



# **Bahamas Telecommunications Company Ltd. and Be Aliv Limited Fixed Termination Charge Dispute**

## **FINAL DETERMINATION AND ORDER**

**Issue Date: 3 May 2018**

**ECS 05/2018**

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## 1. Introduction

Under the terms of section 100 of the Communications Act, 2009 (“Comms Act”) and the *Alternative Dispute Resolution (ADR) Scheme for Disputes Between Licensees* (ECS 20/2014)<sup>1</sup>, the Utilities Regulation and Competition Authority (“URCA”) issues this Final Determination and Order in relation to an interconnection rate dispute between the Bahamas Telecommunications Company Ltd. (“BTC”) and Be Aliv Limited (“Aliv”), submitted to URCA by BTC on 15 August 2017 (“the Dispute”). URCA has also attached an Order in accordance with section 100 of the Comms Act.

The Dispute centred on the fixed termination rate to be paid to BTC by Aliv for calls originating on Aliv’s mobile network and terminating to BTC’s fixed network. As Aliv’s mobile phone numbers are non-geographic, the numbers cannot be used to identify the point of call origination from Aliv’s network. BTC contended that this makes it difficult for BTC to apply the regulated fixed termination rates for intra- and inter-island traffic from Aliv’s network to BTC’s fixed network. Other matters relating to the Dispute include:

- termination rate for calls from Aliv subscribers to non-geographic numbers (i.e., BTC’s ViBe customers);
- measurement of incoming traffic from Aliv’s network to BTC’s fixed line customers; and
- whether an Aliv to BTC fixed call should attract a fixed transit charge.

After taking into account BTC’s Notice of Dispute, the correspondence between the Parties, and Section 5.2 of URCA’s Alternative Dispute Resolution (“ADR”) Scheme URCA concluded that it was appropriate for it to consider the Dispute for resolution.<sup>2</sup> URCA, therefore, issued a Preliminary Determination and Draft Order (ECS 25/2017) on 5 December 2017. The Parties were given the opportunity to make representations or objections on or before 19 January 2018. URCA received submissions from both Parties. The submissions have been summarised and responded to in Section 3 and factored into URCA’s Final Determination and Order.

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<sup>1</sup> ECS 20/2014 can be found at <http://www.urbahamas.bs/wp-content/uploads/2017/01/ECS-20-2014-URCA-Alternative-Dispute-Resolution-ADR-Scheme-for-Disputes-Between-Licensees-1.pdf>.

<sup>2</sup> See Section 7.4.1(i) of URCA’s ADR Scheme.

URCA states that failure to respond to any specific representation made by a respondent does not necessarily signify agreement in whole or in part with the comment, that it has not considered the comment or that it considers the comment unimportant or without merit.

This Final Determination and Order set out URCA’s resolution of the substantive matters raised in the Dispute. Having regard to the regulatory framework outlined in Section 2, URCA’s Final Determination in Section 4 sets out the next steps to be carried out by BTC and Aliv, together referred to as “the Parties”, in order to resolve the Dispute.

## 1.1 Summary and Timeline of Dispute

URCA has summarised the key points of the Dispute leading up to the issuance of the Preliminary Determination in Table 1 below.

**Table 1: Summary and Timeline of Dispute**

Date and Type of Correspondence	Summary of Correspondence
1 February 2017 – Aliv’s letter to BTC	Aliv stated that it reviewed BTC’s December 2016 statement, submitted to Aliv for payment, and observed that BTC applied the incorrect call termination rates for calls from Aliv customers to BTC’s fixed phone numbers and calls from Aliv to BTC’s ViBe numbers. Aliv asserted that a termination rate of 0.75 c/minute should apply for Aliv calls to BTC’s fixed geographic numbers and a rate of 2.01 c/minute should apply to Aliv calls to BTC’s ViBe numbers which are non-geographic. However, BTC’s statement reflected a rate of 2.48 c/minute in both instances.
22 February 2017 – BTC’s response to Aliv	BTC agreed that the statement did not reflect the correct termination rate for Aliv-to-BTC ViBe numbers and that it would make the necessary amendments. BTC disagreed with Aliv’s proposal that the termination rate for Aliv calls to BTC’s fixed geographic numbers should be 0.75 c/minute because Aliv did not indicate which numbers related to which island therefore BTC was unable to decipher whether a call was intra- or inter-island.
31 March 2017 – Aliv’s letter to BTC	Aliv sent BTC a Notice of Dispute pursuant to Clause 17 of the BTC-Aliv Interconnection Agreement and Clause E.7.1. of BTC’s RAIO. Aliv proposed a blended termination rate composed of a 95% application of the on-island rate and a 5% application of the off-island rate. Aliv also reiterated that BTC applied the incorrect termination rate for calls to BTC’s ViBe numbers.
18 April 2017 – Aliv’s letter to BTC	Aliv submitted a Notice of Failure of Dispute Resolution after receiving no response from BTC.
18 April 2017 – BTC’s response to Aliv	BTC asserted that if Annex G.1 of BTC’s RAIO (which addresses call termination to geographic numbers) is applicable then G.11 (which outlines transit rates across Points of Interconnection also known as POIs) should also apply. BTC pointed out that Aliv set all of its termination charges at 3.10 c/minute and was of the view that URCA’s intention was to set all of the same rates for incoming mobile calls to BTC’s network at

	2.48 c/minute. However, BTC rescinded this position relative to ViBe calls but would not change the ViBe rate (on its statement) at that moment.
12 May 2017 – Aliv’s letter to BTC	Aliv referred to a 9 <sup>th</sup> May meeting between the Parties and indicated that both Parties agreed to use a blended rate. Aliv repeated its 95%/5% proposal and requested a counter proposal from BTC.
17 May 2017 – BTC’s response to Aliv	<p>BTC confirmed its agreement for a blended rate going forward. BTC proposed a blended termination rate composed of a 62% application of the on-island rate and a 38% application of the off-island rate. Using the 62%/38% split, BTC’s calculations for the blended rate are outlined below:</p> <ul style="list-style-type: none"> <li>• Fixed termination – <math>0.62 (0.0075) + 0.38 (0.0113) = 0.00465 + 0.004294 = 0.008944</math> or approximately 0.9 c/minute; and</li> <li>• Fixed termination and transit charge – <math>0.008944</math> (blended rate for traffic only as calculated above) + <math>0.62 (0.0104) + 0.38 (0.0259) = 0.008944 + 0.006448 + 0.009842 = 0.025234</math> or approximately 2.5 c/minute.</li> </ul> <p>According to BTC, the blended rate of 2.5 c/minute was fair and justifiable and requested Aliv’s agreement with this counter proposal.</p>
16 June 2017 – Aliv’s response to BTC	Aliv contended that BTC’s letter showed a misunderstanding regarding the definitions of on-island and off-island interconnection rates and calculations. Aliv requested BTC to provide evidence to support its counter-proposal of a 62%/38% split. Aliv disagreed with BTC’s inclusion of a transit charge due to traffic only going through one POI.
19 July 2017 – Aliv’s follow-up letter to BTC	Aliv requested BTC’s response to its 16 <sup>th</sup> June letter by 26 July 2016. Aliv continued that if no response was from BTC by the deadline, it would refer the matter to URCA for resolution.
14 August 2017 – Aliv’s second follow-up letter to BTC	Aliv stated that it had not received BTC’s response and reminded BTC that URCA directed the Parties to come to an agreement on a blended rate independent of URCA’s intervention. Aliv considered BTC’s lack of response to be an acceptance of Aliv’s proposal.
15 August 2017 – BTC’s letter to URCA	<p>BTC filed a Notice of Dispute with URCA. BTC maintained that intra-island calls are calls from one party to another party on the same island and attract a termination rate of 0.75 c/minute while inter-island calls involve calls from one party to a party on another island thus attracting a termination rate of 1.13 c/minute.</p> <p>BTC’s Notice included its calculation (as per the 17<sup>th</sup> May letter) for the blended termination rate and transit charge which amounted to approximately 2.5 c/minute.</p> <p>Furthermore, BTC proposed the following remedies:</p> <ul style="list-style-type: none"> <li>(i) Aliv compensates BTC retroactively starting 1 April 2017 using BTC’s formula provided; and</li> <li>(ii) Going forward, Aliv will apply BTC’s proposed blended rate on Aliv calls terminating to BTC’s fixed line network.</li> </ul>
23 August 2017 – URCA’s letter to Aliv	Upon receipt of the Notice, URCA requested Aliv to send its submission in response to the Notice on or before 12 September 2017.
11 September 2017 – Aliv’s response to URCA	<p>The main points of Aliv’s submission are outlined below:</p> <ul style="list-style-type: none"> <li>• Aliv disagreed with BTC’s understanding of what is considered an on-island and an off-island call. Aliv stated that BTC interprets an on-island call as “calls to</li> </ul>

	<p>numbers on the same island” as meaning the same island as the caller. However, in the interconnection context, Aliv interprets an on-island call to mean the same island as the point of interconnection and not the calling party.</p> <ul style="list-style-type: none"> <li>• Aliv contended that because it uses far-end handover technology, a call from an Aliv customer on Eleuthera, for example, to a BTC customer on Eleuthera would be interpreted as an off-island call because it has to go through the POI on New Providence. Conversely, a call from the Aliv customer on Eleuthera to a BTC customer on New Providence would be considered an on-island call due to the location of the POI. In this respect, Aliv requested URCA to confirm the definition of “same island” and “another island”.</li> <li>• Aliv reiterated that a transit charge should not be applicable considering that all calls from Aliv’s network to BTC’s fixed network go through one POI.</li> <li>• Aliv argued that the majority of its customer base is located on New Providence therefore its 95%/5% proposal is justifiable. Aliv presented the below calculation for its blended rate: <math>0.95 (0.0075) + 0.05 (0.0113) = 0.007125 + 0.00565 = 0.0012775</math> or approximately 1.27 c/minute (As stated in Section 1 of this document, Aliv’s calculation was incorrect. The correct blended rate using a 95%/5% split should be 0.00769 or 0.769 c/minute).</li> <li>• Aliv maintained that Aliv mobile calls to BTC ViBe numbers should be subject to a 2.01 c/minute termination rate.</li> </ul>
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## 1.2 Structure of the Remainder of this Document

The remainder of this document is set out as follows:

Section 2: Regulatory Framework;

Section 3: Summary of Comments Received and URCA’s Responses;

Section 4: URCA’s Final Determination; and

Section 5: Order.

## 2. Regulatory Framework

This Section sets out the regulatory framework under which URCA has exercised its powers to resolve the matters in Dispute.

In the Bahamian National Numbering Plan:<sup>3</sup>

- the service numbers assigned to BTC's mobile and fixed networks are geographic and non-geographic (BTC's non-geographic numbers are primarily used for its ViBe service); and
- the service numbers assigned to Aliv's mobile network are non-geographic.

A geographic number is a service number allocated within the Bahamian National Numbering Plan for use in a nominated geographic area(s) with a specific office code (NXX) whereas a non-geographic number is a service number allocated within the said Plan for use nationally.

The terms governing interconnection between the Parties' networks for voice and SMS traffic are contained in an Interconnection Agreement ("Agreement") dated and effective 30 September 2016. The Agreement refers to the annexes and schedules in BTC's Reference Access and Interconnection Offer ("RAIO") which also form a part of the Agreement.<sup>4</sup> Also, the RAIO provides for two physical points of interconnection (also known as POIs) between Aliv's mobile network and BTC's fixed network – one in New Providence and one in Grand Bahama.

Annex G of the RAIO contains the list of regulated charges for interconnection services. The charges related to this Dispute are outlined in the table below.

**Table 2: Price List associated with Fixed and Mobile Calls to BTC's Fixed Network**

Annex	Service	Price (cents per minute)
G.1	Call termination to geographic numbers on the same island	0.75
	Call termination to geographic numbers on another island	1.13

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<sup>3</sup>ECS 17/2011 issued 12 August 2011 available at <http://www.urcabahamas.bs/download/065902600.pdf>

<sup>4</sup> BTC's RAIO is available at: [https://files.btcbahamas.com/2016/01/31/14870794\\_raio-revised-29jan16.pdf](https://files.btcbahamas.com/2016/01/31/14870794_raio-revised-29jan16.pdf).

G.2	Call termination to non-geographic numbers	2.01
G.11	Transit across one Point of Interconnection	0.90
	Transit between two Points of Interconnection	2.45

In the event of a dispute between the Parties over the provision of interconnection, Section 17 of the Agreement indicates that the Parties use the procedures set out in Annex F of the RAIO. The table below taken from table F.1 of Annex F sets out the process to be followed.

**Table 3: Dispute Resolution Process**

Level in Dispute Resolution Hierarchy	Description	Disputes that are typically expected to be resolved at this level
1. (Lowest)	Operational level - involving the operational staff of each Party up to Field Supervisor level	Operational disputes associated with the interpretation and implementation of detailed operating processes and practices.
2.	Management level - involving the managers in charge of operational units	Operational disputes escalated from the Operational level.
3.	Senior management level	All disputes associated with the implementation of this Agreement, including disputes arising in the course of negotiations to change or amend this Agreement.
4.	Chief Executive level - involving the CEOs of each Party	All disputes associated with the implementation of this Agreement, including disputes arising in the course of negotiations to change or amend this Agreement.
5.	Independent third party including URCA or UAT	Disputes that the Parties cannot resolve requiring, in the view of one or both of them, the involvement of an independent Arbitrator, Mediator, URCA or UAT.

Sections 99(1)(a) and (b) of the Act collectively prescribe that if, on its own motion, URCA has reason to believe that a determination is necessary, it may make determinations relating to (amongst other things):

- any obligations on a licensee regarding the terms or conditions of any licence, including obligations in licence conditions and regulations, and



- any activity set out in the Act, and where the Act provides for URCA to “determine” or “to make determinations” as is the case under section 39(1).

Section 8(1)(a) of the Comms Act confers on URCA the power to, “make determinations in accordance with the terms of sections 99 to 102” and Section 8(1)(e) confers the power to “issue directions, decisions, statements, instructions and notifications.”

Pursuant to section 99(2) of the Comms Act, in making any determination, URCA must comply with section 11 which requires URCA to afford persons with sufficient interest a reasonable opportunity to comment on its proposals.

Section 5 of the Comms Act states that “regulatory and other measures shall be efficient and proportionate to their purpose and introduced in a manner that is transparent, fair and non-discriminatory”.

In the Comms Act, “interconnection” is specifically defined as the “physical or 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.”<sup>5</sup> One of the measures used by URCA to promote competition in communications markets has been to impose ex ante interconnection requirements or obligations on Significant Market Power (“SMP”) or dominant operators. These requirements include, but are not limited to:<sup>6</sup>

- the obligation on BTC to publish a Reference Access and Interconnection Offer (RAIO) with cost based charges;
- the obligation on other licensees to publish price and non-price terms and conditions for fixed termination services<sup>7</sup> and mobile call termination services<sup>8</sup>; and
- the obligation to comply with URCA’s “Final Guidelines: Access and Interconnection.”<sup>9</sup>

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<sup>5</sup> Section 2 of the Comms Act.

<sup>6</sup>These measures supplement the non-discretionary obligations specified in section 40(4) the Comms Act and relevant licences (Conditions 11 and 40 of standard IOL) in relation to interconnection.

<sup>7</sup> System Resources Group Limited (“SRG”) and IP Solutions International Limited (“iPSi”)

<sup>8</sup> Be Aliv Limited

<sup>9</sup> <http://www.urcabahamas.bs/wp-content/uploads/2017/02/ECS-14-2010-Final-Guidelines-Access-and-Interconnection-2.pdf>

The procedures by which URCA handles inter-licensee disputes are outlined in its *“Alternative Dispute Resolution (ADR) Scheme for Disputes between Licensees”* (ECS 20/2014)<sup>10</sup> issued on 31 December 2014. Section 5.2 of the ADR Scheme defines a Dispute as:

*“...any unresolved matter in contention between two or more licensees where one or both parties is aggrieved by the decision or conduct of the other and the parties have failed to reach an amicable resolution after good faith effort has been made to resolve the matter in contention.”*

Section 6.1 of the ADR Scheme recognises that *“Prolonged unresolved disputes between licensees can have an adverse impact on consumers and the ECS as a whole.”* Section 7.3 states that the ADR Scheme applies to any dispute arising out of or in connection with any matter regulated by URCA under the Comms Act save for the exceptions stated in Section 4.2 (i.e., disputes between consumers and licensees, disputes/complaints regarding broadcast content and complaints regarding breach of competition provisions of the Comms Act or licence conditions are not covered by the ADR Scheme). In other words:

*“Every licensee that has been issued either an Individual Operating Licence or a Class Operating Licence Requiring Registration by URCA shall be subject to the procedures established under this ADR Scheme.”* (Section 7.3.1)

Section 7.7.1 of the ADR states that a party (Applicant) requesting dispute resolution from URCA shall complete and submit the relevant Notice of Dispute Form in order to notify URCA of the dispute.

Section 7.4.1 outlines URCA’s powers under the ADR scheme. URCA can take one or more of the following actions that it considers appropriate upon receiving a dispute for resolution:

- (i) hear and determine the Dispute within its powers under the Comms Act, including settling the issues for resolution;
- (ii) facilitate mediation of the Dispute where agreed by the parties;
- (iii) refer the Dispute to an Arbitration Panel for resolution;
- (iv) request information from or submit questions to persons affected by the Dispute;

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<sup>10</sup> URCA’s ADR scheme is available at <http://www.urbahamas.bs/download/010192200.pdf/>

- (v) direct the parties to commence or continue reasonable, good faith efforts to resolve the Dispute;
- (vi) decline to determine the Dispute based on one or more of the grounds set out in Section 7.9 herein;
- (vii) act as mediator of a Dispute; and
- (viii) take such other course of action as it considers necessary to resolve the Dispute.

Ideally, URCA encourages licensees to reach their own agreement for disputes and may decline or dismiss any dispute referred to it if, in URCA's view, the dispute does not warrant the use of URCA's limited resources (See Section 7.9 of ADR Scheme). If URCA chooses to take the action of settling the issues for resolution, Section 7.5.3 of the ADR Scheme indicates that URCA will endeavour to resolve disputes within a maximum of six (6) months for inter-licensee disputes. The timeframes commence from the date URCA is duly notified of a dispute and received all related information. If URCA requests further information from a party, the time will pause and restart upon URCA receipt of the information.

In resolving a dispute, Section 7.11 of the ADR Scheme states:

*"URCA shall take the appropriate regulatory and other measures in exercise of its powers under the Comms Act to effectively resolve a Dispute which may include, but are not limited to, issuing a determination, order, direction, statement, instruction or notification."*

*"A decision by URCA in resolving a Dispute will be issued in writing and state the reasons for URCA's decision on any issue raised in the Dispute. A decision issued by URCA shall bind the parties to a Dispute."*

*"Any Order issued by URCA under the ADR process for resolving a Dispute, may include but is not limited to, the following:*

- (i) an Order to remedy, prevent or rectify a breach, anticipated breach or conduct which gave rise to the Dispute;*
- (ii) an Order to pay compensation;*
- (iii) an Order to pay a fine; and*
- (iv) an Order to pay costs."*

*"An Order issued by URCA consequential to resolving a Dispute may be enforced in the same manner as an Order of the court."*

### 3. Summary of Comments Received and URCA's Responses

In this Section, URCA summarises and responds to the comments received from the Parties.

#### BTC's Comments

Overall, BTC acceded to the **proposed remedies** outlined in URCA's Preliminary Determination (Section 5.7) and Draft Order. These include the following:

- i. *Termination Charges for Inter/Intra-island Traffic* - BTC accepted that calls originating on Aliv's mobile network and terminating to BTC's fixed subscriber on the islands of New Providence and Grand Bahama are to be treated as intra-island calls. Calls originating on Aliv's network and terminating on BTC's fixed network on islands other than New Providence and Grand Bahama are to be treated as inter-island. For the avoidance of doubt, an Aliv call terminating on an island where there is no POI would be subject to the inter-island charge.

In view of the above, BTC accepted the remedies in relation to the intra-island charge of 0.75 cents per minute, and the inter-island charge of 1.13 cents per minute.

- ii. *Termination charge for Calls to Non-geographic Numbers* - BTC accepted that calls originating on Aliv's network and terminating to BTC's ViBe subscribers should be charged at 2.01 cents per minute as per BTC's RAIO.
- iii. *Traffic Measurement and Verification* - BTC also agreed to measure traffic from Aliv's network using the office code (NXX) digits of the called party. BTC reiterated that traffic measurement using the office code (NXX) of the called party is a departure from BTC's long-held view prior to Aliv's market entry and Aliv's use of non-geographic numbers.
- iv. *National Call Transit* - BTC conceded that no transit fees are applicable in the context of this Dispute between the Parties, noting that once two networks are physically interconnected, transit fees should not arise.
- v. BTC agreed to revise interconnection payments by Aliv in line with URCA's proposed approach starting with BTC's December 2016 statement. BTC will quantify the volume of intra-island and inter-island calls and calls to BTC's ViBe numbers as per the procedure outlined by URCA, i.e. called party location and location of the respective POI.

BTC thanked URCA for providing much needed clarity in resolving the Dispute. BTC referred to Section 6.1 of the ADR Scheme which states that the prolonged unresolved disputes between

licensees can have an adverse impact on consumers and the sector as a whole. According to BTC, it recognised the impact and therefore took the appropriate steps to invite URCA's intervention in the Dispute.

#### URCA's Response

URCA notes BTC's agreement with the views and remedies set out in the Preliminary Determination and Draft Order.

#### Aliv's Comments

Generally, Aliv thanked URCA for its analysis of the Dispute and was pleased with the conclusions put forward in the Preliminary Determination.

Aliv made **specific comments** for the items below.

- i. Aliv agreed with URCA's observation (page 3 of the Preliminary Determination) that the blended rate with a 95/5 split would be 0.769 cents per minute not 1.27 cents per minute as Aliv had previously calculated in its 11<sup>th</sup> September letter.
- ii. In reference to Section 5.1 of the Preliminary Determination, Aliv confirmed that URCA's understanding of far end handover is in line with Aliv's understanding and practice. Aliv continued that a fixed operator such as BTC will use near end handover for fixed-to-mobile calls (the POI closest to the calling party) because its network does not hold the information about the location of the mobile called party and this may be causing BTC some confusion. Aliv opined that far end handover is a well-established concept both inside and outside of The Bahamas and this does not excuse BTC's ignorance on this topic. In addition, BTC is used to defining calls that originate and terminate on the same island as intra-island calls for its fixed network retail services, perhaps adding to its confusion over how to deal with wholesale services.
- iii. In reference to page 19 paragraph 2 of the Preliminary Determination, Aliv noted that the principle of cost-based termination charges also applies to calls between fixed networks. While at a retail level, intra-island calls are defined as where the originating customer and the terminating customer are on the same island for interconnected calls, they should be defined as where the POI and the terminating customer are on the same island. In this way, the terminating operator is compensated for the actual use of its terminating network. However, Aliv pointed out that the RAIO does not include a definition of the "same island" as used in Annex G and perhaps the term should be extended to "the same island as the POI" in a future amendment.

- iv. Aliv explained that retrospective charging should apply to rates that have been properly charged according to the rules in force at the time but following a change in the rules, the previous rates are amended and backdated. Aliv continued that BTC was misinterpreting and misapplying the rates set out in the RAIO and generating erroneous invoices therefore retrospective charging would not apply.
- v. Aliv pointed out that BTC and Aliv may decide to open a POI on another island at some time in the future therefore URCA should state the principle that intra-island termination rates apply to calls where the terminating customer and the POI are on the same island.
- vi. Aliv referred to remedy (ii) on page 26 of URCA's Preliminary Determination stating that there was a typographic error due to the prefixes "inter" and "intra" being transposed.
- vii. Aliv referred to remedy (v) on page 26 of the Preliminary Determination stating that the rate should read 2.01 cents per minute instead of 2.1 cents per minute as is currently the case.
- viii. Aliv restated that URCA was not departing from its previous positions on retrospective charging therefore paragraph (g) on page 30 should be omitted.

Under the heading ***Dispute Resolution***, Aliv continued that BTC did not attempt to resolve the Dispute in good faith and on the assumption that the Final Determination is in Aliv's favour, Aliv requested that URCA consider applying Section 7.16 of the ADR Scheme and require BTC to pay Aliv's costs incurred from the Dispute. In reference to URCA requiring BTC to confirm whether it can revise payments using the method proposed by URCA, Aliv noted that BTC already indicated that it can apply this method and a negative answer from BTC would imply a further reluctance on its part to comply with its RAIO obligations. In this scenario, Aliv considered a fine to be appropriate to stimulate BTC to take its obligations more seriously. Aliv invited URCA to set a timetable for BTC's full compliance with any Final Determination and Order issued by URCA. Finally, Aliv invited URCA to verify whether the "temporary engineering problems" mentioned by BTC in relation to its interconnection links will be resolved "in the shortest timeframe possible" to avoid any further disruption to the lawful interconnection of the networks of Aliv and BTC.

#### URCA's Response

URCA responds to the Aliv's specific comments below:

- (i) URCA notes Aliv's agreement that the blended rate with a 95/5 split would be 0.769 cents/min not 1.27 as Aliv previously indicated.
- (ii) URCA has no further comment on the matter of far-end handover vs. near-end handover at this time.
- (iii) Aliv's suggestion that a future amendment to the BTC RAIO to state "the same island as the POI" with respect to the definition of an intra-island call has been noted.
- (iv) URCA notes Aliv's comments that the rates are not being amended due to a subsequent change of rules therefore retrospective charging as it relates to URCA's previous positions on the topic does not apply. For the avoidance of doubt, URCA will remove item (g) which refers to its previous positions on retrospective charging from its Final Determination and Order. URCA, however, will allow revised billing to fixed termination rates and associated payments starting with BTC's December 2016 statement.
- (v) URCA will amend item (a) in its Final Determination and Order to state the principle that for an Aliv to BTC fixed call the intra-island termination rate apply where the BTC fixed line customer and the POI are on the same island.
- (vi) URCA agrees that the prefixes 'intra' and 'inter' were transposed and this was corrected.
- (vii) URCA agrees that the rate to a ViBe customer should be 2.01 c/minute not 2.1 c/minute.

URCA considers that in the circumstances of the Dispute the application of Section 7.16 of the ADR Scheme would be disproportionate. BTC has acceded to URCA's proposed remedies in the Preliminary Determination. Also, URCA recognises that there was no precedent on determining whether to apply the intra- vs. inter-island rates with respect to an Aliv to BTC's fixed call. Indeed, the Parties should have raise this issue in response to URCA's 2016 consultation on BTC's RAIO. BTC alone should not be blamed for this omission. In regard to the termination rate for Aliv calls to ViBe numbers, BTC accepted URCA's proposal that the correct rate of 2.01 c/minute would be applied starting with the December 2016 statement.

BTC confirmed in its response that it would be able to revise payments according to the method proposed in item (iii) on page 26 in URCA's Preliminary Determination therefore the imposition of a fine as proposed by Aliv is not necessary or appropriate.

In reference to Aliv's suggestion that URCA set a timetable for BTC's compliance, URCA requires both Parties to comply with the remedies **within 30 calendar days** of the issuance of this Final Determination.

In regard to the temporary engineering problems, URCA again urges the Parties to add resources to resolve these issues in the shortest timeframe possible.



## 4. Final Determination

This Final Determination is issued on 3 May 2018 by the Utilities Regulation and Competition Authority (“URCA”) in accordance with the provisions of sections 99 to 102 of the Communications Act, 2009 (Comms Act), to Bahamas Telecommunications Company Limited (BTC) and Be Aliv Limited (Aliv).

This Final Determination comprises URCA’s Final Determination in relation to an interconnection rate dispute between BTC and Aliv, submitted to URCA by BTC on 15 August 2017 (“the Dispute”).

**WHEREAS** on 23 November 2009, URCA issued BTC an Individual Operating Licence to provide electronic communications services within, into, from and through The Bahamas, subject to the conditions of the said Licence, regulatory and other measures made by URCA, and the provisions of the Comms Act.

**WHEREAS** on 30 June 2016, URCA issued NewCo 2015 Limited (subsequently renamed Be Aliv Limited) an Individual Operating Licence to provide electronic communications services within, into, from and through The Bahamas, subject to the conditions of the said Licence, regulatory and other measures made by URCA, and the provisions of the Comms Act.

**WHEREAS** on 30 September 2016 BTC and Aliv executed an Interconnection Agreement, setting out the terms governing interconnection between the Parties’ networks for voice and SMS traffic. The Agreement refers to the Annexes and Schedules in BTC’s Reference Access and Interconnection Offer (“RAIO”) which also form a part of the Agreement. Annex G of the RAIO contains the list of charges for interconnection services. Section 17 of the Agreement indicates that the Parties use the procedures set out in Annex F of the RAIO to resolve interconnection disputes between them.

**WHEREAS** pursuant to the Bahamian National Number Plan Aliv’s services numbers are non-geographic and BTC’s fixed and mobile service numbers are geographic.

**WHEREAS** on 31 December 2014 URCA issued its “*Alternative Dispute Resolution (ADR) Scheme for Disputes between Licensees*” (ECS 20/2014).

**WHEREAS** on 15 August 2017, BTC submitted a Notice of Dispute to URCA. The Dispute relates to the fixed termination rate to be paid to BTC by Aliv for calls originating on Aliv’s mobile non-geographic numbers and terminating to BTC’s fixed geographic numbers.

**WHEREAS** on 23 August 2017, URCA having reviewed BTC's Notice of Dispute issued a Notification of Dispute informing the Parties that it was appropriate for URCA to consider the Dispute for resolution in accordance with section 99 of the Comms Act and invited Aliv to make written representations in response to BTC's Notice of Dispute within 14 business days from URCA's Notification of Dispute.

**WHEREAS** Section 99(1)(a) and (b) of the Comms Act empowers URCA to make determinations in respect of any regulatory or other measures.

**WHEREAS** on 5 December 2017, URCA issued its Preliminary Determination and Draft Order and on 19 January 2018, URCA received submissions from the Parties.

**NOW** having considered the submissions of the Parties to the Preliminary Determination and Draft Order and other relevant information available to URCA, URCA makes the following findings:

- (a) Aliv uses far-end handover for calls from its mobile network to BTC's fixed line subscribers. This means that Aliv hands over the call to BTC at the point of interconnection ("POI") nearest to the network termination point of the called party, irrespective of which island the calling party is on when making the call. For the avoidance of doubt, Aliv uses far-end handover for calls terminating on islands where there is no POI, irrespective of where the call originates. This means that for an Aliv to BTC fixed call the intra-island termination rate applies where the BTC fixed line customer and the POI are on the same island.
- (b) It was unreasonable for BTC to apply Annex G.1 of the RAIO based on the originating and terminating phone numbers. Given that Aliv uses far-end handover and its service numbers are non-geographic, a fair and reasonable application of Annex G.1 of the RAIO must take account of the location of the called party and the POI.
- (c) It is technically feasible for BTC to identify the island of the called party by the office code digits of the number. For this reason, a blended rate is not required to resolve the Dispute. This method of identification along with the traffic management responsibilities established in Annex E of the RAIO provide a transparent and efficient framework for verifying billing outputs.
- (d) BTC applied the incorrect termination rate for an Aliv mobile call to a ViBe customer.

- (e) Aliv does not require a national call transit service to convey calls to BTC's fixed subscribers.
- (f) Although the Parties have not identified any adverse impact of the Dispute on consumers and competition, URCA notes that failure to resolve the impasse in the nearby future poses a threat to any-to-any connectivity.



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**Stephen Beraux**  
**Chief Executive Officer**

## 5. Order

This Order is issued by the Utilities Regulation and Competition Authority (“URCA”) pursuant to section 95 of the Communications Act, 2009 (Comms Act) in conjunction with the Final Determination and Order issued by URCA in relation to the interconnection rate dispute between BTC and Aliv, submitted to URCA by BTC on 15 August 2017 (“the Dispute”).

**WHEREAS** by Final Determination made on 3 May 2018, URCA determined the following in relation to the Dispute:

- (a) Aliv uses far-end handover for calls from its mobile network to BTC’s fixed subscribers. This means that Aliv hands over the call to BTC at the point of interconnection (“POI”) nearest to the network termination point of the called party, irrespective of which island the calling party is on when making the call. For the avoidance of doubt, Aliv uses far-end handover for calls terminating on islands where there is no POI, irrespective of where the call originates. This means that for an Aliv to BTC fixed call the intra-island termination rate applies where the BTC fixed line customer and the POI are on the same island.
- (b) It was unreasonable for BTC to apply Annex G.1 of the RAIO based on the originating and terminating phone numbers. As Aliv uses far-end handover and non-geographic service numbers, a fair and reasonable application of Annex G.1 of the RAIO must take account of the location of the called party and the POI.
- (c) It is technically feasible for BTC to identify the island of the called party by the office code digits of the number. Thus, a blended rate is not required to resolve the Dispute. This method of identification along with the traffic management responsibilities established in Annex E of the RAIO provide a transparent and efficient framework for verifying billing outputs.
- (d) BTC applied the incorrect termination rate for an Aliv mobile call to a ViBe customer.
- (e) Aliv does not require a national call transit service to convey calls to BTC’s fixed subscribers.
- (f) Although the Parties have not identified any adverse impact of the Dispute on consumers and competition, URCA notes that failure to resolve the issue in the nearby future poses a threat to any-to-any connectivity.

**IT IS HEREBY ORDERED that:**

- (i) An Aliv mobile call to a New Providence-based fixed customer or Grand Bahama-based fixed customer shall be classified as an intra or on-island call, irrespective of where the originating mobile customer is based when making the call. All other mobile-to-fixed calls would be classified as inter or off-island calls, irrespective of where the originating mobile customer is based when making the call. For the avoidance of doubt, an Aliv mobile call that is terminated on an island where there is no POI is an inter-island call. This means that for an Aliv to BTC fixed call the intra-island termination rate applies where the BTC fixed line customer and the POI are on the same island.
- (ii) Intra-island traffic from Aliv's network to BTC's fixed network should be rated at 0.75 c/minute, and 1.13 c/minute for inter-island traffic terminating on an island where there is no POI.
- (iii) BTC is required to measure traffic from Aliv's network to BTC's fixed geographic numbers using the office code (NXX) digits of the called party. For this reason, a blended rate is not required to resolve the Dispute. The Parties shall use this method of identification along with the procedure established in Annex E of the RAIO to verify billing outputs.
- (iv) BTC shall not apply Annex G.11 (fixed call transit fee) of the RAIO to an Aliv mobile call to BTC's fixed subscribers.
- (v) An Aliv mobile call to a ViBe customer shall be rated at 2.01 c/minute (Annex G.2 of the RAIO).
- (vi) The Parties shall revise interconnection payments resulting from incorrect charges for ViBe calls by BTC starting with BTC's December 2016 statement. The Parties shall revise interconnection payments in line with URCA's clarification at (i) above on how the relevant fixed termination rates shall apply starting with BTC's December 2016 statement. In this case, BTC shall quantify the volume of intra-and inter-island traffic using the identification method and verification procedure noted at item (iii) above.
- (vii) URCA requires both Parties to comply with the remedies outlined above **within 30 calendar days** from the issuance of this Order.

Failure by the Licensee to comply with this Order or any part thereof may result in a fine of not more than 10% of a Licensee's relevant turnover or other penalty determined by URCA in accordance with section 109 of the Comms Act.



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**Stephen Bereaux**  
**Chief Executive Officer**