



Response of The Bahamas Telecommunications
Company Limited

to

**Infrastructure Sharing Regulations Issued
by The Utilities Regulation and Competition
Authority**

Consultation Document ECS 17/2014

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**Legal & Regulatory Division
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1. EXECUTIVE SUMMARY

The Bahamas Telecommunications Company Limited (BTC) welcomes the opportunity to respond to Consultation Document on Infrastructure Sharing Regulations (ECS 17/2014) issued by the Utilities Regulation and Competition Authority (URCA). BTC generally supports the principles which URCA has espoused in its Annual Plan for 2014, to advance the development of competition for the Bahamas' Electronic Communications Sector (ECS) as further evidenced by the consultation document and proposals for the development of the electronic communications sector by encouraging operators to manage the cost of development in the sector through the sharing of passive infrastructure.

The consultation is timely in light of the mobile liberalization process which is now underway. While access to facilities is of import to a new mobile operator is equally so to an incumbent. Further, the significance of access to other facilities for the provision of services outside of the mobile must not be lost in this process. The end product of this process must ultimately be to the benefit of Infrastructure Seeker, Infrastructure Provider and consumers.

BTC would urge URCA to take notice of the inherent need to achieve balance when assessing and crafting regulations on facilities sharing to ensure that both the Infrastructure Provider and Seeker are appropriately accommodated. Though BTC supports the principles of underpinning the concept of infrastructure sharing it strongly encourages URCA to ensure that such principles do not operate so that an operator in the market structures its operation such that it is completely reliant on the infrastructure developed by another. Such a situation would operate to undermine the intent behind liberalization of the telecommunications sector and would not serve the interests of the public of the Bahamas. BTC therefore urges URCA to resist any assumption that parties entering the market do not have the requisite resources and deep enough pockets to develop their

infrastructure and network as players market do have pockets and market power that would allow them to undercut BTC.

While BTC appreciates the benefits of infrastructure sharing, particularly those relating to environmental concerns outlined in this consultation, the model which allows for of facilities sharing, while still require operators to build out their network should prevail. Any operator entering the market should be required to hold closely to obligations to build out its network within the reasonable timeframes established by the Government of The Bahamas and by its licensure. Support for such an approach can be seen across the region.

Development of the electronic communications sector in the Bahamas will require significant investment by operators to provide the systems and networks necessary for the delivery of reliable and robust services. Investment in the construction of mobile infrastructure such as masts, towers and network by an entrant is necessary. Further the establishment of a Main Switching Centre (MSC) would also be necessary to achieve the necessary redundancy and resiliency desired and avoid what URCA in the consultation document has termed “the current challenges in service quality being replicated.” The development and build out of a network by an entrant would also achieve the requisite development of redundant active infrastructure so as “to ensure the availability of a network in the vent of failure or unavailability of another” the necessity of which has been intimated by URCA.

URCA appears to give a nod to parity amongst operators in the Consultation Document. Such a position is critical as any situation in which only one operator is required to grant access to its infrastructure would be detrimental to the development of the electronic communications sector as an operator cannot recoup the cost of infrastructure upkeep and maintenance through charging appropriate mobile termination rates (which should include an element to cover infrastructure investment).

In BTC's view, there is a need clearly designate certain facilities as being exempt from infrastructural access. Included in the category of exceptions would be critical core systems and sites, access to which may have intrusive and disruptive implication for an Facility Provider or negatively impact the quality of service experience being delivered by a Licensee.

In this paper BTC takes the view that in instances where facilities are shared access should be granted at commercially negotiated rates based on the charging principles for access should be based on Fully Allocated Costs (FAC) and in the absence of Fully Allocated Costs, prices should be based on benchmarks.

BTC notes that URCA has indicated the principles which should be applied in the imposition of commercial pricing. URCA should include *inter alia*:

“Price must reflect a reasonable rate of return on capital employed and take into account the investment made by the licensees;

“Price must reflect the true economic cost of assets including a reasonable rate of return;...

“Prices must be impartial/nondiscriminatory. This means that charges for passive infrastructure must be no less favourable than those the seller offers its affiliates or any other licensed operator.”

While the regulations do not appear to be retrospective in nature some view should be taken of the infrastructure sharing arrangements which currently exist amongst operators. Such arrangements which may not necessarily satisfy all of the requirements established should be exempt from application of the

regulations. Operators should be allowed to meet the obligations established under such contracts, whether or not they strictly embody the principles outlined at page 11 of the Consultation document. To do otherwise would create uncertainty.

3. BTC's RESPONSE TO URCA's QUESTIONS

3.1 Consultation Question 1

(a) Do you agree with the list at Part 2.3 of the types of facilities that may be shared? If not, please give reasons for your position.

BTC's Response

BTC is of the view that an Infrastructure Seeker should be excluded from access of the following infrastructure of the Infrastructure Provider:-

- i. Rooftop space and building risers should be subjected to a mutual agreement and/or leasing contracts between the Infrastructure Seeker and the Infrastructure Provider.
- ii. Antennae- due to its passive characteristics
- iii. Poles – as a general communications practice
- iv. Trenches and ducts – since live sites will be at risk, it is preferred that tenants make other arrangements.
- v. Rooftop space and ground space for tower sites – should be defined by the leasing contracts, which have been mutually agreed to by both the Infrastructure Seeker and Provider.
- vi. Power and Air Conditions – Capacities are designed to specifications to accommodate and facilitate infrastructural equipment requirements for that site of the Infrastructure Provider.

However, for items (viii) through (ix), BTC is requesting further details as to what is meant by the phrase, “.....*other physical installations uses for support....*”, and ‘*any services necessary to the service and incidental to the building....*’.

The provisions appear to act as a “catch all”. The creation of these categories has the potential to create uncertainty as to what is covered under such provisions. There should be certainty of scope and impact of the regulations. Accordingly, it is advised that URCA define more closely what these opinions are intended to cover.

BTC reserves comment on items viii – ix as the scope and nature of the references are unclear.

b) Do you agree with the proposed factors to be taken into account by URCA, at Part 2.7 in considering to issue a direction for a license to share facilities with other licensees? Should you disagree, kindly provide a detailed explanation for your views and suggest additions or alternative factors.

BTC's Response

BTC is fundamentally in support of the proposed factors taken into account by URCA at Part 2.7. In addition, it is imperative that consideration be taken of special contractual arrangements with customers particularly business and enterprise customers who require specialized contracts and equipment for the provision of services, where these bespoke contracts include equipment which may ordinarily form part of a public network. In such instances the arrangements should override the scope and reach of infrastructure sharing regulation. Such arrangement should be considered private networks and not part of BTC's infrastructure. Such an approach would ensure the maintenance of the integrity of such contractual arrangements and the delivery of premium service to customers.

In addition, BTC would also suggest that the cost, time and inconvenience to the Infrastructure Provider with regard to any work required to the infrastructure for an Infrastructure Seeker or Licensee be considered by URCA. Core locations, backbone sites and sensitive sites should exempt from facilities sharing requirements.

c) Do you agree with the timeline at Part 2.11 for a license that owns or controls any electronic communications towers to submit a complete inventory of its facilities to URCA?

BTC's Response

BTC is not in agreement with the proposed timeline at Part 2.11 for a licensee that owns or controls any electronic communication tower to submit a complete inventory of its facilities to URCA within the proposed timeline.

While licensees in the ordinary course of business would maintain information of facilities, any proposal for infrastructure sharing would require a comprehensive audit of all facilities to determine state of the source and the capacity for shared access. URCA would recognize that in some cases operators would have aging plants. Consequently, the capacity and safety would be of concern with a legacy plant. In the circumstances a 30 day limitation is aggressive and could lead to a process fraught with challenges. BTC is of the view that a Licensee should be required between six (6) to nine (9) months to provide the data for a comprehensive list of sites to be produced given the complexity of BTC's infrastructure (and those of other operators) throughout the islands, the large number sites and the geographical distribution of infrastructure throughout the islands.

(d) Should any other provisions be included in Part 2 of the draft Regulations or any removed?

BTC's Response

A primary consideration for Operators and Regulators is sustained quality of service and customer centrality. Operators and Regulators must consider the following factors¹ advancement of a passive management:

- (i) Load bearing capacity of towers
- (ii) Azimuth angle of different services providers
- (iii) Tilt of the antenna
- (iv) Height of the antenna

The GSMA reports that, “passive infrastructure sharing requires the consideration of many technical, practical and logical factors, although the principle is simple in theory. Any potential impact must be assessed and fully understood before sharing, commences to ensure that there are no adverse effects on the operation of the site and the supporting network equipment and systems.”

Additionally, the consumption of power by the operators utilized within an infrastructural sharing arrangement, mandates continuous or sustained power 24/7, 365 days a year,² to maintain and meet the fundamental quality of service demands.

While generally infrastructure sharing should be mandated there are certain instances and facilities which should be exempt, specifically those forming:

- (i) core locations
- (ii) backbone, and

¹ Mobile Infrastructure Sharing- GSMA,

² Power Consumption (6.2) – GSMA,

- (iii) sensitive sites.

Core systems rooms should not be shared and should be exclusive to the Infrastructure Provider. It is BTC's considered view that the Infrastructure Seeker should position itself to provide its own containerized solutions, when engaging the Infrastructure Provider.

3.2 Consultation Question 2

a) Do you agree with the information at Part 3.2 that must be included in an in an Access Request? If not, kindly explain.

BTC's Response

BTC is in agreement with Part 3.2 of the proposed regulations which outlines the details of the proposed Access Request. However, the regulations should also provide that the Infrastructure Seeker must clearly specify the purpose for which the access is required, as a separate line item. This is essential to engender transparency and assist in the preliminary assessment processes.

BTC is also of the view that the power supply requirement and general technical specifications should be added to the 3.2 itemized listings in addition to the individuals working on the site.

(b) Do you agree with the timeline at Part 3.7 for an infrastructure provider to conclude an Access Agreement? If you disagree, please give reasons for your position.

BTC's Response

BTC is not in agreement with the timeline for an Infrastructure Provider to conclude an Access Agreement, within forty-two (42) days of receipt of the

Access request set out at Part 3.7, because of the litany of technical processes involved in the assessment, analysis and consolidation of the informational data (i.e. technical analysis and RFQ etc.). BTC's recommendation is that the timeline be set at sixty (60) days as such a timeframe is achievable.

c) Should any other provisions be included in Part 3 of the draft regulations or removed?

BTC's Response

Generally the provisions outlined in Part 3 of the proposed regulations are acceptable however, though some parts thereof are cause for concern. With regard to Part 3.6 which provides that the "Infrastructure Seeker shall as soon as possible comply with a request under Part 3.5 from the Infrastructure Provider for further information," a timeframe for compliance. The regulations appears to indicate that operators may comply "as soon as possible" allow the application of discretion on the part of an operator. There should be some degree of centrality for operators to a request, therefore BTC suggests that within five (5) business days the Infrastructure Seeker should comply for further information.

3.3 Consultation Question 3

BTC is in general agreement with the principle of passive infrastructure sharing. The Company's response to this Public Consultation on the setting of price for infrastructure Sharing is based on passive infrastructure sharing.

a) Do you agree with URCA's proposed costing principles at Part 4.1 for price setting for passive infrastructure sharing? If you disagree, please suggest alternative principles which URCA should consider.

BTC's Response

BTC notes that URCA has proposed the application of the following principles in commercially regulated access:

- i. Charging should serve to promote the efficient use of assets and sustainable competition and maximize benefits for customers;
- ii. Access Charges must reflect a reasonable return on capital employed and take into account the investment made by the Infrastructure Provider;
- iii. Access Charges must only reflect the unbundled components that the Infrastructure Seeker wishes to use. An Infrastructure Provider must unbundle distinct facilities and corresponding charges sufficiently so that the Infrastructure Seeker need only pay for the specific elements required;
- iv. Access Charges must be transparent; and
- v. Access Charges must be impartial, non-discriminatory and must be no less favorable than those the Infrastructure Provider offers its subsidiaries, affiliates partners or any other licensee.

While BTC has no objection to the principles being applied, BTC is of the view that **cost to the infrastructure owner of foregoing or delaying its current [expansion] plans** in determining charges for access³.

In BTC opinion the following should be included as an additional principle as outlined below:

- vi. The cost to the infrastructure provider of foregoing or delaying its expansion plans.***

The experience in Australia may be instructive to this market. The Australian Competition and Consumer Commission (ACCC) points out, in cases where

³ The Australian Competition and Consumer Commission (ACCC)

granting access to facilities prevents the infrastructure owner from using the facility to meet currently forecasted needs, the ACCC will consider the cost to the infrastructure owner of foregoing or delaying its current plans. In determining infrastructure access charges, the opportunity cost to the owner can be added to any modification costs to extend the original access to meet the forecasted needs.⁴ In the case of The Bahamas, there is a cost associated for an Infrastructure Provider of having to expand its facilities to accommodate the Access Seeker and the cost is the opportunity cost of the expansion plans of the Infrastructure Provider.

b) Do you agree with URCA's proposals at Part 4.2 on the price setting methodologies for determining access charges for infrastructure sharing? If you disagree, please suggest an alternative method of cost allocation along with evidence to support the same.

BTC's Response

BTC is in agreement with URCA that the Infrastructure Provider should provide access to its facilities at commercially negotiated rates based on its costs. Further, BTC is of the strongly held view that that the charging principles for access should be based on Fully Allocated Costs (FAC) and in the absence of Fully Allocated Costs, the use of benchmarks. As URCA is fully aware, in some instances there may be challenges in identifying suitable comparators when using benchmarks as a basis to price the cost of access. In cases where BTC can identify suitable comparators for the purpose of benchmarking, BTC should have the latitude to use this approach in the costing for access.

⁴ Economics of Shared Infrastructure Access (Final Report), prepared for Ofcom by CSGM, February 18 2010, page 12 of 94.

c) Should any other provision be included in Part 4 of the draft Regulations or removed?

BTC's Response

In reviewing Part 4.3 of the Consultation Document, URCA's intervention with respect to the provision of data in relation to infrastructure access where charges for such services are based on commercially negotiated rates, terms and conditions should be limited to instances where there is a dispute.

3.4 Consultation Question 4

(a) What are your views on the proposed circumstances whereby an infrastructure provider may deny an Access Request by an Infrastructure Seeker?

BTC's Response:

BTC notes that the Regulator proposed that an Infrastructure Provider may deny an Access Request by an Infrastructure Seeker under Part 5.1(i) and (ii) proposal which appears to be consistent with Trinidad and Tobago's Telecommunications (Access to Facilities) Regulations, 2006.

However, the archipelagic nature of the Bahamas and USO elements should be factored into the equation and ultimately the overall determination.

b) Do you agree with the timeline in Part 5.2 for an infrastructure provider to notify an infrastructure sharer of a denial of an Access Request? If you disagree, kindly suggest an alternative timeframe.

BTC's Response

BTC is not in agreement with the timeframe detailed at Part 5.2 for an Infrastructure Provider to notify an Infrastructure Seeker of a denial of an Access Request, within the proposed fourteen (14) calendar days of receipt of the aforementioned request. BTC is of the view that the timeline is restrictive and should be set at twenty-one (21) working days to allow sufficient time to assess the capacity of the site which access is sought processing of the application details and the appropriate detailed response.

c) Should any other provision be included in Part 5 of the draft regulations or removed?

BTC's Response

BTC is of the view that no other provision be included in Part 5 of the draft regulation or removed.

In addition, reference can be made to Part 5.3 which states in part, "...URCA or any person acting on URCA's behalf may enter the premises to inspect the relevant facilities to determination the reasonableness of the refusal of access", BTC acknowledges the aforementioned proposed requirement, however there should be consistency and/or compliance with Part III – Management of Electronic Communications Section 9 (Powers of Investigations) of the Communications Act 2009.

3.5 Consultation Question 5

a) Do you agree with URCA's proposals for dispute resolution and compliance with the Regulations? If not, kindly give reasons for your position.

BTC's Response

BTC agrees in principal with URCA's proposals for dispute resolution in accordance with URCA ADR scheme issued 31st December, 2014 further to Section 15 Communications Act.

b) Should any other provisions be included in Part 6 if the draft Regulations or removed?

BTC's Response

BTC wish to draw URCA's attention to the following matters:-

Part 6.2 provides for an interim access arrangement while a dispute is being heard. BTC believes that such interim access arrangement should not be an absolute rule and that each dispute be should accessed on its merits to determine whether an interim access arrangement is practicable in the circumstances. Inevitably the dispute would have arisen due to the Infrastructure Provider's failure to provide access and the reasons for such refusal in whole or in part should be considered.

In instances where URCA has determined that an interim access arrangement be established, BTC is of the view that URCA must consider the resulting cost of such sharing and the cost of removal in the event that it is determined by ADR that the Infrastructure Seeker's request has been denied. The issue of damages suffered by the Infrastructure Provider during the period of forced sharing must also be considered.

Part 6.3 speaks to the terms and conditions of the interim access arrangement as "URCA deems appropriate". BTC urges that URCA consider the Infrastructure Provider's reasons for such refusal and consult with the Infrastructure Provider prior to setting out the terms and conditions. The terms and conditions are meant

to remain in force until the dispute is resolved. However, where there is undue delay by a party, other than the Infrastructure Provider, URCA should consider the effect of such delay and make a decision as to whether the terms and conditions are in need of amendment. Where the terms and conditions become less favorable to the Infrastructure Seeker it would encourage the Infrastructure Seeker to act diligently and adhere to the timelines set out in the ADR procedure. Where temporary access is provided on favorable terms to the Infrastructure Seeker, this may encourage delay in effort to enjoy the interim access for an unnecessary period.

Schedule - Commentary

BTC's Response

BTC would also make reference to line item 2 “Guidelines for the Construction of Communication Towers – Submission of Application”, and recommend an augmentation to the listing, which reflects that the Licensee should also submit details of specification for linking or merging the remainder of their network. The specifications should reflect but not limited to the following:-

- i. Frequency link
- ii. Microwave
- iii. Link Transmit Power
- iv. Link Polarization
- v. Microwave Plan

BTC also make reference to line item 4(i) – “Feasibility Analysis for Co-Location” which details the appropriate radii for search areas for the applicant’s determination of possible co-location opportunities, recommends that the search ring be increased to 500m.

CONCLUSION

BTC commends URCA on crafting regulations that are intended to address the expansion of the networks and improve network coverage for mobile and the other areas of business in the electronic communications sector. BTC further commends URCA on the view it has taken that “the sharing of infrastructures should occur between Individual Operating Licensees and/or individual Spectrum Licensees, not just those designated by the Comms Act or by URCA as having SMG.” Such a step would seem to lead to development and progress in the sector.

Consideration should be given to carving out some exceptions to the application of the infrastructure sharing regulations in the interest of protecting operators from risk areas of particular vulnerability such as core systems and facilities.

Reservation of rights

BTC has addressed the issues appearing in the Consultation Document on Infrastructure Sharing Regulations (ECS 17/2-14) but reserves the right to comment further on all issues and states categorically that the decision not to respond to any issue raised in the Consultation Document in whole or in part) does not necessarily indicate agreement in whole or in part with URCA’s positions nor does nay position taken by BTC herein mean a waiver of any of BTC’s rights in any way. BTC expressly reserves all of its rights.

**Legal and Regulatory Division
The Bahamas Telecommunications Company Limited (BTC)
January 30th 2015**