NON-CONFIDENTIAL

Non Confidential Response to

"Infrastructure Sharing Regulations"

ECS 17/2014

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Utilities Regulations and Competition Authority

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By

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Cable Bahamas Ltd Response to Consultation (ECS 17/2014) on "Infrastructure Sharing Regulations"

1. Executive Summary

Cable Bahamas Ltd ("CBL"), together with its affiliates Caribbean Crossings Ltd ("CCL") and Systems Resource Group Limited ("SRG") (collectively, "CBL"), hereby submits its response (the "Response") to Consultation Document ECS 17/2014 (the "Consultation Document"), together with the draft Infrastructure Sharing Regulations (the "Draft Regulations"), which were published by the Utilities Regulation and Competition Authority ("URCA") on December 8, 2014.[1]

Importance of Infrastructure Sharing Regulations for Fair Competition in the Mobile Market

CBL welcomes URCA's proposal insofar as it is aimed at facilitating liberalization of the cellular market in The Bahamas. CBL appreciates the efforts that URCA has expended in seeking expeditiously to address a number of important issues relating to infrastructure sharing ("IS") in light of the imminent selection of a second cellular licensee. Securing reasonable, efficient and non-discriminatory access, where necessary, to the existing towers and other passive infrastructure owned or controlled by the longstanding cellular incumbent, The Bahamas Telecommunications Company, Ltd. ("BTC"), will be critical to the second cellular licensee's ability to deliver top quality competitive mobile services to the citizens of The Bahamas as soon as possible.[2]

As a major provider of video, broadband and fixed voice services in The Bahamas, and as a participant in the tender process for the award of a second cellular licence, CBL has a substantial interest in ensuring the adoption of an efficient and effective regulatory framework for the sharing of passive mobile network infrastructure, where necessary.[3]

[1] CBL is submitting its response without prejudice to its right to challenge, in any subsequent administrative or judicial proceeding, the outcome of this consultation or any defects in the process followed by URCA in preparing the Draft Regulations. As CBL is participating in the process for the award of the second mobile licence, it requests that its response be treated by URCA as confidential.

[2] CBL notes, in this regard, the ambitious roll-out, coverage and quality of service obligations that will apply to the new entrant under the second cellular licence.

[3] CBL has a major interest in the outcome of this proceeding regardless of the outcome of the tender process for the selection of a second cellular licensee in The Bahamas owing to the competitive importance of having a strong and viable alternative to BTC in the mobile space.

Importance of the Ability of the Second Cellular Licensee to Construct its Own Towers

[✂][4] On the four larger islands, however, CBL's own assessment is that there should be few or no legal, environmental or other impediments to the new entrant's ability to construct tower infrastructure where necessary to establish a good quality mobile network. In such circumstances, it is important for URCA to allow market forces to work. As long as the new entrant has the ability to make a build/buy decision in relation to building own-infrastructure or sharing with BTC, it will have negotiating leverage if it elects as the first-best solution to try to reach co-location arrangements with BTC on a commercial basis in some or all areas on the four larger islands.

Allowing the new entrant to construct its own passive RAN infrastructure, instead of becoming dependent on the dominant player in the mobile market, is fully in keeping with Section 5(a) of the Communications Act 2009 (the "Act"), which requires that URCA make policy and regulatory measures with a view to relying on "*market forces* […] *as much as possible as a means of achieving the electronic communications policy objectives*." These policy objectives, which are listed in Section 4 of the Act, cover a wide range of matters including, *inter alia*: promoting investment, encouraging and protecting sustainable competition, limiting adverse impacts on the environment and maintaining public safety.

CBL respectfully disagrees with URCA's preliminary view that "*market forces are unlikely to achieve the electronic communications policy objectives*" as they relate to IS.[5] The Consultation Document does not offer any evidentiary basis for this sweeping assertion, insofar as it has been used by URCA to *require* the new entrant to co-locate its network facilities on BTC's existing RAN infrastructure. Such an outcome would effectively make own-build an option available to the new entrant only in very limited circumstances (and following a potentially long and involved process of forced negotiation with BTC).

Importance of Imposing SMP Access Obligations on BTC in the Mobile Market

CBL *does* agree that there is a pressing need for URCA to define, implement and enforce a new access remedy that should apply to the dominant mobile operator, BTC. This remedy, which has not previously been necessary in light of BTC's monopoly status in the mobile market, would require BTC to provide reasonable, cost-oriented and non-discriminatory access to its passive RAN infrastructure where requested to do so by the new entrant.

It would, however, be discriminatory, disproportionate and anticompetitive for the IS Regulations to force the new entrant (with zero mobile market share) to use BTC's mobile network infrastructure where self-build is a feasible option. That would be tantamount to codifying the substantial and unfair "*first-mover*" advantage that has been accorded by law

[4] [✂]
[5] Consultation Document, page 4.

to BTC as the monopoly cellular provider in The Bahamas for so many years. It would also have the perverse effect of forcing the new entrant to adhere to the incumbent's network topology design, which may not be optimal for the new entrant's network requirements. There would appear to be no statutory basis upon which such a sweeping and draconian obligation could be imposed on a new entrant in line with URCA's powers under the Act.

Overly Broad Scope of the Draft Regulations

CBL is, also concerned that URCA has undertaken too broad a mission at this stage. The Draft Regulations propose to mandate the sharing of not only mobile, but also fixed network infrastructure. Yet, URCA has undertaken no market assessment of the competitive impact of adopting such expansive IS obligations. As discussed more fully below, CBL considers that the IS Regulations should be focused on passive RAN infrastructure sharing only as the immediate priority.

CBL underlines the complexity associated with the development and application of an IS regulatory framework that apply to *all licensees*, not only with respect to passive RAN sharing but also in regard to fixed physical network infrastructure. Any rules that mandate (as opposed to facilitate) symmetrical network sharing of any kind should be based on clear evidence of market failure and should be targeted to address the immediate needs of the market. Under these criteria, at this point in time, the onus of any obligation to provide access should be limited to the mobile network operator that has been designated with significant market power ("SMP") in line with Sections 39, 116 and Schedule 4 of the Act.

In order to avoid unintended but serious consequences, CBL proposes that the development of IS regulations should be undertaken in stages. This means that URCA will need to "*unbundle*" the proposals that are incorporated in the Draft Regulations in order to focus on the immediate priority: the conditions under which the second cellular licensee will be able to access BTC's passive RAN infrastructure. As a first step, CBL urges URCA to focus on remedying the consequences of BTC's longstanding *de jure* monopoly in the cellular market, which has enabled BTC to establish a nationwide RAN infrastructure over a period of many years. The question whether the new cellular entrant should, at some point, also be subject to the same or a similar access obligation with respect to its own passive RAN infrastructure, and the separate issue whether physical fixed network infrastructure (such as duct access) should be imposed as an SMP obligation on designated operators (or on all licensees), should be considered if and when there is clear evidence of a market failure that requires regulatory intervention.[6]

[6] CBL considers that there is a good case for the commercial development of tower sharing over time, if the entry of a second licensee results in strong competition and if BTC provides access to its passive RAN infrastructure under fair and reasonable conditions to facilitate such sharing.

Importance of URCA's Role in Streamlining the Tower Construction Application Process

In the interests of promoting regulatory fairness and robust competition in the mobile market, URCA also should refrain from interposing a new layer of regulation on an already lengthy and cumbersome tower construction application process. This would appear to be the net effect of the proposed "Guidelines for the Construction of Communications Towers" (the "Tower Construction Guidelines" or the "Schedule") that accompany the Draft Regulations.

Because BTC's mobile network is already constructed, and considering that the new entrant will have to start from scratch, the combined effect of these proposed rules would leave BTC in an unjustifiably advantageous and anti-competitive position *vis-a-vis* the second cellular licensee. Under the Draft Regulations, the new entrant would be prevented from building new towers except in very limited circumstances, and in those limited cases, it would be subject to more lengthy and complex permitting procedures than are currently in place.

The combined effect off the Draft Regulations and proposed Tower Construction Guidelines would be incompatible with URCA's duty under Section 5(c) of the Act to ensure that all regulatory and other measures are non-discriminatory and proportionate, insofar as they would:

- force the new entrant to enter into IS sharing negotiations nationwide in cases where that is not be commercially or technically optimal from the new entrant's perspective, and without any prior investigation into the degree to which BTC's towers are actually fit for infrastructure sharing; and

- risk embroiling the new entrant in protracted dispute resolution proceedings with BTC (that would otherwise be avoidable) over the terms and conditions of passive RAN IS arrangements and in regard to the implementation of such arrangements.[7]

The proposed approach therefore carries many serious risks. If adopted as proposed, it will hamper the ability of the new entrant to deploy an independent network infrastructure by preventing it from rolling out RAN infrastructure in areas that are optimal from a network design and engineering standpoint, which may not correspond with BTC's sites. This could have a negative impact on the new entrant's network quality and its ability to compete with BTC. Moreover, the Draft Regulations are predicated on an incorrect assumption that the new entrant mobile operator will always find it more attractive to share infrastructure. By advocating what amounts to a blanket co-location obligation on the new entrant, URCA is, in fact, proposing to remove a critical element of the new licensee's commercial

[7] [✂]

independence and choice, which are essential to fair competition in a liberalized market. The prohibition that applies under Section 2.10 of the Draft Regulations will further restrict the new entrant's independence and choice in this respect, as it will prevent it from availing of any communications towers not owned or controlled by a third party that has not been granted a licence under the Communications Act. URCA has not provided any rationale for this proposition, nor has it taken into account the obvious prejudicial effect that this will have on the new licensee in areas where there is no other viable alternative.

URCA should instead work together to the Ministry of Works and Urban Development (the "Ministry of Works") and any other relevant permitting authorities to establish a transparent and streamlined coordination procedure and "*early warning*" system for all passive RAN infrastructure construction applications. Where possible, URCA should use its good offices to help expedite the processing of the new cellular entrant's applications by ensuring that the relevant permitting authorities are fully apprised of the Government's Policy with respect to mobile competition and the important public interest in the efficient processing of these applications.

Other Competition Concerns that Should be Addressed by the IS Regulations

In light of URCA's proposal to impose an obligation on the new entrant to co-locate its equipment on BTC's towers, it would be reasonable to assume that URCA has already evaluated whether the majority of BTC's tower and other structures are actually fit for sharing. However, this does not appear to be the case. The Draft Regulations (Part 2.11) envisage that an inventory of available tower space will not be completed until three months *after* the IS Regulations are adopted. It would therefore appear that the basic premise underlying the Draft Regulations is simply an assumption.

CBL is concerned that this assumption may be incorrect. There is no reason to delay this important evaluation by waiting for BTC carry out this work after the Regulations are finalized.

CBL therefore urges URCA to initiate its own investigation, without delay, to determine whether BTC's existing towers (and other structures) are capable of accommodating the proper height required to support the new entrant's radio frequency design. As well as reviewing existing structures, URCA should confirm that any towers being planned by BTC (including those under application) are suitable for sharing.

If URCA is not actively involved in the inventory process from the outset, the information that is ultimately produced by BTC is likely to require considerable follow-up work and far longer than three months' time to successfully conclude. This information will be critical to the IS process and it is therefore essential that this inventory be completed and vetted before, or as soon as possible following, the award of the second cellular licence.

Another concern relates to the lack of clarify in the Draft Regulations on the type of interim measures that URCA will apply in the event that the parties fail to reach agreement, or if there is no space on BTC's towers in an area where the new entrant cannot replicate BTC's RAN infrastructure. [✂]

For this reason, CBL urges URCA to specify in the IS Regulations an interim wholesale capacity or roaming obligation that will apply to BTC, as the SMP operator, if such cases arise. In situations where BTC refuses to provide or unnecessarily delays access to its passive RAN infrastructure, the rules should require the wholesale price to be set based on long run incremental cost ("LRIC") or, if the necessary cost data is unavailable, using the lower end of the range of relevant international benchmarks.

Summary of CBL's Core Position

CBL is keen to engage URCA constructively on this regulatory initiative, and has many *genuine and grave concerns* with the Draft Regulations in their current form. CBL believes that, by considering the comments made in this Response, URCA can ensure not only that the resulting regulations are fit-for-purpose and workable, but also that they assist URCA in carrying out its functions.

CBL therefore urges URCA, in line with its duty under the Sections 5(a) and (b) of the Act (reliance on market forces as much as possible; ensuring that all regulatory and other measures are non-discriminatory and proportionate), to revise the Draft Regulations and proposed Tower Construction Guidelines to:

a) address passive RAN IS only;

b) defer to a future proceeding, if necessary, consideration of the need for fixed network IS obligations beyond those which already apply to BTC as an operator with SMP in accordance with BTC's Reference Access and Interconnection Offer ("RAIO");

c) promote the commercial negotiation of IS, rather than automatically requiring the new entrant to co-locate its RAN equipment with BTC's existing facilities, by ensuring that the rules for negotiating IS and resolving disputes are as coherent, efficient and effective as possible;

d) limit the requirement to provide access to passive RAN infrastructure to BTC only (in the form of an SMP obligation), by requiring BTC to grant access to its towers and other passive RAN infrastructure upon request by the new entrant;

e) provide for an expedited investigation by URCA of BTC's existing tower infrastructure and its suitability for supporting the space and minimum height required by the new cellular entrant's radio frequency design, with an immediate and urgent focus on the less populated islands;

f) impose an interim obligation on BTC to provide wholesale network capacity or roaming to the new cellular entrant on a site-specific basis, which should continue in effect until a more advantageous IS sharing arrangement can be put in place (if possible) in those areas where:

   (i) BTC has refused to provide access to its towers, delayed the negotiation process or triggered the initiation of dispute resolution proceedings; and

   (ii) own-build by the new entrant is not possible or feasible, and it has been verified that BTC's towers are physically incapable of supporting co-location of the new entrant's RAN equipment; and

g) establish new Tower Construction Guidelines that facilitate construction by the new entrant where construction is legally permissible, while at the same time creating clear lines of communication between URCA and the Ministry of Works to enable URCA to support the expeditious processing of tower applications (rather than adding another layer of regulation to an already cumbersome process as is currently proposed in the form of "*no objection*" letters).

The remainder of this response is structured as follows:

- Section 2(i) discusses the importance of prioritizing cellular network infrastructure sharing at this stage;

- Section 2(ii) discusses why URCA should refrain from extending the proposed IS framework to apply to fixed networks at this time;

- Section 2(iii) explains how, by unduly restricting the possibility for new infrastructure deployment, the imposition of a blanket requirement on all mobile operators to share passive RAN infrastructure is unjustified and impractical, and will have a discriminatory and disproportionate effect on the new mobile entrant;

- In Section 2(iv), CBL sets out its proposed framework for RAN infrastructure sharing in The Bahamas.

- In Section 2(v), the need for an immediate, URCA-led investigation into the suitability of BTC's existing towers for sharing is addressed.

- In Section 2(vi), CBL discusses the need for URCA to support mobile telecommunications operators in the permit application process, and to clarify its role *vis-a-vis* the relevant permitting bodies and agencies.

Individual responses to the 5 questions set out in the Consultation Document are also set out in Section 3.

Annex 1 identifies a number of significant inconsistencies, ambiguities and omissions that make the Draft Regulations unworkable in practice.

Finally, Annex 2 illustrates the lengthy timeline and non-interoperable procedures proposed in the Draft Regulations, as they would apply in the event that the Infrastructure Provider and Seeker fail to reach agreement, URCA's ADR Scheme for Disputes Between Licensees (the "ADR Scheme") is invoked, and the Access Seeker is ultimately required (and allowed to) apply for a tower construction permit.

2. CBL's Proposed Approach to IS Regulation

(i) Importance of Prioritizing Rules Designed to Promote Mobile Liberalization at this Time

CBL believes that URCA's immediate priority should be the impending liberalization of the mobile communications sector. The adoption of a fair, workable and effective regulatory framework for RAN infrastructure sharing, designed to facilitate the rapid deployment of a second cellular network in The Bahamas, is therefore of paramount importance.

This priority is acknowledged in the introductory sections of the Consultation Document (page 2), where URCA observes that the impetus for the Draft Regulations is the imminent introduction of mobile competition. This priority is also confirmed in a later section, which states that "*in a newly liberalized cellular mobile market, it is imperative that the introduction of new entrants is encouraged in order to promote competition*" and recognizes that facilities sharing will serve as a "*catalyst*" for the roll-out of new services by the new entrant.[8]

This regulatory focus is in line with the Government's 2014 Electronic Communications Sector ("ECS") Policy, which recognizes that infrastructure sharing is a key element of the regulatory considerations for cellular liberalization.[9] In particular, the ECS Policy identifies infrastructure sharing as one of the various "*regulatory considerations*" to be addressed within the context of cellular mobile liberalization. It also reminds URCA that it is required to ensure that all regulatory measures necessary for such liberalization are met and fulfilled in accordance with the timetable set for such liberalization.[10]

With regard to the Draft Regulations themselves, Part 2 includes a sub-section (Parts 2.8 – 2.13) entitled "*Special Provisions for Construction, Use & Sharing of Towers*", which requires all licensees, including the new entrant, to co-locate their RAN equipment on existing (i.e.,

[8] Consultation Document, Section 1.2.2, page 6.
[9] Electronic Communications Sector Policy, 4 April 2014.
[10] *Ibid*, par. 89.

BTC's) communications towers. This sub-section should be read in conjunction with the Schedule to the Draft Regulations, which sets out the Tower Construction Guidelines that are ostensibly applicable to all licensees.

CBL notes that URCA's Draft Annual Plan 2015[11] made reference to tower sharing as a benefit of potential infrastructure sharing regulation, but gave no indication that the intention was to impose a mandatory obligation on the second cellular licensee to co-locate its RAN equipment on BTC's towers:

> "[…] *the introduction of Infrastructure Sharing Regulations would serve to minimize the duplication of towers throughout The Bahamas and mitigate any harm or the perception of harm resulting from tower construction. Moreover, URCA considered that the sharing of facilities would reduce the need for new operators to construct new towers, thereby reducing the investment required to enter the market.*"[12]

CBL is actively pursuing the second cellular licence and, for the purposes of these comments, stands in the position of any potential new entrant. We note that the success of the business case of the second cellular licensee will depend on its ability to get its mobile network up and running as quickly as possible, with the maximum possible coverage, in order to attract and grow a customer base. Also, as URCA is aware, the new cellular licensee will be subject to ambitious network roll-out, coverage and quality of service obligations that URCA will be responsible for enforcing.

Essential to all of the above is a coherent and well-functioning set of rules governing: (i) mandatory access by the new entrant to the dominant mobile operator's passive RAN infrastructure, where necessary; and (ii) an efficient permitting process that enables the new entrant to construct its own towers as quickly as possible where legally permissible and technically and economically feasible. These core principles are discussed in greater detail in the sections that follow.

Such a framework will contribute substantially to the rapid development of mobile infrastructure-based competition in The Bahamas and thus fulfill URCA's duty

> "[…] *to ensure that all regulatory measures necessary for cellular mobile liberalization are met and fulfilled in accordance with the timetable set for such liberalization*".[13]

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[11] URCA Draft Annual Plan 2015, ECS 21/2014, 31 December 2014.
[12] *Ibid*, p. 5.
[13] Consultation Document, Section 1.2.1, page 5.

As and when necessary, URCA can develop and consult on separate or supplemental regulations and guidelines to facilitate the sharing of other types of passive infrastructure (including fixed network infrastructure), and/or the imposition of symmetrical or reciprocal obligations. Any such measures should be predicated on clear evidence of a market failure justifying regulatory intervention. CBL respectfully submits there is no evidence of the need for such expansive regulation at this time; nor is there a clear understanding of its potential impact on competition, investment and service quality.

(ii) There Is No Basis for the Imposition of a Requirement to Provide Access to Fixed Network Infrastructure at this Time

As explained in Section 2(i) above, URCA's immediate priority should be to facilitate access to passive RAN infrastructure where this is necessary.

URCA should therefore refrain from extending the proposed IS framework to apply to fixed networks at this time, because there is no evidentiary basis for doing so. Indeed, URCA has not yet even considered whether there is a sound basis for imposing such an obligation on the basis of a finding of SMP in its recent market reviews, let alone for adopting symmetrical obligations that would apply to all licensees regardless of size or market power, including a new cellular entrant with no existing network and zero mobile market share.

CBL is of the view that, for the time being at least, the existing regulatory framework applicable to fixed-line access services is adequate. In particular, URCA has applied SMP obligations that include the provision of wholesale backhaul and leased line services. For example, URCA's 2010 SMP Decision obligates BTC to grant access to its transmission network as an SMP remedy on the wholesale market for access to the broadband network and services & access to the transmission network.[14] The 2010 SMP decision also imposes a co-location remedy on BTC in the wholesale market for call transit/termination.[15] Likewise, a wholesale broadband obligation has been imposed on CBL on the basis of SMP.
In CBL's view, fixed links and similar wholesale services required to connect any equipment that a new entrant needs or wishes to co-locate on BTC's towers (or other passive infrastructure) with the rest of its network can be addressed using BTC's RAIO. During the initial stages of mobile liberalization, this should be sufficient for the new mobile entrant. If, over time, access to ducts becomes an important element of the new

[14] Obligations imposed on Operators with Significant Market Power (SMP), Final Decision, ECS 11/2010, 22 April 2010, Section 4.2.2.
[15] *Ibid*.

cellular entrant's business case, a "*physical network infrastructure access*" remedy should be considered in the context of an SMP market review.[16]

In conclusion, there is no evidence at this stage to suggest that the existing SMP rules are inadequate to ensure that the new mobile entrant has access to wholesale fixed network services that will enable it to comply with its mobile network roll-out requirements. Likewise, there is no indication that the symmetric imposition of fixed network IS obligations will achieve the objectives set out in the Consultation Document, without irreversibly harming fair competition and the market. To impose symmetrical obligations covering passive fixed network infrastructure at this time would be unsupported by the evidence, discriminatory, disproportionate and incompatible with URCA's powers under the Act.

(iii) Blanket Requirement that All Operators Co-locate Their Active RAN Equipment on BTC's Towers Unfairly Discriminates Against the New Entrant

The Draft Regulations (Part 2.8) contain what amounts to a blanket obligation requiring every mobile network operator to co-locate its RAN equipment on existing towers, unless it is able to satisfy URCA that sharing in a particular location is neither technically nor economically feasible.

To reinforce this requirement, the proposed Tower Construction Guidelines (Section 1.1) stipulate that any licensee that wishes to construct its own tower must demonstrate to URCA that "*all reasonable steps have been taken to investigate tower sharing before applying to the relevant permitting agencies to construct a new tower in The Bahamas*." Furthermore, the Tower Construction Guidelines require the new entrant to seek a "*no-objection*" certificate from URCA prior to submitting a tower construction permit to the relevant authorities.

Although these rules are couched in general terms, and ostensibly apply to all licensed operators indiscriminately, their practical effect is clear. BTC owns the totality of the existing mobile tower infrastructure base,[17] and the new entrant has none. The net effect is that the second cellular licensee will be obligated to seek BTC's permission to co-locate all of its active RAN equipment on BTC's towers, and will not be allowed to construct its own

[16] If URCA were ultimately minded to impose a symmetrical fixed network IS obligation, it would need to consider how such a requirement would interact with similar obligations applicable under the SMP framework. However, the Draft Regulations nowhere explain the relationship between the proposed symmetric infrastructure sharing requirements and the access obligations that currently apply under the SMP framework.

[17] Needless to say, BTC was able to construct its mobile network without regulatory interference, except in respect of the generally applicable construction permitting process.

tower infrastructure except in very limited circumstances, following a protracted process (see Annex 2 to this Response).[18]

Thus, although ostensibly symmetrical in their application, the proposed rules in reality operate asymmetrically *against* the new entrant. This problem is compounded by Section 2.10 of the Draft Regulations, which prohibits the installation of active RAN equipment on communications towers that are not owned or controlled by a third party that has not been granted a licence under the Communications Act. This prohibition will apply disproportionately to the new entrant, which, unlike the incumbent operator, will need to deploy a nation-wide network in compliance with ambitious roll-out requirements. Importantly, URCA has not provided any rationale for this proposition, nor has it clarified the type of harm that it is seeking to address in this regard. It also appears to have failed to appreciate the potential adverse effect that this provision will have on the new entrant if co-location on third party (non-licensee) towers is the only feasible option open to it in a particular area.

The combined effect of these mandatory co-location and tower moratorium rules is disproportionate as applied to the new entrant as well as unduly discriminatory, and therefore incompatible with URCA's duties under Section 5(c) of the Act. Furthermore, there would appear to be no statutory basis under the Act for the imposition of such onerous and intrusive requirements on the new entrant. The "*centralized*" approach proposed by the Draft Regulations risks unduly restricting the possibility for the new entrant to deploy a network infrastructure of its own design. It could also significantly increase the new entrant's network roll-out costs, and unfairly impede its ability to differentiate its offerings on the basis of superior mobile service quality and coverage. In such a scenario, CBL would be condemned to follow a legacy network design implemented by a monopoly provider, which could be expected to have taken an expedient approach when engineering its tower infrastructure by situating its towers in sub-optimal locations from a coverage and service quality perspective.

CBL also notes that the proposed requirement of a "*no objection letter*" before seeking a tower construction permit would be an unnecessary extension of URCA's powers into areas that are beyond its traditional area of expertise. It would also create an additional layer of bureaucracy that could prolong an already lengthy and unpredictable permit application process.

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[18] [✂] BTC will be guaranteed the (continuing) optimal placement of its active equipment on its existing towers and similar structures [✂] Furthermore, the rules provide no guidance on how to resolve the impasse if changes in technology necessitate the construction of towers in completely new sites in the future, where neither BTC nor the second cellular licensee has any existing infrastructure in place and the parties cannot agree on who will build and own the new towers.

The existence of at least two end-to-end mobile networks in a given market is key to ensuring strong competition and consumer service choice on the basis of both quality of service and price.[19] The importance of infrastructure based competition as a facilitator of better quality of service and competitively priced retail services cannot, therefore, be overlooked by URCA.[20] In sum, the proposed "*mandatory co-location*" requirement would be likely to have serious anticompetitive effects on the mobile communications market.

These aspects of the Draft Regulations also run afoul of Section 5(a) of the Act, which requires URCA to rely on market forces as much as possible to achieve the objectives of the Act. The Consultation Document (page 4) makes a sweeping declaration that market forces are unlikely to result in infrastructure sharing because competitors will not willingly share passive infrastructure. However, no evidence is offered in the Consultation Document to support this statement, which overlooks the proliferation of mobile network sharing arrangements between competing mobile network operators in countries around the world,[21] as well as the rise of independent tower companies in many regions.

[✂] The most reasonable and effective solution for the near term is for URCA to encourage and facilitate the commercial negotiation of co-location where the new entrant decides this is the best (or the only) option available to it,[22] while at the same time addressing the obvious market failure that exists in the mobile market by imposing a clear and effective access obligation on BTC in respect of its towers and other passive RAN infrastructure.

We are not aware of any precedents elsewhere for the imposition of a mandatory co-location requirement on a new entrant at the onset of mobile market liberalization (i.e., during the network construction phase).[23] We note that, where IS rules have been imposed,

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[19] The Consultation Document states (at Part 1.2.2 (page 6)), without support in the present context, that:

> "[f]*acilities sharing will serve as a catalyst for faster roll-out of new and innovative services by all operators in an effort to differentiate product offerings to consumers.*"

[20] The importance of infrastructure based competition is also evident from the approach taken in other markets towards mobile network sharing. For example, in the European Union ("EU"), while passive network sharing has been permitted and in some cases encouraged, great care has been taken by regulators to ensure that there are at least two end-to-end mobile network platforms in any national market in order to ensure real competition. Moreover, in many EU countries, network sharing arrangements have targeted high cost areas where it would not be economically feasible for two independent radio access networks to co-exist.

[21] Examples from the EU include the RAN sharing arrangement concluded between Orange Poland and T-Mobile Poland in 2011 and the RAN sharing agreement originally concluded between T-Mobile and Hutchinson 3 in the UK. Similar agreements have also been concluded in, amongst other EU Member States, Denmark, Sweden, Ireland and Spain. Outside of the EU, mobile network sharing agreements have been concluded in several countries, including Argentina, Brazil, Chile, Colombia, Jamaica, Panama and Peru.

[22] The "*negotiate-mediate*" model incorporated in Part 3 of the Draft Regulations is, in principle, a positive element in this regard.

[23] We note that, while the Guidelines for Siting and Sharing of Telecommunication Base Station Infrastructure issued by the Rwanda Utilities Regulatory Agency (which are cited by URCA at page 7 of the Consultation

they have typically been focused on establishing a *right* to co-locate with an existing infrastructure owner's tower; however, they have not unduly interfered with the commercial freedom of communications operators to build their own infrastructure.[24]

For all of these reasons, CBL urges URCA to reconsider the mandatory co-location and tower moratorium provisions of the Draft Regulations, and instead to adopt an alternative, pro-competitive approach along the lines proposed by CBL in this Response.

(iv) Form of Passive RAN Access Obligation to be Imposed on BTC

CBL appreciates that infrastructure sharing can, in certain circumstances, yield significant cost savings that are beneficial to all stakeholders. This is especially likely to be the case in rural or sparsely populated areas, where the simultaneous deployment of multiple RAN infrastructures may not be economically feasible. In such cases, the designated SMP operator in the mobile market should be obligated to share its towers and similar structures with the new entrant.

BTC is presumed to have dominance in the market for the provision of mobile voice in The Bahamas pursuant to Section 116(1) and Schedule 4 of the Act. Section 40 of the Act sets out the remedies that URCA is authorized to impose on an SMP designated operator, including the requirement to share:

> "[…] *infrastructure, facilities and systems used for the provision of electronic communications services*". [25]

CBL considers that the basis for imposing a passive RAN infrastructure access obligation on BTC as a wholesale remedy is self-evident. BTC has benefited from a legally protected monopoly in the provision of cellular services in The Bahamas for many years and, as a consequence, is the owner and operator of the only mobile communications tower infrastructure that currently exists in that market. Its infrastructure is ubiquitous across the entire Commonwealth. By contrast, the new entrant must start from square one, with no network and no customers. In these circumstances, the only real issue is how the remedy should be structured. CBL sets out its proposal below.[26]

Document) appear to provide for some form of mandatory co-location on existing facilities (including communications towers), these requirements were developed and implemented following the liberalization of the mobile communications market in that country; i.e., there were at least two mobile network operators active on the Rwandan mobile market at the time of the promulgation of these rules.

[24] See the benchmarks discussed in Section 1(i) of Annex 1 below.

[25] Section 40(1)(e).

[26] CBL accepts that a consultation will be necessary to consider the details of a passive RAN infrastructure access remedy, although many of the elements have already been proposed by URCA as a symmetric obligation. CBL urges URCA to take the procedural steps necessary to implement the proposed SMP access remedy without delay and in any event by the time that the second cellular licence is awarded, which is expected to take place in May 2015.

Scope of SMP RAN Infrastructure Access Obligation

The SMP RAN infrastructure access obligation to be imposed on BTC (the "RAN Access Obligation") should be similar to that proposed in the Draft Regulations under Parts 2.14 and 4.1. URCA should establish the costing principle in advance, which should be based on the LRIC costs of the tower or passive RAN infrastructure and real estate, and long run average incremental costs ("LRAIC") for associated operating expenses.

In principle, the RAN Access Obligation should apply to BTC's entire passive RAN infrastructure nationwide. This will enable the new entrant to share BTC's passive RAN where that is commercially attractive for the new entrant or necessary because the infrastructure in question cannot be replicated. As explained above, this flexibility is important both to ensure that the new entrant can meet its network deployment requirements, and to enable full infrastructure-based competition in cases where the new entrant's network design requires a different network topology from that chosen by the incumbent.

In practice, the new entrant is likely to seek co-location with the incumbent in places where it is not economically or technically feasible to construct its own towers, and in those areas where cost savings can be gained by both parties and there is no basis for significant differentiation (for example, alongside highways). [✂]

In the alternative, and at a minimum, URCA should require BTC to provide access to its RAN infrastructure in those circumstances where the new entrant is not able to deploy its own tower or other passive RAN infrastructure. Non-replicability would be established where one or more of the following criteria (the "Access Criteria") pertain:

a) **Public Interest:** This refers to cases where the Ministry of Works or another permitting authority determines that it is necessary to limit the construction of towers on the basis of a specific and important public interest considerations (for example, health/safety, environmental, touristic reasons, etc.) that clearly supersede the competition and investment objectives of the Act.

b) **Unavailability:** No other sites are commercially available in an area where BTC (or any other licensee that satisfies the definition of an "*Infrastructure Provider*" under Part 1 of the Draft Regulations) has existing passive RAN infrastructure, and without access to BTC's infrastructure, the new entrant will be foreclosed from providing commercial services in that area.

c) **Uneconomic/technically infeasibility:** It would be uneconomic or technically infeasible for the new entrant to build its own infrastructure in a particular area (including, for example, rural areas that are sparsely populated), and BTC has existing RAN Infrastructure in that area.

If successful in the upcoming tender process, CBL estimates that, taking adequate account of zoning, health and safety and environmental considerations, the new cellular licensee

should be able to deploy its own network to cover most of the population of The Bahamas. There may, however, be some geographic areas, mainly in the smaller, less populated family islands, in which one or more of the above Access Criteria will be satisfied, and BTC's infrastructure thus could not be replicated. In those situations, the new entrant would need to avail of regulated access to BTC's towers or other passive RAN infrastructure under BTC's SMP obligation.

Need to Impose Site-Specific Wholesale Network Capacity or Roaming Arrangement as an Interim Measure

An interim "*resale*" solution will need to be established to cover the situation in which access negotiations fail, particularly in those areas where the new entrant has no option to build its own passive RAN infrastructure. Any such interim solution should be crafted with the aim of incentivizing BTC not to delay providing access to its competitor unnecessarily.

For this reason, CBL proposes that a site-specific wholesale mobile network capacity or roaming obligation should be imposed on BTC in the event that access is refused in a particular area. To create the appropriate incentive, the wholesale obligation should be priced on the basis of LRIC or, if the relevant cost data are not available, at the lower end of the range of relevant international benchmarks.

This remedy should also be available to the new entrant in areas where BTC's infrastructure is non-replicable (i.e., where any of the above Access Criteria are satisfied), but where BTC's infrastructure is currently not engineered to accommodate the placement of a second operator's equipment at the minimum height required to support the new entrant's radio frequency design. If such a scenario arises, the arrangement should remain in place until an appropriate IS and cost sharing solution is agreed between the parties.[27]

(v) Urgent Need for URCA to Immediately Investigate and Determine Whether BTC's Existing Communications Towers are Capable of Being Shared

In light of the commercial and regulatory importance of rapid mobile network deployment to the new entrant, CBL is concerned about the long time lag created by the inventory procedure that is proposed in Part 2.11 of the Draft Regulations. The proposed rule establishes a three-month period following publication of the final version of the Draft Regulations for BTC to provide a complete inventory of all tower infrastructure that it owns or controls. The delivery date could be long after the second cellular licence is awarded and IS negotiations commence.

[27] This scenario would need to be reconciled with the new entrant's roll-out obligations under its mobile spectrum licence.

CBL urges URCA to initiate, without delay, an investigation in order to be in a position to vet the criteria used and the information gathered by BTC in preparing the required inventory. This is to ensure that the information that is collected is accurate, fit-for-purpose and complete.[28] If URCA commences an investigation now, there is a good chance that the results can be made available to the new entrant by the time the second cellular licence is selected.

It is otherwise unclear how URCA expects the new entrant to negotiate access with BTC, without having access to this information to hand. For example, if it is clear that BTC does not have available tower space in a particular area (and at the minimum required height) where the new entrant requests it, the new entrant should not have to wait for three months while BTC completes its inventory before deciding whether to build its own tower (or determining whether there is another option if self-build is not legally permitted or feasible).

The threshold issue to investigate is whether BTC's existing communications towers have the ability to accommodate the minimum height required to support the new entrant's radio frequency design. Because BTC has already deployed a nationwide passive RAN infrastructure, thereby gaining an entrenched "*first-mover*" advantage, its equipment will always be at the optimum height. Considering the need to leave a certain amount of space between the active RAN equipment of the incumbent and the sharing party, the second operator would invariably be forced to co-locate at a lower height than BTC. If too low, the signal from the new entrant's radio equipment would be degraded, which would require remediation by infilling, i.e. constructing other towers or using additional structures in the surrounding area.

CBL therefore urges URCA to initiate an investigation into the suitability of BTC's existing towers for sharing. In those areas where BTC's towers are not suitable for RAN equipment co-location, and where the new entrant is not permitted or able to build its own passive RAN infrastructure, URCA will need to determine how to address those bottlenecks. This eventuality is likely to be of greatest concern on the smaller, less populated islands, where it may not be commercially feasible for a new entrant to build its own towers or find alternative third-party structures to use. The identification of these and any other potential infrastructure bottlenecks is a critical first step of the IS process.

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[28] URCA's investigation should take into account various baseline engineering parameters for determining whether a tower or other passive RAN structure is capable of accommodating the co-location of another operator's equipment and to support that operator's radio frequency design, which will require consideration of such factors as minimum available space, minimum height, and wind resistance. URCA should confer with CBL and other potential stakeholders to ensure that the relevant engineering parameters are taken into account when conducting the investigation and inventory.

CBL also urges URCA to investigate BTC's plans for all towers that are under application or intended for construction within the next twelve months. If URCA wishes to encourage tower sharing, it is imperative that any new towers constructed by BTC are of a height sufficient to accommodate at least on additional operator at a height that is adequate for its purposes.

The outcome of URCA's investigation will have a significant impact on the efficacy of the Draft Regulations and, potentially, their relevance. It will also have a major impact on the new entrant's ability to achieve its business objectives, build a customer base and meet its licence obligations.

(vi) URCA Should Reformulate the Tower Construction Guidelines and Rely on Expertise of Other Government Departments in Respect of Tower Construction Applications

The Tower Construction Guidelines establish a set of procedures that are intended to deter tower construction by communications operators. For the reasons discussed above in Section 2(iii), this aspect of the proposed IS regulatory framework is discriminatory and disproportionate as applied to the new mobile entrant.

Instead, URCA should reformulate the Tower Construction Guidelines to establish a process for liaising with the relevant permitting authorities and assisting applicants by using its good offices to flag to the relevant permitting authorities the important public interest in the prompt processing of any pending communications tower applications. In light of the licence obligations that will be imposed on the new entrant to achieve ambitious roll-out, coverage and quality of service obligations, the new entrant's applications should be identified for priority processing where possible.

It is unclear whether URCA has the required expertise in health and environmental matters or in technical matters to adequately evaluate such factors. CBL respectfully submits that these factors should ordinarily be considered by other Government departments that have significant expertise in considering these issues and the necessary resources. Further, these departments have established processes and procedures which, even if lengthy, are well understood. CBL suggests that, where long-standing expertise and experience lies with other Government stakeholders, the responsibility for considering tower construction issues should remain solely within the remit of those departments.

Instead of conducting extensive assessments in respect of tower construction applications, URCA should focus its interaction with the responsible authorities on promoting new tower construction in order to facilitate swift and effective network roll-out by the new cellular entrant in compliance with its licence obligations.

At a minimum, URCA should clarify its role *vis-a-vis* these other Government stakeholders (and the statutory basis for same) in an effort to avoid any duplication of duties. The Consultation Document makes no mention of URCA's inter-relationships and inter-

dependencies with other Government agencies in this regard, notwithstanding the fact that the framework proposed in the Draft Regulations (and specifically the bifurcated process set down in the Tower Construction Guidelines) contemplates a significant degree of involvement by URCA in the application process for a tower construction permit.

If URCA determines that it has the authority and the need to play a direct role in deciding whether a communications tower (or other passive RAN infrastructure) should be constructed, CBL urges URCA to clarify its role *vis-à-vis* other Government departments and any expert third parties by specifying the following:

a) exactly which Government agency/third party will be responsible for what;

b) what information will be shared between URCA and other Government agencies/third parties;

c) at what stage in the process URCA will interact with other Government agencies/third parties; and

d) any timescales that will apply to interaction with other Government agencies/third parties.

As a productive way forward, CBL urges URCA to consider putting into place a Memorandum of Understanding ("MoU") with the Ministry of Works that will help ensure the prompt identification of any no-build areas based on public interest concerns. The MoU should establish procedures that will enable URCA to help expedite building permits where necessary, in order to remove impediments to the new entrant's ability to meet the network build out and coverage obligations contained in its licence.

As indicated above, URCA should begin these communications with the relevant departments in the Ministry of Works without delay so that the appropriate mechanisms are in place by the time that the second cellular licence is awarded to a new entrant.

3. CBL's Responses to Consultation Questions

CBL's specific responses to URCA's consultation questions on the Draft Regulations are set out below. These responses should be read in the light of CBL's general comments and proposed approach as discussed in Section 2 above.

The terms capitalized below are those defined in the Draft Regulations or Section 2 of the Response.

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.

General comments

- As explained in Section 2(i) above, we encourage URCA to focus on the most immediate priority, which is the liberalization of the cellular market, in which BTC has held a statutory monopoly since the advent of mobile services in The Bahamas. Accordingly, CBL proposes that the types of facilities to be shared pursuant to infrastructure sharing regulations adopted at this time, should be limited to passive ***mobile*** radio access network infrastructure, as opposed to fixed network infrastructure (since access to BTC's regulated wholesale fixed access services will continue to be made available subject to its RAIO, which should be adequate at least during the new entrant's start-up phase). This issue is discussed in more detail in Section 2(ii) above.

- In addition, and as explained in Section 2(iii) above, the new cellular entrant should be given the *opportunity*, but should not be *obligated*, to co-locate on towers (or similar structures) that are owned or controlled by BTC.

- Finally, and as explained in Section 2(iv) above, the obligation to make passive RAN infrastructure access available to third parties, where economically and technically feasible, should be limited to BTC in light of its indisputable dominance in the mobile communications market.

Specific issues

- We note URCA's apparent intention to limit the Draft Regulations to passive infrastructure (see, for example, page 10 of the Consultation Document which states that URCA "*proposes that* [the] *Regulations focus exclusively on passive infrastructure sharing for the time being*.") However, and as explained in Section 1(i) of Annex 1, the current definition of "*Infrastructure*" under Part 1.3 of the Draft Regulations

could be interpreted to include both active and passive network facilities.[29] CBL recommends that BTC should be required to make access to its *passive* RAN infrastructure available upon request by the second cellular licensee as part of the RAN Access Obligation (see Section 2(iv) above). This is supported by a number of benchmarks which are discussed in Section 1(i) of Annex 1.

- Part 2.3(ii) of the Draft Regulations requires the granting of access to "*antennas*". As antennas are widely considered to be active infrastructure, CBL recommends that reference to this term under Part 2.3(ii) should be removed from the list of "*Infrastructure*" that an Infrastructure Provider should provide access to.[30]

- Furthermore, CBL considers that the current SMP framework is capable of ensuring the new mobile licensee access (under regulated terms and conditions) to the wholesale fixed network access services that it will require (at least in immediate terms) for the deployment of a competing mobile network.

(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 licensee to share facilities with other licensees? Should you disagree, kindly provide a detailed explanation for your views and suggest additional or alternative factors.

General comments

In order to realize the most urgent objectives, i.e., those associated with liberalization of the mobile sector, CBL urges URCA to:

- modify Part 2 of the Draft Regulations to focus on the articulation of a general SMP obligation on BTC to provide reasonable, cost-based access to its passive RAN Infrastructure upon request by the second cellular operator (within the framework as proposed under Section 2(iv) above);

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[29] This is because Part 1.3 of the Draft Regulations states that Infrastructure should be understood in the same way as the term "*facility*" is defined in Section 2 of the Act; i.e., "*any element or physical component of a network*". CBL submits that, considering the importance of the term "*Infrastructure*" in determining the scope of application of the Draft Regulations, the definition under Part 1.3 is insufficient. For this reason, CBL encourages URCA to formulate a separate and stand-alone definition of "*Infrastructure*" for the purposes of the Draft Regulations that is developed to take specific account of the main objectives of this draft instrument, and that is clearly limited to passive RAN infrastructure only.

[30] For example, a Joint BEREC/RSPG Report on Infrastructure and spectrum sharing in mobile/wireless networks defines active infrastructure sharing as including antennas (RSPG11-374 final, 11 June 2011, p. 3). Section 2(k) of the Rwandan Guidelines includes "*antennas*" as active infrastructure, while Art. 2(2) of the EU Directive defines passive infrastructure as including "*antenna installations*" but not antennas themselves. Furthermore, a number of reports referred to in URCA's consultation document state that antennas are an "*active*" element of a wireless network. See also, the ITU's Report on "Trends in Telecommunication Reform 2008, Six Degrees of Sharing", page 15 and KPMG's Report on "Passive Infrastructure Sharing in Telecommunications", page 1.

- clarify that the criteria set out in Part 2.7 would be considered only in relation to the obligation imposed on BTC, as the SMP operator, to provide access to its passive RAN infrastructure;

- include, as an additional criterion in Part 2.7, consideration as to whether the non-replicability of the passive infrastructure in question is a result of anticompetitive conduct on the part of the SMP operator;

- modify the requirement set out in Part 2.8 of the Draft Regulations to clarify that the mandatory grant of access to communications towers or other passive RAN infrastructure will be imposed on BTC only as an SMP requirement;

- clarify that, if reasonable access is not provided expeditiously by BTC in this respect, an interim arrangement requiring BTC to provide a wholesale capacity (roaming) arrangement based on LRIC pricing will be the default interim arrangement until any disputes over pricing, feasibility of sharing or other issues are resolved[31] - URCA should also make clear that any such interim arrangements will be structured and priced in a way that provides an incentive to the SMP operator not to deny or otherwise delay the provision of passive RAN infrastructure access where it has the ability to so provide; and

- clarify the timing of the issuance of any "*direction*" that mandates the granting of access by the Infrastructure Provider in accordance with Parts 2.5 and 2.6 of the Draft Regulations, since it unclear whether the Draft Regulations as currently framed contemplate that such a direction would be issued by URCA before or after the close of the negotiation process, or only at the conclusion of a dispute resolution proceeding (see timeline in Annex 2).

Specific issues

- As a threshold matter, it is unclear when, and in what context, the power granted to URCA under Parts 2.5 – 2.7 of the Draft Regulations to issue a direction to share specific facilities would actually applies, and how this power interacts with the other powers granted to URCA under the Draft Regulations. This issue is also addressed at Section 1(iii) of Annex 1 to this Response.

- While we agree in general with the proposed criteria set out in Part 2.7 of the Draft Regulations, we recommend that URCA include, as an additional criterion,

[31] We note that URCA proposes to exercise the power to impose interim arrangements under Part 6.3 of the Regulations.

consideration as to whether the non-replicability of the passive infrastructure in question is a result of anti-competitive conduct on the part of the SMP operator.

- These criteria should only be applied to BTC as an SMP operator to determine the applicability of its obligation to grant access to its passive RAN infrastructure, and should not be applied in respect of any other operators.

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

General comments

- As explained in Section 2(iii) above, CBL is very concerned that, under the procedures proposed in the Draft Regulations, the new cellular licensee will be impeded from bringing new mobile services to market as quickly as possible and achieving the ambitious roll-out, coverage and quality of service targets that URCA will be responsible for enforcing. To minimize the amount of time it will take to determine whether a particular BTC facility is incapable of being shared, CBL urges URCA to commence as a matter of urgency (with a target completion date as close as possible to the expected May 2015 date for selection of the second cellular licensee) an investigation aimed at identifying:

    - the sites on which BTC has does not have adequate capacity to share with the second cellular entrant (i.e., at the height required to support the new entrant's radio frequency design); and

    - any sites (particularly those on the four largest islands) where there is a legal or other impediment to the construction of a new tower or similar structure by the new cellular licensee.

- The proposed scope of such an investigation is discussed under Section 2(v) above, together with the relevant parameters that URCA should take into consideration in this respect.

Specific issues

- CBL believes that BTC should not be given three months from the effective date of the Regulations to provide its initial inventory. That process should be started without delay. It can be expected that BTC's inventory will need to be vetted against the results of URCA's investigation, and the observations of the second cellular licensee. This will take additional time. It is unclear how the three-month period for

delivery of the inventory is meant to inter-operate with the 42-day access sharing negotiation period set out in Part 3.7. For these reasons, CBL urges URCA to reconsider the timeline and process contemplated under Part 2.11 and participate actively in the inventory process in a monitoring and investigative capacity.

- As set out under Section 2(v) above and in the general comments immediately above, CBL is of the view that URCA should undertake, without delay, its own investigation of the suitability of BTC's tower facilities for sharing.

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

General comments

- The Draft Regulations should be amended to mandate that BTC provide access to its passive RAN infrastructure as an SMP obligation, upon request by the second cellular operator, and under reasonable and non-discriminatory terms and conditions.[32] As a practical matter, it makes little sense to impose this kind of obligation on a new entrant, and there is no basis for imposing such a requirement under the Communications Act.

- Any provisions imposing a blanket obligation on the new entrant to co-locate on BTC's towers or similar structures should be withdrawn for the reasons set out in Section 2(iii) above. There appears to be no basis under the Act for URCA to impose this kind of restrictive, blanket obligation , and the imposition of a mandatory co-location obligation on the new entrant would be discriminatory and disproportionate.

- For this reason, CBL recommends that URCA establish revised Tower Construction Guidelines that reflect the approach advocated by CBL in this Response. Such Guidelines should create clear lines of communication between URCA and the Ministry of Works so that URCA will be able to facilitate the expeditious processing of the new cellular entrant's applications, rather than adding another unnecessary layer of regulation in the form of "*no objection*" letters to an already cumbersome process as is currently proposed.

- The inter-operability of Part 2 of the proposed Regulations with Parts 3 - 6 (in terms of both timing and procedure) is confusing and should be clarified. In this regard, we set out in Annex 2 to this Response our understanding of the apparent end-to-end

[32] Part 2.14 of the Draft Regulations requires that the Infrastructure Provider grant access to its facilities under non-discriminatory terms and conditions.

procedures and timeline proposed by the Consultation Document from start to finish, in the event that: (i) the Infrastructure Provider and Seeker fail to reach agreement; (ii) URCA's ADR Scheme is invoked; and (iii) the Infrastructure Seeker has no option but to apply for a tower construction permit after exhausting these procedures.

- [✂] This estimation is made on the assumption that there is no appeal of a decision issued by URCA in its dispute resolution capacity, so the end-to-end process could actually take longer than 14 months.

- As explained in Section 2(iv) above, it is likely that BTC will have a natural incentive to voluntarily agree to a sharing arrangement without delay in cases where it knows that its aspiring competitor has the option of building its own tower or securing a similar facility from a third party.

Question 2

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

General comments

- While CBL generally agrees with the list provided in Part 3.2 of the Draft Regulations, a number of related concerns should be addressed. These concerns are set out and discussed below.

  - The Regulations should make clear that BTC may only require the new licensee to provide a level of detail in relation to the information listed in Part 3.2 that is essential to BTC's ability to respond to the access request.

  - Part 3.5 should be revised to provide that BTC may only request additional information that is essential to its ability to respond to an Access Request. Any such request should be submitted to URCA simultaneously, and URCA should make clear that it will not hesitate to intervene if the information requested is considered to be beyond the minimum necessary. [✂]

  - BTC should be required to inform an Infrastructure Seeker if it has no available space at a height capable of supporting the new entrant's radio frequency design within 5 business days of receipt of an Access Request, and to explain fully why there is no available suitable space (rather than the 14 days provided under Part 5.2). BTC's position should be assessed against the results of URCA's investigation, as proposed above in Section 2(v).

Specific issues

- CBL recommends that the Draft Regulations specify when an Access Request can be considered to be a "*complete*" application/request for the purpose of Part 3.2; i.e., when the Infrastructure Provider has enough information to act on an Access Request for passive RAN infrastructure. [✂].[33]

- The Draft Regulations should also require that the information provided by an Infrastructure Seeker be treated with utmost confidentiality by the Infrastructure Provider and used only for the purpose of delivering access.

(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.

General comments

- CBL generally agrees that the timeline for the negotiation process itself, if limited to 42 days, would be acceptable. [✂]

- There is no basis for requiring the new licensee to wait for 42 days (or more) to find out that BTC does not have adequate space on the passive RAN infrastructure to which access is requested (it is unclear whether Part 5.2 is intended to cover this situation, i.e., whether BTC must disclose the fact that it has no suitable space at the height capable of supporting the Infrastructure Seeker's active equipment on a particular communications tower, for example, within 14 days following receipt of the access request.)[34] This information should be made available up front in the negotiation process (i.e., within 5 days of the request), and checked against the results of the emergency investigation conducted by URCA of BTC's existing RAN infrastructure (see Section 2(v) above and the response to Question 1(c)).

- Part 3.7 is one segment of a much more extensive and complex series of procedures which, if adopted in the manner proposed in the Draft Regulations, could result in an elapsed time, from the date of an access request to approval of a tower construction application (in those cases where BTC has no suitable space available at the optimal

[33] The same observation applies in respect of Section 2.i of the Schedule. While this provision refers to an "*incomplete application*", it does not, however, confirm that an application that includes all of the components set out between Sub-sections i.a) – j) of that provision constitutes a "*complete application*".
[34] It is in any event unclear how the notification provision of Part 5.2 interacts with the three-month inventory period following adoption of the IS Regulations, as proposed in Part 2.11).

height) of more than 14 months (see CBL's illustrative outline of the overall process and timetable proposed by URCA in the Draft Regulations in Annex 2).

- CBL suggests that URCA reconsider the proposed approach, and instead adopt a more streamlined and expedited process that is not predicated on imposing a blanket obligation on the second licensee to co-locate with BTC. Instead, the Draft Regulations and Tower Construction Guidelines should facilitate the commercial negotiation of access to BTC's RAN Infrastructure, especially where it is not legally possible or feasible (technically or economically) for the new entrant to construct its own communications towers or similar facilities. In those areas where the new entrant has a build/buy option, it should have sufficient leverage to negotiate with BTC without likely having to involve URCA in the process. [✂]

Specific issues

- Part 3.7 requires that an Infrastructure Provider use "*all reasonable endeavors*" to conclude an Access Agreement following receipt of a request for access to Infrastructure. The Regulations should provide a clearer standard and confirm that the Infrastructure Provider carries the burden of proving that its rejection of a particular access request is reasonable, including proving the non-feasibility of satisfying a request. URCA should clarify this standard to ensure that reasonable requests for tower modification or reconstruction to make sharing technically possible must be considered and addressed by the Infrastructure Provider.

(c) Should any other provisions be included in Part 3 of the Part Regulations or removed

General comments

- The Regulations should clarify how Part 3 inter-operates with Parts 2 and 4 – 6. In particular, it is unclear how the procedure for negotiating an Access Agreement related to the pricing provisions of Part 4 and refusal of access in Part 5, as well as the dispute resolution provisions of the Draft Regulations.

  - As an example, it is unclear how Part 5.2 (requiring notification of refusal to provide access within 14 days of receipt of an Access Request) sits with Part 3.7, which may result in a refusal by BTC to provide access at the end of the negotiation period.

  - Similarly, it is unclear how Part 4.3 and the price setting mechanisms relate to the negotiation timetable set out in Part 3, since price is likely to be a contentious commercial factor during negotiations.

- Finally, it is not clear at what point URCA will issue a "*direction*" under Part 2.5; i.e., whether this comes after a refusal to provide access, or in conjunction with a decision rendered following the conclusion of the ADR process.

- Given the potential for substantial delays in the event of failure to conclude an Access Agreement, and considering the fact that Part 6 of the Draft Regulations appears to provide for any dispute to be resolved in accordance with URCA's ADR Scheme, it is important for URCA to have the power to implement interim measures that will allow the new mobile entrant to get its cellular business up and running as quickly as possible and provide a disincentive to BTC to engage in dilatory tactics. As explained in Section 2(iv) above, the Draft Regulations should specify a wholesale capacity or roaming obligation that will apply to BTC using a LRIC cost model (or where cost data is not readily available, based on relevant benchmarks at the lower end of the range) in areas where BTC refuses to provide access on reasonable terms and conditions.

- The Draft Regulations should also include a clear mechanism for URCA to address any anti-competitive conduct by BTC, as the SMP provider, during the course of the negotiation process.

Specific issues

- Part 3.8 of the Draft Regulations lists three types of conduct by an Infrastructure Provider that are prohibited during negotiations for Infrastructure sharing. CBL notes URCA use of the word "*and*", which implies that Part 3.8 (i), (ii) and (iii) are cumulative. Any **one** of the identified types of conduct could negatively impact the negotiation of an access agreement. The Draft Regulations should make clear that any and all are prohibited.

Question 3

(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.

General comments

- CBL generally agrees that the Consultation Document correctly identifies the range of standard costing principles that are typically applied, depending on a number of competitive factors, when setting regulated prices.

- However, the Draft Regulations offer no guidance on the criteria that will be applied in determining the circumstances under which these divergent costing principles will be applied.

- It is important that URCA provides strong incentives to the SMP operator to co-operate fully in sharing access to its passive RAN infrastructure where a reasonable request is made by the new market entrant. Thus, at a minimum, the Draft Regulations should make clear that these incentives will be built into any interim pricing measures that URCA finds necessary to impose in cases where access is refused by BTC as the SMP operator.

Specific issues

- URCA should clarify that General Provision 2.14 in Part 2 of the Regulations applies to pricing as a "*term and condition*" as well as other terms and conditions.

(b) Do you agree with URCA's proposal 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 with evidence to support the same.

General comments

- CBL believes that it would be helpful for the Draft Regulations to establish the basic criteria that will be applied in deciding which cost principle is appropriate in specific circumstances, with a focus on those situations that raise concerns about anticompetitive conduct or unnecessary delays that could impede the second cellular licensee's ability to meet its licence obligations and deliver good quality cellular services to customers.

- Some proposals are set out below.

  - As explained in Section 2(iv) above, a LRIC cost methodology should be applied in setting a charge for an interim wholesale capacity or roaming arrangements that would apply in any area where BTC refuses access to its passive RAN infrastructure (see also the response to Question 4(c) below).

  - As also explained under Section 2(iv) above, a similar wholesale capacity arrangement should be made available to the new entrant where one of the Access Criteria are satisfied (and the infrastructure is therefore non-replicable), and where BTC does not have available space at the optimal height on existing passive RAN infrastructure.

- If URCA issues a "*direction*" that BTC must construct new passive RAN infrastructure (or modify existing structure) in order to provide suitable access to the new entrant, URCA should consider reasonable proposals from the Infrastructure Seeker for sharing the costs of reconstruction or modification. For example, the tower construction costs should be based on the actual replacement cost (LRIC), whereas ongoing OPEX costs would be based on LRAIC.

(c) Should any other provisions be included in Part 4 of the Draft Regulations or removed?

Specific issues

- As set out in Section 1(iii) of Annex 1 to this Response, it is unclear how URCA's power to issue a direction establishing Access Charges under Part 4.4 of the Draft Regulations interrelates with the Part 2 procedures and its dispute resolution powers under Part 6. It is also unclear what the Tower Construction Guidelines (Sec. 1.i) mean by requiring the applicant to have taken "all reasonable steps to investigate tower sharing" before an application will be allowed. These ambiguities should be clarified (to the extent they remain relevant) in the final IS Regulations adopted by URCA.

Question 4

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

General comments

- As explained in the response to Question 2(c) above, it is unclear how Part 5.2 of the Draft Regulations (requiring notification of refusal to provide access within 14 days of receipt of an Access Request) sits with Part 3.7. [✂]

- For this reason, BTC should be required to inform an Infrastructure Seeker if it has no available suitable space at the optimal height within 5 business days of receipt of an Access Request, and to specify in detailed terms why no such space is available (rather than the 14 day period as currently proposed under Part 5.2). In any event, URCA should, as a matter of urgency, carry out an investigation *prior to* enacting the IS Regulations in order to identify those BTC towers that can (and cannot) accommodate the proper height required to support a new entrant's radio frequency design. This is necessary to ensure, at the earliest possible stage, that: (i) there is any basis for negotiating access; and (ii) any BTC claims of lack of suitable space are genuine. This proposal is discussed in detail in Section 2(v) above.

- CBL suggests that the rules be modified to require BTC to publish any denial of access made within the suggested 5 days of receipt of an Access Request. (This means that its tower inventory must be completed and vetted by the time the second licence is awarded.)

- CBL recommends that Part 5.5 of the Draft Regulations should also require consideration of anti-competitive behavior by BTC that amounts to an abuse of dominance in relation to restricting tower space suitable for sharing.

Specific issues

- URCA should revise Part 5 of the Draft Regulations to take account of the overarching requirement of ensuring effective and timely access for the new mobile entrant to BTC's tower infrastructure where requested. CBL's proposed amendments are discussed below.

    - Part 5.1(i) states that access can be denied "*where the Infrastructure Provider does not have available capacity*". [✂] For this reason, it is essential for URCA to carry out an immediate investigation prior to enactment of the Draft Regulations (and hopefully before the licence is awarded to the second

cellular entrant) to determine which of BTC's towers are not capable of being shared.

- CBL also recommends that a process be established to provide for the reconstruction (or modification) of BTC's towers where they are unable to accommodate the proper height required to support the new entrant's radio frequency design, but the new entrant is willing to share the cost of replacing the tower. These tower construction/operation cost sharing rules would also be helpful to resolve issues that could arise in the event that new towers need to be constructed (for example, in connection with the deployment of a "*next generation network*") and neither BTC nor the new entrant has any infrastructure in place. A proposal for how the cost of such new-build would be shared is discussed in the response to Question 3(b) above.

- CBL therefore recommends that CBL, as the SMP operator, should be subject to an ongoing obligation to consider future demand for access to share passive RAN infrastructure, especially when constructing or re-engineering passive RAN infrastructure. Furthermore, BTC should be required to plan for and reserve suitable sharing space on any new towers that are built (i.e., space at the proper height required to support a new entrant's radio frequency design) unless there is a reasonable (and not anticompetitive) reason for it to decline to do so. CBL also suggests that URCA set out clear guidance on how it would assess reasonable reservation of suitable sharing space in this context; i.e., the point in the future at which the space must be used, how this could be sufficiently justified, how use would be assured, etc.

- Part 5.1(ii) of the Draft Regulations states that access can be denied on the basis that, if granted, it would compromise the "*safety, security or reliability of the facility or the Infrastructure Provider's network*". URCA should establish an evidence-based minimum threshold to prevent the unfair application of this provision. For example, CBL suggests that "*reliability*" should only be a valid reason for the denial of access where there is a risk of "*serious interference or downtime of services*".

(b) Do you agree with the timeframe 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.

General comments

- CBL directs URCA's attention to the comments made in response to Question 4(a) above.

Specific issues

- CBL suggests that URCA revise its proposal to require BTC to inform the Infrastructure Seeker if it has no suitable sharing space available within 5 business days of receipt of an Access Request, and to explain fully why there is no such suitable space (rather than the 14 days provided under Part 5.2). BTC's position in this regard should be assessed against the results of URCA's prior investigation, as described above in Section 2(v).

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

General comments

- CBL directs URCA's attention to the comments made in response to Questions 4(a) and (b) above.

- CBL is unclear as to how the power granted to URCA under Section 5.4(iii) of the Draft Regulations inter-operates with URCA's dispute resolution power under Part 6, or with its power to issue a "*direction*" pursuant to Sections 2.5 – 2.7. Based on CBL's understanding of the Draft Regulations, CBL presumes that URCA would only issue a "*direction*" pursuant to Sections 2.5 – 2.7 once the procedures under the ADR Scheme have been exhausted. This issue is also addressed under Section 1(iii) of Annex 1 to this Response. Annex 2 contains an illustrative table that sets out the end-to-end process and timetable proposed by URCA under the Draft Regulations (as CBL understands it).

- CBL suggests that Part 5 be amended to provide for an interim or fall-back remedy that would apply where BTC refuses to grant access to its RAN infrastructure upon request, and where the new mobile licensee is unable to deploy its own infrastructure. As explained in Section 2(iv) above, CBL suggests that, pending the resolution of any such issue, a site-specific wholesale network capacity or roaming arrangement should be made available to the new entrant as an interim measure to ensure that it can continue with its service deployment.

Question 5

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

General comments

- The new entrant's ability to resort to URCA's dispute resolution process will be most important in situations where it cannot replicate BTC's existing RAN infrastructure and BTC refuses to provide access.

- URCA's generic ADR Scheme is a lengthy process that is designed to cover disputes of varying complexities. While this may be necessary in some cases, CBL does not believe that it is necessary or proportionate to follow the timescales laid out in the general ADR process in cases involving access to RAN infrastructure, where the issues should be relatively narrow and straightforward.

- CBL proposes for URCA's consideration a streamlined dispute resolution timetable that could be applied specifically in respect of IS related disputes. This proposed timetable is set out in Table 1 below.

- The Regulations should make clear what interim arrangements will be put in place pending dispute resolution (and, potentially, appeal). For example, URCA could specify that the new entrant would be allowed to avail of interim arrangements (as provided under Part 6.3 of the Draft Regulations), including the wholesale capacity/roaming arrangements proposed by CBL in Section 2(iv) above.

Specific issues

- CBL notes that the ADR Scheme allows it to depart from the procedures set out therein, and establish separate dispute resolution procedures in "*warranted circumstances*".[35] CBL outlines below an expedited timetable (of 70 business days) that could apply in respect of the resolution by URCA of any RAN access dispute between an Infrastructure Seeker and an Infrastructure Provider. Considering the importance of the timely and effective resolution of disputes by URCA to the success of the mobile liberalization process, CBL strongly recommends removal of the mediation and arbitration provisions from the dispute resolution procedure, in line with the more streamlined process proposed in Table 1 below.

[35] The Utilities Regulation and Competition Authority Alternative Dispute Resolution (ADR) Scheme for Disputes Between Licensees, ECS 20/2014, December 31, 2014, Section 3.2.

Table 1: CBL's suggested timescales for dispute resolution procedure compared to timescales under the ADR Scheme[36]

Action	Timeline in ADR Scheme	CBL's Suggested Timeline
Notice of Dispute submitted to URCA (including minimum required information).	Within 90 calendar days after occurrence of an unresolved matter in contention between the parties where legal proceedings are not in progress.	Within 5 business days after occurrence of an unresolved matter in contention between the parties where legal proceedings are not in progress.
URCA acknowledges receipt of Notice of Dispute.	Within 2 business days of receiving Notice of Dispute.	Within 1 business day of receiving Notice of Dispute.
URCA expects to complete initial assessment.	Within 5 business days of receiving the Notice of Dispute.	Within 5 business days of receiving the Notice of Dispute.
Applicant must respond to any Request for Information (RFI) or clarification request by URCA.	Within 7 business days of receiving RFI.	Within 5 business days of receiving RFI.
URCA shall notify the Applicant in writing of its proposed course of action which may include directing further negotiation between the parties or notifying Respondent that a dispute has been filed and requesting initial comments.	Within 10 business days of receiving Notice of Dispute or receiving all required information in response to RFI.	Within 7 business days of receiving Notice of Dispute or receiving all required information in response to RFI.
Respondent must submit comments in response to URCA's notification of a dispute.	Within 14 business days of URCA's notification of a dispute.	Within 7 business days of URCA's notification of a dispute.
URCA issues Preliminary Determination	No timeframe specified as from URCA's receipt of	Within 15 business days of receipt of comments from

[36] This table should be read in conjunction with the more developed table at Annex 2.

	comments from Respondent in response to URCA's notification of dispute	respondent in response to URCA's notification of dispute.
Respondent makes representations about matters in Preliminary Determination	Within 30 calendar days of receiving Preliminary Determination (or as otherwise specified in Preliminary Determination).	Within 10 business days of receiving Preliminary Determination (or as otherwise specified in Preliminary Determination).
URCA issues its Final Determination and Order to the dispute.	Within 30 calendar days of receiving representations from the Respondent and any interested party.	Within 15 business days of receiving representations from the Respondent and any interested party.
Overall resolution of dispute by URCA.	Within **6 months** of referral (backstop under Section 7.5.3 of ADR Scheme).	Within **70 business days** of referral.

- CBL notes that, as currently drafted, it is unclear whether URCA is obligated to consider the various factors and criteria established under the Draft Regulations, including those set out under Part 2 and the Schedule, when resolving a dispute referred to it under Part 6. For this reason, CBL suggests that URCA establish specific criteria to be taken into consideration when resolving a dispute relating to passive RAN infrastructure access in the circumstances outlined above.[37]

- CBL submits that the criteria drawn up by URCA for this purpose should be formulated in a manner that takes account of CBL's proposed alternative approach as set out in Section 2 above. For example, specific consideration should be given to the network roll-out requirements that the new mobile entrant will be subject to under its licence.

(b) Should any other provisions be included in Part 6 of the draft regulations or removed.

- CBL directs URCA's attention to the comments made in response to Question 5(a) above.

[37] CBL notes that par. 19 of the EU Directive, for example, establishes a set of issues that should be taken account of by a dispute resolution body in the event that a dispute on access to physical infrastructure is referred to it.

Annex 1 – Key Areas of Concern with Interpretation of the Draft Regulations (Including the Schedule)

Introduction

As noted in CBL's comments on the Consultation Document, the breadth of the Draft Regulations creates a degree of complexity that is counter-productive to the stated objectives of IS and benefits of competition. The Draft Regulations, including the Schedule, contain a number of material inconsistencies and ambiguities. It also appears that URCA has overlooked certain important considerations that may impact negatively on the practical application of a number of the substantive and procedural provisions of the proposal.

A number of the most important issues are highlighted below. CBL urges URCA to narrow the focus and simplify its approach, as proposed in CBL's comments. By doing so, URCA will avoid having to deal with many of the issues identified below. Alternatively, it will be easier for URCA to clarify or resolve these issues.

The terms capitalized below denote terms that are defined in the Draft Regulations or the Response above.

1. Examples of Ambiguities, Inconsistencies and Oversights in the Draft Regulation

(i) Scope of Draft Regulations; passive *v*. active infrastructure sharing

In addition to defining the term "*Infrastructure*", URCA has defined the term "*Passive Infrastructure Sharing*" as the "*sharing of non-electronic infrastructure and facilities*". However, throughout the Draft Regulations, reference is made only to "*Infrastructure*" sharing, with the exception of Part 4 which refers to "*Price Setting for **Passive** Infrastructure Sharing*". The single use of this term in this place suggests that the pricing related requirements set down under Part 4 apply only in respect of the sharing of infrastructure that satisfies the definition of Passive Infrastructure Sharing under Part 1, or whether this is a drafting error on the part of URCA.

It is unclear, therefore, how the terms "*Infrastructure sharing*" and "*Passive Infrastructure Sharing*" should be interpreted for the purposes of the Draft Regulations, or whether these terms are reconcilable/interchangeable. CBL considers that the requirement to grant access to passive RAN infrastructure under the Draft Regulations should be limited to passive network infrastructure only, and should not be extended to active network elements. It is therefore critical that URCA revise this important definition in order to ensure that it appropriately limits the scope of the Draft Regulations, and that it is consistent with the remainder of the text.

We are not aware of any precedents for the imposition by a national regulatory authority of expansive network infrastructure sharing requirements (similar to those proposed by URCA) in markets where SMP access requirements apply concurrently. In fact, the application of such requirements is even unusual in markets where SMP requirements do not apply.

For example, similar legislation enacted in the Dominican Republic in 2010 (the "Dominican Republic Regulations") on network infrastructure sharing limits the obligation to share infrastructure to "*any physical component of a telecommunications network*".[1] Likewise, guidelines issued by the Rwanda Utilities Regulatory Authority (the "Rwandan Guidelines"),[2] on which the Draft Regulations appear to be heavily based, limits the infrastructure sharing requirement to passive infrastructure sharing only. Guidelines on Collocation and Infrastructure Sharing issued in Nigeria (the "Nigerian Guidelines")[3] also require that the Nigerian Communications Commission only encourage and promote the sharing of passive infrastructure. Singapore's Code of Practice for Competition in the Provision of Telecommunication Services provides that only passive infrastructure must be shared including radio distribution systems, in-building cabling, lead-in ducts and associated manholes, monopoles and radio towers.[4]

Finally, the recently enacted EU Directive of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks ("EU Directive")[5] mandates the sharing of "*physical infrastructure*" only. Physical infrastructure is defined under Art. 2(2) of the EU Directive as:

> "*any element of a network which is intended to host other elements of a network without becoming itself an active element of the network.*"

(ii) Definition of "*Concept of "Control*"

Part 1.3 defines an "*Infrastructure Provider*" as an individual operating/spectrum licensee that either owns or is "*in control*" of Infrastructure "*amenable to sharing*". However, the concept of "*control*" of Infrastructure is defined ambiguously under Part 1.3 as the legal right granted under agreement or otherwise "*to procure the full compliance by the owner of* [a] *facility*" with the Draft Regulations. The concept of "*procuring*" compliance is also ambiguous in this respect.

Owing to the importance of the concept of "*control*" in terms of the scope of application of the Draft Regulations, this is a significant omission from the current draft. It is unclear whether URCA's intention is to provide for the scenario whereby an operator has "*control*" of Infrastructure by virtue of a network sharing agreement, or where it has concluded a buy and lease back agreement with a third party vendor tower company, for example. The possibility to conclude multiple layers of access arrangements for the same Infrastructure is not a favorable scenario, and risks leading to the degradation of access, technical interference and avoidable administrative/legal complexity.

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[1] Commonwealth of Dominica, Statutory Rules and Orders No. 36 of 2010 (Gazetted 30 December 2010), Regulation 3(1).
[2] Guidelines for Siting and Sharing of Telecommunication Base Station Infrastructure, issued by the Rwanda Utilities Regulatory Agency, Section 3.
[3] Guidelines on Collocation and Infrastructure Sharing, Regulation 4(2).
[4] Section 7.5.1.
[5] Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks.

Finally, Part 1.3 does not address the possible situation where both the owner and the party "*in control*" of the Infrastructure can comply with the requirements of the Draft Regulations.

(iii) Scope of URCA's Power to Issue a Direction to Share a Specific Facility (Parts 2.5 – 2.7)

It is unclear when the power granted to URCA under Parts 2.5 – 2.7 to issue a "*direction*" to share specific facilities would apply. For example:

- Does this power only apply where an Infrastructure Provider and an Infrastructure Seeker fail to successfully conclude negotiations on Infrastructure sharing pursuant to Part 3 of the Draft Regulations?

- Should the Infrastructure Seeker formally petition or request that URCA issue a direction obligating the Infrastructure Provider to grant access (and if so, how), or do Parts 2.5 – 2.7 allow for the taking of unilateral and *ex-parte* action by URCA?

- Does URCA intend that this power apply when an Infrastructure Provider has denied an Access Request, which appears to be suggested by Part 5.4(iii)?[6] In this respect, CBL notes that, in the event an Infrastructure Provider denies an Access Request, there would be no commercially negotiated terms on which URCA could base any direction to share a specific facility.

- How does the power to issue a direction interrelate with URCA's dispute resolution power under Part 6?

Further, the administrative form of a direction issued by URCA pursuant to Parts 2.5 – 2.7 is not explicitly stated in the Draft Regulations.

The manner in means in which URCA can dispose of the extensive power granted to it under Parts 2.5 – 2.7 must be clarified. CBL submits that URCA's failure to clearly define the scope of its powers under Parts 2.5 – 2.7 makes the proposed legal framework unworkable, at least in its current form.

(iv) Interaction with dispute resolution powers

It is important that the dispute resolution provisions are sufficiently robust in order to ensure that the Draft Regulations serve their purpose of facilitating market entry and effective competition. The existence of expedited dispute resolution procedures are an essential factor in ensuring that the new mobile licensee can avail of access to mobile network infrastructure where required, thus allowing it to comply with its network deployment requirements. In spite of this, it is unclear how URCA's dispute resolution powers under Part 6 interact with some of the other powers granted to it under the Draft Regulations, including:

[6] Part 5.4(iii) of the Draft Regulations provides that, where an Infrastructure Provider has denied an Access Request, URCA may "*impose an infrastructure sharing arrangement on the parties under these regulations*".

- the power to direct that an Infrastructure Provider grant access to Infrastructure (Parts 2.5 – 2.7);

- the power to issue a direction establishing Access Charges (Part 4.4); and

- the power to act under Part 5.4 where URCA concludes that access has been unreasonably refused.

It is also unclear whether URCA is obligated to consider the various factors and criteria established under the Draft Regulations (including those set out under Part 2 and the Schedule) when considering a dispute under Part 6.

(v) Factors taken into consideration by URCA when evaluating infrastructure sharing

The Draft Regulations establish a number of factors to be taken into consideration by URCA when implementing the proposed network infrastructure sharing framework. Table 1 below attempts to demonstrate the potential inconsistencies that exist in respect of these factors. Whilst CBL understands that different Parts of the Draft Regulations are designed to achieve different objectives and outcomes, our analysis suggests that it may not always possible to reconcile the various factors to be taken into consideration by URCA under the different Parts of the Draft Regulations.

CBL submits that any lack of clarity and consistency in this respect is likely to increase the risk that the intended objectives of the regulations will be stymied by inter-operator disputes and litigation.

Table 1 – Different factors considered by URCA in Evaluating Infrastructure or Tower Sharing

Drafting proposed by URCA in various parts of the regulations	Direction by URCA to share a specified facility (Parts 2.5-2.7)	Special provisions for Construction, Use and Sharing of Towers (Parts 2.8-2.13)	Refusal of access (Parts 5.1-5.5)
Facility can be reasonably duplicated or substituted	✔	×	×
Existence of technical alternatives	✔	×	×
Facility is critical to service supply	✔	×	×
Facility has suitable space for current and reasonable future needs	✔	×	×
Encourages effective and efficient use of facilities	✔	×	×
Cost, time and inconvenience to licensees and public	✔	×	×
Proximity to existing	×	✔	×

towers			
Tower saturation	×	✔	×
Impact of sharing on desired coverage	×	✔	×
Technical feasibility of sharing on existing or nearby towers	×	✔	×
Cost of modification to existing towers	×	✔	×
Health and safety considerations	×	✔	×
Environmental impacts	×	✔	×
Design of the proposed new tower	×	✔	×
No suitable sharing space	×	×	✔
Access will compromise safety, security, or reliability	×	×	✔

** Reference to clauses of Parts 1-6 of the Draft Infrastructure Sharing Regulations.*

2. Examples of Ambiguities, Inconsistencies and Oversights in the Schedule

(i) General observations

(a) <u>Mandating tower sharing will impede the new entrant's ability to roll out its own network and meet its coverage obligations</u>

URCA proposes to limit the granting of permits for new electronic communications towers to instances where it is not economically and/or technically feasible to co-locate electronic communications equipment concerned on an existing tower (see Part 2.8 and Section 1 of the Schedule). URCA's proposed approach essentially mandates the co-location of equipment on electronic communications towers (particularly in urban areas), with the limited exception of cases where such co-location would not be economically/technically feasible.

As discussed in Section 2(iii) above, CBL contends that the mandating of passive RAN infrastructure sharing in this manner, as the effective default scenario, represents an excessively intrusive regulatory approach, and fails to guarantee the new entrant access to BTC's passive RAN infrastructure (including communications towers) in order to comply with its stringent network deployment conditions. It also impedes the new entrant's ability to deploy its own passive RAN infrastructure in areas where it may wish to do so, the deployment of which is equally important to both ensuring compliance with the network roll-out requirements, and to facilitating infrastructure based competition in mobile market. As such, URCA's proposals are discriminatory and disproportionate as applied to the new entrant against the new entrant.

Moreover, the broad manner in which the concepts of economic/technical feasibility are characterized or defined under the Schedule allows URCA significant discretion when assessing an application, and makes it very difficult for an operator deploying a new network to know and understand when it should seek to co-locate, and when it has a good case for the construction of a new communications tower.

(b) Concerns over URCA's proposed "centralized" approach

While CBL supports access to passive RAN infrastructure, we are concerned that URCA's proposed "*centralized*" approach risks unduly restricting the possibility for mobile communications operators to deploy their own network infrastructure. The risks associated with this outcome (particularly in respect of the ability of the new licensee to meet its network roll-out requirements and the delivery of infrastructure based competition to the mobile sector) have already been addressed in detail in the Response above (particularly at Section 2(iii).

(c) URCA's restrictive approach is unprecedented

CBL has not found any relevant precedent in the other jurisdictions that we have looked at for the purpose of this response to consultation for a similarly restrictive approach. In order to demonstrate the unduly restrictive nature of the Schedule in a comparative context, a number of examples from other jurisdictions are discussed briefly below.

- In the UK, for example, tower construction policy falls within the remit of local planning authorities, and not the telecommunications regulatory authority, Ofcom. The current policy is that towers should be kept to a minimum and, whenever possible, tower sharing should be encouraged. For example, in the *Planning Policy Guidance Note 8*,[7] tower sharing is "*strongly encouraged*", and applicants should explore this possibility before applying for a permit for a new tower. Local planning authorities may "*reasonably expect*" applicants for new masts to show evidence that they have explored the possibility of erecting antennas on an existing building, mast or other structure. If an operator does not provide "*satisfactory evidence*", its application can be rejected by local planning authorities. The Planning Policy Guidance Note 8 acknowledges that, "*depending on the characteristics of the location*", site sharing (as opposed to mast sharing) may be more appropriate, and should therefore also be considered.

- The *Planning Policy Guidance Note 8 also provides that,* where a mobile base station is added to an existing mast or site, the operator should confirm that the cumulative exposure will not exceed the ICNIRP Guidelines.[8]

[7] See pars. 66 – 73. The Planning Policy Guidance 8 (August 2001) gives guidance on planning for telecommunications development (including radio masts and towers, antennas of all kinds, radio equipment housing, public call boxes, cabinets, poles and overhead wires) while protecting the environment.

[8] The International Commission on Non-Ionising Radiation Protection has published guidelines for limiting exposure to time varying electric, magnetic and electromagnetic fields (up to 300 GHz), par. 99.

- In the United States ("US"), state and local Governments, with certain limitations, authority over decisions regarding the "*placement, constriction and modification of personal wireless service facilities*" (including commercial services).[9] Federal legislation dating from 2012 mandates the grant of qualifying applications for permission to collocate, replace or modify transmissions equipment on existing towers.[10]

- The Federal Communications Commission (the "FCC") has acknowledged the risks of cumulative exposure from tower sharing. In particular, the FCC has recognized the danger on-tower exposure (due to the presence of nearby co-located equipment) may be significant when work is undertaken on a tower subject to collocated transmitters.[11] Power adjustment agreements may be signed to ensure that all tower licensees jointly comply with FCC guidelines for exposure levels.

(ii) Specific Comments on the Draft Guidelines

(a) Discretion allowed to URCA when evaluating an application for a permit

Lack of reference to objective standards and international guidelines

Part 2.8 of the Draft Regulations sets out a number of "*factors*" that URCA will consider when assessing request to construct a new communications tower. A similar list of factors (or "*criteria for the evaluation of applications*") is set out under Section 3 of the Schedule.

The lists established under Part 2.8 and Section 3 of the Schedule contain many broad and undefined terms. The expansive manner in which these factors or criteria are characterized or defined allows URCA significant discretion when assessing any such application under the proposed approach. Examples include the references to "*health and safety considerations*" (Part 2.8(vi) and Section 3(k) of the Schedule), "*any likely adverse impact on the environment in the area surrounding the proposed tower*" (Part 2.8(vii) and Section 3 (g) of the Schedule), and "*tower saturation in the area*" (Part 2.8(ii) and Section 3.c of the Schedule).

Moreover, URCA has not tied any of these factors or criteria to objective standards and/or (international) guidelines. While this grants URCA maximum discretion in terms of the way in which these factors or criteria apply in practice, it makes it very difficult for a stakeholder to appreciate or otherwise understand with any degree of certainty how the guidelines set out in the Schedule would, if adopted in their current form, actually apply in practice.

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[9] 47 U.S.C. Section 332(c)(7) entitled "Preservation of local zoning authority".
[10] 47 U.S.C. Section 1455(a) entitled "Facility modifications".
[11] *See* 47 C.F.R. Sections 1.1307(b)(1) (requiring calculation using total power of collocated simultaneously operating transmitters owned and operated by a single licensee); 1.1307(b)(3)(providing for shared responsibility for compliance due to emissions from multiple fixed transmitters); *see generally Reassessment of Federal Communications Commission Radiofrequency Exposure Limits and Policies*, First report and Order and Further Notice of Proposed Rulemaking and Notice of Inquiry, 28 FCC Rcd 3498 (2013).

Lack of criteria for what URCA would consider acceptable when considering a request

CBL notes that URCA has identified radii for search areas that URCA considers appropriate for the applicant's determination of possible co-location opportunities based on the height of the tower for which approval is being sought (Part 4i. of the Schedule).

However, the Draft Guidelines do not provide criteria for what URCA would consider acceptable when considering other factors relating to a request to construct a new communications tower, such as:

- the design of the proposed new tower (Section 3(h) of the Schedule);[12] and
- proposed transmitter specifications (Section 3(j) of the Schedule).

Inconsistency between lists of "factors"/"criteria" and possible shortcomings

The lists of "*factors*"/"*criteria*" established under Part 2.8 of the Draft Regulations and Section 3 of the Schedule are not the same. The list under Section 3 of the Schedule includes a number of additional considerations that are not mentioned under Part 2.8, including the completeness of the application (Section 3.a)), the feasibility analysis for co-location (Section 3.i)), proposed transmitter specifications (Section 3.j), interference analysis (Section 3.l) and appropriate authorization for use of telecommunications/broadcasting equipment (Section 3.m)).

CBL also notes, as a general observation, that most of the "*factors*"/"*criteria*" set out under Part 2.8 of the Draft Regulations and Section 3 of the Schedule relate to technical feasibility, rather than the economic feasibility analysis that URCA proposes to apply.

Finally, it is unclear whether URCA would consider any negative impact caused by tower sharing on the ability of an existing occupier(s) of the tower to emit their signals.

Demonstrating to URCA's "satisfaction" is too broad

Part 2.8 of the Draft Regulations provides that a service/spectrum licence holder must "*demonstrate to URCA's satisfaction*" that it is not economically/technically feasible to co-locate on an existing communications tower. This principle is repeated under Section 1.ii of the Schedule.

CBL considers that, while this provision grants URCA with very broad discretion, the exercise of such discretion is, once again, not tied to any clear criteria or qualification. As noted above, in the UK's *Planning Policy Guidance Note,* local planning authorities may "*reasonably expect*" applicants for new masts to show evidence that they have explored the possibility of erecting antennas on an existing building, mast or other structure.

[12] The Rwandan Guidelines contain various design requirements (see, for example, Sections 4.1.2.1.3 – 4.1.2.1.5 and 4.1.3 – 4.1.6. Further, in Australia, Infrastructure must be designed and installed in compliance with the requirements of the ACMA guide 'Accessing and Installing Telecommunications Facilities - A Guide (October 1999), available at: http://www.acma.gov.au/WEB/STANDARD/1001/pc=PC_2135

(b) <u>General lack of clarity in the application process</u>

CBL considers that the bifurcated application process proposed by URCA is confusing and, in some cases, appears to be internally inconsistent. For these reasons, and notwithstanding the fact that it adds and additional layer of unnecessary bureaucracy to the whole permit application process, it is considered unworkable in its current form.

For example, Section 1 of the Schedule requires that an applicant must firstly demonstrate to "*URCA's satisfaction*" that co-location on an existing tower is neither economically/technically feasible before submitting an application for non-objection to construct a new tower. In spite of this, the procedure for the submission of the application also requires that evidence of co-location feasibility (see Section 2.i.b) of the Schedule). Moreover, the "*criteria for the evaluation of the application*" that are set out under Section 3 of the Schedule include both the "*technical feasibility of sharing on any nearby existing towers*" (Section 3.e)) and the "*feasibility analysis for co-location*" (Section 3.i)).

It is unclear, therefore, at which stage the economic/technical feasibility assessment is actually undertaken by URCA, or whether it is undertaken at multiple stages in the process (which, if the case, would be unnecessary and excessively burdensome on the applicant). It is also unclear how both references to feasibility under Section 3 of the Schedule differ from each another.

Also, there is a shift from reference to colocation not being "*economically or technically feasible*" under Part 2.8 of the Draft Regulations and Section 1.i of the Schedule to it being simply "*not feasible*" under Section 1.iii of the Schedule.

(c) <u>Timing</u>

Although some parts of the Draft Regulations are highly prescriptive when imposing timeframes on the parties (including timeframes for owners of electronic communications towers to submit an inventory to URCA[13] and the number of days parties have to conclude an Access Agreement[14]), Parts 2.8-2.13 of the Draft Regulations and the Schedule are completely silent as to the timeframes that may apply during the application process.

For example:

- Section 1.iv of the Schedule initially states that URCA will inform the applicant of its decision within three weeks of the submission of the application for a Certificate of Non-Objection. This provision further states that this timeline can be extended, depending on whether additional information is required from the applicant, and whether URCA is required to conduct its own co-location investigation. No time limit is, however, set out for such extension.

[13] Part 2.11, Draft Regulations.
[14] Part 3.7, Draft Regulations.

- Section 2.iii of the Schedule provides for a verification audit to be undertaken by URCA, depending on the feasibility of co-location, but does not provide for a specific time frame for the carrying out of this audit.

- Similarly, Section 2.iv provides that the applicant will enter into discussions on co-location with the owner of the existing tower, but does not set any time limit on how long such negotiations can continue for. Nor does this provision address the eventuality of a failure by both parties to reach a commercial agreement. In this respect, the applicability of the relevant provision of the Draft Regulations in respect of such negotiations (or otherwise) is not explicitly specified in the Schedule.

- Section 2.v provides for possible field investigations of the location of the proposed tower by URCA. However, no provision is made for notifying the applicant of such an eventuality. Moreover, the one week timeframe provided to the applicant to "*resolve*" any inconsistences between the information provided in the application, and the information gathered during the field trip, may not be sufficient.

(d) Period of validity of a Certificate of Non-Objection

CBL notes that Section 6.i of the Schedule provides that any Certificate of Non-Objection granted by URCA is valid for a period of 6 months only. This assumes that all other necessary permits required for the construction of a new tower under the bifurcated process established under the draft Guidelines can be obtained within this time frame. However, URCA's approach does not take into consideration the possibility that the process for the granting of such permits could be delayed beyond this timeframe. If this is the case, the current proposal would require that the applicant go through the whole process once again.

(e) When can an application be considered "complete"?

Section 2.i of the Schedule refers to an "*incomplete application*". It does not, however, confirm that an application that includes all of the components set out between Sub-sections i.a) – j) of that provision constitutes a "*complete application*". In this respect, there is no requirement that URCA inform an applicant within a specified time period (e.g., 5 working days) that the application is "*complete*" or indicate what is missing from the list set out under Section 2.i of the Schedule that makes it incomplete.

CBL notes that confusion or disagreement as to what constitutes a "*complete application*" for a permit to construct a tower has, for example in in the US, led to a delay in the processing of applications at the local level. The FCC has recently addressed this issue in the context of the Federal legislation/regulations setting out specific standards and timing relating to application completeness.[15] This issue is also addressed in our response to Question 4(a) above.

[15] See: *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, Report and Order, 29 FCC Rcd 12865, 12957 (p. 217), 12970 (pp. 259-260) (2014).

(f) Status of URCA's "recommendation" under Section 2.iv

It is unclear how the "*recommendation*" issued by URCA to the applicant pursuant to Section 2.iv of the Schedule to enter into co-location negotiations fits into the overall decision making process.

For example, it is unclear whether the "*recommendation*" may constitute a rejection of the application within the meaning of Section 5.i of the Schedule, or be another form of decision (i.e., determination of the feasibility of co-location pursuant to Section 2.iv *versus* objection to the construction of a new tower pursuant to Section 5.i).

(g) Consideration by URCA of "any other relevant information"

Section 2.i of the Schedule provides that URCA may consider the information provided as part of the application, together with "*any other relevant information in its possession*" when making a decision. URCA is, however, under no obligation to make known and available any such "*other relevant information*" to the applicant, and CBL does not consider this to be in the interests of transparent and reasoned decision making.

(h) Requirement for a Feasibility Analysis for co-location

Section 2.iii of the Schedule requires the undertaking of a "*Feasibility Analysis*" "[w]*here there are existing structures in the area*." However, this requirement is not tied to Section 4 of the Schedule, which establishes draft towers and search guidelines. There is, therefore, no indication as to how "*existing structures*" in the area should be understood for the purposes of Section 2.iii.

The reference under Section 2.iii to instances where there are "*existing structures in the area*" is too broad, and is not qualified or defined. For example, it is unclear what is meant by reference to "*the area*", and, in particular, the exact radius around the proposed tower site to be taken into consideration for the purpose of Section 2.iii.

It is further unclear whether URCA's reference to "*existing structures*" is actually a reference to existing "*towers*", as defined under Part 1.3 of the Draft Regulation.

Finally, it is unclear whether the assessment under Section 2.iii of the Schedule is to be made by reference to the "tower database" to be created by URCA pursuant to Part 2.13 of the Draft Regulation.

(i) Replacement of an existing tower

CBL notes that neither the Draft Regulations nor the Schedule address the replacement of an existing communications tower that is not subject to a co-location arrangement, where such replacement is necessary due to the damage or destruction of the tower structure, or where it simply needs to be replaced because of old age/poor condition etc. The important question here is whether, in the case a new permit is required for the construction of the replacement tower, the owner would be subject to the draft Schedule.

Part 3.10 of the Draft Regulations states that "[t]*he replacement of a shared facility* […] *may only be undertaken upon written prior approval of URCA"*. However, this provision does not apply to communications towers that are not being shared. Moreover, it is unclear whether the general reference to the "*prior approval of URCA*" could be understood to also include the specific approval process established under the Schedule. Finally, Part 3.10 does not provide for a timeframe within which it will grant written

approval. It is important that parties to an Access Agreement are not left waiting for inordinate amounts of time for approval by URCA, while the quality of their service may be deteriorating owing to their inability to replace a shared facility.

(j) Importance of issuing a reasoned decision in writing

Section 1.iv of the Schedule (referenced in Part 2.9 of the Draft Regulations) does not specify what form the decision that is to be taken by URCA in response to an application for a Certificate of Non-Objection should be in. Section 2.vi indicates that, when a decision is taken by URCA, the "*applicant shall ordinarily be informed*" of the decision within three weeks of the application. Section 5.i, on the other hand, states that, in the case that URCA rejects an application for the construction of a new tower, it will "*inform the applicant of the decision in writing stating the reasons for the objection*."

The importance of transparent and reasoned decision making cannot be overlooked in the context of the Draft Regulations, and CBL respectfully reminds URCA of its transparency obligations under Section 5(c) of the Comms Act. In the US, for example, the Telecommunications Act 1996 requires that local Governments explain their reasons for a denial of an application to construct a new tower.[16] The scope and importance of this requirement is demonstrated in a recent US Court of Appeals decision (handed down on 14 January 2015). In *T-Mobile-South v. City of Roswell, the Court of Appeals* held that the decision maker must provide the reasons for a denial which "*need not be elaborate or even sophisticated*" but "*simply clear enough to enable judicial review*."

[16] Section 332(c)(7)(B)(iii).

Annex 2– URCA's Proposed End-to-End Process for Granting of Access

Action	Timeline	Relevant Provision
Draft Regulations		
Submission of Access Request to Infrastructure Provider	N/A	N/A
Infrastructure Seeker must submit Access Request to URCA	Within 2 business days of submitting Access Request	Part 3.3 DR
Infrastructure Provider must acknowledge receipt of Access Request and copy its acknowledgment to URCA	Within 5 business days of receipt of Access Request	Part 3.4 DR
Infrastructure Provider may request further information that it may reasonably require in order to process the Access Request (and must send a copy of request to URCA)	Within 5 business days of receipt of Access Request	Part 3.5 DR
Infrastructure Provider denies an Access Request [unclear on what basis at this stage] and notifies the Infrastructure Seeker and URCA	Within 14 calendar days of receipt of Access Request unless such period has been expressly extended by URCA in writing [Unclear how this deadline will apply in case where Infrastructure Provider requests further information and Access Seeker requires more than 9 days to respond.]	Part 5.2 DR
Infrastructure Provider must use all reasonable endeavors to conclude Access Agreement	Within 42 calendar days of receipt of an Access Request (or within 42 days of receipt of all additional information requested from the Infrastructure Seeker)	Part 3.7 DR

Where the Infrastructure Seeker and Infrastructure Provider fail to reach an agreement and URCA's ADR Scheme is invoked:[1]		
ADR Scheme Action		
Notice of Dispute submitted to URCA (including minimum required information)	Within 90 calendar days after occurrence of an unresolved matter in contention between the parties where legal proceedings are not in progress	Section 8.3.1 ADR
URCA acknowledges receipt of Notice of Dispute	Within 2 business days of receiving Notice of Dispute	Section 8.4.1 ADR
URCA expects to complete initial assessment	Within 5 business days of receiving the Notice of Dispute	Section 8.6.3 ADR
Applicant must respond to any RFI or clarification request by URCA	Within 7 business days of receiving Request for Information (RFI)	Section 8.6.5 ADR
URCA shall notify the Applicant in writing of its proposed course of action which may include directing further negotiation between the parties or notifying Respondent that a dispute has been filed and requesting initial comments [Presumably this is the stage at which URCA would "direct the Infrastructure Provider … to reconsider its decision refusing access" pursuant to Part 5.4(ii) DR.]	Within 10 business days of receiving Notice of Dispute and receiving all required information in response to RFI	Section 8.6.6 ADR and Part 5.4(ii) ADR
Overall timeline where URCA directs "the Infrastructure Provider … to reconsider its decision refusing access" pursuant to Part 5.4(ii) DR	**Approx. at least 3 months from submission of Access Request [However, if the Infrastructure Provider and Infrastructure Seeker fail to agree on access a**	**Part 5.4(ii) DR**

[1] Pursuant to the ADR Scheme, the matter can be resolved by URCA or referred to mediation or an arbitration panel.

	second time, the whole process will start again]	
Respondent must submit comments in response to URCA's notification of a dispute	Within 14 business days of URCA's notification of a dispute	Section 8.8.2 ADR
Infrastructure Provider must supply URCA with cost data it may require in order to determine whether the Infrastructure Provider's proposed Access Charges are in accordance with Parts 4.1 and 4.2 DR	Within 14 calendar days of a written request by URCA.	Part 4.3 DR
Option 1: Mediation – *voluntary, at parties' request*		
Parties must notify URCA that they have agreed to mediation	Within 14 business days of the expiry of the timeframe for the Respondent to submit comments in response to URCA's notification of a dispute	Section 8.9.4 ADR
URCA must initiate the mediation process	Within 5 business days of a request by the parties to initiate mediation	Section 8.9.5 ADR
Commencement of mediation	To be determined by the Mediator appointed or as agreed by the parties	Annex B, Section 3.3 ADR
Names and addresses of persons authorised to represent each party and who will be attending meetings shall be sent to the other party, URCA and the Mediator	Within 5 business days of appointment of the Mediator	Annex B, Section 6.4
Conduct of the mediation including submission of reports summarizing dispute and timing of mediation sessions	To be established by the Mediator, as soon as possible after being appointed, and in consultation with the parties	Annex B, Sections 7.2 and 7.3 ADR
Settlement Agreement is submitted to the Mediator	Within 10 business days after such settlement has been executed	Annex B, Section 9.4 ADR
Termination of Mediation by either party	On 10 business days' notice to the Mediator and the other party	Annex B, Section 10.2 ADR
Option 2: Determination by URCA		
URCA issues Preliminary Determination	No timeframe specified as from URCA's receipt of comments from Respondent in response to URCA's notification of dispute	Section 8.11.1 ADR

Respondent makes representations about matters in Preliminary Determination	Within 30 calendar days of receiving Preliminary Determination (or as otherwise specified in Preliminary Determination)	Section 8.11.1 (ix) ADR
URCA issues its Final Determination and Order to the dispute	Within 30 calendar days of receiving representations from the Respondent and any interested party	Section 8.11.2 ADR
Either party may apply for correction of clerical, computational or typographical error, or error of similar nature, in written determination	Within 10 calendar days of issuance of written determination	Section 7.13.3(ii) ADR
Other party must submit any comments in relation to application for correction or issue to which it relates	Within 5 business days of notification of application for correction	Section 7.13.3(ii) ADR
URCA issues revised determination following correction	Within 14 calendar days of expiration of period of time for the receipt of any comments from the other party or within such other period as URCA may decide	Section 7.13.4 ADR
URCA will seek to resolve issue in accordance with ADR Scheme	Within 6 months of dispute being referred to URCA	Section 7.5.3 ADR
Overall timetable where URCA resolves dispute pursuant to its ADR Scheme referenced in Part 6 of the Draft Regulations and upholds the Infrastructure Provider's decision refusing access under Part 5.4(i) DR	**Approx. at least 8 months from submission of Access Request**	Part 6.1 DR, Section 7.5.3 ADR and Part 5.4(i) DR
Overall timetable where URCA resolves dispute pursuant to its ADR Scheme referenced in Part 6 of the Draft Regulations and issues a direction in accordance with Parts 2.5 and 5.4 DR or Part 4.4 DR	**Approx. at least 10 months from submission of Access Request [including at least 2 months for URCA to conduct a consultation prior to issuing a direction, as required under Part 2.5 DR]**	N/A

Option 3: Referral to Dispute Resolution Panel – *if the dispute concerns technical or complex issues that will more effectively be dealt with by an expert panel*		
URCA shall appoint Dispute Resolution Panel	[No timeframe specified as from URCA's receipt of comments from Respondent in response to URCA's notification of dispute]	Section 9.2.1 ADR
URCA shall establish Terms of Reference for the Panel and serve a copy on each party to the dispute	[No timeframe specified as from URCA's receipt of comments from Respondent in response to URCA's notification of dispute]	Section 9.3.1 ADR
Commencement date for the ADR proceedings	Date on which URCA issues Terms of Reference and all submissions by the parties to the dispute under the ADR Scheme to the Panel	Section 9.5.1 ADR
Panel shall adopt a procedural timetable and issue directions regarding conduct of ADR proceedings	As soon as reasonably practicable after having received the Terms of Reference from URCA	Section 9.5.2 ADR
Panel may issue an oral determination	On 3 calendar days' notice	Section 9.7.3 ADR
Panel shall issue written determination including reasons for decision	Within 14 calendar days of oral determination	Section 9.7.4 ADR
Determination by Panel will be binding on the parties and take effect	Within 14 [calendar] days after issuance of written determination	Section 9.7.6 ADR
Either party may apply for correction of clerical, computational or typographical error, or error of similar nature, in written determination	Within 30 calendar days of issuance of written determination	Section 9.7.9(ii) ADR
Other party may submit any comments in relation to application for correction or issue to which it relates	Within 14 calendar days of notification of application for correction	Section 9.7.9(ii) ADR
Panel issues revised determination following correction	Within 14 calendar days of expiration of period of time for the receipt of any comments from the other party or within such other period as the Panel may decide	Section 9.7.10 ADR
Overall timetable for Panel to issue decision	Within 3 months of issuance of Terms of Reference by URCA	Section 9.7.2 ADR

Overall timetable for resolution of dispute in the event that URCA refers dispute to arbitration panel (where dispute has been referred to URCA pursuant to its ADR Scheme referenced under Part 6 of the Draft Regulations)	At least approx. 12 months from submission of Access Request	N/A
Draft Regulations - following conclusion of ADR Scheme:[2]		
URCA may uphold the Infrastructure Provider's decision refusing access	**At least approx. 12 months**	Part 5.4(i) DR
URCA may make a direction either: (i) imposing infrastructure sharing arrangement on the parties (presumably pursuant to a Direction under Part 2.5 DR); or (ii) setting Access Charges (under Part 4.4 DR)	Within at least 2 months of conclusion of ADR process. This is because Part 2.6 DR provide that prior to issuing a direction, URCA must provide a reasonable opportunity for the Infrastructure Provider and any other interested parties to make representations, and consider all representations, which presumably requires URCA to issue a conclusion, which will include: • preparing consultation document; • at least 30 days required for responses to consultation as required under s. 11(3)(b) Comms Act; • considering responses and drafting response to consultation and final decision)	(i) Parts 2.5 and 5.4 DR (ii) Part 4.4 DR
Notification of Access Agreement to URCA	Within 14 calendar days of signature or amendment	Part 3.13 DR

[2] whether by determination by URCA, mediation or arbitration:

	by the parties	
Amendment of Access Agreement by URCA	Not provided for although presumably URCA would want the ability to modify the Access Agreement is it does not comply with its Regulations, on costing methodologies for example.	N/A
Appeal of decision issued by URCA to the Utilities Appeal Tribunal or any other appellate body	At least several months	Section 7.15.1 ADR
Overall timetable in the event URCA's ADR Scheme is invoked, an arbitration panel determines the issue and URCA subsequently issues a Direction	**At least approx. 14 months from submission of Access Request [plus time for any appeal to the Utilities Appeal Tribunal or any other appellate body]**	**N/A**
If it is determined, that BTC is not required to provide access to its passive RAN infrastructure, the Infrastructure Seeker will need to apply for a permit to construct its own tower		
Tower construction application for non-objective certificate from URCA	[Unclear]	
Tower construction application process with Ministry of Works	Approximately 6 months	