Preliminary Determination on The Implementation of Fixed Number Portability in The Bahamas pursuant to Section 80 of the Communications Act, 2009

ECS 11/2013

Submitted to the

Utilities Regulation and Competition Authority

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Submitted by

Cable Bahamas Ltd.

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1 Introduction and Summary

CBL, including its affiliates Caribbean Crossings Limited and Systems Resource Group Limited ("CBL"), hereby responds to the (second) Preliminary Determination on the implementation of number portability ("NP") issued by the Utilities Regulation and Competition Authority ("URCA") on 30 July 2013[1].

On 20 August 2013, CBL separately responded to URCA's request (set out on page 41 of the Preliminary Determination) for costing information relating to fixed call porting transaction charges (the "Porting Transaction Cost Response"). CBL's Porting Transaction Cost Response is incorporated by reference herein**.**

CBL notes that in its overall approach to number portability, URCA has given priority to user interests by requiring all operators both to import and export numbers and to start from a fixed date. In doing this URCA is following the approach adopted by the European Commission and in many other countries.

In general, and apart from the issues raised below and in CBL's Porting Transaction Cost Response, CBL supports the findings and conclusions contained in URCA's Preliminary Determination in relation to:

- porting between islands;
- mobile NP;
- porting of NXX's 300 and 225;
- the addition of new operators;
- operator obligations for NP implementation;
- selection and licensing of the NP Administration Service Provider; and
- NP cost allocation and recovery.

CBL also applauds URCA's plans to promote public awareness of the new ability of consumers to port their numbers from one operator to another and will support, by affirming whenever helpful and appropriate, URCA's messages and plans to get this important message out to Bahamian consumers as and when NP becomes a reality in The Bahamas.

[1] Preliminary Determination, The implementation of Fixed Number Portability in The Bahamas pursuant to Section 80 of the Communications Act, 2009, ECS 11/2013, 30 July 2013.

CBL's main concerns with the Preliminary Determination focus on the proposed launch date for fixed NP and NP cost allocation and recovery – in particular, URCA's proposal to adopt an "equal apportionment" method for allocating and recovering common industry costs as reflected in the service fees to be paid to PortingXS, the third party provider.

With regard to the launch date, URCA's press statement of August 28th, 2013 announced significant and unexpected delays in the NP implementation process. These delays are due solely to BTC. CBL notes that every day of delay in implementing NP is a windfall for BTC, which has no incentive to allow its fixed line customers to easily move to a competitor.

Number portability is critical to foster competition and the cornerstone for liberalization of the communications market in The Bahamas. Consumers have been waiting some forty eight months for the ability to choose their communications provider without changing their number.

CBL therefore fully supports an URCA determination to be issued on or before the end of September 2013 outlining definitive dates and timelines that must be met by all operators in the revised implementation process. This should include clear milestone steps and dates, particularly as regards the testing of the NP system to ensure there is a smooth launch and that use of the NP system results in a good customer experience from the very outset. CBL encourages URCA to select a full readiness launch date as soon as reasonably possible, before the end of 2013, that is up to the standards that Bahamian consumers will expect in order to achieve a successful implementation. In order to ensure that BTC does not once again delay the implementation process or, equally worrying, launch a process that results in a bad customer experience, each milestone of the extended timetable should have a clear and effective (i.e., deterrent) penalty for non-compliance associated with it.

With respect to NP costing issues, the equal apportionment method being championed by BTC for common industry costs has one main advantage, as noted by URCA: it is simple to implement. As discussed below, however, this method is completely at odds with other important pricing principles that must be considered in the balance. Among other things, the proposed approach would impede rather than promote effective competition by serving as a barrier to entry. Furthermore, the "equal apportionment" approach would in fact be very unequal, as proposed, and unfairly preferential to BTC unless account is taken of BTC's monopoly position in mobile services and the fixed costs associated with making mobile NP available using the same system as for fixed NP.

Giving priority to user interests and benefits implies that number portability is an essential part of the provision of voice services, and this in turn implies that each operator should bear its own costs and that any central costs should be shared in proportion to the size of an operator's customer base. This principle also supports CBL's argument (as detailed in CBL's separate submission on this point) that transaction charges should be zero.

CBL therefore urges URCA to reconsider its preliminary conclusion and rely instead on an apportionment method based on the distribution of users. This can be estimated through the number of NXXs assigned to each operator, including assignments for mobile, adjusted annually.

Alternatively (or as the system evolves), the number of active subscribers per operator may be used as the basis for the apportionment. This is information that URCA should be collecting for general oversight purposes in any event. Either approach would be a fair, proportionate, transparent and relatively easy-to-implement method for apportioning common industry costs over time, including when new operators enter the market.

2 Operator readiness and launch date for fixed number portability in The Bahamas

CBL has been an active member of the NPWG co-operating and attending all NPWG meetings providing regular Readiness Assessments on a weekly basis and will continue to do so until NP is fully launched.

The NP project has milestones that may be out of the control of any one operator. It is critical that the NP project has a project manager that will take responsibility to ensure all parties are working to the same objective, as well as assist and assess milestones that require joint cooperation between operators to ensure that each milestone is met.

CBL encourages URCA to review the operator readiness assessments submitted up to the date (August 28, 2013) of the Press Release outlining the delayed launch for Number Portability. If necessary, URCA should investigate operator readiness in further detail to determine a reasonable launch date for NP in The Bahamas with a target date well before the end of 2013.

Any further delays are to the detriment of consumers and undermine URCA's intention to further liberalize the market and launch number portability in The Bahamas as soon as possible. CBL would therefore recommend that URCA set definitive milestone dates for completion of the following critical process steps:

- Porting Testing
  - Internal operator porting testing sign off
  - Inter-operator porting testing sign off

  including acceptable approval by each operator of PortingXS NPC

- Routing Testing
  - Internal operator porting testing sign off
  - Inter-operator porting testing sign off
- End to End Testing
- Full NP Launch for all Fixed Line subscribers on all islands of The Bahamas that have competitive service providers

In addition to definitive milestone dates, CBL would recommend that URCA set Quality of Service "QoS" parameters to ensure operators achieve a predetermined standard of service, such as those set out below:

- At least 90% of Porting Approval/Authorization Responses must be sent to the donor operator within 48 hours of receipt;
- At least 30-50% of Porting Approval/Authorization Responses must be sent to the donor operator within 24 hours of receipt;
- The number of acceptances of Porting Approval/Authorization Requests must be no less than 90% without strong reasons why this target has not been met.

URCA should review progress after 2 months from the NP launch date and should request specific information from operators on a bi-weekly basis during at least the initial year of implementation, including but not limited to:

- The average number of refusals to Porting Approval/Authorization Requests received, expressed as a percentage; and

- The number of successful portings completed within the time and date parameters requested by the donor.

CBL requests URCA to hold the operators accountable for breaches of the definitive milestone dates identified above if not met as outlined in URCA's determination and any failures to meet the set QoS parameters to measure operators' performance. URCA should do this by making it clear that an operator's failure to meet each milestone or either of the QoS obligations will incur penalties that are sufficient to deter any "strategic failures".

3 The equal apportionment method for allocating common industry costs creates a barrier to market entry and an unfair burden on smaller operators

Equal apportionment creates an unfair burden on smaller operators. BTC currently enjoys a position of extraordinary market power as a result of its historic (and in the case of mobile, still continuing) *de jure* monopoly over these services. Although it is right that both SMP and non-SMP operators should contribute their fair share of the common industry costs of the NP system, URCA should ensure that the costs imposed on non-SMP players are proportionate to their start-up position in the voice market at this time, as against BTC's overwhelming share. This is fully consistent with the "effective competition" costing principle adopted by URCA, which provides that:

"*The objective to promote competition should not be weakened by the mechanism of cost recovery. In particular, the mechanism should not be used to raise a competitor's costs nor weaken their ability to compete*."[2]

Competition in the fixed voice market is only just getting off the ground now. Its growth to date has been severely hampered by the lack of an effective NP capability and consumers' consequent reluctance to switch providers. BTC has been the sole beneficiary of the extended length of time it has taken to implement fixed NP in The Bahamas. Moreover, the solution adopted by URCA is an expensive one that is designed to allow for mobile number portability in the years to come. URCA should take these factors into account

[2] Preliminary Determination, page 24

when considering the apportionment method for common industry costs amongst fixed network operators, and its likely impact on BTC's competitors.

CBL requests URCA not to adopt a system of equal apportionment that unfairly penalises CBL and other potential entrants into the fixed voice market.

4 URCA has supported a more expensive solution than necessary for fixed services

The inequities inherent in the proposed equal apportionment approach are aggravated as a result of the NP solution approved by URCA, which is a sophisticated, high-cost system employing a central data base. This system clearly was not necessary for the provision of adequate fixed-only number portability in a country the size of The Bahamas.[3] It was selected by the NPWG -- based on criteria established by the NPWG and URCA, which included URCA's requirement that the system must have been capable of supporting Mobile Number Portability -- to accommodate an upgrade to enable mobile NP when that market is opened to competition next year. As acknowledged in the Preliminary Determination, *"[t]he NPWG in its deliberations . . . sought to ensure that the systems implemented for fixed NP would be suitable for mobile NP* ***with minimal change****."*[4]

In fact, a central database is not needed at all. Malta, which is of comparable size to The Bahamas, uses a system of inter-operator messaging in order to avoid the costs of a central database and this alternative was not considered in The Bahamas. The Maltese system is used for both fixed and mobile services, and operators do All Call Query routing.

CBL is unwilling to pay an equal share of a system that is unnecessarily expensive for fixed portability.

5 CBL disagrees with the view that equal apportionment is compatible with the "distribution of benefits" principle.

In its Preliminary Determination, URCA stated that:

"More importantly for URCA is that a cost sharing scheme based on NXX assignments could undermine the distribution of benefits principle as BTC

[3] See CBL Response to [Consultation Document on Number Portability for The Bahamas ECS 8/2011]
[4] Preliminary Determination, page 10 (emphasis added)

would contribute a disproportionate share of the common industry system costs given the size of BTC's fixed and mobile customer base."[5]

CBL wishes to emphasise that the chief beneficiaries of number portability as it is to be implemented in The Bahamas are consumers -- not the operators. The distribution of benefits must therefore take potential consumer use of the system into account. Thus, the costs should be borne in proportion to the number of users on each network as measured by either a periodic active subscriber count provided by each operator, or the relevant NXX assignments.

It is self-evidently incorrect to regard operators as the focus of the "distribution of benefits" principle in this context. If that were the litmus test, all costs would arguably have to be borne by the new-entrant "beneficiaries" of the NP solution, rather than BTC. That is unjustifiable for a number of reasons.

- First, at the operator level, there will be winners and losers over time. The incumbent does not necessarily lose from number portability in the longer term.

- Second, new entrants in the voice market have not had the advantage accorded to BTC of building up a customer base and brand over an extended period, the strength of which is likely to be a major factor in consumers' decisions whether or not to switch operators and utilise the NP facility.

- Finally, in light of BTC's dominant position in fixed and mobile voice markets, a payment system that imposes high cost burdens on new entrants, whilst favouring the incumbent operator, raises serious competition concerns.

Portability incurs additional costs for operators and these costs will be borne by the users. This is satisfactory because it is the users who receive the benefits. If the users did not receive the benefits, then number portability would be an unwelcome tax that increased the costs of the whole industry.

CBL believes that the principle of the distribution of benefits can only be followed by a cost apportionment system that takes account of the number of users on each network.

[5] Preliminary Determination, page 34

6 The cost sharing system needs to take account of future plans for mobile and so include current mobile NXX assignments

Non-SMP operators providing only fixed voice services should not be burdened by costs that are attributable to supporting a mobile NP capability.[6] URCA has stated its intention that the database should also be used for mobile and this factor seems to have influenced the procurement.

Consequently the equal apportionment method is not really "equal" at all. Under URCA's proposal, BTC's separate roles as both a fixed operator and a mobile operator making use of the NP system are not recognized in the apportionment. This accords BTC an unfair (and substantial) preference. Under URCA's proposal, the second mobile operator will be required to pay an equal share of the common industry costs, regardless of whether it is new to the Bahamian marketplace or becomes part of an existing fixed network operator. By contrast, BTC's mobile operations will not have been required to pay their fair share.

If an "equal" apportionment approach is adopted, it is only logical that BTC should pay two equal shares of the common industry costs from the outset since it is the only licensee authorized to provide both fixed and mobile voice services, using a system that is designed to accommodate both types of service. Moreover, any new mobile entrants should pay their fair share of these costs retroactive to its inception. This means that provision should be made for at least one additional payor into the system *from its initiation*, and the costs apportioned accordingly to the second mobile operator as soon as it is licensed.

In contrast, the use of NXX codes as the basis of sharing costs (or, alternatively, active subscriber figures) would accommodate this concern provided that BTC's mobile NXX codes or active subscriber figures are included in the calculation.

CBL therefore proposes that the apportionment should take account of NXX codes assigned for BTC's mobile voice services or, alternatively, an apportionment based on active fixed and mobile subscribers should be adopted.

[6] CBL agrees with URCA's proposal to recover the costs of the mobile NP software upgrade from the mobile operators. However, in CBL's view, this does not resolve the problem that equal apportionment of the common industry costs creates insofar as URCA's proposal does not contemplate that BTC will contribute an equal share to cover the common industry costs as a mobile operator, despite the fact that a large portion of the cost of the system selected by the NPWG, based on URCA's requirement to include Mobile Number Portability, is attributable to the requirement that it be ready to deliver mobile NP with minimal changes.

7 The cost sharing system needs to include all assignees of numbers

URCA should make clear that *all licensees* that continue to operate in The Bahamas using assigned NXXs must pay into the system or else forfeit their access to numbers (or their licence). This includes IPSI.

CBL considers that all NXX assignments should be included and that all licensed operators that have been assigned NXXs should be required to contribute under the chosen scheme. Alternatively, active subscriber figures may be used.

8 BTC's historical advantages should not be ignored

URCA's decision on the apportionment of common industry costs should take into account:

(1) the disproportionate benefits that BTC has gained by not having NP in place for the past several years, following market opening, and the opportunity costs to its competitors;

(2) the direct causality between BTC's long-protected position in the fixed and mobile voice markets and the need for a mandated solution; and

(3) the significant expense to BTC's competitors of participating in the protracted negotiations over NP implementation during the past several years.

BTC's *de facto* virtual monopoly over fixed voice and its continuing *de jure* monopoly over mobile voice provide it with revenues and profits from these services that its competitors cannot begin to approximate. Requiring each new entrant to pay *the same share* of common costs as BTC would therefore be far from equitable. Furthermore, it would distort the meaning of the "distribution of benefits" principle by ignoring the asymmetric position that BTC holds in these markets. Finally, it would create a substantial barrier to entry for any potential investors in the market and a serious business risk for any smaller players already trying to get a toehold in a market dominated by BTC.

CBL considers that the proposed method of equal apportionment not only ignores the historical advantages held by BTC but also compounds them.

9 **Apportioning common industry costs on the basis of the number of NXXs assigned, or, alternatively, active subscriber numbers is fair, transparent and easy-to-implement and will promote effective competition.**

CBL proposes that the common industry costs should be shared based on the number of NXX codes assigned at the start of number portability, including codes assigned for mobile services. Alternatively, the number of active subscribers may be utilized. This is consistent with URCA's policy to establish a single licence for both fixed and mobile services. It also links portability costs to number usage or the number of customers, and hence to user benefits.

The use of NXX codes or active subscriber numbers is an approximation but may reasonably be used as a proxy in the first year of the NP programme's implementation. The use of actual subscriber numbers, collected by URCA, is likely to be the optimal solution as NP takes hold and customers port their numbers from one operator to another (thus distorting the market viewpoint provided by the use of NXXs as the basis for apportionment).

In each year, the charges payable by each operator can be calculated based on the number of NXX codes allocated at the start of the year or, alternatively, the number of active subscribers (starting at the end of the first year of implementation). Then at the end of the year the charges can be recalculated and any necessary adjustment added to the following year's charges.

We note that URCA has expressed the concern that a usage-based approach may be challenging to administer. CBL does not understand URCA's apparent concerns about administrative complexity in this regard. URCA issues the NXXs and so will know the count per operator at any given time. There should thus be no issues related to apportioning the common industry costs on this basis in the first year of NP deployment. However, if there is significant customer switching, then over time, NXX assignments will present a distorted snapshot as number blocks assigned to one carrier are gradually shifted to new entrants.

The use of active subscriber figures can be expected, over time, to provide a more robust basis for apportioning the common industry costs. URCA already has much of this subscriber data to hand, or can request it from each operator without impediment under the Communications Act, 2009. These subscriber figures are likely to serve as useful baseline data for resolving other regulatory and competition law issues going forward. The administrative effort to collect this data is therefore likely to be minimal and more than justified in light of the uses to which the data may be put. Regardless of whether NXXs or subscriber numbers are used as the basis for calculation, CBL estimates that it should bear no more than **18-20 percent** of the common industry costs.

10 Conclusion

URCA should take all steps within its powers to ensure that the revised launch date for NP is no later than the end of 2013 and that implementation on or before this date is successful and results in a good customer experience. Under the circumstances, this will require the stipulation of clear interim milestones which, if not met by a participating operator, will be subject to effective penalties at each and every stage of the process. The testing phase for the NP system will be particularly important to ensure that the launch does not result in a negative customer experience. Minimum QoS obligations should also be established and carefully monitored (and, if necessary, enforced) by URCA.

CBL believes that an apportionment of common costs based on NXX assignments, including mobile and adjusted annually, is the most equitable and practical approach.

If, however, URCA does not adopt CBL's alternative proposal, it should opt for a fixed (but not equal) apportionment that is adjusted to reflect competitive circumstances and eliminates any preference in favour of BTC. If such a fixed apportionment is adopted, then CBL considers that the apportionment should not be equal but rather should take into account:

(1) BTC's overwhelming position of dominance in the fixed voice market;

(2) BTC's starting position as a monopolist in the mobile market;

(3) the costs that will be apportioned to the new mobile entrant (recovery of which should be deferred at this time and collected from the new entrant when it is licensed); and

(4) distribution of the remainder of the common costs to *all* other licensed operators that have received NXX assignments.

Respectfully submitted,

Cable Bahamas Ltd.