



# **Proposed Revision of Access and Interconnection Framework**

## **PRELIMINARY DETERMINATION**

**ECS 02/2015**

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## Contents

1	INTRODUCTION.....	2
2	LEGAL FRAMEWORK .....	6
3	SCOPE OF THIS PRELIMINARY DETERMINATION .....	10
4	PRELIMINARY DETERMINATION .....	15
5	SUMMARY OF CONSULTATION QUESTIONS.....	17

# 1 INTRODUCTION

## 1.1 Outline

The Utilities Regulation and Competition Authority (URCA) is the independent regulator and competition authority for the Electronic Communications Sector (ECS) in The Bahamas. The sector comprises of broadcasting, electronic communication and radio spectrum. URCA's powers are set out in the Communications Act, 2009 (Comms Act) and include, inter alia, the power to issue regulatory and other measures for the purposes of affecting the electronic communications policy objectives.

This document comprises a Preliminary Determination through which URCA proposes to revise the existing Access and Interconnection Framework in The Bahamas. In particular, URCA is proposing to implement specific timeframes for the negotiation and establishment of interconnection pursuant to section 99 of the Comms Act. These proposed timeframes will apply to all licensees issued with Individual Operating Licences by URCA providing Public Telephone Services as defined in Condition 1.1 of their licence, and includes those Individual Operating Licensees designated or determined to have Significant Market Power (SMP) in Public Telephone Services. URCA also proposes to establish regulatory measures to ensure that once interconnection is established there is continuity of interconnection services between Licensees, and that amendments and changes to interconnection arrangements are accomplished in a timely manner. .

Section 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 inter alia:

- (i) Any obligations on a Licensee regarding the terms or conditions of any licence
- (ii) Any activity set out in the Comms Act

In making a determination, URCA has a duty, under Section 11 of the Comms Act to consult persons with sufficient interest. Under section 11 (1) URCA shall afford persons with sufficient interest a reasonable opportunity to make representations or comments on URCA's proposals. URCA must then consider those comments and representations in making its final determination and provide written reasons for its determination.

URCA is therefore issuing this Preliminary Determination in accordance with section 100 of the Comms Act.

## **1.2 Background**

URCA recognizes that the interconnection of networks providing electronic communications services is fundamental to the development of sustainable competition in the electronic communications sector. Effective interconnection is one of the main drivers of entry, innovation and growth in the telecommunications market.

URCA's experience during the past five years of competition in the ECS in The Bahamas has also indicated that once interconnection is implemented, inter-operator disputes and competitive pressures may result in disruption to interconnection services, or may delay necessary upgrades to interconnection capacity or the timely rectification of technical and operational issues. URCA has therefore also, in this Preliminary Determination, proposed to implement regulatory directives which will ensure that the interconnection between networks is not, without justification, impaired by operator actions which can negatively impact the services provided to consumers, or have an anti-competitive effect on the market.

With the expiration of BTC's cellular mobile exclusivity on 7 April 2014 and the imminent entry of a second mobile operator in The Bahamas, URCA is seeking to ensure that the regulatory framework is optimal for the achievement of interconnection between networks in the highly competitive environment which will likely result from mobile competition. URCA considers it important that interconnection takes place within a reasonable timeframe which will assist in the development of competition and the successful advent of liberalisation.

In considering these issues, and based on URCA's experience thus far, URCA has reached the preliminary view that it should adopt a more active role in ensuring the negotiation and implementation of reasonable and non-discriminatory interconnection agreements within closely monitored timeframes. Therefore, in this Preliminary Determination URCA sets out in Section 3, certain timeframes for interconnection related matters which it proposes to implement.

URCA has comprehensively reviewed BTC's Reference Access and Interconnection Offer (RAIO), along with URCA's Guidelines for Access and Interconnection (ECS 14/2010) issued on 22 April, 2010, taking account of its duties under the Comms Act and electronic communications sector policy

objectives. URCA now considers that having regard to the matters which have taken place in the ECS since the issuance of the same, and the anticipated future developments, the existing regulatory framework as encompassed in these measures, amongst others, is not adequate to achieve the electronic communications policy objectives.

It is against this background that URCA proposes the implementation of the regulatory measures set out in this Preliminary Determination.

### 1.3 How to Respond

Consistent with the procedure set out in section 100 of the Communications Act, interested parties are advised as follows:

- a. Should an interested party wish to make representations on any matter contained in this Preliminary Determination it may do so in writing to URCA. Such representations must be received by URCA by no later than 5 June, 2015.
- b. URCA shall consider any representations made and shall make its final determination, if appropriate.
- c. URCA may request from any affected party such additional information as is reasonably required to make a determination.
- d. Persons may submit their written representations or comments to the Chief Executive Officer of URCA either:
  - by hand to URCA's office at UBS Annex Building, 31B East Bay Street, Nassau, Bahamas;
  - or
  - by mail to P.O. Box N-4860, Nassau, Bahamas;
  - by fax to (242) 393-0153; or
  - by email, to [info@urcabahamas.bs](mailto:info@urcabahamas.bs)

URCA reserves the right to make all responses available to the public by posting responses on its website at [www.urbahamas.bs](http://www.urbahamas.bs). If a response is marked confidential, reasons should be given to facilitate URCA evaluating the request for confidentiality. URCA may publish or refrain from publishing any document or submission at its sole discretion. URCA will review the responses received by 5 June, 2015 and publish a Statement of Results and issue a Final Determination.

#### 1.4 **Structure of the Remainder of this Document**

The remainder of this Preliminary Determination is set out as follows:

- Section 2 - The Legal Framework under which URCA proposes to establish interconnection timeframes;
- Section 3 - Preliminary Determination- URCA's proposed interconnection timeframes to facilitate the interconnection process.

## 2 LEGAL FRAMEWORK

- 2.1 This Section of the Preliminary Determination sets out the legislative provisions and licence conditions under which URCA proposes to establish and implement interconnection timeframes, to supplement the principles established in URCA's Final Guidelines for Access and Interconnection (ECS 14/2010).
- 2.2 The Comms Act establishes the law applicable to the ECS and empowers URCA, as the regulator for the ECS, with implementing the Electronic Communications Sector Policy. As the regulator for the Electronic Communications Sector (ECS) in The Bahamas, URCA has as a mandate to implement the ECS Policy as well as enforce the provisions of the Comms Act and the conditions of the licences issued.
- 2.3 The regulatory measures proposed under this Preliminary Determination seek to provide the framework for more effective regulation of interconnection by URCA thereby facilitating more efficient interconnection negotiations between Licensees while maintaining a proper environment within which competition may flourish in the ECS in The Bahamas.

Under section 4 of the Comms Act, the electronic communications policy has as part of its objectives:

*"to further the interest of consumers by promoting competition and in particular –*

- (i) to enhance efficiency of the Bahamian electronic communications sector and the productivity of the Bahamian economy;*
- (ii) to promote investment and innovation in electronic communications networks and services; and*
- (iii) to encourage, promote and enforce sustainable competition..."*

- 2.4 Additionally, under section 8 of the Comms Act, URCA has powers to give effect to the electronic communications policy objectives. Section 8(1) provides, inter alia:

*"For the purposes of carrying into effect the electronic communications policy objectives, URCA shall have the power to issue any regulatory and other measures and in particular shall –*

- (a) make determinations in accordance with the terms of sections 99 to 102;*
- (d) issue regulations; and*

(m) *exercise any other powers assigned to it by this Act or any other law*".

2.5 All licensees are subject to the general obligation to negotiate access and interconnection in good faith as set out in Condition 11.1 of its Individual Operating Licence:

*"Subject to the Conditions of this Licence, the communications Act, any Regulatory and other Measures issued by URCA pursuant to the Communications Act and any other relevant enactment, the Licensee is required in good faith to negotiate, conclude and amend agreements with any Other Operator for Interconnection, Access and other related services, including the types and amount of charges."*

2.6 Additionally, under section 40 (1) of the Comms Act, URCA may impose specific conditions on SMP licensees including obligations relating to:

- the publication of a reference offer or offers ensuring equivalence of access and/or interconnection to any of those services and/or facilities in which the licensee has SMP at tariffs based on the licensee's costs;
- sharing of infrastructure, facilities and systems used for the provision of electronic communications services;
- offering services to the businesses which comprise the licensees and their parent companies on a non-discriminatory, commercial basis;
- provision of standard terms of business, which should be published and accessible to customers;
- such other obligations as URCA may consider necessary in pursuance of the electronic communications policy objectives and the sector policy.

2.7 In accordance with Section 5 of the Comms Act, regulatory and other measures introduced by URCA must be efficient and proportionate to their purpose. Additionally those measures must be introduced in a fair, non-discriminatory and transparent manner. Section 5 sets out the guidelines which must be complied with when making policy measures, decisions or laws to take effect in the ECS in the Bahamas as follows:



(a) Market forces shall be relied upon as much as possible as the means for achieving the electronic communications policy objectives;

(b) regulatory and other measures shall be introduced –

(i) where in the view of URCA market forces are unlikely to achieve the electronic communications policy objective within a reasonable timeframe; and

(ii) having due regard to the costs and implications of those regulatory and other measures on affected parties;

(c) regulatory and other measures shall be efficient and proportionate to their purpose and introduced in a manner that is transparent, fair and non-discriminatory and

(d) regulatory and other measures that introduce or amend a significant government policy or regulatory measure (including, but not limited to, the sector policy)-

(i) shall specify the electronic communications policy objective that is advanced by the policy or measure; and

(ii) shall demonstrate compliance with the guidelines set out in paragraphs (a), (b) and (c).

2.8 Pursuant to Section 5(b), URCA may introduce regulatory requirements where URCA is of the view that market forces alone are not likely to achieve a policy objective within the required timeframe, having regard, inter alia to any cost implications associated therewith. URCA is of the view that the measures contained in this Preliminary Determination are necessary and in compliance with the guiding principles as outlined in Section 5 of the Comms Act, as market forces have proven inadequate to foster the prompt negotiation of interconnection agreements and the implementation of timely interconnection during the period that the Access and Interconnection Guidelines have been in place. Additionally URCA considers that there are no additional cost implications involved as the measures contained in this Preliminary Determination does not require any additional activity on the part of operators who are parties to an interconnection agreement but rather simply imposes timelines within which operators are required to act.



### **3 SCOPE OF THIS PRELIMINARY DETERMINATION**

- 3.1 Broadly, the Determination which URCA proposes to make is intended to supplement the Access and Interconnection Guidelines (ECS 14/2010) as well as the other components of the access and interconnection framework, by implementing clear timelines for the activities necessary to implement interconnection of the public electronic communications networks of new operators with the public electronic communications networks of existing operators with SMP, with a view to encouraging the orderly development of communications networks in The Bahamas. It is also intended that these timeframes will ensure that Licensees efficiently carry out the process of negotiation and physical interconnection, thereby promoting and maintaining competition between Licensees in the ECS Sector.
- 3.2 The Access and Interconnection Guidelines (ECS 14/2010) are designed to ensure that operators with SMP have established Reference Access and Interconnection Offers (RAIO) which are approved by URCA and published, ensuring that other licensed operators that wish to obtain access and interconnection services from SMP operators are offered those services on an established, fair and non-discriminatory basis, and to minimise the need for lengthy negotiations in an environment where one operator (the SMP operator) is likely to have a marked advantage. However, notwithstanding this, the current framework lacks effective measures to remove restrictions which may prevent Licensees from effectively and promptly negotiating interconnection agreements between themselves or permit either operator to avoid such agreement, and/or address the possible delays to implementation of interconnection once negotiated.
- 3.3 URCA's experience since the approval of the BTC RAIO and in the period that the Access and Interconnection Guidelines have been in force are that significant challenges have been faced by Licensees seeking interconnection from established SMP operators inclusive of undue and inordinate delays, a lack of timely or in some cases any response to requests for interconnection, and the placement of unreasonable obstacles or preconditions before such interconnection is established. URCA has had several complaints from operators that subsequent to the signing of interconnection agreements, a period of one year followed before physical interconnection was actually established. Others have complained of having received no response to their various requests during the interconnection negotiation, to the extent that operators ended negotiation. URCA considers that prevailing market forces in the ECS are

inadequate to address these issues. As such, the interconnection timeframes in the proposed determination are considered both necessary and proportionate to address the delays that have been experienced in commercial negotiations, and to reduce the extent to which the need for interconnection acts as a barrier to competition in the ECS.

3.4 Moreover, URCA considers that the proposed interconnection timeframes should assist in ensuring not only a reasonably speedy negotiation process, but that those Licensees who have successfully completed negotiations also obtain operational interconnection links in a timely manner.

3.5 These proposed interconnection timeframes are not intended to limit matters which may be dealt with within any existing Reference Access and Interconnection Offer (RAIO) or any other URCA approved terms and conditions. URCA notes, in this regard, that the existing RAIO is unclear as to required timeframes and relies on the premise that all parties to an interconnection agreement will *“act at all times, as far as reasonably possible, so as to facilitate the speedy and effective provision and operation of the Interconnection Services, to the benefit of Customers and to their mutual benefit”* in accordance with, and by way of example, Clause 9.1.3 of the BTC RAIO. However, the proposed timeframes are intended to avoid protracted negotiation and introduce a level of certainty in establishing interconnection agreements and implementing agreed interconnection links.

**Question 1. Do you agree there is a need within the current interconnection framework for the implementation of clear timeframes which will facilitate the timely conclusion of the negotiation of interconnection agreements as well as the conclusion of the interconnection process?**

3.6 URCA is also aware that interconnection is implemented based on the technological and market conditions which pertain at the time of initial market entry for new operators, and involves traffic forecasting which is valid for a limited period of time and which often under or overestimates the market for the services which rely on interconnection. It is therefore understood that periodically the interconnection facilities must be enhanced, upgraded or modified to keep pace with the changes in traffic between the operators, and developments in technology. Market and technological changes may also require changes to the terms and conditions of interconnection which would require renegotiation of specific terms and conditions of the IA.

3.7 URCA has noted during the years of competition in the ECS in The Bahamas that despite contractual provisions in the IA which seek to address these issues, the negotiation, agreement and implementation of such changes has almost invariably been subject to undue delay requiring regulatory intervention. This is therefore an area in which the current framework appears to be inadequate, and in respect of which additional regulatory intervention seems appropriate. URCA is therefore of the preliminary view that as with the initial negotiation, agreement and implementation of interconnection, such changes should also be subject to clear, reasonable timeframes.

**Question 2. Do you agree there is a need within the current interconnection framework for more reasonable timeframes which will facilitate the timely negotiation and implementation of amendments to interconnection agreements, and the implementation of changes, modifications, enhancements of interconnection facilities?**

3.8 Having regard to the foregoing, URCA proposes the following interconnection timeframes which URCA considers should effectively improve and facilitate timely interconnection, and modification to existing interconnection, and which timeframes is intended to apply to all Licensees seeking and supplying interconnection services.

- (1) Licensees shall use best endeavours to conclude a contract providing for the purchasing, delivery and installation of interconnection links or joining circuits forthwith but in any event within **one (1) month** following receipt of a valid request to negotiate an interconnection agreement, unless an extension of time is granted by URCA.
- (2) Licensees shall effect operational interconnection by the completion of acquisition and installation of physical interconnection links or joining circuits, inclusive of testing within **three (3) months** of signing the contract to deliver.
- (3) Licensees are allowed a further **two (2) months** for the conclusion of an executed full interconnection agreement on terms consistent with the BTC RAIO or any other URCA approved terms and conditions, as well as other access and interconnection services.
- (4) Licensees shall use best endeavours to conclude any amendments or changes to an executed interconnection agreement, on terms consistent with the BTC RAIO or any other URCA approved terms and conditions.
- (5) A Licensee shall implement any additional capacity, additional circuits or other technical changes to existing interconnection services, within **three (3) months** of receiving a valid

request from an interconnecting Licensee. A valid request shall be one which is compliant in all material respects with the requirements of the interconnection agreement between the parties.

3.9 A request for interconnection which complies in all material aspects with any requirements expressly set out in any RAIO approved by URCA and published by the interconnection provider shall be considered valid, and where no such requirements have been published, a valid interconnection request shall comply with the following:

- An interconnection request may be in the format of a business letter and include an application for interconnection; and
- An application for interconnection must include licence and company details, the specific interconnection services being requested, the date such services are required, the points of interconnection and capacity requirements and any other relevant details.

**Question 3: Do you agree with the proposed timelines? Should you disagree, kindly give a detailed explanation for your views and suggest alternative timeframes.**

3.10 URCA has noted, with concern, that an interconnection provider, particularly one with Significant Market Power (SMP) may be in a position to impair (e.g. by blocking calls or reducing the grade of service) interconnection services provided under an IA with other licensees operating electronic communications networks and services in The Bahamas, without suffering undue commercial harm. This permits the interconnection provider to use such unilateral action to put pressure on an interconnecting licensee (who may suffer severe commercial harm as a result of the action) to settle unresolved disputes between such licensees, or even to disrupt competition between the licensees. The impairment of interconnection between licensees may also have an adverse impact on the services received by customers or either or both licensees. URCA notes that while it has available ex post regulatory powers which can be used to address such behaviour, there is potential for significant and possibly deleterious harm to be done, before the ex post regulatory measures can be implemented.

3.11 Notwithstanding the foregoing, URCA is aware that there may be legitimate reasons for the impairment of interconnection services, which may include, without limitation, legitimate disputes between the licensees, preserving the technical integrity of either or both networks, or addressing breaches of law or regulation. However, URCA has noted that licensees have in the past tended to take pre-emptive action when issues arise rather than first verifying with URCA

whether their proposed actions are justified. While URCA has various ex post actions that it can take to address such action where URCA believes that interconnection has been unfairly or improperly impaired, the harm that can be caused by improper impairment of interconnection has the potential to make ex post regulatory action inadequate to rectify the breach.

3.12 In this regard, URCA believes that ex ante regulatory measures are necessary to:

- (i) protect the interest of consumers in the ECS;
- (ii) minimize the potential harm to the ECS consequential to the unwarranted and indiscriminate discontinuity of electronic communications services by a licensee; and
- (iii) minimize the potential loss and damage to other operators of electronic communications networks and services.

3.13 URCA therefore proposes, in this Preliminary Determination, to establish regulatory measures to ensure the continuity and integrity of interconnection between licensees until URCA has had an opportunity to ensure that any impairment of interconnection is fully justified, either under the IA or otherwise.

**Question 4: Do you agree that the improper impairment of interconnection services could potentially cause severe harm to licensees and on competition in the ECS? Do you agree that a requirement for Licensees to consult URCA prior to any impairment action would minimize potential harm to Licensee and the ECS in general? Should you disagree, kindly give a detailed explanation for your views and suggest alternative measures.**

## 4 PRELIMINARY DETERMINATION

This is a Preliminary Determination issued pursuant to Section 99 of the Communications Act 2009;

WHEREAS Condition 11.1 of the IOL provides that:

*“Subject to the Conditions of this Licence, the communications Act, any Regulatory and other Measures issued by URCA pursuant to the Communications Act and any other relevant enactment, the Licensee is required in good faith to negotiate, conclude and amend agreements with any Other Operator for Interconnection, Access and other related services, including the types and amount of charges”* and

WHEREAS on 22 April 2010 URCA published its Final Decision on Obligations Imposed on Operators with Significant market Power, (ECS 11/2010) inclusive of its Final Guidelines on Access and Interconnection (ECS 142010), and

WHEREAS and accordance with the Final Guidelines on Access and Interconnection , URCA has reviewed the Final Guidelines on Access and Interconnection and in this Preliminary Determination proposes to supplement the said guidelines by the implementation of interconnection timeframes applicable to all holders of Individual Operating Licences, based on industry experience and to encourage and facilitate further liberalization of the electronic communications sector.

NOW URCA makes the following Preliminary Determination in accordance with Section 40 (1) of the Communications Act, 2009:

A holder of an Individual Operating License (hereinafter referred to as a Licensee) shall, in respect of the negotiation and implementation of interconnection and access services requested by any other Licensee, comply with the following rules:

- (1) Licensees shall use best endeavours to conclude a contract providing for the purchasing, delivery and installation of interconnection links or joining circuits forthwith but in any event within **one (1) month** following receipt of a valid request to negotiate an interconnection agreement, unless an extension of time is granted by URCA.
- (2) Licensees shall effect operational interconnection by the completion of acquisition and installation of physical interconnection links or joining circuits, inclusive of testing within **three (3) months** of signing the contract to deliver.



- (3) Licensees are allowed a further **two (2) months** for the conclusion of an executed full interconnection agreement on terms consistent with the BTC RAIO or any other URCA approved terms and conditions, as well as other access and interconnection services.
- (4) Licensees shall use best endeavours to conclude any amendments or changes to an executed interconnection agreement, on terms consistent with the BTC RAIO or any other URCA approved terms and conditions.
- (5) A Licensee shall implement any additional capacity, additional circuits or other technical changes to existing interconnection services, within **three (3) months** of receiving a valid request from an interconnecting Licensee. A valid request shall be one which is compliant in all material respects with the requirements of the interconnection agreement between the parties.
- (6) URCA may, in its sole discretion, extend any of the timeframes determined herein for any period that URCA deems necessary or appropriate on application by a Licensee, which application shall be submitted in writing and submitted at least seven (7) days before the expiry of the relevant timeframe. In determining any application for an extension URCA shall also consider representations made by any other party to the proposed interconnection.
- (7) A Licensee shall not interrupt, block, 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.

Persons interested in the matters above are invited to make representations to URCA in writing which must be received by no later than 5<sup>th</sup> June 2015. Representations should be submitted to:

The Director of Policy and Regulation  
URCA  
UBS Annex Building  
East Bay Street,  
P.O. Box N-4860  
Nassau, Bahamas  
Email: [info@urcabahamas.bs](mailto:info@urcabahamas.bs)  
Fax: 242.393.0237

URCA will consider and deliberate on any representations received, before making its final determination.

## **5 SUMMARY OF CONSULTATION QUESTIONS**

### **Question 1**

**Do you agree there is a need within the current interconnection framework for the implementation of clear timeframes which will facilitate the timely conclusion of the negotiation of interconnection agreements as well as the conclusion of the interconnection process?**

### **Question 2**

**Do you agree there is a need within the current interconnection framework for more reasonable timeframes which will facilitate the timely negotiation and implementation of amendments to interconnection agreements, and the implementation of changes, modifications, enhancements of interconnection facilities?**

### **Question 3**

**Do you agree with the proposed timelines? Should you disagree, kindly give a detailed explanation for your views and suggest alternative timeframes.**

### **Question 4**

**Do you agree that the improper impairment of interconnection services could potentially cause severe harm to licensees and on competition in the ECS? Do you agree that a requirement for Licensees to consult URCA prior to any impairment action would minimize potential harm to Licensee and the ECS in general? Should you disagree, kindly give a detailed explanation for your views and suggest alternative measures.**