very unlikely that there will be any demand-side competition in these areas and hence no effective substitutes for BTC's broadband products.
- In the areas where only BTC have coverage it has 100% of the market share.

Is it susceptible to *ex ante* regulation?

- Barriers to entry are high as the infrastructure investment required to provide broadband internet services is very large, particularly in the more outlying areas. The alternative is to negotiate access to BTC's network which URCA believes is unlikely to occur without *ex ante* regulation.
- Emerging competition is too uncertain; at this stage of IPSI's development URCA has insufficient information about its product specifications, prices and coverage to determine whether it would be considered as a substitute by consumers for BTC's broadband packages.
- *Ex post* competition law is not considered to be sufficient to tackle an abuse of BTC's SMP position. Precedents indicate that access to infrastructure controlled by another provider is best achieved by recourse to regulation (rather than the application of competition law).[41]

Retail national leased lines

As stated in the Position Paper and BTC Preliminary Determination[42], URCA found that retail national leased lines should remain in the high level SMP market and be susceptible to *ex ante* regulation. BTC challenged the inclusion of retail leased lines in the high level SMP market in its response to the Position Paper; however URCA believes its conclusion is valid for the following reasons:

Should it remain in the high level SMP market?

- URCA found that the alternatives available for BTC's leased lines, from SRG and CBL, would not result in effective competition.
- URCA has concerns that provision of leased lines from BTC and CBL would not provide long-term effective competition, given that BTC and CBL are the only two operators with extensive networks and that they both have vertically integrated network and service provision. These concerns arise from evidence from other markets where the existence of two vertically integrated providers does not result in price levels achieved in countries with more than two providers.

Is it susceptible to *ex ante* regulation?

[39] Areas which are not covered by CBL's network.
[40] Section 3.2.3 of the Position Paper and Section 6.5.3 of the BTC Preliminary Determination.
[41] Section 6.5.3.3 of the BTC Preliminary Determination.
[42] Section 3.2.4 of the Position Paper and Section 6.6 of the BTC Preliminary Determination.

- Barriers to entry are high as a new entrant would require its own network, which would represent a considerable investment both in terms of cost and time, or be able to successfully negotiate access to either BTC's or CBL's.
- Emerging competition is too uncertain; at this stage of IPSI's development URCA has insufficient information about its product specifications, prices and coverage to determine whether it would be considered as a substitute by consumers for BTC's leased lines.
- *Ex post* competition law is not considered to be sufficient to tackle an abuse of BTC's SMP position. Precedents indicate that access to infrastructure controlled by another provider is best achieved by recourse to regulation.

<u>Mobile access, local mobile calling, domestic long distance mobile calling, international long distance mobile calling and mobile data services</u>

As stated in the BTC Preliminary Determination and the Position Paper[43], URCA found that mobile access, local mobile calling, domestic long distance mobile calling and international long distance mobile calling should remain in the high level SMP market and be susceptible to *ex ante* regulation for the following reasons:

Should it remain in the high level SMP market?

- URCA found that there are unlikely to be any demand- or supply-side substitutes which would result in effective competition in the time frame considered. URCA did not identify any alternative products (including BTC or SRG's fixed access services, VoI services or payphones) which consumers would find to be substitutable for BTC's mobile voice services in terms of mobility and price packages available (pre and post paid).

Is it susceptible to *ex ante* regulation?

- Barriers to entry are very high due to the exclusivity that has been granted to BTC for the provision of mobile services.
- Emerging competition is very unlikely in the time period under consideration as BTC has exclusivity in the mobile market for 24 months following the sale of BTC to a private investor.
- *Ex post* competition law, by definition, will not be sufficient to tackle an abuse of BTC's SMP position. Due to BTC's exclusivity, it would be insufficient for URCA to rely on *ex post* competition law as BTC will not face any competitive constraints.

<u>Fixed call transit (domestic, international and mobile)</u>

As stated in the BTC Preliminary Determination[44], URCA found that call transit (domestic, international and mobile) should remain in the high level SMP market and susceptible to *ex ante* regulation for the following reasons:

Should it remain in the high level SMP market?

- URCA found that there are unlikely to be any demand- or supply-side substitutes which would result in effective competition in the time frame considered for any of the services. The only viable alternative provider identified is CBL; however URCA has concerns over whether it would provide long term effective competition to BTC

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[43] Section 10.1-10.3 of the BTC Preliminary Determination and Section 3.2.5 of the Position Paper.
[44] Section 48.2 of the BTC Preliminary Determination.

given that BTC and CBL are the only operators with extensive networks and vertically integrated network and service provision.

- These concerns arise from evidence from other markets where the existence of two vertically integrated operators does not result in price levels achieved in countries with more than two providers.

Is it susceptible to *ex ante* regulation?

- Barriers to entry are high as the cost of the infrastructure required to allow a new entrant to provide the relevant wholesale services is very large and roll-out is unlikely to be possible in the time frame considered. The alternative would be for a new entrant to negotiate access to BTC's network or database (in relation to wholesale customer entry to the directory enquiries database and ancillary services). URCA believes this is unlikely to be successful without *ex ante* regulatory intervention.
- Provision of these wholesale services has been shown internationally to be enduring bottlenecks. URCA concluded that that there is no emerging competition for these products.
- *Ex post* competition law is not considered to be sufficient to tackle an abuse of BTC's SMP position. In the 12-24 month time frame of this review these services are likely to be important to potential competitors of BTC and would need to be available for the new provider to launch voice services in The Bahamas. URCA considers that it would be unsuitable to rely on *ex post* powers only.

<u>Call termination services</u>

This includes call termination (domestic, local calling and DLD, and mobile), termination of emergency calls to the police, termination of automated ancillary services, termination of calls to freephone numbers, termination of calls to operator assistance facilities and termination of calls to directory enquiries.

As stated in the BTC Preliminary Determination[45], URCA found that call termination services should remain in the high level SMP market and be susceptible to *ex ante* regulation for the following reasons:

Should it remain in the high level SMP market?

- BTC controls the facilities for all these services and has exclusive access to the terminating facility (i.e. the local connection to the called party). Therefore there is no alternative to BTC for these services. It is unlikely that more than one provider could gain simultaneous access to the terminating parties/networks – i.e. it is unusual for consumers to have more than one access provider. In the case of automated ancillary services and operator assistance, BTC controls the actual terminating facilities and therefore it is unlikely to rescind control over the access connections to them.
- URCA concluded that there would be no demand- or supply-side substitution for these services in the time frame considered.

Is it susceptible to *ex ante* regulation?

- Barriers to entry are high as the cost of the infrastructure required to allow a new entrant to provide the relevant wholesale services is very large and roll-out is unlikely to be possible in the time frame considered. The alternative would be for a new entrant to negotiate access to BTC's network or database (in relation to

[45] Section 48.1 of the BTC Preliminary Determination.

wholesale customer entry to the directory enquiries database and ancillary services). URCA believes this is unlikely to be successful without *ex ante* regulatory intervention.

- Termination services have been shown internationally to be inherently enduring bottlenecks and therefore URCA concluded that there is no emergent competition for these products.
- *Ex post* competition law is not considered to be sufficient to tackle an abuse of BTC's SMP position. In the 12-24 month time frame of this review these services are likely to be important to potential competitors of BTC and would need to be available for the new provider to launch voice services in The Bahamas. URCA considers that it would be unsuitable to rely on *ex post* powers only.

Wholesale customer entry to the directory enquiries database[46] and ancillary services (call termination and service provision)

As stated in the BTC Preliminary Determination[47], URCA found that wholesale customer entry to the directory enquiries database and ancillary services (call termination and service provision) should remain in the high level SMP market and be susceptible to *ex ante* regulation for the following reasons:

Should it remain in the high level SMP market?

- URCA found that there are unlikely to be any demand- or supply-side substitutes which would result in effective competition in the time frame considered for any of the services. BTC currently controls the directory enquiries database and therefore no other provider could offer these products.

Is it susceptible to *ex ante* regulation?

- Barriers to entry are high for this product. In order for an alternative provider to provide these products, it would need to gain control of BTC's directory enquiry database. Absent regulation, this is very unlikely to happen as it would not be in BTC's commercial interests. Reproducing the database is also not likely to be a viable option for a potential new entrant.
- There is no emerging competition for this product and URCA considers it unlikely to develop absent *ex ante* regulation.
- *Ex post* competition law is not considered to be sufficient to tackle an abuse of BTC's SMP position.

Wholesale national leased lines

As stated in the Position Paper and BTC Preliminary Determination[48], URCA has found that wholesale national leased lines should remain in the high level SMP market and be susceptible to *ex ante* regulation. BTC challenged the inclusion of wholesale leased lines in the high level SMP market in its response to the Position Paper, however URCA believes its conclusion is valid for the following reasons:

Should it remain in the high level SMP market?

- URCA found that the alternatives available for BTC's leased lines, from SRG and CBL, would not result in effective competition. SRG has a very limited presence in the market and does not own its own infrastructure.

[46] A product which allows non-BTC subscribers to be entered into the directory enquiries database.
[47] Section 48.6 of the BTC Preliminary Determination.
[48] Section 3.2.9 of the Position Paper and Section 48.4 of the BTC Preliminary Determination.

- URCA has concerns that provision of leased lines from BTC and CBL would not provide long-term effective competition, given that BTC and CBL are the only two operators with extensive networks and that they both have vertically integrated network and service provision. These concerns arise from evidence from other markets where the existence of two vertically integrated providers does not result in price levels achieved in countries with more than two providers.

Is it susceptible to *ex ante* regulation?

- Barriers to entry are high as a new entrant would require its own network, which would represent a considerable investment both in terms of cost and time, or be able to successfully negotiate access to either BTC's or CBL's to allow for resale.
- Emerging competition is too uncertain; at this stage of IPSI's development URCA has insufficient information about its product specifications, prices and coverage to determine whether it would be considered as a substitute by consumers for BTC's leased lines.
- *Ex post* competition law is not considered to be sufficient to tackle an abuse of BTC's SMP position. Precedents indicate that access to infrastructure controlled by another provider is best achieved by recourse to regulation.

<u>Access to the broadband network and services & Access to the transmission network</u>

As stated in the BTC Preliminary Determination and the Position Paper[49], URCA found that access to the broadband network and services should remain in the high level SMP market and be susceptible to *ex ante* regulation.

Should it remain in the high level SMP market?

- Whilst CBL may offer demand-side substitutability in the areas where it has coverage, URCA does not believe that this would result in long term effective competition in the market for access, given that BTC and CBL are the only two operators with extensive networks and that they both have vertically integrated network and service provision.

Is it susceptible to *ex ante* regulation?

- Of key concern to URCA was that at present broadband services in The Bahamas are provided by two network and service providers and that new entrants would face substantial market entry barriers. New entrants would either have to invest in access infrastructure (whether wire-line or wire-less) or gain access to the infrastructure of one of the current infrastructure providers. Based on international experience, it is unlikely that SMP operators would offer access to new entrants voluntarily.
- Emerging competition is considered unlikely given the high barriers to entry discussed above.
- The main competition problem identified for this product is the barrier to entry for new entrants related to the provision of access to viable access and distribution networks. Precedents indicate that access to infrastructure controlled by another provider is best achieved by recourse to regulation.

[49] Section 8.1 of the CBL Preliminary Determination and Section 3.1.6 of the Position Paper.

C Ex Ante Obligations

URCA set out in detail its framework for the selection of obligations in the Position Paper. A brief summary of the framework and URCA's approach to ensuring that selected obligations are proportionate can also be found in Appendix A of this paper.

URCA has not repeated the analysis undertaken in the Position Paper here. Accordingly, the Position Paper should be referenced for an assessment of:

- The market failure(s) identified for each product in the high level SMP market,
- The options available to URCA to address the identified market failure(s),
- The impact analysis of each option, underpinned by a consideration of costs and benefits,
- The selection of the preferred obligation.

All products which URCA has found to be part of the high level SMP markets will be subject to the relevant conditions set out in Part G of the operator's licence ("standard SMP obligations"). For all markets this includes the condition of non-discrimination and for retail markets this includes the conditions of requirement to publish charges and terms and conditions and consumer protection.

In addition, both CBL and BTC will be required to comply with an accounting separation requirement. URCA considers that the cost and revenue information obtained under the accounting separation requirement is necessary for it to be able to discharge the functions and duties laid out in the Comms Act and other relevant documents. The accounting separation obligation applies to **all** SMP products and the rest of the SMP operators' businesses. More detailed information on accounting separation can be found in the Position Paper and the Final Accounting Separation and Cost Accounting Guidelines for both BTC and CBL.

For each product where a specific *ex ante* obligation has been identified as being required to mitigate the market failure(s) identified, the guidelines and terms of compliance of that obligation have been explained in the remaining appendices of this paper.

In the following Sections, URCA simply states the market failure(s) identified for each product, the possible obligations considered and the preferred solution selected. The preferred solutions were identified by URCA giving consideration to whether the obligation:

- Met URCA's objectives;
- Effectively addressed the market failure(s) identified; and
- Was considered to be the most efficient and proportionate.

It should be noted that in accordance with the framework set out in the Position Paper, after identification of the market failure(s) the first step for every product was to review the sufficiency of the standard SMP obligations to meet the considerations above. Only if the standard SMP obligations were not found to be sufficient were other obligations considered.

URCA has deviated from the findings in the Position Paper only where URCA has received further information from the operators allowing it to further develop the obligations. The details of such changes can be found in Section 2 of this document.

Cable Bahamas Limited

SuperBasic package

URCA identified the following:

Potential market failure(s) identified	**Possible options considered to address market failure(s)**
Predatory pricing	Standard SMP obligations Retail price regulations – rules based Retail price regulation – price cap (incentive-based) Accounting separation
Excessive pricing	Standard SMP obligations Retail price regulations – rules based Retail price regulation – price cap (incentive-based) Accounting separation

URCA's final decision:

For predatory and excessive pricing – retail price regulation (rules based). URCA's objectives with regards to the SuperBasic product are the protection of consumer interests and prevention of market foreclosure by addressing the potential market failures of predatory pricing or excessive pricing. URCA does not consider that standard SMP obligations and accounting separation requirements are sufficient to address these potential market failures. URCA's review of the options available to address potential instances of predatory or excessive pricing concluded that rules-based retail price regulation was the most efficient and proportionate obligation. More detail on the rules-based retail price regulation to be imposed on CBL can be found in the document: Regulation of Retail Prices for SMP Operators – Rules (ECS 15/2010).

Digital packages

URCA identified the following:

Potential market failure(s) identified	**Possible options considered to address market failure(s)**
Predatory pricing	Standard SMP obligations Accounting separation
Excessive pricing	Standard SMP obligations Accounting separation

URCA's final decision:

For predatory and excessive pricing – reliance on standard SMP obligations. URCA considers that where prospective emerging competition has been identified its objectives should focus on the protection of consumer interests. For digital packages, URCA considers that CBL faces the prospect of emerging competition from BTC – who have the ability to match any pricing initiatives – and potential new entrants. URCA also considers that price regulation of the SuperBasic package may also provide a disincentive for CBL to engage in predatory and excessive pricing.[50] As a result, URCA considers that the option of relying on the standard SMP obligations and the accounting separation requirement is likely to meet URCA's objective of preventing market foreclosure through predatory and excessive pricing. URCA considers that this measure is proportionate and efficient, particularly in light of this being an interim SMP review.

Retail national leased lines

URCA identified the following:

Potential market failure(s) identified	Possible options considered to address market failure(s)
Excessive pricing	Standard SMP obligations Accounting separation

URCA's final decision:

For excessive pricing – reliance on standard SMP obligations. URCA considers that where prospective emerging competition has been identified its objectives should focus on the protection of consumer interests. For retail national leased lines, URCA considers that CBL faces existing competition from BTC and emerging competition from potential new entrants (potentially through access to wholesale national leased lines, as discussed below). As a result, URCA considers that the option of relying on the standard SMP obligations and the accounting separation requirement is likely to meet URCA's objective of protecting consumer interests. URCA considers that this measure is proportionate and efficient, particularly in light of this being an interim SMP review.

Broadband internet access

URCA identified the following:

Potential and actual market failure(s) identified	Possible options considered to address market failure(s)
Predatory pricing (potential)	Standard SMP obligations Accounting separation
Tying (actual)	Standard SMP obligations Untying for all customers Untying for all customers (on demand) Untying for new customers only Accounting separation

URCA's final decision:

For predatory pricing – reliance on standard SMP obligations. UCRA considers that where prospective competition has been identified, its objectives should focus on the protection of consumer interests. For broadband internet access, URCA considers that CBL faces the prospect of emerging competition from BTC – who have the ability to match any pricing

[50] The price regulation of SuperBasic may provide disincentive for CBL to engage in predatory pricing as it would effectively be acting predatorily against its own product, which would not be a profit-maximising strategy. For excessive pricing, it may not be in CBL's interest to increase the prices for digital packages materially above the regulated price of the SuperBasic package, assuming that CBL would prefer to migrate as many of its customers from SuperBasic over to digital packages.

initiatives – and potential new entrants. As a result, URCA considers that the option of relying on the standard SMP obligations and the accounting separation requirement is likely to meet URCA's objective of preventing market foreclosure through predatory pricing. URCA considers that this measure is proportionate and efficient, particularly in light of this being an interim SMP review.

For tying – untying of services. URCA's assessment is that consumer welfare is likely to be maximised if untying is implemented for all customers rather than just on demand. URCA has decided to impose an obligation on CBL to implement untying for all customers with the technical specifics of complying with this obligation to be determined by CBL.

<u>Access to the broadband network and services & Access to the transmission network</u>
As noted in the Position Paper access to the broadband network and services is supported by access to the transmission network.

URCA identified the following:

Potential market failure(s) identified	**Possible options considered to address market failure(s)**
Refusal to deal and/or denial of access	Standard SMP obligations Accounting separation

URCA's final decision:

For refusal to deal and/or denial of access – reliance on standard SMP obligations. URCA's predominant objectives in the wholesale market are to prevent foreclosure of the market through "enduring bottlenecks", such as the cost of replicating an SMP operator's network, and to promote sustainable competition in the corresponding retail markets. URCA believes that these objectives will be met through a resale obligation.

URCA considers that the resale obligation has a lower risk associated with it than commercial negotiation in terms of the potential for disputes and delays, and lower costs associated with the more onerous obligations of access to the broadband network and services and access to the transmission network through a RAIO.

URCA would like to reiterate that this is an interim market review and that the markets will be monitored for developments in competition going forward. One of the main objectives of ensuring access to the broadband network and services is to promote sustainable competition in the corresponding retail markets. If, at a later date, a review of the market demonstrates that the wholesale obligation has met this objective, the need for regulation in the corresponding retail market will be reviewed.

<u>Wholesale national leased lines</u>

URCA identified the following:

Potential market failure(s) identified	**Possible options considered to address market failure(s)**
Refusal to deal and/or denial of access	Standard SMP obligations Accounting separation

URCA's final decision:

For refusal to deal and/or denial of access – reliance on standard SMP obligations. URCA's predominant objectives in the wholesale market are to prevent foreclosure of the market through "enduring bottlenecks", such as the cost of replicating an SMP operator's network, and to promote sustainable competition in the corresponding retail markets.

For wholesale national leased lines, URCA has identified the prospect of emerging competition from new entrants and some limited competition from BTC. Given this market structure, URCA considers that the option of relying on the basic SMP obligations (in particular, the standard non-discrimination obligation) is likely to be sufficient to meet URCA's objectives of preventing market foreclosure through any refusal to deal and/or denial of access. URCA considers that this measure is proportionate and efficient, particularly in light of this being an interim SMP review and when compared to the other options that could be imposed to address the market failure identified.

The Bahamas Telecommunications Company Limited

Fixed telephony access and local calling

URCA identified the following:

Potential market failure(s) identified	Possible options considered to address market failure(s)
Predatory pricing	Standard SMP obligations Retail price regulations – rules based Retail price regulation – price cap (incentive-based) Accounting separation
Excessive pricing	Standard SMP obligations Retail price regulations – rules based Retail price regulation – price cap (incentive-based) Accounting separation

URCA's final decision:

For predatory and excessive pricing – retail price regulation (rules based). URCA's objectives with regards to fixed telephony access and local calling are the protection of consumer interests and prevention of market foreclosure by addressing the potential market failures of predatory pricing or excessive pricing. URCA does not consider that standard SMP obligations and accounting separation requirements are sufficient to address these potential market failures. URCA's review of the options available to address potential instances of predatory or excessive pricing concluded that rules-based retail price regulation was the most efficient and proportionate obligation. More detail on the rules-based retail price regulation to be imposed on BTC can be found in the document: Regulation of Retail Prices for SMP Operators – Rules (ECS 15/2010).

Domestic long distance calling, domestic fixed calls to rated numbers and international long distance fixed calling

URCA identified the following:

Potential market failure(s) identified	Possible options considered to address market failure(s)
Predatory pricing	Standard SMP obligations Retail price regulations – rules based Retail price regulation – price cap (incentive-based)

	Accounting separation

URCA's final decision:

For predatory pricing – retail price regulation (rules based). URCA's objectives with regards to DLD and ILD calling are the protection of consumer interests and the prevention of market foreclosure by addressing the potential market failure of predatory pricing. URCA does not consider that standard SMP obligations and accounting separation requirements are sufficient to address these potential market failures. URCA's review of the options available to address potential instances of predatory pricing concluded that rules-based retail price regulation was the most efficient and proportionate obligation. More detail on the rules-based retail price regulation to be imposed on BTC can be found in the document: Regulation of Retail Prices for SMP Operators – Rules (ECS 15/2010).

Broadband internet access in specified areas

URCA identified the following for broadband internet access in specified areas[51]:

Potential market failure(s) identified	Possible options considered to address market failure(s)
Excessive pricing	Standard SMP obligations National geographic averaging of prices Retail price regulation – rules-based Retail price regulation – price cap (incentive-based) Accounting separation

URCA's final decision:

For excessive pricing – national geographic averaging of prices. URCA's concern for BTC's broadband access in specified areas is that BTC could employ excessive pricing in those areas only, while acting competitively in the remaining areas where there is emerging competition. URCA's review of the options available to prevent potential instances of excessive pricing in specified areas concluded that an obligation for national geographic averaging of prices was the most efficient and proportionate obligation.

Retail national leased lines

URCA identified the following:

Potential market failure(s) identified	Possible options considered to address market failure(s)
Excessive pricing	Standard SMP obligations Accounting separation

URCA's final decision:

For excessive pricing – reliance on standard SMP obligations. URCA considers that where prospective emerging competition has been identified its objectives should focus on the protection of consumer interests. For retail national leased lines, URCA considers that BTC

[51] Areas which are not covered by CBL's network. Broadband internet in specified areas is the SMP product as defined above as belonging in the high level SMP market, the obligation for national geographic averaging of prices applies in the areas where BTC has SMP - the nature of the obligation means that it will apply everywhere (i.e., BTC must apply the same prices that it charges in specified areas in those areas in which it faces competition).

faces the prospect of emerging competition from CBL and potential new entrants (potentially through access to wholesale national leased lines, as discussed below). As a result, URCA considers that the option of relying on the standard SMP obligations and the accounting separation requirement is likely to meet URCA's objective of protecting consumer interests. URCA considers that this measure is proportionate and efficient, particularly in light of this being an interim SMP review.

<u>Mobile access, local mobile calling, domestic long distance mobile calling, international long distance mobile calling and mobile data services</u>

URCA identified the following:

Potential market failure(s) identified	Possible options considered to address market failure(s)
Excessive pricing	Standard SMP obligations Retail price regulation – rules based Retail price regulation – price cap (incentive based) Accounting separation

URCA's final decision:
For excessive pricing – retail price regulation (rules-based). URCA's objective with regards to mobile voice and data services is the protection of consumer interests by addressing the potential market failure of excessive pricing. There is no prospect of emerging competition in this market due to BTC's exclusivity period.[52] URCA does not consider that standard SMP obligations and accounting separation requirements are sufficient to address this potential market failure. URCA's review of the options available to address potential instances of excessive pricing concluded that rules-based retail price regulation was the most efficient and proportionate obligation.

<u>Incoming international calls to mobile customers</u>

URCA identified the following:

Potential market failure(s) identified	Possible options considered to address market failure(s)
Excessive pricing	Standard SMP obligations Specific one-off retail price adjustment. Retail price regulation – rules-based Retail price regulation – price cap (incentive-based) Accounting separation

URCA's final decision:

For excessive pricing – specific one-off retail price adjustment. URCA's review of incoming international calls to mobile customers focused only on the activities of BTC in The Bahamas; it did not include any relationships that BTC may have with organisations outside The Bahamas or services offered to operators or customers based outside The Bahamas. For incoming international calls to mobile customers, URCA's objective is the protection of consumer interests through preventing any potential instances of excessive pricing. As this

[52] The exclusivity period is specified in s.114 of the Comms Act as lasting up to two years from the commencement of the Comms Act. The Government has stated in the Sector Policy that it intends to amend the Comms Act so that the exclusivity period can last up to two years following the sale of the majority stake in BTC.

market failure appears to be one of pricing structure rather than pricing levels[53], URCA concluded that the most efficient and proportionate obligation would be a requirement for a one-off change to BTC's pricing structure. This will effectively involve BTC abandoning the retail charging for incoming international calls to mobiles and can be implemented through a simple adjustment to BTC's billing system.

Call transit (domestic, international and mobile), call termination services and wholesale customer entry to the directory enquiries database[54] and ancillary services (call termination and service provision)

URCA identified the following:

Potential market failure(s) identified	**Possible options considered to address market failure(s)**
Refusal to deal and/or denial of access	Standard SMP obligations Commercial offering Resale obligation • Cost orientation • Retail minus pricing • Benchmarking RAIO • Cost orientation • Benchmarking Accounting separation

URCA's final decision:

For refusal to deal and/or denial of access – RAIO (cost orientated). URCA's predominant objectives in the wholesale market are to prevent foreclosure of the market through "enduring bottlenecks", such as the cost of replicating an SMP operator's network, and to promote sustainable competition in the corresponding retail markets. For this market, URCA is concerned about the potential for market foreclosure through any refusal to deal and/or denial of access. This is based on the fact that BTC controls the only pan-Bahamas switched network, controls access to its directly connected customers and also controls the country's only directory enquiry database and service provision. URCA's assessment of the options available to address the potential for any refusal to deal and/or denial of access concluded that the most efficient and proportionate obligation is the development and publication of a RAIO document.

Wholesale national leased lines

URCA identified the following:

Potential market failure(s) identified	**Possible options considered to address market failure(s)**
Refusal to deal and/or denial of access	Standard SMP obligations Accounting separation

URCA's final decision:

[53] BTC's current practice is to charge retail customers to receive calls for which BTC has already received a wholesale payment from an international operator.
[54] A product which allows non-BTC subscribers to be entered into the directory enquiries database.

For refusal to deal and/or denial of access – reliance on standard SMP obligations. URCA's predominant objectives in the wholesale market are to prevent foreclosure of the market through "enduring bottlenecks", such as the cost of replicating an SMP operator's network, and to promote sustainable competition in the corresponding retail markets.

For wholesale national leased lines, URCA has identified the prospect of emerging competition from new entrants and some limited competition from CBL. Given this market structure, URCA considers that the option of relying on the basic SMP obligations (in particular, the standard non-discrimination obligation) is likely to be sufficient to meet URCA's objectives of preventing market foreclosure through any refusal to deal and/or denial of access. URCA considers that this measure is proportionate and efficient, particularly in light of this being an interim SMP review and when compared to the other options that could be imposed to address the market failure identified.

<u>Access to the broadband network and services & Access to the transmission network</u>

As noted in the Position Paper access to the broadband network and services is supported by access to transmission network.

URCA identified the following:

Potential market failure(s) identified	**Possible options considered to address market failure(s)**
Refusal to deal and/or denial of access	Standard SMP obligations Accounting separation

URCA's final decision:

For refusal to deal and/or denial of access – reliance on standard SMP obligations. URCA's predominant objectives in the wholesale market are to prevent foreclosure of the market through "enduring bottlenecks", such as the cost of replicating an SMP operator's network, and to promote sustainable competition in the corresponding retail markets. URCA believes that these objectives will be met through a resale obligation.

URCA considers that the resale obligation has a lower risk associated with it than commercial negotiation in terms of the potential for disputes and delays, and lower costs associated with the more onerous obligations of access to the broadband network and services and access to the transmission network through a RAIO.

URCA would like to reiterate that this is an interim market review and that the markets will be monitored for developments in competition going forward. One of the main objectives of ensuring access to the broadband network and services is to promote sustainable competition in the corresponding retail markets. If, at a later date, a review of the market demonstrates that the wholesale obligation has met this objective, the need for regulation in the corresponding retail market will be reviewed.