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

Response to Public Consultation and Final Determination

ECS 10/2021

Issued: 30 July 2021

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1. Introduction

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

URCA issued the Consultation Document on 28 February 2021. That document had the objectives of inviting comments from stakeholders on the proposed price[1] and non-price[2] terms set out in BTC's and CBL's draft WDIA reference offers, published alongside the Consultation Document on URCA's website.[3]

The first round of responses to the consultation were due on 28 March 2021. The second round of responses were originally due on 28 April 2021, with this deadline later extended to 17 May 2021.

Three parties submitted initial responses to the consultation, namely:

- Coakster Wireless Limited ("Coakster");
- Common Law Center ("CLC"); and
- Wicom Bahamas Limited ("Wicom").

Only BTC made an additional submission as part of the second round. This additional submission commented on aspects of the initial responses to the consultation, focussing on any stakeholder comments made on BTC's draft reference offer (particularly those submitted by CLC in relation to BTC's proposed non-price terms).

URCA thanks respondents for their written submissions and participation in the consultation process. In this document, URCA replies to the main comments submitted and sets out its final position on these issues. In so doing, URCA expressly states that failure on its part to respond in this document to any issue raised by respondents 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.

1.1 Background to the 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"),[4] 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. The Comms Act also provides, in section 5 of the Act, guidelines

1 The Consultation Document suggested respondents might wish to comment on both the structure and level of prices.

2 The Consultation Document provided a number of examples of the non-price terms which respondents might wish to comment upon. These were SLAs, QoS, O&M, ordering, and billing and payment processes.

3 Available at https://www.urcabahamas.bs/consultations/ecs-02-2021-review-of-draft-wholesale-dedicated-internet-access-reference-offers-from-btc-and-cbl-under-sections-39-and-40-of-the-communications-act-2009/

4 Available at https://www.urcabahamas.bs/wp-content/uploads/2016/08/The-Communications-Act-2009-.pdf

that URCA must follow for issuing regulatory and other measures (including Determinations). The Comms Act gives URCA wide-ranging powers which are to be exercised in full compliance with the principles of good regulation.

URCA is required to introduce regulatory and other measures which are efficient and proportionate to its purpose and must introduce 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.[5] 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.[6] 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).

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.

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

6 ECS 13/2020, available at https://www.urcabahamas.bs/wp-content/uploads/2020/09/Review-of-Wholesale-Broadband-Services.pdf

3. BTC and CBL shall submit to URCA for approval their proposed price and non-price terms for their Point-of-Presence ("PoP")-based WDIA services.[7] 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. 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 as to whether it considers these terms to be reasonable and consistent with URCA's Access and Interconnection Guidelines and other relevant documents,[8] 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 submitted to URCA their proposed price and non-price terms for their PoP-based WDIA services (i.e., Item 3 above) on 9 November 2020 and 29 January 2021, respectively. At URCA's request,

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7 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.

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

BTC submitted revised non-price terms on 18 December 2020. In line with the review processes set out in ECS 13/2020, URCA published the draft offers on its website, accompanied by a Consultation Document (ECS 02/2021) inviting 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). In recognition of the confidential nature of the analysis underlying the proposed price terms for WDIA services, URCA provided a high-level overview of BTC's and CBL's pricing analyses in an annex.

URCA had, at the time the Consultation Document was published, only undertaken high-level completeness checks of the draft reference offers. URCA has now reviewed these draft reference offers in parallel to this consultation process, taking into account the stakeholder comments received during the consultation (i.e., Item 5 above).

1.2 Procedures for Making a Determination

URCA has wide-ranging powers under the Comms Act, especially as it relates to SMP Licensees. In particular, URCA's power to impose obligations on SMP Licensees is derived from sections 40 and 5(b) of the Comms Act, which allows URCA to introduce regulatory measures where in its view, "… *market forces are unlikely to achieve the electronic communications policy objectives within a reasonable timeframe"*.

In doing so, URCA must adhere to all relevant principles of the Comms Act, in particular:

- the objectives of the electronic communications sector policy as specified under section 4 of the Comms Act; and
- guidelines for regulation and other measures as per section 5(a), (b), (c) and (d) of the said Act.

The procedures for making a determination, as contained in the Comms Act at section 99(1)(a) and (b), 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;
- any activity set out in the Comms Act; and
- where the Comms Act provides for URCA to "determine" or "to make determinations" as is the case under section 39 (1).

Pursuant to section 99(2) of the Comms Act, in making any determination, URCA must comply with section 11 of the said Act which requires URCA to afford persons with sufficient interest a reasonable opportunity to comment on regulatory or other measures that in URCA's opinion are of public significance. A person whose rights or interests may be materially adversely affected or prejudiced by the proposed regulatory or other measure shall have sufficient interest. Section 13 of the Comms Act establishes that a regulatory and other measure is of public significance if it can lead to, inter alia, a significant impact on persons carrying on activities in those areas where URCA has functions under the Comms Act.

URCA considers the regulatory and other measures consequential to this consultation are of public significance. As such the consultation provided an opportunity for members of the public, Licensees, and other interested parties to submit written comments to URCA.

1.3 Structure of the Remainder of this Document

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

- Section 2 sets out URCA's Final Determination;
- Section 3 summarises the comments received regarding BTC's and CBL's proposed non-price terms and URCA's final decision on the amendments that BTC and CBL are required to make to their reference offers before they can be approved by URCA;
- Section 4 summarises the comments received regarding the price terms proposed by BTC and CBL and sets out the procedure for finalising and approving cost-based prices for WDIA services; and
- Section 5 presents the conclusions and next steps.

2. URCA's Final Determination

WHEREAS,

(i) Section 39(1) of the Communications Act 2009 ("Comms Act") empowers URCA to determine that a Licensee has Significant Market Power (SMP) in a market where the Licensee *"… individually or with others, enjoys a position of economic strength which enables it to hinder the maintenance of effective competition on the relevant market by allowing it to behave to an appreciable extent independently of its competitors, consumers and subscribers."*;

(ii) Pursuant to section 39(2) of the Comms Act, URCA issued ECS 20/2011, the *"Methodology for Assessment of Significant Market Power (SMP) under Section 39(2) of the Communications Act, 2009"* (the "SMP Methodology"[9]), containing criteria relating to the definition of markets in the electronic communications sector, and against which market power may be assessed;

(iii) Sections 40 and 5(b) of the Comms Act, respectively, empower URCA to introduce regulatory measures where in its view, "… *market forces are unlikely to achieve the electronic communications policy objectives within a reasonable timeframe"* and, in these circumstances, "*URCA may impose specific conditions on Licensees determined to have SMP in the relevant market or relevant markets, including obligations relating to – (a) cost recovery and price controls, including obligations for cost orientation of prices and obligations concerning cost accounting systems*";

(iv) Sections 99(1)(a) and (b) of the Comms Act empowers URCA to make determinations in respect of any regulatory or other measures it proposes to introduce;

(v) Pursuant to sections 5(a), (b), (c) and (d) of the Comms Act, containing guidelines that URCA must follow for issuing regulatory and other measures;

(vi) Having regards to the SMP findings of BTC and CBL in the provisioning of WBA services and the obligations on BTC and CBL set out in ECS 13/2020; and

(vii) URCA, having considered all submissions made by Licensees as part of this review process.

NOW URCA HEREBY DETERMINES as follows:

Given the position of economic strength held by BTC and CBL in the respective relevant markets and the need for regulation of PoP-based wholesale DIA services via the publication of URCA-approved reference offers as determined during URCA's review, URCA has determined that the following obligations shall apply to both SMP Licensees:

[9] Also referred to as URCA's SMP Guidelines.

i. 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 ("IOL") 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;

ii. BTC and CBL shall continue to offer wholesale DIA products, the scope of which was described in ECS 13/2020.

iii. BTC and CBL shall continue to support URCA in its review of price terms for their PoP-based wholesale DIA services by way of responding to URCA's requests issued to date and cooperating with URCA's requests including, but not limited to, amendments and further information.

iv. BTC and CBL shall submit to URCA for approval their revised PoP-based wholesale DIA reference offers, reflecting:
   - URCA's required changes to non-price terms summarised in Section 3.4 below (i.e. Figure 1 and Figure 2 for BTC and CBL, respectively); and
   - Their price terms once submitted to, and approved by, URCA.

v. For the avoidance of doubt, BTC and CBL will be responsible for ensuring that the terms and conditions of the PoP-based wholesale DIA services are compatible with the terms and conditions of BTC's and CBL's other regulated wholesale services, the statutory framework of the Comms Act, relevant licence conditions, the Electronic Communications Sector Policy, and all relevant regulatory and other measures issued by URCA from time to time.

vi. After assessing the revised reference offers, URCA will then conclude as to whether all required changes to the terms have been made and whether URCA considers the terms in the revised offers to be reasonable and consistent with URCA's Access and Interconnection Guidelines and other relevant documents.[10] If this is not the case, URCA will intervene as necessary to set terms and conditions relating to price and/or non-price terms it considers reasonable, including cost-based charges.

vii. BTC and CBL shall then publish the approved price and non-price terms and conditions on which their PoP-based wholesale DIA services[11] are provided (i.e., by publishing

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

[11] As further discussed in the Preliminary Determination, URCA notes that the ways in which wholesale DIA 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

the URCA-approved reference offers prominently on their websites and additionally making such information available in other formats upon request).

OLO's point of presence, or "PoP" (such as a base station or data centre), which allows OLOs to use wholesale DIA as an input for the delivery of retail Fixed Wireless Broadband Access services. In line with OLO's current demand for wholesale DIA services, URCA's requirement for BTC and CBL to provide pricing proposals for wholesale DIA services applies only to PoP-based DIA services.

3. Assessment of non-price terms in the draft WDIA reference offers

In this Section, URCA summarises and responds to the comments received during the public consultation process in relation to the non-price terms in BTC's and CBL's draft WDIA reference offers (Consultation Questions 1 and 2). URCA then provides its views on other elements of the draft reference offers which were not raised in the consultation responses. Finally, URCA summarises all required amendments to the draft reference offers, encompassing points raised by respondents as well as its own views on issues not raised under consultation, as set out above.

3.1 First Round Comments

Only CLC provided comments in the first round regarding the non-price terms proposed by BTC or CBL.[12] Its comments are summarised and discussed below.

CLC's comments

CLC provided comments on both CBL's and BTC's non-price terms.

Regarding **BTC's terms**, CLC commented on a total of 11 areas:

1. **Service description – technology.** CLC stated that the non-price terms do not adequately describe the technological solution which will be used to provide the WDIA service.
2. **Service description – symmetry.** CLC stated that it was not clear whether the service offered is symmetrical or asymmetrical.
3. **Service scope.** CLC asked whether the static IP address and support for a domain name is included in the service.
4. **One-off charges.** CLC argued that BTC should be able to quantify charges other than the monthly rental charges, such as those associated with installation, or at least provide clarity as to the circumstances in which those additional fees would be charged. It considered that the non-price terms proposed by BTC afford excessive discretion and expressed concern that BTC might engage in anticompetitive behaviour in the absence of more specific conditions around those charges.
5. **Definition of terms.** CLC noted that although BTC refers to the "Access Seeker" in its terms, BTC's document does not explicitly define this term.
6. **Cancellation penalties.** CLC argued that Clauses 3(8)(a) and 3(8)(b) of the terms and conditions, which relate to penalties for early cancellation by the OLO, are punitive and should be removed.
7. **Service upgrade timeframes.** CLC explained that it considers the timeframes for BTC to provide service upgrades, set out in Clause 3(4), to be excessive and suggested that these should be closely aligned with those in force for residential installations.
8. **Bank guarantee.** CLC argued that Clause 7 of BTC's draft reference offer represents a competitive deterrent. It suggested that it disagreed with the discretion afforded to BTC around the monetary amount required as security and claimed that this provision would be costly to OLOs, since any

[12] No OLOs provided comments on the specific non-price terms proposed by BTC and CBL. The OLOs' submissions instead focused on the prices proposed and are therefore addressed in Section 4.

monetary security held by BTC does not earn interest and furthermore requires the OLO to incur bank charges and VAT. CLC suggested that it would be appropriate for there to be a cap on the amount of money which may be requested from OLOs as a guarantee (in particular suggesting the lower of $20,000 or 10% of the "value of the service"). Finally, CLC argued that this amount should depend on individual OLOs' creditworthiness as rated by the recently established Bahamian credit bureau. URCA assumes CLC's suggested $20,000 cap to the 10% guarantee to relate to annual WDIA charges.

9. **Breach clause.** CLC highlighted that BTC's rights under the Breach clause (Clause 8) are subject to URCA's prior approval.
10. **Confidentiality and information protection.** CLC claimed that Clauses 10.1 and 10.2 of BTC's draft reference offer are unnecessary due to the public nature of the reference offer and the absence of any differentiation in these terms between wholesale customers of BTC. CLC also expressed its view that the 60-month term for which the confidentiality and information protection clauses apply (Clause 10.6) is excessive and should be reduced to 12 months.
11. **Quality of Service (QoS) and Service Level Agreements (SLAs).** CLC expressed dissatisfaction with the SLAs set out in Annex 6, noting that in their current form they set out an escalation process for any issues experienced. CLC explained that the SLAs should outline a set of measurable baseline service standards, accompanied by the terms on which the OLO must be compensated in the event those services are not met. CLC cited Annex G of CBL's draft reference offer as being indicative of the information it considers BTC's offer should also contain.

Regarding **CBL's terms**, CLC commented on two areas:

1. **Confidentiality and information protection.** CLC made the exact same point regarding Clauses 18.1 and 18.2 of CBL's terms regarding confidentiality and information protection as for Clauses 10.1 and 10.2 of BTC's terms, explained above.
2. **Bank guarantee.** CLC made the exact same point regarding the requirement for a bank guarantee (Clause 19 of CBL's terms) as for BTC (Clause 7 of BTC's terms), explained above.

URCA's responses to comments received

URCA notes CLC's various concerns set out in its first round response. However, URCA recognises that BTC, in its second round response, has addressed each of CLC's comments on the non-price terms of BTC's draft reference offer in turn. URCA therefore provides a consolidated response to CLC and BTC's combined views on each of the issues raised by CLC in its first round submission, alongside BTC's second round response points below.

As highlighted above, CLC's comments on CBL's draft reference offer overlap with its comments on BTC's draft reference offer. In particular, issues 8 and 10 raised by CLC apply to both BTC and CBL. URCA's conclusions regarding CLC's comments on both BTC's and CBL's reference offers are therefore all covered in Section 3.2 below.

3.2 Second Round Comments

Only BTC provided a second round response. Its comments in relation to non-price terms are summarised and discussed below, followed by URCA's response on each issue.

<u>BTC's second round comments and URCA's responses</u>

As described in Section 3.1 above, BTC has responded to each of CLC's points. CLC's points are repeated below, with BTC's comments and URCA's responses set out underneath each one. For each comment, URCA's responses focus on the essence of the request and BTC's proposal on how to address the issue raised. Upon submission of the revised WDIA reference offers, URCA will then review the relevant wording in the revised reference offer to confirm whether it is satisfied that this addresses the concerns at hand.

1. **Service description – technology.**
    a. **CLC** stated that the non-price terms do not adequately describe the technological solution which will be used to provide the WDIA service.
    b. **BTC** explained that although WDIA circuits are typically "*fiber-based using Ethernet protocols",* the circuit may include a wireless link depending on the location of the customer's PoP. BTC pledged to resolve this omission by amending the service description section in its revised WDIA reference offer.
    c. **URCA** notes and welcomes BTC's suggested amendment to the service descriptions within its reference offer to resolve the concerns raised by CLC. Once BTC has submitted its revised WDIA reference offer, URCA will review the revised section to ensure it adequately addresses the point in hand. More specifically, URCA requires BTC's and CBL's revised reference offers[13] to specify the underlying technologies used to deliver the WDIA service, including explanations of the circumstances which might determine the use of a particular technology (for example, how the location of a customer's PoP would determine the use of a wireless link).
2. **Service description – symmetry.**
    a. **CLC** stated that it was not clear whether the service offered is symmetrical or asymmetrical.
    b. **BTC** clarified that the WDIA service would be symmetrical and noted that it would amend Clause 1(3) and Annex 4 of its WDIA reference offer accordingly.
    c. **URCA** notes and welcomes BTC's suggested amendment to its service description within its reference offer to resolve the concerns raised by CLC. Once BTC has submitted its revised WDIA reference offer, URCA will review the revised section to ensure it adequately

[13] URCA acknowledges that many of the points raised by CLC relate only to BTC's reference offer. However, for the avoidance of doubt, this document sets out URCA's expectations and requirements in respect to both licensees' revised reference offers, where necessary to ensure consistency and/or clarity.

addresses the point in hand. More specifically, URCA requires BTC's and CBL's revised reference offers to clearly explain the symmetrical nature of the WDIA service.

3. **Service scope.**

    a. **CLC** asked whether the static IP address and support for a domain name is included in the regulated WDIA service.

    b. **BTC** explained that its WDIA service includes static IP addresses but not support for domain names, and said it would provide a clarification on this issue in its revised WDIA reference offer.

    c. **URCA** notes and welcomes BTC's suggested amendment to its description of the service scope in its reference offer to resolve the concerns raised by CLC. Once BTC has submitted its revised WDIA reference offer, URCA will review the revised section to ensure it adequately addresses the point in hand. More generally, URCA requires BTC's and CBL's revised reference offers to clearly explain what is included in, and excluded from, the WDIA service.

4. **One-off charges.**[14]

    a. **CLC** argued that BTC should be able to quantify charges other than the monthly rental charges, such as those associated with installation, or at least provide clarity as to the circumstances in which those additional fees would be charged. It considered that the non-price terms proposed by BTC afford excessive discretion and expressed concern that BTC might engage in anticompetitive behaviour in the absence of more specific conditions around those charges.

    b. **BTC** responded to CLC's point by explaining that the customised nature of WDIA services means one-off (or 'non-recurring') charges for equipment or installation differ across customers according to the location of their PoP, as well as the availability of capacity and infrastructure at the customer's PoP, and that BTC therefore proposes to determine such charges on a case-by-case basis.

    c. **URCA** notes and agrees with CLC's request for BTC to provide more information regarding one-off charges, and BTC's response to CLC's proposal. URCA recognises the importance of balancing the need for such charges to be transparent and verifiable (i.e. by being clearly set out in the reference offer) with the reality that the time and resources required to install a WDIA connection or equipment may vary between WDIA connections for the reasons stated by BTC (i.e. which needs to be taken into account in order for the charges to be reflective of the cost incurred by the access provider, as set out in ECS 13/2020). URCA considers that the most appropriate way to achieve this objective is for BTC and CBL to provide within their reference offers, at a minimum, information on the applicable unit

[14] URCA does not consider this to be a non-price term per se, but addresses this point along with CLC's non-price terms in line with the structure of CLC's consultation response. URCA understands that CLC has categorised it as a non-price term since it does not relate to the proposed prices published by BTC which, in BTC's draft reference offer, only cover recurring rental charges.

prices for labour and individual items of relevant network equipment required for installations or other related one-off events which incur charges. This approach is, for example, in line with the approach used to set one-off charges in Annex G of BTC's RAIO, for example in relation to the charges for Joining Circuits (table G.12).[15]

URCA further requires BTC and CBL to provide a "standard charge" for routine one-off activities such as installations and service upgrades (supported by a breakdown of the relevant labour and equipment components described above), which shall apply in situations where the required network elements are already in place and the OLO's PoP is easily accessible. Quotations for bespoke activities which require additional labour and equipment can then be provided based on the unit rates on a case-by-case basis.

Once BTC and CBL have submitted their revised WDIA reference offers, URCA will review the proposed unit charges which BTC and CBL propose to apply in the case of one-off charges to ensure these are reasonable. URCA emphasises that these must be cost-based and encompass all relevant unit labour and equipment rates which may be relevant for the determination of case-by-case one-off charges.

5. **Definition of terms.**

    a. **CLC** noted that although BTC refers to the "Access Seeker" in its proposed terms, BTC's draft WDIA reference offer does not explicitly define this term.

    b. **BTC** agreed to provide a definition of this term, in line with the definition used in reference offers for its other wholesale services, in its revised WDIA reference offer.

    c. **URCA** notes and welcomes BTC's suggested additional definition within its reference offer to resolve the concerns raised by CLC. Once BTC has submitted its revised WDIA reference offer, URCA will review the revised set of definitions to ensure it adequately addresses the point in hand. More generally, URCA requires BTC's and CBL's revised reference offers to clearly define all terms used.

6. **Cancellation penalties.**

    a. **CLC** argued that Terms and Conditions Clauses 3(8)(a) and 3(8)(b) of the draft WDIA reference offer, which relate to penalties for early cancellation by the OLO, are punitive and should be removed.

    b. **BTC** disagreed with CLC's suggestion that the aforementioned terms are punitive and explained that it considers its proposed cancellation penalties to be fair and reasonable, citing their link to the "*value of the service*". BTC further noted that CLC did not provide any evidence to support its position and argued that the terms referenced by CLC should remain in BTC's WDIA reference offer.

[15] Available at https://files.btcbahamas.com/2021/02/21/btc-raio-reduction-in-interconnetion-rates-jan-2021-corrected..242.pdf

c. **URCA** considers Terms and Conditions Clauses 3(8)(a) and 3(8)(b), which represent further penalties tied to the remaining value of the agreement, to indeed be punitive, since Terms and Conditions Clauses 3(8)(c) and 3(8)(d) are already sufficient to allow BTC to require the OLO to repay discounts/concessions relating to unmet volume commitments and pay all amounts due and owing in the event of termination before the end of the initial contract term. URCA notes that neither BTC's BRO[16] nor its published RAIO contain such clauses and so it is unclear why BTC has introduced these terms into its draft WDIA reference offer. On this basis, URCA determines that Terms and Conditions Clauses 3(8)(a) and 3(8)(b) should be removed in BTC's revised WDIA reference offer.

7. **Service upgrade timeframes.**

a. **CLC** explained that it considers the timeframes for BTC to provide service upgrades, set out in Service Level Agreement Clause 3(4), to be excessive and suggested that these should be closely aligned with those in force for residential installations.

b. **BTC** disagreed with CLC's suggestion that the service upgrade timeframes proposed by BTC are too long and noted that again no evidence was provided to support CLC's claim. BTC explained that the time required to upgrade a WDIA service depends on factors specific to WDIA services and that there is therefore no rationale for using the timeframes for residential fixed access installations as a reference point. BTC concluded by arguing that CLC's suggestion should not be reflected in the revised WDIA reference offer.

c. **URCA** notes CLC's concerns regarding BTC's proposed service upgrade timeframes and BTC's response to those concerns. URCA acknowledges that CLC has not provided specific evidence to contradict BTC's proposals, or put forward an alternative suggestion, but nevertheless understands why CLC considers BTC's proposed timeframes to be excessive. URCA recognises that the technical requirements associated with WDIA connections may differ from other wholesale services described in the BRO and RAIO, and therefore acknowledges the limitations in transposing the appropriate service upgrade timeframes from BTC's other wholesale agreements to the WDIA reference offer. However, URCA would suggest that the timeframe proposed by BTC is particularly long given it understands BTC is likely to have much, if not all, of the required infrastructure already in place as a result of having installed a WDIA connection at the OLO's PoP.

Given URCA's understanding that the nature of a WDIA service upgrade is likely to be less onerous on the access provider than the original installation of a WDIA connection, URCA requires BTC to amend its service upgrade timeframes. In particular, URCA requires BTC to reduce its target service upgrade timeframes such that they are no longer than the installation timeframes contained in CBL's revised WDIA reference offer following its amendments to reflect URCA's comments regarding installation timeframes in Section 3.2. Furthermore, BTC's revised timeframes must also be set with reference to their commercial offers, such as retail DIA services and retail leased circuits/dedicated capacity

[16] Available at https://files.btcbahamas.com/2019/02/25/btc-broadband-resale-offer-2019j.pdf

services. In particular, the terms of BTC's revised WDIA reference offer must include timeframes which are demonstrably no longer than those in its commercial offers for comparable activities (for example, installations) and BTC must provide URCA with evidence of this upon submission of its revised reference offer.

8. **Bank guarantee.**

   a. **CLC** argued that Clause 7 represents a competitive deterrent. It suggested that it disagreed with the discretion afforded to BTC around the monetary amount required as security and claimed that this provision would be costly to OLOs, since any monetary security held by BTC does not earn interest and furthermore requires the OLO to incur bank charges and VAT. CLC suggested that it would be appropriate for there to be a cap on the amount of money which may be requested from OLOs as a guarantee (in particular suggesting the lower of $20,000 or 10% of the "value of the service"). Finally, CLC argued that this amount should depend on individual OLOs' creditworthiness as rated by the recently established Bahamian credit bureau. URCA assumes CLC's suggested 10% guarantee to relate to annual WDIA charges.

   b. **BTC** disagreed with CLC's proposal for a cap on the bank guarantee that BTC can require from an OLO and argued that the provision within its reference offer is consistent with existing reference offers as well as being "*standard commercial practice*" in The Bahamas. It pointed to the wording in its reference offer where it was explained that the level of financial security required in relation to any agreement would be dependent on the overall level of risk being borne by BTC. BTC highlighted that CLC had not provided any supporting evidence or precedent for the 10% cap it proposed and called for CLC's proposal to be rejected.

   c. **URCA** notes CLC's proposals regarding a cap on the required bank guarantee and BTC's response. In particular, URCA recognises CLC's concerns that requiring OLOs to commit capital and forgo interest as well as incur bank charges may result in a barrier to providing retail broadband services using the WDIA service as a wholesale input. However, URCA also acknowledges the points made by BTC. The most important, in URCA's view, is that the requirement for OLOs to provide a financial security equivalent to three months' revenues is consistent with the financial security requirement set out in a number of other wholesale service agreements and reference offers, including BTC's BRO, BTC's RAIO, and CBL's WDIA draft reference offer. URCA further understands that a bank guarantee entails the OLO's bank providing a written commitment to act as a guarantor on behalf of the OLO, in contrast to a bank deposit whereby the OLO would need to transfer or ring-fence the relevant amount.

      Since CLC has not provided any information on the estimated bank charges involved in this arrangement, URCA has no evidence of the potential cost incurred by OLOs in providing such a bank guarantee. URCA also notes BTC's assertion that the amounts stated in its draft WDIA reference offer represent a maximum requirement and that the risk posed by individual OLOs will be considered on a case-by-case basis according to the nature of the service and the OLO's unique situation. URCA considers that the bank guarantee terms in the draft reference offer are a reasonable and common way for BTC to mitigate potential default or bad debt risks posed by OLOs and does not consider that BTC's draft reference offer requires any amendments in response to CLC's concerns. URCA notes that this conclusion also applies to CLC's comment on the equivalent clause in CBL's draft reference offer.

9. **Breach clause.**

   a. **CLC** highlighted that BTC's rights under the Breach clause (Clause 8) are subject to URCA's prior approval.

   b. **BTC** agreed with CLC's suggestion in this regard and pledged to amend its WDIA reference offer accordingly.

   c. **URCA** notes and welcomes BTC's suggested amendment to Clause 8 of its reference offer to resolve the concerns raised by CLC. Once BTC has submitted its revised WDIA reference offer, URCA will review the revised clause to ensure it adequately addresses the point in hand.

10. **Confidentiality and information protection.**

    a. **CLC** claimed that Clauses 10.1 and 10.2 are unnecessary due to the public nature of the reference offer and the absence of any differentiation in these terms between wholesale customers of BTC. CLC also expressed its view that the 60-month term for which the confidentiality and information protection clauses apply (Clause 10.6) is excessive and should be reduced to 12 months.

    b. **BTC** agreed that Clauses 10.1 and 10.2 are unnecessary and noted that it would amend its WDIA reference offer accordingly. However, BTC considered the 60-month term in Clause 10.6 referenced by CLC to be reasonable, noting that CLC did not provide any explanation as to why the term should be reduced. BTC therefore argued that this clause should remain unchanged in its revised WDIA reference offer.

    c. **URCA** notes and welcomes BTC's suggested amendment to Clauses 10.1 and 10.2 of its reference offer to resolve the first point raised by CLC. Once BTC has submitted its revised WDIA reference offer, URCA will review the revised clauses to ensure it adequately addresses the point in hand. URCA notes that this conclusion also applies to CLC's comment on the equivalent clauses in CBL's draft reference offer and therefore requires CBL to remove Clauses 18.1 and 18.2 of its reference offer. Regarding CLC's suggestion for a 12-month term relation to confidentiality and information protection, URCA notes that the 60-month term proposed by BTC in its draft reference offer is consistent with the terms of BTC's BRO and therefore considers this to be reasonable in the absence of any supporting evidence from CLC to the contrary.

11. **Quality of Service (QoS) and Service Level Agreements (SLAs).**

a. **CLC** expressed dissatisfaction with the SLAs set out in Annex 6, noting that in their current form they set out an escalation process for any issues experienced rather than what CLC considers to be SLAs. CLC explained that the SLAs should outline a set of measurable baseline service standards, accompanied by the terms on which the OLO must be compensated in the event those standards are not met. CLC cited Annex G of CBL's draft reference offer as being indicative of the information it considers BTC's offer should also contain.

b. **BTC** responded by saying that it would review the SLA provisions in CBL's draft WDIA reference offer in order to determine whether any changes would be required to BTC's own reference offer.

c. **URCA** agrees with CLC that the SLAs set out in Annex 6 of BTC's draft reference offer are insufficient and supports BTC's agreement with CLC to review CBL's draft reference offer to inform a revised set of SLAs to be included in its WDIA reference offer. URCA requires BTC to include in its SLAs the minimum set of measures covered, but in so doing does not implicitly or explicitly accept the specific terms of the SLAs (in terms of specific targets and remedies, for example) proposed by CBL.

3.3 URCA's view on other non-price issues not raised by respondents

In addition to URCA's conclusions in relation to issues raised in the licensees' consultation responses, URCA has, as part of its own review, identified a number of issues with both draft WDIA reference offers. These issues are set out below.

<u>Comments for both BTC and CBL</u>

1. **Days vs. working days.** URCA noted some inconsistencies in the terms used to describe timeframes in the draft reference offers (including days, business days, and working days). Both BTC and CBL should express timeframes in working days and clearly state where the number of days instead refers to an alternative definition of days (e.g. including weekends and/or public holidays). In line with BTC's BRO and RAIO, URCA understands all the references to "days" in the draft reference offers to mean working days and requests that both licensees provide clear explanations in their revised reference offers in any instances where this is not the case.

2. **General comment.** URCA noted that both draft reference offers were subject to various inaccuracies and missing information. For example:
   a. CBL's draft reference offer contains broken cross-references (*"Error! Reference source not found"*), whereas
   b. BTC's draft offer contains incomplete sentences (point 3 under "Service level Agreement"), incorrect numbering (two sections of the agreement are numbered as Section 3), and apparent errors with the price terms included in the document.

URCA urges both operators to undertake a careful proofread of their revised WDIA reference offers before submitting these to URCA, both for ease of review and to ensure no key information is incorrect.

Comments for BTC

1. **Clarity of service description.** Clause 1 of BTC's draft WDIA reference offer provides an inaccurate description of the PoP-based WDIA service. In particular, it describes the service as being for resale to downstream retail customers, where it is actually a PoP-based WDIA service and is not designed to be resold. BTC describes the service as including a domestic private leased circuit (i.e. a leased line) but does not state whether an international circuit is also included. BTC also refers to a potential equipment charge but does not describe the relevant equipment. URCA requires BTC to rewrite its service description to ensure it is fully reflective of the PoP-based WDIA service described in ECS 13/2020 and consistent with its (revised) service diagram. URCA suggests that BTC compares its service description to, for example, the description provided by CBL in its own draft WDIA reference offer or to other WDIA service descriptions available to BTC.

2. **Service diagram.** The service diagram in Annex 1 is both unclear and inaccurate.
    a. First, it refers to a "resale" service which, as explained above, is incorrect.
    b. From a review of the diagram alone, it is also unclear to URCA which network elements are included in the WDIA service. For example, it is not clear from the diagram which leased circuits are included and it does not clearly define the demarcation point. The diagram suggests that the WDIA service does not reach all the way to the access seeker (OLO)'s POI (PoP), whereas ECS 13/2020 clearly explains that the service is a PoP-based one which reaches as far as individual OLOs' PoPs.

    URCA requires BTC to include a new service diagram within its revised reference offer to correct for these omissions and inaccuracies, including clarification notes if BTC considers this would be helpful for URCA and BTC's prospective wholesale customers. URCA notes that CBL's service diagram, included in Annex A of its draft WDIA reference offer, is much more comprehensive and may form as a reference point for BTC's revised service diagram.

3. **Minimum term for the WDIA agreement.** In its service description (and elsewhere within its draft WDIA reference offer), BTC refers to a minimum initial term for the agreement of three years. This contrasts with the one year minimum term in CBL's draft WDIA reference offer, as well as BTC's own minimum term of one year in its own BRO and RAIO agreements. URCA also understands that BTC offers terms of below three years for either its retail or existing wholesale DIA service offerings prior to the publication of ECS 13/2020 since it refers in its response to its retail-minus rates reflecting a discount for a three-year contract period. URCA considers that if BTC is able to offer terms shorter than three years at either the wholesale or retail level then it should also offer such terms to customers of its regulated PoP-based WDIA service. More importantly, URCA considers BTC's proposed minimum initial term to be excessive since any set-up costs associated with the WDIA service, or other one-off costs incurred by BTC, should be

reflected in and thus recovered from the installation charge. As such, there should be no costs which BTC relies on recovering via recurring charges and therefore would fail to recover from the OLO in the event of termination. As such, URCA requires BTC to reduce its minimum initial term to a period of one year.

4. **Installation timeframes.** URCA understands from the "DIA ordering process" diagram provided in Annex 1 of BTC's draft reference offer that it has a target installation timeframe of at least 21 days and up to 35 days[17] (it is not clear in BTC's draft reference offer whether these are working days or calendar days). URCA recognises that the technical requirements of installing a WDIA connection differ from other wholesale services described in BTC's BRO and RAIO, and therefore acknowledges the limitations in transposing the appropriate installation timeframes from BTC's other wholesale agreements to the WDIA reference offer. However, URCA is of the view that the timeframe proposed by BTC is particularly long given it understands BTC is likely to have much of the required infrastructure already in place. As such, URCA requires BTC to provide supporting evidence for its proposed timeframes which must be no longer than 21 working days. Alternatively, BTC must revise its installation timeframes in all locations to 15 working days.

5. **Customer premise equipment (CPE).** In Clause 5 (and elsewhere within its draft reference offer), BTC refers to CPEs. URCA notes that since the WDIA service in question is PoP-based and does not reach as far as the end-customer's premises, CPE is irrelevant unless BTC is referring to equipment installed at the wholesale customer (i.e., OLO)'s PoP. URCA requires BTC to clarify whether BTC is indeed referring to equipment at the OLO's PoP, and specify the nature of this equipment, or remove all references to CPE.

6. **Operations and maintenance.** In Clause 6, BTC refers to its approach to addressing "*faults which occur in its core network".* However, URCA considers that the scope of BTC's commitment to addressing faults should be broader than its core network alone as the WDIA services spans across both its core and access network. URCA therefore requires BTC to revise its wording to refer to "*faults which occur* in its network".

7. **Breach.** In Clause 8, BTC proposes that it may suspend the provision of the WDIA service in the event that the OLO has failed to pay an undisputed invoice for a period of 30 calendar days following the invoice's due date. URCA recognises that BTC must put measures in place to ensure invoices are paid in a timely manner, but notes that the time period allowed before suspension of the service is significantly shorter than allowed in the conditions of BTC's BRO (90 working days) or BTC's RAIO (90 calendar days). URCA requires BTC to change the relevant timeframe to 90 calendar days to bring this clause in line with its other wholesale agreements.

[17] Comprising 2 days to acknowledge receipt of the OLO's request; 5 days for BTC to assess the OLO's request; 14 days to prepare a quotation and share this with the access seeker; and up to 14 days for service delivery.

8. **Quality of service.** Annex 6 sets out BTC's quality of service parameters for WDIA services. For completeness, URCA requires that this annex refers to the fact that its WDIA reference offer is subject to URCA's Quality of Service Regulations (ECS 42/2016, issued 22 December 2016) or any future Quality of Service Regulation issued by URCA in future.

<u>**Comments for CBL**</u>

1. **Installation timeframes.** In Clause B.11 of Annex B, CBL proposes a target timeframe of 21 working days for the installation of a new WDIA service. URCA recognises that the technical requirements of installing a WDIA connection may differ from other regulated wholesale services (for example, those contained in BTC's BRO and RAIO), and therefore acknowledges the limitations in potentially transposing the appropriate installation timeframes from other, URCA-approved wholesale agreements to the WDIA reference offer. However, URCA considers that 21 working days is particularly long given it understands CBL is likely to have much of the required infrastructure already in place. URCA also notes that this contradicts the 20 working days target described in Clause A.2.5 of Annex A in CBL's draft WDIA reference offer. As such, URCA requires CBL to provide supporting evidence for its proposed timeframes. Alternatively CBL must revise its installation timeframes in all locations to 15 working days. CBL must also ensure internal consistency throughout its revised WDIA reference offer, regarding timeframes and any other terms.

2. **Timeframe for change in capacity.** In Clause B.13 of Annex B, CBL notes that an OLO may request an increase or decrease in its WDIA service capacity (bandwidth) at any time. However, it does not set out any target timeframe for addressing such a request. URCA requires CBL to include this information in its revised WDIA reference offer and also refers CBL to the point above where URCA questions the length of the required timeframe for WDIA installation. In particular, URCA would not expect a change in capacity to take any longer than the installation of the WDIA service itself and requires CBL to provide justification for its proposed timeframe for a change in capacity.

3. **SLAs for installation and service upgrade timeframes.** As noted above, CBL's draft reference offer proposes a target timeframe for the installation of a WDIA service. However, it does not appear that CBL's SLAs provide any commitment to these targets or proposed remedies (for example, compensation) in the case that the targets cannot be met. URCA requires that CBL includes such clauses in its revised WDIA reference offer. As stated under the previous item above, URCA notes the absence of any target timeframe for service upgrades in CBL's reference offer. URCA therefore also requires that CBL includes similar SLA clauses in relation to service upgrades, in its revised WDIA reference offer.

4. **Confidentiality and information protection.** CBL does not specify for how long Clause 18, relating to confidentiality and information protection, applies. URCA requires that CBL includes a sub-clause within Clause 18 to explain that it applies from the date the agreement is signed until 12

months after the expiry or termination of the agreement. URCA notes that this is consistent with its requirement for BTC, as set out above.

3.4 Summary of amendments required to non-price terms

Given URCA's conclusions on the points raised under consultation and its views on other issues identified in the draft WDIA reference offers, set out in Sections 3.2 and 3.3 respectively, **Figure 1** and **Figure 2** below summarise the amendments URCA requires BTC and CBL, respectively, to make to the non-price terms in their revised WDIA reference offers. URCA notes that both BTC and CBL should refer to the contextual information included in Sections 3.2 and 3.3 above and not rely solely on the summary information in the figures below, and reiterates that, once submitted, URCA will review BTC's and CBL's revised WDIA reference offers to ensure that their amendments adequately addresses URCA's requirements.

URCA notes that the lists of required amendments set out below are not exhaustive. In particular, URCA may communicate other required changes in its bilateral communications with both BTC and CBL. This allows, for example, to reflect changes to the non-price terms required as a result of URCA's review of the price terms which are being consulted on separately.

Figure 1 Summary of required amendments to non-price terms in BTC's draft WDIA reference offer

Area	Required amendment
Service description *Clause 1*	1. BTC to clearly specify the underlying technologies used to deliver the WDIA service, including explanations of the circumstances which might determine the use of a particular technology. 2. BTC to amend its service description within its reference offer to reflect the symmetrical nature of the WDIA service. 3. BTC to rewrite its service description to ensure it is fully reflective of the PoP-based WDIA service described in ECS 13/2020 and consistent with its (revised) service diagram. 4. BTC to amend its service description to make it clear what is included in the WDIA service (for example, noting that it includes static IP addresses but not support for domain names). 5. BTC to reduce its minimum initial term to a period of one year.
One-off charges *General comment*	BTC to provide within its reference offers, at a minimum, information on the applicable unit prices for different types of labour and individual items of relevant network equipment required for installations or other related one-off events which incur charges. BTC to also provide a standard charge for routine one-off activities such as installations and service upgrades (supported by a breakdown of the relevant labour and equipment components), which shall apply in situations where the required network elements are already in place and the OLO's PoP is easily accessible.

Definition of terms *Clause 2*	BTC to clearly define all terms used.
Cancellation penalties *Clauses 3(8)(a), 3(8)(b)*	BTC to remove Clauses 3(8)(a) and 3(8)(b).
Service upgrade timeframes *Clause 3*	BTC to reduce its target service upgrade timeframes such that they are no longer than the installation timeframes contained in CBL's revised reference offer following its amendments to reflect URCA's comments regarding installation timeframes in Section 3.2. BTC's revised reference offer must include timeframes which are demonstrably no longer than those in its commercial offers for comparable activities (for example, installations) and BTC must provide URCA with evidence of this upon submission of its revised reference offer.[18]
Breach clause *Clause 8*	BTC to note that its rights under the Breach clause are subject to URCA's prior approval. BTC to revise Clause 8 to allow OLOs a period of 90 calendar days following the due date of an undisputed invoice payment before BTC may suspend provision of the service.
Confidentiality and information protection *Clauses 10.1, 10.2*	BTC to remove Clauses 10.1 and 10.2.
QoS and SLAs *Annex 6*	BTC to review CBL's draft reference offer to inform a revised set of SLAs to be included in its revised reference offer.
Days vs. working days *General*	BTC to express timeframes in working days and clearly state where the number of days instead refers to an alternative definition of days (e.g. including weekends and/or public holidays).
General comment *General*	BTC to undertake a careful proofread of its revised reference offer to ensure no key information is incorrect.
Service diagram *Annex 1*	BTC to include a new service diagram within its revised reference offer to correct for these omissions and inaccuracies, including clarification notes where appropriate.
Installation timeframes *Annex 1*	BTC to provide supporting evidence for its proposed timeframes. Alternatively, BTC must revise its installation timeframes in all locations to 15 working days.

[18] Where either of the above is not obtainable, BTC must provider clear evidence in support of this and provide an alternative timeframe (incl. supporting evidence).

Customer Premise Equipment (CPE) *General*	BTC to clarify whether its references to CPE relate to equipment at the OLO's PoP (and if so, specify the nature of this equipment), or remove all references to CPE.
Operations and Maintenance *Clause 6*	BTC to revise its wording "*faults which occur in its core network*" to instead refer to "*faults which occur in its network".*
Quality of Service *Annex 6*	BTC to amend Annex 6 to refer to the fact that its WDIA reference offer is subject to URCA's Quality of Service Regulations (ECS 42/2016, issued 22 December 2016) or any future Quality of Service Regulation issued by URCA in future.

Figure 2 Summary of required amendments to non-price terms in CBL's draft WDIA reference offer

Area	Required amendment
General comment *General*	CBL to undertake a careful proofread of its revised reference offer to ensure no key information is incorrect.
Service description *Annex A*	1. CBL to clearly specify the underlying technologies used to deliver the WDIA service, including explanations of the circumstances which might determine the use of a particular technology. 2. CBL to amend its service description within its reference offer to reflect the symmetrical nature of the WDIA service. 3. CBL to amend its service description to make it clear what is included in the WDIA service (for example, noting that it includes static IP addresses but not support for domain names).
One-off charges *General comment*	CBL to provide within its reference offers, at a minimum, information on the applicable unit prices for different types of labour and individual items of relevant network equipment required for installations or other related one-off events which incur charges. CBL also to provide a standard charge for routine one-off activities such as installations and service upgrades (supported by a breakdown of the relevant labour and equipment components), which shall apply in situations where the required network elements are already in place and the OLO's PoP is easily accessible.
Definition of terms *Annex H*	CBL to clearly define all terms used.

Confidentiality and information protection *Clause 18*	CBL to include a sub-clause within Clause 18 to explain that the clause applies from the date the agreement is signed until 12 months after the expiry or termination of the agreement.
Days vs. working days *General*	CBL to express timeframes in working days and clearly state where the number of days instead refers to an alternative definition of days (e.g. including weekends and/or public holidays).
Installation timeframes *Annex B*	CBL to provide supporting evidence for its proposed timeframes. Alternatively CBL must revise its installation timeframes in all locations to 15 working days. CBL must also ensure internal consistency throughout its revised reference offer, regarding timeframes and any other terms.
Timeframe for change in capacity *Annex B*	CBL to include a target timeframe for addressing OLOs' requests for a change of capacity in its revised reference offer and provide justification.
SLAs *Annex G*	CBL to include SLAs covering targets and proposed remedies (for example, compensation) in relation to installation and service upgrade timeframes in its revised reference offer.

4. Assessment of price terms

In this section, URCA summarises and responds to the comments received during the public consultation process in relation to the proposed price terms in BTC's and CBL's draft WDIA reference offers (Consultation Questions 3 and 4).

4.1 First Round Comments

Coakster, Wicom and CLC provided comments in the first round regarding the price terms proposed by BTC or CBL. Their comments are summarised and discussed below.

Coakster's comments

Coakster requested that both BTC and CBL offer price schedules for bandwidths lower than 100Mbps, noting that both BTC and CBL currently propose to only offer WDIA services of 100Mbps or more. It explained that in the wake of Hurricane Dorian, it would need to begin by subscribing to WDIA services of a lower bandwidth and potentially upgrade its WDIA service over time.

Regarding the level of prices proposed by BTC and CBL, Coakster acknowledged that both proposed prices represented a reduction relative to current prices, but suggested that WDIA prices could be lowered further (without stating any revised level of prices it considered reasonable). Coakster noted its reliance on URCA in reviewing the level of prices proposed by BTC and CBL.

To support its view that prices of WDIA services are high, Coakster highlighted how the prices of BTC's WDIA services compare to the prices of its BRO services, contrasting the current price of the BRO service (300Mbps download/100Mbps upload) at $187.44/month with the proposed price of the WDIA service (100Mbps symmetrical) at $3,693.00/month. In so doing, it noted the greater reach of BRO services, which represent a connection to individual retail customer premises, relative to the WDIA services under which BTC provides a connection only as far as an OLO's PoP. Coakster acknowledged that a counteracting factor is the non-oversubscribed, symmetrical nature of the WDIA service, but stated that the BRO service "*has much more value*" than the WDIA service.

Wicom's comments

Wicom expressed its concern that neither BTC nor CBL had taken any "*substantial or meaningful*" steps to reduce the prices of their WDIA services and claimed that the "*suggested prices cannot be profitably sold by WISP's [Wicom] or ISP's*". URCA interprets Wicom's statement to mean that, at the prices proposed in the draft reference offers, OLOs would be unable to compete (profitably) with BTC and CBL at the retail level using PoP-based WDIA services as a wholesale input.

Wicom also suggested that BTC and CBL had in the past made poor quality investments and failed to upgrade "*obsolete technology*" in their networks, with their retail customers suffering as a result. It concluded its submission by urging URCA to use "*best competition price modelling*" to derive lower prices for WDIA services, given the positive impact of connectivity on the wider economy. URCA is again unclear as to the methodology suggested by Wicom to lower prices, but presumes this to mean a cost-based pricing exercise of the sort URCA is in the process of finalising with BTC and CBL, as explained in Section 4.4.

CLC's comments

CLC's comments on price terms focused primarily on BTC's proposals.

CLC described BTC's accounting separation ("AS") reports from 2009 onwards as having been unfit for purpose. It seems CLC would consider BTC's AS to be the appropriate basis for a cost-based pricing exercise if the AS was deemed to be robust, as it expressed a dissatisfaction in BTC's approach of using a retail-minus approach to setting prices, rather than a top-down costing approach.

CLC considered the absence of any description regarding the technology which would be used to provide the WDIA service to severely restrict CLC's ability to comment on the reasonability of the proposed prices. It set out, however, its view that these prices "*appear high*" although did not provide any point of comparison or any supporting evidence. CLC suggested a discount range relative to the 100Mbps service of 15% to 20% for higher-bandwidth services before setting out proposals for specific discounts for services of at least 500Mbps. These proposed discounts were as follows:

- 10% for 500Mbps;
- 15% for 1Gbps;

- 20% for 2Gbps; and
- 35% for 10Gbps.

As with its comment that it considers prices to be high, CLC also did not provide any supporting evidence or precedent for its suggested discount rates.

CLC suggested that prices should remain fixed for the duration of the agreed contract period with the exception of upgrades or downgrades. CLC argued that any such price changes should require a notice period of 90 days and be subject to URCA approval.

With regard to CBL's pricing proposal, CLC noted no particular objections, acknowledging that those prices had been set based on CBL's AS and noting that the differentiated pricing by bandwidth of the service appeared to reflect volume discounts (i.e., lower overall effective per-Mbps prices for higher-bandwidth services).

URCA's responses to comments received

URCA notes the concerns raised by Coakster, Wicom and CLC in their first round responses. However, URCA recognises that BTC, in its second round response, has addressed each of their points in turn. URCA therefore provides a consolidated response to the respondents' combined views on each of the issues raised in the first round submissions following BTC's second round response points below.

4.2 Second Round Comments

As stated in Section 3.2 above, only BTC provided a second round response. Its comments in relation to the proposed WDIA price terms are summarised and discussed below, followed by URCA's response on each issue.

BTC's comments

As described in Section 4.1 above, BTC has responded to the points raised by Coakster, Wicom and CLC. BTC's comments on those points are summarised below.

Before responding to the points made by Coakster, Wicom and CLC, BTC provided an overview of the retail-minus approach underlying the proposed prices in its draft WDIA reference offer. It further argued that these prices had been calculated incorrectly and presented a set of higher, updated prices in Table 2 of its second round consultation response.

In response to **Coakster'**s comparison of BTC's WDIA prices with its BRO prices, BTC argued that the same was true of CBL's WDIA pricing, and explained that the reason for this is the different nature of the two services. As such, BTC considered that the BRO prices are irrelevant for an assessment of WDIA service prices.

Overall, BTC considered that the comments made by **Coakster** and **Wicom** regarding the proposed WDIA prices to be misplaced and only designed to ensure the OLOs' profitability, claiming that the OLOs were seeking below-cost WDIA rates which would incentivise ineffective competition. BTC concluded this point by again claiming that its proposed WDIA prices meet the cost orientation standard.

BTC noted **CLC**'s comments, but highlighted that CLC had neither provided any evidence to suggest that BTC's proposed WDIA prices, or any inputs such as the benchmark retail-minus rates, were high, nor explained the issues with BTC's AS model, which CLC claimed was an impediment to the setting of cost-based WDIA prices. BTC rejected CLC's suggestion that the per-Mbps price of WDIA services should decrease for higher-bandwidth services based on an argument that the prices were based on a discount to "longstanding" retail DIA rates which include a discount.

In response to **Coakster**'s request for a WDIA service of bandwidth lower than 100Mbps, BTC outlined its view that it does not consider WDIA services should apply to speeds below 500Mbps, let alone 100Mbps, and added that it does not consider services below 100Mbps to be wholesale services. BTC did not provide any evidence or context to support this claim, however.

BTC claimed that the Consultation Document did not provide sufficient information regarding CBL's approach for BTC to provide specific comments but argued that BTC's prices were higher than CBL's for comparable bandwidths as a result of BTC's greater network footprint, which also covers the most remote geographic areas of The Bahamas contained within Geographic Market 2.

URCA's responses to comments received

As explained in ECS 13/2020 and the Consultation Document, URCA requires that the price terms contained in BTC's and CBL's WDIA reference offers are cost-based. Prices based on a retail-minus approach, as proposed by BTC, clearly do not meet this requirement. As set out in Section 4.4, URCA is in the process of engaging with BTC to derive WDIA prices which properly reflect BTC's underlying cost of providing WDIA services. Prices based on a retail-minus approach will be rejected and not included in BTC's final WDIA reference offer approved by URCA. This section therefore does not comment on BTC's explanations of the specific methodology underpinning its retail-minus prices or outlining its 'corrected' prices, since these are redundant.

URCA acknowledges BTC's comments regarding the potential impact of different geographic footprints on the cost of providing WDIA services. More generally, URCA recognises that cost-reflective prices will take into account BTC's and CBL's respective geographic coverage areas and that these differences, among other differences in their networks such as the use of different technologies, may result in BTC and CBL facing different costs of providing WDIA services. URCA also agrees with BTC's objections to the comparisons of its BRO and WDIA prices since both services are very different and cannot meaningfully be compared even after adjusting for the relative bandwidths or dedicated vs oversubscribed nature of the connection. However, similarly to other comments relating to the price levels in BTC's draft reference offer, URCA again refers to its dismissal of BTC's proposed retail-minus approach to setting prices.

However, URCA finds some of BTC's arguments in this respect to be lacking in merit. BTC appears to criticise **Coakster** and **Wicom** for wanting wholesale prices which allow them to operate profitably, as well as for preferring to rely on BTC's infrastructure rather than inefficiently building duplicate networks.

However, URCA considers it reasonable for OLOs to have the choice between building their own networks (i.e., infrastructure-based competition) and buying cost-reflective wholesale services (i.e., access-based competition) in order to facilitate their provision of retail broadband services in The Bahamas. Furthermore, URCA is of the view that cost-based prices allow BTC (and CBL) to recover their efficiently incurred costs and therefore reflect a fair way to set the prices for BTC’s and CBL’s wholesale access services.

Whilst URCA concurs with BTC’s view that any respondent’s criticism of its AS model should provide a more specific description of the respondent’s concerns, it is clear that BTC has faced issues in using its AS information to produce cost-based WDIA prices.

In response to **CLC**’s suggestion that the per-Mbps price should decrease as bandwidths increase, URCA agrees that this is typical of a wholesale (or retail) pricing structure. A driving factor in this is that some costs associated with the provision of WDIA services (or other wholesale/retail services) are fixed regardless of the service bandwidth, and so this fixed cost represents a greater proportion of the price for lower-bandwidth services. URCA considers BTC’s counteracting argument based on the relationship in its proposal between WDIA prices and retail prices to be irrelevant, given URCA’s earlier comments regarding the issues with using a retail-minus approach to set prices and the requirement for BTC to submit revised prices which are cost-based.

Regarding the requests for lower bandwidth services, URCA has considered the specific arguments put forward by **Coakster** regarding the need for OLOs to scale up their bandwidth requirement as their business grows. URCA finds BTC’s claims that 500Mbps should be a lower limit for WDIA services and that services below 100Mbps should not be classified as wholesale services to be unsubstantiated and confusing. BTC has not explained why it considers this to be justified , and URCA considers that OLOs’ historic use of relatively low bandwidth WDIA services as an input to the provision of their downstream retail services to be strong evidence against the claims made by BTC.

URCA has conducted an assessment of the bandwidths historically offered to customers and the services taken by OLOs in the past, based on information submitted by BTC and CBL earlier in this review process. Considering this alongside Coakster’s request for lower-bandwidth services, URCA has determined that it is necessary for both BTC and CBL to offer a wider range of bandwidths to their WDIA customers (including lower bandwidth products). The amendments required to the licensees’ WDIA reference offers in order to address this are described in Section 4.3 below.

4.3 Amendments required to price terms

Reflecting the need for BTC and CBL to offer a greater range of bandwidths to OLOs, identified in Section 4.2 above, URCA requires that both SMP operators take the following approach to adjusting the price terms in their revised WDIA reference offers.

1. BTC and CBL must set regulated PoP-based wholesale DIA charges for at least the following bandwidths: 30, 50, 75, 100, 150, 200, 250, 350, 500, 750, and 1,000 Mbps. This must be based on fixed and variable elements of charges derived from the costing exercise such that the per-

Mbps charge decreases for higher-bandwidth products. This is based on URCA's understanding that OLOs' bandwidth requirements start from as low as 30Mbps, with OLOs' business plans resting on the ability to scale up bandwidth subscriptions incrementally as they grow their retail customer base.

2. Furthermore, requests from OLOs for PoP-based wholesale DIA services of bandwidths other than those listed above must be considered by either operator and a quote must be provided within 10 working days. If an OLO considers that the price quoted by BTC or CBL for such a service is unreasonable relative to the prices for the WDIA services set out within the WDIA reference offers, the OLO may raise the matter with URCA. URCA shall then validate whether the proposed charge is reasonable and cost-based, and request a detailed justification from the relevant SMP operator within 5 working days if the quoted WDIA price differs significantly. Acceptable justifications could include, for example, modifications to the network which would not be required for the services set out in the WDIA reference offer. If it is not technically feasible for BTC or CBL to meet an OLO's request, they must inform URCA within 5 working days of the OLO's request, communicate this to the OLO, and offer a reasonable alternative. OLOs may ask URCA to intervene in the event that they are unable to arrive at a commercial agreement with BTC and/or CBL.

BTC and CBL shall ensure that their revised WDIA reference offers reflect the terms above.

4.4 Process for establishing cost-based WDIA prices

In parallel to this consultation process, URCA has engaged with both BTC and CBL to ensure that their proposed WDIA prices are cost-based. As summarised in the annex of the Consultation Document, the operators' pricing analyses, which underpin the proposed prices contained within the Consultation Document, took the following forms:

- **BTC** proposed that its prices be based on a "retail-minus" approach whereby wholesale prices are set at a fixed discount relative to retail prices. BTC argued that such an approach was the only feasible methodology it could use to set WDIA prices at that time but conceded that it would be willing to set cost-based charges in future under URCA's guidance.
- **CBL** proposed prices based on an analysis of the cost data contained in its latest separated accounts, taking steps to identify the costs relevant to the provision of WDIA services. Once all relevant costs had been identified, CBL allocated these between variable costs (i.e. those which vary depending on the bandwidth of the service) and variable costs (which do not) in order to set prices for different service bandwidths.

URCA at the time made it clear that it did not consider BTC's proposed approach to be cost-based, regardless of the benchmarks used to set the retail-minus factor, whilst CBL's proposed approach follows logical steps in order to set prices which allow it to recover the costs associated with providing the WDIA service.

Accordingly, URCA is undergoing the following processes:

- With **BTC**, URCA has responded to BTC to explain why its proposed prices are not compliant with ECS 13/2020. URCA has also provided a template for setting cost-based charges with clear instructions as to how BTC might use this, along with its own cost data, to produce revised WDIA charges which are cost-based and therefore compliant with ECS 13/2020. At the date of publication, BTC has yet to provide URCA with its revised WDIA charges. Should BTC fail to comply with this requirement within a reasonable timeframe, URCA shall intervene to set its WDIA charges without BTC having further opportunity to dispute or revise those regulated charges.
- With **CBL**, URCA has held discussions on CBL's proposed approach and better understand the details of its WDIA pricing analysis. URCA has challenged CBL's approach by requesting further clarity on the rationale for its methodological choices as well as more data to support the allocation keys used to allocate costs to WDIA services. This exercise has now been completed for recurring prices.

Both BTC and CBL will include the revised WDIA charges in their final, URCA-approved WDIA reference offers.

Lastly, URCA notes that neither operator has to date provided cost-based estimates of any non-recurring charges (e.g. installation charges), contrary to the requirements set out in ECS 13/2020. Instead, they have argued that installation charges need to be bespoke. In Section 3.2, URCA describes the steps which it requires BTC and CBL to take in order to address this omission.

5. Conclusions and Next Steps

This Final Determination sets out URCA's conclusions on the required amendments to the non-price terms of BTC's and CBL's reference offers. The key next steps in the process are summarised as follows:

- BTC and CBL shall submit to URCA for approval their draft final WDIA reference offers for their PoP-based wholesale DIA services, in accordance with the specific requirements outlined in ECS 13/2020 and reflecting the required amendments to the non-price terms set out by URCA in this document. The price terms within the aforementioned reference offers must reflect URCA's final feedback on the costing exercises submitted by BTC and CBL.

- Following the submission of the draft final reference offers above, URCA will conduct its final checks as to whether these documents reflect all of URCA's requirements as set out above. If either BTC or CBL fails to meet URCA's requirements, URCA will intervene to set the terms and conditions it considers reasonable (including cost-based charges) for that operator.

- BTC and CBL shall then publish the approved price and non-price terms and conditions on which their PoP-based wholesale DIA services are provided (i.e., by publishing the URCA-approved WDIA reference offers prominently on their websites and additionally making such information available in other formats upon request).