# CONSULTATION ON THE PROPOSED REVISION OF THE RETAIL PRICING RULES FOR PRICE REGULATED SERVICES NOT SUBJECT TO PRICE CAP REGULATION (NON PRICE CAPPED SERVICES)

## FINAL DETERMINATION

**ECS 34/2016**

**Issue Date: 30 September 2016**

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# 1. Introduction

On 26 May 2016, the Utilities Regulation and Competition Authority (URCA) issued the Preliminary Determination entitled "Consultation on the Proposed Revision of the Retail Pricing Rules for Price Regulated Services Not Subject to Price Cap Regulation (Non Price Capped Services)" (ECS 16/2016)[1] along with the Annex containing the proposed revised Retail Pricing Rules (also referred to as the "Rules" or RPR) for Non Price Capped Services.[2]The consultation presented URCA's proposals for addressing actual and potential competition concerns that may arise in the provision of Non Price Capped Services and invited comments from stakeholders on these proposals. Presently, Non Price Capped Services cover only BTC's mobile voice and mobile data services. However Non Price Capped Services could also include other retail services in the future.[3]The consultation is considered appropriate at this time due to the forthcoming market entry of a second cellular mobile operator and the need for the Rules to be fit for purpose in a market characterised by increasing competition.

In summary, the consultation consisted of the following:

- URCA's rationale for the Preliminary Determination on the proposed revision to the Retail Pricing Rules as they relate to Non Price Capped Services;
- Background to the Preliminary Determination including an overview of URCA's 2010 and 2014 Significant Market Power (SMP) Assessments and the resulting remedies from each assessment;
- Examination of the competition concerns that may arise in the newly liberalised cellular mobile communications sector along with a review of the regulatory options available to address these concerns; and
- URCA's proposed modifications to the current Rules applicable to Non Price Capped Services.

In addition to seeking general comments and/or views to URCA's proposed amendments, URCA's consultation document contained a number of questions to assist respondents in preparing their written comments on the consultation.

Initial responses to the consultation were received from three parties:

- The Bahamas Telecommunications Company Ltd. ("BTC");
- Cable Bahamas Ltd. ("CBL"); and
- NewCo2015 Limited ("NewCo").

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[1]Preliminary Determination is available at http://www.urcabahamas.bs/download/065196900.pdf.
[2]Annex of the consultation document is available at http://www.urcabahamas.bs/download/065224200.pdf.
[3]BTC's retail fixed voice services and CBL's retail broadband and pay TV services are subject to an *ex ante* price cap regulation and thus are referred to as Price Capped Services in this context. URCA will issue a separate consultation on the need to amend the Retail Pricing Rules for Price Capped Services.

Subsequently, second round responses were received from BTC and NewCo.

The full text of all written submissions received can be found at www.urcabahamas.bs. URCA thanks BTC, CBL and NewCo for their participation in the consultation process.

This Final Determination sets out URCA's revisions to the Rules for Non Price Capped Services taking into account the responses received during the consultation period. The revised Rules are an interim measure, which URCA considers to be more appropriate for the newly liberalised market in comparison to the Rules published in 2014[4], until URCA has completed a full market review of the cellular mobile service markets (currently anticipated to take place once NewCo has established itself in the market).For the avoidance of doubt, the 2014 Rules are still in effect for Price Capped Services until the retail price cap regulation is implemented for these services.

For the avoidance of doubt, respondents should not take URCA's failure to respond explicitly to any issue raised by respondents as signifying agreement in whole or in part with the comment, that it has not considered the comment or that it considers the comment unimportant or without merit.

## 1.1 Consultation Process

The Bahamas' electronic communications industry is guided by the Communications Act, 2009 (Comms Act)[5] which provides the legal framework for URCA's regulation of the electronic communications sector. URCA's role is to implement, monitor and enforce this legislation. URCA has wide-ranging powers under the Comms Act, especially as it relates to SMP licensees.

Section 99 of the Comms Act sets out the procedures for making determinations. In particular, sections 99(1)(a) and (b) of the Comms Act collectively prescribe that if, on its own motion, URCA has reason to believe that a determination is necessary, it may make determinations relating to (among other things):

- any obligations on a Licensee regarding the terms or conditions of any licence, including obligations in licence conditions and regulations;
- any activity set out in the Comms Act; and
- where the Comms Act provides for URCA to "determine" or "to make determinations" as is the case under sections 39(1) and 116(2).

According to section 99(2) of the Comms Act, in making any determination, URCA has to consult persons with sufficient interest under section 11 of the Comms Act and provide written reasons for its determination. Section 13(1) of the Comms Act prescribes that:

> *"A regulatory and other measure is likely to be of public significance if it relates to electronic communications services or networks and can lead to one or more of the following —*

[4] *"Regulation of Retail Prices – for SMP Operators – Rules"* (ECS 06/2014) is available at http://www.urcabahamas.bs/download/091501900.pdf.

[5] The Communications Act, 2009 can be found at http://www.urcabahamas.bs/download/088554800.pdf.

*(a)* *involve a major change in the activities carried on by URCA under this Act;*
*(b)* *a significant impact on persons carrying on activities in those areas where URCA has functions under this Act; and*
*(c)* *a significant impact on the general public in The Bahamas*."

Under section 11(1) of the Comms Act, URCA shall afford persons with sufficient interest a reasonable opportunity to comment on URCA's proposals.

URCA considers that the changes to the Rules are likely to have a significant impact upon the activities carried on by licensees in The Bahamas. As such, the consultation provided an opportunity for members of the public, licensees and other interested parties to submit written comments to URCA.

## 1.2 Remainder of this Document

The remainder of this document is structured as follows:

- Section 2 – URCA's Final Determination;
- Section 3 – Responses to URCA's Consultation Questions;
- Section 4 – Additional Comments Received on the Consultation; and
- Section 5 – Conclusion and Next Steps.

## 2. URCA's Final Determination

"WHEREAS,

(i) section 5 of the Communications Act, 2009 mandates that "*All policy measures, decisions and … to take effect in the electronic communications sector in The Bahamas shall be made with a view to implementing the electronic policy objectives* …";

(ii) the overall objectives of the Electronic Communications Sector Policy as specified at section 4 of the Communications Act, 2009 are to further "*the interests of consumers by promoting competition*" and "*the interests of persons in The Bahamas in relation to the electronic communications sector*";

(iii) section 99(1)(a) and (b) of the Communications Act, 2009 empowers URCA to make determinations;

(iv) the Government at Paragraph 89 of the Electronic Communications Sector Policy (or the ECS Policy ) has directed URCA "*to ensure that all regulatory measures necessary for cellular liberalisation, are met and fulfilled in accordance with the timetable set for such liberalisation*", and;

(v) pursuant to section 116 and sections 4, 5 and 40 of the Comms Act, URCA issued respectively:

- ECS 11/2010, on "Obligations Imposed on Operators with Significant Market Power (SMP) Final Decision", in which URCA set out its list of retail products that are found to be in the high-level SMP markets and the list of specific *ex ante* obligations to which the SMP operators must adhere; and

- ECS 15/2010 *"Regulation of Retail Prices for SMP Operators – Rules"*, in which URCA detailed the rules by which SMP operators must abide by in order to remain compliant with any retail price obligation. These Rules were later revised and superseded by ECS 06/2014 "Regulation of Retail Prices for SMP Operators – Rules".

- ECS 14/2014 *"Assessment of Significant Market Power (SMP) in the Electronic Communications Sector in The Bahamas under Section 39(1) of the Communications Act, 2009"*, identifies BTC as having SMP in the market for retail fixed voice services and CBL as having SMP in the markets for retail broadband services and retail pay TV services and imposes on it, amongst other measures, the retail price cap regulation.

(vi) By the issuance of the "*Request for Proposals To Operate a Cellular Mobile Network and To Provide Cellular Mobile Services in The Bahamas"* (the RFP) on 13 November 2014, the

Government commenced the process for the selection of a second cellular mobile operator to operate a cellular mobile network and provide cellular mobile services in The Bahamas (the "second cellular mobile operator" or "second cellular mobile provider");

(vii) The incumbent cellular mobile operator (BTC) is currently the sole provider of cellular mobile services in The Bahamas and operates a network that provides services to the majority of populated areas in The Bahamas;

(viii) On 30 June 2016 URCA, pursuant to its licensing functions under section 114 of the Comms Act and in accordance with Section 5.2 of the RFP, granted to NewCo2015 Limited ("NewCo") the following licences:

- an Individual Operating Licence (IOL); and
- an Individual Spectrum Licence (ISL).

NewCo is expected to build out its network over the coming months, in line with its licence obligations; and,

(ix) URCA, having conducted a review of the regulatory options available to address potential market failures that may occur relating to Non Price Capped Services in a market where competition is emerging, considered that it is appropriate and proportionate to make certain amendments to the Retail Pricing Rules (ECS 06/2014).,

NOW URCA, having considered the representations made by BTC, CBL and NewCo in response to URCA's Preliminary Determination (ECS 16/2016), HEREBY DETERMINES AS FOLLOWS:

1. Operators having Significant Market Power (SMP) shall, following the commencement of services by the second cellular mobile provider, in relation to services that are not regulated under URCA's (Price Cap Regulatory Measure) comply with the Retail Pricing Rules for Non Price Capped Services (ECS 35/2016), published by URCA concurrently with this Final Determination.

2. The requirements of the Retail Pricing Rules for Non Price Capped Services are summarised as follows, and illustrated in Table 1:

- pre-approval is only required for the withdrawal/discontinuation of Non Price Capped Services, changes to non-price terms and conditions of Non Price Capped Services, and permanent price changes to Multi-product Bundles.
- All remaining changes to Non Price Capped Services will only require prior notification by the SMP operator to URCA.
- Multi-product Bundles will remain subject to the current ***replicability requirements***.
- The SMP operator must submit a ***bi-annual margin squeeze test*** if it offers a relevant wholesale product to downstream competitors
- ***Undue discrimination***:
  - For Non Price Capped Service offerings which contain per minute/SMS prices the relevant SMP operator must demonstrate that any on-net/off-net prices are justified by

underlying cost differences (i.e., they do not exceed any differences in the relevant termination rates).

- For all remaining Non Price Capped Service offerings, URCA will rely on *ex-post* competition powers. The SMP operator must declare that the proposed price change does not result in undue discrimination.

3. As part of the notification process, the SMP operator must make a declaration that the proposed price change is not predatory and that it does not result in a margin squeeze.

4. The amended Retail Pricing Rules for Non Price Capped Services (ECS 35/2016) will come into effect upon NewCo launching its services. With the exception of the bi-annual margin squeeze requirement, the amended Rules will only apply to any proposed amendments to the SMP operator's existing Non Price Capped Service offerings or proposed new Non Price Capped Service offerings going forward.

**Table 1: Pre-approval and notification requirements for Non Price Capped Services**

| | **Amended Rules** |
|---|---|
| **Permanent offers** | |
| Permanent price changes (increase/decrease) to a standalone Non Price Capped Service | Notification* |
| Introduction of new standalone Non Price Capped Service | Notification* |
| Introduction of new product bundle containing Non Price Capped Services only ("Non Price Capped Bundles") | Notification* |
| Permanent price change to a Non Price Capped Bundle | Notification* |
| Withdrawal/discontinuation of all Price Regulated Services | Pre-approval |
| Introduction of a new bundle containing at least one but not exclusively Non Price Capped Services ("Multi-product Bundle") | Pre-approval (Replicability requirement) |
| Permanent price change to a Multi-product Bundle | Pre-approval (Replicability requirement) |
| **Promotions** | |
| Short term Promotions of (standalone or bundled) Non Price Capped Services and Multi-product Bundles | Notification* |
| Full Length Promotions of (standalone or bundled) Non Price Capped Services and Multi-product Bundles | Notification* |
| **Non-price terms** | |

| | |
|---|---|
| Changes to non-price terms and conditions of a (standalone or bundled) Non Price Capped Service and Multi-product Bundles | Pre-approval |

* The SMP operator must make a declaration that the proposed price change is not predatory and that it does not result in a margin squeeze.

## 3. Responses to Consultation Questions

In this Section, URCA summarises and responds to the comments received in relation to the consultation questions. Of the three companies only BTC and NewCo submitted comments on the consultation questions.

**Q1. Do you agree with URCA's rationale for performing this review of the Retail Pricing Rules for Non Price Capped Services? If not, why?**

**NewCo's Comments**

NewCo did not agree with URCA's rationale for performing this review. According to NewCo, URCA's reasoning that it is premature to conduct a full mobile market review at this time is inconsistent with its statement that the current review of the Rules is appropriate given the forthcoming market changes. If URCA considered it "too early to assess how the market will evolve", NewCo was concerned that remedies resulting from the present review may be disproportionate and disruptive to the market in the absence of a full market review. NewCo was further concerned that URCA may copy approaches taken in other markets where liberalisation occurred at an earlier stage of development. NewCo believes that the maturity of the mobile market in The Bahamas adds greater concern as NewCo would have to compete for existing mobile customers (rather than new customers) and there are commonly greater barriers for end-users to switch operators than choosing between two new operators. For these reasons, NewCo urged URCA to conduct a full market review now to ensure regulatory intervention is proportionate and based on observed competition problems.

In NewCo's second round response, NewCo disagreed with BTC's request for the new Rules to be implemented upon NewCo's commercial launch. Instead, NewCo recommended the new Rules be introduced once certain conditions, aimed at benefitting competition, have been implemented. The conditions proposed by NewCo are set out below.

- The billing protocol for fixed-to-mobile and mobile-to-mobile calls should be agreed upon by all parties and BTC should not be allowed to change the billing protocol once agreed.
- The domestic mobile termination rate has been reviewed and set based on Pure LRIC.
- BTC has amended its RAIO as per URCA's instructions after the RAIO consultation process has been finalised.
- National roaming is available to NewCo and declared "fit for purpose" by URCA.
- Minimum *ex ante* safeguards are in place to prevent discriminatory pricing practices.
- Mobile number portability has been introduced in the market to lower the barrier to switch between providers.

**BTC's Comments**

BTC agreed with URCA's rationale for performing the review of the Rules for Non Price Capped Services. In BTC's view, the existing Rules are incompatible with a competitive marketplace. BTC continued that BTC and NewCo should be allowed equal flexibility with respect to pricing and innovation for a level playing field so that consumers can reap the full benefits of mobile competition. BTC also requested for the modified Rules to come into effect no later than NewCo's commercial launch date.

In its second round response, BTC was of the view that URCA should reject NewCo's reasons for postponing the proposed changes to the Rules. In particular, BTC considered NewCo's suggestion of a 12-month delay to be misguided and self-serving. BTC stated that most of NewCo's recommended conditions to have in place before amending the RPR have been addressed in URCA's consultations on amendments to BTC's RAIO[6] and national roaming.[7] Furthermore, both BTC and NewCo are working with URCA towards the implementation of mobile number portability. According to BTC, NewCo's suggestions are therefore simply a delay tactic to preserve the status quo and give NewCo a competitive advantage over BTC.

**URCA's Response to Comments Received/Final Decision**

URCA disagrees with BTC's proposal that both operators should have equal pricing flexibility as this would give BTC an unfair advantage and would not result in a level playing field for both operators. BTC still has SMP in the mobile market and is likely to do so during the initial period after NewCo has launched its services. As such, the potential for competition concerns therefore still remains.

URCA considers it premature to conduct a full market review for mobile services at this time. URCA accepts that the liberalisation of the mobile sector could have a significant pro-competition development in the sector. At the moment, it is unclear how the market will evolve and how the licensees will compete with each other. URCA notes NewCo's suggestion that it would be appropriate to conduct a full market review of mobile services around 12 months after NewCo's commercial launch. From URCA's standpoint, any timeline stated at this time would not preclude URCA from carrying out a market review for mobile services sooner. However, in the absence of unforeseen developments, URCA anticipates that it would be reasonable to initiate the review around 12-18 months after NewCo's commercial launch. Meanwhile, in keeping with its mandate to encourage, promote and enforce sustainable competition, URCA will continue to monitor market development to ensure that remedies remain appropriate and fit for purpose. URCA assures the industry that during this review of the RPR, URCA has examined the potential competition concerns and reviewed the regulatory options available based on the current situation in the market to ensure that remedies are proportionate. For these reasons, URCA maintains that a full market review is not necessary at this time but it will be conducted

[6] URCA's Final Determination on the proposed changes to BTC's RAIO can be found at http://www.urcabahamas.bs/download/042966300.pdf.

[7] URCA's Final Determination and Order on national roaming can be found at http://www.urcabahamas.bs/download/060161000.pdf.

at a future date. In regard to NewCo's concerns about the mobile market's maturity at the time of liberalisation compared to other jurisdictions, URCA took this into consideration when deciding on the modified Rules approach as opposed to a complete removal of *ex ante* obligations.

URCA notes both respondents' opposing views on the timeline for the proposed Rules to take effect. URCA sees merit in allowing BTC greater flexibility upon NewCo's launch. NewCo's insistence that URCA maintain the existing RPR would not promote the overall objectives of the Electronic Communications Sector (ECS) Policy as specified in section 4 of the Comms Act. URCA notes the conditions NewCo considers should be met before the modified Rules are implemented. As BTC noted most of NewCo's recommended conditions have been addressed in URCA's consultations. In particular:

- URCA responded to the issue of billing protocol in the recent BTC RAIO consultation.
- URCA has reviewed and set the domestic mobile termination rates as outlined in the RAIO consultation, resulting in a non-trivial reduction in BTC's interim termination rates, informed by BTC's latest available costing data. As explained in the RAIO consultation, setting the mobile termination rates based on Pure LRIC is not appropriate at this time but URCA may consider this approach subject to further consultation.
- URCA has issued its Final Determination on the RAIO consultation and BTC's RAIO has been amended.
- URCA has issued its Final Determination on national roaming. URCA is in the process reviewing BTC's national roaming agreement proposal at the time this Final Determination on the Rules has been issued.
- In this consultation, URCA has addressed the issue of undue discrimination in its assessment of the responses received on consultation questions 5 and 8 below.
- As NewCo is aware, mobile number portability is currently being implemented, jointly with the industry.

**URCA's Final Determination – Rationale**

It is URCA's determination that:

- this review is appropriate as an interim measure until a full market review for mobile services is conducted; and
- the revised Rules for Non Capped Services will take effect upon NewCo's commercial launch.

**Q2. Do you agree that excessive pricing is not a significant concern going forward? If not, why?**

**<u>NewCo's Comments</u>**

NewCo provisionally agreed with URCA. NewCo agreed that excessive pricing is less of a concern in a competitive market because a second operator presents a pricing constraint to the incumbent. However, NewCo noted that this assumes that NewCo can compete with BTC on a level playing field. NewCo is concerned that such level playing field will not exist in the initial period after its market entry as BTC would still hold a dominant position and have clear incentives to engage in anti-competitive and discriminatory pricing to prevent NewCo from competing successfully in the market. As such, for an equal playing field to arise, NewCo considers there is a need for URCA to prevent BTC from engaging in anti-competitive and discriminatory pricing and to remove any barriers for mobile customers to switch mobile operators by:

- making national roaming available to ensure NewCo can offer matching coverage at commercial launch; and
- introducing mobile number portability at launch to lower the barrier to switch between providers.

**<u>BTC's Comments</u>**

BTC agreed with URC's preliminary position that excessive pricing is not a significant concern going forward because BTC would not be able to raise its retail prices for mobile services above competitive levels without losing major market share to NewCo. BTC also agrees that the majority of regulatory authorities do not impose *ex-ante* regulations for excessive pricing in competitive mobile markets. Therefore, BTC fully supports the same approach to be adopted in The Bahamas.

In its second round response, BTC continued to support URCA's proposals. BTC considered NewCo's provisional qualifications, which are detailed in NewCo's comments below, to be groundless.

**<u>URCA's Response to Comments Received/Final Decision</u>**

URCA notes both respondents' agreement with URCA's proposal. As to NewCo's proposed requirements:

- URCA has issued its Final Determination on national roaming. URCA is in the process reviewing BTC's national roaming agreement proposal at the time this Final Determination on the RPR has been issued.
- As mentioned above, mobile number portability is currently being implemented, jointly with the industry.

| **<u>URCA's Final Determination – Excessive Pricing</u>** |
|---|
| URCA has determined that excessive pricing is no longer a sufficient concern for Non Price Capped Services to warrant *ex ant*e regulation. |

**Q3. Do you agree that predatory pricing is not a significant concern going forward? If not, why?**

**<u>NewCo's Comments</u>**

NewCo also agreed that predatory pricing is not a significant concern in a market where a second licensee has entered. However, NewCo questioned the timing of the removal of BTC's obligations to demonstrate that its temporary and permanent price changes would not foreclose the market to competition. NewCo emphasized that while predatory pricing is not a significant concern, there is a higher risk of it occurring at the point of competitive entry than during the monopolistic era.

**<u>BTC's Comments</u>**

BTC agreed with URCA's preliminary position that predatory pricing is not a significant concern in the mobile market going forward. Due to NewCo's affiliation with CBL, BTC considers NewCo to be a well-established and well-financed competitor with a significant presence in all communications markets in The Bahamas hence a predatory pricing strategy would be irrational and destined to fail. BTC also agreed that the majority of regulatory authorities in competitive mobile markets do not impose any *ex-ante* regulations related to predatory pricing therefore BTC supported the same approach to be adopted in The Bahamas.

In its second round response, BTC expressed that it was difficult to follow NewCo's arguments on predatory pricing. In BTC's opinion, NewCo was again attempting to delay changes to the RPR.

**<u>URCA's Response to Comments Received/Final Decision</u>**

URCA notes both respondents' agreement with its proposal. URCA remains of the view that the timing of the proposed changes to BTC's obligations is appropriate with the successful entry of a second cellular mobile operator as predation mainly aims to prevent such entry to occur in the first place. Once entered, NewCo should become well-placed to compete with BTC on price and, given its investment, is unlikely to be forced from the market. As such, any potential predatory behaviour would be unlikely to be profitable for BTC in the short or long term.

| **<u>URCA's Final Determination – Predatory Pricing</u>**<br><br>URCA has determined that predatory pricing is no longer a sufficient concern for Non Price Capped Services to warrant *ex ante* regulation. |
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**Q4. Do you agree that margin squeeze is not a significant concern going forward? If not, why?**

**<u>NewCo's Comments</u>**

NewCo disagreed with URCA's preliminary position that margin squeeze is not a significant concern going forward. NewCo is concerned that BTC can use margin squeeze through above-cost mobile termination rates and targeted reductions in its retail prices. NewCo then referred to BTC's proposal for a mobile termination rate (MTR) of 4.61 cents per minute and to maintain the existing transit arrangement for traffic routed to BTC's mobile switching centre. If a domestic MTR is included in the BTC RAIO, NewCo recommended the following changes:

- To use a Pure Long Run Incremental Cost (Pure LRIC) methodology to develop the domestic MTR.

- BTC should be required to demonstrate in its separated accounts that it is charging its own fixed and mobile networks the same termination rates as it is charging to NewCo.

- BTC should offer direct interconnection in its RAIO.

NewCo believed that setting the domestic MTR on a Pure LRIC basis will reduce BTC's incentives to engage in margin squeeze hence a review of BTC's MTR is essential before NewCo's commercial launch. NewCo had similar concerns relating to national roaming charges on BTC's mobile network. For these reasons, NewCo recommended that URCA implement the changes to the Rules that relate to margin squeeze only once cost-oriented rates for both mobile termination on BTC's network and national roaming services are introduced.

In its second round response, NewCo disagreed with BTC's arguments relating to margin squeeze. NewCo repeated its previous points regarding mobile termination rates, direct interconnection and national roaming charges. NewCo recommended that URCA conduct a margin squeeze test on the national roaming charges as part of its approval process of the national roaming services.

**<u>BTC's Comments</u>**

BTC agreed with URCA's preliminary position that margin squeeze is not a significant concern going forward given that NewCo will rely on its own facilities to provide mobile services, with the exception of national roaming during the initial launch phase. BTC commented that the majority of regulatory authorities do not impose any *ex-ante* regulations for margin squeeze in competitive markets and therefore supported the same approach to be adopted in The Bahamas. BTC explained that both BTC and NewCo are equally dependent on each other to terminate calls and mobile messages on each other's networks. In the event that BTC is ordered to provide national roaming services to NewCo, BTC mentioned that national roaming rates will be regulated by URCA and set on a full cost recovery basis. NewCo's reliance on national roaming would be limited in scope, coverage and duration and as a result, would not pose significant margin squeeze risk.

In its second round response, BTC stated that NewCo's margin squeeze concerns were addressed in URCA's recent decision to set cost-based, interim mobile termination rates for BTC (which according to BTC *"may well be below rather than above costs"*). While these interim rates were not based on pure LRIC, as requested by NewCo, BTC agreed with URCA's view that determining pure LRIC rates involved a time and resource intensive exercise which was not feasible at this point (BTC instead referred to URCA's plan to conduct a comprehensive review of interconnection rates in due course). BTC further noted that direct interconnection to its mobile network was also now being implemented, further reducing NewCo's dependency on BTC's wholesale services. In BTC's view, NewCo also did not explain the targeted retail price reductions referred to in its hypothetical example on margin squeeze.

**URCA's Response to Comments Received/Final Decision**

URCA notes BTC's agreement with its proposal. In respect of NewCo's comments, changes relating to BTC's mobile termination rates and direct interconnection have now been addressed in URCA's Final Determination on amendments to BTC's RAIO.[8] While not set at pure LRIC, as suggested by NewCo, BTC's interim mobile termination rates are informed by BTC's latest cost accounting data and international benchmarks of LRIC-based mobile termination rates. URCA is therefore satisfied that these interim rates represent a reasonable proxy of cost based mobile termination rates for BTC (until URCA has completed a more detailed assessment of interconnection rates), thus reducing the risk of margin squeeze on mobile services by BTC. In respect of NewCo's recommendation that BTC demonstrate it is charging the same termination rates to its own network as it is charging NewCo, URCA wishes to remind NewCo that BTC or any other SMP licensee is prohibited from charging different termination rates for the same type of traffic to different licensees. In the context of cost based termination rates, BTC would have to therefore implicitly offer its own retail mobile business below cost termination rates in order to facilitate a margin squeeze on these services. While URCA considers this to be a possibility, it also thinks the risk of margin squeeze not just relate to low or below cost on-net prices.

URCA notes that there is on-going discussion between URCA/BTC/NewCo on implementation of direct interconnection between NewCo and BTC's mobile switch.

URCA is currently in the process of reviewing BTC's proposed charges for national roaming services, on which NewCo has also been invited to comment. As set out in the relevant Final Determination (ECS 18/2016)[9], these charges need to be reflective of efficiently incurred cost of providing national roaming services, with BTC having to provide evidence to support its proposed charges. This again should address NewCo's concern about above cost wholesale charges increasing the risk of BTC conducting margin squeeze on mobile services. However, while not a significant concern, URCA recognises that there may be a prevailing risk of margin squeeze on mobile services going forward. This has motivated the requirement for BTC to submit a bi-annual margin squeeze test to assist URCA's monitoring of market developments and BTC's compliance with its SMP obligations.

**URCA's Final Determination – Margin Squeeze**

URCA has determined that margin squeeze is no longer a sufficient concern for Non Price Capped Services to warrant *ex ante* regulation.

[8] URCA's Final Determination on the proposed changes to BTC's RAIO can be found at http://www.urcabahamas.bs/download/042966300.pdf.

[9] ECS 18/2016 is available at http://www.urcabahamas.bs/download/060161000.pdf

**Q5. Do you agree that undue discrimination is a concern going forward? If not, why?**

**<u>NewCo's Comments</u>**

NewCo argued that undue discrimination is a significant concern going forward. NewCo contended that URCA underestimates the impact of undue price discrimination in a mature mobile market. NewCo asserted that on-net/off-net discriminatory pricing is anti-competitive in intent and nature and would remove the level playing field which URCA is trying to achieve. As part of URCA's review of the Rules, NewCo suggested that if URCA cannot provide examples of on-net/off-net discriminatory pricing which are beneficial to the market then it should not be allowed. NewCo's primary concern is that BTC will be allowed to impose a "club effect" on the market by raising the cost of inter-network calling thus increasing the barrier for customers to switch between networks. NewCo, therefore, proposed that any discriminatory pricing practices should be subject to URCA's pre-approval and any on-net/off-net differentials that are not justified by costs should be treated as "undue" (and thus, should not be approved by URCA).

In its second response, NewCo rejected BTC's arguments that the same pricing Rules should apply to both operators. NewCo explained that different pricing Rules should apply to BTC in order to constrain its prevailing market power in mobile services. NewCo emphasized that BTC should require approval for any pricing proposal that charges different prices to similar customers or for similar products and services. In NewCo's view, these should only be approved once BTC can demonstrate they are cost-justified.

NewCo then referred to URCA's Final Determination on the RAIO which leaves NewCo free to decide its charging regime for fixed-to-mobile calls (while also allowing the current system of BTC charging a zero termination rate for fixed-to-mobile calls, with the receiving mobile customer to also pay a airtime charge for receiving the call to prevail). NewCo considers that URCA needs to take into account the possible anti-competitive consequences if NewCo were to adopt a calling party pays (CPP) regime for these call types such as:

- BTC may argue that it does not have a source of funding to pay a termination rate to NewCo and may decide not to send any fixed-to-mobile call traffic to NewCo. Any resulting dispute would take time for URCA to address and competition will be hampered in the meantime.
- Alternatively, there is a risk that BTC could also adopt a CPP regime for these calls and charge excessive call prices to its fixed customers for making calls to NewCo on a discriminatory basis. NewCo believes *ex-ante* rules should be imposed to prevent this pricing approach.

Given the above, NewCo asked URCA to clarify the following in its Final Determination:

- A refusal by BTC to send interconnection traffic to another licensee would be regarded as a breach of its SMP obligations and the need for enabling any-to-any interconnection.
- If BTC were to charge a retail on-net/off-net price differential that is greater than any difference in termination rates, URCA would consider this practice to be undue discrimination.

**BTC's Comments**

BTC responded that it does not consider the potential for undue discrimination to be a significant concern going forward.

BTC referred to URCA's acknowledgement that differential pricing practices are common in retail mobile markets throughout the world. BTC also mentioned that the majority of regulatory authorities in overseas jurisdictions do not impose *ex- ante* regulation related to undue discrimination in competitive mobile markets. BTC referred to the examples of jurisdictions listed in the consultation where concerns over such practices have been investigated by regulators, however, noted that URCA did not specify which investigations were conducted on an *ex- ante* versus ex-post basis and whether they resulted in *ex ante* obligations being imposed. BTC understands that the Regulatory Authority of Bermuda (RAB) examined the issue in 2013 and decided to monitor on-net/off-net traffic flows via a quarterly submission by the two affected operators. BTC continued that if the RAB based on those submissions observed any negative impact on competition resulting from the on-net/off-net pricing by the operators, then the RAB would conduct an *ex-post* investigation or revisit the matter to consider whether any *ex-ante* remedies may be required. To date, BTC understands that neither an ex-post investigation nor *ex ante* remedies have occurred.

BTC stressed that both operators should have equal pricing flexibility which may include differential pricing for consumers. In BTC's view, URCA's examples of ex-post investigations in other jurisdictions support the reliance of ex-post measures in The Bahamas instead of *ex ante* regulation. BTC considers ex-post measures to be appropriate in The Bahamas and consistent with the approach taken by other regulatory authorities.

In its second round response, BTC argued that NewCo's claim that it was unable to uncover examples of on-net/off-net price differentials that were not anti-competitive in intent and nature to be disingenuous. BTC explained that such differentials are common and have been implemented at different stages in the development of the market (i.e., in the early expansion phases as well as the mature market stages). BTC considers NewCo's proposed overall ban of such differentials to be unfounded and inconsistent with its preference for asymmetric mobile termination rates as indicated in the context of the separate consultation on NewCo's SMP in termination markets.[10] In particular, according to BTC, any differences in the level of termination rates between NewCo and BTC would in itself necessitate on-net/off-net price differentials. BTC further commented that NewCo failed to mention the benefits of any "club effect" which may result from on-net/off-net price differentials. BTC explained the general principles associated with network effects[11] would also apply to the "club effect". That is, the addition of a new subscriber to the club adds value to existing club members and therefore

[10] ECS 17/2016 available at http://www.urcabahamas.bs/download/054114100.pdf

[11] BTC describes network effects as 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. BTC added that the positive network externality results from the unintended and unpriced additional value to the network from an individual new subscriber.

constitutes a positive club and network externality. BTC gave the examples of loyalty card and point programs which can have a club effect but ultimately benefit consumers and are common in competitive markets. BTC was concerned that *ex ante* regulatory safeguards would unduly restrict the competitive dynamic between operators resulting in real economic losses to the overall sector.

BTC further referred to NewCo's Annex on the club effect which extensively quoted a document issued by the European Regulators Group (ERG now BEREC). In BTC's view, this document mainly focussed on termination rate symmetry (rather than on-net/off-net pricing). Further, it did not contain any recommendation by the ERG that differential pricing practices should be considered anti-competitive or subject to *ex ante* measures. According to BTC, to date, none of the European regulatory authorities have imposed *ex ante* regulations on on-net/off-net price differentials. BTC concluded that NewCo has not provided evidence that undue discrimination is a concern and instead wants URCA to unduly limit BTC's pricing initiatives.

**URCA's Response to Comments Received/Final Decision**

URCA notes the respondents' opposing views on undue discrimination. However, URCA maintains the view that undue discrimination (in the form of on-net/off-net price discrimination) remains a concern going forward.

As was discussed in the consultation, on-net/off-net pricing for retail mobile services is of regulatory concern in a number of countries, with some form of regulation or monitoring being in place in, for example, New Zealand, Chile, Colombia, Papua Guinea, Kenya, Slovenia and Bermuda. On-net/off-net prices have also been regulated in Singapore and Turkey in the past (but not presently).

In the case of Bermuda, URCA understands that the Regulatory Authority (RA) decided to monitor on-net/off-net traffic flows and subscriber data by requiring the two operators[12] to submit quarterly information consisting of on-net and off-net traffic volumes and subscriber data.[13] This means that the RA relies on market forces rather than regulating directly any price differential, while collecting data which supports it in detecting whether anti-competitive behaviour may be taking place and thus triggering an intervention by RA. As such, it is a monitoring mechanism similar to URCA's proposed bi-annual margin squeeze test which BTC strongly opposes.

Concerning NewCo's two points of clarifications raised in its response to the consultation:

1. URCA advises that a refusal by a licensee to send interconnection traffic to another licensee, otherwise known as call blocking, is prohibited as a result of URCA's Final Determination *"Proposed Revision of Access and Interconnection Framework"* (ECS 08/2015) issued on 30 December 2015.[14] The Final Determination states *"A Licensee shall not interrupt, block,*

[12]Bermuda Digital Communications Ltd. (BDC) and Digicel.
[13]The Bermuda Regulatory Authority's document on "Obligations for Operators with Significant Market Power" can be found at http://www.rab.bm/index.php/decisions/1035-remedies-order-vfinal-8-7-13/file.
[14]ECS 08/2015 is available at http://www.urcabahamas.bs/download/067476700.pdf.

*discontinue or otherwise impair any interconnection or access service it provides to any other Licensee unless with prior written consent of URCA and in accordance with the terms and conditions of the interconnection agreement between the parties."*

2. While not all price discrimination is anti-competitive URCA notes that the imposition of on-net/ off-net pricing has been raised as a competition concern in many markets where operators have customer bases of very different scales and where these differentials are of a significant amount. Given this, URCA considers that it is appropriate to impose some form of restriction on SMP licensees imposing such differentials on mobile services where these are not cost based (i.e., where the differential is not accounted for by differences in the mobile termination rates charged by the mobile licensees). However, URCA recognises that any such restrictions need to be applied with care. This is further discussed as part of consultation question 8 below.

**URCA's Final Determination – Undue Discrimination**

URCA has determined that undue discrimination is a concern for Non Price Capped Services going forward.

**Q6. Do you agree that abusive bundling is a concern going forward? If not, why?**

**NewCo's Comments**

NewCo agreed with URCA's preliminary position that abusive bundling remains a concern going forward and supporting analysis. Where it comes to undue discrimination in relation to bundles, NewCo has the same concerns explained in its response to question 5 above.

In commenting on BTC's initial response, NewCo emphasized that URCA is right to be concerned about the dangers of abusive Multi-product Bundles and that any proposed Multi-product Bundles should be subject to *ex ante* regulation.

**BTC's Comments**

BTC did not consider abusive bundling to be a significant competition concern going forward with respect to both mobile-only and Multi-product Bundles. BTC's comments on each bundle category are outlined below:

BTC agreed with URCA's preliminary views that abusive bundling in the form of ***Mobile-only Bundles*** is not a significant concern going forward since BTC is unable to leverage market power from any SMP market to a non-SMP market with such bundles. BTC further advised that mobile services are generally offered in packages or bundles therefore it would be inappropriate to impost *ex ante* regulation on Mobile-only Bundles. BTC noted that the majority of regulatory authorities do not impose *ex ante* regulations on either individual mobile services or Mobile-only Bundles in competitive mobile markets hence BTC supports URCA adopting the same approach in The Bahamas.

BTC did not consider abusive bundling to be a significant concern going forward in respect to ***Multi-product Bundles***. According to BTC, one of the biggest developments in the competitive landscape is bundling via double-play, triple-play and quad-play packages. These bundles provide convenience and savings to consumers. BTC asserted that maintaining *ex ante* regulations for Multi-product bundles would only delay or block the introduction of new service bundles that can benefit consumers. BTC continued that URCA provided no evidence or analysis for its preliminary view that BTC could leverage its market power in mobile services to other markets. BTC explained that its market power will decrease upon NewCo's launch and URCA shares the same position with regard to the absence of significant excessive pricing, predation and margin squeeze concerns going forward. Furthermore, NewCo is well-established in all other electronic communications markets through its affiliation with CBL hence it would be impossible for BTC to leverage market power from the mobile market to other markets via abusive bundling.

BTC added that the draft Rules for Non Price Capped Services may conflict with the existing Rules that apply to Price Capped Services as the latter set of Rules do not differentiate between Mobile-only and Multi-product Bundles. For this reason, BTC recommended that the Rules for Non Price Capped Service should take precedence with respect to all bundles until the Rules for Price Capped Services are also modified.

In the event that URCA insists on imposing *ex ante* regulation, BTC suggested the following:

- The technical and economic replicability tests should be eliminated to reduce regulatory burden and streamline the process. BTC considers such tests unnecessary as BTC and CBL are two full facilities-based licensed operators in the market.

- Regulatory symmetry should be applied such that CBL is also obligated to comply with any maintained *ex ante* bundling rules if CBL proposed to bundle Pay TV and/or broadband with any mobile services offered by NewCo.

BTC maintained in its second submission that there are no significant competition concerns with Mobile-only Bundles and Multi-product Bundles.

**URCA's Response to Comments Received/Final Decision**

URCA notes BTC's and NewCo's agreement in regard to Mobile-only Bundles. As for Multi-product Bundles, URCA accepts that packages that offer double-play, triple-play and quad-play are popular developments. URCA asserts that pre-approval requirements, as set out in the proposed Rules, will not restrict SMP operators from offering such bundles but will aim to prevent abusive bundling from occurring. There is a greater scope for anti-competitive behaviour for bundles that contain services that intersect different markets than bundles that consist of services from one market only. An SMP operator may have the incentive to use its SMP market to gain market power in a non-SMP market through the use of bundles. In the case of BTC, this could occur on bundled offerings including mobile services and fixed broadband service and/or IPTV services. On Multi-product Bundles that only contain products where BTC has SMP, there is further a risk that BTC could use the bundles to unfairly strengthen its position in a market, particularly if competition is emerging in such a market. Given the risks involved with both types of Multi-product Bundles, URCA remains of the view that it is appropriate to continue to apply the replicability tests to these bundles.

URCA notes BTC's comments on replicability tests and CBL's standing as a full facilities-based operator. URCA reminds BTC that NewCo and CBL are separate entities. CBL does not have a spectrum licence to operate a cellular mobile network and presently URCA has no information on NewCo's commercial offerings and whether it will offer or be in a position to offer double play, triple play or quad play.

URCA's notes BTC's comment that demonstrating replicability is a regulatory burden which should be eliminated to streamline the process. URCA reminds BTC that this is not a new requirement, as it is already set out in the current Rules. URCA further believes the measure is proportionate because the benefits will exceed the associated costs. In respect to BTC's comments that abusive bundling should no longer be a concern given that its market power will decrease upon NewCo's entry, URCA maintains that abusive bundling poses a greater risk to the market than standalone services. While excessive pricing, predation and margin squeeze are not considered significant concerns going forward with respect to standalone services, URCA views abusive bundling as a separate concern. In respect to BTC's comments on regulatory symmetry, CBL's bundles would be subject to the existing Rules until the consultation for Price Capped Services is completed.

**<u>URCA's Final Determination – Abusive Bundling</u>**

URCA has determined that abusive bundling is a concern for Non Price Capped Services going forward.

**Q7. Do you agree with URCA's proposed interim measure of modifying the existing Retail Pricing Rules for Non Price Capped Services until it will undertake a full market review of retail mobile services? If not, why?**

**<u>NewCo's Comments</u>**

NewCo disagreed with URCA's initial view. NewCo agreed that the change in market circumstances should prompt changes in the RPR where it relates to excessive or monopolistic pricing. However, NewCo was concerned that the currently proposed changes to Rules designed to prevent anti-competitive pricing behaviour would result in these Rules having been in force when they were needed less (i.e., during the monopoly era), but now removing the Rules when they are needed most (i.e., at NewCo's commercial launch and the emergence of competition in mobile services). Again, NewCo commented that only a full market review will allow URCA to properly identify competition concerns that are relevant to the specific market circumstances of The Bahamas and any subsequent amendments to existing *ex ante* regulation currently imposed on BTC. NewCo recommended that URCA allow a time period for the market to adjust to competition before it undertakes its market review.

Upon its review of BTC's initial response, NewCo was strongly opposed to BTC's urging for the complete removal of *ex ante* Rules on the grounds that competition is expected to develop rapidly once NewCo enters the market. NewCo stated that URCA should not rely on BTC's argument that it will rapidly lose market share. NewCo reiterates its proposal that URCA carry out a full review of the retail mobile market after the market has stabilised. NewCo suggested that the timing for this review should be around 12 months after its commercial launch.

**BTC's Comments**

BTC expects competition in The Bahamas' mobile market to develop rapidly upon NewCo's launch given the liberalisation experiences in other jurisdictions. BTC suggested that URCA should move to ex-post regulatory measures and adopt the light-touch regulatory approach contemplated under Option 3 in Section 4.2 of the Preliminary Determination. In the event that URCA decides to retain some *ex ante* regulatory measures for an interim period, BTC submits that such measures should be kept to an absolute minimum.

BTC reiterated in the second round that the consultation paper did not identify significant concerns going forward with excessive pricing, predation, margin squeeze or price discrimination. BTC agrees with these conclusions and provided supporting rationale. In BTC's view, NewCo did not provide evidence of significant concerns with any of these issues. For consumers to fully benefit from liberalisation, BTC submits that URCA should move from *ex ante* to ex-post regulation of mobile services as is the norm in other countries.

**URCA's Response to Comments Received/Final Decision**

URCA notes BTC's preference for a complete removal of *ex ante* pricing Rules and maintains that this approach would pose great regulatory and commercial risk given BTC's prevailing dominant position in this market.

URCA recognises NewCo's concern that the mobile market in The Bahamas is being liberalised at a later stage in development than in most other jurisdictions; however, URCA believes uncertainty on market outcomes will always be present regardless of the market stage. Furthermore, URCA is satisfied that the maturity of the market does not justify keeping the existing Rules. URCA has made a number of changes to the regulatory framework that should level the playing field for NewCo to compete effectively with BTC. Implementation of MNP and other relevant initiatives[15] would reduce switching cost and enhance NewCo's ability to compete for customers with BTC.

URCA considers that in the circumstances it would be disproportionate to constrain BTC's ability to compete by maintaining all of the Rules that were in place during the monopoly era. Given the entry of competition into the mobile sector, maintaining the current Rules would be disproportionate, could stifle innovation in pricing and may not result in an efficient outcome for key stakeholders. On the other hand, a complete removal of the Rules at this stage would pose significant regulatory and commercial risk given BTC's position in the broader communications markets for voice services and its current position in the mobile market, prior to the development of effective competition As such, URCA sees

[15] Including National Roaming, Review of BTC's RAIO, and Infrastructure Sharing.

merit in modifying the Rules as an interim measure until a full market review will be conducted in order to give BTC the added flexibility to operate in a competitive environment while also providing a level of protection against anti-competitive behaviour and consumer protection.

**<u>URCA's Final Determination – Interim Measure</u>**

URCA has determined that it is appropriate and proportionate to develop modified Rules for Non Price Capped Services. The modified pricing rules shall remain in effect until a full market review of mobile services is performed by URCA.

**Q8. Do you agree with URCA's proposed amendments regarding competition tests as set out in Section 5.1 of the Preliminary Determination? If not, why?**

**<u>NewCo's Comments</u>**

NewCo addressed each competition test separately as outlined below:

***Predatory Pricing***

NewCo agreed with URCA's proposals.

***Margin Squeeze***

NewCo agreed with URCA's proposals on the condition that mobile termination rates are set using Pure LRIC if a CPP scenario is to apply. NewCo maintained its concern that BTC will impose a margin squeeze by lowering on-net retail prices below the efficient level and still reap economic rent through above-cost mobile termination rates. NewCo therefore proposes that a margin squeeze test is maintained until the mobile termination rates have been reviewed and aligned with efficiently incurred costs of providing these services.

***Undue Discrimination***

NewCo believed that the non-discrimination obligations in section 40(4) of the Comms Act and Condition 34 in BTC's IOL are not sufficient to prevent BTC from engaging in undue discrimination in the retail mobile market.

NewCo referred to URCA's 2014 SMP Assessment which determined that a reliance on its ex-post competition powers to address undue price discrimination for Price Capped Services should not be extended to the mobile market on the grounds of the non-discrimination principle under section 5 of the Comms Act. NewCo also noted that such *ex- ante* regulatory obligations still apply in the fixed market.

NewCo explained that the principle of non-discrimination is not intended to ensure that different markets are regulated in the same way. Instead, NewCo called for URCA to ensure that any remedies are proportionate to the problems identified in each market because there are significant differences between the fixed and mobile markets that should give rise to different ex-ante regulatory regimes. NewCo further explained that the fixed market was liberalised in 2010 which was four years before URCA's 2014 SMP consultation. By contrast, NewCo noted that URCA intends to allow BTC's discriminatory pricing at NewCo's launch which is a much earlier stage in the mobile market's development compared to the fixed market. NewCo also mentioned that most of BTC's retail fixed voice offerings do not entail minimum contract durations present in the mobile post-paid market. Finally, NewCo noted that it is more difficult to impose a "club effect" in the fixed market because of the history of unmetered local calls.

NewCo favoured a regime where BTC must demonstrate that undue discrimination does not occur with URCA approving such applications on an *ex- ante* basis.

***Abusive Product Bundling of Services***

NewCo fully supported URCA's proposed approach on Multi-product Bundles. NewCo agreed with URCA that there is a risk of BTC leveraging its SMP into non-SMP markets through anti-competitive bundling practices. NewCo also agrees that a margin squeeze test on Mobile-only Bundles/packages is appropriate.

In its second round response, NewCo stated that BTC is exaggerating the work it will need to carry out on the margin squeeze tests. NewCo was of the view that BTC should have its methodology already developed as part of its current price applications to URCA and should be able to estimate the costs of its service as part of any commercial review of its retail prices.

**<u>BTC's Comments</u>**

Again, BTC commented that there should not be any remaining *ex ante* competition tests for mobile services or bundles. BTC provided comments for each of URCA's proposals as summarised below:

***Predatory Pricing, Margin Squeeze and Undue Discrimination Tests***

BTC agreed with URCA's proposals to eliminate *ex- ante* tests for predatory pricing, margin squeeze and undue discrimination for introducing and making permanent and temporary changes to mobile services and Mobile-only Bundles and instead rely on ex-post powers going forward.

***Bi-annual Margin Squeeze Test***

BTC strongly disagreed with URCA's proposal for BTC to submit a bi-annual margin squeeze test for all of its mobile services including related promotions. BTC considers this requirement to be extremely onerous and inconsistent with URCA's conclusions that it does not consider margin squeeze to be a significant concern going forward. BTC continued that URCA provided no rationale for adding the new measure which BTC considers to be more burdensome than the existing RPR. Furthermore, URCA provided no rationale why the reliance of ex-post competition powers would not be sufficient to address potential margin squeeze concerns. Under the new proposal in Annex 4, BTC would be required to file a full set of margin squeeze tests every six months for every mobile service and Mobile-only Bundle it offers which could cover dozens of services and bundles. In addition, alternative six-month and two-year projection scenarios would have to be conducted in each case. In a competitive mobile market, the variety and number of services and service bundles can be expected to expand and change steadily. Again, BTC claimed that URCA's proposal is an extensive, onerous, broad-brush regulatory requirement that could not be justified as a regulatory safeguard for a non-existent concern.

BTC repeated that NewCo will use its own network facilities to provide service and any wholesale termination and interim national roaming rates paid by NewCo to BTC would be regulated by URCA. Furthermore, BTC will also have to pay regulated wholesale rates to NewCo in order to terminate calls and messages originating on BTC's network and terminating on NewCo's network.

Further to the above, BTC concluded that the proposed bi-annual margin squeeze test for all of its mobile services and Mobile-only Bundles should be removed from the Rules as URCA's ex-post competition powers would be sufficient to address any competition concerns that may arise.

After its review of NewCo's first response, BTC repeated the arguments it made previously in response to NewCo's concerns on mobile termination rates, margin squeeze and undue discrimination. BTC referred to NewCo's comparisons of the fixed and mobile markets, where NewCo argued that because a competition concern may not arise in the fixed market does not mean that it may not arise in the mobile market. BTC refuted that fixed services are classified as Price Capped Services which will be subject to a separate review by URCA therefore NewCo's arguments are irrelevant to the current consultation. BTC continued that as NewCo did not provide any supporting rationale for its position that *ex-ante* regulation should be retained for Multi-product Bundles and for the reasons outlined in BTC's initial response, BTC maintains that URCA's proposed requirements for Multi-product Bundles is onerous, unnecessary and disproportionate.

**URCA's Responses to Comments Received/Final Decision**

URCA notes BTC's agreement with its proposals to eliminate *ex ante* requirements for ***margin squeeze***, while recognising NewCo's prevailing concerns on this proposal. Regarding NewCo's comments on the link between mobile termination rates and margin squeeze, URCA responded to similar comments made by NewCo in the context of the BTC RAIO consultation process.

URCA reiterates that the bi-annual margin squeeze test is a balanced measure which provides benefits to both BTC and NewCo. BTC will not have to submit a margin squeeze test for each application/notification, where applicable, thus increasing its commercial flexibility by allowing it to respond to market developments quickly while NewCo will retain some degree of protection from potential margin squeeze. Ex-post competition investigations are lengthy and there is a risk of the market incurring substantial harm before the investigation is concluded. In URCA's view, implementing a monitoring mechanism such as a bi-annual margin squeeze test, until effective competition has emerged in this market and BTC is no longer considered SMP, will provide BTC with an incentive to comply with the competition provisions in Part XI of the Comms Act. It would also allow URCA the opportunity to detect and respond to a potential margin squeeze in a timelier manner. In regard to BTC's statement that the proposed test will be more burdensome than the existing Rules, URCA recommends that BTC regularly maintain and update the required data for the bi-annual submission as a part of its internal procedures instead of attempting to complete all of the information at the time of submission. As NewCo noted, BTC should have its methodology already developed as a part of its current submissions to URCA under the 2014 Rules. Although URCA will regulate national roaming rates and interconnection rates, once the proposed modified Rules come into effect, BTC will be able to change its retail prices for Mobile-only Bundles without URCA's prior approval (i.e., these are subject to notification only) hence there is a risk of margin squeeze occurring.

URCA notes BTC's and NewCo's agreement with its proposals on ***predatory pricing***.

Concerning ***undue discrimination***, URCA notes the licensees' opposing views on the need for continued *ex ante* obligations on BTC. URCA recognises that not all price discrimination is anti-competitive and that giving operators the freedom to set on-net and off-net prices can be welfare-enhancing. However, it notes that the imposition of on-net/off-net pricing has been raised as a competition concern in many markets where operators have customer bases of very different scales and where these differentials are of a significant amount. Given this and recognising both the nascent state of competition in the cellular market in The Bahamas and the already high levels of penetration, it considers that it is appropriate to impose some form of restriction on SMP licensees imposing such differentials where these are not cost-based (i.e., where the differential is not accounted for by differences in the mobile termination rates charged by the mobile licensees).

URCA, however, accepts that such a restriction needs to be applied with care. This is particularly because for some postpaid mobile packages all mobile services (access, calls, messages and data) are offered as part of a product bundle (i.e., the monthly subscription charge commonly includes a combination of in-bundle calls, messages and data allowance). This makes it difficult, *ex ante*, to determine the effective unit price for each service and as such, whether such a package may implicitly contain differential on-net and off-net prices. Therefore, in recognition of the prevailing high share of pre-paid mobile customers in The Bahamas, URCA will apply the following approaches to BTC's mobile services going forward:

1. For Non Price Capped Service offerings which contain per minute/SMS prices, BTC must demonstrate that any on-net/off-net prices are justified by underlying cost differences (i.e., they do not exceed any differences in the relevant termination rates).

2. For all remaining Non Price Capped Service offerings, URCA will rely on ex-post competition powers. BTC must declare that the proposed price change does not result in undue discrimination.

URCA is satisfied that the above represents a balanced and proportionate approach to reducing the risk of undue price discrimination on Non Price Capped Services, whilst not unduly restricting BTC's commercial flexibility in the context of the emerging competition on mobile services. BTC is reminded that, further to the above, it remains subject to the standard non-discrimination requirements, set out in its licence.

URCA notes NewCo's agreement with its proposals on ***abusive bundling***.

**URCA's Final Determination –Competition Tests**

URCA has determined that competition tests will not be required for predatory pricing, margin squeeze and undue discrimination on an *ex ante* basis in respect to Non Price Capped Services going forward.

However, URCA will require cost justification from BTC for any on-net/off-net price differentials based on underlying differences in the relevant termination rates, as set out in Annex 2 of the accompanying Rules.

URCA will also continue to require replicability tests for Multi-product Bundles and BTC will be required to submit a bi-annual margin squeeze test as set out in Annex 4 of the accompanying Rules.

**Q9. Do you agree with URCA's proposed notification requirements as set out in Section 5.2 of the Preliminary Determination? If not, why?**

**NewCo's Comments**

NewCo agreed thata notification requirement may be appropriate where it relates to *ex ante* competition tests to prevent BTC from imposing excessive or monopolistic tariffs on the market. However, NewCo maintained that discriminatory pricing practices should be subject to an *ex ante* test by URCA to ensure they are not "undue" and, furthermore, that on-net/off-net price differentials should be treated as "undue" if differences in prices are not justified by the underlying costs of providing these services.

**BTC's Comments**

BTC agreed with URCA's proposals. In the second round, BTC referred to NewCo's proposition to retain pre-approval for discriminatory pricing. BTC stated this would mean that every price, promotion or new service introduction would be subject to pre-approval to demonstrate it is not unduly discriminatory. BTC addressed NewCo's concern on undue discrimination previously and for the reasons already noted, BTC submits that NewCo's proposal be rejected.

**URCA's Response to Comments Received/Final Decision**

URCA notes BTC's agreement with URCA's overall proposal and NewCo's approval on excessive pricing. Regarding NewCo's position on undue price discrimination, as stated in the context of previous consultation questions, while agreeing with the need for cost justification of on-net/off-net price differentials, URCA considers it disproportionate to maintain an *ex- ante* requirement for undue price discrimination for all Non Price Capped Services. Instead, URCA will apply the approach outlined in the context of consultation question 8 above.

**URCA's Final Determination – Notification Requirements**

URCA has determined that the proposed notification requirements in Section 5.2 of the Preliminary Determination will be implemented.

**Q10. Do you agree with URCA's proposed continuation of the existing pre-approval requirements as set out in Section 5.3 of the Preliminary Determination? If not, why?**

**NewCo's Comments**

NewCo agrees with URCA's proposed continuation of the existing pre-approval requirements.

In its second submission, NewCo disagreed with BTC's proposal that Multi-product Bundles should not be subject to *ex ante* price controls. NewCo then referred to BTC's comment that call minute and text allowances are examples of changes in non-price terms and conditions that should be subject to only ex-post regulation. NewCo considers that these are good examples of changes that should remain subject to *ex ante* approval because they can have a material impact on the effective price paid by customers and can therefore be used to circumvent other price controls.

**BTC's Comments**

BTC addressed each of URCA's proposals separately as outlined below:

***New/Price Changes for Multi-Product Bundles***

Further to its response on question 6, BTC disagreed with URCA's proposal to maintain existing *ex ante* pre-approval requirements for the introduction of new Multi-product Bundles and the changes to the prices of existing Multi-product Bundles. URCA should instead rely on its ex-post investigation powers.

***Changes in non-price terms and conditions of mobile services***

BTC strongly disagreed with URCA's proposal to retain *ex ante* pre-approval requirements for changes in non-price terms and conditions of all mobile services and Mobile-only Bundles where the effective price paid by customers is changed. BTC believed this can significantly delay many standard competitive service offers involving modifications to the standard elements of a mobile service or bundle (e.g., domestic or international call minute allowances, text message allowances, features, applications and/or data volume allowances included with an existing mobile service or bundle). URCA's proposal would also create considerable uncertainty as to what would constitute a new mobile service or bundle as opposed to a change in the non-price terms and conditions of an existing mobile service or bundle.

BTC further stated that URCA provided no rationale or examples as support for its proposal. BTC noted that the examples of possible non-price terms and conditions listed in footnote 7 of the Rules have little to do with mobile services.

In BTC's view, from a regulatory standpoint both price and non-price changes should be treated equally and both should be subject to notification instead of pre-approval. Furthermore, BTC believes that ex-post regulation would be consistent with international practice.

***Withdrawal/discontinuation of Mobile Services and Bundles***

BTC disagreed with URCA's proposal to maintain existing *ex ante* pre-approval requirements for the withdrawal or discontinuation of Non Price Capped Services and Bundles. URCA provided no rationale for the proposal and did not identify any significant concern in support of this measure. BTC believes there is no concern in the case of bundles since the components of the bundles would still be available on a standalone basis. As regards to mobile services in general, BTC stated it is unclear what services URCA would seek to prohibit a withdrawal or discontinuation of through this *ex-ante* provision.

In view of the above, BTC advocated a notification process for the withdrawal or discontinuation of mobile services or bundles. BTC explained that any service in question would not be withdrawn immediately and users of that service would be given advance notice of its pending withdrawal in order to make any necessary adjustments beforehand. BTC continued that existing customers can still continue to use the service until its withdrawal but the service would not be offered to new customers. BTC further explained that competing operators must be able to offer new and improved services which may result in existing services being discontinued or withdrawn. BTC concluded that there is no need or rationale for *ex ante* regulation of mobile services going forward.

BTC noted in the second round that NewCo provided no reasons to support the need for the pre-approval requirements. BTC maintained that pre-approval is unnecessary and should be replaced by notification requirements for the reasons given in its initial response.

**<u>URCA's Response to Comments Received/Final Decision</u>**

URCA notes BTC's disagreement with the proposed pre-approval requirements. Given its response to comments on question 6 above, URCA maintains that Multi-product Bundles pose a greater regulatory and commercial risk than standalone services therefore URCA's pre-approval is required.

URCA disagrees with BTC's suggestion that price and non-price changes should be treated equally. Changes to non-price terms and conditions can materially alter the effective price paid by the consumer in addition to quality of service, service agreements amongst other factors. URCA sees merit in maintaining a safeguard to protect consumers.

As to BTC's comments on withdrawals and discontinuations, maintaining pre-approval would not have an adverse effect on BTC. The only difference between the process proposed by BTC and the existing process is that URCA has the right to intervene prior to consumers being notified. Again, URCA considers this safeguard is necessary from a consumer protection standpoint.

URCA notes NewCo’s agreement with its preliminary positions.

**URCA’s Final Determination – Pre-approval Requirements**

URCA has determined that the proposed notification requirements in Section 5.2 of the Preliminary Determination will be implemented.

**Q11. Do you agree with URCA’s proposed amendment to the notification process as set out in Section 5.4 of the Preliminary Determination? If not, why?**

**NewCo’s Comments**

It was NewCo's assumption that the current process requires URCA to confirm receipt of the SMP operator’s notification to ensure that the SMP operator is made aware that its notification was not lost. NewCo believes there is merit in this approach such that BTC is not under the impression that its notification has been accepted by URCA when in fact it has not been reviewed due to an administrative or postal error. For this reason, NewCo proposes not to change the existing notification process.

**BTC’s Comments**

BTC indicated that competitors must be in a position to respond rapidly to market developments and customer demands hence the notification process must be as efficient and prompt as reasonably possible. BTC is concerned that unnecessary delays would leave it at a competitive disadvantage. Therefore, BTC proposes that the notification period should be set at three business days while confirmation of receipt from URCA could remain at two business days however BTC felt that URCA’s confirmation of receipt would not be necessary.

BTC noted NewCo’s suggestion to still require URCA to confirm receipt of the operator’s notification to ensure it was not lost. BTC is not aware of any existing problems with applications or notifications being lost in transmission to URCA. To address such concerns, BTC suggested a signed receipt requirement for physical deliveries or an automatic receipt confirmation requirement for electronic deliveries.

**URCA’s Response to Comments Received/Final Decision**

URCA notes the differing views shared by BTC and NewCo. Upon consideration of the notification process, URCA sees merit in confirming receipt of the SMP operator’s notification. If URCA does not respond in writing, the SMP operator may proceed with the proposed change as set out in the notification.

**URCA’s Final Determination – Notification Process**

URCA has determined that it will continue to confirm receipt of the SMP operator’s notification at least three (3) business days before the planned launch date of the proposed change.

**Q12. Do you agree with URCA's proposed requirement for a bi-annual margin squeeze test for Non Price Capped Service as set out in Section 5.5 of the Preliminary Determination? If not, why?**

**<u>NewCo's Comments</u>**

NewCo agrees with a bi-annual margin squeeze test. NewCo repeated its earlier comments that its agreement is conditional on BTC's mobile termination rates being based on Pure LRIC. Until such time, margin squeeze tests should be applied to Non Price Capped Services on a case-by-case basis.

In its second round response, NewCo reiterated its support for URCA's proposals.

**<u>BTC's Comments</u>**

Further to its response on question 8 above, BTC maintained its opposition to URCA's proposed requirement for a bi-annual margin squeeze test for BTC's mobile services and bundles.

In its second round response, BTC again stated that NewCo provided no supporting rationale for its support of URCA's proposals. For the reasons given previously, BTC remains of the view that a bi-annual margin squeeze test is unnecessary and unjustified just as maintaining the existing *ex-ante* margin squeeze test on a case-by-case basis is no longer necessary and justified.

**<u>URCA's Response to Comments Received/Final Decision</u>**

Given URCA's response on question 8 and the arguments outlined in the Preliminary Determination, URCA sees merit in implementing the bi-annual margin squeeze test. URCA notes NewCo's agreement with its proposals.

**<u>URCA's Final Determination – Bi-annual Margin Squeeze Test</u>**

URCA has determined that BTC will be required to submit a bi-annual margin squeeze test as set out in Annex 4 of the accompanying Retail Pricing Rules.

# 4. Additional Comments Received on the Consultation

BTC, NewCo and CBL provided comments that are not direct responses to the consultation questions. In this Section, URCA summarises and responds to these comments, as follows:

- Section 4.1 - NewCo's General Comments on the Consultation;
- Section 4.2 - CBL's Comments on Fixed to Mobile Pricing; and
- Section 4.3 - BTC's Comments on the Draft Rules.

## 4.1 NewCo's General Comments on the Consultation

NewCo stated that URCA should conduct a formal review of the mobile market before making any changes to the RPR. NewCo reiterated its concern regarding the "club effect" that BTC may use at NewCo's disadvantage. NewCo referred to its response to the RAIO consultation regarding CPP vs. RPP and mobile termination rates and stated that these issues should be resolved before URCA removes any *ex-ante* controls applicable to BTC.

NewCo proposed that any changes to the RPR should not be linked to NewCo's commercial launch but rather to a set of minimum conditions that BTC should meet. The conditions proposed by NewCo are set out below.

- The billing protocol for fixed-to-mobile and mobile-to-mobile calls should be agreed upon by all parties and BTC should not be allowed to change the billing protocol once agreed.
- The domestic mobile termination rate has been reviewed and set based on Pure LRIC.
- BTC has amended its RAIO as per URCA's instructions after the RAIO consultation process has been finalised.
- National roaming is available to NewCo and declared "fit for purpose" by URCA.
- Minimum *ex ante* safeguards are in place to prevent discriminatory pricing practices.
- Mobile number portability has been introduced in the market to lower the barrier to switch between providers.

NewCo explained that by linking changes in the RPR to these minimum requirements for competition in the mobile market to develop, URCA will provide an incentive to BTC to comply with URCA's instructions and to not engage in delay tactics. Further, by tying changes to the commercial launch date of NewCo, and not to the above milestones, URCA is actually incentivising BTC to delay the implementation of the milestones to protect its market position.

As part of NewCo's second response, it referred to BTC's first submission that the mobile market will be competitive immediately therefore URCA's proposed *ex ante* controls are unnecessary. NewCo considered BTC's assertion to be incorrect and self-serving as the controls which prevent anti-competitive behaviour are needed now more than ever. NewCo claimed that competition developed rapidly in other jurisdictions upon the launch of a second mobile operator because the mobile market had a low penetration rate. NewCo repeated its previous comments that BTC is highly incentivised to retain its customers by using market share, margin squeeze and abusive bundling.

NewCo added that BTC misunderstands the purpose of the notification process (Paragraph 18-21 of the Draft Rules) as BTC claims it is to make the regulatory authority aware of the relevant action. In NewCo's view, the objectives of the notification process are to allow URCA an opportunity to call in any proposal that appears to be anti-competitive or contrary to regulations while enabling the operator to proceed quickly with price changes that are compliant. NewCo believes this fundamental misunderstanding renders all of BTC's subsequent comments and proposals in Section 5 of its response irrelevant and unnecessary.

**<u>URCA's Response to NewCo's General Comments/Final Decision</u>**

URCA refers to its final positions on a full mobile market review (question 1) and a club effect (question 5) above. Also, URCA refers to its final position on NewCo's proposed conditions at question 1 above.

As stated previously, the modified Rules will come into effect at NewCo's launch.

### 4.2 CBL's Comments on Fixed to Mobile Pricing

CBL fully supported NewCo's submission and stated that the comments below are supplementary to NewCo's. CBL commented that BTC's pricing for fixed to mobile calls is subject to a receiving party pays (RPP) billing protocol with charges for the first minute being a flat rate and then charged incrementally on a per second basis. CBL estimates that effective rates are 20-25% higher than the publicized rates depending on call duration resulting in the below:

- For a local fixed to prepaid mobile call during the peak hour, a flat rate of 33 cents (Alternatively, off-peak rates of 15 cents per minute and week rates of 20 cents per minute may apply) for the first minute applies to the mobile subscriber. The effective rate per minute for such calls may be 40-41 cents per minute depending on call duration. The fixed line customer does not get charged for making such calls.

- For a long distance fixed to prepaid mobile call, an unrounded overall charge of 51 cents per minute applies (18 cents to the fixed customer and 33 cents to the mobile customer). The effective overall rate per minute for such calls may be 61-64 cents per minute depending on call duration.

CBL's primary concern relates to the level of the inbound airtime charge levied by BTC to its mobile subscribers. CBL referred to BTC's response to the RAIO consultation where BTC indicated a wholesale domestic call termination rate of 4.61 cent should apply. CBL considers that if 4.61 cents is sufficient to cover network costs then the 40-41 cents effective peak hour rate is excessive. CBL further explained that while off-peak and weekend rates are lower, these are still high relative to the 4.61 reference point. Apart from network costs, CBL took into account retail costs being incurred for such calls but stated that these are relatively minor.

Further to the above, CBL argued that the inbound airtime charge levied by BTC is excessive and detrimental to the development of the fixed market because it restricts call volumes to mobile customers. CBL explained that mobile customers are much less likely to answer calls from fixed subscribers making fixed line services less attractive to customers. CBL considers the charges to be discriminatory as they do not apply to mobile calls.

CBL mentioned that the above issue needs to be addressed as part of any change to the Rules. CBL then recommended the removal of all inbound airtime charges as part of a move to calling party pays (CPP) for fixed-to-mobile calls. If the RPP regime remains, CBL recommended that BTC's inbound airtime charges be aligned with costs and that fixed-to-mobile calls remain subject to *ex ante* price controls to prevent further increases.

In conclusion, CBL was of the view that changes to the RPR should only be considered after BTC's existing pricing approach for fixed-to-mobile calls have been reviewed and the implications for the fixed market have been clearly identified.

**URCA's Response to CBL's General Comments/Final Decision**

URCA advises that the issues raised by CBL on billing protocol for fixed to mobile calls have been addressed in URCA's consultation on the amendments to BTC's RAIO. Further, as mentioned in the context of question 2 above, URCA does not consider excessive pricing to be of sufficient concern anymore which needs to be dealt with by the Rules and instead expects competition to lead to competitive retail prices.

### 4.3 BTC's Comments on Draft Rules

BTC raised a number of concerns relating to the draft Rules provided in the Annex, as follows:

- **Notification Process (Part C):** BTC feels that URCA's process is a light pre-approval process because URCA is still maintaining elements of *ex ante* regulation rather than a true notification process in which URCA would rely exclusively on its ex-post investigative powers. In order to reinforce its position, BTC noted that:
    - Paragraph 18 prohibits advertising or the announcement of the action prior to notifying URCA. BTC believes this requirement is unnecessary.
    - Paragraph 20 allows URCA to suspend or disallow a proposed action under a notification process. BTC believes there should be no ambit for URCA to suspend or disallow a proposed action under a notification process and recommended that the Paragraph be amended to remove such reference.

- Paragraph 21 states *"nothing in these Rules prevents URCA from directing the SMP operator not to proceed or to withdraw a new service or…"*. BTC was concerned that this provision is another form of pre-approval.

- **Implementation Following Receipt of Notification Process (Part D):** BTC was of the view that the provisions at Paragraph 23 relating to advertising and implementation timeframes are unnecessary under a notification process. Therefore, BTC suggested that Paragraph 23 be deleted or substantially revised.

- **New Mobile Services (Part F):** BTC stated that Part F of the Rules which deals with the "Introduction of New Single Service Non Price Capped Services" is unnecessary. BTC explained that the proposed definition of what constitutes a new service is unclear. BTC added that Part F is redundant since Part I already covers changes in non-price terms and conditions of an existing mobile service or bundle. BTC suggested that the definition of a new mobile service be defined in a meaningful way or that, more preferably, Part F be deleted.

- **Bundles (Part G):** BTC maintained that the introduction of new or changes to the prices of existing Mobile-only as well as Multi-product Bundles should be subject to notification and ex-post rather than *ex ante* regulation. Therefore, BTC suggested that Part G of the Rules be modified to reflect this proposed common approach for both bundle categories.

- **Promotions (Part H):** BTC referred to the restrictions in Paragraphs 61.6 and 65 prohibiting BTC from offering "similar" short term promotions for a 30-day period or "similar" full length promotions for a 90-day period. BTC considered the term "similar" to be too subjective resulting in arbitrary and inconsistent determinations as to whether a promotion may or may not be "similar" to an earlier promotion. BTC considered "identical" or "equivalent" to be more appropriate terms. BTC also recommended that 30-day and 90-day cooling-off periods be reduced to 15 and 30 calendar days respectively in order to be more consistent with market conditions going forward.

- **Non Price Terms and Conditions (Part I):** Further to its submissions on question 10 above, BTC repeated that changes to both prices and non-price terms and conditions of mobile services and bundles should be treated equally and therefore subject to notification. BTC suggested that Part I be deleted and that notifications related to changes in non-price terms and conditions of mobile services or bundles be added to Parts E and G of the Rules respectively.

- **Withdrawals/Discontinuations (Part J):** In BTC's view, Part J of the Rules should be modified to reflect BTC's proposal that a notification process be adopted for withdrawals/discontinuations.

- **Bi-annual Margin Squeeze Test:** Given its earlier position on margin squeeze, BTC submitted that this regulatory requirement not be adopted and consequently, Annex 4 of the Rules should be removed.

**URCA's Response to BTC's Comments on the Draft Rules/Final Decision**

Below, URCA responds to BTC's concerns separately.

- **Notification Process (Part C):** URCA finds BTC's proposals unacceptable .URCA sees merit in keeping the proposed notification process so that it can monitor changes in the market. As stated earlier, URCA believes monitoring mechanisms act as a safeguard and provide an incentive for BTC to comply with the competition provisions in Part XI of the Comms Act. Indeed, the notification process contemplated is necessary in light of URCA revised approach to undue discrimination. Theoretically, if BTC complies with the provisions, the RPR and the conditions in its licence then there is no need for URCA to suspend or disallow a proposed action. As such, URCA rejects BTC's proposed revisions to Paragraphs 20-21. With regard to Paragraph 18, URCA still has concerns about a proposed action being advertised before URCA is notified.

- **Implementation Following Receipt of Notification Process (Part D):** URCA reminds BTC that this provision is necessary to safeguard the interest of customers. URCA emphasizes that Paragraph 23.1 only concerns price increases. For consistency, URCA will align Paragraph 23.1 with Paragraph 22.1 (which relates to the implementation following approval) to obligate the SMP operator to advertise the relevant notice in at least one national newspaper and on the SMP operator's website.

- **New Mobile Services (Part F):** URCA finds BTC's reasoning to be unclear. Parts F relates to new services while Part I relates to non-price terms and conditions. However, URCA has deleted Paragraphs 31.2 and 34.4.2 from the Rules to remove any ambiguity as to what constitutes a new service.

- **Bundles (Part G):** Given its final position on question 6 above, URCA maintains that Multi-product Bundles are a concern and will be subject to pre-approval and replicability tests.

- **Promotions (Part H):** URCA disagrees with BTC's proposal to change the term "similar" to "identical" and "equivalent". Likewise, URCA will maintain the restriction of offering similar promotions within a specified time period. URCA, however, will allow BTC more flexibility by reducing the cool-off period for Short Term Promotions from 30 calendar days to 15 calendar days and the cool-off period for Full Length Promotions from 90 calendar days to 60 calendar days.

- **Non-Price Terms and Conditions (Part I):** URCA refers to final position on question 10 regarding non-price terms and conditions. Hence, BTC's proposal is rejected.

- **Withdrawals/Discontinuations (Part J):** URCA refers to its response on question 10 regarding withdrawals and discontinuations. Hence, BTC's proposal is rejected.

- **Bi-annual Margin Squeeze Test:** URCA refers to its final position on question 8 above. Hence, BTC's proposal is again rejected.

**URCA's Final Determination – Draft RPR for Non Price Capped Services**

URCA has determined that the SMP operator will be obligated to advertise a notice for a price increase subject to notification in at least one national newspaper and on the SMP operator's website.

URCA will reduce the cool-off periods for Short Term Promotions from 30 calendar days to 15 calendar days and for Full Length Promotions from 90 calendar days to 60 calendar days.

# 5. Conclusion and Next Steps

This document sets out URCA's rationale on its amendments to the Retail Pricing Rules as they pertain to Non Price Capped Services, following the liberalization of the cellular mobile telephone market in The Bahamas. As price cap regulation applies to BTC's fixed telephony and CBL's broadband and Pay TV services, these changes apply to Price Regulated Services and bundles which are not subject to price cap regulation (i.e., predominantly BTC's mobile services).

URCA has outlined a summary of the key amendments in tables 2 and 3 below.

**Table 2: Competition Tests for Non Price Capped Services**

| | Current Rules | Modified Rules |
|---|---|---|
| **Predation Test** | Performed on an *ex ante* basis and applies to all forms of price changes including Full Length Promotions | URCA will rely on *ex-post* competition powers but BTC must still make a declaration that the proposed price change is not predatory on an *ex ante* basis. |
| **Margin Squeeze Test** | Performed as a part of each price change or new service application and applies to all forms of price changes including Full Length Promotions | URCA will rely on *ex-post* competition powers but BTC is still required to make a declaration on an *ex ante* basis that the proposed price change does not result in a margin squeeze.<br>In addition, BTC must submit information to URCA every six months to demonstrate that it has not engaged in margin squeeze. |
| **Abusive Bundling** | *Ex ante* replicability test | *Ex ante* replicability test |
| **Price Discrimination** | SMP operator must demonstrate and declare non-discrimination on an *ex ante* basis | For Non Price Capped Service offerings which contain per minute/SMS prices BTC must demonstrate that any on-net/off-net prices are justified by underlying cost differences (i.e., they do not exceed any differences in the relevant termination rates).<br>For all remaining Non Price Capped Service offerings, URCA will rely on *ex-post* competition powers. BTC must declare that the proposed price change does not result in undue discrimination. |

**Table 3: Pre-approval and Notification Requirements for Non Price Capped Services**

| | Current | Revised |
|---|---|---|
| **Short Term Promotion (Standalone Services and Bundles)** | Notification (coo-off period of 30 calendar days) | Notification (Cool-off period of 15 calendar days applies) |
| **Full Length Promotion (Standalone Services and Bundles)** | Pre-approval (90-day cool-off period) | Notification (60-day cool-off period applies) |
| **Withdrawal and Discontinuation (Standalone Services and Bundles)** | Pre-approval | Pre-approval |
| **Permanent Single Price Change (increase/decrease)** | Pre-approval | Notification |
| **Introduction of New Services (Standalone and Bundles)** | Pre-approval | Notification |
| **Introduction of New Mobile-only Bundles** | Pre-approval (i.e., replicability test) | Notification |
| **Permanent Price Changes to Mobile-only Bundles** | Pre-approval (i.e., replicability test) | Notification |
| **Introduction of New Multi-product Bundles** | Pre-approval (i.e., replicability test) | Pre-approval (i.e., replicability test) |
| **Permanent Price Changes to Multi-product Bundles** | Pre-approval (i.e., replicability test) | Pre-approval (i.e., replicability test) |
| **Changes to non-price terms and conditions of any service or product bundle** | Pre-approval | Pre-approval |

The revised Rules will supersede ECS 06/2014 as it relates to Non Price Capped services and will come into force upon the commercial launch of NewCo. Until such time, the existing Rules (ECS 06/2014) will apply to services that are subject to price cap regulation. Concurrent with the publication of this Final Determination, URCA has published ECS 35/2016 setting out the revised RPR for Non Price Capped Services.