



**BAHAMAS TELECOMMUNICATIONS COMPANY
LIMITED**

**APPLICATION FOR PERMANENT PRICE CHANGE
FOR CALLS TO LOCAL DIRECTORY ENQUIRY
SERVICES**

CONSULTATION DOCUMENT

ECS 18/2011

Issue Date: 21 September 2011

Response Date: 24 October 2011

UTILITIES REGULATION & COMPETITION AUTHORITY

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1 Introduction

The Bahamas Telecommunications Company Limited (BTC) has applied to the Utilities Regulation and Competition Authority (URCA) for approval to introduce a permanent price change for calls originating on BTC's networks to directory enquiry services (i.e., 916). In the case of fixed-line customers, BTC currently bundled the service with the fixed monthly access charge. Meanwhile, calls from mobile subscribers and public payphones to directory enquiries are free of charge.

BTC had applied to URCA in response to a regulatory measure issued by URCA on 11 January 2011 requiring BTC, an operator with Significant Market Power (SMP), to submit retail charging proposals for calls to directory enquiry (DQ) services and automated ancillary services.

Based on URCA's review and in accordance with the terms of s.11 (1) and s.13 (1) of the Communications Act ("Comms Act"), URCA deems the application/request to introduce a new retail price for calls to directory enquiry services to be of "public significance" and therefore has decided to consult on the proposed retail price pursuant to s.11(1)(a) of the Comms Act and paragraph 11.2 of ECS 15/2010 issued 22 April 2010 – "Retail Pricing Rules for Operators with SMP" ("the Rules").¹ As stated at paragraph 11.3 of the Rules, in cases of applications for permanent price changes, URCA may consult with interested parties and afford them a minimum of thirty (30) days to make submissions on the consultation.²

1.1 Objectives of this Consultation

This consultation is issued in accordance with the terms of s.11(1)(a) and paragraph 11.2 of the Rules, and contains URCA's preliminary views and intent with respect to the application set out above. Broadly, the purpose of the consultation is to:

- outline BTC's price application with respect to local directory enquiry services;
- set out the reason for the application put forward by BTC;
- highlight relevant issues; and
- indicate URCA's preliminary views on and proposed modifications to BTC's request.

URCA is minded to approve the application subject to URCA's proposed modifications outlined in Sections 4.2.1 and 4.2.2 below and invites written

¹ Available at www.urbahamas.bs.

² See paragraph 11.3 of the Rules.

comments from BTC and interested third parties on URCA's intent relative to BTC's application. Where a respondent believes that any of the preliminary positions set forth by URCA in this document are contrary to relevant regulatory objectives, principles and/or obligations applicable to BTC, the respondent should clearly set out their reasoning for such objections, together with evidential information to substantiate their position.

1.2 How to respond to this Consultation

Responses to this consultation should be submitted to URCA by 5 p.m. on 24 October 2011. Persons must send their written responses or comments to the Director of Policy and Regulation, either:

- by hand, to URCA's office at UBS Annex Building, East Bay Street, Nassau; or
- by mail to P.O. Box N-4860, Nassau, Bahamas; or
- by fax, to (242) 393-0153; or
- by email, to info@urcabahamas.bs.

URCA reserves the right to make all responses available to the public by posting responses online on its website at www.urbahamas.bs. If a response is marked confidential, reasons should be given to facilitate evaluation by URCA of the request for confidentiality. URCA may publish or refrain from publishing any document or submission, in its sole discretion.

URCA will review the responses received on or before 24 October 2011 and publish a Statement of Results on the consultation.

1.3 Structure of the Remainder of this Document

The rest of this document:

- provides background to BTC's price application (Section 2);
- discusses BTC's proposed price change (Section 3); and
- sets out URCA's review of the application, particularly focusing on compliance with key regulatory requirements (Section 4).

2 Background to the Consultation

BTC has SMP in the “high level” markets for fixed voice and data services, and mobile voice and mobile data services. By virtue of these SMP designations, URCA imposed specific *ex ante* Retail Pricing Rules on BTC. In making an application for a permanent price change, BTC must adhere to the minimum expected information requirements laid down in paragraph 16 of the Retail Pricing Rules. Those Rules also establish some core objectives and principles that URCA must adhere to when reviewing requests for price changes. URCA has also required BTC to publish a Reference Access and Interconnection Offer (RAIO) setting out the terms and conditions upon which BTC offers to provide access and/or interconnection services to other licensed operators in The Bahamas. These regulatory measures are intended to ensure fair competition between operators, thereby furthering the objectives of sector reform.³

The new retail price proposed by BTC is an outcome of URCA’s assessment of the draft RAIO published by BTC in May/June 2010. As part of URCA’s assessment and engagement with BTC and third parties on the draft BTC RAIO, URCA required BTC to submit retail pricing proposals for calls to directory enquiries, and automated ancillary services (i.e., calls to weather/time of day and temperature). This requirement was designed to ensure that an efficient competitor could offer similar retail services in direct competition with BTC, particularly in cases where that competitor used inputs from BTC under the terms and conditions set out in the RAIO. This position was first stated in URCA’s consultation paper on BTC’s draft RAIO.⁴ In that document, URCA emphasised that the proposed non-zero RAIO charges for calls to directory enquiries and automated ancillary services in combination with the existing zero-rated retail charges for these services could result in downstream competitors not being able to profitably replicate BTC’s service offerings.

URCA reaffirmed this position in its final decision on Question 18 of the RAIO Response and Final Decision document (ECS 01/2011) issued 11 January 2011. This stated:

“URCA requires BTC to submit to URCA, within thirty (30) business days from the date of the publication of this Final Decision document, retail proposals for calls to DQ enquiries and automated ancillary services. URCA will review

³ See “Obligations Imposed on Operators with Significant Market Power (SMP) –Final Decision”, 22 April 2010 (ECS 11/2010) at www.urcabahamas.bs.

⁴ ECS 22/2010 issued 7 September 2010

such proposals within the context of key regulatory principles and any other relevant regulatory measures issued by URCA.

For the avoidance of doubt, in the absence of realistic and appropriate proposals from BTC, URCA will review the situation and, if appropriate, URCA could mandate BTC to remove the non-zero charges for terminating calls to DQ and automated ancillary services originating from other operators, or require such retail pricing changes as may be appropriate to ensure fair competition between operators.”

In keeping with the above statement, BTC applied to URCA, on 21 February 2011, to introduce new charges for calls to directory enquiry services and automated ancillary services. URCA did not raise any objection or concerns with respect to BTC’s proposed price for calls to directory enquiries, as outlined within the 21 February 2011 application. In contrast, specific concerns were raised about the proposed retail prices for the other services. In particular, given the inadequacy of the information provided by BTC, URCA could not properly assess the proposed charges for automated ancillary services.

Subsequent to URCA’s initial review, BTC made a number of adjustments and revisions to its original price application for automated ancillary services either in response to concerns and/or clarification questions raised by URCA. On 8 August 2011, URCA advised BTC that in the absence of relevant and defensible data from BTC, URCA could not, amongst others, assess whether the charges proposed by BTC satisfy relevant competition tests.

Within its 18 August 2011 response letter, BTC put forward a new proposal which URCA found acceptable. Under this proposal BTC would apply a rate of zero as the retail charge for calls to automated ancillary services and a rate of zero as the charge for the equivalent wholesale services and inputs. On 30 August 2011, URCA approved the new proposal for calls to automated ancillary services as put forward by BTC.

As an outcome of this approval, URCA directed BTC to remove the current wholesale charges for automated ancillary services in BTC’s URCA-approved RAIO, which is published online on BTC’s website. URCA notes that BTC has since complied with this request.⁵

⁵ <http://www.urbahamas.bs/download/061092700.pdf>

URCA advised BTC that BTC shall only be permitted to apply URCA-approved non-zero charges for wholesale inputs to ancillary services in the event that URCA authorises appropriate non-zero retail rates for calls to automated ancillary services.

URCA believes BTC's proposal is realistic and appropriate given the absence of relevant costing information or benchmarking evidence to determine the reasonableness of BTC's proposed non-zero charges for automated ancillary services. Furthermore, the proposal is consistent with URCA's final decision on Question 18 of the RAI0 Response and Final Decision document (ECS 01/2011 issued 11 January 2011).

3 BTC's Price Change Application

Table 1 below presents BTC's proposed price for directory enquiry services. The proposed price is applicable to calls from BTC's mobile and fixed lines to the local directory enquiry services. The application was silent as to whether the proposed price applies to calls originating on public payphones. However, in response to a clarification question, BTC confirmed that calls from payphones to the local directory enquiry services would also attract the proposed price of 35 cents per call.

Table 1: BTC's Proposed Price – Directory Enquiry Services

Proposed Retail Price (cents per call)	35.00
Approved Wholesale Charges (cents per call)	29.75
BTC'S Proposed Retail Margin (cents per call)	5.25
BTC's Proposed Retail Margin (%)	17.65

Source: BTC

In developing its pricing proposal, BTC applied a 'wholesale plus' mark-up approach. The wholesale element (29.75 cents per call) was approved by URCA as part of its Final Decision on BTC's RAIO and is specified in the current online version of BTC's RAIO.⁶ This charge is based on regional benchmarks and is a proxy for BTC's cost based charge.

The second element is a retail margin of 5.25 cents per call and represents a 17.65% mark-up on the URCA-approved wholesale charge. URCA understands that the 17.65% mark-up represents BTC's estimate of an appropriate retail margin to cover its downstream costs of providing the service on a retail basis. BTC has not provided URCA with detailed justification or evidence to support its proposed mark-up, but asserts that the mark-up is appropriate relative to the wholesale charge "*... in the RAIO to promote competition in the provision of the service while at the same time providing BTC's retail customers with benefits.*"⁷

⁶ See G.5 of Annex G – Price List in The Bahamas Telecommunications Company Limited Reference Access and Interconnection Offer dated June 2011 at www.btcbahamas.bs.com.

⁷ BTC's letter of July 15, 2011.

4 URCA's Review of BTC's Price Change Application

In this Section, URCA:

- reviews the application against the minimum information requirements specified in paragraph 16 of the Retail Pricing Rules;
- determines if the proposed price is reasonable relative to cost or other supporting information; and
- examines whether an efficient competitor could profitably replicate BTC's directory enquiries (DQ) offer. In this context, URCA has sought to identify whether the retail price proposed by BTC could have anti-competitive effects on downstream competitors.

4.1 Completeness of BTC's Application

Under the terms of paragraph 13 of the Rules, BTC must first seek and obtain URCA's prior approval before introducing the new price. BTC has complied with this part of the Rules as evidenced by the application.

Further, paragraph 16 of the Rules stipulates the minimum specified information required from BTC before URCA can properly consider the application for a permanent price change. URCA reviewed BTC's submission against these requirements and in general, URCA's review finds that the application is complete relative to the specific information requirements of paragraphs 16.

4.2 Level of Charging Proposed by BTC

As BTC is the SMP provider of calls to directory enquiries, URCA considers whether BTC's proposed retail price is unreasonable. Ideally, any economic analysis of BTC's proposal would examine the actual costs (network/wholesale and downstream) incurred by BTC in operating the service at the retail level. URCA notes that this information is not one of the outputs from BTC's 2009 separated accounts.

However, in keeping with paragraph 18 of the Rules, BTC provided URCA with other information to support its retail price application. This information shows that the proposed price (35 cents per call) is above the average price (31.4 cents per call) charged by BTC's equivalents in Trinidad & Tobago, Cayman Islands, and Anguilla. Given the paucity of the information BTC provided, URCA endeavoured to improve BTC's analysis by extending the benchmarking sample to include information from other Cable & Wireless (LIME) affiliated entities in the Caribbean (Barbados, and St. Vincent and the Grenadines). The expanded sample size produced an average price

of 32.64 cents per call, which is less than the 35 cents per call proposed by BTC. URCA considers that the expanded sample is likely to be more representative of DQ charging by regional incumbents.

URCA believes that the countries comprising the benchmarked sample are suitable comparators for The Bahamas. These countries have liberalised their telecommunications markets for a number of years. In all the countries, cost reflective pricing is a core objective of national regulatory policy, calls to directory enquiries are price regulated services, and incumbents in most countries are required to provide wholesale inputs for directory enquiries to downstream competitors on regulated terms.

URCA could not determine conclusively whether charges in all the benchmarked jurisdictions are truly cost reflective. Nonetheless, URCA notes that BTC's proposed price is above the average price for the expanded sample (32.64 cents per call) but this does not necessarily lead to a conclusion that BTC's pricing proposal is unreasonable. In view of the foregoing and given the disparity in pricing across the region, URCA has no reasonable or justifiable grounds on which to reject BTC's proposed price on the basis that it is excessive relative to charges in the benchmarked countries.

4.2.1 "Free" calls to Directory Enquiry Services

URCA's research on pricing for the service has also shown that in many countries where a non-zero retail charge is levied, established operators offer their fixed-line customers (business/residential) a number of free calls (up to three (3) depending on the country) to local directory enquiries per month. It is only after the maximum number of free calls allowed are customers billed at the non-zero price for the service. One explanation for this approach is that the printed telephone directory is usually out of date, almost immediately upon publication, and does not always contain the information that a customer is seeking.

URCA believes that those arguments hold true in relation to BTC's printed directory which is published annually, and therefore as part of this tariff review URCA is proposing that BTC offer its fixed customers (business/residential) three (3) free calls to DQ services per month. That is, only after the third inquiry to the DQ database is the customer required to start paying the non-zero retail charge (35 cents per call) for the service.

4.2.2 Calls from Public Payphones to Directory Enquiry Services

URCA is proposing another modification to BTC's price request. This modification relates to the application of the charge to calls from public payphones to directory enquiry services. URCA understands that, for a number of reasons, the printed directory is not readily accessible at public payphone facilities across The Bahamas. This is bound to be an inconvenience for customers and does not guarantee members of the public a minimum level of service. In light of this, URCA considers that it might not be in the public interest to levy the new charge to public payphone users who cannot avail of the printed directory. In that context, providing free calls to directory enquiry services would be a convenient and fair way for BTC to ensure users of public payphones have access to local directory enquiry services. URCA is therefore proposing that calls from public payphones to local directory services should not be a chargeable service at this time.

4.3 Replicability of BTC's Directory Enquiry Services

Replicability is an important principle underpinning the access and interconnection framework in the sector. In the context of this price review, replicability requires that downstream competitors:

- (i) have access to equivalent wholesale inputs on pricing terms and conditions that are transparent and non-discriminatory; and
- (ii) are able to profitably replicate BTC's offer.

4.3.1 Access to Wholesale Inputs

In the context of this price review, BTC's offer is currently replicable by the competition using inputs from BTC under the terms and conditions specified in BTC's URCA-approved RAIO.

BTC has SMP in the relevant wholesale inputs required to replicate its retail offer. To this end, URCA imposed an obligation on BTC to provide the equivalent wholesale inputs to downstream competitors under the terms of its RAIO. BTC's current RAIO (as approved by URCA) contains technical specifications and general and commercial terms, including charges. The charges and other related terms reflected in URCA's consultation and final decision on BTC's RAIO are specifically designed to ensure that BTC's offer is replicable. URCA is satisfied that an alternative operator establishing an interconnection agreement with BTC can replicate BTC's directory enquiry services using the approved RAIO terms and conditions.

4.3.2 Competition Tests

Within the context of this price review, URCA has sought to identify whether the price proposed by BTC could have anti-competitive effects by reducing the ability of downstream competitors to profitably match BTC's offer. In this context, URCA has sought to ensure that, given the information available at this time, the proposed price does not result in either a margin squeeze or predatory pricing. These pricing practices are prohibited under both Part XI (Competition Provisions) of the Comms Act, and the Retail Pricing Rules.

Accordingly and in line with the legal and regulatory framework, URCA examined whether the proposed price could result in an anti-competitive effect on downstream operators. Ideally, any assessment of the proposed price per relevant competition tests for margin squeeze and predation would require information on the incremental cost of the service, as a proxy for its marginal cost. Unfortunately, URCA has no data on BTC's incremental cost or that of any other licensee in The Bahamas.

However and as stated in Section 3 above, URCA approved the charge for the equivalent wholesale inputs in its Final Decision on BTC's RAIQ. For this reason, this charge is a given and requires no further analysis for the purposes of this price review. URCA must consider however whether the retail margin, as proposed by BTC, is a reasonable estimate of the downstream costs incurred by BTC in operating the service at the retail level. As stated above, BTC has not provided URCA with evidential information to support its proposed mark-up, but asserts that the margin is appropriate.

URCA is not aware of any available evidence on appropriate marginal costs or retail margin (i.e., proxy for downstream costs) for directory enquiry services. Similarly, URCA has no information on the marginal cost or downstream costs (retail margin) that would be incurred by an efficient competitor wishing to replicate BTC's offer. Nevertheless, URCA is cognisant that too low a margin could make it infeasible for downstream operators to profitably replicate BTC's offer or lead to potentially inefficient entry in the case of the margin exceeding the retail cost of an efficient operator.

Notwithstanding the above, URCA considers that the proposed mark-up of 17.65% could be in line with common retail margins for other telecommunications services

such as operator assistance services, leased lines and bitstream services.⁸ On the basis of this, URCA considers that BTC's new proposed price need not result in a margin squeeze or predatory pricing on an efficient downstream competitor. As such, URCA considers that it could be reasonable for URCA to accept BTC's proposed level of retail charging for calls to directory enquiries.

URCA notes that it has the power to conduct a competition investigation if new evidence and information should demonstrate after URCA's approval of the application that the new price is potentially anticompetitive, as URCA's approval of a price application does not prevent it from conducting an *ex post* investigation of that price at a later date.

4.4 Summary of URCA's Preliminary Views

URCA has reviewed BTC's price application against relevant regulatory principles and is minded to approve the application, subject to the requirements that BTC provides:

- fixed line customers (residential and business) with three (3) free calls to DQ per month. That is, fixed line customers would only start paying a non-zero retail charge (35 cents per call) for the service after the third call in any particular month.
- calls from public payphones to directory services would be free of any retail charge.

For the avoidance of doubt, calls from all mobile customers (prepaid and postpaid) to directory enquiry services would attract the tariff of 35 cents per call.

URCA invites comments from all parties on BTC's proposal and URCA's proposed modifications to the application. Where a stakeholder believes that any of the preliminary positions set forth by URCA in this document is contrary to relevant regulatory objectives, principles and/or obligations applicable to BTC, it should set out clearly its reasoning for such objections, together with evidential information to substantiate its position.

⁸ See footnote 53 (p.54) Consultation Document (ECS 22/2010) issued 7 September 2010 on BTC's Draft Reference Access and Interconnection Offer (RAIO).