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August 17, 2017

Mr. Donavon Dorsett
Acting Director of EC Sector
Utilities Regulation & Competition Authority
Frederick Street
Nassau, Bahamas

Dear Mr. Dorsett,

Re: Aliv Response to URCA Consultation on Measures for the Collection and Reporting of Market Data by Specified Licensees in the Electronic Communications Sector [ECS 05/2017] and Addendum to Document ECS 05/2017 issued on 3 August 2017

Be Aliv Limited (Aliv) hereby submits its comments in response to the Utilities Regulation and Competition Authority's (URCA's) issuance of an addendum relative to the captioned consultation document for URCA's consideration.

While Aliv notes that responses to the consultation were due on 15 August 2017, Aliv advises URCA that no significant changes were made to Aliv's original submission to URCA on 31 July 2017.

Aliv apologizes for the delay in submission.

Yours sincerely,

Felicity L. Johnson
General Counsel & Company Secretary

Encl.

pc: Damian Blackburn, Chief Aliv Officer





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**Response to Consultation on Measures for the
Collection and Reporting of Market Data by
Specified Licensees in the Electronic
Communications Sector, ECS 05/2017**

Submitted to

The Utilities Regulation & Competition Authority

17 August 2017

1. General Comments

Be Aliv Limited (Aliv) welcomes the opportunity to comment on the Utilities Regulation and Competition Authority's (URCA's) consultation paper on the collection of market data ("Consultation on Measures for the Collection and Reporting of Market Data by Specified Licensees in the Electronic Communications Sector" ECS 05/2017 and Addendum to Document ECS 05/2017 "Consultation on Measures for the Collection and Reporting of Market Data by Specified Licensees" published on 3 August 2017). Aliv however, considers that URCA's proposals, which will require it to prepare, validate and submit over 1,300 separate pieces of information per year to URCA, are unjustified, disproportionate and a breach of the requirements of commercial confidentiality. Aliv therefore urges URCA to undertake a fundamental rethink of its proposals.

Furthermore, Aliv considers that URCA's proposals are not consistent with the requirements of the Communications Act 2009 (Comms Act). This Act states that the objectives of electronic communications policy in The Bahamas are:

*"To enhance the efficiency of the Bahamian electronic communications sector...
To promote investment and innovation ..."* (Section 4 (a) (i) and (ii) of the Comms Act)

However, URCA's proposals will add to Aliv's cost base, thereby reducing its efficiency and diverting investment.

URCA is required under the Act to have:

"...due regard to the costs and implications of those regulatory and other measures on affected parties..." (Section 5 (b) (ii) of the Comms Act).

However, URCA has failed to carry out this assessment. It has made no attempt to identify or estimate the costs of its requirements on the operators, and so has not paid any regard to the impact of the additional costs on the affected operators.

All decisions implemented by URCA must comply with Article 5 (c) of the Act:

"Regulatory and other measures shall be efficient and proportionate to their purpose ..."

Aliv considers that URCA's proposals for market data collection are neither efficient or proportionate. They impose unnecessary additional costs on operators, bring no benefits to the sector and are excessively intrusive and time consuming or labour intensive for the operator.

2. Aliv's Responses to URCA's Questions

Question 1: Do you agree with URCA's justification for its new reporting procedures for the collection of market data? If not, please state why not?

Aliv does not agree with URCA's justification for the collection of market data.

URCA outlined the following three reasons for changing the collection of market data:

1. Input to regulatory decisions

Aliv agrees that good data is important in regulatory decision making. However, this should be collected from the operators on a decision by decision basis, not on the "nice to have" basis proposed in this consultation. This will ensure that URCA has thought through exactly what data it requires and can explain and justify its requirements to the operators, and is likely to use the data provided by the operators. Under the proposed system, it is highly likely that URCA will not use the data provided because there is no direct need for it, resulting in a waste of resources for both the operators and URCA. URCA has also failed to provide examples of how past regulatory decisions would have been aided (either in terms of time or accuracy) by the availability of more detailed market data. This is, quite possibly, because such decisions require the one-off collection of detailed and tailored data in any event, thus negating the need to have data available 'off-the-shelf' on an ongoing basis.

2. Other NRAs collect market data

In seeking to copy the practice of other national regulatory authorities, URCA fails to consider the differences between The Bahamas and other countries. The electronic communications market in The Bahamas consists of two operators in fixed communications and two operators in mobile communications. URCA proposes to publish only aggregated data, but a simple calculation enables one operator to know the detailed business of the other operator, thus providing it with commercially confidential and sensitive information. For a quoted company, this may well breach the disclosure requirements of financial markets.

Furthermore, by basing its list of requested market data on the information collected in other countries, URCA has paid no regard to the reason that the information is collected in a specific country. An example is the requirement for volume and financial information on CPE equipment and handsets. While in some countries equipment sales may have been an issue because of the tying of equipment sales and telephone services, in The Bahamas the handset and CPE equipment markets are competitive, and URCA has no reason to intervene, or to collect information, about them.

URCA also quotes the data requests of the International Telecommunications Union as a reason for its market data requests. However, URCA has no duty to provide information to the ITU, and indeed most countries do not provide the full range of information requested by the ITU.

3. The market in The Bahamas is changing

URCA notes that several innovations are taking place in the Bahamian market, for example the entry of Aliv and the development of bundles. However, these developments provide no justification for URCA to collect market data. URCA needs to intervene when market forces are insufficient, following the identification of specific problems. These innovations are an example of the success of market forces, and there is no need for URCA to collect data about them until a specific problem is identified.

Question 2: Do you agree with URCA's new reporting format for the collection of market data? If not, please state why not?

Aliv does not agree with the reporting format proposed by URCA. It considers that the requests, over and above the data on subscriber numbers and revenues currently provided to URCA, must be justified on a "line by line" basis, identifying both the specific use that URCA will make of the data, and the date when URCA will use it. If URCA cannot justify its requirements in this way, the data can only be classified as "nice to have" rather than to meet a specific requirement.

For example, URCA requires the submission of specific volume and financial data on international calls to the United States, United Kingdom, Canada, Haiti and Jamaica. These markets are competitive, and Aliv can see no reasons why URCA should intervene in them, or need any data on them. Aliv invites URCA to produce a detailed justification for this request. Moreover, while URCA's reporting format serves a traditional mobile market, Aliv is unable to report on some segments as these do not conform to Aliv's revenue reporting for its prepaid plans. These segments are as follows:

Table 1 – Reporting Requirements for Cellular Mobile Operators

- 15** *Total Revenues (calls and SMS only) – The majority of Aliv's revenue is generated from Freedom and Liberty plans which also include data. However, some customers are top-up only, which can then be reported on in this distinct category.*
- 16** *Total Revenues from Domestic Calls – This is bundled under the Freedom and Liberty plans, and therefore cannot be separated out to be reported on.*
- 17** *Total Revenues from Calls to Networks Abroad – United States and Canada are included as regular calls so these cannot be reported on.*
- 18** *Total Revenues from Domestic SMS – This is bundled under the Freedom and Liberty plans, and therefore cannot be reported on.*
- 19** *Total Revenues from SMS to Networks Abroad – United States and Canada are included as regular SMS's therefore these are included in the bundling of the Freedom and Liberty plans.*

- 20** *Total Data Revenues from Mobile Phone Subscribers – Data is only available if a subscriber has a Plan (the Freedom and Liberty plans) which also includes Voice and SMS. Therefore, this cannot be reported on.*
- 22** *Total Revenues from Outbound International Mobile Roaming – Aliv reiterates its invitation for URCA to provide justification for this request.*

Table 5 – Annual Reporting Requirements for All Licensees

- 3** *Total Taxation – Customs/Import Duty: This does not exist in Aliv’s ledgers as a separate item. The ledger system entry contains only what is paid to the customs brokers, who also serve as the freight forwarder, which is inclusive of the entire amount paid: shipping costs, customs/import duty, brokerage fees, cost of delivery to Aliv warehouse, VAT, etc. Again, Aliv invites URCA to provide justification for this request.*

Question 3: Do you agree with URCA’s proposal to receive quarterly and annual market data? If not, please state why not?

Aliv considers that this question ignores the requirements that URCA is placing on the operators. URCA requires the operators to collect and submit **monthly** data, and whether this is sent to URCA on a quarterly or annual basis is not important. URCA’s consultation paper does not acknowledge that the requests are for monthly data, and produces no justifications for this format. Given the variations between each month, Aliv cannot see how URCA will make any use of monthly data, or indeed of quarterly data.

In the case of mobile subscriptions, URCA is asking the operators to submit an average monthly figure. In order to calculate a monthly average, operators will have to collect the data on a daily basis. This is clearly disproportionate, imposing a significant cost on the operators without any improvement in the value or accuracy of information (for example, compared to an end of month figure).

Aliv further objects to annual reporting which does not correspond to Aliv’s fiscal year of July 1st to June 30th.

Question 4: Do you agree with URCA’s proposal to publicise aggregated market data? If not, please state why not?

URCA has not produced any proposals for which data it intends to publish. Aliv considers that URCA must specify which information it intends to publish and consult the operators properly on these proposals.

Aliv objects to URCA’s proposals to publish aggregated data, especially financial data. In a two-operator market, a simple calculation allows one operator to know the detailed performance of the other on a quarterly basis. This information is commercially sensitive; for example, one operator will be able to see the impact of a specific marketing campaign on the other.

Question 5: Do you agree with URCA’s implementation timelines for the new measures? If not, please state why not?

Aliv does not accept the timetable proposed by URCA. It considers that URCA must undertake a serious rethink of its proposals, and undertake meaningful discussions with the operators about the practicality and proportionality of its proposals. This rethink will take some months, making URCA’s timetable impracticable.

Further, Aliv is of the view that quarterly reporting is onerous and unnecessary. Aliv also wishes to point out that URCA requests financial data on a calendar year basis, while the operators report on a financial year basis. It would clearly reduce duplication if URCA sought financial information on the basis of financial years. URCA’s proposal for an annual report to be submitted on 14th February 2018 would present a significant problem for Aliv since its financial year runs from 1st July to 30th June. This would mean that the annual report would have to be prepared for a calendar year as well as a fiscal year, and would unnecessarily place an administrative burden on Aliv inclusive of an increase of Aliv’s operating costs.

Question 6: Do you agree with URCA’s assessment of the regulatory options considered? If not, please state why not?

Aliv considers that URCA’s assessment of the costs and benefits of the regulatory options is cursory and entirely inadequate. In particular:

- URCA has made no effort to engage with the operators so that it can understand the costs imposed on the operators, and therefore has no estimate of the costs of its proposals
- It has produced no estimate of the benefits of its preferred option over and above the current practice.

It is therefore in no position to claim that:

“... the incremental costs incurred by URCA’s licensees that are related to the collection and reporting of the required information will be more than off-set by the benefits to be derived from the new measures.” (page 14).

Furthermore, URCA has not considered the following options:

- Collection of information on an “as needed basis”
- Collection of a reduced set of market data.

As part of its rethink of the proposals in this Consultation Paper, URCA should consider much more carefully the impact of its proposals on operators, whose cost base is under constant pressure in a competitive market. Any additional cost imposed on the operators by URCA is paid by consumers in the form of higher prices, to the detriment of customers and the economy of The Bahamas.

Respectfully submitted

On behalf of Aliv

RESERVATION OF RIGHTS

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