



## **NewCo's comments on BTC's Response to 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**

Submitted to

The Utilities Regulation & Competition Authority

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## Introduction

NewCo2015 Limited (NewCo) welcomes the opportunity to comment on BTC's response to URCA's Preliminary Determination ECS 16/2016, which proposes significant changes to the retail pricing rules imposed on BTC. Our comments focus on the areas where we believe that BTC's comments are mistaken or misleading, in the hope that URCA can assess these comments properly, and can develop a regime for the regulation of retail prices that is in the best interests of consumers and the mobile telecommunications industry in The Bahamas.

NewCo continues to welcome URCA's initiative in reducing regulation, and believes that the entry of the second mobile operator provides a good opportunity to review controls on retail prices in the mobile market where there relate to ex ante rules to prevent excessive pricing. However BTC's underlying assertion, that the mobile market will be competitive immediately and hence the controls proposed by URCA are unnecessary, is incorrect and self-serving. Ex ante rules to ensure BTC does not behave in an anti-competitive manner are needed now more than ever.

In many jurisdictions, the launch of the second mobile operator has led to the rapid development of competition. However this has usually taken place when the mobile market had a low level of penetration, and many new users could be attracted by imaginative marketing and lower prices. In The Bahamas the market is already mature – as URCA's own statistics show, the penetration of mobile subscribers has been static since 2011 at around 84–86% of the population. This means that in order to succeed commercially, NewCo must persuade large numbers of BTC's existing customers to change suppliers (a more difficult task than recruiting new mobile customers). BTC has a strong incentive to retain these customers, for example through discriminatory pricing. BTC is likely to retain its significant market power in the mobile retail market for a number of years (using URCA's definition of a market share of 40% or greater), and URCA needs to design its retail price regulation accordingly.

In summary, NewCo believes that:

- BTC is highly incentivised to use the superior size of its customer base as a tool to compete with NewCo in an anti-competitive manner through discriminatory on-net/off-net pricing. It is NewCo's position that competition should take place on the basis of quality of service, innovation and price and not on the relative size of the customer bases of the operators in the market. Ex ante controls to prevent discriminatory pricing by BTC should therefore remain in place.
- There is a significant risk of margin squeeze while BTC's mobile termination rate remains above efficiently incurred costs. Margin squeeze tests should remain in place at least until the interim MTR proposed by URCA has been replaced by an MTR based on 'Pure LRIC'.
- BTC, as an SMP provider of services in various retail markets, including for mobile services, has both the incentive and the ability to engage in anti-competitive bundling of services. Again ex ante controls should remain in place to prevent BTC from acting on this incentive.

NewCo now sets out its more detailed comments on BTC's submission.

### Question 1 – rationale for review

BTC asks URCA to introduce the new retail pricing rules when NewCo launches its commercial service. NewCo disagrees with this, and believes that the new rules should be introduced once the mobile market can function competitively. In particular the follow steps are required:

- A billing protocol for fixed to mobile (F-M) and mobile to mobile (M-M) traffic (CPP or RPP) is determined with all parties committed to its implementation. BTC, as the SMP operator, should not be allowed to change the billing protocol once agreed (under the 'notification' approach proposed by URCA BTC would have this option)
- The domestic mobile termination rate (MTR) is reviewed and is based on 'Pure LRIC'. URCA's proposed interim rate for the MTR is based on BTC's separated accounts. These accounts are based on fully allocated costs and are not adjusted for BTC's inefficiencies (which URCA deemed substantial in its 2012 Efficiency Study of BTC's cost base). This implies that the interim rate is still substantially above efficiently incurred costs and the risk of margin squeeze persists
- BTC amends 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 with a 'fit for purpose' process is introduced in the market to lower the barrier to switch between providers.

### Question 4 – margin squeeze

BTC considers that margin squeeze would not be a significant concern in the future, arguing that BTC and NewCo are equally dependent on the wholesale prices for call and message termination, and that the wholesale prices for national roaming will be determined by URCA. NewCo considers that both these arguments are incorrect, and that margin squeeze is a realistic threat to a competitive mobile market.

For some time after NewCo's commercial launch, BTC is likely to have a market share of well over 50%. This means that the majority of traffic will be terminated on BTC's mobile network, and BTC will be incentivised to squeeze NewCo's margin unless the following steps have been taken:

- BTC's termination rates that are charged to NewCo represent the actual cost of termination, as measured by "Pure LRIC"
- BTC accounts can demonstrate that it charges its retail arms the same termination rates as it charges to NewCo
- NewCo has a direct interconnection to BTC's fixed and mobile switches, thus removing the need to pay a transit charge to BTC.

Until these steps have been taken, BTC and NewCo will not be equally dependent on wholesale termination prices.

In its Final Determination on National Roaming, URCA has permitted BTC to use a number of different methods to set national roaming charges, and requires BTC to submit its charges to URCA for approval<sup>1</sup>. NewCo considers that it is imperative that URCA conducts a margin squeeze test on these proposed charges so that NewCo is not forced into a loss making position as soon as it launches its service.

## Question 5 – undue discrimination

BTC considers that undue discrimination is not likely to be a problem, argues that the same pricing rules should apply to BTC as to NewCo, and references other jurisdictions to support its case. NewCo rejects these arguments, as follows:

- BTC has 85% of the population as its customers (the penetration rate), and has a strong commercial incentive to retain its customers through discriminatory on-net/off-net call price differentials. Hence it is very likely that undue discrimination will be a problem, and URCA needs regulatory controls in order to counteract this problem.
- BTC will have a 100% share of the mobile retail market when NewCo launches its service, and will have significant market power in this market for some time. Hence different pricing rules should apply to BTC compared to NewCo in order to constrain its market power.
- As discussed above, NewCo is launching its commercial service in a market that is different from the markets when most other second operators entered. Hence the practice in other jurisdictions, where competing operators are well established and can provide meaningful on-net call discounts on their own networks, are not relevant to The Bahamas today.

NewCo continues to believe that URCA should require BTC to seek its prior approval for any pricing proposal that charges different prices to similar customers or for similar products and services. URCA should only approve these proposals if BTC can demonstrate that the price differences are justified by objective cost differences.

Since URCA published its consultation paper on retail price regulation and the submission of the comments from BTC, CBL and NewCo, URCA has produced its Final Determination on BTC's RAI0. This has clarified URCA's position on the charging system for fixed to mobile calls by determining that the mobile termination rate of 2.48 cents shall apply only to mobile to mobile calls from NewCo's network<sup>2</sup>. Hence the current system, whereby BTC charges a zero termination rate for fixed to mobile calls and charges its mobile customers to receive calls (Mobile Party Pays), will continue.

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<sup>1</sup> URCA. Provision of National Roaming Services on the Cellular Mobile Networks of the Bahamas Telecommunications Company Ltd. in The Bahamas to the Second Cellular Mobile Operator for an Interim Period. Statement of Results, Final Determination and Order. ECS 18/2016 .

<sup>2</sup> URCA. Consultation On Proposed Changes to the Reference Access and Interconnection Offer published by the Bahamas Telecommunications Company Ltd. Response To Public Consultation And Final Determination ECS 19/2016 , page 18

While this Determination leaves NewCo free to decide its charging regime for fixed to mobile calls, NewCo considers that URCA needs to think through the possible anti-competitive consequences if NewCo decides to adopt a Calling Party Pays system for fixed to mobile calls:

- BTC may argue that it does not have a source of funding to pay an MTR to NewCo, because a retail charge is not applicable to BTC's retail customers for such calls. BTC may decide not to send any fixed-mobile traffic to NewCo. Even if NewCo then takes a dispute to URCA because BTC is not complying with the principles of interconnection (enabling pay to any customer connections), this would take time to sort out and, while such a dispute is pending NewCo, would be severely hampered in its competition with BTC.
- NewCo may adopt a CPP regime for fixed- mobile calls, and BTC may follow suite as a result of competitive pressures. In this scenario there is a risk that BTC will charge excessive fees for calls from its fixed customer to NewCo on a discriminatory basis. This would make NewCo a less attractive for prospective mobile customers. Such a pricing approach should be prevented through imposition of ex ante rules to prevent discriminatory pricing by BTC.

CBL trusts that URCA will ensure that the above scenarios will not come to bear, and asks URCA to clarify in its Final Determination that:

- A refusal by BTC to send interconnection traffic to another operator would be regarded as a breach of SMP obligations by URCA
- If BTC charges retail on -new/off-net price differential that are greater than any difference in termination rates, URCA would consider this practice to be undue discrimination.

## Question 6 – abusive bundling

BTC discounts URCA's concern that BTC could develop multi-product bundles that are abusive, believing that "... BTC's market power will very quickly evaporate once NewCo enters the market. ..." and that "...CBL/NewCo are well established in all other major electronic communications markets ...".

NewCo expects that BTC will retain significant market power in the mobile market for some time, and that URCA should not design its regulatory regime around BTC's assumptions. Moreover, URCA has designated BTC as having significant market power in the retail fixed voices services market and the retail broadband services market<sup>3</sup>, and BTC remains able to leverage its power in these markets by bundling mobile services with its product offerings in these markets. Hence NewCo continues to believe that URCA is right to be concerned about the dangers of abusive multi-product bundling, and that any proposals for such bundling should continue to be subject to ex-ante regulation.

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<sup>3</sup> Assessment of Significant Market Power in the Electronic Communications Sector in The Bahamas under Section 39(1) of the Communications Act, 2009. Response to public consultation and final determination. ECS 14/2014

## Question 7 – interim regulatory measures

URCA proposes that it should follow option 2 (modified pricing rules) in revising its retail pricing rules, while BTC considers that URCA should follow option 3 (complete removal of ex-ante rules) on the grounds that “.... competition ... can be expected to develop very rapidly once NewCo enters the market”.

NewCo considers that URCA should not base its regulatory regime on BTC’s assumption that it will rapidly lose market share, given the likely barriers to customers switching from their incumbent supplier (BTC) and BTC’s likely commercial reactions to a rapid loss of market share. NewCo reiterates its proposal that URCA should carry out a full review of the mobile retail market after the mobile market has stabilised (say, 12 months after NewCo’s commercial launch), and that URCA should follow its option 2 in the meantime.

## Question 8 – competition tests

BTC disagrees with URCA’s proposal for a bi-annual margin squeeze test on its mobile prices, arguing that such tests would be onerous and that margin squeeze is unlikely to be a problem.

NewCo considers that BTC exaggerates the work it will need to carry out on margin squeeze tests. BTC should have its methodology already developed for this as part of its current submissions to URCA for price changes, and should be able to estimate the costs of its services as part of any commercial review of its retail prices. NewCo considers, as discussed above, that the dangers of margin squeeze are real in the retail mobile market, and that URCA should require BTC to carry out the bi-annual tests, as proposed in the Preliminary Determination.

Since the publication of the Preliminary Determination, URCA has produced its decision on national roaming, which includes a requirement on BTC to produce prices for its national roaming service, and to submit them to URCA for approval. NewCo considers that BTC should be required to carry out a margin squeeze test as part of this submission to URCA, and that URCA should require the proposed prices to pass the margin squeeze test before it approves them.

BTC also considers that price changes involving multi-product bundles should be excluded from the requirement for ex-ante approval. As discussed above, NewCo believes that BTC has the ability and incentives to produce abusive multi-product bundles, and that they should continue to be subject to URCA’s ex-ante approval.

## Question 10 – continuation of existing pre-approval requirements

BTC reiterates its proposal that multi-product bundles should not be subject to ex-ante price controls. As the reasons explained above, NewCo does not agree with BTC.

BTC does not agree that changes to non-price terms and conditions should be subject to ex-ante controls, as proposed by URCA. It quotes changes in call minute or text allowances as examples of changes in non-price terms and conditions that should be subject only to ex-post regulation. NewCo considers that these are good examples of why changes in non-price terms and conditions should continue to be subject to ex-ante approval. Such changes can have a material

impact on the effective price paid by customers, and so can be used to circumvent other price controls.

### **Question 12 – bi-annual margin squeeze test**

BTC disagrees with URCA's proposals for a bi-annual margin squeeze test. As explained above, NewCo supports URCA's proposals.

### **Proposed modification to Retail Pricing Rules**

BTC comments in detail on URCA's proposals in Annex 1 to the Preliminary Determination. NewCo considers that in making its comments, BTC misunderstands the purpose of a notification process, which it claims is "... to make regulatory aware of the proposed action". NewCo considers that the purpose of URCA's scheme, as set out in the Preliminary Determination, is to allow URCA an opportunity to call in any proposal that appears to be anti-competitive or that appears to be contrary to its regulations, but allows the operator to proceed quickly with compliant price changes. This fundamental misunderstanding renders all of BTC's subsequent comments and proposals for changes in section 5 of its response irrelevant and unnecessary.

**Respectfully submitted**

**On behalf of NewCo2015 Limited**

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