

The Bahamas Telecommunications Company Ltd.

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September 2, 2013

Mr. Stephen Bereaux
Director of Policy and Regulation
Utilities Regulation and Competition Authority
UBS Annex Building
East Bay Street
Nassau, The Bahamas

Dear Mr. Bereaux:

Re: Preliminary Determination on the Implementation of Fixed Number Portability in The Bahamas Pursuance to Section 80 of the Communication Act, 2009 ECS 11/2013 - Cost Per Successful Porting Transaction Information Request.

We enclosed BTC's Response to the Preliminary Determination on the Implementation of Fixed Number Portability in The Bahamas Pursuance to Section 80 of the Communication Act, 2009 at caption.

Sincerely yours,
The Bahamas Telecommunications Company Limited

A handwritten signature in blue ink, appearing to read 'Felicity L. Johnson', is written over a light blue horizontal line.

Felicity L. Johnson
Senior Vice President,
Legal, Regulatory & Company Secretary

Enc:



RESPONSE OF THE BAHAMAS TELECOMMUNICATIONS COMPANY LIMITED TO CONSULTATION DOCUMENT ECS 11/2013 – PRELIMINARY DETERMINATION ON THE IMPLEMENTATION OF FIXED NUMBER PORTABILITY IN THE BAHAMAS PURSUANT TO SECTION 80 OF THE COMMUNICATIONS ACT, 2009.

INTRODUCTION

URCA issued on 30th July, 2013, a Consultation Document on a Preliminary Determination on the Implementation of Fixed Number Portability in The Bahamas pursuant to Section 80 of The Communications Act, 2009 (ECS 11/2013) with an initial response date of 29th August, 2013 which has now been extended to September 2nd, 2013.

URCA commits to a Final Determination on ESC11/2013 on or before September 27th, 2013 - 20 days after the initial proposed launch date of Fixed Number Portability (Now deferred).

BTC has been committed since November, 2011 to working towards the implementation of Fixed Number Portability (FNP) consistent with URCA's Final Determination in ECS 21/2012 (dated 3rd August, 2012): Final Determination on the Implementation of Number Portability in the Bahamas pursuant to Sections 80 and 100 of the Communications Act 2009 which sets a standard for arriving at FNP readiness, namely: "Licensees providing fixed voice services in The Bahamas shall use all reasonable endeavours to comply with and achieve the time frames set out in the work plan submitted by the NPWG to URCA in the Recommendations, so as to implement number portability for fixed Telephone number as soon as technically and economically feasible....."(emphasis ours)

BTC's POSITION ON PRELIMINARY DETERMINATION TIMELINES

BTC took the position and communicated this position to URCA shortly after the issue of ECS11/ 2013 that it was gravely concerned with the manner in which serious regulatory matters were being addressed in the time frame required for the response to ECS 11/2013. BTC submitted that with regard to ECS 11/2013 the timeframe for response was woefully inadequate given the issues to be addressed in the Preliminary Determination not the least of which was the complex matter of cost recovery.

BTC further advised URCA that in its duty to discharge its functions in a transparent, objective and non-discriminatory manner, the time frame for responding to a lengthy 161 page Preliminary Determination was not reflective of the transparency, fairness and objectivity required of a Regulator and that even if some of the topics were familiar to Licensees URCA could not presume on the time required for a final sign off. Further,

BTC took issue with the preconceived and predetermined posture which URCA has demonstrated on the issue of cost recovery, a significant issue which should, have been addressed and adjudicated upon well in advance of the expected launch date of FNP on September 3rd, 2013, particularly given that NPWG members had responded to URCA's requirements for their position on cost recovery on 1st March, 2013.

BTC has also expressed its position on the requirement by URCA within ECS11/2013 (at page 49-50) that every Licensee required to provide FNP shall submit relevant costing information to inform URCA's review and decision on the cost per successful porting transaction within twenty-one (21) days of the issuance of ECS 11/2013 or by August 20th, 2013. This date has now been extended to September 3rd, 2013 by URCA on 19th August, 2013. This in BTC's view underscores the fact that URCA has allowed the time to run down on the complex matter of cost recovery where upon URCA finds itself in a position where it must clearly pre-determine the issue of cost recovery, and demand a rapid response to the Preliminary Determination inclusive of the predetermined cost recovery principles and as a consequence render this Preliminary Determination a Final Determination on some elements of the costing principles.

BTC submits that the duty of a Regulator is to initiate and to conduct enquires in an objective state of mind and in a spirit of dialogue and not with a preconceived position. It is BTC's view that URCA has breached neutrality in the manner in which this Preliminary Determination is being conducted on costs in particular, and that such a preconceived position falls below the standard of fairness expected of a Regulator.

Nor does BTC accept the URCA position that given the deliberations and recommendations of the NPWG and their agreement on various matters in the Final Determination issued by URCA on 3rd August 2012 in ECS 21/2012 that this ECS 11/2013 Preliminary Determination is largely a formality and that the timing and the time for response is adequate in those circumstances. BTC submits that the cost Allocation and Recovery Principles should have been consulted upon fully and a Statement of Results issued by URCA well in advance of a Preliminary Determination which is designed to be a "wrap up" all outstanding issues.

It is to be noted that BTC formally requested that URCA withdraw its demand for costing data and defer the request until after the Final Determination on cost recovery for FNP and that URCA allow more time than 30 days for a response to this Preliminary Determination;

BTC therefore submits, together with its response to ECS 11/2013, the reservation of its rights in that BTC will address the issues and BTC reserves the right to comment on all issues and states categorically that the decision not to respond to any issue raised in this consultation in whole or in part does not necessarily represent agreement in whole or in part with URCA's position nor does any position taken by BTC in this consultation mean a waiver of any of BTC's rights in any way. BTC expressly reserves all of its rights.

NUMBER PORTABILITY WORKING GROUP (NPWG)

BTC also notes that pursuant to the Statement of Results in the Public Consultation document on Number Portability for The Bahamas (ECS 21/2012) URCA appointed a joint regulator/ industry working group, the Number Portability Working Group (NPWG) to consider issues relating to the implementation of FNP in The Bahamas. It was intended that the NPWG would have as its initial deliverable the “review of all material information and the recommendation to URCA of an appropriate solution or appropriate solutions” to achieve the objectives as well as the appropriate timeframes and work plans that should be undertaken etc.

BTC was allowed to appoint any two representatives to the NPWG. Whilst BTC acknowledges that significant ground work was achieved through the NPWG, with a spirit of cooperation between Licensees, BTC notes in hindsight that the NPWG essentially ended up being more of a technically oriented and comprised group than perhaps originally intended, and that whilst the flow of information internally with NPWG representatives was critical to their representing the company’s position on the various NPWG deliberations set out in section 3 of ECS 11/2013, in retrospect it might have been advisable for URCA and or the NPWG Group to meet periodically with representatives of the Licensees from the Commercial and Regulatory Departments in order to ensure that all concerns and possible eventualities were being aired and vented with URCA as a part of URCA’s monitoring obligation also set out in ECS 12/2012.

Indeed, BTC has noted that in its response to the First Public Consultation on Number Portability in ECS 08/2011, BTC proposed the establishment of additional support for the NPWG’s Terms of Reference inclusive of sub committees and protocols for raising issues. (24th June, 2011).¹

Certainly additional work streams such as Commercial and Regulatory could have benefitted the process and assisted with the better flow of communications.

FNP LAUNCH DATE ESTABLISHED

At Section 4 of ECS 11/2013 URCS presents its rationale for a Second Determination on Number Portability (essentially to “ensure the compliance of all relevant parties” with the NPWG’s recommendations).²

BTC notes at 4.1.1. that URCA refers to the readiness for launch of NP by no later than 31st August, 2013 and the launch and availability for the public of fixed NP on September 3rd, 2013. The Preliminary Determination at Paragraph 1 also addresses the Readiness and Launch Date for Fixed Number Portability.

¹Pg. 2: BTC 24th June, 2011 submission to ECS 08/2011

²Pg. 19: ECS 11/2013 Preliminary Determination – The implementation of Fixed Number Portability in The Bahamas Pursuant to Section 80 of the Communications Act 2009.

BTC in recent separate and private correspondence has informed URCA of its concerns and challenges with its NGN migration programme on its fixed network which has

resulted in BTC's inability to be in a position to port all fixed voice numbers on every island within The Bahamas where fixed Voice services are available from more than one licensee with the exception of Abaco Island.

BTC notes that since the establishment of the NPWG in December 2011, FNP preparation has progressed steadily with no challenges or legal applications by any of the stakeholders concerned. The launch of FNP within two years from the formal commencement of the project is, in fact, well within and ahead of timeframes in other jurisdictions where it can take anywhere from four to eight years on average.

PORTING OF NXXs 225 AND 300

At section 4.1.4 BTC notes URCA's commentary on the porting of non-geographical NXXs 300 (Special Services) and 225 (ViBe). BTC has represented its position to URCA on the porting of non-geographic NXXs as having Reference Access and Interconnection Offer (RAIO) implications which URCA has deemed not to present any "valid reason" why URCA should exclude non-geographic numbers from FNP "at this time" in the absence of compelling technical and/or economic justification from BTC.³

BTC notes at page 21 of ECS 11/2013 that URCA's two foot note (7 & 8) references to support its arguments that non geographic numbers are subject to portability in the UK and in the USA do not contain the references.

Notwithstanding URCA's statement therefore, that it proposes to require that all Fixed NXXs will be subject to porting BTC hereby submits its justification for the non-porting of non-geographic numbers and specifically 300 and 225 NXXs in response to URCA's Preliminary Determination at paragraph 3 Porting of ECS 11/2013 which mandates that "any subscriber assigned a telephone member within a Central Office Code allocated by URCA for a Fixed Voice Service (whether on a geographic or non-geographic basis) shall be eligible to be ported and every licensee shall provide the facility for porting those numbers".⁴

BTC notes that URCA in the Preliminary Determination intends to establish and maintain a website with a Schedule identifying all NXX- Codes which are subject to Porting "and" those which are exempted"⁵ and inquires as to which NXX Codes URCA anticipates being exempted at this time or in the future given its Determination and Order.

ECONOMIC RATIONALE FOR EXCLUSION OF 225 AND 1-300 NXXs from LNP

³Pg. 21: ECS 11/2013

⁴Pg. 47: ECS 11/2013

⁵Pg. 47: ECS 11/2013

In Section 4.1.2 (page 20) of URCA's Preliminary Determination on Local Number Portability, URCA has indicated that 'having regard to the existence of toll charges for calls between islands within The Bahamas, there is considerable potential for customer confusion regarding billing if numbers were allowed to be moved from one island to another, particularly on the network operated by BTC. Customers have traditionally identified the location of a call number using the NXX prefix, and short of implementing a notification method which might significantly diminish the caller experience, there is no reliable way to avoid a bill shock which might occur when a customer inadvertently calls an off island number in the mistaken belief that the called service is situated on the same island.' URCA goes on to outline in this section of the document that the potential harm to consumers justifies the restriction of number portability within the same island.

URCA justifies its position of not allowing geographic portability on the basis of the potential for bill shock and customer confusion. As URCA knows the 225 and 1-300 NXXs currently used by BTC are non- geographic. Similarly, permitting the porting of these non-geographic NXXs, would be inconsistent with the reasoning advanced by URCA as to why it is not mandating geographic porting, ie the potential for bill shock and customer confusion.

The potential for customer confusion becomes even more egregious in the case of the 1-300 NXXs as SRG (the other participant in the LNP deployment in The Bahamas) does not have an equivalent service offering. BTC's 1- 300 NXX is treated as the equivalent to a 1-800 prefix as in the case of the United States. Customers dialing this 1-300 prefix assigned to BTC are quite familiar with the billing arrangements, where calls to this 1- 300 as a non-geographic number are not subject to tolls. Since there is no equivalent service on the competitor network, ALL customers calling a ported 1 300 number will incur toll charges. There is therefore further consumer harm given the limited reach of SRG's network.

The 225 NXXs is used by BTC's ViBe service, a Voice over Internet protocol (VoIP) calling service. Again the 225 NXX is non -geographic (i.e. not assigned to a particular Island). The subscribers to this service can purchase a bundle of minutes for a fixed price or unlimited calling for a fixed price within the entire Bahamas as well as calls to the USA, Canada and UK (fixed lines). More significantly the service permits customers calling into the VIBE number in The Bahamas, to not themselves incur any charges for that outgoing call. By way of an example, a ViBe subscriber on the island of New Providence may have purchased the service primarily for receiving incoming calls from a family member or customer located on another island. By way of illustration, let us refer to the island of Acklins (one of the Southern Bahamian Islands) as the location of a call origination to the ViBe subscriber in New Providence. When the customer on the island of Acklins places the call to the ViBe subscriber in New Providence, there is no toll charges for the customer in Acklins as this call to the ViBe number in New Providence is treated as a local call. . If that same call was to a non-Vibe customer, the subscriber in Acklins would have incurred a toll charge of 18 cents per minute.

While SRG has a similar service offering to BTC's Vibe service, it is not an equivalent service. As a consequence, if URCA permitted the porting of the 225 NXX, and this number is ported to SRG, a BTC customer on another island calling the SRG customer located on a different island, will be subject to toll charges in accordance with SRG's existing billing protocol, which does not permit free ongoing calls to a ViBe number. This can lead to the potential of a rate shock as the BTC customer accustomed to calling a ViBe number and not incurring any charges, will now be subjected to a toll that he may not be aware of at the time of placing the call.

Given the potential for a rate shock, it is BTC considered view that URCA should exclude the porting of 225 and 1-300 NXXs given the complexities associated with the porting of these numbers at this time. There is great potential for consumer harm in terms of increased charges and the non-availability of equivalent services.

LICENSEE CONNECTIVITY AND PROCESSES OBLIGATIONS FOR FIXED NP IMPLEMENTATION

BTC has committed to having a solution in place and to be ready to port fixed numbers which are on its NGN platform on September 3rd, 2013 and BTC has worked towards the All Call Query Solution as a part of the Network connectivity and processes and the connectivity to the data base maintained by the NP Service Provides Porting XS which, given the various BTC internal platforms involved has not been a simple exercise. Nevertheless BTC notes that the testing schedule established by URCA has been complied with by the Licensees without a major incident.

COSTS APPORTIONMENT AND RECOVERY PRINCIPLES

At Section 4.3 URCA sets out its Cost Apportionment principles in respect of FNP as they appeared in URCA's 15th April 2011 consultation Documents (ECS 8/2011) on Fixed Number Portability.

In Section 6 in the Preliminary Determination URCA addresses Cost Allocation and Recovery with regard to:

- a) Internal Set Up Costs
- b) Common Industry System Costs
- c) Other NP Related Costs – Per Port Costs (requirement for Licensees to submit on the costs per porting transaction within the consultation or by August 20th, 2013, now changed to September 3rd, 2013.
- d) Other NP related Costs – Additional Call Conveyance Costs.

In providing comments to URCA's Preliminary Determination with respect to cost apportionment, BTC took into account the seven (7) principles of cost apportionment as outlined in the Preliminary Determination, i.e. relevant costs; cost causation; distribution of benefits; effective competition; cost minimization; practicality; and reciprocity. BTC provides its comments below relative to each of the categories of costs:

Internal Set Up Costs

BTC in its initial response to URCA on Local Number Portability as outlined in this Preliminary Determination had indicated that based on the experiences in the Cayman Islands, United Kingdom and Germany, the donor operator should have the option of charging customers for porting. BTC has noted in URCA's Preliminary Determination that the Authority is of the view that allowing donor operators the flexibility to recover the internal set up costs partially or otherwise through its porting customers is likely to weaken the competitive and switching effects of number portability. It is important to note, however, the significant internal set up costs for an incumbent like BTC. The internal cost is not symmetric with respect to the larger operators given the relative size of these entities' networks; BTC is therefore placed in the unenviable position of having to absorb huge internal costs relative to the other operators, including the company's largest competitor. While BTC is forced to absorb such large costs, there are benefits to the other operators. Based on the principle of distribution of benefits, those who derive indirect benefits from number portability should bear some of the costs. Based on this principle, distribution of benefits, BTC is firmly of the view and supported by evidence elsewhere that given the huge set up costs and the benefits to be derived by recipient operators, that these operators should bear part of BTC's internal set up costs. In the United Kingdom, British Telecom (BT) was allowed to recover a share of its system set up costs from other operators.⁶

Common Industry System Costs

BTC supports URCA's position as outlined in its Preliminary Determination on Local Number Portability on page 35 of the Preliminary Determination that there is equal apportionment of Common Industry System Costs across the various operators:

'URCA reiterates that the approach proposed by BTC is the fairest, simplest to implement, with minimal or zero administrative costs. It further represents the cost efficient option for NP operators to keep updated, and eliminates the need for monthly reconciliation between operators. URCA also considers that, of the two proposals, equal apportionment is the approach that is most consistent with the distribution of benefit principle...'

Other NP related costs (i.e. per porting costs)

BTC affirms the position as outlined in URCA's Preliminary Determination and this position is further supported by the arguments raised by BTC in its earlier comments on cost apportionment. Again, based on the principle of distribution of benefits, the recipient operator pays the Donor operator the porting transaction costs. This has been borne out in other jurisdictions, i.e. where the recipient pays the Donor operator as in the case of Ghana, Kenya and Georgia.

⁶ Study on the Cost Allocation for Number Portability Carrier Selection and Carrier Selection= Final Report for D6 X111 of the European Commission, Volume1, October 1999, Europe Economics.

Additional Call Conveyance Costs

Based on the principles of effective competition and the distribution of benefits, BTC is of the view that any additional conveyance costs should be borne by the recipient operator. If donor operators are forced to absorb a huge disproportion of costs associated with LNP, it creates distortion within the market and can lead to sub optimal outcomes. There is a cost associated with the recipient operator acquiring a new subscriber. LNP has lowered the cost of acquiring a new customer by way of lowering the cost of switching. If switching costs are further lowered by shifting a significant proportion of costs to the donor operator, it leads to competitive distortion within the market.

URCA has reasoned that the additional conveyance costs is likely to be negligible. BTC reasons that after it has completed its costing associated with LNP, it would be better placed to comment on URCA's assessment with respect to the costs of additional call conveyance. However, as a matter of principle, BTC is of the view that this additional cost of call conveyance should be borne by the recipient operator based on the arguments advanced in this section.

FNP BUSINESS RULES

At Section 4.4 URCA provides the process under which the FNP Business Rules were developed. BTC recognizes the importance of these rules and conditions which apply to the order and provisioning of FNP for subscribers. BTC accepted the July 16th, 2013 agreed version of the Rules which was circulated to NPWG members.

Under the Preliminary Deliberation the Rules have been presented for final commentary and adoption by URCA. URCA has informed that it expects full compliance with the FNP Business Rules.

URCA Advisor and Programme Manager James Wild by email dated 12th August 2013 however, circulated to NPWG members an amendment to the Business Rules which involved primary adjustments to (a) the updated subscriber validation process and the updated NACK/response codes validated with Porting XS.

BTC inquired of URCA in separate correspondence as to the late amendment and whether there was a requirement to update the Business Rules at Annex C of ECS 11/2013 as well as to express BTC's concerns that the Rules were further being amended after sign off by all Licensees.

URCA's response to BTC's inquiries was that the Business Rules were "highly susceptible to impact by the technical implementation of FNP which is on-going, and to that end may require further changes, even after the launch of FNP in The Bahamas"⁷ and that it would therefore be slightly unrealistic for BTC to insist on a "Final" version of

⁷Correspondence dated 15th August, 2013: URCA to BTC

the Business Rules while technical implementation was going on. For the record, whilst BTC fully comprehends that the Business Rules is a “Living” document and susceptible to amendment as technical processes are worked through in live environments, nevertheless, there is no reference by URCA at Section 4.41 or in the Preliminary Determination or in the Order that the Business Rules may be amended from time to time inclusive of the process for amendments.

BTC submits that this is an oversight by URCA in this consultation document which requires adjustment to include the caveat to allow changes to be made.

PENALTIES FOR BREACHES OF BUSINESS RULES BY LICENSEES

BTC notes the URCA decision not to implement a fixed penalty regime for failure to comply with FNP Business Rules “at this time” at 4.4.2 of ECS 11/2013. URCA gives as its reason the failure of the Communications Act to support a fixed penalty regime in the absence of “a more concrete justification such as repeated breaches by Licensees” URCA however states that it will “swiftly and comprehensively address all breaches of those rules”⁸

BTC reminds URCA of the Act’s requirement at Section 5 (c) for transparency fairness and objectivity by the Regulator in the introduction of regulatory and other measures which must also be efficient and proportionate to their purposes. In the instant case the application of any penalties to be imposed for breach of the Business Rules with regards to Part XVII – Enforcement, in the Act are most relevant in this instance. Certainly URCA places itself in a vulnerable position to cause appeals to be made from decisions regarding penalties in the absence of perhaps further consultation with the industry under Section 11 of the Communications Act in order to avoid the arbitrary imposition of penalties.

Again BTC submits that it is extremely important that the Penalties for Failure to comply with the Business Rules are known to all Licensees and are applied with consistency and impartiality and that they could have been addressed earlier in the process by URCA inclusive of the Licensees so that some resolution consistent with the Communications Act could have been arrived at in advance of this Preliminary Determination.

CONCLUSION

In conclusion, BTC reiterates its position that this Preliminary Determination and Order consultation document is late to the industry, and contains several oversights which have implications for the fairness, transparency and objectivity principles which must accompany the introduction of Regulatory measures. It has the potential to open the flood gates of appeals.

⁸ Pg. 44: Section 4.4.2 ECS 11/2013.

The fast clip in the last several months at which the launch of FNP has been proceeded with is perhaps the single most influential reason for a process which has marched on notwithstanding indications and notifications that time was needed to complete the various processes decisions and documentation by all related parties in order to ensure a proper appeal proof process and launch.

RESERVATION OF RIGHTS

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

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Legal & Regulatory Division
2nd September, 2013.