



June 26, 2009

Communications Consultation,  
c/o KPMG,  
5<sup>th</sup> Floor Montague Sterling Centre,  
East Bay Street,  
P.O. Box N-123,  
Nassau.

Dear Sir,

**Re: Consultation Paper on an Access & Interconnection Framework for the Electronic Communications Sector (“A&I Consultation”).**

Please find below the comments of Systems Resource Group Limited (“SRG”), d.b.a. IndiGO Networks<sup>®</sup> (“IndiGO”), with respect to the above Consultation Paper.

### ***Response to Public Consultation Questions***

Question 1: Do you agree that the legislation and license conditions being introduced provides URCA with sufficient powers to ensure SMP operators provide a RAIO in accordance with URCA’s specification? If you do not agree them please state your reasons.

In August 2002, the then Office of Telecommunications (“OfTel”) in the United Kingdom issued a set of market review guidelines with respect to the criteria to be adopted for the assessment of Significant Market Power (“SMP”)<sup>1</sup>. The guidelines were published as a result of the need to comply with various directives issued by the European Community (“EC”), particularly that relating to Access and Interconnection. The EC directives and OfTel’s guidelines go considerably further than those listed in Section 39(3) of the new Communications Act (the “Act”).

In summary, in compliance with EC directives, the guidelines establish that SMP may be held by only one company in a relevant market (single dominance), or by more than one company (collective, or joint dominance). The following criteria are listed:

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<sup>1</sup> [http://www.ofcom.org.uk/static/archive/OfTel/publications/about\\_ofTel/2002/smpg0802.pdf](http://www.ofcom.org.uk/static/archive/OfTel/publications/about_ofTel/2002/smpg0802.pdf)

### Single Dominance:

Market shares	Economies of scale
Overall size of the undertaking	Economies of scope
Control of infrastructure not easily duplicated	Vertical integration
Technical advantages or superiority	A highly developed distribution and sales network
Absence of or low countervailing buying power	Absence of potential competition
Easy or privileged access to capital markets/financial resources	Barriers to expansion
Product/services diversification (e.g. bundled products or services)	-

### Collective Dominance:

Market concentration	Lack of technical innovation, mature technology
Transparency	Absence of excess capacity
Mature market	High barriers to entry
Stagnant or moderate growth on the demand side	Lack of countervailing buying power
Low elasticity of demand	Lack of potential competition
Homogenous product	Various kind of informal or other links between the undertakings concerned
Similar cost structures	Lack of or reduced scope for price competition
Similar market shares	-

In addition to the above, which constitute the EC guidelines with respect to SMP, Oftel also listed the following criteria with respect to the assessment of both single and collective SMP.

Excess pricing and profitability	Barriers to switching
Lack of active competition on non-price factors	Customers' ability to access and use information

Furthermore, Oftel advanced the view that other indicators could also provide valuable input, such as:

- benchmarking of the deal received by consumers against that received by consumers in similar economies;
- consumer satisfaction with service; and
- evidence of previous anti-competitive behaviour or collusion.

SRG considers that the criteria contained in the Act do not adequately accommodate the above. Moreover, SRG does not believe it appropriate for Section 40 of the Act to give the Utilities

7Regulation and Competition Authority (“URCA”) the discretion whether to impose SMP obligations on operators found to have SMP in one or more markets. SRG believes that where SMP has been found to exist, a national regulatory authority **must** impose appropriate remedies or, inevitably, competition in that market will be distorted.

Question 2: Do you agree that the above list should form the core access and interconnection principles in the new regulatory framework? If you disagree please provide your reasoning.

Interconnection is defined as the “physical and logical linking of networks to allow the users of one network to communicate with users of another network or to access carriage services provided by another licensee”. A core interconnection principle should therefore reflect the fact that in a competitive market, both parties will benefit and suffer equally from physical interconnection for the ultimate benefit of the consumer.

In The Bahamas today, the cost of joining networks between the incumbent and new entrant lies solely with the new entrant, to the financial benefit of the incumbent. This was recognised as inequitable by the Public Utilities Commission (“PUC”) in its Statement of Results on the Public Consultation with respect to the Proposed Interconnection Guidelines for The Bahamas dated June 28, 2007 (the “Guidelines”). In Section 4.16 of the Guidelines, the PUC stated that “Charges for joining services should be shared between the parties”, and went further in stating that “the RIO should explain how this split will be implemented”.

SRG believes that the prior decision of the PUC should be reflected in the list of core interconnection principles.

Question 3: Do you agree that the above list should form the minimum structure of an SMP operator’s RAIO? If you disagree please provide your reasoning.

SRG is of the view that at a minimum the RAIO should also encompass the following.

- A mechanism for the handling of disputes between operators.
- For the avoidance of doubt, and as articulated in the Guidelines, the technical standards should include details of how joining services will be provided to the SMP Operator’s network, and at what cost. They should also encompass the principle that other operators may be in a position to provide joining services more cost effectively than the SMP Operator and that access to the SMP Operator’s exchange and facilities for co-location of equipment may be required.

Question 4: Do you agree with the proposal that the call based remedies listed are still relevant and may form part of any new RAIO? If you disagree, please provide your reasons.

The descriptions of call based services contained in Section 32 of the A&I Consultation, and those contained in Section 33 that formed part of the PUC's Guidelines, are not in agreement with each other. The former appear to work from the premise that the SMP operator is always an interconnection provider, and the other operator is always an interconnection seeker. Quite properly, the Guidelines make the point that interconnection can often be a symbiotic relationship where the status of each operator as a provider or seeker can change on a per-call basis dependent upon the service being provided.

For example, call termination does not apply solely to termination of calls received from an other operator's network on the SMP operator's network. The reverse is also an example of call termination, as articulated in the extract from the Guidelines in Section 33, and must be accommodated in the RAIO. The description of call origination in Section 32 does not accommodate such an eventuality because it ignores the fact that the other operator will have geographic numbers assigned under the Bahamas numbering plan.

Question 5: Do you agree that a 'Calls to Directory Information Service' obligation should be included in the RAIO? If you disagree then please explain your reasons.

Yes.

Question 6: Do you agree that indirect access should be within the scope of the RAIO? If you do not agree, please explain your reasoning.

In the absence of any technical or costing information with respect to the current SMP Operator's network, SRG takes the view that the hard and soft costs associated with enforced introduction of indirect access by the SMP Operator would not justify the potential advantage to the consumer.

The size of the market is small, and the types of consumer services that would be accommodated are declining worldwide. Perhaps most crucially, local intra-island calls are currently free of charge to the consumer, and are charged on a bill and keep basis between the SMP Operator and other operators. This means that any new entrant could readily introduce the kind of pre or post paid international or domestic long distance services that would form part of an indirect access solution by simply creating an access number on their own network and routing toll calls accordingly. It is true that operation is a little less convenient for the consumer, but even that slight increase in inconvenience can be largely overcome by CLI being passed between the interconnected operators and the use of speed dialling on the consumer's handset.

The above services exist today, and a competitive long distance toll market has become well developed in line with the economic preference of Bahamian consumers to control their spending through prepaid services. Little further benefit, if any, would be achieved by introduction of indirect access, and indeed

the migration trend of Bahamian consumers towards VoIP services simply adds further weight to that same conclusion.

Question 7: What market conditions do you consider should prevail in order for URCA to mandate an SMP operator to implement indirect access?

The potential exists for the situation to change dramatically were the SMP Operator to either a) introduce a charge for domestic intra-island calls, and/or b) eliminate the practice of charging on a bill and keep basis for intra-island calls that are passed between it and other operators. In such circumstances, the SMP Operator could use the levying of charges for intra-island call termination as an anti-competitive barrier to effectively prevent introduction of competitive long distance services by new entrants.

Question 8: If the market conditions exist, do you have a preference as to which form of indirect access you would wish to see imposed in The Bahamas? Please explain your reasons.

Carrier selection would provide the most flexibility.

Question 9: If indirect access is imposed on an SMP operator how long do you think the SMP operator should have to implement it?

Were it to be introduced, indirect access would have to be operational before any change to the practice of charging either the consumer or other operators for termination of domestic intra-island calls.

Question 10: Do you agree that the specified 'Call Origination' remedies could be included in the RAIO in the future? If you disagree then please explain your reasons.

Yes

Question 11: Do you agree with the proposal that the connectivity based services listed are still relevant and should form part of any new RAIO? If you disagree, please provide your reasons.

SRG agrees with the connectivity services listed, but for the avoidance of doubt would stress that the SMP Operator must not be allowed to unreasonably reject joining circuits that may be provided by the interconnection seeker, or indeed by a third party at the interconnection seeker's request. In particular, if the interconnection seeker is able to more cost effectively provide joining circuits through, say, its

own wireless network, than the SMP Operator has offered through the terms of the RAIO, then the SMP Operator must provide cost orientated terms on which the relevant equipment can be hosted at its POI.

Question 12: Do you agree that wholesale broadband remedies should be within the scope of the RAIO? If you do not agree, please explain your reasoning.

It is imperative. Competitive and innovative broadband services are key to economic growth.

Question 13: What market conditions do you consider should prevail in order for URCA to mandate that an SMP operator implement wholesale broadband remedies?

The fact that they are judged to be an SMP Operator is a sufficient market condition.

Question 14: If market conditions exist, do you have a preference as to which form of wholesale broadband you would wish to see mandated on an SMP operator? Please explain your reasons.

The Bahamas Telecommunications Company (“BTC”) has in the past implemented a DSL resale program for Internet Service Providers (“ISP”) that did not prove popular, or commercially efficacious amongst ISPs in the market. SRG believes that for true competition the only viable solution would be wholesale DSL or bitstream access.

Question 15: How long do you think an SMP operator should be allowed to implement each of the remedies in this category?

SRG believes that a target of 180 days would be appropriate, however the SMP operator should not be permitted to enter any other markets until such time as the remedies are fully implemented and proven. Moreover, given the potential for an SMP Operator to delay to its competitive advantage, SRG considers that a reasonable time period, perhaps a further 180 days, should be required to elapse between satisfactory demonstration of implementation and the SMP Operator being permitted to enter any new market. Such a mechanism would accommodate circumstances where a new entrant might need time to implement equipment and make ready to compete in the SMP Operator’s market, whilst readying itself for competition by the SMP Operator in its own market.

Question 16: Do you agree that the specified ‘Wholesale Broadband’ remedies could be included in the RAIO? If you disagree then please explain your reasons.

Yes.

Question 17: Do you agree that local loop unbundling remedies should be within the scope of the RAIO? If you do not agree, please explain your reasoning.

It is recognised that local loop unbundling (“LLU”) has suffered some challenges in implementation in other jurisdictions, and that it will require significant regulatory oversight if it is to be successful in The Bahamas. Nonetheless, since it offers the only means by which competitive conventional voice services can ever practically be offered, SRG is of the view that such remedies should be within the scope of the RAIO.

Question 18: What market conditions do you consider should prevail in order for URCA to mandate that an SMP operator implement local loop unbundling remedies?

SRG believes that an operator being designated as having SMP would be sufficient market condition.

Question 19: If market conditions exist, do you have a preference as to which form of local loop unbundling you would wish to see obliged on an SMP operator? Please explain your reasons.

In the absence of detailed knowledge of the SMP Operator’s network, any analysis is subjective at best, however bearing in mind that LLU would be desirable to ensure the availability of conventional competitive traditional voice services, then full LLU would seem to be the most appropriate form.

Question 20: How long do you think an SMP Operator should be allowed to implement each of the remedies in this category?

SRG believes that a target of 180 days would be appropriate, however the SMP operator should not be permitted to enter any other markets until such time as the remedies are fully implemented and proven. Moreover, given the potential for an SMP Operator to delay to its competitive advantage, SRG considers that a reasonable time period, perhaps a further 180 days, should be required to elapse between satisfactory demonstration of implementation and the SMP Operator being permitted to enter any new market. Such a mechanism would accommodate circumstances where a new entrant might need time to implement equipment and make ready to compete in the SMP Operator’s market, whilst readying itself for competition by the SMP Operator in its own market.

Question 21: Do you agree that the specified ‘Unbundled Access to the Local Loop’ remedies could be included in the RAIO? If you disagree then please explain your reasons.

Yes, subject to the foregoing.

Question 22: Do you agree that access to cable TV networks remedies should be within the scope of the RAIO? If you do not agree, please explain your reasoning.

SRG has long taken the consistent view that other operators should have the unbundled ability to access the cable TV network of Cable Bahamas Ltd. (“CBL”). A brief look at relevant history is instructive.

On March 3, 2000 CBL was issued an interim ISP license to permit the introduction of Internet services in New Providence across their cable television network. The terms of that license dictated establishment of an interconnection policy for non-affiliated ISPs to the cable television network. The pertinent points of the interconnection requirements within the license were as follows.

- Cable Bahamas shall provide interconnection at the request of other licensed or authorised ISPs and at any technically feasible point.
- Cable Bahamas shall provide interconnection services on non-discriminatory and objective terms and of a quality no less favourable than those of like services provided by Cable Bahamas.
- Cable Bahamas charges for interconnection services shall be orientated to their cost of provision and sufficiently unbundled so that any other ISP requesting interconnection does not have to pay for components that it does not require.

Further, it was mandated that CBL not add any new Internet customers or any new Internet accounts until the terms and rates for interconnection services and the technical standards and specifications for interconnection had been approved by the regulator. This requirement was never enforced by the PUC.

At the time, five privately held ISPs, each of them then offering dial-up Internet access, indicated to the PUC their concern that failure by CBL to implement the above would inevitably lead to competitive distortion of the Internet sector. Those ISPs, amongst them a subsidiary of SRG, d.b.a. Bahamas On-Line, engaged a consultant from the United States to advise on how access to CBL’s network could meet the above principles and be made fairly available. Subsequently, the ISPs concerned presented a formal proposal to the PUC dated May 12, 2000.

The PUC rejected the proposal of the industry, and instead accepted an alternative put forward by CBL that in the view of the ISPs and their consultant was commercial unworkable and failed to meet the principles of interconnection enshrined in CBL’s license. The ISPs prediction for the industry came to pass. SRG is not aware of a single ISP that was able to efficaciously connect to, or utilise, CBL’s network. Not one of the ISPs in question was able to remain in business, and the Internet market today is dominated by CBL.



It would be unconscionable for URCA to not learn from recent history in developing and implementing future policy. The mistakes of the past must not be allowed to repeat themselves. If URCA is to live up to the requirements of Section 4(iii) of the Act to “encourage, promote and enforce sustainable competition” then CBL as the SMP Operator must be required to provide unbundled, non-discriminatory access to its network.

In a similar fashion to implementation of LLU, SRG believes that the SMP operator should not be permitted to enter any other markets until such time as the cable TV network access remedies have been fully implemented and proven. Moreover, given the potential for an SMP Operator to delay to its competitive advantage, SRG considers that a reasonable time period, perhaps a further 180 days, should be required to elapse between satisfactory demonstration of implementation and the SMP Operator being permitted to enter any new market. Such a mechanism would accommodate circumstances where a new entrant might need time to implement equipment and make ready to compete in the SMP Operator’s market, whilst readying itself for competition by the SMP Operator in its own market.

Question 23: What market conditions do you consider should prevail in order for URCA to mandate an SMP operator to implement access to the cable TV network?

It is worth reflecting that Cable Bahamas was originally licensed in 1994 to build and operate a monopoly cable television network. Some might argue that the Bahamian people helped pay for construction of that network:

1. via the cost to them of a 15-year monopoly that has prevented them from enjoying the benefits of competition; and
2. through the tax concessions that were granted to CBL to build their network without incurring import duty on infrastructure components.

In a presentation given to potential investors in November 2008, CBL claimed as follows (their emphasis):

“**Cable Bahamas has several difficult to replicate barriers to entry**, which dampen the likelihood of success by competition within the Company’s core markets:

- **A fully built out terrestrial network** (at a cost of over \$240 million over a 15 year period); replicating this network would not yield an adequate return on investment given the market size and the large capital and resource deployment required
- **A sub-sea fiber network – critical for the success of a broadband service provider on an island nation** – route-diverse and self-healing cable system connecting the Bahamas to the United States.
- **Deep penetration of basic cable TV (75%) and Internet (45%) subscribers** within its expansive 860Mhz fully upgraded network footprint which passes over **94% of all homes & businesses** in The Bahamas”

Through its own words, CBL has articulately described its SMP. Through a windfall brought about by advances in technology, CBL was able to leverage its monopoly into an entirely new market in 2000 with the introduction of Internet services. With further liberalisation of the fixed voice market, it would seem that CBL will at some point be able to leverage its infrastructure into a third market.

SRG respectfully submits that the above circumstances are sufficient enough for CBL, as the SMP Operator, to be mandated to implement access to its network.

Question 24: Subject to the results of market reviews, do you have a preference as to which form of unbundled access to a cable TV network you would wish to see imposed on the SMP operator? Please explain your reasons.

In the absence of detailed knowledge of CBL's network, any analysis is subjective at best, however SRG makes the following comments as an example of just some of the matters that will need to be considered:

- The interconnection point in the network will depend to an extent on the distributed nature of CBL's network and backhaul. Access at a higher point in the network would make sense in cases where the network is distributed throughout the Family Islands, because it would avoid expensive and unnecessary backhaul by each operator to those islands. In a more centralised network, access at the nearest point might be more appropriate.
- Given the change in licensing that will at some point permit CBL's leverage of their infrastructure in fixed voice services, it is only reasonable that unbundling of their infrastructure by others should permit at least the provision of IPTV so that some level of TV competition can be contemplated. Failure to do so will simply mean that CBL gains a new market with no practical improvement in choice for the consumer in their core TV market. It seems reasonable therefore that CBL would need to demonstrate convincingly that their network is ready for additional providers to offer IPTV and expected multiple HD video across their existing hybrid fibre coaxial network.
- If it is not already, the network should be required to be industry standard DOCSIS 3.0 compliant, since earlier versions of DOCSIS are unlikely to offer sufficient bandwidth for new entrant providers in addition to the services offered by CBL.
- In the past, CBL have claimed that their license in Freeport is separate from that elsewhere in The Bahamas. Will Freeport be treated any differently with respect to unbundling?
- How will it be ensured that CBL does not hold other operators hostage to its installation and provisioning processes?
- Other operators will need to have access to end to end network monitoring of any component in CBL's network over which their traffic routes, otherwise frustrated customers will likely be held hostage to CBL's product portfolio even where an other operator is offering a more competitive product.

- How will CBL be required to separate services such as Internet and voice, that may utilise the same Multimedia Terminal Adapter (“eMTA”)?

Beyond the question of unbundling of access, there are other factors that should also be considered

- In cases where an other operator offers a functionally competing service that is based upon session initiation protocol (“SIP”), such as those offered by existing operators, how will CBL be required to ensure that their installation does not discriminate or interfere with those services, for example via an eMTA that disrupts voice traffic to a downstream SIP device?
- Consideration should be given to requiring the SMP Operator to become part of an Internet exchange for The Bahamas, through which all Bahamian ISPs could exchange local Internet traffic. Currently, Internet traffic from one ISP in The Bahamas to another traverses through the United States, which is time consuming, expensive, and a waste of resources.

Question 25: Do you agree that the specified ‘Cable TV network access’ remedies could be included in the RAIO? If you disagree then please explain your reasons.

Yes, subject to the foregoing.

Question 26: Do you agree that the specified ‘Backhaul’ remedy should be included in the RAIO? If you disagree then please explain your reasons.

Backhaul is so essential to the provision of services for a new entrant, that failure to require such services to be provided by an SMP Operator would be fatal to the goal of sustainable competition.

In considering the question of backhaul, SRG would make the following points:

1. It is worth reiterating the aforementioned presentation to investors by CBL in November 2008, in which it stressed the importance of its ownership in a sub-sea fibre network<sup>2</sup>, and the critical nature of such ownership to competitive success<sup>3</sup>.
2. The definition of backhaul must include connection of points that are not limited to a single island, or limited to within the geography of The Bahamas. For the avoidance of doubt, backhaul must include:
  - a. capacity to connect an other operator’s network between islands; and
  - b. capacity to connect an other operator’s network in The Bahamas with a third party’s network outside The Bahamas.
3. Although URCA has the power under section 39(2)(a) of the Communications Act (the “Act”) to define markets for the purposes of SMP, it is not clear under which market backhaul would fall in the presumptions of SMP contained in Schedule 4 of the Act. For practical purposes,

<sup>2</sup> Via CBL’s subsidiary, Caribbean Crossings Limited

<sup>3</sup> See response to question 23

backhaul might fall in either a) fixed voice or b) high speed data and connectivity, or indeed both.

4. Backhaul will be a crucial “joining” component in the unbundling of access to the broadband networks of SMP Operators.

Question 27: What market conditions do you consider should prevail in order for URCA to mandate an SMP operator to provide backhaul services?

Backhaul is so fundamental a requirement, that the existence of any other operator than those operators deemed to have SMP in backhaul would represent sufficient market condition.

Question 28: Do you agree with the proposal that the co-location based services listed are still relevant and could form part of any new RAIO? If you disagree, please provide your reasons.

Yes.

Question 29: Do you agree that whilst access for the sharing of masts or towers for wireless telecommunications equipment and the sharing of ducts should be made available to operators with SMP it should not form part of a RAIO under standard terms and conditions? If you disagree then please explain your reasons.

SRG first wrote to BTC on the subject of requesting shared access to BTC’s masts and towers on August 16, 2004. Despite copious further correspondence from SRG and requests for assistance from the PUC, SRG is no nearer shared access to BTC’s facilities today than it was five years ago.

In the Guidelines, the PUC took the decision that facilities sharing would be accommodated by the SMP Operator within its RIO, although SRG in its response to the consultation had stated its neutrality on the matter given the potential for obfuscation by the SMP Operator.

Notwithstanding the above, facilities sharing remains vitally important for both the environment and sustainable competition. SRG notes that paragraph 30.2 in the Draft Individual Operating Licence that formed part of the Public Consultation on a New Licensing Regime for the Communications Sector, provides for URCA to instruct an SMP Operator with regard to sharing of facilities in accordance with codes of practice developed by URCA pursuant to Section 40(1)(e) of the Act.

SRG is of the view that it matters little whether the SMP Operator is required to make facilities sharing part of the RAIO, or part of a separate commitment and offer under the above requirement; what is important is that URCA is prepared to ensure that the offer is made promptly, in good faith and on non-discriminatory and cost orientated terms.

In the circumstances, there would appear to be little difference in URCA requiring the SMP Operator to provide terms in its RAIO with respect to facilities sharing, or separate terms as part of another document, although it might be said that keeping matters in one document, particularly where the RAIO will already include co-location that is important to masts and towers, might serve to reduce administration and paperwork.

Question 30: Do you agree that a co-location remedy to support LLU and access to Cable TV networks should be within the scope of the RAIO? If you do not agree, please explain your reasoning.

Yes, co-location is essential.

Question 31: Do you agree that URCA should have the power to oblige SMP operators to expand co-location services in the RAIO to provide co-location services for LLU and access to Cable TV networks? If you disagree then please explain your reasons.

Yes.

Question 32: Do you agree with the proposal that the ancillary product listed is still relevant and could form part of any new RAIO? If you disagree, please provide your reasons.

Yes.

Question 33: Do you agree that the specified reciprocal 'Data Management Amendment' service should be included in the RAIO? If you disagree then please explain your reasons.

Yes.

Question 34: Do you agree that the proposed charging framework is suitable and practicable for The Bahamas? If not then please substantiate your answer.

SRG notes the statement in the A&I Consultation that “the existing charging principle for interconnection and access in The Bahamas is that charges should be cost-orientated”. SRG is compelled to point out however, that although the Telecommunications Sector Policy and licenses issued by the PUC impose the policy and principles of cost orientation, the PUC has chosen never to implement that policy. The position of the PUC has been that in the absence of accurate cost information from the dominant operator, access and interconnection should be retail minus. This

situation has existed for five years, and has served to significantly distort the market to the detriment of the new entrant and the consumer, and to the advantage of the dominant operator.

The process of establishing cost is complex, and experience from other jurisdictions has shown that the self interest of those preparing the cost information for a competitive market can lead to manipulation of the outcome. The A&I Consultation is silent on who will be responsible for presenting cost information, how it will be audited by the regulator, and in what timeframe. SRG considers that it would be unacceptable for the current situation to persist such that cost orientation continues to be sacrificed.

SRG notes the distinction made in the A&I Consultation with respect to receiving party pays and calling party pays. The point is well made that it would be inappropriate for the SMP Operator to receive “two payments” in cases where that operator is charging a party to receive a call, and also imposing a cost orientated charge for terminating a call on its network from an other operator. SRG agrees. However, the A&I Consultation is silent with respect to the long standing practice in The Bahamas of BTC making no tariff charge to the consumer for terminating intra-island domestic calls, and the impact that such a practice has on interconnection charges.

BTC’s publicly stated position is that the historical basis for intra-island calls that are free to the consumer has been based on unbalanced tariffs, and that free local calling has been subsidised by high charges made with respect to long distance calls. Faced with substantially lower priced competition from IndiGO over the course of the past 5 years, BTC was forced, with the support of the PUC, to reduce its long distance charges on October 7, 2004 and July 1, 2006, and recoup its lost profits through an increase in local access charges on January 1, 2006.

Throughout the same period, interconnection charges for intra-island call termination between the networks of SRG and BTC have been on a bill and keep basis, i.e. at no charge between operators.

The inference from the above is that tariffs are now balanced, and that local access charges paid by the consumer and businesses since they were raised in 2006 meet BTC’s cost of providing intra-island calls. Whether or no, there are only two possible positions; either i) tariffs are indeed now balanced, or ii) a commercial decision has been taken by BTC to retain unbalanced tariffs, for whatever the reason. In either case, there are significant ramifications for interconnection charges.

In the former case, BTC has been paid for intra-island calls made and received by its customers through the local access charge that it levies. For practical purposes the local access charge might be considered a mix of calling party pays and receiving party pays, so any charge that might then be levied on an interconnecting operator to terminate calls from a third party would fall under the same double dipping that was articulated in the A&I Consultation; BTC would effectively have received two payments for the same service.

In the latter case, the provision of free intra-island calls could only happen through cross subsidy from another line of business within BTC, and would be priced at below cost – the classic definition of predatory pricing in a competitive market. In such a case, BTC would have distorted the market in intra-island fixed voice such that sustainable competition is unachievable. After all, no competitor will invest in infrastructure or offer competing services whilst the market rate to the consumer has been set by the dominant operator at below cost. This would appear to be contrary to various section of the Act, for example:

- Section 4(iii) requires URCA to “encourage, promote and enforce sustainable competition”.
- Section 40(1)(a) which provides for URCA to impose “obligations for cost orientation of prices” on SMP Operators.
- Section 69(2)(a) which prohibits abuse of a dominant position via “unfair purchase or selling prices”.

In either of the above cases, by retailing to the consumer at zero BTC has set its cost at zero, and were BTC permitted to impose a charge on another operator for terminating calls from their network the effect would be fatal to competition. An example serves to help demonstrate the practical realities.

As already advised, in today’s market there is no charge for intra-island termination between operators. Therefore, were BTC to newly impose a charge under the proposed RAIO, an other operator would at that time then be faced with passing that new charge on to its existing customers, who have hitherto paid nothing to terminate local calls regardless of the network on which the called party resides. In such a case, business reality would force those customers of the other operator to take circuits from BTC to terminate calls to BTC customers, thereby avoiding the new termination charge. Common sense dictates that such distortion of the market in favour of the SMP Operator cannot be right, and cannot be the intent of the Act or of interconnection policy.

SRG is of the strong view that as long as a situation persists where BTC chooses to impose no tariff for termination of intra-island calls in its network from its own customers, then BTC cannot be allowed to impose an interconnection charge on other operators for termination of calls to those same customers.

Question 35: Do you agree with the proposed approach to the application of cost-orientation? If not then please substantiate your answer.

It is difficult to imagine a set of circumstances in the existing communications sector in The Bahamas that would warrant application of a charging method that was anything but based on cost orientation. When one considers the two broadband networks of CBL and BTC, neither are replicable, but then neither were built with underlying risk; the former being built with the benefit of a 15-year monopoly on TV services, and the latter long after the existence of a market for broadband services had been established.

In the above circumstances, whilst URCA might have discretion to utilise retail-minus in future situations where there is significant justification, SRG believes that there must be a strong predisposition towards cost plus.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'P. Hutton-Ashkenny', with a stylized flourish at the end.

Paul Hutton-Ashkenny  
President