BTC Everyday.

The Bahamas Telecommunications Company Limited

Comments on Responses to:

Preliminary Determination

Consultation on the Proposed Revision of the Retail Pricing Rules for Price Regulated Services not subject to Price Cap Regulation (Non Price Capped Services)

Consultation Document ECS 16/2016

Legal, Regulatory and
Carrier Services Division
August 29, 2016

Contents

1 Executive Summary

Bahamas Telecommunications Company Ltd. (BTC) herein provides its reply to other parties' comments on the *Consultation on the Proposed Revision of the Retail Pricing Rules for Price Regulated Services not subject to Price Cap Regulation (Non Price Capped Services) Preliminary Determination*, ECS 16/2016, issued by the Utilities Regulation and Competition Authority ("URCA") on 26 May 2016 (the "Consultation Document" or "Preliminary Determination") and the corresponding proposed amendments to the existing Retail Pricing Rules (RPR)[1] provided in Annex 1 to the Consultation Document, the "modified" *Regulation of Retail Prices for SMP Operators of Non Price Capped Services – Rules* ("MRPR").

BTC is in possession of two comments on the Consultation Document: NewCo2015 Limited ("NewCo") and Cable Bahamas Ltd. ("CBL"), both dated 8 July 2016 (the "NewCo Response" and "CBL Response", respectively). BTC is not aware of any other responses to the Consultation Document.

The MRPR apply only to Non Price Capped ("NPC") services, which at the current time only constitute BTC's mobile services. These new rules are intended to support the goals espoused in URCA's 2016 Draft Annual Plan – i.e., to "*ensure that all participants in the [mobile] market have a level playing field while being guided by high level principles of fairness, non-discrimination and transparency*".

As explained in BTC's 8 July 2016 Response to the Consultation Document (the "BTC Response"), BTC generally supports URCA's timely proposals to implement a more flexible and light-handed regulatory regime for BTC's mobile services. In other jurisdictions where mobile service markets have been liberalised, competition developed very rapidly. The same will happen in The Bahamas. However, to ensure that consumers fully benefit from the introduction of mobile competition, URCA must adopt a regulatory regime for mobile services that provides all competitors with the opportunity and ability to compete on a level playing field. In this respect, as set out in the BTC Response, BTC supports URCA's proposals to move from the existing *ex ante* (pre-approval-based) to an *ex post* (notification-based) regulatory regime. This is the same approach adopted by regulatory authorities in other jurisdictions where mobile service markets were liberalised. That said, as explained in the BTC Response, there are several areas where BTC considers that URCA has unnecessarily proposed to retain certain *ex ante* regulatory measures which, in BTC's view, should be replaced by *ex post* safeguards as is the norm in other jurisdictions.

NewCo and CBL, on the other hand, propose that URCA postpone consideration of any changes to the RPR for a variety of unfounded or irrelevant reasons. In effect, they are asking URCA to tilt the playing field in NewCo's favour for an indefinite period of time so NewCo can more rapidly and profitably establish itself in the market. Acquiescing to these requests would no doubt benefit their shareholders, but they would do nothing to benefit consumers in The Bahamas. Moreover, their proposals are inconsistent with URCA's goal of ensuring a "level

[1] URCA, *Regulation of Retail Prices for SMP Operators – Rules*, ECS 06/2014, 16 April 2014.

playing field" in the mobile market and are also out of step with regulatory practice in other jurisdictions, including the Caribbean region, and therefore should be rejected.

The Consultation Document included 12 Consultation Questions. In what follows, BTC replies to the NewCo and CBL Responses, as applicable, on each these questions. BTC notes that the absence of a response by BTC to any specific comment(s) included in the Newco and CBL Responses should not be interpreted as BTC's agreement with any such comment(s).

2 Rationale for the Preliminary Determination

The Consultation Document provides URCA's rationale for conducting a review of the existing RPR applicable to BTC's mobile services at this time in light of the imminent change in the structure of the mobile market. URCA noted that any changes made to the existing RPR applicable to BTC's mobile services would be "interim" in nature until URCA conducts a full market or significant market power ("SMP") review of mobile services.

As set out in the BTC Response, BTC is in agreement with URCA's rationale for performing the present review of the existing RPR for BTC's mobile services. BTC also urges URCA to implement the corresponding proposals before the date of commercial launch of NewCo's services.

In contrast, both NewCo and CBL are opposed to modifying the existing RPR for BTC's mobile services at this time for a variety of reasons. BTC replies to NewCo and CBL's arguments in this respect below.

2.1 Reply to the NewCo Response

NewCo suggested that it is too early to conduct a SMP assessment of the mobile market since Newco has not launched, and, therefore, there are no "solid grounds" to make any changes to the existing RPR for BTC's mobile services. In addition, NewCo also suggested that the mobile market in The Bahamas is unique in that NewCo is entering a "mature" market whereas new entrant mobile operators in other countries more often entered mobile markets during earlier, expansive growth phases. According to NewCo, market entry timing differences may affect market dynamics (e.g., customers' willingness to switch supplier) and, therefore, NewCo proposed that URCA wait "some time for the mobile market to adjust to competition before it undertakes its market review, perhaps 12 months after the commercial launch of NewCo's services"[2] and, by extension, makes any changes to the existing RPR for BTC's mobile services.

In the introductory section of the NewCo Response, a variety of additional pre-conditions or "minimum requirements" were proposed by NewCo that it considered should also be met before any changes to the existing RPR for BTC's mobile services are considered. In summary, these include:[3]

---

[2] NewCo Response, page 8

[3] NewCo Response, page 3.

i) The establishment by URCA of either a calling party pays ("CPP") or a receiving party pays ("RPP") billing protocol for fixed to mobile ("F-M") and mobile to mobile ("M-M") traffic that all parties are committed to implementing.

ii) The establishment by URCA of a domestic mobile termination rate ("MTR") based on a "Pure" long-run incremental cost ("LRIC") methodology.

iii) The finalization of BTC's Reference Access and Interconnection Offer ("RAIO") as per URCA's instructions after the RAIO consultation process has been finalised.

iv) National roaming is available to NewCo and declared "fit-for-purpose" by URCA.

v) Mobile number portability ("MNP") has been introduced in the market.

vi) Minimum *ex ante* safeguards are in place to prevent discriminatory pricing practices.

In BTC's view, URCA should reject all of the above-offered reasons to postpone considering and making any changes to the existing RPR applicable to BTC's mobile services.

First, BTC considers NewCo's proposal that URCA wait for some period of time, including as much as 12 months after the commercial launch of NewCo's services, before considering changes to the existing RPR to be misguided and self-serving. Most of these proposed pre-conditions have already been addressed by URCA and, therefore, are not relevant to this consultation. NewCo has been granted sufficient spectrum to provide mobile services throughout The Bahamas, and it has agreed as a condition of licence to build out its network throughout the country within 2 years. URCA has very recently ruled on the billing protocols for F-M and M-M traffic as well as the domestic MTR in its recent decision on BTC's RAIO, which in the latter case included setting an interim cost-based rate for the domestic MTR.[4] BTC has amended its RAIO as stipulated by URCA's decision in this regard. URCA has also ruled on BTC's national roaming obligation and, as stipulated by URCA's decision, BTC is in the process of implementing the service.[5] Both BTC and NewCo are currently working with URCA towards the implementation of MNP. Lastly, the question of regulatory safeguards to prevent discriminatory pricing practices is a subject of this consultation and, as such, is by BTC discussed further below. Therefore, none of NewCo's proposed "pre-conditions" provides any valid reason for URCA to delay consideration or implementation of changes to the existing RPR for mobile services given the imminent liberalization of the market.

In fact, these proposed pre-conditions for any changes to the existing RPR amount to little more than an unwarranted delay tactic that are in stark contrast to public pronouncements. For example, on NewCo's behalf, CBL has told the public that it expects NewCo to be a highly effective and successful competitor in The Bahamas. CBL has claimed that new entry into the

---

4 URCA, *Consultation on Proposed Changes to the Reference Access and Interconnection Offer Published by The Bahamas Telecommunications Company Ltd: Response To Public Consultation And Final Determination*, ECS 19/2016, 8 August 2016.

5 URCA, *Provision of National Roaming Services on the Cellular Mobile Networks of the Bahamas Telecommunications Company Ltd. in The Bahamas to the Second Cellular Mobile Operator for an Interim Period: Statement of Results, Final Determination and Order*, ECS 18/2016, 22 July, 2016

Bahamian mobile market could increase mobile penetration by 33 percentage points and that new entrants into liberalised mobile markets have typically seized an average 42% market share within three years (based on experience in the other Caribbean and Latin American jurisdictions).[6] This market share estimate was later updated by CBL to the range of 27% to 51%.[7] Consequently, NewCo's implied suggestion that it may struggle to gain customers initially or that mobile competition may be very limited for some time is entirely inconsistent with its major shareholder's perspective on a liberalised market in The Bahamas. NewCo's proposal that URCA delay consideration of any changes to the existing RPR for mobile services is little more than an attempt by NewCo to gain an unwarranted competitive advantage during the initial year or two of mobile competition. While such an approach would no doubt be highly favourable to NewCo's shareholders, it would not be beneficial to consumers in the Bahamas and nor would it be consistent with the goal of ensuring a "level playing field" in the mobile market.

2.2 Reply to the CBL Response

For its part, CBL outlined concerns it has with BTC's current retail prices for F-M calls and, in particular, the level of the inbound airtime charge levied by BTC to its mobile subscribers. CBL considers that current inbound airtime charges to be, in its view, excessive and potentially detrimental to the development of the fixed services market. For this reason, CBL suggested that before any changes to the existing RPR for BTC's mobile services are considered, URCA should first conduct a review of BTC's existing pricing of F-M calls. According to CBL, only after such a review is completed should changes to the existing RPR be considered by URCA.

In reply, BTC notes that CBL's concerns regarding BTC's retail price levels are outside the scope of the current consultation. BTC's current retail mobile prices, including F-M call charges paid by mobile subscribers, have been set under the existing RPR and are not subject to review in this consultation. There is no reason nor need to review BTC's current retail mobile prices before any changes to the existing RPR are considered by URCA.

As in the case of the NewCo Response, CBL's proposal is simply intended to delay consideration and implementation of necessary changes to the existing RPR in order to provide a competitive advantage to NewCo over the course of the initial year or two of its operation. BTC submits that URCA should reject CBL's proposal and, moreover, consider it to be outside the scope of the present consultation.

---

6 N. Hartnell, "Cable Targeting 42% Mobile Market Share ", Tribune, February 16, 2016. See: http://www.tribune242.com/news/2016/feb/16/cable-targeting-42-mobile-market-share/.

7 X. Smith, "Cable $50M share offering for NewCo investment", Nassau Guardian, July 18, 2016. See: http://www.thenassauguardian.com/bahamas-business/40-bahamas-business/66320-cable-50m-share-offering-for-newco-investment.

3 Competitive Market Concerns and Regulatory Options

3.1 Excessive Pricing

The Consultation Document concluded that the risk of excessive pricing would not be a significant concern going forward and, therefore, also concluded that any corresponding *ex ante* regulation is no longer needed to protect consumers from excessive pricing in the mobile market.

As explained in the BTC Response, BTC agrees with URCA's conclusion on this issue.

NewCo expressed "provisional" agreement with URCA on this issue. NewCo qualified its agreement by suggesting that the risk of excessive pricing would only be constrained if it is able to compete with BTC on a "level playing field". According to NewCo, this requires that BTC is prevented from engaging in anti-competitive and discriminatory pricing and also that barriers to switching are addressed through the introduction of national roaming and MNP.

In reply, BTC notes that NewCo failed to provide any explanation or basis for the alleged risk of excessive pricing it claims may exist in a competitive mobile services market. Moreover, contrary to what NewCo suggests, URCA's proposed changes to the existing RPR are in fact intended to provide a level playing field for competitors in the mobile services market. Consequently, NewCo's provisional qualifications are groundless.

Otherwise, BTC notes that it addresses concerns related to undue discrimination in Section 3.4 below. As well, BTC also notes that implementation of both national roaming and MNP are well underway. Therefore, the provisional qualifications noted by NewCo are being fully addressed through the present consultation as well as associated URCA consultations.

3.2 Predatory Pricing

In the Consultation Document, URCA concluded any potential risk of predatory behaviour would be unlikely and, in any event, unprofitable.

As set out in the BTC Response, BTC agrees with URCA's conclusion on this issue.

NewCo also indicated that it does not consider predatory pricing to be a significant concern. At the same time, however, NewCo once again qualified its agreement with URCA on this issue. It questioned the timing of the removal of *ex ante* obligations on BTC to demonstrate that its temporary and permanent price changes would not foreclose the market to competitive entry. According to NewCo, the risk of predation would be "higher at the point of competitive entry than during the monopolistic era".

In reply, BTC notes that NewCo's comments on this issue are difficult to follow. On one hand, it agrees with URCA that "in a market where a second licensee has entered, predatory pricing is not a significant concern" and, yet on the other hand, it suggests that there may be a risk of predation at the point of entry. However, it offered no explanation has to how such a strategy could be profitably implemented or how it could be used to foreclose entry into the mobile market. In BTC's opinion, NewCo is once again simply offering up another unfounded reason to delay consideration and implementation of changes to existing RPR delaying in order to provide itself a competitive advantage following its entry into the market. BTC submits that URCA's conclusion that there is no significant risk of predation going forward is correct and that the related qualifications suggested by NewCo should be dismissed.

3.3 Margin Squeeze

In the Consultation Document, URCA noted that in a competitive mobile market BTC would be required to provide NewCo with wholesale mobile call and messaging termination services and a wholesale national roaming service. URCA noted that these wholesale services will be regulated and, for that reason, URCA concluded that it does not consider margin squeeze to be a significant concern going forward.

As explained in the BTC Response, BTC agrees with URCA's conclusion on this issue.

In contrast, NewCo claimed that it considers the risk of margin squeeze to be a significant concern. In support of this claim, NewCo referred to a hypothetical scenario under which (i) URCA approved an "above-cost" MTR and (ii) BTC engaged in a targeted retail price reduction strategy. It claimed that under this hypothetical scenario, NewCo's ability to compete could be limited. At the same time, NewCo also suggested that such a concern would be eliminated or significantly reduced if URCA set BTC's MTR using a Pure LRIC basis. For this reason, NewCo asked URCA to conduct an immediate review of the level of the MTR, including the methodology used to set it. NewCo added that BTC should also be required to provide direct interconnection to its mobile network.

In reply, BTC notes that URCA has just completed a consultation on BTC's RAIO which included consideration of the level of and methodology used to set the domestic MTR. In its decision, URCA set the level of the domestic MTR at 2.48¢ per minute on an interim basis.[8] In BTC's view, this interim rate may well be below rather than above cost and, moreover, the methodology used to derive it was not subject to comment by interested parties in the course of the BTC RAIO consultation. That said, as recognized by URCA in its decision and acknowledged by BTC and NewCo during the BTC RAIO consultation, developing a LRIC-based MTR would be a "time and resource intensive exercise".[9] Consequently, URCA has established an interim cost-based domestic MTR and has announced that it would conduct a comprehensive review of all interconnection rates in the near term. There is no reason to postpone consideration and implementation of changes to the existing RPR for mobile services until the planned interconnection rate review is completed as proposed by NewCo.

---

8 URCA, ECS 19/2016, pages 17-18.

9 Ibid., page 7.

BTC also notes that NewCo's hypothetical scenario to justify its claimed margin squeeze concern does not stand up to scrutiny. For one, the domestic MTR has been set by URCA on a cost basis. Therefore, NewCo's first assumption that the MTR is set "above-cost" does not hold. Secondly, no specifics were provided by NewCo on what is meant by targeted retail price reductions. In any case, NewCo has already agreed that the risk of predation is not significant. Moreover, under the proposed MRPR, any prices considered to be potentially anti-competitive would remain subject to *ex post* regulatory safeguards. Consequently, BTC submits that NewCo's margin squeeze risk concerns are simply unfounded. It has provided no evidence that margin squeeze would be a significant concern going forward.

Lastly, it is BTC's position that suitable and reasonable interconnection facilities are being made available to NewCo to support its service launch. Consequently, NewCo's additional concern in this regard has already been addressed by URCA in its recent decision on BTC's RAIO.

3.4 Undue Discrimination

The Consultation Document acknowledged that certain forms of price discrimination or of differential pricing are common practices in competitive mobile service markets. URCA specifically noted that differential on-net/off-net pricing is one such example of price discrimination, and added that it is a pricing practice often adopted by mobile operators. At the same time, URCA noted that while in some instances some pricing practices are not unduly discriminatory, in other instances some practices could raise potentially undue discrimination concerns.[10] In this respect, URCA asked parties if they considered undue discrimination to be a significant concern going forward and, if so, why.

In its Response, BTC explained in detail why it did not consider the potential for undue discrimination in the mobile services market to be a significant concern going forward and, correspondingly, no specific *ex ante* regulatory safeguards should be imposed.

In contrast, NewCo stated that it considers all on-net/off-net price differentials to constitute undue discrimination and therefore a significant concern. It offered a number of reasons for its position in this respect:

i) NewCo argued that <u>all</u> on-net/off-net differential pricing practices are anti-competitive in intent and nature. It added that if URCA should assess what forms of price discrimination are in consumers' interests and, if no examples are found, then discriminatory on-net/off-net pricing should not be allowed on an *ex ante* basis.

ii) NewCo again claimed that the timing of the introduction of competition in The Bahamas is different than in many other countries in and around the Caribbean. Therefore, NewCo proposed that competition, at least for an initial undefined period of time, should only be permitted to take place on the "basis of innovation, lower prices and improved quality of service".

10 For simplicity, we use the term "not unduly discriminatory" as the antonym of "undue discrimination".

iii) NewCo argued that on-net/off-net price differentials would result in a "club effect" that would raise barriers to switching suppliers and, in particular, make it more attractive for customers to stay with BTC because it has a larger subscriber base.

For these reasons, NewCo suggested that any attempt by BTC to introduce on-net/off-net price differentials should be treated as "undue discrimination" and, therefore, subject to *ex ante* regulatory provisions, including URCA review and pre-approval.

In reply, BTC finds NewCo's first claim that it was unable to uncover any example of on-net/off-net price differentials that was not anti-competitive in intent and nature to be disingenuous. As highlighted in the Consultation Document, on-net/off-net price differentials have been and continues to be a common pricing practice in the mobile industry, including in the Caribbean region. Moreover, such differentials have been implemented at different points in time in the development of the market – i.e., in the early expansion phases as well as in later mature market stages. Further, as discussed in the BTC Response, for the most part, such pricing differentials raise no significant concerns regarding potential undue discrimination and, in that context, the majority of regulatory authorities in other jurisdictions, do not impose any *ex ante* regulations related to undue discrimination in competitive mobile markets. BTC is not aware of any Caribbean regulator that has imposed such *ex ante* provisions, including as explained in the BTC Response, the Regulatory Authority of the Bermuda, that have specifically studied the issue. As further noted in the BTC Response, the handful of *ex post* investigations in some foreign jurisdictions referenced in the Consultation Document, does not in of itself provide any real guidance as to whether there may be significant competitive concerns in The Bahamas warranting *ex ante* regulation in a competitive mobile services market. In fact, it supports the exact opposite – i.e., the *ex post* measures are sufficient to address any competitive concerns that may arise. Consequently, NewCo's suggestion that effectively all on-net/off-net price discrimination is presumptively anti-competitive is simply incorrect and is not borne out by the actual practical experience and actions of regulatory authorities and competitions agencies around the world.

BTC also considers NewCo's proposal that BTC be effectively banned from offering on-net/off-net price differentials particularly surprising given that NewCo suggested in the consultation on BTC's RAIO that NewCo be permitted to charge an MTR that is higher than the MTR that URCA approves for BTC. NewCo appears to have overlooked the fact that its proposal for asymmetric termination rates would effectively necessitate on-net/off-net price differentials. Consequently, NewCo's proposed ban on on-net/off-net price differentials is inconsistent with its proposal on mobile call termination rates.

As to NewCo's second claim regarding the timing of its entry, it is once again simply asking URCA to provide it with a competitive advantage following its entry into the mobile market. It is suggesting that BTC be limited in its ability to compete once NewCo launches by restricting the types of innovative new pricing plans that BTC would be permitted to introduce in the market. As already noted above, while such a constraint would no doubt be highly favourable to NewCo's shareholders, it would not be beneficial to consumers in the Bahamas and would not be consistent with the goal of ensuring a "level playing field" in the mobile market.

Lastly, NewCo's third claim that allowing on-net/off-net price differentials would create a "club effect" that could raise barriers to switching and make it more attractive for customers to stay with BTC because it has a larger subscriber base is biased and misguided. Network effects, the positive network externality that accrues to telecommunications subscribers from a new subscriber because they are now able to call and receive calls from a greater number of subscribers, is a fundamental feature of telecommunications and other network industries. The positive network externality results from the unintended and unpriced additional value to the network from an individual new subscriber. Network effects have generally been considered as uniformly positive by analysts and as a driver of the dynamic growth in the telecommunications sector around the world. Conceptually, the "club effect" can be considered as a type of operator-specific network phenomenon. It deals with the externalities associated with a subset of network subscribers (the "club"). Nevertheless, the same general principles that apply to the network apply to the club – the addition of a new subscriber to the club would add value to existing club members and, therefore, constitutes a positive club and network externality.

As noted above, on-net/off-net price differentials and other product pricing or features that may have a "club effect" are common in competitive markets (e.g., consider the vast array of existing loyalty card and point programs) and can provide consumers significant benefits as noted above. In contrast, the NewCo Response focusses exclusively on the potential negative externalities from the club effect and in particular, the effect that it could have on its own business case. Simply characterizing any such pricing or service feature initiatives as anti-competitive is misleading and, in fact, incorrect. The reality is that any assessment of the positive and negative economic externalities associated with the "club effect" have to be considered in the context of the broader and uniformly positive externalities from the sector-wide "network effect" at the same time as the competitive dynamics before any conclusions can be reached. BTC is concerned that any *ex ante* regulatory safeguards would have the effect of restricting the competitive dynamic and, therefore, resulting in real economic losses to the sector as a whole.

BTC notes that NewCo included an annex with its submission that provided a description of the "club effect" in the context of telecommunications services. In the annex, NewCo quotes extensively from a European Regulators Group (ERG)[11] document issued in 2007 on setting out with detailed supporting rationale the *ERG's Common Position on Symmetry of Fixed Call Termination Rates and Symmetry of Mobile Call Termination Rates*.[12] As the title suggests the main focus of the document is on termination rate symmetry. While there is discussion of on/off-net price differentials in the document, including reference to the fact that the practice was commonplace at the time the document was prepared, there is no suggestion or recommendation by the ERG that the such differential pricing practices should be considered anti-competitive or that they should be subject to *ex ante* regulatory oversight by National Regulatory Authorities ("NRAs") in Europe. To this date, none of the NRAs in Europe has imposed any such *ex ante* regulatory provisions.

In sum, BTC submits that NewCo has not provided any evidence that there is a significant risk of "undue" discrimination going forward. Instead, it is asking URCA to protect it from competition

---

[11] Subsequently replaced by the Body European Regulators for Electronic Communications (BEREC).

[12] ERG (07) 83 final 080312. See:

following its launch by limiting the types of pricing initiatives BTC would be permitted to undertake in a competitive market. As already noted, acquiescing to NewCo's request to limit competition in this respect would only serve to limit the benefits of competition for consumers in The Bahamas.

3.5 Bundling of Services

The Consultation Document distinguished between two types of product bundles containing mobile services: (i) Mobile-only product bundles and (ii) Multi-product bundles which contain both mobile and non-mobile services. While URCA did not consider that the existing bundling rules should apply to mobile-only bundles, it was of the view that the existing *ex ante* bundling rules should continue to apply in the case of multi-product bundles.

In its Response, BTC agreed with URCA's conclusions regarding mobile-only bundles, but also explained why it does not consider that a significant competition concern would exist going forward with respect to multi-product bundles. Therefore, BTC considers that there are no abusive bundling concerns going for either mobile-only or multi-product bundles.

NewCo stated that it considers that abusive bundling is a concern that would primarily arises in the case of multi-product bundles. NewCo offered no reasons for its position on this question, although it added that its concerns regarding potential undue discrimination extend to bundles as well.

In reply, BTC notes that it has addressed NewCo's unfounded and unsupported claims regarding potential undue discrimination in the preceding section. Otherwise, for the reasons provided in the BTC Response, BTC reiterates that it agrees with URCA that there are no significant competition concerns with mobile-only bundles going forward and, further, that BTC also considers that the same conclusion should apply to multi-product bundles.

3.6 URCA's Proposed Regulatory Options

In the Consultation Document, URCA indicated that it proposed to modify the existing RPR in order to strike a reasonable balance between BTC's need for greater flexibility to make commercial decisions in a competitive environment and the need for URCA to maintain a minimum level of protection against potential anti-competitive behaviour. Parties were asked to comment on URCA's regulatory proposals in this respect.

In its response, BTC proposed that URCA should, to the greatest extent possible, shift its reliance from *ex ante* to *ex post* regulatory measures and adopt a "light-touch" regulation approach for mobile services going forward.

In contrast, NewCo disagreed with URCA's proposal to modify the existing RPR at this time. Once again, it claimed that only a "full market review" would allow URCA to identify those competition concerns that are relevant in the specific market circumstances of The Bahamas. It further suggested that URCA wait "perhaps 12 months after the commercial launch of NewCo's services" before it undertakes a full market review.

In reply, BTC reiterates that the Consultation Document did not identify any significant concerns going forward with excessive pricing, predation, margin squeeze or price discrimination. BTC agrees with these conclusions and provided supporting rationale for its views in the BTC Response. NewCo has not provided any evidence of significant anti-competitive concerns going forward with respect to any of these issues. It has simply advanced a number of unfounded or irrelevant reasons for URCA to postpone consideration of any changes to the current regulatory regime so NewCo can more rapidly and profitably establish itself in the market. This obvious delay tactic should be rejected by URCA. BTC submits that for the full benefits of competition to be provided consumers in The Bahamas, URCA should move from *ex ante* to *ex post* regulation of mobile services, as is the norm in other countries.

4 Proposed Modifications to the Retail Pricing Rules

4.1 Ex Ante v Ex Post Competition Tests

In the Consultation Document, URCA indicated that in the context of mobile liberalisation it proposed to place greater reliance on *ex post* investigative powers to address potential anti-competitive concerns, as follows:

i) *Predatory Pricing*: BTC would no longer be required to submit an *ex ante* predation test for price decreases as they relate to short term/full length promotions and permanent price changes for mobile services and bundles. URCA would instead rely on *ex post* competition powers to address any allegations of predation that may arise.

ii) *Margin Squeeze*: BTC would no longer be required to submit an *ex ante* margin squeeze test for price reductions of retail mobile services as they relate to permanent price changes and promotions for mobile services. However, BTC would be required to submit information relating to the prices of its mobile services and associated costs on a bi-annual basis.

iii) *Undue Discrimination*: BTC would no longer be required to demonstrate on an *ex ante* basis that a price change or any new price for retail mobile services or bundles does not unduly discriminate against specific customers. However, BTC would still be expected to comply with its non-discrimination obligations by virtue of its licence and the Comms Act.

iv) *Abusive Product Bundling of Services*: Current *ex ante* requirements would remain for BTC multi-product bundles including mobile services and non-mobile services.

As explained in the BTC Response, BTC agrees with the above-noted proposals for the most part, with the exception of the proposed bi-annual margin squeeze test and the retention of the existing *ex ante* rules for multi-product bundles.

NewCo provided comments on each of the four proposals.

First, NewCo indicated that it is in agreement with URCA's proposal to rely on *ex post* competition powers to address any allegations of predation. BTC and NewCo are in agreement on this issue – although BTC notes that NewCo's position in this respect appears to contradict its position stated in early parts of the NewCo Response where it is suggested that no changes to the existing RPR should be made at this time.

Second, NewCo stated that an *ex ante* margin squeeze test would no longer be required as long as the MTR is set on a Pure LRIC basis.

In reply, BTC notes that it has already addressed above NewCo's suggestion that no changes in the existing RPR be considered or made until the MTR is set on a Pure LRIC basis. With the recent BTC RAIO decision, URCA has set a cost-based MTR on an interim basis. URCA plans to conduct a review of interconnections rates, including the MTR, in the near future. This review is expected to include consideration of alternative methodologies to set interconnection rates, which will likely include Pure LRIC as one option, but may not necessarily result in that methodology be adopted by URCA. Consequently, NewCo's suggestion that a margin squeeze test should be retained until such time that a Pure LRIC based MTR is implemented by URCA is unnecessary and should be rejected.

As explained in the BTC Response, there is no reason to retain an *ex ante* margin squeeze when there is no significant concern with margin squeeze in the mobile market. Furthermore, there is equally no need to replace the existing case-by-case margin squeeze test with an even more onerous bi-annual margin squeeze test for all of BTC's mobile services.

Third, NewCo disagreed with URCA's proposal to rely on its *ex post* competition powers to address any allegations of undue discrimination that may arise. NewCo added that it does not believe that the non-discrimination obligations under the Comms Act and BTC's licence are sufficient to prevent BTC engaging in such undue discrimination in the mobile market. As well, NewCo noted that *ex ante* obligations still apply to BTC in the fixed market despite the fact the fixed market was liberalised in 2010 and, therefore, suggested they should also be maintained in the mobile market.

In reply, BTC submits that NewCo has provided no compelling rationale for URCA to maintain reliance *ex ante* regulation to protect against the potential for undue discrimination. It has provided no evidence that undue discrimination poses a significant concern going forward; therefore, there is no reason to retain an *ex ante* test requirement. Maintaining such an obligation when it has been established that it is not necessary would be disproportionate and would only serve to limit the benefits of competition.

NewCo also attempts to draw parallels between the fixed and mobile markets in support of its proposal to retain ex ante regulation of any price changes that potentially involve a degree of price differentiation. However, at the same, NewCo also seems to recognize that market differences may well give rise to differences in regulatory obligations. In any event, fixed services are currently classified as "price capped" services and, as such, will be subject to a forthcoming review by URCA through which the existing RPR applicable to fixed and other price capped services will be modified. Therefore, regulations currently applicable or that may be applicable in the future to fixed services are irrelevant to the present proceeding which is dealing with NPC services or, more specifically, BTC's mobile services.

Fourth, NewCo indicated that it fully supports URCA's proposed approach to retain existing *ex ante* regulatory requirements in the case of multi-product bundles; however, it provided no supporting rationale for its position.

In view of the fact that NewCo provided no basis for its position on this matter, for the reasons outlined in the BTC Response, BTC maintains that URCA's proposal to retain onerous *ex ante* approval requirements for multi-product bundles including mobile services is unnecessary and disproportionate.

4.2 Notification Requirements

The Consultation Document proposed that where a relevant competition test is not required on an *ex ante* basis, the existing "pre-approval" process would be replaced by a "notification" requirement for price changes, promotions or the introduction of new services.

As explained in the BTC Response, BTC agrees with URCA's proposals in this respect.

NewCo, on the other hand, stated that while it considers a notification requirement may be appropriate to replace the current requirement to obtain pre-approval from URCA for price increases, it opposed such a requirement in the case of potential discriminatory pricing practices. NewCo added that any on-net/off-net price differential should be treated as "undue discrimination" if differences in prices are not justified by the underlying costs of providing these services.

It appears, therefore, that NewCo proposes that URCA maintain the existing *ex ante* pre-approval process for any price change, new promotion or new mobile service/bundle introduction that raises potential discriminatory pricing questions. In other words, effectively each and every price, promotion or new service introduction should be subject to an *ex ante* pre-approval process according to NewCo since any such initiatives would have to be shown to be not unduly discriminatory.

In reply, BTC notes that it has already addressed NewCo's position on this matter above. Its proposal has no evidentiary basis and is simply a self-serving measure intended to provide it with a competitive advantage. For the reasons already noted above, BTC submits that it should be rejected.

4.3 Pre-Approval Requirements

The Consultation Document proposed that existing *ex ante* pre-approval requirements be maintained for new multi-product bundles containing at least one mobile service, price changes for multi-product bundles containing at least one mobile service, changes in non-price terms and conditions of all NPC services and the withdrawal/discontinuation of all NPC services and all bundles.

As explained in the BTC Response, BTC disagrees with these proposed *ex ante* pre-approval requirements.

In contrast, NewCo stated that it agrees with URCA's proposals in this regard; however, no supporting rationale was provided for its position.

In view of the fact that NewCo provided no reasons for its position on this matter, BTC maintains that URCA's proposed *ex ante* pre-approval requirements are unnecessary and should be replaced by notification requirements. The reasons for BTC's position in this respect are provided in the BTC Response.

4.4 Notification Timeframe

The Consultation Document proposed that the notification requirements set out in the existing RPR would continue to apply to mobile service changes not requiring pre-approval, although URCA proposed to amend this process so that it would not be required to confirm receipt of the operator's notification (as required under the current process).

In its Response, BTC proposed that the notification period be shortened from 5 to 3 business days and that confirmation of receipt from URCA, if issued, remain at 2 days.

NewCo suggested that the current notification process requires URCA to confirm receipt of the operator's notification to ensure that it is clear that the notification was not lost. It added that the current approach should be maintained to ensure BTC was not under the impression that its notification has been accepted by URCA when in fact the notification had not been reviewed due to an administrative or postal error affecting the process. For this reason, NewCo proposed that the current notification process be maintained without change.

In reply, BTC notes that it is not aware of any existing problems with applications or notifications being lost in transmission to URCA. In any event, a simple fix to address such any concerns could easily be implemented through a signed receipt requirement for physical deliveries or an automatic receipt confirmation requirement for electronic deliveries. Either way, BTC considers URCA's proposed amendment to the existing notification process to be reasonable; however, as noted, BTC also considers the length of the notification process period should also be shortened.

4.5 Bi-Annual Margin Squeeze Test for NPC Services

The Consultation Document proposed that BTC be required to submit, every six months, information that enables URCA to assess whether any margin squeeze may be taking place for any mobile services and bundles services where (i) at least one alternative operator competes with the SMP operator using a wholesale product from the SMP operator or (ii) the SMP operator is required to offer a wholesale product, even if there is currently no take-up for this wholesale product.

For the reasons provided in the BTC Response, BTC strongly disagrees with URCA's proposed requirement for a bi-annual margin squeeze test for BTC's mobile services and bundles.

In its Response, NewCo stated that it agrees with the introduction of a bi-annual margin squeeze test, but only after BTC's MTR has been set by URCA on a Pure LRIC basis. In the meantime, NewCo proposed that the existing margin squeeze test should be applied to all NPC services on a case-by-case basis. No supporting rationale was provided by NewCo for either position.

In reply, BTC reiterates that URCA provided in the Consultation Document a number of reasons explaining why it "does not consider margin squeeze to be a significant concern going forward".[13] NewCo has provided no substantive evidence or reasons to reverse this conclusion. Instead, it simply argued that the MTR should, in its view, be set on a Pure LRIC basis at some point in the future. However, as already noted, this is a matter for a future not the present consultation. Consequently, BTC maintains its view that introduction of a bi-annual margin squeeze test is unnecessary and unjustified. As maintaining the existing *ex ante* margin squeeze test on a case-by-case basis, as proposed by NewCo, also no longer necessary and justified.

Reservation of rights

BTC has addressed the issues but reserves the right to comment at any time on all issues and states categorically that the decision not to respond to any issue raised in this Consultation in whole or in part does not necessarily represent agreement in whole or in part with URCA's position, nor does any position taken by BTC in this consultation mean a waiver of any of BTC's rights in any way. BTC expressly reserve all its rights

Respectfully Submitted

Bahamas Telecommunications Company Limited

---

[13] Consultation Document, pages 14-15.