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The Bahamas Telecommunications Company Limited

Response To

Preliminary Determination on the Assessment of the Significant Market Power in the Electronic Communications Sector in The Bahamas under Section 39(1) of the Communications Act, 2009

(ECS 10/2014)

Legal and Regulatory

July 31, 2014

1. Executive Summary

The Bahamas Telecommunications Company Limited (BTC) welcomes the opportunity to respond to this Public Consultation on the Utilities Regulation and Competition Authority's (URCA) Preliminary Determination on the Assessment of Significant Market Power in the Electronic Communications Sector in The Bahamas under Section 39(1) of the Communications Act, 2009.

Role of regulation

BTC considers that intervention should take place where the regulator believes that market forces alone are unlikely to achieve the objectives of the Communications Act within the required timeframe. Further, in imposing regulatory requirements, due consideration should be taken of cost and the need to ensure that the cost to the regulator and affected parties is proportionate to the problem identified for remedies. It is also important that any proposed remedy used to address the identified problem is fit for purpose, taking into account any emerging trends within the electronic communications sector. Finally, it is essential that any regulatory obligations imposed on the relevant parties are transparent, fair and non-discriminatory.

Price cap proposal

BTC supports URCA's proposal for a Price Cap to address the issue of market failure in the fixed voice services, broadband services and Pay TV markets. The Company recognized that the current retail pricing regime, a rules based system, was intended to be an interim transitional arrangement when introduced in April, 2010. Since the introduction of the existing Rules, BTC has had numerous exchanges with URCA on the impediments associated with the current Retail Pricing Framework. The transition to a Price Cap Regime for fixed services is welcomed by BTC as the Company expects that this will allow greater flexibility, predictability with respect to the rules of engagement and more importantly will allow BTC to be more nimble in responding to competition and the needs of consumers.

Impact of convergence

Notwithstanding the foregoing the Preliminary Determination presents some points of concern for the sector. URCA in its Preliminary Determination has not given sufficient weight to the impact of convergent technologies on the delivery of service and by extension the availability of choices to consumers as a result of convergence. The approach that URCA has taken is to view services individually, compared to an approach based on the convergence of narrowband, broadband, fixed and mobile services. URCA in its Preliminary Determination has overlooked that given the convergence of services, the price of individual services are constrained by other electronic services and customers tend to buy services as bundles and not individual services.

Impact of second mobile licence

URCA has also ignored the potential impact on the markets of the second mobile license which is to be issued in The Bahamas in the near future. While BTC is not arguing that mobile and fixed services form part of the same service market at this stage, it is clear that a mobile network with national coverage would lower the barrier to entry in fixed markets, including the markets for broadband, fixed voice and business connectivity services. This is quite clear from evidence across the Caribbean, where new mobile entrants have started providing such services in competition with incumbents. This potential market entry has significant implications for each of the service markets under review in this consultation because it raises the prospect of competition and therefore provides an additional constraint on the behavior of existing players.

Retail deregulation

BTC also notes that the trend internationally in favor of full deregulation of retail services as opposed to retail price caps. There is increasing recognition of the potential for regulatory failure in converging markets where cost structures for individual services are not as easy to estimate and where the boundaries between services (particularly between regulated and non-regulated services) become increasingly blurred. BTC would therefore urge URCA to ensure that at minimum any price caps would be implemented for a transitional period only, with the aim of removing retail price regulation entirely when market circumstances allow. In BTC's view this should happen shortly after the new mobile entrant enters the market, because this new operator will be able to provide fixed services in direct competition with those of BTC and Cable Bahamas Limited (CBL). At that stage The Bahamas will have four networks competing in most markets, including two fixed networks, which is well ahead of the experience in other markets.

Competition for customers

Given that competition in the electronic communications sector is based on customer spending across all communications services (i.e. fixed telephony, broadband and pay television), price caps should be broad-based rather than focused on sub baskets controlling individual prices. The typical behavior of customers is to buy bundles, with free minutes or data downloads, making the real price of individual services difficult to measure and control, further supporting a broad-based price cap approach.

Ex post regulation

BTC believes that in the market circumstances of The Bahamas, the focus of any price cap should be on the protection of consumers against excessive pricing. The market structure on The Bahamas is not conducive to predatory pricing or margin squeeze, with both BTC and CBL in a strong position to ensure such behavior would not be profitable, should it be displayed by the other operator in any service market where that operator has SMP. This is also recognized by URCA in its consultation documents. It is therefore imperative to ensure that competition law is relied on where possible to deal with what is likely to be an immaterial threat to the development of competition in the market. The alternative of ex ante replicability tests would be counterproductive and would result in services where operators do not have SMP becoming subject to SMP obligations because they will increasingly be provided as part of a bundle. This would require the development of detailed costing information for services like broadband or, in future, IPTV services. The result would either be delays on price declines and/or limited availability of bundles, which diametrically opposes what URCA should aim for.

Geographic markets

BTC understand the of URCA's geographic market definitions for broadband and business connectivity services. However, this document demonstrates that such sub-markets are too small to merit separate definition and regulation, and BTC proposes a single national market definition in all service markets under consideration. The approach proposed by BTC would avoid inconsistency where for fixed voice services and pay TV services there is one national market, but two geographic markets for broadband services and business connectivity services.

Business and residential markets

BTC notes that URCA has defined separate markets for high speed business connectivity services, and considers that separate business and residential services markets should be defined for fixed voice services. BTC suggests that URCA review its initial finding that these services are in the same market in light of the comments below, and to collect relevant data from the operators. BTC anticipates that a fuller analysis would cause URCA to draw different conclusion about significant market power and appropriate remedies for the business market.

2. ***Key issues***

2.1 Nature of competition in The Bahamas

The Communications Act 2009 set the stage for the liberalization of fixed network telecommunications in The Bahamas, and CBL began providing competitive voice services towards the end of 2010. While over 30 niche service operators have been licensed by URCA to provide telecommunications voice and data services, effective competition is only between two infrastructure-based providers – BTC and CBL. This picture has not changed over the last three and a half years of competition in The Bahamas. It reflects the nature of circumstances in other Caribbean jurisdictions in which competition is between the operator of the PSTN network and the operator of the cable television network, with some small niche service providers. Given the small size of the national markets in the Caribbean, this picture is not likely to change in the foreseeable future. Even in the larger and more developed markets, consolidation in the telecommunications sector is resulting in effective competition for most customers being between the large infrastructure-based providers.

This has significant implications for regulation of the sector in The Bahamas. Regulation should focus on ensuring that competition between the main players is fair, that they are not constrained unnecessarily in developing new services, and that consumer interests are protected. BTC's views on the specific implications for URCA's review of retail markets are set out below.

2.2 Competition is for customers, not services

Where there are several competing service providers and particularly in markets where indirect access provides the foundation for competition (see the EU with CPS, CS, ULL, Bitstream etc.), competition tends to take place for different services, for example for access lines, for international calls, by different suppliers for internet and television services. Customers will choose between these suppliers based on the price and quality of the individual services. Where there are only two main providers, as in The Bahamas, customers are more likely to buy all their communications services from one supplier, based on the total price of all the services and overall quality of provision. Suppliers respond to this by providing bundles of services, which allow them to pass on the economies of scope gained from bundling to customers.

In this circumstance, the regulation of retail markets should focus on the overall price of packages rather than on the price of individual services, and on ensuring that packages are replicable by the competitor. Cross subsidies within packages are less important than ensuring that the price exceeds the total cost of the bundle. Tariff rebalancing, which in some countries has been a major issue for regulatory authorities and operators, becomes unnecessary because customers are concerned with the total package price, not the price of individual items. Mandated increases of monthly subscription fees would also be highly unpopular with existing consumers of landline services, which are more likely to be of low income than mobile customers. There are also many other sources of lowering access deficits over time including increased usage of the access network by services like broadband and TV. BTC considers that these options should be explored first and any tariff changes should be left to the regulated operator, not be forced on the market by the regulatory authority.

It should also be noted that with the development of free minutes and data downloads within bundles, the calculation of effective prices – and hence the control of individual prices – becomes more complex and challenging for the regulator.

2.3 Convergence makes market definition more challenging

The development of IP-based technology and the huge increase in the capacity of fixed and mobile networks has resulted in services that were once provided on different networks being provided on the same network. This enables the customer to substitute one service for another more easily over fixed, mobile or broadband networks. For example, Digicel is providing broadband and internet services to businesses in Jamaica and in the Turks and Caicos Islands through its WiFi networks, and elsewhere with 4G services. Digicel also provides high capacity connectivity services in various markets, for example in Guyana. Internationally some mobile operators are now entering fixed markets – Vodafone, for example has recently bought cable TV operations in Germany and Spain. This makes market definition, which is based on the concept of service and supply substitution, increasingly challenging. BTC considers that URCA's market analysis should recognize that exact service substitution is not necessary for the price of one service to be a constraint on another. Customers will weigh up the advantages and disadvantages (including price and quality) of one product compared to another and select the service that provides the best combination of features for their particular need.

BTC believes that because of convergence, URCA should pursue broad market definitions rather than attempt to define several detailed markets, and considers that in general the markets presented in this review are at the correct level of definition, with two exceptions.

2.4 Business and residential markets

URCA has proposed that the fixed voice services provided to residential and business customers should be in the same market, mainly on the grounds of supply substitution. BTC considers this is a mistake.

URCA recognises that a significant price differential exists between residential and business customers, with BTC monthly charges for business customers being 2.2 times those for residential customers and CBL's being 1.7 times, reflecting the higher usage, better quality and additional services provided to business customers. This price differential is considerably in excess of that used for the SSNIP test (between 1.05 and 1.1), and yet both BTC and CBL can maintain this price differential, demonstrating that demand and supply side substitution does not take place.

URCA justifies including business and residential customers in the same market by reference to a decision by the European Commission. BTC is of the view that this is not an adequate precedent for the following reasons:

1. The first reason given by the European Commission for merging these markets is:

   "Operators do not generally seek to classify different demand categories and do not normally register whether a particular access service is supplied to a residential or non-residential customer, so that collecting separate data for both groups of customers has in practice often proved to be difficult.[1]"

   This reasoning does not apply to The Bahamas, where business and residential customers are identified separately and charged different rates.

2. The EC gives as its second reason that suppliers can switch between residential and business suppliers in the event of a SSNIP. In The Bahamas this consideration does not apply either, because supply side substitution has not eroded the significant price differentials between the markets, as described above. In addition, unlike the EU, The Bahamas does not have infrastructure-based suppliers that focus solely on residential or business customers, as is the case in the EU. In The Bahamas, CBL and BTC already provide service to both segments and the response to a SSNIP would therefore not likely be material.

[1] European Commission. **COMMISSION STAFF WORKING DOCUMENT EXPLANATORY NOTE Accompanying document to the Commission Recommendation on Relevant Product and Service Markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services. SEC(2007) 1483/2. Page 22, paragraph 5**

BTC therefore considers that URCA should separate the business and residential markets for fixed services. It believes that as the market shares of CBL and BTC in the business markets are significantly different compared to the residential market, this will have a substantial impact on the regulation of these markets. BTC believes that the competitive position in the business market has changed significantly since URCA's last market review in 2009. Hence URCA should pay more attention to this market.

URCA has given the lack of data as a reason for not being in a position to assess consumer switching behavior for residential and business fixed access and call markets, i.e. demand side substitutability and similarly the lack of data on the supply side to assess supply side substitutability between residential and business fixed access and call services. Given the Service Level Agreements (SLAs) that are typically in place for business subscribers that provide an economic rationale for the price differential between residential and business subscribers, it should be a simple matter for the operators to provide data on business customers. The differences in product features by way of the services received by business when compared to residential subscribers, provides a rationale for separating the two markets.

BTC has found the business access and call markets to be more competitive when compared to the less lucrative residential access and call markets. Systems Resource Group (SRG), an entity that was acquired by Cable Bahamas Limited, focused primarily on this market. Other smaller competitors, on entering the market, have also sought to build a business model with focus on the business market. Given the competition in the business market and the availability of resources in this market segment to scrutinize contracts and the whole vetting process as part of their relationship with service providers, there is less need for ex ante intervention in this market when compared to the residential market for access and call services.

BTC is firmly of the view that for the business fixed access and call markets, URCA should place greater reliance on ex post intervention rather than ex ante price regulation. This will allow for greater pricing flexibility and a reduction in lead time in providing benefits to the business community.

2.5 Geographical averaging

In its proposed remedies for the high speed broadband market, URCA proposes that BTC should provide uniform prices across all of The Bahamas. It notes that competition between CBL and BTC in this market exists only in New Providence, Abaco, Grand Bahama and Eleuthera, and that BTC is the only supplier elsewhere.

BTC considers that the implications of this proposal have not been thought through by URCA. The reason why competition is limited to the four islands is that CBL has decided not to provide service elsewhere because the costs of provision are too high. On the four islands CBL sets its prices in relation to its costs, and BTC has to set its prices in relation to CBL's prices. However by requiring BTC to set its prices on the other islands at the same level as prices on the four islands means that BTC prices on the other islands are set in relation to CBL's costs on the four islands. As a result, BTC may well be losing money by providing services on the other islands, where the cost of provision is higher.

BTC considers that the proposed remedy is unfair, and that the prices of services on the less populated islands is a matter that should be considered as part of the universal service, rather than as a price control matter.

URCA's proposals have a further implication for BTC. Geographically averaged pricing suggests that any bundles containing a broadband product should be made available to all its (potential) broadband customers, irrespective of location. However, BTC only has SMP in a very limited part of the broadband market (in terms of subscriber numbers) and through the obligation of geographic averaging any SMP obligations on broadband in market 2 would have national implications for BTC. This surely cannot be the intention of URCA. The solution, as proposed, is to have a single market for broadband services, with the scope of this market being national.

2.6 Replicability tests

URCA proposes that replicability tests should be used on bundles in the fixed services, broadband and pay TV markets. However it does not give any further indications about how these tests will be applied nor does URCA describe the particular competition concern these tests should address. For BTC, the key question is what sort of operator should be able to replicate the bundle under review. BTC considers that, because of the nature of competition in The Bahamas, the test should be applied based on the costs of the two existing operators, rather than a mythical new operator. As both operators provide all services over their networks, with the notable exceptions of mobile telephony (CBL) and Pay TV services (BTC) this clarification will make the replicability tests much simpler and easier to apply. BTC therefore urges URCA to provide greater clarity on the scope of its proposed replicability tests.

BTC also notes that URCA is content to rely on ex post competition powers to deal with margin squeeze and predatory pricing concerns in the market for fixed voice services, but requires a replicability test in relation to bundling such services with other services. BTC agrees with URCA that both CBL and BTC are in a good position to engage in price competition due to the low incremental costs associated with their networks. However, the same argument about ex post regulation applies to bundles, yet URCA has concluded that the bundling of SMP services should be subject to an ex-ante test of replication. Bundling can be an effective way of passing economies of scope on to customers, and BTC considers this should be permitted, unless specific competition problems can be identified. Hence BTC sees no reason why bundling should be subject to ex ante remedies, and believes that ex post investigations are more appropriate.

The following Figure shows the various bundling combinations that are possible.

Figure 1: Bundling options and SMP in service markets

	Telephony	Broadband	TV	Mobile
2P - 1	BTC	CBL		
2P - 2		CBL	CBL	
2P - 3			CBL	BTC
2P - 4	BTC		CBL	
2P - 5		CBL		BTC
2P - 6	BTC			BTC
3P - 1	BTC	CBL	CBL	
3P - 2		CBL	CBL	BTC
3P - 3	BTC		CBL	BTC
3P - 4	BTC	CBL		BTC
4P	BTC	CBL	CBL	BTC

The table shows double play (2P), triple play (3P) and quadruple play (4P) bundling combinations of the four main services in the market. In the table the operator with SMP in each service market is identified. All bundling options containing mobile services are shown in red, these bundles cannot be provided while BTC has a monopoly on mobile services, unless a clear benefit to customers can be demonstrated. All bundles shown in blue can currently only be offered by CBL, as the sole provider of TV services.

The table makes it quite clear that the only bundle BTC can currently readily provide is one of telephony and broadband services (2P -1). In this bundle BTC has SMP in telephony and CBL has SMP in broadband. It is highly unlikely that BTC would be able to engage in an undue tying strategy if it is up against an operator with SMP in the other market relevant to the bundle. A replicability test is therefore not necessary for such a bundle. The only exception is potentially bundle 2P-2, where CBL has SMP in both services in the bundle and would therefore be in a position to exploit such dominance. In general, it is quite clear from the table that CBL is in a better position to leverage dominance than BTC.

The consistent application of URCA's analysis would result in replicability tests also not being necessary for bundles on an ex ante basis, because both BTC and CBL, using their networks to provide service at low incremental costs, are in a strong position to engage in price competition in all markets in which they are active, also when those services are offered through bundles. Any replicability test should therefore be conducted on an ex post basis only, in the highly unlikely set of circumstances where either CBL or BTC would be irrational enough to engage in margin squeeze or predation across bundles of services.

2.7 Price cap design

In principle, BTC supports URCA's proposal for a Price Cap Regime as outlined in URCA's Preliminary Determination on the Assessment of Significant Market Power. BTC has consistently supported a Price Cap for fixed services and in its response to the Public Consultation on Retail Pricing in the Communications Sector, August 3, 2009, supported the implementation of price caps. URCA, in the August 3 Retail Pricing Consultation, had indicated that the existing Retail Pricing Rules (ECS 15/2009) were intended to be a transitional arrangement for a period of six (6) to twelve (12) months. The implementation of a price cap would afford BTC greater flexibility in rebalancing its tariffs, and would allow the speedy introduction of price decreases, thus benefitting customers. Price Caps would provide BTC with the flexibility to adjust prices compared to the existing rigid rules based approach to price regulation.

BTC supports the implementation of a Price Cap based on the following design principles:

- It is important that as part of any Price Cap design that the basket of services are broadly defined. BTC's views on the nature of competition in The Bahamas, the competition for customers rather than for individual services, and the convergence of services are outlined above. In view of these trends, BTC considers that the price cap should have a single basket of services compared to a design where there are more individual services as part of several sub baskets of services. BTC considers that one basket for fixed services (for BTC), and one for broadband services and TV services (for CBL) would be appropriate.

- With the progress to date with the Separated Accounts, the outputs of the Separated Accounts should be used as the starting price (P_o) under a price cap regime for fixed line services. Adjustment to prices over time will be based on the X-factor reflecting tariff changes in real terms.
- BTC supports a price cap with a duration of three (3) years. Based on research, a cap duration of three (3) years is acceptable as it gives some stability to the industry. Given convergence and emergence of new technologies in the industry, it is important to have a cap duration that is not longer than three years.
- There is a number of ways in which the X factor, which controls the rate at which prices should change in real terms, can be calculated for the price cap. BTC considers that a financial model, which takes into account the likely changes in costs and volumes of the operator, is the most appropriate in The Bahamas, with the results being compared to benchmark rates in other Caribbean jurisdictions as a sense check.
- BTC considers that the operator subject to the price cap should be responsible for its implementation, being required to submit an annual calculation to URCA to show how it has complied with the cap. If an operator is found to have exceeded or undershot the price cap, it would be required to adjust prices in the following year in order to compensate.
- Under a price cap, the rules for price changes should be clear enough to self-assess whether price changes fall within the boundaries of allowable price changes, and no notification of price changes to

URCA (as opposed to request for approval) should be necessary. If this is not implemented, one of the main advantages of a price cap, a shorter route to market for price changes, would not be achieved.

Further, it is still relevant today as BTC argued in its response to 2009 Public Consultation on the Retail Pricing Framework, that International Long Distance (ILD) should be excluded from any potential basket of services subject to ex ante regulation. Given the competition through indirect access services and Voice over Internet (VOI) services, the Company is firmly of the view that ILD services should be removed from ex ante regulation and by extension from any price cap regulation.

3. BTC's responses to URCA's questions

Fixed voice services

Q1. Do you agree with URCA's approach to and definition of the product market? If not, why not?

BTC agrees with URCA's overall approach, as set out in paragraph 4.1.1, to seek broad market definitions rather than narrow definitions that distinguish individual services. This approach is appropriate to The Bahamas given the nature of competition (see section 2.1 above) and the focus on competition for customers rather than services (section 2.2). However BTC disagrees with URCA's proposals for the definition of a single fixed voice services market on two grounds.

Business and residential customers

BTC considers that there should be a separation of residential and business fixed access and call services markets. URCA examines the scope for substitution in paragraph 4.1.2, and produces a good reason why demand substitution does not take place – that the operators provide different levels of service to business customers, and will prevent business customers from switching to residential packages while retaining business levels of usage. BTC considers that URCA's reasoning – that a lack of data prevents further consideration – is inadequate. BTC considers that instead URCA should conclude that demand substitution does not take place.

BTC agrees that supply substitution does take place, but URCA does not take this analysis to the next necessary step, which is the application of the SSNIP test. As we set out in section 2.4 above, a 10% rise in the price of business services will not produce any change in supply because the price difference is already much greater than 10%. Hence a hypothetical monopolist supplier of business services in The Bahamas would not see a reduction in its profits from the SSNIP, and supply side substitution cannot be said to exist.

As we set out in section 2.4 above, BTC considers that the European Commission's reasons for maintaining residential and business services in a single market cannot be used as a precedent for The Bahamas.

There is a significant difference in the competitive dynamics of the two markets. At a minimum, URCA should request the relevant operators to provide any necessary data on the business and residential fixed access and call markets so that it can calculate market shares and identify any SMP. BTC believes that this would result in a substantial change in URCA's proposals for the regulation of the fixed voice services market. It is instructive in this context to look at URCA's own conclusions in the market for business connectivity services. These services are provided over the same networks that provide fixed access and calls to business customers and the supply conditions in both markets are therefore the same. This implies that URCA's conclusions in the market for business connectivity services, where URCA deems the market prospectively competitive, would equally apply in the market for voice access and calls, should this be separately defined for business customers.

International calls

BTC considers that international calls should be treated as a separate market from national calls and access, for the following reasons:

- Calls from The Bahamas to international destinations cannot be considered as substitutes for local and national calls. By definition they are calls to destinations outside The Bahamas, and these destinations cannot be reached by dialing numbers based in The Bahamas. As a result, a SSNIP in the cost of international calls cannot result in any switching to national and local calls.
- A supplier of national and local calls cannot easily move into the supply of international calls as a result of a SSNIP from a hypothetical supplier of international calls. They must first of all build an international switching centre, obtain connectivity to several international destination, and

negotiate pricing, billing, and operational agreements with international terminating operators or intermediaries.

- The international calls market has many more operators than the national and local calls market, in particular VoIP and calling card operators. BTC considers that URCA's analysis of the substitution between VoIP and fixed services (pages 35 – 39) is inadequate, partly because it does not distinguish between international calls and national and local calls. If URCA carries out a separate analysis by market, it should conclude that VoIP is a much closer substitute for international calls. In its analysis, URCA has underestimated the considerable improvement in the quality of VoIP calls resulting from the improvement in local broadband speeds and the availability of international capacity to carry VoIP calls. On the topic of unmanaged VoIP and fixed voice services, URCA considers that the 'observed growth in average annual long distance and international call traffic per fixed voice subscriber in recent years (as set out in Figure 3 above) as an indication that Bahamian users do not regard these call services as good substitutes' (see top of page 38 of ECS 10/2014). BTC considers this an inadequate analysis, because it suggests that a market can only be subject of substitution if it is in decline. However, traffic volumes for fixed voice services (as opposed to revenues) are increasing as a result of tariff declines for international fixed voice services (for example Home Phone Plus). This is quite a separate issue from substitution, which of course *does* take place, provided users have access to both a fixed line and a broadband connection. While fixed line numbers have not yet declined, they have in other markets, for example the USA, where 40% of households now no longer have access to a fixed line. This is likely to be the result of substitution by both mobile and VoIP services, but neither effect is formally recognized by URCA in this consultation.

Fixed and mobile substitution

While BTC accepts URCA's conclusion that fixed and mobile voice services are currently in different markets, it considers that in a few years' time these services will have to be treated as being in the same market. The concept of substitution is difficult to apply from a desk, and BTC suggests that URCA should, as it has with Pay TV services, undertake some customer surveys to understand substitution from the customer's viewpoint. BTC notes that the considerable discrepancy in penetration rates in The Bahamas – 85% for mobile and 36% for fixed (2013 data) – and the decline in fixed network penetration, suggest that many customers already view a mobile device as an adequate substitute for fixed, which they do not need.

For the current consultation it is also important to note that while fixed calls do not generally substitute for mobile calls, mobile calls most certainly substitute for fixed calls (i.e. there is 'one-way' substitutability). Customers always have the option to use their mobile phone when making calls instead of the fixed phone, if available. However the reverse does not apply when on the move. This dynamic puts an additional constraint on the pricing behavior of providers of fixed services. URCA relies heavily on a price comparison between BTC's Home Phone Plus service to conclude that prices for fixed services are substantially lower than for mobile services. However, the vast majority of BTC's customers are still on standard landline rentals, where price differences with mobile are much smaller.

BTC therefore does not agree with URCA's proposed single market for fixed voice services. Instead it proposes three separate markets:

- Fixed access and local/national calls for residential customers
- Fixed access and local/national calls for business customers
- Fixed calls to international destinations

BTC notes that the Telecommunications Commission of the Turks and Caicos Islands has defined separate business and residential markets, and separate domestic and international calling markets, and considers that this provides a useful precedent for URCA[2].

Q2. Do you agree with URCA's approach to and the definition of the geographic market? If not, why not?

URCA, in its analysis of the geographic market for broadband, has defined two markets, i.e. New Providence, Abaco, Grand Bahama and Eleuthera and all remaining islands (i.e. where only BTC offers broadband services). In the case of fixed voice services, URCA has defined the geographic market as national in scope. BTC and CBL's footprint for its broadband services mirrors that of its fixed voice services. So, it stands to reason that there should be consistency of the definition of the geographic markets across these services, and that URCA should define two geographic markets for fixed voice services, or alternatively a single national market for broadband services.

Q3. Do you agree with URCA's SMP findings in the market for fixed voice services? If not, why not?

As BTC has proposed above, the fixed voice services market should be separated into residential and business markets, and a separate market for international calls. In assessing SMP for fixed voice services, URCA should carry out a market share analysis for each of these three markets. Until BTC has seen this analysis, it cannot comment whether URCA's conclusions on SMP apply to all these markets.

[2] Telecommunications Commission, Turks and Caicos Islands. Fixed services price regulation review, consultation document. 14 Jan 2013, pages 9 – 12.

In any analysis of the international calls market, URCA should estimate the volume of calls carried by VoIP and calling card operators. It may need to undertake customer surveys in order to collect this information.

Broadband services

Q4. Do you agree with URCA's definition of the product market? If not, why not?

Given that the intent is to have a technology neutral framework, BTC has noted that URCA has made the distinction between fixed (DSL) broadband offered by BTC and the cable based broadband services offered by Cable Bahamas Limited (CBL). This is a departure from URCA's previous analysis where the distinction was just made between narrowband and broadband services, where a minimum threshold was provided for what is deemed broadband. BTC is of the view that there is no need for the distinction in defining the products based on the technologies when comparing BTC's and CBL's broadband offers. It is also not clear why URCA has used DSL as the focal product when cable based broadband is taken up by the majority of customers in the market. Clearly cable based broadband should be the focal product.

Following its comments on the fixed voice service market (see above), BTC considers that separate markets should be identified for broadband business and broadband residential services. The reasons for this are similar to those set out above:

- The lack of customer data on whether switching takes place or not is not an adequate rationale for any conclusion on demand side substitution. The operators provide different levels of service to business customers, for example on contention ratios and response times, and charge substantially different prices (tables 7 and 8 in URCA's Preliminary Determination paper show differences of between two and four times for bundled broadband prices). As URCA acknowledges, the operators can prevent business customers switching to residential packages, and that they can maintain such significant price differentials demonstrates the effectiveness of this in practice.

- While a supplier of residential broadband services can switch to providing business broadband services, this is not the relevant question to whether supply side substitution is sufficient for these services to be included in the same market. The relevant question is the SSNIP analysis – whether a 10% increase in price would be unprofitable for the hypothetical monopoly supplier of business broadband services. BTC considers that the price difference already in existence, of between 2 and 4 times the price of residential services, demonstrates that a price increase would not be constrained by supply side substitution.

BTC concludes that URCA's analysis of this issue, as with the fixed voice service market, is inadequate, and that separate business and residential markets should be identified for broadband services.

BTC therefore proposes that the market definition for broadband services should identify two markets:

- Broadband services for residential customers
- Broadband services for business customers

Q5. Do you agree with URCA's definition of the geographic market? If not, why not?

See BTC's response to Question 2 above. BTC understands the logic of URCA's geographical market definition, but BTC believes the size of geographic market 2 is simply too small to merit separate treatment. Based on May 2014 data, only X of BTC's X residential broadband customers are on islands other than New Providence, Grand Bahama, Abaco and Eleuthera. By BTC's estimates this is likely to constitute only 5% of the national broadband market.

This group of customers therefore appears an unlikely target for geographic de-averaging of broadband prices, which appears to be URCA's primary concern.

Q6. Do you agree with URCA's SMP findings in the markets for broadband services? If not, why?

Following its recommendation that there should be separate residential and business markets for broadband services, BTC cannot comment on URCA's SMP assessment until URCA has carried out an analysis of market shares and other factors that may give rise to SMP for the business and residential markets.

Business Connectivity Services

Q7. Do you agree with URCA's definition of the product market? If not, why?

BTC has no objection to URCA's product market definition. BTC notes though that URCA's analysis to assess if traditional and fiber-based leased lines are in the same market misses the point that one is simply an upgraded or enhanced version of the other, and that both services fulfil the same basic need for customers. A distinction of services by technology platform also conflicts with the basic presumption of technological neutrality.

While URCA reaches the correct conclusion, the approach presented runs the risk that, in future, network upgrades may result in separate service markets, with legacy technology forming the basis for one, and new technology forming the basis for another. This would potentially inhibit operators in phasing out old technology from their networks, as a result of regulatory restrictions. In spite of what URCA's analysis is suggesting, new technologies always provide supply-side substitutes for old technologies, i.e. all the functionality of the old technology can typically be replicated by the new technology and a fiber-based leased line provider could readily switch to providing lower-grade leased lines in response to a SSNIP on traditional leased lines.

Q8. Do you agree with URCA's definition of the geographic markets? If not, why?

See BTC's response to Question 2 above. BTC understands the logic of URCA's geographical market definition, but BTC believes the size of geographic market 2 is simply too small to merit a separate market definition. As an indication we have looked at business DSL connections on the islands where CBL is active versus the total market. This revealed that 81% of connections was on the islands were both operators are active. Similarly, in the case of national leased circuits, approximately 94% of circuits are concentrated on the islands of New Providence and Grand Bahama. Again, these are the two islands where there is the presence of both CBL and BTC, with approximately 6% of national leased circuits for the remaining islands. Given that these business customers are not in the main business centres on New Providence and Grand Bahama and are therefore more likely to be small to medium size businesses, they are likely to represent a much smaller percentage of the total business market in in terms of revenues. BTC does not consider this material enough to justify the definition of a separate market.

Q9. Do you agree with URCA's SMP findings in the retail national business connectivity services? If not, why?

BTC agrees with URCA's assessment that no licensee has SMP in geographic market 1. The geographical split of the overall market into two sub-markets logically results in SMP for the now-monopolistic provider in the market with only one network. However, as stated the size of this market does not merit separate definition of sub-markets based on geography, or the finding of SMP.

International Business Connectivity Services

Q.10 Do you agree with URCA's definition of the product market? If not, why?

BTC has no objection to URCA's product market definition. URCA's analysis mirrors that of the retail national business connectivity market and BTC's comments apply here as well, see answer to question 7.

Q.11 Do you agree with URCA's definition of the geographic market? If not, why?

See BTC's response to Question 2 above. BTC understands the logic of URCA's geographical market definition, but BTC believes the size of geographic market 2 is simply too small to merit a separate market definition. Based on July 2014 data, around 19% of BTC's business DSL customers are on islands other than New Providence, Grand Bahama, Abaco and Eleuthera. Given that these business customers are not in the main business centres on New Providence and Grand Bahama, they are likely to represent an even smaller percentage of the total market in revenues. BTC does not consider this material enough to justify the definition of a separate market.

Q.12 Do you agree with URCA's SMP findings in the retail international business connectivity services? If not, why?

BTC's response in Question 9 is also applicable here, save the discussion is on retail international business connectivity services.

Pay TV

Q.13 Do you agree with URCA's definition of the product market? If not, why?

BTC considers that its comments on the need for separation of the business and residential markets made above also apply to the Pay TV market. However, in contrast to the fixed voice and broadband markets, BTC believes that a division into separate business and residential markets for Pay TV would not result in any changes in the identification of operators with SMP or in the application of remedies. Hence any further analysis of this market should be a low priority for URCA.

BTC agrees that it is premature to consider whether IPTV is part of the Pay TV market until such a product becomes available in The Bahamas. In any case, URCA may wish to forbear from any regulation of such a development until it has become properly established and any market deficiencies have become apparent.

BTC therefore agrees with URCA's market definition for the Pay TV market.

Q 14. Do you agree with URCA's definition of the geographic market? If not, why not?

BTC agrees with URCA's definition of the geographic market for Pay TV.

Q15. Do you agree with URCA's SMP findings in the markets for Pay TV services? If not, why?

BTC supports URCA's conclusion that CBL has market power in the Pay TV market in The Bahamas.

Q16. Do you agree with URCA's proposed SMP remedies for fixed voice services? If not, why not?

BTC supports URCA's proposal to move from the current retail pricing rules to a price cap. As set out in section 2.7 above, the introduction of a price cap would afford BTC greater flexibility in rebalancing its tariffs, and would allow the speedy introduction of price decreases, thus benefitting customers. A price cap would also reduce the regulatory burden for both BTC and URCA.

BTC also supports URCA's position on margin squeeze, believing that it is appropriate to The Bahamas where competition is focused on winning and retaining customers rather than on individual services (see section 2.2 above). BTC also supports URCA's comparison with CBL's ability to match BTC's packages, as the main competitor to BTC.

Similarly, BTC agrees with URCA's comments on predatory pricing, and the ability of CBL to match BTC's pricing structure. BTC considers that ex-post investigations should be sufficient to deal with any margin squeeze or predatory pricing issues.

While BTC accepts that, while it is the only supplier in the mobile market, it should not be allowed to bundle mobile and fixed services because they cannot be replicated. Of course as there are currently no alternative providers in the TV market this implies that, logically, CBL should also not be allowed to bundle TV and broadband services.

BTC fails to see why a restriction to bundle should also apply to fixed and broadband services. CBL is able to replicate both services, and does indeed provide bundles of fixed and broadband services itself. As we comment in Section 2.6 above, and following URCA's analysis of margin squeeze and predatory pricing, CBL is the main competitor to BTC, and its ability to replicate BTC's services should be the test used by URCA. This test should be applied on an ex post basis only, in this market structure there is no need for ex ante testing of replicability because both BTC and CBL, through their market position in various service markets, would be able to ensure a predatory pricing approach would not be profitable and URCA, as the competent competition law authority, would ensure that a predatory pricing strategy would be suitably punished.

BTC does not agree with the position set out by URCA on price discrimination. BTC wishes to point out that on-net/off-net pricing differentials are not price discrimination – all customers taking the bundle pay the same price, and the differential pricing does not apply to customers receiving off-net calls. BTC considers that URCA should not use ex ante rules to micromanage one tariff when its overall strategy for retail pricing is moving towards a broader approach, based on overall customer competition rather than competition for individual services. BTC notes that CBL uses on-net /off-net pricing differentials, and considers that in the interests of competition, it should be able to do the same. On-net/off-net differentials are an appropriate tool in the competition for groups of customers and the level of the price differential should be based on customers' the willingness to buy, not on any cost differences in the provisioning of the service. If there is a competition problem associated with this, BTC considers that an ex-post investigation should be sufficient to deal with the issue, and that there is no need for ex ante regulation in this case.

BTC therefore concludes:

- URCA's proposal for a price cap to replace the Retail Pricing Rules should be implemented as soon as possible
- The proposal for on-net/off-net pricing should be omitted
- The test for replicability should be whether CBL can replicate BTC's proposed retail bundles. Such a test should be applied ex post only.

Q 17. Do you agree with URCA's proposed SMP remedies for broadband services? If not, why not?

While BTC supports URCA's proposals for a price cap on CBL's broadband services, and its approach to margin squeeze and predatory pricing issues (on an ex post basis), it does not agree with its approach on geographical uniform prices and replicability tests.

As explained in section 2.5 above, BTC believes that a requirement for BTC to provide geographical uniform prices may result in it having to provide services below cost on the islands where CBL is not active. CBL provides service to the four main islands and not to the rest of The Bahamas because its costs are lower on the four islands than elsewhere and these islands are therefore commercially more attractive. CBL's broadband price cap and competition will force down broadband prices on these islands, and BTC should be able to match any price reductions if its cost base is similar on the four islands. However, a requirement to maintain geographical uniform prices may well result in BTC providing broadband services at below cost in the rest of The Bahamas. This will remove any incentives on BTC to provide broadband services to areas of these islands currently without service. BTC considers that this issue should not be considered as part of price control, but as a universal service issue.

BTC has commented on replicability tests in The Bahamas under question 16 above. Given the current and foreseeable nature of competition in The Bahamas, replicability tests should focus on BTC and CBL's abilities to replicate packages provided by each other. In both cases this would permit the bundling of voice and broadband packages, but not mobile services (until competition has started in the mobile market). However, there is no need for such tests on an ex ante basis in this market structure and ex post measures should be sufficient.

BTC therefore agrees with URCA's first two proposals (price cap and unbundling requirements on CBL), but proposes that the last two (geographical uniform prices and bundling restrictions) should be deleted.

Q19. Do you agree with URCA's proposed SMP remedies for Pay TV services? If not, why not?

BTC supports URCA's analysis and proposed remedies for Pay TV services.

4. Conclusion

BTC welcomes URCA's initiative in undertaking the review of fixed markets, and the opportunity to comment on its preliminary determination. BTC particularly supports the proposed move to a price cap, and looks forward to discussing the details of how the price caps should operate with URCA in due course. It is hoped that BTC's preliminary observations on the design of a price cap (see Section 2.7 above) are helpful to URCA.

Nevertheless, BTC does not agree with all of URCA's proposals, and in particular considers that URCA should reconsider its proposals for definition of fixed markets, the identification of separate geographic markets, geographically uniform prices, on-net and off-net pricing differentials, and replicability tests.

BTC looks forward to further engagement with URCA on these issues, which are very important for the future of the electronic communications industries in The Bahamas and their customers.

Confidentiality

All business and market data provided as part of this document should be treated as confidential unless expressly stated otherwise. BTC notes that footnote 34 on page 31 of the consultation document contains business confidential information from BTC's recent submission under the retail pricing rules. The information in this footnote allows BTC's competitor to estimate the effective rate per minute on BTC's bundles and this information should not have been made public.

Reservation of Rights

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

Legal and Regulatory Division

The Bahamas Telecommunications Company Limited (BTC)

July 31, 2014