



The Bahamas Telecommunications Company Limited

Response to:

**Review of Wholesale Broadband Access Services
under Sections 39 and 40 of the Communications
Act, 2009**

Preliminary Determination

ECS 04/2020

Issued 27 April 2020

Submitted to:

Utilities Regulation & Competition Authority (“URCA”)

Legal, Regulatory and
Carrier Services Division
June 10, 2022

Table of Contents

1	Introduction.....	1
2	General Comments	1
2.1	Deeply flawed consultation process denying natural justice.....	1
2.2	Unfounded and unsubstantiated OLO claims and allegations.....	2
2.2.1	Unsubstantiated excessive pricing complaints	2
2.2.2	Unfounded refusal to supply allegation.....	3
2.2.3	Unsubstantiated margin squeeze complaints.....	4
2.2.4	No evidence of market failure	5
2.3	The market review in the PD is incomplete	6
2.4	Flawed wholesale services market review	7
2.5	Lack of proportionality.....	9
2.6	Other Issues	9
3	BTC Responses to Consultation Questions	10
3.1	Question 1.....	10
3.2	Question 2.....	10
3.3	Question 3.....	10
3.4	Questions 4 & 5	11
3.5	Question 6.....	11
4	Conclusion	11

1 Introduction

The Bahamas Telecommunications Company Limited ("BTC") is herein providing its Initial Response to the "Review of Wholesale Broadband Access Services under Sections 39 and 40 of the Communications Act, 2009" Preliminary Determination ("PD") issued by the Utilities Regulation and Competition Authority ("URCA") on 27 April 2020 (ECS 04/2020).

In what follows, BTC provides its general comments on the PD in Section 2 and then provides responses to the Consultation Questions included in the PD in Section 3. BTC provides its concluding comments in Section 4. BTC notes that failure to address any specific statement, claim or conclusion in the PD does not imply BTC's agreement in any such case.

2 General Comments

BTC has serious concerns with the consultation process and the substantive regulatory rationale used by URCA to justify the additional regulatory obligation proposed in the PD. In relation to the wholesale broadband access ("WBA") market, the PD proposes that BTC and Cable Bahamas Ltd. ("CBL") be mandated to make available to other local operators ("OLOs") a wholesale dedicated Internet access ("DIA") product at URCA-regulated prices (the "DIA Obligation"). BTC's concerns in this regard are explained below.

2.1 Deeply flawed consultation process denying natural justice

The PD states repeatedly that the proposed DIA Obligation is a direct result of its "in-depth" and "extensive" discussions with a series of OLOs, including Bahamas WiMax, Coakster, WiCom as well as Secure Hosting.¹ According to the PD, the OLOs raised various concerns during their discussions with URCA regarding the pricing and availability of WBA services and, more specifically, wholesale DIA services offered by BTC and CBL. One OLO also made allegations of anticompetitive behaviour by BTC with respect to the provision of these services.

BTC is not aware of the precise complaints or allegations expressed by these parties since they were made in "private" meetings and communications with URCA. As described in the PD, these matters reportedly relate to OLO issues with pricing and provisioning of DIA and possibly other wholesale services. In any event, the OLO complaints and allegations summarized in the PD are vague in nature and, as they stand, are untested and unsubstantiated. If URCA considers that there is any potential merit to any of the complaints, they should be investigated through URCA's established complaints process. Such a process would provide all interested parties, including BTC, an opportunity to comment on them and provide supporting evidence, as necessary. As well, any pricing and service-related claims or concerns should be properly documented along with supporting evidence. BTC considers that URCA's reliance on unsubstantiated and untested OLO claims and allegations discussed in private meetings and communications as the basis for introducing the proposed DIA Obligation is unfair, inappropriate, discriminatory and denies BTC and CBL an opportunity to be heard and, in this case, the fundamental right to know what the

¹ E.g., PD pages 3, 10, 16, 17, 22 and 28.

details of the accusations against them are. URCA’s consultation process is contrary to Sections 4 and 5 of the Communications Act (“Comms Act”), that *inter alia*, require that URCA may only introduce new regulatory measures in a manner that is “transparent, fair and non-discriminatory”. The PD fails to meet this requirement.

Additionally, the fact that URCA would choose to conduct these private, in-depth discussions with OLOs without any input from operators makes a mockery of established principles of public consultations.

2.2 Unfounded and unsubstantiated OLO claims and allegations

The PD notes a number of OLO claims and allegations that URCA uses to justify the proposed DIA Obligation. BTC asserts that all these alleged claims and allegations are either unsubstantiated or unfounded, as no opportunity has been provided to test the veracity of their statements.

2.2.1 Unsubstantiated excessive pricing complaints

Some OLOs allege that existing DIA prices are excessive. BTC rejects this claim and notes that neither the OLOs nor the PD provide any evidence in support of this assertion.

The PD refers to two pieces of “evidence” offered by the OLOs or, more specifically, WiCom in support the excessive price claim. The first appears to have involved benchmarking evidence produced by WiCom, though the information is not described in the PD. In any case, it was rejected by URCA as being unusable and unreliable.² The second involved information shared by WiCom with URCA on IP transit prices in the US for the period 1998 to 2015.³ Based on this information, URCA noted that there have been significant reductions IP transit prices in the US over the last 20 years while, according to URCA, similar DIA service reductions had not occurred in The Bahamas, seemingly implying that DIA prices in The Bahamas may be high.

It is difficult to respond to such vague evidence. For one, none of the information provided by WiCom to URCA is included in the PD. Whilst the first piece of information provided was dismissed outright by URCA, the second piece of information on IP transit prices in the US appears to form the basis for URCA’s believe that DIA prices are possibly excessive. Without presenting or describing the information in the PD, it is impossible to know what US-based IP transit services are being compared with DIA services in The Bahamas. BTC notes that DIA prices are largely driven *inter alia* by inter-island transport costs, which can be considerable in a multi-island archipelago country such as The Bahamas, however this is only one set of input costs involved in providing these services. The services referenced in the US are likely vastly different in nature and scale. But, in any event, vague claims based on undisclosed data and private conversations and communications does not constitute proper evidence for public consultation purposes, and without it anything else BTC says would be responding to speculations and assumptions.

² PD pages 17 and 27. This evidence provided by WiCom was considered by URCA to lack “sufficient detail for URCA to be able to verify the comparability of the services”.

³ PD page 17.

More generally, the PD does not provide any analysis of prices or return on investment to assess whether OLO claims of excessive pricing have any validity. In past consultations, URCA has conducted and presented such information to support its proposals (e.g., by collecting price data for benchmarking purposes).⁴ Instead, in this case, the PD simply suggests that OLOs could improve their competitiveness and bottom lines if URCA mandated reductions in DIA prices. This is of course a tautology, and not evidence supporting the claim that current prices are excessive.

It is BTC's submission there is no evidence provided in the PD that DIA prices are excessive. As such, the claim that DIA prices may be excessive should not be used by URCA as a key part of the basis for proposing the DIA Obligation. It is incomprehensible that URCA would make the assertion of excessive pricing without any evidence of support or any open and transparent investigation of the facts, including service costs. As noted, BTC's considers such action by the regulator to be in violation of the Communications Act.

2.2.2 Unfounded refusal to supply allegation

The PD summarizes a refusal to supply complaint made by Coakster against BTC in private meetings and communications with URCA. According to the PD, Coakster alleged that BTC failed to respond to a request it made to subscribe to wholesale DIA services.⁵ Further, according to the PD, Coakster claimed that it had engaged with BTC in initial discussions regarding pricing of the DIA service but, according to Coakster, BTC did not respond to requests for updates on timings in a timely manner. A related tower sharing concern was also noted in the PD. These issues, according to the PD, resulted in Coakster being unable to begin offering retail services to end-customers and created uncertainty for its business planning. According to the PD, Coakster "submitted evidence" to URCA in support of this complaint.

In response, BTC notes that if Coakster has a refusal to supply complaint to make, it should file such a complaint with URCA following the established procedures under the Comms Act. In that submission, Coakster should fully describe and provide supporting "evidence" for its complaint. URCA stated in the PD that it received evidence from Coakster on this complaint, but that evidence was not included in the PD, which includes little more than a few sentences describing Coakster's allegations. Nonetheless, based on its private meetings and communications with Coakster, URCA seems to have accepted Coakster's allegations as a basis for proposing the DIA Obligation.

URCA in BTC's view seems to have made a leap in its processes. BTC appreciates that when URCA receives a competition-related complaint, it would conduct a full investigation of the matter entertaining the views and perspectives of all stakeholders. At the end of its investigation, assuming there was any merit to the complaint afflicting OLOs, then BTC accepts that proposed remedies may be merited and, if necessary, considered through public consultation process. However, in the current instance, without having ventilated the complaint in question whatsoever, URCA proceeded directly to issuing a one-sided PD aimed at remedying the matter. BTC sees this as *ultra vires* URCA's powers and that the process is unfair and discriminatory against BTC and

⁴ For instance, Wholesale Fixed and Mobile Termination Rates for SMP Licensees, Preliminary Determination, ECS 49/2019.

⁵ PD pages 17-18.

CBL. At this stage, Coakster's allegations are unsubstantiated and, as such, should not be used as supporting rationale for the proposed DIA Obligation.

That said, BTC believes it is familiar with the DIA service and tower sharing requests to which Coakster's complaint relates; however, as noted, BTC is unaware of what specific assertions and evidence Coakster's provided to URCA on this matter. To be given fair opportunity to respond, BTC should be provided with the specifics of Coakster's complaints. BTC does not believe this is the proper forum to ventilate a complaint and does not understand the expectations of URCA having included the allegations in the PD.

In brief, at this stage BTC would say that at all material times it fully cooperated with Coakster to meet its requests for DIA service and tower access. Any delays in timing were not BTC's fault, but rather due to Coakster and the impact of Hurricane Dorian. Coakster's claims that BTC failed to respond to its service request in a timely manner are false. In fact, it was Coakster who failed to respond to BTC's service proposals and, as understood by BTC, one of the reasons for Coakster's delay was that it was attempting to play off BTC and CBL offers to get the lowest price possible.

BTC reiterates, if Coakster believes it has a formal anticompetitive complaint, it should file the complaint following established procedures for such matters. This would allow BTC the opportunity to respond to the full allegation and related evidence. It should not be BTC's responsibility to respond to undocumented and unsubstantiated anticompetitive complaints in the context of this proceeding. For all these reasons, Coakster's refusal to supply complaint, as summarized in the PD, is baseless and should not be used by URCA as part of the basis for proposing the DIA Obligation.

2.2.3 Unsubstantiated margin squeeze complaints

The PD also summarizes a margin squeeze complaint made by Bahamas WiMax in private meetings and communications with URCA. According to the PD, Bahamas WiMax claims that the price structure of DIA services makes it difficult for it to compete with BTC and CBL in the provision of DIA services on a pure resale basis.⁶ The PD notes that Bahamas WiMax acknowledges that it could buy DIA services on a price-discounted bulk capacity basis and then resell the service to smaller end-customers, but that Bahamas WiMax claims the margins resulting from such a business strategy would be low or non-existent based on current DIA service price levels, in effect claiming current prices create a margin squeeze.

As with the matter discussed in the previous section, BTC submits that if Bahamas WiMax has a margin squeeze complaint to make, it should file the complaint with URCA following the established procedures for such matters. Again, it is difficult to respond to the allegations made by Bahamas WiMax since only a brief summary of the complaint, made in private meetings and communications with URCA, is included in the PD. BTC is concerned that URCA appears to have accepted Bahamas WiMax's allegations without seeking input from any other parties. BTC considers this to be unfair and discriminatory. As it stands, Bahamas WiMax's allegations are

⁶ PD pages 16-17.

unsubstantiated and, as such, should not be used as supporting rationale for proposed DIA Obligation.

That said, BTC notes that it is important to recognize that its current DIA services are available to a range of business customers, including OLOs. Significant price discounts are available for higher-capacity services and by opting for multi-year contract rates. As well, further negotiated price reductions are available for custom service arrangements, which typically involve more than DIA services alone. The current price structure therefore affords OLOs with a means to take advantage of scale, term and customer service rate discounts.

OLOs are facilities-based fixed wireless access (“FWA”) service providers. BTC understands that, for the most part, OLOs build and rely on their own mostly wireless network infrastructure and that any DIA or other services acquired from BTC and/or CBL make up a relatively small part of their overall network costs. In this context, BTC does not understand how a DIA-related margin squeeze could occur because most OLO network costs are related to their own wireless network infrastructure used to deliver FWA services.

On the other hand, relying on retail DIA services on a “pure” resale basis would require sufficient scale in the longer term to constitute a profitable business model. As noted, the OLO’s primary service offering is FWA. If there is interest in pure broadband resale service offering as an additional service option, then OLOs such as Bahamas WiMax could consider using the existing broadband resale offer (“BRO”).⁷ In the BRO proceeding, BTC argued against the imposition of the BRO, inter alia because there was no demonstrated evidence of sufficient demand for that product from BTC. Indeed, as URCA is well aware, there has been no interest or request for the BRO from BTC since URCA made that service offering mandatory. Given this experience with the BRO, BTC considers that URCA should not attempt to create a further unnecessary and unwarranted resale market opportunities via the proposed DIA Obligation.

BTC submits that there is no evidence provided in the PD to suggest that the structure of BTC’s DIA service prices could constitute a margin squeeze and any regulatory measures adopted and, or taken by URCA based on such unsubstantiated allegations would be misguided. Consequently, BTC submits that the allegation of a margin squeeze should not be used by URCA as part of the basis for proposing the DIA Obligation.

2.2.4 No evidence of market failure

In the PD, URCA relies on the three main allegations made by the OLOs – excessive pricing, refusal to supply and margin squeeze – as evidence of market failure and, consequently, the basis for the proposed DIA Obligation. As discussed above, all three allegations are unsubstantiated and unfounded. There is no evidence of market failure provided in the PD and, as a result, no justification for the proposed DIA Obligation.

It is also important to emphasize that the PD fails to consider the broader implications of the proposed DIA Obligation for the sector. If the proposed DIA Obligation is introduced as

⁷ Review of the Resale Broadband Obligation imposed on BTC and CBL under Section 116 and Schedule 4 of the Communications Act, 2009, Response to Public Consultation and Final Determination, ECS 09/2018, 31 July 2018.

contemplated in the PD, along with the associated introduction of regulated discounted pricing for the service, then a significant negative impact on sector investment can be expected. BTC and CBL network infrastructure investments could decline as a result of mandated margin reductions and lost business to resellers. As well, OLO network infrastructure investments would also decline since they would be able to purchase BTC and CBL DIA services at mandated discounted price levels that could displace investments that would otherwise have been made to self-supply such services, not too mention expand their network coverage. These detrimental affects of URCA's proposed DIA Obligation is completed ignored in the PD.

2.3 The market review in the PD is incomplete

Normally a market review is conducted to determine or reassess the existence of significant market power ("SMP") and, if found to exist, assess the continued need for existing or the introduction of new regulatory measures. This review is normally started first at the retail market level and then followed at the wholesale market level. In the case at hand, this would start with the retail broadband access ("RBA") service and then proceed to the wholesale broadband access ("WBA") service.⁸ Ultimately the purpose of maintaining existing or establishing new regulatory measures would be to promote effective retail competition to the benefit of end users; therefore, a review of the retail market – i.e., the RBA service market in this case – is essential. However, this retail market level review was skipped by URCA, and only a wholesale market level review is included in the PD.

BTC also notes that the PD suggests that a RBA service review is not necessary at this time since such a review was conducted two years ago in the context of the BRO review, and that the conclusions of that review remain appropriate today.⁹ BTC considers this to be a misrepresentation of the facts. URCA did not in fact conduct a review of the RBA market in 2018. Instead, it relied on the analysis and results of its RBA market review conducted in 2014 (ECS 14/2014).¹⁰ Therefore, the last review of RBA market in The Bahamas was conducted by URCA six years ago. In BTC's view, the results of that 2014 review are now outdated and should be updated before introducing any new regulatory measures, including the proposed DIA Obligation.

In BTC's view the RBA market in The Bahamas has evolved to a highly competitive one today and, on a prospective basis, will no doubt be increasingly competitive considering ongoing technological developments:

- There are two well established facilities-based wireline competitors, BTC and CBL. While CBL does not serve 100% of the population, it serves over 90%. Given the existing national

⁸ This two-step sequential, inter-dependent assessment approach is consistent with regulatory practice in other jurisdictions such as the European Union. See: European Commission, COMMISSION RECOMMENDATION on relevant product and service markets within the electronic communications sector susceptible to ex-ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services, 9 October 2014.

⁹ Page 4 of the PD states: "In ECS 09/2018, URCA reviewed, amongst others, the competitive dynamics in the retail fixed broadband and WBA markets and confirmed BTC's and CBL's SMP positions in their respective geographic markets for WBA services." ECS 09/2018 was issued by

¹⁰ See for instance, page 5 of ECS 09/2017 (the PD that led to ECS 09/2018).

uniform pricing obligation on BTC, customers outside CBL's footprint benefit from the competition within the overlapping 90%.

- As the PD points out, there are also numerous OLO competitors who primarily rely on FWA technology, such as Bahamas WiMax, Coakster and WiCom, who provide competitive alternatives to BTC and CBL.
- Global Nexus is another facilities-based competitor who is currently planning to build a submarine network, with work on first network segments intended to provide high capacity, single-hop connectivity from Nassau to Boca Raton, US and Halifax, Canada.¹¹
- CBL's subsidiary, Aliv, offers MiFi broadband service using 4.5G LTE wireless technology at prices that are competitive with existing wireline products, including substantial data allowances (starting at 50 to 200 GB per month).¹²
- More prospectively, 5G wireless technology offers the promise of significant advances in broadband connectivity in the coming 2 years.

For all these reasons, BTC considers the PD's lack of any consideration of the RBA market to be a serious substantive regulatory flaw and which undermines the legitimacy of the proposed DIA Obligation.

As well, URCA's 2014 RBA market review resulted in the introduction or continuation of a number of *ex ante* RBA regulatory measures – e.g., price caps on CBL's broadband services, mandated national uniform pricing of BTC's retail broadband services, mandated standalone broadband service availability and restrictions on bundling.¹³ In addition, URCA's 2018 WBA market review resulted in revisions to the pre-existing BRO. Taken together, these retail and wholesale obligations already constitute a relatively stringent and onerous regulatory framework. The PD did not take this existing framework into account; it did not carry out a comprehensive review of whether the totality of obligations was in fact achieving their stated objectives; and, further, it did not consider the incremental impact and burden that the proposed DIA Obligation would have, given the relatively onerous existing regulatory framework.

2.4 Flawed wholesale services market review

In addition to BTC's concern with the PD's failure to include a review of the RBA market, prior to considering the WBA market, BTC also considers the market assessment of wholesale DIA services in the PD to be seriously flawed and, as a result, the conclusion that the proposed DIA Obligation is necessary – is unjustified. Contrary to the arguments made in the PD, there are many reasons why the proposed DIA Obligation is unnecessary:

¹¹ See <http://www.globalnexus.com/about/>.

¹² See <https://www.bealiv.com/shop/broadband>.

¹³ ECS 14/2014, page 10.

- i) *There are many facilities-based services providers in the broadband access market:* The PD readily acknowledges that there are numerous service providers in the broadband access market, all of whom are capable of self-supplying RBA services, including DIA or DIA-equivalent services (i.e., the service providers include BTC, CBL, Aliv, Global Nexus, Bahamas WiMax, Coakster and WiCom).
- ii) *Market share not indicative of the need for further regulatory intervention:* The PD indicates that while CBL holds the largest share of the DIA market in Geographic Market 1, BTC also holds a significant market share in the same region. Consequently, there are two significant suppliers of DIA services that OLOs, who choose not to self-supply, can turn to for competitive wholesale service options. While BTC may be the sole wholesale DIA service provider in Geographic Market 2 (which represents a small share of the overall market), BTC's pricing in that market is constrained by an existing national price averaging obligation. Consequently, in BTC's view, the reported market shares are not supportive of the need for the new proposed DIA Obligation.
- iii) *DIA price level and price trends are not supportive of further regulatory intervention:* The PD suggests that DIA service price levels are high in The Bahamas. However, as discussed in Section 2.2, there is no substantiated evidence provided in the PD to support this claim. The PD also fails to consider competition between CBL and BTC as an effective means to regulate pricing. Further, the OLOs can readily self-supply DIA-equivalent services.
- iv) *Barriers to entry are low for FWA operators:* The PD overlooks the fact that all the noted broadband service competitors in The Bahamas are facilities-based operators. BTC has invested enormous sums over many years to build out its fixed network to provide broadband Internet access, among other services. Other operators, such as the OLOs, have deployed FWA networks, which are far less costly to build. As with any service provider, ongoing network investments are required to upgrade and expand service coverage. There is no reason provided in the PD as to why OLOs face significant barriers to entry or expansion in the broadband access market given their reliance on FWA technology. As well, Global Nexus is in the process of building a subsea network to connect The Bahamas to the US and Canada, so even in terms of international connectivity, entry barriers are not as high as asserted in the PD.
- v) *The OLOs possess countervailing buyer power ("CBP"):* Contrary to the claims in the PD, OLOs do in fact have CBP. They can play off wholesale service offers between CBL and BTC. As well, as facilities-based operators, they have the option self-supplying these same services using FWA technology.

Consequently, for all these reasons, BTC considers URCA's assessment of the DIA services market to be flawed and its resulting preliminary conclusion that a new WBA obligation is necessary to be unfounded and overly prescriptive in the circumstances.

BTC notes one further issue with the wholesale broadband services market analysis included in the PD. It relates to the division of the wholesale broadband market into two segments – i.e., WBA and wholesale broadband connectivity ("WBC"). The PD states that DIA falls into the WBA segment alone. As a result, no analysis of the WBC segment is included in the PD. At the same

time, the PD appears to define the proposed new wholesale DIA service as included access and connectivity components – i.e., it would include access to end customers and point-to-point connectivity (between OLO base stations and data centres). Consequently, the proposed DIA Obligation appears to include both WBA and WBC service elements, yet the market analysis in the PD fails to provide any assessment of the WBC market.

2.5 Lack of proportionality

If URCA maintains its proposal to introduce the DIA Obligation – contrary to BTC’s position – BTC also submits that it should not be extended to Geographic Market 2. There are two reasons for BTC’s position in this regard.

First, Geographic Market 2 accounts for little more than 10% of the population of The Bahamas and covers 14 dispersed islands.¹⁴ In the case of most of these islands, BTC services fewer than 400 customers and, in many instances, fewer than 100. The cost of implementing the proposed obligation over such a wide and thinly populated region of the country would be expensive, while the likelihood of any demand for the service in Geographic Market 2 would be very low and, if not, non-existent.

Second, it is also important to recognize that the costs of serving the islands in Geographic Market 2 are disproportionately high relative the country as whole. With the existing national price averaging obligation imposed on BTC, the prices of BTC’s DIA services in Geographic Market 2 are likely already at or even below cost. Therefore, in BTC’s view, it would be unnecessary and inefficient to introduce the proposed DIA Obligation in Geographic Market 2.

2.6 Other Issues

Another issue of concern to BTC is that the PD fails to consider the practicality or feasibility of establishing a standalone regulated wholesale DIA service subject to URCA-mandated pricing. OLOs typically approach BTC to purchase a range of services to meet their requirements, not just DIA service on a standalone basis. To respond to an OLO’s requirements, BTC would typically offer OLOs a customer-specific service arrangement involving a variety services and facilities, including DIA service as a sub-component as required and where available. It is important to note, notwithstanding that DIA services are available in many locations (especially in the case of Geographic Market 2), they are provided via custom built solutions which compromise a combination of terrestrial, subsea and wireless technologies. The application of these technologies are not standardized across our network footprint and are tailored based on the accessibility of infrastructure and topology. Additionally, customization of the requested services and facilities represent a necessary and significant part of the service arrangement to meet an OLO’s wholesale service requirements. As noted earlier, such agreements include capacity and term discounts along with additional negotiated discounts to the customer’s benefit. Over time, as a customer’s total spend increases and requirements expand, larger discounts are available. Stripping out DIA services from such arrangements for mandated regulated pricing

¹⁴ These Islands include: Acklins, Andros, Bimini, Cat Island, Crooked Island, Exuma, Great Harbour Cay, Inagua, Long Cay, Long Island, Mayaguana, Ragged Island, Rum Cay and San Salvador.

purposes, as contemplated in the PD, would in BTC's view be misguided and disruptive to long-established custom service provisioning practices for wholesale customers.

3 BTC Responses to Consultation Questions

3.1 Question 1

Question 1: Please provide comments on URCA's focus on wholesale DIA services in this preliminary determination. Please substantiate any responses with supporting evidence.

BTC's Response

As explained in Section 2, BTC has serious concerns with this consultation process and the substantive regulatory rationale used by URCA to justify the proposed DIA Obligation. URCA's private meetings and communications with the OLOs constitute an unfair, inappropriate and discriminatory process that denies BTC its right to natural justice. URCA appears to have accepted what BTC considers to be unsubstantiated claims and unfounded allegations by the OLOs regarding DIA services and prices. The PD did not include an updated and comprehensive market analysis (i.e., at the RBA and WBA levels) and then developing supporting evidence for the continuation of and/or introduction of any new *ex ante* regulatory measures for the RBA and/or WBA markets.

As a result, it appears to BTC that the PD is little more than an exercise undertaken by URCA to justify the OLOs' requests made in private meetings and communications with URCA. In BTC's view, this is not a fair, transparent, or non-discriminatory approach for establishing substantial new regulatory measures, including the proposed DIA Obligation, and should therefore be rejected.

3.2 Question 2

Question 2: Please provide comments on URCA's market definitions of WBA services as set out above. Please substantiate any responses with supporting evidence.

BTC's Response

As discussed in Section 2.3, BTC considers that the market assessment in the PD should have started at the RBA market level, which would require a reassessment of the RBA market definition. That critical step was skipped in the PD. The WBA market is considered in isolation. Consequently, BTC considers the market assessment included in the PD to be incomplete and, therefore, flawed.

3.3 Question 3

Question 3: Please provide comments on URCA's reconfirmation of the prevailing SMP designations in the WBA markets in The Bahamas. Please substantiate any responses with supporting evidence.

BTC's Response

BTC notes that there is effectively no SMP analysis for the WBA market in the PD. The PD simply states that in URCA's view little is changed since 2018 when it conducted the BRO review. Consequently, according to the PD, URCA proposes to maintain the its pre-existing SMP designation for the WBA market.

As discussed in Section 2.3, BTC considers that an SMP analysis for the RBA market should be conducted before considering the WBA market. As stated above the SMP analysis for the RBA market is now 6 years old and well out of date. In BTC's view, before any new WBA service measures are proposed, a comprehensive review of the RBA market in The Bahamas should be conducted, which should also include a comprehensive review of existing *ex ante* regulations in the RBA and WBA segments of the broadband services market.

3.4 Questions 4 & 5

Question 4: Please provide comments on URCA's preliminary views on the main competition problems or market failures that could arise from a licensee having SMP in respect of the provisioning of wholesale DIA services.

Question 5: Please provide comments on URCA's preliminary views on the need for *ex-ante* regulation of wholesale DIA services. Please substantiate any responses with supporting evidence.

BTC's Response

As discussed in Sections 2.2 and 2.4, BTC submits that there is no substantiated evidence of market failure or competition problems in the in the provisioning of wholesale DIA services. Therefore, in BTC's view, URCA's proposed DIA Obligation is unnecessary and unjustified.

3.5 Question 6

Question 6: Please provide comments on URCA's preliminary views on the proposed SMP remedies in the WBA service markets.

BTC's Response

For the reasons provided above, BTC considers that URCA's proposed DIA Obligation is unnecessary and unfounded.

4 Conclusion

In sum, BTC considers the PD to be flawed since its substance and conclusions are based on one-sided input received by URCA from the OLOs during the course of private meetings and communications. The claims and allegations made by the OLOs, as summarized in the PD, are unsubstantiated, untested and, therefore, should not be the basis for establishing new regulatory obligations for wholesale services in the country. To do so BTC believes would be contrary to the Comms Act, which requires any such proposed regulatory measures to be assessed in a fair,

transparent nor non-discriminatory manner, further, it is BTC's view that for URCA to act outside the statutory guidelines would be an abuse of its powers and *ultra vires*.

In addition, BTC considers that the market analysis included in the PD is incomplete and, therefore and not sufficiently credible for this exercise. BTC reiterates its view, that before any new *ex ante* regulatory measures are introduced in the broadband access market, a review of the RBA market is necessary, including a review of existing *ex ante* regulatory measures, since the previous RBA review is now 6 years old and out of date. Consequently, BTC considers the proposed DIA Obligation to be unjustified, unnecessary and a waste of resources.

The Bahamas Telecommunications Company Ltd.