

September 19, 2016

Mr. Stephen Bereaux  
Acting CEO & Director of ECS  
Utilities Regulation & Competition Authority  
Frederick House  
Frederick Street  
Nassau, Bahamas

Dear Mr. Bereaux,

**Re: ECS 17/2016: Second Response to Preliminary Determination on Assessment of Significant Market Power in Mobile Call and Short Messaging Termination Services on NewCo2015 Limited's Cellular Mobile Network in The Bahamas under Section 39(1) of the Communications Act, 2009**

Please find enclosed NewCo's Second Response to the Public Consultation referenced at captioned.

Yours sincerely,



Felicity L. Johnson  
General Counsel & Company Secretary

FLJ/ksw

Encl.

pc: Damian Blackburn, CEO, NewCo  
Jay Naylor, COO, NewCo

## **Second Response to Preliminary Determination on**

Assessment of Significant Market Power in Mobile Call and Short Messaging Termination Services on NewCo2015 Limited's Cellular Mobile Network in The Bahamas under Section 39(1) of the Communications Act

**ECS 17/2016**

Submitted to the  
The Utilities Regulation & Competition Authority

**19 September 2016**

Filed by  
NewCo2015 Limited

BTC submitted their comments on URCA's Preliminary Determination on Assessment of Significant Market Power (SMP) in Mobile Call and Short Messaging Termination Services on NewCo2015 Limited's Cellular Mobile Network (ECS 17/2016). URCA allowed a period of one month for consultees to comment on each other's responses. NewCo's comments on BTC's response are herein contained.

In general BTC and NewCo come to similar conclusions on URCA's questions, but differ substantially on the issue of asymmetric termination rates. BTC puts forward arguments in favour of symmetrical rates, but at the end of its paper suggests that asymmetric rates should be between 40% and 50% above the regulated mobile termination rate. NewCo has the following comments on BTC's response on asymmetric termination rates:

1. Most of BTC's arguments and quotations concern either fixed termination rates, or asymmetric rates imposed over the long term, neither of which are part of URCA's proposals, which concern mobile termination rates for a limited period of time.
2. BTC's argument (bullet 1, page 3) that asymmetric termination rates do not lead to allocative or productive efficiencies may be correct if asymmetric rates are allowed to persist in the long term, but in the short term, if asymmetric rates reflect real differences in the cost of termination between operators better than symmetrical rates, they will give more accurate price signals to customers, who will be able to allocate their resources accordingly, leading to greater, not less, allocative and productive efficiency. In the longer term, if asymmetric rates reflect underlying inefficiencies, rather than exogenous factors such as unequal spectrum allocation or late market entry, then it would be a poor use of resources to reward inefficient operators with higher termination prices. This timing issue is widely recognized, for example by the ERG, which supports symmetric termination rates in the long term but states that:

*"However asymmetric TR (Termination Rates) may be justified, for example ..... to encourage the development of a new entrant on the market, which suffers from a lack of scale due to late market entry. Indeed, this allows higher expected profits in the short term and induces a more intense competition in the long term to the benefit of end users. In other words, a regulator may allow asymmetric rates for a limited time period - thus trading off short-term inefficiency for long-term objectives (i.e. dynamic efficiency)."*<sup>1</sup>

3. NewCo agrees with BTC's second argument (bullet 2, page 3), that asymmetric rates may lead to higher retail call prices and adverse effects on consumer welfare, and urges URCA to ensure that if asymmetric termination rates are introduced, BTC is not permitted to introduce unjustified differentials on net/off net retail prices.

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<sup>1</sup> European Regulators Group. ERG common position on symmetry of fixed termination rates and symmetry of mobile termination rates. ERG (07) 83 final 080312, page 5.

4. NewCo finds BTC's third argument (bullet 3, page 3) that symmetric rates are more predictable, stable and transparent rather curious. It considers that predictability, stability and transparency are provided where there is a clearly defined regulation regime on termination rates (for example, a clear mechanism for setting rates such as a cost model or a glide path), not whether rates are symmetric or asymmetric.
5. BTC's final argument (paragraph 1, page 4) that new entrants are aware in their business plans that they will make losses in the first years, is not relevant to the regulatory arguments for the economic justification for asymmetric rates.

NewCo recognizes that there are economic and regulatory arguments on both sides of the debate over asymmetric termination rates (these arguments are fairly summarized in URCA's Preliminary Determination). The consensus<sup>2</sup> is that they are justified for new mobile operators where there are objective exogenous cost differences, such as unequal spectrum allocations, or where the existing operator has achieved its economies of scale from an early market entry that has been protected by limits placed by government on the entry of competitors. In The Bahamas, BTC has enjoyed a mobile monopoly for at least twenty years, and NewCo will require time to build up the traffic on its network, and hence to bring its cost per minute down to an efficient level. Again this situation is widely accepted as a sound basis for the introduction of asymmetric mobile termination rates (see section 3.4.2. titled 'Asymmetry of a significantly late entrant' of the ERG report quoted) where it is stated that:

*"The advantages of allowing a recent entrant to recover its efficiently incurred costs should be kept in mind, along with the potential negative side effects of an "unreasonable" asymmetry. When the initial MTR cannot be set in strict relation with per unit cost efficiency incurred by the late entrant (because it leads to "unreasonable" rates), the imposition of a reasonable upper limit should be favoured. This initial level should be accompanied by a glide path towards symmetry." The report goes on to provide a worked example of an MTR glidepath, with an initial asymmetry of 50%, in line with BTC's suggestions.*

Hence NewCo reiterates its conclusion that asymmetric termination rates are justified in The Bahamas on an interim basis.

**Respectfully submitted**  
**On behalf of NewCo2015 Limited**

**RESERVATION OF RIGHTS**

NewCo expressly reserves all rights including the right to comment further on any and all matters herein and categorically states that NewCo's decision not to respond to any matter raised herein in whole or in part, or any position taken by NewCo herein does not constitute a waiver of NewCo's rights in any way.

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<sup>2</sup> For example, European Regulators Group. ERG common position on symmetry of fixed termination rates and symmetry of mobile termination rates. ERG (07) 83 final 080312, page 83.