



December 18, 2009

Mr. Michael Symonette,  
Chief Executive Officer,  
Utilities Regulation & Competition Authority,  
Fourth Terrace, Collins Avenue,  
P.O. Box N-4860,  
Nassau.

Dear Mr. Symonette,

**Re: Public Consultation on Preliminary Determination of the Types of Obligations to be placed on the Bahamas Telecommunications Company (“BTC”) under s. 116(3) Communications Act, 2009 (the “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.

***Timeline***

SRG respectfully submits that the various deadlines within the Consultation from the date on which the Utilities Regulation & Competition Authority (“URCA”) publishes its final determination and final order appear to be in conflict.

As SRG understands the sequence of events, as amended by Public Notice:

- URCA will publish the final determination by no later than February 22, 2010.
- URCA will issue binding Orders by no later than April 22, 2010.
- Within 2 months of the final determination, i.e. by April 22, 2010, BTC must include cost-orientated prices in a “published reference offer”<sup>1</sup>.
- Within 3 months of the final determination, i.e. by May 22, 2010, BTC must submit unaudited cost separated accounts from 2008 as a “test” year<sup>1</sup>.
- Within 6 months of the end of the 2009 financial year, i.e. by June 30, 2010, BTC must submit audited separated accounts<sup>1</sup>.
- Cost orientated prices “shall be based on the separated accounts”<sup>2</sup>.

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<sup>1</sup> Consultation section 3.2

<sup>2</sup> Consultation Appendix 3 section 52.2

It would seem clear that the “test” year based upon 2008 accounts is intended simply as a means of developing the methodology to be deployed with respect to cost separation, and that the audited separated accounts from 2009 are those that must be used for the purposes of establishing cost orientated prices. It is unclear quite how the Reference Access and Interconnect Offer (“RAIO”) required on April 22, 2010 will be able to include the prerequisite cost orientated prices that are based upon separated accounts that will not yet have been published, even in test form.

Moreover, SRG is concerned that URCA appears not to have established a process for reviewing or approving the **methodology** utilised in establishing costs. With respect, as SRG pointed out in its response to the Public Consultation on Access & Interconnection (the “AI Consultation”), SRG considers that the process of establishing cost is complex, and that the self interest of those developing the cost allocation framework can lead to manipulation of the outcome. Whilst SRG notes that the Draft Guidelines for Accounting Separation and Cost Accounting provide for an independent audit of the separated accounts, SRG would respectfully point out that the audit is unlikely to challenge the methodology adopted by the operator, being more focused on auditing that the output from adoption of the methodology is correct. SRG strongly believes that the methodology itself must be independently reviewed and approved.

Any such approval process can only take place after submission of the accounts from the 2008 test year, with sufficient time for review and approval of the methodology prior to submission of the audited cost separated accounts arising from 2009. The time between submission of the 2008 test year and the audited separated accounts for 2009 is a mere 5 weeks, which is unlikely to be sufficient for a properly considered review and approval process to have taken place.

SRG proposes the following:

- The date of publication of the RAIO should be the same as the date of publication of the cost separated accounts from the 2008 test year.
- Cost orientated prices in the RAIO should be interim only, and based on the 2008 test year.
- The methodology utilised in the allocation of costs in the 2008 test year should be subject to a separate review and approval process by URCA, with a two month response timeline.
- The date for publication of the cost separated accounts for the 2009 financial year should be two months following the date of final approval of the cost allocation methodology.
- Cost orientated prices in the RAIO, and any interconnection agreements with operators arising from the RAIO, should be amended on final publication of the audited 2009 cost separated accounts.

### ***Bitstream Access***

Whilst SRG notes that URCA has mandated that BTC should make bitstream access to its network available at cost orientated prices, SRG is concerned that URCA would appear not to have provided any detail with respect to minimum technical or operational requirements that should be part of the bitstream solution proposed by BTC.

Whilst it is true that the particulars of bitstream access by traditional telecommunications companies is well established in other markets, URCA has established no baseline definition of bitstream with minimum standards.

- URCA refers to ETP Recommendations<sup>3</sup> in the Consultation?
  - Are these to form part of the final solution?
  - How will the principles apply?
  - How will BTC not have control over its competitors' customers?
  - How will competitor's be able to provision services and manage services for their own customers?
- Is BTC to set its own rules and be its own policeman?

Moreover, it would appear that URCA has established no process for demonstration of compliance with the SMP obligations under section 116(4) of the Communications Act (the "Act"). Whilst URCA is required to confirm or deny compliance, SRG believes that for URCA to adequately do so a formal process must be established where any operator that is required to meet SMP obligations must adequately demonstrate compliance under a detailed technical test plan.

To SRG it would respectfully appear that BTC:

- Will be free to offer the bare minimum under the label of bitstream access;
- Will be subject to no process that would have the power to change its own determination of what bitstream access entails;
- Will be able to freely claim compliance in the absence of anyone knowing what the original technical and operational goal was intended to be; and
- Will be subject to no objective procedure that will be in a position to properly investigate compliance, particularly in the absence of any detailed intention.

SRG notes the comments made in the Consultation that "URCA has concerns over whether [CBL] will provide long term effective competition to BTC given that BTC and CBL are the only two operators with extensive networks and vertically integrated network and service provision"<sup>4</sup>. With the greatest respect, SRG sees nothing in what is proposed that will ensure that a fair, workable and commercially efficacious bitstream solution will be mandated and implemented in such a way that URCA may allay its own concerns.

### ***National Leased Lines***

SRG notes that URCA's preliminary determination is that there should be no regulation at either the retail or wholesale level on national leased lines. Respectfully, SRG does not agree.

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<sup>3</sup> Consultation section 7.1.8

<sup>4</sup> Consultation section 48.5.1

SRG notes that URCA has not taken into consideration the common ownership of BTC and Cable Bahamas Ltd. (“CBL”) when considering national leased lines. At the time of writing:

- The government of The Bahamas (the “Government”) is the 100% owner of BTC, albeit with a stated position that it intends to sell 51% of BTC. Even in the event of closing on such a transaction, the Government would remain a 49% shareholder with significant input into the direction and operation of BTC.
- The Government, through the National Insurance Board and the public treasury, is owner of 20.5% of the issued shares of CBL. CBL has declared its intention to buy back and retire 30.2% of its shares that are currently issued to Columbus Communications, its largest shareholder, a transaction that it has announced it expects to close by the end of 2009 on the receipt of approval from the Federal Communications Commission in the United States. In the event of closing, the Government will become by far CBL’s largest shareholder with close to 30% of the issued shares in CBL, and significant input into the direction and operation of CBL. Moreover, in the event that the National Insurance Board becomes an investor in the convertible preference shares that form part of the above buy back transaction, the interest of the Government in CBL would become greater still.

BTC and CBL are the only two companies providing national leased lines. SRG believes that the common Government ownership of BTC & CBL, with significant shareholdings in each company, creates the potential for distortion of a competitive market, and SRG notes that were such common ownership to have been engineered after the coming into force of the Act it would have triggered the merger control requirements of the competition provisions in part XI of the Act.

In light of the foregoing, SRG respectfully submits that national leased lines should be subject to retail and wholesale regulation.

### ***International Leased Lines***

Similarly, SRG notes URCA’s preliminary determination that there should be no regulation at either the retail or wholesale level on international leased lines. Again, respectfully, SRG does not agree.

There are three submarine fibre systems that connect the Bahamas to international networks:

1. The Bahama II fibre from West Palm Beach to Eight Mile Rock, owned by a consortium of international operators, including BTC. Because of its age and technology deployed, the Bahama II cable is believed to suffer from high operating costs and limited spare capacity.
2. Caribbean Crossings’ BICS fibre from Boca Raton to Eight Mile Rock.
3. The ARCOS-1 fibre that rings the Caribbean, particularly from North Miami Beach to New Providence.

Of the above three above systems, the two most modern and commonly used fibres are ARCOS-1 and BICS, both of which come under common control.

- ARCOS-1 is 88.51% owned by Columbus Networks, which is itself a wholly owned subsidiary of Columbus Communications (“Columbus”).
- Amongst other regional carriers, BTC is itself a minor equity owner in the remaining issued shares of ARCOS-1.
- Caribbean Crossings, owner of BICS, is a wholly owned subsidiary of CBL.
- As previously indicated, the largest shareholder of CBL is Columbus which holds 30.2% of CBL’s issued shares. Under the Articles of Association of CBL, Columbus has the right to elect three of the five directors of CBL, and thereby has a control block of shares in CBL.

As indicated above, CBL has recently presented to private investors a proposal that, were it to close, would entail the repurchase and cancellation of the Columbus control block. However, even in the event that the proposed transaction were to close, Columbus would continue to exert significant day-to-day management influence and control over CBL through a management agreement that SRG understands would provide, inter alia, for continued Columbus appointed directors on CBL’s board and a Columbus appointed Chief Executive Officer of CBL.

Moreover, as already described in detail above, in any exit of Columbus, whether or not the management agreement remains active, both BTC and CBL will share the Government as the same major shareholder, who at that time would be by far the single largest shareholder of Cable Bahamas with close to 30% ownership, and either 100% or 49% of BTC dependent upon whether the proposed sale of 51% of BTC has then taken place.

In a presentation by CBL to investors dated November 2008, CBL articulated the critical importance of international connectivity as follows (CBL’s own 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 sub-sea fiber network – critical for the success of a broadband service provider on an island nation...**”

For all such critical international connectivity to be subject to common ownership, control, direction, operation and/or influence cannot be conducive to fair competition.

For the aforementioned reasons, SRG respectfully submits that international leased lines should therefore be subject to retail and wholesale regulation.

### ***ViBe***

SRG notes in section 2.1.1 of the Consultation that URCA has excluded BTC’s ViBe voice over internet protocol product from the high level SMP market.

SRG further notes in section 3.2 of the Consultation that URCA has specified retail price regulation on the following products as part of the specific obligations to be placed on BTC:

- Fixed telephony access and local calling.
- Domestic Long Distance (DLD) fixed calling and domestic fixed calls to rated numbers.
- Local mobile calling.
- Domestic Long Distance (DLD) mobile<sup>5</sup> calling.

SRG respectfully points out that BTC includes calling to landlines in the “entire Bahamas” as part of the bundle of minutes in each of the ViBe calling plans that are available to the consumer, including fixed local calling, fixed DLD calling, local mobile and DLD mobile calling<sup>6</sup>.

URCA has stated in section 3.2.3.5 of the Consultation as follows (emphasis added):

**“A bundle, tied products or package that includes at least one price regulated service shall be subject to retail price regulation.** The SMP operator shall provide URCA with the costing information of each service included in the bundle, tied purchase or package and demonstrate to URCA that the price of the bundle is not anti-competitive and would not have the effect of lessening competition in the relevant market.”

In SRG’s view it is therefore indisputable that whilst BTC continues to bundle price regulated domestic long distance fixed and mobile calling with its ViBe packages, then ViBe must itself be considered and treated as a price regulated service, and be subject to retail price regulation.

Yours sincerely,



Paul Hutton-Ashkenny

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<sup>5</sup> SRG notes that the word “mobile” has been inadvertently omitted from line 9 in the table of specific obligations contained in section 3.2 of the Consultation

<sup>6</sup> [http://www2.btcbahamas.com/products/broadband/vibe\\_unite.php](http://www2.btcbahamas.com/products/broadband/vibe_unite.php)