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 Cable Bahamas Ltd. ("CBL") 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® ("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, CBL must include cost-orientated prices in a "published reference offer"[1].
- Within 3 months of the final determination, i.e. by May 22, 2010, CBL must submit unaudited cost separated accounts from 2008 as a "test" year[1].
- Within 6 months of the end of the 2009 financial year, i.e. by June 30, 2010, CBL must submit audited separated accounts[1].
- Cost orientated prices "shall be based on the separated accounts"[2].

[1] Consultation section 3.2
[2] Consultation Appendix 3 section 13.2

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 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 CBL 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 CBL.

Whilst the particulars of bitstream access by traditional telecommunications companies is well established, the same cannot be said for bitstream access by cable companies. Unless URCA intends to mandate significant technical detail in its Final Determination and/or Final Order, SRG respectfully considers the above to be a flaw in the proceedings. In the specific case of bitstream access:

- URCA has established no baseline definition of bitstream with minimum standards.
- URCA raised examples from other jurisdictions in the AI Consultation. Are any of these to be adopted?
- In the AI Consultation, URCA also raised questions with respect to the appropriate connectivity point in CBL's network, to which SRG gave some detailed consideration, but there is no guidance with respect to that point in this Consultation.
- URCA refers to ETP Recommendations[3] in the Consultation?
    - Are these to form part of the final solution?
    - How will the principles apply?
    - How will CBL not have control over its competitors' customers?
    - How will competitor's be able to provision services and manage services for their own customers?
- Is CBL 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 CBL:

- 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 as to whether a duopoly between BTC and CBL will provide long-term effective competition in the market for bitstream access"[4]. 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.

---

[3] Consultation section 11.1.1
[4] Consultation section 8.1.1

National Leased Lines and Broadband Internet
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.

In referring to national data circuits and broadband internet access, URCA appears to have only considered the following:

1. National data circuits "over CBL's cable infrastructure".
2. CBL's Coralwave broadband internet packages with maximum download speeds of 1.5Mb/s for residential and business users.

URCA has omitted to consider that CBL's infrastructure in fact consists of two separate networks, best described in CBL's own words from a presentation to investors dated November 2008 (CBL's own emphasis).

> "The Cable Bahamas' broadband network comprises of two discrete physical layers:
> 1) **Hybrid Fiber Coax (HFC)** network used for all broadband services; video and High Speed Data (HSD). HFC access network is designed for high bandwidth delivery using an optical node architecture that passes an average of 150 homes per node.
> 2) **Direct fiber network** for Ethernet and TDM based services. The direct fiber network provides both Ethernet and TDM services (with either in Point-to-Point or complete Ring network topologies). Hubs (consolidation points) are installed throughout the network, which allows for increased reliability and scalability."

CBL also refers to its above direct fiber network as their "All Optical Ethernet" local loop. In addition to national data circuits, the network is also offered bundled with a broadband Internet service under the brand name Axel that is targeted at the business community. The following is an extract from CBL's marketing literature:

> "All Optical Ethernet is an optical Ethernet solution providing LAN-to-LAN and LAN-to-Internet connectivity up to 1Gbps. Built on a proven IP-over-fiber architecture, our high-speed services bring fiber directly to your home or office.
>
> Our AXEL Ethernet IP Network seamlessly extends your company's LAN to other business locations, while our Internet Service brings the Web to your LAN at breakaway speeds. With All Optical Ethernet, you can securely connect distant locations to create a single managed Wide-Area IP Network.
>
> With this service, your business gets a major upgrade from legacy voice-oriented technology systems to streamlined, data-optimized IP-over-glass. That means greater flexibility, fewer points

> of failure and higher reliability. Whatever your networking needs, from 1 Mbps to 1 Gbps, All Optical Ethernet connects you to the era of bandwidth abundance.
>
> All Optical Ethernet brings your business locations and telecommuters together at breakaway speeds, offering customer-selectable bandwidths from 1.53 Mbps all the way up to 1 Gbps. There's no perceived latency within our network, and as we have provisioned our submarine fibre there is less than 75 milliseconds of latency to POP's in the United States. All Optical Ethernet will not over-subscribe bandwidth within our network, so the speeds you purchase are the speeds you get. And, we guarantee throughput from our Ethernet handoff to the far end of our backbone.
>
> Today, Cable Bahamas Internet Services provides Internet access connectivity from our Nassau hub to the North American Internet backbone up to OC48 capacity. This connection is fully digital as it is totally over fiber, from your location to our upstream providers in the United States."

Pricing for CBL's Axel Internet service is commonly quoted for speeds from 1.53Mb/s to 40Mb/s.

SRG is not aware of any comparable direct fibre service for national leased lines or optical broadband Internet service offered by any other operator, and the Consultation is silent on the subject of CBL's Direct Fiber network and its Axel Internet service.

In addition, SRG notes that URCA has not taken into consideration the common ownership of CBL and the Bahamas Telecommunications Company ("BTC") 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, though 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.

SRG believes that the common 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 all of the foregoing, SRG respectfully submits that CBL should be required to meet the following additional obligations:

- Retail & wholesale regulation on national leased lines.
- Separate retail regulation for their Axel broadband Internet service, in addition to their Coralwave broadband services.
- Separate unbundled local loop access for their All Optical or Direct Fiber Network.
- Accounting separation and cost accounting with respect to their All Optical Network or Direct Fiber Network.

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.

Columbus therefore controls both ARCOS-1 and BICS, the latter through its control of 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 the aforementioned 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 – <u>critical for the success of a broadband service provider on an island nation</u>**…"

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.

Competition

SRG respectfully submits that to the extent that CBL were found to be party to any agreements, or taking any action, that would restrict entry into any of its SMP markets by a competitor, then URCA should place appropriate SMP obligations upon CBL to ensure that any such restrictions were lifted.

Yours sincerely,

Paul Hutton-Ashkenny