



Review of draft wholesale Dedicated Internet Access reference offers from BTC and CBL under Sections 39 and 40 of the Communications Act, 2009

Consultation Document

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1. Introduction

In this document, the Utilities Regulation and Competition Authority ("URCA") invites interested parties to review and comment on The Bahamas Telecommunications Company Ltd. ("BTC") and Cable Bahamas Ltd. ("CBL") proposed terms and conditions for their regulated wholesale Dedicated Internet Access ("WDIA") services, as set out in their published draft WDIA reference offers.

This, amongst others, will then feed into URCA's own review on whether the terms proposed by BTC and CBL are reasonable and consistent with URCA's Access and Interconnection Guidelines and other relevant documents and whether the proposed WDIA charges are cost-reflective.

1.1 Background to this Consultation

URCA is the governing body of the regulatory regime for electronic communications in The Bahamas and was established under the Utilities Regulation and Competition Authority Act, 2009. Under the Communications Act, 2009 ("Comms Act" or the "Act"),¹ URCA is responsible for licensing undertakings that establish, operate or maintain an electronic communications network or provide a carriage service, including by use of any radio spectrum. Section 5 of the Comms Act also provides guidelines that URCA must follow for issuing regulatory and other measures (including Determinations). The Comms Act gives URCA wide-ranging powers to be exercised in full compliance with sound regulation principles.

URCA is required to introduce regulatory and other measures which are efficient and proportionate to its purpose and must present them in a manner that is transparent, fair and non-discriminatory. This means that where URCA believes that market forces alone are unlikely to achieve a policy objective within a reasonable timeframe, URCA may introduce regulatory requirements, having due regard to the costs and implications for affected parties.² However, as a general principle, market forces should be relied upon as much as possible and regulatory measures should be introduced by URCA only when necessary. In general, this means that more prescriptive regulatory measures are only imposed on operators who have a position in a market such that they can act to an appreciable extent independently of competitors, consumers and subscribers (i.e., a position of significant market power, "SMP").

In ECS 13/2020, URCA issued its Final Determination on specific SMP obligations relating to WDIA services.³ In particular, consistent with ECS 09/2018, URCA determined that both BTC and CBL hold SMP in the relevant market for Wholesale Broadband Access ("WBA") services, of which WDIA services form a part. CBL holds SMP in Geographic Market 1 (i.e., the islands where BTC and CBL both have network infrastructure enabling them to offer WBA services - New Providence, Abaco, Grand Bahama and Eleuthera), and BTC holds SMP in Geographic Market 2 (i.e., all remaining islands).

¹ Available at <https://www.urbahamas.bs/wp-content/uploads/2016/08/The-Communications-Act-2009-.pdf>

² See section 5(b)(i), 5(b)(ii) and 5(c) of the Comms Act.

³ ECS 13/2020, available at: <https://www.urbahamas.bs/wp-content/uploads/2020/09/Review-of-Wholesale-Broadband-Services.pdf>

Given their position of economic strength and in light of the potential challenges to competition which URCA's review had indicated may arise, URCA imposed a set of SMP obligations on both SMP Licensees. These included:

1. BTC and CBL shall continue to comply with the non-market specific SMP obligations specified in section 40(4) of the Comms Act, Conditions 34 and 35 of the Individual Operating Licences and specific SMP obligations on wholesale services, accounting separation and cost accounting as set out in the current and also any future Determinations, Decisions or Regulations issued by URCA and which will remain in place until such time as determined by URCA.
2. BTC and CBL shall continue to offer WDIA products. At a minimum, the product offered by each Licensee must cover the service scope and configurations offered by the respective SMP Licensees at the date ECS13/2020 was published (8 September 2020). However, both Licensees are also required to meet any reasonable request from other Licensees for alternative bandwidths or service specifications of their WDIA services.
3. BTC and CBL shall submit to URCA for approval their proposed price and non-price terms for their PoP-based WDIA services.⁴ The proposed service offerings should include, at the minimum, the following:
 - a. the pricing of the PoP-based WDIA services in the form of a table setting out any recurring and non-recurring wholesale charges for each bandwidth of PoP-based WDIA service currently offered; and
 - b. the non-price terms and conditions including, at the minimum:
 - i. a detailed description of the PoP-based WDIA service offerings;
 - ii. service ordering and delivery process and timings;
 - iii. quality of service standards (including key performance indicators and financial compensation owed to access seekers should the SMP Licensee fail or refuse to meet such standards);
 - iv. billing and payment requirements;
 - v. details of a dispute resolution scheme; and
 - vi. operations and maintenance procedures.

As part of their submission to URCA, BTC and CBL shall also: (i) demonstrate that each proposed tariff is reflective of the efficiently incurred costs (including a reasonable return on those costs) of providing the services in question; and (ii) provide a detailed justification for any differences in the proposed non-price terms and conditions of the WDIA service offerings to those of their other regulated wholesale services.

⁴ As set out in ECS 04/2020, the ways in which WDIA services are used in The Bahamas fall into two categories: (i) an "end-to-end" service (i.e., providing connectivity to the customer premises), which allows OLOs to offer retail DIA services to their customers; and (ii) a "PoP-based" service which provides connectivity to the OLO's point of presence, or "PoP" (such as a base station or data centre), which allows OLOs to use WDIA as an input for the delivery of retail Fixed Wireless Broadband Access services. In line with OLO's demand for WDIA services at the time of the publication of EC13/2020, the requirement for the SMP Licensees to provide pricing proposals for WDIA services applies only to PoP-based DIA services.

4. All Licensees will then be given the opportunity to comment on the proposed terms and conditions for the regulated WDIA services.
5. After assessing the proposals and taking into account feedback from Licensees, URCA will conclude whether it considers these terms reasonable and consistent with URCA's Access and Interconnection Guidelines and other relevant documents⁵ and whether the proposed charges are cost-reflective. If this is not the case, URCA will intervene to set the terms and conditions it considers reasonable (including cost-based charges).
6. BTC and CBL shall then publish the approved tariffs and non-price terms and conditions on which their PoP-based WDIA services are provided (i.e., publishing the URCA-approved offers prominently on their websites and additionally making such information available in other formats upon request).

BTC and CBL have now submitted to URCA their proposed price and non-price terms for their PoP-based WDIA services (i.e., Item 3 above). After completing high-level completeness checks of both reference offers, URCA has published the draft offers on its website.

In line with the review processes set out in ECS 13/2020, URCA now invites interested parties to review and comment on both price and non-price terms for WDIA services proposed by BTC and CBL (i.e., Item 4 above).

To facilitate this, URCA has set out specific consultation questions in Section 2. Further, in recognition of the confidential nature of the analysis underlying the proposed price terms for WDIA services, URCA has provided a high-level overview of BTC's and CBL's pricing analysis in the Annex.

For the avoidance of doubt, URCA has so far only undertaken high-level completeness checks of both reference offers. URCA has not yet commenced its review of the proposed price and non-price terms and conditions, as set out under item 5 above. URCA will embark on this review in parallel to this consultation process, taking into account stakeholder comments received during the Consultation.

1.2 How to respond to this Consultation

URCA invites responses to this consultation document from all interested parties. Initial responses should be submitted to URCA by 5:00 p.m. on 28 March 2021. The SMP Licensees and other interested parties will then have the opportunity to further comment on other respondents' submissions by 28 April 2021.

Written responses or comments on this Consultation should be sent to URCA's Chief Executive Officer, either:

- By hand, to URCA's office at Frederick House, Frederick Street, Nassau; or
- By mail to P.O. Box N-4860, Nassau, Bahamas; or
- By fax, to (242) 393-0153; or
- By email to info@urcabahamas.bs.

⁵ Such as, for example, the Comms Act, the current reference offers, and the relevant licence conditions.

Where a respondent believes that the terms and conditions in the draft reference offer from BTC and/or CBL are contrary to their regulatory obligations as set out in ECS 13/2020, the principles in the Access and Interconnection Regulation or outside the international mainstream, the respondent should state his or her position and clearly set out the reasoning for such position, together with evidential information to substantiate their position.

URCA proposes to and reserves the right to make all responses available to the public by posting responses online on its website. If a response is marked confidential, reasons should be given to facilitate URCA's evaluation of confidentiality requests. URCA may, in its sole discretion, publish or refrain from publishing any document or submission.

Persons may obtain copies of this document by downloading it from the URCA website at www.urbahamas.bs.

1.3 Structure of the Remainder of this Document

The remainder of the document is structured in the following way:

- Section 2 contains a high-level overview of the draft WDIA reference offers and specific consultation questions on them.
- Section 3 then provides an overview of the key next steps in the review process.

A high-level overview of BTC's and CBL's pricing analysis is then set out in the Annex.

2. Consultation questions

This section contains a high-level overview of BTC's, and CBL's draft reference offers which are available on URCA's website. This is undertaken separately for the proposed price and non-price terms of the WDIA services. Within each sub-section, URCA also sets out specific consultation questions on the proposed terms.

2.1 Proposed non-price terms

Below URCA provides a brief overview of the key non-price terms contained in the draft WDIA reference offers of BTC and CBL, respectively.

2.1.1 BTC's draft WDIA reference offer

BTC's draft WDIA reference offer is structured in the following way.

The main agreement sets out the key terms and conditions, including amongst others:

1. A high-level service description (see also Annex 1)
2. A list of key, relevant definitions
3. The key terms and conditions
4. The Service Level Agreement, SLA (see also Annex 5)
5. An overview of the billing and payment process (see also Annex 5)
6. The dispute resolution process (see also Annex 2)
7. An overview of the Operations and Maintenance (O&M) process (see also Annex 3)
8. The requirements for bank guarantees
9. A description of a Material Breach by the Access Seeker
10. A description of force majeure
11. Confidentiality and information protection clauses
12. Process for reviewing the agreement

This is complemented by further details in Annexes, including amongst others:

- Order forms (Annex 1)
- An ordering process schedule (Annex 1)
- A diagram of the WDIA service (Annex 1)
- Further details on the dispute resolution process (Annex 2)
- Further details on the Operations and Maintenance process (Annex 3)

- Pricing (Annex 4)
- Further details on the billing and payment process (Annex 5)
- Quality of Service (QoS) standards, including ordering and provisioning KPIs and SLA KPIs (Annex 6)

Consultation response request – BTC's proposed non-price terms

Q1. Please provide comments on the proposed non-price terms (e.g., SLAs, QoS, O&M, ordering, billing and payment process, etc.) in BTC's draft WDIA reference offer. Please provide supporting evidence as part of your responses, where possible.

2.1.2 CBL's draft WDIA reference offer

CBL's draft WDIA reference offer is structured in the following way. The main agreement covers an introduction and the main terms and conditions. This covers elements, such as:

1. Scope of agreement, commencement and duration
2. Prices (see also Annex D)
3. Ordering process and standards (see also Annex A, B and C)
4. Quality of service standards (see also Annex G)
5. The key terms and conditions
6. Management, network safety and protection procedures
7. An overview of the O&M process (see also Annex C)
8. Retail customer relationships
9. Dispute resolution (see also Annex E)
10. Breach, suspension and termination of agreement/services
11. A description of force majeure
12. Process for reviewing the agreement
13. Confidentiality and information protection clauses
14. The requirements for bank guarantees
15. I.P. rights
16. Notices
17. Limitation of liability
18. Severability

This is complemented by further details in Annexes, including amongst others:

- Service Schedule (Annex A)
- Further details on the ordering processes, incl. the ordering form (Annex B)
- Further details on the operations and maintenance process (Annex C)
- Billing (Annex D)
- Further details on the dispute resolution process (Annex E)
- Price List (Annex F)
- The Service Level Agreement, including KPIs (Annex G)
- A list of key, relevant definitions (Annex H)

Consultation response request – CBL's proposed non-price terms

Q2. Please provide comments on the proposed non-price terms (e.g., SLAs, QoS, O&M, ordering, billing and payment process, etc.) in CBL's draft WDIA reference offer. Please provide supporting evidence as part of your responses, where possible.

2.2 Proposed price terms

Below URCA provides a brief overview of the main price terms from the draft WDIA reference offers –of BTC and CBL, respectively.

2.2.1 BTC's draft WDIA reference offer

Annex 4 of BTC's draft WDIA reference offer sets out the proposed price terms for its regulated WDIA services. These are replicated in Table 1 below.

BTC proposes to charge both recurring and non-recurring charges:

- The monthly recurring charges (MRC) are based on the retail minus approach, i.e., representing a 21% discount on the monthly price of BTC's retail DIA product. Further details on the underlying analysis/approach to BTC's proposed WDIA price terms are set out in the Annex. The MRCs for higher speed WDIA services are subject to negotiations.
- The non-recurring charges (NRC) for all WDIA products include installation and equipment charges and are determined on a case-by-case basis.

Table 1: BTC's proposed WDIA prices

Dedicated speeds	Non-recurring charges (NRC)	Monthly Recurring Charges (MRC)
100 Mbps	Includes installation and equipment charges on a case by case basis	\$3,693
500 Mbps	Includes installation and equipment charges on a case by case basis	\$18,466
1 Gbps	Includes installation and equipment charges on a case by case basis	\$36,933
2 Gbps	Includes installation and equipment charges on a case by case basis	<i>Subject to negotiations</i>
10 Gbps	Includes installation and equipment charges on a case by case basis	<i>Subject to negotiations</i>

Source: BTC

Consultation response request – BTC's proposed price terms

Q3. Please provide comments on the proposed price terms (e.g., pricing structure and level) in BTC's draft WDIA reference offer. Please provide supporting evidence as part of your responses, where possible.

2.2.2 CBL's draft WDIA reference offer

Annex F of CBL's draft WDIA reference offer sets out the proposed price terms for its WDIA services. These are replicated in Table 1 below.

CBL proposes to charge both recurring and non-recurring charges:

- The monthly recurring charges (MRC) are based on CBL's costing analysis of WDIA services. Further details on the underlying analysis/approach to CBL's proposed WDIA price terms are set out in the Annex.
- The non-recurring charges (NRC) for all WDIA products include installation charges. They are determined on a case-by-case basis (based on a field survey).

Table 2: CBL's proposed WDIA prices

Dedicated speeds	Non-recurring charges (NRC)	Monthly Recurring Charges (MRC)
200 Mbps		\$4,856

350 Mbps	CBL charges a one-off installation fee based on connection cost estimates following a field survey. The installation fee typically covers, e.g. drop wiring and a demarcation switch and the field survey process. The installation fee is bespoke, and CBL will provide the OLO with an estimate of the fee under Clause B.10.	\$8,354
500 Mbps		\$11,853
750 Mbps		\$17,684
1 Gbps		\$23,514

Source: CBL

Consultation response request – CBL's proposed price terms

Q4. Please provide comments on the proposed price terms (e.g., pricing structure and level) in CBL's draft WDIA reference offer. Please provide supporting evidence as part of your responses, where possible.

3. Next steps in the overall review process

As set out in section 1, this consultation document seeks the views of interested parties on the proposed price, and non-price terms in BTC's and CBL's draft WDIA reference offers.

As part of their second-round responses to this public consultation process, BTC and CBL are requested to explain and justify their currently proposed price and non-price terms and conditions set out in their draft WDIA reference offers (or confirm alternative terms in a revised reference offer), taking into account the comments received from other Licensees.

The consultation responses will then feed into URCA's own review on the draft WDIA reference offers on whether the terms proposed by BTC and CBL are reasonable and consistent with URCA's Access and Interconnection Guidelines and other relevant documents⁶ and whether the proposed WDIA charges are cost-reflective.

If URCA deems this not to be the case, URCA will intervene to set the terms and conditions it considers reasonable (including cost-based charges).

Once URCA completes its review, both SMP Licensees will then have to prepare and publish the URCA-approved WDIA reference offers prominently on their websites.

⁶ Such as, for example, the Comms Act, the current reference offers, and the relevant licence conditions.

Annex: High-level overview of the pricing approaches adopted by CBL and BTC

As part of their submission on the draft reference offers for WDIA services, BTC and CBL have provided URCA with analyses and supporting evidence for the proposed price terms in their draft reference offers (as set out in Section 2.2 above).

Due to the confidential nature of the underlying information, these analyses cannot be shared with the industry as part of this consultation process. Given this, URCA sets out below a high-level overview of the approach adopted by both Licensees when determining their proposed price terms. This aims to support the industry's review and comments on BTC's and CBL's proposed price terms.

BTC's pricing analysis

In general, BTC proposes WDIA price terms based on a "retail-minus" discount factor approach based on BTC's account separation information, supported by benchmarking data. Whilst BTC recognised that its approach does not result in cost-based WDIA charges, as required in ECS 13/2020, in BTC's view, its approach represents the only currently existing tool to establish WDIA prices. However, BTC has indicated to URCA that it is willing to determine the cost-based WDIA charges in the future.

As part of its submission to URCA on the draft reference offer, BTC has provided the following evidence and analysis to support its proposed price terms for regulated WDIA services, set out in its draft reference offer:

1. A high-level analysis of BTC's network and non-network costs for broadband internet access services contained in its separated accounts over the last five years.⁷ Based on this information, BTC derived the ratio of non-network costs to total costs for these services over the five-year period, resulting in a non-network cost ratio of around 25% over that period. BTC then reduced the non-network cost ratio by 15% to reflect non-network costs associated with WDIA service (i.e., to account for service provisioning, customer support, billing, bad debt costs).⁸ This results in BTC's proposed retail-minus discount factor for WDIA services of 21%.
2. To further validate its proposed WDIA charges based on the retail-minus discount of 21%, BTC submitted the following benchmarking information:
 - a. Regional benchmarks of recurring and non-recurring charges for retail DIA charges of 1-100 Mbps speeds offered by Cable and Wireless in Cayman, Jamaica and the ECTEL member states. According to BTC, these regional benchmarks confirm that BTC's proposed WDIA charges would be below those observed across the region (when applying a similar retail minus discount to the observed retail DIA prices).

⁷ BTC's separated accounts do not contain separate information for DIA services, which instead form part of the wider broadband internet access services category.

⁸ In other words, 85% of non-network costs are considered non-applicable in the case of WDIA relative to retail DIA.

- b. International benchmarks on retail minus discounts for regulated wholesale services (i.e., broadband resale and wholesale line rental services) across 14 jurisdictions, already submitted to URCA as part of the 2018 Broadband Resale Offer (BRO) review. This presented an average retail minus value of 16.5% across the entire benchmarking.

CBL's pricing analysis

CBL has developed its monthly recurring charges for regulated WDIA services based on analyses of cost data in its latest separated accounts. This primarily aims to separate the relevant costs for regulated WDIA from those associated with Broadband Internet services within CBL's separated accounts.⁹

This involved the following key analysis steps:

- The starting point is the costs allocated to the Broadband Internet service category in CBL's audited Separated Accounts for fiscal year (F.Y.) 2019/20.
- Cost categories that are exclusively attributable to DIA services are entirely attributed to the DIA services.
- Cost categories that are not used by DIA or not recovered via a recurring charge are discarded from the analysis.
- All remaining cost categories (i.e., those shared between DIA and other Broadband Internet services) are individually allocated either based on the share of bandwidth used by DIA services, the share of revenue generated by DIA services, or a mark-up for common business costs such as information technology(I.T.), Finance and human resource(H.R.) functions.

Incremental costs for access fibres, customer premises equipment or demark switches will be recovered from a non-recurring installation charge and are thus, excluded from this analysis.

The above analysis results in a fixed "per DIA connection" unit cost estimate and a variable "per Mbps" unit cost estimate per month. These unit costs are then combined with the speed offered to determine the monthly recurring charge for each regulated WDIA product set out in Table 2 in Section 2.2.2 above.

⁹ CBL's separated accounts also do not contain separate information for DIA services, which instead form part of the wider Broadband Internet services category.