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The Bahamas Telecommunications Company Limited

Comments on Responses to:

Wholesale Fixed and Mobile Termination Rates for SMP Licensees

Preliminary Determination

ECS 49/2019

Issued 12 September 2019

Submitted to:

Utilities Regulation & Competition Authority ("URCA")

Legal, Regulatory and
Carrier Services Division
November 4, 2019

1 Introduction

The Bahamas Telecommunications Company Limited ("BTC") is herein providing its Comments on Responses to the Utilities Regulation and Competition Authority's ("URCA") Preliminary Determination on "Wholesale Fixed and Mobile Termination Rates for SMP Licensees" (ECS 49/2019) issued 12 September 2019 (the "PD").

BTC is in receipt of Responses to the PD filed by:

- Cable Bahamas Limited ("CBL") dated 15 October 2019, and
- CBL's subsidiary, Be Aliv Limited ("Aliv"), dated 18 October 2019.

In what follows, BTC provides its comments on CBL's and Aliv's Responses to each of the five Questions included in the PD. After having reviewed their Responses, BTC maintains its views set out in its Response dated 21 October 2019, namely that interconnection rates should be set based on a Bahamas-specific LRIC costing exercise to begin immediately and, if URCA decides not to conduct a costing exercise, it should adopt the BTC Alternative benchmarking set out in Section 3.2 of its Response, instead of the flawed preliminary benchmarking exercise included in the PD. BTC notes that failure to address any specific statement, claim or proposal in CBL and Aliv's Responses does not imply BTC's agreement in any such case.

2 Questions included in the PD

2.1 General Methodology for setting Termination Rates

The first question in the PD asks whether parties agree that forward-looking, incremental cost is the appropriate basis for setting termination charges.

In their Responses, both CBL and Aliv agreed with URCA's preliminary view in this regard and, moreover, also agreed that long-run incremental cost ("LRIC") is the appropriate costing approach to be followed. CBL also added that it agrees with URCA's rationale for relying on cost-based rates since "they avoid over-recovery of cost whilst guaranteeing operators adequate returns on efficient network investment and operations."

As indicated in its Response, BTC is also in agreement with URCA's preliminary view, noting this has been the long-held view by all parties to this proceeding, including in the last proceeding dealing with termination rates in 2016.[1] As well, BTC also agrees that rates set on such a basis would avoid over- or under-recovery of cost while also ensuring adequate returns on operators' efficient network investment and operations.

In its Response, CBL indicated that it believes that a "Pure LRIC" approach, which excludes fixed and common costs, is preferable to one that includes such costs (e.g., a "LRIC+" approach). Aliv indicated that it is of the same view. In support of this position, CBL claimed that Pure LRIC-

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[1] URCA, *Consultation on Proposed Changes to The Reference Access and Interconnection Offer Published by The Bahamas Telecommunications Company Ltd., Response to Public Consultation and Final Determination*, ECS 19/2016, Issue Date: 8 August 2016.

based termination rates may lead to lower retail prices than those based on LRIC+, and also suggested that Pure LRIC is considered best practice by "some ITU experts".

In BTC's view, CBL's rationale for preferring a Pure LRIC over a LRIC+ approach in The Bahamas is weak. The suggested impact on retail call rates of LRIC versus LRIC+ based rates is far from certain and, even if a difference were assumed to exist, any such difference would be miniscule (i.e., a fraction of a cent per minute). As well, as CBL implicitly acknowledges, there is no consensus on the "best practice" LRIC approach to be followed. In fact, as set out in the PD and in the BTC Response, the majority of jurisdictions in the Caribbean rely on a LRIC+ approach. Further still, BTC notes that CBL failed to take into account the provisions in the Comms Act that require that URCA ensure that licensees be provided with a reasonable opportunity to recovery costs, which would normally include an adequate return their network investments and operations.

As explained in its Response, while BTC is not in a position to provide a definitive position on this matter at this time, on preliminary basis, BTC leans towards the LRIC+ approach as preferable for The Bahamas. BTC considers that the Pure LRIC/LRIC+ matter should be determined in the context of URCA's overall development of a Bahamas-specific LRIC model along with the many other considerations that would arise in this regard. As in its Response, BTC encourages URCA to begin the development of a Bahamas-specific LRIC model as soon as possible and, in the context of that exercise, determine how to appropriately treat fixed and common costs.

2.2 Specific Approach for setting Termination Rates

The second question in the PD asks whether parties agree with URCA's preliminary view that developing a Bahamas-specific BU-LRIC model should be used to set termination rates in The Bahamas.

In its Response, CBL disagreed with URCA's proposal to develop a Bahamas-specific BU-LRIC model. It suggested that if URCA had conducted a cost-benefit assessment of developing such a model versus other options (such as benchmarking), it would have found that the benefits would likely not exceed costs. CBL claimed that, that compared to a Bahamas-specific BU-LRIC model, benchmarking provides a more efficient means to generate "sufficiently accurate" LRIC-based call termination cost estimates.

CBL also suggested that specific BU-LRIC models are "largely unrelated to the size of the jurisdictions they are applied in". In this respect, CBL provided an analysis of purporting to show variation in Pure LRIC-based mobile termination rates ("MTRs") in 25 countries and, on the basis of that analysis, claimed that the likely error arising from a benchmarking exercise would be less than 0.21 to 0.23 BSD cents per minute. CBL appears to consider such errors to be acceptable and a reasonable trade-off relative to the costs and time required to develop a Bahamas-specific BU-LRIC model.

Lastly, assuming a costing approach is undertaken by URCA, CBL indicated that it supports the adoption of a targeted costing exercise (i.e., Option 2), since it would be more efficient (i.e., less costly) that a Bahamas-specific BU-LRIC model.

For its part, Aliv also disagreed with the adoption of a Bahamas-specific BU-LRIC model effectively for the same reasons offered by CBL. Aliv claimed the benefits of such a model would likely be small relative to the cost and time required for its development. It also considered benchmarking to be preferable.

BTC strongly disagrees with CBL and Aliv's suggestion that URCA abandon its proposal to develop a Bahamas-specific BU-LRIC model to set termination rates. All parties have been long advocating for the development of such a model. It is very surprising to BTC to now see that CBL and Aliv believe that benchmarking should be used instead, in stark contrast to their previous positions on this matter. BTC continues to consider the development of a Bahamas-specific BU-LRIC model to be the most appropriate means for setting termination rates. As necessary, the model could be expanded to address other wholesale and/or retail service prices in the future.

In BTC's view, CBL/Aliv's claims that the benefits of a Bahamas-specific BU-LRIC model would likely not outweigh the costs of its development are unfounded. Firstly, a properly constructed LRIC would provide accurate estimates of the cost of the termination costs under consideration. In the alternative, benchmarking would at best provide an approximation of such costs and, moreover, would be highly sensitive on the benchmark sample countries are used as comparators. Based on its analysis, CBL correctly recognizes that benchmarking errors can be significant. While it is impossible to evaluate CBL's analysis in any meaningful manner – since CBL provided no details as to how the analysis was conducted (e.g., the actual MTRs, the names of the 25 countries included in the analysis, their comparability to The Bahamas, and how the results would change had they included countries relying on LRIC+ approaches) – BTC suspects that CBL's claimed MTR benchmarking error of less than 0.21 to 0.23 BSD cents per minute is significantly understated and, therefore, inaccurate.

For instance, the variation in LRIC-based MTRs across ECTEL Member States is roughly 0.35 BSD cents per minute.[2] In this same vein, BTC also notes that CBL provided no evidence to substantiate its claim that BU-LRIC models are scale insensitive. As explained in its Response, BTC considers that scale ("size of networks") is but one of the most important drivers of termination costs. Other factors include physical geography and environmental/regional differences. For these reasons, BTC considers that Caribbean jurisdictions are far more comparable to The Bahamas than European countries, especially those that are far greater in scale. Consequently, in BTC's view, while benchmarking can be useful as a means to set "interim" rates, it should not be used to set "final" rates in The Bahamas.

CBL/Aliv also claim that the time and cost to develop a Bahamas-specific BU-LRIC model would be considerable and, therefore, unjustifiable; however, they provide no support for this claim. As described in the PD, BU-LRIC models are already widely used in many countries, including Caribbean countries, as emphasized in BTC's Response. URCA could readily modify an "off-the-shelf" LRIC model to reflect the unique density, geographic and operating characteristics of The Bahamas. Such an exercise would not take an inordinate amount of time or effort and, moreover, URCA has the capability and capacity to conduct such an exercise. Indeed, URCA has long planned to do so, and BTC considers that the time to do so is now. BTC considers that the exercise could be completed within a year, which is not an unreasonable or excessive amount of time for such an exercise.

Lastly, BTC notes that developing a Bahamas-specific BU-LRIC model would have long term benefits. It could be used multiple times in the future and readily expanded to address other costing

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2 Eastern Caribbean Telecommunications Authority ("ECTEL"), *Recommendation to National Telecommunications Regulatory Commissions on Cost Oriented Interconnection Rates in the ECTEL Member States*, April 2018. See https://www.ectel.int/wp-content/uploads/2018/09/PUBLIC_Determinaton_Interconnection_rates_2018-1.pdf.

matters. In contrast, benchmarking and targeted costing exercises are ad hoc in nature and, if adopted now, will only serve to delay future implementation of a LRIC model.

2.3 The Need to set Interim Termination Rates

The third question in the PD asks whether parties agree with URCA's view that interim rates for intra-island fixed termination and mobile termination services should be set.

In their Responses, both CBL and Aliv agreed that current termination rates are out of date and should be reduced on an interim basis to levels more reflective of cost.

As indicated in its Response, BTC considers that URCA should move forward immediately to establish LRIC-based "final" termination rates rather than proposing benchmarking-based "interim" termination rates. That said, if URCA intends to rely on a benchmarking approach to set "interim" rates, then BTC submits that URCA should replace the benchmarking proposals included in the PD with the BTC Alternatives set out in Section 3.2 of BTC's Response.

2.4 Proposed Approach to set Interim Termination Rates

The fourth question in the PD asks whether parties agree with URCA's proposed approach for interim termination rates, including the proposed use of a glide path.

In its Response, CBL agreed with URCA's proposal to set interim termination rates based on a benchmark sample of Pure LRIC rates; however, it disagreed with URCA's proposed three-year glide path. CBL argued that the current rates are obsolete and that a rational operator would have forecast a rate reduction and planned for its impact. At the same time, CBL recognized that similar three-year glide paths have been used in other jurisdictions, but it suggested that considered the "total delay until cost-based rates were ultimately reached was substantially shorter" in such cases.

For its part, Aliv also supported the use of Pure LRIC benchmark rates and considered the proposed three-year glide path to be unnecessarily long. Aliv also claimed that current rates are based on long out-of-date benchmarks and, therefore, should be "corrected" as soon as possible. As well, Aliv noted that URCA had planned a termination rate review in 2016, which is only now being conducted. In Aliv's view, this delay adds to the need to adjust termination rates quickly rather than over three years.

BTC disagrees with CBL and Aliv's positions on these two issues. As explained in its Response, BTC considers that the issue of whether a Pure LRIC or LRIC+ approach should be adopted in the context of the development of a Bahamas-specific LRIC model should be considered in conjunction with all assumptions and considerations that go into the development of such a model. Moreover, for the reason set out in its Response, BTC considers that any benchmarking exercise used to set "interim" termination rates should be based on comparable Caribbean jurisdictions and take into account rates set on both LRIC bases – Pure LRIC and LRIC+ – to better reflect the costing approaches followed in the region. Such an approach is also more likely to reduce the risk of setting below-cost termination rates through a benchmarking approach.

As to the use of a three-year glide path to phase in proposed termination rate reductions, BTC notes that both CBL and Aliv appear to acknowledge that such an approach is common practice. However, at the same time, they claim that following the same practice in The Bahamas would be inappropriate and would result in an excessive delay in adjusting rates relative to other countries.

They are incorrect. Like URCA, regulators in other Caribbean jurisdictions have reviewed termination rates from time to time and, after completing their reviews, have generally relied on a glide path approach to phasing in resulting termination rate reductions. There is nothing different in this respect in regard to URCA's proposed glide path. There is no unusual or excessive delay involved with URCA's proposed implementation of revised termination rates. BTC also notes that Aliv is incorrect when is suggest that current termination rates are based on long out-of-date benchmarks. In fact, the current MTR was set in 2016 based on BTC's accounting cost separations results, not benchmarking.[3] Consequently, BTC supports URCA's proposed use of a three-year glide path to phase in termination rate reductions, especially given it is common practice to do so.

BTC also notes that in relation to this Question in the PD, Aliv proposed that URCA set the inter-island fixed termination rate ("FTR") to the same level as the intra-island FTR. It provided several ad hoc, back-of-the-envelope costing assertions for doing so.

BTC submits that Aliv's proposal in this regard should be rejected. No benchmarking data was available on inter-island FTRs; therefore, URCA was unable to set an interim rate for this specific rate. This fact does not support producing a "guestimate" of the rate as proposed by Aliv. In fact, what it does support is the need for URCA to develop a Bahamas-specific BU-LRIC model to properly determine cost-based intra- and inter-island FTRs.

2.5 Proposed Level of the Interim Termination Rates

The fifth question in the PD asks whether parties agree that URCA's proposed levels of interim termination rates.

CBL and Aliv both generally agree with the interim termination rates proposed in the PD, although Aliv suggested that some unspecified revisions to European rates may be needed and CBL suggested Cyprus be added to the benchmarking sample.

As explained in its Response, BTC disagrees with URCA's proposed benchmarking approach. BTC set out is Alternative approach in its Response, which relies on more appropriate Caribbean region benchmark comparators. Consequently, BTC disagrees with Aliv and CBL's suggestions regarding the use of European countries for benchmarking termination rates for The Bahamas.

3 Conclusion

After having reviewed the CBL and Aliv Responses, BTC maintains its views set out in its Response.

BTC agrees that wholesale interconnection rates should be set based on a Bahamas-specific LRIC approach. BTC considers that such a costing exercise should begin immediately so that termination rates could be set on a "final" rather than "interim" basis as soon as possible.

BTC continues to be of the view that the preliminary benchmarking exercise included in the PD is flawed and, if implemented without adjustment, would result in a very significant risk that

[3] URCA, *Consultation on Proposed Changes to The Reference Access and Interconnection Offer Published by The Bahamas Telecommunications Company Ltd., Response to Public Consultation and Final Determination*, ECS 19/2016, Issue Date: 8 August 2016, page 17.

termination rates would be set below cost. Doing so would be inappropriate and would be in violation of the Comms Act. Therefore, if URCA decides not to conduct a Bahamas-specific LRIC-based costing exercise as a result of this proceeding and, instead, rely on benchmarking to set interim termination rates going forward, then BTC submits that the benchmarking exercise included in the PD should be replaced with the BTC Alternative set out in Section 3.2 of its Response.

4 Reservation of Rights

BTC has addressed the issues but reserves the right to comment further on all issues and states categorically that the decision not to respond to any issue raised in this Consultation in whole or in part does not necessarily indicate agreement in whole or in part with URCA's position; nor does any position taken by BTC in this consultation mean a waiver of any of BTC's rights in any way. BTC expressly reserves all its rights.

Legal, Regulatory and Interconnection Division
The Bahamas Telecommunications Company Limited (BTC)
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